

**IN THE MATTER OF**

The Resource Management Act 1991

**AND**

**IN THE MATTER OF**

Proposed Plan Change 47 to the  
Wairau/Awatere Resource  
Management Plan

**SECTION 42A REPORT**

## INTRODUCTION

1. My name is Paul Whyte and I hold the qualification of Bachelor of Town Planning from Auckland University. I am a full member of the New Zealand Planning Institute. I have practiced in the field of resource management and planning since 1984 primarily working for both local government and planning consultants in Dunedin and Christchurch. Currently I am Senior Planner (Associate) in the Christchurch office of Beca Ltd.
2. This report has been commissioned by Marlborough District Council (MDC) in accordance with Section 42A of the Resource Management Act 1991 (RMA) and relates to Proposed Plan Change 47 to the Wairau/Awatere Resource Management Plan (WARMP). The Plan Change was initiated by MDC and relates to development in the vicinity of Tremorne Avenue, Blenheim. The Plan Change was publicly notified on 3 July 2014.
3. This report covers the following matters
  - The proposed Plan Change
  - Submissions
  - Statutory framework
  - Assessment of issues
  - Statutory assessment
  - Conclusion
  - Recommendation

## THE PROPOSED PLAN CHANGE

4. Plan Change 47 relates to rezoning of land in the vicinity of Tremorne Avenue, Blenheim. Specifically, the Plan Change document (Section 32 report) states that the Plan Change proposes to:
  - rezone an area of Industrial 1 zoned land located in the Tremorne Avenue, Algarve Close and Hilton Place area to Urban Residential 2. Currently this area contains residential housing and a vacant undeveloped lot (Lot 15 DP 395434).
  - rezone existing reserve areas in proximity to Tremorne Avenue area from Industrial 1 and Urban Residential 2 Zone to Local Recreation Zone and Conservation Zone.
  - Insert a Specifically Identified Activity in Appendix G for Lot 15 DP 395434
  - Insert a Specifically Identified Activity in Appendix G for Lots 16 to 20 DP 348832 and Lot 2 DP 352510
  - Remove Industrial 1 and Urban Residential 2 zones from Timandra Place, Tremorne Avenue, Algarve Close, De Castro Drive, Hilton Place and Avening Close and show as Road.
5. The background to the Plan Change is extensive but can be summarised as follows:

- When the WARMP was publicly notified in 1997 the area subject to Plan Change 47 was zoned Industrial 1 and Rural 3. Following submissions an area of Rural 3 Zone was rezoned Urban Residential 2. Accordingly, the Plan Change 47 area is currently zoned both Industrial 1 and Urban Residential 2.
- Subsequently the Industrial 1 zoned area was developed for both industrial and residential development. The industrial development occurred around Timandra Place while residential development occurred at the north end of Algarve Close and Hilton Place and in the south part of the zone adjacent to Tremorne Avenue.
- As the Industrial 1 Zone did not allow residential development as a permitted activity resource consents were necessary to enable this development. In particular, Resource Consent No. U070331 (subdivision and land use), was issued in June 2007 to J and RK de Castro Ltd to create 15 allotments on a site in Tremorne Avenue, in proximity to Timandra Place. Subsequently dwellings were erected on 14 of the allotments except for Lot 15 DP395434. This lot is a 1.4ha rear site accessed by two accesses off Tremorne Avenue, and remains undeveloped.
- Resource Consent No. U070331(subdivision) included a condition (28), which stated that the subdivision was granted on the basis that those lots zoned Industrial 1 (including Lot 15) were to be only used for residential purposes and not industrial purposes. The provisions of the Urban Residential 2 Zone were to apply until such time as the land was rezoned Urban Residential 2.
- The condition noted that it was proposed to prepare a Variation to facilitate this change, but that if the Variation was not sufficiently advanced at Section 224 stage, then a consent notice referring to the above was to attach to the Certificates of Title. Council began preparing the Variation but it did not proceed following a request from J and RK de Castro Ltd not to proceed. Subsequently the consent notices did attach to the respective titles when they were issued under DP 395434.
- In recognition of the industrial development in Timandra Place and potential reverse sensitivity effects Resource Consent U070331 (land use) addressed this issue by the following:
  - Condition 1 of the consent required the submission of a landscaping plan for the northern boundary of the access leg to Lot 15 DP 395434. The decision stated this landscaping “will mitigate the effects of industrial activity on residential development”. Condition 2 required the erection of an acoustic fence along the same boundary, although subsequently this condition was cancelled. Nevertheless it appears a fence has been erected along with the required landscaping.
  - A Note attached to the consent in respect of the future development of Lot 15 DP 395434 requires an appropriate buffer of at least 6 metres wide in respect of the adjoining industrial development to the north.

- J and RK de Castro Ltd was placed in receivership in 2013 and the receiver requested that Lot 15 DP 395434 be rezoned Urban Residential. In addition, the owners of the lots zoned Industrial 1 with dwellings on them, also requested the rezoning proceed in accordance with earlier Council indications.
- Accordingly Plan Change 47 is updated from the work that began in 2007 to rezone the “residential lots” to Urban Residential. The Plan Change includes provisions to address reverse sensitivity effects in respect of industrial development in Timanadra Place. The plan change also enables other existing land uses relating to reserves and roads to be rezoned to reflect their existing function.

## - THE EXISTING ENVIRONMENT

6. The Plan Change 47 document describes the Plan Change area as generally located on both sides of Tremorne Avenue, although the area to the south of the avenue is mainly confined to reserve areas and five existing residential lots located at the north end of Hilton Place. The area is shown on Figure 1 below.
7. To the north of Tremorne Avenue are 23 residential lots affected by the Plan Change. These residential lots generally have dwellings located on them except for Lot 15 DP 395434, which as referred to above is vacant. The dwellings have been constructed in the last 10 years or so on lots that are between 500m<sup>2</sup> -1,000m<sup>2</sup> and are part of the Camborne Green subdivision.
8. The reserves are generally in the vicinity of Tremorne Avenue. The reserves are mainly grassed and landscaped and contain a stream that runs parallel to Tremorne Avenue. A reserve containing a drain also runs from the Main South Railway Line to Tavera Street.
9. As discussed above, adjoining the northern boundary of Lot 15 DP 395434 is an industrial area occupied by small industries that are accessed off Timandra Place (the relevant lots are legally described as Lots 16 to 20 DP 348832 and Lot 2 DP 352510). Immediately adjoining the undeveloped Lot 15 are a panel beating operation and a construction yard depot. The Main South Railway Line adjoins the remainder of the northern boundary of Lot 15 DP 395434, with a pedestrian/cycleway also contained within the rail corridor.



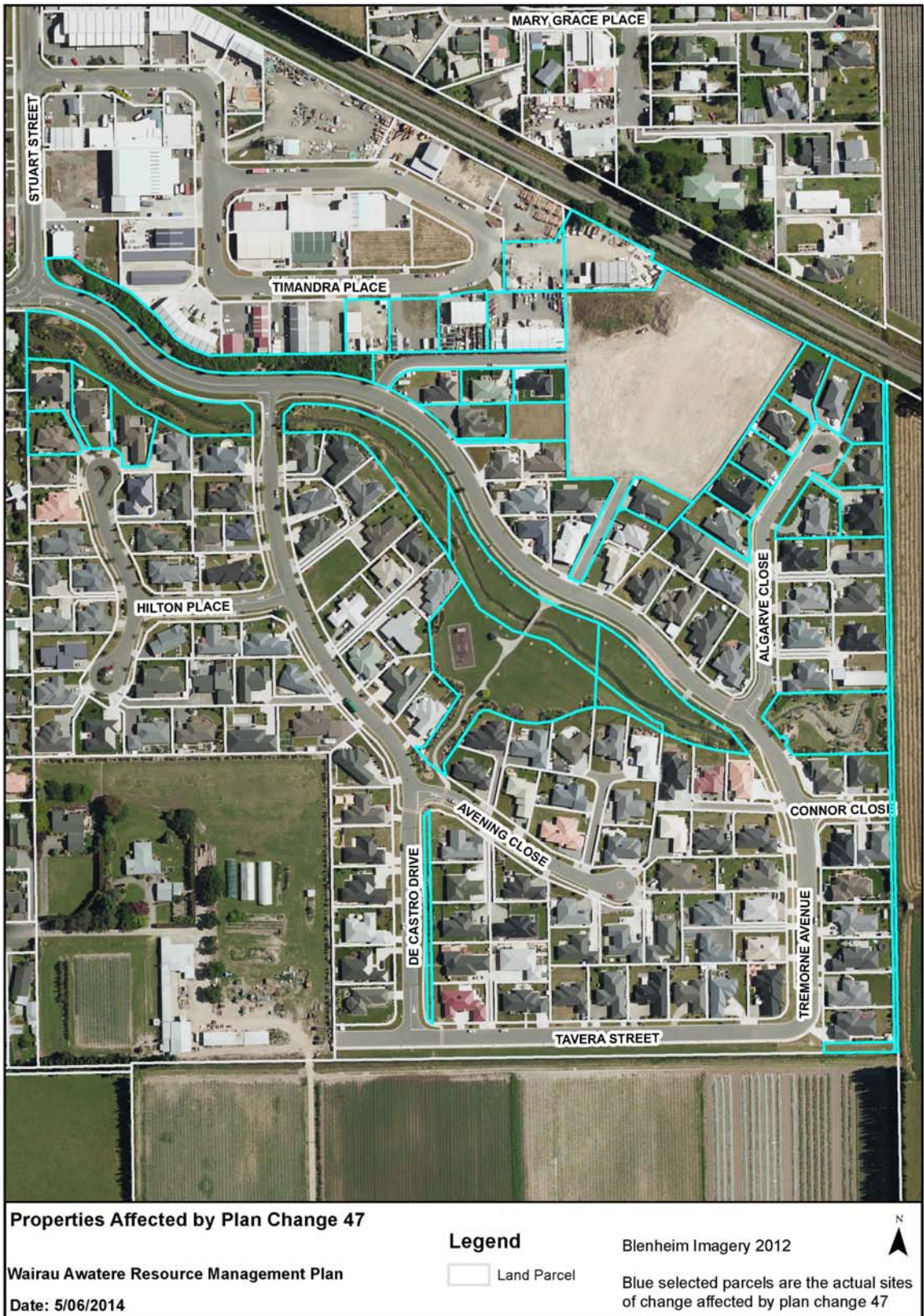


Figure 1

## **SUBMISSIONS**

10. The Plan Change was notified on 3 July 2014 with submissions closing on 14 August 2014. A summary of submissions was notified on 4 September 2014 and further submissions closed on 18 September 2014.
11. Seven submissions were received to the plan change as follows:
  - J and B Pennell, JA Leith, HR and DF Howard, KT Graham, WI Moloney and S and H Henning support the Plan Change.
  - Findlater Construction Ltd, located at 32-34 Timandra Place, oppose the Plan Change in its entirety, including but not limited to reverse sensitivity effects. The submitter considers that the proposed mitigation measures are insufficient to mitigate reverse sensitivity effects.
12. Nine further submissions were received to the original submissions with all of the further submitters supporting the submissions in favour of the Plan Change.

## **STATUTORY FRAMEWORK**

13. Section 72 of the RMA states the purpose of a plan change is to assist a local authority to carry out its functions in order to achieve the purpose of the RMA. Section 74(1) states Council shall change a district plan in accordance with its functions under Section 31 of the Act, Part 2 of the Act, Section 32 of the Act and any regulations (although it is acknowledged MDC is a unitary authority and the WARMP is a combined plan and therefore regional functions may also be relevant).
14. In changing a plan, regard must be had to any strategies prepared under other Acts (section 74(2)(b) of the Act) and effect must be given to national policy statements and any regional policy statement (Section 75(3) of the Act). The Plan Change document addresses the above statutory matters.
15. Clauses 1-10 of the First Schedule to the RMA set out the process for the processing of Council plan changes. Under Clause 10 a local authority must give a decision on the provisions and matters raised in submissions and whether to accept or reject submissions and further submissions.

## **ASSESSMENT OF ISSUES**

16. The issues raised in the submissions are discussed below.

### **Support for Plan Change**

17. Six of the 7 submissions and the 9 further submissions support the Plan Change. These submissions appear to be from residential owners in the area and in my view, are understandable given the nature of the consent notice of Resource Consent U070331 (Condition 28) which indicated that the lots (including Lot 15 DP 395434) would not be used for industrial purposes and that Council intended to initiate a variation (plan change). Accordingly there appears to be reasonable support for the Plan Change.

### **Reverse sensitivity**

18. As indicated above Findlater Construction Ltd opposes the Plan Change mainly due to concerns about reverse sensitivity effects. The submission outlines the difficulty

experienced with reverse sensitivity issues at a former site the company occupied in Blenheim and concern that the same issues will arise at the Timandra Place site. The submitter's site directly adjoins Lot 15 DP 395434 on the submitter's southern boundary.

19. In my view, the issues raised by the submitter have some validity. However, the history of the Plan Change area has not been straightforward and the reality is that industrial zoned land has been developed for residential purposes. The remaining vacant industrial zoned site (Lot 15), as noted above, is a rear site served by two narrow accesses adjoined on three boundaries by existing residential development. I note the location and shape of Lot 15 appears to have been influenced by an earlier proposal to locate a church and school on the site, rather than used for industrial purposes. The consent notice restricts the use of Lot 15 to residential purposes.
20. Given the location of the existing residences and the difficult access I agree with the Section 32 analysis that retaining the site as industrial zoned land is not the most appropriate option. It is also clear Council intended that the area would be rezoned to Urban Residential in 2007.
21. If it is determined that Lot 15 395434 is to be rezoned to Urban Residential I agree that it is appropriate for reverse sensitivity measures to be put in place, particularly given the history of development in the area. The Plan Change proposes the following measures:
  - Scheduling Lot 15 DP 395434 in the WARMP and requiring a 12m buffer zone in which no habitable buildings can be constructed. I note the 12m width is twice the width required at the Industrial 1/Urban zone interface by the WARMP and recognises that some buildings in Timandra Place are built up to the boundary.
  - Scheduling the sites in Timandra Place that directly adjoin Lot 15 DP 395434 so that the more restrictive provisions in the WARMP relating to such matters as noise, lighting, building setbacks, outdoor storage, landscaping at the Industrial1/Urban Residential interface do not apply to the Timandra Place sites. This recognises that Lot 15 was zoned Industrial 1 when the activities in Timandra Place were developed.
22. I also note that the landscaping and acoustic fence on the northern boundary of Lot 15 DP 395434 appears well established and that because of the landscaping and accessway, the existing dwellings are located 12m from the boundary. This is a similar width to the proposed buffer zone adjacent to the remaining length of the northern boundary.
23. In addition the number of lots that can be subdivided from Lot 15 DP 395434 "as of right" is limited by the width of the existing accesses and the number of rear lots already served by the accesses. The Plan Change report on page 13, indicates a maximum of seven lots could be subdivided and as such the number of lots adjoining the northern boundary is likely to be limited.
24. It is acknowledged that the provisions do not necessarily stop persons in the residential area from complaining about the operation of the industrial activities but this is no different from other situations where residences are in proximity to industrial activity. It is also open to Council, as suggested in the Section 32 report, to



place consent notices on titles to alert prospective landowners to the industrial activities.

25. I am of the view that the proposed provisions should enable the submitter to continue to operate in a similar way as at present. Accordingly, I am satisfied that the provisions for reverse sensitivity issues in the circumstances of the Plan Change are adequate. I also note there is only one opposing submitter.

## **STATUTORY ASSESSMENT**

26. Having regard to the matters raised in submissions and the provisions of the Plan Change I am of the view that the Plan Change is able to meet the relevant statutory tests as set out below.

### Section 32

27. In terms of Section 32 I concur with the evaluation undertaken that overall, the proposed Plan Change to rezone the site to Urban Residential 2, Local Recreation and Conservation is the most appropriate option to achieve the purpose of the Act. This is because the proposed zoning is consistent with pattern of land use that has been allowed through the resource consent process, while protecting the existing rights of the industrial land owners in the area.
28. Overall I consider that the Plan Change will better achieve the objectives of the Residential Chapter rather than the Industrial Chapter of the WARMP. In particular, given the amount of existing residential development and the shape and location of Lot 15, it will be difficult to mitigate the effects of industrial development on adjoining residential areas (Policy 1.8) if Lot 15 was to be retained as Industrial 1. In particular, industrial activities utilising the existing accesses would require access past 8 residences.
29. It is also efficient and effective to undertake the Plan Change as the only other option of retaining the status quo and developing the site for industrial purposes is legally uncertain because of the consent notices prohibiting industrial activity. I note that a consent notice can only be uplifted on the initiation of the owner of the site (Section 221 of the RMA).
30. In terms of Section 32(2)(a)(i) and (ii), which relates to economic and employment growth, the status quo of retaining Lot 15 as Industrial 1 may provide greater security for the industrial activities in Timandra Place. However Resource Consent U070331 authorises residential activity and mitigation measures are proposed. In addition the Environment Court decision of Colonial Vineyard Ltd v MDC (Decision No [2014]) determined there is sufficient industrial land in Blenheim, so the opportunities for industrial development on Lot 15 are unlikely to be lost to the town.

### Section 72

31. Section 72 of the RMA states the purpose of a Plan Change is to assist authorities to carry out their functions in order to achieve the purpose of the Act. The functions of Council include "the integrated management of the effects, use and development of land and associated natural and physical resources of the district" (Section 31(1) (a)) and clearly this Plan Change will enable council to undertake its functions.



32. Part 2 (Sections 5-8) sets out the purpose of the Act. I do not consider the existing zoning is to be sustainable management in terms of Section 5 given the development that has occurred and the likely adverse effects that could arise from permitted industrial activity. The economic well being of existing industrial activities will be protected to a significant degree by the proposed reverse sensitivity measures.
33. In terms of Section 6 of the RMA, there do not appear to be any specific matters of national importance. In terms of Section 7 of the RMA the Plan Change should enable a more efficient use and development of resources on the site while existing amenity values and the quality of the environment will at least be maintained by providing more certainty (Sections 7(c), (d), and (f)).
34. In terms of Section 8 Iwi have not objected to the plan change.

#### Section 74

35. Section 74 (2) of the Act states regard is to be had to strategies prepared under other Acts. The most relevant strategy is Growing Marlborough adopted by Council in March 2013. The proposed rezoning is in accordance with the strategy as the document envisages infill residential development.

#### Section 75

36. Section 75 (3) of the RMA states that a plan change shall give effect to any national policy statement and the regional policy statement. There are not any national policy statements that are considered relevant.
37. The Marlborough Regional Policy Statement (RPS) was made operative in 1995. I concur with the Plan Change document that the proposed Plan Change gives effect to the RPS by the following:
  - It will provide for housing while not causing adverse effects on the environment (Objective 7.1.2 and Policy 7.1.7).
  - Quality of life and amenity values will be protected by the proposed zoning and ensure adverse effects are avoided, remedied or mitigated. The residential activities are effectively “clustered” (Objective 7.1.9 and Policy 7.1.10).
  - The sites are serviced by reticulated infrastructure (Objective 7.1.14).
  - The zoning of the reserve areas will provide greater certainty and protection in terms of their assets thereby enhancing amenity values (Objective 7.1.14 and Policy 7.1.21).

### **CONCLUSION**

38. In my view the proposed Plan Change better achieves the objectives of the WARMP than the existing Plan provisions. It is also concluded that the benefits of the proposed plan change outweigh the costs.
39. This Plan Change is considered necessary in order that zoning reflects existing development and the previous Council decisions. Further, the proposed scheduling of relevant sites to enable existing industrial activities to continue to operate with

reasonable certainty setback is considered to be the most appropriate approach in the circumstances of the sites subject to the Plan Change.

## **RECOMMENDATION**

I recommend that:

1. The submissions of J and B Pennell, JA Leith, HR and DF Howard, KT Graham and WI Moloney and the further submissions are accepted and the submission of Findlater Construction Ltd is rejected, and;
2. Plan Change 47 is approved as publicly notified.

24 October 2014.

