



IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of

Proposed Plan Change 3 to the Whakatāne District Plan

REPORT AND DECISIONS OF THE HEARINGS PANEL

Hearings Panel members: Cr Gerard van Beek (Chair), Cr Nándor Tánzos, Cr Victor Luca

25 March 2022

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Appendix 1: Tracked Changes following Decision

Appendix 2: Clause 16 (minor amendment) changes

1. PURPOSE OF DISTRICT PLAN CHANGE 3 - MATTERS OF CONTROL

The purpose of Proposed Plan Change 3 (PC3) is to provide assessment criteria for activities identified either as controlled or restricted discretionary status in the Whakatāne District Plan (District Plan). These changes will update eight activities in the District Plan that currently lack either assessment criteria for restricted discretionary activities or matters of control for controlled activities in one or more zone.

In total, PC3 involves 17 sets of changes to the District Plan.

2. BACKGROUND

The District Plan was made operative 21 June 2017. In May 2019 Council sought legal advice regarding two activities that lacked matters of control or assessment criteria.

In a memorandum dated 28 May 2019, Brookfields lawyers advised Whakatāne District Council (Council) that activity statuses will likely be found to be void on the basis that they are ultra vires to the Resource Management Act 1991 (RMA) and uncertain as to their application if they do not have matters of control or assessment criteria.

Brookfields recommended that Council undertake a limited review of the District Plan to identify any other activities lacking matters of control or assessment criteria. The review identified:

- Seven activities in one or more planning zones that had no matters of control or restricted discretionary assessment criteria;
- One activity in one or more planning zones that lacked matters of control / assessment criteria, but which could be referenced to the controls elsewhere in the District Plan; and
- Two activities in the Subdivision chapter that contained some assessment criteria but lacked criteria to assess the impact of these activities on environmental outcomes.

Brookfields advised Council to undertake a plan change to insert the matters of control and assessment criteria.

3. HEARINGS PANEL FOR PC3

The Hearings Panel has delegated authority to conduct hearings and make decisions on submissions and further submissions to the District Plan and is appointed when required. The Hearings Panel was comprised of three Councillors with commissioner accreditation, including one Councillor with a chair accreditation.

Hearings Panel members were provided with the relevant PC3 documentation prior to the hearing, this included:

- **Section 32 (s32) Report** – Examines the appropriateness of PC3 in achieving the purpose of the Resource Management Act 1991 (RMA).
- **Track Changes Report** – Accompanied the s32 Report as an appendix and included the changes that PC3 sought to include in the District Plan.
- **Submissions** – Public notification of the s32 report made PC3 available for public submission. Four submissions were received.

- **Summary of Submissions** – This document was publicly notified and contained a summary of the four submissions and also then made the request for further submissions.
- **Further Submissions** – One further submission was received from Events Promotions Initiatives Community Whakatāne Town Centre (EPIC).
- **Section 42A Planner’s Report** – This report provides a planner’s analysis and recommendations on the submissions and further submission on PC3
- **Section 32 AA Further Evaluation Report** – Any changes that have been made to PC3 in a response to submissions require a further evaluation of their appropriateness in achieving the purpose of the RMA.
- **Recommended Changes** - This document is the updated Tracked Changes Report that shows amendments that have been made in response to the section 42A recommendations and minor amendments to correct errors made under Schedule 1, Clause 16 of the RMA.

Panel members were invited to seek any points of clarification with staff prior to the formal hearing.

4. SUBMISSIONS & FURTHER SUBMISSIONS

Four submissions were received in total, from:

- Whakatāne District Council;
- Waka Kotahi New Zealand Transport Agency (NZTA);
- Forest & Bird – Eastern Bay of Plenty Branch (Forest & Bird); and
- Fire and Emergency New Zealand (FENZ).

One further submission was received by Events Promotions Initiatives Community Whakatāne Town Centre (EPIC).

Council sought determination from Brookfields Lawyers on the scope of EPIC’s further submission and the scope of an original submission by Forest & Bird.

5. THE HEARING

The hearing was held using the zoom platform on 25 March 2022. Two WDC Policy Planning staff and a Governance support staff were in attendance.

Panel members confirmed that they had read the pre-circulated material and had not raised any matters of significance with staff.

The panel was informed that there were no submitters wishing to be heard in person at the hearing. The request from Forest & Bird to be heard at the hearing had been withdrawn, with staff indicating that their matters to be heard had been addressed in the s42A Report.

The further submission by EPIC, on legal advice, was deemed to be out of scope and not to be considered.

Staff spoke to the s42A Report and s32AA Further Evaluation Reports:

- Staff confirmed that ,as identified in the s42A Report, The District Plan lacked matters of control or assessment criteria for several activities and this needs to be amended.

6. DECISIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS

The full text of the proposed changes is included in the s42A Report in its Appendix 2. These documents include the notified changes proposed by PC3 and changes arising from submissions. This content is not replicated in this decision report.

In addition to the decisions on submissions below, the panel adopts the s32AA report as its own and, for the avoidance of doubt, recommends approval of those minor amendments to the Recommended Changes made under Schedule 1, Clause 16 of the RMA.

Tracked changes reflecting the decisions from this report and Clause 16 amendments are appended to this report.

6.1. Tracked Change 1 / Assessment criteria for four or more dwellings in the Mixed Use Zone

Tracked Change 1 / provision 5.4.7 provides assessment criteria for four or more dwellings per lot in the Mixed Use Zone.

Submissions Received on Tracked Change 1:

Submission Point	Submitter	S42A Report Recommendation	Comments
3.1	Forest & Bird	Reject	The proposed change is consistent with existing criteria used elsewhere in District Plan
4.1	FENZ	Accept	Submission supports plan change criteria to include site access, manoeuvring and access to water supply

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

Retain as notified.

6.2. Tracked Change 2 / Assessment criteria for Papakāinga Housing in the Mixed Use Zone

Tracked Change 2 / provision 5.4.8 provides assessment criteria for Papakāinga Housing in the Mixed Use Zone.

Submissions Received on Tracked Change 2:

Submission Point	Submitter	S42A Report Recommendation	Comments
3.2	Forest & Bird	Reject	The proposed change is consistent with existing criteria used elsewhere in District Plan.
4.2	FENZ	Accept	Submission supports plan change criteria to include site access, manoeuvring and access to water supply.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

Retain as notified.

6.3. Tracked Change 3 / Matters of Control for Places of Assembly in the Rural Ōhiwa Zone

Tracked Change 3 / provision 7.3.2 provides matters of control for places of assembly designed to have a maximum attendance of less than 10 people at any one time in the Rural Ōhiwa Zone.

Submissions Received on Tracked Change 3:

Submission Point	Submitter	S42A Report Recommendation	Comments
3.3	Forest & Bird	Reject	The proposed changes are consistent with criteria used elsewhere in District Plan.
3.8	Forest & Bird	Accept	The proposed change will bring about consistency in the wording for landscaping criteria.
4.3	FENZ	Accept	Submission supports plan change criteria to include site access, manoeuvring and access to water supply.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

That the matters of control 7.3.2 be amended as requested by submission point 3.8 made by Forest & Bird.

6.4. Tracked Change 4 / Assessment Criteria for Places of Assembly in the Large Format Retail Zone

Tracked Change 4 / provision 5.4.9 provides assessment criteria for places of assembly designed to have a maximum occupancy of between 10 to 50 people in the Large Format Retail Zone.

Submissions Received on Tracked Change 4:

Submission Point	Submitter	s42A Report Recommendation	Comments
2.1	NZTA	Accept	Supports assessment of traffic effects.
3.4	Forest & Bird	Reject	The assessment criteria for this activity are sufficient to meet the purpose of the RMA.
3.9	Forest & Bird	Accept	The proposed change will bring about consistency in the wording for landscaping criteria.
4.4	FENZ	Accept	Submission supports plan change criteria to include site access, manoeuvring and access to water supply.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

That the assessment criteria 5.4.9 be amended as requested by submission point 3.9 made by Forest & Bird.

6.5. Tracked Change 5 / Assessment Criteria for Places of Assembly of more than 50 people

Tracked Change 5 / provision 5.4.10 provides assessment criteria for places of assembly designed to have a maximum occupancy or attendance of more than 50 people at any one time in the Mixed Use, Business Centre, Commercial and Large Format Retail Zones.

Submissions Received on Tracked Change 5:

Submission Point	Submitter	s42A Report Recommendation	Comments
1.1	WDC	Accept	The proposed change improves clarity and certainty in the application of provision 5.4.10.
1.2	WDC	Accept	The proposed change improves clarity and certainty in the application of provision 5.4.10.

1.3	WDC	Accept	The proposed change improves clarity and certainty in the application of provision 5.4.10.
2.2	NZTA	Accept	Broaden section to include all traffic effects.
3.5	Forest & Bird	Reject	The assessment criteria for this activity are sufficient to meet the purpose of the RMA.
4.5	FENZ	Accept	Submission supports plan change criteria to include site access, manoeuvring and access to water supply.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

That the assessment criteria 5.4.10 be amended as requested by submission points 1.1, 1.2 and 1.3 made by WDC and submission point 2.2 made by NZTA.

6.6. Tracked Change 6 / Assessment Criteria for Places of Assembly in Industrial Zones

Tracked Change 6 / provision 6.4.5 provides assessment criteria for places of assembly designed to have a maximum occupancy or attendance of more than 50 people at any one time in the Light Industrial and Industrial Zones.

Submissions Received on Tracked Change 6:

Submission Point	Submitter	s42A Report Recommendation	Comments
1.4	WDC	Accept	The proposed change improves clarity and certainty in the application of provision 6.4.5.
1.5	WDC	Accept	The proposed change improves clarity and certainty in the application of provision 6.4.5.
1.6	WDC	Accept	The proposed change improves clarity and certainty in the application of provision 6.4.5.
1.7	WDC	Accept	The proposed change improves clarity and certainty in the application of provision 6.4.5.
2.3	NZTA	Accept	Broaden section to include all traffic effects.
3.6	Forest & Bird	Reject	The assessment criteria for this activity are sufficient to meet the purpose of the RMA.

4.6	FENZ	Accept	Submission supports plan change criteria to include site access, manoeuvring and access to water supply.
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Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

That the assessment criteria 6.4.5 be amended as requested by submission points 1.4, 1.5, 1.6 and 1.7 made by WDC and submission point 2.3 made by NZTA.

6.7. Tracked Change 7 / Assessment Criteria for Places of Assembly in Rural Zones

Tracked Change 7 / provision 7.4.7 provides assessment criteria for places of assembly designed to have a maximum occupancy or attendance of more than 50 people at any one time in the Rural Plains and Rural Foothills Zones.

Submissions Received on Tracked Change 7:

Submission Point	Submitter	S42A Report Recommendation	Comments
2.4	NZTA	Accept	Broaden section to include all traffic effects.
3.10	Forest & Bird	Accept	The proposed change will bring about consistency in the wording for landscaping criteria.
4.1	FENZ	Accept	Submission supports plan change criteria to include site access, manoeuvring and access to water supply.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

That the assessment criteria 7.4.7 be amended as requested by submission point 2.4 made by NZTA and submission point 3.10 made by Forest & Bird.

6.8. Tracked Change 8 / Matters of Control for Alterations to Places of Assembly in the Rural Ōhiwa Zone

Tracked Change 8 / provision 7.3.3 provides matters of control for places of assembly (not provided for by any other category): additions, alterations or extensions where the extension is to buildings less than 50m² in floor area used for a place of assembly which will not increase the existing occupancy or attendance in the Rural Ōhiwa Zone.

Submissions Received on Tracked Change 8:

Submission Point	Submitter	s42A Report Recommendation	Comments
3.11	Forest & Bird	Accept	The proposed change will bring about consistency in the wording for landscaping criteria.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

That the matters of control 7.3.3 be amended as requested by submission point 3.11 made by Forest & Bird.

6.9. Tracked Change 9 / Assessment Criteria for Emergency Service Facilities in the Rural Coastal Zone

Tracked Change 9 / provision 7.4.8 provides assessment criteria for Emergency Service Facilities in the Rural Coastal Zone.

Submissions Received on Tracked Change 9:

Submission Point	Submitter	s42A Report Recommendation	Comments
2.5	NZTA	Accept	The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.
4.8	FENZ	Accept	Captures emergency services facilities and assessment against 3.7.10 Noise Effects. FENZ requests the Council consider the important role of emergency services against noise provisions in the future.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

Retain as notified.

6.10. Tracked Change 10 / Assessment Criteria for Emergency Service Facilities in the Rural Ōhiwa Zone

Tracked Change 10 / provision 7.3.4 provides assessment criteria for Emergency Service Facilities in the Rural Ōhiwa Zone.

Submissions Received on Tracked Change 10:

Submission Point	Submitter	s42A Report Recommendation	Comments
4.9	FENZ	Accept	Captures emergency services facilities and assessment against 3.7.10 Noise Effects. FENZ requests the Council consider the important role of emergency services against noise provisions in the future.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

Retain as notified.

6.11. Tracked Change 11 / Assessment Criteria for Car Parking in the Business Centre and Commercial Zones

Tracked Change 11 / provision 5.4.11 provides assessment criteria for Car Parking in the Business Centre and Commercial Zones.

Submissions Received on Tracked Change 11:

Submission Point	Submitter	s42A Report Recommendation	Comments
2.6	NZTA	Accept	The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.
Further Submission Point	Further Submitter		
1	EPIC	Reject	EPIC supports in part and rejects in part NZTA submission 2.6. EPIC proposes additional traffic effects to be considered. Further submissions made under clause 8 of schedule 1 of the RMA can only support or oppose an original submission and cannot seek to introduce new material. Legal advice sought by Council confirms that the

			submission is beyond scope and cannot be considered.
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Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

Retain as notified.

6.12. Tracked Change 12 / Assessment Criteria for Car Parking in Rural Zones

Tracked Change 12 / provision 7.4.9 provides assessment criteria for Car Parking in the Rural Plains and Rural Foothills Zones.

Submissions Received on Tracked Change 12:

Submission Point	Submitter	s42A Report Recommendation	Comments
2.7	NZTA	Accept	The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.
3.12	Forest & Bird	Accept	The proposed change will bring about consistency in the wording for landscaping criteria.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

That the assessment criteria 7.4.9 be amended as requested by submission point 3.12 made by Forest & Bird.

6.13. Tracked Change 13 / Matters of Control for Exploration Activities in Rural Ōhiwa Zone

Tracked Change 13 / provision 7.3.5 provides matters of control for exploration of aggregate, sand, gravel or pumice in the Rural Ōhiwa Zone.

Decision:

There were no submissions received on Tracked Change 13. Retain as notified.

6.14. Tracked Change 14 / Matters of Control for Accessory Buildings and Buildings on Public Reserves in Rural Ōhiwa Zone

Tracked Change 14 / provision 7.3.6 provides matters of control for accessory buildings to any permitted activity (not for habitation) and buildings on public reserves in the Rural Ōhiwa Zone.

Decision:

There were no submissions received on Tracked Change 14. Retain as notified.

6.15. Tracked Change 15 / Assessment Criteria for Accessory Buildings in Large Format Retail Zone

Tracked Change 15 proposes a minor change to include activity 45 in the list of activities in existing assessment criteria 5.3.1, Activities in the Large Format Retail Zone. Activity 45 provides assessment criteria for accessory buildings to any permitted activity not for habitation.

Submissions Received on Tracked Change 15:

Submission Point	Submitter	s42A Report Recommendation	Comments
3.7	Forest & Bird	Reject	The assessment criteria for this activity are sufficient to meet the purpose of the RMA.

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

Retain as notified.

6.16. Tracked Change 16 / Assessment Criteria for Esplanade Reserve or Strip Waivers

Tracked Change 16 proposes to add new assessment criteria to existing assessment criteria 12.8.6, Esplanade Reserve or Strip Waivers (Subdivision). The proposed addition was the criteria listed in assessment criteria 12.7.1 (a-v): Subdivision With or Without Public Roads.

Submissions Received on Tracked Change 16:

Submission Point	Submitter	s42A Report Recommendation	Comments
2.8	NZTA	Accept	The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise
3.13	Forest & Bird	Accept	Forest & Bird seek various forms of relief in their submission. Legal opinion to

			<p>Council¹ concluded that some of the relief sort was beyond the scope of PC3.</p> <p>Part of their submission was in scope and relates to new criteria that would provide for public access, public land use and conservation. The changes provided by Forest & Bird's submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.</p>
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Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

That the assessment criteria 12.8.6 be amended with the addition notified in PC3 and as requested by submission point 3.13 made by Forest & Bird.

6.17. Tracked Change 17 / Assessment Criteria for Subdivision within Kawerau Geothermal Exploration Area

Tracked Change 17 proposes to add new assessment criteria to existing assessment criteria 12.8.7, Subdivision Within Kawerau Geothermal Exploration Area. The proposed addition was the criteria listed in Rule 12.7.1 (a-v): Subdivision With or Without Public Roads.

Submissions Received on Tracked Change 17:

Submission Point	Submitter	s42A Report Recommendation	Comments
2.9	NZTA	Accept	The additional assessment criteria will give a greater assessment of the traffic effects of this activity

Discussion:

The panel considered the assessment of the s42A Report and recommended no further changes.

Decision:

Retain as notified.

¹ Brookfields Determination – Submissions on Plan Change 3 - 27 May 2021