

File Reference: W045-15-47-04

Wairau/Awatere Resource Management Plan

Decision on Plan Change No. 47: Tremorne Avenue Rezoning; to the Wairau/Awatere Resource Management Plan

This document contains the decisions of the Marlborough District Council on plan change 47 to the Wairau/Awatere Resource Management Plan.

Included as part of this decision is the reasons and amended Schedule of Changes

DECISION DATE: 19 January 2015



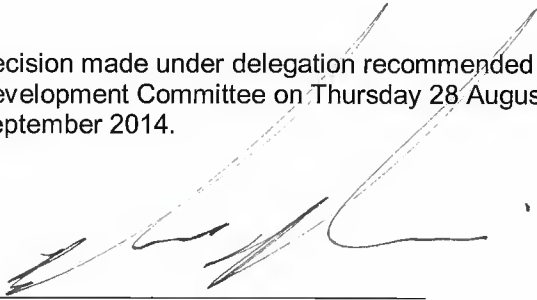
**MARLBOROUGH
DISTRICT COUNCIL**

Marlborough District Council

Decision in relation to:

Plan Change 47 – Tremorne Avenue Rezoning

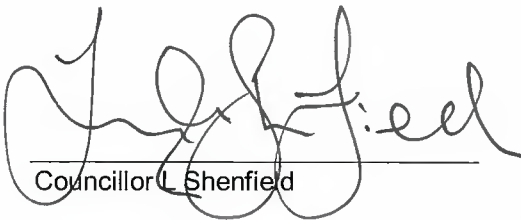
Decision made under delegation recommended by the Marlborough District Council Regional Policy and Development Committee on Thursday 28 August 2014 and ratified by full Council on Thursday 18 September 2014.



Councillor D Oddie (Chair)



Councillor J Arbuckle



Councillor L Shenfield

Dated this 19 Day of January 2015

Introduction

- [1] Marlborough District Council has concern over an anomaly in the Wairau Awatere Resource Management Plan in respect of the zoning of an area encompassing properties on Tremorne Avenue, Algarve Close and Hilton Place. While the properties have generally been developed for residential use the underlying zoning is either Industrial 1 or in a number of cases a combination of Industrial 1 and Urban Residential 2.
- [2] The evolution of the zoning of Tremorne Avenue and surrounds began on the notification of the Plan in 1997, specifically, as the Committee understands it, in response to a submission from a landowner. At that time the land was utilised for rural production and the intention had been to apply Industrial 1 and Rural 3 zones over the area subject to Plan Change 47. In response to the submission received, part of the area was zoned Urban Residential 2 and part was zoned Industrial 1. The boundary line appears to have been drawn in an arbitrary manner. The Committee surmised the rural land use at the time provided no guidance in terms of where the boundary between the two zones should lie.
- [3] The extent of the current zoning of the area subject to Plan Change 47 is presently shown in Maps 155, 162 and 163 contained in Volume 3 of the Wairau Awatere Resource Management Plan.
- [4] Subsequent to the inception of the Urban Residential 2 and Industrial 1 zones, under the benefit of a series of resource consents, the land encompassing what has since become Tremorne Avenue, Hilton Place and Algarve Crescent, etc, has been developed for residential purposes. Prior to the development of Tremorne Avenue, land to the immediate north was developed for industrial purposes in accordance with the underlying Industrial 1 zone, this became Timandra Place. The then undeveloped land that is now Tremorne Avenue was zoned Industrial 1 and no industrial/residential interface existed at that time.
- [5] In 2007, the land to the south of Timandra Place was developed creating fourteen residential allotments and a much larger allotment (Lot 15 DP 395434) intended to be utilised for a church and school. The resource consent relied on a variation to the Plan to address the matter of the underlying zoning; specifically that it no longer reflected the proposed land use for this development. To bridge the gap between the time the consent was granted and the variation becoming operative, a consent notice was registered on the certificate of title for each newly created allotment stating the land could not be used for industrial purposes. The plans to construct a school and church on Lot 15 did not eventuate.
- [6] As a result, Lot 15 remains vacant and undeveloped with residential development on its western, southern and eastern boundaries and industrial development on its northern boundary. The overall development included recreational green space following DeCastro's Drain and associated roading. The underlying zoning is Industrial 1 and a consent notice is registered on the related certificates of title as discussed above.
- [7] Such is the extent of this subsequent development the Committee agreed the current zoning and related provisions do not reflect or manage the actual land use that has occurred in this subject area. It concluded a change to the Plan provisions for this zone is warranted in order to restore integrity to the Wairau Awatere Resource Management Plan in this regard.

Notification

- [8] On 3 July 2014 Council publicly notified Plan Change 47. At closing of submissions on 14 August 2014, seven submissions were received.
- [9] Six of the seven submissions were from residential property owners who in general provided support for the proposed Plan Change. One opposing submission was received from Findlater Construction Limited which operates from a site on Timandra Place abutting Lot 15.

- [10] At closing of further submissions on 18 September 2014 nine further submissions were received to the original submissions, all supporting submissions in favour of the rezoning.

Hearing

- [11] Submitters H & D Howard, K Graham and Findlater Construction Limited all indicated a desire to be heard in respect of their submissions. Accordingly a hearing was held on Thursday 11 November 2014 in Marlborough District Council Chambers, in the District Administration Building.
- [12] Of the submitters who wished to be heard, only Mrs Howard was in attendance at the hearing. Mr Graham and Findlater Construction Limited both indicated prior to the hearing an inability to attend. Findlater Construction Limited requested the hearing be adjourned to facilitate its attendance at a later date. This request was granted and a second day of hearing was scheduled on Friday 28 November 2014 for this purpose.
- [13] The hearing was also attended by Mr Paul Whyte, Senior Planner (Associate) for BECA Limited. Mr Whyte is the author s42A report prepared in respect of this Plan Change.

Procedural Matters

- [14] A sub-committee consisting of Councillors David Oddie, Jamie Arbuckle and Laressa Shenfield was delegated the power to hear and make decisions on submissions to Plan Change 47 by the Regional Policy and Development Committee on Thursday 28 August 2014. Minute reference R.14/15.74. This decision was ratified by full Council on Thursday 18 September 2014. Pursuant to s39B Resource Management Act 1991 Councillors Oddie, Arbuckle and Shenfield are currently accredited decision makers under the Making Good Decisions Programme. Councillors Oddie and Arbuckle each hold a Chairman's endorsement.
- [15] Submitters S Schmidt and J Pinnell had indicated on their submissions they did not wish to be heard in respect of their submissions. However, they attended the hearing on 11 November and received permission from the Committee to speak in support of their submissions.

Matters Raised in Submission

- [16] At the hearing D Howard, S Schmidt and J Pinnell each stated they purchased their respective properties on the strength of the consent notice registered against the certificates of title. All accepted the industrial activity in proximity but opposed any activity of that nature on Lot 15.
- [17] Mrs Pinnell spoke of the inadequacy of the vegetation screening in place on the northern boundary of the northern accessway, she and Mrs Howard spoke of need for tall vegetation screening within the buffer.
- [18] At the invitation of the Committee, Mr Whyte explained that the existing and future vegetation screening was not within the scope of the proposed Plan Change and therefore was not a matter for the Committee to consider. Further he suggested that should Lot 15 be developed for residential purposes the construction of dwellings will better serve to screen the industrial activity from the submitter's view.
- [19] At the reconvened hearing, Mr Clarke presented a submission on behalf of Findlater Construction Limited. The submission set out the planning history of the area and identified the potential for conflict arising from industrial and residential activities occurring in close proximity, specifically in terms of any future development of Lot 15 for residential purposes. He spoke of the reverse sensitivity issues experienced by Findlater Construction Limited at a previous location which had resulted in the company having to relocate to its current site. Mr Clark submitted that the proposed Plan Change 47 did not go far enough in resolving this current potential for conflict. Specifically, the proposed Discretionary status for the construction of habitable buildings within the 12 metre buffer meant the submitter will be required to defend its position against any applications for

resource consent that may arise in the future.

- [20] As an alternative to the withdrawal of Lot 15 from Plan Change 47, Mr Clark suggested the following approach, which he submitted would create a defensible buffer at the proposed Industrial/Residential interface:
- The construction of an earth bund wall of 2.5 metres in height with planting on the top in the same manner as that which is occurring along Tremorne Avenue (paragraphs [53] and [56] b)).
 - A consent notice to be registered against the certificates of title of Lot 15 and any subsequent properties subdivided from it. The consent notice would *alert owners to the specific matters which relate to Lot 15 and the adjoining land in the Industrial Zone so they come to the land with 'eyes open'* (paragraphs [55] and [56] c)).
 - A prohibition on the erection of habitable buildings within the proposed buffer zone (paragraph [56] a)).
 - An amendment to Rule 37.4.2.1.8, specifically that this provision does not apply to Lots 16 to 20 DP 348832 or Lot 2 DP 352510 (paragraph [56] d)).

Statutory Framework

- [21] Part 2 of the Resource Management Act 1991(the Act) contains the purposes and principles underlying the sustainable management of the environment.
- [22] Sections 32(1)(a)-(c) and (2)(a)-(c) require a consideration of how best to achieve the purposes of the Act, including an evaluation of other reasonably practicable options for achieving this objective, an assessment of the effectiveness of the proposed provisions and an assessment of the associated benefit and costs including opportunities for economic growth and employment.
- [23] The Committee also had regard to Clause 10(1)(2)(a) and(b) Schedule 1 Resource Management Act 1991, and the Marlborough Regional Policy Statement and the relevant provisions of the Wairau Awatere Resource Management Plan.
- [24] The s32 report identified and evaluated the following four options:
1. Retain the status quo thereby retaining the existing zoning;
 2. Rezone the site to Urban Residential 2, Local Recreation and Conservation and roads and insert provisions relating to industrial/residential interface as proposed;
 3. Rezone the sites to a new zone not currently in the Wairau Awatere Resource Management Plan; or
 4. Rezone the site at the time of the Wairau Awatere Resource Management Plan review.
- [25] The Committee reviewed the related cost benefit and effectiveness/efficiency analysis set out in the s32 report. It agreed the retention of the current Industrial 1 zoning over the land the subject of Plan Change 47 was not a viable option as it would not resolve the matter of the consent notice or avoid adverse cross boundary effects that would result from the development of Lot 15 for industrial purposes. The Committee found the Local Recreation and Conservation provisions could readily be imposed over the non-residential land use areas within the subject area. It concurred with Mr Whyte's evaluation that the provisions of the Urban Residential 2 zone would recognise the existing land uses and enable a more efficient use of Lot 15 DP 395494.
- [26] The Committee also noted that all submitters from residential properties supported the proposed Plan Change. While Findlater Construction Limited opposed the proposed Plan Change it has provided an alternative option for the Committee to consider.

- [27] The Committee noted that the s32 report identified the potential for reverse sensitivity effects. The plan change as notified proposed additional provisions over and above operative provisions, to manage reverse sensitivity effects at the industrial/urban residential interface at this location. These include:
- The creation of a buffer area (item 11 – Appendix G - Register of Specifically Identified Activities) consistent with the setback of dwellings from the southern boundary of industrial sites located in Timandra Place. The extent of the buffer at 12 metres is twice the setback for the application of rules to manage reverse sensitivity effects normally applied at the industrial/urban residential interface.
 - Not providing for the erection of habitable buildings within the buffer area as a Permitted Activity.
 - Scheduling adjoining industrial properties (item 12) in Appendix G - Register of Specifically Identified Activities so that the more restrictive provisions in the Wairau Awatere Resource Management Plan in respect of noise, lighting, building setbacks, outdoor storage and landscaping at the Industrial 1/Urban Residential interface do not apply to the Timandra Place sites in recognition that the Timandra Place activities were developed at a time when Lot 15 was zoned Industrial 1.

Consideration of Issues Raised Through Submissions

- [28] **Construction of a bund within the proposed buffer**
- Other than the concept of a bund, raised in submissions at the hearing, the Committee noted there were no suitable experts present at the hearing or technical evidence presented to demonstrate whether such a structure would meet the requirements of the submitters.
- [29] It also held the view that a bund had not formed part of the Plan Change proposal and had not been raised in the original submissions.
- [30] Furthermore, the Committee was satisfied that Rule 28.2.5 – *Matters Over Which the Council Will Exercise Control - a) the use of the site* provided sufficient scope for Council to consider the construction of a bund at the time of subdivision and to ensure the design was such that it would be fit for purpose.
- [31] The Committee acknowledge the concerns of the residential submitters regarding cross boundary effects, however, it concluded that any consideration of a bund, and associated vegetation screening, was beyond the scope of its jurisdiction. The Committee was satisfied that this matter could be addressed at resource consent through Rule 28.2.5.
- [32] **Buffer**
- The Committee also acknowledged the cross boundary concerns of Findlater Construction Limited and was sympathetic in terms of the difficulties experienced with reverse sensitivity issues at its former site. The Committee accepted this submitter developed its property in accordance with the underlying Industrial 1 zoning at a time when the development of residential activity on Lot 15 was not anticipated. In the absence of an Industrial/Urban Residential Interface the development of the site met the requirements of rule 37.1.3.4.2 which only required buildings to be setback a minimum of 3 metres from the boundary of any non-industrial zoned property.
- [33] The Committee noted this submitter had originally opposed this Plan Change in its entirety but had helpfully suggested an alternative approach at the hearing. Findlater Construction Limited provided limited support for the Plan Change subject to amendments intended to create a 'defensible buffer' at the Industrial/Urban Residential Interface.
- [34] The Committee was mindful of Rule 37.4.2.1.8 which seeks to protect and maintain amenity values of any adjoining Residential Zone interface. However, it also reached the view that the Plan Change should not prevent Findlater Construction Limited from continuing to operate on its site. The Committee determined Rule 37.4.2.1.8 was satisfied by the proposed 12 metre buffer described in Appendix G under the new item 11 -Tremorne Avenue, Blenheim (on land described

as Lot 15 DP 395434), and met the requirements of Rule 37.1.3.4.2, which in any case only requires a 6 metre buffer at the industrial/urban residential interface.

[35] In terms of the proposed addition to Appendix G at -

11.3 – *The erection of habitable buildings within the buffer is a **discretionary activity**,*

the Committee accepted Mr Clarke's submission that this provision would impose a burden on Findlater Construction Limited requiring it to defend the buffer strip each time a resource consent application is lodged in this regard. The Committee found this undermined the objective of establishing a 'defensible buffer'. The Committee accepted the amendment proposed by Findlater Construction Limited at paragraph [56] a) of its submission.

[36] The Committee rejected, for reasons stated above, proposed amendment [56] d).

[37] In terms of proposed amendment [56] c) the Committee determined there will be sufficient indicators provided under Appendix G to alert any future owners of Lot 15 and any allotments subdivided from it, that cross boundary matters are present and need to be considered. It found that [56]c) which required a consent notice to be registered against the relevant certificate of title was unnecessary for this reason.

[38] The Committee rejected proposed amendment [56] d). It found the Appendix G provision at 12.3 achieves the intention of this proposed amendment.

12.3 – The 'Amenities' provisions at Rule 37.1.3 shall be applied to Lots 16 to 20 DP 348832 and Lot 2 DP 352510 as though these sites do not adjoin an Urban Residential Zone boundary ,

Decision

[39] The Committee determined the zoning must be regularised in order to achieve consistency with the land use that has been allowed through the resource consent process.

[40] The Committee recognised the rights of both the existing industrial land owners and future residential occupiers in the subject area. It also determined that the issue of reverse sensitivity raised by Findlater Construction Limited must be resolved in the Plan without imposing a requirement on this submitter to defend this right each time an application is lodged for resource consent in respect of the development of Lot 15.

[41] It accepted all of the submissions, to the extent discussed within the body of this decision.

[42] The Committee approved Plan Change 47 as notified subject to the following amendment:

Appendix G- item 11. **Tremorne Avenue, Blenheim (on land described as Lot 15 DP 395434)** is amended by the following (shown as strikethrough and in bold).

11.3 The erection of habitable buildings within the buffer area is a **discretionary activity prohibited activity**.

Appendix 1

Schedule of Changes

The changes to the Plan as a result of the decisions are shown by underlining and ~~strikethroughs~~.

The following is proposed in respect of the Plan Change:

1. Amend the Planning Maps 162 and 163 by deleting the Industrial 1 Zoning and rezoning with Urban Residential 2 Zone in respect of residential properties in Algarve Close, Hilton Place and Tremorne Avenue including Lot 15 DP 3955435.
2. Amend Plan Maps 162 and 163 by deleting the Industrial 1 Zoning and rezoning with Local Recreation Zone and Conservation Zone in Respect of the following sites:

Legal Description	Current Address / Physical Location	New Zoning
Lot 143 DP 323472	Situated to south of Tremorne Avenue, between Stuart Street and De Castro Drive intersection.	Local Recreation
Lot 8 DP 336893	Situated to south of Tremorne Avenue, east of De Castro Drive intersection.	Local Recreation
Lot 102 DP 384861	Reserve to the south of Tremorne Avenue.	Local Recreation
Lot 101 DP 384861	Large reserve to south of Tremorne Avenue.	Local Recreation
Lot 2 DP 362155	Situated to south of Tremorne Avenue, opposite Algarve Close intersection.	Local Recreation
Lot 6 DP 336893	Contains earth bund between Tremorne Avenue and Timandra Place	Local Recreation
Lot 1001 DP 384861	Strip adjacent to De Castro Drive	Local Recreation
Lot 1 DP 3692155	Narrow strip between Main South Railway Line and Tavera Street	Conservation
Lot 1 DP 370613	Situated corner of Tremorne Avenue and Tavera Street	Conservation

3. Remove industrial 1 and Urban Residential 2 zones from roads in Timandra Place, Tremorne Avenue, Algarve Close, De Castro Drive, Hilton Place and Avening Close.
4.
 - i. Amend Planning Map 162 of the WARMP by inserting a Specifically Identified Activity Site (Appendix G) – 11 and:
 - ii. Insert Diagram notated 11 in Appendix G;

In respect of the following site:

3 Tremorne Avenue – Lot 15 DP 395434

5.

- i. Amend Planning Map 162 by inserting a Specifically Identified Activity Site (Appendix G) – 12 and;
- ii. Insert Diagram notated 12 in Appendix G;

In respect of the following sites:

Legal Description	Current Address / Physical Location
Lot 16 DP 348332	24 Timandra Place
Lot 17 DP 348332	26 Timandra Place
Lot 18 DP 348332	28 Timandra Place
Lot 19 DP 348332	30 Timandra Place
Lot 20 DP 348332	32 Timandra Place
Lot 2 DP 352510	32 Timandra Place

6. Add the following to Appendix G – Register of Specifically Identified Activities of the WARMF:

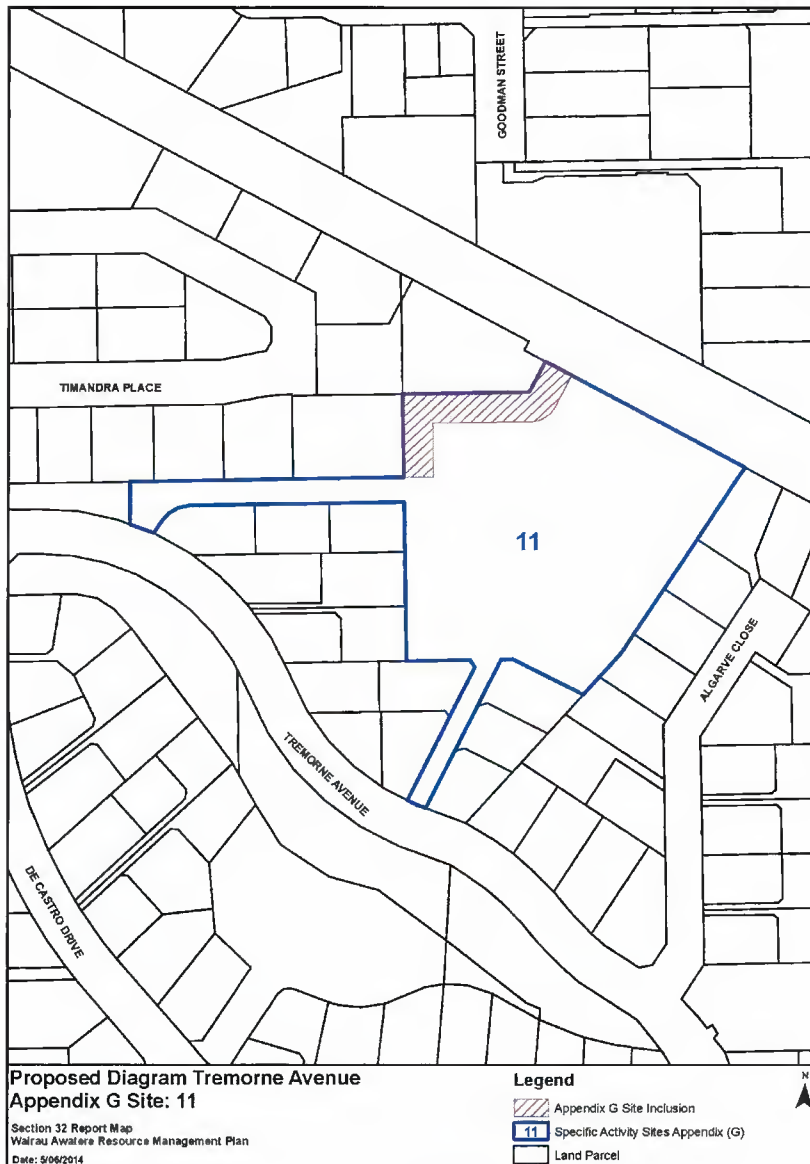
Appendix G – Register of Specifically Identified Activities

11.0 Tremorne Avenue Blenheim (on land described as Lot 15 DP 395435)

11.1 This schedule applies to the site shown on planning map 162 and the attached diagram with the notation 11.

11.2 The Urban Residential 2 Zone provisions shall apply to this site provided that no habitable buildings shall be erected in the buffer area identified on the site. Habitable buildings include a dwelling house or unit, sleep out, visitor accommodation or other habitable building.

11.3 The erection of habitable buildings within the buffer area is a prohibited activity.



12.0 **Amenity Controls (on land described as Lots 16 to 20 DP 348832 and Lot 2 DP 352510)**

12.1 This schedule applies the sites shown on planning map 162 and the attached diagram with the notation 12.

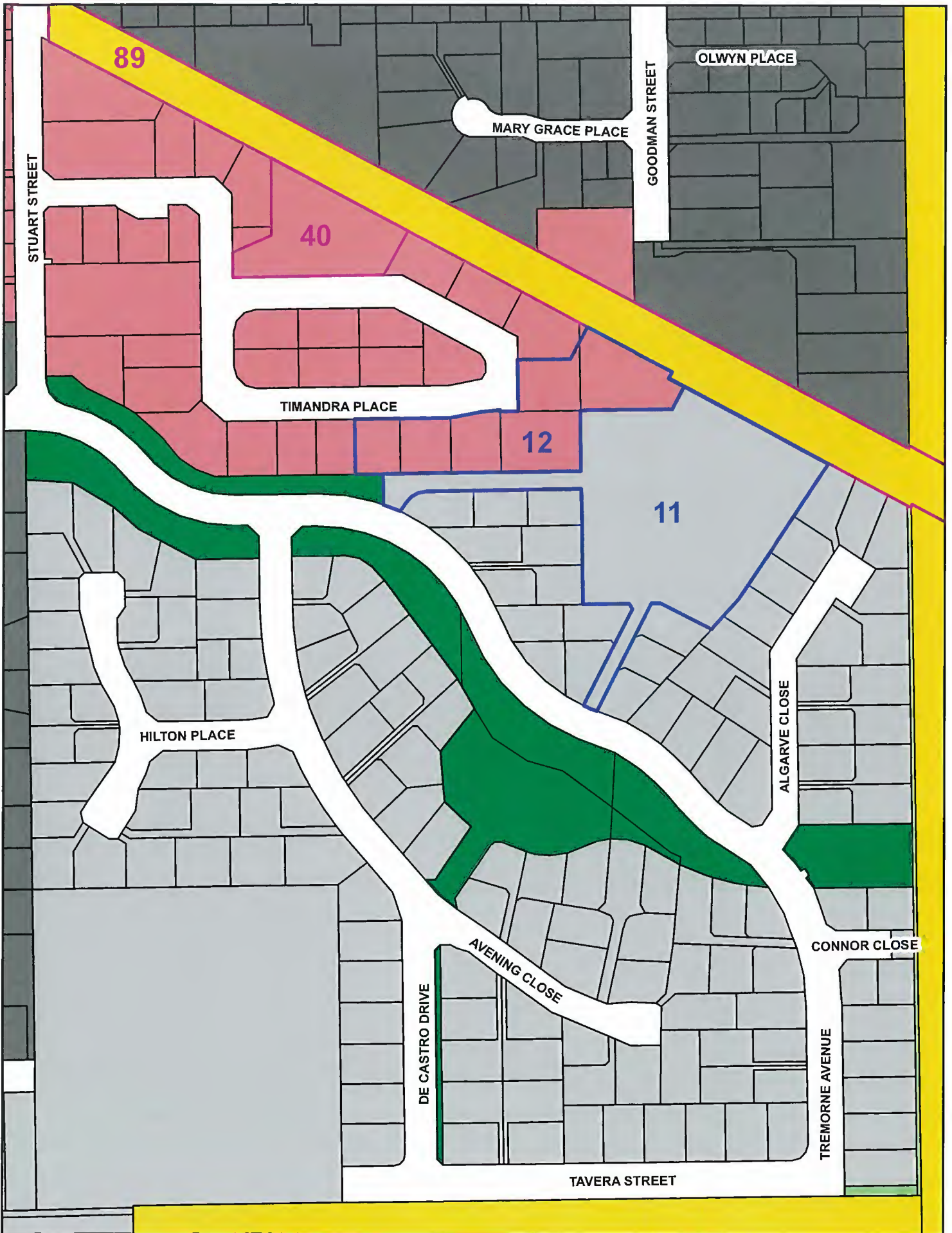
12.2 For the purpose of this Schedule and this Plan, any reference to site boundaries is to the boundaries of a scheduled site.

12.3 The 'Amenities' provision at Rule 37.1.3 shall be applied to Lots 16 to 20 DP 348832 and Lot 2 DP 352510 as though these sites do not adjoin an Urban Residential Zone boundary.



Appendix 2

Zoning Decision Map & Appendix G Decision Diagrams



Zoning Decision Map Tremorne Ave Plan Change 47

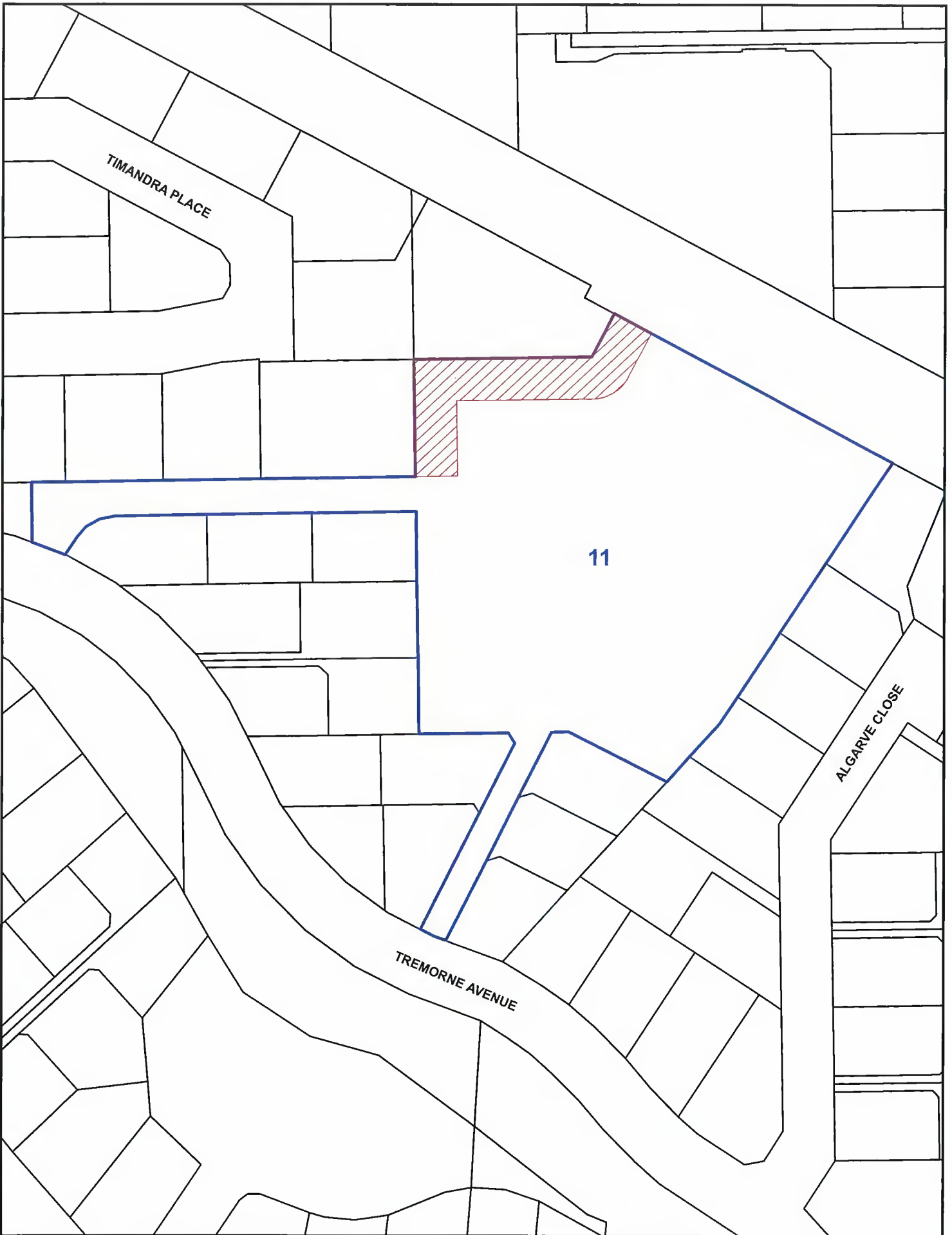
Wairau Awatere Resource Management Plan

Date: 15/01/2015

Legend

- | | | |
|--------------------------------------|------------------|-----------------------|
| Specific Activity Sites Appendix (G) | Local Recreation | Road |
| Designation | Conservation | Urban Residential One |
| Land Parcel | Industrial One | Urban Residential Two |
| | Rural Three | |





**Decision Diagram Tremorne Avenue
Appendix G Site 11**

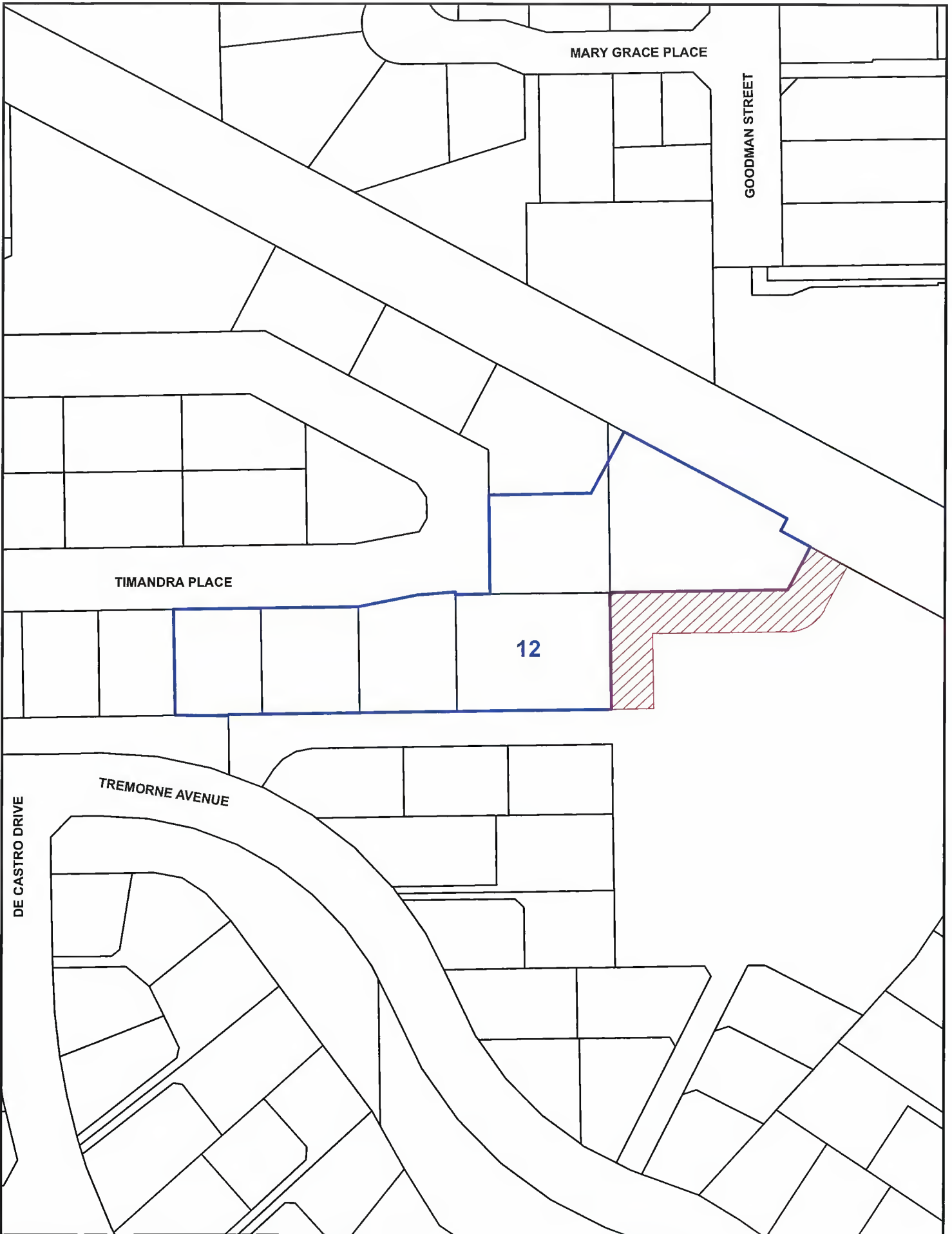
Wairau Awatere Resource Management Plan

Date: 15/01/2015

Legend

-  Appendix G Site Inclusion
-  Specific Activity Sites Appendix (G)
-  Land Parcel








**Decision Diagram Tremorne Avenue
Appednix G Site 12**

Wairau Awatere Resource Management Plan

Date: 15/01/2015

Legend

-  Appendix G Site Inclusion
-  Specific Activity Sites Appendix (G)
-  Land Parcel

