

RESOURCE MANAGEMENT ACT 1991

HOROWHENUA DISTRICT PLAN - PLAN CHANGE 1

HEARINGS OF SUBMISSIONS

DECISION OF HEARING PANEL

HEARING DATE: 28th MAY 2018

**HEARING PANEL: DEAN CHRYSTAL (Chair)
BERNIE WANDEN
JO MASON**

Contents

1. Introduction	3
2. Procedural Matter	3
3. Officer’s Report.....	3
4. Submitters	4
5. Evaluation	4
6. Decision	9

Appendix A AMENDMENTS TO THE PLAN

Appendix B SCHEDULE OF DECISIONS ON SUBMISSION POINTS

1. Introduction

- 1.1 We were appointed by the Horowhenua District Council to consider submissions on Proposed Plan Change 1 (PPC 1) - Historic Heritage – Update of Schedule 2 to include additional buildings, structures and sites and consequential other amendments to the Operative Horowhenua District Plan.
- 1.2 The hearing into submissions received on PPC 1 was held on the 28th May 2018.
- 1.3 The hearing was closed on the 21st June 2018.

Abbreviations

- 1.4 In preparing this decision we have used the following abbreviations:

Heritage NZ	Heritage New Zealand
Horizons	Horizons Regional Council
Officer's report	Report evaluating the submissions prepared by Ms Caitlin O'Shea for our assistance under s42A(1) of the RMA
District Plan	Horowhenua District Plan
RMA	Resource Management Act
The Act	Resource Management Act

2. Procedural Matter

- 2.1. At the beginning of the hearing we were faced with a procedural matter raised by Ms A Hunt who was a submitter in opposition to PPC 1 representing the Potangotango Foundation.
- 2.2. Ms Hunt presented the Panel with a document which included a Court Charging Document which she said she had lodged with the District Court in Wellington in which Commissioner Mason was named as the defendant in relation to alleged false and misleading evidence she gave in the trial of Mr Phillip Taueki in January 2016. As a consequence Ms Hunt claimed that Commissioner Mason had a conflict of interest in relation to the submission she had lodged on behalf of the Potangotango Foundation. She considered Commissioner Mason should step down from the Hearing Panel.
- 2.3. At this point the Panel took a recess to discuss the matter and were accompanied by the Council's legal advisor Sam Wood. Having considered the matter, and while the Panel did not consider the issues overlapped, it was decided to err on the side of caution and Commissioner Mason stood down from the Panel rather than hold up the proceedings further.
- 2.4. Commissioners Chrystal and Wanden continued with the hearing and the Council confirming that the remaining Panel members had the authority to hear and determine the plan change.
- 2.5. It is noted that subsequent to the hearing being completed the charges brought by Ms Hunt against Commissioner Mason were not accepted for filing by the District Court in a decision dated 15 June 2018.

3. Officer's Report

- 3.1 We were provided with, and had reviewed, the Officer's report prepared by Caitlin O'Shea pursuant to s42A of the Act prior to the hearing commencing.

- 3.2 In her report Ms O’Shea informed us of the background to PPC 1. She said that the changes made to Schedule 2¹ of the District Plan as part of the District Plan Review were considered to be an interim measure until a more comprehensive review of local historic heritage was undertaken. She went on to say that in 2015/16 the Council sought nominations from the community regarding additional buildings, structures or sites for possible inclusion in Schedule 2. The nominations received were subsequently assessed by suitably qualified heritage professionals to determine their eligibility.
- 3.3 Based on the outcome of this assessment, Proposed Plan Change 1 to the District Plan proposes to update Schedule 2 to include additional non-residential buildings, structures and sites along with other consequential amendments.
- 3.4 Ms O’Shea went on to highlight the relevant sections of the Act and the relevant planning documents in her report and in terms of background explained the approach adopted in relation to heritage in the District Plan review.

4. Submitters

Appearances

- 4.1. The following submitters made an appearance at the hearing:
- Ms A Hunt and Mr P Taueki on behalf of the Potangotango Foundation

5. Evaluation

- 5.1. Our evaluation of the plan change and the submissions received has been undertaken in the same order as appears in the Officer’s Report for ease of reference.
- 5.2. Text amendments are shown as **bold/underlined** where added and ~~strikethrough~~ where deleted.

Amendment 1

- 5.3. This sought to amend the Methods for Issue 13.1 & Objective 13.1.1 and involved deleting an existing bullet point and adding new bullet points to clarify the work that still needs to be done to identify additional historic heritage buildings, structures and sites, as well as sites of significance to Maori, wāhi tapu, wāhi tūpuna and archaeological sites, for listing in Schedule 2 – Heritage.
- 5.4. The amendments were supported by Heritage NZ and Horizons. K & S Prouse also supported the amendments, but considered that it was flawed to assume that the list in Schedule 2 of the District Plan was complete and therefore requested the inclusion of an additional bullet point outlining how Council would address future nominations/requests in a timely manner.
- 5.5. Ms O’Shea supported the inclusion of a further bullet point along the lines proposed by K & S Prouse, recommending that a third new bullet point be added to the Methods for Issue 13.1 & Objective 13.1.1 as follows:
- **Council will review and maintain Schedule 2 of the District Plan on a regular basis, making appropriate changes to the Schedule by way of future plan changes based on the advice received from a suitably qualified heritage professional.**

¹ Schedule 2 contains the list of Historic Heritage Buildings, Structures and Sites

- 5.6. We have reviewed the requested amendment and subsequent recommendation and associated wording and consider it to be appropriate. We agree that a method as to how Council will address the future nominations of buildings, structures or sites for inclusion in the District Plan is missing. We therefore adopt the recommendation and reasons as our decision pursuant to Clause 10(2)(a) of Schedule 1 to the RMA and **accept** the submission by K & S Prouse.
- 5.7. The support for the remaining changes proposed as part of Amendment 1 from Heritage NZ and Horizons is noted and **accepted** and we recommend these amendments are adopted.

Amendment 2

- 5.8. This sought minor amendments to the Explanation and Principal Reasons associated with Issue 31.2, Objective 13.2.1 and Policies 13.2.2 to 13.2.8 to provide reference to structures, earthworks and redecoration.
- 5.9. Heritage NZ and K & S Prouse supported the amendments as providing greater specificity and reference to the protection of historic places and their associated settings.
- 5.10. We therefore recommend the amendments be adopted and that the submissions by K & S Prouse and Heritage NZ be **accepted**.

Amendment 3 to 7

- 5.11. Amendment 3 sought to add a further 11 heritage buildings, structures and sites to Schedule 2 - Heritage of the District Plan, while Amendments 4, 5, 6 & 7 sought to amend the planning maps to show the location of these heritage buildings, structures and sites which were proposed for inclusion in Schedule 2.
- 5.12. J Harper supported Amendment 3, but sought that the text be altered so as to include the front part of the Manawatu Herald Building at 6 Main Street, Foxton and that the term 'circa' be removed from Note 2. Horizons supported Amendment 3 while Heritage NZ supported Amendments 3 to 7.
- 5.13. Ms O'Shea supported the request to include the front part of the former Manawatu Herald building and had initially noted that the removal of Note 2 (which relates to the same building) would address the second part of the submitter's request, regarding removal of the word 'circa'. It was subsequently found however that the listing should relate to the front section of the building and that the note as a consequence needed to remain and be added to along with an accompanying aerial photo. A supplementary amendment was provided to the Panel at the hearing and Ms O'Shea indicated that the extent of building shown had been checked by a heritage expert and was considered appropriate for listing.
- 5.14. Ms O'Shea therefore recommended the following amendment:

Map	Ref	Site Name	Location	Description	Legal Description	Heritage New Zealand Category
1, 14, 15, 15A	H64	Former Manawatu Herald Building (partial refer to note 2)	6 Main Street, Foxton	Commercial Building	Part Section 100 Town of Foxton	

Note 2: This listing only applies to the original Manawatu Herald building constructed circa 1879 **and the reconstructed façade (please refer to below aerial photograph).**



Aerial photograph of Former Manawatu Herald Building showing the sections that are included in the listing (in yellow)

- 5.15. We noted that the front part of the Manawatu Herald Building was built to replicate the façade from the 1890s using the ‘shadow’ from the façade that had been retained. We accept the recommendation to now include this part of the building. Mr Harper, the owner of the building, had indicated in his submission that to be effective, protection of the wooden sections of the overall building at 6 Main St should be for both the 1879 section and the added 1892 section of street façade which is built in front of the 1879 section. He said without change to the current wording the 1892 section, which is the heritage noted façade, the street frontage could technically be changed or removed. He also noted the date of the building is precisely, not circa, 1879 as the building was a new build for the Manawatu Herald and printing started there in November 1879.
- 5.16. We accept that the revised note for the building is necessary and that the provision of a highlighted aerial photograph provides certainty and removes any ambiguity that might have previously existed. While we noted Mr Harper’s reference to the word “circa” we do not think it creates any uncertainty and without definitive documented proof of the buildings date of construction the reference remains appropriate.
- 5.17. We therefore adopt the revised recommendation of the reporting officer for the reasons set out above and **accept in part** the submission by J Harper.
- 5.18. The support for Amendment 3-7 from Heritage NZ and Horizons are noted and **accepted** and we recommend that the remaining amendments be adopted.

Miscellaneous and General Submissions

- 5.19. Two submissions raised miscellaneous or general matters as set out below
- 5.20. K & S Prouse requested that non-regulatory or voluntary mechanisms to incentivise the enhancement of heritage be explored, and that Council works with property owners to achieve this. While supporting PPC 1 the submitter noted that property owner concerns over the extent and implications of regulatory measures may be why some heritage properties were not listed. They contended that the Council needed to consider the extent of the regulatory measures imposed and the manner they go about it.

- 5.21. The Potangotango Foundation requested that Council commence the preparation of a plan change to protect sites of significance to tangata whenua in the district. The submitter noted that the plan change did not include sites of significant to tangata whenua such as Lake Horowhenua, particularly when these sites were of far more historical significance than post contact heritage. They also noted that the Council was legally required to take into account the principles of the Treaty of Waitangi, and that the Resource Management Act describes the relationship of Māori to their wāhi tapu and other taonga as a matter of national importance.
- 5.22. In response to the Prouse's submission Ms O'Shea said that the Council currently offered incentives to owners of listed buildings, structures and sites to encourage their ongoing conservation. These included a waiver or reimbursement of processing fees for any resource consents required as a result of the property's listing in the District Plan, along with a dedicated Heritage Fund. She said the Heritage Fund was for projects that conserve or restore the heritage value or character of a property that was recognised under the District Plan for its historical significance. She noted that the incentives package had only recently been introduced by the Council and all relevant property owners had been notified.
- 5.23. In relation to the Potangotango Foundation submission Ms O'Shea said that the proposed amendments include further provision under Methods for Issue 13.1 & Objective 13.1.1 to commence a process to identify sites of significance to Māori, wāhi tapu, wāhi tūpuna and archaeological sites in the district. This, in turn she said, provided a clear signal of Council's intent to undertake this further work, subject to available funding and resources.
- 5.24. At the hearing Ms Hunt discussed the issue of heritage buildings within Foxton. She expressed concern that not all heritage buildings within the town had been acknowledged and that collectively they were a unique part of New Zealand's culture. She went onto say that there were a number of buildings in the main street which should be protected. Ms Hunt acknowledged that compromises maybe acceptable and that some buildings maybe lost to save others.
- 5.25. Ms Hunt and Mr Taueki went on to discuss the lack of recognition of Māori heritage within the District Plan. They described in particular the significance of sites around Lake Horowhenua where a famous massacre had taken place that were not recognised or protected. They contended that the Council had not been proactive and had failed to deal with pre-colonial history.
- 5.26. In response the Council Officers acknowledged that few buildings were listed in the Foxton Town Centre but that the area had a character/heritage overlay in the District Plan which meant that new buildings are a restricted discretionary activity along with external additions and alternations which did not comply with the permitted activity conditions. It was also acknowledged that there as a need to recognise Māori heritage within the District Plan and that this would form part of another phase of plan changes.

Assessment

- 5.27. We acknowledge firstly that PPC 1 only involved buildings which were supported by their owners for listing. To that extent the plan change is limited in scope to those particular buildings and we have no ability within our jurisdiction to extend it to other buildings or sites unless these were specifically identified in submissions. Notwithstanding, we acknowledge the concerns of both submitters on this matter.

- 5.28. In terms of the Prouse submission regarding exploring non-regulatory or voluntary mechanisms to incentivise the enhancement of heritage, we note that the Council has only recently introduced an incentives package, as identified by Ms O'Shea, to owners of listed buildings, structures and sites to help them with ongoing conservation. The package includes a fee waiver and a heritage fund which can be applied for. We considered this is an important step forward, but that it would obviously take time to have effect. We also felt going forward that it would be important for the owners of other buildings and sites that might be considered for listing to be made aware of the incentive package.
- 5.29. Turning specifically to Foxton, we noted that there was presently only one listed building within the Town Centre but that PPC 1 would introduce via listing a number of other buildings and structures within the Town Centre area.
- 5.30. Further, we acknowledge that there is a Town Centre Character/Heritage Overlay currently in the District Plan within the Commercial Zone which requires consent for new buildings and external additions and alterations to existing buildings that do not comply with the permitted activity conditions. While this provides the ability to ensure a degree of character within the town centre is maintain we noted that the total or partial demolition or removal of buildings and structures that were not listed in Schedule 2 - Historic Heritage was a permitted activity.
- 5.31. In this context we noted that it remains open to the Council, building owners and/or the general public to bring forward any further buildings within the Foxton Town Centre that are considered and assessed as worthy of protection in order to avoid the demolition scenario.
- 5.32. Turning to the issue of Māori or precolonial heritage we note that the Methods associated with Issue 1.1 & Objective 1.1.1 in the District Plan state:
- *Identify areas and sites of cultural significance where Iwi have requested their inclusion in the District Plan on the Planning Maps.*
 - *Commence within 12 months of the date of the plan notification a comprehensive district wide cultural landscape survey for the purpose of identifying areas or sites of cultural significance for inclusion in the District Plan. The survey should be undertaken in consultation with Tāngata Whenua and potentially affected landowners. It will be necessary for the Council to discuss with Tāngata Whenua how sites of cultural significance are to be identified on the Planning Maps, and evaluate the appropriate methods to protect the identified sites and their associated values.*
- 5.33. In addition Policy 13.1.2 seeks to:
- Identify historic heritage that contributes to an understanding and appreciation of the culture and history of the District, the region and/or New Zealand that is significant in terms of one or more of the following values:*
- *Māori cultural values.*
 - *Archaeological values.*
 - *Historic values.*
 - *Social values.*
 - *Setting and group values.*
 - *Architectural values.*
 - *Scientific and technological values. [emphasis added]*

- 5.34. Further, proposed Amendment 1 (referred to above) includes the deletion of an existing method under Issue 13.1 and Objective 13.1.1 and the addition of a more focussed method aligned to commencing a process to identify sites of significance to Māori, wāhi tapu, wāhi tūpuna and archaeological sites.
- 5.35. It is clear to us that the District Plan currently recognises the need to protect 'sites' of importance to Māori. We also note that the Council has an obligation under s6(e) of the RMA to provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. The District Plan also encourages Iwi to become involved in the process of identifying sites of cultural significance.
- 5.36. We acknowledge that there is a need to move this process forward and it seemed to us that this is likely to occur in due course. Beyond that there is little more that we are able to do within the context and scope of this plan change short of encouraging the process of identifying sites of cultural significance to occur.
- 5.37. Given the recent introduction by the Council of the heritage incentive package, the submission by K & S Prouse is **accepted in part**. The submission by the Potangotango Foundation is also **accepted in part** to the extent that the PCC 1 has introduced a new method to commence a process to identify sites of significance to Māori, wāhi tapu, wāhi tūpuna and archaeological sites

6. Decision

- 6.1. For all of the foregoing reasons we resolve the following:
1. That pursuant to clause 10 of the Schedule 1 to the Resource Management Act 1991 Plan Change 1 to the Horowhenua District Plan be approved including the amendments set out in **Appendix A** to this decision.
 2. That for the reasons set out in the above report submissions are accepted or accepted in part as listed in **Appendix B** to this decision.



Dean Chrystal



Bernie Wanden

13 July 2018

AMENDMENTS TO THE DISTRICT PLAN

All amendments are shown as **bold/underlined** or ~~strikethrough~~.

Amendment 1

Methods for Issue 13.1 & Objective 13.1.1 District Plan.

Delete bullet point two of the Methods for Issue 13.1 & Objective 13.1.1 and replace it with three new bullet points as follows:

- ~~• Commence, in line with the Horowhenua Historic Heritage Strategy 2012, a comprehensive survey of historic heritage in the District, including sites of significance to Māori, wāhi tapu, wāhi tūpuna and archaeological sites, within 12 months of the date of notification of the Proposed District Plan. The survey should apply a thematic approach to the identification of prospective historic heritage buildings, sites, and interrelated areas and be undertaken in consultation with iwi, local historical societies, the NZHPT and potentially affected landowners.~~
- **Have the remaining buildings, structures and sites, which were nominated by the public for their historical values, assessed by suitably qualified professionals to establish whether they should be included in Schedule 2 of the District Plan in the future.**
- **Commence a process, in line with the Horowhenua Heritage Strategy 2012, to identify sites of significance to Māori, wāhi tapu, wāhi tūpuna and archaeological sites.**
- **Council will review and maintain Schedule 2 of the District Plan on a regular basis, making appropriate changes to the Schedule by way of future plan changes based on the advice received from a suitably qualified heritage professional.**

Amendment 2

Amend the Explanation and Principal Reasons associated with Issues 13.2, Objective 13.2.1 and Policies 13.2.2 to 13.2.8 as follows:

The objective and policies seek to prevent the loss of heritage value associated with buildings, **structures** and sites included in the Historic Heritage Schedule due to neglect or under-use, or from changes arising from such activities as external alterations, additions, **earthworks** and subdivision.

For historic heritage buildings, **structures** and sites to be successfully and sustainably managed they need to remain functional. In response, the District Plan encourages their continued compatible use and enables regular maintenance, repair, **redcoration** and internal alterations to occur without the need for a resource consent. The District Plan also recognises that in order to provide for the ongoing safe, functional and economic use of historic heritage buildings it is necessary for them to be upgraded to meet relevant code standards, including earthquake strengthening.

Historic heritage buildings, **structures** and sites are also subject to activities which can lead to their associated heritage values being destroyed or severely diminished. Insensitive alterations and additions, for instance, can detract from the architectural qualities of a scheduled building, while demolition in response to development pressure results in permanent loss.

To address this situation the District Plan seeks to ensure that such effects are avoided or appropriately mitigated by requiring resource consent to be sought. In the case of demolition of Group 1 buildings **and structures** or the destruction of sites, the intent is that these activities are avoided unless exceptional circumstances exist. Exceptional circumstances could include total or partial demolition considered necessary due to significant and irreversible damage from fire or natural hazard events.

The context or setting associated with historic heritage buildings, **structures** and sites can also make an important contribution to its heritage value. The relationship between a building and its site, for instance, can be lost or eroded through the reduction of its original surrounds. In response, the District Plan seeks to ensure that the setting of a historic building, **structure** or site is not unduly compromised or its value diminished by inappropriate **earthworks or** on-site development, or incompatible subdivision activity and associated development.

Amendment 3

Add the following to Group 1 and Group 2 Buildings and Structures within Schedule 2 of the District Plan as follows:

Historic Heritage Group 1: Buildings and Structures (outstanding national and/or regional significance)

Map	Ref	Site Name	Location	Description	Legal Description	Heritage New Zealand Category
<u>1, 14, 15, 15A</u>	<u>H57</u>	<u>Dolphin</u>	<u>Manawatu River (Foxton Loop) – to west of Lot 3 DP 457778</u>	<u>Former Foxton Wharf Structure</u>	<u>Manawatu River</u>	
<u>1, 14, 15, 15A</u>	<u>H58</u>	<u>Former Presbyterian Church</u> <i>(partial refer to note 1)</i>	<u>5 Main Street, Foxton</u>	<u>Community Building (Foxton Little Theatre)</u>	<u>Lot 1 DP 33751</u>	

Historic Heritage Group 2: Buildings and Structures (regional and/or local significance)

Map	Ref	Site Name	Location	Description	Legal Description	Heritage New Zealand Category
<u>7, 27, 27B, 28, 28B</u>	<u>H59</u>	<u>Levin Cenotaph</u>	<u>4-12 Kent Street, Levin</u>	<u>War Memorial</u>	<u>Section 2 Block XVIII Town of Levin</u>	
<u>7, 27</u>	<u>H60</u>	<u>Weraroa Peace Gate and the Pioneer Memorial</u>	<u>North-west Corner of Mako Mako Road and Oxford Street, Levin</u>	<u>War Memorials</u>	<u>Part Section 32 Levin Suburban</u>	
<u>3, 16</u>	<u>H61</u>	<u>Tokomaru Memorial Gates</u>	<u>5 Tokomaru East Road, Tokomaru</u>	<u>War Memorial</u>	<u>Section 166 Town of Tokomaru</u>	
<u>5</u>	<u>H62</u>	<u>Moutoa Memorial Gates</u>	<u>Foxton-Shannon Road, Moutoa (south of Moutoa Hall)</u>	<u>War Memorial</u>	<u>Section 21 Block VII Mt Robinson SD</u>	
<u>1, 14, 15, 15A</u>	<u>H63</u>	<u>Foxton War Memorial</u>	<u>Corner of Ravensworth place and Main Street, Foxton</u>	<u>War Memorial</u>	<u>Main Street, Foxton (Road Reserve)</u>	
<u>1, 14, 15, 15A</u>	<u>H64</u>	<u>Former Manawatu Herald Building</u> <i>(partial refer to note 2)</i>	<u>6 Main Street, Foxton</u>	<u>Commercial Building</u>	<u>Part Section 100 Town of Foxton</u>	
<u>1, 14, 15, 15A</u>	<u>H65</u>	<u>Foxton Racing Club Building</u> <i>(Façade only)</i>	<u>8 Main Street, Foxton</u>	<u>Dwelling</u>	<u>Part Section 100 Town of Foxton</u>	
<u>1, 14, 15, 15A</u>	<u>H66</u>	<u>De Molen</u>	<u>24 Harbour Street, Foxton</u>	<u>Wind Mill</u>	<u>Part Section 598 Town of Foxton</u>	

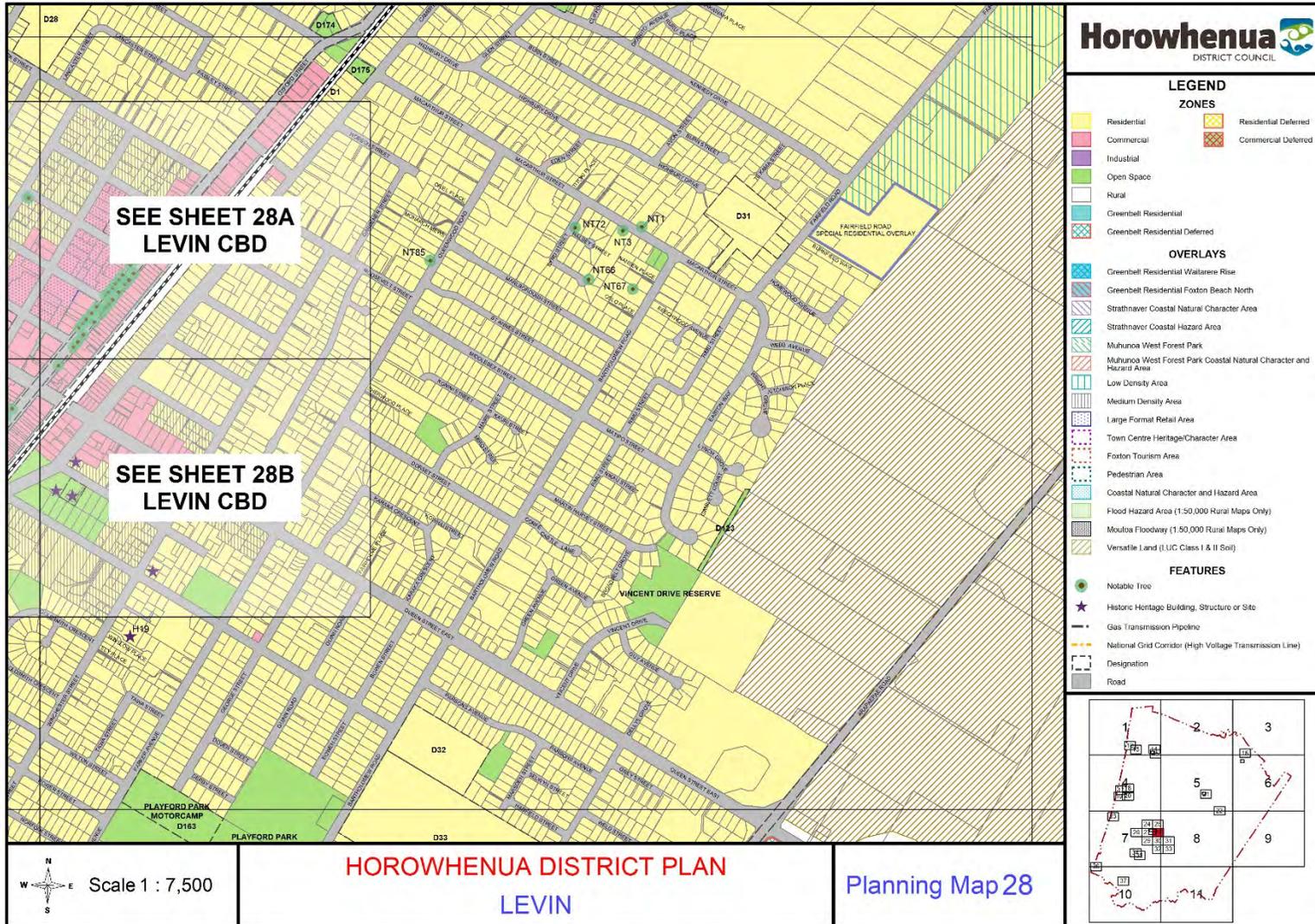
Note 1: This listing only applies to the original sections of the Presbyterian Church building constructed in 1867.

Note 2: This listing only applies to the original Manawatu Herald building constructed circa 1879 **and the reconstructed façade (please refer to below aerial photograph).**

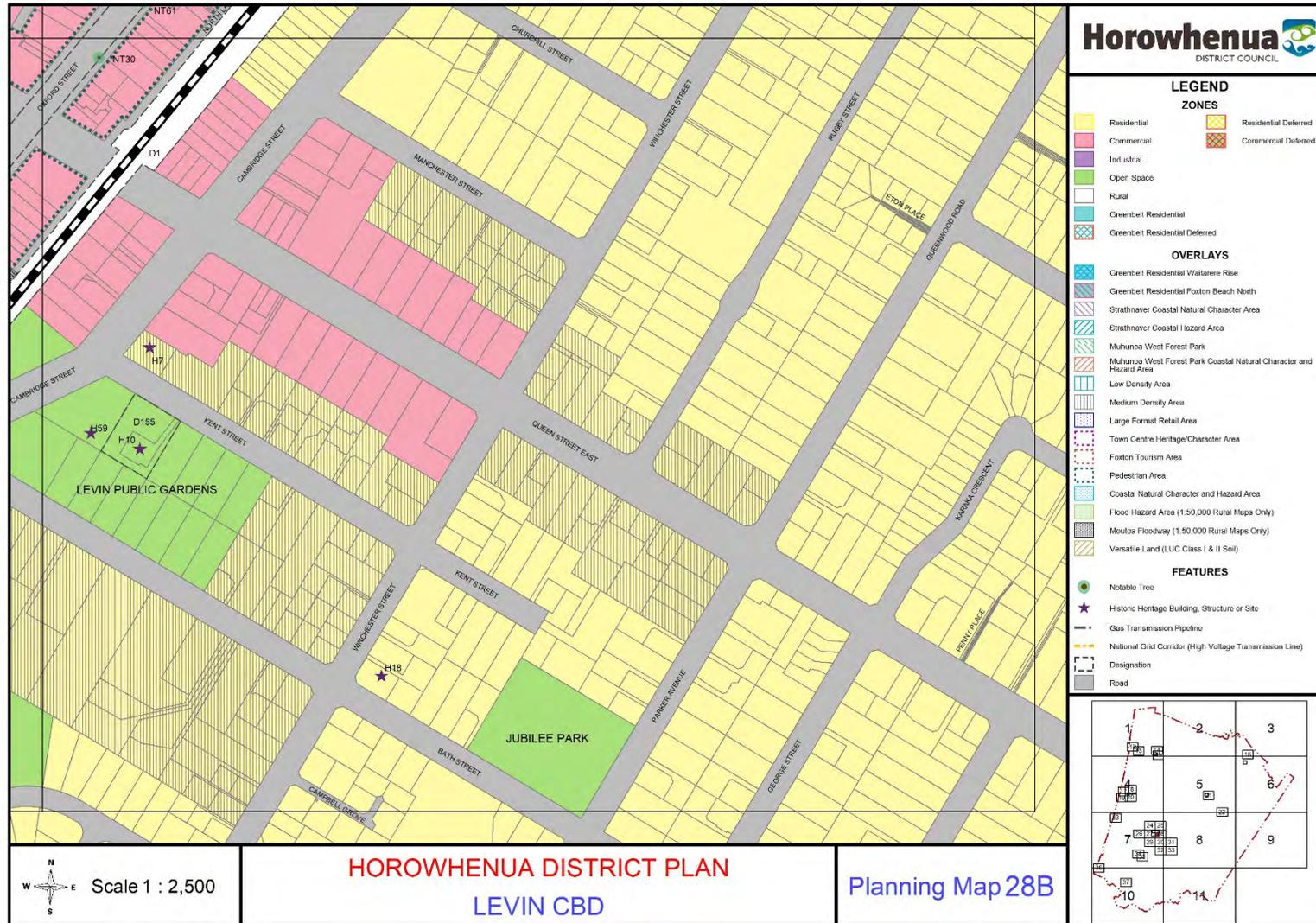


Aerial photograph of Former Manawatu Herald Building showing the sections that are included in the listing (in yellow)

Planning Map 28



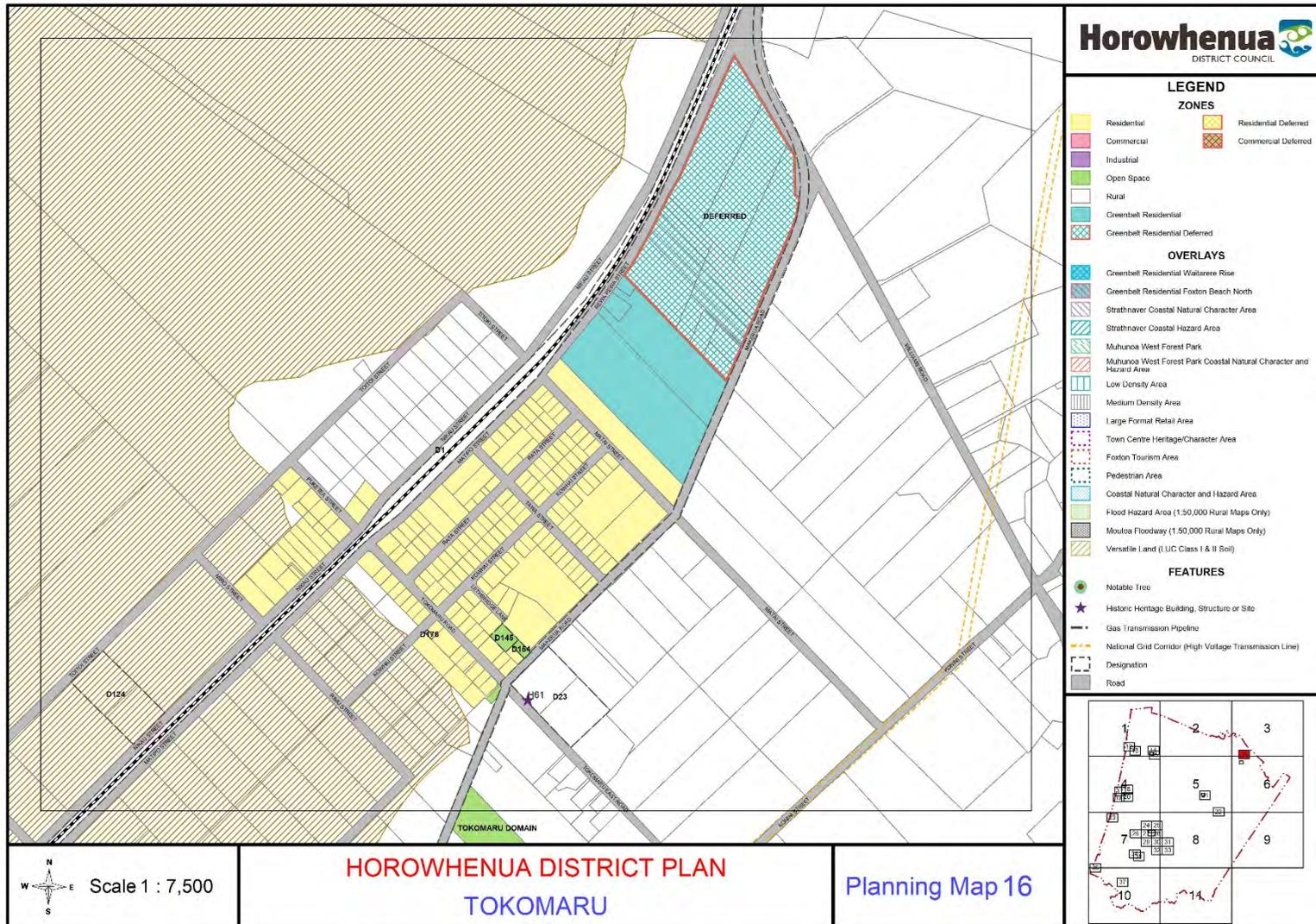
Planning Map 28B



Amendment 5

Amend the Planning Map 16

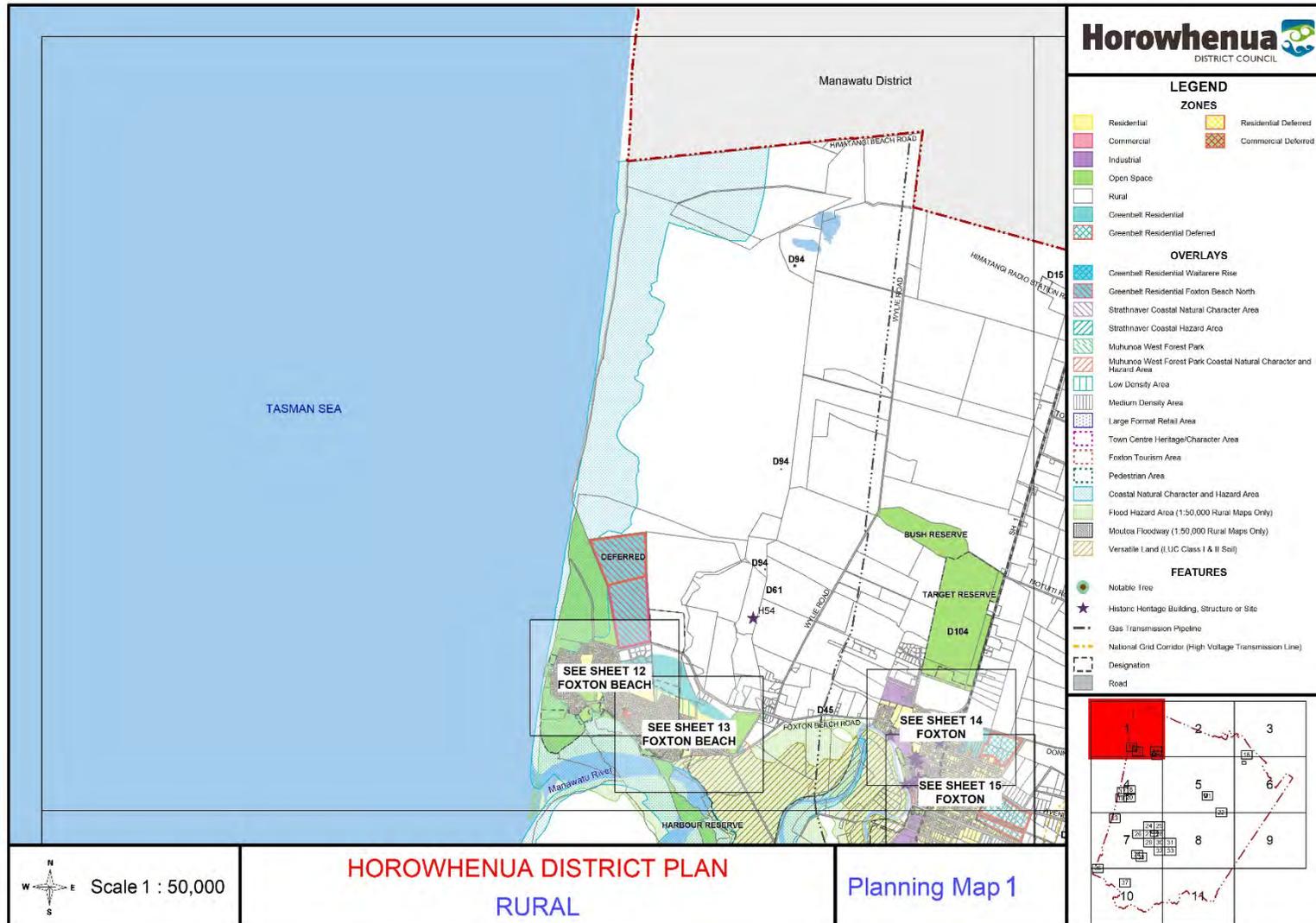
Planning Map 16



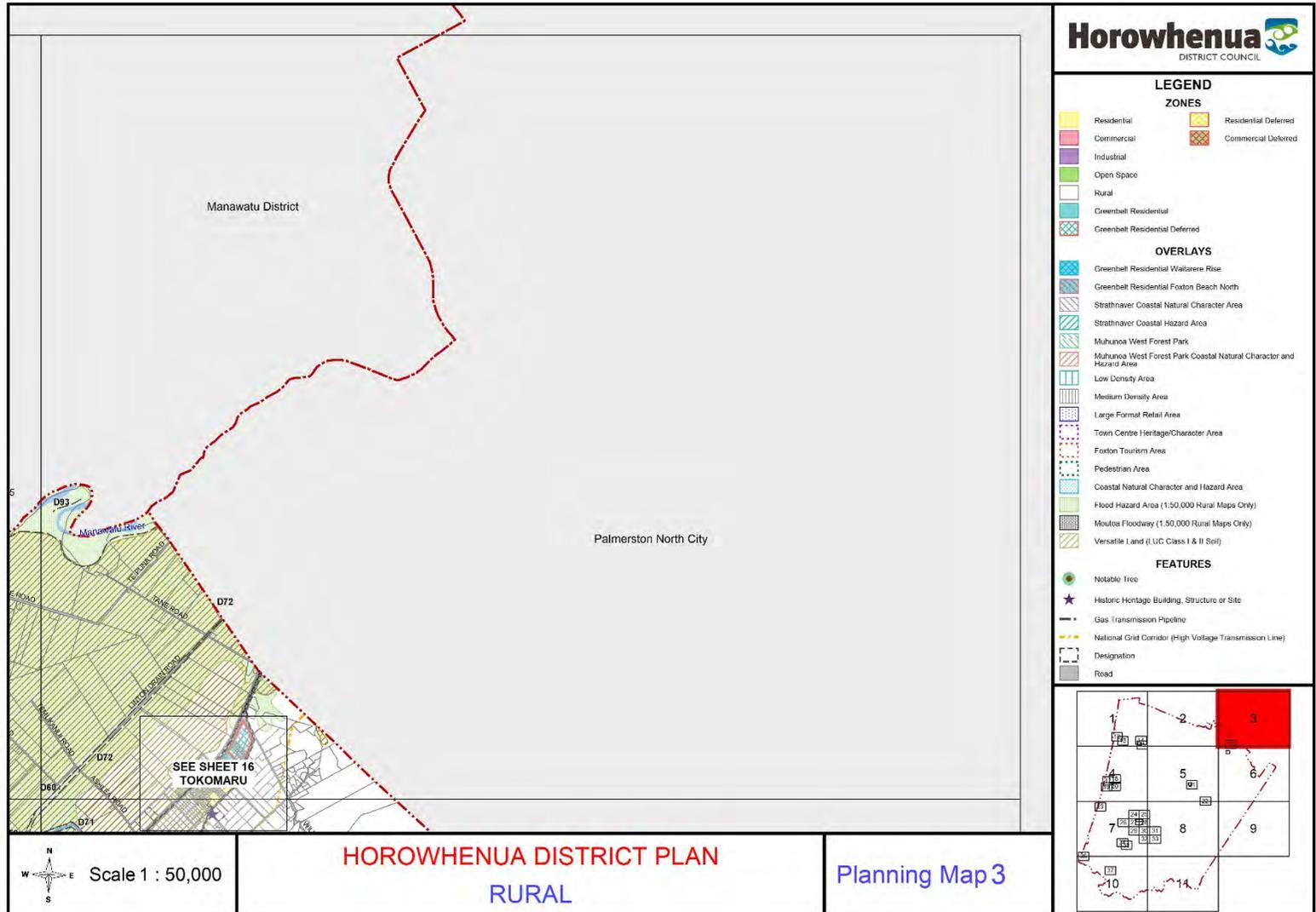
Amendment 6

Amend the Planning Maps 1, 3, 4, 5, 6 and 7

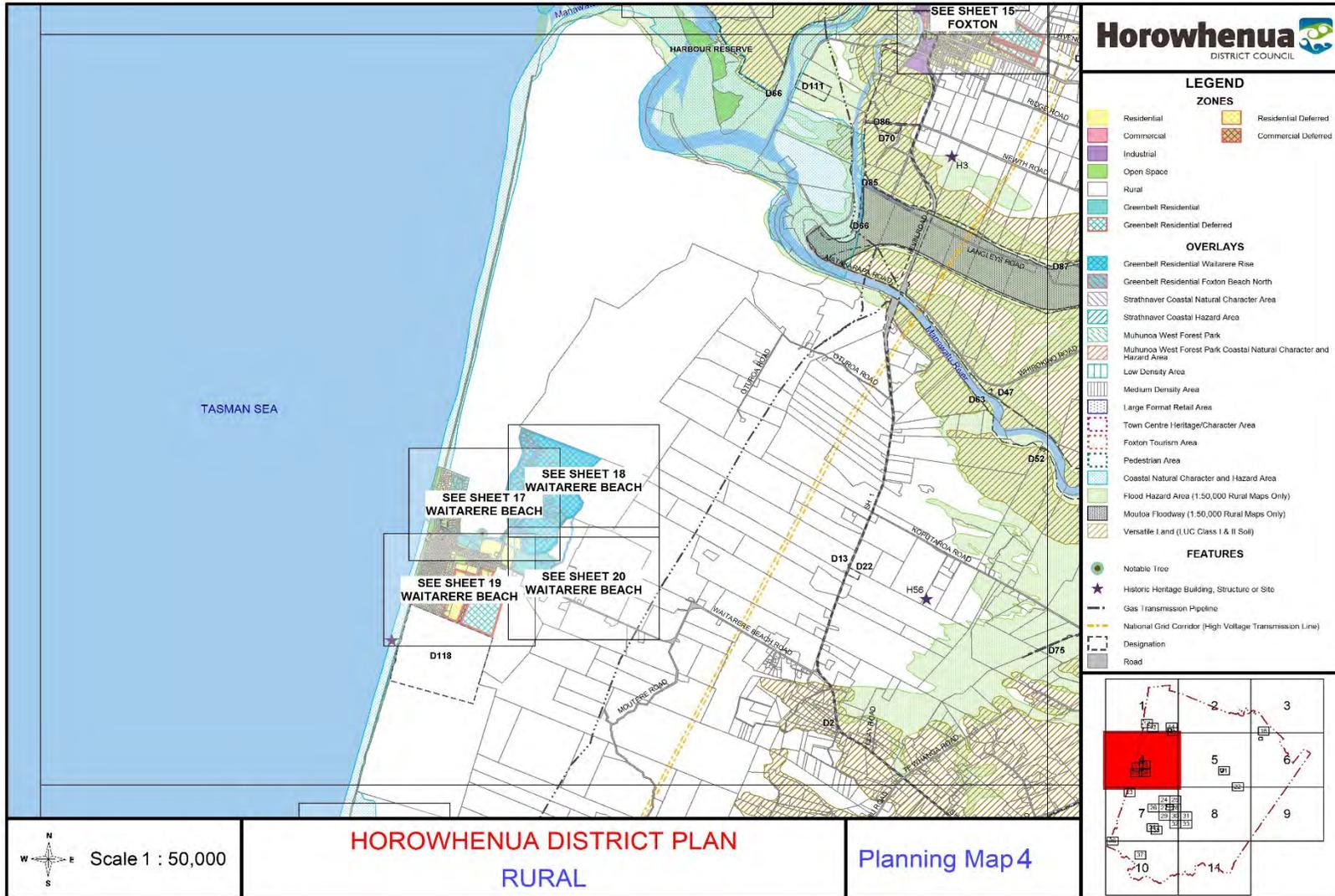
Planning Map 1



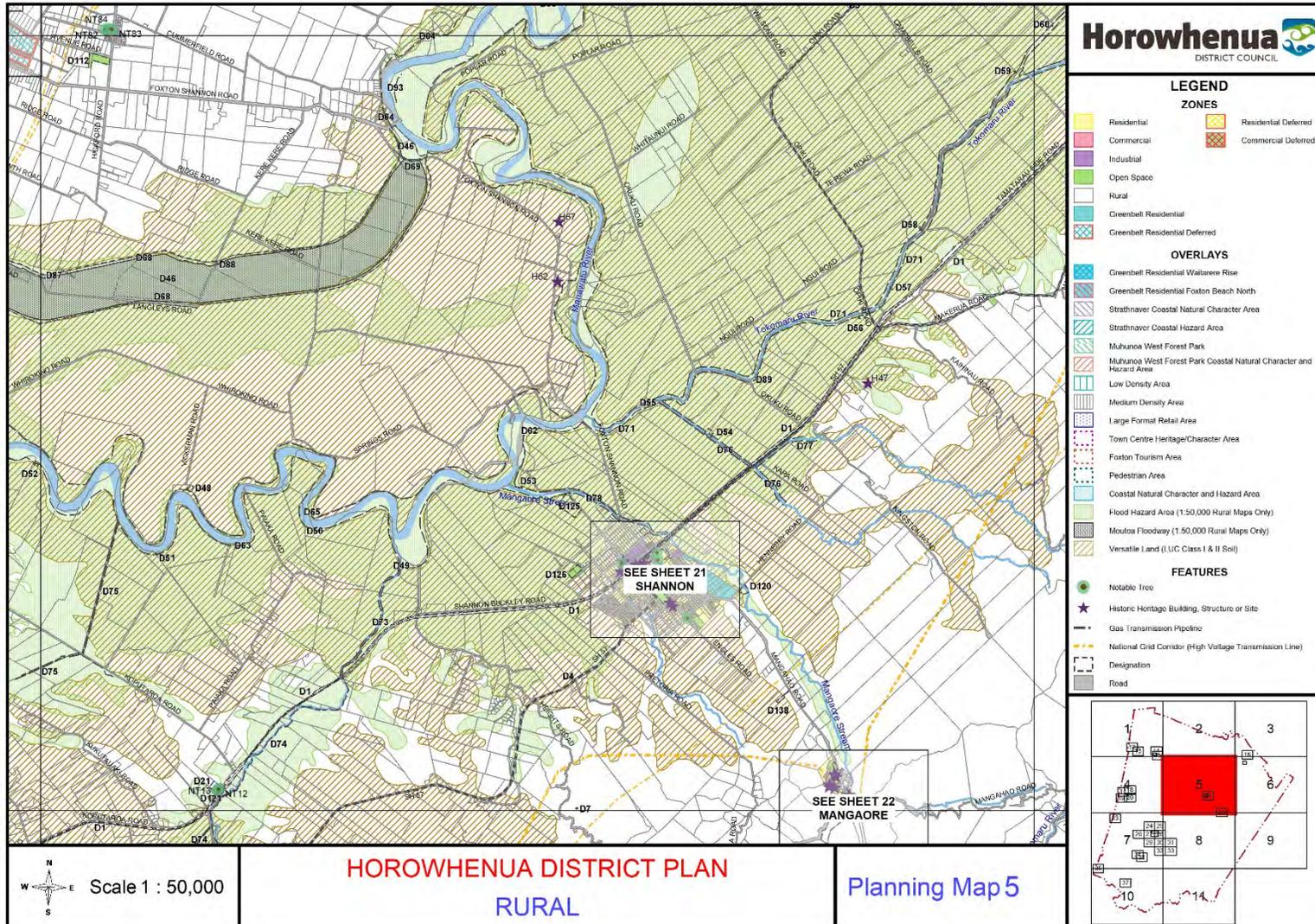
Planning Map 3



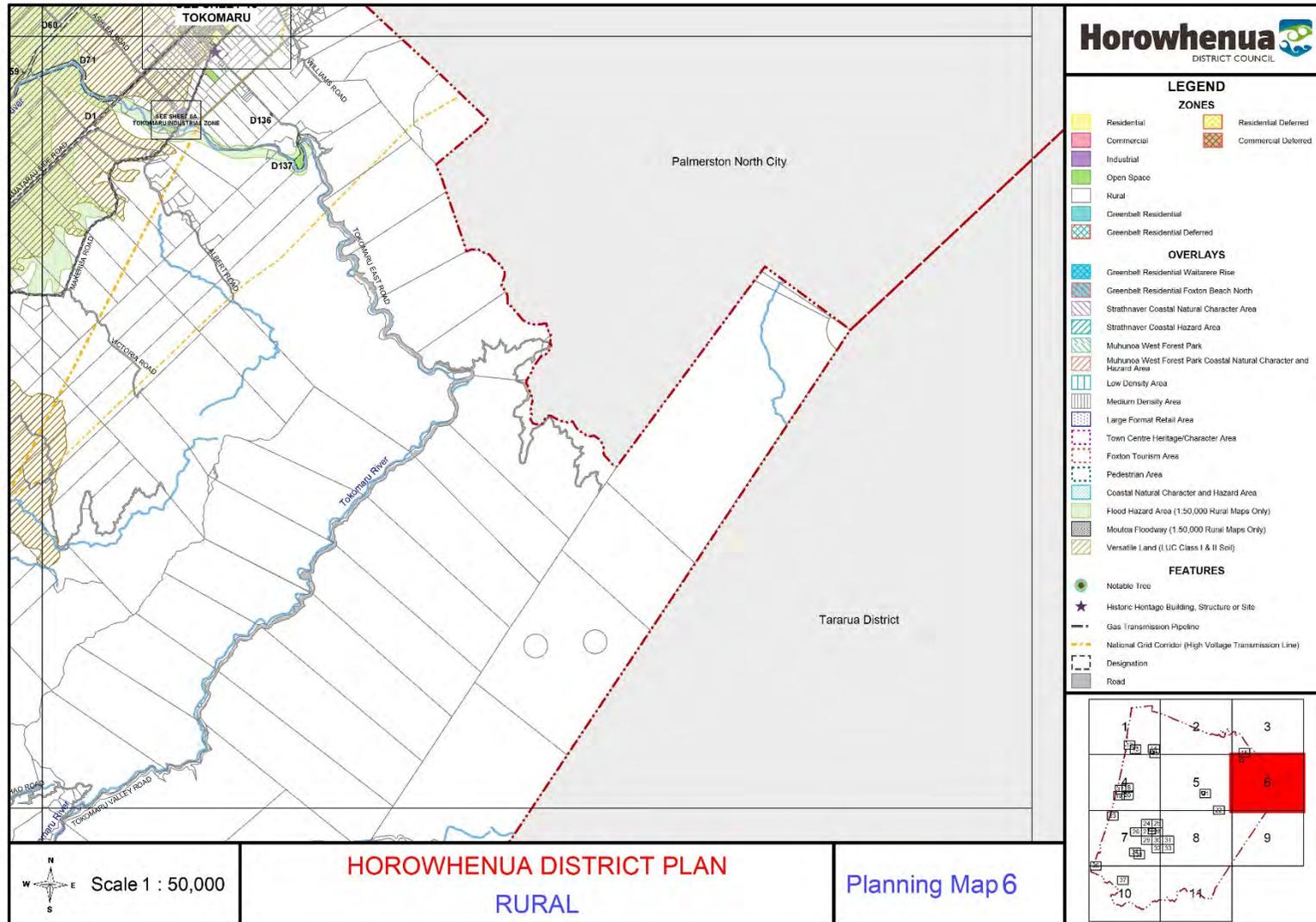
Planning Map 4



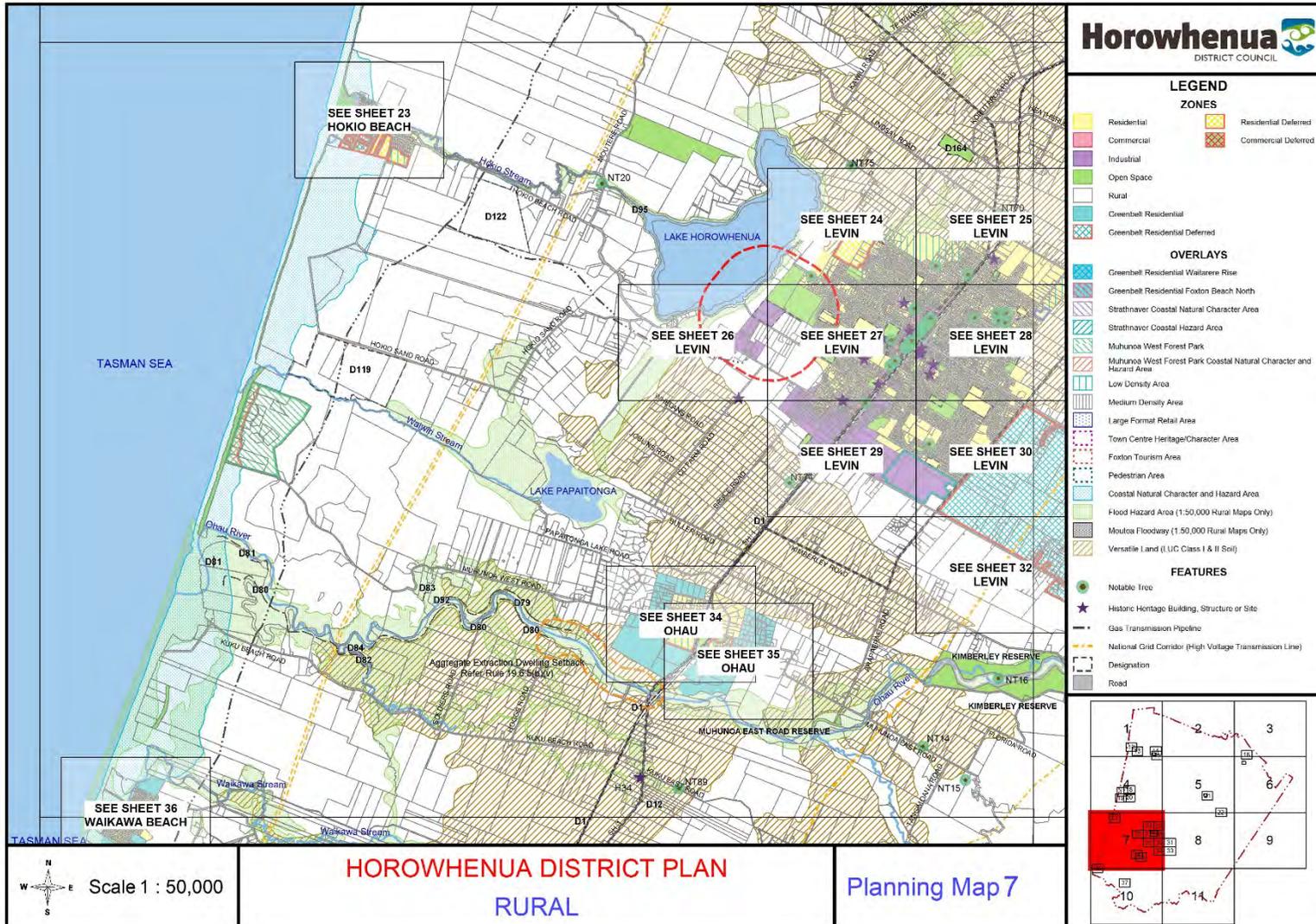
Planning Map 5



Planning Map 6



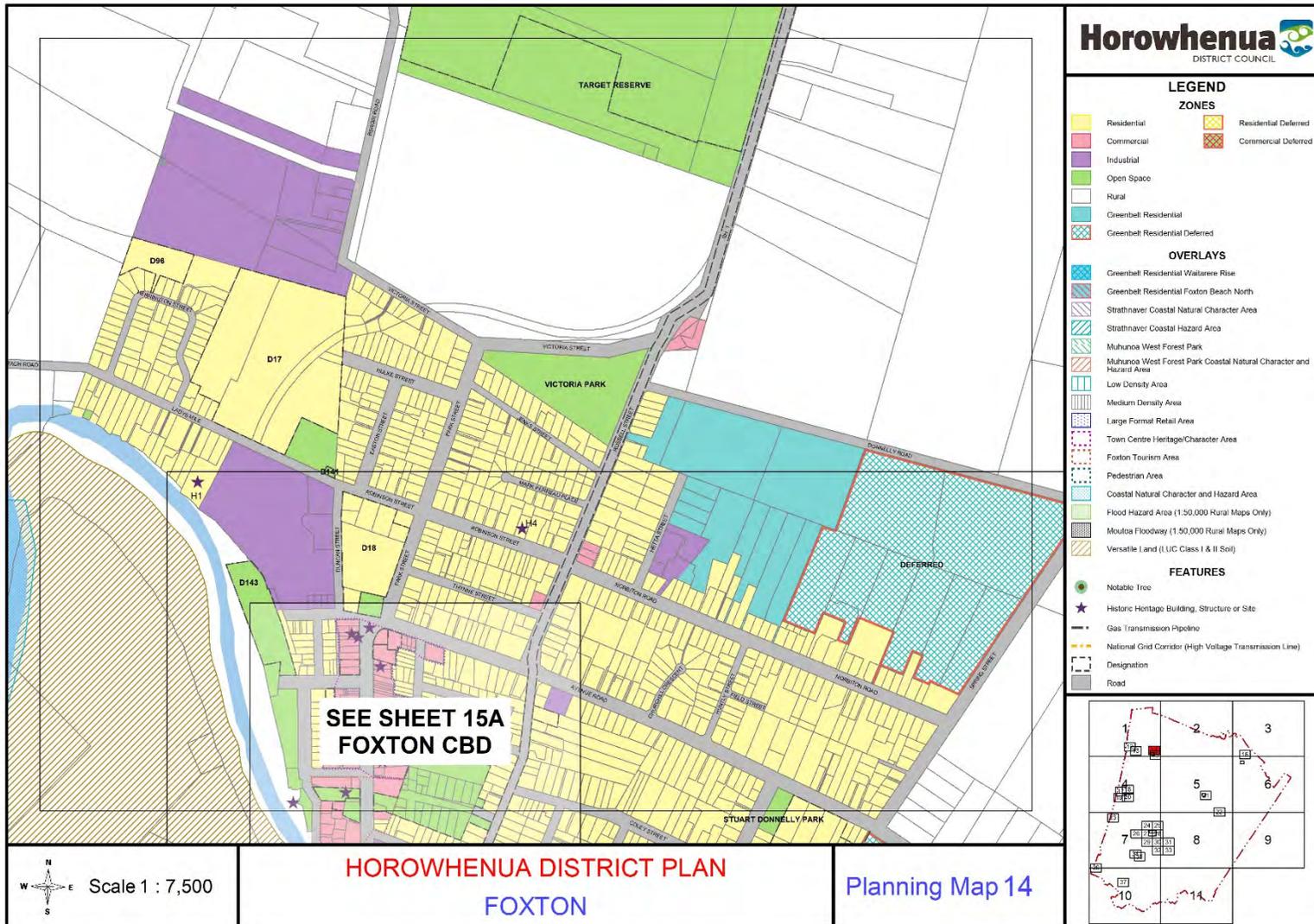
Planning Map 7



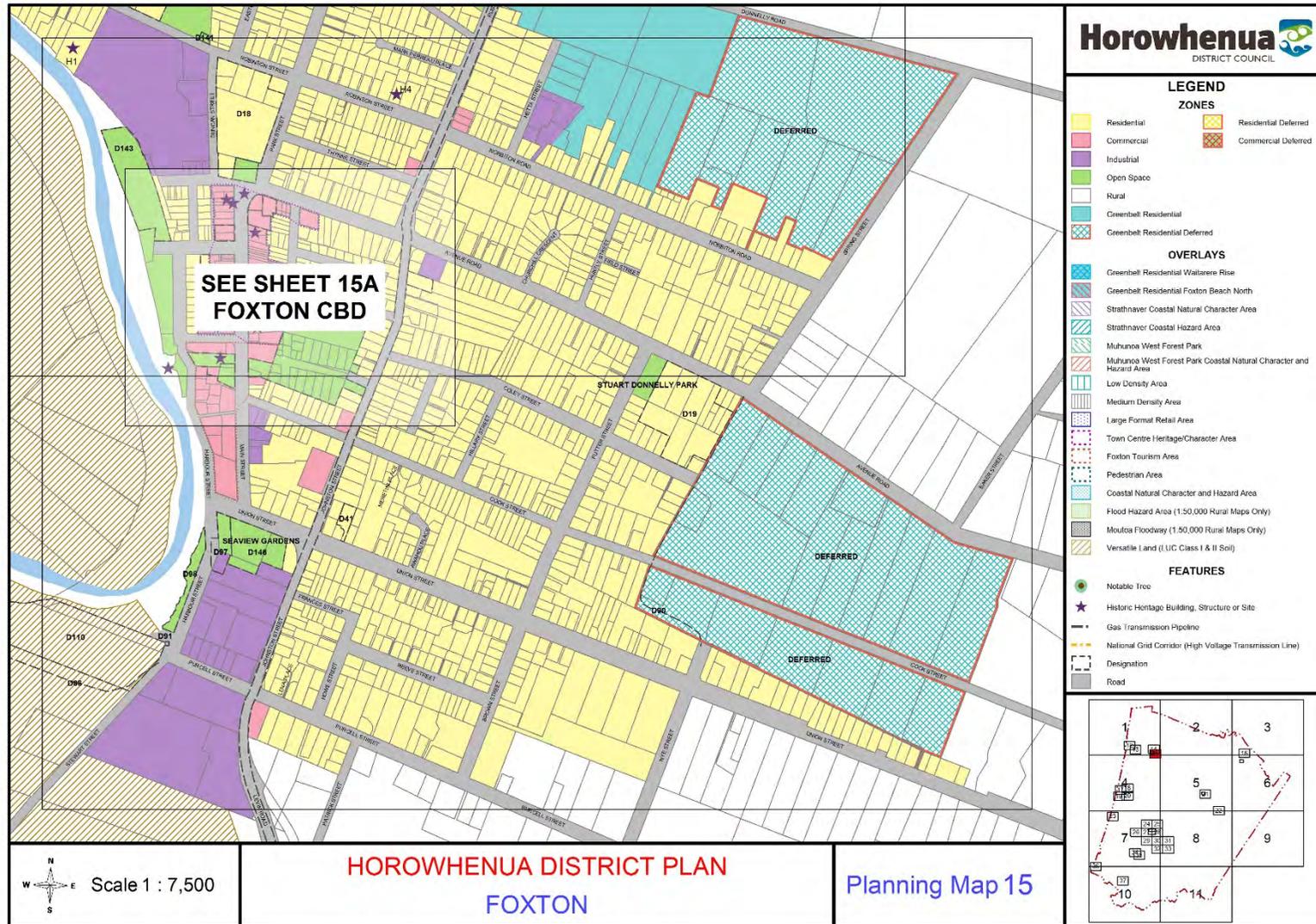
Amendment 7

Amend the Planning Maps 14, 15, and 15A

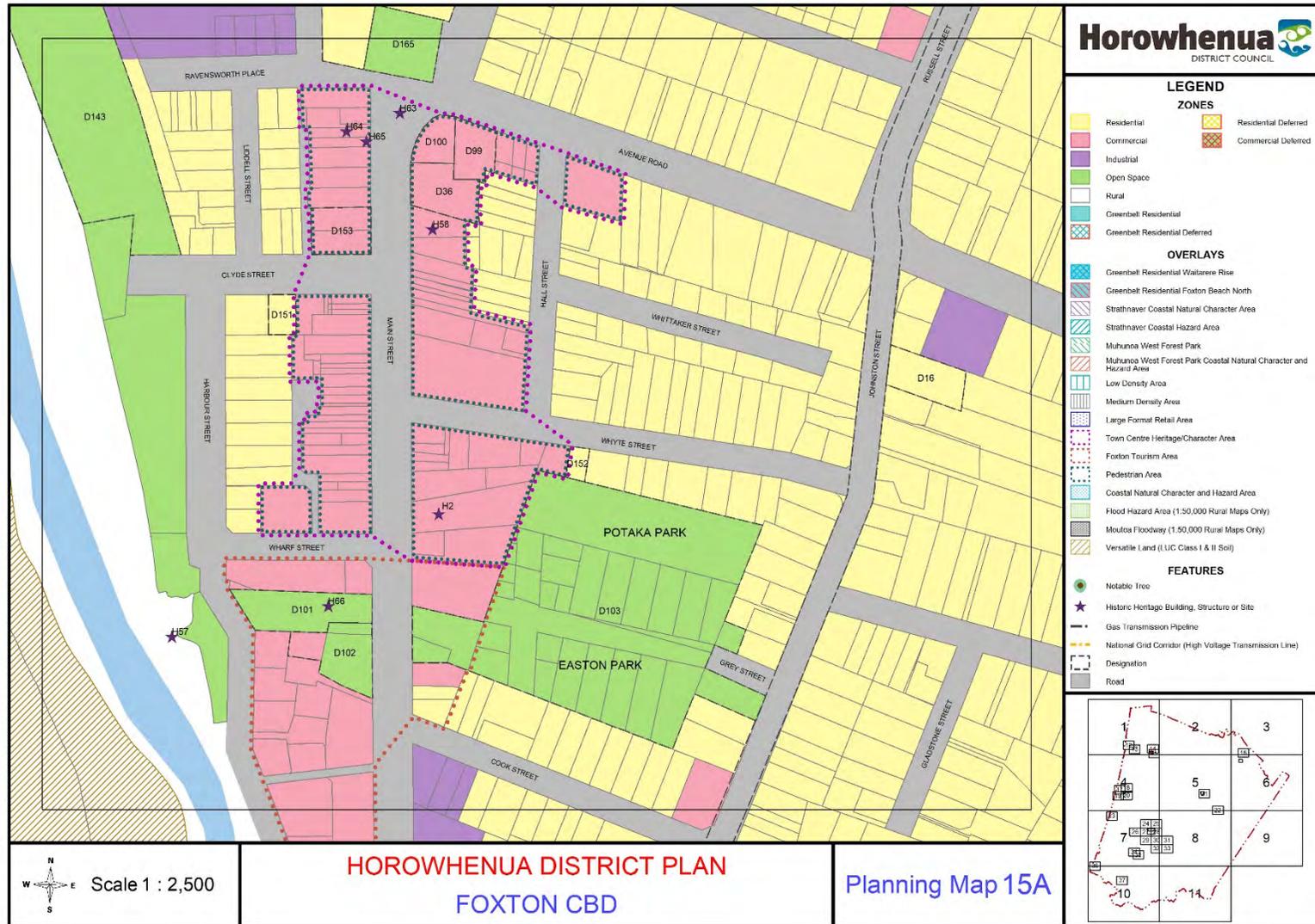
Planning Map 14



Planning Map 15



Planning Map 15A



SCHEDULE OF DECISIONS ON SUBMISSION POINTS

Sub. No	Submitter Name	Amendments	Panel Decision
01/02	Heritage New Zealand	1	Accept
01/04	Horizons Regional Council	1	Accept
01/07	K & S Prouse	1	Accept
01/02	Heritage New Zealand	2	Accept
01/05	K & S Prouse	2	Accept
01/01	J Harper	3	Accept in part
01/04	Horizons Regional Council	3	Accept
01/02	Heritage New Zealand	3	Accept
01/02	Heritage New Zealand	4, 5, 6, & 7	Accept
01/06	K & S Prouse	Miscellaneous	Accept in part
01/03	Potangotango Foundation	Miscellaneous	Accept in part