

<b>Date:</b>	24 November 2020	<b>App Number:</b>	LU/0230/20
<b>Reporting Planner:</b>	Christina Walker	<b>Site Visits on:</b>	21 <sup>st</sup> and 22 <sup>nd</sup> October 2020

<b>Applicant:</b>	Whitehall Fruit Packers Holdings Limited
<b>Property Address:</b>	Various – See Report
<b>Legal Description:</b>	Various – See Report
<b>Site Area:</b>	Various – See Report
<b>Activity Status:</b>	Non-Complying
<b>Zoning:</b>	Rural
<b>Policy Area(s):</b>	Various – See Report
<b>Designation(s):</b>	None
<b>Proposal:</b>	Land use consent for shade cloths on 14 properties in Waipa District

## 1 INTRODUCTION

The Applicant (Whitehall Fruit Packers) is seeking blanket consent to allow for the erection of artificial screens within and over kiwifruit orchards on 14 properties throughout the Waipa District. This attracts a Non-Complying Activity Status.

### 1.1 Description of site

The application covers 14 properties, each of these is discussed separately in the following subsections.

Site visit photographs are included in Appendix A of this report. Aerial Photographs, District Plan Maps and Special Features Maps are included in Appendix B of this report.

Table 1 - Subject Properties

ID	Address	Legal Description	Record of Title	Size (ha)	Zone	Policy Overlay	Special Features/Statutory Acknowledge and Deed of Recognition Area/Areas of Interest	Comments
1	816 Tirau Road	Part Section 13 Gorton Settlement	SA37C/413	18.50	Rural	Part - High Amenity Landscape  Part - Cultural Landscape Alert Area  Small Area of Significant Natural Area	HAIL area – Orchard  SA/DR – Ngati Haua  AOI – Ngati Haua, Ngati Koroki Kahukura, Raukawa  Waikato Tainui Co-Management Area	Current Kiwifruit Orchard, surrounded by hedging and shelterbelts.  Some existing artificial screens.  Some farm sheds located throughout the site  Adjoins Lake Karapiro to the west and State Highway 1 to the east.
2	982 Kaipaki Road	LOT 2 DP 492140  LOT 2 DPS 32828  LOT 3 DPS 32828	714541  SA31D/867  SA31D/868	57.4	Rural	Small Area of Significant Natural Area	HAIL area – Orchard  Unstable Land  AOI – Ngati Haua and Raukawa  Waikato Tainui Co-Management Area	Current Kiwifruit Orchard.  Dwelling.  Some farm sheds located throughout the site and shelterbelts surrounding.  Adjoins Mangawhero Stream to the south.

3	194 Arapuni Road (16 Brotherhood Road)	Lot 2 DP 304595	18437	7.57	Rural	N/A	HAIL area – Orchard AOI - Raukawa	Current Kiwifruit Orchard.  Dwelling.  Some farm sheds located throughout the site.  Shelterbelts around the majority of the property.
4	3/165 Gorton Road	Lot 2 DP 527059 and Lot 2 498881	848007	3.55	Rural	Part – River and Lake Environs  Part – High Amenity Landscapes  Part – Access Strip  Part – Cultural Landscape Area Alert  High Voltage Transmission Lines (affects Access only)	No Special Features  SA/DR – Ngati Haua  AOI – Ngati Haua, Ngati Koroki Kahukura, Raukawa	Accessed down access leg.  Current Kiwifruit orchard.  One existing farm shed.  Some areas of mature shelterbelt on boundaries, shelterbelt to the southwest recently planted.
5	103 Gorton Road	Lot 2 DP 424353	494675	4.76	Rural	N/A	HAIL area – Orchard  Unstable Land  SA/DOR – Nagti Haua	Current Kiwifruit orchard.  One existing farm shed.

							AOI – Ngati Haua, Ngati Koroki Kahukura, Raukawa  Waikato Tainui Co-Management Area	Mature shelterbelt on eastern boundary. No fencing or shelter belt on the northern boundary.
6	420 Greenhill Drive	Lot 2 DP 405546	419464	14.22	Part Residential  Part Rural	N/A	HAIL area – Orchard	Current Kiwifruit orchard.  One existing farm shed.  Some areas of mature shelterbelt.
7	21D Amber Lane	Lot 1 DP 420383 and Lot 1 DP 409324	477616	7.13	Rural	Part – River and Lake Environs  Part – High Amenity Landscapes  Part – Access Strip  Part – Cultural Landscape Area Alert  High Voltage Transmission Lines	HAIL area – Orchard  SA/DR – Ngati Haua  AOI – Ngati Haua, Ngati Koroki Kahukura, Raukawa	Current Kiwifruit orchard.  No buildings.  Existing mature shelterbelts.
8	714 Maunga	Lot 3 DP 483094	680930	26.3	Rural	Part – High Amenity Landscapes	HAIL area – Orchard	Current Kiwifruit orchard.

	tautari Road	Lot 1 DP 483094	680929			Cultural Landscape Area - Pukekura Cultural Landscape Area Alert	SA/DR – Ngati Haua AOI – Ngati Haua, Ngati Koroki Kahukura, Raukawa	Farm building.  Some areas of mature shelterbelt, recently planted shelterbelt on southern boundary and part of eastern boundary, adjoining 808 Maungatautari Road.  Adjoins the Hauoira Stream to the west.
9	94 Gorton Road	Section 12 Gorton Settlement  Section 11 Gorton Settlement  Lot 1 DP 85531 and Lot 1 DP 415991	SA49D/926  SA1051/244  462223	63.13	Rural	Part – River and Lake Environs  Part – High Amenity Landscapes  High Voltage Transmission Lines  Small Area for Significant Natural Area	HAIL area – Orchard  Areas of Flooding  SA/DR – Ngati Haua  AOI – Ngati Haua, Ngati Koroki Kahukura, Raukawa  Waikato Tainui Co-Management Area	Current Kiwifruit orchard.  Existing Dwelling  Cool store development  Mature shelterbelts along external boundaries
10	122 McGregor Road	Lot 2 DP 502579	753262	41.49	Rural	N/A	HAIL area – Orchard  Peat Land	No existing kiwifruit.  Some mature planting throughout site and some recent boundary planting.
11	567 Ngahina	Lot 1 DP450118	571681	16.53	Rural	N/A	N/A	No existing kiwifruit.

	pouri Road							Recent boundary planting. No current built form.
12	56 Gorton Road	Lot 2 DP 415991	462222	8.48	Rural	Small area of Significant Natural Area  High Voltage Transmission Lines	SA/DR – Ngati Haua  AOI – Ngati Haua, Ngati Koroki Kahukura, Raukawa  Waikato Tainui Co-Management Area	No existing kiwifruit planting.  Existing dwelling and shed.  Hedging on all boundaries.
13	159 Whitehall Road	Lot 1 DP 501305  Lot 2 DP 501305	748706  748707	5.95  25.01	Rural	N/A	HAIL site – Orchard  Unstable Land  SA/DR – Ngati Haua  AOI – Ngati Haua, Ngati Koroki Kahukura, Raukawa  Waikato Tainui Co-Management Area	Currently areas of kiwifruit and grazing.  Existing farm sheds.  Dwelling.  Some artificial screens along boundary, some mature shelter belts.
14	1285 Kaipaki Road	Lot 1 DP 517505 and Lot 1 DP 394777	808629	11.46	Deferred Large Lot	Structure Plan Area  High Voltage Transmission Lines	HAIL site – Orchard  Quarry Site Buffer (note: this does not	Partially developed with kiwifruit, additional development underway.

					Residential		<p>apply under the District Plan and the District Plan takes precedent in this matter)</p> <p>AOI – Ngati Haua, Raukawa</p> <p>Waikato Tainui Co-Management Area</p>	<p>Access to both Kaipaki and Cambridge Road.</p> <p>Some mature shelterbelts.</p>
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## 1.2 Proposal

Pursuant to Section 88 of the Resource Management Act 1991 ('the Act'), Whitehall Fruit Packers Holdings Limited have applied for a 'blanket' landuse consent to cover all existing and future 'artificial screens' erected in conjunction with their Kiwifruit orchards (current and future) located on the subject sites set out in *Table 1*. It is noted that the Applicant has confirmed that no artificial screens are proposed on the portion of 420 Greenhill Drive which is subject to Residential Zoning.

All other sites are zoned Rural with the exception of 1285 Kaipaki Road which is zoned Deferred Large Lot Residential.

The proposal includes the installation of:

- Vertical artificial screens (cloth) to provide for wind breaks, in either green, white/cream or translucent, with a maximum height of 8m.
- Horizontal artificial screens (cloth) to provide protection from frost, hail and wind damage. These cloths are generally white/translucent and are a maximum of 8m in height. The screens are supported by wooden poles set out in a grid structure with approximately 24m spacing between each pole.

The screens and supporting structures are to be set a minimum of 7m from boundaries (both road and internal boundaries). The exceptions to this are as follows:

- There shall be no minimum setback from internal boundaries where the adjoining property is in common ownership
- There shall be no minimum setback from internal boundaries where the written approval of the adjoining property owner is obtained.
- The minimum internal boundary setback for the property at 1285 Kaipaki Road (located within the Deferred Large Lot Residential Zone) is to be 5m.

No maximum site coverage is proposed, meaning that horizontal artificial screens could be erected over the entire area of each property with the exception of the areas within the above described setbacks.

The Applicant has provided photographs of existing shade cloths. These are reproduced in Figure 1 and Figure 2, following.





Figure 1 - Existing Vertical Shade Cloth (Source: Application Document)



Figure 2 - Existing Horizontal Shade Cloth (Source: Application Document)

### 1.3 Process Matters

For administrative purposes each property subject to this consent has been assigned an application number, those numbers are noted in Figure 3, below.

It is noted that 159 Whitehall Road is listed twice as it has two separate Records of Title. It is also noted that some addresses may differ from those listed in the application, this is due to Councils

records indicating a different road number. In these instances, both the address provided by the Applicant and the address on Council record is noted in Table 1.

816 Tirau Rd	LU/0240/20
982 Kaipaki Road	LU/0241/20
194 Arapuni Road	LU/0242/20
3/165 Gorton Rd	LU/0243/20
103 Gorton Rd	LU/0244/20
420 Greenhill Dr	LU/0245/20
21/D Amber Lane	LU/0246/20
714 Maungatautari Rd	LU/0247/20
94 Gorton Rd	LU/0230/20
122 McGregor Rd	LU/0248/20
567 Ngahinapouri Rd	LU/0251/20
It is 56 Gorton Rd	LU/0252/20
159 Whitehall Rd	LU/0253/20
159 Whitehall Rd	LU/0254/20
1285 Kaipaki Rd	LU/0255/20

Figure 3 - Application Numbers

## 2 REASON FOR THE APPLICATION

A land use consent as described under Section 87A of the Act is required for the reasons set out below.

### 2.1 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES)

These regulations came into force on 1 January 2012 and apply when a person wants to do an activity described in Regulation 5(2) to 5(6) on a piece of land described in Regulation 5(7) or 5(8).

A number of the subject properties are subject to potential contamination as a result of the horticultural activities taking place, these properties are considered to be a 'piece of land in accordance with Regulation 5(7), they are also considered to be 'production land'. Section 5(8) of the NES sets out the regulations applicable to production land. This is reproduced below:

*If a piece of land described in subclause (7) is production land, these regulations apply if the person wants to—*

*(a) remove a fuel storage system from the piece of land or replace a fuel storage system in or on the piece of land:*

*(b) sample or disturb—*

*(i) soil under existing residential buildings on the piece of land:*

*(ii) soil used for the farmhouse garden or other residential purposes in the immediate vicinity of existing residential buildings:*

*(iii) soil that would be under proposed residential buildings on the piece of land:*

- (iv) soil that would be used for the farmhouse garden or other residential purposes in the immediate vicinity of proposed residential buildings:*
- (c) subdivide land in a way that causes the piece of land to stop being production land:*
- (d) change the use of the piece of land in a way that causes the piece of land to stop being production land.*

The proposal seeks to enable the erection of artificial screens, which are supported by posts. Earthworks associated with this will be minimal and land will continue to be production land. As such, consent is not required under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

## 2.2 Waipa District Plan Rule Assessment

The following Waipa District Plan (District Plan) definitions are relevant to the assessment of the proposal (my emphasis added).

**Farming Activity** means an agricultural and/or horticultural ACTIVITY having as its primary purpose, the production of goods for human or animal consumption and includes any livestock or crop, using the in-situ soil, vegetation, water and air as the medium for production, and must include maintaining the ground cover. For the avoidance of doubt, FARMING ACTIVITIES includes:

- ANCILLARY ACTIVITIES including the storage and initial processing of horticultural and agricultural products produced on SITE; and
- The storage and spreading of any solid or liquid animal waste generated on SITE by FARMING ACTIVITIES; and
- Farm implement sheds, stables, hay barns and BUILDINGS for the storage of feed which is to be used on the HOLDING; and
- BEE KEEPING (and associated activities including extraction processing, production of honey and bee products, packaging, storage and distribution); and
- PACKING SHEDS; and
- Stud farming, and horse training; and
- The feeding of young stock in a BUILDING or similar enclosure or wintering of stock on a feed pad as part of normal pastoral FARMING ACTIVITIES for a limited season only; and
- Greenhouses/glasshouses with a PERMEABLE floor and where the soil profile is maintained if located on high quality soil; and
- OUTDOOR (EXTENSIVE) PIG FARMING; and
- CONSERVATION PLANTING; and
- The use of FARM AIRSTRIPS AND FARM HELIPADS.

### Comment

Shade cloths and hail netting are ancillary to horticulture and therefore appropriately defined as farming activities.

**Artificial Screen** means a man-made structure for the purpose of providing wind shelter that is greater than 2m high.

### Comment

The proposal seeks consent for artificial screens, however, it is noted that this term is not used in the Rural Zone provisions and, as such, the more general definition of 'building' is applied.

**Building** means BUILDING or structure, or part of a BUILDING or structure, whether temporary or permanent, moveable or immovable, but does not include:

- Any BUILDING or structure less than 5m<sup>2</sup> in area, and less than 1m in HEIGHT; or
- Any retaining wall less than 1.5m in HEIGHT, provided that any retaining wall (regardless of HEIGHT) which supports any LOAD or surcharge additional to the LOAD of the ground is considered to be a BUILDING; or
- Any fence or wall less than 1.8m in HEIGHT; or
- Any retaining wall or fence on top of a retaining wall that does not jointly exceed 1.8m in HEIGHT; or
- Any swimming pool or spa pool less than 1m in HEIGHT above GROUND LEVEL; or
- Any vehicle or caravan whether movable or immovable which is not used as a place of permanent residence or business, or for assembly or storage purposes; or
- Any mast, pole or radio or television aerial which is less than 2m in HEIGHT above the point of attachment or its base support; or
- Any uncovered part of a deck (excluding balustrades and hand rails) or terrace, platform or bridge which is less than 1m above GROUND LEVEL; or
- Any ELECTRIC LINES or TELECOMMUNICATION LINES; or
- Any SUBSTATION fence not exceeding 2.5m in HEIGHT.

#### Comment

Artificial screens, as proposed, meet the definition of a 'building' as outlined above due to their height and size.

**Accessory Building** means a BUILDING, the use of which is clearly incidental to the use of the principal LAND USE or BUILDING on that SITE, or to any permitted use of the land if not built upon and includes, but is not limited to; a carport, garage (excluding a garage which is integrated into and forms part of a DWELLING), workshop, and shed.

*For the avoidance of doubt, an ACCESSORY BUILDING shall not include BUILDINGS which are capable of being lived in independently.*

#### Comment

The artificial screens are considered to be accessory to the principal horticultural activity on the various sites.

The Applicant's Agent has provided an assessment of the proposal against the Rural Zone provisions. I have reviewed this assessment and consider it to be correct, however, I note that no assessment of Rule 4.4.2.7 was provided with the application. As such, I have included an assessment of this rule on the basis of further information provided in the letter from Mitchell Daysh Limited dated 29 October 2020. A summary of the key provision is included in Table 2.

*Table 2 - Rural Zone Rules Assessment*

Rule #	Rule Name	Status of Activity/Compliance	Comment
4.4.1.1 – Activity Status Provisions			
(d)	Farming Activities	Permitted	The proposed is deemed to be ancillary to a farming activity and is therefore a permitted activity.
(i)	Accessory	Permitted	The artificial screens are considered accessory



	Building to any Activity		buildings to the horticultural activity (kiwifruit growing).
It is noted that the above activities must comply with the performance standards of the zone. An assessment of those performance standards is included below.			
4.4.2 – Performance Standards			
4.4.2.1	Minimum Setback from Road Boundaries	Does Not Comply	<p>a) Buildings less than 100m<sup>2</sup> are required to be set back 15m</p> <p>b) Buildings greater than 100m<sup>2</sup> are required to be set back 30m</p> <p>c) Buildings adjacent to the State Highway are required to be set back 30m.</p> <p>The Applicant seeks a 7m setback, except that:</p> <ul style="list-style-type: none"> <li>Where an internal boundary adjoins a site in common ownership there shall be no setback</li> <li>Where the written approval of an adjoining owner is provided the internal setback can be reduced to the agreed extent.</li> </ul> <p>As a result of non-compliances with a) the application attracts a <b>Non Complying Activity Status</b>.</p> <p>As a result of the non-compliance with b) and c) the application attracts a <b>Discretionary Activity Status</b>.</p>
4.4.2.2	Internal Boundary Setbacks	Does Not Comply	<p>d) Buildings less than or equal to 250m<sup>2</sup> are required to be set back 15m</p> <p>e) all other buildings greater than 250m<sup>2</sup> are required to be set back 25m</p> <p>In all cases the Applicant seeks a 7m setback.</p> <p>As a result of this non-compliance the application attracts a <b>Restricted Discretionary Activity Status</b>.</p>
4.4.2.7	Building Setback from a Significant Natural Area (SNA)	Does not Comply	<p>This provision requires a 10m setback from any SNA. The Applicant is not proposing any setback from SNA's.</p> <p>As a result the proposal attracts a <b>Restricted Discretionary Activity</b>.</p>
4.4.2.9	Building Height	Complies	The artificial screens will not exceed 12m.
4.4.2.10	Maximum Building Coverage	Does not Comply	<p>Maximum site coverage for sites one hectare or more is 3%.</p> <p>The Applicant is seeking no restriction on site coverage.</p>

			As such, the proposal attracts a <b>Discretionary Activity Status</b> .
4.4.2.12	Daylight Control	Does not Comply	The Applicant is seeking dispensation from this provision as in some instances the artificial screens will not comply with this provision.  As such, the proposal attracts a <b>Discretionary Activity Status</b> .

As outlined in the table above, the application, insofar as it relates to the Rural Zone, is deemed to be a **Non-Complying Activity**, being the highest status indicated by the above rules.

The Applicant's Agent has also provided an assessment of the proposal against the standards in Section 25 – Landscapes and Viewshafts, which apply to those properties located within the River and Lake Environs and High Amenity Landscape policy areas, and Section 26: Lakes and Waterbodies, which applies to properties adjoining water bodies. I have reviewed this assessment and agree with it. Table 3, following, provides a summary of the key provisions.

*Table 3 - Landscape and Viewshafts and Lakes and Water Bodies Assessment*

Rule #	Rule Name	Status of Activity/Compliance	Comment
Section 25 – Landscapes and Viewshafts			
25.4.1 – Activity Status Provisions			
(h)	Artificial Screens	Restricted Discretionary	The proposal provides for artificial screens within both the High Amenity Landscape and River and Lake Environs. See <i>Table 1</i> for identification of relevant properties.
Section 26 – Lakes and Water Bodies			
26.4.2 – Performance Standards			
4.4.2.1	Minimum Setback from Lakes and Water bodies	Complies	The Applicant advises that no artificial screens will be erected within 23m of a lake or water body.

As outlined in the table above, the application, insofar as it relates to the provisions of the Landscape and Viewshafts policy areas, is deemed to be a **Restricted Discretionary Activity** being the highest status indicated by the above rules.

The Applicant's Agent has not provided an assessment of the proposal against the provisions in Section 14 – Deferred Zones, insofar as it relates to the property at 1285 Kaipaki Road, which is zoned Deferred Large Lot Residential Zone. As such, an assessment of those provisions is included in Table 4, below.

Table 4 - Deferred Zone Assessment

Rule #	Rule Name	Status of Activity/Compliance	Comment
14.4.1 – Activity Status Provisions			
14.4.1.5 (a)	Within a deferred Large Lot Residential Zone any activity that is Non-Complying in the Rural Zone	Non-Complying	The proposal is non-complying in the Rural Zone.

The application, insofar as it relates to 1285 Kaipaki Road, is a **Non-Complying Activity**.

In this instance it is appropriate to bundle the application and apply the highest activity status, being a **Non-Complying Activity**.

### 3 ASSESSMENT FOR THE PURPOSE OF PUBLIC NOTIFICATION

#### 3.1 Adequacy of information

It is my opinion that the information contained within the application is substantially suitable and reliable for the purpose of making a recommendation of and decision on notification. The information within the application is sufficient to understand the characteristics of the proposed activity as it relates to provisions of the District Plan, for identifying the scope and extent of any adverse effects on the environment, and to identify persons who may be affected by the activity's adverse effects.

#### 3.2 Mandatory Public Notification - Section 95A(2) & (3) – Step 1

Council must publicly notify the resource consent where:

- a) it has been requested by the Applicant; or
- b) a further information request has not been complied with or the Applicant refuses to provide the information pursuant to Section 95C; or
- c) the application has been made jointly with an application to exchange recreation reserve land under Section 15AA of the Reserves Act 1977.

In this instance, none of the above situations apply, therefore public notification is not required under Section 95A(2) and 95A(3).

### **3.3 Public notification precluded – Section 95A(5) – Step 2**

The consent is for a resource consent for one or more activities and there are no rules in a National Environmental Standard or the District Plan relevant to this proposal that preclude public notification.

The application not for a resource consent for one or more of the following:

- a) Controlled activity;
- b) A restricted discretionary, discretionary, or non-complying activity, but only if the activity is a boundary activity;

As the application is not one of the above activities, the application is not precluded from public notification.

### **3.4 Public notification required in certain circumstances – Section 95A(8) – Step 3**

Council must publicly notify the resource consent where:

- a) The application is for a resource consent for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification; or
- b) The consent authority decides, pursuant to Section 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor.

In this instance, public notification is not required by a rule or a national environmental standard. Refer to Section 4.5 and 4.6 of this report for Council's assessment of the effects.

### **3.5 Effects that may or must be disregarded – Section 95D(a), (b), (d) and (e)**

Pursuant to Section 95D, if a rule or national environmental standard permits an activity with that effect the adverse effect of that activity may be disregarded.

#### **3.5.1 Permitted Baseline**

Pursuant to Section 95D, a Council may disregard an adverse effect of the activity on the environment if the plan or a national environmental standard permits an activity with that effect (i.e. the Council may consider the 'permitted baseline'). The permitted baseline is a concept designed to disregard effects on the environment that are permitted by a plan or have been consented to with regard to who is affected and the scale of the effects.

The District Plan provides for the following activities within the Rural Zone:

#### Shelter Belts (Rule 4.4.2.58)

- Shelter belts up to 6m in height
- Shelter belts greater than 6m in height, provided they are no closer than:



- 30m from any dwelling
- 30m from any boundary of the Residential Zone, Large Lot Residential Zone or Marae Development Zone

These provisions are considered to be relevant considerations insofar as they relate to the permitted baseline. Specifically, it is noted that shelter belts provide both a visual screen and shading in a similar manner that may occur with the use of vertical artificial screens, although it is noted that they have a different aesthetic. Further discussion regarding this is included throughout my effects assessment.

Also of relevance are the rules relating to construction noise (Rule 4.4.2.19) and earthworks restrictions (4.4.2.73), both of which the Applicant has confirmed they will comply with.

### **3.5.2 Receiving Environment**

In assessing the potential adverse effects on the environment the receiving “environment” for effects must be considered.

The receiving environment is a mandatory consideration defined by caselaw and is the environment beyond the subject site upon which a proposed activity might have effects. This includes the future state of the environment upon which effects will occur, including:

- The environment as it might be modified by the utilisation of rights to carry out permitted activities; and
- The environment as it might be modified by implementing resource consents that have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.

In this instance, the majority of the properties are located in rural areas and are developed as Kiwifruit orchards (see further description in Table 1). The existing orchards, including the vines, posts and supports, form part of the receiving environment. Likewise, the majority of the sites are surrounded by a mixture of rural and residential development, with some located in close proximity to Lake Karapiro. The exception to this is 420 Greenhill Drive, which adjoins residential zoned and developed land to the southeast and east, with rural land on the northern and western boundaries.

There are a number of shelterbelts of varying species and heights on a number of the subject properties and the Applicant has stated that they intend to plant additional shelter belts. These shelterbelts, where they are either existing or can be planted as part of the permitted standards, form part of the receiving environment.

### **3.5.3 Land excluded from the assessment**

For the purpose of assessing an application to establish whether public notification is required, effects on owners and occupiers of the subject site and adjacent sites, and persons whom have given

written approval **must** be disregarded. The adjacent properties to be excluded from the public notification assessment are listed and depicted in **Appendix C**.

No written approvals were provided with the application.

### **3.6 Assessment of Adverse Environmental Effects – Section 95D**

Part 2 of the Act explains the purpose is to “*promote the sustainable management of natural and physical resources*”. In addition, it is noted the meaning of ‘effect’ is defined under the Act as:

*In this Act, unless the context otherwise requires, the term **effect** includes—*

- (a) any positive or adverse effect; and*
- (b) any temporary or permanent effect; and*
- (c) any past, present, or future effect; and*
- (d) any cumulative effect which arises over time or in combination with other effects — regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*
- (e) any potential effect of high probability; and*
- (f) any potential effect of low probability which has a high potential impact.*

With the definition of ‘effect’ in mind, it is considered appropriate to further examine the effects of the proposed activity relating to temporary construction effects, visual amenity, rural character, cultural effects, effects on significant natural areas and traffic effects.

#### **3.6.1 Temporary Construction Effects**

The erection of artificial screens requires the driving of support poles, the attachment of screens and the use of wire supports. The Applicant has advised that they will comply with construction noise requirements and earthworks limits set out in the District Plan.

I consider that the construction noise associated with the erection of artificial screens is consistent with construction noise that could occur as part of a permitted activity (including the construction of fencing) in the Rural Zone.

As such, any effects associated with construction are considered to fall within the permitted baseline and are negligible.

#### **3.6.2 Visual and Amenity Effects – Landscape Areas**

The District Plan contemplates the use of artificial screens within Landscape Areas, with objectives and policies<sup>1</sup> indicating that they may be acceptable where they:

- Do not obstruct views to outstanding natural features; and
- Do not detract from the character and amenity of the landscape or viewshaft.

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<sup>1</sup> Objective 25.3.10 and Policies 25.3.10.1-25.3.10.2

In this instance, the proposal relates to a number of sites located within the River and Lake Environs and High Amenity Areas (see *Table 1* for identification of the relevant properties), where built form is subject to a number of controls, including location and use of recessive colours.

As a result of these controls, the visual amenity of the area around Lake Karapiro (within both the High Amenity Landscape and River and Lake Environs) can be broadly described as an environment which comprises large areas of open space, mature vegetation and built form that is predominantly recessive in both colour and design.

The proposal provides for the use of white/opaque screens within the landscape areas as the Applicant advises that green cloth cannot be used for horizontal screening as it does not allow for light penetration in the same manner that white/translucent cloth does. There are existing vertical (green) screens on Gorton Road which are readily visible from across Lake Karapiro, particularly in areas where the road is slightly more elevated. I am of the opinion that these detract from the visual amenity of the landscape to a minor degree, given that they form only a small part of the viewing catchment, are partially screened by existing built form and shelterbelts, and are an appropriate colour for landscape areas. Further, they do not block views to and from outstanding natural features when viewed from public areas (although this is possibly different from adjoining properties).

Conversely, white cloth used for large areas of horizontal screens will be readily visible from elevated positions, including from Mount Maungatautari and public areas in the vicinity of Lake Karapiro. The application does not seek to limit the coverage provided these screens, beyond the required boundary setback, as such these screens could cover large areas of crop. The use of large areas of white/opaque horizontal screens is in contrast to the dominant visual characteristics of these landscape areas (as described earlier). Given this contrast, along with the potential bulk of screens, they are likely to represent a focal point of the wider environment, particularly when viewed from higher elevations. As such, and, in my opinion will detract from the amenity of the area in a manner that is more than minor. That is, the effects of the proposal will be not only visible from a large area, but due to the nature and scale of the proposal are likely to represent a contrast to the receiving environment and provide a focal point, detracting from the character and amenity of the wider area.

Overall, the adverse visual and amenity effects on landscape areas are considered to be more than minor in nature.

### **3.6.3 Visual Effects – Rural Area (outside Policy Areas)**

Horticulture is a permitted activity in the Rural Zone and, as such, structures associated with horticulture are somewhat accepted within the rural environment. Further, it is noted that in many cases, artificial screens are screened from public places by existing or proposed shelterbelts. Nonetheless, large artificial screens may remain visible above shelterbelts or from elevated positions. Further, particularly in the case of horizontal screens, there may be large areas of vines covered with cloth that is white/opaque in colour and readily distinguishable and visible within an

environment which is characterised by large areas of open space, and colours which tend toward greens and dark colours.

While there is an argument that large rural buildings also form part of the rural landscape along with areas of hard surface (such as feedlots and cowsheds) it is unlikely that they would be of the same scale as is proposed for the vertical artificial screens. Specifically, the Rural Zone provides for a coverage of 3% on sites of more than one hectare (Rule 4.4.2.10) and while the coverage provided by artificial screens is not at the same intensity as other built form, the nature of this proposal allows for large areas of properties to be covered, in a manner that is not otherwise considered or provided for in the Rural Zone.

When considered in isolation, particularly on smaller properties, artificial screens that sit behind shelterbelts are unlikely to result in any minor or more than minor visual effects on the wider rural environment, given that they support a legitimate rural activity and are generally screened from the immediate surrounds. However, on larger properties and when considered cumulatively, which is appropriate given the 'blanket' nature of this consent, the increased use in artificial screens is likely to result in a minor adverse change to the visual amenity of the rural environment.

Overall, I consider the proposal will have a minor adverse effect on the visual amenity of the wider rural environment.

#### **3.6.4 Rural Character and Amenity**

The Act defines amenity values as *“those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”*. Therefore, rural character cannot be considered in isolation or simply by considering each individual effect (i.e. noise, odour, visual amenity, traffic), rather it is a combination and accumulation of effects and intrinsic values and will vary from one area to another.

In this instance, the Rural Zone accommodates productive rural activities, including agriculture, horticulture and forestry. It has a character and amenity which is consistent with the working nature of the Zone and is generally characterised by large areas of open space with dispersed built form.

Horticulture is an accepted and established use of the Rural Zone, which is generally characterised by rows of vines/trees with structural supports (wooden post and wire). Shelterbelts are commons and artificial screens are at times utilised to provide additional protection.

The large scale use of artificial screens has not been specifically contemplated by the District Plan and, as such, they are controlled by general provisions relating to structures - although they differ in character and amenity from more traditional 'structures', being hard built form.

The application includes a request for a setback of 7m from all boundaries, except where adjoining properties are in common ownership or the adjoining owner has provided written approval for a lesser setback. While the effects of this reduced setback are likely to be largely restricted to

adjoining properties and therefore better addressed in an assessment under s95B of the Act (assessment of affected parties), reduced setbacks also have the potential to impact on the wider character and amenity of the Rural Zone, which generally provides for greater separation of built form. In this instance, it is my opinion that the reduced setback is unlikely to impact on the overall character and amenity of the Rural environment as artificial screens are readily distinguishable from more permanent and solid built form, and are unlikely to be perceived in the same manner as a building. Further, setbacks are, in most cases, unlikely to be readily discernible to the general public due to the use of shelterbelts, which will largely screen the artificial screens.

When considered in isolation, particularly on smaller scale properties and where surrounded by shelter belts, the use of artificial screens is unlikely to impact on the character and amenity of the rural environment. Even where partially visible, artificial screens that are smaller in scale, when used as an accessory to horticulture, are somewhat expected and form an acceptable part of the rural environment.

However, when utilised over large areas and when considered cumulatively, artificial screens do have the potential to detract from the wider character and amenity of the Rural Zone as they represent a departure from the dominant character of the Zone, being large areas of open space and visible vegetation. The screening provided by shelterbelts, which are present on most properties subject to this application, does provide some mitigation. While the Applicant is not offering up any conditions requiring the retention and/or planting of shelterbelts I consider it is reasonable to assume that these will be retained and enhanced due to the benefits they provide in relation to the production of kiwifruit.

In consideration of this mitigation and the permitted nature of horticulture within the Rural Zone, I consider the adverse effects of the proposal insofar as they relate to the character and amenity of the general Rural Zone (i.e. not subject to any policy overlays) to be minor in nature.

### **3.6.5 Deferred Zoning**

1285 Kaipaki Road is located within the deferred Large Lot Residential Zone. This area provides for rural development until such time the Large Lot Residential Zoning of the site is activated through the completion of a structure plan. Nonetheless, it is appropriate to consider how activities may impact on the ability of land within the deferred zoning to be re-developed.

In this instance the site is already developed in part with kiwifruit and the addition of artificial screens is not considered likely to exacerbate any difficulties with the potential future development of the wider area. It is noted that there may be some impact on immediately adjoining properties who wish to develop in a manner consistent with the future Large Lot Residential Zoning, however, this is better considered under s.95B (effects on persons).

Overall any adverse effect on the Deferred Large Lot Residential Zone is considered to be minimal in nature.

### **3.6.6 Effects on Significant Natural Areas**

In response to a request for further information under s.92 of the Act, the Applicant has advised that, at times, artificial screens may encroach onto the required 10m setback (for structures and buildings) from Significant Natural Areas (SNA's) and into SNA's themselves. There are four properties which have areas of SNA's, these are:

- 982 Kaipaki Road (adjacent to the Mangawhero Stream)
- 94 Gorton Road (Gorton Road Gully)
- 56 Gorton Road (Gorton Road Gully)
- 816 Tirau Road (Gorton Road Gully)

In all instances the SNA's located within the sites are small in area and are largely contained on adjoining sites. Further, it would appear unlikely that kiwifruit would be established in close proximity to these areas given the topography and vegetation of the immediate area. Nonetheless there is the potential for encroachment into the required setback even where the SNA's are not located within the subject property and the Applicant has confirmed that they intend for the application to provide for encroachment into these areas. Such an encroachment would likely involve the disturbance of small areas of soil as required for the erection of supporting poles and structures.

The ecological values of each of these areas has not been assessed and it is not known what level of encroachment is proposed, however, given the likely small nature of any encroachment, I consider that the effects of the proposal on the SNA's are likely to be minor in nature.

### **3.6.7 Effects on the roading network**

Traffic and the effects on the roading network are an instrumental part of the District Plan direction to ensure an integrated approach to land use and transport. At a local scale, the integration of new activities needs to ensure that the roading network can continue to function in a safe and efficient manner.

The proposed development provides for the establishment of artificial screens up to 8m in height, 7m from road boundaries. This has the potential to impact on traffic safety, due to the blocking of sight lines.

However, it is considered appropriate to take into account the permitted baseline insofar as it relates to shelterbelts, which are able to be planted directly on road boundaries with no restriction on height (except as it relates to shelterbelts which are located within 30m of dwellings or within different zones). Further, my observations on site were that, in most instances, large road verges provide for sight distances and neither the existing shelterbelts nor the proposed artificial screens will impact traffic safety.

Lastly, the Applicant's agent has provided confirmation that Waka Kotahi NZ Transport Agency do not have any concerns with the proposal and do not consider themselves to be an affected party.

Overall, it is concluded that any adverse effects on the roading network as a result of this proposal will be within the permitted baseline and less than minor in nature.

### **3.6.8 Cultural Effects**

A number of the properties subject to this application are located within cultural landscape alert areas as well as within areas subject to Statutory Acknowledgement Areas, Deed of Recognition Areas (SAA's and DOR's) and Areas of Interest for Nagti Haua, Ngai Koroki Kahukura and Raukawa.

The Applicant does not report any consultation with iwi and none has been carried out by Council as a result of this application. Mana Whenua are the only party qualified to comment on the significance of an area or a specific proposal and, as such, I do not wish to draw any conclusion as to the extent of cultural effects that may arise from this proposal. However, in the event there are cultural effects which are minor or more than minor, it is my opinion that these are best addressed directly by those parties (Nagti Haua, Ngai Koroki Kahukura and Raukawa), who have a known interest in the subject properties and who can be considered affected parties under section 95B of the Act, as necessary.

As such, for the purposes of this public notification assessment, cultural effects on the wider community are considered to be no more than minor in nature.

### **3.6.9 Summary of Effects**

Overall it is concluded that any adverse effects of the proposal will be minor insofar as they relate to the Rural Zone, outside of policy areas, and more than minor insofar as they relate to areas within Landscape Policy Areas or in areas which adjoin Significant Natural Areas.

The application has been bundled and applied for as a 'blanket' consent and as such it is considered appropriate to apply the highest level of effects to the proposal as a whole. On that basis, the overall adverse effects of the proposal are considered to be more than minor.

## **3.7 Special Circumstances – Section 95A(9) – Step 4**

Council must determine as to whether special circumstances exist in relation to the application that warrant public notification of the application and publicly notify an application if it considers that special circumstances exist. In effect, special circumstances 'trumps' other notification provisions. Special circumstances have been defined as circumstances that are unusual or exceptional, but may be less than extraordinary or unique. Special circumstances provide a mechanism for public notification of an application which may otherwise appear to be routine or uncontentious or minor in its effects.

In this instance, the assessment of effects has found that the proposal will have more than minor adverse effects and therefore an assessment of special circumstances is not required. However, for completeness, I have provided a discussion of special circumstances below.

In this instance, the proposal provides for the erection of artificial screens over a number of properties and at a scale that has not been contemplated by the District Plan and therefore has not been subject to public consultation or input through a Schedule 1 RMA process. Given that the application covers a number of number of properties, in a number of locations throughout the District it has the potential to impact on the amenity and character of the rural environment generally, and particularly those rural environments which are subject to policy overlays. It is therefore my opinion that this qualifies as a special circumstance and the public should be given the opportunity to have input into the outcome of this application.

As such, it is my opinion that the proposal contains special circumstances which would justify the public notification of the consent.

### **3.8 Summary of Public Notification Assessment**

Pursuant to Section 95A, the application has been assessed to determine if public notification is required. In this instance, and for the reasons outlined in Sections 3.1 to 3.7 above, it is considered that the proposal warrants public notification.

**Reporting Officer:**



**Christina Walker**  
**Consultant Planner**  
**Dated: 24 November 2020**

**Approved By:**



**Quentin Budd**  
**Consents Team Leader**  
**Dated: 24<sup>th</sup> November 2020**