

Proposed

# River control and flood protection

Bylaw for Taranaki

2020



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# Proposed River Control and Flood Protection Bylaws for Taranaki

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*This note does not form part of the Bylaw.*

## Explanatory Note

The *Taranaki Regional Council Flood Protection Bylaw 2020* has been prepared under the *Local Government Act 2002* to provide for the ongoing management and efficient operation of flood protection and flood control works that are owned or controlled by the Taranaki Regional Council ('the Council'). These include flood protection schemes, floodways and areas of flood protection vegetation constructed and managed to prevent damage, danger, or distress to the community from river flooding. It is crucial that these works function properly when needed.

People undertaking activities within the vicinity of these flood protection and flood control works require authority from the Council under this bylaw where the activity could impact on the integrity or efficient operation of the works.

This bylaw does not apply to any privately owned/managed drainage or flood protection schemes, or those that are managed by other local authorities.

Compliance with this bylaw does not remove the need for activities to comply with the *Resource Management Act 1991*, and other relevant regional and district plans. Activities within the beds of lakes and rivers may also be subject to rules in regional plans in accordance with section 13 of the *Resource Management Act 1991*. Any activity occurring within the coastal marine area may require resource consent under section 12 of the *Resource Management Act 1991*.

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# Seal

The *Taranaki Regional Council Flood Protection Bylaw 2020* was prepared by the Taranaki Regional Council under the provisions of section 149 of the *Local Government Act 2002*.

This bylaw was proposed at the Ordinary Meeting of the Taranaki Regional Council held on *[date to be confirmed]*, confirmed at an Ordinary Meeting of the Council held *[date to be confirmed]* 2020 and come into force on *[date to be confirmed]* 2020.

DATED at Stratford on *[date to be confirmed]*.

SIGNED by the TARANAKI REGIONAL COUNCIL

By the affixing of its common seal in the presence of

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M N MacLeod (Chairman)

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M J Nield (Director – Corporate Services)

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## Part 1

# Preliminary provisions

### 1. Title

- 1.1 The bylaw shall be known as the '*Taranaki Regional Council Flood Protection Bylaw 2020*'.

### 2. Commencement

- 2.1 This bylaw came into force on the date of the Taranaki Regional Council's special resolution on [DATE TO BE DETERMINED].

### 3. Purpose

- 3.1 The purpose of this bylaw is to protect flood protection and flood control works belonging to or under the control of the Taranaki Regional Council (the Council) from damage or misuse by people undertaking activities within the vicinity of these works.

- 3.2 This bylaw only controls activities that may affect the integrity or effective operation and maintenance of the flood protection and flood control works.

### 4. Application

- 4.1 This bylaw has legal effect under the *Local Government Act 2002* and applies within the administrative boundaries of the Taranaki region as defined by the *Local Government (Taranaki Region) Reorganisation Order 1989*.
- 4.2 This bylaw applies to flood protection and flood control works that are owned or controlled by the Council. These include flood protection schemes, floodways and areas of flood protection vegetation constructed and managed to prevent damage, danger, or distress to the community from river flooding.
- 4.3 For the purposes of certainty, the bylaw does not apply to any privately owned/managed drainage or flood protection schemes, or those that are managed by other local authorities.

### 5. Definition of terms

- 5.1 In this bylaw, unless the context otherwise requires:

**Authority** means any permission issued by the Council under [section 15 \[Authority\]](#) of these bylaws.

**Bylaw** means the *Taranaki Regional Flood Protection Bylaw 2020*.

**Construct** includes effect, alter, reconstruct, replace, extend, remove and demolish.

**Council** means the Taranaki Regional Council.

**Crossing** means any bridge, culvert, set of pipes or ford across a watercourse which provides passage for people, stock, vehicles or equipment.

**Defence against water** means any managed structure or appliance of whatsoever kind that has the effect of stopping, diverting, controlling, restricting, or otherwise regulating the flow or spread or subsidence of water in or out of a watercourse, including flood waters, and includes associated dam, bund, weir, floodgate, channel, bank, stopbank, flood wall, retaining wall, protection structure, carriageway, groyne, or reservoir, and includes those identified in [Part 6 \[Maps\]](#).

**Drain** has the same meaning as in section 2 of the *Land Drainage Act 1908* (as set out below):

includes every passage, natural watercourse, or channel on or under ground through which water flows continuously or otherwise, except a navigable river, but does not include a water race as defined in section 58 hereof.

**Earthworks** has the same meaning as set out in the *National Planning Standards* (as set out below):

means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excluding gardening, cultivation, and disturbance of land for the installation of fence posts.

**Equipment** means any equipment, devices or machinery associated with managing watercourses or defences against water. For example floodgates, pump stations and water level recorders.

**Excavation** means the removal of material, which results in a hole or cavity, other than boring or digging of holes up to 1.5 metres depth for immediate placement of posts or piles, or driving posts or piles.

**Flood protection vegetation** means all trees and shrubs, including those deliberately planted, or self-seeded, owned, controlled or managed by the Council for flood or erosion protection purposes.

**Flood protection and flood control** includes defences against water, drains, watercourses, floodways and flood protection vegetation.

**Floodway** means any area managed by the Council which is designed to provide passage for floodwaters and includes those identified in [Part 6 \[Maps\]](#).

**Maintenance** includes mechanical cleaning, weed cutting, or spraying, and the maintenance or repair of related installations.

**Occupier** in relation to any property, means the lawfully authorised inhabitant of that property and persons who have legal right to undertake activities on that property.

**Person** means anybody, except those authorized by the Council in the exercise of any powers or duties provided for under this bylaw.

**Structure** has the same meaning as in section 2 of the *Resource Management Act 1991* (as set out below):

means any building, equipment, device, or other facility, made by people and which is fixed to land, and includes any raft.

**Watercourse** has the same meaning as in section 2(1) of the *Soil Conservation and River Control Act 1941* (as set out below):

includes every river, stream, passage, and channel on or under the ground, whether natural or not, through which water flows, whether continuously or intermittently.

## Part 2

# Activities under the bylaw

## 6. Floodways

### 6.1 No person shall:

- a) widen, deepen, infill, divert or otherwise alter any floodway;
- b) place any material or object that could impede or deflect flood or drainage flows within or into any floodway;
- c) plant or allow to grow any vegetation in any floodway that may;
  - (i) impede or deflect the flow of water; or
  - (ii) interfere with access for maintenance or inspection purposes; or
- d) construct or locate any structure in, over, through or under any floodway; without the prior written authority of the Council in accordance with [Part 4 \[Applying for authority\]](#).

## 7. Defences against water

### 7.1 No person shall:

- a) alter or otherwise interfere with any defence against water;
- b) damage or allow damage to occur to any defence against water;
- c) allow stock to damage or overgraze vegetation on any defence against water;
- d) construct any crossing in, over, through, along or under any defence against water;
- e) construct, or form through repeated use, a road, track or ford for the passage of vehicles, people or stock, on any defence against water; or
- f) remove, adjust, or interfere with any equipment relied on for the operation of any defence against water;

without the prior written authority of the Council in accordance with [Part 4 \[Applying for authority\]](#).

### 7.2 No person shall:

- a) plant or allow to grow any shrub, hedge, tree, or part thereof;
- b) dump or deposit any thing;
- c) construct or locate any structure; or
- d) carry out any earthworks or excavation, including for construction of a drain or for building foundations;

on any defence against water, within 7.5 metres from any defence against water or between a defence against water and the opposite bank of the watercourse, without the prior written authority of the Council in accordance with [Part 4 \[Applying for authority\]](#).

### 7.3

No person shall remove, damage, or allow stock to damage any fence, gate, sign, track, or ford that is owned or controlled by the Council in relation to any defence against water without the prior written authority of the Council in accordance with [Part 4 \[Applying for authority\]](#).

## 8. Flood protection vegetation

### 8.1

No person shall remove or damage any flood protection vegetation or allow stock to graze within an area where Council managed flood protection vegetation is located without the prior written authority of the Council in accordance with [Part 4 \[Applying for authority\]](#).

## 9. Hydrological devices, equipment and survey benchmarks

### 9.1

No person shall remove, damage or interfere with hydrological devices, hydrological equipment or survey benchmarks, or undertake works that would affect their operation, without the prior written authority of the Council in accordance with [Part 4 \[Applying for authority\]](#).

**Note:** The location of hydrological devices and equipment can be found in [Part 6 \[Maps\]](#).

## Part 3

# Land entry

### 10. Inspection and surveys

- 10.1 The Council may enter onto land to inspect and/or survey any floodway, defence against water, or any device, equipment or machinery used or associated with any defence against water, where the Council has given written notice<sup>1</sup> of at least two working days to the occupier of the land, of the activity and it is not an emergency.
- 10.2 In the event of an emergency, the Council is not required to give two working days notice but will provide notice as soon as practicable in the circumstances.

### 11. Defences against water maintenance works

- 11.1 The Council may enter onto land to carry out maintenance or repairs to floodways or defences against water owned or controlled by the Council where the Council has given written notice<sup>1</sup> of at least five working days to the occupier of the land, of the activity and it is not an emergency.
- 11.2 In the event of an emergency, the Council is not required to give five working days notice but will provide notice as soon as practicable in the circumstances.

### 12. Prohibiting or restricting access

- 12.1 The Council may prohibit or restrict access to any floodway or defence against water if, in the opinion of the Council, the restriction or prohibition is necessary to protect the floodway or defence against water from damage.

- 12.2 A prohibition or restriction under bylaw 12.1 will only be made where the Council has:
- clearly displayed, adjacent to any floodway or defence against water, a notice stating the prohibition or restriction; and
  - given written notice<sup>1</sup> of at least two working days, including an explanation of the prohibition or restriction, to the occupier of land and it is not an emergency.
- 12.3 In the event of an emergency, the Council is not required to give two working days notice but will provide notice as soon as practicable in the circumstances.

### 13. Obstruction to officers and contractors

- 13.1 No person, whether on private land or not, shall unreasonably obstruct or hinder any employee of the Council or any contractor engaged by the Council in the performance of anything which that employee or contractor is or may be required to do.
- 13.2 No person shall unreasonably obstruct or hinder any employee or contractor from bringing, onto any land, or from operating, any drain clearing plant or machinery.

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<sup>1</sup> In addition to written notice given under bylaws 10 to 15, the Council will endeavour to speak directly to the occupier of land before entering land to discuss the reasons for entry and any matters for concern. In determining reasonable terms of entry in the circumstances, the Council will have regard to the interests and convenience of the persons who may be affected and the requirements of any business utilising the land.

## 14. Maintenance of floodways by private individuals

- 14.1 Occupiers of land who wish to avoid herbicide use for the maintenance of floodways adjacent to or through their properties may undertake the floodway clearance themselves, or employ contractors to do so, subject to:
- a) obtaining prior written authority from the Council in compliance with [Part 4 Applying for an authority](#)];
  - b) signs being erected by the occupiers of land to clearly mark the areas where chemicals are not to be used (this may be achieved using simple signs clearly marked 'Chemical Free Area');
  - c) the works are to be carried out to a standard specified by the Council. That standard may include a time period within which the works are required to be carried out; and
  - d) if the works are not carried out to the prescribed standard, the Council may give notice of its intention to maintain the floodway and, following the period of one week, may carry out the required maintenance using any method it deems efficient including the use of herbicides.

## Part 4

# Applying for an authority

### 15. Authority

- 15.1 An application to the Council for authority under this bylaw shall be made using the online form at: [hyperlink to be confirmed] and be accompanied by any fee as prescribed in the Long-Term Plan.
- 15.2 When considering any application for an authority, the Council shall have regard to, but not be limited to, the following assessment criteria, in order to ensure the effective operation and integrity of the flood protection and flood control works:
- a) drainage and flood flow capacity;
  - b) stability/scour/erosion risk;
  - c) on-going functionality;
  - d) access for inspection and maintenance purposes; and
  - e) term of authority.
- 15.3 Any condition imposed under any authority will be appropriate for the scale and nature of the activity proposed and for giving effect to the purpose of this bylaw.
- 15.4 In the event of a Council decision to refuse an application for authority, the Council shall include, in writing, the reasons for that decision.
- 15.5 Every person to whom an authority is granted shall produce that authority for inspection on request by the Council.
- 15.6 Every authority granted under this bylaw to an occupier of any land, shall be binding on every subsequent occupier of that land, unless it specifically states otherwise.
- 15.7 The Council shall keep a register of all authorities granted and refused.

### 16. Fees

- 16.1 Any person who applies for an authority under this bylaw is required to pay an administration fee upon lodging the application for authority. Fees are set out in the Long Term Plan.
- 16.2 The Council may, in its absolute discretion, refund, remit or waive the whole or part of such fee.

### 17. Deeming authority

- 17.1 Any existing resource consent or agreement granted by or made with the Council and issued prior to this bylaw coming into force and which authorises the carrying out of any activity listed in this bylaw, shall be deemed to be an authority under this bylaw to carry out such work for the term and on the conditions set out in the resource consent or agreement. This will include any right under that consent or agreement to replace or repair any structure or to undertake any routine maintenance.

### 18. Revocation of authority

- 18.1 The Council may revoke any authority granted under this bylaw where:
- a) the holder of that authority contravenes or fails to comply with any condition of the authority; or
  - b) if the information made available to the Council, by the applicant for the authority for the purposes of the application, contained inaccuracies which materially influenced the decision made by Council in respect of the application.
- 18.2 Where the authority is to be revoked in accordance with [section 18.1\(a\)](#) (above), the Council shall not revoke any such authority without giving to the holder a notice in writing which:
- a) sets out the matters in which the holder has contravened or has failed to comply with any condition of the authority; and
  - b) if the breach or failure is capable of remedy, gives the holder a reasonable time within which to remedy it.

## Compliance and enforcement

### 19. Offence

- 19.1 Every person who commits an offence against this bylaw is liable to the penalties prescribed by section 242 of the *Local Government Act 2002*.

### 20. Notice to remedy

- 20.1 The Council may, by written notice, require any mitigation or remediation considered necessary by Council, in relation to the contravention of any provision of this bylaw, or the conditions of the relevant authority, in the time, and in the manner stated in the notice, at the cost of the person who committed the offence, as described by [section 19 \[Offence\]](#) (above).

### 21. Removal of works

- 21.1 The Council, may remove or alter any work or anything constructed after the date at which these bylaws becomes operative, that contravenes of any provision of these bylaws or any conditions of any authority, and may recover the costs incurred by the Council in connection with the removal or alteration from those responsible for the works.
- 21.2 Any action undertaken under [section 21.1 \[Removal of works\]](#) (above) shall not relieve any person from liability to any penalty incurred by reason of the breach.

## Part 6

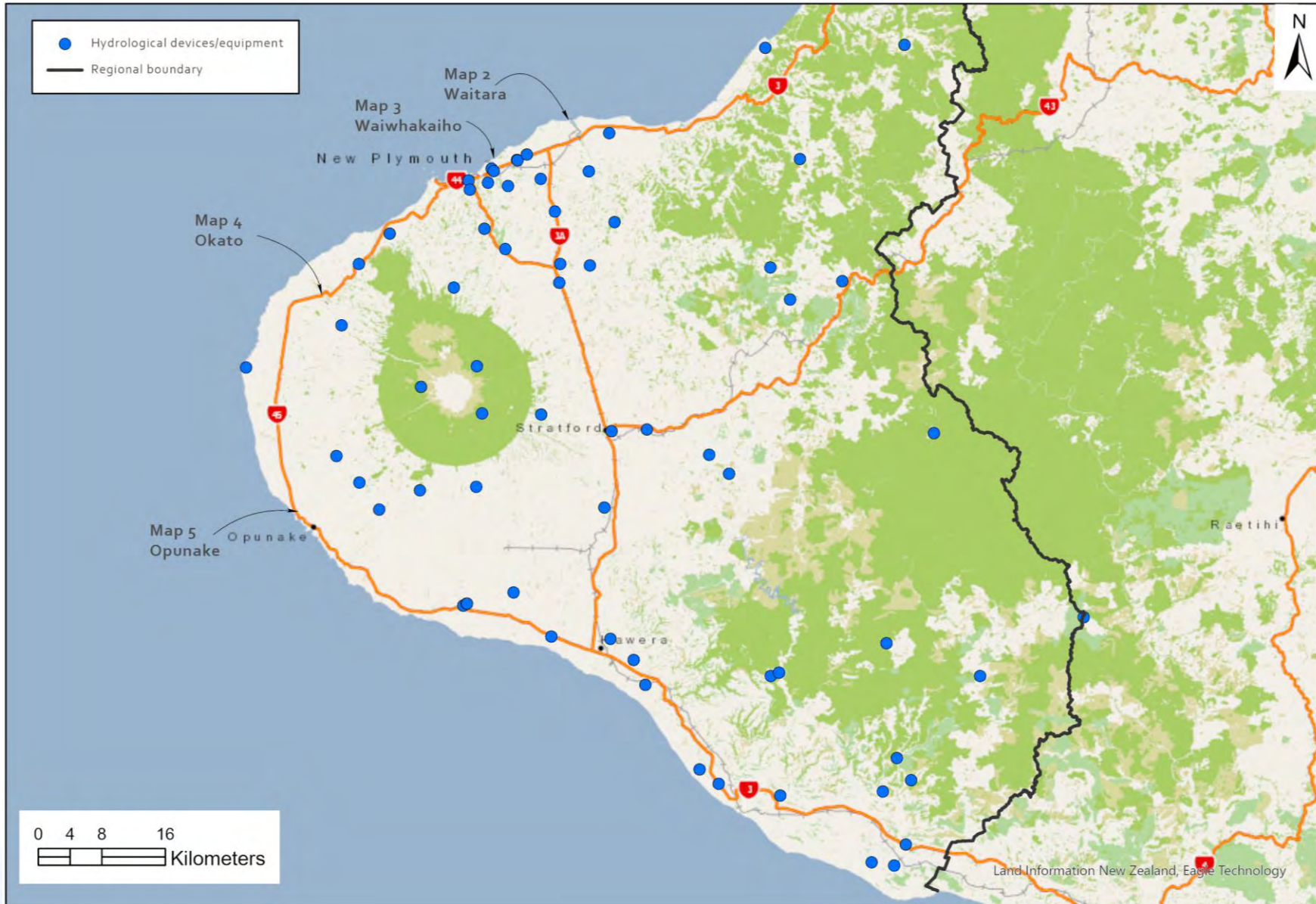
# Maps

**Note 1:** *These maps are a representation of Council managed hydrological devices/equipment, floodways and defences against water, at the time of writing and may be added to over the life of the bylaws.*

**Note 2:** *The resolution of lines on maps in the printed Map Volume may not be sufficient to determine the accurate placement of those lines in relation to any property. If you are uncertain, please contact the Council's River Manager directly for assistance.*



# Map 1 – Regional map



**Map 1** Regional map showing the location of hydrological devices/equipment sites and also showing the location of map sets 2 – 4

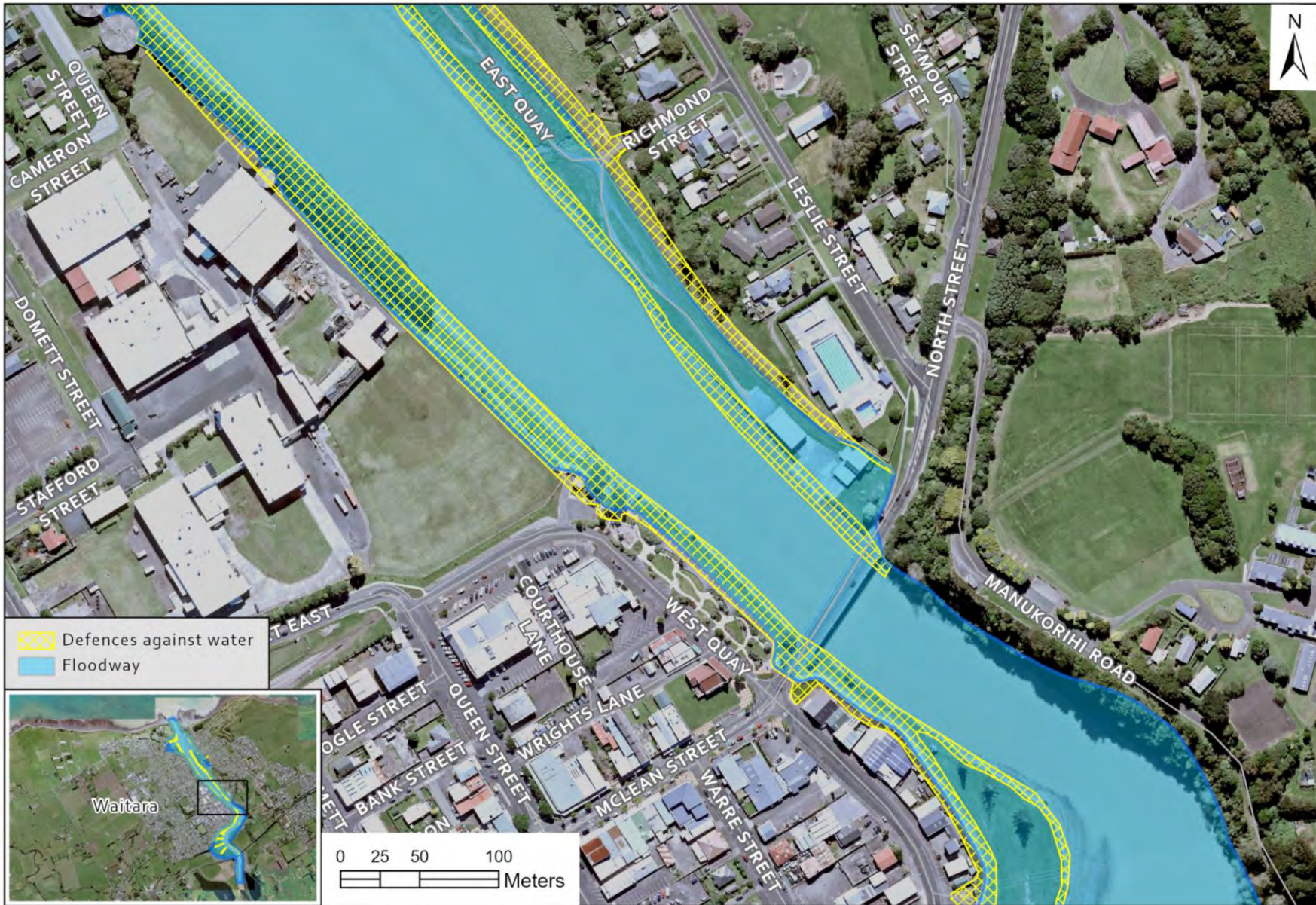
## Map 2 - Waitara



**Map 2a** Defences against water and floodways along the Waitara River, New Plymouth.



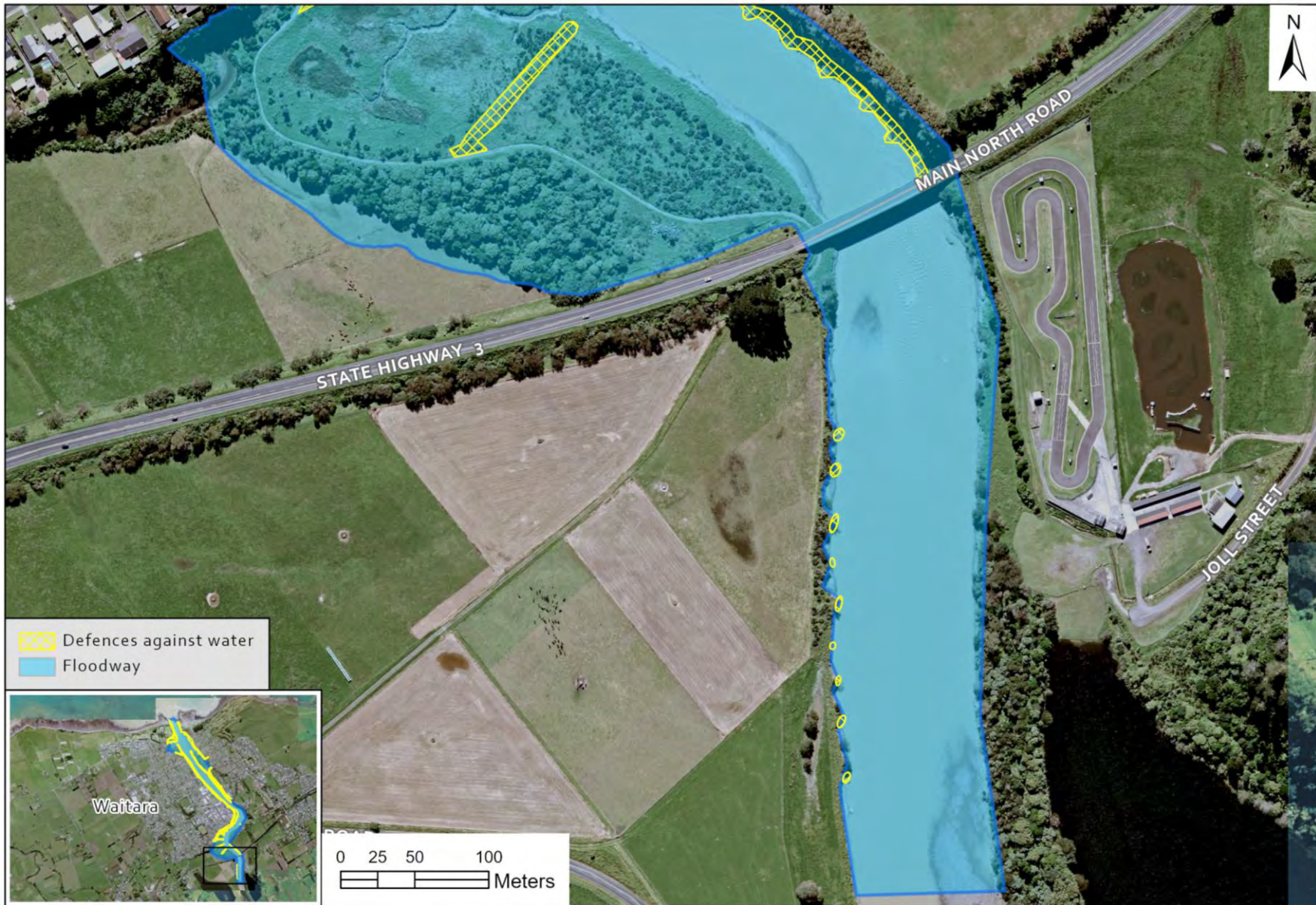
**Map 2b** Defences against water and floodways along the Waitara River, New Plymouth.



**Map 2c** Defences against water and floodways along the Waitara River, New Plymouth.



**Map 2d** Defences against water and floodways along the Waitara River, New Plymouth.

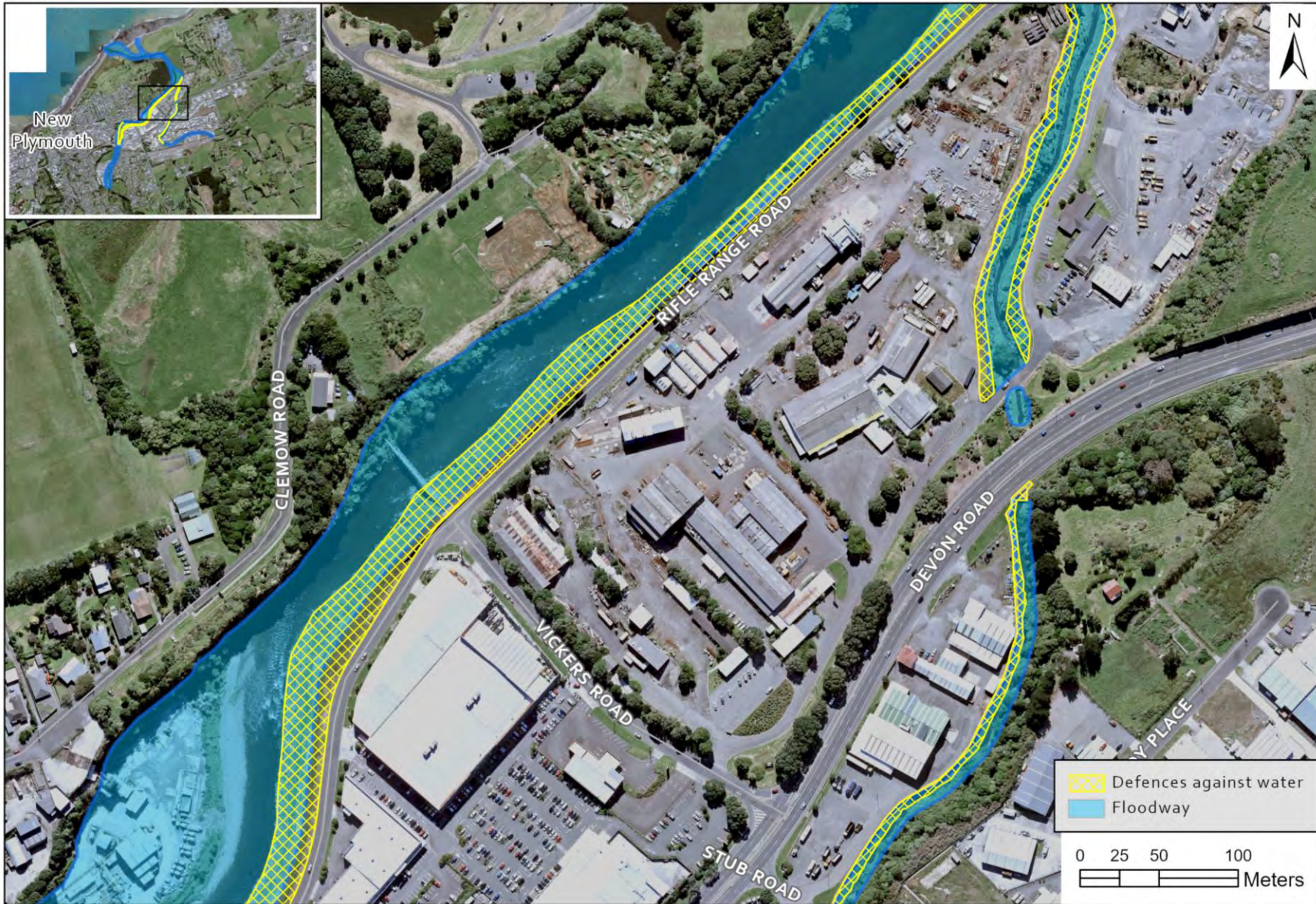


**Map 2e** Defences against water and floodways along the Waitara River, New Plymouth.

### Map 3 - Waiwhakaiho

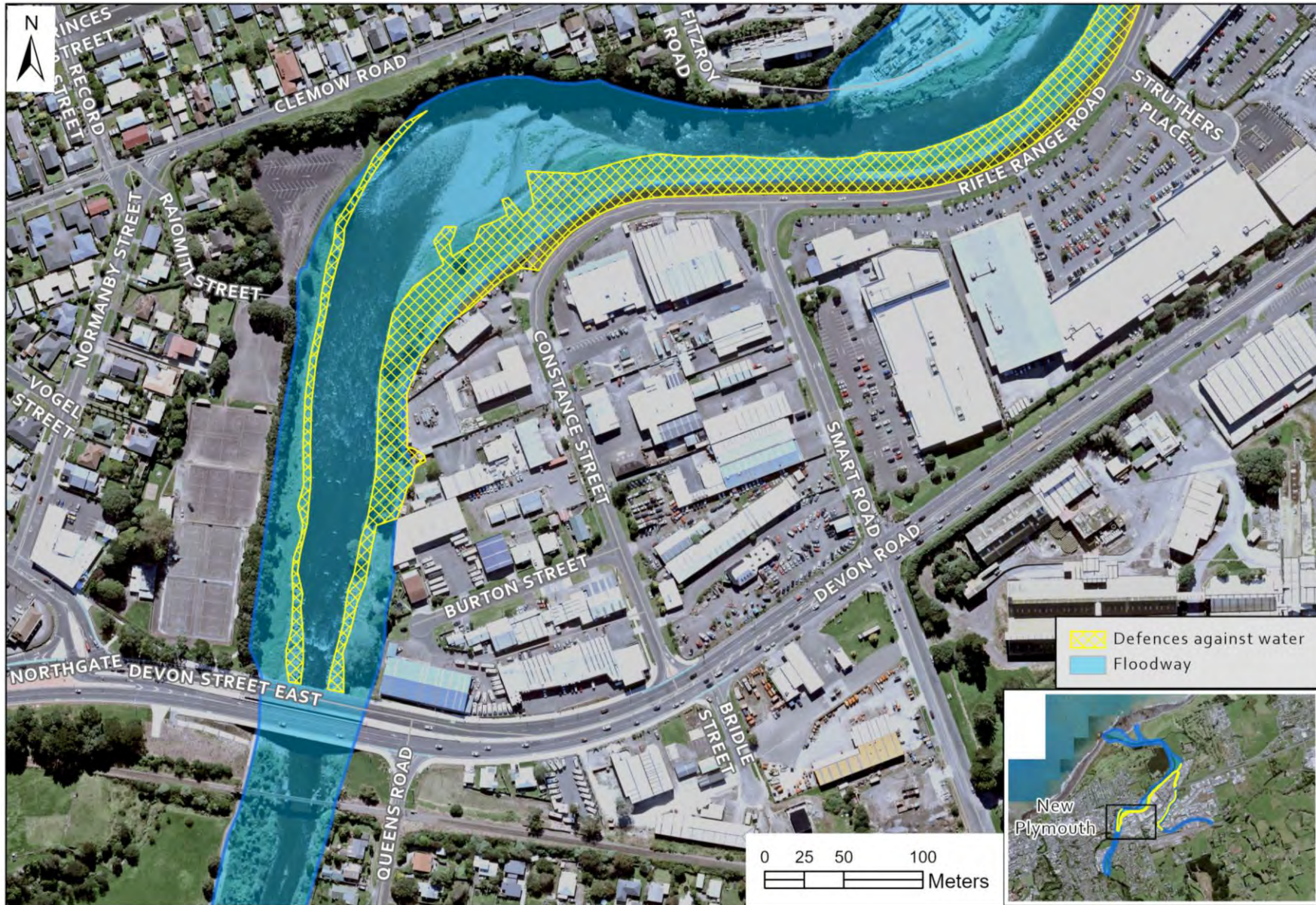


**Map 3a** Defences against water and floodways along the Waiwhakaiho River and Upper Mangone Stream, New Plymouth.



**Map 3b** Defences against water and floodways along the Waiwhakaiho River and Mangone Stream, New Plymouth.

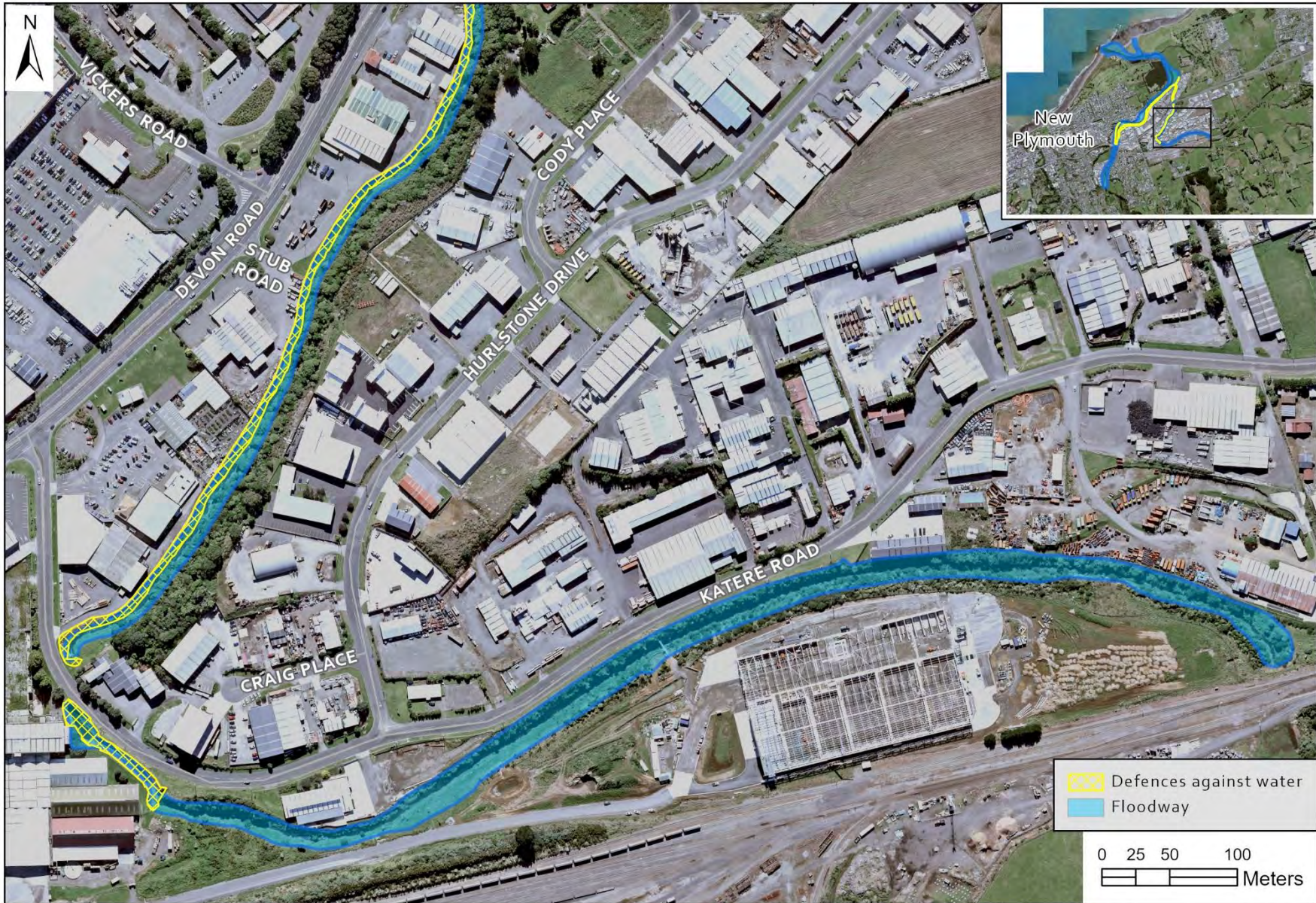




**Map 3c** Defences against water and floodways along the Waiwhakaho River, New Plymouth.



Map 3d Floodways along the Waiwhakaiho River, New Plymouth.



**Map 3e** Defences against water and floodways along the Mangaoone Stream, New Plymouth.

Map 4 - Okato



**Map 4a** Defences against water along the Kaihihi Stream, Okato.  
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**Map 4b** Defences against water along the Kaihihi Stream, Okato.



**Map 4c** Defences against water and floodways along the Stony/Hangatāhua River, Okato



**Map 4d** Defences against water along the Stony/Hangatāhua River, Okato.

Map 5 – Opunake



**Map 5a** Defence against water between Otahi stream 2 and Hihiwera Stream.





**Map 5b** Defences against water near Ihaia Road, Opunake.



**Map 5c** Defences against water between Ihaia Road and Waiaua River 2, Opunake.



**Map 5d** Defences against water between Gisborne Terrace and Allison Street, Opunake.