

Decision Report

Plan Change 5 – Electricity Transmission Buffer Zones

Important Note

The Proposed District Plan May 2011 Annotated Version was the current version of the District Plan when Plan Changes 1-27 were notified in November 2011 and this version was therefore used as the base document for preparing the Plan Changes and the Section 32 and Planning Reports.

Since then the District Plan has been made operative (16 June 2012). The Operative District Plan 2012 is now the current version of the District Plan and therefore Plan Changes 1-27 are proposed to change this version only.

For the purpose of understanding how decisions on this Plan Change relate to the Section 32 and Planning Report and to both versions of the District Plan discussed above, this Decision Report is divided into three parts.

Part A contains the decisions on the Plan Change in response to submissions and further submissions.

Part B shows how the full notified Plan Change and subsequent decisions would change the Proposed District Plan May 2011 Annotated Version Base Document.

Part C shows how the full notified Plan Change and subsequent decisions are proposed to change the Operative District Plan 2012.

Advice to Submitters:

Submitters will be familiar with the rule and map numbers from the Proposed District Plan May 2011 Annotated Version and so should refer to Parts A and B of this report to understand the decisions on their submission points.

However any submitter wishing to make an appeal will need to refer to the rule and map numbers of the Operative District Plan 2012 in Part C and reference these in their appeal.

Decision of the Independent Hearing Commissioner

Council appointed an Independent Hearing Commissioner to hear and make decisions on submissions and further submissions made on Plan Change 5. These decisions and the reasons for these decisions are shown in this Decision Report. For a full background to the decisions however, please see the attached report titled "Decision of the Independent Hearings Commissioner".

Part A: Decisions

Any changes to rules are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in **red**, and any changes resulting from decisions in **blue**.

Decision

That the relevant planning maps be amended to show transmission corridor buffers at 32m and 16m from the centrelines of the 220kV and 110kV lines respectively, and those maps be annotated to advise that compliance with NZECP 34:2001 is required in this area before any structure (including buildings), subdivision or earthworks is commenced.

Decision

That an advice note cross-referencing NZECP 34:2001 be included in subsection 10.6.4 Other Regulations and Codes after the third bullet point as follows;

- [New Zealand Electrical Code of Practice for Electrical Safe Distances \(NZECP 34:2001\)](#).

Decision

That NZECP 34:2001 be specifically referenced on the relevant property Land Information Memoranda and Project Information Memoranda for the purpose of alerting parties to the need to take this into account (for example in terms of any building consent under the Building Act 1991).

Decision

That all other proposed provisions of Plan Change 5 be deleted as follows;

Section 10 - Network and Utilities

That the following proposed additions to 10.3 be deleted as follows;

Activity	Surface of Water	Identified Significant Features	Residential, Future Urban, Rural Residential and Lifestyle Zone	Commercial Zone	Industrial Zone	Rural Zone	All Terrain Park Zone (ATP)	Public Reserves	Road Reserve	
Transmission Buffer Zones – see Appendix 9										
{be}	Buildings/Structures within Transmission Buffer Zone A	NA	NA	NC	NA	NA	NC	NC	NA	NA
{bf}	Buildings/Structures within Transmission Buffer Zone B	NA	NA	RD	NA	NA	RD	RD	NA	NA
{bg}	Subdivision within Transmission Buffer Zone A	NA	NA	NC	NA	NA	NC	NC	NA	NA
{bh}	Subdivision within Transmission Buffer Zone B	NA	NA	RD	NA	NA	RD	RD	NA	NA
{bi}	Earthworks within Transmission Buffer Zone A complying with Rule 10.4(t)	NA	NA	P	NA	NA	P	P	NA	NA
{bj}	Earthworks within Transmission Buffer Zone A not complying with Rule 10.4(t)	NA	NA	NC	NA	NA	NC	NC	NA	NA

P = Permitted C = Controlled RD = Restricted Discretionary D = Discretionary NC = Non-complying NA = not applicable

That the following proposed additions to 10.4 Activity Performance Standards for Infrastructure and Network Utilities be deleted as follows;

~~(t) Earthworks within Transmission Buffer Zone A~~

~~Earthworks within the Transmission Buffer Zone A shall meet the following performance standards~~

- ~~(a) no deeper than 300mm within 2.2 metres of transmission pole support structure~~
- ~~(b) no deeper than 750mm within 2.2 to 5 metres of a transmission pole support structure~~
- ~~(c) no deeper than 300mm within 6 metres of the outer visible edge of a transmission tower support structure~~
- ~~(d) no deeper than 3 metres between 6 to 12 metres of the outer visible edge of a transmission tower support structure~~
- ~~(e) not create an unstable batter~~
- ~~(f) do not result in a reduction of the existing conductor clearance distances~~
- ~~(g) Vertical holes may be at a depth no greater than 500mm within 1.5 metres from a transmission support structure~~
- ~~(h) Any earthworks undertaken by a Network Utility operator or as part of agricultural or domestic cultivation, or repair, sealing or resealing of a road, footpath or driveway is exempt from the above (a) to (g) restrictions~~

That the following proposed additions to 10.5 Matters of Discretion be deleted as follows;

~~(k) For buildings/structures within Transmission Buffer Zone B Council shall have regard to the following matters:~~

- ~~(i) Extent of the compliance with NZCEP34:2001~~
- ~~(ii) Location, height, scale, orientation and use of the building/structure~~
- ~~(iii) The approval of the Network Operator~~
- ~~(iv) Public notification is not required however where the approval of the network operator is not obtained then the application shall be limited notified to that party.~~

~~(l) For Subdivision within Transmission Buffer Zone B Council shall have regard to the following matters:~~

- ~~(i) The extent to which the subdivision avoids conflict with the transmission lines~~
- ~~(ii) Location of the house sites~~
- ~~(iii) Extent of compliance with NZCEP34:2001~~
- ~~(iv) The approval of the Network Operator~~
- ~~(v) Public notification of the application is not required however where the approval of the network operator is not obtained then the application shall be limited notified to that party.~~

Section 16 – Rural

That Rule 16.4.1 (w) reverts back to the status quo and proposed new rule (x) is deleted as follows;

(w) [Financial Contributions – See Section 11 Network and Utilities – See Section 10 \(For Transmission Buffers see Rule 10.3\)](#)

~~(x) – Financial Contributions – See Section 11~~

That proposed new Rule 16.4.2 (a) (iii) is deleted as follows;

~~(iii) – Subdivision within a Transmission Buffer – See Rule 10.3~~

Section 16A – Lifestyle:

That Rule 16.7.1(t) reverts back to the status quo and proposed new rule 16.7.1(u) is deleted as follows;

(t) [Financial Contributions – See Section 11 Network and Utilities – See Section 10 \(For Transmission Buffers see Rule 10.3\)](#)

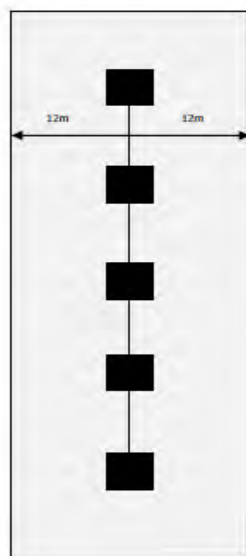
~~(u) – Financial Contributions – See Section 11~~

That proposed new Rule 16.8.2(a) (iii) be deleted as follows;

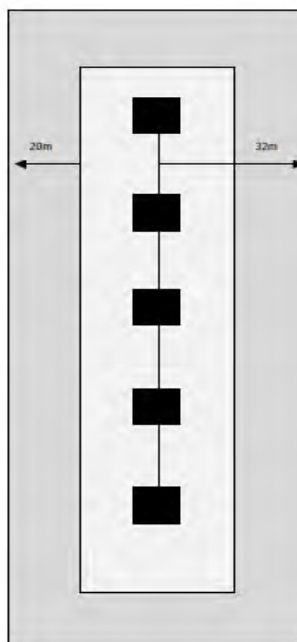
~~(iii) – Subdivision within a Transmission Buffer – See Rule 10.3~~

Proposed Appendix 9 – Transmission Buffer Zones

That the proposed addition of Appendix 9 – Transmission Buffer Zones be deleted.



Transmission Buffer Zone A
12 meters from the lines



Transmission Buffer Zone B
12m – 32 metres from the lines

The following submissions are therefore:

Accepted

Submission	Point Number	Name
64		Morrison, D G
66		Vision Family Trust
FS 83		NZ Horticulture, NZKGI and NZAGA

Accepted in Part

Submission	Point Number	Name
20		Te Matai Motorsport
25		Wills, M J
32		Treloar, J M
36		Cotter, N A
45 & FS 75		Federated Farmers of NZ (Inc)
47		NZ Horticulture, NZKGI and NZAGA
50		TECT All Terrain Park Manager
51		Bailey, R D
FS 73		Trustpower
FS 74		NZ Transport Agency
FS 79		Surveying Services

Rejected

Submission	Point Number	Name
23 & FS 70		Transpower
34		Trust Power
48		Toi Te Ora Public Health

Reasons for Decisions

The reasons for the decisions are as follows;

- Regardless of how policies 10 and 11 of the National Policy Statement on Electricity Transmission 2008 may be interpreted, that instrument cannot transfer or supplant the regulatory authority provided by the NZECP 34:2001. Council does not have authority under that code, and therefore unnecessary duplication would be entailed if consents are required for purposes that effectively go no further than requiring compliance with that code.
- The evidence in support of the need for the detailed rules proposed under PC5 was not sufficient to justify the potential disbenefit created for landowners – who, in any event, will require approval from the overhead electric line/support structure owner for activities to which the code NZECP 34:2001 applies.
- Sensitive activities and reverse sensitivity are both addressed in the soon-to-become operative proposed District Plan, and are routinely addressed in consent application considerations.
- The proposed rule provisions are not the most appropriate way of achieving the objective, nor would they be particularly efficient or effective.

- An alternative way, being an indicative buffer corridor with appropriate annotation and cross-referencing, is considered to better satisfy the requirement of section 32 of the Resource Management Act 1991 and to fall within the scope of relief generally sought.
- For additional information, inclusion of a reference to the code NZECP 34:2001 should be placed on Land and Project Information Memoranda. This will ensure that notice is taken for other than Resource Management Act 1991 considerations.

Part B: Changes to the Proposed District Plan May 2011 Annotated Version Base Document

Any changes to rules are shown as follows; existing District Plan text in black and changes (being the culmination of the notified Plan Change and subsequent decisions) are shown in [red](#).

That the relevant planning maps be amended to show transmission corridor buffers at 32m and 16m from the centrelines of the 220kV and 110kV lines respectively, and those maps be annotated to advise that compliance with NZECP 34:2001 is required in this area before any structure (including buildings), subdivision or earthworks is commenced.

That an advice note cross-referencing NZECP 34:2001 be included in subsection 10.6.4 Other Regulations and Codes after the third bullet point as follows;

- [New Zealand Electrical Code of Practice for Electrical Safe Distances \(NZECP 34:2001\)](#).

Part C: Changes to the Operative District Plan 2012

Any changes to rules are shown as follows; existing District Plan text in black and changes (being the culmination of the notified Plan Change and subsequent decisions) are shown in [red](#).

That the relevant planning maps be amended to show transmission corridor buffers at 32m and 16m from the centrelines of the 220kV and 110kV lines respectively, and those maps be annotated to advise that compliance with NZECP 34:2001 is required in this area before any structure (including buildings), subdivision or earthworks is commenced.

That an advice note cross-referencing NZECP 34:2001 be included in subsection 10.6.4 Other Regulations and Codes after the third bullet point as follows;

- [New Zealand Electrical Code of Practice for Electrical Safe Distances \(NZECP 34:2001\)](#).

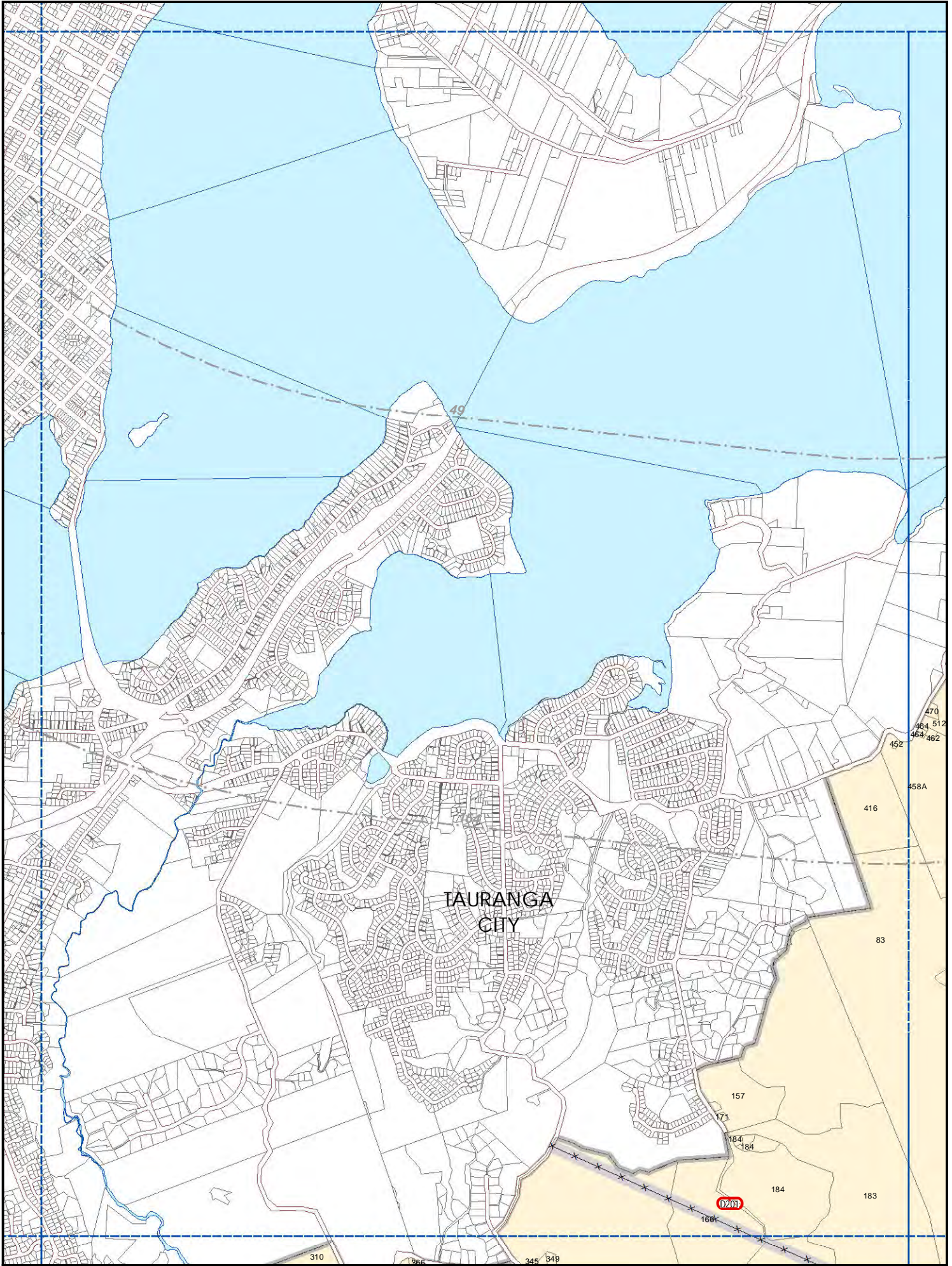
Infrastructure		Airport Approach Surface	
		Designation	
		Formed Roads	
		Limited Access	
		Stop Bank	
Reserves		Esplanade Strip	
		Proposed Esplanade Strip / Reserve	
		Kaimai - Mamaku Forest Park Boundary	
		Reserve	
		Reserve, Department of Conservation	
Significant Features		Viewshaft	
		Significant Ecological Feature / RAP	
		Outstanding Landscape Feature - 50m (S7a & S8a) - 40m (S9a)	
		Outstanding Landscape Feature	
		Cultural Heritage Feature Boundary	
		Built Heritage Feature	
		Cultural Heritage Feature	
		Notable Trees	
	Structure Plan		Structure Plan Boundary
			Greenlane
		Road	
		Stormwater	
		Wastewater	
		Water Supply	
		Walk/Cycleway	
		Reserve area	
		Stormwater Pond	
		Minden Lifestyle Structure Plan Area Overland	

Flowpaths and Local Ecological Features

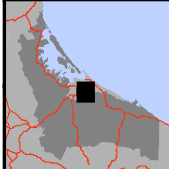
Bay of Plenty Regional Council should be consulted before undertaking any activity in the vicinity of Mean High Water Springs to establish the actual line of Mean High Water Springs. Formed roads are indicated as white shading on the road land parcels. Unformed roads have the underlying zone indicated.

(1) Compliance with NZECP 34:2001 is required in this area for *buildings/structures* and *earthworks*. The distance quoted is from the centreline of the transmission line.
 (2) The identified areas include; the community service area at Rangioru, the central hub site within the All Terrain Park and buffer zones in Stage 2 Omokoroa and Binnie Road.

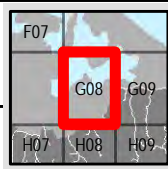
Land Hazards		Coastal Protection - Primary Risk	
		Coastal Protection - Secondary Risk	
		Coastal Protection - Open Coastline	
		Coastal Protection - Access Yard	
		Flood Hazard	
		Stability Area - Minden A	
		Stability Area - Minden B1	
		Stability Area - Minden B2	
		Stability Area - Minden C	
		Stability Area - Minden U	
		Stability Area - General	
		Stability Area - Landslip	
	Zones		All Terrain Park (ATP)
			Commercial
			Commercial Transition
		Horticultural Post Harvest	
		Industrial	
		Residential	
		Medium Density Residential	
		Rural Residential	
		Rural	
		Lifestyle	
Zone Overlays		Future Urban	
		District Boundary	
		Electricity Transmission Line	
		Electricity Transmission Line Buffer 16m (1)	
		Electricity Transmission Line Buffer 32m (1)	
		Identified Area (2)	
		Firing Range Exclusion Zone	
		Quarry Effects Management Area	
		TNL 100m Building Line Setback	
		Town Centre Boundary	



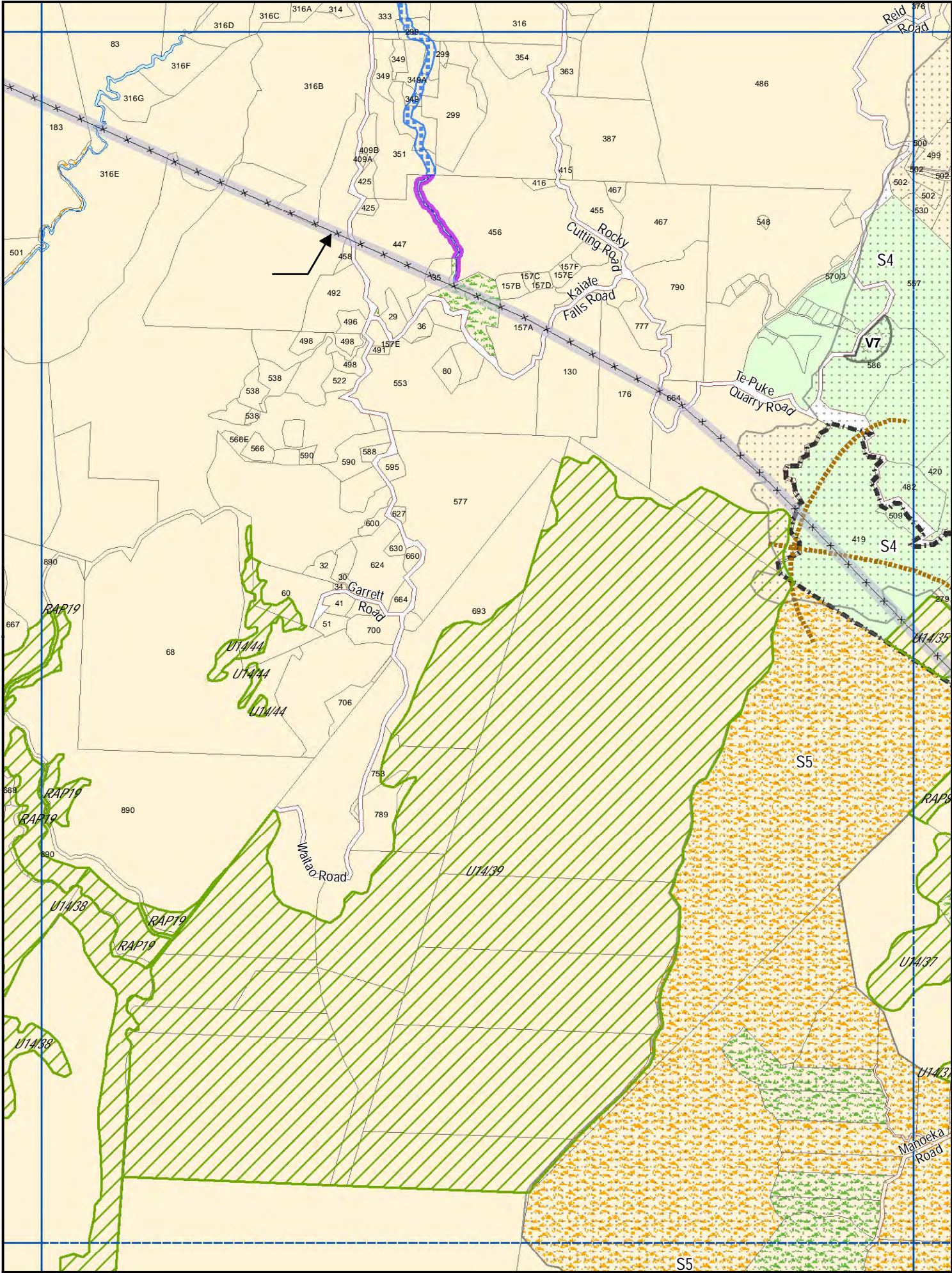
G08 Rural Series



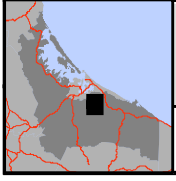
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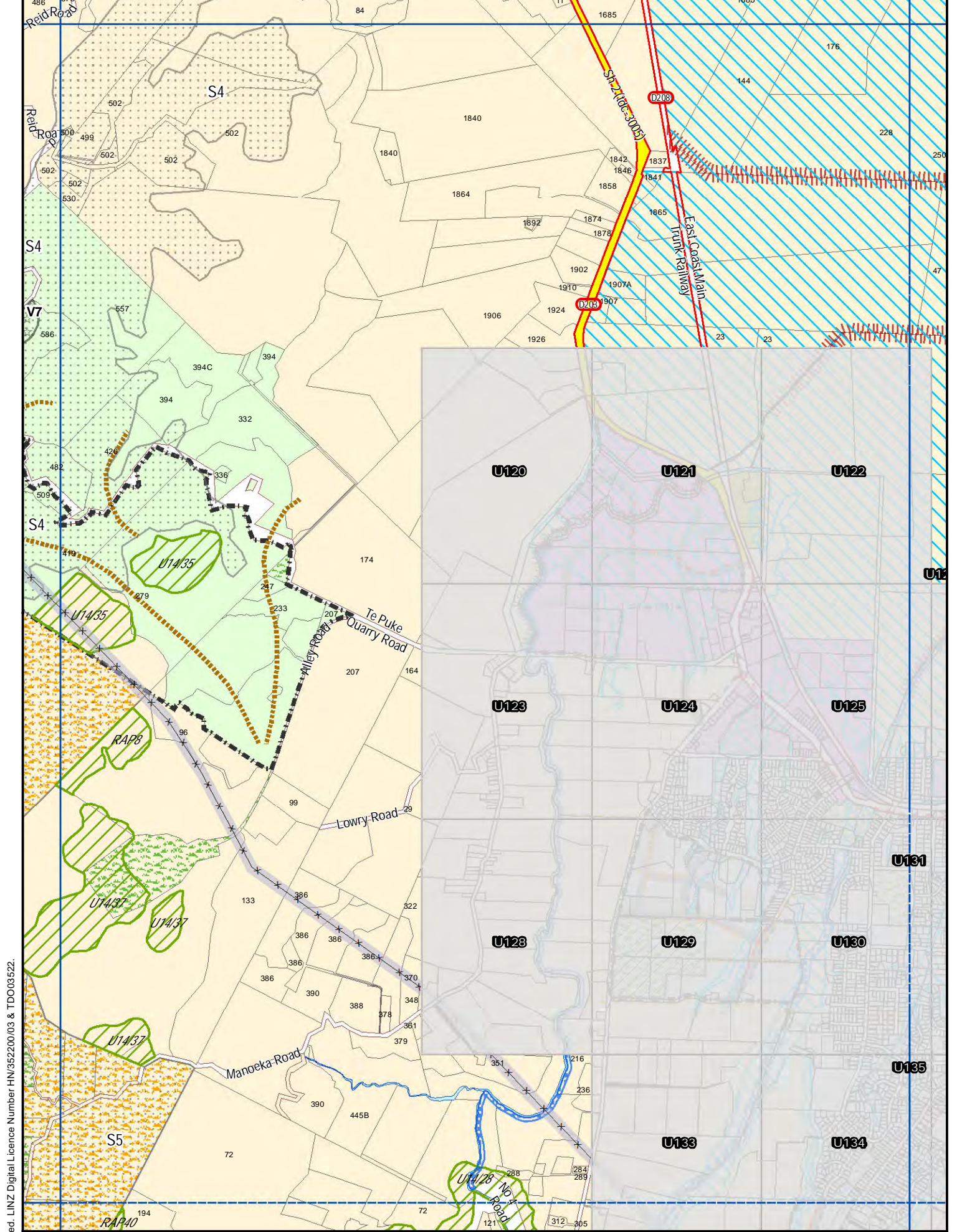
H09 Rural Series

G08	G09	G10
H08	H09	H10
I08	I09	I10

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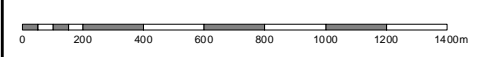
Western Bay of Plenty
District Council

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H10 Rural Series

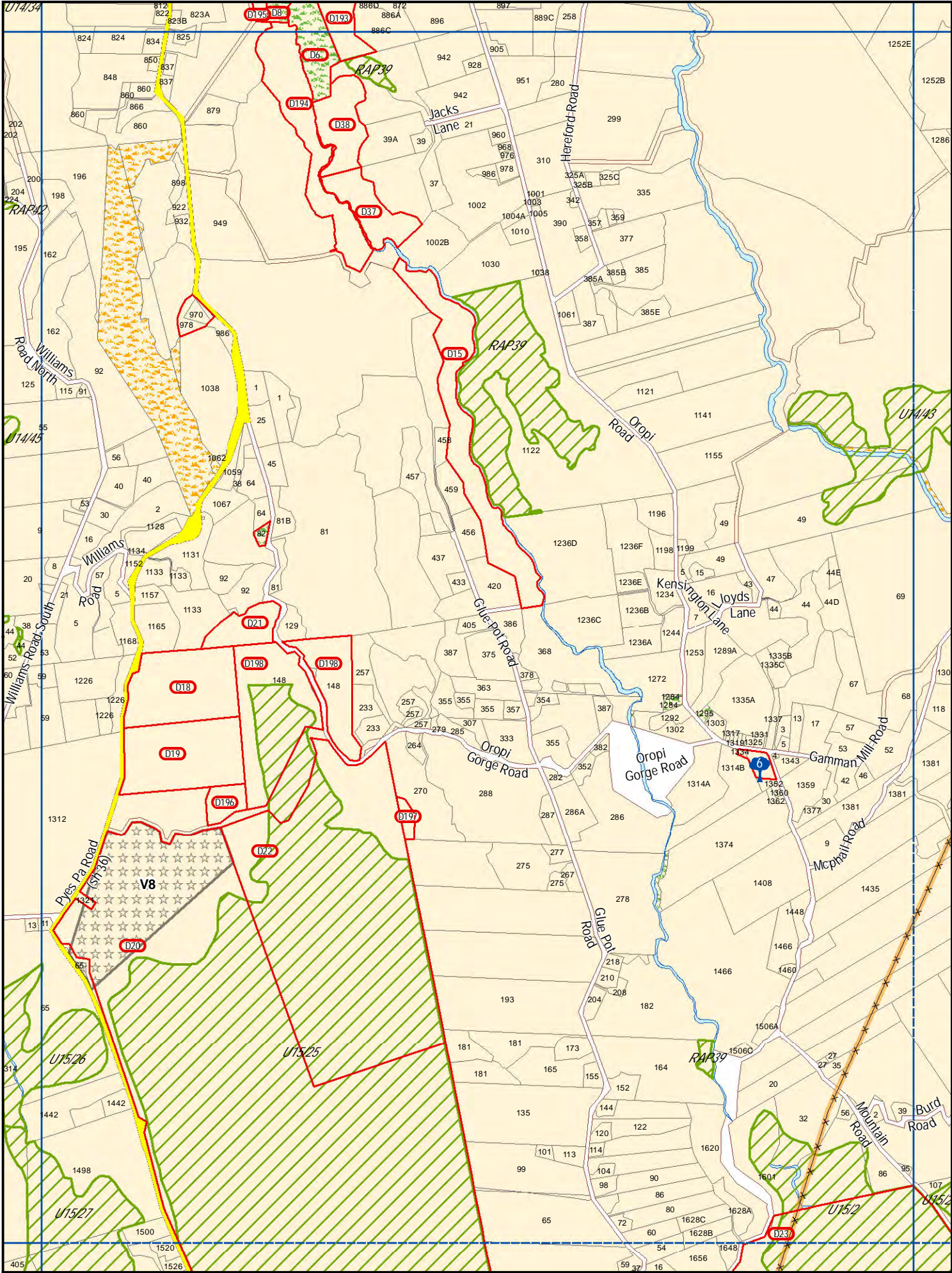


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G09	G10	G11
H09	H10	H11
I09	I10	I11

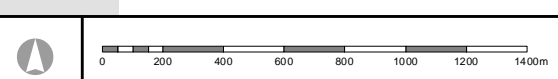


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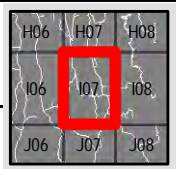


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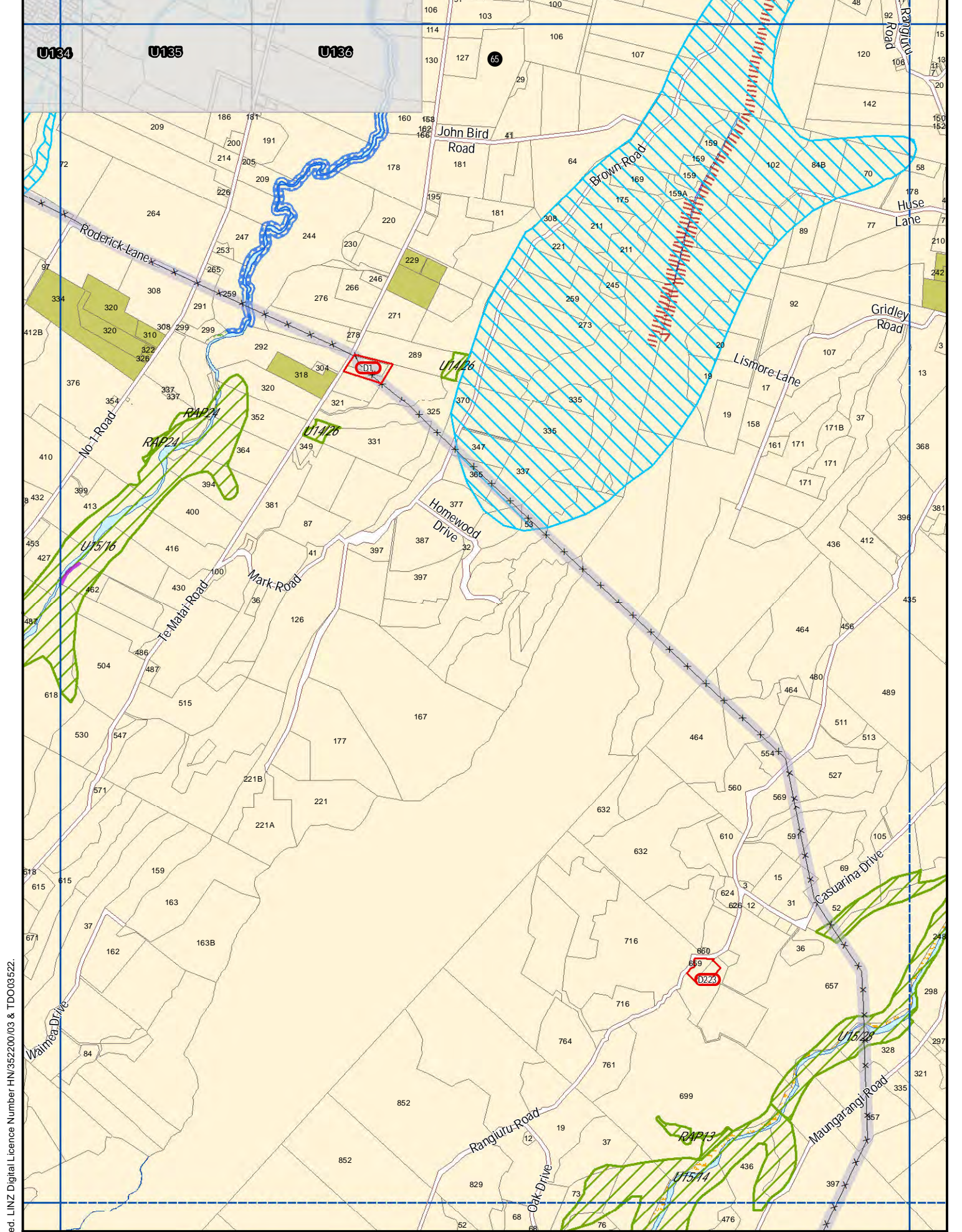
107 Rural Series



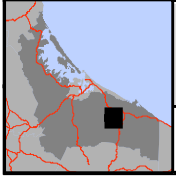
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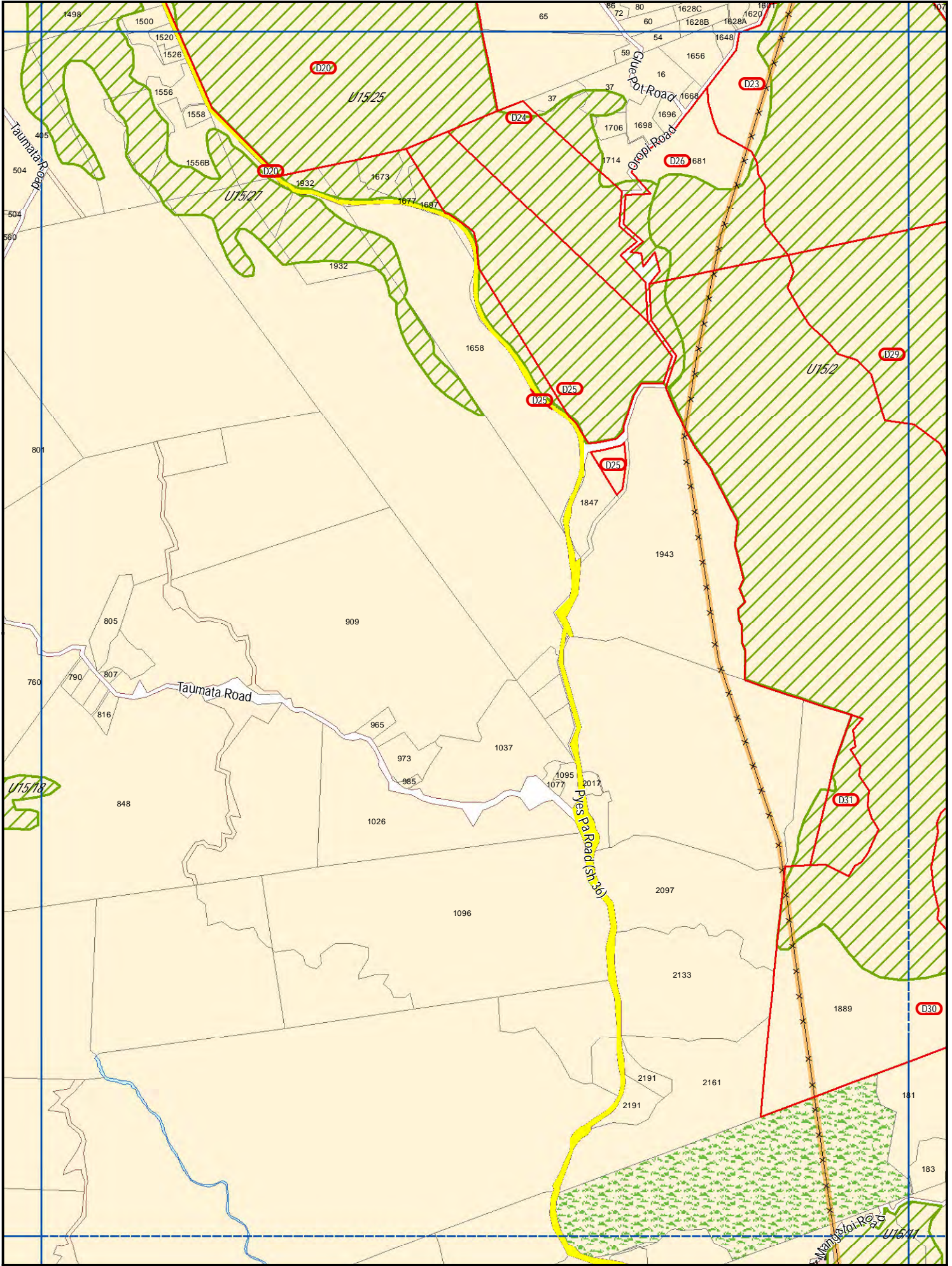
111 Rural Series

Scale 1:25000 (A4)

H10	H11	H12
I10	I11	I12
J10	J11	J12

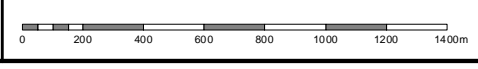
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J07 Rural Series

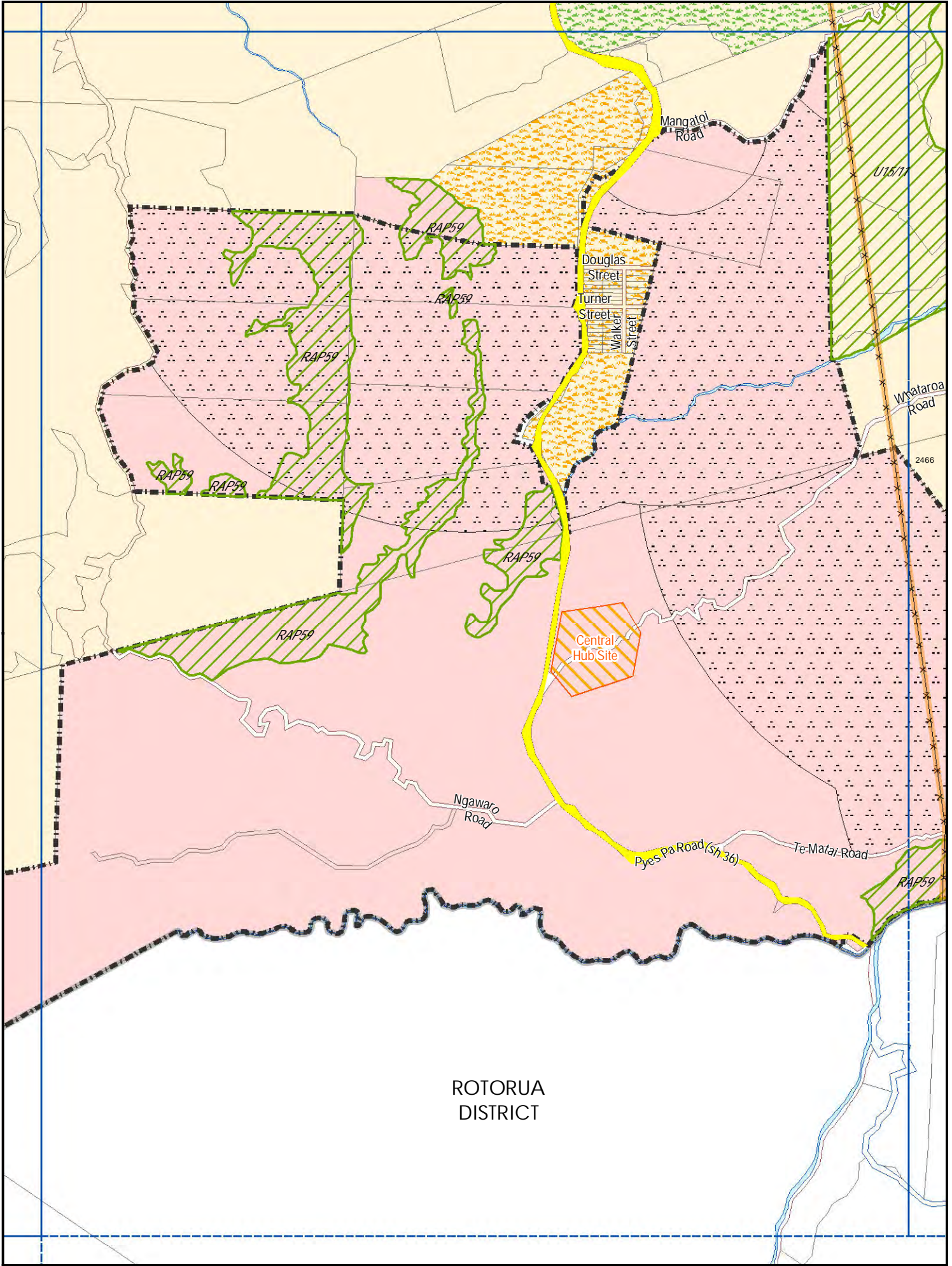


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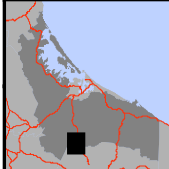
J06	J07	J08
J06	J07	J08
K06	K07	K08



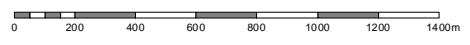
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ROTORUA DISTRICT



K07 Rural Series

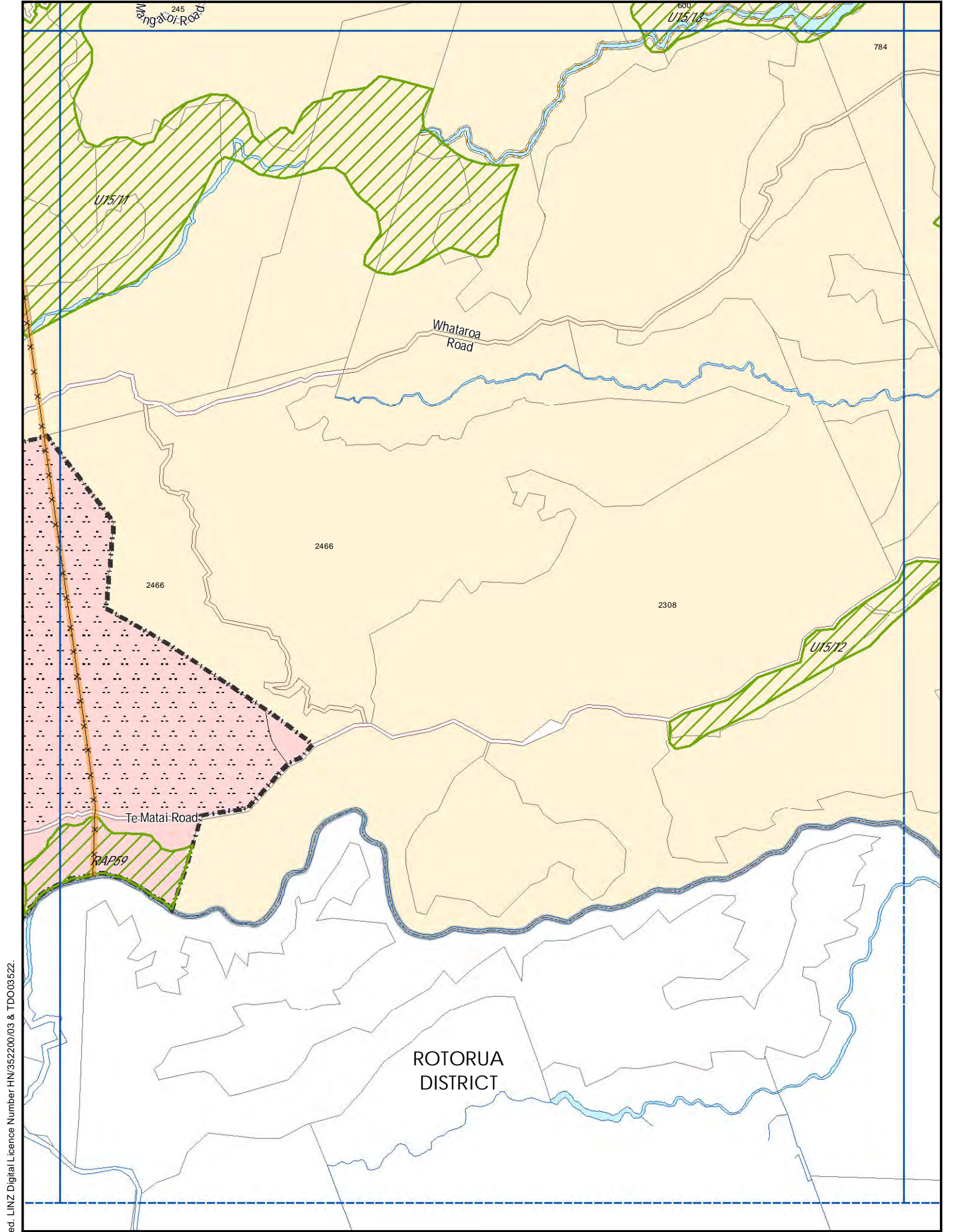


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J06	J07	J08
K06	K07	K08
L06		

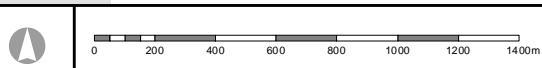


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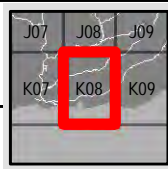


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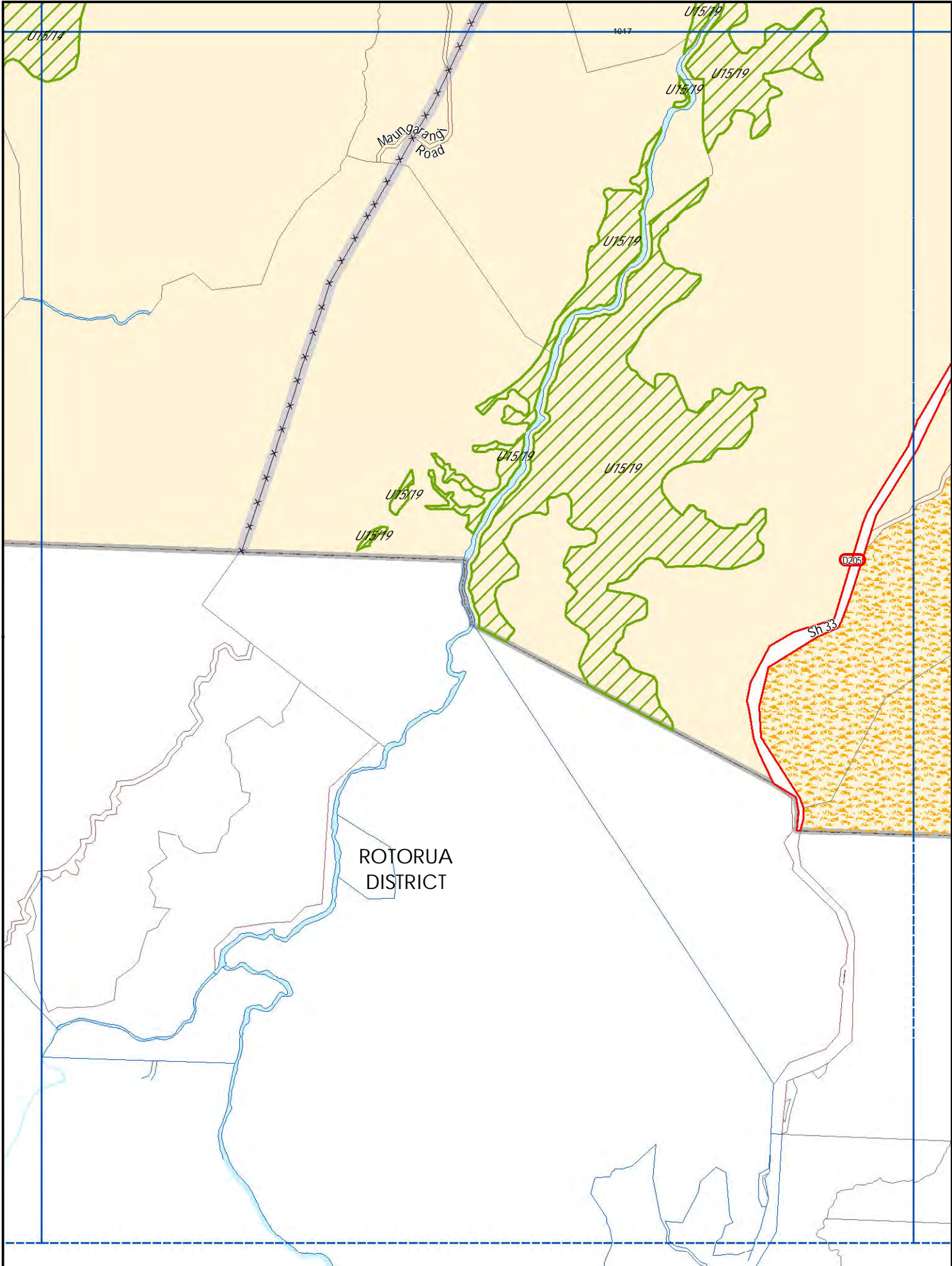
K08 Rural Series



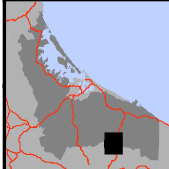
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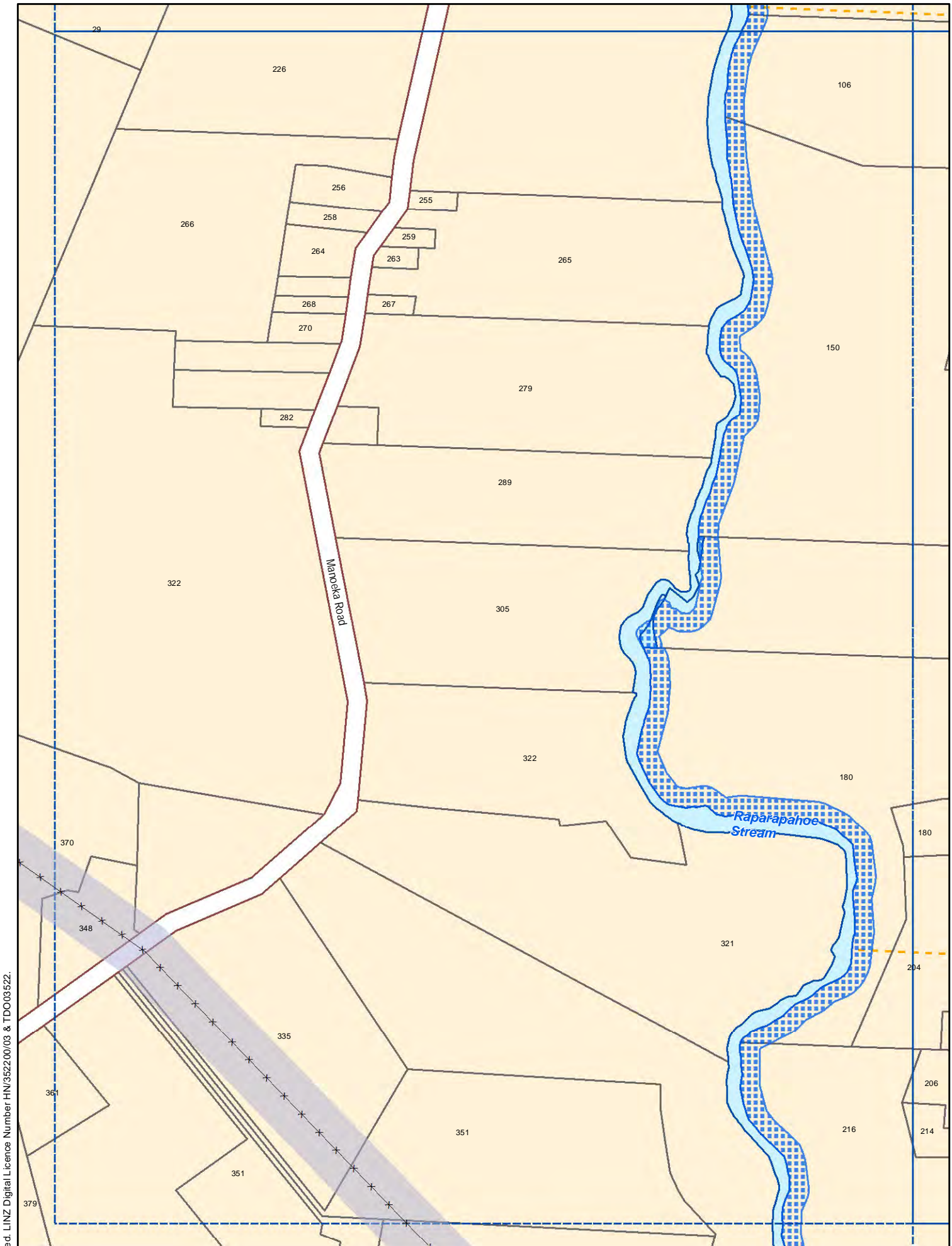
K11 Rural Series

J10	J11	J12
K10	K11	K12

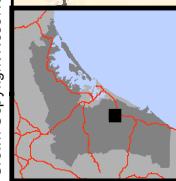
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Western Bay of Plenty District Council

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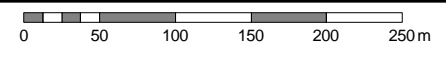


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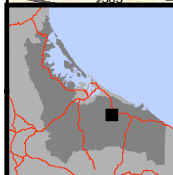
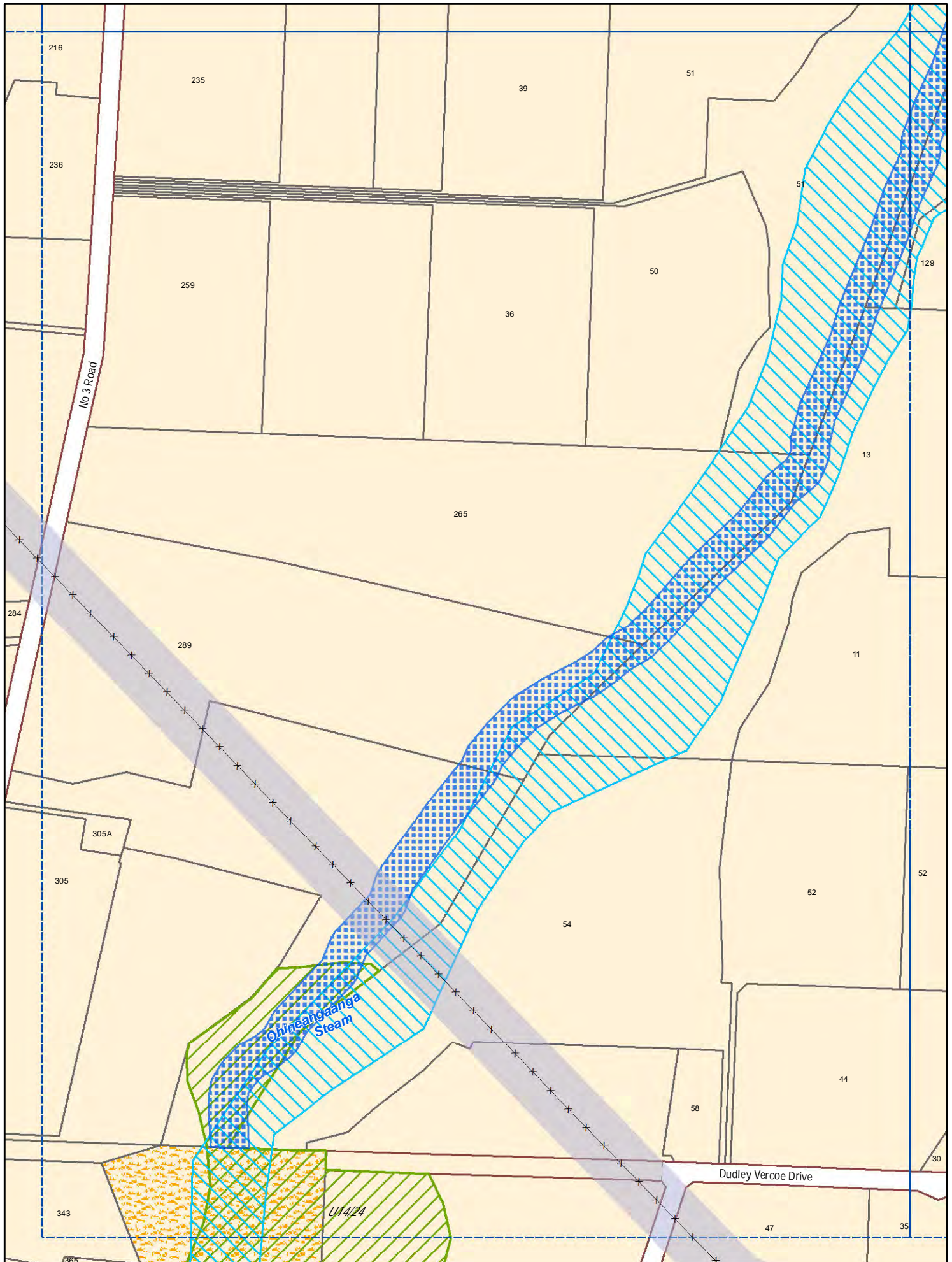
U128

Te Puke



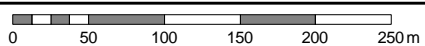
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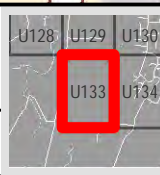


U133

Te Puke



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Revision Date: 11 August 2012

DECISION OF THE INDEPENDENT HEARING COMMISSIONER

WESTERN BAY OF PLENTY DISTRICT PLAN

PLAN CHANGE 5

ELECTRICITY TRANSMISSION BUFFER ZONES

1.0 INTRODUCTION

- 1.1 Plan Change 5 – Transmission Buffer Zones (“**PC5**”) was publicly notified on the 19th November 2011; submissions closed on the 16th December 2011; further submissions closed on the 20th February 2012. A section 32 Report was, I understand, released at the same time. In relation to PC5 a total of 13 submissions and 6 further submissions were received. The summary of submissions was prepared and notified on the 17th March 2012. The number and details of submission and further submission points received are identified in the Hearing Report prepared by the reporting planner, Mr Phillip Martelli, Resource Management Manager.
- 1.2 The hearing of submissions on PC5 was held at Council on the 25th May 2012 before Independent Commissioner David Hill, sitting alone under delegated authority from Council (Council Resolution C19.9 of 22 March 2012). That delegation (under section 34A of the Resource Management Act 1991 (“**the Act**”)) is to hear and decide on submissions.

2.0 REASON FOR THE PLAN CHANGE

- 2.1 The National Policy Statement on Electricity Transmission 2008 (“**the NPSET**”) was gazetted on the 13th March 2008, and noted in its Preamble that:

In accordance with section 55(2A)(a) of the Act, and within four years of approval of this national policy statement, local authorities are to notify and process under the First Schedule to the Act a plan change or review to give effect as appropriate to the provisions of this national policy statement.

- 2.2 However while this timeline appears to be stated as a requirement, the NPSET clearly notes that:

This preamble may assist the interpretation of the national policy statement, where this is needed to resolve uncertainty.

- 2.3 In other words, it is part of the explanatory material and not the NPS proper. This appears to be further emphasised at the end of the NPSET where it is explained:

Explanatory note

This note is not part of the national policy statement but is intended to indicate its general effect

This national policy statement comes into force 28 days after the date of its notification in the Gazette. It provides that electricity transmission is a matter of national significance under the Resource Management Act 1991 and prescribes an objective and policies to guide the making of resource management decisions.

The national policy statement requires local authorities to give effect to its provisions in plans made under the Resource Management Act 1991 by initiating a plan change or review within four years of its approval.

- 2.4 Regardless, Council did notify PC5 within that 4 year expectation. It may also turn out to be important to note that the explanatory note indicates that the NPSET is to “guide” decision-making.
- 2.5 Council considers that, with the exception of two policies, the NPSET has been given effect through relevant policies and objectives in the District Plan. The exceptions are Policies 10 and 11 of the NPSET.

Policy 10 states:

In achieving the purpose of the Act, decision-makers must to the extent reasonably possible manage activities to avoid reverse sensitivity effects on the electricity transmission network and to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.

Policy 11 states:

Local authorities must consult with the operator of the national grid, to identify an appropriate buffer corridor within which it can be expected that sensitive activities will generally not be provided for in plans and/or given resource consent. To assist local authorities to identify these corridors, they may request the operator of the national grid to provide local authorities with its medium to long-term plans for the alteration or upgrading of each affected section of the national grid (so as to facilitate the long-term strategic planning of the grid).

- 2.6 Transpower New Zealand Limited (“**Transpower**”) had raised the matter of the absence of a corridor / buffer in submissions to the proposed District Plan. However, rather than deal with the associated issues through the plan appeal process, Council preferred and agreed to promote a Plan Change so that the matter could be dealt with separately and explicitly. Accordingly PC5 was undertaken to explore the option of a buffer surrounding the existing national grid high voltage transmission lines in the Western Bay of Plenty District. The proposed corridor or buffer around the Transpower lines is proposed for two inter-related reasons:
- (a) to protect the safety of people using and developing land around these lines; and
 - (b) to protect the lines for future upgrades and required maintenance.
- 2.7 PC5 was not intended to address directly any of the other provisions of the NPSET and those provisions therefore fall outside the scope of this plan change. Nor is it intended to apply to any new lines which, I was told, would be pursued in the normal manner either by way of the Electricity Act 1992 or by means of designation depending on the circumstance.

3.0 DECISION

- 3.1 As the Independent Hearing Commissioner with delegated authority to hear and decide on submissions on PC5, I have given careful consideration to the advice from Council officers, the content of all submissions, the alterations to the proposed plan content requested by submitters, and the evidence and/or submissions of those submitters and further submitters that appeared at the hearing.

3.2 My Decision is as stated in section 12.0 below.

4.0 **Submissions**

4.1 No late submissions were received.

4.2 A general overview of the matters raised through the submissions and further submissions in relation to PC5 is provided below. For a more detailed summary of the submissions and further submissions received reference can be made to the Hearing Report prepared by Council.

5.0 **Submitters**

5.1 Nine parties appeared at the hearing and made submissions, representations or gave evidence, being:

Transpower NZ Limited – Ms Nicky McIndoe (Counsel), Mr Michael Hurley (Environmental Advisor - Policy), Mr Robert Simpson (Chief Engineer), Ms Karen Blair (Planning Consultant);

TECT Park – Mr Peter Watson (Reserves and Facilities Manager, Western Bay of Plenty District Council);

Mr Paul & Mrs Judy Treloar and Vision Family Trust (in conjunction with Mr Bruce Beca and Mr Howard Morrison);

NZ Kiwifruit Growers Incorporated – Mr Mike Chapman (CE NZKGI); Mr Neil Trebilco, Mr Craig Greenlees, Mr Jim Gray and Mr John Montgomery (Growers); Ms Lynette Wharfe (Horticulture NZ);

Mrs Evelyn Wills;

Mr Andrew Morrison (for Mr Desmond Morrison);

Te Matai Motorsport Incorporated - Mr Neil Rogers (Deputy Chairman);

Bailey Farms Ltd – Mr Ron Bailey and Mr Steve Bailey;

Bay of Plenty Province of Federated Farmers of NZ - Mr John Scrimgeour (President); Mr Nigel Billings (Senior Policy Advisor); Ms Rhea Dasent (Regional Policy Advisor);

5.2 Tabled evidence was produced on behalf of the New Zealand Transport Authority (Ms Kim Harris Cottle, Principal Planner).

6.0 **Matters beyond scope / jurisdiction**

6.1 Many submitters sought that I recommend rejecting PC5 on the ground that it was fundamentally inequitable to landowners. This was framed in various guises but included charges of uncompensated land confiscation, abrogation of landowner rights, bad faith positioning, unbridled SOE power, and so forth. Charges that Transpower rejected. I have no need to inquire into the merit of those charges but I was left in no doubt that the relationship between Transpower and many of the submitting landowners is a matter deserving of careful on-going attention regardless of the outcome of this plan change, as that is a long term relationship.

6.2 As was plainly put by Ms McIndoe, the Electricity Act 1992 already provides the authority for Transpower to access its transmission lines for operational purposes and a plan change cannot and does not alter that fact. While Ms McIndoe referred to section 23 of the Electricity Act, she did not cite the particular power in full so I include that below for the sake of clarity:

23 Rights of entry in respect of existing works

- (1) *Any person that owns any existing works may enter upon land for the purpose of gaining access to those works and may perform any act or operation necessary for the purpose of—*
 - (a) *inspecting, maintaining, or operating the works:*
 - (b) *in the case of works the construction of which had not been completed before 1 January 1988 (in the case of works owned by the Corporation) or before 1 January 1993 (in the case of works owned by any other electricity operator), completing the works.*
- (2) *A certificate signed by the owner of any existing works containing a statement that any specified works were constructed (in whole or in part) before 1 January 1988 (in relation to works owned by the Corporation) or before 1 January 1993 (in the case of works owned by any other person) under the authority of the Electricity Act 1968 (or any Act repealed by that Act) or the Electric Power Boards Act 1925 or the Local Government Act 1974 or the Public Works Act 1981 or any local or private Act shall be admissible in evidence in any proceedings and shall, in the absence of proof to the contrary, constitute proof of that statement.*
- (3) *In this section, **maintenance** includes—*
 - (a) *any repairs and any other activities for the purpose of maintaining, or that have the effect of maintaining, existing works; and*
 - (b) *the carrying out of any replacement or upgrade of existing works as long as the land will not be injuriously affected as a result of the replacement or upgrade.*

6.3 Certainly that is not an absolute power, in that a number of procedural steps and dispute rights are also provided (including the power to make binding declarations by the Environment Court), but it is clear that inspection, repairs and maintenance of existing works are otherwise unqualified, and replacement or upgrade of existing works are only qualified by the injurious affection clause – which equally clearly has the Environment Court identified as the remedial agency for disputes.

6.4 I certainly understand the question raised by many submitters as to why, if this power is entrenched, along with the relevant mandatory Electrical Safe Distance code of practice NZECP 34:2001 (“**the Code**”), there is also the need for PC5 – especially as Transpower confirmed at the hearing that PC5 will only apply to currently existing works. However, Transpower provided an answer to that question and I consider that further below.

6.5 It is also important to note that compensation is not a matter that can be determined under the Act in this instance regardless of whether one is talking of existing or new lines (and certainly not at a first instance hearing). That is only available as a remedy for land compulsorily acquired by order of the Environment Court for a designation, requirement, or heritage order under either of sections 185 or 198 of the Act. I was told that the existing lines were not established by any of those means and, even if they were, the time for such a claim is undoubtedly long since past.

6.6 What is within scope to determine is whether or not, under section 85 of the Act, an interest in land is rendered incapable of reasonable use by any provision of the plan change – the remedy then being a revision to or deletion of the offending provision:

85 Compensation not payable in respect of controls on land

(1) *An interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in this Act.*

(2) *Notwithstanding subsection (1), any person having an interest in land to which any provision or proposed provision of a plan or proposed plan applies, and who considers that the provision or proposed provision would render that interest in land incapable of reasonable use, may challenge that provision or proposed provision on those grounds—*

(a) *in a submission made under Part 1 of Schedule 1 in respect of a proposed plan or change to a plan ...*

...

(6) *In subsections (2) and (3), the term **reasonable use**, in relation to any land, includes the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person other than the applicant would not be significant.*

6.7 That is a matter to which I return below.

7.0 THE STATUTORY TESTS FOR PLAN CHANGES

7.1 In her opening legal submissions, Ms McIndoe referred¹ to the decision “formula” used by the Environment Court in its Long Bay – Okura decision and helpfully provided a copy of the relevant part (paragraph 34 particularly) of that decision. While that decision was issued prior to the Act’s 2009 Amendment, its thrust remains broadly applicable – the relevant amendments being largely confined to the mechanics of rule-making and notification.

7.2 As far as I could determine no submitters took issue with these requirements. Even those most clearly opposed to the proposed plan change accepted that Council was required to give effect to the NPSET and that some form and degree of development constraint was necessary in the interests of safety and the good management of the national infrastructure.

7.3 Where views seemed to differ was over the standard required by the Act’s section 32 tests of appropriateness, efficiency and effectiveness, and whether this needed to be by way of plan prescription rather than by private treaty between Transpower and the individual landowner.

7.4 To recap, section 32 of the Act requires decision makers, including through this hearing, to do the following:

(2) *A further evaluation must also be made by —*

¹ McIndoe, Opening legal submissions, paragraph [9] and Appendix A – *Formula for assessing plan changes*

- (a) *a local authority before making a decision under clause 10 or clause 29(4) of Schedule 1 ...*
- (3) *An evaluation must examine —*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purposes of the examinations referred to in subsections (3) ... an evaluation must take into account —*
 - (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

7.5 Furthermore, section 32A of the Act gives, in this instance the commissioner, free rein in taking into account the matters stated in section 32 regardless of whether submissions are actually made on those matters.

7.6 The section 32 Report provided at notification does not, it has to be said, provide much assistance in this matter beyond reciting (page 2) Transpower's key reasons for a buffer zone, being:

- *Protection for the safety of those people who reside and work within close proximity to the lines;*
- *Risk to security of supply;*
- *Risk to the structural integrity of the support structures;*
- *Reverse sensitivity.*

7.7 Although cited, these were reframed slightly by Ms McIndoe in her submissions (paragraph 32) under Policy 11 as:

1. *Protection for the safety of people who reside and work within close proximity to the lines;*
2. *Provide for operation, maintenance and upgrade of the lines (reducing risks to security of supply);*
3. *Protect the structural integrity of the lines; and;*
4. *Reduce and prevent reverse sensitivity effects.*

7.8 Ms McIndoe also added under Policy 10 the requirement on Council to:

- *Avoid reverse sensitivity effects; and*
- *Ensure operation, maintenance, upgrading and development is not compromised.*

7.9 The Report relies upon an apparent agreement with Transpower (and others) arising

from the district plan appeals and notes that “*The below recommendations are based on Transpower’s requested provisions ...[which] provide a good base from which to start.*” (section 5.0 page 7). While that is clearly a pragmatic response to the NPSET and the point at which the district plan review had reached, it can hardly be claimed to satisfy the section 32 tests. Indeed, and as proposed by Council, those notified provisions were further significantly amended as a result of ensuing consultation rounds.

- 7.10 It is therefore difficult to escape the conclusion that at the time of notification and at the commencement of the present hearing, the section 32 evaluation undertaken, or at least released, was deficient. No systematic section 32(3)(b) evaluation of the proposed rule provisions or of the amended provisions was available.
- 7.11 By itself such a conclusion is not fatal for the plan change. The Act contemplates the section 32 evaluation as being a process that is only concluded effectively at the point of final decision. That is the import of section 32A(1) of the Act, which directs that a challenge on the ground of insufficiency of compliance may only be made through submission – and which can then be determined at hearing.
- 7.12 At the present hearing Council introduced no further section 32 material, leaving that for Transpower to effect. Ms Karen Blair, a consultant planner, gave that evidence for Transpower.
- 7.13 Before turning to Ms Blair’s evidence it pays to remind ourselves that, for the purposes of our consideration, the NPSET is assumed to have satisfied its section 32 evaluation because the Minister is required to complete a section 32 evaluation before issuing a national policy statement (section 32((2)(b)). Importantly, then, the objective and associated Policies 10 and 11 of the NPSET are not at issue – and that includes the Policy 11 requirement regarding the identification of an appropriate buffer corridor. In effect they have already passed the test as to whether they are the most appropriate way of achieving the purpose of the Act and the objective. In other words, I am not required to inquire into or satisfy myself on section 32(3)(a) or the policy-relevant part of section 32(3)(b).
- 7.14 What I am required to inquire into and satisfy myself on is the section 32(3)(b) appropriateness of the proposed rules / other methods as a means of achieving the NPSET objective. That single objective of the NPSET is stated as:

To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:

- *managing the adverse environmental effects of the network; and*
- *managing the adverse effects of other activities on the network.*

- 7.15 Ms Blair’s planning evidence on this matter – setting aside for one moment certain amendments to the plan provisions that she proposed – was, in summary:
- A buffer corridor is a method that appropriately addresses both Policies 10 and 11² - especially, it seems, because this is primarily rural land and comparatively few existing structures / buildings are affected;

² Blair, EIC, paragraph [34]

- The general order of rules proposed are efficient, effective and the most appropriate because they:
 - (a) integrate the relevant requirements of the Code;
 - (b) require consent for most activities beneath the swing of the conductor under “normal” wind conditions (i.e. 100pa / 47kph);
 - (c) permit activities subject to the Code provided risk and maintenance are not compromised;
 - (d) require building platforms outside the buffer to be identified at the time of subdivision;
 - (e) apply only to existing transmission lines and do not compromise existing buildings/structures/activities and any associated existing use rights;
 - (f) are tailored to reflect the national value of the transmission asset and incorporate a risk-based approach;
 - (g) recognise that structures and non-habitable buildings also pose a risk to the lines;
 - (h) do not seek to specify “sensitive activities” as such, but identify dwellings, minor dwellings, accommodation facilities and places of assembly as non-complying activities in Area A due to the fact that these are specifically identified as sensitive activities under the Rural Zone provisions; and
 - (i) align earthworks controls with the Code.
- The specific order of amended rules as proposed by Transpower are efficient, effective and the most appropriate because:
 - (a) non-complying activity status (rather than restricted discretionary) for activities not otherwise permitted under the 12m Buffer Area A³ sends the appropriate *avoidance* signal;
 - (b) permitting minor activities in Buffer Area A such as small buildings of no more than 10m² and 2.5m in height, and network utilities, will not constrain maintenance activities nor pose undue risk.

7.16 Ms Blair did not address the material meaning(s) of *efficiency* and *effectiveness* directly – nor did any of Transpower’s other witnesses. By implication I understood her evidence overall to be that these matters were satisfied because the resultant rules were a reasonable compromise between Transpower’s needs and landowners’ expectations. A compromise of Transpower’s needs because it did not establish or require the maximum credible transmission corridor buffer in all wind strength conditions and span lengths (a conclusion derived largely from Mr Simpson’s evidence regarding load capacity, conductor “stretch” and maximum conductor swing⁴), but also did not actually prohibit any particular class of activity or

³ That is, 12m each side of the centreline

⁴ Simpson, EIC, paragraph [43.2] and McIndoe, Clarifications, Appendix C – *Graphic regarding the calculation of*

development, rather allowing for applications to be made and determined.

7.17 In regard to the assessment of benefits and costs required to be taken into account by section 32(4) of the Act, Ms Blair relied on the evidence of Mr Simpson and Mr Hurley.

7.18 The benefits cited⁵, in summary, were that the provisions:

- protect people’s safety and minimises risk;
- ensure compliance with existing (mandatory) statutory code;
- ensure on-going operation and maintenance of existing lines and security of supply;
- address proximate reverse sensitivity effects;
- place controls on the effects of new activities;
- ensure Transpower is notified as a potentially affected party; and
- allocate compliance costs appropriately.

7.19 The costs cited⁶ were:

- potential opportunity cost losses for landowners;
- places restrictions on future development of *existing* activities within corridor;
- has associated compliance costs; and
- does not ensure code compliance for that 5% of longer spans whose conductor swing is correspondingly greater, or beyond the proposed 4m Buffer Area B for the 110kV Te Matai line.

7.20 Finally Ms Blair concluded⁷ that there was no need to consider the risk of not acting (section 32(4)(b)) because the relevant information was sufficient and not uncertain. This was echoed by Ms McIndoe agreeing⁸ that while this aspect of risk is not relevant to PC5, another element of risk, being potential effects of low probability but high potential impact (under the definition of “*effect*” in the Act), certainly is.

7.21 Submitters in opposition who appeared took issue with many of the points made by Transpower’s witnesses but did not present a structured section 32 argument for consideration. Suffice to record at this point that I am satisfied that a fuller section 32 assessment has now been provided – albeit that it falls short of what might be considered a fully competent assessment. In that regard, of course, one needs to be mindful that the single NPSET objective stated – and which is the proper focus of the section 32(3)(b) evaluation – is a *process* or *narrative* objective, not easily amenable

Buffer B, for example

⁵ Blair, EIC, paragraph [102]

⁶ Blair, EIC, paragraph [105]

⁷ Blair, EIC, paragraph [111]

⁸ McIndoe, Opening legal submissions, paragraph [43]-[44]

to a rigorous evaluation as regards what might or might not constitute the most appropriate means of achieving it. It is about *facilitating* an activity while *managing* others. Necessarily then there will be many ways of doing such, constrained only by the cascading structure of the RMA whereby objectives are required to achieve the purpose of the Act, policies are required to implement objectives, and rules are required to implement policies.

7.22 Effectively then, as the objectives and policies are to be taken as givens (through the NPSET), the ambit of my section 32 consideration is limited to whether the rule provisions of PC5 are the most appropriate means of implementing policies 10 and 11 of the NPSET.

7.23 I therefore turn now to the following matters of interpretation (underlined) raised by various parties regarding those two policies:

- Policy 10:
 - *must to the extent reasonably possible manage activities*
 - *to avoid reverse sensitivity effects on the electricity transmission network*
 - *to ensure that operation, maintenance, upgrading, and development of the electricity transmission network is not compromised.*
- Policy 11:
 - *Local authorities must consult with the operator of the national grid to identify*
 - *an appropriate buffer corridor*
 - *within which it can be expected that sensitive activities*
 - *will generally not be provided for in plans and/or given resource consent.*

7.24 Policy 10

7.24.1 Reasonably possible:

7.24.1.1 Ms McIndoe submitted⁹ that this requires Council to take active steps to manage activities.

7.24.1.2 I agree with that interpretation, noting though that what is reasonable must also accord with Council's functions and powers under the Act.

7.24.2 Avoid reverse sensitivity effects:

7.24.2.1 Ms McIndoe cited¹⁰ the 2008 *Gateway Funeral Services v Whakatane District Council* case in which the Court defined "reverse sensitivity", submitting that this was precisely what PC5 achieved as required by this policy – i.e. the avoidance of those new activities alongside the lines and towers that could compromise the national grid.

⁹ McIndoe, Opening legal submissions, paragraph [34]

¹⁰ McIndoe, Opening legal submissions, paragraph [19]

7.24.2.2 Ms Blair gave her opinion¹¹ that in the context of Policy 10 as a whole, certain principles could be distilled (which I have summarised as follows):

- an in-principle preference for the avoidance of any adverse effects;
- if adverse effects cannot be avoided, then only if the associated activities would not be sensitive to the operation of the line, maintenance activities and/or pose a safety risk, should they be allowed;
- Transpower should not bear any burden arising from the location of new activities permitted close to the lines; and
- Upgrading within the buffer corridor should be dependent upon its generated adverse effects.

7.24.2.3 I note that not all reverse sensitivity effects need be avoided – remembering that “effects” has both *actual* and *potential* implications under the Act – because not all are significant and therefore a judgement is required regarding real risk and consequence.

7.25 Policy 11

7.25.1 Consult with the operator:

7.25.1.1 I note that the NPSET only required consultation with the operator of the National Grid in the first instance in identifying an appropriate buffer. This is what Council has done.

7.25.2 Appropriate buffer corridor:

7.25.2.1 Ms Blair considered¹² that “*appropriate*” in this context requires the incorporation of both Policy 10 and 11 such that the corridor determination should take into account all those sensitive activities that might pose a reverse sensitivity risk, including at the low probability/high potential impact end of the continuum.

7.25.2.2 I agree with that proposition, adding that the potential effect on (and cost of) otherwise lawful activities is also an integral part of that consideration.

7.25.3 Sensitive activities:

7.25.3.1 I note that the NPSET defines this term to include *schools, residential buildings and hospitals* without further assistance.

7.25.3.2 The Hearing Report (page 244) restricts the term:

to those that have a high level of human use – dwellings, minor dwellings, places of assembly, and education facilities.

although the proposed associated rule for Buffer Area A includes, with the

¹¹ Blair, EIC, paragraph [31]

¹² Blair, EIC, paragraph [32]

approval of Ms Blair, *accommodation facilities* also, being so defined apparently under the soon-to-become-operative District Plan.

7.25.3.3 Ms McIndoe reminded us that the defined list is not exhaustive and submitted that the term should be understood as referring to those activities that are sensitive to the effects of transmission lines.

7.25.3.4 I agree with Ms McIndoe, noting that such are not required to be prohibited by Policy 11 but will “generally not be provided for”.

7.25.4 *Generally not be provided:*

7.25.4.1 Ms McIndoe noted¹³ that PC5 does not classify or prohibit any activities. I accept that.

7.26 Other parties (e.g. representatives of Federated Farmers and NZKGI) took issue with varying aspects of those interpretations.

8.0 INCAPABLE OF REASONABLE USE

8.1 A number of submitters challenged the provisions on the basis that they would render the land incapable of reasonable use and, as I have noted above, this is a legitimate ground for challenge under section 85(2)(a) of the Act.

8.2 The Act provides little guidance as to how to determine this matter other than the rather elastic “definition” of “*reasonable use*” cited above in paragraph [0]. No caselaw that might assist was cited, and that which is referenced in the standard sources is somewhat problematic because the Environment Court has a different two-step test under section 85(3) of the Act to that which a local authority has under section 85(2). For whatever reason, under section 85(2) I am not directed to consider, as is the Court, whether the “incapability” constitutes “an unfair and unreasonable burden”. This makes little sense since, if I do not take that burden into consideration and the matter proceeds subsequently on appeal, the Court will determine the matter taking that burden into consideration *provided* the appellant made that challenge in its primary submission. I therefore consider it appropriate to adopt a pragmatic interpretation and proceed as if section 85(3) also applies to a first instance local authority hearing.

8.3 As I understood the submissions on this matter they broadly involved three different scenarios:

- (a) the erection of canopy and support structures associated with existing horticultural activities – primarily kiwifruit;
- (b) the erection of buildings integral to existing farm practices; and
- (c) the development potential of land for subdivision.

8.4 The first scenario was presented by witnesses for Horticulture NZ and NZ Kiwifruit Growers Incorporated – perhaps most graphically by Mr Craig Greenlees, but also by Messers Bailey, Gray and Morrison. They pointed out that the sort of vertical and horizontal structures required for both direct wind protection and also for vine health

¹³ McIndoe, Opening legal submissions, paragraph [38]

protection, may be up to 10m in height. The potential set-back from the buffer for these structures represents a significant loss in income – calculated and presented by Ms Wharfe¹⁴ as an average net value of \$60,000/ha of gold kiwifruit and an indicative bareland differential over canopy land of \$92,000/ha.

- 8.5 While the second scenario was introduced by way of argument, no submitter introduced any factual evidence for this concern – other than a disputed photograph of a shed and some indicative plans. I note that the Agenda Hearing Report similarly remarked that only a very few existing structures fall under the lines presently.
- 8.6 The third scenario was presented by witnesses for the Vision Family Trust and Mrs Wills – and was a key concern of the Bay of Plenty Federated Farmers witnesses.
- 8.7 Transpower’s general response to these concerns¹⁵, as I understood its representatives and witnesses, was that the plan provisions themselves do not create a situation whereby the land is incapable of reasonable use. Nothing is prohibited outright – certainly nothing that would not, by extension, be prohibited anyway by a proper application of the Code; the plan provisions allow applications to be made and duly considered, and entail appeal rights in the usual way; and many rural activities not involving higher structures can continue beneath the lines uninterrupted. The only difference is a requirement to make an application.
- 8.8 I accept those submissions. Certainly the Code places limits on activities and, in some instances, those limits might indeed frustrate present intentions. However, to the extent that the plan change does no more than reference or incorporate the Code “it” cannot be said to render the land incapable of reasonable use. That decision effectively rests outside the RMA with the overhead electrical line and/or tower owner pursuant to the Code.

9.0 DUPLICATION AND NZECP 34:2001

- 9.1 Many submitters noted that they “hosted” Transpower’s activities on their land – neither rentals, compensation nor easements applying. There was a clear and general sense of frustration, then, that formalising and codifying this “relationship” by means of planning rules, which required landowners to seek consents (and commit costs) that, arguably, they would not otherwise need, was a double affront. In their generalised view the Code was sufficient protection having both height and distance parameters – as explained by Mr Hurley with reference to Table 2 of the Code in particular – and PC5 entailed unnecessary duplication.
- 9.2 Transpower’s response was that the Code did not address maintenance / emergency issues (particularly the need to retain a ready access corridor for heavy machinery) and was not enforceable until after a risk is manifest¹⁶. Subdivision was a particular concern.
- 9.3 Mr Hurley advised¹⁷ that Transpower had sought statutory amendments to tighten up the compliance relationship with the Building Code and had proposed a National Environmental Standard to manage third party risks, but that this had not been

¹⁴ Wharfe, EIC, section [4.5] page [8]

¹⁵ see for example, McIndoe, Clarification, paragraph [20.2]

¹⁶ Hurley, EIC, paragraph [17.3]

¹⁷ Hurley, EIC, paragraph [13]

accepted by Government – effectively in favour of the NPSET (and allied regulation). By implication then, I assume that if these measures prove not to be sufficient, Government will respond positively to Transpower’s request to effect any additional remedial powers it considers necessary. However, their inadequacy is yet to be demonstrated.

9.4 Ms McIndoe has confirmed¹⁸ that the Code provides no guidance on the matter of applications for written consent and / or challenges to Transpower’s decisions under the Code – while also noting that there is no explicit or implied right of waiver with respect to those mandatory provisions, and that the Summary Proceedings Act 1957 applies to offences resulting from non-compliance.

9.5 On further inquiry I find that the Code was approved by the Minister of Energy and gazetted under Part 4 - Electrical Codes of Practice, Electricity Act 1992 on 21 December 2001. Furthermore under the Electricity (Safety) Regulations 2010 (and pursuant to section 169 of the Electricity Act 1992) clause 17 states:

17 Maintaining safe distances

(1) *A person who carries out any construction, building, excavation, or other work on or near an electric line must maintain safe distances—*

(a) *in accordance with ECP 34 ...*

(3) *Each of the following persons commits a grade A offence if safe distances are not maintained as required by subclause (1):*

(a) *a person who carries out the work described in subclause (1):*

(b) *a person who controls the work described in subclause (1):*

(c) *a person who owns or controls any line, works, fittings, building, structures, equipment, or machinery that is the subject of, or involved in, the work described in subclause (1).*

9.6 For completion a grade A offence is stated as:

10 Grade A and grade B offences

(1) *A grade A offence is an offence for which the defendant, on summary conviction, is liable,—*

(a) *for an individual, to a fine not exceeding \$10,000; or*

(b) *for a body corporate, to a fine not exceeding \$50,000.*

9.7 As the recommended PC5 provisions include restricted discretionary activity status for activities in Buffer Area B that “do not comply” with the Code, I have some concern as to the lawfulness of any such provision. That is, as to whether a district plan rule (and therefore decision) can overrule a regulatory code provision – an application for which, presumably, would not gain the written consent of Transpower anyway? If not then the provision is *ultra vires*.

9.8 Certainly there are many instances where an activity will require authorisation under more than one statute or regulation – the Building Act, Reserves Act and Historic Places Act are common examples with respect to cross-over matters concerning the Act – but what is proposed here is a rule that acknowledges non-compliance with

¹⁸ McIndoe, Clarification, paragraphs [23]-[27]

another regulation. On the face of it that would appear to promote an unavoidable conflict with section 23 of the Act, which states:

23 Other legal requirements not affected

(1) *Compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, bylaws, and rules of law.*

- 9.9 While the above offence provisions relate to a “person” who undertakes a “work”, and a land use consent under the Act relates more to the activity of the work (i.e., typically, an earthwork or structure) it seems rather artificial to suggest that as long as the person could accomplish the work by keeping a personal safe distance it would be permissible to consent the activity even though the structure breached that threshold.
- 9.10 I therefore find that there is a potential duplication here because the plan provisions can only proceed from a position of compliance *with* the regulatory code. Furthermore any rule to the contrary could not pass the section 32 test of appropriateness (let alone efficiency or effectiveness). It was Ms McIndoe’s submission in reply that the need for approval cannot be waived under the Code. Furthermore there appears to be no mechanism for the transfer of the power of approval to Council such that Council as consent authority can make autonomous binding decisions on the matter.
- 9.11 This means that there is scant justification for a rule that *appears* to leave a discretion in the hands of Council in the event that Transpower declines to provide its approval, as Council has no discretion to exercise *contra* the Code provision. In other words, there seems little justification in Council taking on the middleman “responsibility” of requiring an application under a code-based rule and determining that application against the concurrence of the overhead electric line owner – whose decision under the Code is, to all intents and purposes, final. Similarly there seems little point in Council intervening in a process ultimately requiring that same decision from another “authority” if there is no “added value” in that process.
- 9.12 The question is reasonably put then, as it was by submitters in opposition, as to what the purpose of any such plan rule might be. No new *resource management* rules are proposed by PC5 (setting aside for a moment the proposed adoption of the Code’s earthworks requirements) so, apart from the Code, there appears to be no need for a rule to govern structures or buildings etc additional to those already contained within the relevant zone rules, since compliance with the Code and the existing zone rules is required presently.
- 9.13 Transpower submitted that the Code does not cover issues such as maintenance requirements (primarily access arrangements) and subdivision because its emphasis is on the construction of buildings and structures. This, Transpower suggested, was effectively too late in the process to be fair to all parties. Certainly there is merit in that conclusion to the extent that people should have a clear understanding of what regulatory controls apply before they commit to activities that might then be compromised. I agree that those are matters in which the facility owner should have a say. However, no evidence was provided by Transpower that indicated any real problems in respect of maintenance access in the predominantly rural zone of the District – and a number of submitters indicated that access for such purpose was readily provided. Furthermore, and as noted in paragraph 0, the Electricity Act 1992 provides clear authority for access (and which may be further strengthened if the Infrastructure Bill that is currently before Parliament progresses).

- 9.14 While I fully appreciate the hypothetical maintenance access issue raised by Transpower – and certainly these would appear to be very real in a more urbanised setting – promulgating a consent rule requirement in the absence of material evidence for its necessity seems, on the face of it, contradictory to a sound section 32 benefit/cost evaluation. In that regard I do not agree with Ms Blair that there is no need to consider further the “risk of not acting” because of the uncertainty or insufficiency of information regarding the policy. The policy is uncertain precisely regarding the *need* for action in this particular context. Policy 10 does not require the adoption of a maintenance access rule (for example) but requires decision makers to ensure the network is not compromised as far as is *reasonably* possible. This is not a circumstance, it seems to me, where an abundance of caution (or precaution) is required that might justify imposing an additional section 9 restriction across the board.
- 9.15 While I understand the ‘negotiation’ process that has ensued attempting to find a solution to the problems perceived by Transpower in operating the national grid and by Council in complying with the requirements of the NPSET, I am not persuaded that the land use activity rules contained in PC5 are appropriate in the Western BOP context – and certainly there is doubt as to whether they would be either efficient or effective for all concerned.
- 9.16 In light of the above, it seems to me that the most appropriate way forward is for Council to signal that any activity that comes within the ambit of the Code within the larger buffer area will require the written approval of the overhead electric line or support structure owner (as the case may be), effectively as a *precondition* for any application that might then be required under the normal plan rules for the zone or (District), or before undertaking any district plan permitted activity for which approval under the Code is required. While this approach would not completely satisfy Transpower’s concerns over new subdivision proposals, where dwelling sites are not clearly and irrevocably identified, it would signal to prospective subdividers that approval may be required in the event that any subsequent structure falls within the indicative buffer corridor. It would certainly signify this to decision makers considering subdivision applications.
- 9.17 I conclude that the most efficient and effective means of providing for the health and safety of people, the national grid, and economic activity is to adopt an indicative buffer (and an associated statement) within which it is clearly noted that the Code applies to structures (including buildings). As reinforcement it would be appropriate for Council to consider alerting landowners to this requirement by means of an annotation on the respective Land and Project Information Memoranda for those whose properties lie under the indicative buffer corridor.
- 9.18 I accept that this might appear to give Transpower considerable “planning” powers over private land – but that is a necessary consequence of the Code, which already exists, the administrative responsibility for which cannot be transferred to Council. However that power is not unconfined and a civil remedy is available.
- 9.19 While no party sought this relief specifically, it would appear to fall within the scope of relief generally sought – which ranged the full spectrum from decline to adopt.

10. EARTHWORKS

- 10.1 Following from the logic of the above, the question also arises as to whether incorporating the Code’s earthworks provisions relating to electric line support

structures is warranted.

- 10.2 The Code requires the prior written consent of the pole or tower owner for any excavation or other interference with the land exceeding defined parameters. The revised provisions (i.e. those recommended by Transpower at the hearing) propose that such works are a restricted discretionary activity in both Buffer Areas A and B.
- 10.3 While reciting the Code standards in a rule in the Plan might be perceived as being helpful, that is a slippery slope for all manner of other regulations and codes for which the same could similarly be said. Again, there would appear to be unnecessary duplication in the proposed rule provisions. If the owner declines to grant consent, any consent that might be granted by Council is nugatory (and *vice versa*). It cannot be given effect under the Code. Similarly, if the owner grants consent, an application is irrelevant unless required for other reasons by the relevant zone provisions.
- 10.4 I conclude that the most efficient and effective means of providing for the health and safety of people, the national grid, and economic activity with respect to earthworks is to adopt an indicative buffer (and an associated statement) within which it is clearly noted that the Code applies. The remedy for the owner, after all, is provided for under the Electricity (Safety) Regulations 2010 as cited above. No obvious justification for Council's intervention was provided. The proposition that such might be efficient for the facility owner is not a sufficient section 32 justification.
- 10.5 In passing I also note that should the standards in the Code be amended at some future time and Council have adopted those standards into its district plan, then it would be put to the cost and inconvenience of having to promote a plan change or variation to bring the plan into line with any such amendment. The option of adopting the Code by reference under Part 3 of Schedule 1 to the Act is not available in these proceedings and, in any event, would not circumvent the need for a change or variation if amended.

11. SENSITIVE ACTIVITIES

- 11.1 If the Code is simply cross-referenced in the planning maps, this potentially leaves the matter of reverse sensitivity effects and sensitive activities implicit. Transpower has submitted that this aspect of Policy 10 is significant and should be addressed.
- 11.2 I accept that the matter of reverse sensitivity is a significant issue for, among others, network utility providers. However, from the background material provided to the hearing (particularly regarding the provisions of the soon-to-be-operative plan) and the responses given, that concern seems misplaced in this context. Reverse sensitivity effects are a matter routinely considered in planning decisions and the rural zone provisions (the zone most obviously affected under PC5) already require applications for consent for the sort of sensitive activities specifically identified in the NPSET (and the additional activity identified by Transpower). No evidence was presented that indicated that the imminent plan would permit *as of right* activities of the sort (and scale presumably) raised as a concern (e.g. accommodation facilities and places of assembly) without any other control or rule triggering the requirement for a resource consent. It is therefore reasonable to expect that, in addition to any structures requiring the prior approval of the line or support structure owner, the ability to exercise a right of submission will occur through the normal consent application process. I find it unlikely that the scale of such applications in the rural zone, in particular, would be such as to justify imposing a higher general burden on landowners (through a rule) than might be the case on Transpower without such a

rule.

- 11.3 Furthermore, the inclusion of the buffers on the planning maps will clearly signal to all concerned that there is a significant matter to be taken into account, and that Transpower is a potentially affected party in any proceedings.
- 11.4 I consider this to adequately respond to the Policy 10 imperative in the context of the District and to satisfy the section 32 requirement(s), and therefore see no additional need to include specific provisions on the matter.

12.DECISIONS

My Decisions are as follows:

- 12.1 The relevant planning maps be amended to show transmission corridor buffers at 32m and 16m from the centrelines of the 220kV and 110kV lines respectively, and those maps be annotated to advise that compliance with NZECP 34:2001 is required in this area before any structure (including buildings), subdivision or earthworks is commenced.
- 12.2 An advice note cross-referencing NZECP 34:2001 be included in subsection 10.6.4 Other Regulations and Codes.
- 12.3 All other provisions of PC5 to be deleted.
- 12.5 I recommend to Council that NZECP 34:2001 be specifically referenced on the relevant property Land Information Memoranda and Project Information Memoranda for the purpose of alerting parties to the need to take this into account (for example in terms of any building consent under the Building Act 1991).
- 12.6 The following submissions are therefore:

Accepted

Submission Number	Submitter Name
64	Morrison, D G
66	Vision Family Trust
FS 83	NZ Horticulture, NZKGI and NZAGA

Accepted in Part

Submission Number	Submitter Name
20	Te Matai Motorsport
25	Wills, M J
32	Treloar, J M
36	Cotter, N A

45 & FS 75	Federated Farmers of NZ (Inc)
47	NZ Horticulture, NZKGI and NZAGA
50	TECT All Terrain Park Manager
51	Bailey, R D
FS 73	TrustPower
FS 74	NZ Transport Agency
FS 79	Surveying Services

Rejected

Submission Number	Submitter Name
23 & FS 70	Transpower
34	TrustPower
48	Toi Te Ora Public Health

12.7 Reasons

The reasons for the Decisions are contained in the above report but are, in summary:

- (a) Regardless of how policies 10 and 11 of the National Policy Statement on Electricity Transmission 2008 may be interpreted, that instrument cannot transfer or supplant the regulatory authority provided by the NZECP 34:2001. Council does not have authority under that code, and therefore unnecessary duplication would be entailed if consents are required for purposes that effectively go no further than requiring compliance with that code.
- (b) The evidence in support of the need for the detailed rules proposed under PC5 was not sufficient to justify the potential disbenefit created for landowners – who, in any event, will require approval from the overhead electric line/support structure owner for activities to which the code NZECP 34:2001 applies.
- (c) Sensitive activities and reverse sensitivity are both addressed in the soon-to-become operative proposed District Plan, and are routinely addressed in consent application considerations.
- (d) The proposed rule provisions are not the most appropriate way of achieving the objective, nor would they be particularly efficient or effective.
- (e) An alternative way, being an indicative buffer corridor with appropriate

annotation and cross-referencing, is considered to better satisfy the requirement of section 32 of the Resource Management Act 1991 and to fall within the scope of relief generally sought.

- (f) For additional information, inclusion of a reference to the code NZECP 34:2001 should be placed on Land and Project Information Memoranda. This will ensure that notice is taken for other than Resource Management Act 1991 considerations.

A handwritten signature in black ink, appearing to read 'David Hill'. The signature is written in a cursive style with a large, sweeping initial 'D'.

David Hill
Independent Hearing Commissioner

Date: 13th July 2012