

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

AND

IN THE MATTER of an appeal under Clause 14 of the
First Schedule to the Act in relation to
Proposed Plan Changes 5, 23 and 25 to
the Western Bay of Plenty District Plan,
First Review

BETWEEN **TRANSPOWER NEW ZEALAND
LIMITED**
ENV-2012-AKL-000151

Appellant

AND **WESTERN BAY OF PLENTY
DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

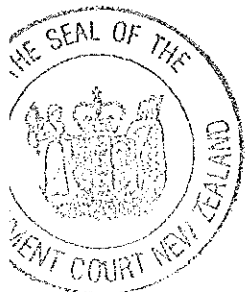
Environment Judge J A Smith sitting alone under section 279 of the Act

IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction

1. This appeal relates to the decisions of the Western Bay of Plenty District Council on proposed Plan Changes 5, 23 and 25 to the Western Bay of Plenty District Plan First Review. The parties have now reached an agreement that will resolve this appeal in its entirety.
2. In making this order the Court has read and considered the Appeal and the Memorandum of the parties dated 2 September 2013.
3. The following parties have given notices of intention to become parties to these proceedings pursuant to s.274 of the Act and have signed the memorandum setting out the relief sought:



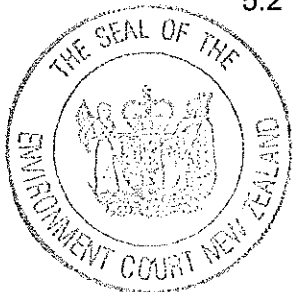
- (a) Western Bay of Plenty District Council as part owner and operator of TECT All Terrain Park;
- (b) AP and MH Parkes;
- (c) Nathan Anthony Cotter;
- (d) Evelyn and Michael Wills;
- (e) C and CA Verwey;
- (f) Mark Kenneth Williams;
- (g) John Montgomery;
- (h) Barry John Roderick and Lyn Govenlock Partnership;
- (i) Paul and Judy Treloar;
- (j) The Trustees of the Vision Family Trust;
- (k) Bailey Farms Limited;
- (l) NZ Kiwifruit Growers / Horticulture New Zealand;
- (m) Federated Farmers of New Zealand; and
- (n) Bay of Plenty Regional Council.

4. Verdon Kean also gave notice of an interest in this appeal under section 274 of the Act, but has since withdrawn his interest.

5. 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.297. The Court understands for present purposes that:

5.1 All parties to the proceeding have executed the Memorandum requesting this order; and

5.2 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 Resource Management Act, including in particular Part 2.



Order

6. Therefore the Court orders, by consent, that the Appeal by Transpower New Zealand Limited is allowed to the extent that the amendments set out in **Annexure A** to this order are made to the Operative Western Bay of Plenty District Plan First Review.
7. The Appeal is otherwise dismissed.
8. There is no order for costs.

DATED at Auckland this

13th

day of

September

2013



J A Smith
Environment Judge



Annexure A

8.1 Maps and Legend

That the Legend, and Planning Maps annexed to this order as **Annexure B** entitled G08, H08, I07, I08, J07, K07, K08, H09, H10, I10, I11, J11, K11, U128 and U133, showing the National Grid Electricity Transmission Line, the National Grid Electricity Transmission Buffer - Kaitemako Line, and the National Grid Electricity Transmission Buffer – Te Matai Line, are substituted for the Operative Legend and Planning Maps having the corresponding title.

8.2 Definitions

That the following new definition be added:

National Grid Electricity Transmission Buffer means an area of 12m from the outer edge of the support structures, and 12m of the centreline of the Te Matai Transmission Line (i.e. the HAI-TMI A and OKE-TMI A) or 12 m of the centreline of the Kaitemako Transmission Line (i.e. the HAI-TRK A) shown on the Planning Maps while the Transmission Lines are owned or operated by Transpower New Zealand Ltd.

8.3 Rural Zone

(a) That the following new paragraph (e) be added to Rule **18.3.5 Non-Complying Activities**

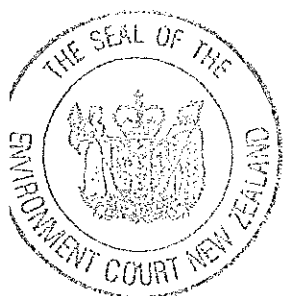
- (e) Within the National Grid Electricity Transmission Buffer
- *Dwellings, minor dwellings, accommodation facilities, education facilities, hospitals, rest homes, and retirement villages.*
 - Principal buildings for *intensive farming activities* and commercial greenhouses.
 - Buildings for restricted discretionary or discretionary activities in 18.3.3 or 18.3.4.
 - *Buildings/structures* and *earthworks* not complying with the performance standards in 18.4.1(o).
 - Subdivision not complying with the performance standards in 18.4.2(a)(iv).

(b) That the following new paragraph (o) be added to Rule **18.4.1 General Activity Performance Standards** and existing Rules 18.4.1(o) to 18.4.1(aa) be consequentially renumbered 18.4.1(p) to 18.4.1(ab) accordingly

18.4.1(o) National Grid Electricity Transmission Buffers

Note:

- Non-compliance with (i) to (iii) below shall require a resource consent for a Non-Complying Activity.



- For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to publicly notify any application.
- All activities (whether listed below or not) located under or adjacent to transmission lines must comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances. Compliance with the District Plan rules does not ensure compliance with the Code.

(i) Activities around transmission structures (towers or poles)

Buildings/structures (including additions and alterations), *artificial crop protection structures* and horticultural crop support structures shall not be located within 12m of the outer edge of a transmission structure associated with a transmission line shown on the Planning Maps;

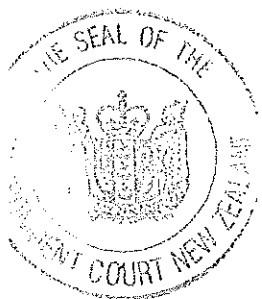
Except that:

- (a) *Artificial crop protection* and horticultural crop support structures can be located within 8m–12m of the outer edge of a single pole (not tower) provided it:
- is no more than 2.5m high; and
 - is removable or temporary, to allow a clear working space 12m from the pole when necessary for maintenance purposes; and
 - is located a sufficient distance from the pole to provide for unimpeded access for maintenance equipment, including a crane.
- (b) *Artificial crop protection* and horticultural crop support structures can be closer than 8m from a pole or 12m from a tower where Transpower New Zealand Limited gives its written approval in accordance with clause 2.4.1 of NZECP34:2001.
- (c) Fences can be located within 5m–12m from the outer edge of a support structure provided they comply with NZECP34:2001

(ii) Activities under conductors (wires)

- (a) Within the *National Grid Electricity Transmission Buffer* the following (including any additions or alterations) shall not be located:
- *Dwellings,*
 - *Minor dwellings,*
 - *Accommodation facilities,*
 - *Education facilities,*
 - Milking shed buildings (excluding the surrounding platform and any stockyards).
- (b) Within the *National Grid Electricity Transmission Buffer* the following shall be no closer than 10m in a vertical direction from the conductor associated with a transmission line shown on the Planning Maps unless they otherwise comply with NZECP34 2001:
- *Buildings/structures* associated with horticultural and *farming* activities,
 - *Artificial crop protection* and horticultural crop support structures

(iii) Earthworks and Quarrying



(a) Earthworks and Quarrying Around Poles

Earthworks and quarrying shall not be:

- (i) deeper than 300mm within 2.2m of a transmission pole support structure or stay wire; or
- (ii) deeper than 750mm between 2.2m - 5m from a transmission pole support structure or stay wire.

Except that:

Vertical holes not exceeding 500mm diameter beyond 1.5m from the outer edge of a pole support structure or stay wire are exempt from (i) and (ii) above.

(b) Earthworks and Quarrying Around Towers

Earthworks and quarrying shall not be:

- (i) deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure; or
- (ii) deeper than 3m between 6m - 12m from the outer visible edge of a transmission tower support structure.

(c) Earthworks and Quarrying within the National Grid Electricity Transmission Buffer

Earthworks and quarrying shall not:

- (i) create an unstable batter that will affect a transmission support structure; and/or
- (ii) result in a reduction in the ground to conductor clearance distances as required by NZECP34:2001.

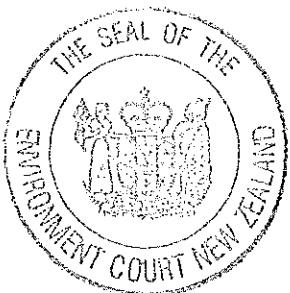
Provided that:

- *Earthworks* undertaken by a Network Utility operator in accordance with NZECP34; or
 - *Earthworks* undertaken as part of normal agricultural cultivation or the repair, sealing or resealing of a road (including farm track), footpath or driveway
- are exempt from (a) and (b) above.

(c) That the following new paragraph (iv) be add to **Rule 18.4.2(a) Subdivision Activity Performance Standards - General**

(iv) Conflict with *National Grid Electricity Transmission Buffer*

Lots that have a *National Grid Electricity Transmission Buffer* located on them shall have an identified house site and an additional separate building site (in terms of the requirements of 12.3.7(e)). Such sites shall not be located within the *National Grid Electricity Transmission Buffer*. Furthermore if such sites are located between this buffer and a distance of 37m from the centreline of the Kaitemako Transmission Line or 16m from the centreline of the Te Matai Transmission Line, Transpower shall be considered an affected party to ensure compliance with NZECP34.



See also 12.3.8(p) Subdivision Information Requirements - Application Report

- Non-compliance with the above shall require a resource consent for a Non-Complying Activity.
 - For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to publicly notify any application.
 - All activities (whether listed above or not) located under or adjacent to transmission lines must comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances. Compliance with the District Plan rules does not ensure compliance with the Code
- (d) That the following new paragraph (j) be added to **Rule 18.5.8 Discretionary and Non-Complying Activity Criteria-General:**

- (j) In relation to activities within the *National Grid Electricity Transmission Buffers:*
- the safety of the proposed activity (with reference to compliance with NZECP34 2001), and
 - the effects on the National Grid, including potential reverse sensitivity effects, and whether the operation and maintenance of the transmission lines is compromised.

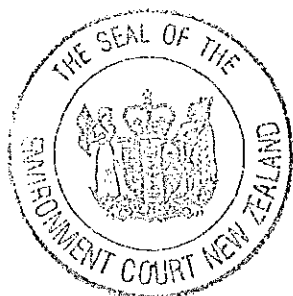
For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to notify any application.

9. Lifestyle Zone

- (a) That the following new paragraph (e) be add to **Rule 17.3.5 Non-Complying Activities**

- (e) Within the *National Grid Electricity Transmission Buffer*
- *Dwellings, minor dwellings, accommodation facilities, education facilities, hospitals, rest homes and retirement villages*
 - Principal buildings for *intensive farming activities*
 - *Buildings* for restricted discretionary or discretionary activities in 17.3.4
 - *Buildings/structures* and *earthworks* not complying with the performance standards in 17.4.1(i)
 - Subdivision not complying with the performance standards in 17.4.2(a)

- (b) That the following new paragraph (i) be added to **Rule 17.4.1 General Activity Performance Standards** and existing Rules 17.4.1(i) to



17.4.1(u) be consequentially renumbered 17.4.1(j) to 17.4.1(v) accordingly:

17.4.1(i) National Grid Electricity Transmission Buffers

Note:

- Non-compliance with (i) to (iii) below shall require a resource consent for a Non-Complying Activity.
- For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to publicly notify any application.
- All activities (whether listed below or not) located under or adjacent to transmission lines must comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances. Compliance with the District Plan rules does not ensure compliance with the Code.

(i) Activities around transmission structures (towers or poles)

Buildings/structures (including additions and alterations) shall not be located within 12m of the outer edge of a transmission structure associated with a transmission line shown on the Planning Maps.

Except that:

Fences can be located within 5m–12m from the outer edge of a support structure provided they comply with NZECP34:2001.

(ii) Activities under conductors (wires)

Buildings/structures shall not be located within the *National Grid Electricity Transmission Buffer*.

(iii) Earthworks and Quarrying

(a) Earthworks and Quarrying Around Poles

Earthworks and *quarrying* shall not be:

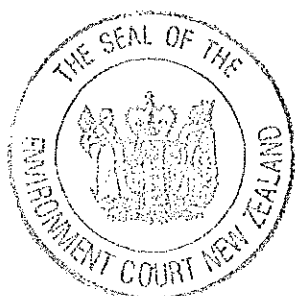
- (i) deeper than 300mm within 2.2m of a transmission pole support structure or stay wire; or
- (ii) deeper than 750mm between 2.2m - 5m from a transmission pole support structure or stay wire.

Except that:

Vertical holes not exceeding 500mm diameter beyond 1.5m from the outer edge of a pole support structure or stay wire are exempt from (i) and (ii) above.

(b) Earthworks and Quarrying Around Towers

Earthworks and *quarrying* shall not be:



- (i) deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure; or
- (ii) deeper than 3 metres between 6m - 12m from the outer visible edge of a transmission tower support structure.

(c) Earthworks and Quarrying within the National Grid Electricity Transmission Buffer

Earthworks and *quarrying* shall not:

- (i) create an unstable batter that will affect a transmission support structure; and/or
- (ii) result in a reduction in the ground to conductor clearance distances as required by NZECP34:2001.

Provided that:

- *Earthworks* undertaken as part of a network utility in accordance with NZECP34
- *Earthworks* undertaken as part of normal agricultural cultivation or the repair, sealing or resealing of an existing surface of any road (including a farm track), footpath or driveway

are exempt from (a) and (b) above.

(c) That the following new paragraph (iv) be added to **Rule 17.4.2(a) Subdivision Activity Performance Standards – General**

(iv) Conflict with *National Grid Electricity Transmission Buffer*

Lots that have a *National Grid Electricity Transmission Buffer* located on them shall have an identified house site and an additional separate building site (in terms of the requirements of 12.3.7(e)). Such sites shall not be located within the *National Grid Electricity Transmission Buffer*. Furthermore if such sites are located between this buffer and a distance of 16m from the centreline of the Te Matai Transmission Line, Transpower shall be considered an affected party to ensure compliance with NZECP34.

See also 12.3.8(p) Subdivision Information Requirements - Application Report

- Non-compliance with the above shall require a resource consent for a Non-Complying Activity.
- For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to publicly notify any application.
- All activities (whether listed above or not) located under or adjacent to transmission lines must comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances.



Compliance with the District Plan rules does not ensure compliance with the Code.

(d) That the following new paragraph (h) be added to **Rule 17.6.3 Discretionary and Non-Complying Activity Criteria-General**

- (h) In relation to activities within the *National Grid Electricity Transmission Buffers*,
- the safety of the proposed activity (with reference to compliance with NZECP34 2001),and
 - the effects on the National Grid, including potential reverse sensitivity effects, and whether the operation, maintenance and development of the transmission lines is compromised.

For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to notify any application.

9.2 All Terrain Park Zone

(a) That the following new paragraph (b) be added to **Rule 23.3.5 Non-Complying activities**

(b) Within the *National Grid Electricity Transmission Buffer*

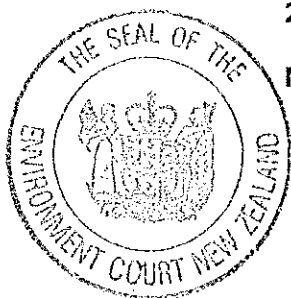
- *Dwellings, minor dwellings, accommodation facilities, education facilities, hospitals, rest homes and retirement villages*
- Principal buildings for *intensive farming activities*
- *Buildings* for discretionary activities in 23.3.4
- *Earthworks* not complying with the performance standards in 23.4.1(f)
- Subdivision not complying with the performance standards in 23.4.2(a)(v)

- (b) That the following new paragraph (f) be added to **Rule 23.4.1 General Activity Performance Standards** and existing Rules 23.4.1(f) to 23.4.1(r) be consequentially renumbered as Rules 23.4.1(g) to 23.4.1(s) accordingly:

23.4.1(f) National Grid Electricity Transmission Buffers

Note:

- Non-compliance with (i) and (ii) below shall require a resource consent for a Non-Complying Activity.



- For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to notify any application.
 - All activities (whether listed below or not) located under or adjacent to transmission lines must comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances. Compliance with the District Plan rules does not ensure compliance with the Code.
- (i) Activities around transmission structures (towers or poles)

Fences can be located within 5m – 12m from the outer edge of a support structure provided they comply with NZECP34:2001.

(ii) Earthworks and Quarrying

(a) Earthworks and Quarrying Around Poles

Earthworks and quarrying shall not be:

- (i) deeper than 300mm within 2.2m of a transmission pole support structure or stay wire; or
- (ii) deeper than 750mm between 2.2m - 5m from a transmission pole support structure or stay wire.

Except that:

Vertical holes not exceeding 500mm diameter beyond 1.5m from the outer edge of a pole support structure or stay wire are exempt from (i) and (ii) above.

(b) Earthworks and Quarrying Around Towers

Earthworks and quarrying shall not be:

- (i) deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure; or
- (ii) deeper than 3m between 6m - 12m from the outer visible edge of a transmission tower support structure.

(c) Earthworks and Quarrying within the *National Grid Electricity Transmission Buffer*

Earthworks and quarrying shall not:

- (i) create an unstable batter that will affect a transmission support structure; and/or
- (ii) result in a reduction in the ground to conductor clearance distances as required by NZECP34:2001.

Provided that:

Earthworks undertaken as part of the maintenance or repair of tracks or trails associated with activities within the Zone, the repair, sealing or resealing of a road (including farm tracks) footpath or driveway, or as part of normal rural cultivation practices are exempt from (a) and (b) above.



- (c) That the following new paragraph (v) be added to **Rule 23.4.2(a) Subdivision and Development:**

- (v) Lots that have a *National Grid Electricity Transmission Buffer* located on them shall have an identified house site and an additional separate building site (in terms of the requirements of 12.3.7(e)). Such sites shall not be located within the *National Grid Electricity Transmission Buffer*. Furthermore if such sites are located between this buffer and a distance of 37m from the centreline of the Kaitemako Transmission Line, Transpower shall be considered an affected party to ensure compliance with NZECP34.

See also 12.3.8(p) Subdivision Information Requirements - Application Report

- Non-compliance with the above shall require a resource consent for a Non-Complying Activity.
- For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to notify any application.
- All activities (whether listed above or not) located under or adjacent to transmission lines must comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances. Compliance with the District Plan rules does not ensure compliance with the Code.

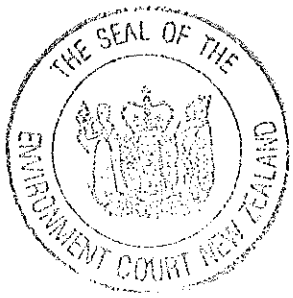
- (d) That the following new paragraph (h) be added to **Rule 23.5.4 Discretionary and Non-Complying Activities**

- (h) In relation to activities within the *National Grid Electricity Transmission Buffers*
- the safety of the proposed activity (with reference to compliance with NZECP34 2001), and
 - the effects on the National Grid, including potential reverse sensitivity effects, and whether the operation and maintenance of the transmission lines is compromised.

For the purpose of the notification provisions of the Resource Management Act, Transpower shall be an affected person, and any application for consent need not be publicly notified. Council will have discretion over whether to notify any application.



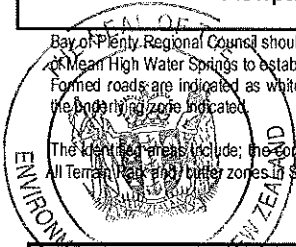
Annexure B



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
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

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
Zones		All Terrain Park (ATP)
		Commercial
		Commercial Transition
		Horticultural Post Harvest
		Industrial
		Residential
		Medium Density Residential
		Rural Residential
		Rural
		Lifestyle
	Future Urban	
Zone Overlays		District Boundary
		National Grid Electricity Transmission Line
		National Grid Electricity Transmission Buffer - Kaitemako Line
		National Grid Electricity Transmission Buffer - Te Matai Line
		Identified Area (2)
		Firing Range Exclusion Zone
		Quarry Effects Management Area
		TNL 100m Building Line Setback
	Town Centre Boundary	

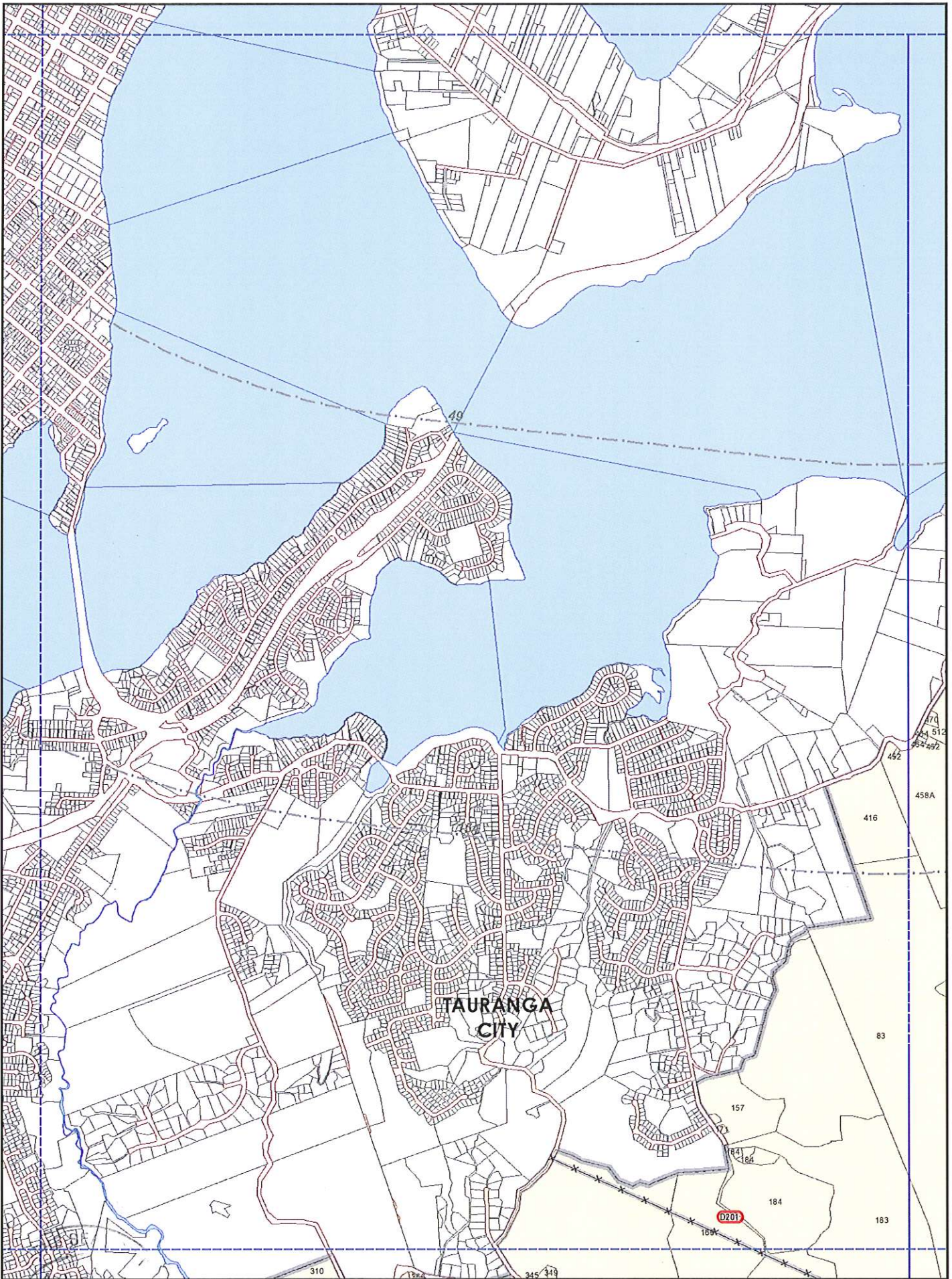
Bay of Plenty Regional Council should be consulted before undertaking any activity in the vicinity of Mean High Water Springs to establish the actual line of Mean High Water Springs.
 Formed roads are indicated as white shading on the road land parcels. Unformed roads have the underlying zone indicated.
 The kaitiaki areas include: the community service area at Rangiora, the central hub site within the All Terrain Park and buffer zones in Stage 2 Omokoroa and Binnie Road.



Legend

Revision Date: 11 August 2012

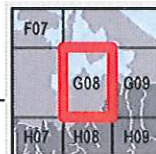




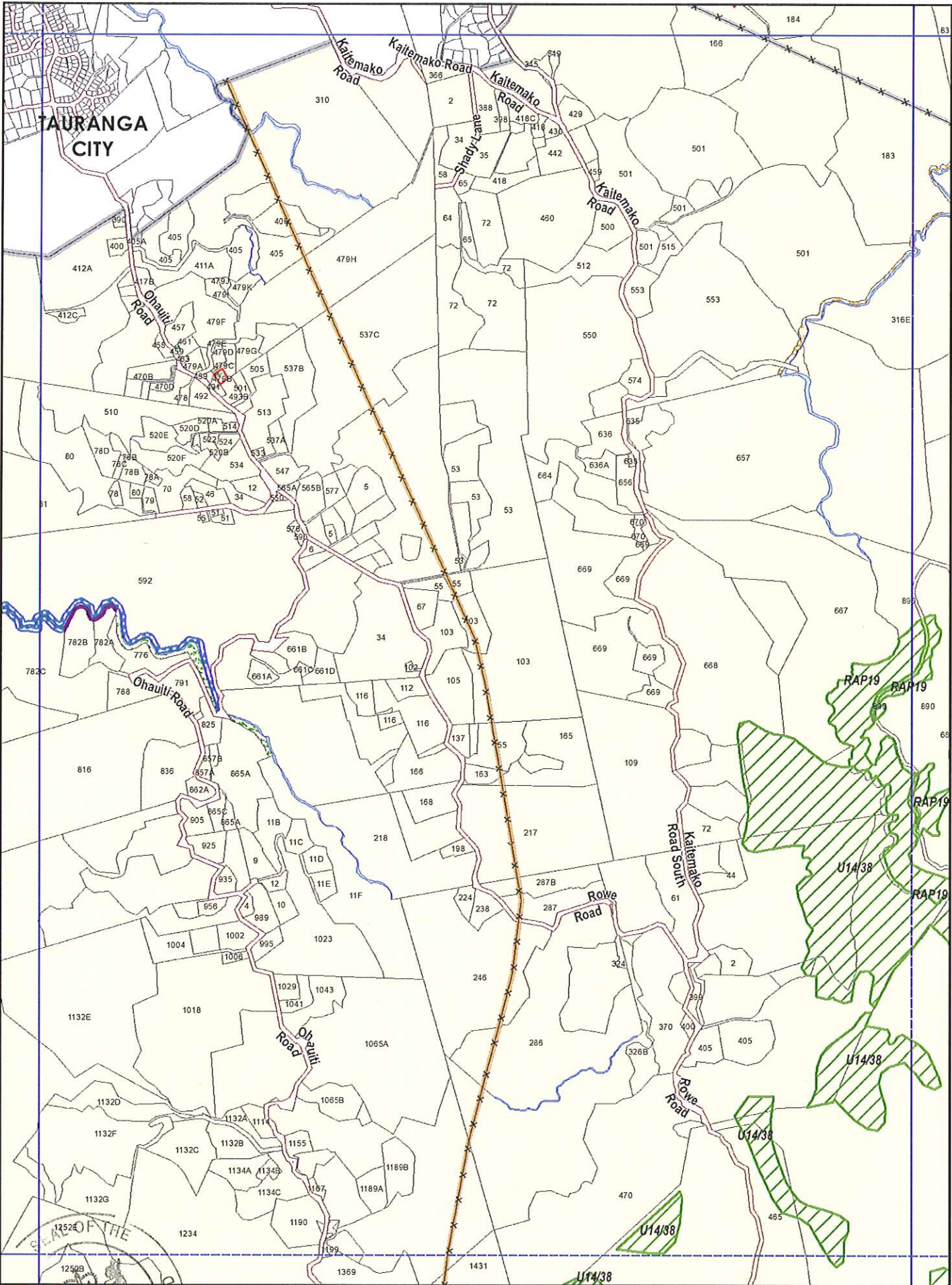
G08 Rural Series



Scale 1:25000 (A4)



Revision Date: 11 August 2012



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H08 Rural Series

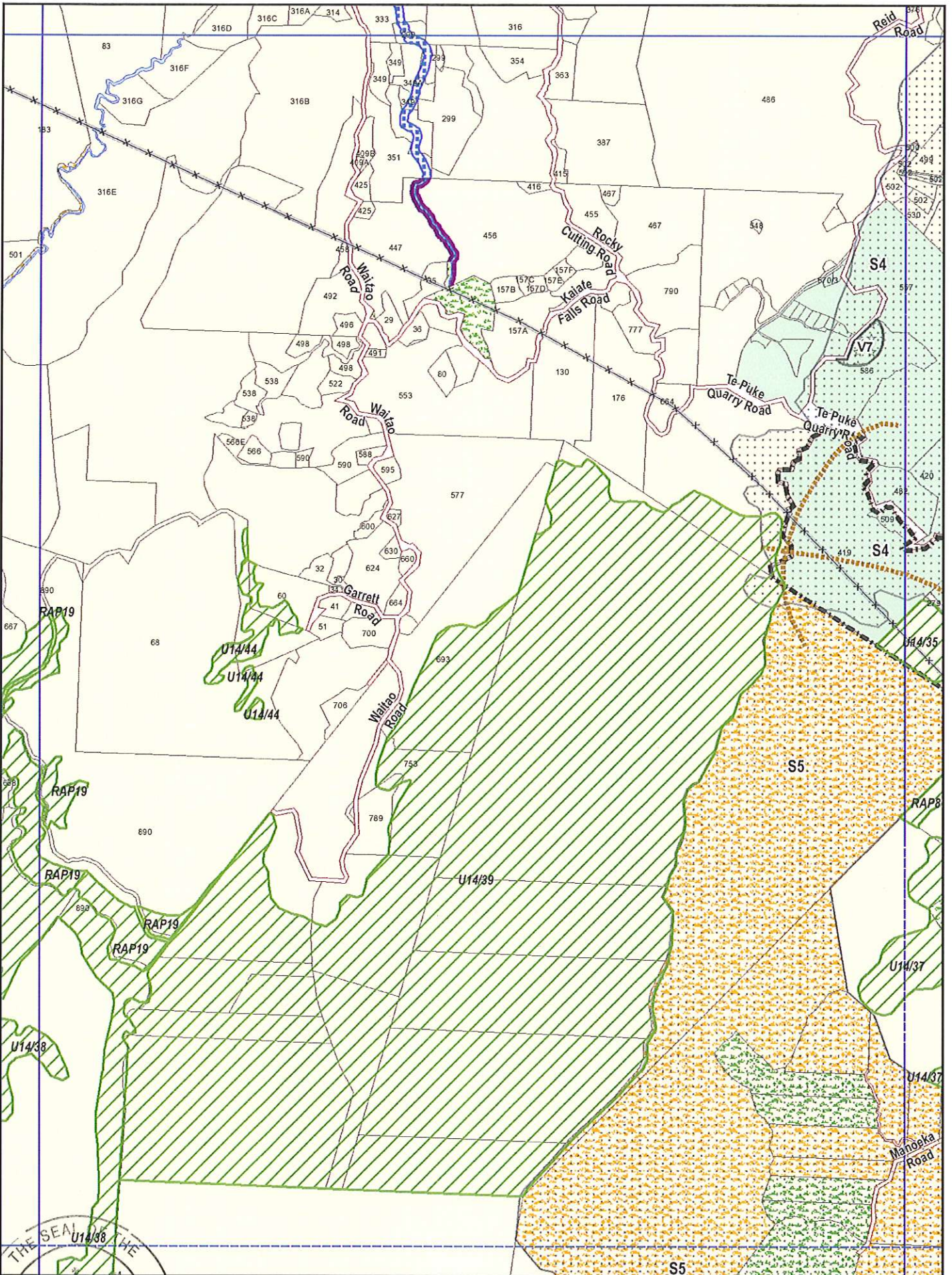


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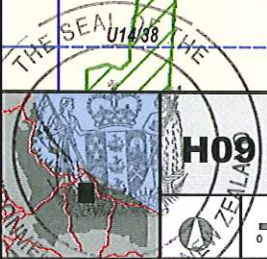
G08	G09
H07	H08
I07	I09



Revision Date: 11 August 2012



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H09 Rural Series

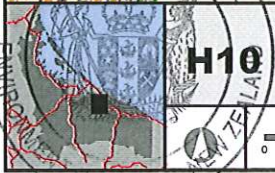
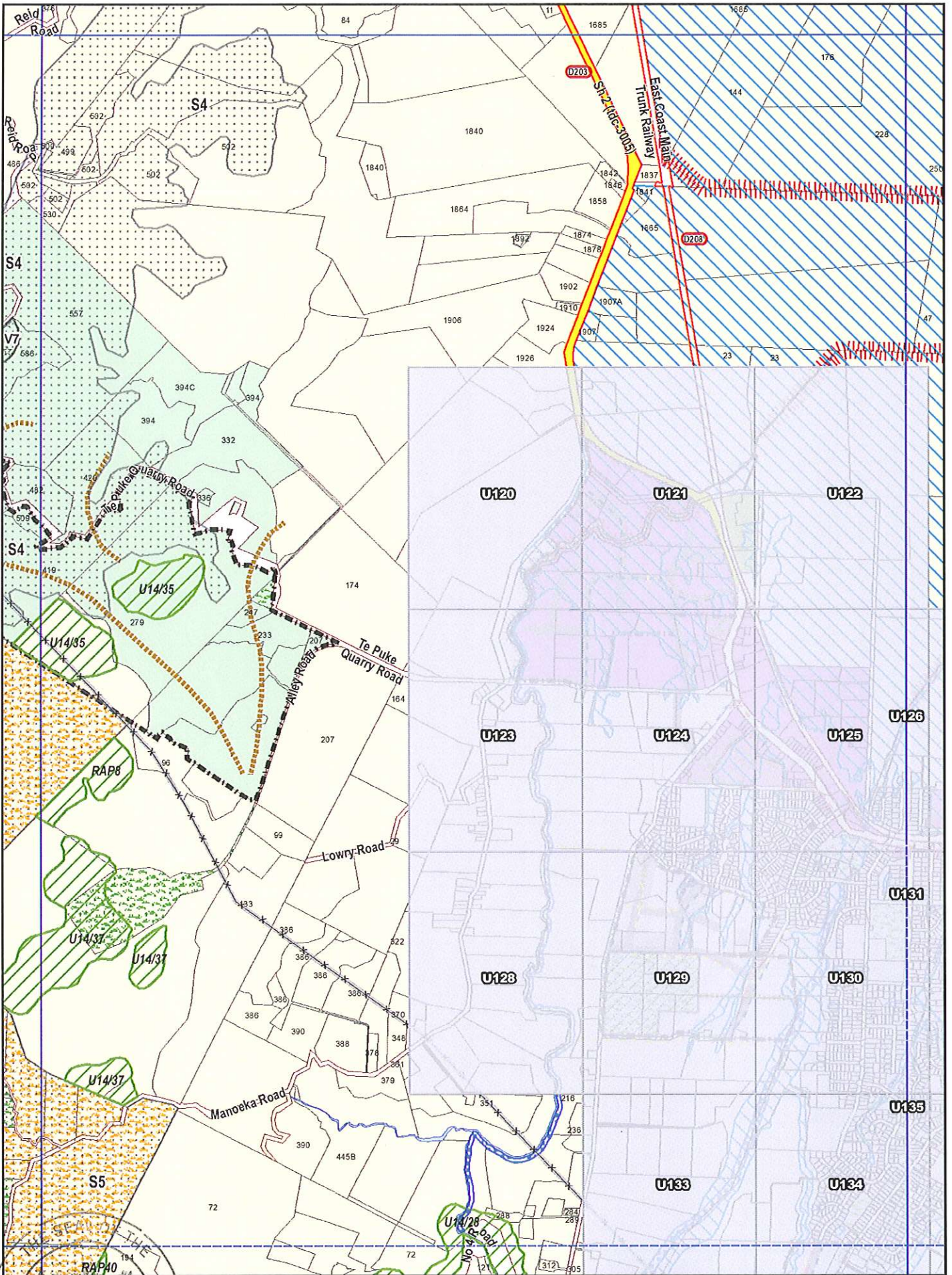


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G08	G09	G10
H08	H09	H10
I08	I09	I10



Revision Date: 11 August 2012



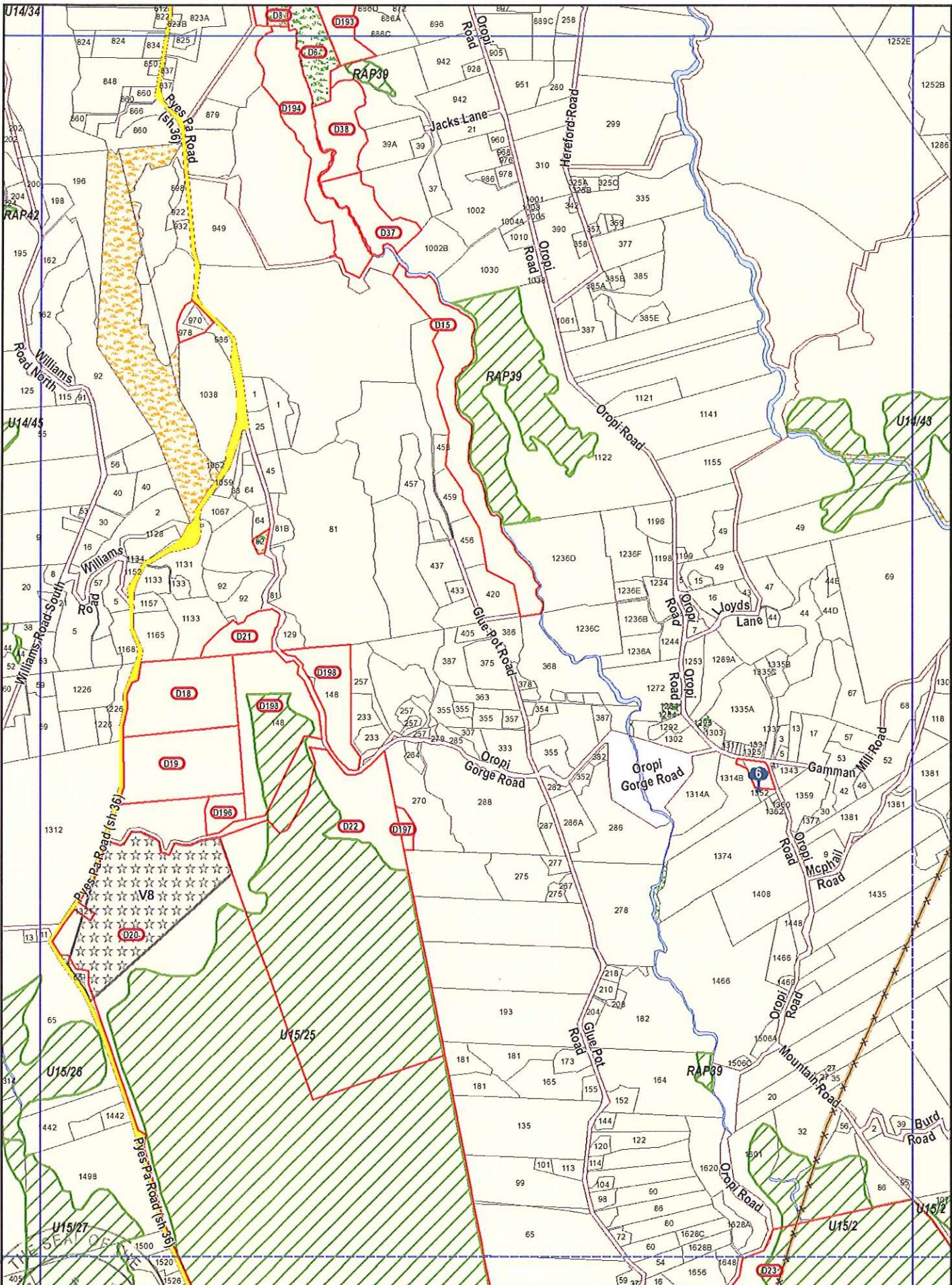
H10 Rural Series

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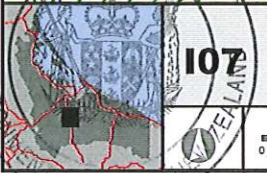
G09	G10	G11
H09	H10	H11
I09	I10	I11



Revision Date: 11 August 2012



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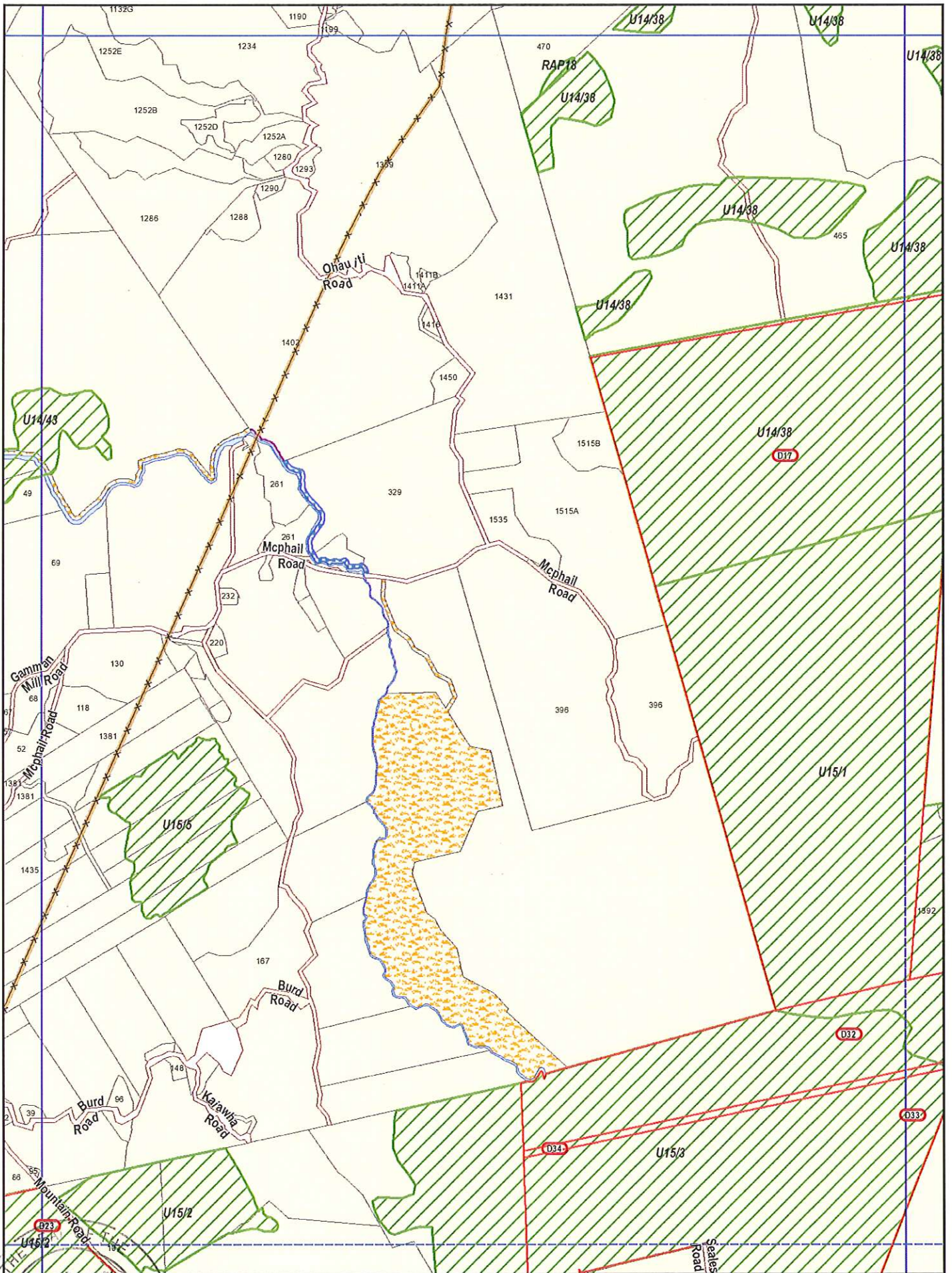
Rural Series

Scale 1:25000 (A4)

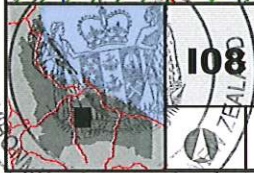
H06	H07	H08
I06	I07	I08
J06	J07	J08

Western Bay of Plenty District Council

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Rural Series



Scale 1:25000 (A4)

H07	H08	H09
J07	J08	J09



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