

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

STATEMENT OF PLANNING EVIDENCE OF SARAH LEA DAVIDSON

12 October 2022

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 1. 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 boundary¹. The s42A confirms that this shelterbelt *will* be planted around the periphery of the vertical cloth². 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 evidence³

¹ Paragraph 4.5 of Simone Williams' Evidence and Paragraph 24 of Parmvir Singh Bains' Evidence.

² Paragraph 6.5 of s42A Report.

³ 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 1000m³ 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 report⁴ 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 boundaries⁵. I also note the mature trees near the northern boundary of the submitter's property are deciduous and lose their leaf in winter.

⁴ Paragraph 3.5 of s42A Report

⁵ 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 Road⁶. Ms Williams has observed that there are significant horticulture activities all within a 3km radius of the application site⁷. 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 8.10⁸ 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 cloth⁹ 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 dominant¹⁰.
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 report¹¹.

⁶ Section 3.4 of s42A Report

⁷ Paragraph 3.5 of Simone Williams' Evidence.

⁸ Paragraph 8.10 Simone Williams' Evidence

⁹ Paragraph 8.9 Simone Williams' Evidence

¹⁰ Paragraph 13.5 of Joanne Soanes' evidence

¹¹ 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 measures¹² 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 fans¹³. The use of bird scaring devices¹⁴ 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 report¹⁵ 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

¹² Section 15 of Joanne Soanes Evidence

¹⁴ Rule 4.4.2.20 and Rule 4.4.2.15 Waipa District Plan

¹⁵ 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 environment¹⁶. 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 activity¹⁷.
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 amenity¹⁸.
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.

¹⁶ Paragraph 12.1.4 of s42A Report

¹⁷ Paragraph 9.18 of Simone Williams Evidence

¹⁸ 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 ODP¹⁹. 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.²⁰
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 4.3.3.4²¹. Ms Williams evidence suggests these objectives and policies are not directly relevant to determining this application²². 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 ODP²³ 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

¹⁹ Paragraph 10 of the submission prepared by Sarah Davidson

²⁰ Paragraph 13.4.3 of s42A Report.

²¹ Paragraph 13.4.5 of s42A Report.

²² Paragraph 11.7 of Simone William's Evidence.

²³ 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 plan²⁴ 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 experienced²⁵. 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 mitigation²⁶ 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.

²⁴ Paragraph 13.4.7 of s42A Report

²⁵ Paragraph 12.6 of Joanne Soanes Evidence

²⁶ 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.²⁷ 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.²⁸ WDC's s42A report finds effects on waterbodies to be acceptable and the NPS-FM 'maintained' in this proposal²⁹. 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 body³⁰ 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

²⁷ Paragraph 13.4.13 of s42A report

²⁸ Page 3 of further information dated 27 September 2022

²⁹ Paragraph 14.5 of s42A report

³⁰ 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 directives³¹. The s42A report provides an assessment of the RPS³². 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.

³¹ Paragraph 12.13 of Simone William's evidence

³² 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)³³. 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 condition³⁴.

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.

³³ Paragraph 13.2 of Simone William's evidence

³⁴ 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