

## Proposed Plan Change 5 submission

### To: Whakatāne District Council

Name of submitter: Ross Gardiner

This is a submission on the following change proposed to the Whakatāne District Plan (the **proposal**):

- Proposed Plan Change 5: Accessible Parking (Te Tūtohunga Panonitanga 5: Tūnga Waka Whai Huarahi)

I could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that my submission relates to are:

- I have made a submission (both in support or critique of) on each item (1-19) or proposed change that has been identified in PPC5. However, changes are sought to items: 1, 2, 4, 7, 8, 11, 12, 13, 16, 17 and 19. I have also raised matters that should be expanded upon in relation to accessible parking.

My submission is:

I'm generally supportive of the intension of PPC5 and the intents to introduce rules to require accessible parking with various developments. There are details to PPC5 that I believe need modification or are unworkable for end users or will not achieve desired environmental outcomes that are sought by PPC5.

PPC5 is being enacted in an environment where the NPS-UD 2020 removed minimum parking rates (excluding accessible parking rates) from all statutory planning documents. The WDP relied upon enforcement of the Building Act and Building Code to implement NZS 4121:2001 and for the provision of accessible parks. In a situation where no carparks are required, no accessible carparks are required under NZS 4121:2001. PPC5 seeks to remedy this situation.

In essence, this submission relates to the following core components:

- Implementation of the NPS-UD 2020 and the effect of that on the items sought to be changed;
- Typographical changes;
- Plan readability or consistency changes; and
- Changes to support ease and usability by the public.

Implementation of the NPS-UD 2020

On 17 December 2022, WDC made operative changes to the WDP which removed rules relating to minimum parking rates, in accordance with the NPS-UD 2020. For clarity, parking

standard rules are not subject to this change (i.e., if parking is supplied, it must achieve standards specified by the Plan for dimensions, setbacks to boundaries, manoeuvrability, etc.).

Subpart 8 of the NPS-UD 2020 specifically requires that if any *territorial authority contains objectives, policies, rules, or assessment criteria that have the effect of requiring a minimum number of car parks to be provided for a particular development, land use, or activity, the territorial authority must change its district plan to remove that effect, other than in respect of accessible car parks.*

The deadline for these changes to take effect was not later than 20 February 2022 (18 months after commencement date of the NPS-UD 2020). These changes were required to be undertaken without using the Schedule 1 process, but decisions are still subject to judicial review and enforcement orders, as they are a resolution of council.

The changes made on 17 December removed rules which required minimum parking rates for permitted activities, but no objectives, policies or assessment criteria were altered. Further, recommended guidance for discretionary and non-complying activities under Section 3.7 of the Plan were altered, which appears to be outside the limits of what the NPS-UD 2020 provided for, and that the Schedule 1 process may have been applicable. To note, the wording of Section 3.7 of the plan is only recommended guidance, and not a limitation, unless assessment criteria of a rule specifically references a subpart of 3.7, then it is assessment criteria via reference.

PPC5 seeks to alter 19 items in the WDP. Of these, various are assessment criteria which also contain wording which can be read to mean that WDC may implement conditions or considerations on the rates of carparking with an activity, contrary to the NPS-UD 2020, as the standards of any parks provided are considered under Chapter 13 of the WDP. See PPC5 items 1, 7, 8, 9, and 10.

Further, PPC5 items 1, 7, 8, 9, and 10, seeks to add accessibly parks as a matter of control or restricted discretion to various activities, when it may be more appropriate for those activities to have accessible parks considered under the permitted activity criteria provided for by PPC5 item 12. However, this will require consequential changes to PPC5 item 12 that correlates rates of accessible parks to various activities, such as urupā, places of assembly, etc. As this change is more in depth and will require technical knowledge, if this is accepted by WDC, it would be more appropriate for WDC to undertake the analysis.

### Changes sought

For usability of this submission, the text of the “Amend to Read” column of Appendix 1 to the Section 32 report has been used and additional points have been underlined for additional text, or ~~striketrough~~ for deleted text. Each of the 19 items in this PPC5 has been listed with reasons for the changes sought identified below.

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#### Item 1:

Amend to read: '3.6.1 Urupā and cemeteries 'Council shall restrict its discretion to: ... 4. Transportation – including provision of adequate ~~car parking that includes~~ accessible parking, and traffic management measures to ensure the safe and efficient operation of the surrounding road network.

#### Reason for proposed change to Item 1:

The reasons for this change are elaborated on under the section "Implementation of the NPS-UD 2020" of this submission. Therefore, this assessment criteria appears to be contrary to the NPS-UD 2020 as the proposed wording implies that carparking rates are a matter of restricted discretion. A variation to PPC5 and the ODP may be required to rectify this, as the NPS-UD 2020 prescribes a process to remove the text without using the Schedule 1 process.

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#### Item 2:

Amend to read: '3.7.17.1 Traffic Effects Council shall have regard to: a. traffic volumes and traffic mix relative to existing and future traffic patterns, access, ~~parking~~, accessible parking, and loading on-site;

#### Reason for proposed change to Item 2:

The reasons for this change are elaborated on under the section "Implementation of the NPS-UD 2020" of this submission. Therefore, this assessment criteria appears to be contrary to the NPS-UD 2020 as the proposed wording implies that carparking rates are a matter of restricted discretion. A variation to PPC5 and the ODP may be required to rectify this, as the NPS-UD 2020 prescribes a process to remove the text without using the Schedule 1 process.

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#### Item 3:

Rule 3.7.30 is only guidance material for discretionary and non-complying activities, unless a controlled or restricted discretionary activity specifically references this as assessment criteria. This means that accessible parks can be considered under the existing rule framework for discretionary and non-complying activities.

The Plans states: *"3.7 ASSESSMENT CRITERIA—DISCRETIONARY ACTIVITIES / NONCOMPLYING ACTIVITIES The following Criteria are a guide to the matters the Council can have regard to when assessing an application. This does not restrict the Council's discretionary powers under section 104(1)(a) of the RMA to consider any actual or potential effects on the environment of allowing the activity."*

Further 3.3.6.2 of the Plan states “Section 3.7 sets out the criteria that the Council will have regard to when considering an application for a Discretionary activity. The Criteria do not limit the Council’s discretion.”

As this criteria is only guidance material for discretionary and non-complying activities, and not an objective, policy, rule or assessment criteria (as specified by the NPS-UD 2020), it is unclear whether the mechanisms Council followed to make changes to the WDP were appropriate. This is also elaborated on under the section “Implementation of the NPS-UD 2020” of this submission.

However, the reinstatement of this text and amended to be for accessible parks is generally supported.

Item 4:

General support, subject to the proposed change: Amend to read: ‘3.7.32.1 Council shall have regard to; ... f. traffic movement on and off of the site including access, accessible parking, and loading of vehicles for attendees and for emergency and security vehicles;’

42.	<b>Places of assembly</b> for a maximum of four consecutive days excluding jet-boat or personal watercraft events.	Festivals, carnivals, fairs, bazaars, conventions, concerts, public meetings	C	C	C	P	P	P	P	P	P	C or Pr <sup>a</sup>	P	C	C	C	C	NA
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Reason for proposed change to Item 4:

The use of a comma after accessible parking clearly denotes that “accessible parking” and “loading of vehicles for attendees and for emergency and security vehicles” are separate matters to be consider. In addition, for parking not to be listed in **bold** as it is not a defined term.

Further, the rule that this is in reference to only consists of Permitted, Controlled, or Prohibited activities – so it’s placement in the Plan should be reconsidered (i.e., under Section 3.6 ‘Assessment Criteria – Restricted Discretionary Activities’, and another appropriate location for multizonal matters of control), rather than being listed under 3.7 – discretionary and non-complying activities.

Item 5:

General support for the proposed change. However, like Item 3 of PPC5, Rule 3.7.36 is only guidance material for discretionary and non-complying activities, unless a controlled or restricted discretionary activity specifically references this as assessment criteria. This means that accessible parks can be considered under the existing rule framework for discretionary Community Activities in the Light Industrial and Industrial Zones.

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Item 6:

General support. However, like Item 3 of PPC5, Rule 3.7.44 is only guidance material for discretionary and non-complying activities, unless a controlled or restricted discretionary activity specifically references this as assessment criteria. This means that accessible parks can be considered under the existing rule framework for discretionary activities Community Activities in the Large Format Retail Zone.

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Item 7:

General support for the proposed change.

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Item 8:

Generally neutral to this proposed change.

Activity Status Table 3.4 Item 2 only lists “Two or three dwellings per lot” as a Controlled Activity within the Mixed Use Zone. Therefore, the title of 5.3.5 should be amended to reflect this and read as **Two or ~~more~~ three dwellings per Lot (see Activity Status Table 3.4 Item 2).**

Amend to read: 5.3.5.1 Council exercise its control over; ... a. ~~‘the number of accessible car parks, location and design of access and parking space, and on-site vehicle manoeuvring to ensure the safe and efficient operation of the transport network;’~~

Alternatively, should the change listed above not be accepted, then the following change to be requested: Amend to read: 5.3.5 Two or more dwellings per Lot (see Activity Status Table 3.4 Item 2) 5.3.5.1 Council exercise its control over; ... a. ~~the number of accessible car parks,~~ location and design of access and parking spaces (if any), and on-site vehicle manoeuvring to ensure the safe and efficient operation of the transport network;

Reason for proposed changes to Item 8:

This assessment criteria is essentially redundant, as if parking spaces or a vehicle entrance / egress point is provided, they must comply with standards listed in Chapter 13 (this is unaffected by the NPS-UD 2020). If non-compliance is found, then consent is triggered under those rules.

It seems unusual that a private dwelling will be required to have an accessible park associated with it – as it is not a location that is frequently visited by members of the public, and the property owner or occupier will typically have private parking to suit the needs of the individual. However, accessible parking rates should be implemented at the rate prescribed by the standard for two to three dwellings on one lot.

Should the same assessment criteria be intended for restricted discretionary activities (as provided by Activity Status Table Item 3), then a new section should be created under 5.4.7 of the WDP, rather than being bundled with the controlled assessment criteria for two to 3 dwellings. Should this not be done, a Plan user may interpret that there is no relevant assessment criteria or that the activity is ultra vires. To note, this change mirrors the change that is being sought to Item 1 of [Proposed Plan Change 3](#) (PPC3) to the WDP. Further, accessible parking is not listed as assessment criteria in Item 1 of PPC3 (traffic safety and safe access to and egress from the site are), and no decisions have been issued on PPC3. It is unusual for controlled assessment criteria to be more stringent than restricted discretionary activity criteria, which is why should Option A to delete this section in its entirety be selected, Option B to reject the inclusion of accessible parking (with minor changes to wording) should be accepted.

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Item 9:

General support of this proposed change.

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Item 10:

General support of this proposed change.

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Item 11:

Oppose, unless modified as below. This rule makes activities that provide greater than 25 car parks as a discretionary activity. With the proposed wording, a site could feasibly provide 30 parks, 1 accessible park, and not trigger any resource consent requirement, due to the “and” clause.

Amend to read: ‘13.2.7.2 Any activity in the Business Centre, Mixed Use and Commercial Zone which provides more than 25 on-site parking spaces, including any and 2 or more accessible parking space(s), shall be a discretionary activity.’

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Item 12:

General support, subject to the proposed changes.

Include new section: ‘13.2.9 Accessible parking provision rates 13.2.9.1 Accessible parking is not required for dwellings where there are less than four six or fewer car parks per lot, or for business activities with frontage onto any identified pedestrian streets street(s) in the ~~Whakatāne or Kōpēpepe~~ which fronts the Business Centre Zone-Zones.

13.2.9.2 Accessible parking requirements do not apply to permitted activities in the Rural Zones. These are identified in Activity Status Table 3.4 Items 31-37c ~~s3.4.1.1 (Items 31-37c)~~ and include farming, forestry, rural processing activities and quarrying.

~~13.2.9.2~~ 13.2.9.3 Where car parking is provided, and excluding where accessible parks are not required by 13.2.9.1 or 13.2.9.2 dwellings where there are less than four per lot and business activities with frontage to a pedestrian street in the Business Centre Zone, accessible parking spaces for people with a disability shall be provided in accordance with the following table:

Table 13.7 – Number of car parks:

Total number of car parks	Number of accessible car park spaces
0– 20	Not less than 1
21 – 50	Not less than 2
For every additional 50 car parks	Not less than 1

Reasons for changes to Item 12:

There is a rule numbering error, so consequential changes should be made to accept this.

Changes to reflect an average of 6 parks per lot, or less. Small or moderately sized residential developments will be less likely to be impacted by this rule. However, this standard should ultimately reflect what is specified by NZS 4121:2001 in relation to the number of accessible parks required for multiple dwellings on a lot.

Changes to ensure that the Rule is catering for *any* pedestrian streets may avoid interpretation complications on pedestrian streets that aren't in Whakatāne or Kōpeōpeō, such as in Tāneatua, and the other associated pedestrian street rules that may be applicable, such as limitations on vehicle entrances, verandas, etc. If this change is not accepted, then for Kopeopeo to be altered to Kōpeōpeō.

Under 13.2.9.2, changing the reference to the Activity Status table in Chapter 3 to be consistent with other references in the Plan text. The text providing descriptions of rural activities should be deleted, as it is superfluous.

Under 13.2.9.3 to refer back to the previous rules, rather than repeating the text of those rules within this rule, and to refer to parks for disabled persons as accessibility parks, as that is consistent with the rest of the proposed changes being made in PPC5.

It may be helpful for Plan users to create an avoidance of doubt clause to express what activities are exempt from these requirements to mirror the applicable buildings that are subject to these requirements under the Building Act.

Further, should non-compliance be found with these rules, the activity will default to discretionary activity status (as per 3.3.2.4 of the Plan), which will grant the territorial authority broad review powers when there is a particularly specific rule or standard breached. It is much more appropriate for this to be a restricted discretionary activity. This will provide Plan users certainty over their proposal and what Council may review, rather than the entire development being liable. Further, it is sought that Council crafts an appropriate list of matters of restricted discretion in accordance with their objectives and policies on this matter (see item 17 of PPC5 for further detail).

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#### Item 13:

The text to be included should be amended to state: *Accessible parking spaces must comply with NZS ~~1421~~ 4121:2001.*

Further, this rule has been tacked onto the specifics about non-accessible parking spaces standards, so it would be better suited to have its own numbered rule (i.e., Rule 13.2.10.4).

To note, this item may have a typographical error where it lists the rule as 13.2.10, when it appears to be 13.2.10.2.

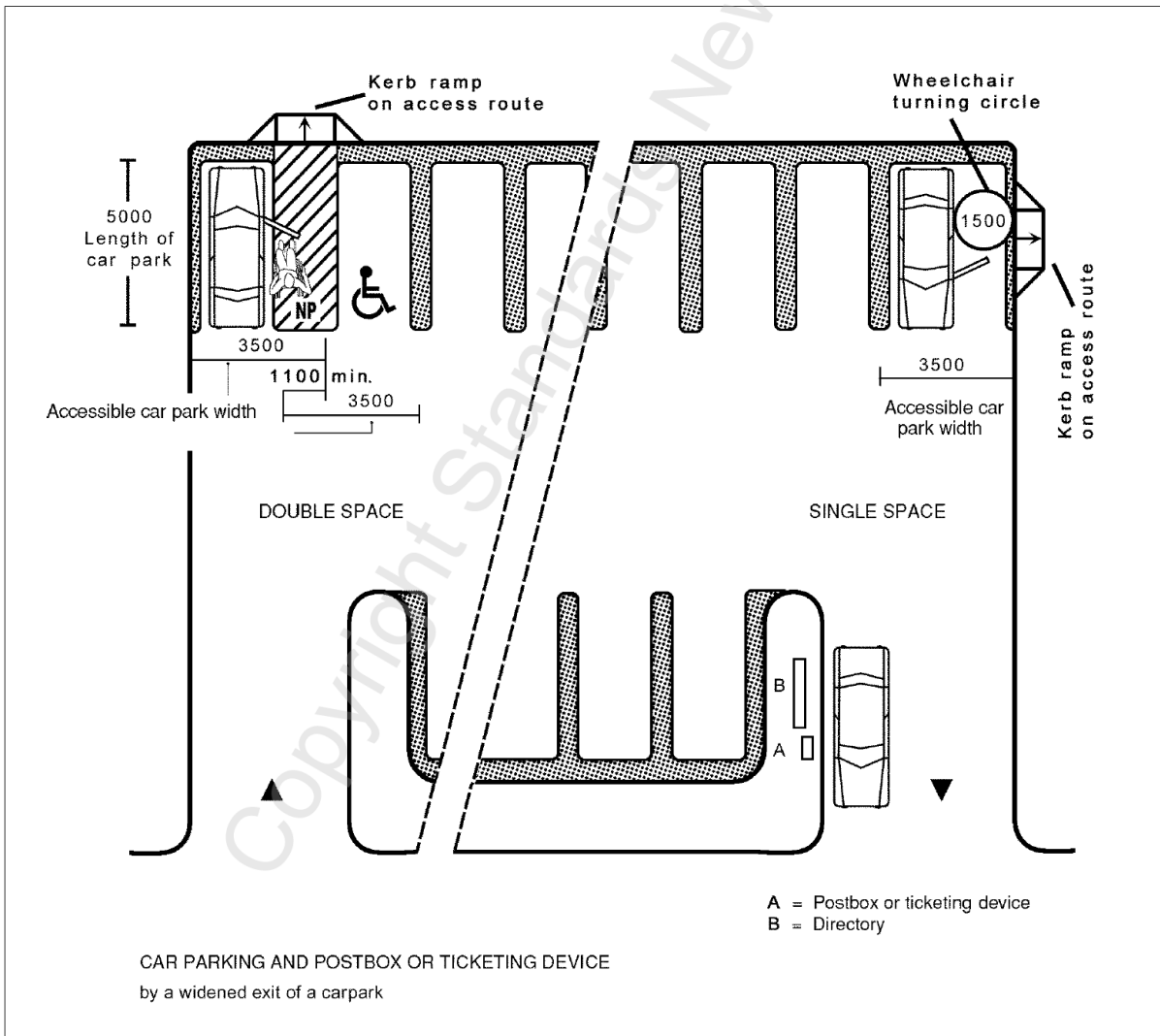
In my opinion, this proposed rule is seemingly broad and should be further specified to state that: *Accessible parking spaces must comply with Section 5 – Car Parks of NZS 4121:2001.* This will ensure that only the accessible car parks are examined, and not all other accessibility points, including access to the carpark via ramps or the like, which minor or technical non-compliance with will trigger resource consent, when an acceptable solution may be found during processing of the relevant building consent.

This also streamlines internal work and processes, as typically building consent applications are reviewed by a planner for compliance with the district plan standards, when access for persons with disabilities are also reviewed by the Building Control Authority, as per Section 118 of the Building Act 2004 (previously Section 47A of the Building Act 1991 – thus reducing the double-up of reviewing the ‘nuts and bolts’ of the proposal.

In addition to this, where NZS 4121:2001 is mentioned in the Plan document, a hyperlink to the document should be provided or an associated page with reference to referenced documents in the Plan to be provided.

Further, Figure 7 of NZS 4121:2001 (or another diagram to the same effect) should be included within Chapter 13 and referenced by rules (13.2.9) that require accessible parks.





**Figure 7 – Car parking**

his standard is currently only referenced under Rule 22.2.3 of the Plan, which relates to a specific designation. It is unclear whether Part 3 of Schedule 1 (Clauses 30-35) is applicable to notification of PPC5 with NZS 4121:2001 being incorporated by reference and affecting the Plan document, rather than for a specific designation and requiring authority.

Item 14:

General support of this proposed change.

Item 15:

General support of this proposed change.

Item 16:

General opposition of this proposed change.

The rules that are subject to this assessment criteria do not appear to be relevant to the provision of accessible parks should those rules (13.2.2, 13.2.2.2 (i), 13.2.18, 13.2.15, 13.2.4, 13.2.5, and 13.2.21) be breached.

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Item 17:

General support of this proposed change.

Amend to read: 13.4.8 On-site Parking (see Rules in 13.2.9) 13.4.8.1 Council shall have regard to: a. The extent to which the following circumstances may apply, as the basis for being able to provide alternative parking provisions: i. Multiple provision on one site – two or more owners may make joint provision for accessible car parking so long as the total provision is no more than the sum of the requirements for each individual activity except where vehicles will regularly be attracted to the site at times that seldom coincide. A legally binding agreement shall be entered into to ensure the relevant ~~Certificates~~ Record of Title are amalgamated or otherwise held together;

Reason for proposed change to Item 17:

This will align the proposed assessment criteria with legislative wording.

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Item 18:

General support of this proposed change.

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Item 19:

General support of this proposed change. However, this should be amended to be listed as 13.4.8.1(a)(iii) rather than ~~13.4.8.1(a)(v)~~ for consistency.

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## Additional commentary

While I have general support for this PPC5, it would likely be more appropriate or user friendly to have a single point in Section 13 with suitable diagrams depicting what is required, when, and at what minimum rates. Further, for an appropriate definition for accessible parks to be included.

The NPS-UD 2020 defines accessible parks as meaning: *a car park designed and marked (for instance, in accordance with the mobility car parking scheme) for use by persons with a disability or with limited mobility.*

Copying this definition is appropriate.

I am unsure whether I received formal notification of this Proposed Plan Change as per the requirements of Section 5(1A) of Schedule 1 of the RMA. If it is the case that I did not receive notification of PPC5, it may mean other persons in the district who may be more affected by PPC5 did not receive formal notification either, sidestepping parliament's intention for public involvement in the Plan making process.

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## I seek the following decision from the local authority:

- That this submission is received and taken fully into account.
- That a review of the WDP's objectives, policies and assessment criteria in relation to minimum parking rates be undertaken, and the processes prescribed by the NPS-UD 2020 be followed to make any necessary amendments to the Plan and PPC3 (if required).
- That a variation to PPC3 be undertaken to include accessible parking rates as assessment criteria to be consistent with the changes sought by PPC5.

I wish to be heard in support of my submission.

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

Signature of submitter:  
(or person authorised to sign on behalf of submitter)

Ross Gardiner

Date: 11 May 2022

(A signature is not required if you make your submission by electronic means.)

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