

**BEFORE THE COMMISSONER**  
**APPOINTED BY THE WAIPA DISTRICT COUNCIL**

**IN THE MATTER OF**

the Resource Management Act 1991  
(‘the Act’)

**AND**

**IN THE MATTER**

Resource consent application by  
Kiwifruit Investments Limited for  
partially retrospective and partially  
prospective land use consent to plant  
shelterbelts at 582 Parallel Road,  
Cambridge

**SUBMITTERS**

Nicholas B Jennings and Vanessa L  
Jennings

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**SUBMISSIONS OF LEGAL COUNSEL FOR THE SUBMITTERS IN RELATION  
TO NOTIFICATION OF THE RESOURCE CONSENT APPLICATION FOR  
SHELTERBELTS**

Dated: 10 February 2023

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**Is the sleepout on the submitter's property part of the dwelling?**

1. The essential point taken in the legal opinion from Tompkins Wake and in the communications from counsel for the Applicant is that the terms "dwelling" and "sleepout" are separately defined in the District Plan, and they are therefore not capable of coinciding. Those views also rely on a sleepout being an "accessory building" under the District Plan definitions.
2. The submitters' position is that such an interpretation does not correctly apply the definitions of a sleepout, accessory building and dwelling.
3. In the present case the suggested classification of the external bedroom as a sleepout and an accessory building fails to recognize the fact that the external bedroom is an integrated part of the dwelling, connected by the decking that provides access to it, forming a unified dwelling building. The decking provides the flooring connection between that bedroom and the other parts of the dwelling i.e. the kitchen, living rooms, other bedroom areas and bathrooms.
4. The external bedroom is an integrated part of the dwelling with continuous access via the deck.
5. Some sleepouts are completely separated from dwellings, with no flooring connection and without the integration that exists in the present case. In those cases they may be accessory buildings similar to a detached garage or detached shed.
6. The absence of walls and a roof connecting the bedroom to the rest of the dwelling does not remove its status as an integrated part of the dwelling.
7. The definition of "accessory building" identifies buildings that are incidental to the use of the principal land use or building. The examples given in the definition are carport, garage, workshop, shed.
8. To qualify as a "sleepout" the bedroom would have to be separate from the dwelling and incidental to the use of the dwelling. That is not the case here. The access to the sleepout is at floor level with the rest of the dwelling and

there is a fully integrated use of the full dwelling structure, including the exterior bedroom.

9. It is important to note that the definition of “accessory building” excludes any garage which is integrated into and forms part of a dwelling. Similarly in this case the sleepout is not an accessory building because it is integrated into and forms part of the dwelling.

**Exercise of the discretion of whether to disregard effects of permitted activities under s95E(2)(a)**

10. The Commissioner has a discretion to exercise, as s95E(2)(a) allows permitted effects to be disregarded, but does not require that approach to be taken.
11. The very close inter-relationship of the two applications counts against exercising the discretion to disregard permitted effects. The combined effects of the shelterbelts and the artificial structures are cumulative effects that are relevant to both applications. Those effects have to be considered together in order to determine the full effects of the Applicant’s proposal. The shelterbelts form a part of the proposal for the artificial shelter, being the primary mitigation of visual, landscape and rural character effects.
12. For the shelterbelt application, the effects of the shelterbelt will be cumulative with the effects of the artificial shelter. It is undeniable that the artificial shelter will be erected, and it is partly erected already. There is no argument to be made for ignoring the cumulative effects of the shelterbelts and the artificial shelter. In the present case the shelterbelt consent application is so closely linked with the limited notified application for the artificial structures and the screening, that the two applications need to be heard together.
13. The s42A report places heavy reliance on the permitted status of the shelterbelt on the eastern boundary, the potentially permitted status on the northern boundary, without consideration of how the effects of those shelterbelts are cumulative with the effects of the non permitted shelterbelt on the western boundary. The shelterbelt on the western boundary is the

closest shelterbelt to the submitter's boundary and closest to the submitter's dwelling. The absence of consideration of cumulative effect reduces the reliability of the s42A report considerably.

14. There is no expert evidence on landscape, visual and rural character effects before the reporting planner or the Commissioner, as discussed in the next section of these submissions, so there is a need to hear the two applications together, to determine the cumulative effects of all these interrelated features of the two applications.


### **The absence of expert evidence**

15. The s42A report for the shelterbelt consent application is not informed by expert evidence, except to the extent of the acceptance of the expert landscape consultant commentary that has been provided by the landscape expert for the submitters. Notably, there is no expert opinion backing up assessments of whether the effects of the shelterbelt are less than minor, minor, more than minor.
16. The reporting planner is not an expert in landscape, visual or rural character effects, and is therefore able to make the required assessments in the absence of supporting expert evidence, which is normally provided by the Applicant in these situations. The Applicant has chosen to conduct its case entirely without expert evidence, other than the planner's evidence.
17. The submitters have chosen to produce expert evidence on the issues that are central to the effects of the shelterbelt and I am advised that at this point in the preparation of the evidence that the expert assessment will be that the effects of the shelterbelt on the submitters will not be in the "less than minor" category.
18. There simply is not the evidential foundation for the Hearing Commissioner to determine that the effects of the shelterbelts will be less than minor.
19. Expert evidence should be considered on that issue. The Applicant must therefore be given the opportunity to submit, to provide expert evidence to

demonstrate the true cumulative effects of the shelterbelt on all three boundaries and the cumulative effects with the artificial shelter building.

20. Counsel wishes to have the opportunity, along with other counsel, to address these issues further at the commencement of the hearing.

Dated: 10 February 2023



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P Lang  
Counsel for the Submitters