

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)

**OUTLINE OF LEGAL SUBMISSIONS
FOR HOT WATER BEACH (NZ) LIMITED**

Dated 8 September 2021

MAY IT PLEASE THE COMMISSIONERS

Introduction and summary

1. These submissions are presented on behalf of Hot Water Beach (NZ) Limited (HWBL), owner of the Taiwawe Catchment Structure Plan (TCSP) land subject of Variation 3, and submitter to Variation 3.
2. Variation 3 presents a choice to be made between upholding the rural aesthetic (on the one hand), and enabling development to secure material benefits for terrestrial and aquatic ecology, catchment hydrology and landscape (on the other).
3. If declined, a 38-hectare non-productive¹ and undersized² parcel of land would be retained in pastoral use, with associated adverse effects in terms of land erosion, hydrology and ecology, set to continue and endure. Rural character, as a form of amenity would be retained, with provision for approximately two lots under the “off the shelf” Conservation Lot Rule 8: Section 38 of the PDP (Rule 8).
4. The site would continue to sit as a pastoral ‘island’ on the edge of an expanding settlement, with existing development to the north, and “well under way” to the east.³ The approved subdivision ‘next door’ has already re-cast the landscape as an area of lifestyle development, interspersed with remnant bush.⁴
5. Mr Lawrence opines that Rule 8 could not and would not sustain the level of stewardship investment and resource commitment needed to carry out and support the extent of protection and enhancement proposed for the 18.8 hectare Conservation Area under the TCSP.⁵
6. By contrast, if Variation 3 is approved, the following benefits would be secured:
 - (a) Provision for 25 rural lifestyle/large lot residential sections and dwellings on the fringe of Hot Water Beach settlement, within a self-contained, self-servicing development.
 - (b) Improvements to catchment hydrology and ecological values through the coordinated and integrated efforts of the 25 lot owners; legally required to collectively own the 18.8 hectare Conservation Area and contribute to the protection, restoration and enhancement measures applying to it.

¹ Section 42A report, at 272.

² Section 42A report, at 275.

³ Section 42A report, at 36 (as to 790 Hot Water Beach Road, refer Attachment 5 to Mr Brown’s evidence).

⁴ Mr Brown’s supplementary evidence, at paragraph 5.

⁵ Mr Lawrence’ evidence at paragraph 22.

- (c) A positive transition to the landscape of the setting, forging a visual and physical connection between the predominant bush and forest covered land to the west, the land already developed to the north, and that currently being developed in a similar manner (to the TCSP concept) immediately to the east.⁶
7. These benefits would be secured without placing any burden on the ratepayer or Council infrastructure. Traffic safety and efficiency would be sustained and visual effects on neighbouring properties would be at worst moderate (in the short term), reducing to low even positive in the longer term.⁷
8. There is no hiding from the fact that Variation 3 would enable development at a substantially greater intensity than the generic Rule 8 Conservation Lot opportunity of the recently settled PDP subdivision chapter.⁸
9. Nor is there any hiding from the fact that subdivision and development enabled through the TCSP would change the existing rural character attributes of the Structure Plan land.⁹ That said, this change is positive, not adverse, for both landscape¹⁰ and ecology.¹¹
10. Conversely, HWBL submits it would be an “own goal” in both ecological and landscape terms to decline Variation 3, which represents a demonstrably “better” outcome in s 32 terms than the status quo, and for promoting the overall sustainable management purpose of the RMA.
11. I now address the evidence and planning as well as statutory provisions, in support of the submissions just made.

Benefits of the TCSP

12. The expert opinion evidence called by HWBL demonstrates the following by way of material benefits which would be secured through Variation 3 being approved.
13. First, as to hydrology, Mr Chapman’s report produced with his evidence records as follows:

The proposal seeks to implement a large scale native replanting programme focussing on gully and ridgeline areas to provide landscape and conservation areas. This revegetation programme will significantly improve water quality compared to the existing rural run off.¹²

⁶ Mr Brown’s evidence, at paragraphs 28 and 44.

⁷ Mr Brown’s evidence, paragraphs 42-53.

⁸ Paragraphs 134 -136 of the s 42A report (albeit the statement “40 times” is no longer valid). Refer also paragraph 7.5 of Mr Vare’s evidence for the Regional Council.

⁹ As emphasised in Ms Lamason’s evidence for Diane Hinds.

¹⁰ Mr Brown’s evidence, at paragraph 46 (set out below).

¹¹ Mr Goldwater’s evidence, at paragraph 46 (set out below).

¹² Page 7 of the report appended to Mr Chapman’s evidence.

14. As the report also states:

New vegetation will reduce site run off at Taiwawe by providing leaf canopy interception, evapotranspiration, and soakage into the organic ground cover, through:

- Evapotranspiration
- Increased Soakage
- Flow retardance

The existing natural features at Taiwawe comprise a series of stream and gully networks (incised to about 10m to 20m depth) leading to a lowland wetland floodplain. These features will be enhanced with additional native planted areas to provide a higher level of infiltration, greater reduction in runoff velocities, extending the time of concentration (reducing peak flows), filtering sediments and other contaminants and recycling nutrients. The area of existing vegetation is 9.21ha, the area of proposed re-vegetation is ~13.60ha - this is a significant increase and will readily achieve the benefits listed above.

15. As Mr Chapman states in his supplementary statement:¹³

In my 20 years of working on stormwater solutions and catchment management plans I have never been in this unique and fortunate situation whereby there is a commitment to undertake significant re-planting that will, in net overall terms, reduce runoff volume and peak flows (notwithstanding the other ecological, cultural and amenity benefits of the re-planting).

16. In terms of terrestrial and aquatic ecology benefits, Mr Goldwater advises as follows:

42. Rule 1 m) provides a detailed scope for an Ecological Management Plan, which will guide activities such as planting, pest plant and animal control, stock exclusion, baseline and ongoing surveys for threatened fauna species and their continued management.
43. Provided it is appropriately implemented, the combination of planting, pest control, and stock exclusion, as specified in the proposed Ecological Management Plan, will markedly enhance the biodiversity values of the subject site. Over time the combination of conservation and landscape planting (c.13.6 hectares) will more than double the area of existing indigenous vegetation at the site. This will enhance connectivity between isolated remnants and larger tracts of adjacent indigenous forest. These linkages will benefit the movement of mobile fauna such as kiwi, whilst also providing additional habitat and food resources for a range of species. In addition, the exclusion of stock from watercourses and wetlands will improve the quality of water flowing into downstream receiving environments.
46. I am confident that the Ecological Management Plan will achieve long-term ecological functioning of indigenous biodiversity within the Conservation Area, in accordance with Rule 8 of the Proposed Thames-Coromandel District Plan (Section 38). An Incorporated Society that is legally obligated to fund and implement an ongoing programme to control pest plant and animal species, together with an ongoing programme of monitoring, is more likely to achieve positive ecological outcomes than

¹³ Dated 31 March 2021, paragraph 6.

would a number of disparate land owners occupying the same area.

17. As Mr Goldwater observes in his summary statement:¹⁴

... I consider that the positive ecological outcome at the site and the wider catchment will be a marked improvement on the current regime of pastoral farming with no or only limited control of pest and animal species, at landowner discretion.

18. In terms of the landscape transition that would be delivered through implementation of the TCSP, Mr Brown advises as follows:

44. In the course of the changes that I have just described, the amenity values of the application site would inevitably change as well. Currently much of the eastern valley still comprises remnant pasture that is still stocked with cattle, notwithstanding the increasing presence of lifestyle blocks and residential clusters (such as that at 123 Taiwawe Lane) in the valley's midst. The bush between these actively used paddocks – including the SNAs on the subject site and neighbouring properties – remains largely subservient to both these rural activities and some of the residential development that has already occurred. The Structure Plan would change this balance by ensuring that more than half of 104 Taiwawe Lane is covered in regenerating bush and native planting. This should provide the platform for further planting on individual lots across the property. Regardless, the vegetation cover across the application site will gradually evolve to the point where it is much more continuous and mature across the entire property, and freer of weed species. As a result, it would start to match the bush cover across the Taiwawe Stream, creating a more cohesive body of native forest across the middle of the Taiwawe Stream valley.

45. Although the subject site would also contain more residential development and activities than at present, these would be isolated to a number of relatively discrete pockets – near the Taiwawe Stream, around both paddocks above Ngatuturu Lane and near the top of Taiwawe Lane. The expanded vegetation cover around and between these pockets would, in the future, become more critical in terms of the site's landscape structure and aesthetic. It would re-characterise the site – moving away from rural production towards a more natural environment that frames and encloses pockets of residential development within it, much like parts of Tuatēawa and Cook Bluff.

46. All of these changes would be contextualised by the subdivision and development consented at 790 Hot Water Beach Road, within a site that is more exposed and (from a landscape standpoint) more sensitive than that found at 104 Taiwawe Lane. That development would effectively re-shape the valley on the south side of the Taiwawe Stream and the gateway to Hot Water Beach. It would recast the local landscape as one in which pasture and rural production is displaced by housing framed by extensive tracts of native bush and revegetation. This approach, together with the landscape transition predicated by it, has been supported by Council in relation to 790 Hot Water Beach Road, and the proposed Structure Plan would

¹⁴ Circulated on 6 September 2021.

further cement this change. On balance, I regard it as being positive for both the Taiwawe Stream valley and Hot Water Beach's rural hinterland.

19. These hydrological, ecological and landscape benefits can be compared with the 'counter factual' scenario and outcomes associated with declining Variation 3, being that either:
 - (a) An undersized non-productive rural holding would be retained in pastoral use, with associated and enduring effects of grazing and run off (albeit preserving the current rural character aesthetic of the TCSP land); or
 - (b) All or parts of the existing SNA features on the site¹⁵ would be protected but not necessarily enhanced under Rule 8, in exchange for one to two conservation lots being approved,¹⁶ either in substitution for or alongside pastoral use continuing on the remainder of the TCSP land.
20. Again, and having regard to the expert opinion evidence available to the Commissioners, I submit the positive TSCP outcomes and benefits demonstrably outweigh those of the status quo option under the Proposed District Plan.

Overview of TCSP requirements

21. In his primary statement Mr Lawrence gives a detailed summary of the specific requirements of the revised TCSP (Version 11), subject of the evidence and opinion of the primary experts (landscape, ecology, engineering, traffic).¹⁷
22. In his supplementary statements, Mr Lawrence explains the refinements made to produce Versions 12 and 13 of the TCSP in response to issues raised in evidence from submitters and the supplementary s 42A report¹⁸ and the outcomes of the pre-hearing meeting, respectively.
23. The revised TCSP is submitted to comprise a comprehensive and detailed response to issues raised in submissions and in turn throughout the s 42A reports, in order to ensure that the intended benefits of the Structure Plan *are* secured through Variation 3, and the subsequent (restricted discretionary activity) consenting process that would follow.
24. Appended to these submissions is a comparative table (**Table 1**) summarising

¹⁵ Appendix A to Mr Goldwater's evidence.

¹⁶ Mr Vare's assessment (paragraph 7.5) is two lots for the circa 9ha of SNA available for protection. Refer Table 1, Section 38 of the PDP.

¹⁷ Paragraphs 15 to 33 of Mr Lawrence's evidence.

¹⁸ Received at the outset of the originally convened hearing on 15 March 2021.

the principal requirements of:

- The TCSP
- Rule 8 (section 38)
- The Hot Water Beach Road Structure Plan referred to in the s 42A report.¹⁹

25. Having regard to that table, I submit that not only is the revised TCSP (even as at Revision 11) more detailed and comprehensive than Rule 8 as to ecological protection *and enhancement*, but substantially more prescriptive than both Rule 8 and the Hot Water Beach Road Structure Plan, across all relevant dimensions including:

- Building platform identification and certainty
- Wastewater treatment
- Stormwater management
- Roading
- Landscaping
- Ecological management more generally.

26. The s 42A report advises that the Hot Water Beach Road Structure Plan is "*based on an appropriate depth and breadth of assessment which is reflected in the rules package*".²⁰

27. I submit that the TCSP is, now at least, considerably more so.

28. Rule 8 is said to include a number of specific standards, for example a management plan to achieve long term ecological functioning, monitoring, pest management, identification of proposed building platforms and access areas.²¹ Mr Vare similarly expresses a preference for reliance on Rule 8, as being more efficient and effective, given the "imprecise nature of the proposed TSCP".²²

29. With respect, that preference and criticism of the TSCP may previously have been valid, but is no longer so. Again, the TCSP (Version 13) is considerably more detailed, prescriptive and comprehensive than Rule 8, and indeed,

¹⁹ Paragraph 301, and set out in full in Appendix 2.

²⁰ Paragraph 301 of the s 42A report.

²¹ Paragraph 45 of the s 42A report with reference to Appendix 1.

²² Paragraph 7.9 of Mr Vare's evidence.

HWBL submits that was the case with Version 11.

30. This is particularly so in terms of the enhancement and restoration dimension, and (I submit) the other concern raised by Mr Vare, i.e. whether the intended benefits will actually be delivered.²³ The resourcing realities raised by Mr Lawrence²⁴ and greater efficacy of coordinated landowner effort noted by Mr Goldwater,²⁵ are two key factors in this regard.
31. Fundamentally, I submit that the Commissioners can be confident that, if approved, Variation 3 through the TCSP would lock in the hydrological, ecological and landscape benefits summarised in the evidence of Mr Chapman, Mr Goldwater and Mr Brown, as set out above.
32. Furthermore, the evidence of Mr Kelsey and Mr Burgess confirms that:
 - (a) The structure plan land is geotechnically suitable for the proposed 25 house sites and associated accessway alignments, with favourable stability conditions provided by low slope angles, strong ground conditions and deep ground water levels.²⁶
 - (b) Suitable options are available for onsite wastewater disposal, with more than sufficient area provided within the minimum 2,500 metre lot size to accommodate wastewater disposal in a manner meeting best practice guidelines.²⁷
 - (c) The proposed internal and external road network investments, including upgrading of the perimeter roads and the intersection of Taiwawe Lane with Hot Water Beach Road, will ensure that traffic generated by development on the proposed 25 lots can be safely and efficiently accommodated on the overall road network at Hot Water Beach and beyond.²⁸
33. Provision is also included within the TCSP to address concerns raised by Heritage New Zealand, in relation to the identification and protection of archaeological sites.²⁹
34. HWBL has ensured the cultural perspectives shared by Mr Davis as kaumatua for Ngāti Hei are embraced within the Structure Plan, not least through the overall approach taken to ecological protection and restoration, along with

²³ Paragraphs 8.3 to 8.5 of Mr Vare's evidence.

²⁴ Paragraph 22 of Mr Lawrence's evidence.

²⁵ Paragraph 46 of Mr Goldwater's evidence in that regard

²⁶ Paragraphs 10 and 11 of Mr Kelsey's evidence.

²⁷ Paragraphs 37 to 44 of Mr Kelsey's evidence.

²⁸ Paragraph 31 of Mr Burgess' statement of evidence.

²⁹ Refer revised Rule 1.1(n) in particular.

stormwater and wastewater management and disposal methods.

35. A Memorandum of Understanding has been entered into between HWBL and Ngāti Hei, and a Maori Values Assessment received from Ngāti Hei Environ (MVA). Version 13 of the TCSP has been amended in the various ways described by Mr Lawrence in his second supplementary statement, to align with the information and recommendations of the MVA.
36. I now address the s 42A report findings and recommendations,³⁰ including the issues raised in other submissions to Variation 13, with this overview of the TCSP in mind.

Section 42A report

37. The (original) s 42A report necessarily addressed the TCSP as notified under Variation 3.
38. It concludes (inter alia) that Variation 3 in its [then] *current form* would not be consistent with the purpose of the RMA.³¹
39. The following statement from the report is (with respect) submitted to represent a recurrent theme throughout the report:

The scale and density of the proposal, the absence of provision for key infrastructure together with a poorly developed provisions framework for “ecological restoration” based on preliminary high-level reports which fail to address core matters are key concerns of all opposing submissions.³²

40. It must be recalled however that the s 42A report was addressing a proposal for up to 45 lots, which the report author assessed could result in up to 90 dwellings and minor units being established, with no restrictions on farm buildings.³³
41. Simply put, the s 42A report was effectively superseded by the TCSP in its revised form (i.e. , as at Variation 11, subject of the proponent’s evidence filed on 1 March).
42. Not only has the maximum number of lots and buildings been substantially reduced to fall within a new landscape threshold (25 lots), but conversely substantially greater detail and prescription along with information is now available on all of the outstanding issues of concern covered in the s 42A report, including with reference to the points raised in submissions received

³⁰ Including those of the supplementary s42A report, tabled on 15 March.

³¹ Paragraph 304 of the s 42A report.

³² Paragraph 122 of the s 42A report.

³³ Paragraph 90 of the s 42A report.

on Variation 3.

43. This includes in relation to the following specific matters and concerns identified in the s 42 A report:
- (a) Lack of planning certainty or security that the ecological and landscape benefits assumed under Variation 3 will be realised,³⁴ being matters now addressed through the additional information included in Mr Goldwater's evidence, and the revised TCSP provisions summarised in Mr Lawrence's evidence (and in Table 1).
 - (b) Lack of information and certainty as to stormwater, flooding and 'Three Waters' management,³⁵ as now addressed in the evidence of Mr Chapman and Mr Kelsey, with both experts giving specific details regarding (and confirmation that) stormwater and wastewater can be managed effectively, in fact to improve overall catchment hydrology and water quality.
 - (c) Geotechnical risks and hazards,³⁶ again as now addressed in the evidence of Mr Kelsey (in particular), and as summarised above.
 - (d) That the TCSP does not meet the requirements for a Structure Plan as set through section 27 of the PDP,³⁷ as addressed by Mr Lawrence in his evidence, confirming that with the additional detail now provided, all elements of section 27 of the PDP regarding the purpose, intent and content of structure plans are now delivered through the TCSP.³⁸
44. Each of the respective primary expert witnesses address additional or more specific elements of the s 42A report in their statements of evidence, including Mr Burgess in relation to transportation, and Mr Kelsey in relation to engineering issues generally.

Supplementary s 42A Report

45. As the Commissioners will recall, at the outset of the originally convened hearing on 15 March 2021, the reporting officer produced a supplementary s 42A report. The hearing was adjourned to enable the proponent to address the various issues raised in that supplementary s 42A report.
46. Again, each of the respective primary expert witnesses (along with Mr Lawrence) have thoroughly addressed all of the substantive issues and

³⁴ Paragraphs 62, 63, 73, 74, 106(h), 122 (as set out above), 145, 194, 237, 289 to 291 and 299.

³⁵ Paragraphs 11(c), 27, 32, 146 to 149, 158 to 167, 198 to 199, 211 (with reference to NPS – Fresh Water Management) and 293 (table as to risk of acting or not acting).

³⁶ Paragraphs 32, 66, 150 to 155, 224 to 227 and 293.

³⁷ Paragraph 11(e) along with paragraphs 54 to 59 and 301 of the s 42A report.

³⁸ Paragraph 42 of Mr Lawrence's evidence.

matters of detail raised in the supplementary s 42A report. This comprehensive response is summarised in **Table 2** appended to these submissions.

47. Overall, I strongly submit that the TCSP as now proposed through Variation 3 is in a form and of a nature that is not only “fit for purpose” as a structure plan, but arguably goes well beyond the level of detail and prescription required at this stage of the overall planning process.
48. I further submit that there can be no complaint or criticism levelled at HWBL for having responded to the issues raised in submissions, in this thorough and constructive, even iterative, way.
49. It must be remembered that the full Council resolved to notify an earlier version of Variation 3.³⁹
50. It is the very nature of the resource management process which followed notification of Variation 3, that through public participation and scrutiny, additional issues emerge that require attention and response. That is exactly what has happened here. It is very simply, resource management in action.
51. In that regard, the pre-hearing meeting directed by the Commissioners was, with respect, a particularly useful opportunity to explain Version 12 of the TCSP to submitters (as by then prepared and available), and discuss and respond to the remaining concerns raised, in generating Version 13.
52. Finally, appended to these submissions is a **revised Rule 2** addressing matters of detailed wording (principally regarding minor units), as raised by Ms Lamason in her statement filed on 1 September 2021, in response to production of Version 13 (through Mr Lawrence’s second supplementary statement). Mr Lawrence will be able to address this at the hearing.
53. To the extent that any issues of “scope” arise or are raised at this hearing as to the nature and extent of revisions made to the TCSP, I defer to and adopt correspondence submitted to the Council on that point, as previously produced to the Commissioners.⁴⁰

Section 32 evaluation

54. Both the s 42A report and Mr Lawrence’s evidence address Variation 3 with reference to the statutory framework, including by way of further assessment under s 32 of the RMA.
55. Fundamentally, and with reference to Mr Lawrence’s response to the s 42A

³⁹ Paragraphs 12 to 13 and 48 to 49 of the s 42A report.

⁴⁰ Memorandum dated 17 February 2021 seeking directions.

report in this regard, I submit that the TCSP represents:

- (a) The most appropriate way to achieve the purpose of the Act; and
 - (b) The most appropriate way to achieve the relevant objectives and provisions of the PDP, having regard to the alternatives, and issues of efficiency and effectiveness.
56. To confirm the point, **Table 3** appended to these submissions gives an overview of the most relevant or controlling provisions of the PDP, including as serve to give effect to the higher order planning instruments (the WRPS, and NPS Fresh Water Management in particular).
57. Beyond that and with reference to Part 2 of the RMA, the following brief points are made:
- (a) A further notable dimension of the TCSP is that provision can be made for the 25 proposed lots, in a coastal setting, but which nonetheless avoids both the coastal environment⁴¹ and any areas of outstanding natural character or landscape value (as to ss6 (a) and (b));
 - (b) The SNA areas present on the site are not only protected but will be enhanced and maintained in perpetuity (as to s 6 (c));
 - (c) The relationship of Ngāti Hei with the ancestral lands, water and sites associated with the TCSP land is recognised and provided for through the outcomes of engagement by the proponent with Ngāti Hei (as to s 6 (e)); and
 - (d) Provision is made for the protection of historic heritage, to the satisfaction of Heritage New Zealand (Pouhere Taonga)⁴² (as to s 6 (f)).
58. In short, this is I submit a relatively rare case in which provision can be made for coastal development which does not engage or offend any s 6 matters of national importance.
59. The issues of concern as raised by the reporting officer and submitters are instead centred within a s 7 “other matters” context ,whereby HWBL again submits that the inevitable degree of ‘change’ inherent to implementation of the TCSP would be positive in terms of amenity values and the quality of the environment, and represent a demonstrably more efficient use of the land resources comprised in the site.

⁴¹ S42A report, paragraph 41.

⁴² Facilitator’s report of pre hearing meeting, paragraph 5.8.

Conclusion

60. The choice facing the Planning Commissioners is whether to leave this 38 hectare unproductive farm lot with its current rural zoning on a rural aesthetic pretext, and with the possibility that a form of one or two lot conservation subdivision may at some stage be progressed.
61. The other alternative is to approve a detailed, comprehensive, holistic and prescriptive structure plan that will secure a range of ecological, hydrological and landscape benefits for the catchment and setting, as well as providing for a wider range of land uses and living choices, through a self-sustaining and self-sufficient subdivision and development proposal.
62. HWBL submits that the TCSP is demonstrably the better outcome, in both s 32 and broader sustainable management terms.
63. Variation 3 should be approved accordingly.



Martin Williams

Counsel for Hot Water Beach (NZ) Limited

Dated: 8 September 2021