

TASMANIAN PLANNING COMMISSION

DECISION

Planning scheme	Latrobe Interim Planning Scheme 2013
Amendment	01-19 – insert Bushfire-Prone Areas Overlay maps
Planning authority	Latrobe Council
Date of decision	12 September 2019

Decision

The draft amendment is modified under section 41(ab) of the *Land Use Planning and Approvals Act 1993* as set out in Annexure A and is approved under section 42.



Peter Fischer
Acting Executive Commissioner

Note:

References to provisions of the *Land Use Planning and Approvals Act 1993* (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The commencement day was 17 December 2015.

REASONS FOR DECISION

Background

Amendment

The draft amendment proposes to insert a Bushfire-Prone Areas Overlay map into the planning scheme.

Site information

The proposed overlay covers the majority of the municipality with the exception of areas of Hawley Beach, Shearwater, Port Sorell, Latrobe, Tarleton, Spreyton and Wesley Vale.

The mapping was prepared by the Tasmania Fire Service and Latrobe Council officers. The Tasmania Fire Service provided a planning report supporting the draft amendment.

Issues raised in representations

TasWater's Submission to Planning Authority Notice under section 52S(2) of the *Water and Sewerage Industry Act 2008* states that it does not object to the draft amendment, has no formal comments for the Tasmanian Planning Commission and does not wish to attend any subsequent hearings.

Planning authority's response to the representations

The planning authority advised that no representations were received, other than the TasWater notice, and requested the Commission to endorse the draft amendment as presented.

Consideration of the draft amendment

1. Under section 40 of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the amendment and the representations, statements and recommendations contained in the planning authority's section 39 report.
2. One representation was received and after consultation under section 40(2A) of the Act, the Commission dispensed with holding a hearing.
3. The amendment has been initiated and certified by the Latrobe Council, in its capacity as planning authority, and further supported in the reports under sections 35 and 39.
4. Under section 32(1), in the opinion of the relevant decision-maker, a draft amendment:
 - (a)-(d) . . .
 - (e) must, as far as practicable, avoid potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area;
 - (ea) must not conflict with the requirements of section 300;
 - (f) must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.

5. Section 300 includes that:
 - (1) An amendment may only be made under Division 2 or 2A to a local provision of a planning scheme, or to insert a local provision into, or remove a local provision from, such a scheme, if the amendment is, as far as is, in the opinion of the relevant decision-maker, practicable, consistent with the regional land use strategy for the regional area in which is situated the land to which the scheme applies.
6. Section 300(2)-(5) inclusive relates to the effect of amending a local provision with respect to common provisions. These matters are not relevant to the draft amendment as there are no implications for any common provisions.
7. Section 32(1)(e) is applicable as the draft overlay mapping extends to the boundary of the local government area.
8. Under section 32(1)(f), regional impacts of use and development permissible under the amendment have been considered with reference to Living on the Coast: The Cradle Coast Regional Land Use Planning Framework, October 2011 (the regional strategy).
9. Under section 32(2), the provisions of section 20(2)-(9) inclusive apply to the amendment of a planning scheme in the same manner as they apply to a planning scheme.

Planning Directive No. 5.1 – Bushfire-Prone Areas Code

10. The Bushfire-Prone Areas Code (the code) applies to all interim planning schemes through Planning Directive No. 5.1. In the report under section 35, the planning authority notes that the mapping will relate to the definition of bushfire-prone areas under the Bushfire-Prone Areas Code.
11. In the supporting planning report, the Tasmania Fire Service notes that the Bushfire-Prone Areas Code applies to land within a bushfire-prone area, defined at clause E1.3 of the planning scheme as meaning:
 - (a) land that is within the boundary of a bushfire-prone area shown on an overlay on a planning scheme map; and
 - (b) where there is no overlay on a planning scheme map, land that is within 100m of an area of bushfire-prone vegetation equal to or greater than 1ha.
12. The Tasmania Fire Service advise that where no mapping exists, planning authorities must rely on an interpretation of sub-clause (b). Incorporation of the overlay map into the planning scheme will mean sub-clause (a) is used, which will reduce the amount of assessment required to determine whether the code applies. The Tasmania Fire Service further states:

...the mapping will remove ambiguity and improve the development assessment process to the benefit of permit authorities, land owners and developers.
13. The planning authority notes that the amendment does not introduce any new development standards, but instead improves the application of the Code.
14. The Tasmania Fire Service report describes the methodology used to prepare the mapping for the overlay. The Tasmania Fire Service states that during the mapping process, the overlay was refined through evaluation of local conditions, resulting in a significant reduction of private land parcels affected by the code. The Tasmania Fire Service submits that the overlay will reduce costs and delays associated with the approval process for these properties.
15. The report also considers a number of new subdivisions in urban fringe locations, and the need, or otherwise, for the overlay in those areas still being developed.

Commission's consideration

16. The Commission agrees that the introduction of the overlay mapping will clarify the application of the code and reduce unnecessary constraints on those properties no longer affected by the code.
17. The Commission is satisfied with the methodology used to prepare the mapping and finds that the overlay accurately reflects land within a bushfire-prone area.

Strategic justification

18. In the report under section 35, the planning authority considers the draft amendment against the regional strategy, noting that section 4.4 of the Cradle Coast Land Use Strategy (part C of the regional strategy) provides the regional land use policy for the protection of people and property.
19. The Tasmania Fire Service also references the land use planning processes for risk management found in section 4.4, which are:
 - a. Recognise land exposed to future or enhanced risk is a valuable and strategic resource that should not be sterilised by unnecessarily excluding use or development
 - b. Establish the priority for risk management is to protect the lives of people, the economic value of buildings, the functional capacity of infrastructure, and the integrity of natural systems
 - c. Avoid new essential service, sensitive or inappropriately located use or development on undeveloped land exposed to or affected by a high level of an existing, likely future or enhanced risk, including from inundation and erosion by the sea, flooding, bushfire or landslip
 - d. Limit opportunity for expansion of existing essential service, sensitive or inappropriately located use and development onto land exposed to or affected by an existing, likely future or enhanced level of risk.
 - e. Limit opportunity for redevelopment and intensification of existing essential service, sensitive or inappropriately located use or development on land exposed to or affected by an existing, likely future or enhanced level of risk unless the impact can be managed to be no greater or less than the existing situation
 - f. Promote guidelines and technical measures that which will assist to reduce impact of an existing, likely future or enhanced level of risk and make existing strategically significant places, uses, development and infrastructure assets less vulnerable, including provision for protection, accommodation and abatement, or retreat
 - g. Require a hazard risk assessment for new or intensified use or development on land exposed to an existing, likely future or enhanced risk, such assessment to address the nature and severity of the hazard, the specific risk factors for the proposed use or development, and the measures required to mitigate any risk having exceedance probability of greater than 1% at any time over the life of the development
 - h. Ensure current and future landowners and occupiers are put on notice of the likelihood for a future or enhanced level of risk.
20. The Tasmania Fire Service considers that the refinement in the overlay, resulting in a reduction of parcels subject to the code, is consistent with 4.4(a). They further consider that the overlay mapping will support 4.4(b), (c), (d) and (e) by assisting in the application of the Bushfire-Prone Areas Code.

21. The Tasmania Fire Service notes that the overlay will provide a useful resource for risk mitigation planning and therefore is consistent with 4.4(f). They also state that the overlay is consistent with 4.4(g) as it directly relates to existing requirements for bushfire hazard assessment. In relation to 4.4(h), they note:

Provision of a publicly-accessible and property-based layer that identifies designated bushfire-prone areas will increase the opportunity for landowners to inform themselves with respect to the potential exposure to risk...
22. Both the planning authority and the Tasmania Fire Service consider that the intention of regional strategy for the containment of existing urban settlements indirectly supports community fire safety by restricting growth of the interface between urban and rural land.
23. Both parties also consider the draft amendment is consistent with the Latrobe Council Strategic Plan 2012-2017, particularly the following strategies:
 - 3.1.1 – Engage with State, Regional and Local Government bodies.
 - 3.1.2 – Develop and implement the Emergency Management Plan.
 - 4.1.1 – To administer and update the Planning Scheme to manage development and land use.
 - 4.1.2 – Enforce planning scheme and planning permit requirements.
 - 4.1.5 – Meet Council's statutory building services requirements.
 - 4.5.4 – Identify fire risks within the municipality and issue Fire Abatement Notices where required.
24. The Tasmania Fire Service considers that collaboration with Council in preparation of the draft amendment meets 3.1.1 and that the overlay may be a useful tool in emergency planning which is consistent with 3.1.2. They consider amendment of the planning scheme to introduce the draft overlay is consistent with 4.1.1 and will assist with achieving 4.1.2, 4.1.5 and 4.5.4 by clearly defining those areas subject to bushfire hazard. They also note:

By mapping certain areas out of the overlay, the overlay clearly identifies those areas that must be kept hazard-free, thereby supporting the issue of Fire Abatement Notices.

Commission's consideration

25. The Commission notes the views of the planning authority and the Tasmania Fire Service and is satisfied that the amendment is, as far as is practicable, consistent with the regional strategy and the Latrobe Council Strategic Plan 2012-2017.

Avoiding potential for conflict with use and development of the adjacent area

26. Section 32(1)(e) requires that the amendment 'must, as far as practicable, avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area'.
27. In response to section 32(1)(e), both the planning authority and the Tasmania Fire Service consider the draft amendment will facilitate the application of the Bushfire-Prone Areas Code and will not generate the potential for land use conflict.

Commission's consideration

28. The Commission considers that, as the draft amendment does not allow for additional development or use, there is no potential for land use conflicts with use and development applying to the adjacent area. The Commission agrees with the parties that the amendment meets the requirements of section 32(1)(e).

State Policies and Resource Management and Planning System Objectives

29. The Commission finds that no State Policies are relevant to the draft amendment and that it seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Modifications required to draft amendment

30. The overlay maps certified by the planning authority are of poor quality due to being scanned after certification.
31. The Commission therefore modifies the draft amendment to include higher quality maps.

Decision on draft amendment

32. Subject to the modification described above, the Commission finds that the draft amendment is in order and gives its approval.

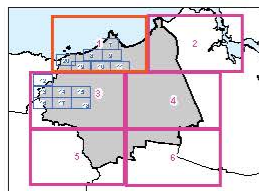
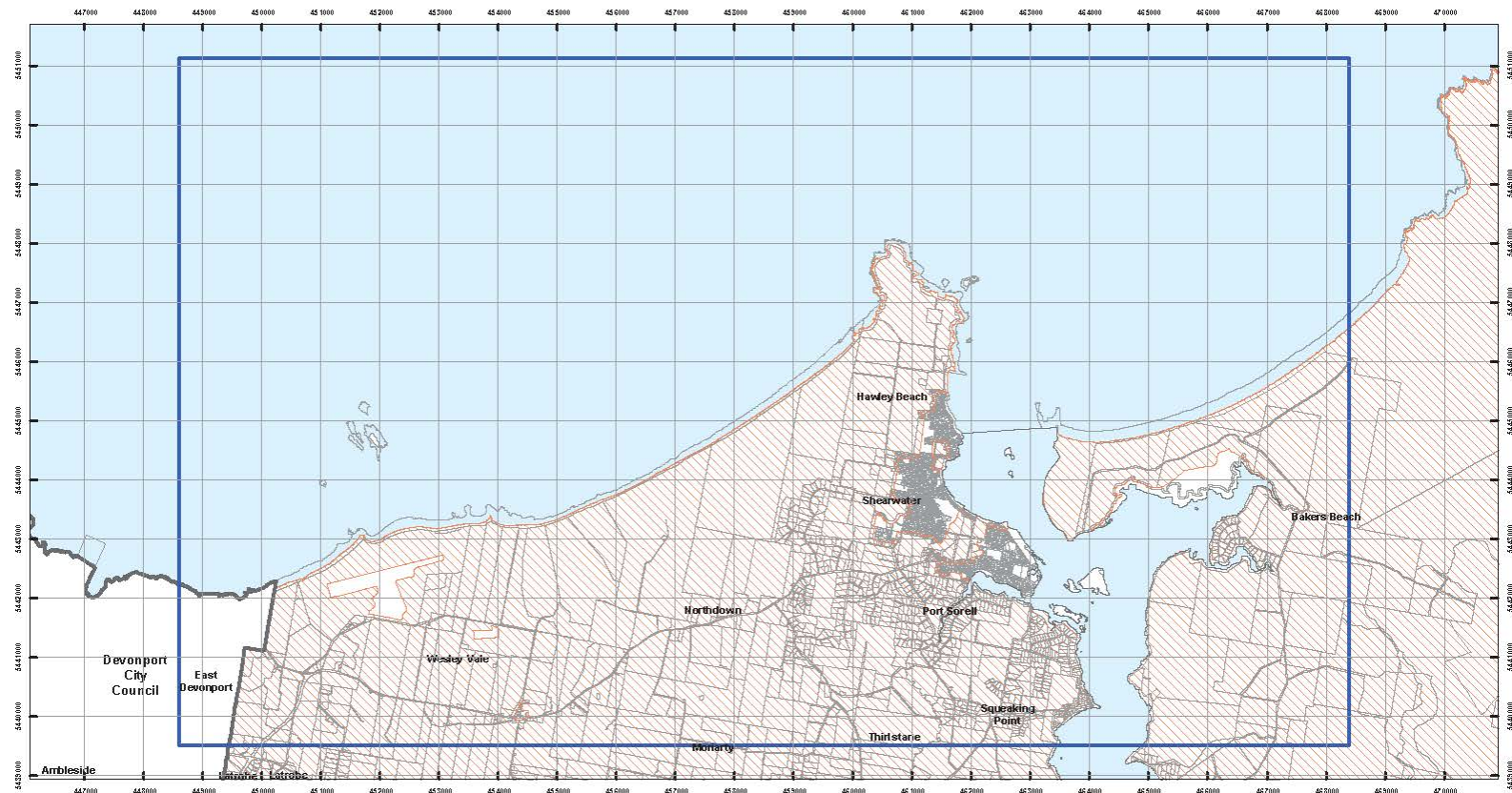
Attachments

Annexure A – Modified amendment

Annexure A

Modified amendment 01-19 Latrobe Interim Planning Scheme 2013.

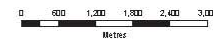
Insert Bushfire-Prone Areas Overlay maps, as made applicable by the Bushfire-Prone Areas
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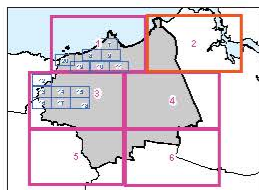
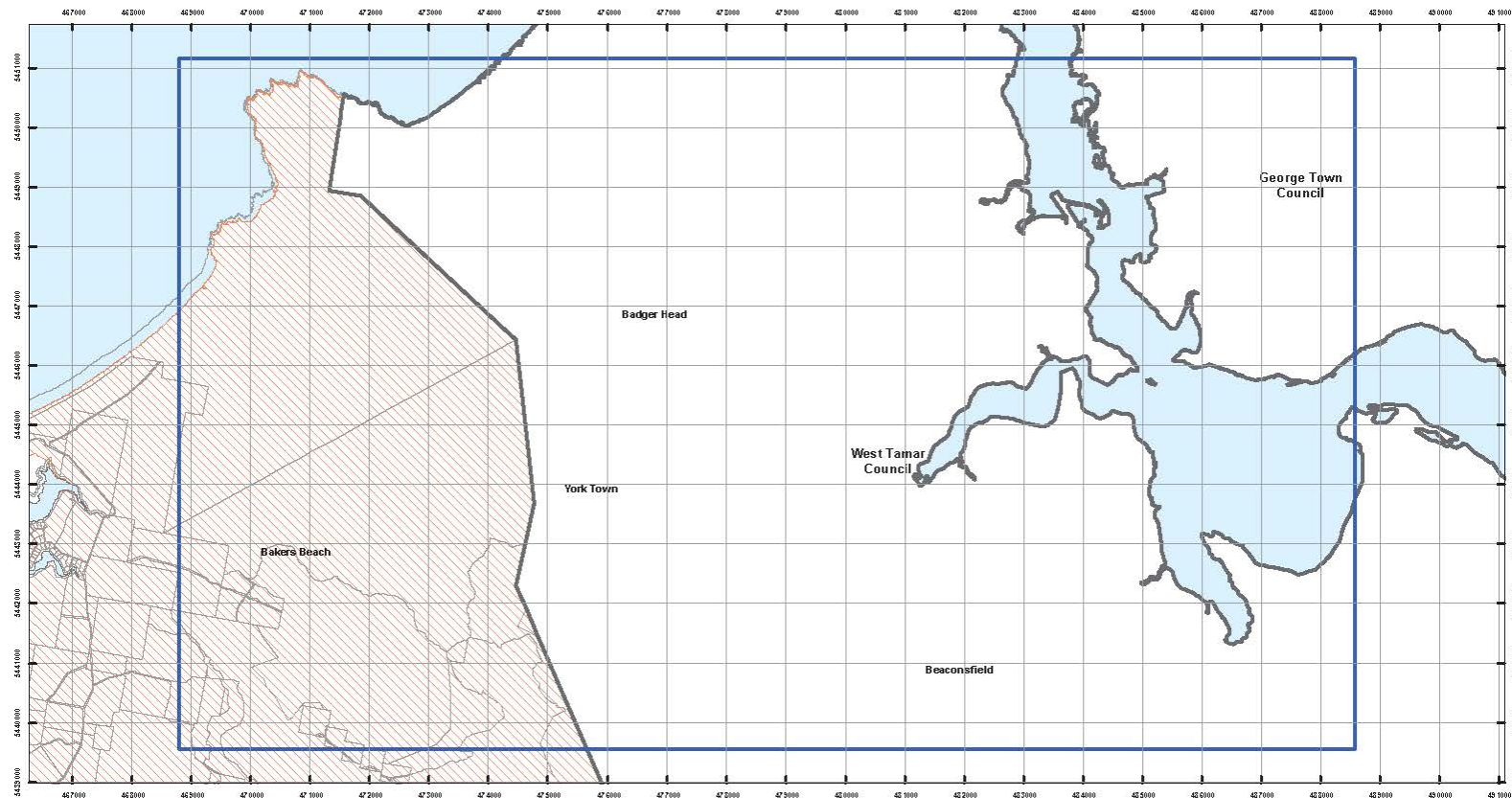
These maps form part of the Latrobe Interim Planning Scheme 2013.



Latrobe Council
Latrobe Interim Planning Scheme 2013
Bushfire-Prone Areas Overlay



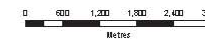
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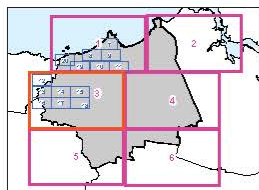
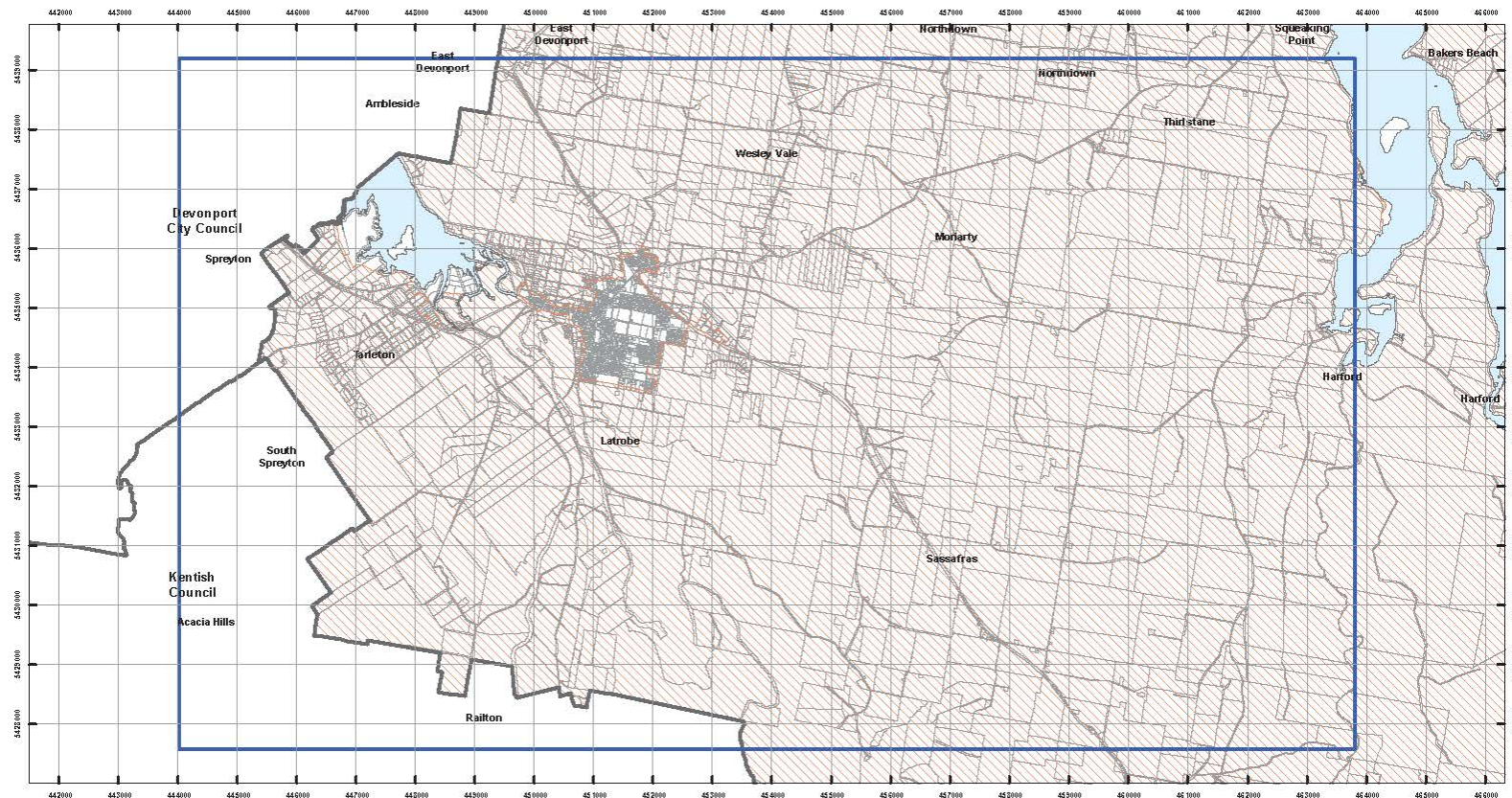


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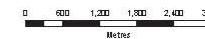




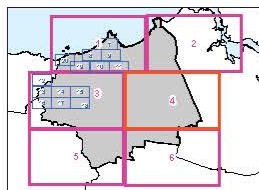
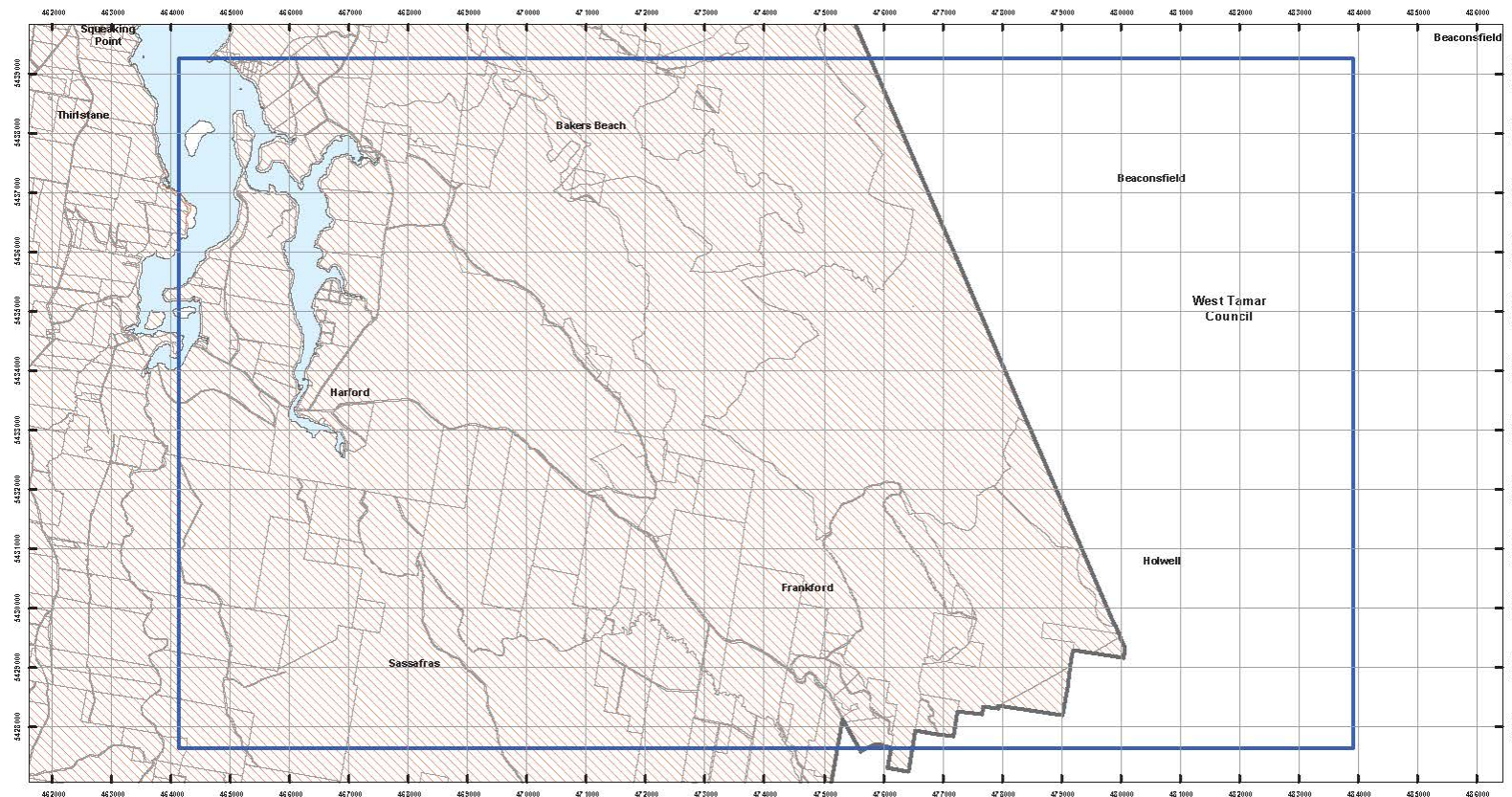
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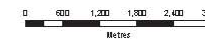
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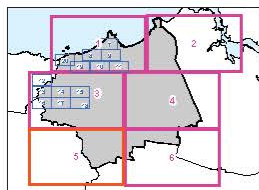
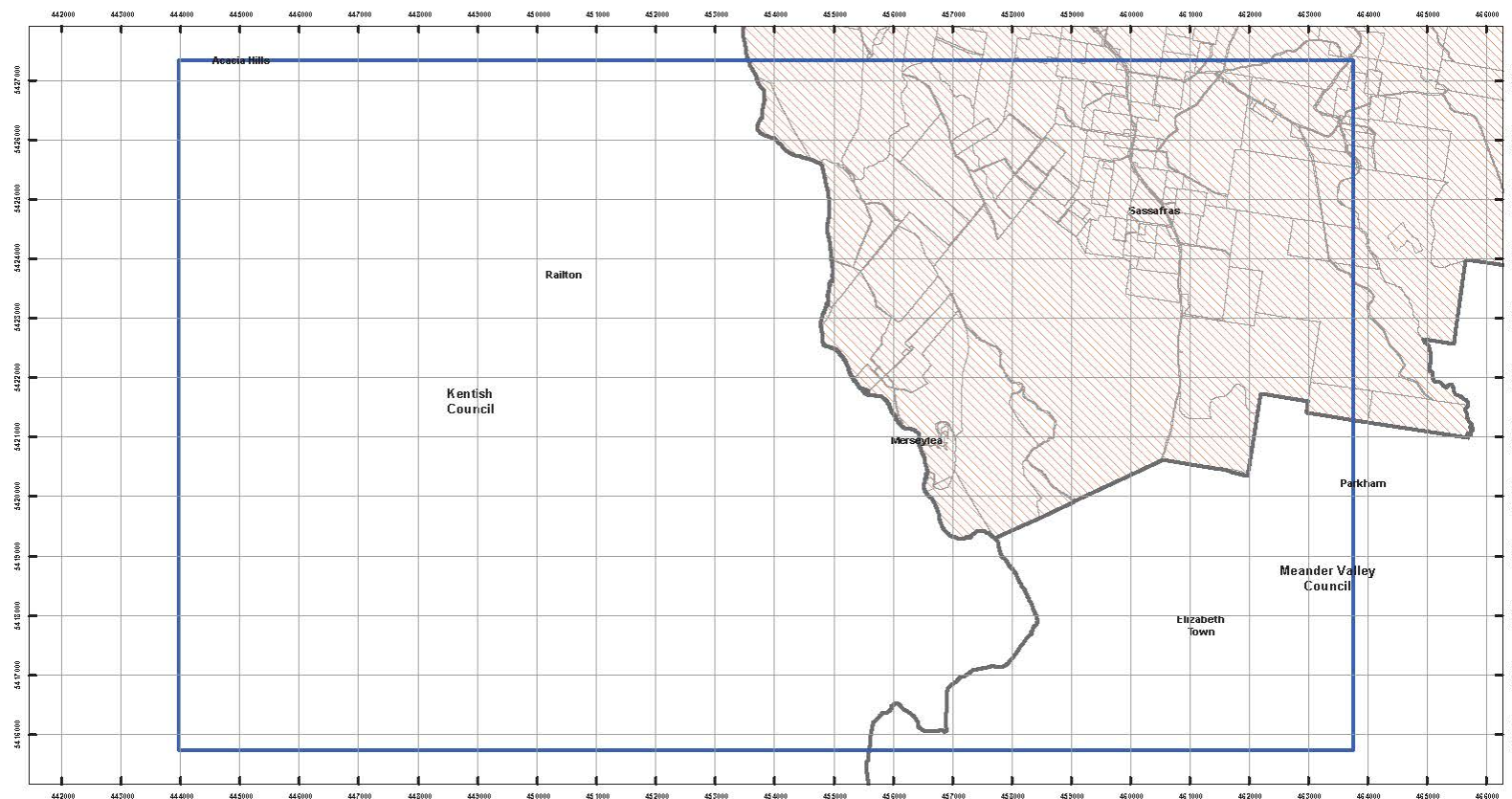


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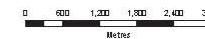




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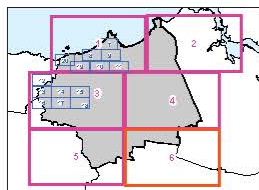
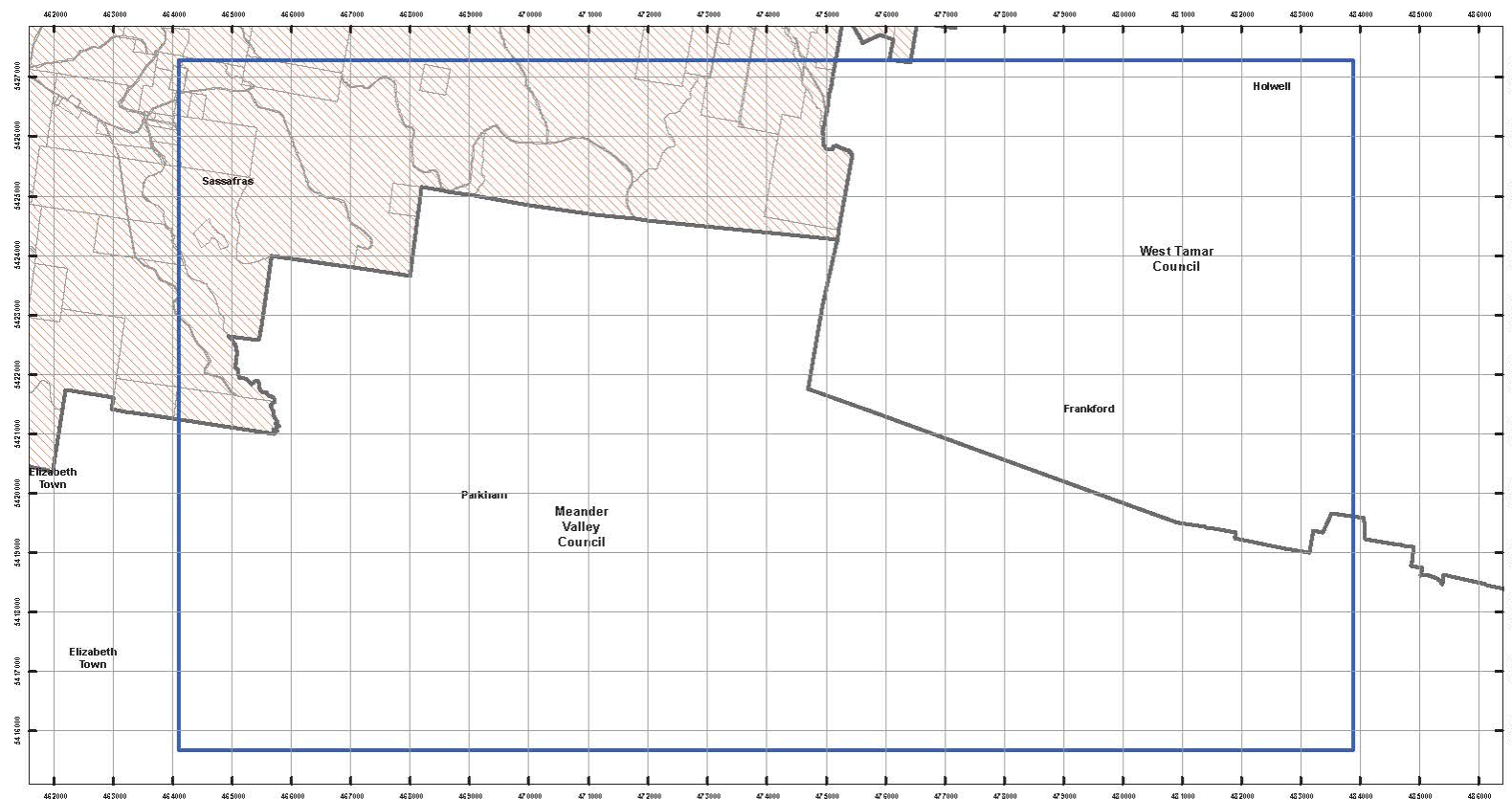


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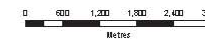




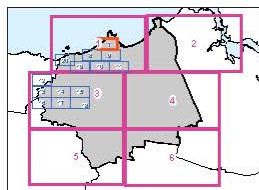
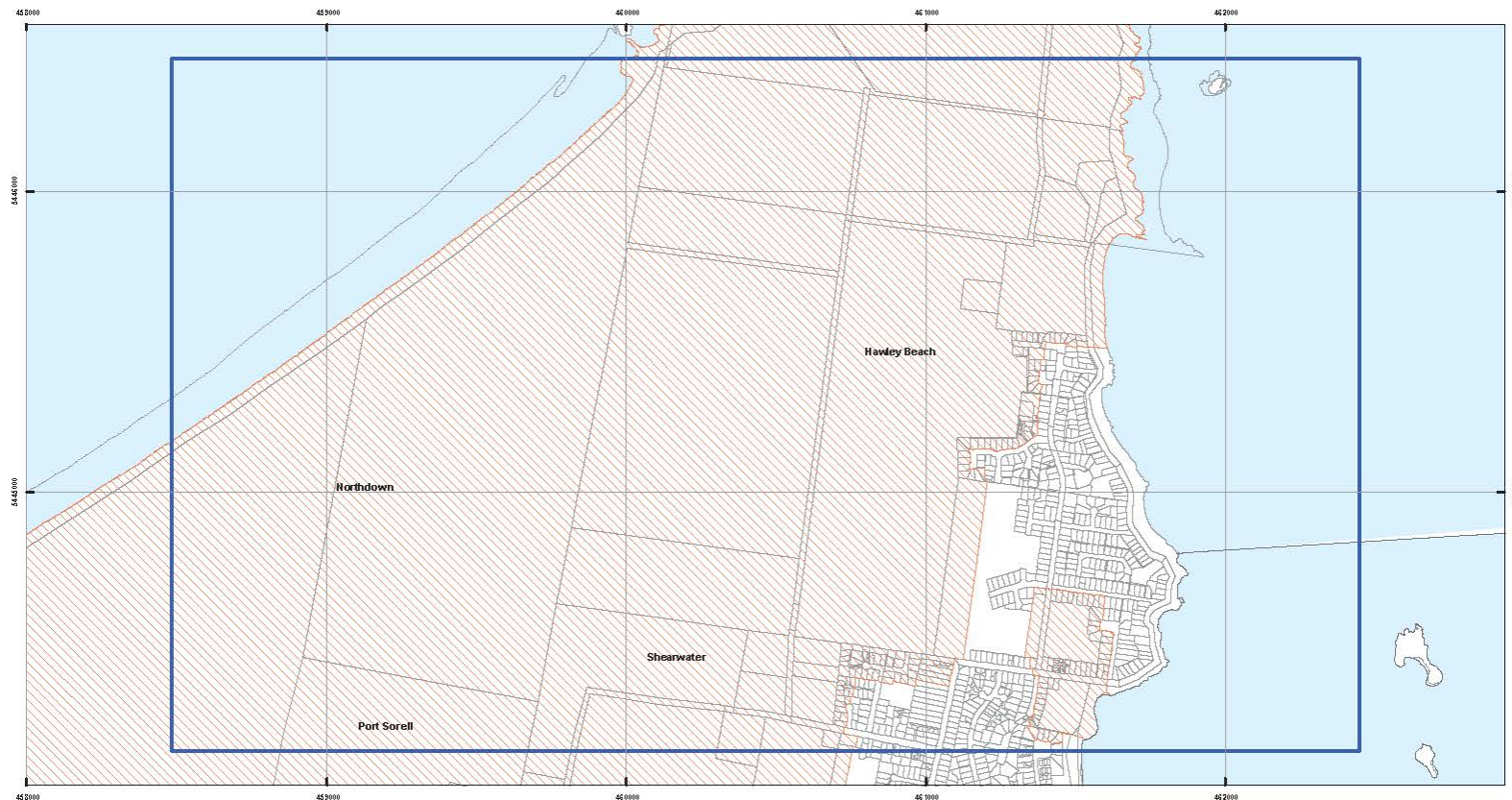
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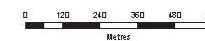
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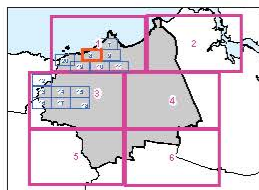
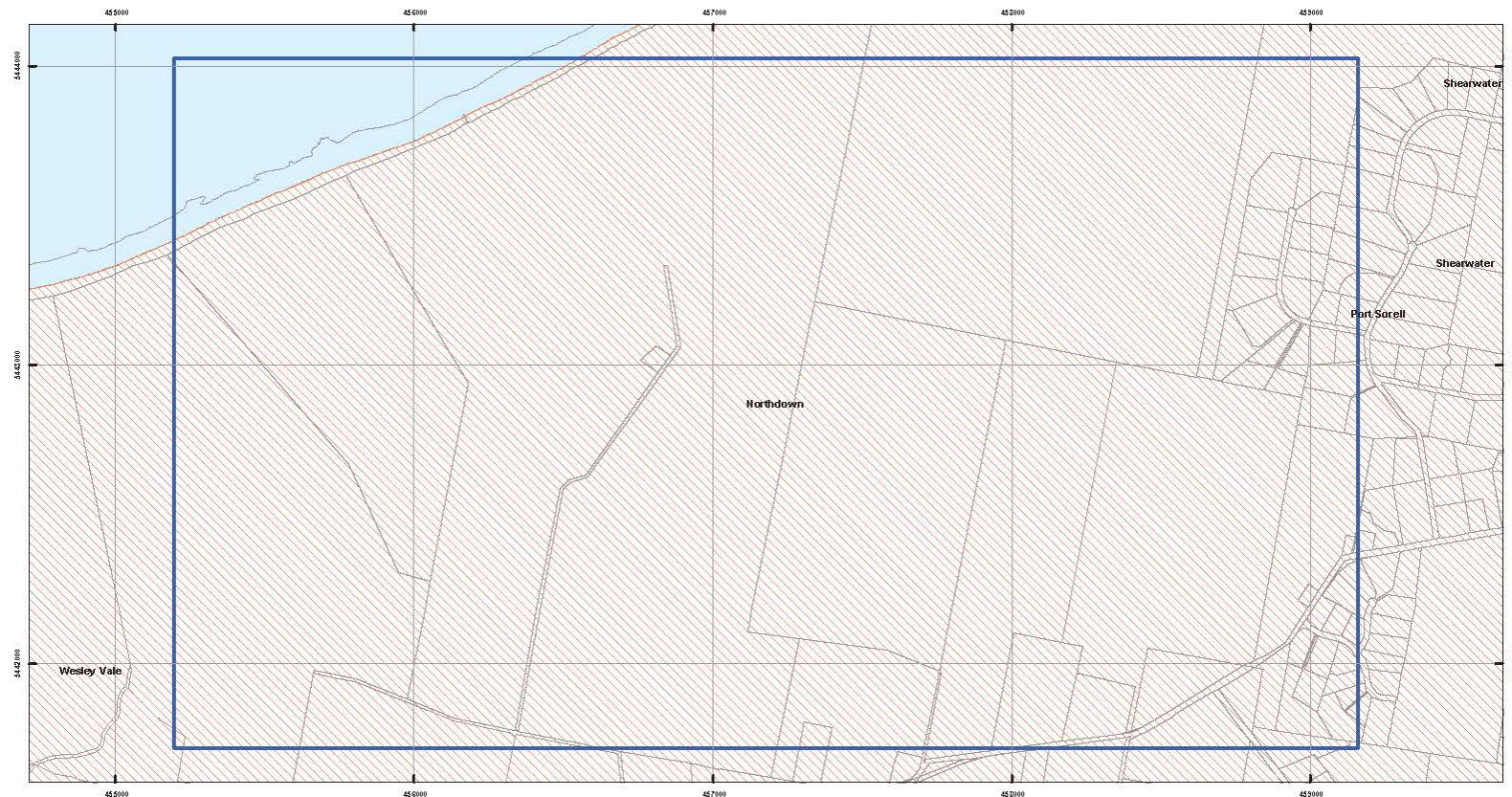
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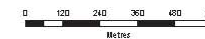
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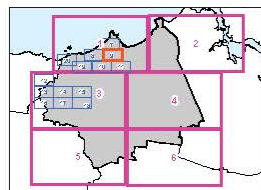
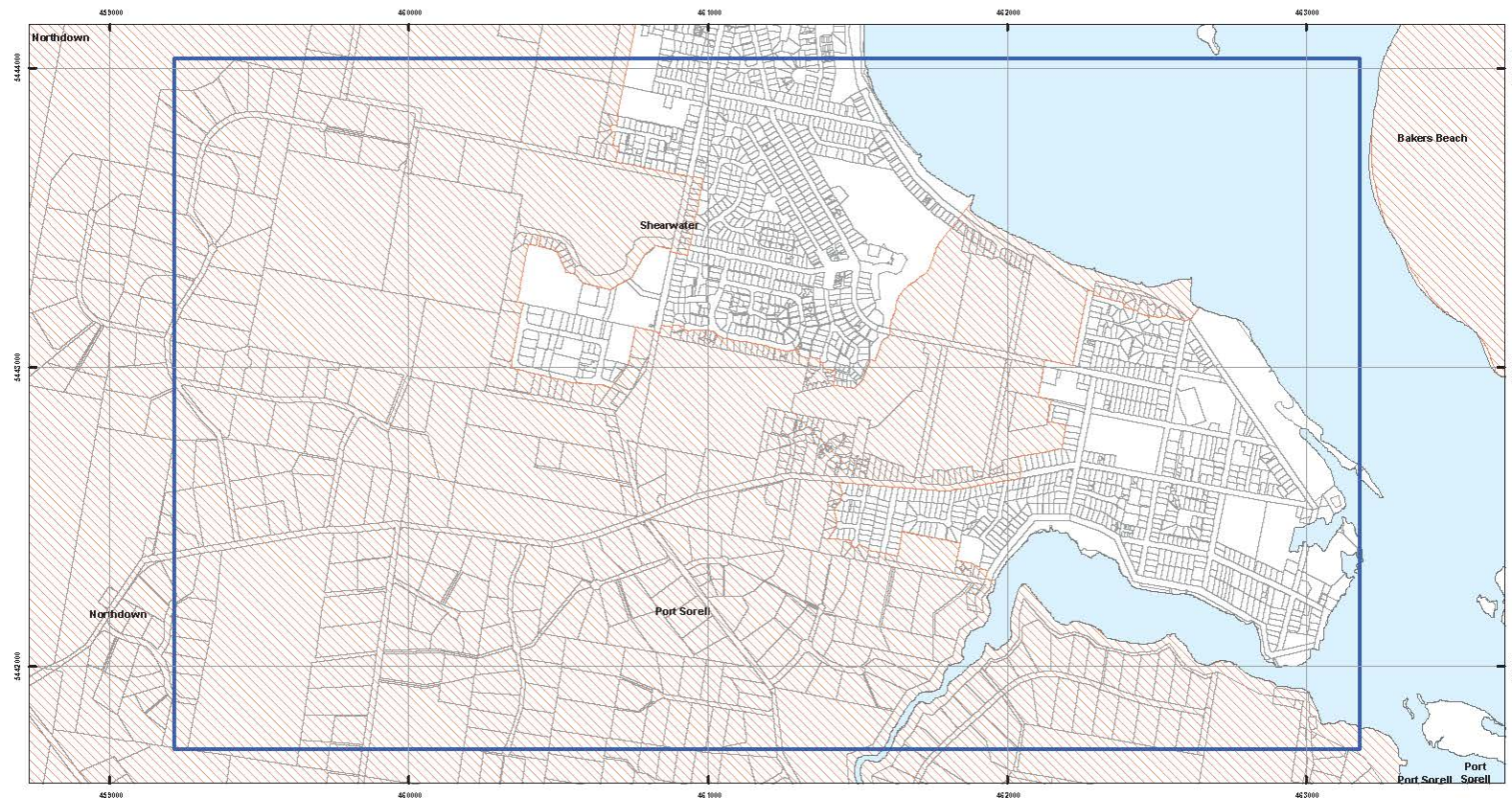
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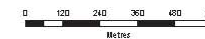
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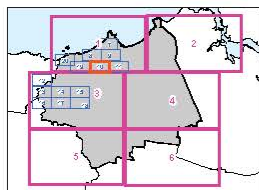
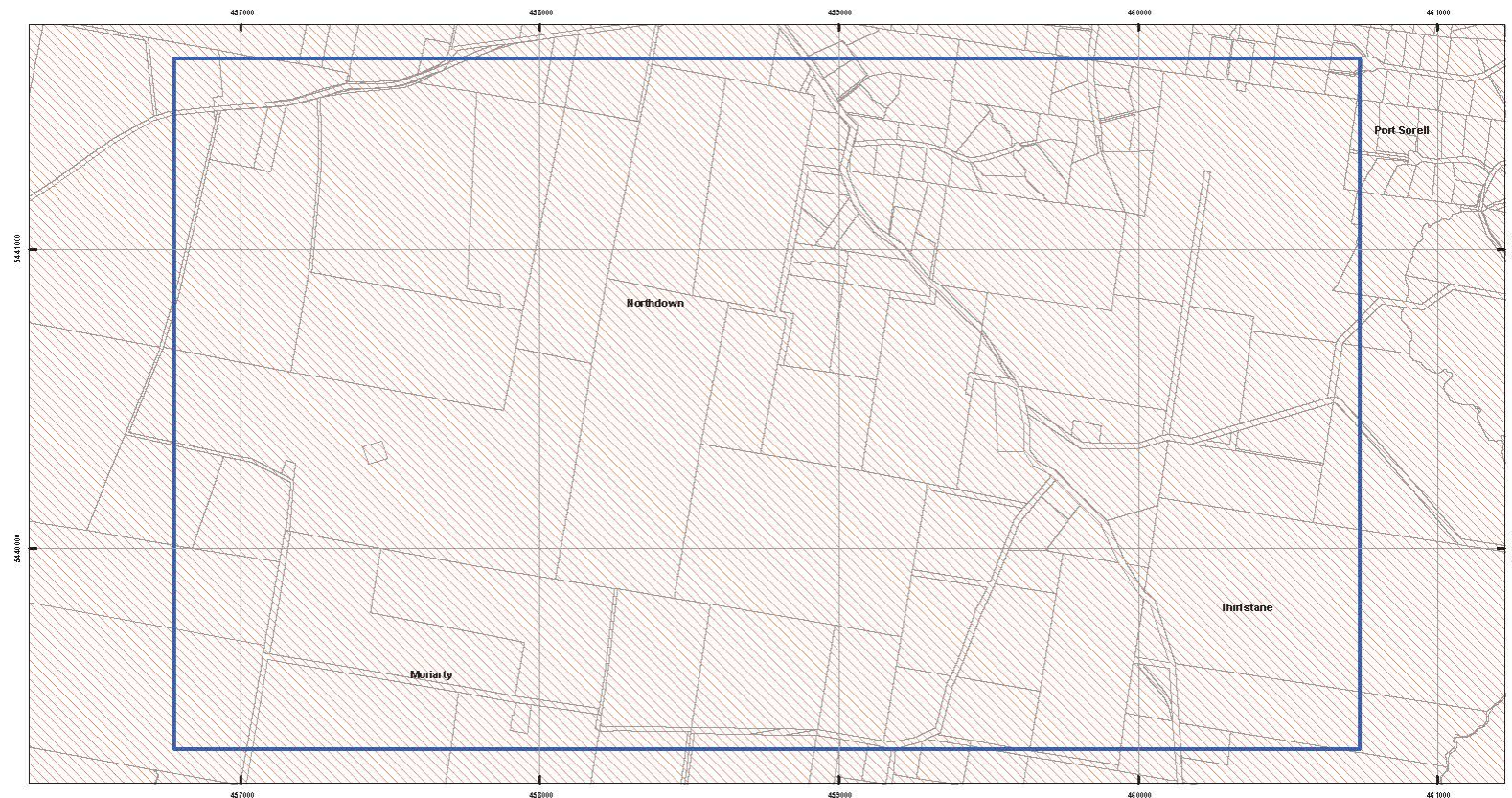


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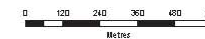




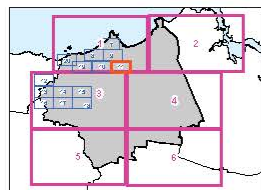
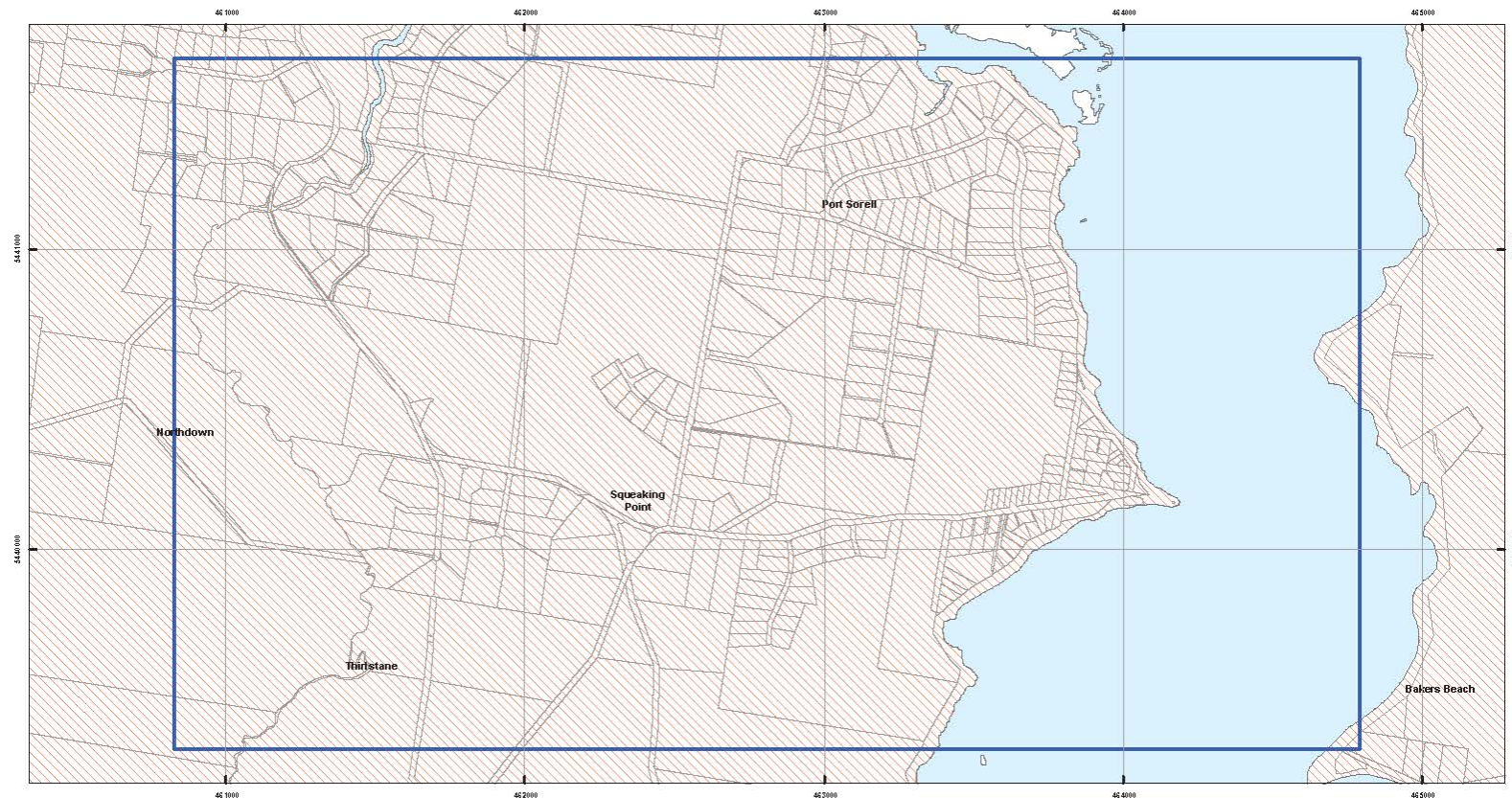
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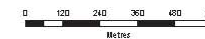
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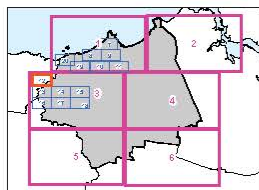
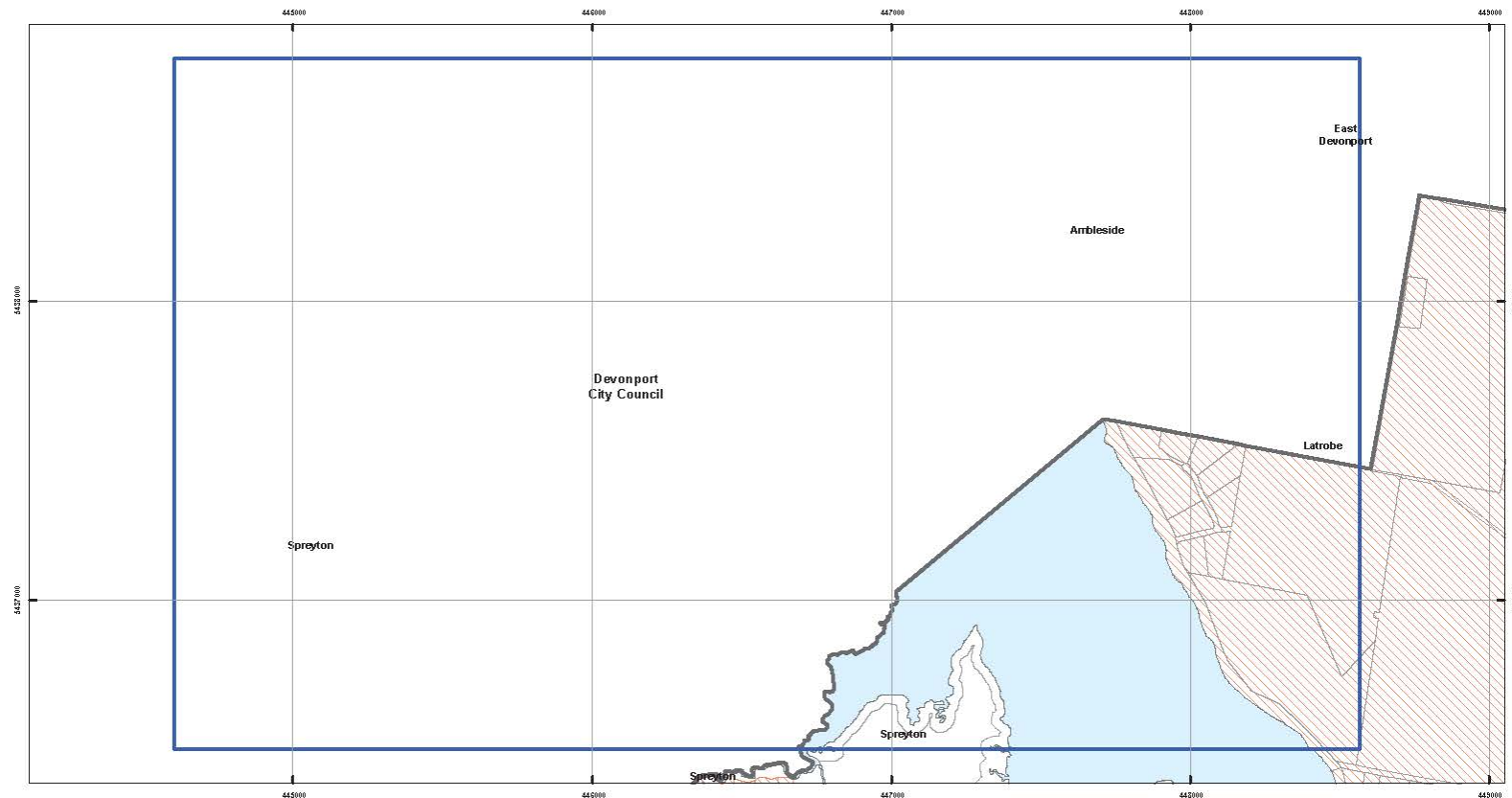
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Bushfire-Prone Areas Overlay



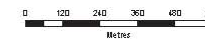
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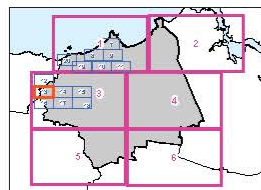
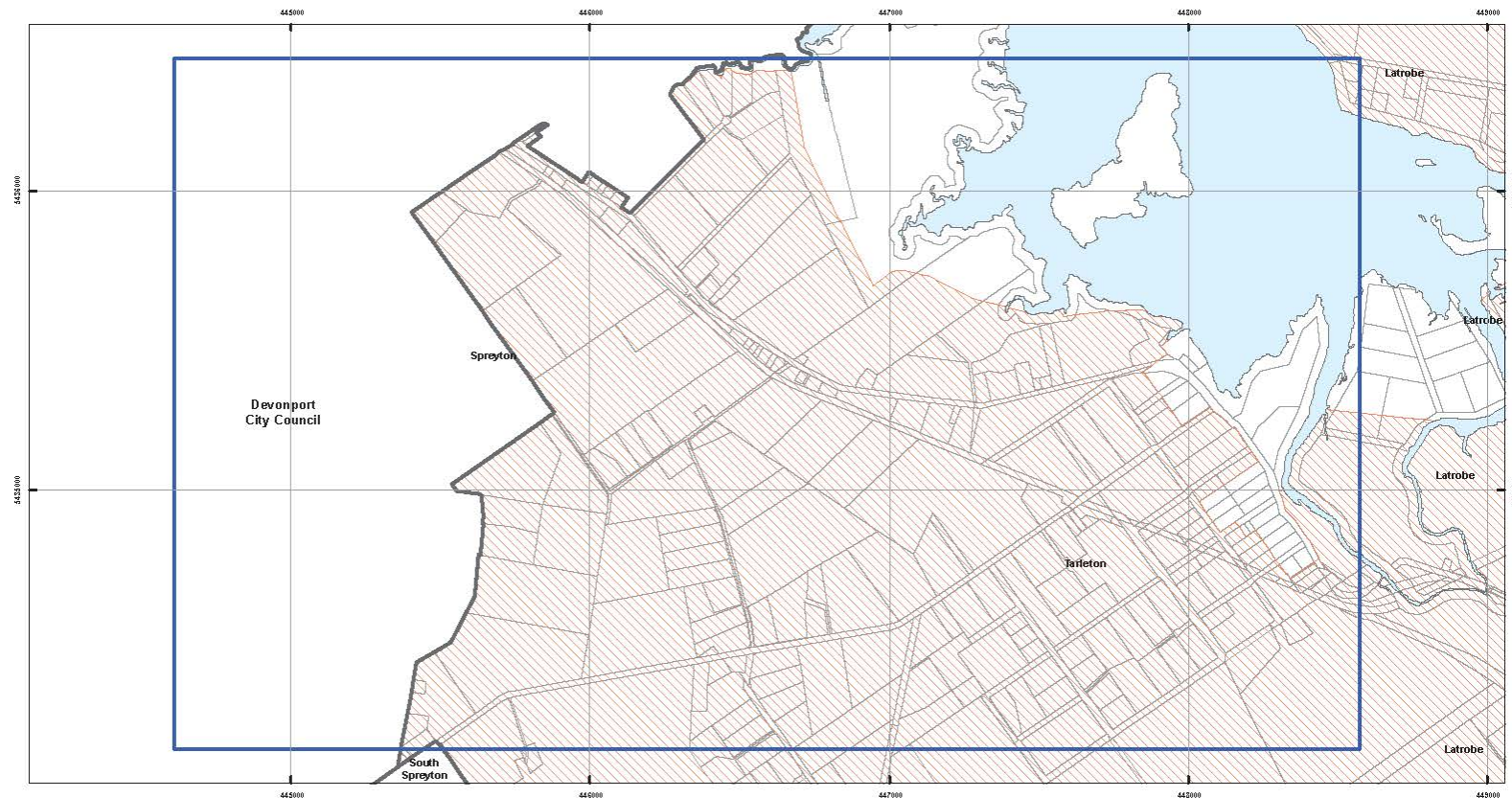
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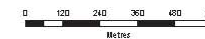
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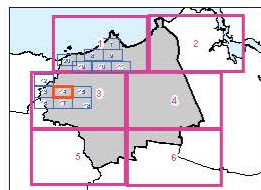
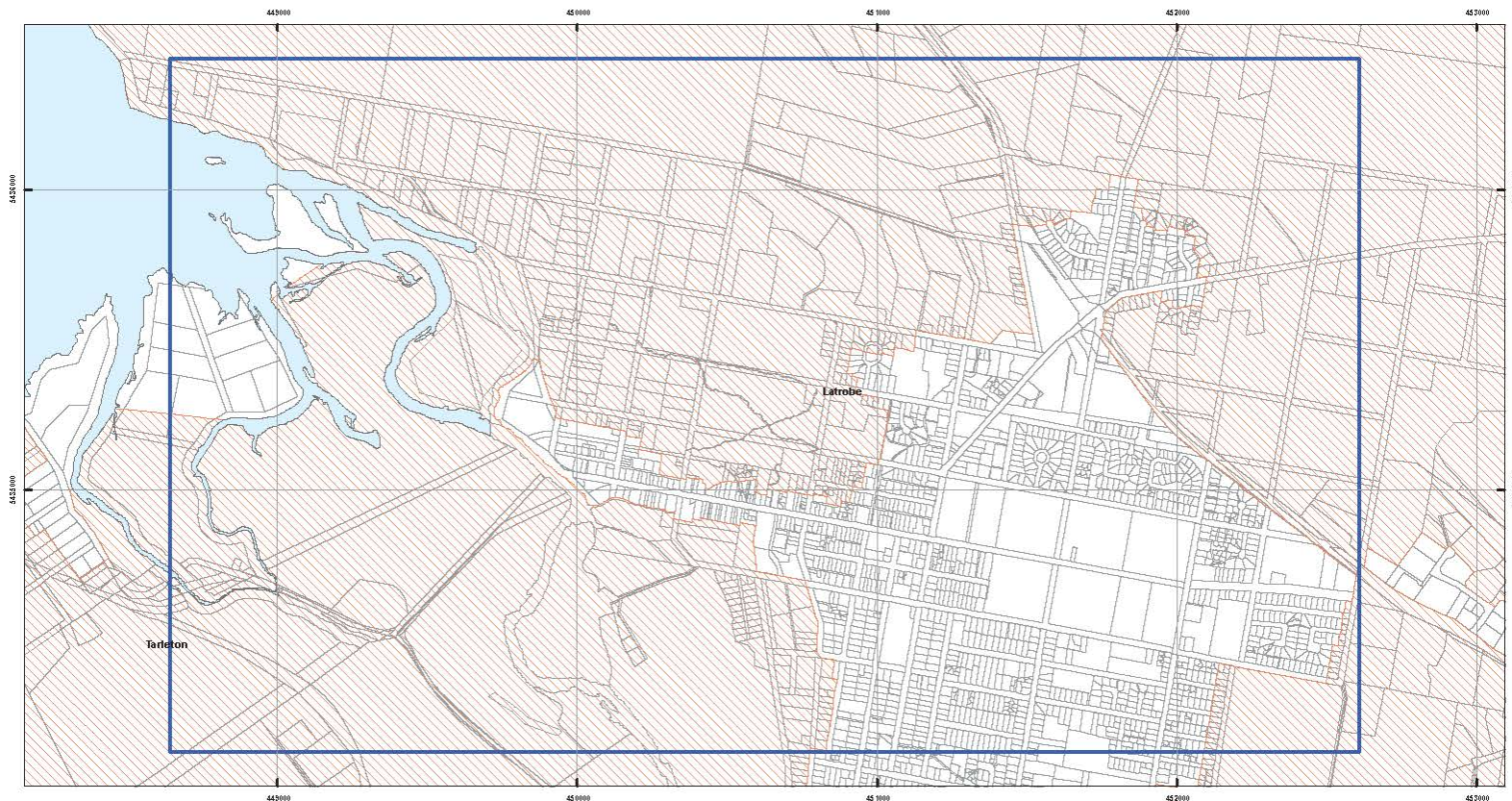
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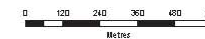
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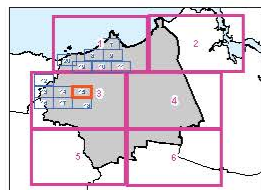
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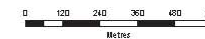
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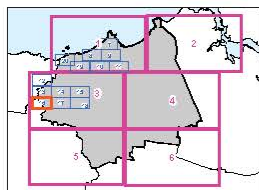
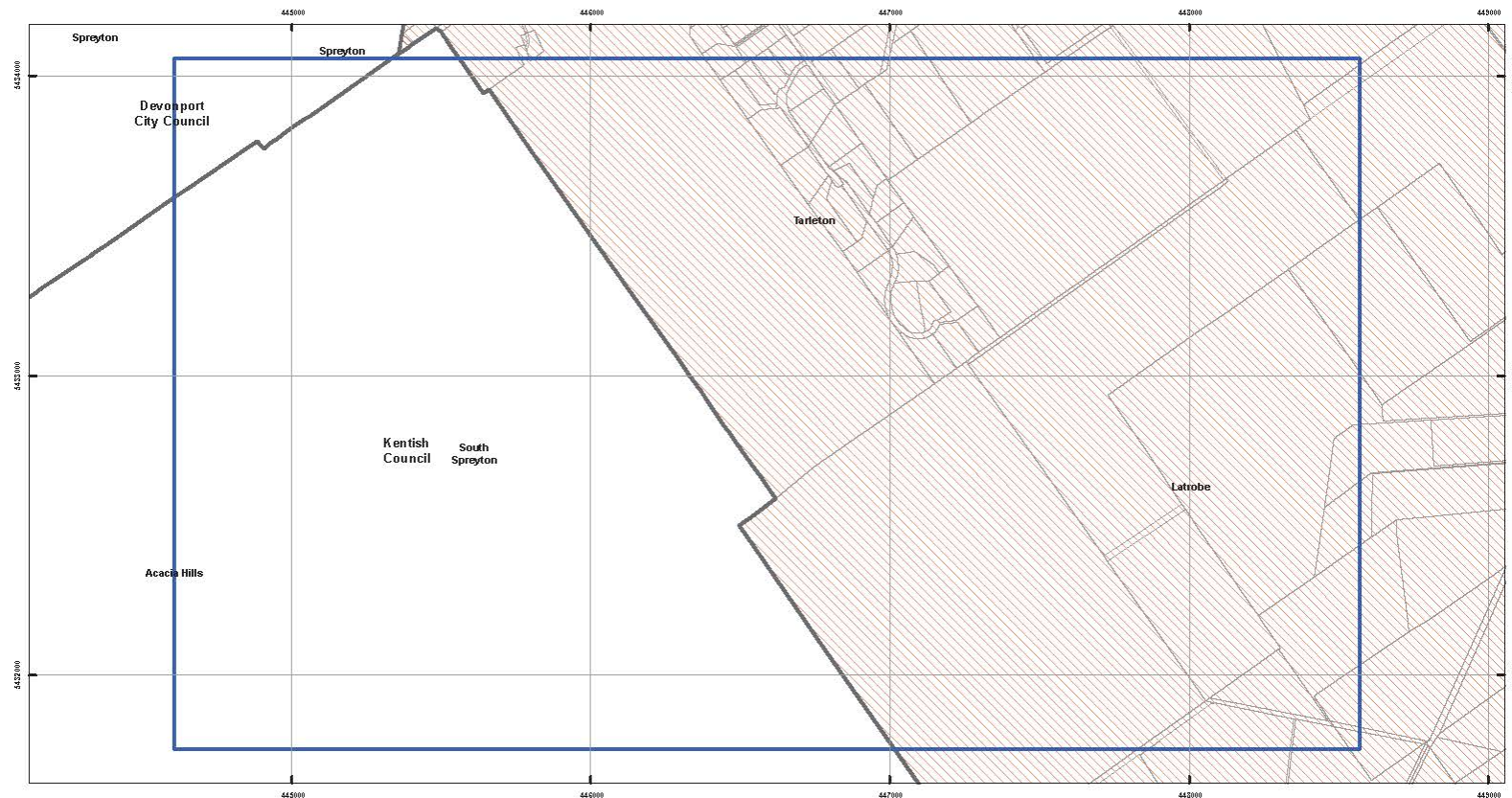
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Latrobe Council
Latrobe Interim Planning Scheme 2013
Bushfire-Prone Areas Overlay



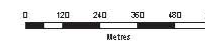
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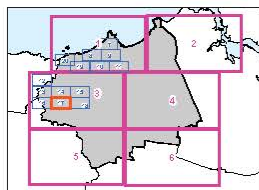
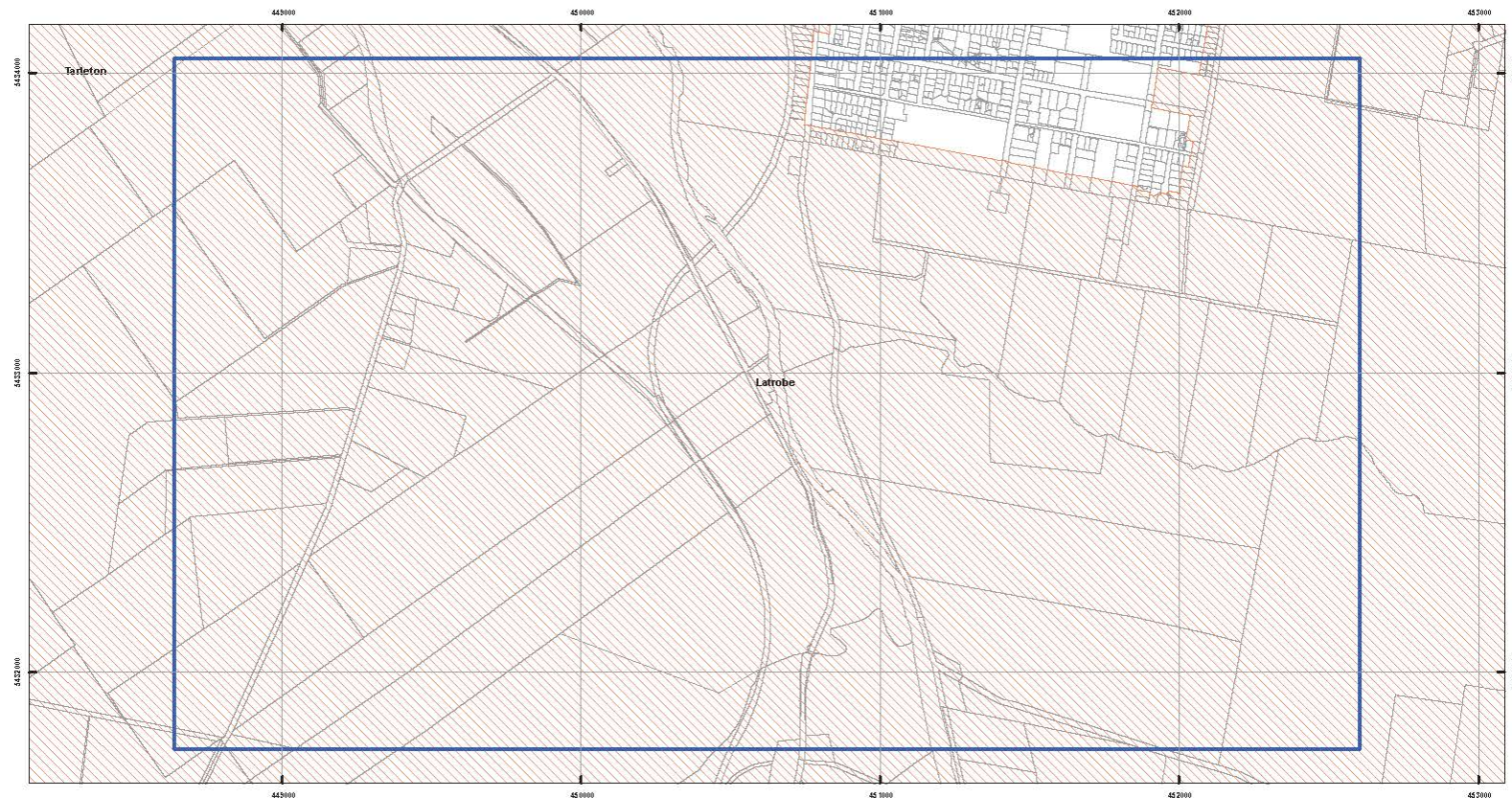
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Latrobe Council
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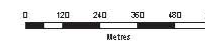
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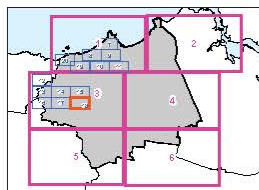
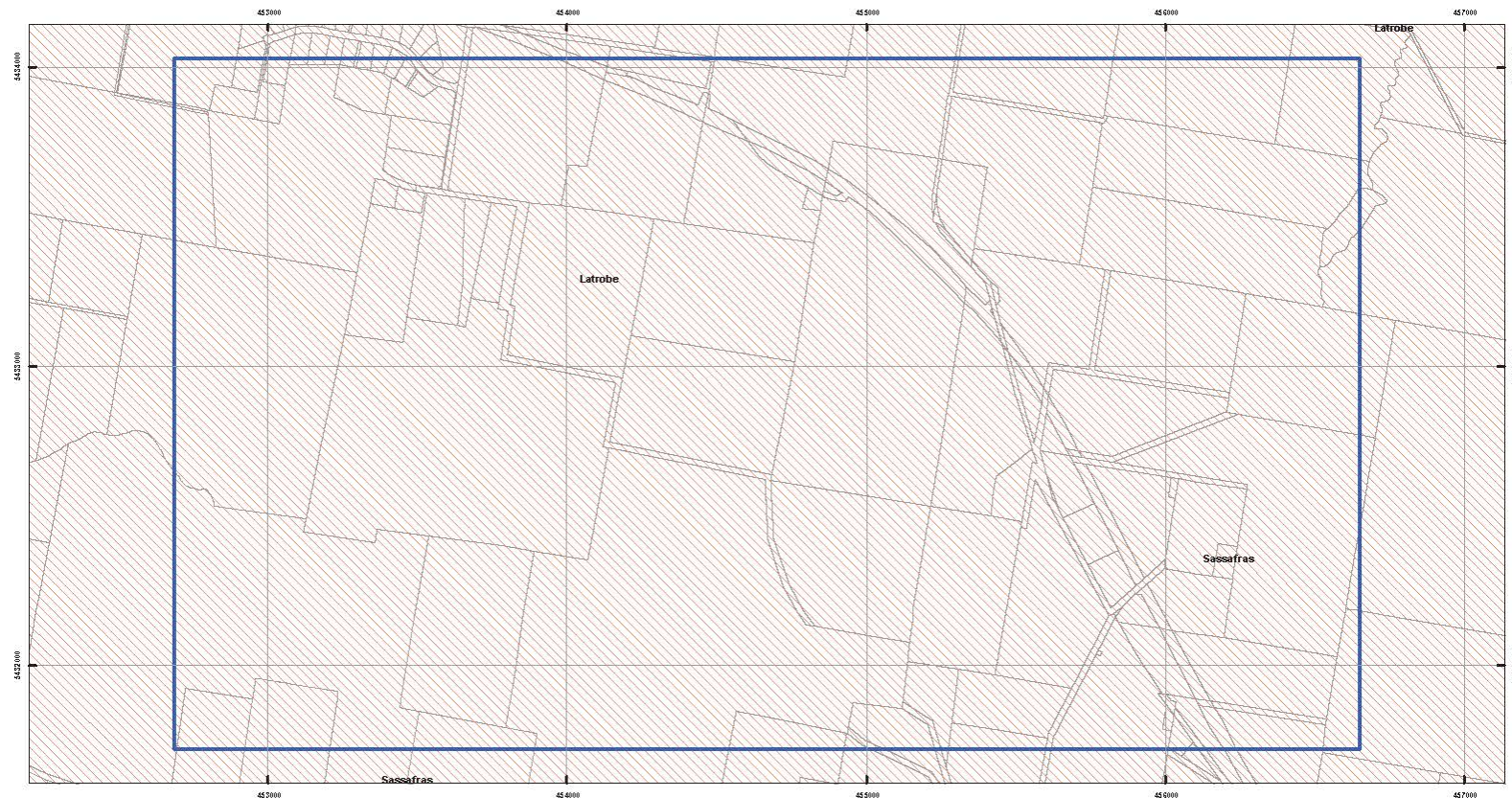


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Latrobe Interim Planning Scheme 2013
Bushfire-Prone Areas Overlay



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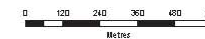




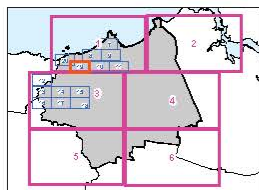
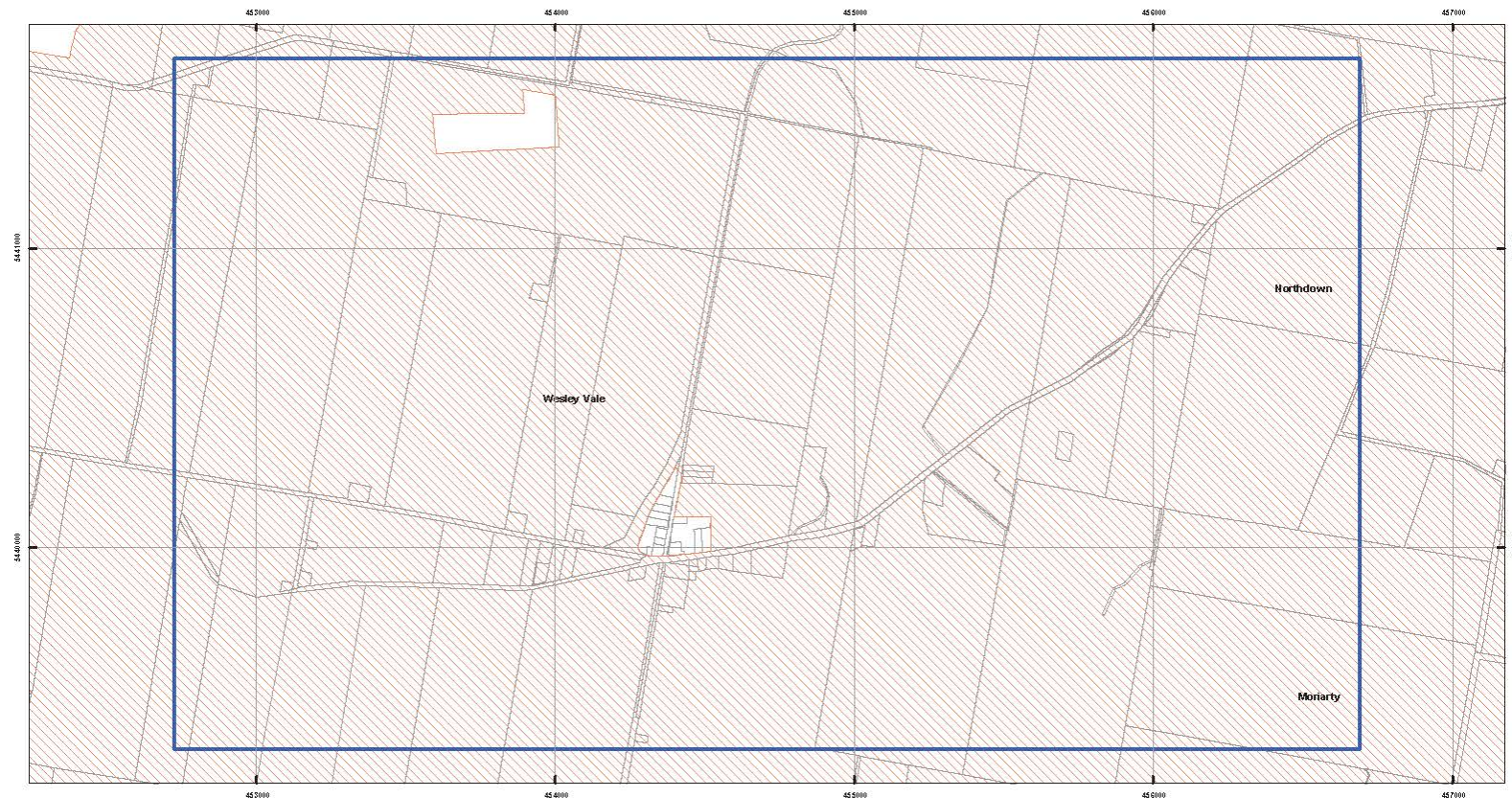
These maps form part of the Latrobe Interim Planning Scheme 2013.



Latrobe Council
Latrobe Interim Planning Scheme 2013
Bushfire-Prone Areas Overlay



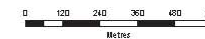
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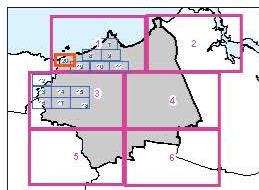
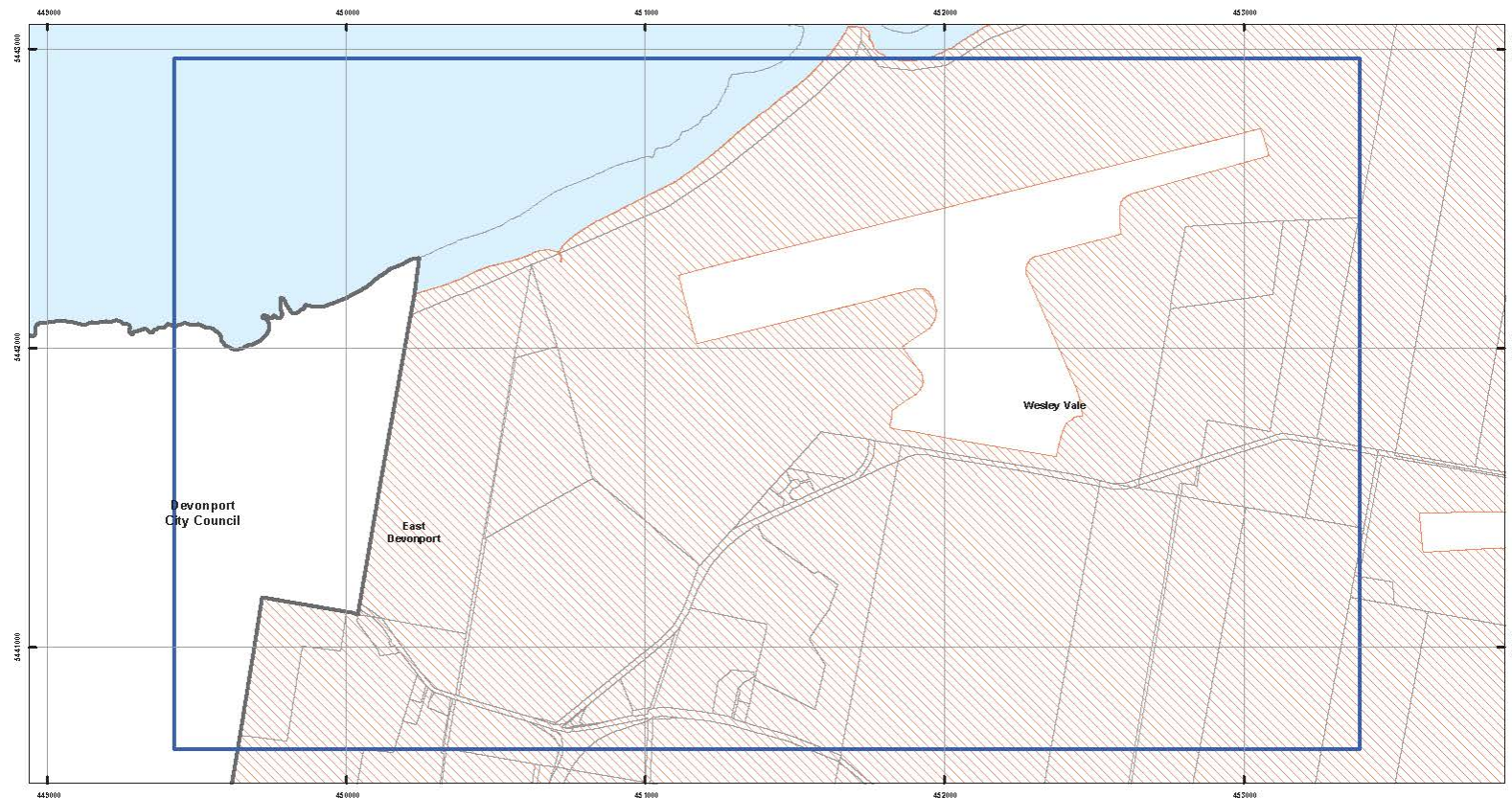
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Latrobe Interim Planning Scheme 2013
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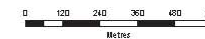
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