

IN THE ENVIRONMENT COURT  
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU

Decision [2024] NZEnvC 053

IN THE MATTER OF an appeal under clause 14 of the First  
Schedule of the Resource Management  
Act 1991

BETWEEN PEACOCKE SOUTH LIMITED

(ENV-2023-AKL-000047)

Appellant

AND

HAMILTON CITY COUNCIL

Respondent

Court: Alternate Environment Judge L J Newhook sitting alone under s  
279 of the Act

Last case event: Joint memorandum in support of draft consent orders dated 1  
March 2024

Date of Order: 25 March 2024

Date of Issue: 25 March 2024

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**CONSENT ORDER**

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A: Under section 279(1)(b) of the Resource Management Act 1991, the  
Environment Court, by consent, orders that:

- (1) Appendix 2: Structure Plans and Appendix 17A: Peacocke Precinct  
Planning Maps are amended in accordance with **Attachment A** to this



Order to amend the location and extent of the Significant Bat Habitat Area overlay and the underlying Natural Open Space Zone; and

(2) the appeal is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

## REASONS

### Introduction

[1] This consent order concerns an appeal by Peacocke South Limited (**the Appellant** and/or **PSL**) against the decisions of Hamilton City Council (**the Respondent**) on Proposed Plan Change 5 – Peacocke Structure Plan (**PC5**) to the Operative Hamilton City District Plan.

### Background

#### *Original submission and PDP Decision*

[2] PC5 is a Council-led plan change pursuant to clause 2 of the First Schedule to the Resource Management Act 1991 (**RMA**) which proposes to replace the existing Peacocke Structure Plan to enable the urbanisation of the Peacocke Growth Cell.

[3] Within the Peacocke Precinct, there exists a range of significant natural elements, including habitat for the critically endangered Long-tailed bat. PC5 maps ecological corridors throughout the Peacocke Precinct as Significant Bat Habitat Area (**SBHA**) to protect and enhance the habitat for Long-tailed bat. SBHA mostly follow gully network and Significant Natural Area but are also mapped onto some areas of open pastoral land identified as flightpath or as providing connectivity between areas for roosting, foraging and moving through landscape. The Natural Open Space Zone (**NOSZ**) has been applied to SBHA to provide further protection for bat habitat.

[4] The Appellant owns landholdings within the Peacocke Precinct.

[5] The Appellant made a submission and a further submission on PC5. The submission, among other things, opposed the proposed mapping of SBHA on particular parts of its land it considers suitable for urban development and rezoning those parts NOSZ.

[6] On 17 February 2023, on behalf of the Respondent, an Independent Hearing Panel made a decision on PC5 rejecting the Appellant's submission concerning the location of SBHA and NOSZ on its land.

### *Appeal*

[7] On 14 April 2023, the Appellant filed a notice of appeal seeking to rezone parts of its land, otherwise suitable for urban development, that are subject to the SBHA overlay from NOSZ to Medium Density Residential Zone.

[8] Waikato Regional Council, The Adare Company Limited and the Director-General of Conservation each gave notice of an intention to become a party to the appeal under section 274 of the RMA.

### **Agreement reached between the parties**

[9] Since the appeal was filed, the parties have engaged in direct discussions and all parties have participated in Court-assisted mediation and have reached an agreement on changes that will resolve the appeal and address the relief sought by the Appellant in its entirety.

[10] The agreed amendments to Appendix 2: Structure Plans and Appendix 17A: Peacocke Precinct Planning Maps are set out in **Attachment A** to this order.

[11] To resolve the appeal, the parties have agreed to amend the location of SBHA and the underlying NOSZ on PSL's land in Figures 2-1, 2-2 and 2-3 in Appendix 2: Structure Plans and Maps 63A and 63B in Appendix 17A: Peacocke Precinct Planning Maps.

[12] The Decision Version mapping of SBHA/NOSZ on the PSL land covers areas that are currently grassland and hedging. Accordingly, the amended mapping does not remove protections from existing habitat. Under the amended mapping

agreed by the parties, the width and shape of the SBHA/NOSZ on the PSL land does not vary significantly and there is an increase in the extent of SBHA/NOSZ from 1.20ha to 1.23ha. The parties are satisfied that the amended mapping maintains or improves ecological connectivity on the PSL land and will not result in a loss of ecological value. Those areas where the SBHA/NOSZ has been relocated now revert to Medium Density Residential Zone.

### **Section 32AA assessment**

[13] Section 32AA of the RMA requires a further evaluation for any changes to a proposal since the initial section 32 evaluation report and the decision.

[14] The parties provided a section 32AA evaluation of the appropriateness of the agreed amendments. In summary, the parties consider that these amendments:

- (a) Are the most appropriate option for achieving the relevant objectives of PC5 in that they strike a better balance between enabling land suitable for urban development to be used for medium density residential activity and providing for ecological corridors that are well-connected and functional;
- (b) Are the most efficient and effective option as they:
  - (i) Better align with PSL's subdivision plans which will result in a more efficient future resource consent process;
  - (ii) Reflect urban design and environmental constraints;
  - (iii) Maintain ecological connectivity, protection and functionality; and
  - (iv) Allow for land suitable for urban development to be rezoned Medium Density Residential Zone;
- (c) Do not give rise to additional costs; and
- (d) Satisfy the concerns raised in the appeal and in the s 274 notice.

## Consideration

[15] In making this Order the Court has read and considered the notice of appeal dated 14 April 2023 and the Joint Memorandum of the Parties dated 1 March 2024.

[16] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[17] The Court is satisfied that the changes sought are within the scope of the Appellant's submission and appeal.

## Order

[18] The Court orders, by consent, that:

- (a) The appeal is allowed subject to the agreed amendments to Appendix 2: Structure Plans and Appendix 17A: Peacocke Precinct Planning Maps as set out in **Attachment A** to this order;
- (b) The appeal is otherwise dismissed; and
- (c) There is no order as to costs.

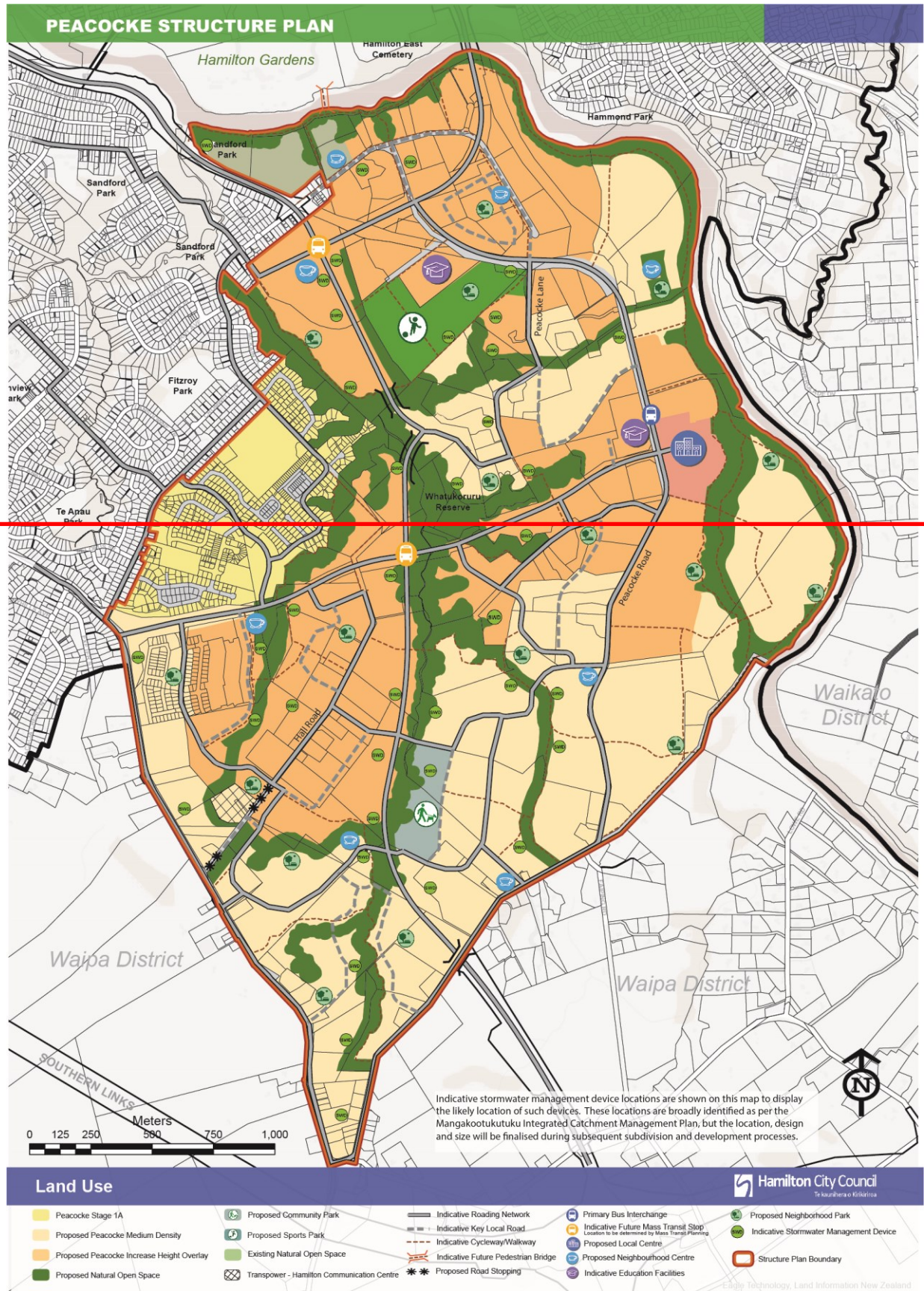


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L J Newhook  
Alternate Environment Judge



**Figure 2-1: Peacocke Structure Plan – Land Use**



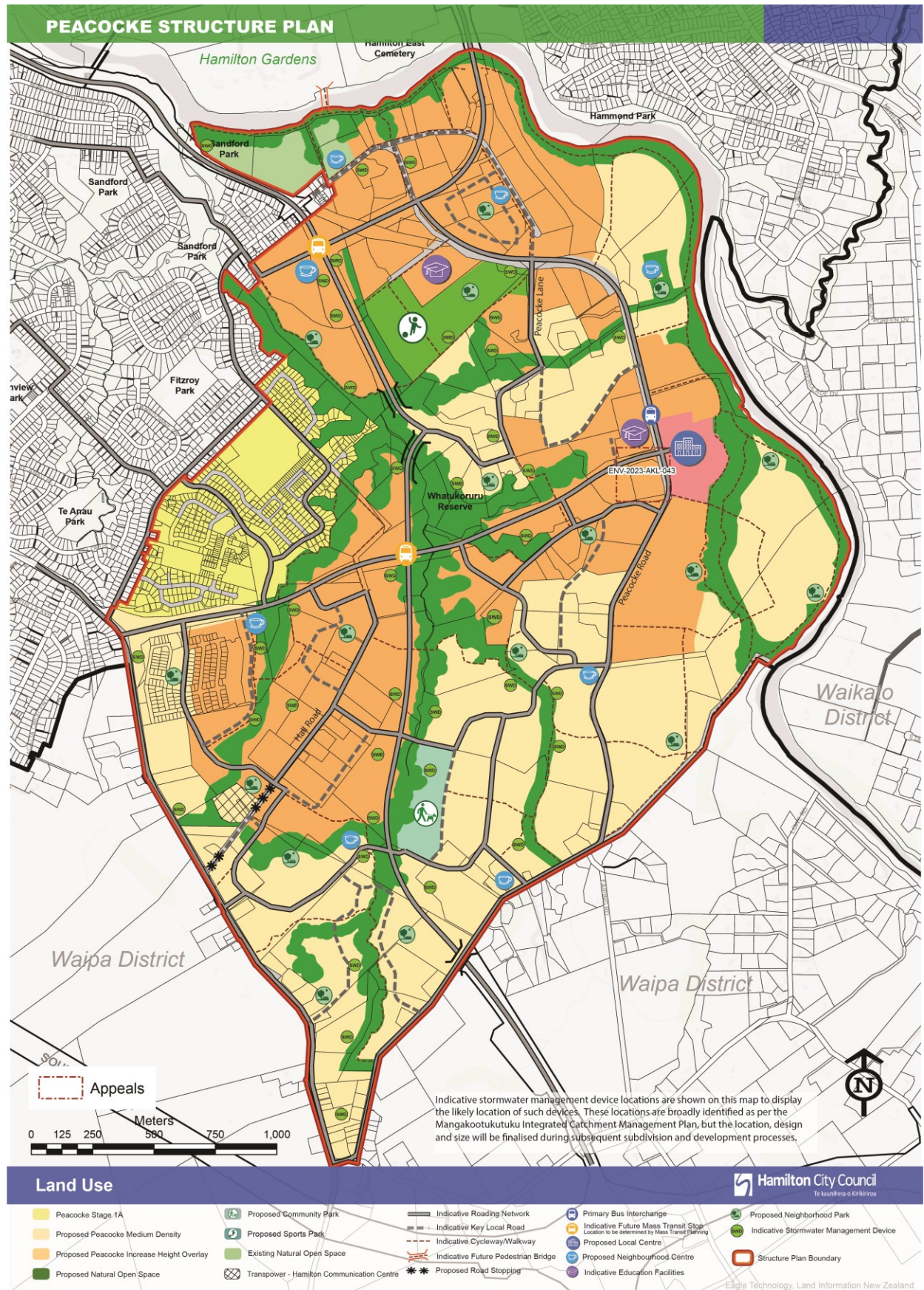
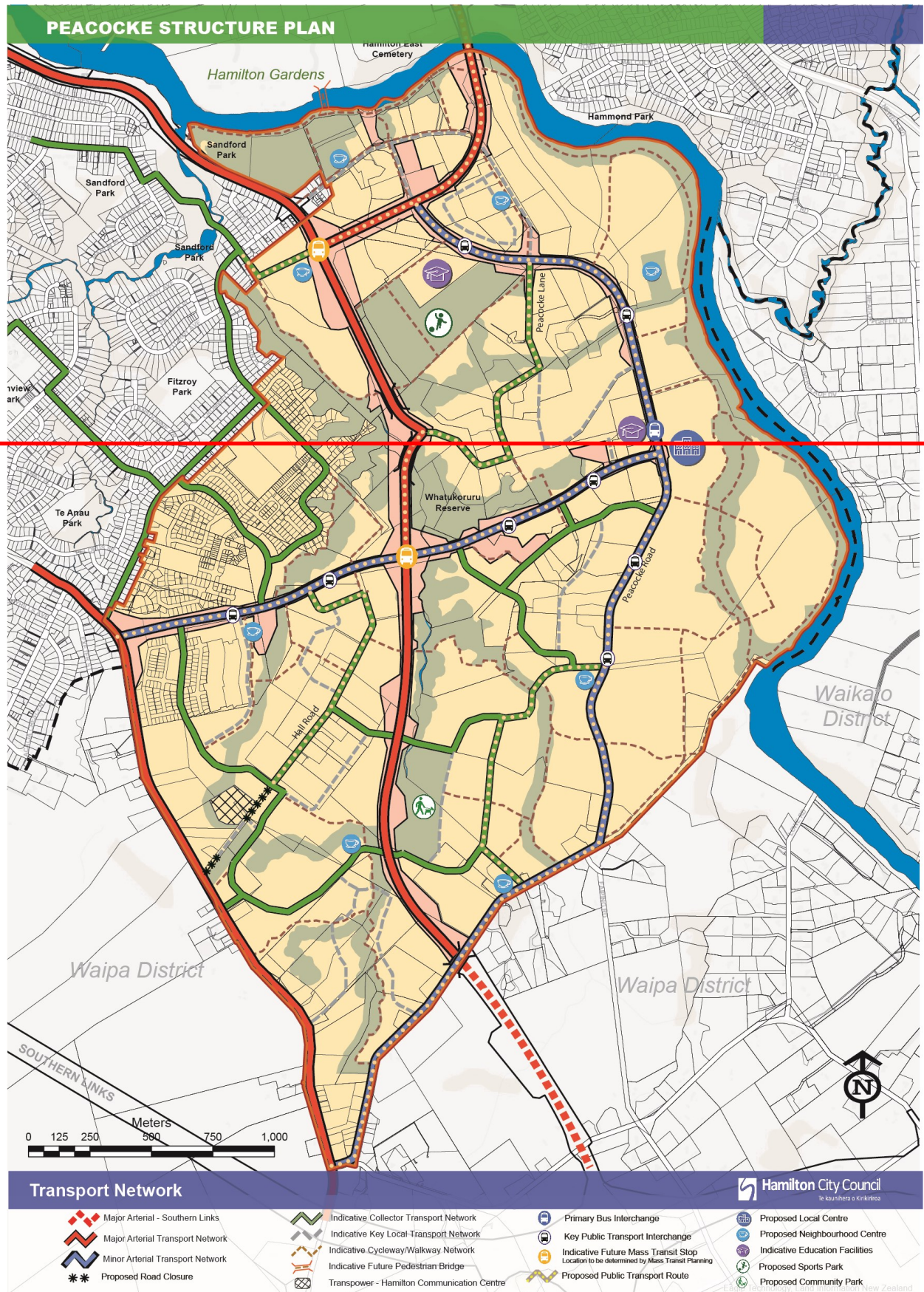


Figure 2-2: Peacocke Structure Plan Transport Network





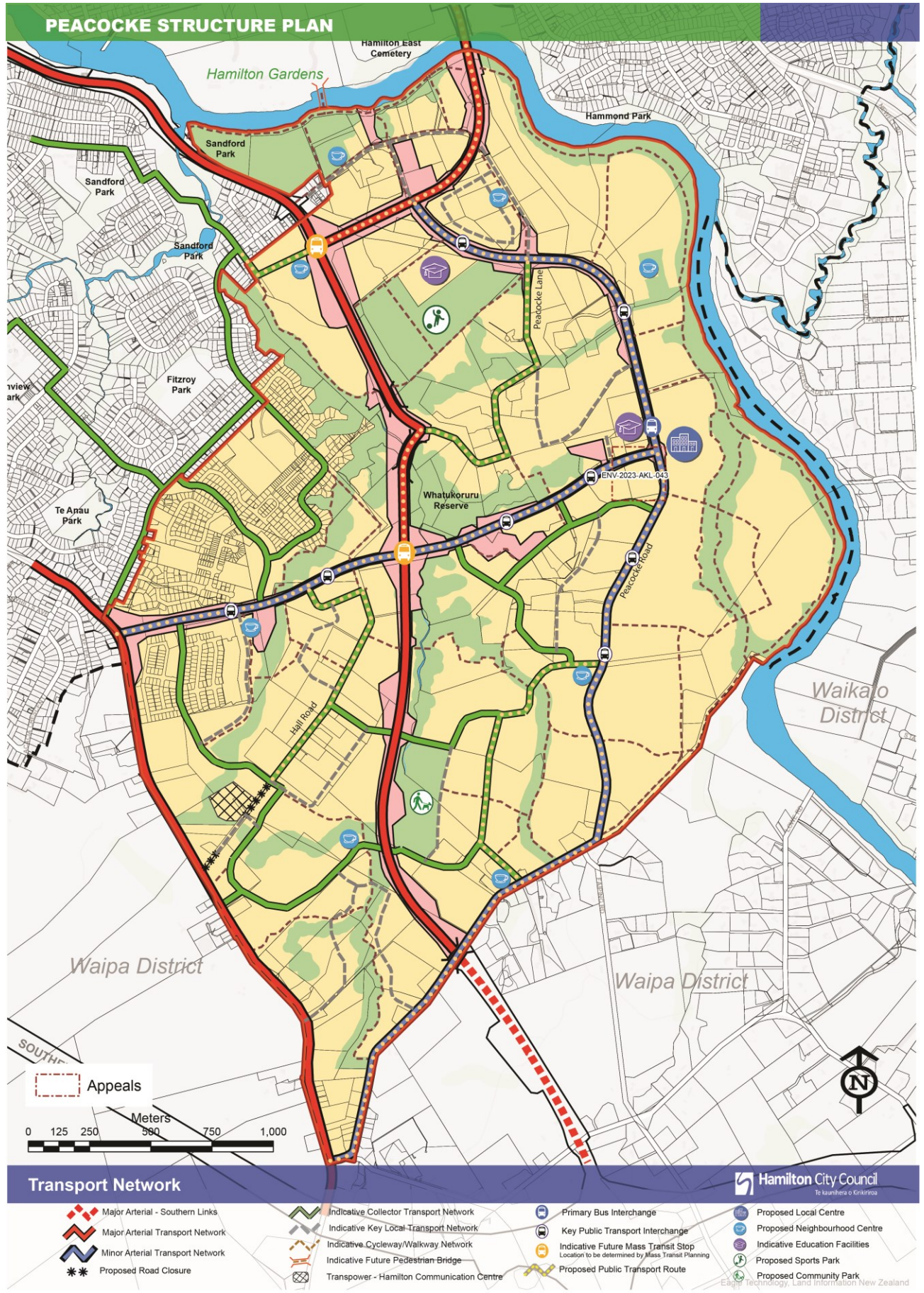
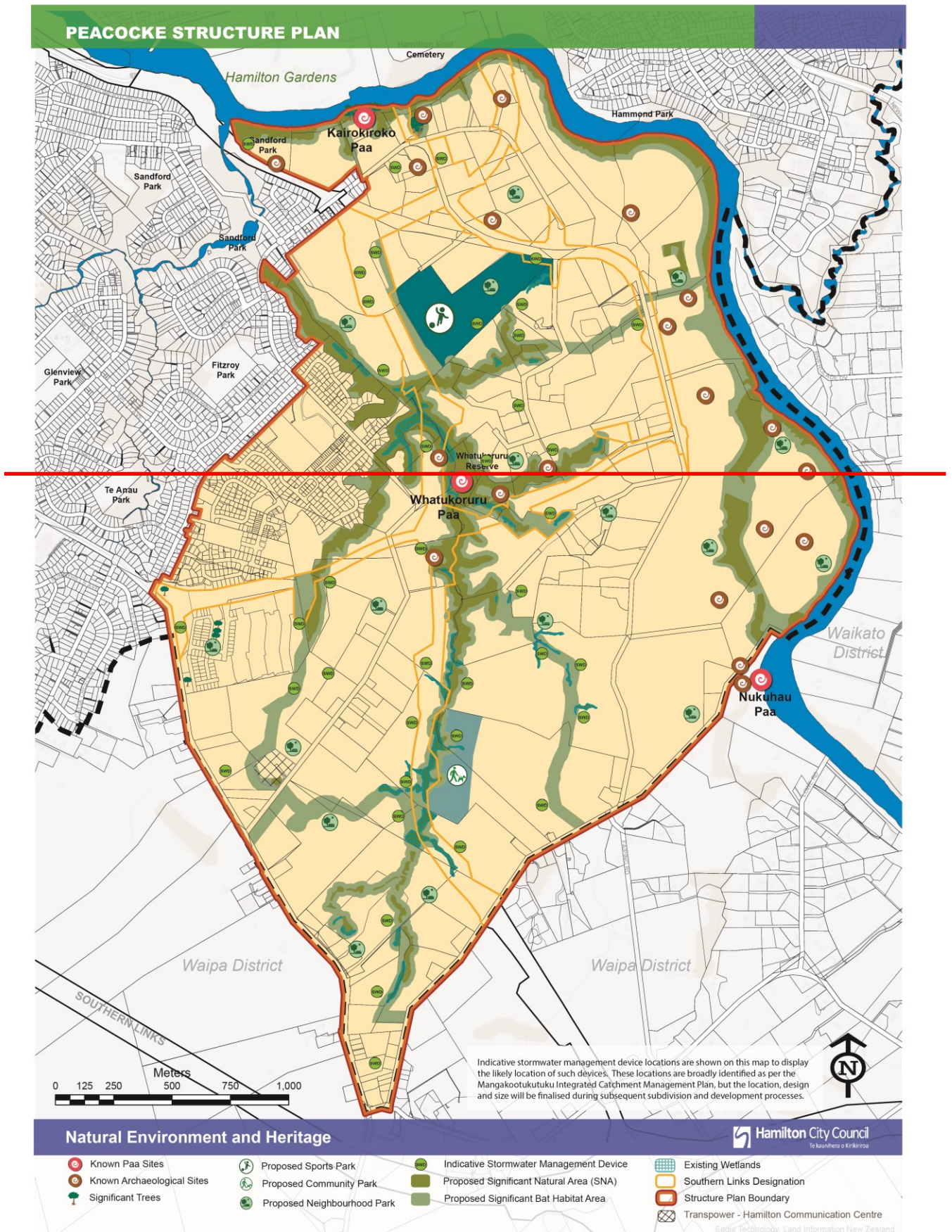


Figure 2-3: Peacocke Structure Plan – Environment and Heritage









# PEACOCKE PRECINCT Planning Maps


## KEY:

### Zoning

-  Medium density residential zone
-  Local centre zone
-  Neighbourhood centre zone
-  Natural open space zone
-  Sports and active recreation zone
-  Transport corridor zone


### Features

#### Significant Trees (Schedule 9C)


-  Significant Trees

#### Significant Archaeological Site (Schedule 8B & 8C)






-  Archaeological Site

-  Significant Archaeological Site Extent




#### Airport Protection Overlay

-  Conical Obstacle Limitation Surface - 102m Moturiki Datum


#### Designations (Schedule 26.3 - Volume I)

-  Designation
-  Waikato River Bank Stability Area
-  Seismic Investigation Area
-  Waikato River and Gully Hazard Area
-  Culvert Block Flood Hazard Area (Culvert Block Flood Level)




#### Natural Environment

-  Significant Natural Area (Schedule 9c)
-  Peat Lakes and Wetlands
-  Significant Bat Habitat Area

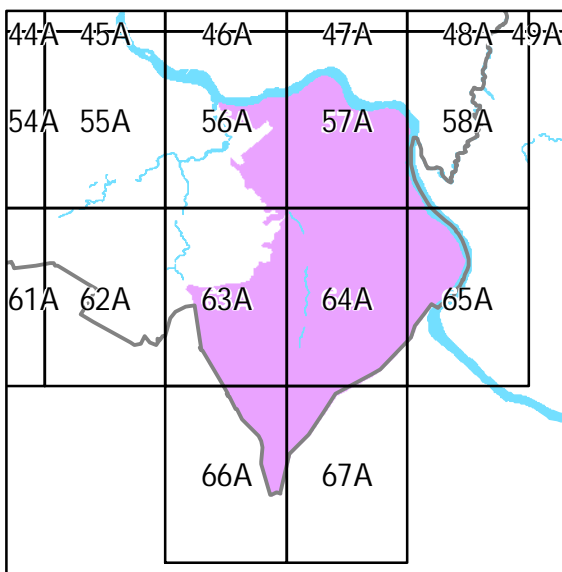
#### Residential Overlay

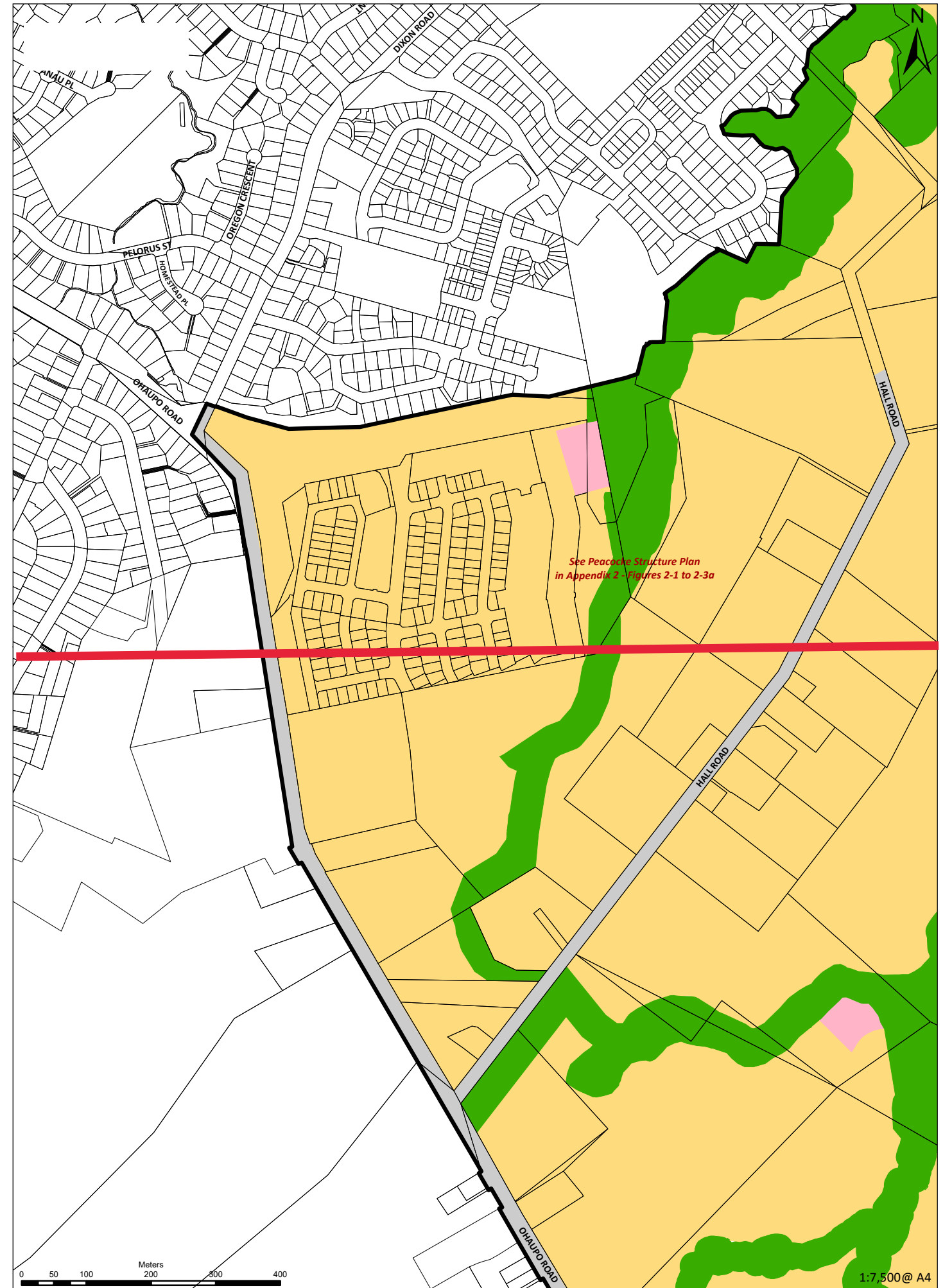
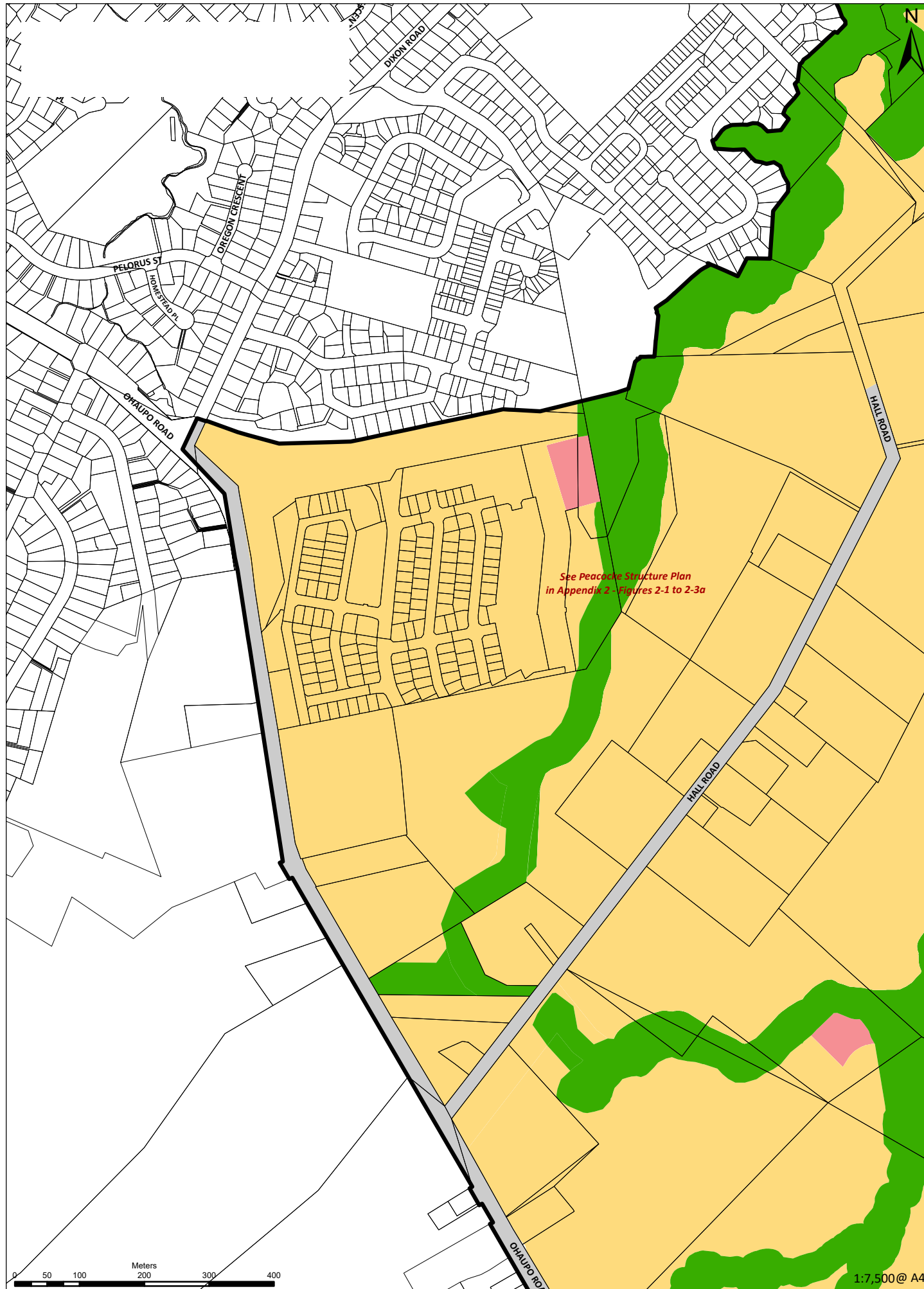
-  Increased Height Overlay

#### Natural Hazard Area

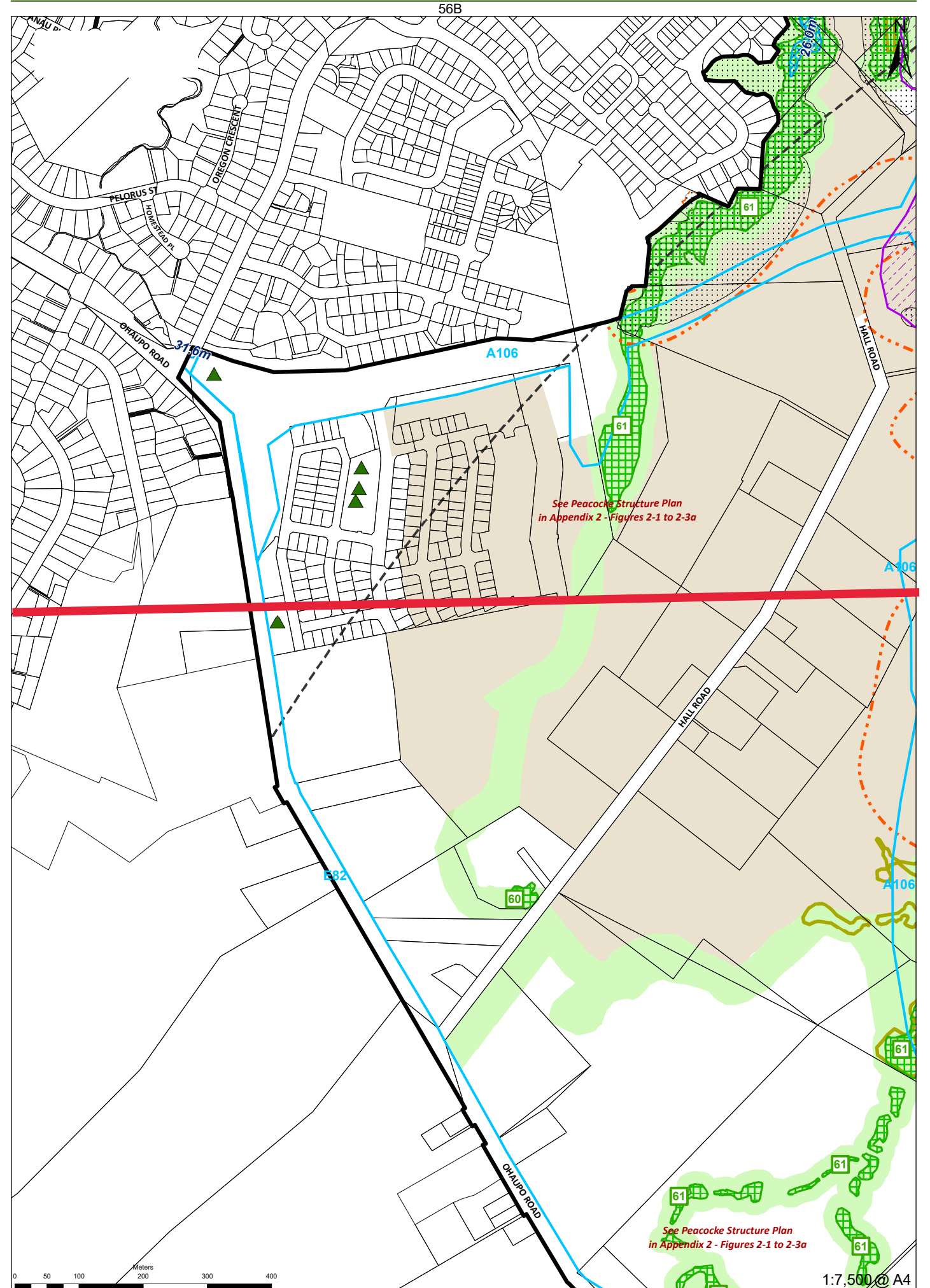
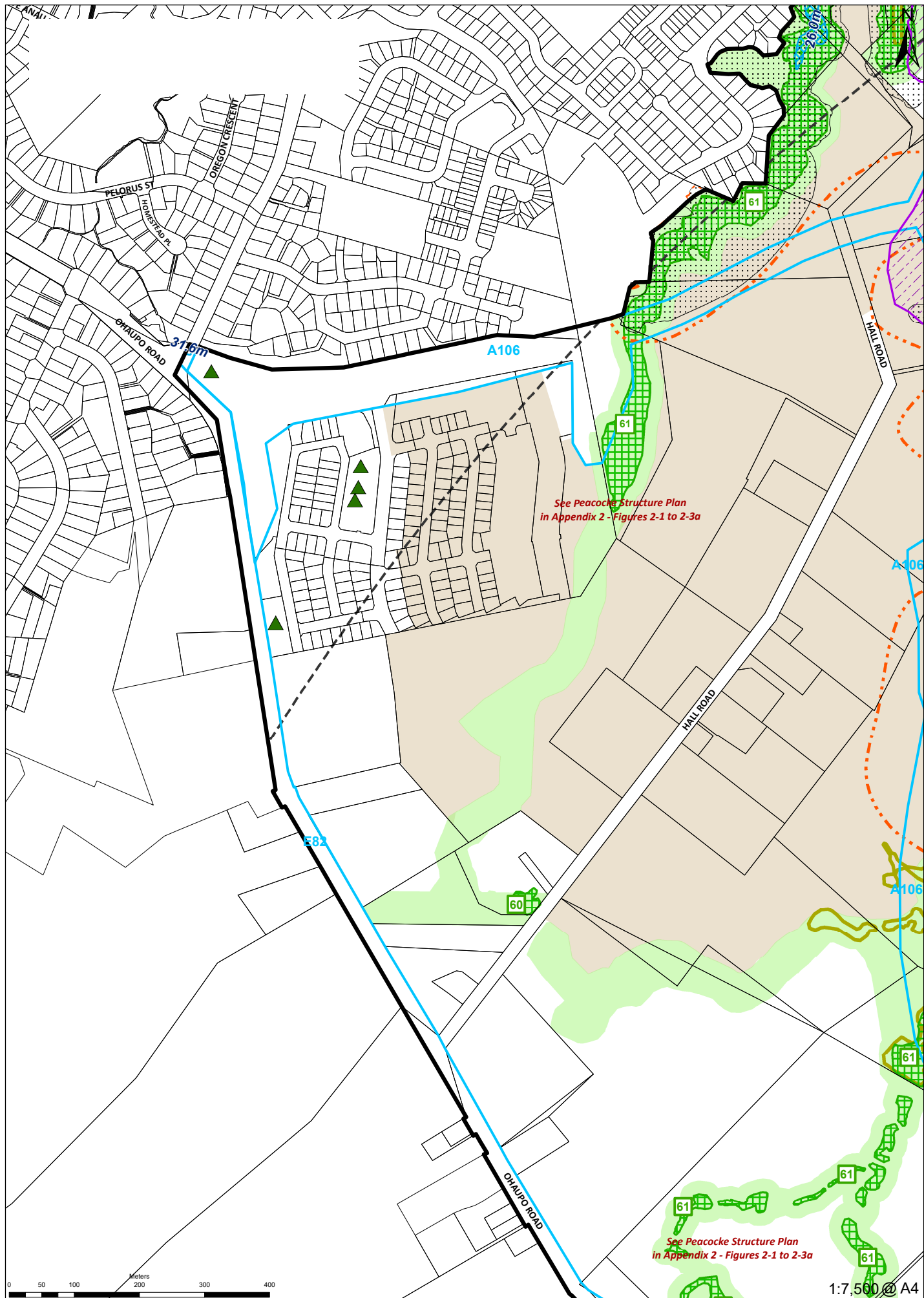
-  Medium Flood Hazard Area
-  High Flood Hazard Area
-  Peacocke Precinct Boundary

### PEACOCKE PRECINCT





Peacocke Precinct - Zoning Map 63A



Peacocke Precinct - Features Map 63B