

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions to Variation 3 to the
Proposed Thames Coromandel District Plan
(Taiwawe Catchment Structure Plan)

**Supplementary STATEMENT OF EVIDENCE OF
GRAEME JAMES LAWRENCE
ON BEHALF OF HOT WATER BEACH (NZ) LIMITED**

Dated 31 March 2021

INTRODUCTION

1. My name is Graeme James Lawrence. I am director of Lawrence Cross Chapman & Co Ltd an Auckland based Environmental Planning company. My qualifications and experience are set out in my primary statement of evidence.¹

CODE OF CONDUCT

2. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I further confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.
3. Edits I would like to make to my primary statement of evidence to address imprecise wording are:
 - a. Para 13 e. (page 4) the Structure Plan number for Attachment 2: should read 27.9.11 (not 27.9.10);
 - b. Para 13 f. (page 4) The Structure Plan number for Attachment 3 should read 27.9.12 (not 27.9.11)
 - c. Para 34. C. 4th bullet point remove the repeated word by delete "rule" so the words read "rules framework".
 - d. Para 34 c. 9th bullet point (page 13) delete the third to last sentence making reference to whole of catchment rather than to the catchments of two unnamed tributaries:

"The TSCP provides one of the few whole head of catchment structure plans in the District."
 - e. Para 42 (page 16) second sentence delete the word "the headwaters of the" and add them after the "Taiwawe Stream and" so the sentence reads:

"The conservation and development strategy proposed for the Taiwawe Stream and headwaters of two of its tributaries, fits the purpose of a structure plan on nearly every count:"
 - f. Para 44 (page 17) second sentence requires similar wordsmithing to read:

¹ Dated 2 March 2021

“The scope and extent of conservation and protection measures proposed for the Taiwawe Stream and headwaters of two of its tributaries go significantly beyond those contemplated by the zones or mapped overlays currently in the Proposed District plan.”

BACKGROUND

4. I have reviewed the supplementary s 42A RMA Planning Report [s42A SR] received on 15 March 2021 along with its attachments containing comments and input by Mr Kessels (ecologist), Council’s Rooding Manager (Traffic and Stormwater) and Council’s Development Planners (Consents Planners)².
5. The s42A SR has been prepared to address refinements made to the TCSP since it was first lodged. Along with matters raised in the attachments to the report it contains:
 - a. observations on opportunities for word smithing.
 - b. identification of matters that have not been addressed in the TCSP, but which (in my opinion) would normally be considerations at the time of resource consent (subdivision) application and consent.
 - c. information and observations that I consider to be at odds with responses gained from Council for the Variation and in finalising it for notification.
 - d. incorrect analysis of some parts of the TCSP.
 - e. confusion over matters for consideration of non-complying activities and those relevant to Plan Changes or Variations

OVERVIEW

6. I address the points as raised in the s 42A SR covering:
 - a. Further edits and refinements being made to address specific concerns.
 - b. Reasons for not responding in the manner suggested.
 - c. Making corrections or challenges to statements or observations given.
7. For the purposes of 6a above I produce Version 12 of the TCSP (V 12) which is **attachment 1**.
8. I rely on the findings of the original assessment reports to the extent that they have not been updated, superseded, or refined by the evidence presented by Hot Water Beach (NZ) Ltd (HWB NZ) for the March Hearing. I otherwise rely on the supplementary evidence

² S42A SR Attachment 3 “Recommendations based on TCDC Development Planners – Mechanics and workability of TCSP Provisions”

submitted by HWB NZ for the resumed Hearing, drafts of which I have read in preparing this statement.

SCOPE OF EVIDENCE

9. My evidence is structured to address matters as raised in the Supplementary s42A Report [s42A SR], *seriatim*.

Para 16 Effectiveness of Te Miro recommendations for stormwater management

10. I do not share Ms Resl's 'considerable concern' over the stormwater management proposed by Te Miro. The primary and overarching outcome from all the protection, restoration and development activities under the TCSP is a net positive one. As Mr Chapman identifies, Mr Varley has clearly misunderstood the concepts of 'pass it forward' and the function of swales as proposed for the TCSP.
11. This matter is returned to in paragraphs 48 to 61 of the s42A SR and Mr Chapman has addressed this in supplementary evidence.

Para 18 Reference to s42A SR Attachment 3 based on Consent Planners input.

12. I have considered the suggested wording improvements and 'necessary' changes to address nature of development within the TCSP. My response is set out in the following table: Table 1: Refinements & Comments on Provisions for Development.

Table 1: Refinements and Comments on Provisions for Development			
Standard	S42A SR	Comment	Response
Std m)i)	Delete 'enrichment'	Agree	See TCSP v12
Std m ii)	Provide clear targets	Agree & add from best practice	See TSCP v12
Std 1.1 r)	All Conservation Area in 1 title	Not question of titles but ownership. Deleted r) Added at q) for consent notice i) requiring all Conservation Area to be in single ownership through the required legal entity, with subdivision of the Conservation Area to be prohibited .	See TSCP v12 1.1 q) new i). New rule 1.7.
Table 2: RDA Matters of Discretion			
1 c)	New wording suggested as to building platforms being free from hazards	Not necessary. Only 1 lot may require this (for House Site 25) in any event TCSP wording is same as for RDA in subdivision section.	Retain current wording in format used in Subdivision Section 38 Table 5 Matter 1 a)
1 d)	New wording suggested	Not necessary. Addressed in subdivision application and standard condition requiring detailed design approval from Council engineers. See also	No change

		standards 2 c), 4 d) and 5 in Table 1.	
2 a)	Add reference to 'best practice'	Not necessary as best practice provisions are incorporated into the standards for subdivision (rule 1.1 g) to m) in particular).	No change
New 2c)	Add density and layout consideration for achieving best possible/practicable biodiversity outcomes for site	Not necessary or warranted. Density and layout is built into the TCSP for RDA to achieve multiple objectives – settlement strategy, diverse housing choices, retirement from livestock farming, landscape and amenity values as well as sustainable gain in biodiversity values.	No change
4 Staging	Staging of Development requiring ecological restoration activities to be undertaken at stage 1	Impractical and not necessary. Any staging must be aligned to achieve positive ecological protection and enhancement, the number and location of lots to be produced and to attenuate or offset additional stormwater generated by the change in land use activities. Timing of measures is to be recommended for all stages (if any) under the ecological management plan. New wording (Table 2, Matter 4b)) is added to address timing of planting relative to stormwater attenuation (see below).	Amended with a new Matter 4 b) in TCSP Table 2
5 Earthworks	New requirement for building platforms and access to avoid modification of landform	Impractical and unreasonable. Avoidance of landform modification is not possible. Council require rural road standards for the two Lanes, private accessways are minimised to get greatest use off a single ROW formation with low impact engineering design (see Policy 2e and Diagrams B-D and attachment 3). Defined Building Areas are located so that associated earthworks are minimised.	No change, noting matters of discretion are in place to address whether adverse effects of earthworks or vegetation clearance on rural character are avoided, roads and driveways minimise effects on landscape values and earthworks for construction of access and dwelling sites are minimised.
5 e) Mitigation planting	Amend to address mitigation of landform modification through mitigation planting	The current wording provides for mitigation planting as a means of addressing effects on landscape characteristics generally (which includes modification of landform). The suggested refinement unnecessarily limits the consideration of effects to just landform modification and the response to just mitigation planting.	No change necessary suggested amendment not desirable.
9c Defined Building Area (DBA)	Delete c) limiting consideration of a change to the location of a DBA shown in attachment 1.	The matter of discretion limits the scope for amending the location of a DBA shown in attachment 1. The scope for altering the location of DBA from that identified is to make sure	Deletion not necessary or desirable.

		when the final site is determined by geotechnical analysis, archaeological survey and assessment of related contours at subdivision stage, the DBA identified on the survey plan and to come down on the land title is: stable, will avoid archeological remains and be located to minimise earthworks.	
Table 3: Standards for Buildings			
Add new standard	for maximum impermeable area	Not necessary for this rural location or this large lot residential/rural lifestyle development. Permeability and other stormwater management mechanisms are addressed and available to achieve net hydrological improvement .	No change
DBA	Setback standard for ecological area	The 20m setback is already in place for buildings from stream or wetland. It may not be reasonable or practical to provide a 20 m setback from an ecological area. The ecological areas are within the Conservation Area which includes where necessary a buffer planting area and extensive restoration planting. These areas will not form part of a public domain or commons. The TCDC District plan imposes setbacks of various width from public domain areas depending on whether they roads, Conservation Zone, Beachfront boundaries.	No change
Standard 3 Maximum Buildings	Add words "on a lot"	This is a helpful addition	I recommend the addition of the words "on a lot" to Table 3 "Maximum Number of Buildings".
Additional Recommendations			
Add Earthworks Standards	To minimise earthworks effectively.	The land uses provided for and contained are not likely to lead to more than minimal demand for earthworks. The Rural Zone (outside the coastal environment overlay) earthworks rules would apply in any event . They are comprehensive and all inclusive. While no 'bespoke' earthworks rules apply in the TCSP there is no conflict with the Rural Zone rules and therefore the Rural Zone rules would prevail. The Coastal Zone Overlay earthworks rules are more constraining. Other large lot residential and rural lifestyle lots surrounding Hot Water Beach settlement are in the Rural Zone – some within	I recommend the addition of Standard 5 "Earthworks" to Table 3 to read as follows: "provisions of Section 56 Rule 7 for the Coastal Environment Overlay shall apply." Amend the Title of Table 3 to read "Table 3: Buildings and Earthworks"

		the Coastal Environment Overlay. The earthworks rule applying to them would be an effective and efficient means of addressing earthworks for the TCSP.	
Incorporated Society	Consider majority needed for decision making	Considered.	No changes required
Conservation efforts and needs	These are ongoing and will need to be met by the Incorporated Society as well as for enforcement and monitoring	Agreed. This is the purpose of the legal entity and spelled out in the TCSP at all levels, purpose, to address such issues, objectives, policies and methods (rules and consent notice). The extent of work and the reach required of the legal entity makes it essential that it has sufficient size and resource.	Already provided for in the TCSP.
Road status and standards	Public or private	This decision public or private does not need to be made at this stage. The intersection at Hot Water Beach Rd is to be public road. The TCSP provides diagrams for road geometry and relies on the construction design standards in the engineering Code of Practice to apply so they are at an appropriate public road standard assuming later vested .	No change
Archaeological survey		The site has been subject of archaeological and cultural values assessment. No sites are recorded and none have been identified. The understanding is that the risk of there being any is low. The survey required at time of scheme plan preparation (as agreed with HNZ) will allow fine seiving and specific focus at a detailed level to determine final locations for planting (EMP and LPP) or other work if sites are found and are to be avoided. The application can reflect that. The minimum standard for restoration planting is in place in the TCSP and can be met by having areas added for protection and enhancement. Criteria are in place to address buildings and access.	There is flexibility built into the TCSP as worded. No change to timing of the detailed survey is required by HNZ or is necessary.

Para 20 Consent Status

13. The statement that the amended proposal provides for subdivision to remain restricted discretionary if it does not meet the standards is not correct. The TCSP Version 11 provided as follows:

- a. At Rule 1.1 subdivision to create more than one lot is a Restricted Discretionary Activity PROVIDED THAT the standards set out in 1.1 a) to r) are met.
 - b. The standard 1.1 a) set a cap of 25 lots
 - c. The standard 1.1 b) specifically included all the subdivision standards in Section 27.9.6 Table 1.
 - d. At Rule 1.3 subdivision that did not meet the standards for Restricted Discretionary Activity Rules 1.1 b) to r) is a Discretionary Activity.
 - e. At Rule 1.4 subdivision that exceed the cap in 1.1 a) is a Discretionary Activity PROVIDED THAT it did not exceed 35 lots
 - f. At Rule 1.5 subdivision that exceeded 35 lots is a Prohibited Activity.
14. The provisions of the TCSP therefore established the restricted discretionary activity status for up to 25 lots, but only if it compliant with 18 standards a) to r) plus 13 standards in Table 1, covering minimum lot area, services, utilities, and infrastructure.
 15. Beyond that subdivision would be a discretionary activity and therefore considered in accordance with all the Objectives and Policies of the District Plan. Lots over 35 could not be considered by way of resource consent.
 16. With the further refinements in V12 TCSP the TCSP strategy on activity status does not change. It however becomes a little more nuanced.
 17. Version 12 adds a further two standards to rule 1.1c) whereby the Defined Building Area (DBA) for each lot must be referenced to the GPS location (as identified in TCSP Attachment 1), and by setting a maximum area (500m²).
 18. The final location and shape of the DBA can be determined at the time of subdivision consent. In this way there may be a variation to the location standard for the DBA, as decided with reference to assessment matter 9 in Table 2. In addition, new rule 1.2 is added whereby status is retained as a restricted discretionary activity for this purpose i.e. for breach of rule 1.1 c). I note that this is the only standard, breach of which would retain restricted discretionary activity status.
 19. Assessment criteria under matter 9 are restricted to the consideration of geotechnical constraints, i.e. to avoid areas of potential instability, as well as disturbance to

archaeological remains and to minimize earthworks, but along with mitigation of any additional effect from a revised building platform needed in response to these constraints. In this way the site identified in the structure plan can be 'fine-tuned' before being fixed by survey and brought down on title plans without change in activity status for the subdivision. This is not a case therefore of 'considerable flexibility' to move building platforms outside the DBA's shown on Attachment 1, as suggested at paragraph 26 of the s42A SR.

20. For completeness, I add here that in v12 TCSP standard 1.1 r) is removed and the subject addressed in Rule 1.7 (prohibited status). I address this later in my evidence. As a result, full discretionary activity status applies if subdivision does meet the standards 1.1 b), d) to q). If the standard in Rule 1.1 c) is not met it remains a restricted discretionary activity subject to assessment criteria in Table 2 Matter 9, as just explained.

Paras 22 (and 41) Rules for Development or Land Use

21. The summary (in para 22) of rules for buildings and the activity status if they are not met covers some but not all rules relating to buildings³. The suggestion is made (para 41) that if an activity 'transgresses' key standards or alignment with the 'stormwater management plan', the activity should therefore be a non-complying activity, such that "*the relevant objectives and policies of the Plan would apply*".
22. The appropriate activity status if an activity does not meet a standard will vary according to the standard not being met and thresholds of tolerance for change. I now address the different rules, noting where there are refinements to standards in V 12, and the activity status for cases where different standards may be sought.
23. Rule 2 provides the permitted activity standards for **One Dwelling per lot and Accessory Buildings**. The standards are:
- a. Located within a DBA shown on TCSP Attachment one or an approved subdivision plan.
If this standard is not met the building(s) become a **non-complying activity** application.
The higher threshold test required of a non-complying activity can be justified with the provision to fine tune the final location (and landscape planting if necessary) of a DBA by way of restricted discretionary activity

³ The summary does not cover 2.1 c) standards for colour reflectivity and materials or d) ultra violet decals or light reflecting film on windows to minimise bird strike or Rule 4 buildings associated with activities other than residential.

before the DBA is approved and comes down on the title (as addressed above).

- b. The standards in TCSP Table 3 V 12 (refinements to version 11 are noted):
- Maximum Height 6m (down from 8m Rural Zone height)
 - Maximum site coverage (or maximum building footprint) 350m² (taking account of the 350m² standard that was applied in the Structure Plan for 790 Hot Water Beach Road)
 - Maximum number of buildings per lot 2 (remains the same number as v11 but the words “per lot” are added).
 - Maximum setback from stream or wetland 20m (remaining the same).

If any of the standards in this table (except for the setback from streams or wetlands) are not met the building(s) become a **discretionary activity** where the Objectives and Policies for the Plan as whole apply. The decision will not therefore be restricted to the matters of discretion for Table 2 Item 7 (effects of not meeting the standard) and Item 8 (location design and visibility of buildings/structures) in Table 2 in the event that there are other relevant considerations in the circumstances.

It is not necessary to establish a non-complying activity status in circumstances where the management of effects of non-compliance for minor variations would be able to be mitigated or addressed by one or more of the discretionary criteria or by applying policies derived from other sections of the Plan.

In the case of the 20m setbacks from streams or wetland there is no scope for flexibility and the non-complying activity status is justified on ecological grounds.

- c. The standards in Section 56 Rural Zone for Colour Materials and Reflectivity. If any of these standards are not met the application becomes **non-complying**. This activity status is justified because the range and scope of options available within the standard are broad.
- d. Ultra-violet Reflecting decals on windows
If this standard is not met the building(s) become a non-complying activity. This standard is an essential and effective means of achieving the ecological outcomes expected within the TCSP.

Para 23 (and 44) Rule 1.1.g) in tandem with standard m) vii) timing

24. Uncertainty over the timing of the protection and enhancement measures required under Rule 1.1g), and the programme of implementation in the EMP under Rule 1.1m) vii) is an issue raised in paragraph 23. In para 44 attention is drawn to the need for the timing and funding of the protection and restoration planting to achieve mitigation of stormwater effects.

The question seems to be what level of restoration planting (landscape or ecological) and/or what level of protection needs to be in place for existing vegetation before or after (under consent notice) the s 224 completion certificate is signed?

25. A new criterion has been added to Matter 4 Staging. I address this in Table 1 above. The new matter of discretion for staging at 4 b) states:

The extent to which the Ecological Management Plan and Landscape Planting plan need to be implemented for each stage or the extent of subdivision and development approved under the application, including to attenuate or offset any additional stormwater runoff generated by that level of development.

While these matters would become a consideration for staging under the generic heading for Item 4 Staging of Development and standard practice developed through case law, it articulates the essential factors (but not the only ones) for consideration in an AEE supporting a staged development.

The purpose of this new wording is to ensure that the Council can require adequate restoration planting (as proposed under the ecological management and landscape planting plans) at each stage of subdivision (assuming there is to be any staging) to provide the hydrological offset assumed in the Te Miro report and modelling for the level of development being proposed over time. This timing would otherwise still be driven by landscape and ecological considerations under rules 1.1 f) v) and m) vii), with the relevant management plan (once approved by the Council) determining which specific measures precede or (conversely) succeed the s224 certificate.

Paras 25/26 Flexibility to accommodate buildings and role of Defined Building Areas

26. Two concerns are being raised here: the TCSP being designed to accommodate 35 lots with unknown scale of development opportunities (e.g. to create minor units); and flexibility to move building 'platforms' outside DBAs.
27. The TCSP provisions are focussed on providing for up to 25 lots, not 35 lots as suggested. The objectives, policies and rules in the TCSP provide for ecological and hydrological

enhancements with measures to manage effects of establishing housing for stewards of the endeavour. The discretionary activity status takes any additional lots for houses outside the immediate scope of the TCSP, and into consideration under the Plan as a whole.

28. I address the importance of getting the final position for the 25 identified DBAs right, in my primary evidence.⁴
29. The provisions in Rule 1.1 c) which I address in Table 1 above provide, as set out in Table 2: below, as follows:

Table 2: Defined Building Area		
DBA	Standard	Subdivision RDA
Location Shown on TCSP Attachment 1 with GPS point in schedule	√	
Standard Rule 1.1 c)	There shall be one <u>Defined Building Area</u> which shall be no greater than 500m ² , and whereby at least some part of the <u>Defined Building Area</u> must incorporate or immediately adjoin the GPS location identifying the <u>Defined Building Area</u> as set out on Attachment 1; Overall Development Concept.;	√
DBA outside the location shown		Rule 1.2
RDA Assessment Criteria	Matters of Discretion 9 a)	The extent to which the Defined Building Area shown on the scheme plan for the subdivision as prepared to meet Rule 1.1c) is outside the Defined Building Area shown on Attachment 1: Overall Development Concept.
	b)	The extent to which any additional landscape or visual effect arising from the location of the building platform outside the Defined Building Area shown on Attachment 1: Overall Development Concept, can be mitigated.
	c)	Whether the building platform needs to be located outside the Defined Building Area shown on Attachment 1: Overall Development Concept, to avoid geotechnical instability constraints or minimise site preparation earthworks, as a result of building site topography, or avoid archaeological remains.

⁴ Para 24 f. and g.

30. As discussed above; the fine-grained assessment provided for under the suite of rules set out in Table 2 above is required to ensure that the approved DBA that comes down on to the title is as accurate as it can be. The level of accuracy is particularly important because the size of the DBA is so restricted – 500m² compared with 1000m² which was the limit on size for the 344.10 Structure Plan.⁵
31. Rather than giving broad flexibility to approve changes to building platforms (as suggested in the s42A SR), the discretion is limited to consideration of stability, minimisation of earthworks and avoidance of archaeological remains, and provides for any further mitigation necessary for landscape or amenity reasons. Beyond that, the spatial extent of the DBAs is now clearly defined, and any minor units for the 25 lots will need to be located within the DBAs, to a maximum cumulative area of 430m² under Rule 3.⁶
32. It is important to note that the opportunity to refine the position of a DBA, by way of RDA, only applies to the refinement of the position shown on the attachment 1 to the TCSP. It does not apply once the subdivision has been approved with identified DBAs approved.

Para 28 Consent Notice Rule 1.1 q)

33. This paragraph considers the TCSP does not make a clear commitment that the Conservation Area will be protected in perpetuity and seems to seek a QEII Trust Open Space Covenant as the vehicle which would provide a reliable degree of stringency and continuity.
34. Rule 1.1q) has been amended to clearly require that the Conservation Area will be retained in the ownership of the legal entity/ Incorporated Society, which in my opinion would provide the necessary degree of commitment sought in this section of the s42A SR.

Para 33 Subdivision Standards and reference to septic tanks

35. The point being made in the s42A SR seems obscure to me. The term ‘septic tank refers to a tank with drainage field. It does not, to my knowledge, get confused with a wastewater system with dual or multi chambers and/or tertiary treatment. Both Bay of Plenty Region Plan Change 14 and Waikato Regional Plan refer to septic tanks and where additional treatment is required articulate that.

⁵ 344.10 Rule 2.1 vi) where the Landscape Management Plan is to identify the location of a Defined Building Area “which shall be no greater than 1000m²”

⁶ As a restricted discretionary activity, 350m² as a permitted activity. Accessory buildings also need to fall within this site coverage limit.

36. To address the concern the words “on their own” have, nevertheless been added in V12.

Paras 35-40 Structure Plan and Non Complying Activity.

37. The question of confidence in and reliance on the district plan was an issue raised in the early consultation with Council policy and consents planners. There are four significant District plan policy streams the TCSP is implementing: ecological enhancements integrating several (nearly all) different threads of the District Plan’s Biodiversity strategy for encouraging subdivision⁷ ; consolidating a development of 25 large lot residential/rural lifestyle on an existing settlement; and extending the diversity of residential choices of a nature, character and scale that meets the unique characteristics of Hot Water Beach.
38. My primary evidence addresses the purpose of structure plans as set out in the Plan and identifies the ways in which the proposed conservation and development framework meets all relevant criteria for using a Structure Plan method for achieving objectives of the Plan and higher order planning instruments.⁸
39. The whole point of the Structure Plan was to target and focus a response to the Plan objectives and policies to:
- a. Identify and ground truth the extent of SNAs indicated in WRC reports.
 - b. Establish measures to protect the SNAs and to expand them through an ecological protection and enhancement programme connecting waterways and wetlands on one farm, with the ecological protection and enhancement endeavours being carried out under another structure plan and subsequent consents on the neighbouring property.
 - c. Provide for development that would make no demands on public services, be self-sustaining in that regard and provide hydrological enhancements.
 - d. Address a need to upgrade existing network of private rights of ways (Taiwawe and Ngatuturu Lanes) to rural road standards.
40. The Structure Plan method overcomes the type of concern as raised in the s42A SR about ad hoc planning as can arise if subdivision and development to this extent is carried out through non- complying activity applications by way of resource a consent alone, with accompanying concerns about precedent. This factor was a key reason why the structure plan was considered as a Plan Change or Variation.

⁷ My primary statement at para 34d. In relation to Biodiversity Policy 1d)

⁸ Paragraph 42

41. I do not agree with the statements in s42A SR that suggest that the scale and scope of development go beyond what the plan had intended. The intention of a structure plan is very much (and to my mind) precisely to provide a 'plan within a plan' (paragraph 40 of the s42A SR). That is what all eight⁹ of the other structure plans in the District Plan do, and the TCSP would be no different. The challenge is to keep the provisions of the 'plan within the Plan' relevant and I consider that while comprehensive, this has been achieved.

Para 45 Planting Areas for Ecological and Landscape purposes

42. This issue is able to be addressed at the time of preparation of subdivision application through both the Ecological Management Plan and Landscape Planting Plan as identified on the face of attachment 2. However, to respond to the binary approach being taken in the s 42A SR the relevant rule 1.1 f) is amended so that the landscape planting plan drives the timing of the R8 and R9, given it also serves as landscape mitigation. Mr Brown's supplementary statement addresses this in more detail.

Para 47 Original Owner vs Incorporated Society responsibilities

43. Again, this is a matter where the responsibilities are clearly differentiated. The applicant/landowner/consent holder is responsible for implementing conditions of consent until completion certificates have issued under s 224 RMA and new titles are issued. An Incorporated Society made up of new owners is not able to be formed until new titles have issued and under the provisions of the TCSP that part of the Conservation Area that has new title is transferred into the ownership of the new corporate entity. Clarification of respective responsibility (landowner, legal entity) has been added through an addition to rule 1.1 p (new v)).

Para 73 Key features that distinguish Structure Plan 344.10 from TCSP

44. The comparison of the TCSP with the Structure Plan 344.10 purports to distinguish them and leads to a false impression that the development proposed in the TCSP is inferior by comparison.
45. I had done a comparison of the TCSP proposal with the 344.10 Structure plan early in my assessment. It was a topic of discussion with Council planners which resulted in reaching agreement that a structure plan was the appropriate method to adopt and that the TCSP

⁹ Including 27.9 Kaimarama Structure Plan (Consent Order dated 22 March 2021)

be introduced into the Plan by way of plan change or variation. I have repeated a comparison and produce it in Table 3: following:

Table 3: Structure Plans Comparison		
	344.10	TCSP
Area	34.76ha	38.12
Area Protected	22.5ha existing 3ha wetland 2ha (LMP) 27.5ha Total	9.2 existing 6.9 restoration 6.76ha (Landscape Planting) 22.8ha
Max Number of lots	20	25
Average Density	1 lot per 1.7ha	1 lot per 1.5 ha
Activity Status for Subdivision	Controlled (CA)	Restricted Activity (RDA)
Lot boundaries	Indicative	Not shown
Staging	By CA consent	By RDA consent
Max Area of DBA	1000m ²	500m ²
DBA and access located within existing indigenous vegetation areas	4	nil
Location of DBA	Indicative	By GPS
Final Location of DBA	By CA consent	By RDA
Max building footprint	350m ²	350m ²
Max Height	5.5m	6.0m
Ecological Management Plan	With Application	With Application
Landscape Management Plan	With Application	With Application
Subdivision not provided for as CA as DA	Non complying Activity	Prohibited Activity

47. The comparison does not take account of the pattern of development that occurred in a more ad hoc manner mostly by way of consent in Radar Road to the south of Hot Water Beach. Within the Radar Road area on the southern boundary of the Residential Area of the Hot Water Beach Settlement, 10 Large Lot Residential Lots (between 1700m² and

8800m² in area) and 3 Rural Lifestyle lots (1.07 to 1.58ha) retained their Rural Zone in the Plan.

Para 74 Resource Management Reason for Scale of Development

48. In this paragraph it appears the writer has difficulty in reconciling the scale and scope of development with the conservation framework proposed in the TCSP. The difficulty comes with limiting the considerations to those set out in the Conservation Lot provision of the Plan which as I addressed in my primary evidence: is a specific Plan provision which updated the provision for Conservation Lots that evolved through previous generations of plans; is of limited scope; is only one means adopted by the Plan for ecological enhancements; and is ill-equipped to achieve strategic development outcomes for development and growth, subdivision, enhancement of biodiversity values and improvement in catchment management and enhanced hydrology outcomes in a comprehensive integrated manner.
49. The RMA considerations and Plan objectives go beyond the focus on the Conservation Lot provisions that the s42A Reports have had.
50. I address the question of the nature, character and scale of development in my primary evidence¹⁰ where I considered that the host community needs to provide a level of stewardship and investment (financial and human) to sustain the level of protection and enhancement proposed, for both ecology and built environment, through monitoring of the conservation effort and with monitoring and oversight of development controls.
51. The sustainable level of stewardship must also take account of the following:
- a. No longer operating as a farm generating income.
 - b. The location on the periphery of an established settlement
 - c. Type of development consistent with strategic policy to provide diversity of residential opportunities
 - d. Lifestyle development not compromising highly productive land
 - e. Comprehensive nature of development within a conservation framework avoiding reverse sensitivity effects.
52. There is therefore in my opinion a 'good resource management' reason for the extent of development proposed to sustain the conservation framework involved.

¹⁰ Para 22

Para 78 Objectives and Policies for 35 lot development

53. The s42A SR observation on the role of objectives and policies for discretionary and non complying activities is not correct. The Objectives and Policies within the TCSP provide the framework for establishing permitted activity development standards, the standards for subdivision as an RDA and for consideration of applications under a restricted discretionary activity status. As such, they have been reviewed, and refinements made as follows:
- a. To Objective 1 removing reference to “high natural character” to avoid confusion with the use of the term as an overlay in the coastal environment. The v 12 objective refers to “habitat values, and the natural character of stream margins”. In this way retaining the term natural character in its s6 (a) RMA context for preservation of wetlands and river margins and the protection of them from inappropriate subdivision, use and development.
 - b. To Objective 2 simplifying and focussing it on the quality of development within a conservation framework in the Rural Zone next to the settlement of Hot Water Beach.
54. TCSP Policy 2c seeks to retain ‘a rural character’ and amenity consistent with establishing and extending the range of living choices for Hot Water Beach settlement. I consider this can be achieved with a development of up to 25 lots where the finally approved DBAs do not exceed 500m², within lots exceeding 2500m², and where the overall density will be 1 per 1.5 ha with development compartmentalised within a conservation framework. The scale of buildings is governed by:
- a. Restricting height to 6m
 - b. All buildings being contained within a DBA which does not exceed 500m².
 - c. Maximum footprint of buildings does not exceed 350m²; unless, in the case of a Minor Unit, it is being added as a RDA and, in combination with other buildings within the DBA, does not exceed 430m².
55. Discretionary and non-complying activities go beyond the TCSP planning framework and will be considered under relevant objectives and policies across the whole Plan. Such applications will be considered under the strategic planning Section 15 Development and Growth, Section 16 Subdivision and the primary overlay focus provided by the Biodiversity Section 6. The overall regime in place as set though the TCSP is by no means ‘toothless’ as suggested.

Para 80 Earthworks

56. The question of earthworks controls is raised. I address this in my Table 1 above. I consider the Rural Zone provisions provide an adequate framework for managing the effects of earthworks carried out as a land use. There may be some merit in establishing the more restrictive earthworks standards applying to the coastal environment overlay. As a result, rather than default to the Rural Zone earthworks provisions I recommend the following alteration to the heading and addition of item 5 for Table 3.

Table 3: Standards for Buildings & Earthworks		
1.	Maximum Building Height	6m
2.	Maximum Site Coverage	350m ²
3.	Maximum Number of Buildings per lot	2
4.	Minimum setback from stream or wetland	20m
5	Earthworks	Provisions of Section 56 Rule 7 for the Coastal Environment Overlay shall apply

57. Earthworks associated with subdivision are addressed under the Council's Code of Practice for Subdivision and Development (October 2013) with standard conditions imposed on any subdivision consent. The Council's Code of Practice standards are specifically recognised and provided for in the TCSP as follows:

- a. In Rule 1.2 among the matters of limited discretion; and
- b. In Table 1: Subdivision Standards at Item 5¹¹ providing for refinements to enable low impact engineering solutions to be applied to design and construction of subdivision works as follows:

Any refinements to Engineering Code of Practice standards necessary to minimise earthworks and avoid the need for hard engineering solutions to stormwater management shall be included in the application for subdivision consent.

Para 81 Water Storage for Firefighting

58. This would be a standard condition of consent on subdivision. For completeness I recommend the following amendment to the standards for water supply in Table 1 Item 2b)

¹¹ Instead of having the provision refer to internal rights of way only as worded in Version 11 Item 4d)

b)	Adequate water supply suitable for domestic purposes must be provided for each lot and or/building	Within each lot an area of sufficient size shall be identified on the plan of subdivision to provide minimum on-site storage of water sufficient to meet the quality and quantity required for: domestic use for 5 people at 300 litres per person for up to 20 days; and for firefighting to meet SNZ PAS 4509:2008.
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Para 82 Prohibited Activity Status instead of Encumbrance on Title for Conservation Area

59. TCSP v 12 has Rule 1.1 r) deleted and a new Rule 1.7 to achieve this as follows:
6. *Subdivision within the Conservation Area shown on Diagram A, excluding subdivision for boundary adjustment, roading, access or utilities is a **Prohibited Activity**.*
60. Consequential amendments have been made to Rule 1.3 and 1.5.

Paras 84 and 85 Maximum Area for DBA and Maximum height

61. TCSP version 12 has amended these standards, as explained above, whereby:
- at Rule 1.1 c) the DBA standard is maximum 500m² in area and its location shown on the TCSP attachment 1 also forms part of the standard.
 - the standard for building height in Table 3 is amended to 6m.

Para 86 Definitions

62. The definitions in Section 3 of the Plan do not provide specific meaning for the terms defined at the end of the TCSP. The general use of these terms vary and can lead to, at best, misunderstanding, or at worst, poor decision making. The defined terms must in my view remain and in the case of Defined Building Area be amended to provide for the location of water storage tanks outside the DBA.

Defined Building Area

- Is a term used in a Structure Plan recently finalised by Environment Court consent order ENV-2016-AKL-000121 to be inserted into the TCDC Plan.
- Was a term used in the 344.10 Structure Plan at 790 Hot Water Beach Road. It was not specifically defined in that Structure Plan because it was a defined term in the Operative District plan which it came under.
- The defined building area is very tight, half the size of the 1000m² provided for as a maximum size for a DBA under the 344.10 Structure Plan. The 500m² is the size of an average urban section with reticulated services.

- d. The refinement in TCSP v 12 to fix the DBA at a maximum of 500m² requires amendment to the definition to allow for water storage tanks (which come under the definition of “building” in Section 3 of the Plan) to be sited outside the DBA.
- e. The amendment proposed will result in the definition being refined as follows:

DEFINED BUILDING AREA means a nominated area for the purpose of locating buildings to be shown on a survey plan and subject to consent notice at the time of subdivision. For the avoidance of doubt, water storage tanks for domestic or firefighting purposes may be located outside a Defined Building Area.

Large Lot Residential

- f. Is not defined in the Plan.
- g. Is a zone name and description applied in the National Planning Standards 2019 as a standard for District Plans.
- h. The TCSP uses the NPS 2019 to describe the character of development proposed.
- i. The definitions aptly describe the residential outcomes expected on some lots within TCSP.
- j. The names, character, style and purpose provide meaning to use of the terms in objectives and policies of the TCSP that is different from the zones and character descriptions provided in Section 3 Definitions or Part VIII of the Plan.

Rural Lifestyle

- a. Is a term with similar description and purpose set out in Section 57 Rural Lifestyle Zone of the Plan.
- b. The definition provided is couched in terms that apply to the character of lots not the zone in the Plan.

Archaeological Survey & Agreement with Heritage NZ in relation to their Submission

63. In my primary evidence¹² and in this evidence I have referred to provisions in the TCSP for an archaeological survey. The archaeological survey is to take place to assist in determining the final location of the DBA for approval. In Table 1 (last item) I referred to the TCSP provision for an archaeological survey to not only determine whether the location of a DBA needed to be changed to avoid archaeological remains but also to inform preparation of the EMP and LPP to ensure planting did not do so. These provisions are in Rule 1.1n). They arise from an agreement reached with Heritage New Zealand (HNZ) to address matters raised in their submission on Variation 3. The agreement

¹² Paragraph 33

reached with HNZ also resulted in adding a note referencing accidental discovery protocols in the Plan.

CONCLUSION

I consider the TCSP v12 provides a planning framework that will achieve the Purpose, Objectives and Policies set out in TCSP v12 in a manner that will achieve the strategic direction of the Council's Proposed District Plan, weaving together the main threads of ecological and hydrological enhancements and development opportunities in a rural setting, at a sustainable scale, providing diversity of living choices adjacent to Hot Water Beach settlement.

Graeme Lawrence
Planner
31 March 2021