

**IN THE MATTER**

of the Resource Management Act  
1991

**AND**

**IN THE MATTER**

of an appeal pursuant to clause  
14 of Schedule 1 to the Act

**BETWEEN**

**BLUEHAVEN MANAGEMENT  
LTD, BLUEHAVEN HOLDINGS  
LTD AND EXCELSA VILLAGE  
LTD**

(ENV-2011-AKL-000082)

Appellants

**AND**

**TAURANGA CITY COUNCIL**

Respondent

**BEFORE THE ENVIRONMENT COURT**

Environment Judge M Harland sitting alone under section 279 of the Act

**IN CHAMBERS** at Auckland

**CONSENT ORDER**

**Introduction**

1. The Court has read and considered the appeal and the memorandum of the parties dated 15 December 2011.
2. Bay of Plenty Regional Council, Carrus Corporation Ltd, Hawridge Developments Ltd, Property Council of New Zealand (Bay of Plenty Branch), Ford Land Holdings Pty Ltd, Te Tumu Kaituna 11B2 Trust, Te Tumu Kaituna 14 Trust and Te Tumu Landowners Group are section 274 parties to the appeal but their interest in the appeal does not extend to 5.a of the appeal to which this consent order relates. They have therefore not signed the memorandum setting out the relief sought.
3. New Zealand Transport Agency (NZTA) is also a section 274 party to the appeal and is interested in the entire appeal. NZTA has signed the memorandum setting out the relief sought.



4. The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting this order; and
  - (b) 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

5. Therefore, the Court orders, by consent, that the proposed Tauranga City Plan be amended as follows (with additions shown in underlining and deletions shown in ~~striketthrough~~):

- (a) Amend 17A.8.1.2 Policy – Commercial Plan Areas as follows:

#### 17A.8.1.2 Policy – Commercial Plan Areas

By ensuring that land zoned for commercial activities and land identified as a Plan Area on the *Plan Maps (Part B)* at Poike Road, Gravatt Road, Parton Road, Courtney Road, Bethlehem, Bayfair, Jude Place, and Welcome Bay and Excelsa is developed in a comprehensive manner in accordance with the *Commercial Outline Development Plan* (where relevant) for the area and the environmental mitigation measures identified for those *sites*, including:

- i) Land zoned for new business activity at Excelsa has regard to:
  - i) Mitigation of visual effects from business activities and buildings when viewed from the surrounding residential area through landscape planting within both private and public spaces, and building controls;
  - ii) Providing opportunities for convenience and comparison retail, employment, business and community services and serving a neighbourhood catchment;



- iii) The opportunity for mixed use development with residential activities above street level;
- iv) The provision of buildings of a height that will provide capacity and legibility to the centre without detracting from the amenity of the surrounding area;
- v) Comprehensive traffic management provision, including parking within both private and public space;

(b) Amend Rule 17A.11.1 Building Height as follows:

17A.11.1.1 Building Height in the Commercial and Tauriko Commercial Zone

a) The maximum *height* of any *building*, with the exception of the *Permitted Intrusions* in *Rule 4H.2*, shall be:

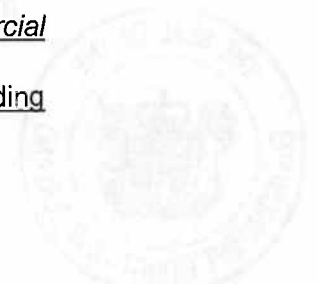
Zone	Maximum Building Height
Commercial Zone	12 m
Tauriko Commercial Zone	16 m
<u>Excelsa Commercial Plan Area</u>	<u>The maximum building height for a building or structure shall not exceed that specified in metres on the Excelsa Commercial Plan Area Outline Development Plan in Appendix 17L</u>

...

(c) Amend Rule 17A.11.3 Streetscape by inserting the following permitted activity rule:

17A.11.3.3 Excelsa Commercial Plan Area Streetscape

- a) In addition to complying with Rule 17A.11.3.1 Commercial Zone and City Centre Zone Streetscape:
  - i) All buildings shall comply with any specified building



- setback as shown in Excelsa Commercial Plan Area Outline Development Plan in Appendix 17L; and
- ii) Vehicle access shall not occupy any part of a front boundary where "no access" is shown on the Excelsa Commercial Plan Area Outline Development Plan in Appendix 17L.
- (d) Amend special permitted activity rule 17A.12.5.7 Bethlehem, Bayfair and Welcome Bay Commercial Area Plan Areas to read:

17A.12.5.7 Bethlehem, Bayfair, and Welcome Bay and Excelsa Commercial Plan Areas

- a) No development within the Bethlehem, Bayfair, or Welcome Bay or Excelsa Commercial Plan Areas shall exceed 1000m<sup>2</sup> of gross floor area as additions or alterations to an existing *building*, or be a stand alone *building* as a permitted activity;
- b) Buildings within 20 metres of the Farm Street boundary of the Bayfair Commercial Plan Area, as identified on *Appendix 17K: Bayfair Commercial Plan Area Outline Development Plan* shall be a controlled activity, excluding minor cosmetic alterations and repairs which do not change the design and appearance of an existing building, internal additions or alterations, and any buildings not visible from the street;
- c) All *site* layout, landscape planting, parking, access and *building setbacks* shall comply with the relevant *Outline Development Plan* contained as an Appendix to this Chapter.
- d) Vehicle ingress via Access A from the Western Access' to Area A as shown on the Bethlehem Commercial Plan Area: *Appendix 17I: Bethlehem Commercial Plan Area Outline Development Plan*.

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*Note: Any activity that does not comply with Rule 17A.12.5.7 – Bethlehem, Te Reti, Bayfair, Excelsa and Welcome Bay Commercial Plan Area shall result in the activity being considered a Controlled Activity.*

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- (e) Amend Rule 17A.13 Controlled Activity Rules as follows:

The following are Controlled Activities.

- a) Any *building* or activity within the following Commercial Plan Areas identified in the *Plan Maps (Part B)*, and which does not comply with *Rule 17A.12.5.7 - Bethlehem, Bayfair, Excelsa and Welcome Bay Commercial Plan Areas*:
- i) Bethlehem;
  - ii) Welcome Bay;
  - iii) Bayfair;
  - iv) Excelsa.
- b) The use of one vehicle access for ingress between the Bethlehem Commercial Plan Area and Te Paeroa Road.
- (f) Amend Rule 17A.13.1 Controlled Activity – Commercial Plan Areas by adding the following:



17A.13.1.8 Standards and Terms in the Excelsa Commercial Plan Area

- a) All site development, landscaping and layout shall be designed, laid out and managed generally in accordance with Appendix 17L: Excelsa Commercial Plan Area Outline Development Plan.
- b) Plans or details shall be provided illustrating the availability of service areas and/or service courts i.e. places for rubbish bins, storage etc for residential units and other activities.
- c) Plans, elevations and details of publicly owned and publicly used open space shall be provided. These shall include, but not be limited to, the street, walkways, parks, squares and car parks. These shall be shown so as to illustrate their relationship with private space and buildings.
- d) All significant framework trees in car parks, streets, foot paths, and reserves shall be provided with an uninterrupted (free of services) planting area of 2m x 2m x 1.5 m (deep), and be fitted with sufficient infrastructure (reinforced concrete surrounds, stakes, tree cage, tree grates, root guards and irrigation) to ensure the longevity of the trees.
- e) All trees intended for visual mitigation and to enhance public and publicly-used open space, shall be planted at a minimum size of PB150 and a minimum height of 2.0 metres, recognising the scale and intensity of development.
- f) Detailed traffic engineering drawings shall be provided and shall include, but not be limited to:
  - i) Vehicular movements restricted to left turn into and left turn out of the service lane onto Papamoa Beach Road;
  - ii) Pedestrian crossing facilities and pedestrian routes, including flush medians where there may be conflict with traffic movements, and provision of pedestrian refuges on Papamoa Beach Road in line with all proposed and existing pedestrian accessways;
  - iii) A demonstration that sufficient car parking spaces will be provided in both public and private space to avoid parking overflows into the public road network in the surrounding residential area.

- (g) Amend Rule 17A.13.1 Controlled Activity – Commercial Plan Areas by adding the following:

17A.13.1.9 Matters of Control and Conditions in the Excelsa Commercial Plan Area

Within the Excelsa Commercial Plan Area, the Council reserves control over the following matters:

- a) The standards and terms for the Excelsa Commercial Plan Area;
- b) Ensuring all development is subject to the implementation of appropriate landscape mitigation.
- c) Ensuring access to the site maintains local amenity and the safety of the transport network, including the long term intention that Golden Sands Drive may be modified to enable greater pedestrian priority once its principal traffic function serving the Wairakei Urban Growth area is no longer required.



- d) Mitigation of the effects of street trees on Council's infrastructure, including but not limited to, kerbs, footpaths, drainage, pipes and services and the infrastructure of publicly used open space.
- e) The functional relationship between the ground floors of buildings and adjoining open space.

(h) Insert a new Appendix 17L: Excelsa Commercial Plan Area Outline Development Plan as attached to this consent order as **Annexure 1**.

(i) Amend planning maps L61 and L74 to show the Excelsa Commercial Plan Area as attached to this consent order as **Annexure 2**.

6. This consent order disposes of the relief at paragraph 5.a of the appeal. The appeal also seeks relief in relation to subdivision yield (paragraphs 5.b and 5.c). These parts of the appeal are related to other appeals against the Proposed City Plan and will remain live.

7. There shall be no order as to costs.

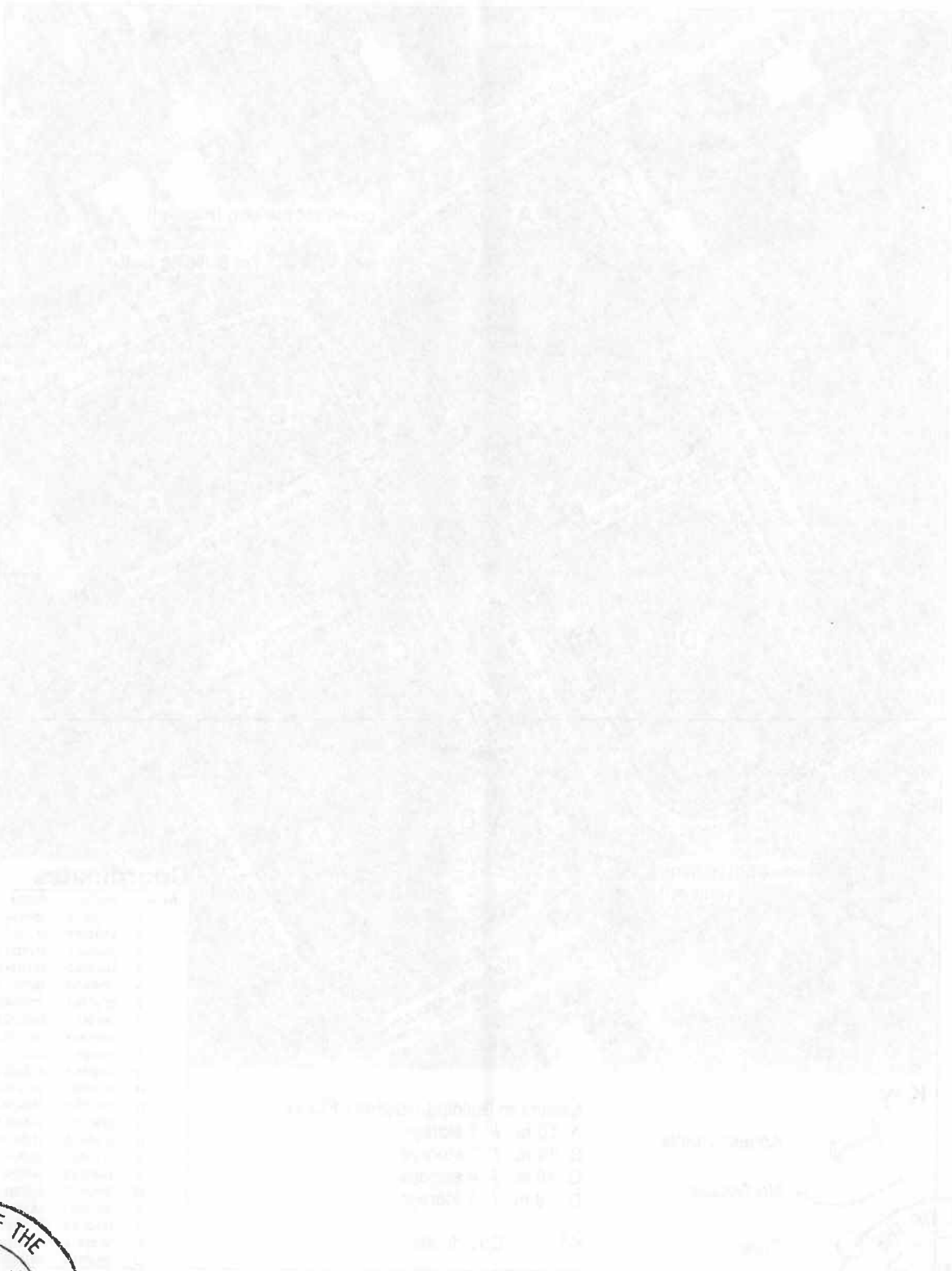
DATED this 23<sup>rd</sup> day of December 2011

M Harland  
 M Harland  
 Environment Judge

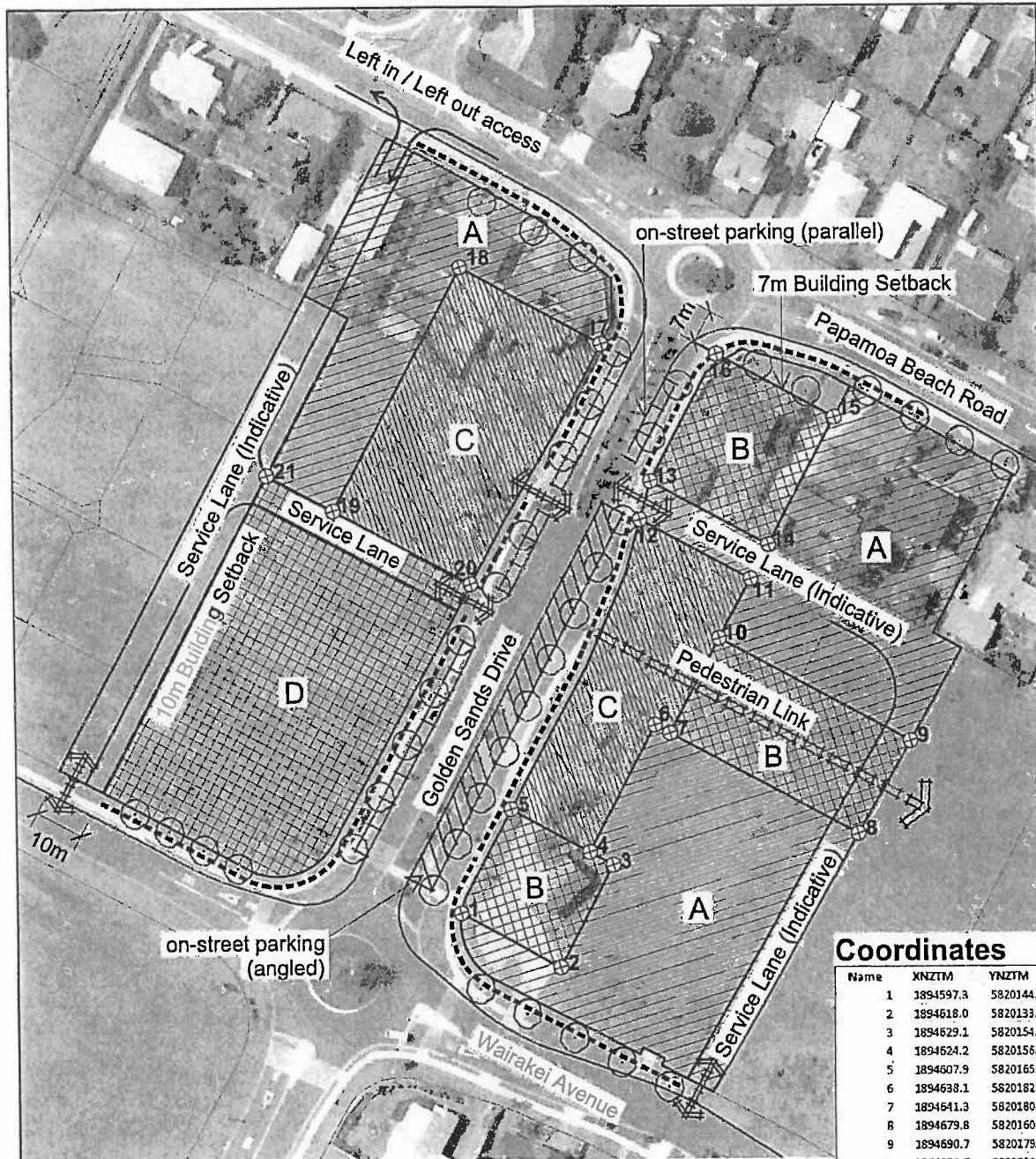


ANNEXURE 1

Appendix IV: Eiregas Commercial Plant Area  
Outline Development Plan



# Appendix 17L: Excelsa Commercial Plan Area Outline Development Plan




### Coordinates

Name	XNZTM	YNZTM
1	1894597.3	5820144.5
2	1894618.0	5820133.3
3	1894629.1	5820154.1
4	1894624.2	5820156.7
5	1894607.9	5820165.4
6	1894638.1	5820182.5
7	1894641.3	5820180.8
8	1894679.8	5820160.1
9	1894690.7	5820179.0
10	1894651.6	5820200.1
11	1894658.1	5820212.1
12	1894635.5	5820224.3
13	1894637.7	5820232.0
14	1894661.8	5820219.0
15	1894675.7	5820244.8
16	1894653.6	5820256.7
17	1894627.7	5820259.8
18	1894598.3	5820275.6
19	1894571.9	5820226.3
20	1894600.0	5820211.2
21	1894558.4	5820233.6

### Key

-  Access Points
-  No Access
-  Trees

### Maximum Building Heights / Floors

- A 10 m / 3 storeys
- B 14 m / 3 storeys
- C 16 m / 4 storeys
- D 9 m / 3 storeys
-  Coordinates



ANNEXURE 2

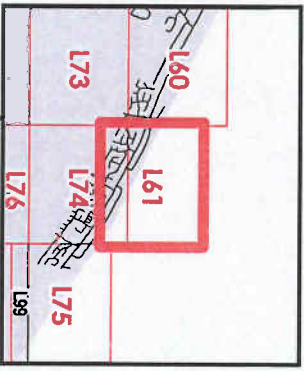




# City Plan

Planning Map

L61

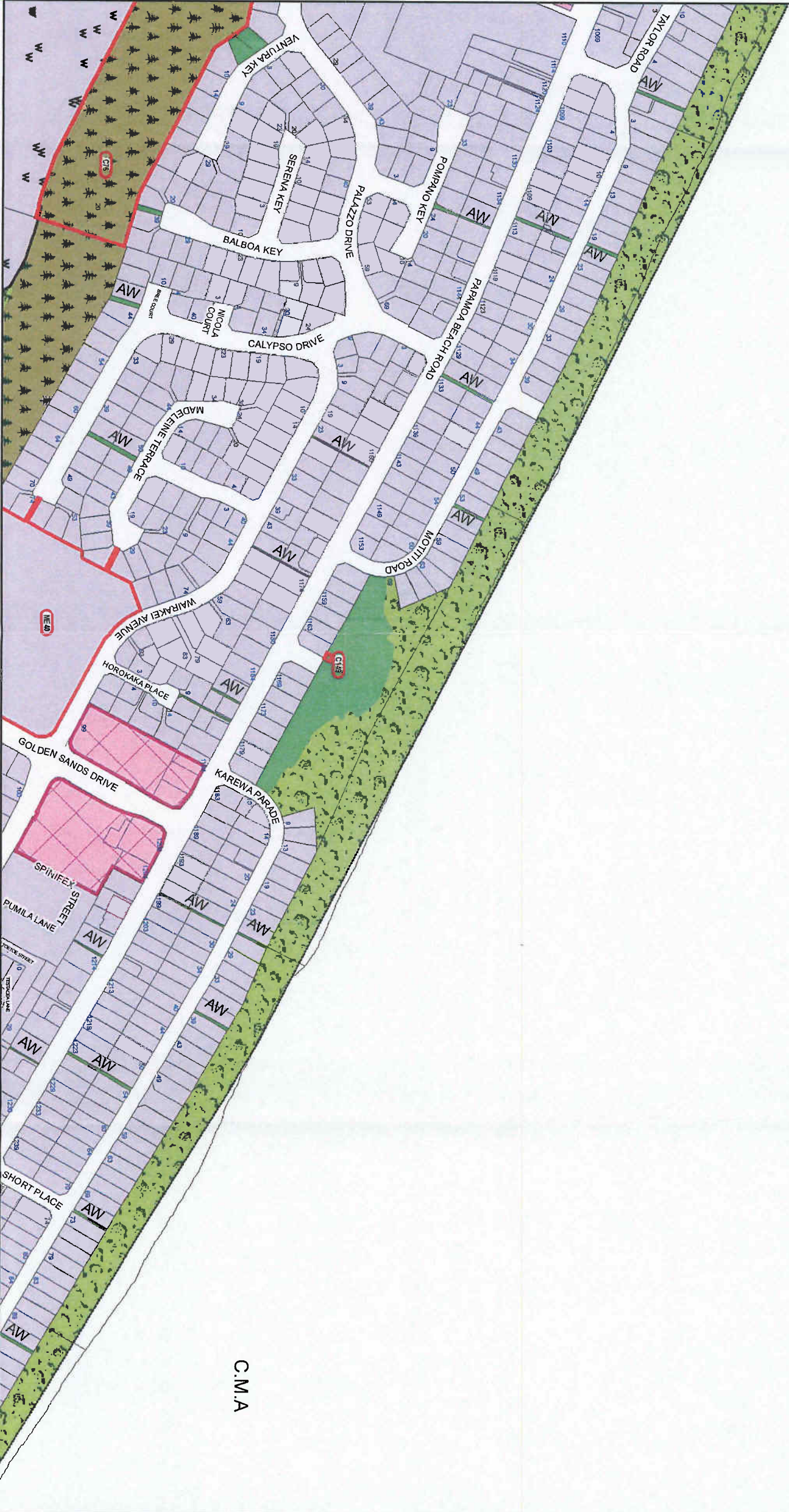


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Section 1 L61

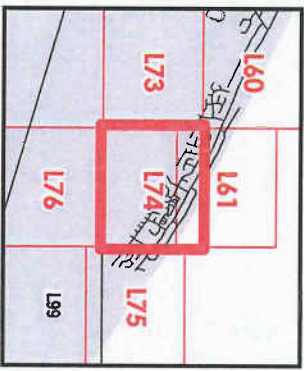




# City Plan

## Planning Map

# L74

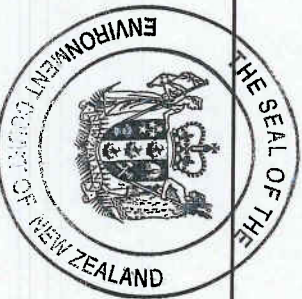
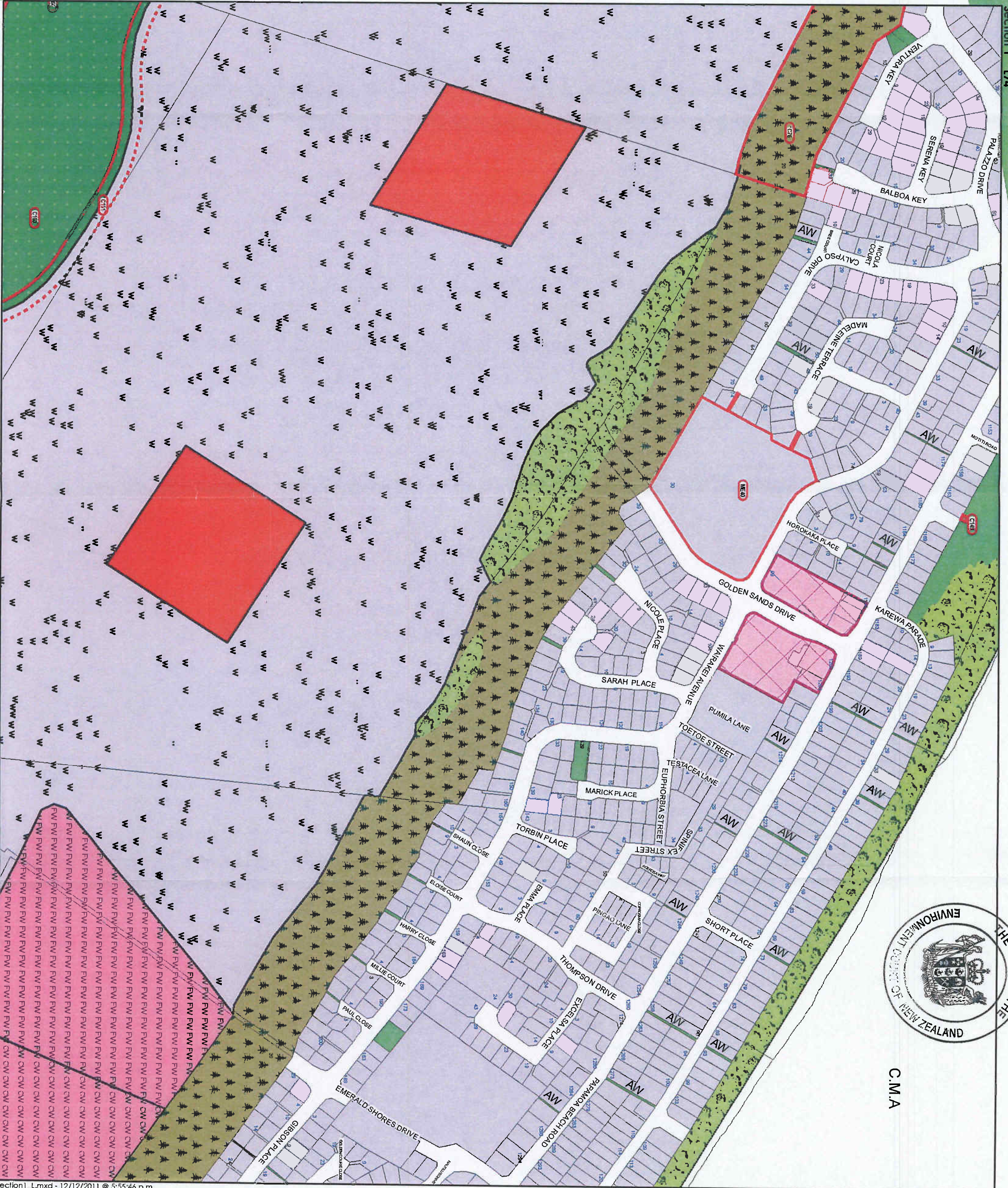


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C.M.A