



**Western
Bay of Plenty**
District Council

MINUTES ATTACHMENTS

**Independent Commissioner Hearing
Meeting**

Monday, 8 March 2021

Table of Contents

7.5	Section 92 Request for Further Information Following Close of Submissions - JACE Investments Ltd - 404 Omokoroa Road, Omokoroa	
	Attachment 1 RC11997L and RC12296S - Jace Investments Ltd - Final Decision	4

DECISION OF THE WESTERN BAY OF PLENTY DISTRICT COUNCIL
RESOURCE MANAGEMENT ACT 1991

Applicant:	Jace Investments Limited (RC11997L and RC12296S)
Location:	404 Omokoroa Road, Omokoroa
Proposal:	To establish and operate a town centre including business, civic, residential, education and reserve activities
Types of Consent:	Land Use and Subdivision
Legal Description:	Lot 1 Deposited Plan 307535
Zoning:	Commercial and Future Urban
Activity Status:	Non-complying
Public Notification:	17 June 2020
Commissioners:	Commissioners Jan Caunter, David Hill and David Mead
Date:	10 MAY 2021
Decision:	CONSENT IS GRANTED, SUBJECT TO CONDITIONS

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by Jace Investments Limited to:

Land use - establish and operate a town centre including business, civic, residential, education and reserve activities

Subdivision – establish super lots and lots for roads and infrastructure

Certificate of compliance – contaminated site

Council Files: RC11997L and RC12296S

**DECISION OF WESTERN BAY OF PLENTY DISTRICT COUNCIL INDEPENDENT HEARING
COMMISSIONERS J CAUNTER, D HILL AND D MEAD, APPOINTED PURSUANT TO
SECTION 34A OF THE RESOURCE MANAGEMENT ACT 1991**

INTRODUCTION

1. We have been given delegated authority by the Western Bay of Plenty District Council (“the Council”) under section 34A of the Resource Management Act 1991 (“the Act”) to hear and determine an application by Jace Investments Limited (“the Applicant”) and, if granted, to impose conditions of consent.

THE PROPOSAL

2. The Applicant seeks:
 - a) resource consent to establish and operate a town centre including business, civic, residential, education and reserve activities. The proposal includes significant earthworks required to establish roads, buildings and to develop services;
 - b) subdivision consent to establish super lots and lots for roads and infrastructure; and
 - c) a certificate of compliance with respect to the permitted works under the NES for Assessing and Managing Contaminants in Soil to Protect Human Health.
3. We note at the outset that we do not understand ourselves to have delegated authority to issue a certificate of compliance. This decision does not therefore grant a certificate of compliance for the remediation of contaminated land on the subject site.
4. The location of the proposed town centre as described in the application is 404 Omokoroa Road, Omokoroa (“the site”). A Masterplan¹ has been developed, comprising:
 - a) Main primary access from Omokoroa Road via a roundabout (the application noted the roundabout is to be built by the Council as part of its structure planning upgrades);
 - b) An internal ‘main street’ running along a southern/northern axis with the heart of the town centre being defined by a series of buildings;

¹ Masterplan, First Principles, Sheet 2.1.00 dated 8 March 2021

- c) The other internal road will run in an easterly/ westerly direction,
 - d) Building A – motel/ hotel of 2170m², located at the entrance to the town centre;
 - e) Building B – retail/ office space of 1100m² located on the main entrance road;
 - f) Building C – retail/ office space of 1490m² located near the internal roundabout;
 - g) Building D – office space of 1280m² located on the opposite side of the main entrance to the town centre to Building A;
 - h) Building E – retail/ office space of 1100m² located on the main entrance road;
 - i) Building F – retail/ office space of 1120m² located on the main entrance road;
 - j) Building G – medium density residential of 860m² located in an area west of the internal roundabout;
 - k) Buildings H1, H2 and H3 – medium density residential of 1570m² located in an area west of the internal roundabout;
 - l) Building I – civic building of 1900m² located to the west of the internal roundabout and next to the open space/ marketplace;
 - m) Building J – retail/ office space of 1410m² located on the northern corner of the internal roundabout;
 - n) Building K – retail/ office space of 2430m² located on the main road opposite the supermarket;
 - o) Building L – retail/ office space of 600m² located on the main road opposite the supermarket
 - p) Building M – a supermarket and adjoining retail or food and beverage tenancies of 6450m²;
 - q) Building N – apartment and retail space of 3045m², located near the northern boundary of the site (close to Kaimai Views residential area);
 - r) Building O – childcare centre of 485m² located on the northern boundary.
5. The total Gross Floor Area identified on the Masterplan is 26,840m². The Masterplan shows the location of these buildings, and accompanying diagrams show their possible external appearance. However detailed design of the buildings has not yet been undertaken. While the application as notified appeared to propose 701 carparking spaces (according to the Traffic Impact Assessment), the 8 March 2021 Masterplan has been amended to show 654 carparks, with a mix of surface parking and undercroft parking arrangements). The buildings having undercroft parking are shown on the Masterplan as Buildings A, D, I and M.
6. The subject site has an overall area of 7.909 hectares. It is approximately 1.1km from State Highway 2 and 2.8km from the Tralee Street commercial area on the Omokoroa Peninsula. The site is zoned Commercial and Future Urban under the Operative District Plan and is included within the Regional Policy Statement – Urban Limits. It is currently planted and operating as a kiwifruit orchard.
7. As presented at the hearing, the town centre is proposed to be accessed by vehicles from four points, with the potential for an additional road access in the future as land to the north-west develops. The main entry will be from the new roundabout on Omokoroa Road, at the southern end of the centre. A 'left in' slip lane is to be provided off Omokoroa mid frontage to provide for car and truck access to the proposed supermarket. At the northern end of the site two way access is proposed, but with a ban on right turn out onto Omokoroa Road (that is left in and left out and right in – but not right out). Access to Kaimai Views residential area is also proposed. Kaimai Views is a residential area established under the Housing Accords and Special Housing Areas Act 2013 with a Commercial zoning. The streets in Kaimai Views are narrow, but provision was made at the time of subdivision for a road connection into the application site.

NOTIFICATION AND SUBMISSIONS

8. Notice of the application was served on identified affected persons (including those on Council's statutory list) on 19 June 2020. The application was also publicly notified in three newspapers, with submissions closing on 17 July 2020. The summary of submissions in the section 42A Report noted that a total of 76 submissions were received within the statutory timeframe, 46 of those being in support, 7 neutral and 19 in opposition. Two submissions were conditional and 2 did not specify whether they supported or opposed. Ms Price noted in her section 42A report that a number of submissions were received from submitters residing outside of Omokoroa, in the nearby rural areas of Te Puna and Minden.
9. The full outline of the submissions was set out in the section 42A Report. In summary, the following issues were raised in these submissions:
 - Environmental sustainability – concerns about sustainable buildings and environmental design, urban design, alternative modes of transport, low impact stormwater design, reduction of car dominance.
 - Application not consistent with objectives and policies of the District Plan, not a sustainable management of resources, not in accordance with RMA principles, not consistent with Part 2 of the Act.
 - Regional development / economic – provide for regional and economic growth and potential employment, adverse effects on the Tralee Street shopping centre and Fresh Choice, lack of economic assessment, size of the proposed commercial centre.
 - Amenity/ character/ housing/ community. Supporting submissions addressed the provision of green space, quality retail and cafes, sympathetic to surroundings, community areas, outside amenity for higher density living and the alternative for residents to having to travel to other centres to shop. Opposing submitters addressed, amongst other things, poor urban design, lack of consideration of local context and sustainability, the bulk of the proposed three storey apartment building overlooking a residential area, privacy and scale of effects, noise and lighting effects on adjacent residents, inappropriate location of childcare centre and no identified children's play areas, lack of consideration for pedestrians and cyclists, dominant buildings and lack of community consultation.
 - Roading/ infrastructure/ stormwater, water – traffic effects including the possibility of traffic passing through the adjacent Kaimai Views subdivision, the design of Sentinel Avenue, provisions for pedestrians and cyclists, safety of roading intersections, stormwater management and uncertainty over water supply.
 - Cultural – the two supporting submitters noted the importance of hapu involvement and ongoing engagement with Pirirakau.
 - Structure Plan process – submitters supporting and opposing questioned how this proposal would affect the Omokoroa Structure Plan process being undertaken by the Council which included the identification of a new Omokoroa town centre.
 - Other topics – submitters raised conditions and the conflict of this proposal with the District Plan objectives and policies.
10. The Council issued two requests for further information. The first dated 18 June 2020 listed 90 questions, across all parts of the application. The second dated 29 July 2020 listed a further 17 questions. Both were responded to by the Applicant on 9 October 2020, with a series of answers and reports and a substantial set of plans. Included in this documentation was an acoustic assessment from Earcon, which we address in more detail later in this decision. Despite the extensive further information, a number of

matters were unresolved at the time of the hearing and were highlighted in the Council's two section 42A reports.

PROCEDURAL MATTERS

11. Some procedural matters arose before, during and after the hearing, which became the subject of a number of Minutes issued by us to the parties.
12. On 3 March 2021 we received tabled expert planning evidence from Ms Kay Panther Knight in support of the submission lodged by Woolworths NZ Limited ("Woolworths"). This evidence was filed late. Having sought comment from the Applicant and Woolworths², we allowed the evidence to be admitted on the basis that the Applicant could respond to it through supplementary evidence³. Ms Knight did not appear at the hearing.
13. A hearing was held at the Council Chambers on 8 and 9 March 2021. The hearing was adjourned at the completion of the second day and after hearing all of the evidence to enable the Applicant and the Council to further discuss conditions of consent and differences in opinion between some of the experts for both parties. On 30 March 2021 we received a further set of conditions agreed between the Applicant and the Council, a joint memorandum of counsel for both parties, updated plans and a revised set of Design Guidelines. We issued a Sixth Minute on 6 April 2021, asking several questions about the conditions and asking for the Applicant's response to be included with its Reply.
14. The Applicant's Reply was received on 13 April 2021.
15. The hearing was closed on 23 April 2021.

THE HEARING

16. We received evidence and reports from the Applicant, submitters and the Council, all of which is detailed under the heading Summary of Evidence and in other relevant parts of the decision.
17. In attendance at the hearing were:
 - a) The Applicant, represented by Ms Vanessa Hamm (legal counsel); Mr Craig Lemon (Jace Investments); Mr Graham Price (architect); Mr Thomas Watts (urban design and landscape); Dr Lee Beattie (urban design peer review); Mr Ian Carlisle (traffic); Mr Daniel Hight (engineering); Mr John Polkinghorne (economics) and Mr Richard Coles (planning).
 - b) Submitters – Mr Bruce McCabe (Chairperson, Omokoroa Residents and Ratepayers Association Inc); Ms Julie Shepherd (Pirirakau Environment Manager); Ms Alison Henderson (Chairperson, Omokoroa Public Art Group); Ms Ailsa Fisher; Ms Robyn Scrimshaw (via Zoom).
 - c) Council's reporting staff / experts and administrative support – Ms Mary Hill (legal counsel); Ms Anna Price (Council's reporting planner); Mr Philip Martelli (Council's resource management manager); Ms Alison Curtis (noise); Ms Ann Fosberry (traffic); Mr Ken Lawton (Council development engineering); Mr Morne Hugo

² Second Minute dated 3 March 2021

³ Third Minute dated 5 March 2021

(urban design); Ms Carolyn Irvin (Council governance support) and Ms Barbara Clarke (Council's senior governance manager).

- d) Several members of Council's staff, a number of elected members (observing only), other submitters and members of the public.
18. We had the benefit of two section 42A reports prepared by Ms Price. Based upon her assessment of the application, Ms Price recommended that consent be granted subject to conditions.

SITE VISIT

19. We undertook a site visit before the hearing. We were not accompanied by any member of Council staff or any member of the Applicant's team.

THE DISTRICT PLAN AND RESOURCE CONSENTS REQUIRED

20. As noted, the site is zoned both Commercial (approximately 5.3ha) and Future Urban (approximately 2.6ha) in the Western Bay of Plenty Operative District Plan.
21. The AEE and the section 42A report each listed the activity statuses for the activities falling within the application under the Operative District Plan.
22. Those documents noted the following:
- Controlled activity - a breach of Rule 12.4.1(J) earthworks within the Omokoroa Stage 2 Structure Plan area. Earthworks exceeding 300m³ in a 6 month period requires consent as a controlled activity. The application proposes a total of 113,000 m³.
 - Controlled activity - Rule 12.3.2.1 – land to be set aside or vested as a reserve or where land is to become public open space owned by Council, lots may be created without having to comply with the minimum lot sizes and other minimum standards for lots. This applies to Lot 101 pump station and Lot 102 drainage reserve;
 - Restricted discretionary activity - a breach of Rule 4B.4.7 for a shortfall in carparking (carparking does not comply with the activity table in 4B.4.7);
 - Restricted discretionary activity - a breach of Rule 12.4.4.2 for the provision of an under-width road reserve;
 - Restricted discretionary activity for several breaches of Rule 19.4.1, namely:
 - a breach of building height - the maximum permitted building height is 11m. The proposal breaches height at various levels depending on the building, to a maximum of 3.68m from the existing ground level above the 11m limit (Building N);
 - verandas – the rule requires that all buildings be provided with a veranda not less than 2m wide, 3m above street level, 0.3m back from the kerb and not more than 0.4m thick. Verandas have been included on most of the commercial buildings within the site facing the village green areas but do not cover the street network;

- continuous retail frontage – residential buildings will not have a continuous retail frontage or canopy. The civic building is set back from the street and will have some hard-landscaped areas surrounding the building;
 - carparking within 10m of a road boundary – the rule requires that no car parking other than underground parking shall be located within 10m of any street boundary. Carparking areas between buildings A and B, the childcare centre, Building N and carparking adjacent to Building I do not comply;
 - offices – the rule requires that the floor area to be utilised for offices on the ground floor is not to exceed 20% of the total gross floor area of the building. This rule does not apply to Commercial Services. Building B does not comply;
 - setback from a strategic road – the rule requires a minimum 10m setback. Building A is located 7m from Omokoroa Road; and
 - dwellings at ground floor level – the rule requires that all dwellings shall be located above ground floor. Buildings G, H1 to H3 and N include residential dwellings at ground floor.
- Non-complying activity - a breach of Rule 4A.5(b) as earthworks are a non-complying activity in the Commercial zone;
 - Non-complying activity - a breach of Rule 4B.4.2 – no crossing place shall be permitted to serve any proposed new activity that requires resource consent and/ or increases traffic movements to the site;
 - A subdivision consent under Rule 19.3.2(a). This is a controlled activity. Matters of control are limited to those specified in Rule 19.6.2.
23. Overall, the application is to be assessed as a **non-complying** activity under the Operative District Plan.

RELEVANT STATUTORY PROVISIONS

24. This application must be considered in terms of Sections 104, 104B, 104D, 106, 108, 108AA, 220 and 221 of the Act.
25. Under section 104D we may grant resource consent for a non-complying activity only if we are satisfied that either the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor, or the application is for an activity that will not be contrary to the objectives and policies of the Operative District Plan and the regional planning instruments. If the application passes either of the thresholds in section 104D, we may proceed to assess the application under section 104.
26. Subject to Part 2 of the Act, Section 104 sets out those matters to be considered by the consent authority when deciding a resource consent application. Considerations of relevance to this application are:
- a) *any actual and potential effects on the environment of allowing the activity; and*
 - ab) *any measure proposed or agreed to by the applicant for the purposes of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of:*

- (i) a national environmental standard:
- (ii) other regulations:
- (iii) a national policy statement:
- (iv) a New Zealand coastal policy statement:
- (v) a regional policy statement or proposed regional policy statement:
- (vi) a plan or proposed plan; and

(c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.

27. Section 106 enables us to refuse a subdivision consent, or to grant a subdivision consent subject to conditions if there is a significant risk from natural hazards or sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.
28. Sections 108, 108AA and 221 empower us to impose conditions on land use and subdivision consents.
29. We address Part 2 at the end of this decision.

NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH (“NES”)

30. The subject site was identified in the AEE as a HAIL site, given its history of orchard activities. A Detailed Site Investigation was undertaken by Geohazard Environment, showing one sample as containing above background levels of arsenic. This area was localised and it was determined no remediation was necessary. Some fragments of relic shed cladding containing asbestos were also discovered. Soil sampling indicated no asbestos was present in the soil.
31. The NES provides for the disturbance and removal of contaminated soil as a permitted activity under Section 8(3) of the Regulations. Up to 5m³ of material per 500m² of land may be removed provided it is disposed of to a facility authorised to receive such material. In this case, the site size is 5ha and the maximum volume of soil that can be removed as a permitted activity is 500m³. The Applicant has estimated approximately 2m³ will be removed around the arsenic area and disposed to an approved landfill. This activity is permitted by the NES.
32. No other areas of the site were found to contain any contaminants in, on or under the land above background concentrations. The NES does not therefore apply to the remainder of the site.

NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020 (NPS-UD)

33. The NPS-UD applies. This places new requirements on local authorities within a high growth urban area to provide for future growth. Western Bay of Plenty is classified as Tier 1 because of its relationship with Tauranga. Ms Price noted that the Council's own monitoring and related projections had identified that there is insufficient capacity within the District to meet the requirements set out in the NPS-UD. The Council's response has been the development of the Omokoroa Stage 3 Structure Planning process and the plan change being prepared as part of that process.
34. Mr Coles did not address the NPS- UD in the AEE but addressed it in questioning. We

address this in more detail in our discussion of his evidence.

35. We consider the proposal aligns with the NPS-UD.

TRADE COMPETITION

36. There was no debate that a submitter, Woolworths, was a trade competitor. This was acknowledged by Woolworths itself. Woolworths' submission opposed the proposal on several grounds:⁴
- a) The application did not include sufficient information in respect of economic impacts on Omokoroa Village Centre or wider economic conditions in the District;
 - b) The application was unclear in respect of its scope relative to the Future Urban zone boundary and no assessment of the provisions of that zone had been undertaken;
 - c) The application did not provide sufficient analysis of the implications arising from the intended delivery of the proposal in advance of the Town Centre Plan and appropriate structure planning by the Council.
37. Ms Knight expanded on those points in her tabled evidence and considered the application lacked a robust economic analysis. The concern appeared to be directed in particular at economic effects on the Tralee Street shopping centre in which Woolworth operates (the Fresh Choice supermarket).
38. Pursuant to section 308B of the Act, a trade competitor may make a submission only if it is directly affected by an effect of the activity to which the application relates, that adversely affects the environment and does not relate to competition or the effects of trade competition. Ms Hamm submitted that Woolworths had not produced evidence to support its claims of adverse effects from the proposal on the Tralee Street shopping centre or the Fresh Choice supermarket operated by Woolworths. She submitted Mr Polkinghorne's economic assessment of May 2020 had covered these matters, as did his evidence, and confirmed that any effects on existing retail areas would be minor, and limited to trade competition only.⁵
39. We accept Ms Hamm's submissions. We address Mr Polkinghorne's evidence in more detail in our discussion of economic effects.

RELEVANCE OF OMOKOROA STRUCTURE PLAN

40. The section 42A report referred us to the Omokoroa Stage 3 Structure Plan process. Ms Price explained that the public open days had commenced in November 2017 and that feedback was sought from the public on the preferred location for a town centre. The site owned by Jace was one of the options put forward. Ms Price also noted that the Stage 3 Structure Plan process was "put on hold" in May 2020, following the receipt of this application.⁶
41. In her opening submissions, Ms Hamm submitted that Council's Stage 3 Structure Plan was not a relevant matter for consideration under section 104(1)(c) of the Act. As we have said, the Stage 3 Structure Plan had been raised by Ms Price in her section 42A report and was also mentioned in some submissions. Ms Hamm noted that Stage 3 was

⁴ Evidence of Kay Knight, paragraph 1.2

⁵ Opening legal submissions for Applicant, paragraphs 33 and 34

⁶ Section 42A report, paragraphs 26-44. We note that Mr Martelli's report confirmed some work on Stage 3 had been ongoing. We discuss this in our summary of his report.

not a formal statutory process commenced by Council at this stage as no structure plan had been notified. A First Schedule plan change process had yet to commence. She stated that if the Council intended through process to change the existing zoning of the Applicant's land, it should expect that to be opposed. Equally, there may be debate about other sites for a town centre. In her submission, Stage 3 should be afforded very little, if any, weight.⁷

42. As Ms Hamm submitted, any relevant information under section 104(1)(c) must also be "reasonably necessary to determine the application". She submitted it was not and that the District Plan already contained an operative structure plan (Stage 2) for a town centre at Omokoroa. Ms Hamm submitted we should not consider alternative town centre locations or make a decision on this proposal having regard to the best location for a town centre at Omokoroa. Rather, this application must be considered on its merits.⁸
43. We accept most of these submissions but note that it is not quite correct to say that the District Plan contains an operative structure plan for a town centre at Omokoroa. What it does provide for at Section 19.5 is the development of "A commercial area master plan for the Omokoroa Stage 2 Structure Plan area"⁹ In otherwise accepting Ms Hamm's submissions on this point, we note that Mr Martelli's report to the Commission¹⁰ provided us with some useful background to the Omokoroa Structure Plan and he expanded on some points in questioning. Ms Price also provided useful information on this background in her section 42A report. We found this helpful in understanding how the current Operative District Plan provisions had been arrived at and what lay ahead in Stage 3. However, we have assessed this application on its merits against the Operative District Plan as it currently stands (including the Omokoroa Stage 2 provisions which are operative) and have taken no account of Stage 3, as not only does it have no statutory basis at this time, the only substantive material before us related to that exercise was the 2020 RPS alternative town centre site location report tabled by Council (and addressed by Mr Polkinghorne).

SUMMARY OF SUBMISSIONS AND EVIDENCE HEARD/ TABLED

44. We received pre-circulated expert evidence from all parties appearing at the hearing. Both oral and written evidence was received from submitters appearing at the hearing.
45. We emphasise that the section below is a summary only of the evidence that we heard. In the case of expert evidence across various disciplines, the evidence is addressed in more detail in later sections of our decision.

Applicant

46. Ms Hamm presented opening legal submissions. She told us that Jace had purchased the subject site in 2015 and has lodged this application, given the Council has not yet prepared a master plan for the Omokoroa Town Centre. Following the lodgement of the application, Jace undertook public consultation with the Omokoroa community at a public meeting on 24 June 2020. Some changes were then made to the proposal, most notably the increase in size of the civic building and marketplace, the redesigning of Buildings N and O to increase separation from the buildings and the Kaimai Views residents and the

⁷ Opening legal submissions for Applicant, paragraphs 15-20

⁸ Opening legal submissions for Applicant, paragraph 22-23

⁹ We consider this to be different to the more specific plan provisions applying, for example, to Waihi Beach

¹⁰ Martelli report forming part of the supplementary section 42A report on 5 March 2021

provision of a slip lane and a northern intersection to allow for northbound vehicles to left turn in to the town centre and for southbound vehicles to right turn in. The Applicant's evidence was based on these revisions.¹¹ As noted above, Ms Hamm submitted that the Council's Stage 3 structure planning process was not a relevant consideration under section 104(1)(c) of the Act as no formal statutory planning process has been commenced by Council to alter the zoning of the land which is to be subject to Stage 3 structure planning and the information is not, in any event, reasonably relevant to our decision making process.¹² Ms Hamm addressed the differences in the opinions of the traffic experts on some matters, which we discuss later in this decision. Ms Hamm then went on to address the submission made by Woolworths and the supporting evidence tabled by Ms Knight, submitting that Woolworths is a trade competitor and could only make a submission if it was directly affected by an effect of the activity to which the application relates, that adversely affects the environment. Jace did not accept the apparent assertion of Ms Knight that the Applicant had not appropriately quantified or assessed the effects of the proposed town centre on the Tralee Street shopping centre or Fresh Choice. RCG Limited had undertaken an economic assessment, concluding that any effects on existing retail would be minor and limited to trade competition. Ms Hamm then went on to address various aspects of the Council's supplementary section 42A report on this subject.¹³

47. Ms Hamm then submitted that the Applicant was happy to work with the Council on its plans for Omokoroa Road, including the new roundabout. She told us the 20m road width in the town centre had been consciously proposed and supported by expert assessment. It was intended to provide a more intimate feel in the town centre through the use of narrower roads. Ms Hamm then commented on the Council's noise conditions as they stood at that time. On lapse dates, Ms Hamm submitted that the Applicant proposed a 5 year lapse period for Stage 1 but otherwise a 10 year lapse would be appropriate. Finally, Ms Hamm outlined the proposed amendments to consent conditions addressed in the Applicant's evidence.¹⁴
48. **Mr Price** is a registered architect and a Director of First Principles Architects. He opened the evidence for the Applicant by outlining the development overall, explaining that the intention of the development was that it not be vehicle dominant. The main anchor tenant would be the supermarket. The gateway buildings at the main entrance to the town centre were also important. It was intended that the hotel would be 3 storeys high. The plaza would be used as a marketplace some of the time, but its focus was more of a public space. Buses would come into the town centre via the main roundabout, would travel around the internal roundabout to drop off and pick up passengers and would then exit via the main roundabout. In questioning, Mr Price confirmed that all buildings were at concept level only¹⁵ and the details would follow through consent conditions. He accepted that the conditions could be varied. In response to concerns expressed in the section 42A report as to the lack of guidance over building design, he proposed wording around detailed design matters that could be incorporated into the Design Guidelines.
49. In his evidence, Mr Price explained the site's context and noted that probably the most sensitive neighbour was the existing Kaimai Views residential development to the north.

¹¹ Opening legal submissions for Applicant, paragraphs 2-7

¹² Opening legal submissions for Applicant, paragraphs 15-24

¹³ Opening legal submissions for Applicant, paragraphs 30-37

¹⁴ Opening legal submissions for Applicant, paragraphs 39-64

¹⁵ The same point was made in his written evidence at paragraph 62, where Mr Price referred to a "concept masterplan"

Buildings N and O needed to be sympathetic to this interface.¹⁶ The town centre would be built in stages to suit the community's and region's needs. He explained the town centre layout and the intent of the design. He told us that pedestrian movement is one of the most fundamental design criteria for an active, safe and interesting town centre and the emphasis here had been on clearly delineated spaces.¹⁷ On identity and place making, Mr Price stated:¹⁸

"The evolution of the design for Omokoroa town centre will be influenced by multiple criteria and ongoing conversations and design workshops."

50. In concluding his evidence, Mr Price referred to "the concept masterplan".¹⁹ He confirmed in questioning that the civic building was the least resolved part of the development, and its intent and detail would need to be discussed with the Applicant in more detail. It was intended that the concept of the development would be developed into detailed design.
51. **Mr Lemon** is one of two directors of the Applicant company. He explained that Jace is the umbrella company to several subsidiary companies and owns the site at 404 Omokoroa Road. He described the overall design concept as:²⁰
"..to establish a town centre that includes different scales of retail and office space that will accommodate a variety of businesses, all while maintaining the community focused coastal feel of Omokoroa peninsular. The ultimate mix of tenancies will be market driven and respond to the needs of the community."
52. He explained that the laneways in the development were designed to incorporate the Wairua (spirit) of the neighbourhood, with the laneways coming together at the market place. This would then flow into a bush clad gully which provided cleansing before entry into the harbour. He intended to incorporate cultural and historical stories into the design and had been working with local iwi led by Pirirakau (as mana whenua hapu) on this.²¹ Jace also met with the Council to discuss the proposal prior to lodging the application in May 2020, and had responded to the feedback provided.
53. Mr Lemon confirmed the development would be fully funded by Jace. He outlined Jace's experience in kiwifruit orchard developments in New Zealand, and also told us Jace had provided the same expertise in Japan and China. It had considerable experience in leasing as a landlord and tenant.²² Mr Lemon then outlined his various discussions with Mr Martelli at the Council about the structure planning process being undertaken by the Council at Omokoroa and how that might impact the Jace land. In 2018, Jace indicated to the Council its intentions to develop the commercially zoned land on the property and advised in 2019 and 2020, through various staff and elected members, the more specific design proposal for the town centre.
54. Mr Lemon's evidence also outlined the Applicant's consultation with the wider community. He confirmed Jace had discussed its development plans with Woolworths, noting that as Woolworths already had a presence in Omokoroa through the Fresh

¹⁶ Evidence of Graham Price, paragraph 22

¹⁷ Evidence of Graham Price, paragraph 48

¹⁸ Evidence of Graham Price, paragraph 56

¹⁹ At paragraph 62

²⁰ Evidence of Craig Lemon, paragraph 13

²¹ Evidence of Craig Lemon, paragraph 17

²² Evidence of Craig Lemon, paragraphs 22-34

Choice supermarket, it was not a priority of that company to open another supermarket at Omokoroa. However, Woolworths might revisit that in the future given the projected growth.²³ Mr Lemon confirmed Jace had received interest from a wide range of potential tenants and had met with a housing company and a retirement village developer to discuss their interest. Mr Lemon's evidence was that if resource consent was granted, work would commence on site in August 2021 with site clearance. Stage 1 construction would commence in 2023. He anticipated all stages of development would be complete by 2029.²⁴

55. In response to the Council's supplementary section 42A report, Mr Lemon expressed his view that the Council's suggested timeframes to realise the development were unrealistic. On the Council's points about lack of certainty, Mr Lemon stated "our proposal offers more certainty than anything the Council has. Jace offers a single well capitalised site owner, with large scale construction experience."²⁵ He noted that "Stage 1 is a very large stage and the idea that it would be completed and all activities operational within 3 years is unrealistic."²⁶ Nevertheless, in the end, Jace agreed lapse conditions with the Council and included its own "milestone" condition.
56. Mr Lemon's response to questioning by the Commission confirmed that Jace would prefer to own, build and tenant all buildings. Some interested tenants wished to have an involvement in the design of the building they would be located in, most particularly the childcare centre. The control of the achievement of the design behind the Masterplan would sit within Jace. Mr Lemon also confirmed that the trigger to move to a new stage of development would be demand. For example, if there was high demand for offices, that stage of development would move forward. Jace did not want to be held to the subdivision staging plan, and would need a construction staging plan. Despite this answer, Jace agreed to list the Subdivision Staging Plan in Condition 1. In terms of the question of a supermarket's commitment to the development, Mr Lemon confirmed that neither supermarket chain had committed to the development. Both were concerned about "foot numbers" within the town centre, which would affect their commercial margins. It was Mr Lemon's view that a resource consent would enable Jace to negotiate around that.
57. **Mr Polkinghorne** is an economist and an Associate Director of RCG Limited, an architectural and property firm. Mr Polkinghorne's work for this project was a desk top study only. At the time of writing his evidence, he had not been to the site or to the existing retail areas on Omokoroa Peninsula. Mr Polkinghorne's evidence discussed the economic environment, the economic effects of the development (including on Fresh Choice), the appropriateness of the town centre size and location, the economic matters raised in submissions (including that covered in Ms Knight's evidence for Woolworths) and the section 42A report. Mr Polkinghorne told us there were several other small retail areas on the Omokoroa Peninsula, the largest of which was the Tralee Street commercial area, which included a supermarket (Fresh Choice), a medical centre, a church and a number of small food and beverage/ convenience shops. Mr Polkinghorne outlined the nature of the five separately owned properties in that commercial area. He noted that the recently consented 97-137 Hamurana Rd (the Tralee St commercial area) would, in his view, be unlikely to be fully developed in line with the consented drawings,

²³ At paragraph 47. This was challenged by Woolworths in Ms Knight's evidence and was also the subject of further enquiry by the Council's reporting planner, Ms Price, who was told by Woolworths that it had no intention to build a second supermarket at Omokoroa

²⁴ Evidence of Craig Lemon, paragraph 65.

²⁵ Supplementary evidence of Craig Lemon, paragraph 5

²⁶ Supplementary evidence of Craig Lemon, paragraph 9.

considering some parts would be rescoped for residential use rather than commercial activity.²⁷ He considered this proposed town centre at 404 Omokoroa Road was appropriately located, and the proposed commercial land area and activities were consistent with the market size and other economic studies undertaken for Omokoroa.

58. In response to the evidence tabled by Ms Knight on behalf of Woolworths, Mr Polkinghorne did not accept that the Tralee Street commercial area was a town centre development. It was, in his opinion, more of a 'village centre'. When questioned further on this, Mr Polkinghorne stated that he considered a town centre (from an economic perspective) to comprise the ability for the population to access day to day services and one which provided employment opportunities such as child care, other retail etc. Mr Polkinghorne did not agree that this proposed town centre would create adverse effects on the Tralee Street commercial area that were more than minor, whether or not that site was fully developed in accordance with its recently issued resource consent.
59. Mr Polkinghorne's supplementary statement noted that if a supermarket was not located within this proposed town centre at 404 Omokoroa Rd, it would be detrimental to the vitality of the town centre and it "could mean the centre struggles to become a real heart".²⁸ However, he considered it speculative to consider what might happen if an anchor tenant was not secured as there was no confirmed or zoned alternative site for a town centre or supermarket.²⁹ He considered there would be a likely demand for a full-size supermarket at Omokoroa within the next ten years.³⁰ In answers to questioning on what might happen to this development proposal if a supermarket was not secured, he stated other services would develop, but considered the town centre would be too small for drive through fast food premises.
60. **Dr Beattie** is an urban designer and planner. He is the Deputy Head of the University of Auckland's School of Architecture and Planning and is also the Director of the University of Auckland's Urban Design Programme. Dr Beattie was engaged by Momentum Planning and Design Limited to provide a peer review of the proposed town centre design. He was involved in a number of discussions with the design team over the design approach. Dr Beattie's opinion was that the town centre proposed had a strong land use strategy, providing for a mix of land uses to meet the needs of the community.³¹ He considered the proposal would achieve a very high standard of urban design quality and would positively contribute to the existing, emerging and future Omokoroa urban environment and would be in accordance with the outcomes sought by the District Plan for the Commercial zone.³²
61. Dr Beattie's evidence specifically noted this environment would evolve over the next 10-30 years and beyond. The question of how this town centre would integrate with that growing environment was important. He told us that one of the changes made to the design was the incorporation of the new "High Street" capable of supporting public transport options.³³ The site's location close to the rail corridor to Tauranga would provide options for future rail or other rapid public transport connections to Tauranga City and beyond.³⁴ Dr Beattie noted the focus on creating a strong public edge

²⁷ Evidence of John Polkinghorne, paragraph 31

²⁸ Supplementary evidence of John Polkinghorne, paragraph 11.

²⁹ At paragraph 12

³⁰ At paragraph 13

³¹ Evidence of Dr Beattie, paragraph 8

³² Evidence of Dr Beattie, paragraph 10

³³ Evidence of Dr Beattie, paragraph 17(b)

³⁴ Evidence of Dr Beattie, paragraph 17(c)

throughout the town centre and the need to ensure safe pedestrian movements between the proposed new school to the south of the site, the town centre and the emerging residential catchments in the Omokoroa area.³⁵

62. At our request, Dr Beattie prepared a Memorandum dated 8 March 2021 which considered whether the final proposed conditions of consent (as they stood at that time) would provide a high degree of confidence that the proposal would deliver the urban design outcomes expressed through the application and the design guidelines referenced in the conditions. Dr Beattie confirmed that the plans prepared by Mr Price in support of the application detailed all of the buildings, except for Building O and the proposed residential terraces. Individual site plans, elevation views, roof planes and renders gave direction of design outcomes sought. Materiality was implied within the renders. The plans listed in Condition 1 would form part of the application and be stamped if consent was granted so that it was clear what the Commission had granted consent to. Dr Beattie suggested the design assessment could require that certification be undertaken by an independent, suitably qualified urban designer or architect as part of the building consent process and that this could include a link between Condition 3D (as it was then) and Condition 1. As the details of the childcare centre were not clear, Dr Beattie suggested this building could be limited to single storey. The Memorandum included two suggested changes to consent conditions, which formed part of the consent conditions tabled with the Applicant's Reply and are included within the conditions attached to this decision.
63. **Mr Watts** is an urban designer/ planner employed by Momentum Planning and Design Limited. He holds qualifications in both landscape architecture³⁶ and urban and regional planning. Mr Watts' evidence addressed the town centre design process, the amended proposal, urban design/ bulk dominance effects, visual landscape and landscape effects, submissions and the section 42A reports. Mr Watts was of the opinion that the proposal would provide a positive urban design outcome for Omokoroa and would have low landscape and visual effects. He confirmed that the preliminary town centre design discussed with the Council in 2019 was not prepared by Momentum. Momentum became involved in 2020 when a Masterplan was developed with input from all of a multi-disciplinary project team and was then independently reviewed by Dr Beattie. The same process occurred in responding to the Council's section 92 request, which included several changes to the design.
64. In summarising the design concept, Mr Watts stated:³⁷
"The overall design concept is to establish a town centre that includes different scales of retail and office space to accommodate a variety of businesses. The ultimate mix of tenancies will be market driven and respond to the needs of the community. The buildings will be designed to be used flexibly throughout their design life."
65. Mr Watts confirmed that the design was changed in response to submissions lodged following public notification. The key changes were the redesigning of Building N to provide a larger setback and remove the bulk of the building from the adjacent Kaimai Views residents; the provision of a second right hand turn into the town centre from Omokoroa Rd to reduce the number of vehicles potentially taking a short cut through Kaimai Views; an increase in the size of the market area to accommodate larger events;

³⁵ Evidence of Dr Beattie, paragraph 19(e)

³⁶ In questioning, Mr Watts confirmed he was not presently a member of the New Zealand Institute of Landscape Architects

³⁷ Evidence of Thomas Watts, paragraph 25

an increase in the size of the civic building (Building I) to provide greater flexibility for larger tenancies and to create multi-use potential; the production of a landscape plan and the relocation of bus stops within the town centre to provide better circulation.³⁸ In questioning, Mr Watts confirmed there is no urban design panel in Tauranga, and agreed there would need to be a mechanism to review all urban design matters associated with the development.

66. **Mr Hight** is the Engineering Team Leader at Lysaght Consultants. He led the team responsible for preparing the engineering design for the town centre development. Mr Hight noted that the site layout was designed by others, with Lysaght's input limited to the engineering and servicing design required to enable that layout. His evidence addressed earthworks and retaining walls, roading vertical geometry, design of the stormwater/ wastewater / potable water systems, submissions and the section 42A reports. In his evidence, Mr Hight advised that the proposed earthworks are a predominantly fill operation, with approximately 113,000m³ of earthworks needed to be imported to site to complete the works. He noted that this volume was higher than the volume indicated in the application as notified (approximately 50,000m³) and was realised when the section 92 response was being prepared by the Applicant. He considered the 113,000m³ volume could be achieved in one earthworks season, but this would depend on staging. He considered there would be no additional effects arising from the additional volume of earthworks. Overall, Mr Hight considered the detailed design and construction of the site could be carried out in accordance with the Council's best practice subject to recommendations contained within his engineering report and the section 92 response. Effects of servicing and earthworks could be adequately mitigated on the basis of those engineering reports.
67. **Mr Carlisle** is a Principal Transportation Engineer at Stantec NZ. His evidence covered the existing transportation environment, the proposed vehicle access strategy, the assessment of traffic and transportation effects including mitigation, transport issues raised in submissions and the section 42A report. He described the current roading environment, noting the new residential subdivisions in the area of the town centre and the local roading network developed to support those. He told us the Council has been undertaking upgrading and widening of Omokoroa Rd in recent years and the addition of a shared pedestrian and cycling path has been established on the western side of the road. It was intended that the main street of this town centre development would link to a new roundabout located adjacent to Flounder Drive, that roundabout having been anticipated and included in the Omokoroa Structure Plan Rooding Schedule for the area. Other roading connections proposed at the time of Mr Carlisle writing his evidence³⁹ were a left turn slip lane from Omokoroa Rd to enable vehicles to exit directly off Omokoroa Rd; an access providing for all movements except a right turn out at the northern end of the town centre; a local road link to Kaimai Views subdivision; and the provision of additional land to the west to provide possible future connections to Prole Rd.
68. Mr Carlisle's first statement and his supplementary provided a detailed response to the points of difference between his assessment and that undertaken by Ms Fosberry for the Council. We address this later in our decision in our discussion of traffic effects.
69. **Mr Coles** is a Director and Planner for Momentum Planning and Design Limited. His evidence covered the site context, planning instruments and a statutory planning

³⁸ Evidence of Thomas Watts, paragraph 27

³⁹ Some of these roading proposals changed as the hearing progressed and are outlined in more detail in our discussion of traffic effects

assessment, the process of town centre design, community consultation and submissions, the section 42A report and conditions. He confirmed that the proposal includes a Design Guidelines document and the application is supported by an architectural plan set. Mr Coles described the zoning context in his evidence, explaining that the site comprises approximately half of the Stage 2 Commercial Zone allocated to the Omokoroa urban growth area. The balance of that commercially zoned land had been consented for a Special Housing Area (Kaimai Views) north of the site and a future school south of the site. While there are no commercial to residential boundary controls that apply to the land, the Applicant had taken account of those interfaces in creating setbacks and landscaping to achieve good design outcomes.⁴⁰

70. Mr Coles explained the District Plan's requirement for a town centre plan to be prepared by the Council, with a number of anticipated design outcomes. The proposed town centre had been designed to be consistent with those design outcomes, with the exception of the additional access to Omokoroa Rd. He told us that the Omokoroa Stage 2 Structure Plan, made operative in 2010, included a two lane roundabout to the Omokoroa Town Centre site along with a four lane road between Prole Rd and the town centre roundabout. He understood this was later amended to a single lane roundabout and a two lane road from Prole Rd to the town centre.⁴¹
71. Mr Coles explained that the Western Bay of Plenty District and Omokoroa Growth Area falls within the Tauranga environment in the NPS-UD and is a Tier 1 urban environment. In questioning, he confirmed that he considered this project was "infrastructure ready" but could not confirm if there were any urban requirements in the NPS-UD that needed to be accomplished.
72. In order to achieve the development capacity sought under the NPS-UD attention to a number of matters is required when considering resource consents in a Tier 1 urban environment⁴² – and a town centre zone specifically (acknowledging that this is not yet formally such a zone).
73. Objective 6 specifically requires that:

Local authority decisions on urban development that affect urban environments are:

- (a) *integrated with infrastructure planning and funding decisions; and*
- (b) *strategic over the medium term and long term; and*
- (c) *responsive, particularly in relation to proposals that would supply significant development capacity.*

74. Companion Policy 6 requires that:
When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

⁴⁰ Evidence of Richard Coles, paragraphs 20-22

⁴¹ Evidence of Richard Coles, paragraphs 26-27

⁴² NPS-UD Appendix: Tier 1 and 2 urban environments and local authorities - Table 1

- (a) *the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement;*
 - (b) *that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*
 - (i) *may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
 - (ii) *are not, of themselves, an adverse effect*
 - (c) *the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1);*
 - (d) *any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity;*
 - (e) *the likely current and future effects of climate change.*
75. Furthermore, under NPS-UD Part 3: Implementation, local authorities are required to provide sufficient development capacity over the 30-year planning horizon in a plan-enabled, infrastructure ready, suitable and demand expected way.
76. Technically that is not required of us in this instance, being a resource consent. However, in view of the fact that this application is proposed as a town centre, and is likely to be rezoned accordingly in due course if granted, we have turned our minds to those specifications as if it were a plan change. Having done that, and in light of the evidence presented by the Council and the Applicant, we are satisfied that the application would meet those requirements.
77. Mr Coles otherwise addressed points of difference between the Applicant's and Council's experts in the Section 42A reports and provided us with his comments on draft conditions.
78. Finally, we record that while the Applicant prepared a noise assessment through its section 92 response, the author of that report, Earcon Acoustics, did not prepare evidence on it or appear at the hearing.

Submitters

79. **Ms Shepherd** is the Environment Manager for Pirirakau. Pirirakau supported the town centre proposal. It had a direct relationship with Mr Lemon and believed he had progressed this application with good intentions to deliver the project. Ms Shepherd was of the view that this development could enable Omokoroa to become a destination in itself, particularly given the inclusion of a hotel/ motel. Ms Shepherd confirmed Pirirakau had signed a Memorandum of Understanding (MOU) with the Applicant. While there had in the past been some tension between iwi and settlor families, iwi now wanted to restore the relationship. In questioning, Ms Shepherd advised that the MOU addressed progress with the civic centre, and its future planning and fit with the needs of the community. She also mentioned a possible waka launching facility at the Omokoroa Domain and the provision of a community meeting space.

80. **Mr McCabe** presented evidence on behalf of Omokoroa Residents and Ratepayers Association (ORRA). He told us that ORRA had hosted a public meeting with the Applicant in Omokoroa on 22 June 2020 to allow the Applicant to explain its proposal and to receive community feedback. This meeting was attended by over 220 people and, according to Mr McCabe, feedback was “overwhelmingly in support of the proposal”.⁴³ Residents raised a number of key points for consideration, that Mr McCabe understood had now been responded to by Jace. These included points raised by Kaimai Views residents about amenity impacts.⁴⁴ He noted that the proposed town centre would be centrally located on the Omokoroa Peninsula and well located to existing and future residential developments. It would be readily accessible for pedestrians and cyclists. At some 470 metres in length, the frontage of the town centre along Omokoroa Rd would be a clear statement of its location. The proposed development was next to a future school, contributing to patronage of the town centre and its vibrancy. The community wanted a town centre that was “village-like” and the urban design delivered on that.
81. Mr McCabe told us that the Omokoroa Stage 2 Structure Plan had included 12ha of Commercial zoned land for a town centre, including this site. That community expectation had been created through that structure planning process. ORRA also supported the potential for employment opportunities created by the town centre development. The town centre would contribute to the development and self-sufficiency of the Omokoroa community.⁴⁵
82. **Ms Henderson** presented evidence on behalf of the Omokoroa Art Group. She told us this group is excited by the development but felt the proposed town centre needed to meet more community needs and be a little less focused on retail. Community groups have been using the old Omokoroa library for their activities but there were too many interested groups for those premises. The Omokoroa Art Group is concerned the civic centre and the marketplace are not big enough to properly service the community. In questioning, Ms Henderson told us she was unclear how the marketplace would integrate with other plans in the area, including the future development of State Highway 2. Access to the proposed marketplace was regarded as difficult.
83. **Ms Fisher** is a town planner by profession but gave evidence in her personal capacity as a local resident. She generally supported the proposal but was concerned about the design of the buildings and the town centre generally and the transport network. On the first point, she noted the proposal did not give adequate effect to a number of the design guidelines submitted with the application and omitted reference to principles of sustainable design. She provided us with a helpful table setting out the problems she saw with the urban design, considering its layout to be too car dominant. She agreed active frontages along the main streets were essential for creating attractive and welcoming spaces and providing for passive surveillance. She supported Mr Price’s comments on Buildings G and H having a northerly aspect with front decks or yards to activate the street, but her support was provided on the basis that this design feature is shown on the plans referenced in Condition 1 or similar. Regarding sustainable design, Ms Fisher considered that more work could be done on stormwater runoff and management systems to enable stormwater to be captured and used in landscaping. The design principles did not include sustainable built form principles such as incorporating renewable energy solutions. Without this, she considered the proposal to be inconsistent with the NPS-UD Objective 8.

⁴³ Evidence of Mr McCabe, paragraph 6

⁴⁴ Evidence of Mr McCabe, paragraphs 5 and 6

⁴⁵ Evidence of Mr McCabe, paragraphs 13-15

