

BEFORE THE ENVIRONMENT COURT

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

AND of an appeal under Clause 14 of the First Schedule to the Act

BETWEEN DORR BELL LIMITED

ENV-2017-AKL-000082

Appellant

AND WESTERN BAY OF PLENTY DISTRICT COUNCIL

Respondent

Environment Judge D A Kirkpatrick sitting alone under s 279 of the Act
IN CHAMBERS at Auckland.

CONSENT ORDER

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

(1) the appeal is allowed subject to the amendments set out in Annexure A and Annexure B to this order.

(2) the appeal is otherwise dismissed.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

- [1] This proceeding concerns an appeal by Dorr Bell (Properties) Limited against part of the decisions by Western Bay of Plenty District Council on Proposed Plan Change 75 to the operative Western Bay of Plenty District Plan, relating to Te Puke Floodable Areas and Area 3 Structure Plan Review.
- [2] Dorr Bell's appeal sought relief which addressed the following concerns:
- (a) An integrated approach stormwater management;
 - (b) A more optimal location for road "RD11" and watermain "WS4" to better promote efficient subdivision and development;
 - (c) Removal of stormwater ponds from the Structure Plan to enable development flexibility;
 - (d) Retention of proposed reserve "TP3-3" until removal is justified through the provision of further information;
 - (e) Retention of Medium Density Zoning on its land and deletion of proposed maximum average lot size, to better enable a range of residential housing types and lot sizes.
- [3] The parties have reached an agreement that will resolve the appeal in its entirety. The agreement responds to the relief sought in the appeal as follows:
- (a) All stormwater ponds on the appellant's and s 274 parties' land have been removed from the Decisions Version of the Structure Plan, although stormwater must still be designed to provide for attenuation to pre-development levels in accordance with operative Rule 12.4.10.4. However, removing identification of ponds in the structure plan should provide for greater development flexibility by enabling ponds to be located in the most appropriate position on the site, whilst avoiding a change to a more restrictive activity status which would have arisen from a departure from the location identified in the structure plan;



- (b) The location of Road "RD1-1" as shown on the Decisions Version of the Structure Plan has been adjusted slightly relative to property boundaries to correct a drafting error. Council has clarified that water-main WS-4 is shown within the road reserve (as sought by the appellant) and no adjustment to the structure plan is required to reflect this;
- (c) Following discussions and the exchange of further information the parties are agreed that the decision to remove reserve "TP3-3" from the Structure Plan should be upheld;
- (d) Council has agreed to reinstate Medium Density Zoning on the appellant's land (proposed to be removed from the Structure Plan under the Decisions Version) which is sought to be retained by the appellant based on its view that such zoning will provide it with greater development flexibility. On that basis the proposed maximum average lot size rule opposed by the appellant, which is applicable to the originally proposed Residential Zoning, will not apply to the appellant's land.

[4] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 4 October 2017.

[5] Stuart McKinstry and The Orchard Community Trust have given notice of an intention to become parties to the appeal under s 274 of the Act, and have signed the memorandum of the parties seeking this order.

[6] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 290. The Court understands for present purposes that:

6.1 All parties to the proceedings have executed the Memorandum requesting this order; and

6.2 All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, and in particular Part 2.



Order

[7] Therefore the Court orders, by consent, that:

- (a) The Appeal is granted, to the extent that the Decisions Version (April 2017) of the following planning map and structure plan is replaced with the amended planning map and structure plan annexed to this consent order:
 - (i) *Planning Map U129 – Te Puke* (Annexure A); and
 - (ii) *Te Puke Area 3 Structure Plan – Infrastructure*” (Annexure B).
- (b) The appeal is otherwise dismissed.
- (c) There is no order as to costs.

DATED at Auckland this 9th day of October 2017.

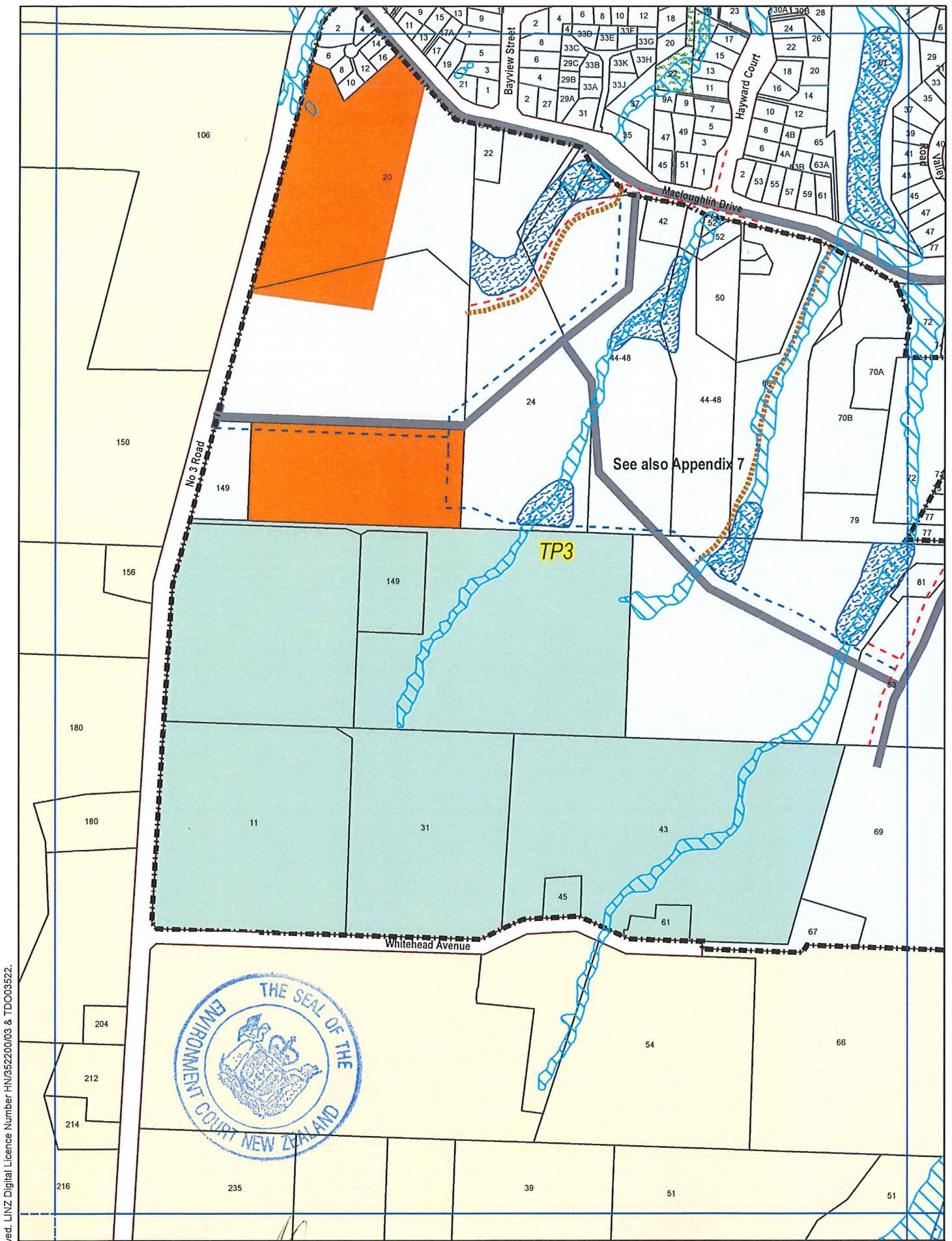


D A Kirkpatrick
Environment Judge



Annexure A





See also Appendix 7

TP3



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U129

Te Puke



Western Bay of Plenty District Council



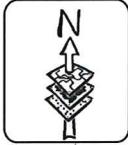
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Revision Date: PC 75
20 September 2017

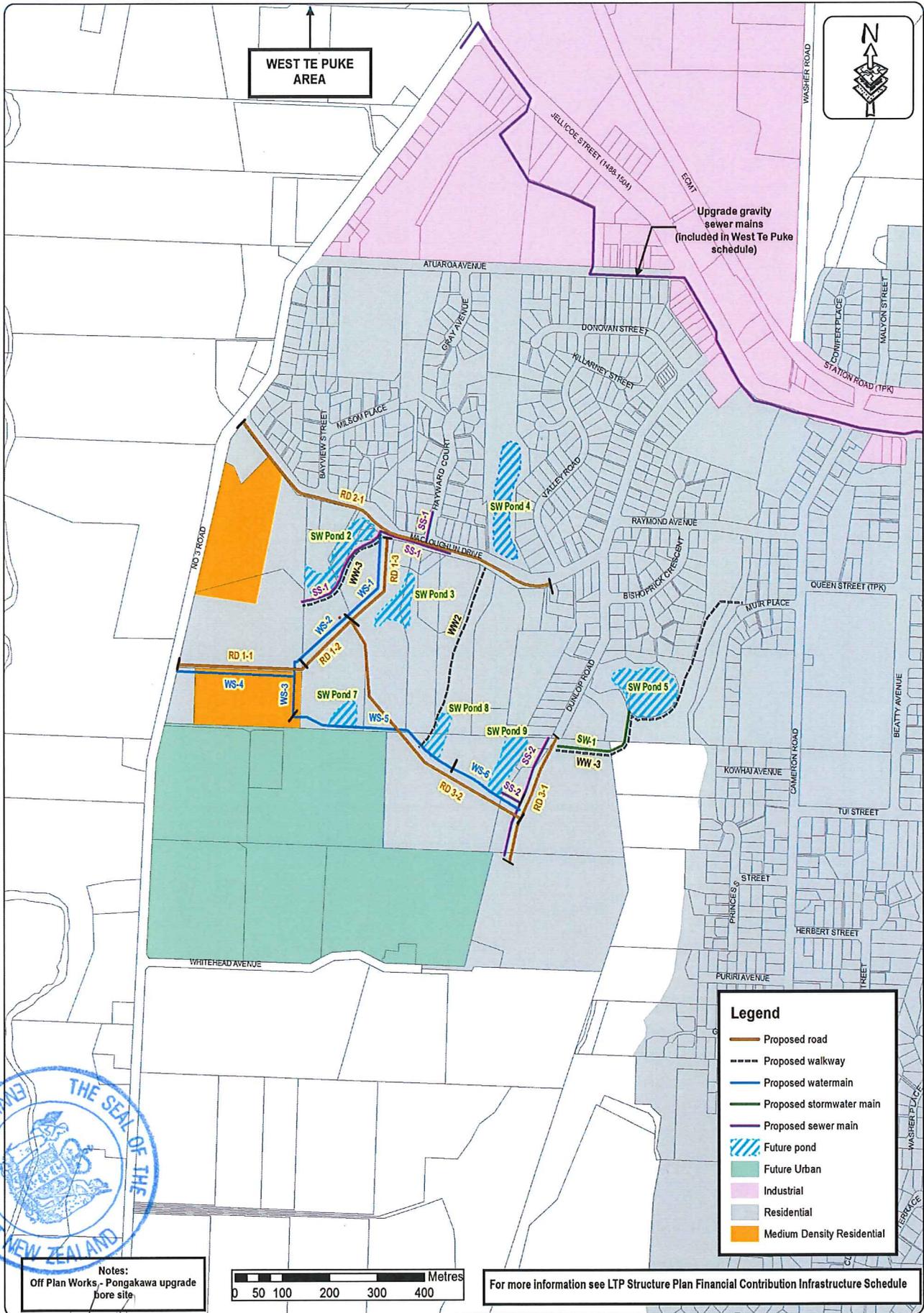
Annexure B



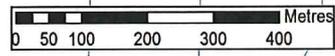
WEST TE PUKE AREA



Upgrade gravity sewer mains (included in West Te Puke schedule)



Notes:
Off Plan Works - Pongakawa upgrade bore site



For more information see LTP Structure Plan Financial Contribution Infrastructure Schedule

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