



# Forest & Bird

TE REO O TE TAIAO | *Giving Nature a Voice*

## **Submission on Variation 3 Taiwawe Catchment Strategic Plan to the Thames Coromandel Proposed District Plan relating to an application by Hotwater Beach NZ Ltd.**

28 August 2020

To: Thames-Coromandel District Council  
Proposed Thames-Coromandel District Plan Variation 3  
Attention: Policy and Planning Team  
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This is a submission on Variation 3 Taiwawe Catchment Strategic Plan to the Thames Coromandel Proposed District Plan.

Forest & Bird could not gain an advantage in trade competition through this submission.

Forest & Bird is submitting in opposition to Variation 3.

Forest & Bird wishes to be heard in support of this submission, and would be prepared to consider presenting this submission in a joint case with others making a similar submission at any hearing.

### **Introduction**

The Royal Forest and Bird Protection Society of New Zealand Inc. has been Aotearoa New Zealand's independent voice for nature since 1923 with many members and supporters nationwide. Forest & Bird's constitutional purpose is:

*To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.*

Forest & Bird is actively involved in regional and district planning processes relating to freshwater, coastal environments and biodiversity across Aotearoa New Zealand.

Forest & Bird's Mercury Bay Branch is actively involved in regeneration projects and monitoring local and regional environmental issues.

Forest & Bird's particular interest with the Variation 3 proposal relates to the importance of the area to Brown Kiwi, the significant indigenous vegetation and habitat existing on the site and adjacent areas and the adjacent Taiwawe stream.

Forest & Bird recognises that the proposal includes provisions for protection and enhancement opportunities. However we consider that potential for adverse effects is not appropriately avoided, remedied or mitigated by the current proposal. There is also significant uncertainty as to the outcomes that would be achieved for protection and enhancement as proposed in Variation 3.

Forest & Bird's key concerns with proposed Variation 3 are set out below relating to:

- The important indigenous biodiversity and freshwater values of Taiwawe catchment
- The scale of the residential development proposed
- The level of protection afforded significant natural areas and the maintenance of indigenous biodiversity under the proposed Variation 3 provisions

## **Submission**

### **The biodiversity values of Taiwawe catchment**

1. The Taiwawe stream catchment includes extensive indigenous forest, exotic forestry blocks and rural farmlands extending into rural residential and a small residential township at the coast. The site is just under a 1 km from the coast, and has been identified as outside of the coastal environment line on the councils planning maps. The indigenous vegetation and habitat on the site connects with the Whenuakite Forest Park identified as a significant natural area and an area to the west of the site which is protected under QEII covenant. Indigenous forest under TCDC land covenants to the south of the site provides connection to the Coromandel Forest Park.
2. The site is effectively surrounded by and intersected with areas of significant indigenous biodiversity. The Councils planning maps show:
  - large areas along the western boundary identified as significant natural areas (SNA) by the Waikato Regional Council.
  - immediately to the east land parcels are identified as containing SNA and by TCDC covenants.
  - from the southwest corner of the site extends a large area of SNA which is QEII covenant.
  - the Taiwawe stream runs along or near the western and northern boundary of the site.
3. This wider area represents an important reservoir of flora and fauna which has had intensive pest control programmes for decades. The Whenuakite Kiwi Care Group is one of the earliest

kiwi care groups and, arguably, the most successful. With an expanding kiwi population birds are prospecting for new habitat. They are heard “every night” according to the neighbours on the western boundary and have been heard for the first time in many years at the north end of Hot Water Beach. Other headline species are being reported more and more often in the area include the kereru, kaka, tui, fernbird, bittern, ruru, and many more. The proposed development puts the protection of these species and this positive trend at risk.

4. The applicant’s (Hot Water Beach (NZ) Ltd) ecological report identifies the presence of threatened species such as North Island brown kiwi (*Apteryx mantelli*), North Island kaka, North island fernbird (*Bowdleria punctata vealeae*), long-tailed bat (*Chalinolobus tuberculatus*), and Hochstetter’s frog (*Leiopelma hochstetteri*) in Coromandel Forest Park. The ecological report also recognizes that numbers of several of these species have declined substantially over the past three decades. Population growth, which has seen a steady increase in the Coromandel over recent years, is likely to be a factor along with other land use changes and predation of pests.
5. The ecological report also identifies that the vegetation on the site provides good quality habitat for a range of indigenous bird species and is highly likely to support indigenous geckos and skinks. For example, that large trees at the property, including pines, have the potential to support the ‘Threatened-Nationally Critical’ long-tailed bat.
6. It is concerning that the study did not extend to targeted reptile and bat surveys given the likelihood of the presence of at risk and threatened species with the habitat present.
7. The implied assumption that these areas will be protected and therefore assessment would add little value is erroneous. Firstly because a comprehensive survey is justified to support an assessment of effects given the significance of the vegetation and knowledge of species present in surrounding areas. Secondly because the measures for protection and enhancement proposed by the applicant in from of Variation 3 provisions cannot be adequately assessed without this information.
8. There remain many gaps in the measures proposed by the applicant to address effects of the proposal. For example:
  - The lack of any riparian buffer or set back from Tributary 1 and the Taiwawe stream at the northern end of the site.
  - The assumption that effects on bats will be avoided or mitigated without identifying the presence of bats or the extent of their habitat.
  - The assumption that effects on lizards and the Hochstetter’s frog will be avoided or mitigated without identifying their presence or the extent of their habitat.
9. Many of our concerns relate to the wording of the Variation 3 provisions and the extent to which this would bind future subdivision and land use activities.

10. It is not clear why the applicant has not sought to provide certainty of protection for the significant natural areas and values, by seeking a QEII covenant ahead of seeking this variation to the district plan.
11. The planting programme for ecological enhancement considered in the Structure Plan, Ecology and Landscape Reports is based on described the principles. However experience suggests that enhancement and ecological remediation come relatively late on most projects and a principle approach does not provide the certainty that outcomes will be achieved ahead of or concurrently with the development for subdivision. The potential to leave enhancement activities until late in the staging of site development risks coinciding with when funding is under pressure such that environmental works tend to be slimmed down to a minimum. More specific commitments should be required at this stage through directive requirements in the Variation 3 provisions. Currently it could be interpreted that the ecological and landscape plans could be satisfied by a few hundred plants only. The applicant may have more than this in mind but budget pressure can dull the best of intentions. The Variation 3 provisions should require the developer to provide some sense of quantum; the total area to be planted at nominated densities and an overall number of plants. Species selection is also important, and direction is lacking on this in the Variation. Planting should be aimed at enhancing the existing canopy, providing a wide range of short and long term species for food sources which support the wide range of fauna present and potentially able to access the site. This needs to be directed so that enhancement is no compromised by later decision that fewer and cheaper plants will do the job.
12. Pest control and control of domestic animals is critical to protecting the significant values of the site. We know that domestic predators (cats and dogs) are taking their toll on adjacent Coromandel Brown Kiwi habitat. Two decades of intensive effort by the Whenuakite Kiwi Care Group and their supporters has resulted in the spread of kiwi beyond the core protected area, including close to the Hot Water Beach settlement. This brings birds into areas with a higher risk of predation by domestic pets and sometimes fatal encounters with human activities (eg: road ways, swimming pools, wild-fire, avian diseases). Expanding residential and lifestyle development will result in an increase in predators which will inhibit the expansion of kiwi.
13. This plan variation to facilitate a subdivision proposal is weak in it's intended control measures for pests, domestic pets and human activities to avoid and minimize effects on indigenous fauna. While the supporting material suggests an intent by the applicants to incorporate property covenants for "domestic cat bans" we understand that in nearby subdivisions such measures have been poorly complied with and has not been enforced. There is no indication of the applicant or council proposing similar restrictions for dogs. Ambiguity around the keeping of other domestic animals could mean the keeping of pigs and poultry both of which also pose a risk to kiwi.

14. Loss of kiwi habitat and fragmentation due to sub-division particularly in coastal areas is significant in the Coromandel Peninsula. While the Coromandel Peninsula contains almost continuous potential habitat, safe passage (i.e. predator control) for kiwi between managed areas is not always guaranteed. The emigration of highly mobile sub-adult kiwi from these areas into unmanaged areas puts them at significant risk particularly where this coincides with development and recreational activities. Dogs pose the greatest threat to adult kiwi, both in managed and unmanaged areas. Adoption of pet free subdivisions, managed predator control and enhancement plantings could also benefit kiwi in adjacent areas.
15. Increased domestic predators are taking their toll on nearby known New Zealand Dotteral and Oystercatcher breeding sites. Bringing more cats and dogs to the Hot Water Beach area will cause negative effect on these populations already under immense pressure.
16. Pest control for protection of kiwi also has benefits to other bird species including tui, kereru, pateke and kaka. Cats also pose a threat to these species and kereru, cuckoo and tui are particularly vulnerable to fatal impact with reflective surfaces close to indigenous habitat.
17. Indigenous vegetation and habitat is also at risk from invasive garden plant species invading nearby indigenous shrub, forest, wetland and dune systems. Local area problems include exotic palms, ivy, lantana, cherries, grasses, lilies, passionfruit, kiwifruit, guavas, locquat, pine, jasmine and bamboo. The developers proposal does not provide enforceable provisions for pest plants
18. Window strike is recognized as a risk to birds in the ecological report. Birds die by the thousands each year this way. However the Variation provisions leave the detail on how this risk can be adequately mitigated to later divisions on subdivision and development. Given the bird species present, the site design is faulty as houses will be surrounded by significant natural areas which birds will (if properly protected) continually fly between at all times of the day. Whether houses can be located and designed to sufficiently avoid and mitigate these risks should be part of decision making on this variation.
19. Clause 10.1 of the ecological report notes that the environmental risks to water quality are:
  - Sedimentation.
  - Stormwater and wastewater
20. Forest & Bird is supportive of protection to be given to freshwater, wetlands and the tributaries on the site through plantings and set backs in most riparian areas. However we consider enhancement, riparian planting and buffering needs to be extended to the currently degraded stream and tributary reaches at the northern end of the site. These reaches are identified in the ecological report as supporting good numbers of banded kōkopu and provide connectively to the Taiwawe stream. The removal of stock, together with appropriate mitigation planting, would significantly improve the ecological values of these reaches.

21. The Variation provisions which allow for farming activities including intensive farming to be carried out on the site is concerning. Particularly as faecal contaminants already pollute the Taiwawe stream in high rain events, which the area has often.
22. Sedimentation risk is a particular concern for the construction phase, particularly as the level of exaction could be extensive and intensive. The risk of sedimentation is acute during the construction of houses and roads and ongoing especially during the winter season. Without identifying the location and areas for the Defined Building Area of each potential lot, it is uncertain whether this risk can be adequately addressed.
23. Stormwater and wastewater are also of concern for their potential to adversely affect the freshwater bodies on, adjacent and downstream to the site. There are ongoing risks from septic tank effluent beds and accidental discharge from malfunctions. Stormwater from the impermeable areas and roofs is shed into water tables and streams, especially in winter when tanks are full, and the catchment has to deal with heavy water volumes very suddenly. Again without further information of the scale and specific location of facilities, structures and hard surfaces of the development these effects cannot be adequately considered in decision making on variation 3.

#### **The scale of the residential development proposed**

24. The development of 38 hectares of land at 104 Taiwawe Lane (the site) by Hot Water Beach (NZ) Ltd (the "applicant") is for 45 residential properties and the establishment of conservation areas (the proposal). The residential aspect is significant in scale for the area, not only when you consider the significant natural values in the rural landscape, but also when you consider that the number of residential dwellings proposed is comparable to nearby Hot Water Beach village (with approximately 50 houses).
25. While the proposal includes conservation areas within the site, the residential aspects will be dominant. In an area like this, the natural environment should dominate the built environment. In this proposal the reverse is true.
26. The proposal brings with it construction effects for 45 houses, ancillary buildings, access ways and roading. Not only will there be construction activity and noise disturbance to habitat but also potential for sediment runoff affecting the tributaries and Taiwawe stream.
27. The ongoing effects of residential activities includes disturbance from the presence of people, predation from pets, predation and competition for food from increases in pests such as rats, mice and the invasion of domestic plants.
28. In our view the scale of this development is not appropriate in this location, nor would it be possible to avoid or adequately remedy or mitigate adverse effects on indigenous biodiversity. The activity as provided for through Variation 3 is incompatible with protection of significant indigenous biodiversity.

## Planning provisions

29. The Policy & S32 RMA Analysis<sup>1</sup> (the assessment report) suggests that Variation 3 is a response to ground truthing and the mapping of SNA's to bring them into the district plan. The assessment report considers that this will provide a planning framework tailored to protect the natural values of the SNA and to introduce conservation measures targeted to enhance those values.
30. If this is the case then far greater weight needs to be given to ecological outcomes in the proposed structure plan provisions. Currently the provisions lack scope for decision makers considering future subdivision consents (or other activities) to influence the location or size of 'defined building areas', the location of septic tank dispersal areas, the number and size of subdivision lots within the Development Area on the basis of ecological considerations. Similarly for the design and location of access, roads and rows, there is limited if any discretion for the decision maker to influence or limit these activities on the basis of ecological impacts.
31. Calling the development a "Catchment" strategic plan seems misleading as it only addresses part of the catchment. The Variation provision do not provide context for the development within the wider catchment. For example the retention of the neighbouring 20ha lot between the site and village is important to maintain rural character of the rural zone in the catchment. The developers commitment to supporting an upgrade of telecommunications, which we understand would extend beyond the site, also is not identified specifically in the catchment structure plan provisions.
32. Nor has Variation 3 has identified the full extent of the SNA's which relate to the site. The full extent of the SNA's should be shown on the structure plan diagrams and be supported by inclusion of methods to protect the areas outside of the development site which complement protection within the site.
33. Strategic planning on a property by property basis is not strategic in our view. This applies a very narrow interpretation of WRPS Policy 6.10 which is not really effective to a spatial planning approach.
34. The statement on Page 5 of the assessment report that "Subdivision and development is to be spatially separated from the area containing significant indigenous vegetation and significant habitats of indigenous fauna" is not borne out by Diagram A which show the Development Area as immediately adjacent the Conservation Area. The access shown on Diagram A dissects the Conservation Areas from SNA along Taiwawe Steam to the west of the site. Spatial separation for subdivision is also uncertain as the Variation provisions suggests conservation areas will likely be within private ownership.

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<sup>1</sup> Proposed Taiwawe Catchment Structure Plan, Policy & S32 RMA Analysis, Lawrence Cross and Chapmans, Planning & Resource Management, Graeme Lawrence 30 April 2020.

35. There are other uncertainties and assumptions for what the proposal will entail within the supporting information for the proposal and even within the purpose statement of the variation itself that are not borne out by the wording of the variation provisions. For example the wording for the implementation of the Purpose at 27.9.2 (ii) states that “Development intensity will be limited by the number of dwellings and location of identified buildings sites or Defined Building Areas located within areas identified for development”. However there is no directive policy requirement to limit the number of dwellings, nor does the variation identify the location of building sites or defined building areas.
36. Not only have there been no site surveys for reptiles and bats, but the variation does not include direction for this to be required before subdivision. Nor do the limited requires set out for the ecological management plan include a lizard or bat management plan.
37. The Variation policies do not require a “cat ban” or any other specific pest control measures despite supporting material indicating that such measures will be required.
38. The assessment of subdivisions provisions Chapter 15 (page 7 of the assessment report) suggests the development will utilize low impact design, that ecological and landscape management plans will encourage natural and organic outcomes and green technologies, however, none of this is evident in the Variation 3 provisions.
39. In considering Rural Area provisions (page 8 of the assessment report) suggests that the development will meet objectives of that chapter, which includes that:
  - development areas are mapped to provide location for self-sufficient servicing; and
  - that large lot residential development (no less than 2500m<sup>2</sup>) of variable sizes.However these requirements are not evident in the Variation provisions.
40. Both the implementation of the purpose (s7.9.2 (i)) in the variation and the assessment report (Page 6) seem to assume that specific qualities or values have been identified for indigenous biodiversity and will be protected through the variation. While some values are set out in the supporting material, this information is not included by the variation, nor was the assessments complete.
41. Making a decision on the variation without complete information of these values is problematic as the provisions assume a level of development and allow flexibility which may result in the loss of values which should be protected and maintained.
42. Of particular concern with the Variation 3 structure plan approach for this site is that the “Special Purpose Provisions” would apply over any overlay provisions. The proposed objectives and policy in Variation 3 are inadequate to replace the policy and objectives for biodiversity in section 37 of the Plan and of the WRPS. Nor do the restricted discretionary rules in Variation 3 enable decision makers to adequately consider and apply those other policies and objectives.

43. While the proposal for “protection in perpetuity” sounds good, it is not clear what “protection” would actually entail. For example there is no requirement for fencing, which would be a key measure to ensure dogs do not stray into Conservation Areas. There is no ban on dogs being taken into the Conservation Areas. Nor is Rule 1 standard g) for land owners to meet recommendations in ecological and landscape management plans certain to address peat and animal control concerns. Not only do the structure plan provisions lack direction as to the any specific pest and domestic animal controls, the requirements of Rule 1 standard d) and e) for the development of these plans lacks any direction to provide “recommendations” to land owners. The word “recommendations” is also unhelpful as a recommendations is not usually interpreted as a requirement. Requiring specific actions would be preferable.
44. The wording of Rule 1 standard h) for an encumbrance is also uncertain and seems to suggest that the SNA may be spread over many titles. Best practice is to protect SNA’s as a whole and it is not clear how this would be achieved with the multiple title approach. Splitting the protected ecological areas into multiple covenants only complicates management of the ecological features. People do not need to personally ‘own’ covenants to become involved in conservation work as is evident by the success of the Whenuakite project.
45. Alignment with Policy 2d is also unclear as the policy refers to open areas of indigenous vegetation in private ownership being subjective to covenants, and appears to apply to areas beyond the Conservation area. This may be appropriate but the distinction from Conservation Area should be clarified in policy direction.
46. The ecological assessment suggest that farming activities will cease if Variation 3 is adopted, however Rule 3 would allow buildings for farming and intensive farming. These buildings would not be confined to the Defined Building Area. Variation 3 does not include set backs from freshwater bodies or from the Conservation Area for such buildings nor is there any policy direction for ecological considerations in siting such buildings to align such development with the objectives and purpose of the Structure Plan.
47. The provision for a landscape management plan to be developed (Rule 1 standard e) by a suitably qualified expert is uncertain as to the expertise required. The three requirements currently listed for a landscape management plan suggests a geo-tech engineer rather than the need for any ecological expertise. However the siting of Defined Building Area’s needs to be informed by ecological advice to ensure that adverse effects on Conservation Areas are avoided and to inform councils function for the maintenance of indigenous biodiversity.
48. There are currently no limits or specific direction for access and rights-of-ways to be set at a minimal width, to avoid Conservation Areas or to include buffer planting or fencing to reduce impacts on biodiversity.
49. The restriction of discretion in Rule 1 and 2 is inadequate for consideration of indigenous biodiversity policies in the plan and WRPS. It is also uncertain whether Policy 1b direction for uses and activities to minimise adverse effects on the natural values would apply over policy

direction in other chapters and the WRPS that may direct activities to avoid, remedy or mitigate adverse effects. Policy 1b is inadequate and does not ensure consistency with other provisions in the plan or give effect to the WRPS as 'minimising' effects cannot be certain to protect significant values or maintain indigenous biological diversity. Even when considered together with Policy 1a, protection is only afforded to indigenous vegetation within the Conservation Area. There is no policy direction to protect indigenous fauna and habitat within the Conservation Area or within the Development Area. As no specific studies for reptiles and bats has been undertaken there could be significant values in those areas where council has responsibilities to recognise and protect as well as the need to include provisions fulfilling councils functions to maintain indigenous biodiversity. Nor do the policies set direction for the control domestic animals to avoid predation of indigenous fauna.

50. These deficiencies are also concerning for the development of management plans where the lack of direction would result in questions over adequacy and requirements for management plans.
51. Because the objectives and policies do not specify that subdivision development must be no more than 45 lots (noting that Forest & Bird consider this is too many) a discretionary activity for more lots could be sought and granted. Clear policy direction setting a limit or a prohibited status where Rule 1 standard a) is not met is necessary to address this.
52. The Table 2 Restricted Discretionary matters are uncertain and inadequate as follows:
  - Matter 2 links the assessment criteria to the purpose which creates uncertainty as those provisions may not have statutory weight, unlike objectives and policies.
  - Matter 2 presumes an ecological management plan will be provided however there is no policy direction for provision of a management plan or to determine adequacy.
  - Matter 4 staging should include assessment of the need to stage development to avoid, remedy and minimize effects of development on indigenous biodiversity and freshwater bodies.
  - The matters do not provide scope for council to determine grant or decline on basis of maintenance or protection of indigenous biodiversity.
  - The matters do not provide scope for council to consider whether the proposed location or area of a proposed building platform area is appropriate in terms of avoiding, remedying and mitigating effects on the environment.
  - Discretion is not retained for council to consider the division of lots in the subdivision proposal or the location of lot boundaries.
  - The matters do not provide scope to consider the number of lots, nor is there clear policy direction to limit lots to 45 or less, or for considering circumstances where less than 45 lots may be appropriate.

- The purpose statement refers to a mix of residential and lifestyle, however there is no scope for council to consider this. Nor is there policy direction included to guide what an appropriate mix would be.
  - The matters do not provide scope for consideration of maintenance of indigenous biodiversity outside of the Conservation Area.
  - The matters appear to limit consideration of provisions in Chapter 15, unparticular objective 6 and its policies which include assessment against Section 7A.
53. Because the direction for management plans is only set out in the Rule 1, a subdivision consent which does not meet those requirements can be considered as a discretionary activity and does not have the benefit of any policy direction for management plans to meet achieve the recommendations and enhancements of the ecological report provided by the applicant.
54. There are no monitoring or reporting requirements directed through policy or rules to confirm that a Net Environmental Benefit is achieved for biodiversity on the site.

#### **Conclusion**

55. The reality of achieving real conservation gains through development of this site as proposed is unlikely.
56. Actual conservation achievements require long-term commitments which are not evidence in Variation 3.
57. The actual reality of managing streams, bush remnants and surrounding areas from predators and invasive plants is often beyond the actual ability of most land-owners, particularly absentee. Perceived rewards can be few and costs high. Subdivision designs can also vary hugely and no concrete details are given for this proposal.
58. The proposed structure plan rules and assessment criteria do not provide for sustainable subdivision and development.

#### **Relief sought**

59. Forest & Bird seeks that the plan modification, Variation 3, be declined.
60. However if the decision maker is minded to approve Variation 3, then Forest & Bird considers that the development proposed will need to be significantly reduced and redesigned, further surveys undertaken to determine significant fauna likely to be present and the Variation provisions amended to address the matters raised in this submission.

Thank you for considering these submissions