

Decision Report of Hearings Panel



Subject: **Proposed Plan Change 5 (Accessible Parking) to the Whakatāne District Plan**

Date: **10 December 2024**

Hearings Panel: **Cr Nándor Tánczos (Chair), Carolyn Hamill**

Reference: **A2821798**

1 Reason for the report - *Te Take mō tēnei rīpoata*

Changes to the District Plan are managed by Schedule 1 of the Resource Management Act 1991, which requires public consultation and hearings.

The Hearings Panel has delegated authority to hear, consider and make decisions on submissions and further submissions on a change that is proposed to the District Plan.

3.1.2 of the Delegations Register - Governance 2022-2025

- a) *To conduct hearings of submissions and further submissions to the Whakatāne District Plan under Clause 8B of Schedule 1 to the RMA.*
- b) *To consider submissions where no person indicates they wish to be heard, under Clause 8C of Schedule 1 to the RMA.*
- c) *To deliberate and make decisions on submissions and further submissions as provided for in Clauses 9 and 10 of Schedule 1 to the RMA.*

The Hearings Panel met to consider submissions and review Proposed Plan Change 5 (Accessible Parking) on 27 November 2024.

This report sets out the decisions of the Hearings Panel on the submissions to PPC5 (Accessible Parking) and the recommendations of the Council planners.

This report aims to reduce duplication.

Please refer to the Appendices for:

- Appendix 1: Tracked Changes from Decisions of Hearings Panel
- Appendix 2: Section 32AA Report – Further evaluation of changes
- Appendix 3: Section 42A Report – planners recommendations 22 November 2024
- Appendix 4: Section 42A Report – Tracked changes

2 Proposed Plan Change 5 - Accessible Parking

The purpose of Proposed Plan Change 5 (PC5) is to include accessible parking provisions in the District Plan to enable accessible parking to be required for new developments and activities, when appropriate, during the resource consent process.

In total, PPC5 proposed 19 sets of changes to the District Plan. The key changes it seeks are to:

- Insert rules to ensure accessible parking can be required in appropriate circumstances, including minimum car park rates for accessible parking and a standard for construction.
- Reinstate (with amendment) assessment criteria for non-compliance with the accessible parking rules.
- To amend 12 assessment criteria where the provision of accessible parking is appropriate:
 - Traffic
 - Parking
 - Service lanes/roads
 - A range of activities across the business and industrial zones including but not limited to urupā and cemeteries, places of assembly and educational facilities.

3 Background

PPC5 is seeking to reinstate accessible parking provision in the District Plan, after these were removed during the implementation of the National Policy Statement on Urban Development 2020 (NPS-UD).

The NPS-UD requires the removal of minimum carparking rates from District Plans. This was implemented in 2021 but an undesired consequence was the removal of provisions for accessible parking. These were expressed as a ratio of the minimum parking provisions and relied on Section 118 of the Building Act 2004 and NZS 4121:2001. Without a car park being built, an accessible car park cannot be required in a resource consent, even in circumstances where accessible car parking may be very appropriate, eg a medical centre or event centre.

The District Plan needs to be changed to ensure that accessible parking can be required, when it is appropriate, for new development. This includes the activities and buildings required to provide accessible parking under Section 118 of the Building Act.

3.1 Renotification

After notifying and receiving one submission in 2022, PPC5 was renotified mid-2023 to ensure that the notification requirements of the District Plan were fully met, in response to concerns raised by the submitter. In addition a number of minor errors (eg numbering and spelling) were identified and corrected.

See s42A Report section 3.3.3 for further information.

3.2 National Planning Standards

In early 2024, the District Plan was reformatted to comply with the National Planning Standards (NPS). As part of this, the structure of the District Plan changed and zones, objectives, policies, rules and assessment criteria were relocated and renamed. In addition a number of minor errors were identified and corrected and some standardised wording applied, including for assessment criteria introductions. This affects PPC5 and meant PPC5 needed to be converted into the new format, including renaming and relocating.

See s42A Report section 3.2 for further information.

3.3 Submissions

One submission was received during the original submission period. During the renotification period four submissions were received.

Five submissions were received in total:

- Submitter 1 - Ross Gardiner (carried forward from the initial PPC5 notification)
- Submitter 2 - Caroline van Leeuwen
- Submitter 3 - Disabilities Resource Centre
- Submitter 4 - Gina Seay
- Submitter 5 - Whakatāne Accessibility and Inclusion

No further submissions were received.

Four submissions were in support requested no changes and did not wish to be heard at hearing:

- Submitter 2 - Caroline van Leeuwen
- Submitter 3 - Disabilities Resource Centre
- Submitter 4 - Gina Seay
- Submitter 5 - Whakatāne Accessibility and Inclusion

Submission 1 requested changes to most provisions proposed by PPC5. In total there were 41 submission points. 23 were withdrawn over the course of the plan change, as:

- resolved by renotification;
- resolved by National Planning Standards implementation to the District Plan;
- resolved by minor error corrections during renotification or NPS implementation;
- out of scope; or
- the item requested no change to PPC5.

Council planners engaged with Submitter 1 at length to understand the requests and identify solutions acceptable to the submitter and Council planners. With Council planners putting forth those recommended solutions, Submitter 1 agreed they did not need to be heard at hearing.

4 Hearings Panel

The Hearings Panel met in the Whakatāne Council offices. Two WDC policy planning staff and one Governance support staff were in attendance. The meeting was digitally recorded for record keeping.

The panel was informed that there were no submitters to be heard. The request from Submitter 1 had been withdrawn with staff indicating that their matters to be heard had been addressed in the s42A Report.

Staff spoke to the s42A and s32 Reports and tracked changes. They confirmed that the ability to require accessible parking through resource consents is desirable, as it helps meet the communities varying needs when developing, and it reflects requirements of the Building Act for accessibility for people with disabilities. Staff also spoke to the solutions identified by Submitter 1 and Council planners and answered a number of questions from the Panel.

The Panel identified several minor items for correction, see section 6. These can be made under Schedule 1, Clause 16 of the RMA which allows for minor alterations and corrections that have minor effect (do not change the content and intent of the provision).

4.1 Documents provided

Hearing panel members were provided with the relevant PC5 documentation prior the hearing, this included:

- **Section 32 (s32) Report** – Examines the appropriateness of PC5 in achieving the purpose of the Resource Management Act 1991 (RMA).
- **Section 32 Report – Appendix 1 – Original Tracked Changes**– Accompanied the s32 Report as an appendix and included the changes that PPC5 sought to include in the District Plan.
- **Section 32 Report – Appendix 2 – Renotification Tracked Changes** – Provided to accompany the s32 Report as an appendix and included the changes PPC5 sought to include in the District Plan when renotified in 2023. This includes minor error corrections and alterations.
- **Submissions** – Public notification of the s32 report made PPC5 available for public submission. Five 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.
- **Section 42A Planner’s Report** – This report provides an analysis and recommendations on the submissions and further submission on PPC5.
- **Section 42A Planner’s Report – Appendix 1 – Tracked changes NPS conversion** – Accompanied the s42A Report as an appendix and is the tracked changes of PPC5 converted to the new NPS format of the District Plan.
- **Section 42A Planner’s Report – Appendix 2 – Tracked changes with recommendations**– Accompanied the s42A Report as an appendix and is the tracked changes of PPC5 with tracked changes showing the recommendations of the s42A report.

5 Decisions on Submissions

The changes recommended by Council planners are detailed in the s42A Report (Appendix 3) and in the tracked changes of Appendix 4. These documents include the proposed PPC5 provisions and changes arising from submissions. This content is not replicated in this decision report, it is summarized here for ease of reading.

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

Provisions of PPC5 not submitted on or having the submission point withdrawn are not discussed in this report as no changes are requested via submission. Due to this, it is only parts of Submission 1 that will be assessed.

5.1 Tracked Change Item 1: Assessment criteria for urupā and cemeteries

Tracked Change Item 1 provides assessment criteria for urupā and cemeteries in a variety of zones.

Submissions Received on Tracked Change Item 1:

Submission Point	S42A Report Recommendation	S42A Summary Comments
1.1	Accept with amendments.	Agreed by Submitter 1. Amendments would clarify that parking rates cannot be considered for general parking but can be for accessible parking.

Discussion:

Agreed.

Decision:

Accept with amendments recommended by the s42A Report.

5.2 Tracked Change Item 2: Assessment criteria for traffic effects

Tracked Change Item 2 provides assessment criteria for traffic effects in the Transport chapter.

Submissions Received on Tracked Change Item 2:

Submission Point	S42A Report Recommendation	S42A Summary Comments
1.2	Accept with amendments.	Agreed by Submitter 1. Amendments would clarify that parking rates cannot be considered for general parking but can be for accessible parking

Discussion:

Agreed.

Decision:

Accept with amendments recommended by the s42A Report.

5.3 Tracked Change Item 8: Assessment criteria for two or more dwellings per lot

Tracked Change Item 8 provides assessment criteria for two or more dwellings per lot in the Mixed Use Zone.

Submissions Received on Tracked Change Item 8:

Submission Point	S42A Report Recommendation	S42A Summary Comments
1.11 1.12	Retain as notified with amendments to resolve.	Agreed by Submitter 1. Amendments would limit consideration of the number of accessible car parks to the parking rates and make clear the other requirements of the rule apply to all types of parking, which includes accessible parking.

Discussion:

Agreed.

Decision:

Retain with amendments recommended by the s42A Report.

5.4 Tracked Change Item 11: Assessment criteria for traffic flow generation

Tracked Change Item 11 provides assessment criteria for traffic flow generation in the Transport chapter.

Submissions Received on Tracked Change Item 11:

Submission Point	S42A Report Recommendation	S42A Summary Comments
1.15	Accept and amend.	Agreed by Submitter 1. Avoids internal conflict with the parking rates.

Discussion:

Agreed.

Decision:

Accept with amendments recommended by the s42A Report.

5.5 Tracked Change Item 12: Accessible parking rules – rate and activities

Tracked Change Item 12 provides rules on which activities are required to provide accessible parking and at what rate.

Submissions Received on Tracked Change Item 12:

Submission Point	S42A Report Recommendation	S42A Summary Comments
1.16	Reject.	Agreed by Submitter 1. After NPS implementation, the rule is now co-located with the location and design rules and covers more than just parking rates.
1.17	Accept in part, reword Tracked Change Item 12.	Agreed by Submitter 1.
1.18		Rewording would clarify the intention of when accessible parking should be required and ensures it aligns with the Building Act requirements. More appropriately meets the intention of PPC5.
1.20		
1.21		
1.22	Accept.	Agreed by Submitter 1. PPC5 intended non-compliance to be restricted discretionary, evidenced by the assessment criteria title in the original proposed provisions referencing the rule number.

Discussion:

Agreed.

Decision:

Accept the recommendations of the s42A Report.

5.6 Tracked Change Item 13: Accessible parking rules – location and design

Tracked Change Item 13 provides rules on how accessible car parks are to be located and designed.

Submissions Received on Tracked Change Item 13:

Submission Point	S42A Report Recommendation	S42A Summary Comments
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1.24	Reject, with amendments to resolve.	Agreed by Submitter 1. A standalone rule separates it from the context of what is to be assessed and applies its scope beyond parking. Grammatical amendments would allow for the rule to read more easily. Related to Submission Point 1.26 (below).
1.26	Accept.	Agreed by Submitter 1. Compliance should be limited to the accessible parking section of NZS 4121, not the entire standard. Related to Submission Point 1.24 (above).
1.28	Reject.	Considered resolved by Submitter 1. The rules of Section 5 of NZS 4121:2001 do not lend themselves to being adequately described by a diagram.
1.29	Reject	Considered resolved by Submitter 1. NZS 4121:2001 was available along with the proposed plan change at Council offices and on request. Online was not possible due to copyright.

Discussion:

Agreed.

Decision:

Accept the recommendations of the s42A Report.

5.7 Tracked Change Item 16: Assessment criteria for various transport items including parking

Tracked Change Item 16 provides assessment criteria for various transport items:

- Roads and property access excluding State Highway;
- Sight lines;
- Provision of loading spaces;
- Restricted vehicle access parking;
- Design construction, private ways, access legs, access lots or common areas utilised for vehicle access on a cross or company lease or unit title;
- Design construction of vehicle crossing excluding State Highway; and
- Restricted vehicle access to loading spaces

Submissions Received on Tracked Change 16:

Submission Point	S42A Report Recommendation	S42A Summary Comments
1.32	Reject, with amendments to resolve.	Agreed by Submitter 1. Assessment of wider considerations of parking is a relevant matter of consideration. Amendments would clarify when parking rates can be considered.

Discussion:

Agreed.

Decision:

Accept the recommendations of the s42A Report.

5.8 General matter: diagrams

Submitter 1 included some requests on general matters, including the creation of diagrams to express the requirements of NZS 4121:2001.

Submission Point 1.28 on Tracked Change 13 is of a similar nature.

Submissions Received:

Submission Point	S42A Report Recommendation	Comments
1.37	Reject.	Considered resolved by Submitter 1. The rules of Section 5 of NZS 4121:2001 do not lend themselves to being adequately described by a diagram.

Discussion:

Agreed.

Decision:

Reject submission point.

5.9 General matter: definition

Submitter 1 included some requests on more general matters, including a definition for accessible parking.

Submissions Received:

Submission Point	S42A Report Recommendation	Comments
1.38	Accept.	Considered resolved by Submitter 1. The inclusion of the NPS-UD definition of accessible car park aligns with higher order legislation.

Discussion:

Agreed.

Decision:

Accept submission point.

6 Schedule 1, Clause 16 of the Resource Management Act 1991

Schedule 1, Clause 16(2) of the Resource Management Act 1991 allows for Council to correct any minor errors or make alterations of minor effect.

“A local authority may make an amendment, without using the process in this schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.”

Several have been identified by Council planners and several were identified by the Commissioners. These are identified in the below table, with * indicating those identified by the Commissioners.

Red is for original proposed changes. Green is for s42A recommended changes. Purple is for the minor corrections.

Item	District Plan Section	Change				
1, 2, 8	Multi	Amend the tracked changes to reflect the changes recommended by the s42A report to specify the rates rule when referring to parking rates in assessment criteria. Item 1 and 2 “... accessible car parks (including parking rates in TRAN-R8.5) ...” Item 8 “... number of accessible car parks as in TRAN-R8.5 ...”				
5	LIZ-AC8a GIZ-AC9a	*Correct typo in the assessment criteria generic wording “... criteria are a guide to the matters ...”				
12	TRAN-R8.3	Shift TRAN-R8.3 into its own rule line as it relates to only two zones, not all zones. Under the NPS format of the District Plan, rules for zones are grouped together. Rules for some zones and not others should be identified separately. Note: the Operative District Plan has been used to display the change below to avoid confusions with the multiple iterations of tracked changes for this plan change. Note: In the s42A report the change incorrectly identified “not” to be removed (not) but this word was not in the original sentence.				
	All zones	<table border="1"> <tr> <td>Activity status: PER</td> <td>Activity status where compliance: DIS</td> </tr> <tr> <td> <ol style="list-style-type: none"> The layout of any parking area... Parking spaces are to have sufficient... In the General Residential and Medium Density Residential Zones, no car park space shall be located in the front yard. </td> <td> <i>see DIS assessment criteria TRAN-AC7 and TRAN-AC8</i> </td> </tr> </table>	Activity status: PER	Activity status where compliance: DIS	<ol style="list-style-type: none"> The layout of any parking area... Parking spaces are to have sufficient... In the General Residential and Medium Density Residential Zones, no car park space shall be located in the front yard. 	<i>see DIS assessment criteria TRAN-AC7 and TRAN-AC8</i>
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	General Residential and Medium Density Residential Zones	<table border="1"> <tr> <td>Activity status: PER</td> <td>Activity status where compliance: DIS</td> </tr> <tr> <td> <ol style="list-style-type: none"> In the General Residential and Medium Density Residential Zones, no car park space shall not be located in the front yard. </td> <td> <i>see DIS assessment criteria TRAN-AC7 and TRAN-AC8</i> </td> </tr> </table>	Activity status: PER	Activity status where compliance: DIS	<ol style="list-style-type: none"> In the General Residential and Medium Density Residential Zones, no car park space shall not be located in the front yard. 	<i>see DIS assessment criteria TRAN-AC7 and TRAN-AC8</i>
Activity status: PER	Activity status where compliance: DIS					
<ol style="list-style-type: none"> In the General Residential and Medium Density Residential Zones, no car park space shall not be located in the front yard. 	<i>see DIS assessment criteria TRAN-AC7 and TRAN-AC8</i>					

Item	District Plan Section	Change
17	TRAN-AC11a(i)	<p>*Correct to “no less”, as the intention is to require at least the minimum total number required. This is a drafting error. It is not desirable to discourage providing more than the minimum number of accessible car parks and it should not be prevented, particularly as some activities may have a greater need.</p> <p>From: “...so long as the total provision is no less <u>more</u> than the sum of the requirements for each individual activity...”</p> <p>To: “...so long as the total provision is no less more than the sum of the requirements for each individual activity...”</p>
18	TRAN-AC2a(ii)ae	<p>Correct reference to parking to refer to accessible car parking*, and apply NPS-UD defined term “accessible car parks”</p> <p>ae. any physical characteristics of the site that may affect its ability to accommodate off-street accessible car parks parking; and</p>
19	TRAN-AC11a.3	<p>Remove reference to loading as this assessment criteria now only applies to accessible parking and not wider considerations of parking and loading.</p> <p>iii. modification of parking and loading standards: the number of accessible car parks parking spaces proposed and whether the demand for accessible car parks parking likely to be generated by the proposed activity can be accommodated on the site.</p>