

29 January 2021

Partner: Theresa Le Bas

File Ref: 485920-11

Whakatāne District Council  
C/- Stephen Allerby - Policy Planner  
Private Bag 1002  
**WHAKATĀNE 3158**

**Email: Via email: [stephen.allerby@whakatane.govt.nz](mailto:stephen.allerby@whakatane.govt.nz)**

Dear Stephen,

**Further Submission on Whakatāne District Plan 2017 - Proposed Plan Change 3: Matters of Control**

On behalf of Events Promotions Initiatives Community Whakatāne Town Centre Incorporated (**EPIC**), attached is a further submission, supporting in part and opposing in part, to a submission on Proposed Plan Change 3 to the Whakatāne District Plan.

Sincerely yours,

**TOMPKINS WAKE**

**Bianka Lee**  
Senior Solicitor

encl.

**Form 6**

Further submission in support of, or in opposition to, submission on notified proposed policy statement or plan, change or variation

*Clause 8 of Schedule 1, Resource Management Act 1991*

**To** Whakatāne District Council

Name of person making further submission: Events Promotions Initiatives Community Whakatāne Town Centre Incorporated (**EPIC**)

This is a further submission supporting in part and opposing in part a submission on a change proposed to the Whakatāne District Plan 2017 – Plan Change 3: Matters of Control (the **proposal**).

EPIC is a person representing a relevant aspect of the public interest.

EPIC represents 365 members made up of business and property owners in the Whakatāne Town Centre. Those businesses and properties are situated within the Business Centre, Commercial, Mixed Use and other zones which are included in the proposal. Members of EPIC include target ratepayers within Whakatāne District Council's Target Rate Area for the Whakatāne CBD.

The core objectives of EPIC are to:

- represent and promote the interests of members,
- advocate for a vibrant and buoyant Whakatāne Town Centre,
- collaborate with stakeholders to improve the appearance and vitality of The Strand and CBD,
- enhance the shoppers' experience,
- support business in the CBD,
- develop and deliver coordinated promotional campaigns for businesses in the Whakatāne CBD, and
- foster relationships with Whakatāne District Council, Ngāti Awa, EBOP Chamber of Commerce, Tourism Bay of Plenty, our community and visiting shoppers with the owners and occupiers of buildings in the Whakatāne Town Centre and EPIC members.

**Further submission**

EPIC opposes in part and supports in part the submission of:

Waka Kotahi New Zealand Transport Agency

New Zealand Transport Agency  
Level 1, Deloitte Building  
24 Anzac Parade  
Hamilton 3216  
Email: luke.braithwaite@nzta.govt.nz  
Submitter No. 2

The particular part of the submission that EPIC opposes in part and supports in part is **Submission Point 2.6**.

### **Reasons for EPIC's further submission**

The reasons for EPIC's further submission are:

1. Submission Point 2.6 on the proposal seeks to retain the proposed new section 5.4.12.1 (a) **(the proposed provision)** concerning the assessment criteria for the restricted discretionary activity classification assigned to Rule 3.4.1.1.29 for car parking activities in the Business Centre and Commercial zones.
2. As the activity classification is a restricted discretionary activity, the matters which the Council shall restrict its discretion over must be specified and cannot be infinite; in other words, those matters must be clearly defined and listed.<sup>1</sup>
3. The restricted discretionary matter of 'traffic effects' as currently drafted in the proposed provision has a broad meaning. The succeeding list of matters could be interpreted in a highly subjective manner as they are composed as a non-exhaustive list. This issue leaves the matters of restricted discretion open and potentially subject to a subjective assessment when determining an application for car parking activities in these zones. Such drafting, it is submitted, is inconsistent with the intent of section 87A(3) of the Act.
4. As 'traffic effects' is also not defined in the Operative Whakatāne District Plan, there will likely be a subjective element of input when determining what the term means.
5. Further, the matters of traffic effects as described in the proposed provision do not include the consideration of the benefits or proximity of car parking activities to commercial and retail areas within the respective zones, nor how the availability of car parking is appropriate and positively contributes to urban, business environments. If this matter were included in the assessment criteria rule, it would be supported by clear policy direction in the Operative Whakatāne District Plan (see below) to ensure businesses in the retail environments of the district are not adversely affected by incompatible development or land use.
6. EPIC submits that the proposed provision should be amended to:
  - a. Ensure consistency with the Act by specifying the matters over which discretion will be restricted;
  - b. Remove the precursory statement of "including but not limited to" so that the succeeding matters are conclusive in accordance with the intent of the Act;

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<sup>1</sup> Sections 77B(3) and (4), 87A(3) and 104C(1)(b) of the Resource Management Act 1991 (**the Act**).

- c. Give certainty to planners and applicants alike when assessing and lodging applications which include car parking activities in the Business Centre and Commercial zones; and
  - d. Extend the list of traffic effects to specify that the benefits and proximity of car parking within the same zones is a matter which the Council must restrict its discretion over.
7. These suggested amendments are consistent with the following objectives and policies in the Operative Whakatāne District Plan to ensure the restricted discretionary assessment criteria for Rule 3.4.1.1.29 is conclusive and gives effect to the higher provisions, as follows:
- a. **Chapter 2 – Strategic – Opportunities for Business – Strategic Objective 3: Economic development and growth is stimulated by providing for a wide range of business activities:**
    - i. Policy 1 – To support the vibrancy and resilience of businesses in the District by providing for a range of activities in appropriate zones and retaining a high level of amenity and service;
    - ii. Policy 2 – To ensure that subdivision, use and development does not compromise the ability of legally established business activities to operate effectively in appropriate zones, and to protect them from reverse sensitivity from inappropriate activities in those zones or adjacent zones;
    - iii. Policy 3 – To support the business heart of townships by enabling business activities in those areas and by avoiding out-of-zone retail, commercial and industrial developments unless provided for as part of an approved Structure Plan;
  - b. **Chapter 3 Zone Description – 3.1.8 Business Centre Zone – 3.1.8.3:**
    - i. Public parking areas are provided within the Whakatāne Town Centre so a lower parking requirement for most activities is allowed. The joint use of parking areas and the different parking demands for different activities mean that on-site parking is not necessary for all activities, nor is it desirable to have parking areas, and vehicle crossings, breaking up the continuity of street frontages. A range of activities is a feature of the larger integrated centres in the Business Centre Zone, which warrant conveniently located common (public) parking areas;
  - c. **Chapter 5 Objective Bus1 Policy 6:**
    - i. To avoid adverse effects on the retail environment in the Whakatāne Town Centre and the Kōpeōpeō shopping areas;
  - d. **Chapter 5 Objective Bus2 Policy 2:**
    - i. **To ensure that new retail and commercial development does not adversely affect the economic integrity of retail businesses in the Whakatāne and Kōpeōpeō Business Centre Zones;**
  - e. **Chapter 5 Objective Bus4:**
    - i. To enable the Whakatāne Town Centre to continue to draw on its natural and cultural heritage to emphasise its relationship to the river and

escarpment and to enable the Whakatāne Town Centre to continue to be a place with a strong local identity that is vibrant and highly valued by residents, businesses and visitors;

**f. Chapter 5 Objective Bus4 Policy 7:**

- i. To encourage car parking in combined facilities at key points (such as gateways to the town centre) that;
  1. a. reduce the need for on-site parking;
  2. encourage walking and cycling in the town centre;
  3. **enable the use of surface parking for activities that contribute positively to the quality of the urban space;** and
  4. do not adversely affect the function, including the safe and efficient operation, of the wider land transport network; and

**g. Chapter 5 Objective Bus4 Policy 8:**

- i. To manage the movement of people, cyclists and vehicles within the Whakatāne Town Centre by defining vehicle and pedestrian priority areas and streets.

[our emphasis added]

8. EPIC seeks that Submission 2.6 is accepted in part to the extent that:

- the proposed provision is amended so that the list of traffic effects is conclusive and consistent with the Act; and
- the benefits and proximity of car parking is added to the list of traffic effects as a matter over which the Council will restrict its discretion.

9. EPIC submits that the following text be considered for inclusion in the proposed provision:

- 5.4.12 Car parking in the Business Centre and Commercial Zones
- 5.4.12.1 Council shall restrict its discretion to:
- a. traffic effects, which are:
    - i. access;
    - ii. on-site vehicle manoeuvring areas;
    - iii. the provision of bus bays;
    - iv. drop off zones;
    - v. measures to separate pedestrians, buses, cyclists and vehicles;
    - vi. traffic volumes and traffic mix;

- vii. parking and loading;
- viii. pedestrian and cyclist safety;
- ix. construction traffic;
- x. the practicability of combining access ways serving more than one site lot;
- xi. the location and proximity of the car parking activity to business and commercial activities; and
- xii. the ability for the car parking activity to serve the social, cultural and economic well-being of the community, including benefits, in a manner that is consistent with the relevant zone's objectives and policies.

Such further or other relief that is consistent with the issue raised in this further submission.

**EPIC wishes to be heard in support of its further submission.**

If others make a similar submission, EPIC will consider presenting a joint case with them at a hearing.

Thank you for considering EPIC's further submission on proposed Plan Change 3 to Whakatāne District Plan 2017.

Sincerely,

Theresa Le Bas & Bianka Lee  
Counsel for EPIC

29 January 2021

**Address for service of person making further submission:**

Tompkins Wake

1105 Arawa Street

PO Box 248

Rotorua 3040

Attention: Theresa Le Bas / Bianka Lee

Email: [theresa.lebas@tompkinswake.co.nz](mailto:theresa.lebas@tompkinswake.co.nz) / [bianka.lee@tompkinswake.co.nz](mailto:bianka.lee@tompkinswake.co.nz)

**Note to person making further submission**

A copy of your further submission must be served on the original submitter within 5 working days after it is served on the local authority.

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least 1 of the following applies to the submission (or part of the submission):

- it is frivolous or vexatious:
- it discloses no reasonable or relevant case:
- it would be an abuse of the hearing process to allow the submission (or the part) to be taken further:
- it contains offensive language:
- it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.

If you are making a submission to the Environmental Protection Authority, you should use [form 16C](#).