

**BEFORE HEARING COMMISSIONERS  
APPOINTED BY THE HAMILTON CITY COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991  
(**RMA**)

**AND**

**IN THE MATTER** of Plan Change 5 – Peacocke to the  
Operative Hamilton City District Plan

**BETWEEN**

**VICTORIA COLLINS AND TROY  
RADOVANCICH**

Submitter [No. 57]

**AND**

**HAMILTON CITY COUNCIL**

Local Authority

**STATEMENT OF  
TROY DION RADOVANCICH**

**18 September 2022**

## STATEMENT SUMMARY

1. My name is Troy Radovancich. My partner and I own the residential dwelling at 237 Dixon Road and a small lifestyle sized property at 241 Dixon Road. Our submissions relate to the property at 241 Dixon Road (being Lot 101 DP 505873). Hamilton City Council has acquired an interest in part of our property under the Southern Links roading project. This statement relates to the part of the property that we retain.
2. Our property is proposed to be zoned Medium Density Residential Zone and Natural Open Space Zone under Plan Change 5 (**PC5**).
  - (a) The land zoned Medium Density Residential is also subject to a High Density Overlay Area.
  - (b) The Natural Open Space zoned land is also identified as a Waikato Riverbank and Gully Hazard Area (**WRGHA**) in the PC5 Planning Maps and Peacocke Structure Plan (**PSP / PC5**).
3. In relation to the identification of the WRGHA on the Planning Maps, I summarise my statement as follows:
  - (a) The WRGHA should be set at the top of the gully bank. The 6m setback from this position, and the Council's existing powers under s 106 RMA and the information requirements in the District Plan are sufficient to enable Council to assess proposed development and possible land instability hazards.
  - (b) The proposed boundary of the WRGHA undermines the objectives and policies of the Medium Density Residential Zone and the High Density overlay by reducing the flat, developable land area by 54%.
  - (c) I believe that Council have misapplied by the Primary Setback Line identified by AECOM in that they have adopted it as the boundary of the WRGHA and applied an additional 6m setback. I believe they have applied a setback to a setback.
  - (d) I do not believe the recommendations of the AECOM report have been applied with an even hand. The AECOM states that it is a desktop assessment that includes no site-specific analysis. It identifies a conservative setback line and recommends that site specific analysis be obtained to identify the setback line on a

property-by-property basis. PC5, does not adopt this approach. It applies the setback line as a fixed, no-build line, for which building beyond requires consent. PC5 makes no provision for an applicant to provide a site-specific report that identifies a more suitable setback line.

4. In relation to the Proposed Roding Network, I summarise my statement as follows:
  - (a) That either a local/collector road, or intersection 'stub' be shown on the northern side and intersecting with the proposed east-west road. The proposed east-west road has been shown variously as a collector road or arterial road to which direct vehicle crossings will not be available as of right. If an intersection is not shown on the Proposed Roding Network maps there is a risk a connection will not be provided and properties to the north of the road will be landlocked.

## **INTRODUCTION**

5. My name is Troy Dion Radovancich.
6. My partner, Victoria Miranda Collins, and I (together with RB Trustee Ltd) are the owners of the property at 241 Dixon Road, Peacocke, which is 2.0017 hectares in area. We have owned this land since 30 November 2016.
7. I am a Director at Rad Surveying Ltd, in Hamilton and prior to this I was a surveyor at Blue Wallace, Surveyors, Hamilton. I hold the qualification of Bachelor of Surveying from the University of Otago. I am a full member of the New Zealand Institute of Surveyors and Consulting Surveyors of New Zealand.
8. I am a Licensed Cadastral Surveyor with 13 years' experience. I have operated Rad Surveying as sole Director for 8.5 years. Over this time, I have been engaged to complete work for developers in the Waikato region. My experience includes undertaking all aspects to complete residential, commercial, and rural subdivisions, including preparing resource consent applications, engineering design, civil construction supervision, completion certification to Council, and Land Transfer surveys to raise new titles.

## **CODE OF CONDUCT**

9. My statement relates to the WRGHA which is proposed over part of our property under PC5 and the absence of a vehicle connection for properties to the north of the proposed east-west collector/arterial road.
10. Although I am a qualified and experienced Surveyor, this statement is provided in my capacity as a submitter and landowner. My statement is not provided as expert evidence per the Environment Court Code of Conduct for expert witnesses.

## **SCOPE OF STATEMENT**

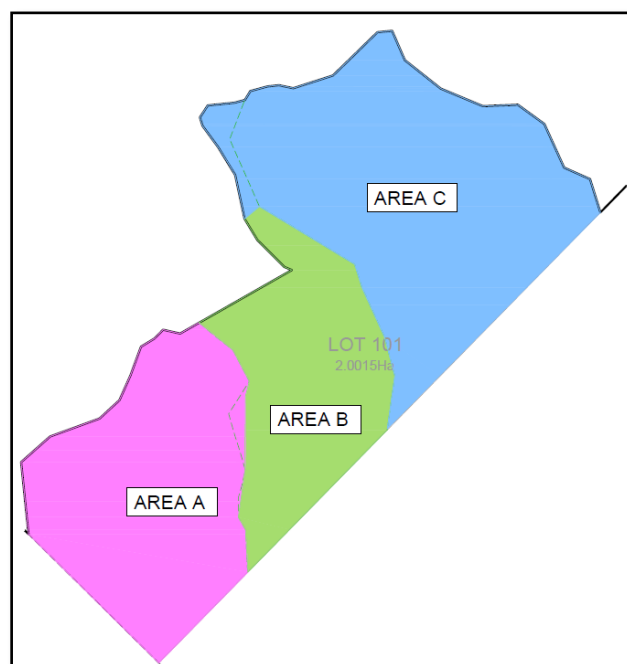
11. My statement is structured by topic and covers the following:
  - (a) Background to our submission;
  - (b) The boundary position of the WRGHA under PC5 (and why I disagree with it);
  - (c) Why road access for our property ought to be shown on the Proposed

Roading Network maps;

(d) My overall conclusions.

## BACKGROUND

12. Our property at 241 Dixon Road, Peacocke, is Lot 101 DP 505873 having an area of 2.0017ha. Though this property is addressed as being at 241 Dixon Road, in fact, legal and physical access is only feasible from the end of Hall Road.
13. A portion of this property is owned by Hamilton City Council under an agreement between ourselves and Hamilton City Council. This agreement was reached as a part of negotiations for land acquired for the Southern Links roading project.
14. The portion retained by us is shown as Area A in Figure 1 below. My submissions relate to Area A only (and any reference to our property at 241 Dixon Road, is reference to Area A).

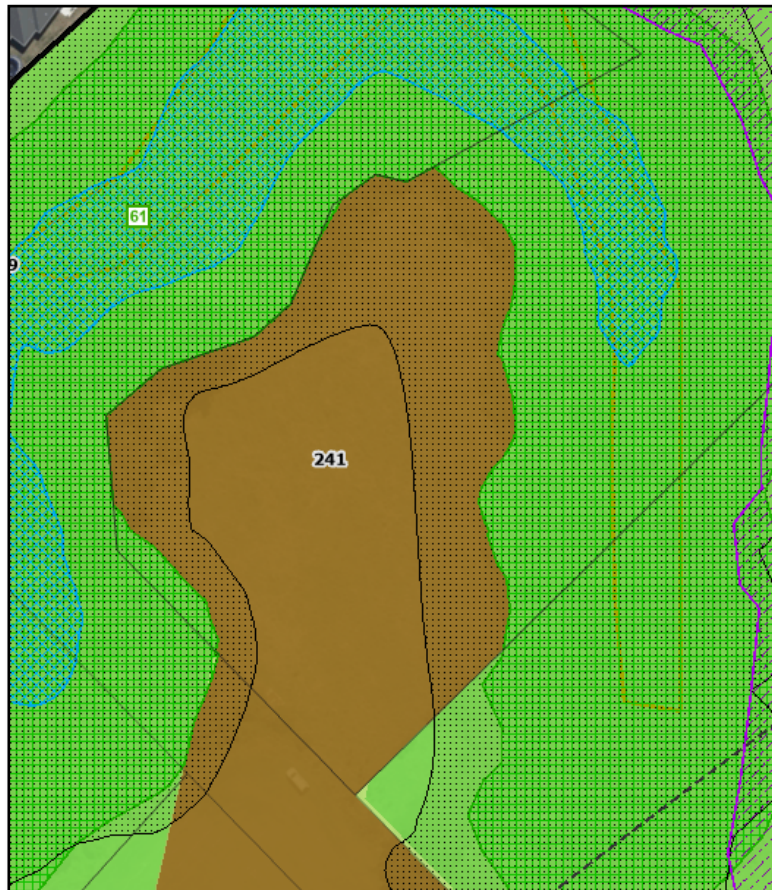


**Figure 1: Area A = the land covered by this statement being land owned by Troy Radovancich and Victoria Collins. Areas B and C are owned by Hamilton City Council.**

15. Our property at 241 Dixon Road, Peacocke, is proposed to be zoned Medium Density Residential Zone and Natural Open Space Zone under PC5

(Figure 2).

- (a) The Medium Density Residentially zoned land is subject to a High Density Overlay Area.
- (b) The Natural Open Space Zone and parts of the Medium Density Residential Zone land is subject to the WRGHA.



**Figure 2: PC5 Zoning of 241 Dixon Road (Brown = High Density Overlay Area, Green = Natural Open Space Zone, Hatch = Waikato River Gully Hazard Area WRGHA). The brown area corresponds with the area of 241 Dixon Road that is the subject of my submission.**

- 16. Should our property be developed in the future, the part that is proposed Natural Open Space Zone would be vested in HCC as Local Purpose Reserve. The part that is proposed Medium Density Residential Zone with High Density Overlay could be developed into residential allotments.
- 17. As can be seen from Figure 2, a significant portion of the land zoned

Medium Density Residential Zone with High Density Overlay is subject to the WRGHA (the hatch).

18. It is the position of the boundary of the WRGHA that we object to.
19. The second portion of my statement relates to the protection of future road access to the property. At present vehicle access is only possible from Hall Road. The property fronts an unformed part of Hall Road. See **Figure 3** below. Despite being addressed as a property on Dixon Road, vehicle access is not possible from Dixon Road as there is an impassable gully separating the property from Dixon Road.



**Figure 3: Road access to 241 Dixon Road is currently provided via Hall Road. The formed portion of Hall Road is seen at the bottom of the picture, the unformed section of Hall Road extends alongside the property at 144 Hall Road.**

## **POSITION OF THE WRGHA**

### ***Definition and purpose of WRGHA***

20. In the ODP, the WRGHA is defined as:
  - (a) “the area identified on the Planning Maps as the Waikato Riverbank and Gully Hazard Area *and is susceptible to land instability because of its slope and/or soil types.*”<sup>1</sup> (emphasis added).
21. The WRGHA is also identified as being a “Hazard Area”.<sup>2</sup>
22. The WRGHA is therefore an overlay shown on the Planning Maps to identify land that “is susceptible to land instability because of its slope and/or soil types”
23. The WRGHA is used by proposed rule MRZ-PREC1-PSP: R39 to identify the position of a building setback line. The rule requires that buildings (including swimming pools) be setback 6m from the “Waikato Riverbank and Gully”. I note that this is different wording to the current, operative rule (4.4.6(f)) which requires a 6m setback from the “Waikato Riverbank and Gully *Hazard Area*” (my emphasis), but I presume the intention is to require a 6m setback from the boundary of the WRGHA, since there is no definition proposed for “Waikato Riverbank and Gully” and the missing words (“Hazard Area”) are presumably an oversight.
24. Where a building is proposed to be built within the WRGHA, consent is required as a Discretionary activity under rule 22.3.h.

### ***WRGHA as it applies to 241 Dixon Road***

25. Our issue is with the position of the WRGHA on our property, particularly when regard is had to the physical features of the site.
26. The title boundaries of 241 Dixon Road largely align with the top of the bank of the adjoining gully. Thus, almost the entire area of the property is flat, developable land.
27. It is my view that the WRGHA should be limited to the gully adjoining our property, that is, that it should end at the top of the bank of the gully.

---

<sup>1</sup> Volume 2, Appendix 1, Section 1.1, Definitions and Terms.

<sup>2</sup> Ibid.



28. As it is currently drawn, the WRGHA extends beyond the top of bank by approximately 6m to 28m. Then the 6m setback is applied. This creates an area of 12m to 34m of flat land, from the top of the gully bank within which no development can occur. This reduces the developable area of 241 Dixon Road from 3943m<sup>2</sup> to 1835m<sup>2</sup> (54% reduction). **Figure 4** shows the spatial extent of the WRGHA and the 6m setback line.

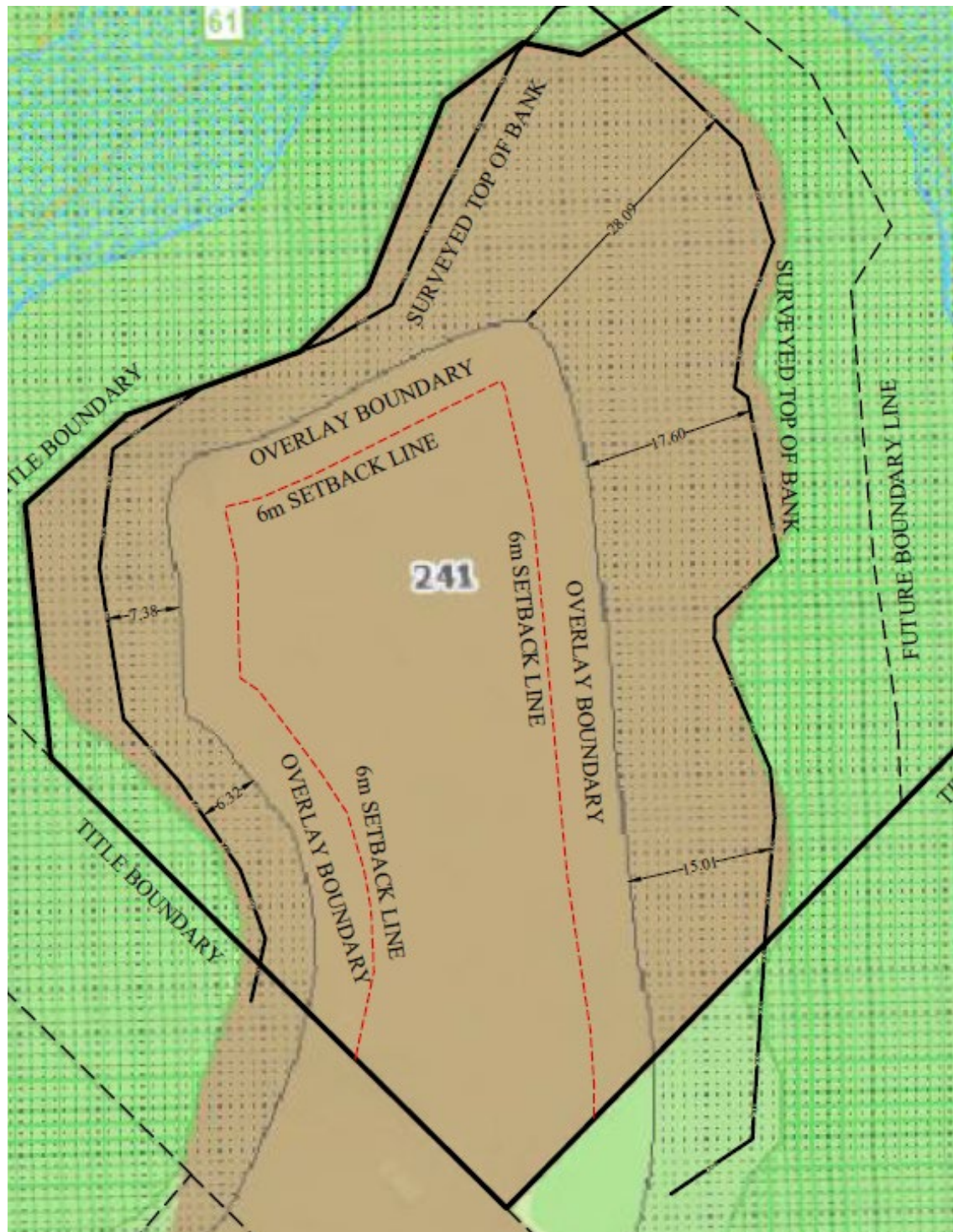


Figure 4: WRGHA and 6m setback over 241 Dixon Road.

29. The photos attached in **Appendix 1**, show the top of the bank in most areas around the property and demonstrate, how the site is flat and accessible beyond the top of the bank.

***AECOM report***

30. In Appendix Y of PC5 is a report by AECOM. The report is a detailed gully hazard setback assessment of the Mangakotukutuku and Peacocke Catchment as part of the Mangakotukutuku Integrated Catchment Management Plan.<sup>3</sup>
31. The scope of the assessment included:
- (a) *Preliminary stability assessment of gully and riverbanks within the project area using the ground model developed in the previous assessment and slope geometry obtained from the HCC LiDAR terrain model. Stability assessment was undertaken to obtain setback distances.*
- (b) *Development of two setback lines as follows:*
- *Primary setback line (static – identified as a red line)*
  - *Secondary setback line (seismic – identified as a green line).<sup>4</sup>*
32. I understand that the Primary Setback Line has been adopted in the Planning Maps as the boundary of the WRGHA. I am not concerned with the Secondary Setback Line and make no further comment on it.
33. The AECOM report noted that the Primary Setback Line is “proposed to be the minimum development *setback* to prevent the gully system being damaged from land development activities.”<sup>5</sup> (my emphasis).
34. My first concern is that the Primary setback line, identified and mapped in the AECOM report, has been misapplied by HCC. The purpose of the AECOM report was to identify setback lines. I believe HCC have used the setback lines identified by AECOM to define the boundary of the WRGHA. Plan Change 5, then creates an additional 6m setback from the WRGHA. HCC have therefore created a setback from a setback.

---

<sup>3</sup> Aecom, Mangakotukutuku ICMP, Addendum Report, Stage 2, Setback Assessment.

<sup>4</sup> Ibid, paragraph 1.0

<sup>5</sup> Ibid, paragraph 3.1

35. The correct application of the Primary Setback Line would have been to transfer it to the Planning Maps with a 6m offset towards the gully areas. I am not sure this has been done.

36. In section 3.2 the report notes that:

*AECOM also understands that HCC wish to retain the existing Gully Hazard Zone (GHZ) of 6m from the crest of the gully slope for purposes outside the scope of this report. Therefore, the setback lines defined within this report will remain separate entities from the GHZ.*

37. I take this comment to mean that the setback lines identified by AECOM were intended to be a new setback that was not intended to define the limits of the WRGHA.

38. Section 4.3 of the report notes that:

*Setback lines were reverted to the existing HCC 6m gully hazard setback line in areas where slope stability results from this assessment was deemed to pose no risk.*

39. The AECOM maps are not sufficiently accurate and do not include sufficient detail for me to verify if the boundary of WRGHA in the Planning Maps aligns with the Primary setback line identified by AECOM. But I consider there is a risk that AECOM have adopted the existing 6m setback from the top of the gully bank as the Primary Setback Line which HCC has then adopted as the boundary of the WRGHA to which an additional 6m building setback applies. Thus, where there was originally a 6m setback there is now a 12m setback. This is illustrated by the western boundary of our property where there is now a 12m-13m setback proposed – see **Figure 4** above.

40. My second concern is that the AECOM report has been used to definitively fix the position of the WRGHA and there is no mechanism in PC5 to challenge the position of the WRGHA at the time of applying for a resource consent. This is contrary to AECOM report which notes:

(a) “Because of the inherent variability observed within the Hinuera Formation.... and the underlying Puketoka Formation, a conservative set of soil parameters was required. This has resulted in setback distances that are larger than what may be produced from a detailed

analysis undertaken with site specific soil data.”<sup>6</sup>

- (b) The report is “interpretative based on a desktop assessment and preliminary assessment using readily available information”<sup>7</sup>
  - (c) “The required setback extent may differ from the setback line presented in this report. Setback requirements could be closer or further away from the gully top of bank where actual ground conditions differ from those used in this assessment.”<sup>8</sup>
  - (d) The report covers a “large area with a comparatively limited amount of site investigation data. Therefore, the setback lines are presented as guidance and do not preclude detailed site investigation.”<sup>9</sup>
41. It seems to me that the Primary Setback Line identified by AECOM is particularly conservative and more likely than not to be larger than what is required, yet HCC have used the Primary Setback Line to define the boundaries of the WRGHA and applied an additional setback line beyond which building may not occur without resource consent.
42. Because the position of the building setback impacts subdivision design and density, a setback line that is further from the gully bank than actual conditions warrant, will almost certainly reduce density.
43. I suggest a suitable remedy would be to build flexibility into the District Plan to allow applicants to obtain a detailed site investigation that identifies the *actual* setback line relevant to the property. This would allow a subdivision to be designed that both mitigates hazards from slope stability and/or soil types whilst maximizing the yield possible under the District Plan.

***Council’s existing powers under s 106 Resource Management Act 1991 (RMA) and information requirements under the District Plan***

44. Fixing the position of the WRGHA beyond the top of the gully bank and applying an additional 6m building setback, is unnecessary considering s 106 RMA. In the case of subdivision section 106 gives the territorial authority broad powers to refuse a subdivision, or grant consent subject to conditions,

---

<sup>6</sup> Ibid, paragraph 4.2.

<sup>7</sup> Ibid, paragraph 6.2

<sup>8</sup> Ibid, paragraph 6.2(a)

<sup>9</sup> Ibid, paragraph 4.1.

if it considers there is a significant risk from natural hazards.

45. The information requirements in Volume 2, Section 1.2.2.10 of the District Plan require an application for resource consent for subdivision, use or development to include a Site Management Plan that includes “the nature of the ground conditions and the suitability of the proposal having regard to these ground conditions.” and “Land stability, erosion, earthquake (amplification and liquefaction) or any other natural hazard, including any modification to landforms and removal of vegetation.”
46. In my experience as a Surveyor, Council routinely require a geotechnical assessment of development sites that adjoin gully areas in order to establish that the proposed development will not adversely affect the gully slopes and does not introduce risks with building in proximity to gully banks. This is the case whether proposed development respects the setback line or not.
47. Thus, in my view, the existing powers under s 106 RMA and the information requirements under the District Plan mean the issue (of land stability) can be addressed within an application for subdivision or land use consent. The conservative position of the WRGHA beyond the top of the gully bank is unnecessary given the existing mechanisms under the RMA and in the District Plan.

### ***Medium Density Residential Zoning***

48. One of the underlying fundamentals of PC5 is to maximise the housing density in Stage 2 Peacocke area.
49. The proposed position of the WRGHA which is based on a conservative assessment and is not site specific, and the addition of a ‘hard’ building setback line undermines the High Density overlay by reducing the developable land by 54% (from 3943m<sup>2</sup> to 1835m<sup>2</sup>).

### **ROAD ACCESS**

50. The property currently relies on Hall Road for physical and legal vehicular access (despite being addressed as 241 Dixon Road, it is not possible to access the property with a vehicle from Dixon Road).
51. The planning maps indicate that Hall Road will be severed by the east-west

arterial road<sup>10</sup>. See the extract in Figure 5 below.



**Figure 5: Extract from PSP, Appendix 2, Structure Plan, Transport Network. The area circled shows the area of Hall Road above the East-West arterial road that will be severed by the arterial road.**

52. The Planning Maps show that properties south of the east-west arterial road will have access to a collector road that intersects with the arterial road, whereas properties to the north of the arterial road (including our property) will not have access to a collector or local road that intersects with the arterial road.
53. This means that properties north of the arterial road will be seeking a vehicle crossing directly onto the arterial road. I understand Council are unlikely to support this, rendering the properties landlocked and without access to a road.
54. I simply ask that, in relation to properties north of the east-west arterial road, either:
  - (a) A local road in the position of Hall Road be shown intersecting with the arterial road (i.e. the unformed portion of Hall Road be shown as

<sup>10</sup> I note that the same road is shown as a collector road on the PSP, Land Use Plan).

part of the “Proposed Roding Network”); or

(b) An intersection ‘stub’ be shown on the northern side of the east-west collector road in the position of Hall Road.

55. I believe that this is important because the Planning Maps show the “Proposed Roding Network”. This approach will ensure that a connection point to the arterial road will not be missed.
56. I have reviewed paragraphs 7.91-7.97 of the Section 42A Report and note that it does not address this portion of Hall Road.

## **CONCLUSION**

### ***WRGHA***

57. It is imperative that due consideration is given to the position of the WRGHA overlay because it is used to define an additional 6m setback beyond which building is not permitted without resource consent, which would then be subject to Council discretion.
58. It is my opinion that the WRGHA ought to be set to the top of the gully bank. A 6m setback from the top of bank will serve to mitigate possible land stability risks and effects. This is because, Council has existing mechanisms that it regularly uses (s 106 RMA and the Information Requirements under the District Plan) to request information about land stability, erosion, earthquake or another natural hazards that are relevant to the site.
59. The proposed boundaries of the WRGHA reduce the developable area of the property by 54% (when compared with a 6m setback from the top of gully bank). The setback overlay will modify subdivision design and reduce yield. This seemingly defeats the purpose of the High-Density overlay.
60. Though it is not wholly apparent, I infer that the Primary Setback Line identified by AECOM has been used to define the boundaries of the WRGHA to which an additional 6m setback has been applied. This would be incorrect, and I seek clarification from Council as to their methodology for bringing the Primary Setback Line into the Planning Maps.
61. The AECOM report states that the Primary Setback Line has been conservatively set and was created from a desktop study with no site-specific analysis or verification. The AECOM report notes that setback

requirements could be closer or further away from the gully top of bank where actual ground conditions differ from assumptions made. AECOM notes that the setback lines are presented as guidance and do not preclude further site-specific geotechnical assessment. Yet, that is not how the setback line has been applied within PC5. PC5 adopts the conservative setback line and applies a further setback to which a hard 'no build' rule applies. There is no ability to present a site-specific geotechnical assessment that may establish a suitable setback line in a different position to that identified in the Planning Maps. My concern is that Council staff processing applications in the future will fail to appreciate that the report that identified the position of the setback line (on which the Planning Maps rely), intended that position to be indicative only and that it could be adjusted following further site-specific analysis.

62. In summary:

- (a) the boundary of the WRGHA should be set to the top of the gully bank, with a requirement that each site that adjoins a WRGHA provide a site-specific geotechnical assessment that establishes the setback line in relation to the property in question to accompany a development proposal.
- (b) If Council choose to retain the WRGHA boundary as currently drawn, then provision ought to be included that allows the setback from that boundary to be varied by means of a site-specific geotechnical assessment that establishes the setback line in relation to the property in question.

#### ***Road access***

63. I ask that an intersection stub or a local road be shown to connect to the east-west arterial/collector road for the properties to the north of that road in the interest that a connection to that road is not missed in the future. If a connection is not shown, and not created, properties to the north will not be able to construct vehicle access directly onto the arterial/collector road.

**Dated this 18<sup>th</sup> day of September 2022**



**Troy Radovancich**



**APPENDIX 1 – PHOTOS OF THE SUBJECT SITE: 241 DIXON ROAD, PEACOCKE**