

SECTION 42A HEARING REPORT



To: The Hearing Commissioner
From: Marne Lomas - Planner
Subject: **Section 42A Report for Limited Notified Resource Consent Application**
Hearing Date: 20 October 2022
File Reference: LU/0147/22

APPLICANT:	Kiwifruit Investments Ltd
PROPERTY ADDRESS:	582 Parallel Road
LEGAL DESCRIPTION:	LOT 3 DPS 89413 (ROT SA70D/525)
SITE AREA:	35.3283ha
ZONING – DISTRICT PLAN:	Rural Zone Hamilton Airport – Conical Surface Overlay Significant Natural Area – WP344
PROPOSAL:	Land use consent to construct vertical and horizontal (overhead) artificial kiwifruit shelter
SURVEYOR:	Barker & Associates Ltd (Cambridge)

1 INTRODUCTION

- 1.1 Kiwifruit Investments Limited ('the Applicant') has applied for resource consent (land use) in a retrospective and prospective capacity for the establishment of vertical and horizontal artificial kiwifruit shelters ancillary to a permitted horticultural kiwifruit orchard at 582 Parallel Road, Cambridge. A site location map is included in Appendix 1. A copy of the application for resource consent is attached to this report as Appendix 2.
- 1.2 The site to which this consent relates is a rural property approximately 4.5km west of Leamington. A detailed description of the site is provided in Section 3 of this report.
- 1.3 This application is assessed as a Discretionary activity under the provisions of the Operative Waipa District Plan ('District Plan'), breaching rules relating to boundary

setbacks and site coverage. The artificial shelters fall under the District Plan definition of a 'Building' and therefore Rural Zone rules for buildings are applicable.

- 1.4 This application was received on 28 June 2022, notification was made on 16 August 2022. A copy of my notification report is included in Appendix 3 of this report.
- 1.5 During the submission period, one submission in opposition was received by Council on 12 September 2022, which is contained in Appendix 4 of this report.
- 1.6 A request for further information was made to the applicant on 14 September 2022, which is contained in Appendix 5 of this report.
- 1.7 The applicant's response to the request was provided to Council on 22 September 2022, which is contained in Appendix 6 of this report.
- 1.8 The application has been referred to an Independent Commissioner as the planning staff do not have delegated authority to make a decision on notified applications where submissions have been lodged in opposition. The Councillors are not in office due to election season.

2 PURPOSE OF THE REPORT

- 2.1 This report has been prepared by Marne Lomas (Planner), in accordance with Section 42A of the Act, to provide a planning assessment and recommendation to the Independent Commissioner on the above resource consent application. The key purposes of this report are to:
 - Describe the application and consent requirements;
 - Identify the issues and concerns raised by parties who have lodged submissions on this resource consent application;
 - Assess the environmental effects of the proposal, including those raised in submissions;
 - Determine the effectiveness and appropriateness of the measures proposed by the Applicant to avoid, remedy or mitigate those environmental effects;
 - Assess the proposal against the requirements of the Act and the provisions of the relevant planning instruments;
 - Make a recommendation for the consideration of the Hearing Commissioner as to whether the resource consent should be granted or refused; and
 - Recommend conditions be imposed on the resource consent, if granted, to ensure that the adverse effects of the proposal can be appropriately managed, which is contained in Appendix 8 of this report.
- 2.2 **It should be noted that any of the conclusions reached or the recommendations formed are not binding on the Independent Commissioner. The Independent**

Commissioner will make their own conclusions and recommendations after having considered all the evidence from the applicant and submitter at the hearing.

3 THE SITE AND RECEIVING ENVIRONMENT

- 3.1 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').
- 3.2 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 'artificial shelters'), a 250m² processing building and a water retention pond (there are also multiple water bores around the site). The site was recently purchased by the applicant with the intent to use as a kiwifruit orchard. Noting that this application is partly retrospective and partly prospective, some of the shelters have already been constructed, starting on the eastern side and moving west. Currently the shelters have been constructed up to the eastern boundary of 598 Parallel Road, and even further west towards the northern portion of the site.
- 3.3 The site is mostly flat with a shallow gully (containing a modified waterway / 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. The drain does not have flowing water and is completely grassed over. There is a deeper gully on the eastern side of the site, and the eastern boundary is a deep gully that also forms the SNA. It was found in part of LU/0053/22 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 are all contained in Appendix 7 of this report.
- 3.4 Surrounding sites are rural, or rural residential in nature particularly along Parallel Road. The site surrounds a rural residential property, 598 Parallel Road. Other sites adjoining and rural landuse like dairy farms.
- 3.5 598 Parallel Road is the submitters property. It is 6500m² and contains the submitters dwelling, garage, pool and sheds. The entrance to this property is from Parallel Road. The outdoor living space is north-facing, the site also has a number of small paddocks for a small number of stock and other animals. The site has some mature trees and hedge screening from the subject site. The site is zoned Rural and has no policy overlays, the Airport conical surface overlay does come across this site but this has no consequence to the application.
- 3.6 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.

3.7 Images from Council’s planning maps and from the site visit are shown in Figures 1-9.

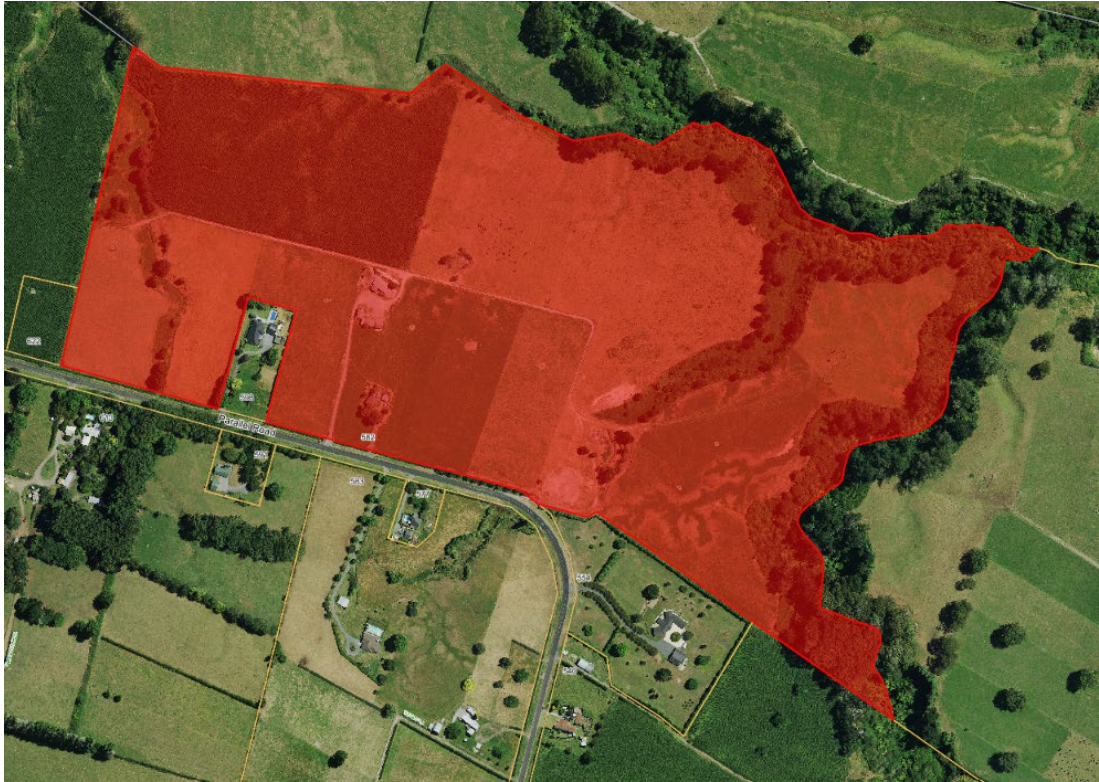


Figure 1: Aerial photograph of site (site shown in red)



Figure 2: District Plan Zone & Policy Overlays ('Significant Natural Area' in green)

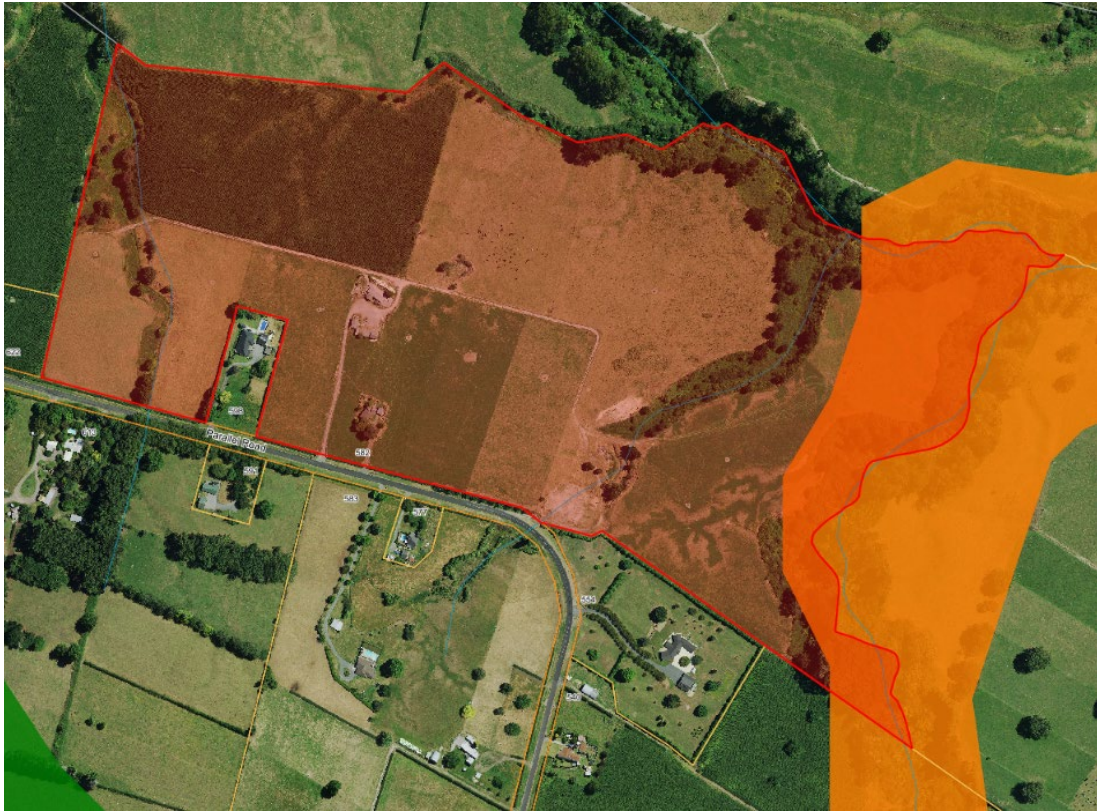


Figure 3: District Plan Special Features ('Unstable Land' in orange)



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



Figure 5: Site visit photos 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 9: Site visit photo showing the western portion of the site, currently empty, shows the shallow gully, facing Parallel Road to the west.



Figure 10: Site visit photo showing the western portion of the site, shows the shallow gully from the roadside facing north. Existing artificial shelters in the background.

4 BACKGROUND

LU/0053/22

- 4.1 Kiwifruit Investments Ltd ('the Applicant') obtained land use consent to undertake earthworks in the Rural Zone to construct a 15,000m³ pond for irrigation purposes. The proposal involves stripping 1,650m³ of topsoil, excavating 10,600m³ of subsoil with a cut up to 4.5m in depth and 5,700m³ of fill involving re-used cut up to 2.7m in depth.
- 4.2 This application was processed on a non-notified basis and Ngā Iwi Tōpū O Waipā (NITOW) were neutral in respect of the application.
- 4.3 As of 19th August all earthworks relating to the retention pond have been approved as per LU/0053/22. Note there are no proposed earthworks for this application LU/0147/22, other than excavating holes for the supporting poles, no other earthworks are proposed.

Waikato Regional Council Consents

- 4.4 On 13 September 2022 the applicant's agent provided four non-notified and approved Waikato Regional Council (WRC) consents, which are summarised below and are contained in Appendix 7 of this application.
1. AUTH143442.01.01 - Construct, use and maintain well for crop irrigation;
 2. AUTH144393.02.01 - Earthworks in association with proposed Kiwifruit development (construction of water storage pond);
 3. AUTH144142.01.01 - Construct 2 bores, use and maintain well for crop irrigation supply and monitoring bores;
 4. AUTH144627.01.01 - To drill up to 3 test bores for the construction of a single production bore hole and up to 2 monitoring bores to take groundwater for a new kiwifruit orchard irrigation.
- 4.5 The consent that relates to earthworks - AUTH144393.02.01 was accompanied with an Ecological Impact Assessment prepared by Titoki Landcare which I have also attached in Appendix 5 as it contains useful information regarding my assessment of the waterbodies and SNA.
- 4.6 The Commissioner may want to refer to the WRC consent conditions if the decision to grant this application is made.

Development Engineering:

- 4.7 A vehicle crossing application (VC/0195/22) was applied for, also in a retrospective capacity, to legalise emergency works needed to expand and seal one of the original farm entrances. The entrance is located on the southern boundary of the site adjoining Parallel Road, and was originally used as a secondary entrance for quad bikes etc.
- 4.8 To prepare the orchard and do associated works, this corner entrance was expanded in an emergency capacity. Complaints were received from neighbours, and Council's enforcement team was called out. A retrospective application was lodged for a temporary vehicle crossing permit, but concerns were raised about the location of the entrance and the bend in Parallel Road as vehicles turning right into the site have a very sharp corner.
- 4.9 Currently (at the time of writing this report) the vehicle crossing permit application still has outstanding issues and has not been accepted by Council's Development Engineering team.

Complaints

- 4.10 Several complaints from neighbours were received by Council in relation to the artificial shelters prior to and following the resource consent application being submitted. The complaints identified a number of issues, such as:

- Wondering how the shelterbelts will be maintained along the boundary, if people would have to come onto their property.
- If the cryptomeria clippings could be harmful to dairy cows.
- Removing trees and exposing earth near SNA.
- Within the boundary setbacks.
- Spraying on the site might affect their site/dairy operation.
- Views and sun will be completely blocked.
- Wifi service will be completely shut off due to loss of mountain views.
- Noise during the week and weekends.
- Cars and trucks parking on the grass verge.
- ‘Immigrant’ drivers.
- 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.

4.11 Some of these effects, and those additional points raised in the submission from Mr Jennings are considered in Section 11 of this report.

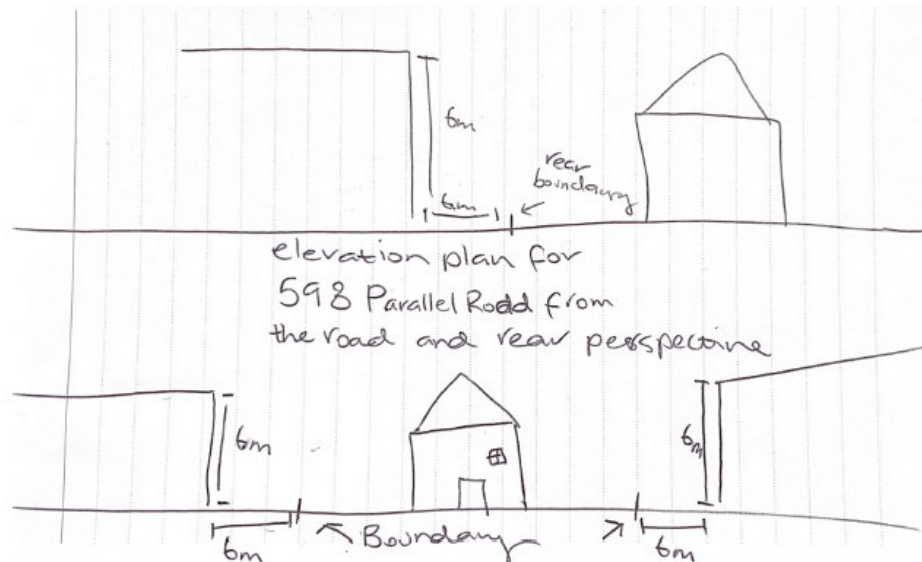
5 Section 92

5.1 A section 92 request was sent to the applicants agent, Simone Williams, on 14th September 2022 in light of points raised in the submission. The letter is contained in Appendix 5 of this report. The RMA ‘working days’ clock does not stop for s92 requests made after the decision on notification.

5.2 A response was received on 22nd September 2022 and is contained in Appendix 6 of this report. I considered the response to satisfy the points raised, and I have incorporated the additional information into this report.

5.3 The following information was requested:

1. Please provide to-scale elevation plans showing the scale (distance of shelters to the boundary, height of shelters) of the proposal as it relates to 598 Parallel Road. Please show an elevation showing the side boundaries and the rear boundary, see image below as an example:



Response: This was provided and is contained in Appendix 6.

2. Please provide an assessment of the proposal against the National Environmental Standard for Freshwater 2020 (NES-FW).

Response (summarised): With respect to this application in question, for which application is sought for the construction of vertical and horizontal (overhead) artificial Kiwifruit shelter, there are no standards and rules in NES-FW, Part 3: Standards for other activities that relate to freshwater of the NES-F that apply to this Application. The Ecological Impact Assessment, prepared by Titoki Landcare has concluded that no natural wetlands are present along the riparian zone of the modified ephemeral stream for which the proposed shelter will cover, and that the two wetland areas that were identified further downstream, with the proposed works of this application being greater than 10m from the wetland extent (refer wetland buffer areas in Figure 7 of the Ecological Impact Assessment). Accordingly, this application does not require consent under NES-F. Lastly, with respect to this proposal, the findings of this assessment highlight that the modified ephemeral stream subsequently trigger an encroachment with Rule 26.4.2.1 of the Waipa District Plan – 23m setbacks from waterbodies. This is discussed in further detail under Question 4 below.

3. Please provide an assessment of the proposal against the National Policy Statement for Freshwater Management 2020 (NPS-FM).

Response: The NPS-FM came into effect on 3 September 2020 and replaces the NPS-FM 2014 (amended 2017). The NPS-FM sets out the objectives and policies for freshwater management under the RMA (1991) to support improved freshwater management in New Zealand. In terms of the proposed activities, I have had regard to the fundamental concept of 'Te Mana o te Wai' and the objectives and policies of the NPS-FM and consider them to be consistent.

4. Please provide an assessment of the proposal against Rule 26.4.2.1 Setbacks from waterbodies, relating to the modified watercourse/drain on the western portion of the site.

Note: assessment is not required for this rule against the waterbodies contained in the SNA (on the northern and eastern portion of the site) as they have confirmed to be wetlands and are not applicable to this rule.

Response (summarised): *The proposed vertical shelter (located near the southern boundary of the site) and horizontal (overhead) shelter will encroach into the 23m setback from the modified watercourse located on the western side of the site. As the overhead shelter will span over the watercourse, there will be no setback to the proposed shelter, albeit the horizontal shelter being 6m above the watercourse (being the height of the shelter). The proposal is therefore unable to comply with this rule.*

5. Please provide a site coverage calculation that includes all buildings on the site.

Response: *The total site coverage including the artificial screens (23ha) and the newly constructed shed (250m²) will result in a site coverage of 23.025ha, being 65.1743%.*

6. Please provide any approved Waikato Regional Council consents, and information about any not approved/pending consents.

Response (summarised):

1. AUTH143442.01.01 - Construct, use and maintain well for crop irrigation;
2. AUTH144393.02.01 - Earthworks in association with proposed Kiwifruit development (construction of water storage pond);
3. AUTH144142.01.01 - Construct 2 bores, use and maintain well for crop irrigation supply and monitoring bores;
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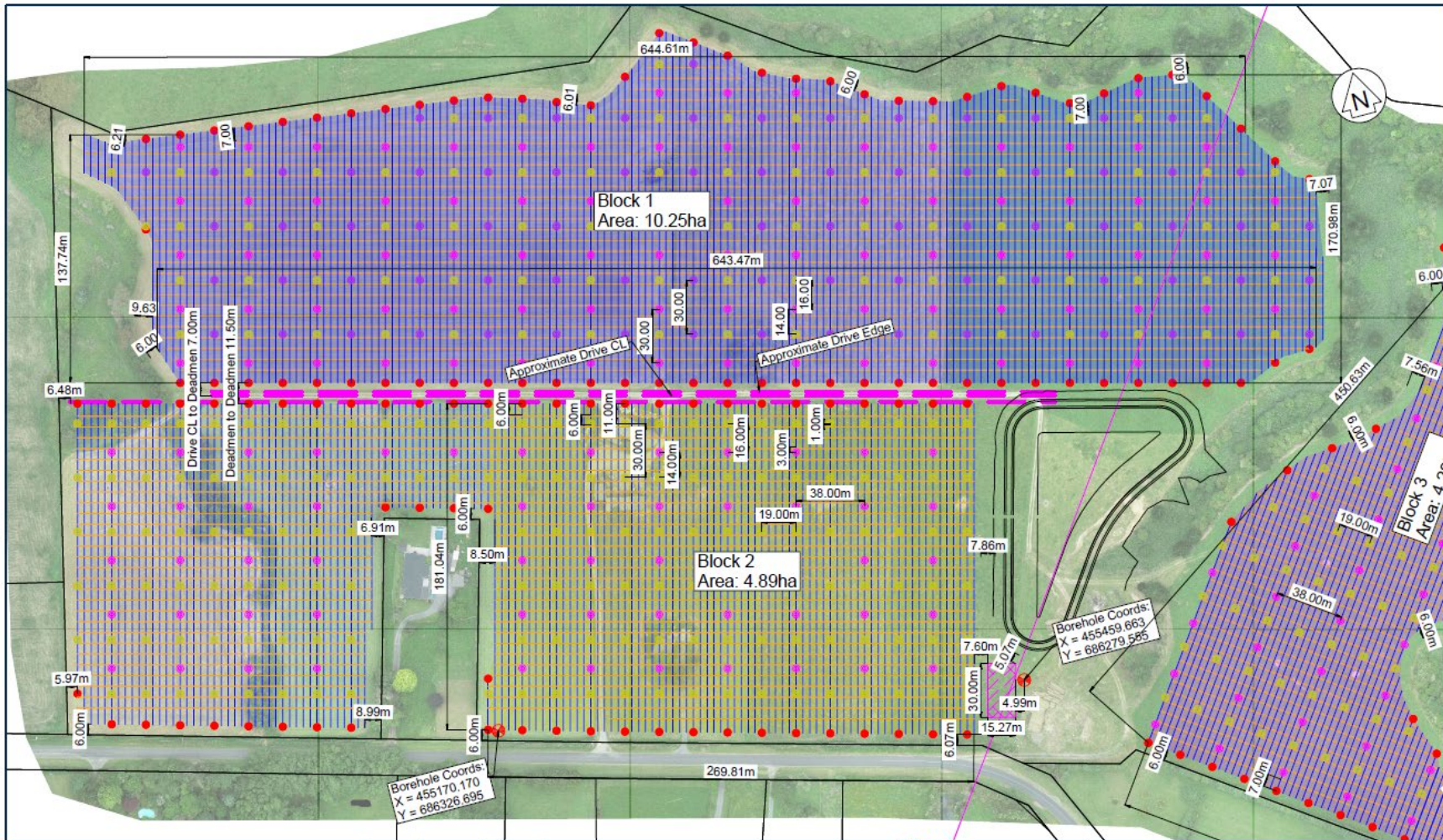
As expanded earlier in this Section 92 response, investigations into the classification of the modified watercourse and wetland area located on the western side of the site have been undertaken over the last few months by Titoki Landcare to explore the possibility of piping 205m of this watercourse and reclaiming the 114.8m² of streambed for horticultural use. The reporting from Titoki Landcare has just been finalised, and as such resource consent to Waikato Regional Council and NES-FW can now be applied for and is sought.

It must be noted that whilst a bundling approach to the Kiwifruit development of the site would have been the most appropriate way to proceed with resource consent applications with both Waipa District Council and Waikato Regional Council, the land use consent for the vertical and horizontal shelter with Waipa District Council was prioritised based on the enforcement action taken by Waipa District Council.

6 THE PROPOSAL

- 6.1 Kiwifruit Investments Ltd have applied for a landuse consent for constructing an artificial kiwifruit shelter, some retrospective and some proposed.
- 6.2 The proposal is to construct artificial vertical and horizontal artificial shelters over a future kiwifruit orchard. The majority of the artificial shelter has been established, proposed to cover 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 dark green in colour and the horizontal artificial shelter will be white/transparent. The vertical and horizontal artificial shelter will be used to protect kiwifruit planting within the canopy area and will breach road, internal and SNA boundary setbacks as well as site coverage rules.
- 6.3 The vertical cloth is 2.1m high and links to the horizontal (overhead) cloth that has a height of 6 metres on a 45 degree angle.
- 6.4 The vertical cloth is proposed to 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 65.18%. The specific measurements are depicted in Figure 10 below.
- 6.5 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, 3.5m along road boundaries (due to the powerlines) and 6m along internal boundaries.
- 6.6 The purpose of the cryptomeria shelterbelt will mitigate 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 at 3.5 metres along road boundaries and 6 metres in height along internal boundaries to ensure the shelter belts will comply with the District Plan.
- 6.7 The purpose for the artificial shelter to be established is through the need to protect more sensitive fruit varieties such as red and gold Kiwifruit varieties and to maximise productive land. Shelterbelts are widely used in the horticulture sector to protect fruit from wind and frost damage, however through technological advancements, artificial shelters are now the preferred choice to protect the plants and fruit. 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 spay drift, wind, frost and birds.
- 6.8 The kiwifruit orchard itself is a farming activity and therefore is permitted in the Rural Zone under the District Plan. This application pertains only to the effects from the artificial shelters and other matters relating to the shelters.

- 6.9 This is a Discretionary activity under the District Plan. Specific rules are outlined in Section 9 of this report.
- 6.10 Refer to Figures 10 & 11 for the proposed site plan for the activity.



SURVEYED	EN	02.12.21
DRAWN	CE	10.02.22
DESIGNED	CE	10.02.22
CHECKED	CE	10.02.22

PROJECT
582 Parallel Road, Cambridge

CLIENT
Sabre Construction

TITLE
Block 1-3 Draft Design

SCALE	1:2000 (A3)
PROJECT NUMBER	0323
DRAWING NUMBER	0323-200-08
SHEET NUMBER	1 of 2

NOTES:
1. Refer to Certificate of Title for Easements and Legal interests

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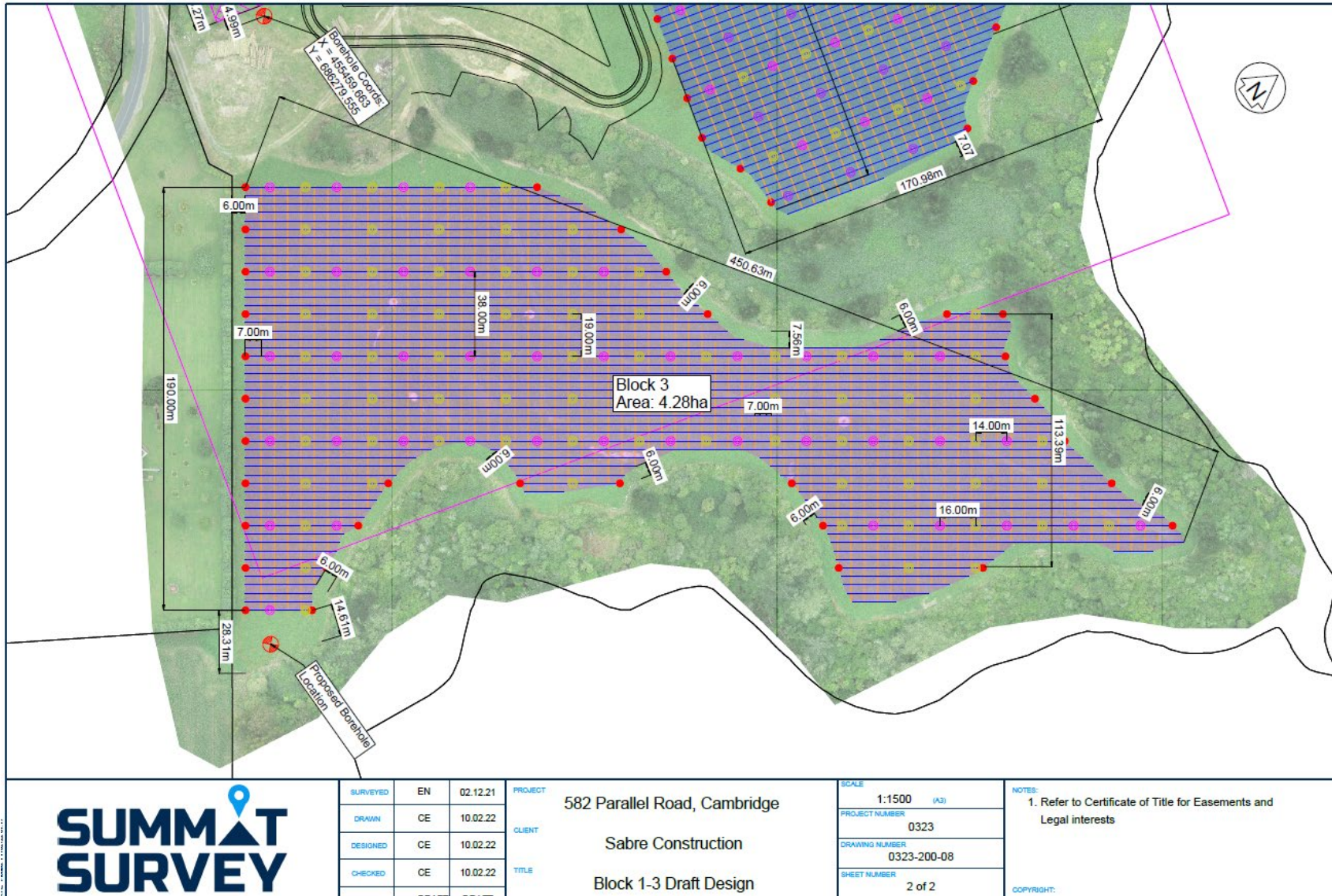


Figure 11: Artificial shelter site plans.

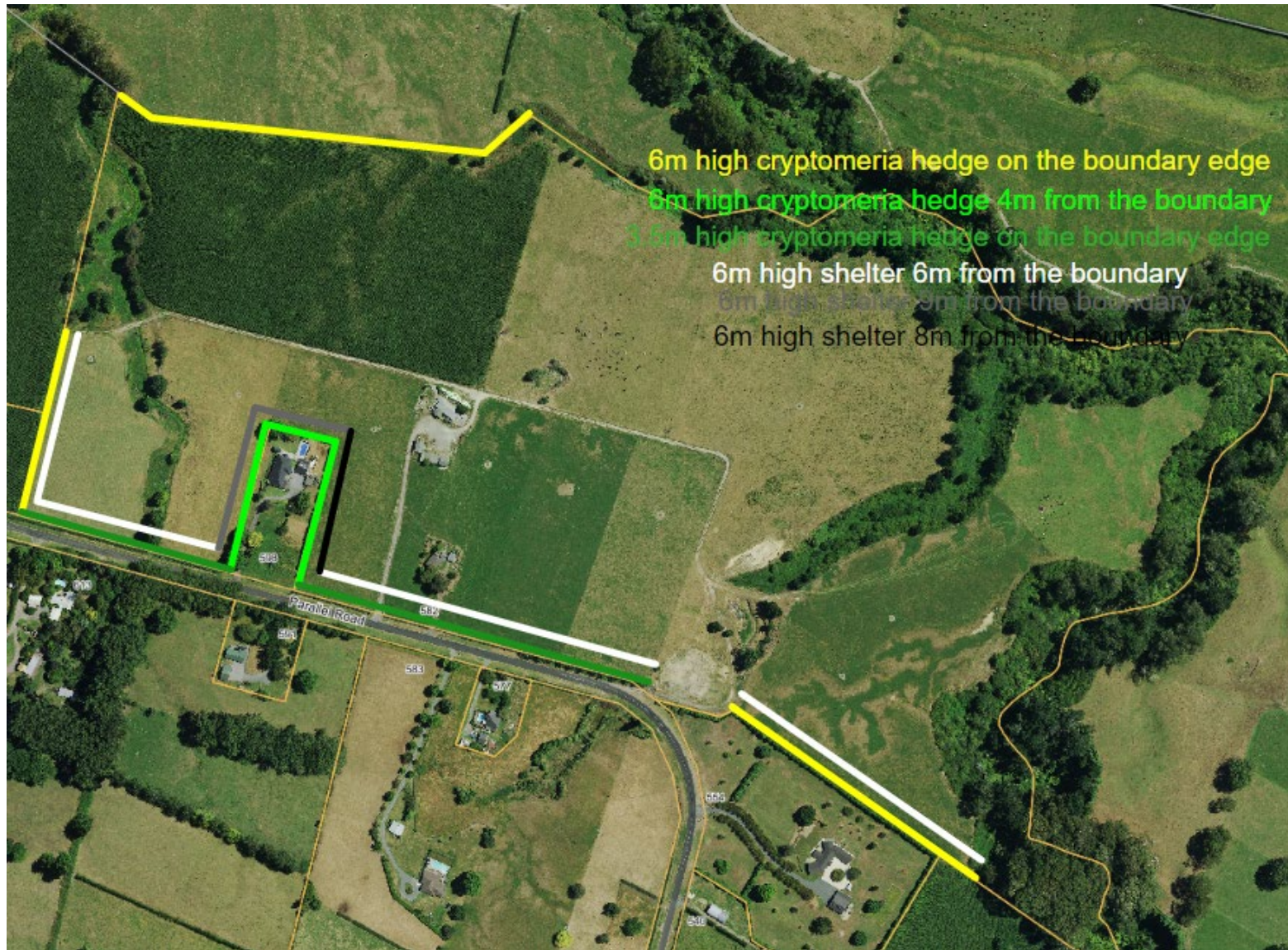


Figure 12: Cryptomeria shelterbelt site plan.

7 NGA IWI TOOPU O WAIPA (NITOW) CONSULTATION

7.1 NITOW were not consulted for this application. Landuse consents pertaining to 'simple' non-compliances like boundary setback and site coverage exceedances are not circulated.

8 NOTIFICATION SUMMARY

8.1 Under the Act the notification provisions are contained in Sections 95A to 95F. Specifically, Sections 95A to 95F which set out the process for determining whether or not public notification or limited notification of the application is required. Having regard to the notification provisions, a notification assessment has been completed and is contained in Appendix 3.

8.2 This report concludes:

- The information contained within the application is substantially suitable and reliable for the purpose of making a recommendation of and decision on notification;
- The applicant did not request that the application be publicly notified and there are no rules in the District Plan relevant to this proposal that require that the application must be notified;
- There are no rules in the District Plan relevant to this proposal that preclude public or limited notification.

8.3 The adverse effects were assessed to be below the 'more than minor' threshold on the wider environment and the proposal could therefore be considered without the need for public notification.

8.4 There were no special circumstances that warranted public notification.

8.5 The property subject to this application is not within, adjacent to, or directly affected by a statutory acknowledgment area.

8.6 The permitted baseline activities with regard to this proposal include:

- Horticultural (farming) activities
- 6m high shelterbelts
- Road boundary setback 30m
- Internal boundary setback 25m
- SNA setback 10m
- Site coverage 3%

8.7 Two landowners provided their written approval to the application:

- 554 Parallel Road (adjoining on the southern boundary)

- 613 Parallel Road (adjacent to the south across Parallel Road)



Figure 13: Written approvals outlined in red with stars.

8.8 Pursuant to Section 95B, it was considered that the proposal warranted limited notification to the persons at the following property:

- 598 Parallel Road (Nicholas Jennings and Vanessa Jennings)



Figure 14: 598 Parallel Road, party notified.

8.9 The assessment of effects in this report considered the proposal with regard to:

- Effects on rural character and amenity
- Effects on SNA and biodiversity
- Effects on waterbodies
- Construction effects

8.10 This application proceeded to limited notification with the submission period commencing on 16 August 2022 and closed on 13 September 2022.

8.11 Submission

8.11.1. One submission was received from Nicholas (Nick) & Vanessa Jennings who own the aforementioned property 598 Parallel Road. The submission was received at 4pm on 12 September 2022, which was day 19 of the 20 statutory day timeframe. The submission was prepared by Sarah Davidson, a Senior Planner at BTW Company. The full submission letter is contained in Appendix 4, but I have summarised it below:

- *The following submission is made on behalf of Nicholas Jennings and Vanessa Jennings (598 Parallel Road). The submission opposes Kiwifruit Investments Ltd consent application at 582 Parallel Road, Cambridge.*
- *This submission is lodged in response to the notice dated 16th August 2022 for limited notification of land use application LU/0147/22.*
- *The submitters wish to be heard at a hearing and would be willing to attend a pre-hearing meeting if required. A copy of this submission has been served on the Applicant.*

The application is deficient for the following reasons:

- *There are no elevation plans provided in the assessment to assess height, appearance and bulk.*
- *The application did not recognise and assess rule 26.4.2.1 (23m setback from waterbodies).*
- *The application did not mention approved or sought consents from Waikato Regional Council as a requirement of Schedule 4(2)(1)(e) of the Act.*
- *No independent ecology assessment was provided in the application to address or corroborate the assessment of effects on biodiversity and the SNA.*
- *The application does not address the NES-FW (2020) in relation to natural wetlands.*
- *The application does not address the NPS-FW.*
- *The proposed cryptomeria shelterbelt will have adverse effects relating to shading and amenity as such the permitted baseline applied in the application is not relevant. The application also has not considered other mitigation measures to address the adverse effects on the artificial shelters.*
- *The adverse visual and amenity effects of the structures prior to the shelterbelts reaching maturity have not been adequately considered in the application and the application has not considered the potential adverse visual and amenity effects during this period.*
- *The application did not consider the cumulative effects of the existing and consented buildings on site as it relates to the receiving environment.*
- *The site coverage calculations did not consider existing buildings on site.*
- *The proposal will and has resulted in adverse effects relating to the boundary setback and site coverage non-compliances. The proposal is a significant change in the built form of the receiving environment and will impact on aesthetic values from the submitters property at 598 Parallel Road.*
- *The proposal is contrary to the objectives and policies of the ODP (full list included in the letter in Appendix 5).*

8.12 The submitters seek the application be declined, and wish to be heard in a hearing in support of their submission.

8.12.1. In addition to the above, the submitter has previously (during phone discussions) raised the potential for loss of property values within their submission. Case law has established that effects on property values are not a relevant consideration in determining whether a resource consent should be granted. The Environment Court has taken the approach that the question of effects on property values is not an effect in itself, but it is a 'symptom' of other specific environmental effects. This matter is therefore not discussed any further with regard to the application.

8.13 The above matters are discussed further in Section 10 & 11 of this report.

9 OFFICER COMMENTS

9.1 No further comments were sought from other staff or external agencies.

10 DISTRICT PLAN PROVISIONS – CLASSIFICATION OF THE LANDUSE CONSENT

10.1 The subject site is zoned Rural in the operative Waipa District Plan, and subject to the Hamilton Airport – Conical Surface Overlay and Significant Natural Area – WP344.

10.2 Operative Waipā District Plan

10.2.1. The standards are thus assessed in Table 1 following:

TABLE 1: ASSESSMENT OF APPLICATION AGAINST SECTION 4 - RURAL ZONE RULES

Rule #	Rule Name	Status of Activity	Comment
4.4.2.1(b)	Minimum building setback from road boundaries 30m	Discretionary	The proposed activity will result in the shelters being 6m from the road boundary. This non-compliance results in the proposal 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 5.97-8.99m 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.
4.4.2.9	Maximum height of buildings 12m	Permitted	The artificial shelters will not exceed 12m.
4.4.2.10	Maximum building coverage 3%	Restricted Discretionary	The proposed shelters will cover 65.18% of the site.
4.4.2.12	Daylight Control	Permitted	The proposed shelters will not exceed on daylight recession planes.
4.4.2.58	Tree Planting (shelterbelts no more than 6m high)	Permitted	The proposed shelterbelts are between 3.5-6m high.
26.4.2.1	Setbacks from water bodies	Restricted Discretionary	The proposed shelters will be directly above the gully on the western portion of the site, it has been identified as a modified watercourse / farm drain from the Agent and from Titus engineers plans shown for LU/0053/22. The waterway is highly modified and grassed over, the applicants intend to cover and pipe the drain (not relevant to this application). This meets the definition of a waterbody under the Act as part of a 'river' definition includes modified

Rule #	Rule Name	Status of Activity	Comment
			<p>water courses.</p> <p>On the eastern portion of the site and associated gully, most of the artificial shelters will be outside of the 23m setback but there are some spots where this is borderline or could be slightly within the setback. The gully has been identified as a wetland in LU/0053/22 s92 response and in the Ecological Impact Assessment written by Titoki Landcare provided to and accepted by Waikato Regional Council in approved consent AUTH144393.02.01, therefore the rule does not apply to this portion of the site as the rule does not apply to wetlands.</p> <p>Please refer to Appendix 7 for the full documents.</p>

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

11 ASSESSMENT OF MATTERS TO BE CONSIDERED UNDER THE RESOURCE MANAGEMENT ACT 1991 (RMA)

11.1 Introduction

11.1.1. As a Discretionary activity the land use consent application is to be assessed having regard to the relevant matters in Sections 104(1) of the RMA, and whether consent can be granted under Section 104B.

11.1.2. A consent authority must have regard to a number of matters under Section 104 of the Act when considering an application for resource consent. Those matters include:

- The actual and potential effects of an activity on the environment (section 104(1)(a));
- Any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse environmental effects that may or will result from the activity (section 104(1)(ab));
- The provisions of an operative and / or proposed District Plan, National Directions, the Regional Plan or the Regional Policy Statement, or any other relevant statutory documents (section 104(1)(b)); and
- Any other matter the consent authority determines relevant and reasonably necessary to determine the application (section 104(1)(c)).

11.1.3. The following provides my assessment of all relevant matters under Section 104.

11.2 Section 104

11.2.1. Section 104 sets out those matters that a consent authority must consider when assessing an application for resource consent. The matters that are relevant to the consideration of this application (subject also to Part II, Purpose and Principles) are:

- “a) Any actual and potential effects on the environment of allowing the activity; and ...*
- b) Any relevant provisions of -*
 - (vi) A plan or proposed plan;”*

11.2.2. Section 12 (Effects on the Environment) and Section 13 (Waipa District Plan) of this report respectively address sections 104(1)(a) and (b) of the RMA.

11.2.3. 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.*

11.3 Part II – Purpose and Principals of the RMA

11.3.1. Part II is the purpose and principals of the RMA. The overall purpose of the RMA is to promote the sustainable management of natural and physical resources. “Sustainable management” is defined to mean managing the use, development and protection of such resources in a way that enables people and communities to provide for their social, economic and cultural well-being and their health and safety. At the same time they must:

- Sustain the potential of resources to meet the reasonable foreseeable needs of the future generations.
- Safeguard the life-supporting capacity of air, water, soil and ecosystems.
- Avoid, remedy or mitigate adverse effects on the environment of the activity.

11.3.2. With the above definition in mind, and the assessment of adverse effects in the approved notification report, which is also relevant for the purposes of the assessment required under Section 104(1)(a), the potential adverse effects of the proposed activity requiring further examination relate to those matters raised in submissions and other effects. These matters are:

- Rural Character and amenity

- SNA and biodiversity
- Effects on waterbodies
- Construction effects
- Positive effects

11.3.3. Additional concerns were raised by other neighbours in relation to this landuse consent, these concerns are outlined and discussed in my notification assessment in Appendix 3. Concerns included a loss of wifi and cell phone coverage, loss of light and warmth, shelterbelt maintenance, shelterbelts being poisonous to dairy cows, spraying (discharge of chemicals), and drivers/kiwifruit workers driving and parking illegally. These concerns raised by neighbours are mostly outside of the scope of this application as they don't relate to the artificial shelters, or they are beyond the considerations of the RMA.

11.3.4. As discussed in the notification assessment, some of the relevant concerns from neighbours were considered but found to be less than minor, and as such I recommended not notifying to those parties.

11.4 Receiving Environment

11.4.1. In assessing the actual and potential effects on the environment the 'receiving environment' for effects must be considered.

11.4.2. 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.

11.4.3. In this instance, the receiving environment has been described in Section 3 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.

11.4.4. I have checked all properties adjoining the subject site for granted consents, implemented and unimplemented and there are no granted consents for any nearby sites that 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 613 Parallel Road.

12 ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT OF ALLOWING THE ACTIVITIES

Following is an assessment of the actual and potential environmental effects from the proposed activity.

12.1 Rural Character and Amenity

- 12.1.1. When considering rural character, I make the following comments. The Rural Zone is primarily 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. 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”*.
- 12.1.2. 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).
- 12.1.3. As a horticulture activity (farming activity), the kiwifruit orchard is a permitted activity for the Rural Zone. Non-compliances relate 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 are utilised to provide additional protection for sensitive species.
- 12.1.4. The artificial shelters are not a typical structure currently in the District and they are not currently recognised or anticipated in the Plan. As such, the structures fall under the Plan definition for a ‘building’ (over 1m high and 5m²), despite not being a ‘building’ in the typical sense, such as a shed or other solid/impermeable structure found in the rural environment. 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 a higher elevation, the shelters have a semi-transparent white cover across the landscape that is quite obvious due to the considerable site coverage.
- 12.1.5. 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 artificial shelters (65.11% site coverage). The combination of the considerable site coverage and the reduced

boundary setbacks make them unmissable in the receiving environment, which was raised in the submission.

- 12.1.6. To mitigate the visual effects, the artificial shelter will be largely obscured from the wider environment and adjoining properties with the proposed cryptomeria shelterbelt. An example from Whitehall Fruitpackers on Kaipaki Road in Figure 9 (approximately 2km from the subject site) shows the nature of the cryptomeria shelterbelts. The proposed cryptomeria shelterbelts for this application will be 3.5m high along the road boundary (due to overhead powerlines) and 6m high along internal boundaries. The cryptomeria 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.



Figure 15: Example cryptomeria shelterbelts along Kaipaki Road.

- 12.1.7. It is noted that due to the shorter height of the road boundary cryptomeria at 3.5m high, and the artificial shelters proposed to be 6m high, there will be some artificial shelter visible depending on the elevation of the viewer. Occupiers of the receiving environment and users of Parallel Road would still have significantly reduced views of the artificial shelters as 3.5m is still high enough to block views at eye level. Internal boundary cryptomeria at 6m will completely block views to the artificial shelters unless viewed from above.
- 12.1.8. With regard to the proposed reduced boundary setbacks, the artificial shelters will not be noticeable to road users or the wider environment over time, when the cryptomeria shelterbelt has reached maturity. The 3.5m cryptomeria along the road boundary will take about 5 years (in the central north island, cryptomerias can grow 1m per year according to Farm Forestry New Zealand) to be an established height and thickness. The visual effects on road users and the wider environment 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 eye line.
- 12.1.9. The proposed reduced setbacks 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 along the road boundary and adjoining sites (other than the submitters property) is unlikely to significantly impact on

the overall character and amenity of the rural environment. Artificial shelters are readily distinguishable from more permanent and solid built form (being mostly transparent) and setbacks are unlikely to be discernible to the general public due to the use of shelterbelts, which will in time block the artificial shelters. However, it is acknowledged that there will be an adverse effect until the shelter belts grow to a sufficient height.

- 12.1.10. The cryptomeria shelterbelts can be planted along any boundary as a permitted activity, so long as they are kept to 6m or under in height. The proposed cryptomeria shelterbelts will be a maximum of 6m, maintained by the applicant through a consent condition. However, the cryptomeria also contribute to the significant visual change, as they essentially close off the site to the wider environment, blocking views into the site. They can cause shading effects and block views of the open rural landscape, especially from the roadside or an adjoining property they can have quite a dominant visual effect.
- 12.1.11. In the Rural Zone, it can be reasonably expected that artificial shelters and shelterbelts could be along the road boundary, or one/two shared internal boundaries. Which is part of the reason why I recommended not notifying to other adjoining properties. In comparison to the submitters property, which sees all three internal boundaries affected by the artificial shelters and shelterbelts.
- 12.1.12. Effects on the submitter and surrounding properties from the cryptomeria shelterbelts are permitted under the District Plan so long as they don't exceed 6m. In the District Plan, if shelterbelts grow over 6m they are required to be set back 30m from adjoining sites and dwellings (4.4.2.58(a)). As raised in the submission, having the cryptomeria shelterbelts being 4m from the boundary, 6m high, and along the all three of the shared boundaries, would create a sense of being 'boxed in' and will have significant shading effects on the submitters property. No other mitigation measures have been considered or offered in the application other than the shelterbelt, which has significant effects of their own.
- 12.1.13. The cryptomeria shelterbelt will create significant shading, loss of light (and temperature) and an overall reduction in amenity for this property. As discussed above, the cryptomeria shelterbelts are a permitted activity, as such the effects on this property from the cryptomeria shelterbelts are permitted under the District Plan. If the cryptomeria shelterbelts were to be lower, the property would experience more visual effects from the artificial shelter boundary reduction and site coverage.
- 12.1.14. As raised in the submission and mentioned above, the reduced boundary setbacks are much more dominant on this property when compared to other neighbouring sites/receiving environment. 598 Parallel Road is surrounded by the subject site and proposed artificial shelters and the 6m shelterbelt, on the north, east and west boundary. The proposed vertical shelter will be located 8.5m from the eastern boundary, 6m from its northern boundary, and 6.9m to 8.99m from its western boundary. The artificial shelters being 19m closer than what is permitted creates

significant visual change for the property, and amenity will be adversely impacted as the proposal has significant bulk and dominance effects around this property.

12.1.15. As the submitter property is affected on all three of its internal boundaries from the setback encroachment, it will experience significant visual effects and a change of outlook from 'open' rural character. The effects of this are vastly different from a permitted development, being 3% site coverage and a 25m internal boundary setback for the artificial shelters. 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. Although the artificial shelters do not meet the typical expectations of a building, the proposal is outside of what can be reasonably expected from an adjoining horticultural development.

12.1.16. The submitter raised that no elevation plans were provided in the application to aid in assessing the bulk and dominance effects. I did not consider elevation plans to be helpful to my assessment, as the artificial shelters are already in place along one of the submitters boundaries and the effects are already displayed. However this was requested in the section 92 and was received. I have included the main elevations below (more are contained in the s92 response in Appendix 6):

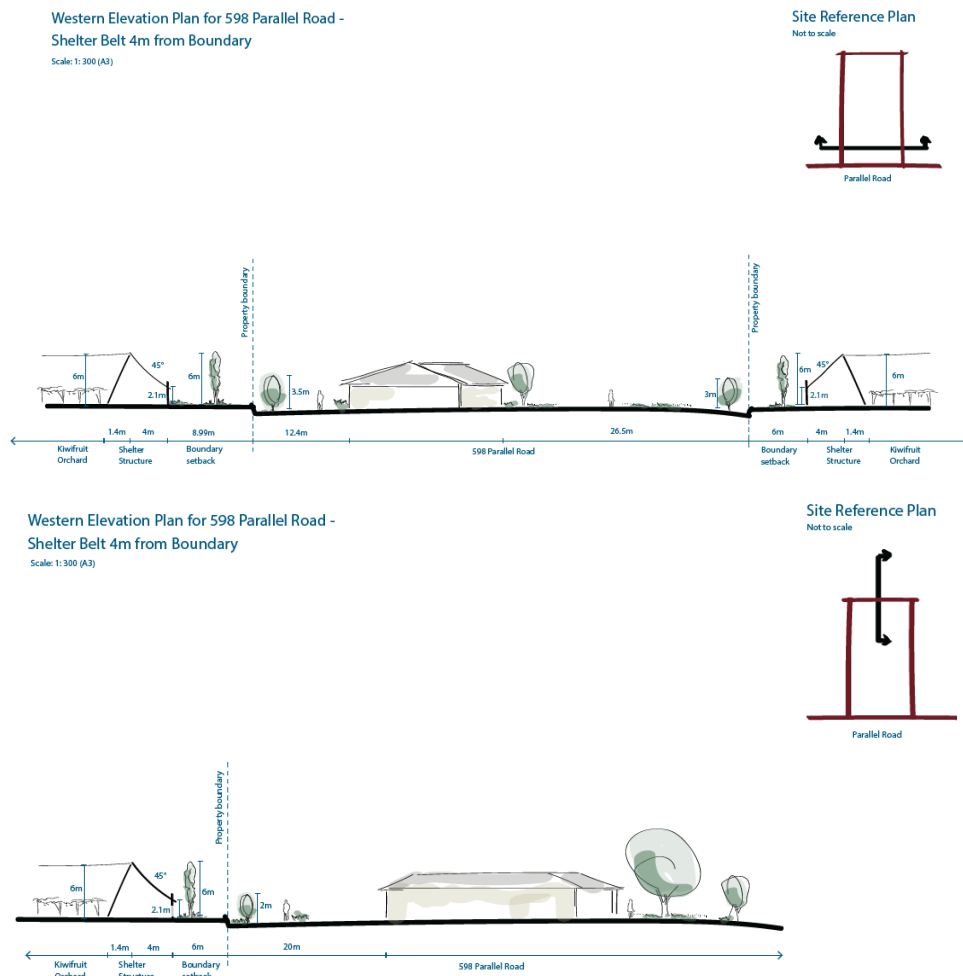


Figure 16: South and west elevations of the proposed artificial shelters and the shelterbelts.

- 12.1.17. 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 on three boundaries. 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. If the artificial shelters and associated cryptomeria shelterbelts were set back 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.
- 12.1.18. As the artificial shelters will be 6m away at the closest point, this property will experience dominating adverse visual effects and amenity effects associated with the proximity of the activity, to a more than minor capacity. The proposed mitigation being the cryptomeria shelterbelts taking approximately 8 years to grow, is a prolonged amount of time and beyond a 'temporary' effect.
- 12.1.19. I do not consider the cryptomeria shelterbelt a satisfactory mitigation measure in the short to medium term.
- 12.1.20. Overall, I consider the actual and potential effects of visual amenity on the submitters property to be significant and the proposed shelterbelts to be insufficient in avoiding the adverse effects.

12.2 Significant Natural Area and Biodiversity

- 12.2.1. 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 artificial shelter will be setback similar to other external extents within the site. 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 seeks to establish artificial shelter around and over the proposed permitted farming activity, therefore, the proposal will not disrupt the biodiversity and physical form within the adjoining SNA and access to the SNA can still be achieved.
- 12.2.2. As the artificial shelters are almost completely permeable, rainwater and sunlight are able to pass through with ease. Stormwater and sun is able to pass through the artificial shelters the typical effects from a 'building' (waters servicing, runoff, shading) being near an sensitive location are mitigated.
- 12.2.3. The artificial shelters may provide some buffer from elements like wind. The artificial shelters may also protect the SNA from other permitted horticultural activities like chemical spray.
- 12.2.4 The applicant raised that no ecology assessment was provided as part of the application to support the applications assessment of the SNA and biodiversity. In the Ecological

Impact Assessment written by Titoki Landcare 2022 (Note: there are two Titoki Landcare reports for this site, “2022 Ecological Impact Assessment” which relates to the SNA and wetlands and “2022 Ecological Impact Assessment and Mitigation Options” which relates to the waterbody/stream”) provided in Appendix 5, an assessment was made against the SNA and associated wetland as it related to the stormwater retention pond and packing shed earthworks and construction. Although for a different consent, the report supports my assessment in that impacts on vegetation and biodiversity will be ‘low or very low’. The report states that effects on the SNA would be likely if construction materials enter the gully or if the vegetation is removed or disturbed. As this application maintains a 6m building setback from the SNA, no earthworks are proposed, no materials will enter the gully and no vegetation will be removed or disturbed as a result of this application.

- 12.2.5 Overall, effects on biodiversity and the SNA are considered to be very minor and acceptable.

12.3 Effects on Waterbodies

12.3.1 To the western side of the site is a highly modified watercourse, a farm / land stormwater drain would be the most fitting description. The watercourse is fully grassed over, and at the time of my site visits I did not see any water, running or otherwise. Trees and vegetation that are visible in satellite images are no longer there.

12.3.2 No testing has been done on the soils in this location, so it is not a confirmed wetland like the gully system to the east. As such a farm drain meets the definition of a ‘River’ under the Act, and a river ‘or any part thereof’ meets the definition of a waterbody. As such Rule 26.4.2.1 is applicable to this area of the site.

12.3.3 The application proposes to cover this waterbody with the artificial shelters, but not plant the kiwi plants in the shallow gully. Considering the highly modified nature of this waterbody, which holds no native vegetation or fauna species to disturb, the artificial shelters going directly overhead would pose no change to the physical nature of the waterbody. The artificial shelters let rain and sunlight pass through completely, so the waterbody will not be impacted by changes in environmental conditions (other than reduced wind and frost), and will not see additional or change in discharge into the environment as a result of the artificial shelters.

12.3.4 Due to the existing highly modified nature of the waterbody, very low natural character and amenity, public access, recreational opportunities and natural/cultural values are negligible. No changes are proposed to the waterbody, so existing ecological and riparian values will remain unchanged by the proposal. As raised by the submitter, the application did not recognise and assess this non-compliance and was one of the points raised in the section 92, which was addressed in the response and confirmed by the applicant that the proposal doesn’t comply and forms part of the consent being sought.

12.3.5 The ecological report written by Titoki Landcare “2022 Ecological Impact Assessment and Mitigation Options” submitted as part of the s92 response supports my assessment as it states the ecological value of this waterbody as low, and states *“the ecological values associated with terrestrial vegetation and fauna habitat is very low, with only*

common exotic bird species recorded and weedy pasture vegetation.” It is noted that this Titoki report was submitted as part of preparation for a different consent, applicants may seek to pipe this waterbody in the future (seeking additional consent from Waikato Regional Council). As the report relates to this application, on the assessment of quality of the waterbody and effects, is still relevant.

- 12.3.6 There will be some loss of amenity relating to the waterbody, as it will no longer be visible from the road or above, and birds will no longer be able to access the waterbody.
- 12.3.7 Overall, effects on waterbodies in my opinion are considered to be very minor and acceptable.

12.4 Construction effects

- 12.4.1 For clarity, the effects considered are only for the construction of the artificial shelters, not for the kiwifruit activity as a whole, which is permitted (although still required to comply with the following Plan rules). There have been complaints from neighbouring properties relating to noise and vibration from the construction of the artificial shelters. It has also been noted that the applicant has been carrying out loud activities during weekends and public holidays, which is also a breach of the Plan. I cannot consider effects that have occurred in the past.
- 12.4.2 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 should comply with Plan requirements for noise, vibration and earthworks 7am to 10pm.
- 12.4.3 As such, any effects associated with construction of the shelters are considered to fall within the permitted baseline.

12.5 Positive Effects

- 12.5.1 A large portion of the Waipa District’s GDP comes from rural activities, such as rural based industry, agriculture and horticulture. A kiwifruit orchard will contribute to the productive landuse of the rural zone, with the artificial shelters making more sensitive species like red and gold kiwifruit easier to grow. The artificial shelters are integral to maximising the productivity of the horticultural activity and the rural landuse.
- 12.5.2 Some concerns were raised by neighbours about “immigrant” drivers and seasonal workers employed by the applicants causing issues for surrounding properties and the roading network. However, I would consider the generation of jobs in the district to be a positive effect, especially jobs that promote rural productivity and are not within the urban centres.

12.6 Assessment of Environmental Effects Conclusion

- 12.6.1 On balance, the negative effects on the submitters property (which cannot be mitigated in the short to medium term) outweigh the acceptable effects on the surrounding

environment. The effects on the submitters property are concentrated and not reasonably expected within the Rural Zone or from an adjoining activity.

- 12.6.2 The above assessment has considered the potential effects of the proposed activity raised in the application, Council’s notification assessment and the submissions received. I am not satisfied that the effects of the activity on the submitter can be appropriately avoided, remedied or mitigated to an acceptable level.

13 WAIPA DISTRICT PLAN

13.3 Objectives and Policies

13.3.1 The District Plan contains a number of objectives and policies that directly relate to this land use consent application. Those objectives and policies are contained in Section 4 – Rural Zone and Section 24 – Indigenous Biodiversity.

13.3.2 The applicant’s agent has provided an assessment of the relevant objectives and policies in Section 10 of the application. In addition to their assessment the relevant objectives and policies from each of these sections is discussed further in the following paragraphs.

13.4 Section 4 – Rural Zone

Objective – Rural Resources

4.3.1 *To maintain or enhance the inherent life supporting capacity, health and well-being of rural land, ecosystems, soil and water resources.*

Policy - Avoid adverse effects on aquatic and riparian ecosystems (including lakes)

4.3.1.3 *To avoid, remedy or mitigate adverse effects of development, subdivision and activities on the quality of the District’s ground and surface water resource, and promote the enhancement of their ecological and cultural values by:*

- (a) Maintaining or enhancing the life supporting capacity of water bodies; and*
- (b) Maintaining or enhancing the ability to use aquatic ecosystems as mahinga kai (a food source); and*
- (c) Where appropriate, maintaining or enhancing the availability of water bodies for recreation; and*
- (d) Enhancing ecological corridors and riparian margins.*

Policy – Protect the rural resource

4.3.1.4 *The versatility and life supporting capacity of the District’s rural land and soil resource, particularly high class soils and peat soils, are protected from development, subdivision or activities that would prevent its future use for primary production, or its ability to maintain the District’s ecological/biodiversity values.*

- 13.4.1 Objective 4.3.1 and Policy 4.3.1.3 & 4.3.1.4 highlight the significance of versatility and life supporting capacity of the District’s soils and productive land. The proposed activity

is an ancillary structure to a permitted horticulture activity, that promotes the productivity of the kiwifruits and enables sensitive species to be grown without excessive shelterbelts and chemical spray. As the buildings still maintain a 6m setback from the SNA and the identified wetlands, and is not proposing to remove or disturb the SNA, the application does 'maintain' the existing environment. I do not consider the application to 'enhance' the environment, although the artificial shelters could provide some protection (wind and spray drift) to the SNA and wider ecosystem.

- 13.4.2 Overall, it is my opinion that the application is consistent with the above objective and associated policies.

Objective – Rural activities: Farming

4.3.2 *The capacity of rural areas and rural resources to support farming activities and lawfully established rural based activities is maintained.*

Policy – Management of rural resources

4.3.2.1 *Manage rural resources so that farming activities can continue to establish and operate.*

Policy – Rural environment

4.3.2.2 *Recognise and protect the continued operation of the Rural Zone as a pastoral working environment.*

4.3.2.3 *Manage farming activities so that they do not result in adverse effects on the environment or adjacent sites by ensuring:*
(a) *Buildings are located appropriately; and*
(b) *Adverse effects, are avoided, remedied or mitigated.*

Policy - Farm buildings and activities to internalise adverse effects

4.3.2.4 *Farm buildings and activities shall be located and scaled to minimise adverse effects on rural character and amenity.*

Policy - Storage and processing of horticultural and agricultural produce grown on the holding

4.3.2.6 *To enable the storage and initial processing of horticultural or agricultural produce grown on the same holding as part of a farming activity.*

- 13.4.3 Objective 4.3.2 and the associated policies seek to ensure farming activities can occur in the Rural Zone. Horticulture is a farming activity and the produce is grown and processed on site has part of the activity. Although open pasture typically associated with stock grazing and dairy farming is the most common landuse in the district, horticulture is also a common landuse and pasture is being used in a productive way. Adverse effects on the wider pastoral environment and the rural environment are not impacted by this proposal. However, Policy 4.3.2.3 states that buildings should be located appropriately and adverse effects from buildings should be avoided, remedied or mitigated. The proposed location against the submitters property, along all three internal boundaries does pose significant adverse effects. The proposed mitigation (shelterbelts) in my

opinion does not sufficiently avoid the adverse effects, and even pose adverse effects of their own.

13.4.4 Overall, it is my opinion that the application is not consistent with Policy 4.3.2.3.

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.*

13.4.5 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 road boundary shelterbelts will be 3.5m high, so as not be near the overhead powerlines. The shelterbelts adjoining the submitters property is contrary to the Policy as it will cause adverse shading effects.

13.4.6 Overall, it is my opinion that the application is not consistent with the above objective and policy.

Objective – Rural character

4.3.7 *Rural character and amenity is maintained.*

Policies – Rural character

4.3.7.1 *Land use activities should be at a density, scale, intensity and location to maintain rural character.*

4.3.7.2 *Rural character and associated amenity values shall be maintained by ensuring rural land uses predominate in the Rural Zone, and buildings are of an appropriate scale and location.*

13.4.7 Objective 4.3.7 and associated policies seek to maintain rural character and the dominant landuse be associated with rural activities. As horticulture is a rural zone activity, and the artificial shelters are ancillary to the activity in the most appropriate location, the proposal is consistent with these. Although the scale of the artificial shelters are not anticipated in the Plan, the landuse that is enabled is appropriate for the location and is consistent with rural character.

13.4.8 Overall, it is my opinion that the application is consistent with the above objective and policies.

Objective – Rural Amenity: setbacks

4.3.8 *To maintain rural character and amenity and avoid reverse sensitivity effects.*

Policy - Internal boundaries

4.3.8.2 Buildings and activities are set back from rear and side boundaries to maintain rural character and amenity and avoid reverse sensitivity effects.

13.4.9 Objective 4.3.8 and Policy 4.3.8.2 seek to maintain rural amenity by maintaining internal boundary setbacks with buildings in the Rural Zone. For this proposal, the reduced boundary setbacks proposed by the applicant do not provide suitable setbacks for the artificial setbacks that are considerate to the submitters residential property. Coupled with the reduced setbacks on all three of the submitters internal boundaries, this is outside of what can be reasonable expected in the Rural Zone, as it is maintained in this Objective and Policy. In regard to reduced boundary setbacks for other adjoining internal boundary neighbours, they are adjoining on only one shared boundary and are either an undeveloped site or a rural holding.

13.4.10 Overall, it is my opinion the proposal is not consistent with this objective and policy.

Objective - Managing effects on district wide indigenous biodiversity

24.3.1 To maintain and enhance the existing level of biodiversity within the District.

Policy - Maintenance and enhancement of indigenous biodiversity

24.3.1.1 To achieve the maintenance and enhancement of indigenous biodiversity values in the District by ensuring that removal of indigenous vegetation or disturbance of wetland areas only occurs where:

- (a) Connectivity to link core habitats along biodiversity corridors is supported; and*
- (b) Sensitive sites remain buffered from intensive land use, development and subdivision; and*
- (c) Habitat is retained for at risk and threatened indigenous species; and*
- (d) Customary activities do not adversely affect at risk or threatened indigenous species; and*
- (e) Consideration has been given to opportunities that contribute to no net loss at a regional scale.*

13.4.11 Objective 24.3.1. and 24.3.1.1 seek to maintain the quality and quantity of the districts indigenous biodiversity. This proposal does propose to reduce setbacks to adjoining SNA's, but does not propose to remove or do any works within the boundary of the SNA. The site provides a fence along the boundary between the orchard and the SNA. The SNA could experience positive effects from this proposal as I discussed in Section 11.2 of this report.

13.4.12 Overall, it is my opinion that the application is consistent with this objective and policy.

13.4.13 My overall assessment for this application against the District Plan is that it is consistent with the rural resource and farming objectives, and the rural character. However, the application is contrary to the District Plan in terms of rural buildings, rural amenity and

shelterbelts, in this case the submitters property. On balance, it is my opinion that this application is contrary to the District Plan.

14 PROVISIONS OF OTHER STATUTORY PLANNING DOCUMENTS (SECTION 104(1)(B))

14.3 Pursuant to Section 104(1)(b), the consent authority must have regard to any relevant provisions of a national environmental standard, other regulations, a national policy statement, the regional policy statement and the regional plan. Below is an assessment of these provisions.

National Policy Statements

14.4 National Policy Statements (NPSs) are instruments issued under Section 52(2) of the Act that enable Government to prescribe objectives and policies for matters of national significance which are relevant to achieving the sustainable management purpose of the Act. An NPS may also give particular direction to local authorities as to how they need to give effect to the policies and objectives of the NPS. The current NPSs that are in effect are:

- National Policy Statement on Urban Development;
- National Policy Statement for Freshwater Management;
- National Policy Statement for Renewable Electricity Generation;
- National Policy Statement on Electricity Transmission; and
- New Zealand Coastal Policy Statement.

14.5 The submitter raised that no assessment was provided in the application regarding the NPS-FM, this was requested in the section 92. In the response the following assessment was made:

“The NPS-FM came into effect on 3 September 2020 and replaces the NPS-FM 2014 (amended 2017). The NPS-FM sets out the objectives and policies for freshwater management under the RMA (1991) to support improved freshwater management in New Zealand. In terms of the proposed activities, I have had regard to the fundamental concept of ‘Te Mana o te Wai’ and the objectives and policies of the NPS-FM and consider them to be consistent.”

14.6 As discussed in more detail in Section 12 of this report I find effects on waterbodies to be acceptable, therefore the NPS-FM is maintained in this proposal.

National Environmental Standards

14.7 National Environmental Standards (‘NESs’) are regulations issued under Section 43 of the Act that prescribe technical and on-technical standards which apply across the country. The current NESs that are in effect are:

- National Environmental Standards for Air Quality;
- National Environmental Standards for Sources of Drinking Water;

- National Environmental Standards for Telecommunication Facilities;
- National Environmental Standards for Electricity Transmission Activities;
- National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health;
- National Environmental Standards for Plantation Forestry; and
- National Environmental Standards for Freshwater.

14.8 The submitter raised that no assessment was provided in the application regarding the NES-FW, this was requested in the section 92. In the response the following assessment was made:

“With respect to this application in question, for which application is sought for the construction of vertical and horizontal (overhead) artificial Kiwifruit shelter, there are no standards and rules in NES-FW, Part 3: Standards for other activities that relate to freshwater of the NES-F that apply to this Application. The Draft Ecological Impact Assessment, prepared by Titoki Landcare has concluded that no natural wetlands are present along the riparian zone of the modified ephemeral stream for which the proposed shelter will cover, and that the two wetland areas that were identified further downstream, with the proposed works of this application being greater than 10m from the wetland extent (refer wetland buffer areas in Figure 7 of the Draft Ecological Impact Assessment). Accordingly, this application does not require consent under NES-F.”

14.9 I agree with the applicants assessment and also agree no consent is needed under the NES-FW.

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

14.10 Te Tauākī Kaupapahere Te-Rohe O Waikato provides an overview of the resource management issues in the Waikato Region, and the ways in which integrated management of the Region’s natural and physical resources will be achieved. It provides policies and a range of methods to achieve integrated outcomes for the region across resources, jurisdictional boundaries and agency functions, and guides development of sub-ordinate plans (regional as well as district) and consideration of resource consents. The Te Tauākī Kaupapahere Te-Rohe O Waikato outlines 27 objectives on key regional issues. Those most relevant to this proposal are:

Objective 3.1 – Integrated Management

Natural and physical resources are managed in a way that recognises:

- a) the inter-relationships within and values of water body catchments, riparian areas and wetlands, the coastal environment, the Hauraki Gulf and the Waikato River;*
- b) natural processes that inherently occur without human management or interference;*
- c) the complex interactions between air, water, land and all living things;*
- d) the needs of current and future generations;*

- e) *the relationships between environmental, social, economic and cultural wellbeing;*
- f) *the need to work with agencies, landowners, resource users and communities; and*
- g) *the interrelationship of natural resources with the built environment.*

Objective 3.2 – Resource use and development

Natural and physical resources are managed in a way that recognises:

- a) *the inter-relationships within and values of water body catchments, riparian areas and wetlands, the coastal environment, the Hauraki Gulf and the Waikato River;*
- b) *natural processes that inherently occur without human management or interference;*
- c) *the complex interactions between air, water, land and all living things;*
- d) *the needs of current and future generations;*
- e) *the relationships between environmental, social, economic and cultural wellbeing;*
- f) *the need to work with agencies, landowners, resource users and communities; and*
- g) *the interrelationship of natural resources with the built environment.*

Objective 3.12 – Built environment

Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

- a) *promoting positive indigenous biodiversity outcomes;*
- b) *preserving and protecting natural character, and protecting outstanding natural features and landscapes from inappropriate subdivision, use, and development;*
- c) *integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;*
- d) *integrating land use and water planning, including to ensure that sufficient water is available to support future planned growth;*
- e) *recognising and protecting the value and long-term benefits of regionally significant infrastructure;*
- f) *protecting access to identified significant mineral resources;*
- g) *minimising land use conflicts, including minimising potential for reverse sensitivity;*
- h) *anticipating and responding to changing land use pressures outside the Waikato region which may impact on the built environment within the region;*
- i) *providing for the development, operation, maintenance and upgrading of new and existing electricity transmission and renewable electricity generation activities including small and community scale generation;*
- j) *promoting a viable and vibrant central business district in Hamilton city, with a supporting network of sub-regional and town centres; and*

- k) *providing for a range of commercial development to support the social and economic wellbeing of the region.*

Objective 3.19 - Ecological integrity and indigenous biodiversity

The full range of ecosystem types, their extent and the indigenous biodiversity that those ecosystems can support exist in a healthy and functional state.

Objective 3.21 – Amenity

The qualities and characteristics of areas and features, valued for their contribution to amenity, are maintained or enhanced.

Objective 3.26 - High class soils

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

- 14.11 Following on from the objectives are a number of supporting policies. These policies seek an integrated approach to land use that is undertaken to uphold the natural and physical resources across the region. The proposed activity in this case is not considered to be in conflict with the provisions of Te Tauākī Kaupapahere Te-Rohe O Waikato.

Waikato Regional Plan

- 14.12 The Waikato Regional Plan 2007 ('the Regional Plan') is intended to provide direction regarding the use, development and protection of natural and physical resources in the Waikato Region. It gives effect to Te Tauākī Kaupapahere Te-Rohe O Waikato and helps the Regional Council carry out its functions under Section 30 of the Act. With regard to the Regional Plan, the applicant has sought and gained four resource consent regarding earthworks and ground water take pursuant to the provisions of the Regional Plan. A copy of the Regional Council consents are included in Appendix 5.

15 OTHER MATTERS (Section 104(1)(C))

Treaty Settlement Acts – Statutory Acknowledgement Area

- 15.3 The property subject to this consent is not within (or adjacent to, or may affect) Ngati Hauā/ Ruakawa / Ngati 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, Ngati Koroki Kahukura, Raukawa.

Joint Management Agreement Area – Waikato Raupatu River Trust

- 15.4 The Waikato Raupatu Claims Settlement Act 1995 gave effect to certain provisions of the deed of settlement between the Crown and Waikato dated 22 May 1995 and settled certain Raupatu claims made to the Waitangi Tribunal by Robert Te Kotahi Mahuta, the Tainui Maaori Trust Board, and Ngā Marae Tōpu (Wai 30). Renegotiation's in 2009 led to the agreement of a new deed of settlement which included provisions related to joint management agreements. The Waikato-Tainui Raupatu Claims (Waikato River)

Settlement Act 2010 was enacted to give effect to that deed of settlement and subsequently a Joint Management Agreement with Waipa District Council was made.

- 15.5 This agreement includes giving appropriate weight to relevant matters provided for in the Settlement Act 2010, respecting the mana whakahaere rights and responsibilities of Waikato-Tainui, recognising the statutory functions, powers and duties of both parties, and recognising the Trust's rights to participate in processes where circumstances may be appropriate.

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

- 15.6 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)).
- 15.7 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. Section 21 – Te Whenua (Land) and Section 25 – Ngaa Whakaritenga Moo ngaa whenua o Waikato-Tainui (Land use planning) have been given particular regard in terms of this application.
- 15.8 Section 21 includes objectives and policies which seek to promote best practice for land and soil management in order to protect waterways. This application does not propose any earthworks or disturbance to adjoining waterways or wetlands that form the SNA. The drain running through the western portion is dry and fully grassed over and is not considered to be a waterway, so there is no concern of deteriorating water quality from this application.
- 15.9 Section 25 outlines that as kaitiaki within their role, Waikato-Tainui seek to ensure environmental sustainability including consideration within the rural environment of the consequences of development on the environment. Policy 25.3.2.2 – Rural Development seeks to *“ensure that rural development is well planned, and the environmental, cultural, spiritual and social outcomes are positive”*. The application did not provide an assessment against this Plan, however I find that the application is consistent with this policy as the Rural Zone is the most appropriate place for this development and landuse.

Development Contributions and Financial Contributions

- 15.10 Development contributions are not payable on this application pursuant to Council's Development Contributions Policy.

16 Part 2 Matters (Section 104(1))

16.3 Under Section 104(1) of the Act, when considering an application for resource consent the consent authority must have regard to Part 2 of the Act. Part 2 outlines and promotes the concept of sustainable management, lists matters of national importance as well as matters related to achieving the purpose of the Act, and requires the principles of the Treaty of Waitangi to be taken into account.

Purpose of the Act – Section 5

16.4 The overall purpose of the Act is to promote the sustainable management of natural and physical resources. “*Sustainable management*” is defined as managing the use, development and protection of natural and physical resources in a way that enables people and communities to provide for their social, economic and cultural well-being and their health and safety. At the same time, they must:

- Sustain the potential of resources to meet the reasonably foreseeable needs of future generations;
- Safeguard the life-supporting capacity of air, water, soil and ecosystems; and
- Avoid, remedy or mitigate adverse effects on the environment of the activity.

16.5 With regard to adverse effects on the environment of the activity, the application does not pose significant adverse effects on the wider environment. There will be some noticeable changes in landuse and this will have a temporary visual effect before mitigation measures are in place. The adverse effects on the submitter are significant and this cannot be avoided, remedied or mitigated by a consent condition. While the Act does not seek to avoid all effects, the application has demonstrated that effects can be mitigated to a level which is acceptable on the wider environment. For these reasons I consider that the application upholds the propose of the Act as outlined under Section 5 of the Act.

Matters of National Importance – Section 6

16.6 Section 6 of the Act requires that “*all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall recognise and provide for*” the matters of national importance listed in Section 6(a-h). Of these matters the following are considered applicable to this application:

- “(a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;*
- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;”*

16.7 In this application the site adjoins wetlands that form the SNA to the north and east. As outlined in this report, this application does not seek any earthworks or disturbance

within the SNA. As such there will be no effect on the SNA and associated wetlands and biodiversity, therefore upholding the matters of importance listed above.

Matters for Consideration – Section 7

16.8 Section 7 lists the matters that a consent authority is required to have particular regard to in achieving the purpose of the Act. The listed matters are not threshold tests or criteria but, where a proposal raises issues of the kind listed, they are to be given particular regard. The Section 7 issues that are relevant to this application are:

- (a) *kaitiakitanga*;
- (b) *the efficient use and development of natural and physical resources*;
- (c) *the maintenance and enhancement of amenity values*; and
- (f) *maintenance and enhancement of the quality of the environment*.

16.9 Consultation was not undertaken with tangata whenua for this application as effects on the wider environment are less than minor.

Principles of the Treaty of Waitangi – Section 8

16.10 Section 8 of the Act requires that the principles of the Treaty of Waitangi are taken into account. In this instance, the proposal is not considered to be of direct relevance to the Treaty.

Summary of Part 2 Assessment

16.11 In assessing the proposal against Sections 5 to 8 of the Act, I conclude that the application is consistent with the purposes and principles of the Act and the land use is an appropriate use of the subject site.

17 CONCLUSION

17.3 The proposal is to establish artificial kiwifruit shelters, exceeding site coverage and boundary setback rules at 582 Parallel Road, Cambridge. The activity has been assessed under the Rural Zone provisions of the Operative Waipa District Plan as a Discretionary activity.

17.4 Pursuant to Section 95B of the Act, the potential effects of the activity were assessed to be minor or more than minor with regard to one property, 598 Parallel Road. On this basis the proposal proceed to limited notification.

17.5 During the submission period one submission was received in opposition. The submitter raised the following matters:

- There are no elevation plans provided in the assessment to assess height, appearance and bulk.
- The application did not recognise and assess rule 26.4.2.1 (23m setback from waterbodies).

- The application did not mention approved or sought consents from Waikato Regional Council as a requirement of Schedule 4(2)(1)(e) of the Act.
- No independent ecology assessment was provided in the application to address or corroborate the assessment of effects on biodiversity and the SNA.
- The application does not address the NES-FW (2020) in relation to natural wetlands.
- The application does not address the NPS-FW.
- The proposed cryptomeria shelterbelt will have adverse effects relating to shading and amenity as such the permitted baseline applied in the application is not relevant. The application also has not considered other mitigation measures to address the adverse effects on the artificial shelters.
- The adverse visual and amenity effects of the structures prior to the shelterbelts reaching maturity have not been adequately considered in the application and the application has not considered the potential adverse visual and amenity effects during this period.
- The application did not consider the cumulative effects of the existing and consented buildings on site as it relates to the receiving environment.
- The site coverage calculations did not consider existing buildings on site.
- The proposal will and has resulted in adverse effects relating to the boundary setback and site coverage non-compliances. The proposal is a significant change in the built form of the receiving environment and will impact on aesthetic values from the submitters property at 598 Parallel Road.
- The proposal is contrary to the objectives and policies of the ODP (full list included in the letter in Appendix 5).

17.6 An assessment of the environmental effects of the proposal has been considered pursuant to Section 104 of the Act. The conclusion of this assessment is that the actual and potential effects on the environment from granting this consent, while noticeable, are acceptable on the wider environment. The actual and potential effects on the submitters property, are not acceptable and not able to be suitably avoided or mitigated in the short to medium term.

17.7 The objectives and policies of the District Plan, Regional Policy Statement and other non-statutory documents have been considered in this assessment. In summary, the proposal is considered to be inconsistent with the objectives of the District Plan.

17.8 In conclusion, having considered the various matters of Sections 104 and 104D of the RMA, it is my view that the land use application cannot avoid, or mitigate adverse effects on the submitters property and that the application be **refused**.

17.9 In the case the Commissioner does not agree with my recommendation, draft conditions have been prepared in Appendix 8.

18 RECOMMENDATION

That:

- a) *The report of Marne Lomas - Planner be received; and*
- b) *In consideration of Sections 104, and pursuant to Sections 104B, 108 and 220 of the Resource Management Act 1991, the Waipa District Council refuses consent for the landuse application LU/0147/22 to Kiwifruit Investments Limited for artificial kiwifruit shelters the property at 582 Parallel Road, legally described as LOT 3 DPS 89413 (Record of Title identifier SA70D/525).*

Report prepared by:

Marne Lomas

Marne Lomas

PLANNER

Date: 27 September 2022

Reviewed by:



Quentin Budd

CONSENTS TEAM LEADER

Date: 27 September 2022

Approved for release to Hearing Commissioner by:



Tony Quickfall

MANAGER DISTRICT PLAN & GROWTH

Date: 27 September 2022