

Before the Auckland Council

In the Matter of the Resource Management Act 1991

And

In the Matter Proposed Plan Change 5 to the Hamilton District Plan
– Peacocke Structure Plan

Submitter M & M Shaw, 143 and 148 Hall Road, Peacocke

**Evidence of James Hook
Dated 16 September 2022**

INTRODUCTION

1. My full name is James Ronald Hook.
2. My tertiary qualifications comprise a Bachelor of Surveying (BSurv) and a Master of Regional and Resource Planning (MRRP). I have worked as a Planning Consultant for 28 years. I am full member of the New Zealand Planning Institute and have previously obtained certification as a Planning Commissioner.
3. My professional experience has included a wide range of land use and subdivision consent applications, professional advice, and expert evidence services to a broad range of Clients, including local authorities, community and special interest groups (as detailed in my Curriculum Vitae – refer to **Attachment 1**).
4. Through the course of my work, I have made regular appearances at Council hearings and have regular and on-going experience in matters before the Environment Court. While not a hearing before the Court, this evidence has been prepared in accordance with the Code of Conduct for Expert witnesses, contained in section 5 of the Environment Court Consolidated Practice Note 2014. This evidence is within my area of expertise, and I confirm that I have considered all material facts known to me that are relevant to the proposal.
5. This statement relates to the further submissions of M&M Shaw (FS012) on PC5, which apply to a broad range of matters (across the seventy-two submission points) affecting the Plan Change, including:
 - Objectives and Policies
 - Roading layout and design requirements
 - Structure Plan Figure 2-2 (Transport)
 - Location and Extent of Natural Open Space Zone
 - Identification of SNA areas
 - Land use activities within SNA areas
 - Significant Bat Habitat Corridors (SBHC)
 - Identification of Esplanade Reserves on Figure 2-3 (Natural Environment and Heritage)
 - Compensation for land zone Natural Open Space, SBHC and for associated public works
 - Access to properties adjoining minor arterial road
6. This statement relates to three specific issues of significance to the Submitter within the broader scope established by its submissions, which are addressed in detail below:
 - a) Roading within the Peacocke Structure Plan Area
 - b) Land Use Activities within Proposed Natural Open Space Zone
 - c) Conflict between proposed NOSZ and Peacocke Stage 1 Development Area

The Submitters' Properties and Existing Activities

7. The Submitters own four adjoining properties at:
 - a) Section 1 SO 539766, a vacant site of 3085m²
 - b) Section 3 SO 539766, a site of 5.6873ha occupied by two dwellings and ancillary buildings.
 - c) Section 7 SO 539766, a vacant (land locked) site of 1.8004ha.
 - d) Lot 1 DPS 60471 occupied by a dwelling, workshop and ancillary buildings.



Figure 1: Location of Submitter's Land (Hall Road, Peacocke)

8. Over the last 30 years, the Submitters have extensively planted mixed native and exotic trees planted around a sequence of ponds within part of the Mangakotukutuku Gully System that crosses their land. This area operates as a "Bird Park" that is freely accessible to the public and is open daily.

9. The Bird Park incorporates pond and aviaries, a network of paths and large landscaped areas that extends across the Submitters land, and a part of neighbouring property leased by the Submitters. The extent of land identified as an SNA (part of site SNA 61 under PC5 and SNA C87 under PC9) applies to that area of the Submitter’s land. However, it is noted that prior to the improvements undertaken to the land by the Submitter the gully system had very little vegetation cover and was in pasture or infested by invasive species.



Figure 2: Perspective view of Submitter’s Land showing vegetation, ponds and pathway network forming part of the Bird Park within the gully system.

10. The north-western portion of the Submitters’ land is in the Stage 1 Peacocke Structure Plan area and is located within the General Residential zone.
11. The balance of the submitter’s land, which has been split into three separate portions due to taking of land for roading within Designation A106, is in the Peacocke Special Character Zone.

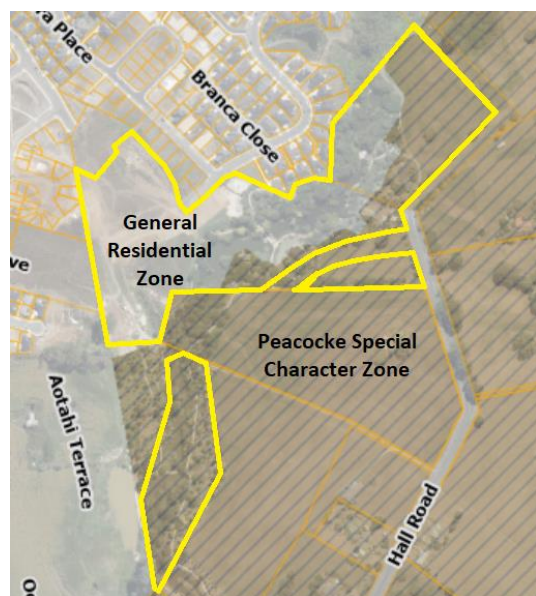


Figure 3: Operative Zoning of Submitter’s Land

Roading within the Peacocke Structure Plan Area

12. As per M&M Shaw’s submission to Proposed Plan Change 9, the alignment of roading within the Peacocke Precinct, in particular roading identified as “arterial and minor arterial” roads that cross the Waikato River Gully systems are in conflict with the identified SNA areas within the gully systems, including (but not limited) to the Mangakotukutuku Gully System (SNA 61 under PC5 and SNA C87 under PC9) which extends through the Submitter’s land.

<u>SNA 61</u>	<u>Mangakotukutuku gully, Peacocke II</u>	<u>56B, 57B,</u> <u>63B, 64B,</u> <u>66B, 67B</u>
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Excerpt from Plan Change 5 – addition of SNA61 to Schedule 9C: Significant Natural Areas

13. The land included within PC5 remains in an undeveloped state with fully intact SNA areas within an area of predominantly rural land use activities. The assessed ecological values of SNA 61/C87 within the gully systems have been evaluated as being of National Significance and provide habitat for the endangered long-tailed bat or *pekapeka-tou-roa* which is classified "Nationally Critical" pursuant to the New Zealand Threat Classification System.

<u>Site ID</u>	<u>C87</u>
<u>Site name</u>	<u>Mangakotukutuku Gully, Peacocke</u>
<u>Area (ha)</u>	<u>37.16</u>
<u>SNA type</u>	<u>cSNA</u>
<u>RPS ecological significance criteria 1,3,4,6,8,11</u>	<u>3.11</u>
<u>Significance</u>	<u>National</u>

14. The Significance criteria defined in clause 11A of the Waikato Regional Policy Statement met by the Mangakotukutuku Gully System are:

It is vegetation or habitat that is currently habitat for indigenous species or associations of indigenous species that are: classed as threatened, at risk, or data deficient; or endemic to the Waikato region.

It is an area of indigenous vegetation or habitat for indigenous species (which habitat is either naturally occurring or has been established as a mitigation measure) that forms, either on its own or in combination with other similar areas, an ecological buffer, linkage or corridor and which is necessary to protect any site identified as significant under criteria 1-10 from external adverse effects.

15. Within the Peacocke Precinct a new roading network is required to be established in conjunction with the development of that land, some of which have been subject to a Notice of Requirement (known as a Peacocke Southern Links) and are within the area covered by Designation A106. Other components of the roading network are not designated and all roading alignment shown on PC5 is understood to be indicative, with final alignment to be determined as part of subsequent subdivision consenting process.

16. The identification of SNAs with the Peacocke Precinct under PC5 (and similarly under PC9) is incongruous and in direct conflict with the works enabled by Designation A106 and other roading links that cross SNA areas under the proposed Peacocke Structure Plan. In particular, the SNA notation proposed under PC9 for the Mangakotukutuku Gully System (SNA 61/C87) directly conflicts with the proposed roading alignments that extend across that gully system, as shown in Figures 1 and 2 below. Construction of those roads will require extensive vegetation remove, earthworks and bridge/culvert construction. The road bisects the gully and cuts through an area of bat habitat along the alignment of a proposed Significant Bat Habitat Area (SBHA).



Fig 4: Extent of SNA 61/C87 (green hatch) and significant habitat area (shaded green)

17. In accordance with the purpose of the Resource Management Act 1991, Hamilton City Council, has a statutory duty to give effect to the Purpose and Principles under Part 2 of the act, which include:

- The Section 5 Purpose to sustainably manage natural and physical resource in the City to enable people and communities to provide for their social, economic, and cultural well-being, while:

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

- The requirement when managing the use, development and protection of natural and physical resources that the Council “shall recognise and provide for” the matters of National Importance under Section 6, including:
 - c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
 - The requirement when managing the use, development and protection of natural and physical resources that the Council “shall have particular regard to” the “Other matters” under Section 7, including:
 - (d) intrinsic values of ecosystems;*
18. PC5 (and PC9) both fail to give effect to those statutory provisions, as the plan changes do not address the direct conflict with other provisions of the District Plan in respect of the roading alignments proposed under PC5 – Peacocke Structure Plan and Designation A106. The plan changes also fail to give effect to the Act in respect of the specific functions Hamilton City Council is responsible for under section 31 of the Act:
- (a) The establishment, implementation, and review of objectives, policies, and methods to achieve the integrated management of the effects of the use, development or protection of land and associated natural and physical resource of the district”*
...
 - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of-*
...
 - (iii) the maintenance of indigenous biological diversity*
19. The Council’s evidence in support of the s.42A report does not address this conflict. However, the evidence of Matthew Baber (Ecology – Offsetting/Compensation) does identify the need for additional mechanisms to address the effects of vegetation clearance (such as would occur during the construction of roading across the natural gully systems within the Peacocke Structure Plan area) including the application of biodiversity offsetting and compensation principles to determine the quantum of habitat restoration or enhancement required to address residual adverse effects¹.
20. I concur with Mr Baber’s assessment but note that the approach he suggests does not accord with the purpose of the Act that requires adverse effects to be avoided in the first instance. I am not aware of alternative routes being considered by the roading authorities that would avoid the habitat damage and loss associated with roading works through the gully systems. However, in light of the recent recognition of the ecological and habitat values of the Mangakotukutuku Gully System

¹ Evidence of Matthew Baber, paragraph 24.

it would be appropriate for Hamilton City Council to comprehensively review the alignment of the proposed roading network in order to avoid such significant adverse effects on the environment.

Relevance of Designation A106

21. The Council completed detailed ecological studies to identify SNA areas² within Peacocke in June 2022, nine years after the Notice of Requirement (NoR) was submitted for Roading Designation A106. The information now available identifies SNA areas of national significance within the Peacocke Structure Plan area was therefore not available during the NOR process for the “Southern Links” roading.
22. In particular, surveys to establish the extent of remaining ecologically functioning areas in Hamilton, including those that provide habitat to the long-tailed bat were undertaken following the NOR process. These are recorded in the Plan Change 9 – S32 Report (page 58):

Within the Hamilton City Ecological District, it is estimated that since 1840, the Hamilton Ecological District has had a 97.8% reduction in indigenous vegetation. The vegetation areas that are left (in gullies and along the Waikato River) are the habitat for several threatened and/or regionally uncommon species, notably the long-tailed bat where Hamilton is one of only a few cities in New Zealand where longtailed bats are known to persist in an urban landscape.

The overall picture is of a significantly depleted ecological system, with only 1.5% of the total city area protected by the current SNA overlay and numerous areas of key habitat for fauna that are not protected by the operative SNA framework. This is a significant gap in the ODP framework for the protection of the SNAs which has been noted by the Environment Court³ and does not fully meet obligations under section 6(c) of the RMA and the WRPS.

23. Under Clause 26.2 of the Operative District Plan all works within a designation require an Outline Plan to be submitted to Council in accordance with section 176A of the Act before construction commences. In addition, the roading works within the Peacocke Southern Links area will also require Resource Consent from the Waikato Regional Council for bulk earthworks, stormwater diversion, stream and wetland modification and an Outline Plan of Works. It is therefore noted that the Designation is just one component of the Consenting process for the proposed roading “southern links” roading. It is my understanding that no “permitted baseline” has been established for construction of that roading through the Mangakotukutuku Gully System contiguous with Submitters’ land.

² Report by 4Sight Consulting – *Significant Natural Areas of Hamilton City District: Terrestrial and Wetland Ecosystems*, June 2022

³ In *Weaston Lea v Hamilton City Council [2020] NZEnvC 189*, paragraph 40-42, the Environment Court commented on the absence of critical bat habitat in the operative SNA maps and schedule as follows “*This is an unfortunate oversight. It is a matter requiring urgent redress. In fairness, we understand this to be the case with the necessary policy development work being undertaken by the Council. At the same time, the oversight cannot be ignored. There is a diminishing population of an endangered species of native New Zealand fauna, deemed to be so rare as to be classified “Nationally Critical” pursuant to the New Zealand Threat Classification System*”.

24. It is therefore my understanding that when the roading alignment was determined the potential adverse effects on the habitat and roosting sites of the “nationally critical” long-tailed bat was not considered within the context of:

- The purpose of and matters of National Importance under the Resource Management Act 1991.
- The requirement under s.168A(3) to give adequate consideration to alternative routes for roading through the Peacocke area where “*it is likely that the work will have a significant adverse effect on the environment*”.
- The National Policy Statement for Freshwater Management.
- The National Policy Statement for Indigenous Biodiversity (exposure draft July 2022).
- The Objectives and Policies of Chapter 3, Section 3.2 – Significant Vegetation and Habitat of the Waikato Regional Plan.
- The relevant provisions of the Operative Hamilton City District Plan.

25. Furthermore, the Conditions of the Designation are not informed by, and accordingly to not recognise and address the presence of a Nationally Significant SNA area that the Council proposes to extensively modify by multiple roads, bridges and culverts as part of the Peacocke Southern Links roading.

Decision Requested:

26. In recognition that Designation A106 is in direct conflict with Part 2 of the Act it would be appropriate for Hamilton City Council give notice pursuant to s.182 of the Act to surrender designation A106, following which the Designation would be removed from the District Plan. The Council should then complete the following actions:

(a) Deferral of decisions on the roading network on Plan Change 5 – Peacocke Structure Plan, until the following actions are completed;

(b) Comprehensively review the alignment for all roads in the Peacocke Structure Plan (Southern Links) area to avoid direct impacts on SNA areas and on the habitat of the nationally significant long-tailed bat including realignment of the roading network to avoid roads (and associated works) within, adjacent to, or crossing the Mangakotukutuku Gully (SNA 61/C87) and other SNA areas within the Peacocke Precinct in accordance with the relevant provisions of the following:

- *Part 2 of the Resource Management Act 1991*
- *The National Policy Statement for Indigenous Biodiversity*
- *The National Policy Statement for Freshwater Management*
- *The Objectives and Policies of Chapter 3, Section 3.2 – Significant Vegetation and Habitat of the Waikato Regional Plan*
- *The relevant provisions of the Operative Hamilton City District Plan, including*

- *Chapter 2 – Strategic Framework*
- *Chapter 20 – Natural Environments*
- *Chapter 21 – Waikato River and Gully Systems*
- *Appendix 10 – Waikato River Corridor and Gully Systems including the Vision and Strategy for the Waikato River (Te Ture Whaimana o Te Awa of Waikato)*

(c) *Following completion of the review of all roading alignments required by b), Notify a new Notice of Requirement in accordance with s.168A for roading within the (Southern Links) area;*

(d) *Once the Notice of Requirement in d) is confirmed undertake a Variation to Plan Change 5 – Peacocke Structure Plan to incorporate the new roading alignments determined by the Notice of Requirement process.*

27. The Submitter relies on the scope established by its submission on PC9, which makes an identical request for relief to resolve the conflict between SNA areas and the proposed roading network within the Peacocke Precinct area (that is also subject to PC5).

Land Use Activities within Proposed Natural Open Space Zone

28. PC5 applies a Natural Open Space Zone (NOSZ) to that area of the Submitter’s land that operates as a “Bird Park”, an area that the submitter has undertaken extensive landscaping and improvements to, in order to provide for a high-quality visitor experience.

29. The SNA values of the Submitters land exist because of the efforts and investment by the landowner, are the result of human intervention and are not “natural.” It’s care and maintenance of the subject land has achieved the high quality of vegetation and habitat now present on the site. The NOSZ zoning is unnecessary and potentially restrictive on the Submitter’s on-going operation of the “Bird Park” and are not justified under Part 2 of the Resource Management Act 1991 or via an evaluation under S.32.

30. Application of restrictive controls on vegetation management and land use activities within the identified NOSZ area on the subject properties would unreasonably restrict the landowners reasonable use and management of their land, and substantially restrict its use and function.

31. Accordingly, the Submitter seeks an alternative approach to the management of vegetation and natural features on their land that provides greater flexibility for its continued use, maintenance and enhancement as part of the “Bird Park”. It wishes to ensure that the SNA annotation the Natural Open Space zoning and the associated vegetation and environmental controls proposed under PC5 (and PC9) do not prevent the reasonable use of its land and does not wish to have to place reliance on “existing use rights” to continue with its existing land use and associated land management practices.

32. The Submitter seeks amendments to Chapter 15A, to ensure it can undertake the following existing activities on its land:
- Maintenance and replacement of all existing and lawfully established buildings and structures including any associated earthworks and vegetation modification;
 - Maintenance, replacement and construction of walkways, board walks, cycle paths and pedestrian bridges including associated signage including any associated earthworks and vegetation modification;
 - The establishment, maintenance and removal of trees and vegetation across up to 10% of the land area in any year.
33. It is noted that the following activities are permitted, subject to compliance with R32 – R37:
- R6 = “Informal Recreation”
 - R7 = “Maintenance of existing features, including buildings, structures and grounds”
 - R8 = “Park Furniture”
 - R13 = “Planting, pruning, and maintenance of vegetation or trees”
 - R14 = “Walkways and cycleways”
 - R15 = “Removal of Vegetation or trees”, limited to HCC, WRC and DOC

Decision Requested

34. The Permitted Activity rules listed would provide for most of the Submitters’ activities, subject to acceptance of the following amendments:
- a) Amend Chapter 15A NOSZ – PREC1- P: RULES - ACTIVITY STATUS, to enable the following as Permitted Activities:
 - i. Amend R15 by deleting and replacing PER-1, with the following:
 1. Where removal of trees and vegetation is undertaken under supervision of a suitably qualified and experienced person over up to 10% of the land area in any year.

Comment: The Act requires an “effects based” approach to resource management. There is no difference in the effects arising from land use activities on land under private/public ownership, consequently the Act does not differentiate between works initiated by a private individual from those undertaken by a public entity. The NOSZ primarily applies to private land, and it is inappropriate to restrict permitted activities to those undertaken by the Council, Regional Council or Department of Conservation only. Where an SNA notation also applies to land within the NOSZ the controls on the removal of trees and vegetation within the SNA will also apply and may be more restrictive.

Conflict between proposed NOSZ and Peacocke Stage 1 Development Area

35. Part of the Submitters’ land adjoins the recently subdivided residential area accessed from Dixon Road within the Stage 1 Structure Plan area and with an operative General Residential zoning.

Under the operative zoning subdivision to create vacant allotments of 400m² is provided for, and the majority of the land to the northeast of the submitter's property has been subdivided in accordance with those provisions.

36. In the area of the submitters land to the northwest of the gully system adjoining Dixon Road, consent was obtained from HCC to create four residential allotments extending to a depth 30m from the formed section of Dixon Road under Consent Variation 011.2013.00005835.036 (as Stages 30A and 30B) – as shown in Figure 3 below.

37. Earthworks have been completed and reticulated services have been installed to the four allotments – as shown in Figures 4 & 5 below . However, the submitters were unable to secure title due to a contractual dispute with the adjacent landowner. Unfortunately, the 4-lot consent has lapsed and will require a new Subdivision Consent, which must now include consideration of PC5.

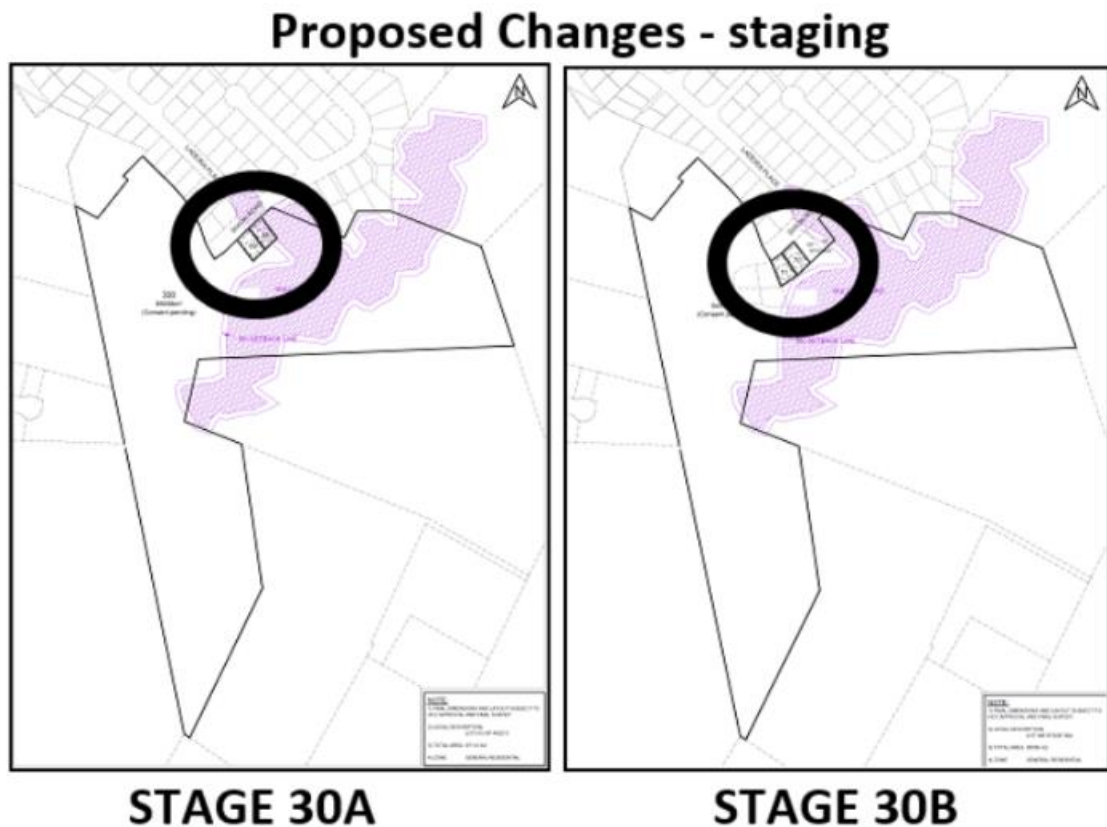


Figure 5: Location of 4 Sections under Consent Variation 011.2013.00005835.036



Figure 6: residential sections adjacent to Dixon Road)



Figure 7: Services in place for 4 x Sections

38. All things being equal, this part of the Submitters' land would be subdivisible into four allotments in accordance with the operative General Residential zone. However, PC5 proposes to apply a NOSZ to part of that land – reducing the available land width to between 20-25m, which is insufficient to enable the creation of residential sections with perpendicular orientation to the road alignment. This matter was raised with Mr Craig Sharman on 24 August 2022, following his request for details of “site-specific” matters to be raised with him during the Expert Conferencing.

39. The area affected by PC5 is shown in Figure 6 and 7 below:



Figure 8: Location of “Four Sections” – Operate Zoning (shown in white)



Figure 9: Location of “Four Sections” – Proposed Natural Open Space Zoning (shown in green)

40. The approximate extent of the land proposed to be rezoned a Natural Open Space that applies to that part of the Submitters' land that has been earth-worked in preparation for residential development in shown as Area A (which covers approx. 1200² of land) in Figure 10 below.



Figure 10: Location of “Four Sections” – Operate Zoning (shown in white)

41. The Submitters wish to ensure that the extension of PC5 into the Stage 1 area, does not prevent their ability under the operative provisions to create four residential allotments perpendicular to Dixon Road. Accordingly, they request that the NOSZ boundary is set back a distance of 30m from the Dixon Road boundary, in order to provide sufficient depth of land to create sections of $>400\text{m}^2$ perpendicular to the road.
42. Application of a 30m set back of the zone boundary from the road (as shaded in Figure 11) would provide sufficient land area of suitable dimensions to enable the creation of four allotments of 420m^2 (approx.) i.e. 14m wide by 30m deep, that could then utilise the installed services and land that has been levelled and prepared for residential use.

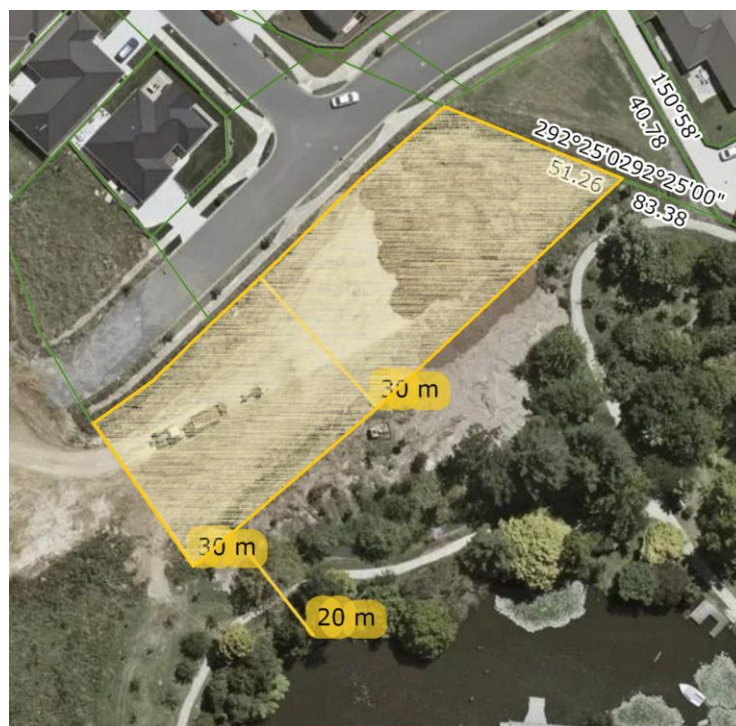


Figure 11: Area of Submitters Land to be retained as General Residential Zone

43. It is noted that allotments of 30m deep provide sufficient land area for the establishment of a 20m wide Esplanade Reserve at a future date encompassing the existing landscaping and paths, and the associated ecological and recreational values within that area.

Decision Requested

44. Reposition the boundary of the NOSZ offset 30m south-east from the alignment of Dixon Road (located opposite to 284 Dixon Road (Lot 31 DP 487359) and 54 Ladeira Place (Lot 44 DP 495333) in order to retain the ability of the Submitter to make reasonable use of that land by undertaking a residential subdivision in accordance with the operative General Residential Zoning.

James Hook
Planning Consultant
16 September 2022

Attachments:

1. Curriculum Vitae

Attachment 1 - Curriculum Vitae of James Ronald Hook (Urban Planner)

Qualifications: 1991 – Bachelor of Surveying (with Credit)
1994 – Master of Regional and Resource Planning (with Distinction)
Member of New Zealand Planning Institute

Company Director of Envivo Limited
28 years' experience as a Planning Consultant
21 years' experience as a Company Director

Continuing Professional Development: on-going participation in NZPI, MfE, RMLA and related courses – RMA Amendments, Expert Witness, Alternative Dispute Resolution, Financial/Development Contributions. Presented to Select Committee on RMA Amendments November 2021.

Experience: James has wide-ranging professional experience with all stages of development projects, from pre-development planning, due diligence, and project formulation advice through to obtaining all necessary resource consents, including appearances at Council, Environment Court and High Court hearings as an Expert Witness.

His specialist areas include commercial, intensive residential, mixed-use, industrial and retail development, subdivision and coastal consents.

James' recent experience includes preparing applications and providing planning advice on a number of commercial, retail, residential (including medium and high density) developments, complex subdivision, coastal and mixed-use development projects and private plan changes. This has involved the presentation of various projects to Auckland City Council's Urban Design Panel, at numerous Council hearings and hearings of Independent Hearing Panels.

James has appeared as an Expert Witness more than twenty-five times at the Environment Court and has attended mediation in relation to those and a range of other appeals. He has also appeared at the High Court and prepared affidavits for the Court in relation to various civil proceedings.

Specialist Skills:

- Strategic Planning advice
- Resource Consent applications
- Expert Evidence
- Urban Design Panel presentations
- Subdivision and Coastal Consents
- Plan Changes
- Appeals and mediations
- Due diligence investigations
- Development feasibility assessments
- Project formulation and strategy
- Assessment of environmental effects
- Policy analysis and submissions