

**BEFORE THE COMMISSIONER**  
**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 construct vertical and horizontal overhead artificial kiwifruit shelter buildings at 582 Parallel Road, Cambridge (Council Reference LU/0147/22)

**AND**

**IN THE MATTER** Resource consent application by Kiwifruit Investments Limited to establish shelterbelts at 582 Parallel Road, Cambridge (Council Reference LU/0252/22)

**SUBMITTER** Nicholas B Jennings and Vanessa L Jennings

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**STATEMENT OF PLANNING EVIDENCE OF SARAH LEA DAVIDSON**

15 February 2023

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## QUALIFICATIONS AND EXPERIENCE

1. My full name is Sarah Lea Davidson
2. I hold the qualification of Bachelor of Environmental Management from the Southern Institute of Technology. I am an Associate Member of the New Zealand Planning Institute and I hold a Making Good Decisions Certificate for RMA Decision Makers.
3. I hold the position of Senior Planner at BTW Company Ltd, a multidisciplinary consultancy based in Hamilton and New Plymouth.
4. My evidence is given on behalf of Nicholas and Vanessa Jennings (the submitter).
5. My previous work experience includes eight' years in the field of resource management, both in the public and private sector. I undertake planning work for a range of clients primarily in the Waikato and Taranaki regions, but also have experience working across other regions throughout New Zealand. My planning advice and project work typically relates to resource consent matters including preparation and processing of applications, policy analysis, strategic planning and project management. During my career, I have been a Senior Planner at both Central Otago District Council and Otago Regional Council prior to my role at BTW Company Ltd.
6. My evidence pertains to planning matters only.
7. In preparing this statement of evidence I have considered the following documents:
  - a) The Assessment of Environmental Effects (AEE), Revised Plans and technical assessments forming both Applications (including responses to s92 further information requests) – from here on referred to as the Proposal;
  - b) The statements of evidence of the Applicants' experts regarding planning;
  - c) The National Policy Statement for Highly Productive Land 2022;
  - d) The National Policy Statement for Freshwater Management 2020;
  - e) The Waikato Regional Policy Statement 2016;
  - f) The Operative Waipa District Plan (WDP) 2016;
  - g) Joanne Soanes Evidence dated 12 October 2022;
  - h) Joanne Soanes Evidence dated 15 February 2023
  - i) Evidence of the Applicant dated 07 February 2023;
  - j) Legal opinions prepared by the Applicants' Legal Counsel, Council's Legal Counsel and the Submitters' Legal Counsel in relation to the interpretation of Rule 4.4.4.58;
  - k) Waipa District Council's (WDC) s42A Report prepared by Marne Lomas and the addendum prepared by Louise Cowan dated 22 December 2022; and
  - l) WDC's s95 and s42A Report for LU/0252/22 prepared by Louise Cowan.

8. I am familiar with the location and immediate surroundings of the site and visited the area in August 2022 and in October 2022. I am not aware of any changes to the site or area since my last visit that would affect the opinions expressed in my evidence.

#### **EXPERT WITNESS CODE OF CONDUCT**

9. While this is not a hearing before the Environment Court, I confirm that I have read, and agree to comply with, the Environment Court's Code of Conduct for Expert Witnesses (Environment Court of New Zealand Practice Note 2023). This evidence I am presenting has been prepared in accordance with the Code and is within my area of my expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

#### **SCOPE OF EVIDENCE AND APPROACH**

10. I have been asked by the submitter to provide expert planning evidence in relation to planning matters arising from the Proposal. The submitter occupies and owns 598 Parallel Road, Cambridge which adjoins the application site to the north, east and west.
11. I originally prepared the submission and evidence for the submitter in relation to the original Application for LU/0147/22. Ms Cowan's supplementary s42A report dated 22 December 2022 provides a background to this Application and subsequent application LU/0252/22 that I will not repeat here. I agree with this description provided by Ms Cowan.
12. Ms Cowan has recommended that Application LU/0252/22 for retrospective and prospective shelterbelts be granted on a non-notified basis. The minute of Commissioner Alan Withy dated 19 January 2023 has declined to adopt this recommendation until hearing from Counsel for the Applicant and Submitter.
13. As LU/0147/22 and LU/0252/22 are to be determined concurrently my evidence will consider both of these applications.
14. I have prepared evidence in relation to:
  - a) Assessment of effects on the environment.
  - b) Assessment against the relevant planning framework.

## SUBMITTER'S INTERESTS

15. The Submitter's land is located within the Rural Zone. The land is contained within Record of Title ("RT") SA70D/523 and contains a total area of 0.65 hectares (Ha). The RT was issued on the 13 September 2000. The Submitter's family reside in the dwelling located on the property. The residential activity on the property comprises of outdoor living areas that are north facing, accessory buildings and landscaping. Small paddocks surround the curtilage area. I would describe the submitter's property as a lifestyle block. The submitter shares three boundaries with the application site to the north, west and east as demonstrated in Figure 1.



**Figure 1. Aerial photograph of Submitter's property (Source: Waikato Regional Council Maps)**

16. The Proposal has the potential to create adverse visual and amenity effects on the Submitter's property, as outlined in the s95 report for LU/0147/22, and the submitter was notified of the original application on 16 August 2022 by WDC.
17. Shelterbelt plantings (as sought under LU/0252/22) are proposed to be planted by the applicant near all three boundaries of the submitter's property that have the potential to create adverse visual and amenity effects on the submitter. Only the western shelterbelt to be planted in 'karo' triggers resource consent near the Submitter's boundary according to the s95 and s42A report. The Submitters also have an interest in this Application.

18. At the time of writing this evidence a decision on notification has not been made by the Commissioner for Application LU/0252/22.
19. The threshold test for an affected person under s95B and s95E of the Resource Management Act 1991 (the Act) is a minor or more than minor adverse effect on the person. There is no definition for minor or more than minor effects under the Act. Mr Lang can provide legal advice for interpretation on the definition of minor or more than minor effects.
20. I note that Commissioner Alan Withy's Minute dated 13 October at Paragraph 5 confirms under s91 of the Act that the hearing date for LU/0147/22 be vacated and a new hearing date be scheduled once a notification decision on the additional application is known. This suggests the shelterbelt application and the artificial shelter application are connected to each other. This is further noted in Ms Cowan's supplementary s42A report<sup>1</sup> where she notes that the proposal as a whole consists of non-complying Cryptomeria shelterbelts and Karo shelterbelts where the non-compliances are being considered independently but concurrently with LU/0147/22.
21. Based on the above in Paragraph 20, I consider the two applications being considered are related to one another, where the second application for the shelterbelts relates to a mitigation measure for the first application. In the interests of natural justice and fairness of process, it would be reasonable that the Submitter should also be determined as an affected party to LU/0252/22 given the close relationship between the two consent applications as I have highlighted. Mr Lang can provide legal advice on this matter.

## **THE PROPOSAL**

22. The Proposal has been comprehensively described in the AEE for both applications and summarised in the s42A Reports prepared by Ms Lomas and Ms Cowan. I agree with the descriptions.
23. Since the original application has been lodged there have been subsequent amendments to the application and an additional consent application has been lodged by the Applicant's Agent seeking resource consent for retrospective and prospective shelterbelts. This consent application was lodged on 25 October 2022. The proposal has been comprehensively described in the AEE's and I agree with those descriptions.

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<sup>1</sup> Paragraph 39 Supplementary s42A report dated 22 December 2022

## APPLICATION ACTIVITY STATUS

24. The subject site is located within the Rural Zone in the WDP and is subject to Hamilton Airport-Conical Surface Overlay and Significant Natural Area- WP344.

### Application for Shelter Belts

25. In respect of LU/0252/22 Ms Cowan considers the sleepout, deck area attached to the dwelling and swimming pools on the Submitter's property are separately defined as accessory buildings and are not considered to be a 'dwelling'<sup>2</sup>. Ms Cowan considers the existing shelterbelt to the north of the property is compliant and consent for the shelterbelt is only required for the following as a restricted discretionary activity under Rule 4.4.2.58:
- Cryptomeria planting on the inside of the road boundary of Parallel Road, to be maintained to a height of no greater than 3.5m;
  - Cryptomeria planting at 4m from the eastern internal boundary with 598 Parallel Road for the first 10m from the road boundary with Parallel Road, to be maintained to a height of no greater than 6m;
  - Karo planting at 4m from the western internal boundary and 16.4m from the western façade of the dwelling at 598 Parallel Road, to be maintained to a height of no greater than 6m;
  - Cryptomeria planting on the internal boundary with 622 Parallel Road for the first 10m from the road boundary with Parallel Road, to be maintained to a height of no greater than 6m; and
  - Cryptomeria planting on the road boundary of Parallel Road within 5m of the existing modified ephemeral waterway within the western portion of the site (identified as purple in Figure 1), and maintained to a height of no greater than 3.5m.
26. Mr Lang contacted the Council on 05 January 2023 to express the view that the outdoor bedroom is part of the dwelling and as such consent is required for the northern shelterbelt under Rule 4.4.2.58 as this shelterbelt is located within 30m of a dwelling.
27. A legal opinion provided by Council's Legal Counsel dated 13 January 2023 concurs with Ms Cowan's interpretation<sup>3</sup> and advises the outdoor bedroom is an accessory building and is not a dwelling. On this basis the Application has proceeded as a restricted discretionary activity under Rule 4.4.2.58 as outlined in Paragraph 25 with consent not being required for the northern shelterbelt. I will leave the status of the northern shelterbelt to be addressed by the Lawyers noting that the status of the

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<sup>2</sup> Page 12 of s95 and s42A report for LU/0252/22

<sup>3</sup> Paragraph 14 of Tompkins Wake Legal Advice dated 13 January 2023

northern shelterbelt is dependent on the legal interpretation and opinion on the definition of a dwelling. This evidence has been prepared on the basis that it is possible the northern shelterbelt is a permitted activity.

### **Unauthorised Earth Bund**

28. I note that when I undertook a site visit on 11 October 2022, a large soil bund had been placed near the western boundary of the submitter's property that does not form part of the existing earthwork consent granted by Waipa District Council. I consider that the earth bund also requires consent under Rule 4.4.2.75 of the ODP as the earthworks onsite overall will exceed 1000 m<sup>3</sup> under this Rule and have not been approved as part of the existing resource consent. I note that this has not been addressed in the updated Applications and this was originally raised in my evidence. A photograph of the soil bund is shown in Figure 10 of Ms Cowan's s42A report for the shelterbelt application (LU/0252/22).

### **Application for Kiwifruit Shelter Buildings**

29. Application LU/0147/22 has overall been assessed as a discretionary activity as outlined in paragraph 50 of the supplementary s42A report prepared by Ms Cowan. I agree with this assessment. As a discretionary activity all actual and potential effects need to be considered which would include any adverse effects resulting from proposed mitigation measures such as the shelterbelts.

### **RECEIVING ENVIRONMENT**

30. My original evidence dated 12 October 2022 confirms my assessment of the receiving environment within Paragraphs 21-24. I will not repeat this information. I have attached this evidence in Appendix A.
31. The Application LU/0252/22 in Section 1.1 of the s95 and s42A report describes the site and surrounding area in respect of the existing shelterbelts that have been planted on the subject property.
32. Ms Cowan notes the surrounding sites are rural or rural residential in nature, particularly along Parallel Road<sup>4</sup>. I agree with this description noting there are approximately 12 rural residential properties within a 1 km radius of the subject site. Ms Soannes in her evidence dated 14 February 2023 also provides an assessment of the existing environment. I agree with this description.

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<sup>4</sup> Page 2 of s95 and s42A report for LU/0252/22

## **ASSESSMENT OF ENVIRONMENTAL EFFECTS**

33. The actual and potential effects of the proposal have been assessed in detail by WDC's reporting officer in the original s42A report by Ms Lomas, the addendum by Ms Cowan and the evidence of Ms Williams.
34. The assessment of environmental effects in my evidence dated 12 October 2022 is still relevant. I note there have been amendments to the Application LU/0147/22 as outlined in Ms Williams evidence and Ms Cowans addendum to the s42A report.
35. The amended proposal for the artificial structures seeks to increase the setback of the artificial structure on the northern boundary of 598 Parallel Road from 6 metres to 14 metres to enable the shelterbelt proposed near the boundary of this property to be setback so that it is at least 30m from the dwelling located at 598 Parallel Road and compliant with Rule 4.4.2.58 of the WDP. Updated elevation plans have also been provided along with a slight increase in the setback from 8m to 9.7m from the eastern boundary.

### **Adverse Visual Amenity Effects**

36. In my opinion, the amended proposal if granted will still result in significant structures located within 25m of all three boundaries of the submitter's property. I consider the amended proposal will have significant adverse effects on rural character and amenity being located within close proximity to the submitter's property and having significant scale and site coverage. The proposed mitigation in the form of shelterbelts near all three boundaries of the Submitter's property will have adverse visual effects on the submitter that I will elaborate on further relying on the expert evidence of Ms Soanes.
37. The submitter currently experiences views of the retrospective kiwifruit structures to the east and north and open views towards the west where this area is yet to be developed. Ms Soanes in her evidence notes that retrospectively before any structures were established on site a farmhouse and a dairy shed and farm ancillary buildings were located centrally within the site and these have been cleared<sup>5</sup>. Based on this evidence I consider the Submitter would have likely experienced open rural views of a pastoral environment. Ms Soanes confirms the only remaining portion of the site in pasture, without structures, is located within the west<sup>6</sup>. I concur with this statement.
38. The structures currently have significant effects on the amenity values of the submitters property where the structures are located within close proximity to the

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<sup>5</sup> Paragraph 8.4 of Joanne Soanes Evidence dated 15 February 2022

<sup>6</sup> Paragraph 8.5 of Joanne Soanes Evidence dated 15 February 2022



northern and eastern boundaries of the Submitters property. There is a deck area and swimming pool located to the north of the Submitters dwelling and these areas currently experience dominating views of the structures. The proposal to also include artificial structures near the western boundary will see the Submitters views being closed in completely, in particular from the deck and swimming pool area where the Submitters once enjoyed open rural views and an appreciation for the open rural landscape.

39. Ms Williams in her evidence notes the subject site is not located within any policy overlay, viewshafts or landscapes and this has been overlooked in Ms Soanes original evaluation<sup>7</sup>. I do not consider the absence of these layers in the WDP to be of relevance when assessing the adverse effects of the shelter structures and the proposed shelterbelt mitigation on the submitter. The Application is a discretionary activity and all actual and potential effects can be taken into consideration, including the potential visual effects of the structures and shelterbelts on the Submitters. The landscape of the rural environment is important to take into consideration when assessing adverse visual effects regardless of what policy overlays apply.
40. Ms Williams notes that the site itself is located on flat country, where long distant views will be typically punctuated by trees and shelterbelts, and shorter views are more dominant and expected in this locality<sup>8</sup>. I disagree with this statement noting similar properties along Parallel Road have sparse vegetation along property boundaries and an open rural outlook. I note that no properties along Parallel Road currently experience a permitted 'boxed in' effect from vegetation near boundaries of the property nor experience shorter views. Ms Soanes in her evidence notes *cryptomeria japonica* and *pittosporum crassifolium* (or other pittosporum sp.) (the species proposed/have been planted for the shelterbelt) are not uncommon within the rural landscape. The difference is that the proposed shelterbelt will enclose an area of private neighbouring land completely screening rural outlook, which Ms Soanes considers to be less typical in the rural landscape and not appropriate for visual mitigation<sup>9</sup>. I concur with Ms Soanes and consider the mitigation measure itself will have adverse visual effects on the Submitters.
41. Both Ms Williams and Ms Soanes acknowledge in their evidence that rural character is variable. Ms Soanes in her evidence acknowledges the importance of managing landscape change so that adverse effects are avoided or appropriately mitigated<sup>10</sup>. The artificial shelter structures are significant being over 60% site coverage and are located in close proximity to the submitter's property where a 25m setback is required. I consider the structures will have an adverse effect on rural character,

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<sup>7</sup> Paragraph 5.4 of Simone Williams Evidence dated 7 February 2022

<sup>8</sup> Paragraph 5.4 of Simone Williams Evidence dated 7 February 2022

<sup>9</sup> Paragraph 12.10 of Joanne Soanes Evidence dated 15 February 2022

<sup>10</sup> Paragraph 11.2 of Joanne Soanes Evidence dated 15 February 2022

particularly from the submitter's property, reducing open space and rural outlook in addition to reducing natural features of the landscape that can be expected, such as outlooks to significant natural areas and gully systems. This is further confirmed in Ms Soanes evidence<sup>11</sup> which I rely on to make this assessment.

42. The addition of a shelterbelt near all three boundaries of the Submitter's property is not an appropriate form of mitigation and as confirmed in my original evidence in Paragraphs 25 to 27 this form of mitigation measure will have adverse effects on the Submitters, eliminating rural outlook and affecting the openness of the rural landscape. The shelterbelts will become a notable feature of the Submitter's property including from the bedrooms and outdoor living areas. This is further noted in Ms Soanes expert landscape evidence which I have relied on to determine the visual effects of the shelterbelts.
43. Ms Cowans addendum to the s42A report contends that the adverse visual effects of the shelter structures on the submitter will only be experienced for a period of 3 to 5 years being the period from initial planting of the shelter belts until they reach reasonable maturity<sup>12</sup>. I rely on the expert landscape evidence of Ms Soanes that confirms Karo will unlikely have the same density as Cryptomeria noting the Karo shelterbelt will likely thin out over time<sup>13</sup>.
44. In addition to the above Ms Soanes notes the kiwifruit structures will be visible to the north and east and through potential gaps in the Cryptomeria shelterbelt until it reaches an established height of 6m at approximately 5 years and at a density of 90%<sup>14</sup>. I note the growth rates specified in Ms Cowans report are different from Ms Soanes evidence and based on the expert landscape evidence of Ms Soanes I consider it is likely the structures will be visible for a period of 5 years or more. It is not guaranteed full coverage will be achieved from the shelterbelt, particularly along the Karo shelterbelt, therefore, it is likely that the adverse visual effects of the artificial structures observed by Ms Cowan in her report will be experienced by the submitter on a longer-term basis.
45. I note that the Application does not include visual and landscape analysis of the shelterbelts at maturity and the artificial structures. It is unclear in the Application whether the structures will still be visible when the shelterbelts are at maturity, particularly from the deck area where this sits 1m above ground level. In the absence of such information, it is possible the artificial structures will be visible, particularly from outdoor living areas such as the deck and pool which form high amenity areas where the Submitter enjoys open space.

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<sup>11</sup> Paragraph 11.6 of Joanne Soanes Evidence dated 15 February 2022

<sup>12</sup> Paragraph 52 Supplementary s42A report dated 22 December 2022

<sup>13</sup> Paragraph 12.14 of Joanne Soanes Evidence dated 15 February 2022

<sup>14</sup> Paragraph 12.11 of Joanne Soanes Evidence dated 15 February 2022

46. Both Ms Williams and Ms Cowan have applied the permitted baseline in respect of the shelterbelts proposed near the boundaries of the submitter's property. The western shelterbelt is not permitted but Ms Cowan notes a permitted baseline for shelterbelts that could be planted within 30m of a dwelling<sup>15</sup>.
47. My understanding is that applying the permitted baseline is at the consent authority's discretion but this discretion must be applied in a reasoned manner. In this case, I do not consider it helpful to apply the permitted baseline to the artificial structure application in respect of the shelterbelts when these are to form part of a mitigation measure to screen the artificial kiwifruit structures.
48. The Applicant proposes to plant the shelterbelts as a mitigation measure and if the artificial shelters were not proposed it would, in my opinion, be highly unlikely / fanciful that the applicant would make an application for the shelter belts as proposed. This reinforces that the two applications are intricately linked and in my opinion applying the permitted baseline to disregard the effects of the shelterbelt is not in the best interests of integrated resource management decision making.
49. I consider the adverse effects of the shelterbelts to be a matter for consideration, particularly as the western shelterbelt is not a permitted activity. Ms Cowan notes the appearance and 'monotonous character' of the plant species is not a matter for consideration<sup>16</sup>. I disagree with this assessment made by Ms Cowan. As at least one of the shelterbelts requires resource consent and the vegetated shelterbelts are to be used as mitigation managed by proposed consent conditions<sup>17</sup>, the adverse effects of the appearance of the shelterbelts is a relevant matter for consideration. As Ms Soanes evidence confirms, the shelterbelts are monotonous in nature and will create moderate to high landscape effects on the submitter's property. I agree with this assessment. The activity as a whole is a discretionary activity and all relevant actual and potential effects must be considered, this includes adverse effects resulting from mitigation measures regardless of whether they are a permitted activity in their own right or not.
50. The effects of the western shelterbelt will be in conjunction with the effects of the other sections of the shelterbelt, and the cumulative effects of having shelterbelts around most of the submitter's property need to be considered. The Application does not include an assessment of the potential shading effects from shelterbelts cumulatively being located around the northern, western and eastern boundaries of the submitter's property and relies on assessing the activity against permitted height recession planes for buildings under Rule 4.4.2.12 of the WDP. It would be unlikely

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<sup>15</sup> Paragraph 45 Supplementary s42A report dated 22 December 2022

<sup>16</sup> Paragraph 54 Supplementary s42A report dated 22 December 2022.

<sup>17</sup> Section 3.15 of Simone Williams evidence dated 7 February 2022

that a building would be proposed along all three boundaries and even if such a building was proposed it would likely need a resource consent under Rule 4.4.2.2 for breaching setback requirements.

51. For reasons given above, I consider that adverse visual and amenity effects of the artificial shelter structures will be experienced by the submitter's, particularly on the western boundary where Karo is proposed to be planted. As noted in Ms Soanes evidence it is unknown how long Karo will take to grow at a height of 6 metres as proposed in the Application and whether it can achieve 90% density<sup>18</sup>. I rely on this evidence to confirm the Karo shelterbelt is unlikely to provide the level of screening anticipated to completely 'block' the view of the artificial shelter structures over time.
52. In conclusion, based on the expert landscape evidence of Ms Soanes it is my opinion that the structures will have significant adverse visual effects on the Submitters, particularly from high amenity areas such as the deck area where the Submitters experience open views of the rural landscape. The structures are at a density not anticipated by the District Plan and at over 60% site coverage and being located less than 15 metres from the Submitters boundaries will completely obstruct any rural outlook. I consider it is not appropriate to apply the permitted baseline to the proposed shelterbelts in this instance and it is my opinion based on expert landscape evidence that the shelterbelts themselves will have adverse effects and create a 'boxed in' effect that will dominate the Submitters views and affect the enjoyment of and experience of an open rural landscape that is expected in this locality. There is uncertainty on the level of screening the shelterbelts will provide and as such based on the information provided in the Application, the adverse visual effects of the shelter structures raised in Ms Cowan's supplementary report are likely to have long term effects rather than short to medium long term effects.

### **Conditions of Consent**

53. Ms Williams proposes conditions of consent for maintaining the shelterbelts<sup>19</sup>. I note Condition 7 confirms the Cryptomeria to be maintained in perpetuity at a height of no greater than 6m. This would allow the Cryptomeria to be maintained at a height less than 6m. The visual effects of the structures should therefore be considered at a reduced height or alternative wording provided.
54. Condition 8 requires the Karo planting on the western boundary to be maintained at a height of no greater than 6 metres, similar to Condition 7, this would allow the Karo to be maintained at heights less than 6 metres and the effects of this need to be addressed or alternative wording provided.

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<sup>18</sup> Paragraph 13.7 of Joanne Soanes Evidence dated 15 February 2022

<sup>19</sup> Section 6 of Simone Williams evidence dated 7 February 2022

55. Clarification should be sought that there is sufficient space between the shelter belts and the submitter's property to avoid plant debris crossing onto the submitter's property when the shelterbelts are being maintained.
56. Confirmation has not been received that Regional Council have granted resource consent to reclaim the identified water body on the western block marked 'future block'. Being a discretionary activity under the NES-FW there is uncertainty of obtaining consent for this component of the development, particularly as under the NPS-FM there is an avoid policy to '*avoid the loss of river extent and values to the extent practicable*'. As noted in Ms Soanes evidence, although the shallow gully may not hold significant ecological value, filling it in will alter the landscape pattern and will have a small landscape adverse effect<sup>20</sup>. This has potential to affect the proposed conditions of consent should regional council consent not yet be granted.

## **RELEVANT PLANNING FRAMEWORK**

### **Operative Waipa District Plan (WDP)**

57. The original submission for the submitter raised that the proposal is contrary to the objectives and policies of the WDP<sup>21</sup>. I have assessed the relevant objectives and policies in Appendix 2.
58. Objective 4.3.2 and Policies 4.3.2.1-4.3.2.6 seek to manage rural activities and the rural environment. The overarching objective seeks to maintain the capacity of rural areas and rural resources to support farming activities and that lawfully established rural based activities are maintained Policy 4.3.2.2 recognises and protects the continued operation of the Rural Zone as a pastoral working environment. The activity is inconsistent with this Policy noting the activity is not a pastoral activity. The shelter structures are within a location and at a scale that will cause adverse visual, amenity and landscape effects as highlighted in my assessment of effects. The activity is inconsistent with Policy 4.3.2.2 and 4.3.2.3.
59. I agree with the original s42A report in that the horticulture activity itself is consistent with Objective 4.3.7 and Policies 4.3.7.1 and 4.3.7.2. I also agree with the original s42A report confirming artificial shelters are not anticipated in the WDP<sup>22</sup> and as such I consider that the scale, intensity, density and location of the shelter building itself is contrary to Objective 4.3.7 and Policies 4.3.7.1 and 4.3.7.2 that seek rural character and amenity to be maintained and land use activities are at a design, scale, intensity and located to maintain rural character.

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<sup>20</sup> Paragraph 11.5 of Joanne Soanes evidence dated 12 October 2022

<sup>21</sup> Paragraph 10 of the submission prepared by Sarah Davidson

<sup>22</sup> Paragraph 13.4.7 of s42A Report

60. The proposal is inconsistent with Objective 4.3.8 and Policy 4.3.8.2. The setback of the shelter buildings where a 25m setback is required will have adverse effects on the rural character and amenity values of the submitter's property. As noted in the landscape evidence of Ms Soanes, the structures will dominate the view from the submitter's property and a loss of rural and visual amenity will be experienced<sup>23</sup> particularly in the first 5 years while the shelterbelt matures. Although the rural environment can experience change and this is acknowledged in the WDP, the addition of artificial structures within close proximity of three boundaries of the submitter's property is not anticipated by the WDP and the adverse effects of this have not been adequately addressed.
61. In addition, it is noted the proposal will significantly alter the open space currently experienced within this locality. The proposal will not mitigate adverse effects on the amenity values of the submitter. The submitter will experience being 'boxed in' on their property due to the location of the shelter buildings being within 25 m of all three boundaries. It is the Council's discretion to apply the permitted baseline, however I consider it would be difficult to achieve a permitted 'boxed in' effect to the level proposed by the Applicant without expert landscape evidence to demonstrate this can be achieved as a permitted activity. For this reason, I consider the proposal to be inconsistent with Objective 4.3.8 and Policy 4.3.8.2.
62. I note Ms Cowan and Ms Lomas have different conclusions on whether the application for retrospective and prospective artificial shelters is consistent with the Objectives and Policies of the WDP. Ms Cowan considers the proposal to be consistent in part with the objectives and policies of the WDP and considers the adverse effects that results in inconsistencies with the objectives and policies of the WDP relating to rural character and amenity will be for a period of 3 to 5 years<sup>24</sup>. I disagree with this assessment, relying on the updated evidence of Ms Soanes that confirms a longer period of growth and uncertainties with the density of growth. I also agree with Ms Lomas in her assessment that the Application is contrary to the District Plan in terms of rural buildings, rural amenity and shelterbelts on the submitters property<sup>25</sup>.

### **Conclusion**

63. Based on the above assessment and my assessment in Appendix 2, I consider that the activity, on balance, will be contrary to the objectives and policies of the WDP that relate to landscape and amenity provisions due to the shelter structures and shelterbelt activity. I note that the kiwifruit growing activity itself is consistent with the objectives and policies of the WDP. The mitigation proposed in the form of

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<sup>23</sup> Paragraph 12.6 of Joanne Soanes Evidence dated 15 February 2022

<sup>24</sup> Paragraph 75 of supplementary s42A report

<sup>25</sup> Paragraph 13.4.13 of s42A report

shelterbelts will not provide sufficient mitigation from the artificial shelters and will in itself result in adverse effects. The shelterbelts, by virtue of their location, scale and density, will result in significant adverse effects on the submitter and the rural landscape and are contrary to the framework of the WDP that anticipates low density form in the rural environment.

### **National Policy Statement for Highly Productive Land 2022 (NPS-HPL)**

64. Ms Williams and Ms Cowan in their evidence have provided an assessment of the activities against the NPS-HPL. While the structures and shelterbelts are on highly productive land under the NPS-HPL, as previously outlined in my evidence, the key issues for consideration are the adverse effects of the structures and the shelterbelts as a form of mitigation rather than the growing of kiwifruit. Therefore, I consider the NPS-HPL is of little relevance to this Application.

### **National Policy Statement for Freshwater Management 2020 (NPS-FM)**

65. WDC's original s42A report finds effects on waterbodies to be acceptable and the NPS-FM 'maintained' in this proposal<sup>26</sup>. I note the following avoid policy in the NPS-FM:

*"Policy 7: The loss of river extent and values is avoided to the extent practicable".*

66. I consider the addition of the artificial structures over the waterbody, as specified in the further information, to be inconsistent with this Policy. As regional council consent is required to reclaim and pipe this water body<sup>27</sup> it is my opinion that the relevant WDC applications, along with the regional council consent application, should be considered together due to the relationship between the consents. Should the Commissioner not consider this approach to be appropriate I consider it to be appropriate that a decision on the WDC applications should not be made until the outcome of the regional council application is known due to the risk of the plans for the WDC applications needing to be changed.

67.

### **Waikato Regional Policy Statement: Te Tauākī Kaupapahere Te-Rohe O Waikato (RPS)**

68. Ms Williams' in her evidence confirms the ODP has been prepared after the RPS and it has been prepared in consideration of RPS directives<sup>28</sup>. The s42A report provides an assessment of the RPS<sup>29</sup>. I concur with the original assessment undertaken in the s42A

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<sup>26</sup> Paragraph 14.5 of s42A report

<sup>27</sup> Page 3 of further information dated 27 September 2022

<sup>28</sup> Paragraph 12.13 of Simone William's evidence

<sup>29</sup> Paragraph 14.10 of s42A report.

report and Ms Cowan's supplementary report, with the exception of Objective 3.21 on amenity. I consider based on expert landscape evidence and my own assessment that the qualities and characteristics of the rural environment in the locality of the subject site cannot be maintained and as such the proposal is inconsistent with this Objective. Overall, I consider the applications to be inconsistent with the RPS.



### **Other Matters (s104(1)(c))**

69. Section 15 of the s42A report provides an assessment on other matters that are relevant to the proposal. I concur with the assessment made and note the SNA will be avoided.

### **Part 2 Matters**

70. I understand that the relevant planning instruments have been prepared taking into account Part 2 matters, but in the present case the WDP does not consider or make provision for the type of structure proposed by the Applicant. I also note that the WDP became fully operative in 2017 and since this time there have been amendments to the RPS. The WDP may not be consistent with Part 2 based on updated higher order planning documents and a recourse to Part 2 could be justified.
71. It is my opinion that the proposal will not achieve the overall purpose of the RMA. The kiwifruit growing activity itself will represent sustainable management, however the artificial structures, along with the use of shelterbelts as visual mitigation which in themselves create significant adverse effects does not represent sustainable management.
72. Section 7 of the RMA lists the matters a consent authority must have particular regard to in achieving the purpose of the Act, of particular relevant to this Application are the following matters:
- the maintenance and enhancement of amenity values
  - maintenance and enhancement of the quality of the environment:
73. I consider the proposal will not maintain and enhance amenity values or maintain and enhance the quality of the environment. I consider the proposal will compromise the amenity values and quality of the rural environment in a manner that is not anticipated by the WDP. This is further supported by expert landscape evidence and the planning reports make comment that such structures are not anticipated by the WDP, which I agree with. The proposal will have significant adverse effects on the submitter that cannot be appropriately avoided, remedied or mitigated.

### **CONCLUSION**

74. In my opinion there is clear direction under the ODP and the RPS to ensure amenity values are maintained or enhanced and adverse effects on rural character are minimised. The ODP does not currently anticipate artificial shelters of this scale in this location and recognises the rural character of Waipa District as being a broad concept,

including low density widely spaced building form. I consider the proposal will not maintain rural character within the vicinity of the development and will not achieve the intent of the relevant policy framework. If granted, the proposal has the potential to create adverse effects on the submitter due to the location, scale and density of the artificial shelters and the use of inappropriate mitigation measures. The proposal will result in significant adverse amenity effects on the submitter that cannot be appropriately avoided, remedied or mitigated. I consider the development as a whole is contrary to the relevant objectives and policies of the WDP, RPS and NPS-FM. In my opinion the applications should be declined.

**Dated this day 15 February 2023**

A handwritten signature in black ink, appearing to read 'S. Davidson', written in a cursive style.

**Sarah Lea Davidson**  
**Senior Planner- BTW Company**

Appendix 1- Copy of Original Evidence

**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 construct vertical and horizontal overhead artificial kiwifruit shelter buildings at 582 Parallel Road, Cambridge

**SUBMITTERS** Nicholas B Jennings and Vanessa L Jennings

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**STATEMENT OF PLANNING EVIDENCE OF SARAH LEA DAVIDSON**

12 October 2022

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## QUALIFICATIONS AND EXPERIENCE

1. My full name is Sarah Lea Davidson
2. I hold the qualification of Bachelor of Environmental Management from the Southern Institute of Technology. I am an Associate Member of the New Zealand Planning Institute and I hold a Making Good Decisions Certificate for RMA Decision Makers.
3. I hold the position of Senior Planner at BTW Company Ltd, a multidisciplinary consultancy based in Hamilton and New Plymouth.
4. My evidence is given on behalf of Nicholas and Vanessa Jennings (the submitter).
5. My previous work experience includes eight' years in the field of resource management, both in the public and private sector. I undertake planning work for a range of clients primarily in the Waikato and Taranaki regions, but also have experience working across other regions throughout New Zealand.. My planning advice and project work typically relates to resource consent matters including preparation and processing of applications, policy analysis, strategic planning and project management. During my career, I have been a Senior Planner at both Central Otago District Council and Otago Regional Council prior to my role at BTW Company Ltd.
6. My evidence pertains to planning matters only.
7. In preparing this statement of evidence I have considered the following documents:
  - a) The Assessment of Environmental Effects (AEE) and technical assessments forming the Application (including responses to s92 further information requests) – from here on referred to as the Proposal;
  - b) The statements of evidence of the Applicants' experts regarding planning;
  - c) The National Policy Statement for Highly Productive Land 2022;
  - d) The National Policy Statement for Freshwater Management 2020;
  - e) The Waikato Regional Policy Statement 2016;
  - f) The Operative Waipa District Plan (ODP) 2016;
  - g) Joanne Soanes Evidence dated 12 October 2022;
  - h) Phil Lang's legal opinion dated 05 October 2022;
  - i) Evidence of the Applicant dated 05 October 2022; and
  - j) Waipa District Council's (WDC) s42A Report prepared by Marne Lomas
8. I am familiar with the location and immediate surroundings of the site and visited the area in August 2022 and recently in October 2022.

## **EXPERT WITNESS CODE OF CONDUCT**

9. While this is not a hearing before the Environment Court, I confirm that I have read, and agree to comply with, the Environment Court's Code of Conduct for Expert Witnesses (Environment Court of New Zealand Practice Note 2014). This evidence I am presenting has been prepared in accordance with the Code and is within my area of my expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

## **SCOPE OF EVIDENCE AND APPROACH**

10. I have been asked by the submitter to provide expert planning evidence in relation to planning matters arising from the Proposal and their submissions. The submitter occupies and owns 598 Parallel Road, Cambridge.
11. I have prepared evidence in relation to:
  - a) Assessment of effects on the environment
  - b) Assessment against the relevant planning framework.

## **SUBMITTER'S INTERESTS**

12. The Submitter's land is located within the Rural Zone and is partly subject to the Hamilton Airport Conical Surface Overlay. The land is contained within Record of Title ("RT") SA70D/523 and contains a total area of 0.65 hectares (Ha). The submitter's reside in the dwelling located on the property. The residential activity on the property comprises of outdoor living areas that are north facing, accessory buildings and landscaping. Small paddocks surround the curtilage area. The submitters' share three boundaries with the application site as demonstrated in Figure 1.



**Figure 2. Aerial photograph of Submitters property (Source: Waikato Regional Council Maps)**

13. The Proposal has the potential to create adverse visual and amenity effects on the Submitter's property as outlined in the s95 report and the submitter's were notified of the application on 16 August 2022 by WDC. I also rely on the evidence in Ms Soanes' evidence that confirms this.

### **THE PROPOSAL**

14. The Proposal has been comprehensively described in the AEE and summarised in the s42A Report. There are some changes of the proposal described in the Statement of Evidence of Ms Williams, Mr Parmvir Singh Bains and the s42A report. Mr Parmvir Singh Bains (the Applicant) and Ms Williams evidence confirms Cryptomeria shelterbelt has been planted 4 metres (m) off the submitter's boundary and along the road boundary<sup>30</sup>. The s42A confirms that this shelterbelt *will* be planted around the periphery of the vertical cloth<sup>31</sup>. It is understood the shelterbelt planting has been undertaken since the s42A Report has been released.
15. In addition, it is noted that the artificial shelter buildings will now be 8 m off the northern boundary as stated in Ms Williams evidence<sup>32</sup>

<sup>30</sup> Paragraph 4.5 of Simone Williams' Evidence and Paragraph 24 of Parmvir Singh Bains' Evidence.

<sup>31</sup> Paragraph 6.5 of s42A Report.

<sup>32</sup> Paragraph 14.1 of Simone Williams' Evidence

16. I have adopted the proposal description except where there are discrepancies highlighted above. For completeness, the proposal relates to retrospective and prospective vertical and horizontal artificial shelter buildings proposed to cover an area of 23.5 hectares for the purpose of protecting RubyRed© kiwifruit plantings and minimising spray drift.

#### **APPLICATION ACTIVITY STATUS**

17. The subject site is located within the Rural Zone in the ODP and is subject to Hamilton Airport-Conical Surface Overlay and Significant Natural Area- WP344.
18. The s42A Report and the evidence of Ms Williams agree on the activity status and reasons for consent under the ODP. I agree on this activity status.
19. I note that when I undertook a site visit on 11 October 2022, a large soil bund had been placed near the western boundary of the submitter's property that does not form part of the existing earthwork consent granted by Waipa District Council. I consider that the earth bund also requires consent under Rule 4.4.2.75 of the ODP as the earthworks onsite overall will exceed 1000m<sup>3</sup> under this Rule and has not been approved as part of the existing resource consent.
20. I also note that a legal opinion has been provided by Mr Lang in relation to Rule 4.4.2.58 (Tree Planting) to Council and I consider, based on this opinion and my own planning analysis, that the Cryptomeria shelterbelts in the proposal fail to comply with this Rule, being within 30m of the Submitters' dwelling, 10m from the road boundary and 10m from overhead powerlines. Consent is required as a restricted discretionary activity under this Rule. At the time of writing this evidence, no other legal opinion on this matter has been provided nor any comment on that issue from Council.

#### **RECEIVING ENVIRONMENT**

21. I note the s42A report<sup>33</sup> and Ms Williams evidence do not agree on the density of hedging along the Submitter's property. I agree with the analysis of the receiving environment in the s42A report on Pages 3-9. I consider there is only some patchy hedging along the eastern, western and northern boundary. This is further discussed in Ms Soanes expert landscape evidence where she notes pittosporum is located sporadically along the western and eastern boundaries<sup>34</sup>. I also note the mature trees near the northern boundary of the submitter's property are deciduous and lose their leaf in winter.

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<sup>33</sup> Paragraph 3.5 of s42A Report

<sup>34</sup> Paragraph 9.4 of Joanne Soanes' evidence



22. I agree with the s42A report in respect of the analysis of the receiving environment with surrounding sites being rural or rural residential in nature, particularly along Parallel Road<sup>35</sup>. Ms Williams has observed that there are significant horticulture activities all within a 3km radius of the application site<sup>36</sup>. I agree on the expert landscape evidence of Ms Soanes and her assessment on the landscape of the receiving environment in Section 7 and 8 of her evidence, noting the receiving environment contains a mixture of pastoral, horticulture and rural residential lifestyle blocks.
23. I note that the artificial shelter buildings referenced within Paragraph 8.10<sup>37</sup> at 383 Parallel Road of Ms Williams evidence are subject to judicial review that Mr Lang is involved with. I note the permitted kiwifruit development at 583 Parallel Road only contains a 1.8 m high vertical fence covered with white cloth<sup>38</sup> and I did not observe a 6 m high structure when undertaking a site visit on 11 October 2022 from the submitter's property.
24. I note the development that Ms Williams evidence refers to within Paragraph 8.12 pertains to strawberry tunnels and was supported with expert landscape evidence by Ms Soanes.

#### **ASSESSMENT OF ENVIRONMENTAL EFFECTS**

25. The actual and potential effects of the proposal have been assessed in detail by WDC's reporting officer in the s42A report and Ms Williams. I note that the Applicant has not engaged their own landscape expert to assess the visual and landscape effects of the proposal. Ms Soanes does not believe that the particular adverse effects of the proposal will be appropriately avoided, remedied or mitigation. I agree with further assessment on this below.
26. Shelterbelts 4 m off all three boundaries of the submitter's property that are 6 m tall are likely to create adverse visual and amenity effects, according to Ms Soanes' evidence, noting the shelterbelts will visually enclose the submitter's property and be visually dominant<sup>39</sup>.
27. The Applicant has amended their proposal so that the structures will be 8 m off the northern boundary and included planting of a hybrid Cryptomeria variety to achieve a 6 m height shelterbelt in a shorter period of time than that stated in the s42A report<sup>40</sup>.

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<sup>35</sup> Section 3.4 of s42A Report

<sup>36</sup> Paragraph 3.5 of Simone Williams' Evidence.

<sup>37</sup> Paragraph 8.10 Simone Williams' Evidence

<sup>38</sup> Paragraph 8.9 Simone Williams' Evidence

<sup>39</sup> Paragraph 13.5 of Joanne Soanes' evidence

<sup>40</sup> Paragraph 9.19 of Simone Williams' Evidence.

The shelterbelt is still proposed as a mitigation measure. Paragraph 12.1.12 of the s42A report notes that no other mitigation measures have been considered or offered in the Application other than the shelterbelt, which has a significant effect of its own. I agree with this finding in the s42A report and note no alternative mitigation measures have been offered in the Applicants' evidence other than a minor increase in separation from the northern boundary and the planting of a hybrid variety shelterbelt to reduce the time the Cryptomeria hedging takes to mature to a height of 6 m. I agree on the expert landscape evidence of Ms Soanes confirming more appropriate mitigation measures<sup>41</sup> to address the actual and potential adverse visual and amenity effects of the artificial structures.

28. I also note that alternative measures to protect kiwifruit during frost periods as a permitted activity could also include the use of helicopters and frost fans<sup>42</sup>. The use of bird scaring devices<sup>43</sup> and temporary bird control netting during bud and fruit season is also permitted subject to complying with permitted activity standards. The use of permitted alternative protection measures have not been discussed in the Application or evidence of the Applicant.
29. In addition, I note the planting of other kiwifruit varieties that do not rely on artificial structures or Cryptomeria hedging within 30m of a boundary is also permitted under Rule 4.4.1.1 and Rule 4.4.2.58 of the ODP.
30. The permitted baseline has been established in Section 3.5.1 of the s95 notification report and further expands on this in Paragraph 8.6 of the s42A report. I agree with the permitted baseline assessment in respect of horticulture activities and concur that horticulture is a permitted activity and I consider the effects of the horticulture activity itself should be disregarded.
31. I note shelterbelts that naturally grow more than 6 m require resource consent if they are within 30 m of a dwelling on an adjoining site and 10m of a road boundary as a restricted discretionary activity. As such I consider there is no permitted baseline associated with the Cryptomeria shelterbelt planting as this is planted within 30 m of the Submitters' dwelling, 10m of the road boundary and 10m below an overhead power line.
32. I agree with the s42A report<sup>44</sup> that the actual and potential adverse effects on the submitter's property will be significant and the proposed shelterbelts will be insufficient in avoiding and mitigating the adverse effects on the rural landscape and

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<sup>41</sup> Section 15 of Joanne Soanes Evidence

<sup>43</sup> Rule 4.4.2.20 and Rule 4.4.2.15 Waipa District Plan

<sup>44</sup> Paragraph 12.1.20 of s42A Report

amenity values of the submitters. Also noting that the Cryptomeria shelterbelt will still take approximately 5 years to mature and the adverse visual and amenity effects on the submitters prior to maturity have still not been considered in the application or the Applicants' evidence.

33. The s42A report notes the artificial shelters are not currently recognised or anticipated in the ODP and notes they are a prominent feature on the immediate landscape around the submitters' property due to the considerable site coverage and atypical nature of the artificial shelter in the existing environment<sup>45</sup>. Ms Williams in her evidence confirms the location, height and form of the proposed artificial shelter for a horticulture activity is not inconsistent with what is typically seen for larger scale productive horticultural activities and notes that there are widespread horticultural activities within the receiving environment with rapid increase of this type of activity<sup>46</sup>.
34. In my opinion there is no disputing that horticulture activities do form part of the receiving environment, the key consideration is the visual and amenity effects associated with the artificial shelter buildings and the shelterbelt planting and the potential adverse effects on the submitter. I agree with the evidence of Ms Soanes and can confirm the structures will be dominant from the submitters' property and they will experience a loss of rural and visual amenity<sup>47</sup>.
35. Mr Holwerda for the Applicant in his evidence notes the positive effects of the artificial shelter buildings, in particular with spray drift. Ms Williams also confirms this as a positive effect. I note the Waikato Regional Plan contains rules in respect to the discharge of agrichemicals to air, in particular Rule 6.2.4.9 which confirms the discharge of agrichemical shall be undertaken in such a way that no significant adverse effect of off-target drift shall occur beyond the boundary of the property being sprayed. Regardless of the presence of the shelterbelt and artificial structures, spray drift should be managed in a manner that complies with the Waikato Regional Plan rules.
36. I do note the positive effects in Paragraph 10.4 of Ms Williams evidence in respect of the orchard activity and generating employment. I wish to acknowledge the orchard activity is permitted and the growing of kiwifruit within permitted activity parameters is anticipated in the rural environment and that activity has positive social, economic and cultural effects. I note that these activities can occur without the need for the artificial structures and the shelter belts.

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<sup>45</sup> Paragraph 12.1.4 of s42A Report

<sup>46</sup> Paragraph 9.18 of Simone Williams Evidence

<sup>47</sup> Paragraph 12.6 of Joanne Soanes Evidence

## Relevant Planning Framework

### *Operative Waipa District Plan (ODP)*

37. The submission raised that the proposal is contrary to the objectives and policies of the ODP<sup>48</sup>. I have assessed the relevant objectives and policies.
38. Objective 4.3.2 and Policies 4.3.2.1-4.3.2.6 seek to manage rural activities and the rural environment. The overarching objective seeks to maintain the capacity of rural areas and rural resources to support farming activities. There is no disputing that the growing of kiwifruit on the subject site itself is consistent with the overarching objective, the key consideration for the application is the effects of the structures rather than kiwifruit growing. There is disagreement between WDC's reporting officer and the Applicants' experts in respect of Policy 4.3.2.3. This policy requires farm buildings and activities to be appropriately located and that adverse effects are avoided, remedied or mitigated. It is my opinion, based on expert landscape evidence, that the artificial shelter building is not appropriately located and the adverse effects arising cannot be appropriately avoided, remedied or mitigated. The shelterbelt does not serve to mitigate the location and the significant scale of the artificial shelter building. The proposal has significant adverse effects on rural character and amenity being located within close proximity to the submitter's property and having significant scale and site coverage. I agree with the assessment made in the s42A report on this policy.<sup>49</sup>
39. There is disagreement between the s42A report and the Applicant's expert evidence on Objective 4.3.3 and Policy 4.3.3.4 that relates to shelterbelts. The s42A report considers the shelterbelts adjoining the submitter's property are contrary to Policy 4.3.3.4<sup>50</sup>. Ms Williams evidence suggests these objectives and policies are not directly relevant to determining this application<sup>51</sup>. As consent is required for the shelterbelt plantings, it is my opinion that Objective 4.3.3 and Policy 4.3.3.4 are considered relevant.
40. Ms Williams has relied on elevation plans and daylighting standards of the ODP<sup>52</sup> to demonstrate the shelterbelt will not have adverse shading effects. Comparison with the standards for buildings generally is inappropriate when the scale of the buildings also seriously exceeds the site coverage limit. The District Plan does not permit the extent of close building along a boundary that is proposed in this case. As such I consider the Cryptomeria shelterbelt to be contrary to Objective 4.3.3 and Policy

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<sup>48</sup> Paragraph 10 of the submission prepared by Sarah Davidson

<sup>49</sup> Paragraph 13.4.3 of s42A Report.

<sup>50</sup> Paragraph 13.4.5 of s42A Report.

<sup>51</sup> Paragraph 11.7 of Simone William's Evidence.

<sup>52</sup> Appendix A of Simone William's Evidence

4.3.3.4. The objective and policy seek to ensure shelterbelts do not have an adverse effect on the environment and the amenity of adjacent properties. I consider the bulk and locality of the shelterbelt will have adverse effects on the amenity values of the Submitter's property, altering the landscape of the receiving environment (including the submitter's property) from a largely open landscape with some mature planting to an environment of being 'boxed' in by the shelterbelt. This is supported by Ms Soanes' evidence.

41. I agree with the s42A report in that the horticulture activity itself is consistent with Objective 4.3.7 and Policies 4.3.7.1 and 4.3.7.2. I also agree with the s42A report confirming artificial shelters are not anticipated in the plan<sup>53</sup> and as such I consider that the density and location of the shelter building itself is contrary to Objective 4.3.7 and Policies 4.3.7.1 and 4.3.7.2 that seek rural character and amenity to be maintained and land use activities are at a design, scale, intensity and located to maintain rural character.
42. There are further disagreements between the s42A report and Ms Williams; evidence in relation to Objective 4.3.8 and Policy 4.3.8.2. I agree with the assessment in the s42A report in Paragraph 13.4.9 that the proposal is inconsistent with this objective and policy. The setback of the shelter buildings as currently proposed will have adverse effects on the rural character and amenity values of the submitter's property. As noted in the landscape evidence of Ms Soanes, the structures will dominate the view from the submitter's property and a loss of rural and visual amenity will be experienced<sup>54</sup>. Although the rural environment can experience change and this is acknowledged in the ODP, the addition of artificial structures within close proximity of three boundaries of the submitter's property is not anticipated by the ODP and the adverse effects of this have not been adequately addressed.
43. In addition, it is noted the proposal will significantly alter the open space currently experienced within this locality. The proposal will not mitigate adverse effects on the amenity values of the submitters. The submitter's will experience being 'boxed in' on their property due to the location of the shelter buildings being within 25 m of all three boundaries. The reliance on the mature vegetation on the submitter's site as mitigation<sup>55</sup> is also not appropriate as the applicant has no control over this vegetation and it can be altered or removed by the submitter at any given time, or it could die and require replacement. For these reasons I consider the proposal to be inconsistent with Objective 4.3.8 and Policy 4.3.8.2.

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<sup>53</sup> Paragraph 13.4.7 of s42A Report

<sup>54</sup> Paragraph 12.6 of Joanne Soanes Evidence

<sup>55</sup> Paragraph 9.22 of Simone William's evidence

44. In summary, I agree with the s42A report confirming the application is contrary to the ODP in terms of rural buildings, rural amenity and shelterbelts.<sup>56</sup> The mitigation proposed in the form of a 6 metre high shelterbelt within 4 metres of the submitter's northern, eastern and western boundaries is not appropriate as further noted in the landscape evidence prepared by Ms Soanes.

*National Policy Statement for Highly Productive Land 2022 (NPS-HPL)*

45. Ms Williams' in her evidence has provided an assessment of the activity against the NPS-HPL. I concur that the growing of kiwifruit on highly productive land is consistent with the NPS-HPL. As previously outlined in my evidence, the key issues for consideration are the adverse effects of the structures and shelterbelts rather than the growing of kiwifruit and whether the structures are reasonably necessary to support the growth of kiwifruit on the subject site.

*National Policy Statement for Freshwater Management 2020 (NPS-FM)*

46. Further information submitted to WDC dated 27 September 2022 provides an assessment against the NPS-FM.<sup>57</sup> WDC's s42A report finds effects on waterbodies to be acceptable and the NPS-FM 'maintained' in this proposal<sup>58</sup>. I note the following avoid policy in the NPS-FM:

*"Policy 7: The loss of river extent and values is avoided to the extent practicable".*

47. I consider the addition of the artificial structures over the waterbody, as specified in the further information, to be inconsistent with this Policy. As regional council consent is required to reclaim and pipe this water body<sup>59</sup> it is my opinion that this area should not be developed until such time as regional council consents are in place. This is also due to the risk of plans for this application needing to be changed should consent not be granted by Waikato Regional Council.

*National Environmental Standard for Freshwater 2020 (NES-FW)*

48. The further information dated 27 September 2022 confirms regional council consent is required under Regulation 57 of the NES-FW for reclamation of the waterbody to the west of the subject site, therefore I disagree with the statement under Paragraph 14.9 of the s42A report which considers that no consent is needed under the NES-FW. Structures are proposed over the waterbody and until such time as consent is sought

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<sup>56</sup> Paragraph 13.4.13 of s42A report

<sup>57</sup> Page 3 of further information dated 27 September 2022

<sup>58</sup> Paragraph 14.5 of s42A report

<sup>59</sup> Page 3 of further information dated 27 September 2022

from the regional council and granted, it is my opinion that the western area of the subject site should not be developed as it could be subject to change and is subject to the granting of other consent applications.

*Waikato Regional Policy Statement: Te Tauākī Kaupapahere Te-Rohe O Waikato (RPS)*

49. Ms Williams' in her evidence confirms the ODP has been prepared after the RPS and it has been prepared in consideration of RPS directives<sup>60</sup>. The s42A report provides an assessment of the RPS<sup>61</sup>. I concur with the assessment undertaken in the s42A report, with the exception of Objective 3.21 on amenity. I consider based on expert landscape evidence and my own assessment that the qualities and characteristics of the rural environment in the locality of the subject site cannot be maintained and as such the proposal is inconsistent with this Objective.

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<sup>60</sup> Paragraph 12.13 of Simone William's evidence

<sup>61</sup> Paragraph 14.10 of s42A report.

*Other Matters (s104(1)(c))*

50. Section 15 of the s42A report provides an assessment on other matters that are relevant to the proposal. I concur with the assessment made and note the SNA will be avoided.

*Part 2 Matters*

51. Section 13.2 of Ms Williams' evidence confirms the District and Regional Plans and the RPS have been taken into account and Part 2 of the Resource Management Act 1991 (RMA)<sup>62</sup>. I note that the s42A report provides a full assessment of Part 2. Ms Williams' and the s42A report both conclude the application is consistent with the purposes and principles of the RMA. I do note that the s42A report recommends declining the Application.

52. It is my opinion that the proposal will not achieve the overall purpose of the RMA. The kiwifruit growing activity itself will represent sustainable management, however the artificial structures, along with the use of a Cryptomeria shelterbelt do not avoid, remedy or mitigate adverse effects on the environment. I concur with the s42A report noting that the adverse effects on the submitter are significant and these adverse effects cannot be avoided, remedied or mitigated by a consent condition<sup>63</sup>.

53. I concur with the assessment of the s42a report against matters of national importance undertaken in Paragraphs 16.6 and 16.7, noting the SNA has been avoided by the proposal and supported by an ecological assessment.

54. Section 7 of the RMA lists the matters a consent authority must have particular regard to in achieving the purpose of the Act. I note the matters listed under Paragraph 16.8 of the s42A report are relevant.

55. I disagree that the proposal will maintain and enhance amenity values or maintain and enhance the quality of the environment. I consider the proposal will compromise the amenity values and quality of the rural environment in a manner that is not anticipated by the ODP. This is further supported by expert landscape evidence and the s42A report makes comment that such structures are not anticipated by the ODP, which I agree with.

56. Section 8 requires the principles of the Treaty of Waitangi are taken in account. I concur with the s42A assessment in Paragraph 16.10.

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<sup>62</sup> Paragraph 13.2 of Simone William's evidence

<sup>63</sup> Paragraph 16.5 of the s42A report.



## **Conclusion**

57. In my opinion there is clear direction under the ODP and the Waikato Regional Policy Statement in ensuring amenity effects are maintained or enhanced and adverse effects on rural character are minimised. The ODP does not currently recognise artificial shelters of this scale in this location and recognises the rural character of Waipa District as being a broad concept, including low density widely space building form. I consider the proposal will not maintain rural character within the vicinity of the development and will not achieve the intent of the policy framework this evidence relates to. Additionally, the proposal will result in significant adverse amenity effects on the submitter that cannot be appropriately avoided, remedied or mitigated. In my opinion the application should be declined.

**Dated this day 12 October 2022**

**Sarah Lea Davidson**

**Senior Planner- BTW Company**

Appendix 2- Waipa District Plan Objectives and Policy Assessment

Objective/Policy Number	Description	Consistent/Contrary
Objective 4.3.1 Rural Resources	To maintain or enhance the inherent life supporting capacity, health and well-being of rural land, ecosystems, soil and water resources.	The kiwifruit growing activity will be consistent with this Objective with the exception of water resources due to the reclamation of the water body located within the western block. The activity will not maintain this water body.
Policy 4.3.1.3 - Avoid adverse effects on aquatic and riparian ecosystems (including lakes)	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: <ul style="list-style-type: none"> <li>a) Maintaining or enhancing the life supporting capacity of water bodies; and</li> <li>b) Maintaining or enhancing the ability to use aquatic ecosystems as mahinga kai (a food source); and</li> <li>c) Where appropriate, maintaining or enhancing the availability of water bodies for recreation; and</li> <li>d) Enhancing ecological corridors and riparian margins.</li> </ul>	As regional council consent has not been confirmed for the reclamation of the identified water body, the Activity has the potential to be contrary as the reclamation of the water body could be inappropriate.
Policy 4.3.1.4- Protect the rural soil resource	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.	The development will involve permitted kiwifruit growing that utilises the soil resource, and an ecological report has been submitted with the Application showing the Application will maintain ecological values of the SNA. The activity is consistent with this Policy.
Policy 4.3.1.6- Earthworks	To ensure that earthworks are carried out in a manner that avoids adverse effects on infrastructure, between properties and on water bodies.	A previous consent has been granted for the site that has determined consistency with this Policy.
Objective 4.3.2-Rural Activities: Farming	The capacity of rural areas and rural resources to support farming activities and lawfully established rural based activities is maintained.	The kiwifruit growing activity will maintain rural resources and is consistent with this Objective.

Policy 4.3.2.1- management of rural resources	Manage rural resources so that farming activities can continue to establish and operate.	The kiwifruit growing activity will allow the land resource to continue to be used for farming activities and is consistent with this Policy.
Policy 4.3.2.2- Rural environment	Recognise and protect the continued operation of the Rural Zone as a pastoral working environment.	The activity does not involve pastoral farming and will involve large artificial structures that are not recognised by the District Plan. The activity contrary to this policy as the activity will alter the land from a pastoral environment to an intensive kiwifruit orchard operation.
Policy 4.3.2.3- Farming activities to avoid adverse effects	Manage farming activities so that they do not result in adverse effects on the environment or adjacent sites by ensuring: <ul style="list-style-type: none"> <li>a) Buildings are located appropriately; and</li> <li>b) Adverse effects, are avoided, remedied or mitigated.</li> </ul>	The activity will not avoid adverse effects on the Submitter as the artificial structures are located within an inappropriate location to cause adverse visual and amenity effects. The adverse effects are unable to be appropriately mitigated with proposed mitigation resulting in adverse visual effects on the Submitter. The activity is contrary to this Policy.
Policy 4.3.2.4- Farm buildings and activities to internalise adverse effects	Farm buildings and activities shall be located and scaled to minimise adverse effects on rural character and amenity.	The buildings are at a scale that is not anticipated in the District Plan and they have the potential to cause adverse effects on rural landscape character and amenity values as identified in expert landscape evidence. The effects of the activity will not be internalised and are located inappropriately from sensitive receptors. The activity is contrary to this Policy.
Objective 4.3.3- Rural activity: shelterbelts, woodlots and commercial forestry	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,	The retrospective and proposed shelterbelt will have adverse effects on the Submitter and will appear visually intrusive and dominant from the

	railway lines, electricity transmission and distribution lines, and boundary fence lines.	Submitters property affecting rural outlook and amenity values. The activity is inconsistent with this Objective.
Policy 4.3.3.4- Shelterbelts	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.	The location of the shelterbelts and the cumulative effects of permitted shelterbelts will have an adverse effect on the Submitter, there is potential for shading that the Application has not detailed. The Application has only provided a comparison to permitted height recession planes of buildings in the WDP. The Application is inconsistent with this Policy.
Objective 4.3.7- Rural Character	Rural character and amenity is maintained	The activity will not maintain rural character and amenity values in this instance and will result in the loss of rural outlook and views of dominant features within the landscape including the SNA, views of mountain ranges and the water body to the west of the submitters property. The activity is inconsistent with this Objective.
Policy 4.3.7.1	Land use activities should be at a density, scale, intensity and location to maintain rural character.	The activity seeks a site coverage of more than 60% and such scale is not appropriate within the rural environment to maintain rural character, where the area is largely a pastoral environment characterised by open space. The activity is contrary to this Policy.
Policy 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.	The building is not located or scaled appropriately to maintain rural character or amenity values within this locality as detailed in expert landscape evidence. The activity is contrary to this Policy.

<p>Objective 4.3.8- Rural amenity: Setbacks</p>	<p>To maintain rural character and amenity and avoid reverse sensitivity effects.</p>	<p>The District Plan requires a 25m setback from internal site boundaries and the proposal seeks to breach this setback by less than 10m on two of the boundaries and 14m on the northern boundary of the submitter's property. For a building of this size, the setbacks are not appropriate to maintain the open space and character of the rural environment. The development will have adverse effects on amenity values by completely obstructing rural outlook. The activity contrary to this Objective.</p>
<p>Policy 4.3.8.2- Internal boundaries</p>	<p>Buildings and activities are set back from rear and side boundaries to maintain rural character and amenity and avoid reverse sensitivity effects.</p>	<p>The development will be setback less than half the required distance from three of the Submitter's boundaries. As noted above the setback is not appropriate to maintain open space and rural character or avoid reverse sensitivity values. The activity is inconsistent with this Policy.</p>