

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL
INDEPENDENT COMMISSIONERS HEARING NO. CH21-1
HELD IN THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA
ON MONDAY, 8 MARCH 2021 AT 9.30AM (DAY 1 OF 2)**

1 PRESENT – COMMISSION OF INDEPENDENT COMMISSIONERS

Commissioner Jan Caunter (Chairperson), Commissioner David Hill and Commissioner David Mead (the Commission)

2 STAFF IN ATTENDANCE

R Davie (Group Manager Policy Planning and Regulatory Services), P Martelli (Resource Management Manager), J Hextall (Resource Management Contractor), A Curtis (Compliance and Monitoring Manager), A Price (Senior Consents Planner), K Lawton (Senior Land Development Specialist), and B Clarke (Senior Governance Advisor)

EXTERNAL ATTENDEES [ON BEHALF OF COUNCIL]

Present Days 1 and 2:

Ms. Mary Hill, (Cooney Lees Morgan), Mr. Lee Dove, (Harrison Grierson), Ms. Ann Fosberry, (Aurecon NZ Limited).

Present Day 2 only:

Mr. Morné Hugo, (Boffa Miskell Limited).

COUNCILLORS PRESENT

Deputy Mayor J Scrimgeour, Cr. G Dally, Cr. J Denyer, Cr. M Grainger, and Cr. M Murray-Benge

OTHERS PRESENT

Five Members of the Public, one Member of the Media (Bay of Plenty Times), and as listed in the minutes.

COMMUNITY BOARDS PRESENT

Nil.

3 APOLOGIES

Nil.

4 DECLARATIONS OF INTEREST

Nil.

5 PUBLIC EXCLUDED ITEMS

Nil.

6 HEARING BEFORE INDEPENDENT COMMISSIONERS PANEL [DAY 1 OF 2]

[RC11997L & RC2996S] JACE INVESTMENTS LTD, 404 ŌMOKOROA ROAD, ŌMOKOROA: APPLICATION FOR LAND USE AND SUBDIVISION CONSENT TO ESTABLISH A MIXED-USE COMMERCIAL TOWN CENTRE

Introduction and Opening of Hearing

Commissioner Caunter (as Chairperson), opened the hearing and welcomed all those present. She outlined the purpose of the hearing and introduced herself and the other two Independent Commissioners forming the Commission (the Commission), briefly outlining their backgrounds and areas of expertise. On behalf of all three Commissioners (the Commission), she confirmed that the Commission was independent and had no known conflicts of interest with regard to the application before them.

7 REPORTS

Commissioner Caunter noted that the following reports had been received by the Commission, read, and the information noted:

- 7.1 Full Application – JACE Investments Ltd – 404 Ōmokoroa Road, Ōmokoroa – RC11997L and RC2996S;
- 7.2 Senior Consent Planner's Report – JACE Investments Ltd – 404 Ōmokoroa Road, Ōmokoroa – RC11997L and RC2996S;
- 7.3 Summary of Submissions – JACE Investments Ltd – 404 Ōmokoroa Road, Ōmokoroa – RC11997L and RC2996S;
- 7.4 Initial Section 92 Request for Further Information – JACE Investments Ltd – 404 Ōmokoroa Road, Ōmokoroa – RC11997L and RC2996S;
- 7.5 Section 92 Request for Further Information Following Close of Submissions – JACE Investments Ltd – 404 Ōmokoroa Road, Ōmokoroa – RC11997L and RC2996S.

Commissioner Caunter advised that the Commission had viewed drone footage showing the site and its immediate surrounds, as provided by Council, and had read all documentation 'lodged to date'. Pre-circulated documentation was identified as follows:

Tabled Items circulated prior to the Hearing

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| Tabled Item (1): | Letter dated 23 October 2020 from Julie Bevan, Policy and Planning Manager, Bay of Plenty Regional Council (Submitter), notifying Withdrawal of Submission. |
| Tabled Item (2): | Letter dated 16 February 2021 from Alec Duncan, Planner of Beca Limited on behalf of Fire and Emergency New Zealand (Submitter). |
| Tabled Item (3): | Email dated 18 February 2021 from Max Kehoe (Submitter). |
| Tabled Item (4): | Commissioner Minute No.1 dated 1 March 2021. |
| Tabled Item (5): | Memorandum of Understanding dated 17 July 2020 between JACE Investments Limited and Pirirākau Incorporated Society (the Parties), provided 2 March 2021 by Pirirākau (Submitter) |
| Tabled Item (6): | Statement of Evidence dated 2 March 2021 from Kay Panther Knight on behalf of Woolworths New Zealand Limited (Submitter). |
| Tabled Item (7): | Statement dated 3 March 2021 from Bruce McCabe on behalf of Ōmokoroa Residents and Ratepayers Association Inc. (Submitter). |
| Tabled Item (8): | Commissioner Minute No.2 dated 3 March 2021. |
| Tabled Item (9): | Email dated 4 March 2021 from Sinead Nicholls (Submitter). |
| Tabled Item (10): | Memorandum of Counsel dated 4 March 2021 from Mary Hill of Cooney Lees Morgan for the Consent Authority (Western Bay of Plenty District Council). |
| Tabled Item (11): | Memorandum of Counsel dated 5 March 2021 from Vanessa Hamm, Legal Counsel on behalf of JACE Investments Limited (Applicant). |

- Tabled Item (12): Letter dated 5 March 2021 from Allison Arthur-Young of Russell McVeagh on behalf of Woolworths New Zealand Limited (Submitter), in response to Commissioner's Minute No.2.
- Tabled Item (13): Commissioner Minute No.3 dated 5 March 2021.
- Tabled Item (14): Supplementary Report dated 5 March 2021 from Council's Reporting Officer / Author of the Section 42A report.
- Tabled Item (15): Draft Conditions of Consent dated 8 March 2021, prepared by Council's Reporting Officer.

Directions for Participants

Commissioner Caunter addressed the Hearing as follows:

- The Commission's consideration of drafts of Conditions did not, in any way, signify that consent would be granted to the Applicant, but had been provided to assist the Commission in its understanding of how any effects of the application might be mitigated or controlled. Submitters, in particular, should note this. The Commission had many questions in relation to conditions viewed 'to date', and would explore these with witnesses throughout the Hearing.
- As the Panel had pre-read evidence and legal submissions, expert witnesses should not read their evidence or reports in full, but may highlight key evidence and/or summarise their evidence or reports.
- The Applicant had already been 'granted leave' to respond in writing to planning evidence tabled the previous week, (outside the Hearings timetable), by Kay Panther Knight on behalf of the Submitter: Woolworths NZ Limited.
- Lay Submitters wishing to present evidence should have hard copies available to be tabled on their behalf. All lay evidence may be read out. However, the Commission would not now accept any late evidence in an 'expert form' from any Submitter. The reason for this was that it would prejudice the presentations from other parties.
- Before the opening legal submissions and the Applicant's witnesses moved to their evidence, it was requested that the Applicant nominate a person to provide a brief overview of the Application as it now stood, with references to the updated plans that had been tabled at the start of the hearing that morning.

Hearing Procedure and Site Visit

Commissioner Caunter outlined the following:

- Cross examinations would not be permitted. The Commission would ask questions of Legal Counsel's, expert witnesses, submitters and staff for clarification. Any other questions should be put through the Chairperson, however, this was not encouraged as the Commission wished to keep to a standard order for the Hearing.
- The Commission had undertaken its own separate and brief site visits prior to the Hearing commencing. The Commission intended to adjourn the Hearing at approximately 3.00pm that afternoon to undertake a further site visit together, viewing the nearby subdivisions and Tralee shopping area.
- The anticipated order of evidence and timetable for the Hearing was outlined. The Commission accepted that the Hearing was a fluid process, continually being adapted to fit the needs and constraints of the situation and questions of clarification. Therefore, some flexibility was required to accommodate the needs of all parties. The Commission would discuss progress as it worked through the evidence and would endeavour to ensure that Submitters who had been scheduled to be heard from 2.00pm would be heard at the scheduled times.

- It was established that there were no Submitters present who had not already indicated that they wished to speak. There being no others, the order of the Submitters' Schedule to Speak would be followed.
- Housekeeping and Emergency Evacuation Procedures were explained.

Legal Issues Identified by the Commission

Commissioner Caunter advised that, in the course of the Commission's reading, it had identified some legal issues it would appreciate responses on, from the Applicant and the Council in the course of their presentations. These were as follows:

1. The Application related to Lot 1, and that had clearly been identified throughout all documents received so far, but did not appear to include a 'balance Lot 7'. Suggested conditions requiring, for example, any additional parking on a 'balance lot' identified, as required, under a parking review were not seen as mentioned, or the identification and the protection of a future link to Prole Road appear to raise issues of the scope.
2. Effects of a link road through to Prole Road had not been notified to Prole Road landowners, although this had been mentioned in some of the more recent documentation.
3. The Section 92 response and the evidence discussed the possibility of a cinema and a pool at the Town Centre. It was not clear that these were included within the Application as notified, and there would be effects associated with both.
4. The Council had suggested that further traffic modelling be undertaken prior to consent being granted. The Commission must make a decision based on the evidence that was heard and all assessments lodged. The Commission requested comment as to how any further modelling could happen given that the Hearing had commenced, and the statutory time frames.

Introduction of Councillors Present

Commissioner Caunter welcomed those Councillors present and introduced them for the information of attendees as follows:

- Deputy Mayor John Scrimgeour;
- Cr. Grant Dally;
- Cr. James Denyer;
- Cr. Murray Grainger;
- Cr. Margaret Murray-Benge.

At the invitation of the Commissioner, Ms. Sandra Conchie, (Journalist, Bay of Plenty Times), introduced herself for the information of attendees.

Appearances for the Applicant

At the invitation of Commissioner Caunter, Ms. Vanessa Hamm, Legal Counsel for the Applicant, introduced the following persons, noting their area of expertise or role in the Hearing:

1. Ms. Vanessa Hamm Partner, (Holland Beckett Law), Legal Counsel for the Applicant;
2. Mr. Graham Price Architect, (First Principles Architects) – Architectural evidence;
3. Mr. Craig Lemon Director, (JACE Investments Limited) – the Applicant;
4. Mr. John Polkinghorne Associate Director (RCG Limited) – Economics evidence;
5. Dr. Lee Beattie Urban Designer & Planner - Urban Design Peer Review evidence;
6. Mr. Thomas Watts Urban Designer & Planner (Momentum Planning & Design Limited) – Urban Design and Landscape evidence;

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|----|-------------------|---|
| 7. | Mr. Daniel Hight | Engineering Team Leader (Lysaght Consultants) – Engineering evidence; |
| 8. | Mr. Ian Carlisle | Principal Transportation Engineer, (Stantec NZ) – Traffic evidence; |
| 9. | Mr. Richard Coles | Planner, (Momentum Planning & Design Limited) – Planning evidence. |

Attendance in support of the Applicant (not providing evidence):

- Ms. Laura Murphy Solicitor (Holland Beckett Law);
- Ms. Hayley Larmen Business Manager, Southern Orchards Limited (JACE Investments Limited Group)

Submitters Scheduled to Speak from 2.00pm (Day 1)

Submitters in Support

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| 1. | Dr. Bruce McCabe | Ōmokoroa Residents & Ratepayers Assoc. |
| 2. | Ms. Julie Shepherd | Pirirākau Incorporated Society. |

Submitter in Opposition

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|----|---------------------|---|
| 3. | Ms. Robyn Scrimshaw | Individual Submitter (<i>part only attendance</i>). |
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Submitters 'Not Specified / Conditional / Others'

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| 4. | Ms. Alison Henderson | Ōmokoroa Public Art Group. |
| 5. | Ms. Ailsa Fisher | Individual Submitter. |

Introduction of Council Officers / External Persons in Support of Council

At the invitation of Commissioner Caunter, Anna Price (Senior Consents Planner), introduced the Staff and external persons in support of Council as follows, and noted their expertise or role in the Hearing:

Council Staff

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| 1. | Ms. Rachael Davie | Group Manager Policy Planning and Regulatory Services – responsible Group Manager (<i>present Day 1</i>); |
| 2. | Ms. Anna Price | Senior Consents Planner – Author, Section 42A report; |
| 3. | Mr. Phillip Martelli | Resource Management Manager – Resource Management Structure Plan; |
| 4. | Mr. Jeff Hextall | Resource Management Contractor – Structure Plan; |
| 5. | Ms. Alison Curtis | Compliance and Monitoring Manager – Noise Sensitive Activities; |
| 6. | Mr. Ken Lawton | Senior Land Development Specialist – Engineering; |
| 7. | Ms. Barbara Clarke | Senior Governance Advisor – Minutes of Hearing. |

External Persons in Support of Council

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| 1. | Ms. Mary Hill | Partner (Cooney Lees Morgan) - Legal Counsel for Consent Authority; |
| 2. | Mr. Lee Dove | Planning Manager-Tauranga (Harrison Grierson) – Independent Planning Advisor; |
| 3. | Ms. Ann Fosberry | Traffic and Road Safety Consultant, Aurecon NZ Limited) – Prepared Peer Review of Traffic Assessment on behalf of Council; |
| 4. | Mr. Morné Hugo | Associate Partner / Landscape Architect (Boffa Miskell Limited) (<i>present Day 2 only</i>). |

In response to a request from Mary Hill, Legal Counsel, Commissioner Caunter identified those Staff and experts in support of Council, who should be in attendance throughout the Hearing and those Staff who could be on 'standby', but be available to be 'called for questioning' if required.

1. EVIDENCE FOR THE APPLICANT

a) **Ms. Vanessa Hamm**, Partner, (**Holland Beckett Law**), Legal Counsel appearing on behalf of JACE Investments Limited (the Applicant), addressed the Commission as follows:

- A. In relation to Tabled Item (6), a Statement of Evidence dated 2 March 2021 from Kay Panther Knight on behalf of the Submitter Woolworths NZ Ltd. This information had been unexpected. As a result, there would be Supplementary Evidence provided in response from the Applicant's expert witnesses, being Mr. Coles, Mr. Polkinghorne, Mr. Lemon and Mr. Carlisle.
- B. Tabled Item (16), Updated Maps & Plans titled 'Ōmokoroa Town Centre JACE Investments Ltd Design Presentation' dated 4 March 2021, had been tabled by the Applicant that morning. As there had been several versions of plans and the Commission had requested an update in relation to this tabled item, Mr. Price would provide a brief overview for clarity.

Ms. Hamm then Tabled Item (17) titled 'Legal Submissions on behalf of JACE Investments Limited' dated 8 March 2021, and addressed the Commission.
Scope of Legal Submissions (Tabled Item 17)

- Introduction;
- The issues and case for the Applicant;
- Background;
- Evidence for the Applicant;
- Conclusion;
- Table of changes to conditions discussed in Statements of Evidence dated 19 February 2021.

Applicant's Response to Four Legal Issues Identified by the Commission

Ms. Hamm addressed the list of four matters raised by the Commission at the outset of the Hearing, suggesting that she would address matters identified by the Commission as Issues 1, 2 and 3 during the provision of evidence throughout the Hearing. These matters related to the relationship of the 'balance' lot to the Application; the link road to Prole Road; and the issue of the cinema and pool.

The matter raised by the Commission, identified as Issue 4, related to the suggestion that further traffic modelling be undertaken before the decision, and any process issues relating to that. She advised that Mr. Carlisle had addressed traffic modelling and, in his professional opinion, further modelling was not necessary.

In terms of process, her interest was to ensure that there was no prejudice to the Applicant as a result of a request for further information, or suggestions that further information was required, some of which had come at an extremely late stage in the process'; as recently as Friday, 5 March 2021.

She requested that the Commission 'bear in mind' that the s42A report had been circulated by Council within the statutory timeframe, and that Council was legally entitled to deliver the s42A report 15 working days before the Hearing commenced. There was nothing unlawful about that. However, she advised that the Applicant had requested that the s42A report be provided earlier than that to enable issues to be responded to in a more flexible way, rather than being confined to one week.

On behalf of the Applicant, Ms. Hamm suggested that if there were any areas where the Commission considered that further information was needed, that the Applicant be afforded an early opportunity for that to occur. Should the information be fundamental to

a decision on whether to grant resource consent or not, then the process would be to adjourn the Hearing to enable that further information to be produced prior to the Commission making a decision. If the information was not fundamental to a decision on whether to grant resource consent or not, but would be helpful to have in order to settle the final details of the consent, then the process option would be to issue an Interim Decision indicating the granting of consent, and setting out the further matters to be addressed before conditions of consent were finalised.

Ms. Hamm's submission was that there was sufficient information before the Commission in terms of the District Plan framework that the Applicant was working within, and that the conditions, which had been proposed appropriately dealt with any issues. However, should the Commission find itself in the position where it considered that further information was warranted, 'in light of' the way some of those issues had been delivered to the Applicant, it was requested that the Applicant be afforded those opportunities.

Ms. Hamm responded to questions as follows:

- In terms of the intention of the Commercial zoning that had been applied, that zoning was originally much larger at approximately 12 hectares (12 ha), as discussed in Mr. Cole's evidence.
There was Commercial zoning in Ōmokoroa, and the provision for a Master Plan. As to which part of the 12 ha that Master Plan may cover, or if it was intended over the whole 12 ha was arguable, if "turning the clock back". As of today, the sites either side had been developed for a Special Housing Area (SHA), and had been acquired by the Ministry of Education for a school, which had the effect of "shrinking" the Commercial zoning area.
- In relation to certainty around the major aspects of the project, for example, the supermarket and hotel, and the 'lapse provision' she noted the following:
 - in the event that major aspects of the project were not secured, effectively voiding the consent, the Council seemed to have constructed the spectre of uncertainty. Then in response, had suggested some "quite unachievable staging or lapse conditions". For example, stage 1 was extremely large, so the idea that the Applicant would deliver all of those activities and that they would be operational within three years, whilst navigating the further Council consenting processes required, was unrealistic.
 - If Council's concern was that there was, ultimately, no bigger tenant secured, then the 'lapse' was the mechanism by which the consent would "fall away".
- In terms of when consent would be 'given effect to', as Stage 1 was a large part of the consent, it seemed likely that once it was 'given effect to', then full consent would be 'given effect to'. However, it was subject to Council's approach to issuing consents, and it should be noted that different councils had different approaches. The proposed conditions suggested that Council may not have regarded consent being 'given effect to' for Stage 1 as consent being 'given effect to' for the whole consent, because there was a further ten year 'lapse' period. Council staff and Mr. Lemon could provide further clarification, if required. Ordinarily, she would expect that "the construction works" would start 'giving effect to' the consent once certain tenancies were secured.
- This was a Commercial zone. The activity proposed was entirely appropriate for Commercial zoning. It was not usual for Hearings to enquire into prospective Commercial tenancies for office buildings in a Commercial zone, nor for land developers to have to produce evidence of likely demand of residential sales of houses in a Residential zone. The Commission was cautioned against too much detailed enquiry into that issue, as, from her perspective, case law was clear that the issue of liability was for the Applicant, or Consent Holder, once consent was granted. Mr. Lemon, in his Supplementary Evidence, would confirm that he had not attempted negotiations at this time, as his focus was to gain resource consent. That approach

was appropriate and justified within the context of the Resource Management Act 1991 (RMA).

- In terms of reliance on the Master Plan, that building uses would eventuate, it was a risk getting into a high degree of speculation. Of course, there was evidence that a supermarket would be justified within the next few years. The conditions of consent were there to ensure that the product would be delivered.
- It was her submission that there was no “gap” in the plans that would require the Commission to turn its attention to, or default back to the tests in Part 2 of the RMA. The piece of information that the plan referred to, did not exist in the District Plan as a Master Plan. However, it was by no means not clear or defined that the Master Plan itself would be in the District Plan. From the Applicant’s perspective, the District Plan was incomplete. That was her initial response, but she would ask Mr. Coles to address the matter when giving his evidence.
- In terms of Council producing a Master Plan for the site, her assessment after studying the rule in the District Plan, was that items would be articulated more visually in a Master Plan. That may be ‘at odds’ with Council’s Compliance and Monitoring Manager, Ms. Curtis, who considered that a Master Plan may have included further acoustic standards.
She did not agree with the District Plan in that way, as the District Plan already included some standards, including acoustic. Either way, a Master Plan was never done.
- The absence of a Council Master Plan would not be likely to cause an issue with resource consent. The Applicant had prepared a Master Plan that endeavoured to follow the itemised matters in Section 19.5 of the District Plan as closely as possible. The accesses on Ōmokoroa Road were a good example of that, because the District Plan only referred to one access, so the original Master Plan only provided an additional left turn out at the northern intersection. It was only after the application was lodged that the right and left turn in were added. The reason the Master Plan only had the left turn out originally, was that the Applicant was endeavouring to adhere, as closely as possible, to the District Plan. From her perspective, the Applicant had taken that task on in the proposal itself.
- In relation to the Gateway Tests, Section 19.5 of the District Plan related to the development of the Commercial area and Master Plan for a Commercial zone, and set out what a comprehensive Development Plan should include, being such as items that may be articulated visually on the plan. Then, in addition to the standards in 19.4.1, performance standards shall apply. There was one about access to Ōmokoroa Road shown on the roundabout, being by way of the Structure Plan. That was the trigger for Non-Complying Activity Status. This was included in the objectives and policies of the District Plan. The case law that dealt with the issue of whether to look at the objectives and policies ‘as a whole’, or whether one could be selected and be relied on that to prove whether it was contrary. She could address this more fully in her Right of Reply, however, her submission was that the weight or case law on the issue was that the objectives and policies should be considered ‘as a whole’. Certainly, that would be consistent with the approach that the Court of Appeal took with the Davidson case, when it addressed the matter of a peer appraisal and the objectives and policies ‘as a whole’. She would clarify that during the Hearing.
- In relation to the amendments to the Master Plan since lodgement, and the requirement for additional fill, Mr. Hight and/or Mr. Cole would provide more information in response during the Hearing.
- In relation to a new set of plans, specifically Sheet 2.1.10b, Building N in relation to an additional third floor, Ms. Hamm would provide a response during the Hearing.

- In relation to whether the Bay of Plenty Regional Council (BOPRC) was aware of the requirement for additional fill before it had withdrawn its submission, it was her submission that BOPRC had been aware of that information, as its submission had been withdrawn after the Section 92 response. The Section 92 response was the mechanism by which the changes to the application were made. The BOPRC submission had revolved around two issues, being the structure planning process and transport. BOPRC had made some comments to the Western Bay of Plenty District Council (WBOPDC) around issues of concern.
- In relation to Mr. Carlisle's professional opinion about 'rat running' and narrow streets, it was noted that the comments had been made from a "client perspective". Mr. Carlisle would provide further perspective and response during the Hearing.

Matter raised by Commission

Commissioner Caunter addressed the Hearing and raised the matter of the intent of lapse dates for stages in development. She invited further consideration around this aspect of the application during the course of the Hearing.

10.50am The Hearing adjourned.
11.05am The Hearing reconvened.

- b) Mr. Graham Price**, Architect / Director (**First Principles Architects**), appeared on behalf of the Applicant. He had pre-circulated evidence dated 19 February 2021. He addressed the Commissioners and spoke to both his pre-circulated evidence and to a Powerpoint Presentation, which included Town Centre plans and artistic 'renders' (visual images) of proposed buildings and amenities.

Scope of Statement of Evidence of Graham Price (Pre-circulated)

- Introduction;
- Code of Conduct for Expert Witnesses;

The evidence covered specific aspects of the concept design for the proposed Town Centre as follows:

- Vision;
- Context and Site Analysis;
- Refinement of the Concept Masterplan;
- Design Narrative;
- The Section 42A report; and
- Conditions;
- Conclusion.

Mr. Price responded to questions as follows:

- In reference to Building N on the plan, the word "additional" should be crossed out to avoid confusion. Building N always was a three story building. That had not changed.
- In terms of level differences of building platforms once earthworks were done, in particular around Ōmokoroa Road, there would be 'cut and fill' to meet requirements such as stormwater flow paths and various other things across the site. There were multiple sections in the resource consent application, whether they were architectural, landscape or engineering drawings, but in terms of defining main vehicular roads and main pedestrian access, care had been taken to ensure they were all accessible. Fill

tended to be added to ensure that the gradient of a road was appropriate, and accesses could be achieved.

- The hotel building on the corner of the main roundabout sat below the level of the road. It was a three-story building with excavations made for an underground carpark. When arriving at the main roundabout, the hotel building appeared to be a two storey building, but one level sat below the road. When entering at the lower level, it would appear to be a three-story building with a basement.
- The supermarket level had underground car parking. It was not far from Ōmokoroa Road. There was a landscape strip and an embankment that dropped down to the retail tenancies and the supermarket level, which were similar.
- The footpath from the western side of the housing development on the other side of Ōmokoroa Road, (Anglers Way), was almost in line with the southern edge of Building N, where the single lane slip road was. Coming past the roundabout, as shown on the Concept Landscape Plan, there was single lane access.
- The bus stops were located within the town centre, past the main roundabout on the right hand side of the road by the hotel building (between Buildings A and D on the master plan).
- The intention was for buses to come in off the main roundabout, go around the smaller roundabout to drop off and pick up passengers, then leave the area.
- In terms of the operation of the planned bus route on the site, discussions had not been held with bus operators at this early stage. The Principal Transportation Engineer, Mr. Ian Carlisle, would be able to provide further clarification on this matter.

Mr. Richard Coles, Planner, responded to questions as follows:

- With regard to plans for the layout or arrangement of buildings and open spaces on the education site, the Ministry of Education had not provided detailed design plans yet.
- Discussions had been ongoing with the Ministry of Education for eight months. He understood the school would be a combined primary and secondary school.

Mr. Price further responded to questions as follows:

- In relation to Building B; coming off the roundabout into the Town Centre, at ground level the appearance was that of a two storey building; then the road began to drop about half a level as it went down. On the main street, most of that was semi-basement. The northern corner of Building D would be above the street, and there were two levels above that, the upper two floors, which would be transparent.
- In terms of the inside car parking for the supermarket; there would be extracts to take exhaust fumes up through the roof.
- The team had carefully considered where the service yard should be. It was clear this should not be on the main street. There were two entries on the south side through the glazed atrium. That was considered the appropriate side, as Ōmokoroa Road was the main road. It was acknowledged that there were residents across that road, but this was also the most robust 'activated' area for vehicles. It was proposed to mitigate by layering with a 3m high decorative screen which would form the fence, and cladding. When looking at the service yard itself, most of the yard would be screened and only the gates would be permeable. It would not be solid grey concrete, as a cladding would be chosen to make that part of the building appealing. It would likely

be timber or another product, but details had not been finalised at this time. A landscaping strip was also suggested.

- In relation to Building N, there was a cross section showing the height relationship with the adjoining property, and that was included in the resource consent application. The bulk of the building had not been changed. However, the building had been 'pulled back' and the top level set back now. That information had been provided in the Section 92 information.
- In terms of the potential Civic Building design appearing "less resolved", they would work closely with the client, as the functions of interior spaces and design investigations were ultimately up to the client to progress. They had shown the footprint itself and where the entry would be from the street and the market place. The intent was a two storey building off the market place with underground car parking. All designs were concept designs. The three renders were taken directly from the model. Trees, materials, textures, colours, and representations of people were added to the concept designs as artistic interpretations. The supermarket building on the main street was exactly the same design, as shown in the resource consent.
- All underground car parking was counted as part of the total on-site car parking calculation. The render showed the proposed Civic Building with the frontage closest to the lane being 'transparent', and the location of the carpark was also shown. Activation with the market place was important.
- In terms of going from the concept to detailed design for a building, elevations for the proposed buildings had been provided in the resource consent application. These showed the glazing and proposed entries. The position of an entry was dependant upon 'tenancy split' and internal layout. A Civic Centre, for example, required a certain size. The location of an entry also depended upon where this could be connected to the street. The criteria on active street frontage, and everything related to it, must be taken into account.
- There was one two-way entry to the supermarket carpark. The Transportation Engineer, Mr. Carlisle, could provide further information in relation to approaching vehicle movements.
- In relation to the proposed Childcare Centre in Building O, this had a small 'footprint' of 50m² or 60m², dependant upon the Operator of that centre. Many childcare centres were two storey.
- The part of the road going up to the Kaimai Views subdivision did not comply with the '1 in 12' gradient required to provide accessibility for pedestrians, but there were alternatives to provide accessibility with a separate footpath. It was an engineering design matter.
- With regard to the location of the Childcare Centre, and the reason it was not on the school boundary, he had worked on projects where the Childcare Centre was intentionally in amongst the residential area. Sometimes this worked and sometimes not, and there were 'pros and cons' with that. It was often more about the scale of the building up against the boundary. There would be a low scale building against the boundary for daylighting requirements, acoustic fences to mitigate the noise of children playing, and the building itself would become the buffer to the play area. The Childcare Centre should not go in the Town Centre. It was about the scale of the building and ensuring there was an outer play area on the other side.
- Building N had a 'semi under-croft' parking arrangement and this was achieved with upper level residential apartments that were bigger, then smaller studio apartments on the ground level. They were not 'sunk' and were different to the underground car parking with the other buildings. Some were counter levered, but the first four did form true underground car parks.

- In relation to the back of Building E and a notional pedestrian link, there had been discussion about creating some pedestrian connections to the school site, and whether they would be gated or not gated. There was another located between the terraced houses as well. These were suggestions for two locations for access ways. The Master Plan would want to provide access somewhere along that boundary for students to get into the Town Centre.
- In relation to contours on Sheet 211.10, he would check on these and respond in due course, during the Hearing.

Matter of Clarification

In response to a matter raised by the Commission earlier, Ms. Hamm clarified as follows:

- The proposed Childcare Centre was a single story building.
 - It was considered that this would not merit a specific condition of consent, but such could be applied if the Commission felt it necessary.
 - The building would be under “Commercial height”.
- c) **Mr. Craig Lemon**, Director, of **JACE Investments Limited** (the Applicant), had pre-circulated evidence dated 19 February 2021. He Tabled Item (18), ‘Supplementary Statement of Evidence of Craig Lemon’ dated 8 March 2021 and addressed the Commissioners.

Scope of Statement of Evidence (Pre-circulated)

- Introduction;
- Executive summary;
- An outline of the Development;
- The process leading to the Consent Application;
- The merits of the Development;
- JACE Investments Limited’s property development experience;
- JACE Investments Limited’s consultations to date;
- Demand for the Development;
- The Development timeline.

Scope of Supplementary Statement of Evidence (Tabled Item 18)

- The issues of certainty and timing to deliver the Town Centre project;
- Staging and Development;
- Unrealistic to complete Stage 1 within 3 years due to scale and size;
- Appetite to begin the project;
- Lapse conditions provided for in the Resource Management Act.

Mr. Lemon responded to questions as follows:

- JACE preferred to own the land, build and tenant. JACE had been approached by various interested parties, some had indicated they would like involvement in designing and building themselves, for example, the Operator for the Childcare Centre. Their intent was to have control over the design and see the build through as per the designs, acknowledging that details may have to be worked through. JACE would stick to the Master Plan. The ownership structure would still be within JACE, and would be controlled by JACE.
- In terms of the rationale behind the stages selected and the Section 92 response outlining the stages; the rationale was that JACE needed to get the roads in place.

State Highway / Ōmokoroa Road development gave the opportunity that, in the event that urban growth was quick creating demand as anticipated along Prole Road, there would be the opportunity to have the roads set up and supermarket complex built. The project stages selected were about response to growth. Retail would be around the supermarket complex to support it. Residential accommodation would come in requiring the retail and supermarket. The stage selection was sensible and the natural progression that would be required. When they had approached Council with a Concept Plan in September 2019, they had anticipated a larger Commercial floor area but were advised it was too large. Lot 5 had the ability to be Residential, but also provided the opportunity to continue to expand Commercial activity in that area.

They had given a lot of consideration to the northern entrance off Ōmokoroa Road (the right turn in). The original plan was to have a slip lane. They had met with residents and ratepayers to discuss what was meant to be happening on the site. At that meeting the residents had expressed concerns about traffic 'rat running' and the opportunity to have a northern entrance. A robust discussion was held on these matters and other elements for the Town Centre. JACE's proposal was an attempt to mitigate the desires and needs of the residents and ratepayers.

- They had held one meeting with Kaimai View residents in June 2020, prior to the Submission closing period. They also did a presentation for the Ōmokoroa Residents and Ratepayers Association, and held a public open day at Ōmokoroa School ten days later on a Saturday. At that open day, dropped in to discuss what was proposed and feedback was received. Some of those attendees were Kaimai View residents. They also arranged a meeting for those people who had made comments on social media or through submissions.
- His understanding was that residents definitely did not want a traffic 'rat run'. They wanted access to the Town Centre. They commented that roads were narrow and they had a community there. It was mixed feedback. Most said it was great to have the Town Centre there, but they did not want lots of through traffic. Those at the meeting said they could live with travelling out of their subdivision to gain Town Centre access, rather than have through traffic.
- The community consultation took place after the application had been lodged, as the timing had been impacted by COVID-19. They had taken the proposal to the community. JACE had planned to hold its own community meetings, but they had met with the Ōmokoroa Residents and Ratepayers, who wanted to run their own meeting.
- The proposed Hotel was to provide business travellers and visitors to the community with accommodation; particularly with the growth anticipated. The uses could be multiple, depending on what was happening in the community.
- In terms of construction hours, it was about practicality and trying to get the works done within the timeframes of the project stages. There were many aspects to be worked through. The site was a kiwifruit orchard, and it would be more and more challenging to continue operating the site as such, especially with a school nearby.
- In terms of what triggered the move from one stage to the next, and staging issues of title and construction, demand would indicate how the development proceeded. The order was to put in the roads and then put in the services. They would then produce an indicative building plan, depending on demand as the area grew. They would look at starting construction in Lot 2 and also in Lot 3, then loop back around the main street to Lot 5 and then Lot 4. Lot 4 depended on the demand and desire of buyers. There would be a Construction Indicative Plan. They had received earnest registrations of interest to set up businesses on the site. That demand meant that they could progress stages. In terms of building a supermarket, part of it was foot numbers,

and there had to be enough going through to make it worth developing. The future development of Ōmokoroa also relied upon a Plan Change going through.

Hearing Process - Commissioner's Instructions

Commissioner Caunter advised that the Hearing would now adjourn for lunch and reconvene at 2.00pm to hear scheduled Submitters. She noted that the Commission did not wish to inconvenience Submitters attending to speak and, therefore, following the hearing of Submitters, the Commission would then proceed to hear continued evidence from the Applicant throughout the afternoon.

1.00pm The Hearing adjourned.
2.00pm The Hearing reconvened.

Commissioner Caunter advised that the Commission had postponed its site visit until the following day in order to progress the Hearing. She noted that all the Commissioners were familiar with the site, but wished to visit the site together the next day.

Request from the Applicant

With the Commission's leave, Ms. Hamm requested that, due to an expert witness needing to return to Auckland, that following the hearing of Submitters the Applicant be permitted to change the order of evidence in presenting its case, as follows:

- Mr. Polkinghorne (Economics);
- Dr. Beattie (Urban Design Peer Review);
- Mr. Watts (Urban Design and Landscape);
- Mr. Hight (Engineer).

Commissioner Caunter granted the request on behalf of the Commission.

2. EVIDENCE OF SUBMITTERS

Submitters in Support:

- a) **Pirirākau Incorporated Society**, was represented by **Ms. Julie Shepherd** (Manager), who had pre-circulated Tabled Item (5) Memorandum of Understanding between JACE Investments Limited and Pirirākau Incorporated Society (the Parties) dated 17 July 2020. She addressed the Hearing verbally in support of Pirirākau's Submission and of the proposal, noting the following:
- Ōmokoroa was part of Pirirākau's tribal rohe (territory or boundary area of iwi), and they were in support of the proposed Ōmokoroa Town Centre.
 - Western Bay of Plenty District Council (WBOPDC) was progressive, catering for many community needs. Pirirākau had faith in Council's process in relation to this application.
 - Pirirākau had a direct relationship with Mr. Craig Lemon, the Director of JACE. From their observations and experiences in discussions with Mr. Lemon, he had been "up front" and informative. Pirirākau had faith in JACE's full and genuine intention to deliver the Ōmokoroa Town Centre.
 - In terms of the need for a proposed hotel or motel, it was their belief that Ōmokoroa was a destination for the future. The hapu sought to be part of this.

- Pirirākau's Memorandum of Understanding (MOU) with JACE Investments Limited reflected their mutual relationship and understanding. It was not prescriptive, but they were confident that Pirirākau would be able to deliver its cultural identity and presence throughout the Town Centre. During the times of colonisation and confiscation, many settlers had moved into the tribal rohe. In Ōmokoroa particularly, the old settler families had become well established and well known. They had almost worn the korowai (cloak) of Pirirākau's identity. Pirirākau had begun to collaborate more with members of the Ōmokoroa community, so that they could restore their relationship to the land, and their cultural identity on the Ōmokoroa peninsula.

Ms. Shepherd responded to questions as follows:

There had been many korero (discussions) with JACE around cultural identity and the presence of cultural design in some hard features, such as the concrete walls in the Civic Centre. They also had discussions with Council around future planning and how Pirirākau might fit into the community in various ways. They wanted to form a Tauranga Moana Waka Launching Facility at the Ōmokoroa Domain, and over time, establish a Marae-type building that could be shared with the community, to come together and meet. Cultural identity was currently lacking in that community.

- The normal conditions of consent, such as cultural monitoring for earthworks, and all the usual conditions would be sufficient. They could not impose a condition other than the intent of the MOU.

Commissioner Caunter thanked Ms. Shepherd for appearing.

- b) **Ōmokoroa Residents and Ratepayers Association (ORRA)** was represented by **Dr. Bruce McCabe** (Chairperson), who had pre-circulated Tabled Item (7), a Statement of Evidence dated 3 March 2021. He requested that the original submission be taken as read, and addressed the Commissioners, highlighting key points in the tabled item.

Scope of Pre-Circulated Statement (Tabled Item 7)

- Introduction;
- Background;
- Submission;
- Conclusion.

Dr. McCabe responded to questions as follows:

- ORRA supported the Town Centre Development, due to clear public support for the proposal, which had been indicated during a public event where JACE presented their proposal, and the redesign work JACE was undertaking to address concerns of Kaimai Views residents.
- It was considered that the proposed Town Centre would contribute to the provision of retail and other services in Ōmokoroa, making it more self-sufficient and reducing the need for travel. It would provide on-site amenities on the Peninsula, and contribute to a necessary increase of employment opportunities in Ōmokoroa.
- ORRA's position was based on a combination of feedback during the public meeting, and casual feedback following that meeting. Many people commented, and noted it had been a worthwhile meeting. JACE was to be commended, as it was not often residents and ratepayers were informed about the intentions of Developers, before the developments went ahead.
- ORRA was established in 2020, then had to deal with COVID-19. They currently had 174 members.

- He had lived in Ōmokoroa for four years and it was surprising how quickly houses were being built. He considered that population growth would be a rapid process on the peninsula.
- In terms of the potential bridge over the railway line connecting to another residential area, it would go between Kayelene Place and Kaimai Views, which linked into the Town Centre. Kayelene Place also had a cycleway/walkway that went through to Western Avenue and further into the community. That potential bridge would open up foot and cycle traffic through Kaimai Views, and into the Town Centre. The bridge was a Council proposal. When he had spoken to the Chief Executive Officer the bridge was “on the books”, but the timeline for it had not yet been worked out.
- He understood that a large number of workers commuted daily from Ōmokoroa into Tauranga city. He personally did not travel at that time of the morning, because the traffic could back up past the Ōmokoroa intersection. He estimated the travel time between Ōmokoroa and Tauranga to be at least thirty or forty-five minutes, sometimes longer. It was already a problem and it would not get any better until Waka Kotahi / NZ Transport Agency constructed the intersection and completed road works, as was the expectation.
- The high volume of vehicles leaving Ōmokoroa during the afternoon peak time, may be associated with tradesmen that frequented the peninsula.
- In terms of traffic flow assessments, and the potential to have a road access closed, resulting in a need to travel further around to the proposed shopping centre, he had not had that discussion with anyone; so was unable to comment on the matter.

Commissioner Caunter thanked Dr. McCabe for appearing.

Submitter in Opposition:

c) Ms. Robyn Scrimshaw

Ms Scrimshaw was scheduled to speak, but had tendered an apology due to illness. Arrangements were made for her to join the hearing via Zoom (Audio/Visual Connection) the following day, Tuesday, 9 March 2021 (Day 2).

(Refer Page 30 of these minutes).

Submitters Not Specified / Conditional / Others

d) Ōmokoroa Public Art Group (OPAG) was represented by **Ms. Alison Henderson**, who verbally addressed the Commissioners in support of the Submission, noting the following key points:

- OPAG was a small art group of eight people, but they were typical of many other small community groups that currently existed in Ōmokoroa, many of whom only had a voice through the WBOPDC.
- There were many other, similar smaller groups within the community who may not have made a submission, but all needed to have “a place, a function and a home” in the future development of what would become a much bigger town.
- OPAG had made a submission because they worked closely with Council and were keen to ensure that Ōmokoroa increasingly became a vibrant and creative community. Public Art was one way of representing that.

- They were excited about having increased facilities that would bring new retail, commercial and residential opportunities, but had concerns that the current planning for the Town Centre represented both a unique opportunity, and a unique problem.
- The proposal presented an opportunity to “get it right” and do good, consultative planning with as many community groups as possible, and to create something that would meet the needs of those groups. But it needed to do more than meet the needs for retail, employment and commercial activities. It needed to meet the needs of all those small groups who, currently, were just beginning to find a place and a voice in the community.
- The unique problem was that this was a “self-contained and one-off” development. OPAG’s concern was that it did not take sufficient account of the whole Ōmokoroa area, beyond the peninsula. There were community groups from Plummers Point, Whakamarama, Pahoia, and the surrounding hinterland who also used Ōmokoroa facilities such as the shops, medical facilities, library, community facilities and Settlers Hall.
- Since their submission, OPAG, one of four small community groups, had asked the Council to have the opportunity to use the old library in Ōmokoroa, to show how different community groups needed facilities. In the short time they had been in that ‘caretaker role’, and prior to making their full submission to have the use of that building for community groups, they had had Ōmokoroa Artists, the Public Art Group, the History Group, and the Ōmokoroa Environmental Managers Incorporated (OEMI) all represented in that area. They had created a gallery, put on exhibitions from local craftspeople from around the area, created a ‘drop-in’ centre, had many visitors and were keen to see this developed into a community resource. There were multiple groups keen to be a part of that, but actually there were too many to fit into that one small centre. There had also been a proposal from MenzShed to use the old pavilion. The Settlers Hall usage was at capacity. This was the need of the community the size it was now; the question was how future community need would be met with the expected increased population.
- OPAG was concerned that the Civic Building and Market Place, while being an important opportunity within the proposal by JACE Investments, were not sufficient. They would not be well enough integrated with all the other facilities that the Council, Ministry of Education and other groups would need to provide for this bigger community. The proposal did not recognise that the community was dynamic, and that a ‘one-off’ presentation was not going to “get it right”. They had to build in the opportunity for that community to contribute and grow into a Town Centre.
- OPAG wanted to see more than a retail, commercial and residential centre. They wanted to see a development that allowed for expansion, public ownership and creative use of the land that was available.

Ms. Henderson responded to questions as follows:

- OPAG considered themselves to be neutrally positioned, and did not have expertise to comment on most aspects of the proposal. They were requesting that the Commission give consideration to the dynamic nature of community needs, and the need for adequate facilities and community spaces, within the development.
- They were addressing JACE Investments in the hope that it would work in partnership with Council to provide for community needs.
- They could possibly see a different location for the Civic space. The Market Place itself looked like a very good concept, but it was unclear, when looking at a single development with the restricted boundaries of that development, as to how that would

integrate with all the other plans for the remainder of the area, particularly between the railway line and the State Highway that was yet to be significantly developed. While it had good features looking over the valley and opportunities for it to be a good asset, it was also limiting access and the provision of other buildings and facilities. This was not just about a Market Place, as such. There must be a place where people could meet and connect, where there could be galleries and music for them to enjoy. They were part of the arts fraternity in the community. This was not a commercial need, it was a community need, and they did not see that being met in the provisions.

- They had not had any discussions with the Applicant about their position since lodging their submission. They had not been invited to, and had not sought that.

Commissioner Caunter thanked Ms. Henderson for appearing.

- e) **Ms. Ailsa Fisher**, an Individual Submitter, Tabled Item (19) titled 'Presentation to Hearings Panel – Ailsa Fisher' and addressed the Commissioners, reading the tabled item in full. She noted that she was a Town Planner by profession, but was speaking to her submission as a lay person before the Commission.

Scope of Presentation (Tabled Item 19)

- Introduction;
- Design Guidelines
- Design of Built Form
- Transport Network
- Conclusion.

Ms. Fisher responded to questions as follows:

- She understood there was bike parking next to the supermarket, close to the entrance. There were other simple measures that could also be put in place to encourage and make it easier for people to cycle or walk. She would like to see more of these included in the development.
- She did not see the need for the main street to have car park provisions to the size and scale shown. Anything that could be done to encourage additional areas for people to meet should be promoted. If this was done, people would not necessarily have to go to the Market place, but it would also enhance connection to Market place.
- There were other benefits to building in 'low impact' landscape design in public spaces, other than stormwater management. Amenity would come from that, in terms of going from a Kiwifruit orchard that was fully permeable, to a development that was not. She was not a Landscape Architect, but was seeking greater double benefit of amenity and lower impact on stormwater. The Applicant could consolidate and was not stopped from following the general philosophy.

Commissioner Caunter thanked Ms. Fisher for appearing.

1. **EVIDENCE OF APPLICANT Continued**: *(following the hearing of Submitters)*

- d) **Mr. John Polkinghorne**, Economist / Associate Director, (**RCG Limited**) appeared on behalf of the Applicant, and had pre-circulated evidence dated 19 February 2021, Tabled Item (20) titled 'Supplementary Statement of Evidence' dated 8 March 2021. He addressed the Commissioners with key points from both his pre-circulated evidence, and his supplementary evidence, taking introductions as read.

Scope of Pre-Circulated Statement of Evidence

- Introduction;
- Code of Conduct for Expert Witnesses;
- The existing economic environment (including additional detail on the Tralee Street area);
- The economic effects of the Development (including additional detail on Fresh Choice);
- The appropriateness of the Town Centre size and location;
- Economic related matters raised through Submissions; and
- The Section 42A report.

Scope of Supplementary Statement of Evidence (Tabled Item 20)

- Introduction;
- Response to evidence from Kay Knight tabled on behalf of Woolworths New Zealand Limited; and
- Matters raised under the heading “Economic Effects” in the ‘Supplementary Report by Reporting Officer’ dated 5 March 2021.

Mr. Polkinghorne responded to questions as follows:

- He did not re-analyse the 12,000 population projection for Ōmokoroa, but had done his best to confirm it by consulting the Council plan document, and contacting the BOPRC, who had confirmed to him that the projection was still appropriate to use. The only remaining question he had, was whether the 12,000 population projection might have extended to the area east of the Ōmokoroa peninsula. The RPS Group Australia had assumed that it did in their report, but either way, it was a difference of less than a “1,000 people”.
- In terms of what population size supermarkets considered to be a ‘trigger’ for establishing in a catchment, this varied, but was likely to be around the 10,000 population mark. Other factors would certainly be taken into account. Given that the long-term population of Ōmokoroa, and even the medium-term population, (within seven-ten years) was getting to the 10,000 level, supermarkets had indicated interest for some time now.
- At times a supermarket may look at establishing in a township prior to reaching a population threshold ‘trigger’, but that depended on a number of factors, and in particular, on the competition. In this case, the Fresh Choice supermarket was local. Beyond that, people had to travel to Bethlehem in Tauranga, or Katikati to access supermarkets. Supermarkets would consider growth projections, and the timing of the Stage 3 Subdivision Staging Plan. It was a fact that Ōmokoroa would reach the threshold number and that was only a matter of time.
- He was comfortable with the ‘mix and quantum’ of retail, office and other amenities in the proposed ‘small scale’ Town Centre. Some previous economic reports originally had 12-13 hectares zoned for a Town Centre. That land area was more than what was needed today, from a commercial perspective. He broadly agreed with the conclusion of a more recent report from RPS Group Australia, which was a Town Centre in the range of 3-4 hectares was appropriate. That size aligned with what was proposed in the application for Resource Consent. The land area was a little larger, in terms of the Commercial zone, as some of that was to go to Residential.
- From his perspective, primarily a Town Centre provided:
 - the ability to access services required day-to-day;
 - the creation of employment opportunities and local economic viability;

- acquiring a childcare centre and supermarket;
- having social and community amenities.

In terms of residents of Ōmokoroa and surrounding areas accessing essential services currently, there was a limited amount on the Ōmokoroa peninsula itself, although he understood there was a medical practice. Most essential services would have to be accessed off site and travelled to. He envisaged that most essential services would be included in the proposed Town Centre. Developers were looking at mixed use, such as office, medical, veterinary, childcare, residential, and accommodation. This meant that much needed amenities, facilities and services would be available earlier, rather than later.

- Should the scenario occur where the supermarket was not established at Ōmokoroa, or was slow to be established, looking at the mix of activities, there were still some that would be able to be established. This would depend on market demand and other factors. He would anticipate that the residential, childcare and Hotel accommodation would do so, along with some other facilities.
- In terms of market conditions for drive-through facilities such as McDonalds and KFC, those types of businesses usually established themselves in areas with a much higher population base and better State Highway or drive-through locations.

- e) **Dr. Lee Beattie**, Urban Designer/Urban Planner (**Urban Planning and Design Limited**), was also Deputy Head, Auckland University's School of Architecture and Planning and Director, Auckland University's Urban Design Programme. He appeared on behalf of the Applicant and had pre-circulated evidence dated 19 February 2021.

He addressed the Commissioners, noting he had been engaged by Momentum Planning and Design Limited to provide a Peer Review of the proposed design. He requested that his report be taken as read and, at the direction of the Commission, agreed to highlight key points only; and respond to any questions.

Scope of Statement of Evidence (*Pre-circulated*)

- Introduction;
- Code of Conduct for Expert Witnesses;
- Executive summary;
- The site and location/site conditions relevant to urban design;
- Peer Review of Thomas Watts's Urban Design Assessment, evidence for the proposal and proposed Design Guidelines supporting its implementation;
- Issues raised in Submissions and the s42A report, including Morne Hugo's review;
- The relevant District Plan provisions and their implications from an urban design perspective;
- Overall conclusions and recommendations for this Application.

Key Points

- He was comfortable that Mr. Price had presented on architectural matters in detail and had responded to a number of questions, so there was no need to repeat that evidence.
- He had become professionally involved after the peer review, and through a number of design changes over time, which had happened before the application was lodged. His involvement continued during the first COVID-19 lockdown period, via Zoom, and in response to the Section 92 requests.

- The relationship between the development and Ōmokoroa Road could not be emphasised enough, it was extremely important. A 'positive relationship' connecting back on to that road must be created.
- They had tried to create a much more 'non-car' type of development. Thinking had moved away from the 'car-orientated' developments of the past. This was reflected in the location of the car parking in general, and in the under-car parking of the supermarket, with supporting positive aspects included in the design.
- To make a lot of elements walkable and make them work, they had worked hard to put more residential in, with a range of different types of typology. There had to be more density to make this work, and provide strong, desirable elements.
- In terms of widths of the high street, that had been robustly discussed for 'build and form'. There had to be 'energy' coming into the high street and again, density had to be at a level to make it work. What was presented was a compromised position, but it attempted to reduce traffic speeds and encourage 'intimacy' with people walking and connecting and still, literally, have sufficient space for footpaths and street plantings.
- One issue that often arose with developments, was the ongoing management and maintenance and who was responsible within the District. This was a matter for discussion between the Applicant and the Council.
- In terms of a development, it was not just about "today's world", but also about the future, for example, 30-50 years down the track. It was about getting the right building and roading structures in place that would enable resilience in the Master Plan. They had tried to enable those opportunities. Uses would change over time, but the key element was to ensure that the building 'built form', 'spaces between' and 'movement strategies' were strong enough to enable flexibility and resilience over time.
- He would have preferred some extra height with buildings in the development, but was conscious of the rules within the District Plan that must be complied with. Buildings A and D, the supermarket and 'entry statements' would have provided good opportunities for extra height.
- The proposed Conditions of Consent had attempted to deal with the issues of materiality and were about ensuring ongoing quality over time.
- In terms of the range of mixed uses, and trying to achieve a vibrant place that was liveable and walkable, potentially there was opportunity for further density and this would help the vitality of the Town Centre. Having a Civic Centre bounded by a Market place was an important part of this.
- In terms of connection and linkages to the education precinct, that would have to happen between the terrace blocks, as this was the only logical place.

Dr. Beattie responded to questions as follows:

- In terms of 'assumptions' around the urban design review, he had assumed that the Civic building would be located and be as shown, because that had been the proposition given to him, and it had evolved over time. He considered that the potential for Council to utilise that building with a drop-in centre, Council office and library was an important element to support the Market place there.
- In terms of a potential transition to another use of the Civic building, if not a Civic activity, the key thing was to have some 'activation' on to that space. Initially, he would have liked more 'grade' between Buildings K and L to provide more 'spacing' there, which would create more relationship and access with the high street. But through

discussion, the spaces between Buildings K and L were widened, and it was decided they would be the primary movement space and create access to the Hotel.

- With the design of the buildings, the materiality and plantings for good urban design, it was critical to have appropriate Conditions of Consent to ensure that important key principles and measures were in place, to get things delivered, and enable the development to have the resilience to go forward through time. It was accepted that uses evolved over time. It was about trying to ensure that balances where there to achieve that resilience.
- In terms of Mr. Hugo's urban design review comments dated 2 March 2021, it appeared he was trying to articulate the materials and colours he wished to see in his design proposition. As long as the right parameters were in place, it would seem likely that could be delivered.
- In terms of the proposed Conditions of Consent which had recently changed, as that evidence had not been made available until a late stage, he had not had time to consider it. He was comfortable to consider those conditions and provide comment to the Commission, if desired.
- In terms of the design philosophy and how that could be carried through and not changed, care must be taken that the proposition was deliverable and was managed appropriately. This was not his area of expertise, but discussions would certainly need to be held between the Council and the Applicant.

Commission Request

At the request of the Commission, Dr. Beattie agreed to review the current version of the proposed Conditions of Consent, also considering design philosophy, and to provide his comments, by way of a Memorandum, to the Commission by noon the following day.

3.45pm The Hearing adjourned.
4.00pm The Hearing reconvened.

1. EVIDENCE OF APPLICANT - CONTINUED:

Applicant's Evidence

Ms. Vanessa Hamm, Legal Counsel for the Applicant, addressed the Commission, advising that Mr. Watts would now present urban design and landscape evidence, but would put greater focus on the landscape, as Dr. Beattie's had covered some urban design aspects.

She also Tabled Item (21) titled 'Track changed draft Conditions of Consent' dated 8 March 2021, and advised that this document was the latest set of draft Conditions of Consent. Ideally, she would have preferred to table this when Mr. Coles was providing his evidence, but was doing so now, as the "gaps" in Condition 9 had now been populated for completion by Mr. Watts.

- f) **Mr. Thomas Watts**, Urban Designer / Planner (**Momentum Planning and Design Limited**), appeared on behalf of the Applicant, had pre-circulated evidence dated 19 February 2021. He noted that Tabled Item (21) included an updated Ōmokoroa Town Centre Landscape Masterplan, which he confirmed as superseding any previous version of that plan, and he spoke to it.

Scope of Statement of Evidence (Pre-circulated)

- Introduction;
- Code of Conduct for Expert Witnesses;
- The town centre design process;
- The proposal as amended;
- Submissions and mitigation;
- Urban design effects;
- Bulk and dominance effects;
- Mitigation of bulk and dominance effects;
- Landscape effects;
- Physical landscape effects;
- Visual landscape effects; and
- The Section 42A report and proposed Consent Conditions.
- Conclusion.

Scope of Supplementary Evidence (Tabled Item 21)

- Track changed draft Conditions of Consent dated 8 March 2021;
- Updated Ōmokoroa Town Centre Landscape Masterplan dated 8 March 2021 (*confirmed as superseding any previous version*).

Mr. Watts responded to questions as follows:

- In response to the peer review of the Technical Landscape and Visual Assessment Report by Rebecca Ryder (Boffa Miskell), dated 2 March 2021, specifically seeking the provision of four performance outcomes:
 - a) The Building Heights (RL Levels) relative to the surrounding land uses, associated with Condition 9, had been addressed;
 - b) Building design controls including reflectivity values had been addressed;
 - c) Boundary treatments: Landscaping and how that would be implemented on those boundaries had always been shown in the design guidelines and Landscape Masterplan. The next level of detail would be part of the proposed landscape conditions. Fencing topologies were not included in the Landscape Masterplan.
 - d) A Landscape Management Plan had been included.
- In terms of Crime Prevention Through Environmental Design (CPTED) assessments, some key principles from CPTED had been incorporated into the design. These were 'active edges' along the Market place; passive surveillance from the Civic building, and from Buildings K and L; ground floor 'activation', and permeability with links into the Market place from five different connections. There was also a link going north-west along the Kaimai Views boundary. Lighting had been a key consideration, in terms of not disturbing neighbours, but allowing people to move safely through these spaces. CCTV security cameras could be utilised, if desired.
- On the plan, at the end of Anglers Way, there was an existing pathway onto Ōmokoroa Road. The 'dotted' line on the plan proposed a connection from Ōmokoroa Road south and across to where people could access the Town Centre. Originally, they had included a more direct route, but this was not ideal from a traffic point of view, or urban design perspective.
- In terms of plantings and visibility, part of the reason for having "spacings" within the plantings was to maintain visibility to the supermarket and other commercial elements. The intended tree species they would use would not be dense, and would allow permeability. Ground cover was intended to be easily maintained, low height level shrubs.

- The 3m width of the footpaths had been designed to allow provision for pedestrian movement and “spill-out space” for café tables or outdoor displays of goods. In considering this, the project team had based this main street on the Mount Maunganui main street as, from their perspective; that was a user-friendly, pedestrian-focused environment that slowed traffic.
- In terms of the Design Guidelines, and the plan showing “active and important facades”, this was about the areas of Commercial buildings where it was considered important to have facades, e.g. beside the supermarket entrance. From the main street there would be ‘active facades’ around the market place in key pedestrian areas. This did not mean that other areas would be blank but, in this case, the guidelines were indicating prominent facades. This related more to the ground floor level entrances, and there could also be activation on the next floors up. The red-dotted line shown in that plan would need to be reviewed, but there would be an element of screening for the parking.
- It was accepted that an explanation about the demarcated line and other details should be provided in the Design Guidelines plan legend. That would be amended.
- In relation to Council’s urban design reviewer’s comments seeking more detail within the Guidelines about outcomes with individual buildings, the Urban Design Guidelines provided a framework, set out key areas of design, and referred to the Masterplan. This had a level of detail that the Urban Design Report referred to. It appeared that the reviewer was seeking more detailed design in the Landscape Architecture. A landscape condition had been prepared, but this was about the high level concept plan.
- The intention was to have ‘active uses’ at the ground level in the Market place, but there would be offices above, and a mix of community uses.

Mr. Price, Architect, responded to a question as follows:

- In terms of individual uses of tenancies and space, as an Architect, he encountered this all the time. For example, the most fundamental thing, from an urban design point of view, was how to activate a Market Place or public space. Often a plaza, for example, could be “enabled to become activated” by a partnership between the council involved and the private developer, and in that way, did not have to be restrictive.
- In this case, when they had introduced the Civic space / Market place, they considered that it could equally be used by art groups, for exhibitions, for trade and workshop spaces as much as for cafés. In fact, the biggest pedestrian area was actually around the internal roundabout as shown on the plan. There were wider areas of up to 5-6m there, which would attract more activity, similar to that encountered in European small town centres. The object of this Master Plan was to create ‘critical mass’ on the upper level and connect by a covered lane to the Market Place so they worked together. If there were other activities during the day, people would gravitate to the lower level. The tenancy mix had to be chosen to be adaptive to that. It was important to provide maximum flexibility for the use of tenancies to ensure that all the “edges that had been designed for activation, were activated”.

Mr. Watts further responded to questions as follows:

- He held a Bachelor of Landscape Architecture, a Master of Urban and Regional Planning, and was a Member of the NZ Planning Institute, but he was not, currently, a Member of the NZ Institute of Landscape Architects (NZILA). The report had been prepared in accordance with the NZILA Best Practice Guidelines and landscape visual

assessments. His initial report had used the NZILA as a guideline as well, because it was a combination of spatial and urban design. It had also used the Auckland Urban Design Manual. Following the peer review, they had taken those comments 'on board', and had used the NZILA rating scale, and had assessed the effects in accordance with that.

- The peer review had wanted to ascertain what camera and lens he had used to take the photographs provided as part of his evidence. It was an iPhone with a good 29mm lens. In terms of NZILA standards seeking that photographs taken be from a formulaic 35mm lens, for best practice for Architects, he was not aware of this as a requirement, and did not see it in the guidelines.
- In relation to the application going through as a Building Consent process, if an urban design review was required, it would have to be contracted out, as there was no Urban Design Planner in the Western Bay or Tauranga. He would consider that to be an appropriate way to deal with it, as it appeared logical. It could be discussed with the Applicant's team.
- The proposal was to enhance the existing landscape strip along the boundary of the Kaimai Views, with additional plantings, as shown in the new Landscape Plan. This would have been discussed, at some point, with the residents, as they would most likely want it maintained and added to. Plant species would align with any requirements with regard to shading on the south side.
- In relation to sub-references in the guidelines to low impact water design, rain gardens and tree pits, these were definitely a possibility and had been discussed with civil engineers, in terms of reticulating stormwater through those infiltration systems. The Applicant wanted to incorporate these and it was a matter of working with engineers as to where it was appropriate.
- There was a cross section on page 27 in the design guidelines that showed the relationship between Building N and the Childcare Centre. The scale was correct. A plan would be provided to show the extent of the small encroachment in the edge, which was referred to in proposed Condition 9. The Applicant would come back to the Commission with further clarification, in relation to this matter, during the course of the Hearing.

- g) Mr. Daniel Hight**, Traffic Engineer / Engineering Team Leader, (**Lysaght Consultants**), appeared on behalf of the Applicant, and had pre-circulated evidence dated 19 February 2021. He noted that his report could be taken as read. He addressed the Commission on key elements that had been raised during the hearing that day.

Scope of Statement of Evidence (Pre-circulated).

- Introduction;
- Code of Conduct for Expert Witnesses;
- Earthworks and the associated retaining walls required to enable the proposal;
- Roading vertical geometry (to supplement the evidence prepared by Ian Carlisle) design;
- Stormwater disposal design;
- Wastewater disposal design;
- Potable water supply design;
- Related matters raised through Submissions; and
- Section 42A report and proposed Consent Conditions.

Key Points

- A report regarding 'outstanding issues to resolve' had only been received from the Council Engineer, Mr. Lawton, on Friday, 5 March 2021. These matters would be addressed in writing, however, he could address some of them now.
- No. 13 of his evidence related to earthworks and additional fill. This had been the subject of a question from the Commission. The additional fill had come about while their Section 92 responses were being prepared, and was a design feature to accommodate some traffic safety review information and to accommodate a larger Civic building and the larger Market place. The quantum had increased to approximately 113,000. While the volume had increased, the environmental effects would not be vastly increased.
- Earthworks were a function of the area, the quantum discussed was within the realm of expectations for the site, and had been contemplated by the BOPRC guidelines, which heavily referenced earthworks. The earthworks could be done in one earthworks season. The finished ground design contours shown on the plan were accurate.
- The vertical design would require some refinements, but this was unusual. It was not anticipated that these would be significant enough to effect what had been proposed.
- With regard to stormwater retention, treatment and disposal, there were many plantings, walkways and cycleways, and a reserve, although not currently named. The flow path from the MOE school site next door was still being developed as discussions with the MOE continued. The Applicant considered that it could handle the flow from that, and they believed they would reach a solution in discussions.
- No. 23 of his evidence briefly touched on the low impact stormwater design. This had been considered, though not in detail, during the design stages. There were a few options available for treatment at the source. There was a downstream stormwater pond, which had been designed for 90% permeability on this site, so it was an appropriate size to deal with the flow. Any "at source" treatment was considered a 'nice to have'. Three options were available. Rain gardens were not well suited to narrow corridors and generally needed to be on a relatively flat site, so a lot of the site was not conducive to that. Alternatively, there were proprietary systems such as in-ground, but these were not likely to find favour with Council. They were not common in the area, and they tended to be expensive and difficult to maintain. The most favoured option for this site was bio-tension treatment, which could fit in the car parking corridor showing the trees, and would be the best avenue to explore.
- No. 27 in his report had been referenced by Mr. Lawton in his email on Friday, who had stated that the pump station was not currently shown as such on the scheme plan. It could be accommodated.
- No. 35 related to the staging of works and infrastructure, and had been raised in a question from the Commissioner. This had been considered and the Momentum Staging Plan showed the yellow Stage 1 area, and where the downstream infrastructure would be. That was where the downstream water pipes would go. Stage 1 was "front loaded" with infrastructure.
- In relation to Draft Condition No. 77, and the 20ml internal diameter water supply, he recommended that the word "minimum" may not be sufficient for the Hotel or the supermarket, and that this should be assessed on an "as required" basis.

Mr. Hight responded to questions as follows:

- There may be some minor engineering elements to finally be resolved, in terms of very minor adjustments. He did not believe these should, in any way, derail the granting of the consent.
- The existing treatment pond was permanent. It had been designed to receive run-off from all of the development area, including over road as well. Essentially, every geographical piece of land in the catchment had been designed to flow to it. It was a wet pond.

Commissioners Instructions

Commissioner Caunter noted that a Submitter, Ms. Robyn Scrimshaw, had been unable to attend today and would be joining the hearing tomorrow to address the Commission via Zoom audio / video connection.

Commissioner Caunter thanked all those in attendance and advised that the Hearing would now be adjourned to allow the Commissioners to undertake a site visit. She advised that it would be reconvened at 9.30am the following day, Tuesday, 9 March 2021 to conclude the Applicant's case, hear the remaining Submitter, hear the closing comments of the Council Officer(s), and to hear the Applicant's Right of Reply.

5.05pm Commissioner Caunter declared that the hearing stood **adjourned**.

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL
INDEPENDENT COMMISSIONER HEARING MEETING NO. CH21-1
HELD IN THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA
AND VIA ZOOM (AUDIO/VISUAL CONNECTION), RECONVENED ON
TUESDAY, 9 MARCH 2021 AT 9.30AM**

PRESENT

Commissioner Jan Caunter (Chairperson), Commissioner David Hill and Commissioner David Mead

STAFF IN ATTENDANCE

P Martelli (Resource Management Manager), J Hextall (Resource Management Contractor), A Curtis (Compliance and Monitoring Manager), A Price (Senior Consents Planner), K Lawton (Senior Land Development Specialist), and B Clarke (Senior Governance Advisor)

EXTERNAL ATTENDEES [ON BEHALF OF COUNCIL

Present Day 2:

Ms M Hill, (Partner, Cooney Lees Morgan), Mr L Dove, (Harrison Grierson), Ms A Fosberry, (Aurecon New Zealand Limited), and Mr M Hugo, (Boffa Miskell Limited).

COUNCILLORS PRESENT

Deputy Mayor J Scrimgeour, Cr G Dally, Cr M Dean, Cr J Denyer, Cr M Grainger, Cr M Murray-Benge.

OTHERS PRESENT

1 Member of the Public, 1 Member of the Media (Bay of Plenty Times) and as listed in the minutes.

COMMUNITY BOARDS PRESENT

Nil.

HEARING BEFORE INDEPENDENT COMMISSIONERS PANEL - CONTINUATION OF HEARING [DAY 2 OF 2]

[RC11997L & RC2996S] JACE INVESTMENTS LTD, 404 ŌMOKOROA ROAD, ŌMOKOROA: APPLICATION FOR LAND USE AND SUBDIVISION CONSENT TO ESTABLISH A MIXED-USE COMMERCIAL TOWN CENTRE

Commissioner's Introduction

Commissioner Caunter welcomed all those present, and invited the Applicant to continue with the presentation of their case.

1. EVIDENCE OF APPLICANT Continued (Day 2 of 2):

Ms. Vanessa Hamm, Legal Counsel for the Applicant, spoke to Tabled Item (16), an updated set of the Ōmokoroa Town Centre – JACE Investments Ltd Design Presentation (Maps) prepared by Momentum First Principles (Architects and Interiors), dated 4 March 2021.

She noted that, for clarification, the Commission should be mindful that there were some assumptions indicated on the plans. She advised that the easement setback had been measured, but the existing ground levels around Kaimai Views had been used and, therefore, they had assumed the ground level and the stud heights. However, the Applicant considered that the maps did show the picture more clearly in relation to what was happening at 404 Ōmokoroa Road.

h) On behalf of **Dr. Lee Beattie**, who was not able to be present, Ms. Hamm Tabled Item (22) titled: 'Memo to the Commissioner from Dr Lee Beattie', dated 8 March 2021. She noted that Dr. Beattie had reviewed the draft Conditions of Consent, as requested, and had recommended some minor changes as follows:

- It was recommended that Consent Condition 3(d) be amended to have a "Design Statement prepared by a suitably qualified and independent Urban Design or Architectural expert", certifying that the buildings and the stage comply with the approved plans. That had to occur before Building Consent could be applied for.
- With respect to Building O, it was recommended that Consent Condition 13 state "That the Childcare Centre be limited to a single storey building and 100 children", for clarity in the conditions.

Scope of Dr. Beattie's Memo to the Commissioners (Tabled Item 22)

- Proposed Conditions of Consent;
- Key underlying urban design features and principles;
- Individual site plans, elevation views, roof planes and renders;
- Architectural drawings supported by the Ōmokoroa Town Centre Design Guidelines;
- Building O and the residential terraces;
- Condition 3(d);
- Condition 13;
- Conclusion.

Ms. Hamm also addressed matters raised in the first questions from the Commission the previous day, as follows:

- In relation to the Future Urban zoned land:
 - Lot 1, of which the application related to, was the entire block, although the Commercial zoned land was where the Town Centre was proposed to be located. The original assessment of Environmental Effects did address these in respect of both roading and car parking.
 - Roading - that west of the internal roundabout, another local road servicing the Commercial area and, ultimately, providing a connection through to the Future Urban Area may be provided. It would be an opportunity to provide a road connection through to Prole Road on the western boundary of the MOE site.
 - Car parking – with the monitoring, if there was any shortfall, additional carparks could be established by extending the "at grade" carpark next the Civic Centre into the balance of the Future Urban land.
 - From her perspective, there was no issue of scope there, as both the carpark and roading were indicated in the original application. There was the related question of the Consent Notice. The Applicant would accept that, but noted that it would make sense to link that to the structure plan or similar. The Applicant would continue to discuss this issue with Council, as it reflected, through that structure planning process and the community may wish to have a say.
- In relation to a cinema, the application did refer to a possible cinema but that was the extent of the reference within the application. The proposal did not include a large-scale cinema, however, the Applicant would not rule out something boutique, in the nature of the movie cinema in Queenstown. Any related traffic questions could be directed to Mr. Carlisle.

- There had been a question raised by Council within the Section 92 request around a swimming pool and movie theatre. The response that related to the swimming pool was that it had not been considered and was not part of the application.
- i) **Ian Carlisle**, Principal Transportation Engineer, (Stantec New Zealand), appeared on behalf of the Applicant, had pre-circulated evidence dated 19 February 2021, Tabled Item (23) dated 8 March 2021 titled: 'Further Statement of Ian Carlisle in Response to Ann Fosberry Memorandum dated 4 March 2021'. He requested that his evidence be taken as read, and he would respond to questions of clarification.

Scope of Statement of Evidence (Pre-circulated)

This evidence included reference to the Transportation Assessment (TA) and responses to further information requests.

- Introduction;
- Code of Conduct for Expert Witnesses;
- The existing transportation environment;
- The proposed Vehicle Access Strategy;
- The assessment of traffic and transportation effects, including mitigation measures;
- Transport-related matters raised through Submissions; and
- The Section 42A report and proposed Consent Conditions.

Scope of Further Statement of Evidence 'In Response to Ann Fosberry's Memorandum dated 4 March 2021' (Tabled Item 23)

- Introduction;
- Traffic Modelling Sensitivity Testing;
- Northern Access 'No Right Turn';
- No vehicle access between Ōmokoroa Town Centre and Sentinel Avenue;
- Ōmokoroa Road / Flounder Drive Roundabout;
- Ōmokoroa Road between Ōmokoroa Town Centre (OTC) and Prole Road;
- Conditions of Consent.

Mr. Carlisle responded to questions as follows:

- His evidence had addressed traffic model flows for the mid-block section between the Town Centre and Prole Road. Based on those traffic volumes, which may be high, for the reasons already outlined, he considered there was no need for four lanes. He had suggested that it may be sensible to have a four-lane section, when there were two roundabouts with two lanes on each approach, and then a section of single lane road between. It may make sense to build in four lanes so there was no traffic merging, but it was not a direct consequence of this particular development.
- The base traffic flows had come from the regional model. He was not limiting his assessment to the effects of the Town Centre, but had gone wider than that.
- The number of lanes and traffic volume were the key criteria determining the size of a roundabout and this could increase the circulatory carriageway by a third. The other factor was speed, as in high speed environments, roundabouts tended to be bigger to make them more prominent. As there was now a low speed environment at 60kph or less, then the roundabout size could come down as well. It was a factor of tracking speed and the number of lanes.
- In terms of the roundabout near the Settler Inn, the 60kph speed threshold occurred just before it, and that was a single lane roundabout.

- He considered that there should not be a right turn out from the Town Centre, and one had never been proposed. There were other possibilities, such as a Kaimai Views connection. As both nearby roads would be under the control of Council, it would be free to make changes in the future.
- There was a proposed bus stop located outside the Hotel on the main Town Centre road (Road 1). It was intended to cater for both directions of travel, enabling buses to enter the site, circulate using the roundabout, disembark and embark passengers, then leave the site. However, it was acknowledged that the Council's Future Urbanisation Project for the section of Ōmokoroa Road between Flounder Drive and Settler Avenue, had a bus stop proposed on each side of Ōmokoroa Road, just to the north-east of the Town Centre roundabout / Flounder Drive. BOPRC could indicate preferences for providing bus services. There was logic to leaving the bus route on Ōmokoroa Road and having passengers disembark and embark on that road, without having to enter the Town Centre. There would be a pedestrian crossing point on each of the four legs of the roundabout to serve passengers. That was a matter of detail design.
- On the Master Plan, the proposed location for the main bike park was beside the 'left turn in' at Building C. Currently, Ōmokoroa Road had a shared path down the western shoulder. The expectation was that would be one of the key entrances for pedestrians/cyclists. In its Future Urbanisation Project, Council proposed an additional shared path on the other side of the road as well. The result would be good shared path connectivity on Ōmokoroa Road. It was recognised that a bike park near the shared access path was appropriate, so that was where they had put their focus and had proposed the location. The Applicant would be fully supportive of providing additional bike parking, for example, around the market place. He had not turned his attention to statistics, but there were guidelines that could assist. Bike parks could be part of a Condition of Consent, in terms of monitoring and supply. In areas where there was greater need, it was appropriate to add more bike parking. A review of conditions for parking demand, for example, by a fixed period of time after the activity commenced, was supported. The important issue was to monitor the situation, and to have the ability to react to that monitoring.

Ms. Hamm responded to a question as follows:

- In terms of the District Plan and requirement for consents, the additional entrance on Ōmokoroa Road had a Non-Complying activity status, and might 'trigger' consent. It appeared somewhat unclear, as there was also reference to Restricted Discretionary activity. The Applicant had adopted a conservative approach, which they understood was also Council's approach.

Mr. Carlisle responded to further questions as follows:

- The traffic modelling had been undertaken for the full capacity of the Ōmokoroa Peninsula in year 2048. There would be very minimal growth beyond that once the capacity for the "full build-out" of the peninsula was reached. They had modelled year 2028 and year 2048. He was confident the estimates before the Commission were year 2048.
- In terms of the frustration of motorists queued while attempting to make a right turn into the Town Centre, and the safety concern over the potential for a "right-turn, right-side crash", that came back to the capacity. When considering an intersection operating in the middle of the day, when there was much less traffic, motorists usually had sufficient time to choose an acceptable time to make that right turn. That was why the traffic modelling was important, in terms of that safety risk, and whether the sensitivity modelling was appropriate in drawing those conclusions. Both he and Ms. Fosberry had weighed up all those factors and had come to their own conclusion

over what was an acceptable level of risk. Whereas, he had weighed connectivity, the good cycle lanes, and lower speeds around all of those factors to come to his conclusions. Ms. Fosberry could be questioned about her conclusions. The traffic modelling showed that the queuing was acceptable and within the available limits of the right-turn-bay that was provided. It was acknowledged that there were certain times in the day when traffic gathered, as everyone arrived in those few minutes. If vehicles were queued, it was common sense that motorists would choose not to join the back of the queue that was going to take them longer. In that case, drivers could travel on past the right turn bay to the main roundabout that lead into the Town Centre. There was an argument that those drivers could go through the Kaimai Views. All of this discussion was based on the sensitivity modelling, which he had some concern with.

- The Safety Audit took into account all road users, including cyclists. It was a 'judgement call' as to the volume of cyclists and pedestrians, based on the current volume and what may be seen in the future. The school would certainly impact on the whole catchment. He was hesitant to attempt to estimate cyclist/pedestrian numbers without supporting data, but these would certainly be increased and there would be 'before' and 'after' school hour peaks. The Town Centre itself would attract people by bicycle, along with pedestrians from the surrounding neighbourhoods when the railway bridge crossing was put in.

Question from Submitter Via Commissioner Chairperson

Through the Commissioner Chairperson, **Mr. Bill Jacob** (Submitter), requested that his written question be put to the Applicant. Commissioner Caunter accepted the request, as the question was appropriate and the response would also assist the Commission. For the record, she read out the question as follows:

Submitter Question:

I refer to the documents available on Council's website; the agenda and first Item 7.1, attachment 7, pages 143 and 147. These show key links from the proposal to the surrounds. I refer to the exit point onto Ōmokoroa Road, opposite Anglers Way and the new development to the east of the proposal. I also refer to the same source, page 499, paragraph 150, third bullet point, in which Ms. Fosberry identifies a safety risk for pedestrians crossing from Ōmokoroa Road. My submission dated 15/07/20 identifies the hazard of access across Ōmokoroa Road to the proposal.

My question is "Why has the applicant not provided for an underpass across Ōmokoroa Road to link to the access to Anglers Way?"

Mr. Carlisle, in response to Submitter question:

- First, for school children, he did not believe that a crossing adjacent to Angers Way was required, although it may be used. This was because school children would have more direct access via the roundabout crossings to the school.
- At the time of the transportation assessment, he had recognised and, in fact, brought it to everyone's attention, that there was a series of steps and an access way from Angers Way down to Ōmokoroa Road, as this may have been forgotten by many. He had promoted the need for a crossing based on his assessment.
- As to the provision of a crossing, a discussion could be had as to whether it should be part of a Structure Plan, including all the infrastructure and roundabouts within the schedule. He fully supported a crossing, but did not support an underpass, as he did not believe there was the volume of users to support one.

Mr. Carlisle responded to further questions from the Commission as follows:

- A bus shelter had been provided for in the Town Centre. He was comfortable with this location, but had raised the matter from a BOPRC operational perspective. The Applicant considered it was appropriate for the BOPRC to determine the desired location and number of bus shelters required to operate its bus service.
 - He understood the cinema would be a 'small-scale boutique' type, catering to approximately 30-40 patrons. In which case, there had been no need to make specific provision for it in the original assessment. There would be good complementary use between a cinema and other activities within a Town Centre, typically outside business hours. In terms of any traffic generation and parking requirements related to a cinema, there was no issue there. On-site parking may be a minor effect, but was complementary to other activity usage, in terms of timing of the parks required.
 - He had not commented further on concerns expressed by Council on the total number of carparks, because the strategy had been taken from the Transport Assessment stage of the project. They had based their parking generation on other developments, including other Town Centres, e.g. Bethlehem, which for this area may be over-filling for carparks. There may be slightly fewer carparks than in the original strategy, but they were comfortable with the numbers for that reason. The strategy taken was that they would review the use of the parking spaces on the site and then adjust accordingly in the future.
 - In terms of the question of four lanes between the two roundabouts, you needed to have the down-stream number of lanes required to accommodate the volume of traffic, and then the appropriate design for the roundabout. With traffic flows, 'two lanes into one' was a hold up. A large roundabout was traditionally two-lanes, and would cater for a very high volume of traffic. There was a three lane roundabout at Tauriko. Three or four lanes were due to phasing, the 'wait time' and capacity. Effectively, intersections required more lanes than roundabouts to deal with the same volume of traffic. Bethlehem, for example, had a single lane north that did not have sufficient capacity, and should be two lanes, as there was a long-term response. In this case, his modelling indicated that there was not a need for four lanes. It came back to some of the 'sensitivity' modelling, as to how this would be run. To clarify, he did not have the modelling for the Prole Road roundabout, so was not sure what Council's modelling for that roundabout looked like.
 - In terms of charging e-Bikes, e-Scooters and electric vehicles, the Applicant would be willing to consider that and provide for it. It was acknowledged that this was likely to be a requirement.
- j) **Mr. Richard Coles**, Director & Planner (Momentum Planning and Design Limited), appeared on behalf of the Applicant, had pre-circulated evidence dated 19 February 2021, and Tabled Item (24) titled: 'Supplementary Statement of Evidence of Richard Coles' dated 8 March 2021. He addressed the Commissioners with an introductory overview, then outlined key points from his Supplementary evidence.

Scope of Statement of Evidence (Pre-circulated)

The evidence focused on issues specifically related to the Application and in contention. Analysis of the Statutory Planning Documents included in the Assessment of Environmental Effects (AEE), submitted with the Application had not been repeated.

- Qualifications and experience;
- Code of Conduct for Expert Witnesses;
- Executive summary;
- Site context;

- Operative District Plan and earlier versions relevant to the Commercial Town Centre site;
- Process of Town Centre design;
- Community engagement;
- Matters raised by Submitters;
- The Council Officer's report;
- Statutory Planning Assessment;
- Proposed Consent Conditions;
- Conclusion.

Scope of Supplementary Statement of Evidence of Richard Coles (Tabled Item 24)

- Introduction;
- Woolworths NZ Limited and Economic Effects;
- Supplementary Report by Reporting Officer;
- Transportation effects;
- Engineering matters;
- Noise effects;
- Lapsing period;
- Landscape and visual effects;
- Urban design;
- Evidence of Ms. Ailsa Fisher (Submitter).

Introductory Overview:

- This was one of the most exciting projects he had been involved with in his twenty-nine years of planning. They had put a good team together, and the result was a really good design.
- Much effort had been put into the project, focusing on urban design; architecture; access issues; and ensuring they had responded to the District Plan requirements for a Town Centre. This was a Town Centre zone in the Ōmokoroa: Stage 2 Structure Plan. The outcome responded well to the boundary effects for the school, and also for Kaimai Views.
- There were some non-complying aspects, which were because there was no Town Centre plan for twenty-five years, and also the access onto Ōmokoroa Road. The rest of the development, including the scale of the buildings was, generally, compliant.
- The "pedestrianisation" of the connecting points to the Town Centre, and to meet the Plaza requirements, (which were a standard in the Town Centre Plan), were certainly achieved and overall, the design was a good one.

Mr. Coles responded to a question as follows:

- An updated draft Conditions of Consent had been provided to Council's Senior Consents Planner that morning, but some feedback from Dr. Beattie had not yet been included. A revised set of Conditions of Consent would be provided to the Commission.

Ms. Hamm responded to a question as follows:

- Mr. Coles had referred to a revised Design Guidelines document in his supplementary evidence. Three aspects that related to the Design Guidelines had been raised during the hearing. These were the active and important facades; the flowchart; and a small issue about cobbling. The flowchart on the last page had been reviewed overnight

against Condition 3, and the flowchart could be amended to align with the draft Conditions of Consent. It was a question of whether the Commission would like that prior to hearing from Council, or whether those minor amendments could be incorporated into the Applicant's right of reply.

Commission direction

Commissioner Caunter advised the Commission would consider the matter of revised Design Guidelines, and would provide guidance in due course.

11.05am The Hearing adjourned.
11.20am The Hearing reconvened.

1. APPLICANTS EVIDENCE – CONTINUED

j) **Mr. Richard Coles**, Director & Planner (Momentum Planning and Design Limited), continued his evidence on behalf of the Applicant.

Mr. Coles responded to further questions as follows:

- All of the medical, administration and other activities within the Commercial zone would currently apply to this development.
- He understood that the big 'DIY' businesses such as Mitre 10 and Bunnings had separate definitions under the District Plan, other than 'retail'. He did not consider they would be Permitted Activities in the context of this development.
- In relation to the National Policy Statement (NPS) urban development, WBOPDC's status would be 'Tier 1' because of its relationship with Tauranga. In terms of weight given to the NPS, it was more about the relationship to car parking matters and the provisions of height.
- The Financial Contributions (FINCO's) framework was clear, but the description of road improvement works had changed over time. If it did change back, the FINCO's charge on the development would be apportioned accordingly. A "fair amount" of weight could be placed on the NPS when the Commission deliberated.
- The Staging Plan had been developed, in discussion with Lysaght Consultants, in terms of considerations of access; earthworks; servicing; finished land form; and having a logical process of creating 'super lots' to allow the buildings to be constructed. It was considered this was the most logical approach, and would enable that 'built form' established within Ōmokoroa, and then to 'roll out' through the rest of the Town Centre. The majority of the roads had to be constructed 'up front' and that would create a 'state of earthworks'. A pump station also needed to be established to the west of the site.
- In terms of the Childcare Centre being limited to one hundred children, this had been considered appropriate for the development, and in terms of carparks provided on site, they provided sufficient for slightly more than one hundred capacity of children, in terms of drop offs and staff parking. It was a "normalised metric" for the number of residents. Within five years there would be 1,200 households within walking distance of the Childcare Centre.
- He agreed that the conditions for Land Use and Subdivision should be separate as, in effect, they were separate consents. He recommended they be separated out in the final analysis for ease in attaching the right consent notices.

- There had been some internal discussions within the Applicant's team regarding the lapse period. The Applicant considered that five years was appropriate for Stage 1. The reason for that period was that kiwifruit had to be removed; and bulk earthworks, with civil infrastructure and sewer outlets needed to occur in tandem. There was a lot of work to be done. He had provided criteria that would give effect to the Land Use Consent.

Ms. Hamm responded to a question as follows:

- She concurred that Mr. Coles had provided criteria that would 'give effect' to the Land Use Consent. The legal position was that it was always a question of "fact or degree". She had looked at this issue a number of times for consent holders over the years. There was case law support for consent being 'given effect to' when no onsite works had effectively been taken. Similarly, she had encountered situations where Consent Authorities had taken the position that, because a consent holder had not completed all the stages of the land use consent, they had not 'given effect' to it. These were examples of two extremes. She cautioned against getting into a 'hard and fast' rule now, about what 'giving effect' to the consent was going to mean. It was her view that, based on the case law, there was scope for 'giving effect to' the consent in relation to the site works. There was a high level of expenditure to clear the orchard and get earthworks done. Ultimately, it was always a question of "fact or degree". It may be useful to hear from the Council in its reporting function.

Mr. Coles responded to further questions as follows:

- In terms of there being no noise standard within the Commercial zone, and the rationale for using an Industrial zone noise standard, he considered that there should be a Commercial-Industrial zone standard. He had not been involved in any noise complaint issues in the Western Bay for operators. He was aware of complaints within Tauranga City with regard to noise at bars, and in the Commercial area at Mount Maunganui.
- In terms of the future ownership of the Market Place land, at the moment, it was identified that JACE Investments would have control of that space; licenses; restaurants; and any temporary events or activities. Public easements could be granted, but that intention had not been considered at this time. It was a public space, and it was feasible that there could be an 'easement in gross' in favour of Council to create a service entrance. There had been internal discussion amongst the Applicant's team, on whether or not the Civic Building could be leased by Council. This would include a large part of the Market Place.
- With regard to Building N, the height exceeding 11m, and the potential for overlooking the adjoining property and outdoor space, it was a long building with a narrow frontage towards the Kaimai Views. The outlook was westerly, across a gully area towards the Kaimai Hills. They were east-west facing units by design. The end unit on the third floor with windows facing Kaimai Views, had a primary outlook to both the east and west.
- He had not fully reviewed the policies referred to in the application materials, as he was aware that those relating to the design features had been well canvassed by the other experts. He had outlined the many design features, which had addressed requirements of the policies. There was Residential mixed-use within the Town Centre, and suitable access was provided for. Special Housing Legislation had come in. Originally, there may have been two access-ways intended, and there would have been a 'through road' going through the Town Centre to an Industrial-Commercial roundabout to the north, servicing a mix of Industrial-Commercial use, but that was now Kaimai Views. Either gateway was commendable. Ōmokoroa Road had been

maintained as a secondary arterial road. The intent of the road function, as a whole, had been met.

Ms. Hamm responded to a question as follows:

- In terms of applying a rule from another Authority's District Plan (Tauranga City Council), in this case a noise rule, was not viewed as a legality issue, in the sense that it had been offered to assist. Mr. Coles had given evidence that it was a 'fit for purpose' example from the adjoining territorial authority's District Plan, because WBOPDC's District Plan did not have one. One aim was to have conditions that were also agreed to by the Applicant. Council would have the opportunity to comment. This was offered in an attempt to address the concern in a practical way, calling on the experience of the neighbouring Territorial Authority. Further information was anticipated, and would be incorporated into the Applicant's Right of Reply.

Mr. Coles responded to further questions as follows:

- In relation to the reason for the subdivision, Council was currently taking a conservative view in terms of making sure that lots were established, and titles issued for all consents. The Applicant had decided it would be break up the development into "super lots" so it could be progressively brought forward. It had tried to estimate, in terms of the order of development that would occur, because effectively, once all subdivisions were complete, all the lots could be created and development could occur in any order. It had tried to create a logical process in 'sleeving' the outside of Ōmokoroa Road (the frontage), to make sure people would not be driving by an unfinished construction site.
- In terms of a comprehensive development, and the potential to sell lots off if plans did not eventuate, he considered that the Land Use and Subdivision consents would bundle this development together, along with the Architectural outcomes; the Master Plan overlay; more detailed Conditions of Consent; and the Urban Design Guidelines to look at the end products. There were enough plans to ensure that the end outcome was achieved.
- In terms of an intent to change the zone on the site, he was not aware of that. He was aware that there had been a structure planning exercise that had started looking at alternative sites for a Commercial Town Centre, as part of the Ōmokoroa Stage 3 Structure Plans. There had been a Special Housing Area (SHA) originally mooted, of approximately 50h of land going down to Prole Road and possibly beyond to the State Highway. Kaimai Views was consented in 2016, and construction started in late 2017.

Commissioner Direction

Commissioner Caunter thanked the Applicant for its evidence, and advised the Hearing that a Submitter would now attend the Hearing via Zoom Audio/Visual Connection as she was unwell, and had been unable to attend in person. She would now be heard in respect of her Submission.

2. EVIDENCE OF SUBMITTERS – CONTINUED:

Submitter in Opposition (Via Zoom Audio/Visual Connection)

- f) **Robyn Scrimshaw** joined the Hearing via Zoom Audio/Visual connection and addressed the Hearing verbally in support of her written Submission, providing an overview as follows:

- She lived in the Kaimai Views subdivision at 8 Waihiri Place. Her home was in close proximity to where the proposed development would be.
- Other residents in her street had also submitted but, unfortunately, they were unable to be present either yesterday or today.
- When she had purchased her property in October 2018, she had done her due diligence, as had her lawyer. They had viewed the Structure Plan proposed by WBOPDC for the site across the road, and all of the options proposed had Residential zone abutting her property.
- She worked from home at least 50% of the time, and had chosen to build and live in Ōmokoroa to be out of the city.
- She had moved into her property in March 2019. Letters were received, along with the proposed Structure Plan in 2020, around the same time that consultation began.
- Following the notification letters there was confusion as to what was going to happen. As a result, Kaimai Views residents had requested a meeting in May 2020. A meeting was held at the Ōmokoroa Town Hall. There was confusion as to who the Developer was; what would be developed; and who was doing what, at that meeting, and also confusion arising from subsequent conversations, even to this day. That had made it challenging for some people to have a say, as they were daunted by the whole process.
- Notification of the public meeting scheduled on 13 July 2020, was only received on 9 July 2020. Because of the short notice, only two people from her street were able to attend the meeting, as many had commitments with childcare or pickups. It was at that meeting that Building N was discussed, and a change to the layout was mentioned. They had expressed strong concerns about light spill over their properties, the height of buildings and the proposed decking that would overlook Kaimai Views. The first evidence that Building N had a changed layout was at this meeting. Their concerns remained unresolved.
- A person from Ōmokoroa Residents and Ratepayers Association had stated that agreement had been reached to the proposal with Kaimai Views residents. After speaking to other residents and neighbours in her street who had submitted, none of them had ever heard from this person or been spoken to, and certainly, she had not, as her resolved remained unsolved and she would have said so. Therefore, she, and many of her neighbours she was aware, were not in agreement with the proposal. It was unclear as to which residents that person had spoken to, but at the least, it appeared it was to no one in her street in Kaimai Views.
- A major concern related to the duration of the consent, and the uncertainty raised by living next door to a construction situation. They were greatly concerned with dust and noise over a ten-year period, and about the unconfirmed order of staged development. The noise and dust would likely impact on her ability to work from home.
- A supermarket should probably be built first, but there were concerns over constant noise and movement related to that activity right next to their boundary. The noise limits proposed were quite high. The Tauranga City Council's noise limits were relative to properties of an industrial standard. The houses built in their street did not have double glazing, and they had not been built to industrial standards, as they were residential. Additional mitigation would be required to address industrial noise that may be generated. That mitigation would be expensive, and it was a question of the cost to retrofit their homes, and who should pay this. She and her neighbours were very concerned about the noise effects from a Commercial development right next to their homes. Noise would come up the valley to them on the wind.

- They did not have a footpath on their street, but all families on the street had children. Many children played on the street regularly, and also rode their bikes on the street. There was a concern over any increased traffic volume from the development and impacts on safety. They already had trucks coming down their street because they had been unable to access the subdivision another way. If their road was used for an access road, and additional vehicles were coming from a Commercial area into their subdivision, this would be a constant worry. It would be extremely dangerous for all their children, and they were fearful there would be a terrible accident. There had already been a few 'close calls' on the road as it way now. It may be that a request to review the bylaw would help, but they were unsure of that process.
- The hours for limiting noise with construction, referred to in draft Consent Condition 79, were not acceptable. This condition did not reflect the fact that many people worked from home now, for at least part of the week, and would not want to cope with the negative impact of construction noise next door.
- With reference to draft Consent Condition 73 around street lighting, she was concerned with light spill over their boundary.
- She was concerned that security around the Childcare Centre had not been addressed.
- They did not have a recreation reserve in their area and she did not see one planned in the Town Centre. Without that, there was likely to be more children out on the street. She was concerned about where the increasing population would go to enjoy local recreational activity, or how that would be provided for.
- With regard to dust that would be created on the construction site, she had a medical condition, and requested strict mitigation measures to control construction dust, not only for herself, but for many others, who had asthma and other respiratory ailments. There was scant information about containment and protection right on their boundaries.

Ms. Scrimshaw responded to questions as follows:

- In terms of her due diligence prior to purchasing, although the land next to her was zoned Commercial, she had understood that the proposed Plan Change was quite well appraised and was already two years through the Schedule 1 process. Therefore, she, and her lawyer, had anticipated that notification of that Plan Change would occur, and noted it had Residential zoning on the boundary, and a Commercial development that was located closer to Prole Road. On this basis, she had anticipated that there would be residential development that would move from the boundary through to Prole Road. There was speculation that, during the sales process, some of her neighbours indicated they were advised that piece of land was not to be developed, but she could not give evidence on that point, as she had not been told that. However, she did look at the Structure Plan process, and was confident that process had been under way for quite some time, was clear in the location, and that the community had indicated strong views on the location of the elements of the development. She had relied on that at the time she purchased her property. If she had known what would happen, she would move, but with current prices, and land availability, that was not possible.
- When they were home, the children played basketball on the street, or roller-bladed around Wai Huri Place on the asphalt, if they could not play on the exposed aggregate footpaths. Some of the children played Saturday morning sport in Tauranga at the schools, such as soccer, rugby, and basket ball. Out of school, some went mountain biking. There were few recreational facilities for their children, and they looked forward to a reserve being developed near Katikati.

Commissioner Caunter thanked Ms. Scrimshaw for presenting her submission, and noted that she was welcome to remain on Zoom link to hear the next stage of the hearing if she wished.

3. WESTERN BAY OF PLENTY DISTRICT COUNCIL'S REPORTING TEAM

- a) **Ms. Mary Hill**, Legal Counsel (Partner, Cooney Lees Morgan), appeared on behalf of the Consent Authority, Western Bay of Plenty District Council (WBOPDC). She advised that she wished to address some preliminary matters; then the legal issues the Commission had raised at the outset of the Hearing, to the extent that they had not already been addressed by Ms. Hamm. She advised that she was largely in agreement with the legal points that Ms. Hamm had made, but wished to make supplementary points. Ms. Hill addressed the Commission **verbally** as follows:

Preliminary matters:

- A. She wished to clarify the role of the reporting team, as there had been some concerns raised around the process. The intent of the reporting team was to ensure that the Commission had all of the information it needed to make an informed decision. The reporting team had provided the supplementary information in advance of the Hearing. This was to enable the Applicant team to address it in evidence, as part of the presentation of their case, rather than dealing with it at this part of the proceeding, when the Applicant's case had, essentially, closed. It appeared that an attempt to ensure procedural fairness, by giving advance notice of the issues, had somehow led to a suggestion that this was some sort of "information dump", or solicitation of information. This was not the case.
- B. An issue had arisen around the question of whether, or not, there was going to be a supermarket or other "key anchor" tenant, and understanding the importance or relevance of that information for the Commission. The reporting team's view was that this was a highly relevant and important consideration. The reason was that this was not a standard application. Aside from the fact that it was non-complying, what was being applied for was, essentially, the Town Centre. Under the District Plan, it was envisaged that would be a Council-driven project, and there would be community consultation and engagement, in the usual way. The Applicant was entitled to apply, as it had, for a non-complying application, and it was acknowledged that consultation had occurred. However, the interest of the Council remained a vested interest on behalf of the community, to ensure that it did get a Town Centre, and that it would be one that would meet the needs of the community. That was why it was relevant and important to look at ensuring there was this "key anchor" tenancy. Mr. Polkinghorne, in his economic evidence, had acknowledged that tenancy's importance to getting this proposal working. Essentially, it came down to more certainty around the lapse, timing and staging conditions. These would be addressed as she worked through some of the other legal issues. The 'key anchor tenancy' (supermarket), may not be a deal breaker, it may be something Council could work with, but careful consideration needed to be given to it.
- C. The final preliminary matter related to the Structure Plan process. Mr. Martelli (WBOPDC) had provided a Supplementary Statement on the Structure Plan process, largely in response to the Woolworths' Submission, and the suggestion in Ms. Knight's evidence on behalf, that granting this application might somehow undermine the Structure Plan process. In his statement, Mr. Martelli explained that would not be the case. However, what would need to happen was that the Structure Plan would need to adjust to take account of the Commission's decision. If, for example, the consent was granted, in anticipation of that, negotiations were ongoing with stakeholders to look at what should be done on the land that Council was focusing on being the Town Centre. That had to occur, so that Council was ready to take action with that Structure Plan because of the development pressure, once the outcome of this application was

known. It was a fluid process. Council was anticipating what might happen, and would be able to work around whatever the outcome was. This was not significant, in terms of impact on that process, except if the Town Centre consent was granted and then did not “get off the ground”. In that case, it would create an issue, as there were a number of other decisions that did depend on that. That was why the timing, and Council’s recommended early lapse date would be important, because if Council was to wait ten years, or even five years for Stage 1 to not ‘get off the ground’, then the delivery of the Town Centre to the Ōmokoroa community would be substantially delayed. That was why Council was interested in questions as to whether Stage 1 was going to happen, and when.

Ms. Hill then addressed the Commission verbally on legal matters as follows:

Legal matters:

- A. In relation to Balance Lot 7 and issues around scope, it was agreed that scope and local parking at the Prole Road connection were sufficiently raised in the application so there should not be issues of scope. In addition, there was case law to the effect that a balance lot, which was shown on a Subdivision Plan, formed part of the subdivision, therefore, the Commission was able to put Conditions of Consent that related to that balance lot. The Masterplan that was notified, was slightly confusing, because it had a notation in relation to the balance site, that this area did not form part of the application. Potentially, there may have been some confusion between the Land Use part and the subdivision part but, certainly, the balance lot clearly did form part of the Subdivision Application and, therefore, the proposed Consent Notice Conditions were appropriate. It appeared that the parties, the Commission and the Applicant, were agreed that it would be prudent, through the Consent Notice, to provide for a future link, should it be required. The suggested addition stating “should it be required by the future Structure Plan process” was an appropriate one. There was also the possibility of putting in a Consent Notice to ensure that there would be sufficient land available for the car parking overflow, if required. If there was to be future development of the Balance Lot, that would ensure that would require a further subdivision consent. There would be planning or design for car parking overflow, and it would provide more certainty in that regard.
- B. On a related point that had just arisen, although there had been a subdivision application for the reasons explained by Mr. Coles, which made sense, there was still the ability, potentially, for the individual lots to be on-sold. While it was accepted that was not the intention of the developer, there was the option to preclude that happening in the amalgamation conditions with a ‘Covenant Against Transfer of Allotments’ under Section 240 of the RMA. Such a covenant would ensure the lots were ‘held together’, until such time as the development had been completed, and then that condition would no longer be required. This had not yet been discussed with the Applicant, and had just occurred when working through matters.
- C. Further to the matter of the link to Prole Road and the scope issue, the reporting team considered that there was no issue, as it had been notified, and it could be dealt with through a Consent Notice. On discussion with Mr. Martelli, additionally, the Stage 3 structure planning process would involve consultation with the community around completing that link, and what the effects of that might be on the public. Any residual concerns the Commission had around the public not understanding that matter would be addressed via that process.
- D. The cinema and swimming pool had been addressed by Ms. Hamm, but did raise a bigger issue, though not insurmountable. There was a “disconnect” between the “narrative style” of the application, as it referred to possible facilities like a cinema and pool, potentially addressed via the Section 92 information, and the way the conditions quite strictly tied development back to the Master Plan. Condition 1 was a general

condition, e.g. “that the proposed subdivision be established in accordance with the application”, and then there was a list of things that the application entailed, and one of them was the Ōmokoroa Master Plan. In that document there was a table that listed the activity types. The only ones that were specified in a particular way, were the supermarket, childcare, civic, and accommodation (the hotel). Everything else was general category, such as residential, retail or commercial. If assuming that those definitions should be interpreted by looking at the District Plan, that would be a sensible approach. Retail, for example, did not include restaurants. Establishing cafes would likely be a desired option, but currently, on strict interpretation, those would not be able to be established in the Town Centre. Further careful thought needed to be given to what activities should go there, and make sure the consent would enable these. One option was to tie them to activities that would ordinarily be permitted in a Commercial zone. There may have been a miscommunication in one of Mr. Coles’ responses to the Commission; that this Commercial zone did not have permitted activities; that there was a “carve out” for the Ōmokoroa Town Centre, which made every activity a Restricted Discretionary Activity, so at the moment nothing was actually permitted. It would be a reasonable approach to take, to say that the reason was possibly because a “considered master planning approach” was sought, which was what was occurring through the resource consent application. However, if putting that aside; considering what would ordinarily be appropriate, and what the District Plan would indicate was appropriate in a Commercial zone, this would allow a range of activities. This was an important element that could be worked through while looking at conditions.

- E. Further traffic modelling was the last issue the Commission had raised, and was a process question. The reporting team’s preference would be for an adjournment rather than an interim decision. Ms. Hill had caution around an interim decision because, if the modelling, or whatever further information came to light, suggested consent could not be granted, this would leave all the parties “in a bind”. In terms of the statutory time periods, Section 103(a) of the Act required the hearing to be completed no later than 75 working days from the close of submissions. Submissions closed on 17 July 2020. The 75 working day period was 30 October 2020. However, the hearing was deferred to 8 March 2021 with the Applicant’s approval, which was allowed under Section 37 of the Act. The Commission was now hearing the matter 86 working days after Submissions closed. In her legal submission, the Commission could extend this date further; in fact, the period could be extended more than double with the test under Section 37(a)5 of the Act, provided the Applicant consented. She understood the Applicant may be comfortable with the concept of an adjournment. The other factors necessary to consider were the interests of affected parties. In her view, the interests of the community in achieving an adequate assessment of effects, (which would be the very reason for seeking an adjournment, if the Commission felt that further information was required on any outstanding issue), was of importance. There was also a duty to avoid unreasonable delay. If granting an extension to obtain further information, it was suggested that this would not be an unreasonable delay. The issue as to whether the Commission considered it needed further information was a separate matter, and the Commission would hear from Ms. Fosberry in relation to traffic modelling.
- F. In terms of the acoustic issue that had arisen as a legal question put to Ms. Hamm; because this was a non-complying application, it was not going to comply with the rules of the District Plan. That then allowed consideration of general case law around whether conditions were ultra-vires, or whether they were reasonable in how they related to the application, particularly if “offered up” by the Applicant. In her legal submission, the Commission could impose a different noise standard or standards that it considered would address the effects arising. What was before the Commission was an unusual situation, where what was established on the ground was different to what the zoning had anticipated, because there was now a Residential zone in close

proximity to a Commercial zone. Ms. Curtis had considered appropriate provisions for this case, and she would address the Commission on this, as a matter of evidence.

- G. The most challenging issue was the matter of lapse provisions. The problem being faced was that the lapse provisions, under the Act, were not designed for a staged scenario, and there had been some concern relating to the possibility that the community may have to wait ten years until the project lapsed. It sounded as though the Applicant was ready to proceed. All parties appeared to agree that it was important to get certainly on the timing of that first stage, which was a key stage. It may be that what was really required was to have clear conditions around when stages should, potentially, start and be completed, and whether it was important that stages were completed in a particular order, or not. She agreed with Ms. Hamm that once Stage 1 was, potentially, well underway, let alone completed, the consent would have been “given effect to”, and lapse would become a redundant point. The lapse would become a backup scenario, if nothing happened at all. An earlier ‘lapse date’ for Stage 1 would be an appropriate way to proceed, and then if the Town Centre did not get off the ground, Council could adjust in terms of the provision of a Town Centre.

Ms. Hill responded to questions as follows:

- In terms of the question of whether the supermarket should be operational within a specified time period, this may be too specific, possibly unfair on the Applicant, and not providing the flexibility that was required. However, the supermarket could be “tied” in some way to Stage 1 in the development stage, rather than the subdivision stage. That would then enable the tenant, and the related, complementary activities to be established, because that stage would attract and fund further development. In a scenario where nothing happened for three years, for example, that would not meet the need to provide certainty for the community there would be a Town Centre in a timely manner.
 - It was important that any conditions specify what Stage 1 was. It was a planning question for Ms. Price, as to which of the stages would come next, and when they were likely to be completed.
- b) **Mr. Morné Hugo**, Associate Partner / Landscape Architect (Boffa Miskell Limited), appeared on behalf of WBOPDC, in relation to the delivery of urban design aspects and his review.

Mr. Hugo responded to questions as follows:

- With regard to detail on the delivery of the buildings, and the condition around a Development Plan being presented, it was about a combination of what was appropriate with a resource consent. In terms of the Development Plan, it was relatively prescriptive up to a certain level of detail, and there was also the Design Guideline that sat “backing that”, but this was not enough to give complete surety of the outcome. It was important to have a mechanism in place so that, at an appropriate point in the process, it ensured that the outcomes were doubled-checked and verified by an expert, independent person. The world and the economy, for example, may change, but it was a question of how to achieve a general level of comfort, that the key elements that would protect the wider environment would be maintained. At the Building Consent stage, each individual building should go through a review process, which would be an appropriate stage to review that component. Tied in to that, there was the landscape perspective and the key interface to Kaimai Views, and how that would be dealt with. Conditions must be robust to ensure an appropriate person was doing that element of the work.

- The Design Guidelines on their own were not sufficient. They added a level, and must be comprehensively looked at along with the Master Plan, to ascertain the intensions. The other conditions, such as landscaping, needed to be identified, and all of those things must be considered as coming together to achieve the outcome. There needed to be a thorough check at that point.
- Details around materials, colour, and glazing needed to be checked, as it was about an alignment between the 'physical' and the 'visual'. It had been promised, but should be checked. That was why it was important that an appropriate person undertook an assessment. An Independent Consultant would give all the parties comfort that it had been done properly, and was in everyone's best interests.
- He was comfortable that the Master Plan would ensure that the Civic / Public plaza component was being delivered, and the location made sense. The 'open space network' created around the interface with Kaimai Views could also be discussed. The concern was how this was to be achieved, and what the process was going to be to ensure that. In terms of restaurants and cafes, those kind of activities would draw people to that public place and make it viable, as the space needed to be supported in that way. In terms of conditions, and what the Town Centre allowed for, those activities should be encouraged and supported. The supermarket was an important component, and would help to draw people to the public space, or they may not go there. That was only going to happen once there was a combination of Residential and Mixed-Use there. The nearest shop was kilometres down the road, so those amenities needed to happen, and be easily accessible.
- In terms of resolving any professional conflict between the reviewer and the Applicant, given the spectrum of elements, a professional person had an ethical way of operating. It must be an open forum for discussion and mediation, and should be someone given the mandate to make the final recommendation. A condition should be included to enable the authority to be delegated, and it was suggested this be made very clear.

Commissioner Caunter thanked Mr. Hugo and released him from the Hearing.

1.00pm The Hearing adjourned.

2.00pm The Hearing reconvened.

Commission Instruction

Commissioner Caunter noted there were a number of evidential reports before the Commission for consideration, and she requested that all those giving evidence identify which particular report they were referring to, during the course of their evidence.

3. WESTERN BAY OF PLENTY DISTRICT COUNCIL'S REPORTING TEAM - CONTINUED:

- c) **Ann Fosberry**, Traffic and Road Safety Consultant (Aurecon New Zealand Limited) appeared on behalf of WBOPDC. Ms. Fosberry advised that she would highlight key points in relation to the Section 42A report; provide responses to Mr. Carlisle's evidence; and, potentially, 'follow up' with commentary around some questions the Commission had put earlier in the Hearing. If there were any 'evidential gaps', she was comfortable to respond to those also. She addressed the Commission with verbal legal evidence, as follows:

- She wished to address the sensitivity testing first, as that was an issue that had been raised earlier, in terms of the suggestion of a potential disagreement or misunderstanding between Aurecon and Stantec. To clarify, the sensitivity testing did

test increased traffic generation, and tested differences in traffic splits, e.g. where the traffic goes, which entrance it goes into, and how much traffic comes from the north or the south. Aurecon and Stantec's testing scenarios did differ. Aurecon had not retested the Stantec scenario. To move forward, she would like to meet with Mr. Carlisle later this week, agree on those differences, and potentially, prepare a joint statement around those differences, so the Commission could see some agreement. It appeared there was a misunderstanding on the work that Aurecon had done. Mr. Carlisle would confirm that there had been in excess of thirty spreadsheets exchanged, and this was a lot of data to work through for both of them. It would be appropriate to meet and continue discussions that had been undertaken prior to the hearing, to work through those issues.

- In his evidence, Mr. Carlisle had referred to the regional model, and that he considered it was conservative. Within the regional model, a particular generation figure was used for a Town Centre, that was higher than the fifty percentile figure that Mr. Carlisle had used. She understood that generation percentile figure was based on the Bethlehem Town Centre, as an example. She was aware that Mr. Carlisle had been involved in the Bethlehem Town Centre since its inception and, therefore, had a great deal of knowledge around its development. She had not seen any data from that, to help her understand why 50% was actually a reasonable figure, and they had tested a higher figure than the fifty percentile. As part of the proposed discussion with Mr. Carlisle, she would like to see that data to better understand it. Mr. Carlisle may well be correct, in assuming that the model was conservative, and she was comfortable working through this matter. On work sites, there were a number of examples around the Bay of Plenty (BOP), where modelling that was conservative, had proven not to be, due to the exceptional growth that had been experienced in the BOP.
- In paragraphs 28 and 29 of Mr. Carlisle's evidence, he talked about wanting to do some refined modelling. As a result of that, she suggested if refined modelling was going to be triggered, there was potential to include the Prole Road roundabout and link. She was unsure from Mr. Carlisle's statement today, if he was still proposing that refined modelling would be useful. However, he did discuss, and she agreed on this point, that there was no point building something if it was not needed. There was value in doing more work between them in relation to this matter.
- In their test scenarios they saw there might be some issues of concern with the right turn, that may cause a queue bay. That may result in the potential for people to either, pass that and go south to the roundabout and do a U-turn and come back, or potentially "those in the know" may divert through Kaimai Views. This was the reason for suggesting the right turn was not the safest option. Additionally, there was historic crash data to consider. When thinking about 'Safe System' intersections, there was less focus on what the historic crash data might be at intersections, and about how to reduce the risk in the future. For example, 'Safe System' was about reducing speed so if a motorist was involved in a crash, it was survivable.
- One of the issues that the safety auditors did not pick up on, in the Road Safety Audit Report, was the issue of the pedestrian / cyclist path across that intersection. If there was a cyclist or pedestrian on that crossing who was not looking for a right-turning vehicle, and that vehicle was looking for a gap to negotiate through the northbound traffic, there was potential for a crash. We should bear in mind that, for pedestrians and cyclists, the speed in a crash needed to be below 80kph to be survivable. One question raised by the Commission to Mr. Carlisle, was about the level of use on that particular crossing. Given that there would be a large educational site with intermediate and secondary schools, during school peak hours there was likely to be a lot of additional traffic. If taking a wider 'cycleway context', there was 18km of cycle way stretching from the Wairoa Bridge at the Tauranga City boundary, through to Ōmokoroa. That linked into Lynley Park, and it was not a long trip across the railway

line, then cyclists were into the Town Centre. There was a proposed future link for that cycleway to go as far as Waihi, and link right through to Thames and around the coast to Miranda. To the south, there was a proposed strategic link for the cycleway through to Maketu and beyond. As a tourist destination, Ōmokoroa had a lot of potential around that cycle trail aspect, including commercial benefits. She expected there would be a significant amount of cycle traffic using this area. She had 'safety audited' the Ōmokoroa cycle trail on a week day, and was surprised at the volume of cyclist traffic using that route during the week, and the weekend flows were even higher when families were out and about. There was a significant number of e-bike users, therefore, she supported having extra cycle parks and bike charging facilities, as she anticipated growth in that regard.

- If the Commission was of a mind to allow the right turn in, and allow the connection to Sentinel Avenue, that did not necessarily mean that there would be no 'rat-running'. People would choose what they considered the most convenient route. They could pick another route, that may be through Kaimai Views or it may be to continue down to make that U-turn. Mr. Carlisle stated that, if Sentinel Avenue was closed, there would be little effect to the residents of Kaimai Views. She similarly suggested that there would be little effect if the right turn was closed, and people went down to the roundabout, did a right turn and came back.
- To clarify, the pedestrian crossings at the main entry roundabout, she had not recommended zebra crossings. She had recommended Raised Safety Platforms. The new Raised Safety Platform Guideline had a platform that reduced speeds to 50kph, and another that reduced speeds to 30kph. 30kph was an appropriate design speed for those platforms, and she recommended they be on all four legs of the main entry roundabout. It had been suggested that, as an arterial road, Ōmokoroa Road would be effected by the placement of Raised Safety Platforms. Given there was an overall speed limit of 60kph, plus the fact that people should slow down to go around a roundabout, the imposition of slowing down to go over those Raised Safety Platforms before reaching the roundabout would improve safety for all. It was likely to make little difference to the travel time on Ōmokoroa Road. This was at the main entry roundabout, as the Master Plan already showed Raised Safety Platforms at the Town Centre central roundabout.
- She had highlighted the need, in her evidence previously, to deal with the pedestrian 'design line' from Anglers Way, and that been raised by the Commission as well. People could not be directed to use the crossings at the roundabout. People's behaviour was such that they would often run across road, rather than walk another 50m to a roundabout, so there needed to be a safe crossing position for them on that 'design line' as well.
- Paragraph 29 of Ms. Hamm's statement this morning, proposed three carparks at the end of Sentinel Avenue, if that avenue was closed. It was noted that if the pedestrian / cyclist access was to be fitted in, it would need to go through there, and it was not appropriate there. There was a need to go through that aspect of the design.
- The Bay of Plenty Regional Council, as the provider of the service, would determine where the bus stops and bus routes would go. That was not to say this would not be discussed with the Applicant and local authorities.

A question was put by the Commission, in relation to whether it would be considered fruitful for Ms. Fosberry and Mr. Carlisle to meet and further discuss traffic matters. Responses were as follows:

- Ms. Fosberry noted that she had not discussed the proposal to meet with Mr. Carlisle at this time, but had with WBOPDC's Legal Counsel.

- Mr. Carlisle responded, noting that, at the risk of starting further debate at this point, the decision as to whether it would be fruitful to enter into more discussion, would likely be made by the Applicant's team. From his perspective, he had outlined his evidence with clarity, and did not consider there had been any misunderstanding. He suggested it may be helpful for Ms. Fosberry to understand where the differences lay.

Commissioner Caunter noted that the matter would be given further consideration by the Commissioner at the end of the day.

Ms. Fosberry responded to questions as follows:

- With respect to restricted speed zones outside schools, it was her understanding that the school access was to be on the connecting road between Prole Road and the Town Centre, so that would be the road on which the lower School Speed Limit would apply during school time. She had not seen any School Speed Zones applied on roads that did not have school accesses, around New Zealand. That was not to say that there might not be a case for that to occur, depending on whether the school had a pedestrian or cycle access directly onto Ōmokoroa Road. She understood that vehicle access would be at the rear. As seen in the Master Plan, there was provision made for pedestrian access through to the school site, and there may well be pedestrian access through to Ōmokoroa Road. If there was a large number of school pupils coming out onto Ōmokoroa Road, then it might be appropriate to have that speed limit reduction.
- The process to accomplish reducing speeds near schools was generally done under the Speed Limit Bylaw, and there were some guidelines around setting those speeds and installing the signs. She was aware, through discussions with the Tauranga City Council Road Safety Engineers, that in Tauranga City, as had been done in Hamilton, they were looking to reduce some of the urban 50kph speed zones to 40kph, and the "follow on" from that, was that they would be looking to reduce the 40kph speed zones to 30kph. There was definitely the ability to have a reduced speed limit related to school activities, if it was deemed necessary for safety. Usually the NZ Police may have input as well.
- If a further conversation with Mr. Carlisle was not held, she noted that Mr. Carlisle had acknowledged there may be occasions when there was a 'queue back' of traffic. She suggested, depending upon how conservative the data was, or was not, that traffic may 'queue back' more often. It appeared that Mr. Carlisle was not concerned whether a right turn was provided, or not. She was opposed to the right turn. Mr. Carlisle had raised the point that he did not believe that four-laning was 'an effect' from the Town Centre. If the two roundabouts were modelled together it would prove, or disprove that. How long it would take to prove, or disprove, would be a question for Mr. Carlisle. Her assumption was that it would be Mr. Carlisle who would be undertaking, or instructing that modelling to be done, dependant upon his resources or commitments.
- In relation to Condition 71, that the consent holder contributes to Council costs for roadworks, that was her understanding. It related to a Financial Contribution (FINCO).
- In terms of the roundabout and pedestrian access to cross the road on Anglers Way, the Ōmokoroa Road upgrading design plans that she had seen, had a very narrow solid medium edge in the design. If there was a provision for pedestrians to cross in, and around Anglers Way link, the median would need to be much wider to provide safe refuge for pedestrians. Those plans did not show that, so she was making point that, if there was to be a pedestrian facility there, it would require a design change.

- If a pedestrian wanted to cross the road at the roundabout, they would need to wait for a break in the traffic to safely walk across the road. There was a misconception that 'Zebra Crossings' were safer. They were not. What tended to happen, was that pedestrians thought they were safe on them, so they took less cognisance of traffic. There were arguments both ways. There needed to be a significant number of pedestrians crossing all the time, for a 'Zebra Crossing' to be effective. Drivers needed to see, on a regular basis, that they were being stopped. It may be that, once the Town Centre was fully developed, and all the residential housing was in, that there was enough pedestrian activity to warrant installing a 'Zebra Crossing'. However, it was suggested that, at the early stages, a 'Zebra Crossing' would not be warranted. The other aspect to consider with raised platforms, was that some drivers did not know what to do, so they often stopped and gave way to people anyway. In that sense, platforms were often safer, because everyone was "on their toes" trying to do what was right.
 - If an issue arose with the way pedestrians used a raised platform, i.e. stepping out without hesitation, often a sign was installed that told pedestrians they had to give way. However, it was worth noting that, in some cases, it was different. For example, on Ngatai Road, in Tauranga city, there was a two-way, separated cycleway. The pedestrian 'Zebra Crossings' across Ngatai Road had Give Way signs on them, because the cyclists and pedestrians had the right-of-way, other traffic had to give way. This was the reverse of what would normally be expected, and was following the same approach as was happening in Christchurch on cycleway projects. Potentially, that created an issue for drivers travelling around other parts of the country, who came to Tauranga and were not used to giving way in that manner. Again, if a motorist was unsure, they usually slowed down.
- d) **Mr. Ken Lawton**, Senior Land Development Specialist (WBOPDC), appeared on behalf of the consent authority, and requested that his Memorandum be taken as read. He then addressed the Commission ***verbally***, *outlining key points* as follows:
- For the past 16 years while he had been working at WOPDC, he had been involved with all major development in relation on the Ōmokoroa Peninsula, and would be in the foreseeable future.

Earthworks

- Council's draft Condition 56, which was Mr. Coles draft Condition 54 (H), talked about a response to potential damage on Council's roads. During the previous day's evidence, he had heard a comparison raised between the earthworks on the subject site, and the Harbour Ridge development. He spoke to a GIS map, indicating the Harbour Ridge site and earthworks. He did not consider this an appropriate comparison, as Harbour Ridge earthworks were all on-site 'cut to fill'. JACE, by comparison, was potentially 90% imported fill, trucked in from outside of Ōmokoroa, as there was little earth available on the peninsula, that had not been accounted for. He understood JACE was bringing in around 113,000 cubic metres 'solid measure', and if including bulking factor, that added another 40% by the time it was put on the truck. That was a vast amount of dirt. It would be helpful to have the Applicant clarify whether they were talking about 'solid measure' or 'truck measure'. It was standard practice to talk about 'solid measure'. That flowed on to the effects. Council's Ōmokoroa roading upgrade would be occurring at the same time as this material could be coming into the site. It was not the best timing, and was a potential major traffic management concern. The other issue was the effects on Council's pavement. He understood from Council's Transportation Engineers, that they were not planning to replace the existing pavement, and that it would stay there and the road would be widened on either side. That existing pavement would be highly likely to be damaged from this amount of heavy vehicles transporting material to the site. Transporting that

amount of material represented a spike in heavy axle loads, and although roads were designed to take heavy axle loads over a period of time. When there was a compressed timeframe of 3-4 months, for example, there could be a lot of damage, quickly. He questioned how that damage would be accounted for.

- Another issue with the earthworks was the potential interference with the overland flow paths with the Ministry of Education (MoE) site next door. Council staff had been advised that the Applicant was in discussions with the MoE on this matter. That involved a third party. That could be an issue in itself, and it should be resolved before approving the resource consent.

Road Reserve Width

- The next issue was the proposed 20m Road Reserve. The District Plan required 26m in a Commercial zone. He was uncertain whether the Applicant had mentioned this non-compliance in the application but, if so, he questioned what the justification was for reducing that 26m requirement to 20m. In his 'Assessment of Environmental Effects', Mr. Coles had simply stated: "*Sentinel Avenue will connect through to Ōmokoroa Road, and will have a 20m wide road corridor.*" In his table, which Planners generally used to compare compliance with non-compliance, it stated: Rule 12.4.4.2 - proposed roads - 'complies' - CTIA by Stantec NZ. If you then go to Stantec's TIA, it stated: "*Each of the Roads is proposed with a minimum of a 20m Road Reserve.*" There was no commentary whatsoever, to explain the non-compliance. He had heard during the Hearing yesterday, that the 20m Road Reserve was, basically, "transposing" what had happened with the Mount Maunganui main street into the JACE site. He questioned whether it was appropriate for Council to give up 6m. Council could do better, as it had proposed in its District Plan. There was no mention of compensation for this non-compliance. He did not consider that Council should give up 6m of the Road Reserve. Road Reserves were important, as they allowed for trees, berm, and pedestrian movement, which needed space. Council was already having issues, in relation to this, with Residential development, and was having to put trees in the pavement due to non-availability of space on the berm, despite having 20m Road Reserves. That was an experiment, and part of the reason the trees were there was because if putting them between the footpath and the kerb, which was the only space available that did not have services in it, there would be more issues because there was not enough room, and Council would be required to fix the lifting pavements.
- Submitter Fisher had mentioned amenity and shade, which he had taken note of. Submitter Henderson from the Art Group had mentioned that the Civic Building and Market Place area were 'not enough', and they sought something that would allow for expansion. If, for example, there was to be some public art as assets, the question was whether these should be on land owned by Council, and if it was considered that the Road Reserve was an appropriate place for that purpose. If the Road Reserve was not appropriate, then the question remained as to where those assets could be located.
- It was not an exact quote, but Dr. Beattie had indicated that things evolved over time and design quality was maintained over time. Sometimes things that evolved over time required additional space. Council should not give up 6m of the Road Reserve, as the whole 26m would comply with the District Plan, and may be needed to meet the needs of its community. It was proposed that there would be cafes with tables out on the footpath. He questioned why was this not being provided for, by asking for a 26m Road Reserve.

Sentinel Avenue Access

- He had heard, during yesterday's evidence, that 'no vehicle access' was, apparently, the general consensus at a ratepayers meeting. He reiterated that this was a medium density development. Dwellings alongside Sentinel Avenue, generally, only had two onsite parks, at best, and visitors parked on the road.
- He then spoke to a short **video**, providing commentary on his walk along Settlers Avenue, towards the central roundabout, then along Sentinel Avenue, and up to the JACE site boundary. He pointed out the street trees in the pavement; traffic travelling along the narrow roads and the obstacles they faced; plantings in the berms; the shared-space road where there were no footpaths; plants growing over the footpaths; and vehicles parked on the roadside. Some of the cars parked road side could have belonged to the residents. In the road that Submitter Scrimshaw lived on, had very little on-street parking available. Vegetation overgrowing the footpath needed to be cut back to allow pedestrian movement, and Council was already working on doing that. He noted this was, potentially, what would happen in a similar way in the proposed JACE development.
- People visiting friends and family in the shared space loop road would often park in Sentinel Avenue. This slowed traffic, but was what was expected for this type of residential development, and appeared to be self regulating for the local residents. However, this was somewhat different to what had been indicated by Submitter Scrimshaw, who seemed to be saying that the residents were still having some issues and had not fully adapted to their roading environment at all. It was important to listen to residents who lived within these environments day-to-day.
- If considering the environment shown in the video, and then factoring in a far greater volume of traffic, for example, on a Saturday when many residents could be home, and a volume of visitors to the JACE site and town centre, there was potential for traffic chaos.
- If seeking to prevent others parking in Sentinal Ave through regulation, the sort of solution that was often put forward, was to have yellow no parking lines. That effected residents negatively, because their visitors were then forced into nearby, narrower side streets. This did not seem fair on the residents.

Condition 71

- With reference to the two lane roundabout, and the four-laning of the road between the two roundabouts, in the draft conditions, the Applicant was seeking to remove the cost sharing condition. The Commission had referred to Condition 71 as a "loose" condition. The reason was that it reflected a lack of consultation with Council. Council had been left with little choice but to write conditions such as this one, in order to fill the gaps that should have been resolved during pre-consultation. Until that was resolved, it was difficult to say what should be done with that condition.

Hamurana Road Extension and Bridge Connection to Tui Glenn

- To provide clarification on the Tui Glenn area additional bridge over the railway track, he spoke to an **aerial photograph** with a map overlay, pointing out where Sentinel Avenue was and then appeared to stop. There were red lines that indicated Council's Structure Plan alignment for the Hamurana Road extension. Sentinel Avenue would butt into that at a T-intersection, and then turn to the right. Hamurana Road (or whatever it was eventually named), would carry on to the railway tracks. There would be a bridge over the railway track, and that would create a connection up to Tui Glenn. Currently, Council was not planning a vehicle bridge over the railway track. It was too far away and there would not be enough demand for that, but it was considering a

cycleway bridge. If a vehicle bridge was required in due course, that cycleway bridge may possibly be incorporated into an all vehicle bridge in future, depending upon resources available and decisions yet to be made.

Commissioner Hill thanked Mr. Lawton and noted that the information clarifying Tui Glenn, the potential bridge and the connection with Hamurana, in particular, was helpful.

Mr. Lawton responded to questions as follows:

- In relation to whether Council could impose a heavy vehicle impact fee, or relied entirely upon Financial Contributions (FINCO's) to cover road degradation, this was quite a complex matter. If this was about truck movements to and from a quarry in a Rural zone, it would be considered an out-of-zone activity. In such a case, there were two types of FINCO's that could be applied. One was 'pavement consumption', and the other was 'capacity consumption', which was about activities effecting the ability of normal traffic to effectively use the roads, e.g. having to pass several trucks at one time. In this particular instance, it was not an out-of-zone activity. However, he understood, from the Planner's 42A report, that the earthworks were, in fact, a non-complying activity in themselves, and there was a possibility that a separate resource consent may be required. The pavement had only been finished in the past eighteen months, and any potential damage to it, and to the roads from the transportation of fill, would be a definite effect that Council should be considering or discussing.
- When considering the impact of an activity on roads and pavements, and the application of FINCO's, it did not make any difference where the fill had been transported from.
- In relation to the proposed 20m Road Reserve. Table 1, in Section 12 of the Subdivision Development chapter of the District Plan refers. The table information was 'driven' by vehicle movements. He understood that the vehicle movements for the JACE proposal would exceed 1,000 Passenger Car Equivalent (PCE), and therefore, technically, the requirement for 26m Road Reserve was triggered. To the extent that local roads carried more than 1,000 vehicles per day, then the 26m Road Reserve applied regardless of what it was for. Unfortunately, that was an issue that would have been beneficial to resolve with the Applicant prior to the Hearing.

Mr. Carlisle addressed the Commission as follows:

- To assist the Commission, Transportation Assessment 9.2, did discuss the issue of the Road Reserve. The conclusion was that it accepted the District Plan and, therefore, that the appropriate Road Reserve width would be 26m.
- This conclusion was on the basis of Sentinel Avenue being "open" to traffic. There would still be traffic in excess of 1,000 PCE, as all the traffic would still have to come from the main roundabout down to the Town Centre.

Mr. Lawton responded to a further question as follows:

- In terms of the approach to stormwater, and downstream flow paths, if Council sought to have onsite stormwater, for example, if it was what the community also wanted, it would need to be fitted in to a 20m Road Reserve, potentially. The Road Reserve was not just a traffic consideration, but was needed to fit everything else that was needed into it. If there was insufficient room, the first aspect to suffer was street trees, which would not flourish and thrive. Allowing a 26m Road Reserve provided for pipes, plantings and other things that may be required.

- e) **Ms. Alison Curtis**, Compliance and Monitoring Manager (WBOPDC), appeared on behalf of the consent authority. She requested that her report, in response to the acoustic report prepared by Earcon on behalf of the Applicant, dated 2 March 2021, be taken as read. She then addressed the Commission **verbally** with key points as follows:

Earcon Report

- In relation to the acoustic report prepared by Earcon on behalf of the Applicant, she considered the report to be preliminary only. It had not specifically addressed all the different activities that were occurring on the site. It was obvious, particularly after hearing the Applicant's evidence, that there was a true desire for this to be multi-use space, and there were likely to be multiple activities generated. The Earcon report addressed some noise producing activities, but not all of them in relation to the areas that had been discussed during this Hearing, which included a number of retail spaces provided for on the plan.
- In her assessment of the noise considerations for this application, she did look at it from a broad perspective; that the office and retail spaces, over a period of time, could be used for a number of different activities that may not have been considered or outlined in the Earcon report, or in the initial assessment that had been provided by the Applicant. Having had experience in the changing environment of Commercial spaces in many Town Centres, there was definitely an evolution over time about what would occur in spaces. Her recommendations were based on the fact that there could be noise generating activities, and noise sensitive activities, located in close proximity.

Noise Rules

- The Applicant discussed the provisions in Council's District Plan, which were specifically around Industrial noise levels between Industrial noise uses. They were not intended to be for Commercial, and had arisen from a specific plan change to address issues in the District's Industrial areas. The noise level of 65dBA leq was only for the "intra-Industrial" noise levels and was not intended to apply to Commercial noise activities. The Commercial noise levels that applied in Council's District Plan, were currently only limited to the provisions that were at the zone boundary, and provisions limited to noise sensitive uses within a Commercial area. They were, specifically, 45dBA leq during the day and 30dBA leq at night.
- In her recommendations, she had put forward a number of suggestions, specifically in relation to "intra-Commercial" noise levels, which would be from one activity to another activity, within the Commercial area. The Applicant had suggested 65dBA leq at the outside boundary of any particular business. Her recommendation was 60dBA leq and she would speak further to that. She had also recommended some internal "noise insulation levels". There was an equation that allowed for noise insulation levels, which provided a building envelope that would ensure a 30dBA leq reduction from outside the building, to inside the building. For any building construction there was a requirement for output under Sound Transmission Class (STC) ratings. If an external noise level was too high, the design of the building had to be such as to mitigate sound level transmission. The terms of that design, it would be very expensive to be able to achieve the right internal sound levels. The recommendations she had put forward were to provide a reasonable external level to the building, and a reasonable sound insulation measure, to ensure internal noise levels that were achieved by residents next to those activities, would enable those activities to "cohabitate" within the Commercial zone, appropriately.
- Addressing the issues that had been raised by the Applicant, specifically around a 65dBA leq versus the Council recommendation for 60dBA leq, there were several issues that arose, the higher the external noise level was to a building. The higher the

external noise level, the higher the construction costs to design a building that would achieve an internal noise level suitable for habitation. 65dBA leq was at the high level for an external noise level for Commercial operation for any District Plan level throughout the country. Auckland Unitary Plan (AUP) referred; and had two external sound levels that were applied to Auckland Commercial areas. For Auckland Town Centre zones, it was 60dBA leq, and for the Central Business District it was 65dBA leq. The reason was that Auckland was in a position where it could not get the noise levels below 65dBA leq in its town centres. Tauranga City, unfortunately, was in a similar situation, and had a 65dBA leq outside of its Commercial uses. That made it highly expensive to design buildings without noise levels excesses, and it meant that Council received significant complaints in relation to conflict between activities.

- The reality was that, if there was a Commercial business operating at a 60dBA leq limit, and a neighbouring business operating at the same level, the noise calculations meant that there was an external sound level of 63dBA leq, combining the two sound levels. If there was a 65dBA leq limit, e.g. a bar and restaurant next to each other, the external noise level to that building would become 68dBA leq. There would then be a design requirement, which was to try to get from 68dBA leq outside the building, to 30dBA leq inside the building. Standard glazing laminate glass for a building would not achieve this, there would have to be significant laminate glass depth to achieve that, which would, in turn, significantly increase the cost. Her recommendations had been made with a balanced, 'belts and braces' approach to both the noise generating activities, and the noise sensitive activities, which would ensure that the Developer would not have issues, in terms of the design of the building being so expensive that it was unable to achieve a desired economic design.
- The Applicant had put forward a cinema as a potential use within the Town Centre. The average cinema, or a building intended for noisier activities, was likely to have noise that was being generated at a low frequency. The average cinema now, could potentially want its audience to "feel" the movie and not just see it, so there were specific design criteria that must be applied with that noise generating activity within a Town Centre. It was expected that a separate resource consent would need to be lodged for such an activity.

Ms. Curtis responded to questions as follows:

- To clarify, she was not talking about a 30dBA leq reduction, but it was about trying to reach a 39dBA leq noise limit inside the building. The acoustic calculation unit provided for controls around noise frequencies, and looked at eliminating, to some degree, noise frequency. The Auckland Unitary Plan (AUP) had a slightly different approach.

Ms. Price responded to a question as follows:

- In reference to whether the District Plan defining noise sensitive activities, under Section 4C.1.3.2, Noise Limits, Section (c) (i) stated: "*For potentially noise-sensitive activities, such as commercial offices, places of assembly, medical, veterinary or scientific facilities, and dwellings, and accommodation facilities, an Acoustic Design Certificate shall be provided at the time of building consent, demonstrating that the building has been designed so that the internal noise limits set out in the following table are not exceeded*".

Ms. Curtis responded to further questions as follows:

- In terms of Kaimai Views Commercial zoning, and "noise situation interface", she could only refer to the lack of information in the Earcon report, which did tend to specifically address the two 'noise generating' activities only. These were the

supermarket and the childcare centre, and they had made an assessment around how those two activities would effect the neighbouring residences, but there had not been a full assessment of all 'noise generating' activities and how they would impact. The Earcon report provided some noise mapping, but this mapping did not, in her opinion, fully address all 'noise generating' activities. There was also concern that there could be some noise effects beyond the Town Centre to Kaimai Views. There were a number of areas that, it was suggested, required further exploration.

- In relation to Condition 10, and noise Kaimai Views residents may be exposed to currently, because the application only related to the Town Centre, and the noise limits that would be put in place with this application would not extend beyond the boundary, the only District Plan provisions were around those noise sensitive uses (internal noise levels) that needed to be achieved. There would definitely be potential that Kaimai Views residents would experience some noise. The design requirements that Council would be looking to impose, would not be able to be applied to those activities. Mr. Martelli would be able to further address this matter when presenting his evidence.

Matter of Clarification

Commissioner Caunter noted the reason for the line of enquiry in relation to Condition 10, was that the Commission understood the Kaimai Views land was zoned Commercial, and although it had housing on it, through the Special Housing Area (SHA) process, that zone was still there. The wording before the table in Condition 10 stated:

*“That the commercial activities (excluding these noise-sensitive activities in condition X below) shall be conducted as to ensure that noise from the site does not exceed the following noise limits within the stated timeframes at the boundary of any property **within a Residential Zone**”.*

The Commission understood the intent of both the Applicant and Council's reporting team. However, Condition 10 as it stood, could not be applied because Kaimai Views was Commercially zoned land. Some further thought needed to be done to address this.

Mr. Craig Lemon, Director of JACE Investments Limited, advised as follows:

- The Earcon report was meant to have taken into account the Kaimai Views residential use, as if it was zoned Residential.
- That condition could be amended quite easily.

Ms. Curtis responded to further questions as follows:

- In relation to costs to provide additional noise protection, she was familiar with the Wellington City Council District Plan, which may assist. That plan had a 60dBA leq requirement at the external boundary, and included the noise and insulation factor. As part of their District Plan Provisions, to help developers, they had provided a guide to what kind of materials would achieve the required dBA, and indicative design requirements, such as glazing. She referred to the Wellington City Council Operative District Plan – Business Area Standards – Chapter 34.6., and the Noise Insulation Business 1 Area Rules 34.6.2.10.1. She read the table in full, where it informed glazing requirements, noting that glazed areas greater than 35% of the floor area required a Specialist Acoustic (SA) report to show conformance with the insulation rules. This increased the cost of the laminate and, added to the cost of the SA report, would increase the cost of the build.
- The Applicant's information was intended to be a concept design at this time. Bearing in mind the considerable pressure on housing within the District, there was a possibility that there would not be as much demand for office use, within the Town

Centre, as there may be for Residential use. There was the potential conflict, in managing the noise within the one building, if there was an entertainment or business activity with a degree of noise generation on the ground floor, and then potential residential use on the upper floor. There was always a possibility that Residential could be an “end use” over the lifespan of a building. If this happened, it would mean that there would have to be significant investment in terms of isolation of the noise generating activities to that Residential use. There had not been any specific design provisions in the Earcon report, as to how to ensure that those two uses could occur within the one building. She had noted in her report, that in the Earcon report there had not been complete consideration of how those outdoor spaces would be used, and the potential noise generation from them. The noise modelling that was done by Earcon for that space, did not show that there could be, for example, a concert in the park, or night time entertainment such as a movie, or any other noise generating activity.

f) **Mr. Phillip Martelli**, Resource Management Manager (WBOPDC), appeared on behalf of the consent authority and addressed the Commission, highlighting key points and commenting on matters raised during the hearing, as follows:

- He had been employed by WBOPDC for 30 years, and during that time had been involved in planning in relation to Ōmokoroa. He also lived in the area, and was familiar with the history of the area, and the Ōmokoroa community.
- He had been asked to comment on what the Master Plan for Ōmokoroa should be, and it was, largely, what the Applicant had put forward. Council had anticipated, when it asked for a Master Plan in the original Plan Change, that there would be visual plans, plus text, including detailed design guidelines and, also it would be likely that there would be some changes to the rules in the District Plan. In considering a town centre in Ōmokoroa, Council was dealing with something it had never dealt with before. On this basis, it needed to be considered in its own, ‘stand-alone’ context, and not apply rules that applied to the rest of the District.

Mr. Martelli responded to a question as follows:

- Council’s intention, when discussing the preparation of a Master Plan for Ōmokoroa, was to introduce it by way of a Plan Change. That had not been discussed at that level of detail with the Applicant. From his professional perspective, a Private Plan Change would have been preferable, but notwithstanding, Council had received a non-complying application, and must deal with it accordingly.

Mr. Martelli continued his presentation of evidence:

- One of the reasons a Master Plan was not prepared in the past, was because there was no indication that a town centre was going to be happening soon. Therefore, it seemed a waste of time, energy and money to prepare a Master Plan for something that could be ten, fifteen or more years away, because things change. Council had seen a great deal of change in its District in the time since the original plan change was notified. So Council needed to be flexible, and many things chosen to be included in this application were appropriate to have, but certainly were not thought of at the time Council was producing the original Plan Change. The future use of electric bikes and scooters, and charging stations for electric cars, for example, although minor points, were not anticipated fifteen years ago, let alone the change in people’s use of town centres. There was now demand for alfresco dining and a focus on food and beverage, rather than retail shopping. The nature of usage had changed significantly over time, therefore, the planning for the town centre needed to be timely when ready to start developing, and not a long period in advance, so that was why a Master Plan had not been prepared back at that time.

- During the hearing, there had been discussion about whether the schools should have pedestrian/cyclist access from Ōmokoroa Road. Council had already been in discussions with the MoE about access when the detailed design was being considered. From a “place making”/planning aspect, Council was not keen about this because it was highly likely that people would use Ōmokoroa Road as a ‘pickup/drop-off’ point and it was not designed for that. In all discussions with the MoE, access was around the new roads closer to Prole Road and the Town Centre. In that regard, Council had informative discussions with JACE on where the alignment would go, and with the MoE.
- In terms of the questions raised on the effect to landowners and the wider community, the only landowner truly effected was the MoE themselves, and Council was in discussion with them because the school would be on their own land, as Council had sold the land to the MoE. There was only one neighbour that may be potentially effected, and they were aware of what Council was intending to do, as there had been significant work down Prole Road. There had been a lot of community discussions held already with Prole Road residents/landowners.
- To further clarify on the Hamurana Road extension and bridge, as raised by Mr. Lawton, he was correct, in the sense that the original Structure Plan actually had a bridge from Hamurana Road, (down by the State Highway), all the way through to Francis Road. Investigations had shown that the cost was “almost unaffordable”, but also that in fact, it was a “nice-to-have”, not a “need-to-have”. Some thought there was a need for another access point over the railway line. If looking at Matua for example, there was a population of approximately 4,000, which was slightly lower than the population anticipated on the other side of the railway line at Ōmokoroa. Matua only had one access point across the railway line, which was an example of how that could work.
- Ms. Curtis had discussed the current zones. Part of Kaimai Views was zoned Commercial and part was zoned Light Industrial. As part of the current Structure Plan process, Council was looking at “rationalising” some of the existing zones, and making Kaimai Views a Residential zone. Council intended a fuller discussion with JACE about the rest of their land, in terms of the best options for Future Urban Zone land, and discussions had already happened in relation to the road links in between. Further discussion was likely on whether there would be any changes around the Commercial zone rules, that may fit in the Structure Plan to help the Town Centre design.
- In summary, Council was “well down the track” in preparing a Structure Plan for Ōmokoroa Town Centre. Council had changed the Structure Plan, as a result of the JACE application, so the JACE location was shown as the Town Centre, and that had caused Council to relocate other activities within the Structure Plan. Council was preparing a Structure Plan on the basis that, pending the outcome of this hearing, Council could move ahead with a Plan Change, one way or the other. The reason Council was doing that, was because it must be ready to move, as Ōmokoroa was running out of Residential land, and Council was short of meeting its requirement under the National Policy Statement on Urban Development. Council must take action sooner rather than later, as opposed to waiting another two years.

Mr. Martelli responded to further questions as follows:

- At this time last year, Council was preparing to engage with the community on a preferred Structure Plan. Within three days of Council sending letters out to the community, JACE lodged its application. Under advice from Ms. Hill, in relation to fairness and due process, Council put its Structure Plan on hold, and had done no further work on it. What they had been preparing, was a Structure Plan based on the assumption that the JACE Town Centre was proved, what that could look like, and

how it could be best aligned with the Structure Plan. That was the current focus, rather than incubating two Structure Plans at the same time. In terms of providing a draft of the current Structure Plan being prepared, there was some concern in doing so, as there was commercial sensitivity, and Council was yet to talk to some of the effected landowners, who would be impacted in a reasonably significant way. Therefore, parts of the Structure Plan were still somewhat confidential, but Council could advise that the main change being considered was location of the active reserves in the current Structure Plan. When Council had last engaged with the community, approximately fifteen to eighteen months ago, there were two or three options as to where the active reserve might go, but there had been no further consultation with the community about a preferred option, since.

- In terms of the projections for uptake of residential dwellings (growth) at Ōmokoroa, the population should be 12,000. Therefore, in Stage 3, Council anticipated approximately 2,200 residential dwellings, with close to 800 dwellings, potentially, in the existing areas. Council anticipated that Ōmokoroa would be built out in less than thirty years, i.e. the late 2040's, and was having to revise its Long Term Plan figures currently, as a result. Staff had talked to Tauranga City Council staff, and the city was having difficulty meeting residential supply needs. As a result, people were going to places like Ōmokoroa and Te Puke. There would be some major issues with the ability to provide dwellings because of this.
- In terms of evidence given the day before on the catchment size required to support a supermarket of 3,500m² (being a population of approximately 8,000), it may take another ten years to reach that catchment size. A table of related figures could be provided if required. If considering the addition of the hinterland, as had been talked about, potentially that added another 5,000 people, and it would not be too far from the catchment required, potentially, within a five to ten-year period. Supermarkets may have a different way of assessing this.
- His involvement around the Civic building, or Civic precinct, had been through meetings with JACE, and Council's Strategic Property Manager, Mr. Williams, as part of the Structure Plan process. The size of the amenity had been discussed, and was based on Council's service centres at Katikati and Te Puke, and how those functions performed. Katikati had a new Civic building, so Council had the experience from that to provide guidance on what was likely to be required in Ōmokoroa. Council had just invested in a new facility, opened a few months ago, at Western Avenue, Ōmokoroa. It was part of the sports centre, and Council had the use of one end of that facility. That had been done on the basis that, in due course, Council would relocate to the Town Centre in Ōmokoroa, leaving more space for the sports centre. To be clear, Council would relocate to the Town Centre Ōmokoroa, as a service centre only, and it would not be a total relocation of Council's Barkes Corner main office. No time line had been applied around that relocation, at this stage.
- In his Memorandum dated 4 March 2021, paragraph 4, he had advised that the Applicant was aware that Council would change zoning of the subject site, via the Structure Plan process. To further explain, as part of the last round of community engagement, four possible sites for the Town Centre were shown, but none of those sites were on the JACE property. When Council was starting to prepare the Structure Plan to the preferred option, they had met with the representatives of JACE to give them an indication of Council's intention in terms of the location of the Town Centre. Discussions had included the likelihood of changing the zone from Commercial to Residential as reserve locations had to be considered, as well as other possibilities.
- In terms of the likelihood of a Town Centre zone arising from the Structure Plan; at this stage, Council had not had discussions with JACE, in terms of whether there was a need to change the District Plan to give effect to what was put there, or should it be a "sub-zone of what we have got". It was interesting that the National Plan Standards

were out at the moment, and it talked about a new hierarchy of commercial and town centres. Council was currently undertaking a study with Tauranga City Council to look at the overall commercial hierarchy of the whole sub-region and, therefore, where that would fit in, and obviously Ōmokoroa would be a Town Centre. Whether it would end up being a separate Town Centre was unknown. This Council was about to commence a District Plan Review in the next financial next year, so that was the time to look at it in detail. However, if there were minor changes which could make the Town Centre in Ōmokoroa more operational, that could be done now.

3. REPORTING OFFICER'S COMMENTS FOLLOWING THE HEARING OF ALL EVIDENCE

- a) **Ms. Anna Price**, Senior Consents Planner (WBOPDC), and Author of the Section 42A report, addressed the Commission following the hearing of all evidence, providing clarification on issues and matters raised on both days of the Hearing, as follows:

Scope of Comments:

- There had been questions raised by the Commission around the nature of the Concept Plans presented, and to what level there was certainty concerning them. To clarify, Council had already held a number of discussions with the Applicant concerning these Concept Plans and, specifically, on the need to provide a level of detail that could be proved, and could be relied upon for certainty. There had now been further discussion, via Mr. Hugo and also Commissioner Mead, around independent reviewers, and possible delegation of that function to an independent reviewer. To note, Council would not be comfortable accepting the delegation of that function to a third party, but would instead accept a certification from a third party, upon which it could then rely on. This was similar to ecological experts that provided a certification for ecological features.
- With regard to the Civic building, the intention was never for Barkes Corner offices to relocate to Ōmokoroa, and this had not changed. Council's Strategic Property Manager, Mr. Williams, had indicated that there was an intention for a new Library and Service Centre, similar to the one built in Katikati. This would also provide for some Council meeting spaces, and community meeting spaces. That tied in to the submission from the Ōmokoroa Arts Group, indicating the need to provide for community space.
- With regard to access to Kaimai Views, there had been some comments on the vehicle use of Kaimai Views residents to the Town Centre. Council did not wish to encourage this type of transport for such close residents, and would prefer to encourage active walking and cycling. It was anticipated that close by residents would only use their vehicles if they were, for example, doing a big supermarket shop. Mr. Carlisle had indicated that this journey would not be significant, if they were to drive from Kaimai Views out onto Ōmokoroa Road. Council's preference was that the connectivity be maintained by pedestrian and cycle access only. A number of amenity concerns had been raised by Submitters, and the restriction to pedestrian and cycle only would assist in mitigating those concerns. It should be noted that the National Policy Statement on Urban Development guided Council to reduce the reliability on private vehicles, and to encourage accessibility through active forms of transport, being cycle and pedestrian. This was another reason why Council had not focused too heavily on the minimum carpark numbers, as these would be reviewed through Council's District Plan review.
- In terms of the cinema and pool, these did raise an issue on what the Masterplan showed spatially, and what activities the application document listed. The spatial Masterplan, as tabled, specifically indicated supermarket, childcare, hotel and civic

use, and then the other uses were generic, being 'office' or 'retail'. There did need to be consideration around definitions under the District Plan as, for example, 'retail' did not include restaurants. There needed to be careful thought about what activities would occur in the Ōmokoroa Town Centre, and what was ordinarily appropriate in a Commercial zone, such as the current permitted activities. Staff were willing to work with the Applicant on these permitted activities, as part of the draft conditions.

- With regard to the desire for no raised planters and low impact stormwater design, Submitter, Ms. Fisher had questions around these, and discussion ensued around responsibility for maintenance, with an example indicated in Auckland. She could confirm that, in this case, in the Western Bay, Council's Transportation Manager would have that function of maintenance, and not the Reserves Team. In the matter of raised planters and the pre-treatment of stormwater, it had also been acknowledged by Mr. Hight, (appearing for the Applicant), that the downstream ponds would provide both treatment and storage, and that low impact treatment was a "nice-to-have". Obviously, if that was something that the community wanted later on, then it was hoped that Council could have that discussion with the Developer at that time.
- With regard to earthworks, Mr. Hight had stated in his evidence, that 113,000m³ of fill material was to be imported to the site. Under its Section 92 request, Council had requested the Applicant to provide further detail, following a statement in their Application that there was to be 50,000m³ of earthworks. Given that, under the District Plan, the activity was discretionary, or non-complying, the associated earthworks also "fell to" a non-complying activity. In her Section 42A report, there were questions she still had in relation to the amenity effects. She could see that, in the Applicant's evidence, they had referred their earthworks effects only to the Bay of Plenty Regional Council (BOPRC) consent. It should be noted that the BOPRC consent only dealt with dust, and did not deal with the amenity effects of bulk earthworks, as considered under the District Plan, or related truck movements and noise.
- Council had included a Construction Management Plan, and a Construction Traffic Management Plan to try to assist with the gap in information, because currently, there was a question of where the fill material was likely to come from, given that it was unlikely to be coming from anywhere on the peninsula. This gave some scope to the Applicant to consider, once they knew where the fill was coming from, and as Mr. Lawton had raised, there were Council concerns around traffic movements and use of the road.
- Financial Contributions (FINCO's), related to the earthworks portion of the consent, had also not yet been considered.
- With regard to lapse dates, in her supplementary report circulated on Friday, 5 March 2021, she considered a shorter lapse date for the commencement of the works on site for Stage 1, and this was to give the community and Council certainty that the Town Centre would progress. This was only a consideration, but raised the importance of the delivery of the Town Centre, and expectations and the desire for the development of the Town Centre in Ōmokoroa. Council would have a further discussion with the Applicant around the commencement of works, as part of the draft Conditions discussion, and what was intended with the work programme. Staff also sought to discuss the definition of 'giving effect to' (the consent), and to look at whether this could be built into a Condition of Consent, so that, should any other Council representative, or future consent holder be involved, there would be a clear understanding of what that meant.
- Finally, from her observations in the hearing during the last two days, there did still remain a question, in particular, around the transport effects and, specifically the right hand turn-in off Ōmokoroa Road. She relied on Ms. Fosberry's expert evidence, as Ms. Fosberry had been working closely with Council, and considered that the right

turn in did create a safety risk that Council should consider to be higher. The Applicant considered that the right turn-in was acceptable and should remain. Ms. Price advised that it was her recommendation, should consent be granted, that it should be on the basis that there be a condition requiring no right turn-in from Ōmokoroa Road.

Ms. Price responded to a question as follows:

- Under the District Plan requirements, earthworks were a non-complying activity where a land use consent was applied for a Discretionary or Non-Complying Activity. That gave Council the ability to consider amenity effects from the earthworks portion of the consent. The Applicant had applied for a BOPRC consent, and considered that satisfied that portion of the District Plan consent requirement. She did not agree with that position, as the District Plan requirement for earthworks considerations was separate to the BOPRC's considerations, and the omitted transportation effects could be considered in relation to the earthworks under the District Plan. She considered that the effects had not been assessed but, "on the whole", that could be provided at a later date, not the assessment effects, but the information to assure that the effects were mitigated, in terms of a Structure Management Plan and a Traffic Management Plan. She believed that this should be considered, and she had made a note under her Section 42A report, stating that she thought it would be appropriate that it be considered. While there was information that was potentially missing, it was still possible for consent to be granted, provided there were suitable Conditions of Consent. That was what she had tried to achieve, by writing quite a number of the draft conditions in terms of the provision of more information to ensure that, at the time works got underway, once more detail was known, the Applicant would come back to Council and provide that detail. She was also hoping that a lot of that information would be forthcoming in the Applicant's evidence provided at the hearing.

Ms. Hill addressed the Commission as follows:

- To assist, Council was familiar with the adaptive management concept. A number of the outstanding issues related to matters that the proposed draft conditions proposed to deal with, through management plans that were yet to come. She understood that Ms. Price's position was that she considered these 'information gaps' were not fundamental to the decision to grant consent, but would come down to the wording of the final conditions, and the rigour with which they proposed in relation to these management plans yet to come. That was probably where some further work needed to occur, before the Commission could make its final decision. It may well be, potentially, that Ms. Price exhausts that process and still believed there were some things that had not reached agreement, but it felt premature for her to do that now.

Ms. Price responded to further questions as follows:

- In terms of there being sufficient guidance in the design guidelines to certify the process, and not have it become a "mini resource consent" process, she had relied upon Mr. Hugo's peer review and she had also heard evidence from Dr. Beattie as well. She understood they were both satisfied with the conditions. She referred the Commission to Mr. Hugo's comment, stating that he considered that the level of detail was appropriate and, therefore, she relied on his expertise on that matter.
- The timing of the Design Guideline was at the time of building consent, which was something she did not agree with, because that tied it to a 'twenty working days' process and, ultimately, once it was tied to a building consent it was too late to make any significant changes. That was why the team had built in the condition for at least three months prior, so that Council could obtain a Building Development Plan, and this could be assessed with information from an independent expert, and the team had agreed that should be incorporated.

- In terms of the design guideline and descriptions of “active and important facades”, and some further details provided verbally by the Applicant but not included in the guidelines, she did agree that the guidelines should be updated with fuller information. In terms of the general descriptions of things, e.g. “durable materials” with descriptions of some materials and then “and many others” being wide open, the guideline appeared to need more of a review, and possibly a planner’s review, to ensure it was much clearer and refined ‘to an appropriate degree’ in the draft conditions. She understood that the Applicant had already indicated they had prepared an update of the guideline, and it may be that what they were updating would be based on matters raised during the Hearing. That may tie in with discussions on draft conditions, to be had.
- In terms of the overall picture, she was satisfied that, as long as there was a condition that meant there would be no access from Kaimai Views; and there would be no right turn-in, consent could be granted if the Commission were of a mind to do so. She was satisfied that the Application had achieved the “104 hurdles” being Section 104 of the RMA, which set out the principal matters, subject to Part 2.

Commissioner Caunter thanked the Council team for their evidence, comments and responses to assist the Commission. She announced a brief adjournment in order to allow the Commission to consider whether they now had all the information they required.

4.20pm The Hearing adjourned.

4.35pm The Hearing reconvened.

Commissioner Caunter invited the Applicant to respond to the matter of further information that had been raised.

Response from Applicant

Ms. Hamm, Legal Counsel for the Applicant, addressed the Commission, noting that, having considered both the question of whether there was further information the Commission may require, and the question of conditions, she still did consider it was possible that the Commission could make a decision without further information. However, to advance matters, it would be useful for the Commission to have before it an agreed set of conditions. Therefore, if the Commission and Council were in agreement, Ms. Hamm proposed that between now and the end of the following week, that Council and the Applicant work constructively together to agree on a set of draft Conditions of Consent, or if there was no agreement, to at least produce Version A and Version B of what the conditions might be. At that point, she would suggest that those conditions of consent documents be filed with the Commission, and to await the Commission’s further instructions.

Commissioner Caunter, thanked Ms. Hamm and Ms. Hill. She noted that, in fairness to all, the Commission agreed that it would be appropriate to provide the opportunity for the Applicant and Council to work towards an agreed set of Conditions of Consent, which may involve, for example, the Traffic Engineers input.

Ms. Hamm thanked the Commission and noted her understanding was that, once that agreed set of draft Conditions of Consent had been provided, then the expectation would be either that there would be a request for further information. However, should the Commission be satisfied, that she would then provide the Applicants Right of Reply, which she currently reserved.

COMMISSIONER'S INSTRUCTIONS

Commissioner Caunter noted that Ms. Hamm's summation was correct, but she advised that there was also the possibility that the Hearing may need to be reconvened, should the Commission deem that necessary.

Commissioner Caunter acknowledged that ten days may not be sufficient time to achieve the work required. She advised that the revised set of draft Conditions of Consent, agreed between Council and the Applicant, would be required by close of business on **Tuesday, 23 March 2021** via a Joint Memorandum, including any joint witness statements on outstanding issues. The Commission would then issue a 'Commission Minute' advising of any further requirements. She also requested the information be a "Clean and Tracked 'WORD' version, noting that comments were preferred as they assisted to follow the thought process.

Commissioner Caunter thanked all parties for their participation in the Hearing, noting that the work they had done, thus far, was appreciated by the Commission. She confirmed that the Applicant would have a Right of Reply. She advised that the Hearing now stood adjourned, subject to the provision of further information required, as discussed above, and that any further instructions on behalf of the Commission on the process would be provided in the form of a "Commission Minute".

Commissioner Caunter adjourned the Hearing at 4.45pm.

Minutes Note 1: **Applicant's Right of Reply** dated 13 April 2021 was circulated to all parties on 13 April 2021.

Minutes Note 2: The Commission **Formally Closed** the Hearing on 23 April 2021. All parties were notified on 23 April 2021.

Minutes Note 3: The **DECISION** dated 10 May 2021 and signed by the three Commissioners of the Commission **as attached**, was circulated to all parties on 10 May 2021.

ATTACHMENTS

1 RC11997L and RC12296S - Jace Investments Ltd - Final Decision

The minutes of this Hearing were received at the Council meeting held on 4 November 2021.