

# MEETING – AGENDA –

Ngā Take

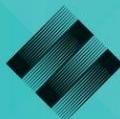


# COUNCIL

Te Kaunihera

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**C21-13**  
**Thursday, 4 November 2021**  
**Council Chambers**  
**Barkes Corner, Tauranga**  
**9.30am**



*Western Bay of Plenty  
District Council*

# Council

## Membership

<b>Chairperson</b>	Mayor Garry Webber
<b>Deputy Chairperson</b>	Deputy Mayor John Scrimgeour
<b>Members</b>	Cr Grant Dally Cr Mark Dean Cr James Denyer Cr Murray Grainger Cr Monique Gray Cr Anne Henry Cr Kevin Marsh Cr Margaret Murray-Benge Cr Allan Sole Cr Don Thwaites
<b>Quorum</b>	6
<b>Frequency</b>	Six weekly

## Role:

To ensure the effective and efficient governance and leadership of the District.

## Power to Act:

- To exercise all non-delegable functions and powers of the Council including, but not limited to:
  - The power to make a rate;
  - The power to make a bylaw;
  - The power to borrow money, purchase, or dispose of assets, other than in accordance with the Long Term Plan;
  - The power to adopt a Long Term Plan, Annual Plan or Annual Report;
  - The power to appoint a chief executive;
  - The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement;
  - The power to adopt a remuneration and employment policy;
  - The power to approve a proposed policy statement or plan under clause 17 of Schedule 1 of the Resource Management Act 1991;
  - The power to make a final decision on a recommendation from the Ombudsman where it is proposed that Council not accept the recommendation.
- To exercise all functions, powers and duties of the Council that have not been delegated, including the power to compulsorily acquire land under the Public Works Act 1981.
- To make decisions which are required by legislation to be made by resolution of the local authority.
- To authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council, or included in Council's Long Term Plan or Annual Plan.
- To make appointments of members to Council Controlled Organisation Boards of Directors/Trustees and representatives of Council to external organisations;
- To consider and make decisions regarding any matters relating to Council Controlled Organisations, including recommendations for modifications to CCO or other entities' accountability documents (i.e. Letter of Expectation, Statement of Intent) recommended by the Policy Committee or any matters referred from the Performance and Monitoring Committee.

- To approve joint agreements and contractual arrangements between Western Bay of Plenty District Council and Tauranga City Council or any other entity.
- To consider applications to the Community Matching Fund (including accumulated Ecological Financial Contributions).
- To consider applications to the Facilities in the Community Grant Fund.

## **Procedural matters:**

- Approval of elected member training/conference attendance.

## **Mayor's Delegation:**

Should there be insufficient time for Council to consider approval of elected member training/conference attendance, the Mayor (or Deputy Mayor in the Mayor's absence) is delegated authority to grant approval and report the decision back to the next scheduled meeting of Council.

Should there be insufficient time for Council to consider approval of a final submission to an external body, the Mayor (or Deputy Mayor in the Mayor's absence) is delegated authority to sign the submission on behalf of Council, provided the final submission is reported to the next scheduled meeting of Council or relevant Committee.

## **Power to sub-delegate:**

Council may delegate any of its functions, duties or powers to a subcommittee, working group or other subordinate decision-making body, subject to the restrictions on its delegations and any limitation imposed by Council.

Notice is hereby given that a Meeting of Council will be held in the Council Chambers, Barks Corner, Tauranga on:  
Thursday, 4 November 2021 at 9.30am

## Order Of Business

<b>1</b>	<b>Present .....</b>	<b>6</b>
<b>2</b>	<b>In Attendance .....</b>	<b>6</b>
<b>3</b>	<b>Apologies .....</b>	<b>6</b>
<b>4</b>	<b>Consideration of Late Items .....</b>	<b>6</b>
<b>5</b>	<b>Declarations of Interest .....</b>	<b>6</b>
<b>6</b>	<b>Public Excluded Items .....</b>	<b>6</b>
<b>7</b>	<b>Public Forum.....</b>	<b>6</b>
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11.3	Chief Executive Officer's Report - Request for Execution of Documents under Seal of Council.....	331

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11.4 Appointment of independent consultant for the Chief Executive Officer  
Performance Review Process ..... 332

- 1 PRESENT**
- 2 IN ATTENDANCE**
- 3 APOLOGIES**
- 4 CONSIDERATION OF LATE ITEMS**
- 5 DECLARATIONS OF INTEREST**
- 6 PUBLIC EXCLUDED ITEMS**
- 7 PUBLIC FORUM**

## 8 COUNCIL AND COMMITTEE MINUTES FOR CONFIRMATION

### 8.1 MINUTES OF THE INDEPENDENT COMMISSIONER HEARING MEETING HELD ON 8 - 9 MARCH 2021

**File Number:** A4371460

**Author:** Horowai Wi Repa, Governance Technical Support

**Authoriser:** Barbara Whitton, Customer Services and Governance Manager

#### RECOMMENDATION

That the Minutes of the Independent Commissioner Hearing Meeting held on 8 and 9 March 2021 be received.

#### ATTACHMENTS

1. CH21-1 - Minutes - 8 - 9 March 2021 [↓](#) 
2. CH21-1 Minute Attachments - Final Decision [↓](#) 

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Independent Commissioners Hearing Minutes (Days 1 & 2)

8 & 9 March 2021

**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.

Independent Commissioners Hearing Minutes (Days 1 &amp; 2)

8 &amp; 9 March 2021

**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**

- 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).

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- 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.

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- 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;

Independent Commissioners Hearing Minutes (Days 1 & 2)

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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

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

Submitter in Opposition

- |    |                     |   |
|----|---------------------|---|
| 3. | Ms. Robyn Scrimshaw | Individual Submitter ( <i>part only attendance</i> ). |
|----|---------------------|---|

Submitters 'Not Specified / Conditional / Others'

- |    |                      |                            |
|----|----------------------|----------------------------|
| 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

- |    |                      |   |
|----|----------------------|---|
| 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

- |    |                  |  |
|----|------------------|--|
| 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> ).                             |

Independent Commissioners Hearing Minutes (Days 1 & 2)

8 & 9 March 2021

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.

## Independent Commissioners Hearing Minutes (Days 1 &amp; 2)

8 &amp; 9 March 2021

- 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 50m<sup>2</sup> or 60m<sup>2</sup>, 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.

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- 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

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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;

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- 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.

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- 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

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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.

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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**.

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**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.

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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.

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- 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

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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;

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- 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:

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- 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.

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- 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

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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.

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- 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 this was 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 Sentinel 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 3,500m<sup>2</sup> (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 Barks 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 Barks 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 113,000m<sup>3</sup> 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 50,000m<sup>3</sup> 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.

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Independent Commissioners Hearing Minutes (Days 1 & 2)

8 & 9 March 2021

### 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.**



**Western  
Bay of Plenty**  
District Council

# **MINUTES ATTACHMENTS**

**Independent Commissioner Hearing  
Meeting**

**Monday, 8 March 2021**



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

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

**UNDER THE RESOURCE MANAGEMENT ACT 1991**

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

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

Subdivision – establish super lots and lots for roads and infrastructure

Certificate of compliance – contaminated site

**Council Files: RC11997L and RC12296S**

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

**INTRODUCTION**

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

**THE PROPOSAL**

2. The Applicant seeks:
  - a) resource consent to establish and operate a town centre including business, civic, residential, education and reserve activities. The proposal includes significant earthworks required to establish roads, buildings and to develop services;
  - b) subdivision consent to establish super lots and lots for roads and infrastructure; and
  - c) a certificate of compliance with respect to the permitted works under the NES for Assessing and Managing Contaminants in Soil to Protect Human Health.
3. We note at the outset that we do not understand ourselves to have delegated authority to issue a certificate of compliance. This decision does not therefore grant a certificate of compliance for the remediation of contaminated land on the subject site.
4. The location of the proposed town centre as described in the application is 404 Omokoroa Road, Omokoroa (“the site”). A Masterplan<sup>1</sup> has been developed, comprising:
  - a) Main primary access from Omokoroa Road via a roundabout (the application noted the roundabout is to be built by the Council as part of its structure planning upgrades);
  - b) An internal ‘main street’ running along a southern/northern axis with the heart of the town centre being defined by a series of buildings;

<sup>1</sup> Masterplan, First Principles, Sheet 2.1.00 dated 8 March 2021

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

**NOTIFICATION AND SUBMISSIONS**

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

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

#### PROCEDURAL MATTERS

11. Some procedural matters arose before, during and after the hearing, which became the subject of a number of Minutes issued by us to the parties.
12. On 3 March 2021 we received tabled expert planning evidence from Ms Kay Panther Knight in support of the submission lodged by Woolworths NZ Limited ("Woolworths"). This evidence was filed late. Having sought comment from the Applicant and Woolworths<sup>2</sup>, we allowed the evidence to be admitted on the basis that the Applicant could respond to it through supplementary evidence<sup>3</sup>. Ms Knight did not appear at the hearing.
13. A hearing was held at the Council Chambers on 8 and 9 March 2021. The hearing was adjourned at the completion of the second day and after hearing all of the evidence to enable the Applicant and the Council to further discuss conditions of consent and differences in opinion between some of the experts for both parties. On 30 March 2021 we received a further set of conditions agreed between the Applicant and the Council, a joint memorandum of counsel for both parties, updated plans and a revised set of Design Guidelines. We issued a Sixth Minute on 6 April 2021, asking several questions about the conditions and asking for the Applicant's response to be included with its Reply.
14. The Applicant's Reply was received on 13 April 2021.
15. The hearing was closed on 23 April 2021.

#### THE HEARING

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

<sup>2</sup> Second Minute dated 3 March 2021

<sup>3</sup> Third Minute dated 5 March 2021

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

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

#### **SITE VISIT**

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

#### **THE DISTRICT PLAN AND RESOURCE CONSENTS REQUIRED**

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

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

#### RELEVANT STATUTORY PROVISIONS

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

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

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

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

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

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

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

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

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

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

#### **TRADE COMPETITION**

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

#### **RELEVANCE OF OMOKOROA STRUCTURE PLAN**

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

<sup>4</sup> Evidence of Kay Knight, paragraph 1.2

<sup>5</sup> Opening legal submissions for Applicant, paragraphs 33 and 34

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

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

42. As Ms Hamm submitted, any relevant information under section 104(1)(c) must also be "reasonably necessary to determine the application". She submitted it was not and that the District Plan already contained an operative structure plan (Stage 2) for a town centre at Omokoroa. Ms Hamm submitted we should not consider alternative town centre locations or make a decision on this proposal having regard to the best location for a town centre at Omokoroa. Rather, this application must be considered on its merits.<sup>8</sup>
43. We accept most of these submissions but note that it is not quite correct to say that the District Plan contains an operative structure plan for a town centre at Omokoroa. What it does provide for at Section 19.5 is the development of "A commercial area master plan for the Omokoroa Stage 2 Structure Plan area"<sup>9</sup> In otherwise accepting Ms Hamm's submissions on this point, we note that Mr Martelli's report to the Commission<sup>10</sup> provided us with some useful background to the Omokoroa Structure Plan and he expanded on some points in questioning. Ms Price also provided useful information on this background in her section 42A report. We found this helpful in understanding how the current Operative District Plan provisions had been arrived at and what lay ahead in Stage 3. However, we have assessed this application on its merits against the Operative District Plan as it currently stands (including the Omokoroa Stage 2 provisions which are operative) and have taken no account of Stage 3, as not only does it have no statutory basis at this time, the only substantive material before us related to that exercise was the 2020 RPS alternative town centre site location report tabled by Council (and addressed by Mr Polkinghorne).

#### **SUMMARY OF SUBMISSIONS AND EVIDENCE HEARD/ TABLED**

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

#### **Applicant**

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

<sup>7</sup> Opening legal submissions for Applicant, paragraphs 15-20

<sup>8</sup> Opening legal submissions for Applicant, paragraph 22-23

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

<sup>10</sup> Martelli report forming part of the supplementary section 42A report on 5 March 2021

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

47. Ms Hamm then submitted that the Applicant was happy to work with the Council on its plans for Omokoroa Road, including the new roundabout. She told us the 20m road width in the town centre had been consciously proposed and supported by expert assessment. It was intended to provide a more intimate feel in the town centre through the use of narrower roads. Ms Hamm then commented on the Council's noise conditions as they stood at that time. On lapse dates, Ms Hamm submitted that the Applicant proposed a 5 year lapse period for Stage 1 but otherwise a 10 year lapse would be appropriate. Finally, Ms Hamm outlined the proposed amendments to consent conditions addressed in the Applicant's evidence.<sup>14</sup>
48. **Mr Price** is a registered architect and a Director of First Principles Architects. He opened the evidence for the Applicant by outlining the development overall, explaining that the intention of the development was that it not be vehicle dominant. The main anchor tenant would be the supermarket. The gateway buildings at the main entrance to the town centre were also important. It was intended that the hotel would be 3 storeys high. The plaza would be used as a marketplace some of the time, but its focus was more of a public space. Buses would come into the town centre via the main roundabout, would travel around the internal roundabout to drop off and pick up passengers and would then exit via the main roundabout. In questioning, Mr Price confirmed that all buildings were at concept level only<sup>15</sup> and the details would follow through consent conditions. He accepted that the conditions could be varied. In response to concerns expressed in the section 42A report as to the lack of guidance over building design, he proposed wording around detailed design matters that could be incorporated into the Design Guidelines.
49. In his evidence, Mr Price explained the site's context and noted that probably the most sensitive neighbour was the existing Kaimai Views residential development to the north.

<sup>11</sup> Opening legal submissions for Applicant, paragraphs 2-7

<sup>12</sup> Opening legal submissions for Applicant, paragraphs 15-24

<sup>13</sup> Opening legal submissions for Applicant, paragraphs 30-37

<sup>14</sup> Opening legal submissions for Applicant, paragraphs 39-64

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

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

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

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

<sup>16</sup> Evidence of Graham Price, paragraph 22

<sup>17</sup> Evidence of Graham Price, paragraph 48

<sup>18</sup> Evidence of Graham Price, paragraph 56

<sup>19</sup> At paragraph 62

<sup>20</sup> Evidence of Craig Lemon, paragraph 13

<sup>21</sup> Evidence of Craig Lemon, paragraph 17

<sup>22</sup> Evidence of Craig Lemon, paragraphs 22-34

Choice supermarket, it was not a priority of that company to open another supermarket at Omokoroa. However, Woolworths might revisit that in the future given the projected growth.<sup>23</sup> Mr Lemon confirmed Jace had received interest from a wide range of potential tenants and had met with a housing company and a retirement village developer to discuss their interest. Mr Lemon's evidence was that if resource consent was granted, work would commence on site in August 2021 with site clearance. Stage 1 construction would commence in 2023. He anticipated all stages of development would be complete by 2029.<sup>24</sup>

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

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

<sup>24</sup> Evidence of Craig Lemon, paragraph 65.

<sup>25</sup> Supplementary evidence of Craig Lemon, paragraph 5

<sup>26</sup> Supplementary evidence of Craig Lemon, paragraph 9.

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

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

<sup>27</sup> Evidence of John Polkinghorne, paragraph 31

<sup>28</sup> Supplementary evidence of John Polkinghorne, paragraph 11.

<sup>29</sup> At paragraph 12

<sup>30</sup> At paragraph 13

<sup>31</sup> Evidence of Dr Beattie, paragraph 8

<sup>32</sup> Evidence of Dr Beattie, paragraph 10

<sup>33</sup> Evidence of Dr Beattie, paragraph 17(b)

<sup>34</sup> Evidence of Dr Beattie, paragraph 17(c)

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

62. At our request, Dr Beattie prepared a Memorandum dated 8 March 2021 which considered whether the final proposed conditions of consent (as they stood at that time) would provide a high degree of confidence that the proposal would deliver the urban design outcomes expressed through the application and the design guidelines referenced in the conditions. Dr Beattie confirmed that the plans prepared by Mr Price in support of the application detailed all of the buildings, except for Building O and the proposed residential terraces. Individual site plans, elevation views, roof planes and renders gave direction of design outcomes sought. Materiality was implied within the renders. The plans listed in Condition 1 would form part of the application and be stamped if consent was granted so that it was clear what the Commission had granted consent to. Dr Beattie suggested the design assessment could require that certification be undertaken by an independent, suitably qualified urban designer or architect as part of the building consent process and that this could include a link between Condition 3D (as it was then) and Condition 1. As the details of the childcare centre were not clear, Dr Beattie suggested this building could be limited to single storey. The Memorandum included two suggested changes to consent conditions, which formed part of the consent conditions tabled with the Applicant's Reply and are included within the conditions attached to this decision.
63. **Mr Watts** is an urban designer/ planner employed by Momentum Planning and Design Limited. He holds qualifications in both landscape architecture<sup>36</sup> and urban and regional planning. Mr Watts' evidence addressed the town centre design process, the amended proposal, urban design/ bulk dominance effects, visual landscape and landscape effects, submissions and the section 42A reports. Mr Watts was of the opinion that the proposal would provide a positive urban design outcome for Omokoroa and would have low landscape and visual effects. He confirmed that the preliminary town centre design discussed with the Council in 2019 was not prepared by Momentum. Momentum became involved in 2020 when a Masterplan was developed with input from all of a multi-disciplinary project team and was then independently reviewed by Dr Beattie. The same process occurred in responding to the Council's section 92 request, which included several changes to the design.
64. In summarising the design concept, Mr Watts stated:<sup>37</sup>  
 "The overall design concept is to establish a town centre that includes different scales of retail and office space to accommodate a variety of businesses. The ultimate mix of tenancies will be market driven and respond to the needs of the community. The buildings will be designed to be used flexibly throughout their design life."
65. Mr Watts confirmed that the design was changed in response to submissions lodged following public notification. The key changes were the redesigning of Building N to provide a larger setback and remove the bulk of the building from the adjacent Kaimai Views residents; the provision of a second right hand turn into the town centre from Omokoroa Rd to reduce the number of vehicles potentially taking a short cut through Kaimai Views; an increase in the size of the market area to accommodate larger events;

<sup>35</sup> Evidence of Dr Beattie, paragraph 19(e)

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

<sup>37</sup> Evidence of Thomas Watts, paragraph 25

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

66. **Mr Hight** is the Engineering Team Leader at Lysaght Consultants. He led the team responsible for preparing the engineering design for the town centre development. Mr Hight noted that the site layout was designed by others, with Lysaght's input limited to the engineering and servicing design required to enable that layout. His evidence addressed earthworks and retaining walls, roading vertical geometry, design of the stormwater/ wastewater / potable water systems, submissions and the section 42A reports. In his evidence, Mr Hight advised that the proposed earthworks are a predominantly fill operation, with approximately 113,000m<sup>3</sup> of earthworks needed to be imported to site to complete the works. He noted that this volume was higher than the volume indicated in the application as notified (approximately 50,000m<sup>3</sup>) and was realised when the section 92 response was being prepared by the Applicant. He considered the 113,000m<sup>3</sup> volume could be achieved in one earthworks season, but this would depend on staging. He considered there would be no additional effects arising from the additional volume of earthworks. Overall, Mr Hight considered the detailed design and construction of the site could be carried out in accordance with the Council's best practice subject to recommendations contained within his engineering report and the section 92 response. Effects of servicing and earthworks could be adequately mitigated on the basis of those engineering reports.
67. **Mr Carlisle** is a Principal Transportation Engineer at Stantec NZ. His evidence covered the existing transportation environment, the proposed vehicle access strategy, the assessment of traffic and transportation effects including mitigation, transport issues raised in submissions and the section 42A report. He described the current roading environment, noting the new residential subdivisions in the area of the town centre and the local roading network developed to support those. He told us the Council has been undertaking upgrading and widening of Omokoroa Rd in recent years and the addition of a shared pedestrian and cycling path has been established on the western side of the road. It was intended that the main street of this town centre development would link to a new roundabout located adjacent to Flounder Drive, that roundabout having been anticipated and included in the Omokoroa Structure Plan Roading Schedule for the area. Other roading connections proposed at the time of Mr Carlisle writing his evidence<sup>39</sup> were a left turn slip lane from Omokoroa Rd to enable vehicles to exit directly off Omokoroa Rd; an access providing for all movements except a right turn out at the northern end of the town centre; a local road link to Kaimai Views subdivision; and the provision of additional land to the west to provide possible future connections to Prole Rd.
68. Mr Carlisle's first statement and his supplementary provided a detailed response to the points of difference between his assessment and that undertaken by Ms Fosberry for the Council. We address this later in our decision in our discussion of traffic effects.
69. **Mr Coles** is a Director and Planner for Momentum Planning and Design Limited. His evidence covered the site context, planning instruments and a statutory planning

<sup>38</sup> Evidence of Thomas Watts, paragraph 27

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

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

70. Mr Coles explained the District Plan's requirement for a town centre plan to be prepared by the Council, with a number of anticipated design outcomes. The proposed town centre had been designed to be consistent with those design outcomes, with the exception of the additional access to Omokoroa Rd. He told us that the Omokoroa Stage 2 Structure Plan, made operative in 2010, included a two lane roundabout to the Omokoroa Town Centre site along with a four lane road between Prole Rd and the town centre roundabout. He understood this was later amended to a single lane roundabout and a two lane road from Prole Rd to the town centre.<sup>41</sup>
71. Mr Coles explained that the Western Bay of Plenty District and Omokoroa Growth Area falls within the Tauranga environment in the NPS-UD and is a Tier 1 urban environment. In questioning, he confirmed that he considered this project was "infrastructure ready" but could not confirm if there were any urban requirements in the NPS-UD that needed to be accomplished.
72. In order to achieve the development capacity sought under the NPS-UD attention to a number of matters is required when considering resource consents in a Tier 1 urban environment<sup>42</sup> – and a town centre zone specifically (acknowledging that this is not yet formally such a zone).
73. Objective 6 specifically requires that:
- Local authority decisions on urban development that affect urban environments are:*
- (a) *integrated with infrastructure planning and funding decisions; and*
  - (b) *strategic over the medium term and long term; and*
  - (c) *responsive, particularly in relation to proposals that would supply significant development capacity.*
74. Companion Policy 6 requires that:
- When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

<sup>40</sup> Evidence of Richard Coles, paragraphs 20-22

<sup>41</sup> Evidence of Richard Coles, paragraphs 26-27

<sup>42</sup> NPS-UD Appendix: Tier 1 and 2 urban environments and local authorities - Table 1

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

#### **Submitters**

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

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

<sup>43</sup> Evidence of Mr McCabe, paragraph 6

<sup>44</sup> Evidence of Mr McCabe, paragraphs 5 and 6

<sup>45</sup> Evidence of Mr McCabe, paragraphs 13-15

84. Ms Fisher also noted the proposal should avoid what she called 'gimmicky' design – e.g. the peninsula has a coastal character but this would not fit with the town centre given its distance from the coast and its lack of coastal connection. The incorporation of an art trail was suggested. Ms Fisher noted this (if accepted) should be incorporated into the conditions of consent.<sup>46</sup> Ms Fisher also sought the pedestrianisation of the main street (middle block) to avoid the town centre being severed through the main road of the town centre. She did not consider two north-south accesses were necessary. Ms Fisher disagreed with Mr Coles that vehicles would 'activate' the space. In her view, they acted more as a barrier and hazard. Design features such as cobbling were included within the design guidelines and should have been factored into the development costs.<sup>47</sup>
85. Ms Fisher also stated that the approach taken to the provision of parking was inappropriate; that is, that any required additional parking spaces would be provided at such a time that the Council deemed necessary. Ms Fisher's view was that this failed to require or incorporate other measures to address the parking shortfall such as adequate bike parking, e bike charging, storage lockers, water stations, seating for rest, a local shuttle service or paid parking. She suggested the conditions include the provision of a carparking management plan, an approach encouraged through the NPS-UD, Policy 11.<sup>48</sup>
86. **Ms Scrimshaw** appeared at the hearing by Zoom call. She resides in the Kaimai Views subdivision, purchasing there in 2018. At that time, she checked proposals for development in the Council's Structure Plan and her lawyer checked the site's underlying zoning. In questioning, Ms Scrimshaw confirmed her understanding that this site would be developed for residential use. Ms Scrimshaw moved into her home in 2019 and was then part of the consultation process undertaken by the Council on its structure planning processes and the Applicant on its resource consent application. She described these overlaps as confusing. Ms Scrimshaw attended the meeting between the Applicant and Omokoroa residents and recalled discussion about Building N, decking protrusions, light spill and noise. She challenged the assertion made by Mr McCabe that he was speaking for Omokoroa residents in agreeing to the proposal - Ms Scrimshaw and her neighbours had not heard from him and did not know who in the community he had spoken to.
87. Ms Scrimshaw was concerned about the duration of the consent and the extensive period she would have to tolerate noise and dust. She works from home about 50% of the time. She did not know how the development would be staged. She considered the noise limits for buildings within the development to be quite high, noting the Kaimai Views residents did not have additional mitigation such as double glazing. This had not been offered. She noted the prevailing wind is from the south and would, in her opinion, carry noise from the town centre to Kaimai Views. Ms Scrimshaw noted there is no footpath on Sentinel Avenue (within Kaimai Views) and the children play on the street. Parking often occurs on both sides of the narrow streets there. While Kaimai Views residents were alert to children playing, she did not consider it was appropriate for through traffic to drive through the subdivision en route to the town centre because of the potential safety issues. Ms Scrimshaw commented on the hours of construction condition, considering there would be too much disruption from the 7.30-6.00 hours proposed. She was also concerned about street lighting. She noted there was no mention of pre-surveys being done on neighbours' homes prior to construction starting.

<sup>46</sup> Evidence of Ailsa Fisher, table in paragraph 2.2

<sup>47</sup> Evidence of Ailsa Fisher, paragraphs 4.1- 4.4

<sup>48</sup> Evidence of Ailsa Fisher, paragraphs 4.6 and 4.7

88. **Ms Knight's** tabled planning evidence for Woolworths raised trade competition matters as discussed above. Ms Knight otherwise raised matters concerning the scope of the application (particularly related to the role of the Future Urban zoned land and whether any use of that was within scope); the town centre master planning exercise which has been undertaken by the Council and discounted the Applicant's site as appropriate for a town centre; the lack of sufficient information to support a finding that the proposal passed the two tests in section 104D; and an assessment of the proposal against relevant planning provisions and her comments on the evidence lodged by the Applicant. Ms Knight's overall conclusion was that the application could not be granted consent, and significant additional assessment was required to determine the impact of the proposal on the wider environment.<sup>49</sup>
89. **Fire and Emergency New Zealand** ("Fire and Emergency") tabled a letter through its consultants, Beca.<sup>50</sup> This confirmed Fire and Emergency would not appear at the hearing but that in lieu of attendance, the letter should be tabled for the Commission's consideration. In its submission, Fire and Emergency had requested clarity over details of water supply for firefighting purposes and suitable access for emergency vehicles. Beca noted the comments in the Section 42A report addressing these matters, specifically that Ms Price had not acknowledged Fire and Emergency's requests for conditions and had not provided conditions addressing relevant matters with her report. Ms Price did not address this matter further in her supplementary report of 5 March, nor have the requested conditions appeared in subsequent drafts of the conditions. We consider the conditions to be relevant and have included them in the attached consent conditions.

#### **Council**

90. **Ms Hill** appeared as legal counsel for the Council. She emphasised the intent of the Council's reporting team was to ensure the Commission had sufficient information before it to make a decision and, in that regard, Council had prepared a supplementary section 42A report, circulated on 5 March 2021.
91. Ms Hill told us the Council's structure planning had intended the Omokoroa town centre be a Council project. The Council accepted the Applicant was entitled to apply for its consent and acknowledged there had been consultation with the community. Ms Hill submitted the Council's interest was in getting a town centre off the ground. In that regard, the Council considered it very important for the town centre to have a key anchor tenant. More certainty was required around the timing of the development and the lapse conditions. Ms Hill told us concerns had been raised by the Council because of the overlap with the structure plan process. That process would need to adjust to take account of the decision made on this application. There had already been negotiations regarding the Council's intended town centre location if this consent was granted and the town centre was to be located on the subject site instead. However, the Council is concerned that if consent is granted, the development does commence and progress, as this affects decisions to be made about Omokoroa's future. It is therefore necessary to be clear that the development will happen, and when.
92. On noise, Ms Hill submitted the development would not comply with the rules in the District Plan and it was open to the Commission to consider whether the conditions proposed by the Applicant were ultra vires. We could impose different noise standards to address noise effects, as there is now a residential development next door to the

<sup>49</sup> Evidence of Kay Knight paragraph 7.2

<sup>50</sup> Letter from Beca dated 16 February 2021

subject site. Ms Hill told us both she and Ms Curtis had concerns about the use of the Tauranga City Council noise rules (suggested by the Applicant) as there have been problems with the enforcement of these rules. On the lapse dates, Ms Hill submitted the Applicant had signalled it intends to commence the development. The Council sought certainty around Stage 1 in particular as this stage was very important. It also sought clear conditions as to when the stages would start and finish and the order of the staging.

93. **Mr Hugo** is an Associate Partner at Boffa Miskell and prepared the urban design report for the Council. He was in general agreement with the urban design assessments undertaken by the Applicant's experts. In order to ensure the design outcomes were achieved, Mr Hugo recommended two consent conditions be included. The first was that all architectural designs, colours, materials and treatments should be submitted for approval by Council prior to any application for building consent. The second was the provision of and certification by a Registered NZILA Landscape Architect of the following: final detailed landscape plans, a landscape management plan and a maintenance programme. These plans should incorporate all relevant boundary fencing, boundary landscaping and visual mitigation treatments proposed. The landscape plans should also reference all external hard-surface paving treatments, soft landscaping components, shelters and canopy structures, water features and any other relevant design components. In his supplementary report, Mr Hugo repeated his recommendation on conditions. In questioning, Mr Hugo confirmed the need for an independent review of the development against the Design Guidelines. He did not accept that the District Plan, the visuals and the Design Guidelines were enough to ensure the appropriate urban design outcome. This would need to be carefully checked at building design stage as by then more details would be available as to what was intended for each building. Mr Hugo confirmed it was important for this independent reviewer to have delegated authority and that this be clear in the conditions.
94. Mr Hugo was also of the opinion that the conditions would need to be clear on what was intended by way of urban design and landscaping, an example being the interface between the town centre and Kaimai Views. He noted the design guidelines were only that and the conditions should include details of what was intended. When asked about staging of the development, Mr Hugo stressed the importance of the supermarket as a key tenant as it would draw people in to the town centre. The civic centre was also important as it would draw in residents wanting to use that facility.
95. **Ms Fosberry** is the Technical Director, Infrastructure, at Aurecon. Her first report discussed the traffic modelling undertaken by Stantec and the application of sensitivity testing to those results. These indicated that the roundabout intersection access to the town centre and the proposed northern access were sensitive to a change in assumptions. It was Ms Fosberry's opinion that the roundabout at the Omokoroa Road intersection with the town centre at Flounder Drive would need to be a two lane circulating roundabout, with only Flounder Drive having a single lane approach. The sensitivity modelling also showed that the northern intersection proposed right turn in from Omokoroa Rd would queue back and should be prevented as it provided a lesser level of service and raised serious safety concerns both for turning traffic and for pedestrians and cyclists crossing that access.
96. In her supplementary report, responding to Mr Carlisle's evidence, Ms Fosberry repeated these opinions, noting the need for a two lane roundabout unless traffic model refinement

proved otherwise.<sup>51</sup> She stated that the recommendation for no right hand turn at the northern access point was not based solely on sensitivity testing. That intersection raised serious safety concerns, such as the potential for serious crashes, conflicts with pedestrians and cyclists, and queuing. Ms Fosberry also recommended that there be no car access between the town centre and Sentinel Avenue, leaving this access for cyclists and pedestrians only. She recommended a provision to ensure pedestrian safety where the town centre creates the demand for pedestrians to cross Omokoroa Road. Her final recommendation was that Omokoroa Road be two laned in each direction unless traffic modelling prior to the issue of our decision proved otherwise. At the hearing, Ms Fosberry was of the opinion that more discussion was required between her and Mr Carlisle to resolve their differences in opinion. She explained in more detail some of the safety concerns she had.

97. **Mr Lawton** is a Senior Land Development Specialist at the Council. It appears his initial opinions were contained within Ms Price's first section 42A report. In his 5 March report, Mr Lawton stated that he supported Ms Fosberry's recommendations on the Flounder Drive roundabout, the four laning of Omokoroa Road and the prohibition of vehicular access between the town centre and Sentinel Avenue. Additionally, he noted that the 20m road reserve proposed by the Applicant was unacceptable, as this road reserve had to provide for underground servicing, an acceptable level of amenity spaces internal to commercial sites within the town centre, safe separation between vehicles and pedestrians and the easy manoeuvrability of heavy vehicles. He pointed us to the District Plan objectives and policies setting out these matters. In questioning he noted that the 20m width proposed would compromise planting and stormwater management.
98. Mr Lawton noted that Council's strategic planners intended that there be a road link between the Jace site and Prole Road through the school site to the south and this was now shown on the Applicant's plans. He recommended that a consent notice be imposed on Lot 7 to ensure this link is constructed at the time of developing the balance lot. On earthworks, Mr Lawton was concerned that the 113,000m<sup>3</sup> volume now referred to by the Applicant would have an effect on Council roading and infrastructure. He noted the truck movements involved would occur during the upgrading of Omokoroa Road, which was not ideal. The Applicant had provided no commitment to repair Council pavements should these be damaged. There was a potential interference with overland flow paths on the school site next door and this should be resolved before a consent is issued.
99. On the roundabout issues, Mr Lawton told us the conditions addressing this were not resolved. On car parking, Mr Lawton sought that the required 701 carparks be provided and required through consent conditions. He stated that the 654 carparks proposed by the Applicant through its evidence was not supported by any analysis. Otherwise, Mr Lawton's report noted some concerns about roading vertical geometry, the overland flow path, stormwater treatment and attenuation, and the wastewater pumping station and sought that these matters be resolved prior to the issue of any resource consent.
100. **Ms Curtis** is the Council's Compliance and Monitoring Manager. Her 2 March report responded to the acoustic report prepared by Earcon on behalf of the Applicant. She

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<sup>51</sup> Ms Fosberry's supplementary report sought that additional traffic modelling be undertaken as part of the hearing process, prior to us making any decision on the application. Mr Carlisle resisted this. The Joint Memorandum and conditions filed by the Applicant and the Council on 30 March 2021 overcame this disagreement.

considered that report to be a preliminary report only, not a detailed noise assessment<sup>52</sup> of all noise generating activities or a consideration of all noise effects on residential users. She also noted that the Earcon report did not detail specific building design for the management of noise effects. Ms Curtis was particularly concerned about conflicts in activities within the town centre and how these might be managed. Residential amenity needed to be protected. She noted Earcon's approach had been on neighbouring residential properties, not site to site within the town centre development itself. As regards Building N, Ms Curtis noted that for an apartment on the first floor to achieve a night-time internal noise level of 30dBA Leq with a noise generating activity below, there would have to be a building attenuation of about 35-40dBA Leq. This would result in significant building costs because of the construction requirements to provide this protection.

101. Ms Curtis provided us with a number of recommended conditions to address her noise concerns. In questioning, she noted that the District Plan noise levels were based on the standard for the Industrial zone and were not, in her opinion, intended to apply to the Commercial zone. The current limits for the Commercial zone boundary were 45dBA daytime and 30dBA during the night. When asked about noise levels for a cinema (this having been mentioned during the hearing), Ms Curtis noted this would require specific design criteria as a patron would expect to hear the noise and feel the noise too. She would expect to see any cinema having to apply for a separate resource consent. When questioned on her comment about the lack of assessment in the Earcon report of the location of entertainment noise, Ms Curtis stated that while she understood the Masterplan to only be a concept, housing pressures within the District could result in there being demand for residential development over, say, office development. There was a potential for noise conflict in say, Building M, if it was not used for a supermarket but instead contained a noisy activity on the ground floor and residential activity above it. No design controls had been provided by the Applicant to address these potential conflicts.
102. **Mr Martelli** is the Council's Resource Management Manager. His 4 March report updated us on the structure plan process for Omokoroa Stage 3. While that process was put on hold when this application was lodged, work has continued behind the scenes to ensure Stage 3 is ready for notification once the outcome of this application is known. That work includes planning for infrastructure. Mr Martelli told us that the Applicant was aware the Council intended to change the zoning of its site through the structure plan process and clarified in questioning that the new zoning could become residential, but there were other possibilities. A Future Urban zone was also being discussed. Mr Martelli's report also clarified that the Council has prepared a draft structure plan based on the Jace location for the town centre. This is not ready for notification as there is still consultation to be completed.
103. Mr Martelli's report stated that Council was working towards notifying a plan change for Stage 3 of the Omokoroa Structure Plan and new residential rules in the middle of this year. He confirmed in questioning that the Stage 3 structure plan was not quite "waiting to happen" as work had been refocused on this application and its processing. Timing

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<sup>52</sup> This was acknowledged by Earcon in its report, noting that its assessment was limited to the assessment of noise levels from general activities described on the masterplan, but not including assessment of possible specific noise generating activities or events that may be included in the proposed development. Earcon also acknowledged at section 5.4 of its report that a more detailed assessment of façade construction in the context of materials, surface areas, and frequency analysis was required if noise levels incident on the façade are more than 20dBA above the required internal noise levels.

was critical as Omokoroa is running out of zoned residential land and is in breach of NPS-UD requirements. He told us that if this application is declined, that has an effect on the location of the active reserves in the structure plan, which in turn has implications for a number of landowners as well as Council's planning processes. The location of the active reserves is a sensitive matter and they could not be identified in this hearing process. Mr Martelli told us Stage 3 would comprise 2,200 dwellings and would take development through to the late 2040s. Mr Martelli expected Omokoroa's population would reach 10,000 in 5-10 years. The structure plan process would look at rationalising some existing zones (for example, Kaimai Views would be rezoned Residential). He had concerns about the lapse dates sought by the Applicant as the 5 and 10 year periods (at the time of preparing his report) suggested there was some uncertainty about getting the project off the ground. He was also concerned that a supermarket may not wish to establish in the town centre given the importance of such a key anchor tenant to the success of the town centre.

104. In questioning, we asked Mr Martelli what he considered the Jace Masterplan should comprise. He responded that he anticipated it would involve visuals, text and changes to the plan and he would have preferred to see the development proceed as a private plan change. He confirmed that the Council's structure plan could be "tweaked" to include the town centre if consent was granted.
105. **Ms Price** is a Senior Consents Planner at the Council and prepared the Council's two section 42A reports. These included background information about the site and zoning, notification details and a summary of submission points, an assessment of effects and an assessment against all relevant planning documents. In both cases, Ms Price summarised a number of concerns of the expert team for the Council, but nevertheless recommended that consent be granted subject to conditions. The two main concerns related to the safety of the right turn in at the northern entrance and the lack of detail in the application as to the detailed design of buildings.
106. In many cases, Ms Price noted the Applicant had yet to provide information requested in the section 92 request and this information was relevant to the recommendation she was making. We note that in her oral comments, Ms Price noted the Applicant had still not addressed the amenity effects of the bulk earthworks activity. The earthworks were a non-complying activity under the District Plan. The Applicant had deferred this consideration to the Regional Council consent process, but as Ms Price noted, that process did not consider land use matters such as truck movements. She had tried to address this through conditions. Ms Hill clarified that an adaptive management approach was being taken, and that the conditions required more rigour. Ms Price was relying on the opinions of Mr Hugo and Dr Beattie in her opinion that the design guidelines would be met and there was enough in that document to assist with certification. However, she did not want that certification to be tied to the building consent process as that had to be completed within 20 working days.
107. Ms Price also noted the AEE had not assessed the proposal against relevant national policy statements and national environmental standards, the Bay of Plenty Regional Policy Statement and the Bay of Plenty Natural Resources Plan. Her report helpfully included those assessments. In her first report, Ms Price noted that transport effects would be more than minor but could be mitigated and controlled through consent conditions. She considered the proposal was an activity envisaged by the District Plan and that it would not be "repugnant to" its objectives and policies.
108. In response to Mr Polkinghorne's statement that it was unlikely the resource granted to undertake further development at 97-137 Hamurana Road would be fully developed, Ms

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Price told us the Council had recently met with the developers of that site, who indicated they expected their work programme would have tenants in Stage 1 buildings by 2022. She noted Mr Polkinghorne's economic assessment had not considered the possibility of the Jace proposal not securing a supermarket as an anchor tenant and she had made her own enquiries with Foodstuffs NZ, who had advised her Foodstuffs has no interest in the Jace site. Ms Price's concern was similar to other members of Council's team. If a supermarket was not secured, there were questions over whether the proposed town centre would proceed and any flow on effects that might cause.<sup>53</sup>

109. In questioning, Ms Price confirmed her view that she considered the concept plans prepared by the Applicant provided sufficient certainty about the development particularly in light of Mr Hugo's recommendation that an independent reviewer sign off compliance with the design guidelines. She told us the Council would not accept delegation to this person but would accept certification.
110. Finally, we record here that Ms Rebecca Ryder prepared a landscape assessment for the Council. Ms Ryder did not appear at the hearing. This assessment is discussed under landscape effects.

#### APPLICANT'S REPLY

111. In her Reply dated 13 April 2021, Ms Hamm addressed a number of topics, which we summarise here.
112. The application and AEE related to "Lot 1" which presently comprises the entire landholding owned by Jace's subsidiary, Kiwi Green New Zealand Limited. Ms Hamm submitted that the application always had a relationship with, and to some extent, relied on the land zoned Future Urban and pointed us to two parts of the application where this relationship was stated. Ms Hamm submitted the land zoned Future Urban was within scope.
113. The application did not include provision for a pool but did refer to the possibility of a cinema.
114. The application as lodged indicated earthworks of approximately 50,000m<sup>3</sup>. As a result of changes made to the application following receipt of submissions and the section 92 request, changes were made which affected earthworks. This was predominantly a fill operation and approximately 113,000m<sup>3</sup> of material would need to be imported to the site to complete the works. This requirement arose as a result of design refinement, including the traffic safety review and the larger marketplace. Relying on the Environment Court decision in Coull v Christchurch City Council<sup>54</sup> and the evidence of Mr Hight, Ms Hamm submitted:
- a) the additional earthworks did not increase the scale or intensity of activity;
  - b) the increased traffic movements importing fill to the site was not an exacerbation of the impact of the activity which puts the earthworks outside the scope of the application. Significant traffic movements arising from the development of the site could be expected for some time and future development in Omokoroa and

<sup>53</sup> Ms Price noted that Ms Fosberry's supplementary report had observed that changes to expected activities in the town centre, particularly a supermarket, in any of the development stages would affect traffic generation with a flow on effect on intersection design.

<sup>54</sup> EnvC Christchurch C77/06, 14 June 2006

- roading developments would mean truck movements were anticipated;
- c) The increased volume of earthworks mitigated the impacts of the town centre due to the enlarged marketplace and gradients required for roading and intersections (both arising through the section 92 request and submissions);
  - d) There is no exacerbation in terms of the District Plan as the earthworks would be permitted if carried out on a stand-alone basis, otherwise they fall to be considered as part of the non-complying activity irrespective of volume;
  - e) There is nothing to suggest that parties who did not make submissions would have done so if they were aware of the change.
115. We accept these submissions, subject to our assessment of the effects of earthworks later in this decision.<sup>55</sup>
116. On the question of the approach to be taken to the assessment of objectives and policies, particularly if the application is inconsistent with one of those, the accepted approach in case law is to read the objectives and policies as a whole. In this case, that meant the objectives and policies in Chapter 19 of the District Plan should be read as a whole and the proposal is highly consistent with those. As regards the one stand out policy relating to roading (Policy 19.2.2.15(d)), Ms Hamm referred us to Mr Coles' evidence that the intent of the policy was met as the intention was to preserve the primary function of Omokoroa Road as a transport corridor.
117. Ms Hamm submitted that Part 2 of the Act need not be applied as the District Plan has been prepared having regard to Part 2 and has a coherent set of policies designed to achieve clear environmental outcomes such that the policies should be implemented. Recourse to Part 2 would not add anything. The fact there was no Omokoroa Stage 2 Structure Plan Area masterplan did not lead to an incoherent set of policies.
118. Ms Hamm also submitted that it would not have been appropriate for the Applicant to apply for a private plan change instead of a resource consent because the Commercial and Future Urban zoning is appropriate and there would be no need to alter that zoning. Chapter 19 is directed at town centres and makes particular provision for the Omokoroa Stage 2 Structure Plan. It also sets out performance standards and criteria for the Commercial Area masterplan. The Commercial zoned part of the site is subject to the operative Stage 2 Structure Plan.
119. Ms Hamm responded to matters raised by submitters, noting the Applicant accepted many of the points made by Ms Fisher. As regards Ms Scrimshaw, the reliance placed on the application zoning being changed to Residential was misplaced as the operative zoning is Commercial and would remain so pending a publicly notified planning process.
120. In Ms Hamm's submission, no further information was required to make a decision on the application.
121. Ms Hamm made various comments on conditions (including a response to questions that we had about the conditions lodged with a joint memorandum of counsel for the Applicant and the Council on 30 March 2021) and provided us with an updated set of conditions and an updated set of architectural plans.

<sup>55</sup> Our acceptance of these submissions on scope excludes the 30,000m<sup>3</sup> of infill proposed to be brought from proposed Lot 7. We do not consider that to be within scope. We discuss this further under Earthworks.

**PERMITTED BASELINE, EXISTING ENVIRONMENT AND RECEIVING ENVIRONMENT****Permitted baseline**

122. Under section 104(2) of the Act, we have the discretion to take into account the permitted baseline.
123. Rule 19.3.1 of the Operative District Plan sets out permitted activities for other Commercial zones throughout the District. However, the subject site here is subject to Rule 19.3.3(b). There are no permitted activities for the site. There is therefore no relevant permitted baseline.

**Existing and receiving environment**

124. The site is currently an operational kiwifruit orchard. The existing environment includes a single dwelling and an existing barn on the property. The site comprises a gently graded terrace landform falling towards the north-west with the heads of two gullies present on the northern and western boundaries. The northern gully continues north into the neighbouring property. The existing ground levels range from 32m (Moturiki Datum) adjacent to Omokoroa Road to RL 20m at the north western boundary.
125. The site is bound to the east by Omokoroa Road and further east, residential subdivision, to the north by the Kaimai Views residential area and to the west and south by kiwifruit orchards. The Ministry of Education has recently been granted a Notice of Requirement for a new school (primary and secondary) on the adjoining boundary to the south. The Kaimai Views residential area is currently zoned Commercial but has been developed as a residential area under the Housing Accords and Special Housing Areas Act 2013. We were told by Ms Price that the Council proposes to rezone this land to Residential through the Omokoroa Stage 3 Structure Plan.
126. Urban road upgrades are proposed for Omokoroa Road and Prole Road with physical works expected to commence in 2021.

**THE PRINCIPAL ISSUES IN CONTENTION**

127. Section 113 of the RMA requires the Commission to identify the principal issues in contention and to record its findings on these matters.
128. After analysis of the application, the legal submissions and supporting evidence (including proposed mitigation measures and volunteered conditions offered by the Applicant), the submissions on the application and a full review of the section 42A reports, we consider the proposed activity raises the following issues in contention<sup>56</sup>:

- (a) Urban design and amenity effects;
- (b) Landscape and visual amenity effects;
- (c) Traffic and parking effects;

<sup>56</sup> We note the issues in contention arose primarily in expert evidence and reports for the Applicant and the Council. While those two parties eventually tabled a set of agreed conditions, our assessment must take account of the evidence and reports filed and the conditions tabled.

- (d) Noise effects;
  - (e) Earthworks, services and infrastructure;
  - (f) The objectives and policies of the relevant planning documents;
  - (g) Consent conditions.
129. Our findings on the principal issues in contention are set out in the following sections of our decision.

#### **ASSESSMENT OF EFFECTS ON THE ENVIRONMENT**

##### **A URBAN DESIGN AND AMENITY EFFECTS**

130. As noted by Dr Beattie in his evidence<sup>57</sup>, the Applicant's design team sought to ensure that a number of specific design matters were addressed. We summarise these as follows:
- a) The building and land use strategy, with the street layout and open and civic space network, will positively activate and create a strong public edge throughout the town centre;
  - b) There should be a strong built presence and relationship with Omokoroa Road;
  - c) Increase the number of access points onto Omokoroa Road for both vehicle and active travel options (such as walking and cycling);
  - d) Provide a strong movement strategy with pedestrian movement opportunities and physical connections across the site and to the surrounding urban environment;
  - e) Built form should create a strong and positive street presence to the public open spaces and the public realm generally;
  - f) Ensure a range of housing types are provided to support the town centre;
  - g) Ensure the quality of overall building materiality and responses to the public realm;
  - h) Use building height to create definition and variety throughout the town centre.
131. The mixed use proposed brings together a number of design elements to ensure provision is made for retail, residential and commercial use. Offices and a childcare centre are part of the mix. The building typologies and sizes were set out in our section detailing the proposal.
132. The design has taken account of neighbours to the north, south and east. Buildings N and O have been designed to be sympathetic to the transition area with Kaimai Views and to provide a buffer to the commercial centre. The boundary with the school site to the south has been left unbuilt (principally carparking) so as not to result in the school facing the back of large buildings. Medium density terraced houses together with an open landscaped car park are intended to achieve a safe and pleasant fringe to the development's centre. Future growth to the west can be accommodated.<sup>58</sup>
133. The town centre's focus is on active travel options and the Applicant is seeking to create a development that is less focused on cars. As Dr Beattie noted, it is intended to link the town centre to the existing cycling network. It is also proposed to include a number

<sup>57</sup> Evidence of Dr Beattie, paragraph 19

<sup>58</sup> Evidence of Graham Price, paragraphs 22-25

of pedestrian and cycling connections to the town centre to facilitate the safe crossing of Omokoroa Road for these users. Some aspects of the development were less attractive to Dr Beattie. He would have preferred to see a stronger built presence to the street between Buildings I and N with the residential buildings in Kaimai Views. However, he accepted the Kaimai Views residents had expressed concern about development next to them and the final design took account of this. Dr Beattie also considered the roundabout in the centre of the town centre was less desirable, but also accepted this as being required from a traffic engineering perspective.<sup>59</sup>

134. The Applicant's experts and Council's peer reviewer were all supportive of the overall approach to the development – in that it proposes a main street type environment, not an enclosed mall or a large format (big box) centre. Submitters like the Omokoroa Residents and Ratepayers also supported this approach.
135. The basic structure of the town centre was not questioned, although the public plaza did raise possible CPTED issues. Activation of this space appears to be reliant upon the proposed civic building, the future of which is unknown.
136. The Masterplan proposes narrower roads (20m rather than the 26m set out in the District Plan). The narrower roads were promoted on the basis of a more 'urban environment' being created, which we support. The main issue was whether the narrower road width could accommodate sufficient space for footpaths, landscape treatment, on-site stormwater etc. The debate was not concerned with road carriageway widths or street parking. We consider the town centre layout has a number of opportunities for wider pavements to allow for spill out space (eg café tables, outdoor display of goods) such as the plaza area and the edge of the central roundabout.
137. In our view, the general support evident over the structure (layout) of the town centre and the role of that structure in delivering the identified amenity and urban design outcomes means that the Masterplan needs to be given sufficient 'weight' in the conditions. To this end we have amended the recommended conditions so that they refer to the town centre being developed 'in accordance with' the Masterplan.
138. The main area of debate was the delivery of the vision, particularly as it relates to building design (such as the positioning of entrances, extent of glazing to streets, canopies, materials and finishes, screening of undercroft parking and delivery areas). The application provided example images, but not finished designs.
139. We spent some time in the hearing discussing possible methods to ensure that these matters can be appropriately addressed through conditions. The Applicant has prepared a 'design guide', the purpose of which is to provide a 'framework for assessing and approving proposed buildings, public realm and landscape treatment outcomes'.
140. Mr Price proposed additional wording to address the need for visually broken facades at human scale, and the lack of recommendations on colour palette in the guide. He drafted guidelines in relation to colour palette and modulation which address the concerns raised. These were attached as Appendix 1 to his evidence.
141. In response to questions we had about the certainty of delivery of the urban design vision, Dr Beattie expressed his confidence in the process before us and proposed independent review of actual building design against the Design Guidelines before

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<sup>59</sup> Evidence of Dr Beattie, paragraphs 27-30

providing plans to the Council for certification. Mr Hugo also supported this approach.

142. We agree that both courses of action are needed – more detail in the guidelines and independent assessment. The revised Design Guidelines submitted post-hearing now refer to key performance standards relating to canopies and frontages, for example.
143. However these actions do not ensure high quality design. We do note that the land is zoned Commercial and that under the District Plan buildings are a restricted discretionary activity, with discretion including building design (19.7.2 Restricted Discretionary Activities – Omokoroa Stage 2 Structure Plan Area). To an extent, the process followed by the Council for a non-notified RDA and (under this application, as granted) assessment of proposed buildings against the Design Guidelines is not that much different. The Council still needs to certify that buildings meet the Design Guidelines, and where necessary, may refuse to certify plans, even if independent review suggests otherwise. This places some weight on the Design Guidelines.
144. On the basis of the conditions attached, we consider the urban design effects are less than minor.

### **B LANDSCAPE AND VISUAL AMENITY EFFECTS**

145. Mr Watts' evidence noted the landscape assessment was triggered primarily by the height encroachments above the 11m height limit associated with Buildings A, B, C, D, J, M and N. His assessment of effects had considered adjoining residential areas, including Kaimai Views to the north and Harbour Ridge and Te Awanui Waters to the east. His assessment also took account of various urban design and landscape outcomes in the District Plan – a landscape strip along Omokoroa Road; orientation of the town centre towards the gully reserve area; the establishment of a piazza area within the town centre to allow people to congregate; street trees and hard and soft landscaping elements to break up hard landscaping and car parking; modulated buildings avoiding long linear unbroken facades; appropriate boundary treatments with adjoining land and consideration of effects on amenity values; and a legible town centre guided by bulk and location standards. The Masterplan was consistent with these.<sup>60</sup>
146. Mr Watts also noted in his evidence the physical change to the landscape that would result from this development. With the exception of the gully system, the site would be cleared of existing kiwifruit and shelter belts and recontoured to accommodate the landform specified in the engineering assessment. As noted elsewhere, this will require substantial fill to be transported to the site. Mr Watts assessed the change to the physical landscape as moderate to high<sup>61</sup>, but considered it was anticipated as an outcome of the District Plan given the provisions addressing the Omokoroa Town Centre.<sup>62</sup>
147. As regards visual landscape effects, Mr Watts noted that the removal of the shelter belts on the site will open up and increase the visual connection to the Kaimai Ranges beyond. He acknowledged that the establishment of commercial buildings on the land would partially obscure some of those views, but noted that the height of buildings immediately adjacent to Omokoroa Road include two storey facades at the town centre entrance adjacent to Flounder Avenue, reducing to a single storey façade along the supermarket building (Building M) and the two storey façade of Building N. He considered Kaimai

<sup>60</sup> Evidence of Thomas Watts, paragraphs 48-53

<sup>61</sup> Based on the NZILA 7 point rating system

<sup>62</sup> Evidence of Thomas Watts, paragraphs 54-56

Views residents would enjoy wider views to the Kaimai Ranges as Building O (the childcare centre) is a single storey building and Building N was now set back from the boundary with Kaimai Views. The gully area would be improved with the removal of bamboo and weed control and landscaping with native vegetation. The adverse effects of the change in land use such as signage and lighting were anticipated by the District Plan.<sup>63</sup>

148. Mr Watt's landscape assessment was peer reviewed for the Council by Ms Rebecca Ryder of Boffa Miskell. Ms Ryder's initial assessment noted Mr Watts had not applied a scale of effect but rather referred to effects being acceptable or minor. In light of that, Mr Watts updated his report and submitted it to Ms Ryder for a further review in February 2021. Having reviewed that updated report, Ms Ryder accepted that the change in landscape effects would be moderate to high and that this change was anticipated. The change would be in keeping with the surrounding landforms and broader landscape patterns. She considered the long-term effects would be moderate to low given the underlying zone and surrounding landscape.
149. On visual effects, Ms Ryder noted Mr Watts had not specified in his assessment the camera used for his photographs. In questioning, Mr Watts told us he had used his iPhone, a somewhat unusual and unprofessional approach.<sup>64</sup> Ms Ryder was also concerned that Mr Watts had given descriptions in his assessment that were unreferenced to images and did not address specific effects on each viewing audience. Despite Ms Ryder's comments, Mr Watts did not address this point in his evidence either. As a professional landscape architect, Ms Ryder made it clear to us in her report that she could nevertheless ascertain the degree of change in each view. Ms Ryder stressed the importance of managing the landscape effects and recommended that height restrictions should relate to Reduced Levels (RLs) and not solely to building height planes. This was particularly important to the potential loss of views on the surrounding environment.
150. Ms Ryder had some pointed observations on conditions, which we quote, as they underpin many of the concerns we have held throughout this hearing about the nature of the conditions proposed<sup>65</sup> and the lack of certainty of the delivery of the proposal. Ms Ryder said this:<sup>66</sup>

“Reviewing the Draft Conditions of Consent, I concur with the Council's Planner where the conditions rely on detailed design and it is unclear on how this fits into the process. I remain of the opinion that, as extracted from my advice to Council that performance outcomes should be provided for:

- (a) Building heights relative to the surrounding land uses (ie RLs)
- (b) Building design controls including reflectivity values
- (c) Boundary treatments, in particular with immediate neighbouring properties with regard to vegetation height, placement, density and fencing typologies
- (d) And the preparation of a landscape management plan addressing

<sup>63</sup> Evidence of Thomas Watts, paragraph 57-61

<sup>64</sup> Mr Watts was not aware of the best practice requirements of the New Zealand Institute of Landscape Architects

<sup>65</sup> This report referred to conditions tabled by the Applicant at that time the report was prepared

<sup>66</sup> Supplementary landscape peer review of Rebecca Ryder dated 4 March 2021. These comments related to the conditions as they stood at the time this report was prepared.

visual effects and urban design effects matters.

Condition 9 of the Draft Conditions of Consent address those recommendations but are yet to provide further detail. I support this inclusion and recommend this information is clearly addressed at the hearing. I note that condition 90 will require further refinement to connect across to the landscape management plan and not specifically the engineering design. It is important the mitigation and amenity outcomes relied upon to reach the degree of effect remain relevant throughout the engineering, architectural and landscape design development.”

151. Ms Ryder’s conclusion was that subject to the refinement of the consent conditions, the landscape and visual effects were adequately addressed and the potential adverse landscape and visual effects would be of a moderate-low to low degree.
152. In reliance on Ms Ryder’s report and on the basis of the conditions attached, we make the same finding.

### **C TRAFFIC AND PARKING EFFECTS**

153. Mr Carlisle prepared an initial traffic assessment dated May 2020 and a supplementary traffic assessment dated 23 September 2020 in response to the Council’s request for further information. Mr Carlisle’s assessments were peer reviewed for the Council by Ms Fosberry.
154. In his initial assessment, Mr Carlisle set out in detail the existing roading environment, noting that Omokoroa Road is a two way single carriageway, Secondary Arterial Route, with a 80kph speed limit. In his evidence, Mr Carlisle noted the current speed restriction on Omokoroa Road adjacent to the site (and back to Prole Road) is 60kph, and that this was approved by the Council on 17 December 2020.<sup>67</sup> Omokoroa Road was upgraded two years ago and now includes a shared cycle and pedestrian path on the west side of the road. Omokoroa is served by one bus service, managed by the Bay of Plenty Regional Council. This operates during peak times. A 19km Omokoroa to Tauranga cycle route is nearing completion and will provide an alternative transport route to State Highway 2.
155. The initial traffic assessment identified that the operative Omokoroa Structure Plan has identified transport upgrading projects in the area required to meet the transport demands of the growth in traffic anticipated in the area. A key future project is a new roundabout into the subject site at Flounder Drive. This will provide the entry point to the town centre. Each of the roads within the town centre will have a 20m wide road reserve, with a standard carriageway of 8m and parking/ footpaths of 6m each side. The 8m wide carriageway provides a single traffic lane in each direction. The town centre includes an internal roundabout, between Buildings B, C, F, J and M.
156. Both undercroft parking (Buildings A, D, I and M) and on street parking are proposed, with a total of 654 carparks proposed to be provided. There was some confusion about the actual number of carparks being proposed. The original traffic assessment appeared to suggest the total expected parking demand was 759 spaces at peak. The original traffic assessment then proposed that 701 carparks would be provided, but the drawings accompanying the application at that stage showed 674. Later plans amended this to 654 spaces but no detailed rationale was provided for this reduction other than that the

<sup>67</sup> Evidence of Ian Carlisle, paragraph 15

lower number had resulted from the response to the section 92 request, from submissions and as a result of the safety audit. The Applicant's approach to the parking shortfall was to have sufficient room on the balance site (proposed Lot 7) to accommodate additional parking should this be necessary. Mr Coles noted that sufficient land was available in the Future Urban zoned area to provide additional carparking as required and considered an "adaptive management approach" could address this, noting the NPS-UD had removed carparking standards from District Plans.<sup>68</sup> A condition was proposed to enable the Applicant to review carparking and, if additional carparks were required, to confirm the number and provide those.

157. The subdivision plan allows the site to be developed in large lots in accordance with the Masterplan. A vested roading network is proposed. Road 501 will provide a through connection between Omokoroa Road and Sentinel Avenue. Road 503 provides for property access and allows direct access to Omokoroa Road, with a left turn only. Road 502 will be a no exit road, connected to Omokoroa Road for pedestrian/ cycle access. Road 504 provides a property access and allows for connectivity to potential future growth areas to the west and south, including the future school site to the south of the town centre.
158. The traffic assessments included recommendations to provide certainty of design standards including intersection and access design (noting that it was appropriate to reference Council's Development Code), parking layouts, detailed design of the road, intersection, entrances and car parking to be reviewed by a suitably qualified independent traffic engineer and the lot boundaries to be flexible and responsive to minor changes as necessary at detailed design stage.<sup>69</sup>
159. Some traffic design elements were amended as the application progressed, first through the section 92 response and later through evidence and further discussion between the two traffic experts. The Applicant had originally proposed that a road travel north from the town centre to connect with Sentinel Avenue, enabling traffic to pass through the Kaimai Views residential area. Through the section 92 process, a right turn was also proposed off Omokoroa Rd into the northern part of the town centre, to facilitate entry for vehicles travelling south. A slip lane was also proposed to travel parallel to Omokoroa Rd from the south to facilitate access for larger vehicles needing to access the supermarket in particular.
160. Ms Fosberry raised a number of concerns in her assessments. The Section 42A report summarised these as:<sup>70</sup>
- a) The roundabout was sensitive to the changes but would operate with an acceptable level of service into the future if it was a two lane circulating roundabout;
  - b) The proposed right turn northern access did not operate at a satisfactory level of service;
  - c) There was safety risk for pedestrians and cyclists using the connection from Anglers Way to the town centre;
  - d) Sensitivity testing of the traffic modelling undertaken by Stantec had shown that in some scenarios, queuing to exit from Road 4 onto Omokoroa Road may occur. If unduly delayed, northbound users would choose to drive through Sentinel Avenue in the Kaimai Views residential area to Settler Avenue to access Omokoroa Road. The same would happen if there was queuing at the northern most access right

<sup>68</sup> Supplementary evidence of Richard Coles, paragraph 20

<sup>69</sup> Evidence of Ian Carlisle, paragraph 42

<sup>70</sup> First section 42A report, paragraph 151

- turning point to the town centre, in which case drivers would take a 'rat run' option through Kaimai Views.
- e) The parking shortfall may result in overflow parking on Omokoroa Road or within areas that affect the safety of vulnerable road users within the town centre and the operation of the internal and external road network. This raised both operational and safety concerns.
161. In her supplementary review dated 4 March 2021, Ms Fosberry repeated many of these concerns and provided us with an updated set of recommendations. Ms Fosberry expanded on these points when presenting her report at the hearing:
- a) The right turn off Omokoroa Road should be removed from the proposal
  - b) To avoid the potential 'rat running' problem through Kaimai Views and the associated safety concerns, there should be no vehicle access from the town centre to and through Sentinel Avenue. Provision for pedestrians, cyclists and mobility scooters etc. should remain;
  - c) It was more prudent to build a two lane circulating roundabout to provide for future needs;
  - d) The Applicant, not the Council, should be responsible for providing safe access across Omokoroa Road at Anglers Way;
  - e) Further modelling was required to assess whether Omokoroa Road between Prole Road roundabout and Flounder Drive roundabout should be two laned or four laned. Ms Fosberry recommended this be two lanes in each direction unless traffic modelling proved otherwise;
  - f) Ms Fosberry commented on the draft consent conditions as they stood at that time.
162. It was clear to us that Ms Fosberry and Mr Carlisle disagreed on a number of points. We invited them to undertake further discussions as part of the process of the Council and the Applicant revisiting the draft consent conditions. Through the Joint Memorandum of Counsel for the Applicant and the Council dated 29 March 2021, the Applicant agreed with the recommendations to delete the right turn from Omokoroa Road and to prevent vehicular access between the town centre and Kaimai Views.<sup>71</sup> The same document recorded that the conditions no longer made provision for the number of lanes required at the roundabout and/ or between the roundabout at the town centre entrance and Prole Road. The Operative District Plan provides a financial contribution regime for these matters and contributions could be levied accordingly.
163. The conditions agreed by the Council and the Applicant included a requirement for the Applicant to prepare a Travel Management Plan for the childcare centre. This is to be certified by the Council. We have amended this condition to specify that the Travel Management Plan is to set out actions to support access by active modes and to manage demands for access by private vehicle.
164. Based on the removal of the right turn in from Omokoroa Road and limiting the access to Kaimai Views to pedestrians and cyclists/ scooters etc, we find that the traffic effects are no more than minor. Traffic safety and amenity issues have been resolved. We consider the Applicant and the Council should confer on whether safe pedestrian access from Anglers Way to the town centre is feasible, and if so, to provide for such access. We have included a condition to address this.

#### **D NOISE EFFECTS**

165. As noted above, the application as notified did not include a noise assessment. The

<sup>71</sup> At paragraph 8

Earcon assessment provided with the Applicant's section 92 response did not address all noise effects within the town centre. Earcon did not attend the hearing, therefore the only expert we heard from on noise was Council's reviewer, Ms Curtis. We outlined Ms Curtis' report in our discussion of evidence above.

166. Ms Curtis recommended a number of conditions addressing:<sup>72</sup>
- a) The provision of a detailed acoustic design report by an acoustic consultant. That acoustic report should include details of building construction, ventilation and glazing to ensure the internal noise levels within the residential units comply with the internal noise standards detailed in the conditions;
  - b) A limit on noise from commercial activities when measured at or at the boundary of any site or at the outside wall of any building on any site other than the site from which the noise is emitted;
  - c) An amended condition addressing the time period for when delivery vehicles or waste collection vehicles may access the town centre;
  - d) The level of acoustic certification to apply to a dwelling and/ or residential component of a building; and
  - e) Prior to residential occupation of the buildings, the consent holder is to provide certification from a suitably qualified person that the building has been constructed and mechanical ventilation provided to bedrooms and habitable rooms in accordance with the report's requirements.
167. The Applicant accepted Ms Curtis' recommended conditions and volunteered them on an *Augier* basis (because the site is in a commercial zone without context-appropriate noise standards as noted above) and agreed to be bound by them.<sup>73</sup>
168. On the basis of Ms Curtis' report and the recommended conditions, we find noise effects will be no more than minor. We have amended the conditions slightly to avoid undue repetition and have added an Advice Note to the acoustic sensitivity condition to specify the formula on which the condition is based.

## **E EARTHWORKS, SERVICES AND INFRASTRUCTURE**

### *Earthworks*

169. As discussed above, the volume of infill earthworks is now calculated at 113,000m<sup>3</sup>. However, we note the Cut Fill Contours Plan in fact refers to 115,550m<sup>3</sup> of infill. Mr Hight's evidence for the Applicant was that the additional volume of bulk earthworks would not result in additional effects. Mr Lawton for the Council did not quite accept that, expressing concern about the impact of trucks on the Council's roads and pavement and noting also that an additional 40% bulk should be added to the fill volume in trucking terms. Mr Lawton wanted the Applicant to confirm either a solid measure or a truck measure so that this was certain.
170. Given the site's current topography, there is no doubt that substantial earthworks will be required to raise and prepare the site for the town centre development. The Applicant has provided plans showing the extent of the proposed earthworks and the resulting contours. We accept those. Details of the staging of bulk earthworks were less clear at the hearing, and we asked further questions on this. The Applicant's Reply confirmed that "the majority of" earthworks would occur in Stage 1 and "the earthworks will likely

<sup>72</sup> Report of Ms Curtis dated 2 March 2021, pages 6-8

<sup>73</sup> Joint memorandum of Counsel Regarding Conditions, paragraph 14, confirmed in the Joint Memorandum of 5 May 2021

need to be completed for the whole town centre in one stage to ensure all necessary services can be established.”<sup>74</sup> We consider more certainty is required, such that all bulk earthworks will be required in Stage 1. The total volume of earthworks consented (infill of 115,550m<sup>3</sup>) is specified in the conditions through the Cut Fill Contours Plan listed in Condition 1. So too, the hours of work on site are prescribed in the conditions so that members of the public and the Council can be sure that the amenity of nearby residents is protected.

171. We do note, however, that the Cut Fill Contours Plan indicates an intention to use 30,000m<sup>3</sup> infill from the Future Urban zoned part of existing Lot 1 (proposed Lot 7). No supporting evidence was provided regarding that proposition and its potential effects, nor was the matter illustrated in the contour plans provided. Accordingly, we do not accept that as being within the scope of the application and do not, thereby, grant consent to that activity. In the event that we are found to be in error on that ground, we decline to authorise the removal of 30,000m<sup>3</sup> from that part of existing Lot 1 land on the s104(6) ground that insufficient information has been provided for us to understand the effects of that particular activity.
172. The support for the proposal from the Omokoroa community is in many ways based on the Applicant delivering up this town centre in a timely way. Having cleared the site, it is important that the Applicant continues to develop the site in accordance with this consent and the Omokoroa community is not left with an unsightly “hole in the ground”. The milestone condition and the lapse date condition address this.
173. Mr Hight confirmed in his evidence that dust control will be required for the duration of earthworks, as dictated by the Bay of Plenty Regional Council’s “Erosion and Sediment Control Guidelines for Land Disturbing Activities”. These prescribe the methodologies and dust control water quantities required, and the complaints system to be followed. Mr Hight’s understanding was that a consented groundwater take is presently on site, which is being varied to enable the take of sufficient water to suppress dust during the earthworks. It was his opinion that the risk of dust nuisance would be negligible provided the guidelines are adhered to.

#### *Water*

174. Lysaght Consultants provided a detailed report on servicing as part of the application, which confirmed the suitability of the site development. There is existing water infrastructure located within the Omokoroa Road reserve and within Sentinel Avenue. The development is proposed to connect to both existing water systems. A new 200mm water main is needed on the eastern side of Omokoroa Road, along with upgrading the 50mm rider main adjacent to Flounder Avenue to a 200mm main to complete the loop. As noted in the Lysaght report, these two upgrades should provide sufficient capacity to service the town centre for the predicted water demand (and firefighting – but we have included the condition sought by Fire & Emergency NZ out of an abundance of caution).

#### *Wastewater*

175. The Lysaght report provided a preliminary layout of the wastewater system that will be gravity fed to a pump station within the site. This will pump wastewater via a rising main to the existing wastewater system on Omokoroa Road. The Lysaght report confirmed the calculations undertaken which indicated there was adequate capacity in the network to receive wastewater from the town centre. Mr Lawton’s comment was that the

<sup>74</sup> Applicant’s Reply, Appendix table, in answer to our questions on this

wastewater pumping station on Lot 1 was too small. An area of 124m<sup>2</sup> was proposed by the Applicant. The Council wanted an area of 225m<sup>2</sup> in order to provide space for access maintenance and a future bio-filter should one be required. Mr Lawton did not accept the Applicant's suggestion that additional land could be provided in a future stage and recommended to us that a "complying" (which we understand to be 225m<sup>2</sup>) area be provided in the scheme plan.

176. Despite this, the conditions agreed by the Applicant and the Council post-hearing did not include this requirement and referred to more generic conditions. In response to Mr Lawton's concerns, Mr Coles suggested the lot area for this infrastructure could be amended, but then went on to say this should be addressed in detailed design.<sup>75</sup>

#### *Stormwater*

177. Lysaght's report confirmed that the site could be serviced with stormwater infrastructure given the established downstream ponds and the natural fall of the site.
178. Mr Hight's evidence was that the primary stormwater collection and reticulation network has been conceptually designed in accordance with the Council's Development Code. Runoff from hardstand areas within the lots and road corridors (in a one in 10 year storm) will be collected in downpipes and catchpits and reticulated by an underground pipe network to the gully in the north of the site in Lot 102. Erosive effects of the discharge will be mitigated using appropriate rock armouring or similar. From the discharge point, runoff will flow overland through the gully in Lot 102 to the north and into the existing stormwater pond constructed as part of the Kaimai Views development. All stormwater infrastructure will be vested with the Council.<sup>76</sup>
179. The town centre road network will provide a secondary flow path towards the gully system. Where the road layout does not provide a direct route to the gully, dedicated overland flow paths have been provided. As regards overland flow from the school site to the south, a piped secondary flow path is proposed as an option to convey that stormwater to the gully, but the Applicant's preferred option is to agree with the Ministry of Education to place fill within that school site to enable overland flow to freely enter the site. Dialogue is apparently underway with the Ministry about this.<sup>77</sup> Mr Coles mentioned in his evidence that in discussions with the Ministry, it was evident that the Ministry has no development plans or earthworks plans completed at this time, but that it was likely a design solution would be able to be reached to minimise or avoid ponding on the school site. It was intended this be addressed during detailed design and a condition could be added to the consent if required.<sup>78</sup> We do not consider that necessary.
180. Ms Fisher raised concerns about the stormwater design. In his supplementary statement, Mr Coles referred us to Mr Hight's evidence that bioretention tree pits could be incorporated and also noted that the stormwater pond servicing this sub-catchment is complete and is designed to manage water quality and attenuation (for a 100 year storm event).<sup>79</sup> Mr Coles then told us Mr Hight's evidence was that bioretention tree pits were not required. As Mr Lawton for the Council had queried the area required in the road reserve for a biofilter tree pit, Mr Coles' response was that as the roads would be vested in the Council, the Council needed to decide whether the maintenance costs were

<sup>75</sup> Supplementary evidence of Richard Coles, paragraph 25

<sup>76</sup> Evidence of Daniel Hight, paragraph 20

<sup>77</sup> Evidence of Daniel Hight, paragraphs 21 and 22

<sup>78</sup> Supplementary evidence of Richard Coles, paragraph 23

<sup>79</sup> Supplementary evidence of Richard Coles, paragraph 38; Evidence of Daniel Hight, paragraph 23

justified. In questioning, Mr Lawton confirmed that his concern was that the 20m road reserve proposed by the Applicant limited the amount of room needed to provide for stormwater infrastructure and street trees would suffer if the street width was too narrow. The Applicant's Reply submissions noted the amended Design Guidelines included the possibility of stormwater bio-retention filtration systems.<sup>80</sup>

181. We consider this matter should be left for the detailed design stage and have not included a condition requiring the inclusion of bioretention tree pits.

*Power and telecommunications*

182. Powerco's submission on the application noted the existing constraints in the existing network and also recorded that its electrical networks were recognised as regionally significant infrastructure in the Bay of Plenty Regional Policy Statement. It was therefore appropriate that any development avoid adverse effects on the electricity distribution network. The site has an existing power connection which will require upgrading to service the town centre. In his supplementary evidence, Mr Coles provided additional oral confirmation that Powerco had confirmed to the Applicant that it could provide the required power supply, with the necessary upgrades. Mr Coles confirmed in his first statement of evidence that the conditions should provide for power supply to future lots.<sup>81</sup>
183. Ultra-fast broadband is available in Omokoroa and Chorus has provided confirmation to the Applicant that the network can be extended to provide connection availability, subject to design. Through the section 92 process, the Applicant provided a letter from Powerco that noted with regard to Chorus, location of cabinetry will be addressed at the time of detailed design. This is normally located within the road reserve.

*Firefighting*

184. Earlier in our decision, we referred to the correspondence received from Beca on behalf of Fire and Emergency. Beca requested two conditions be included in consent conditions and consent notices if we decided that consent should be granted. The conditions were not included in any drafts of conditions provided to us post-hearing. We have therefore included them in the conditions attached.
185. We also record that Fire and Emergency stated via Beca that it requested the Applicant engage with it during the building consent process to ensure that the firefighting supply network is suitably designed (including panel locations and rises, if multiple) for use by Fire and Emergency during any emergency.
186. Overall, we are satisfied that the effects of earthworks, services and infrastructure will be no more than minor, provided the conditions attached are adhered to.

**F ECONOMIC EFFECTS**

187. We heard from only one economist, Mr Polkinghorne, who gave evidence for the Applicant. He prepared the economic assessment supporting the application. His report reviewed earlier economic reports prepared by Property Economics (commissioned by Foodstuffs) and RPS (commissioned to assist with the work being undertaken by the Council on Omokoroa Stage 3 Structure Plan). Mr Polkinghorne's assessment was that Omokoroa was still at an early stage of development. Omokoroa was growing fast. In

<sup>80</sup> Reply submissions paragraph 37, referring to the updated Design Guidelines page 36

<sup>81</sup> Statement of evidence of Richard Coles, paragraph 53

his opinion the retail area at Tralee Street would only ever serve part of the Omokoroa Peninsula due to its size and location. RPS had earlier recommended that a 3.5ha town centre was required to service Omokoroa's needs (excluding roads).

188. As we noted in our summary of Mr Polkinghorne's evidence, a supermarket is likely to be the main anchor tenant for the town centre. This would be supported by a range of retail options and some service activity. Mr Polkinghorne told us that prior to the opening of the Fresh Choice in 2016, located at the Tralee Street shopping area, Omokoroa residents had to travel to other centres for all but the most basic shopping needs, as well as for jobs and services. To some extent, that still applied. He considered the development proposed by Jace at 404 Omokoroa Road would remedy these issues and could eventually provide 500-1000 jobs if fully developed in line with the consent drawings.<sup>82</sup>
189. Mr Polkinghorne's evidence set out the detail of the Tralee Street development. He noted that 97-137 Hamurana Road had resource consent for a mixed use development but was less confident that this would be achieved. We addressed this earlier in our decision.
190. Ms Price's section 42A report pointed us to Mr Polkinghorne's opinion that if the Fresh Choice was to close, it was unclear if this would be a significant adverse effect. His evidence expanded on this, noting his opinion that he did not think any town centre development at the Applicant's site would lead to the Fresh Choice closing. It is a small supermarket and delivers to a different market than a full size supermarket. Even if this development proceeded with a full-size supermarket, RCG considered Fresh Choice would still be a convenience option for residents living in the northern part of the peninsula. It is some 2km from the Applicant's site. As he noted, a second supermarket would be good for competition. A supermarket on the Applicant's site would be more convenient for the majority of Omokoroa residents.<sup>83</sup>
191. Mr Polkinghorne's opinion was that development of the town centre would have significant positive effects for the Omokoroa community and beyond. Any negative economic effects would be minor and limited to trade competition. The Applicant's site is appropriately sized, has appropriate zoning and single ownership, has good exposure to Omokoroa Road, and is easily accessible to all Omokoroa residents. Tralee Street does not share all of these characteristics (especially as most of the future residential development is anticipated to be in the southern part of the peninsula). Mr Polkinghorne responded in detail to the points raised in Woolworths' submission and in Ms Knights' planning evidence for Woolworths.<sup>84</sup>
192. A very real issue raised by the Council was the possibility of a supermarket not being secured as an anchor tenant and this not being assessed by RCG. Mr Polkinghorne's response was that he did not consider there would be no supermarket as there would, in his opinion, be demand for a full-size supermarket in Omokoroa within ten years. He did agree that if a supermarket was not located within the town centre, it would be detrimental to the vitality of the town centre and the centre could struggle to become a real heart of the community. He considered it speculative to take this any further, given there is no confirmed or zoned alternative site for a town centre or supermarket at this time.<sup>85</sup>

<sup>82</sup> Evidence of John Polkinghorne, paragraphs 17-18

<sup>83</sup> Evidence of John Polkinghorne, paragraphs 40-45

<sup>84</sup> Evidence of John Polkinghorne, paragraphs 57-77

<sup>85</sup> Evidence of John Polkinghorne, paragraphs 10-13

193. We are satisfied that the economic assessment properly addressed economic effects and that those effects (beyond trade competition effects) are likely to be no more than minor, if present at all. We have carefully considered the implications of there being no supermarket as an anchor tenant and what that would mean for the town centre. It occurred to us that the very same difficulty could arise for the Council if it was in charge of developing a town centre under its structure planning process. At the end of the day, the consent includes a short lapse period (which the Applicant has agreed to) and the commercial risk of not securing a major tenant lies with Jace. It must undertake all bulk earthworks in Stage 1, including the supermarket location, and assumes the commercial risk of delivery of the project. We do not consider we can take the matter any further in the consent conditions.

#### **SUMMARY OF EFFECTS**

194. Overall, having considered the evidence, the application and supporting reports, the legal submissions and the Council's reports, we consider the effects are no more than minor.
195. The application therefore passes the first section 104D test.

#### **OBJECTIVES AND POLICIES**

##### **REGIONAL PLANS**

196. We are required to take account of the Bay of Plenty Regional Policy Statement ("RPS") in our assessment. While the AEE did not address the RPS,<sup>86</sup> Ms Price included it within her planning assessment. We do not set out the detailed provisions of the RPS here. As Ms Price noted, the RPS:<sup>87</sup>
- "...provides a framework for sustainably managing the region's natural and physical resources. It highlights regionally significant issues with land, air, fresh and coastal water, infrastructure and biodiversity, including issues of significance to iwi. It sets out what needs to be achieved (objectives) and how it will be achieved (policies and methods). The Western Bay of Plenty Operative District Plan is required to reflect the provisions of the RPS."
197. Ms Price then went on to assess the town centre proposal against sections of the RPS, addressing iwi resource management, urban and rural growth management, water quality and water quantity and natural hazards. She noted the Applicant's consultation with iwi, the archaeological assessment undertaken as part of its application and the intention to continue to work with Pirirakau hapu on cultural and planting opportunities within the town centre. Ms Price considered the application satisfied the urban and rural growth management provisions. It took a considered approach to development, took into account regional and local travel patterns, managed the effects of subdivision, ensured high quality urban design and provided public open space. The activity was located within the urban limit. On earthworks, Ms Price noted the Applicant had not provided much information on the effects of earthworks in relation to District Council requirements and noted the application that had been made to the Regional Council for an earthworks consent. Ms Price considered the proposal satisfied the two water quality provisions WQ 1A and WQ 7B. On natural hazards, the site is not subject to any current District Plan Natural Hazard overlays. It is subject to non-statutory mapping of floodable

<sup>86</sup> We note that Ms Coles did not address regional planning instruments in his planning evidence either

<sup>87</sup> Section 42A report, page 53

area within the gully. We discuss this further below.

198. Ms Price also referred us to the Regional Resources Plan, considering this relevant as the proposal required earthworks and a stormwater discharge. The Regional Council's submission had noted issues with the provision of systems to address development of this scale, but the submission was later withdrawn. As Ms Price noted, the development will need to comply with the relevant rules of the Regional Natural Resources Plan or apply for the appropriate consent. As this lies outside our jurisdiction, we make no further comment.
199. On the information before us, we consider the proposal is not contrary to the RPS – noting, in addition, that the present zoning is, of course, Commercial and so many of the potential effects that might be of concern under the regional planning instruments could arise under that operative zoning regardless.

#### ***DISTRICT PLAN***

200. We have considered the assessments of the objectives and policies of the Western Bay of Plenty Operative District Plan as set out in the Application, the section 42A report and the evidence.
201. We do not intend to traverse each and every relevant objective and policy. Our assessment will focus on primary matters.

#### **Section 4B Transportation, Access, Parking and Loading**

202. The objectives in Section 4B.2.1 include the provision of an integrated, efficient, safe and sustainable transportation network that supports social and economic wellbeing and a land use pattern that maintains or enhances the regional strategic linkages. Provision is to be made for more efficient land use, development and subdivision of existing areas in a way that recognises and integrates with the functions of different road types, transport modes and the defined transportation network. The use and development of alternative modes of transport is encouraged.
203. There are a number of policies in Section 4B.2.2 to implement these objectives. They were fully set out in the section 42A report and the AEE and we do not repeat them. They are generally directed at protecting the safety and efficiency of the transport network; ensuring that land use, development and subdivision planning provides for multi-modal transport; the establishment and operation of activities in a manner which ensures safe and effective on-site and off-site vehicle parking, manoeuvring and access and pedestrian access; and providing safe, usable and attractive networks and associated linkages for pedestrians, cyclists and motor vehicles.
204. We consider the proposal is generally not contrary to these objectives and policies. The one issue that has remained somewhat unresolved is the shortfall in carparking and how that might be addressed. We accept the suggested condition requiring the demand for carparking to be monitored and if necessary, supplemented. We are conscious that the development is seeking to avoid car dominance and in that regard, safe provision for pedestrians and cyclists is equally important.

#### **Section 4C Amenity**

205. The relevant plan provisions are 4C1.2.1 and Policy 4C1.2.2 addressing levels of noise and Objective 4C5.2.1 and Policy 4C5.2.2 addressing visual effects of activities situated

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in prominent locations or adjacent to residential areas and ensuring appropriate landscaping and screening is established in conjunction with activities so as to minimise their potential adverse visual impact.

206. As Ms Price noted, the District Plan prescribes maximum noise limits for the Commercial zone. Account also needed to be taken of the noise from the bulk earthworks and construction phase. It is also important to consider both the effect of noise on residential neighbours and the noise limits within the Commercial zone itself, as the town centre will include high density residential living. We consider the conditions address these matters and the application is not contrary to these objectives and policies.

#### **Section 4D Signs**

207. Section 4D.2.1 deals with signs. The objectives are directed at maintaining and enhancing the visual amenity of the District from the adverse effects of signs while recognising the different sensitivities of different locations, avoiding the adverse effects of signs on the safe and efficient operation of roads and mitigation of the adverse effects on traffic safety of activities which attract people to the site. Policy 1 requires that signs be of a size, type, colour, number and/ or location as to maintain and enhance the zone's visual amenity and that signs visible from roads should be positioned and designed so that they do not distract motorists or otherwise impair their ability to drive safely.
208. We didn't receive much in the way of evidence on proposed signage for the town centre. Mr Price's Appendix 1 Design Guidelines stated that "Signage and advertising can also add interest and colour to these areas and attracts people to visit the premises". We could not locate any assessment of signage in Mr Watts' evidence or Ms Price's report. The architectural set of plans included elevations and these did show signage. These plans form part of Condition 1. We are satisfied that the proposal is not contrary to the signage objectives and policy.

#### **Section 7 Heritage**

209. The AEE also referred to Section 7.2.1 and 7.2.2 dealing with historic heritage. As historical heritage (and cultural effects) were not in contention, we have not addressed those matters in detail but are satisfied the proposal is not contrary to them.

#### **Section 10 Infrastructure**

210. Mr Coles also referred us to Section 10 Infrastructure. Objective 1 is "Development, operation, maintenance and upgrading of infrastructure and network utility systems and services so as to efficiently and effectively meet the current and foreseeable needs of the District". Objective 6 requires the establishment and management of activities, or the undertaking of subdivision, in a way that avoids, remedies, or mitigates potential reverse sensitivity effects that may impact on the safe, efficient and efficient operation of infrastructure and network utilities. Section 10.2.2 addresses policies. Policy 1 requires that infrastructure and utility be sequenced in a way that integrates with long-term planning and funding mechanisms of local authorities and central government policies, directions and strategies. Policy 4 is that assessment of resource consent applications should have regard to the functional, locational, technical and operational requirements of infrastructure and network utilities and that recognition be afforded to the requirements of, and constraints on, the efficient and effective development, operation, maintenance and upgrading of infrastructure and network utilities.

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211. We consider the proposal is not contrary to these objectives and policies. The AEE addressed infrastructure at page 43 and the discussions between the Applicant and the Council have included provision for infrastructure. We consider these matters are sufficiently covered in the consent conditions attached.

#### **Section 11 Financial Contributions**

212. These are set out in detail in the section 42A report and we do not repeat them here. There is no question that the development will result in additional demand on Council's water, wastewater, stormwater and roading infrastructure. The Applicant and the Council agree that financial contributions will be imposed. The proposal is not contrary to these objectives and policies.

#### **Section 12 Subdivision and Development**

213. The objectives in 12.2.1 are directed at providing development and subdivision that reinforces the existing built form and character of a local area; planning the development and subdivision in an integrated manner and providing necessary infrastructure and services; designing and constructing infrastructure and services to minimum standards to result in improved environmental outcomes without significant additional cost to the community; undertaking a comprehensive assessment of development proposals to ensure the full effect of the proposal is able to be determined; minimising the effect of stormwater run-off; and taking into account the principles of optimum energy efficiency and the benefits of renewable energy.
214. The policies in 12.2.2 require that all urban subdivision is to have regard to subdivision guidelines contained in the Development Code, Built Environment Strategy and urban design protocols and guidelines. The design of subdivision is to be in accordance with structure plans. Subdivision is to be undertaken in accordance with any staging requirements to ensure the effective and efficient servicing of land within the catchment. Infrastructure and services must be provided to meet the reasonably foreseeable needs of other land in the development's vicinity. Subdivision and development are to comply with the Council's Development Code for the provision of infrastructure and development or provide an alternative standard which is as effective and efficient in the long term and results in improved environmental outcomes. The policies implement the objective on comprehensive assessment of a development proposal and require that the information requirements of the Development Code are met. Subdivision and development practices should take account of existing topography, drainage and soil conditions with the aim of minimising stormwater run-off. It should also reflect the principles of optimum energy efficiency and solar energy and the generation of renewable energy such as solar water heating. Adverse effects of traffic generation from the subdivision and development on the transport network are to be avoided, remedied or mitigated.
215. We agree with Ms Price that while the development and subdivision is not strictly in accordance with the Stage 2 Structure Plan for Omokoroa, it does include some measures that assist in mitigating the scale of the development, including the southern slip lane and the left turn in/ out intersection at the northern end of the town centre. Most of the buildings comply with the height limit and if they do not, they have now been designed to address the effects on nearby neighbours. Building N is an example of this. The Applicant has accepted it must pay for the upgrading of much of the infrastructure and services required for the development.
216. The comprehensive assessment of all effects required by Objective 12.2.1.5 and Policy 12.2.2.6 are important. We have been mindful of this in our consideration of this proposal

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and in writing our decision. As expressed to the parties a number of times, it is important for the Commission to be able to assess all effects in making its decision. We stress that our approval of this development has been marginal because we did not consider later assessments by third parties to be lawful or appropriate. We have restructured the conditions to make it clear what this consent gives effect to.

217. Overall, we consider that, on the basis of the conditions attached to this decision, the proposal is not contrary to the Section 12 objectives and policies.

#### **Section 19 Commercial zone**

218. Section 19 addresses the Commercial zone and includes 11 objectives at 19.2.1. We consider that the Masterplan shows a consolidated commercial area with mixed use residential incorporated to ensure it is a vibrant commercial area and will encourage social and cultural interaction. The development reflects accepted urban design principles. The development can meet CPTED requirements, and is of a scale that is appropriate for its location. The commercial activities should be able to operate effectively and efficiently without undue restraint from non-commercial uses, in particular residential uses. The noise conditions recommended by Ms Curtis are designed to ensure the protection of residential amenity. The marketplace and civic centre are designed to integrate. The proposal includes road, cycle and pedestrian linkages to the town centre.

219. Section 19.2.2 sets out the policies for the Commercial zone. We summarise these as including:

- New development of commercial centres is to be consistent with the design elements of relevant town centre plans;
- Ensuring buildings and structures in Commercial zones provide sufficient shelter for pedestrians, do not compromise pedestrian access unless the site locality or characteristics are such that verandas or other forms of shelter are not required, and support the development of areas that encourage social interaction;
- Encouraging alternative routes for heavy transport so as to avoid adverse effects such as danger to pedestrians, dust, noise and odour;
- Ensuring noise levels are such as to maintain a reasonable quality commercial environment;
- Locating residential activities so that they do not compromise the integrity of the commercial zone and avoid issues with noise;
- Applying financial contributions and other consent conditions to assist in avoiding or mitigating potential adverse effects of future subdivision and development;
- Identifying and protecting significant heritage and landscape features;
- Applying height limits appropriate for the location of the zone;
- Promoting pedestrian and cycle accessibility;
- Requiring retail frontages to be orientated towards streets and other public areas;
- Ensuring that development is designed and constructed to be consistent with the New Zealand Urban Design Protocol and National Guidelines for Crime Prevention through Environmental Design;
- In the case of commercial development within the Omokoroa Stage 2 Structure Plan area, providing a design that includes mixed use areas, visually broken façades of a human scale, muted natural or recessive colours, a maximum of one connection to Omokoroa Road thereby

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preserving that road's primary function as a transport corridor, landscaped carparking and set back from Omokoroa Road, functional and alternate mixed use (including residential) on upper floors, outlook and amenities that relate to the adjoining gully system and the provision of residential accommodation to promote vibrancy in the commercial area.

220. We consider the proposal is not contrary to these objectives and policies. Those aspects of the design that do not meet them, such as height limits, have been the subject of this resource consent. The application has sought to follow the specific matters outlined in Section 19.2.2.15 that set out the policy direction for the Omokoroa Town Centre.

#### **SUMMARY OBJECTIVES AND POLICIES**

221. The application is not contrary to the objectives and policies in the Operative District Plan and the relevant regional planning documents and passes the section 104D(1)(b) test.

#### **SECTION 104D ASSESSMENT**

222. Having considered the effects on the environment and the relevant objectives and policies, we find that effects of the proposal are no more than minor, subject to the conditions to be imposed. The proposal is not contrary to the relevant objectives and policies of the plans. The application passes both thresholds in section 104D.

#### **SECTIONS 104(1)(a) and (b) ASSESSMENT**

Our assessment under sections 104(1)(a) and (b) requires us to consider any actual and potential effects on the environment of allowing the activity and the relevant provisions of the regional and planning instruments.

223. On positive effects, there is no doubt that a town centre for Omokoroa will be a positive step for that community. The community's support for this proposal signals its desire to see this development proceed. The development will provide growth and employment opportunities. It will enable Omokoroa residents, now and in the future, to provide for their own commercial needs and not be reliant on having to travel to other centres to shop or obtain a range of other services. It will provide social benefits through the use of the civic centre and the marketplace/ plaza.
224. In terms of possible adverse effects, we are satisfied, subject to the conditions, that effects will not be significant. Having said that, we acknowledge that there is a degree of uncertainty over final design of buildings, streets, laneways and public areas. The details of the design of these features will have a strong influence on the amenity of the centre. We consider that the amended conditions (as discussed below) provide an adequate framework to address this concern.
225. We have reviewed relevant objectives and policies in the above sections and find no reason to make a negative finding. As noted, the NPS-UD supports the provision of additional capacity for retail and business activities.
226. We refer to the relevance of Part 2 at the end of this decision.

#### **SECTION 104(1)(c) - OTHER MATTERS**

227. As stated earlier in our decision, we do not consider the Omokoroa Stage 3 Structure

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Plan process to be relevant, given its non-statutory status at this time.

228. We have addressed the NPS-UD and the NES elsewhere in this decision.

#### **Precedent Effect**

229. The proposal is non-complying under the Operative District Plan. We consider it is therefore appropriate to consider the matter of precedent. So too, the integrity of the District Plan is relevant. Given the District Plan's clear intention to develop a commercial area master plan at Omokoroa, and the provisions addressing such development, we do not consider this proposal creates an undesirable precedent. The District Plan's support for a development of this nature is, in essence, the reason why this application has been granted. However, it is important for the consent holder to actually deliver a town centre for the Omokoroa community. The conditions attached are intended to provide more certainty around this.

#### **SECTION 106 ASSESSMENT**

230. At page 57 of her section 42A report, Ms Price referred us to section 106 of the Act, whereby Council may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if there is a significant risk from natural hazards. She noted that the Applicant had not undertaken a Natural Hazards Risk Assessment under the Natural Hazard provisions of the RPS<sup>88</sup>. The site is not identified as being within a District Plan Natural Hazard Area but the Council is aware that the site is subject to flooding in extreme rainfall events<sup>89</sup>, and to liquefaction<sup>90</sup>. The Regional Council did not raise any concerns in the submission it lodged on the application (which was later withdrawn in any event). We agree with Ms Price that there is no reason to refuse the consent under section 106 of the Act. The conditions include the recommendations of the CMW Geotechnical Report which include minimum floor levels.

#### **LAPSE DATES**

231. The Applicant indicated in its Reply that it accepted a lapse condition of 5 years proposed by the Council whereby the threshold for giving effect to the consent is defined by the completion of bulk earthworks. Furthermore, a milestone condition is also proposed requiring the bulk earthworks to commence no later than 15 September 2023.
232. The reason given for those conditions relates to Council's concern that the town centre actually progress both for strategic reasons – Omokoroa needs a town centre and if this fails then an alternative will be required – and also because Council considers itself at risk of not meeting the NPS-UD requirements for the area if it is delayed.
233. As both the Applicant and Council have agreed to those conditions, we accept and impose them accordingly (with some slight wording amendment). Furthermore, as we require all bulk earthworks to be completed in Stage 1, this should cause no issue.

<sup>88</sup> Referring to Policy NH 9B. Appendix D to the CMW report forming part of the application was a natural hazard risk assessment but did not appear to refer to the RPS

<sup>89</sup> Based on a 1% AEP (1 in 100 year flood event) in the year 2130, this is shown as a low-lying area running through the property. Refer paragraph 325 of section 42A report.

<sup>90</sup> The liquefaction classification for the majority of the property is "liquefaction damage is unlikely"

**CONDITIONS**

234. We received drafts of conditions ahead of, and at the hearing. It was clear to us that there was some difference in opinion between the experts as to the nature of the conditions. We asked the Council and the Applicant to confer on these matters and to provide us with an updated set of conditions. That was received on 30 March 2021. The conditions provided at that stage were agreed to by the Applicant on an *Augier* basis. We appreciated the time the two parties spent on this exercise.
235. We received a further set of amended conditions with the Applicant's Reply. These responded in particular to points we had raised in our Sixth Minute. After significantly restructuring the conditions, we invited<sup>91</sup> the Council and the Applicant to review the conditions as they stood at that time, to be sure we had not mistakenly omitted important conditions and also asking for some minor details to be provided. We specifically excluded any feedback on the merit of the conditions, noting the feedback sought was about form, not content. We received a joint memorandum from those parties on 5 May 2021.
236. We have spent considerable time reviewing the conditions in detail. Indeed, the consideration of the conditions, and our redrafting of them, have been the primary reason for the length of time taken to deliver this decision. Throughout this process, our concern has been that the development proposed by Jace will actually be delivered to the Omokoroa community, and in the manner intended. In our opinion, the drafts of the conditions provided to us by both the Applicant and the Council were too uncertain and were not well structured and were in some cases repetitive. We have restructured the conditions and made amendments to make it clear what this decision gives consent to. The documents listed in Condition 1 are fundamental to delivery of this development.
237. Because of the uncertainties we have discussed throughout this decision we have been very deliberate in the conditions that we now impose in removing the discretion that underlies the use of such phrases as "in general accordance with". If this consent is to be granted it must be on the basis of activities and effects put before us. Accordingly, we require the consent to be for what has been presented. While we acknowledge that changes are inevitable for projects of this scale, those will have to be sought through condition change applications as those finer grained details come forward. To do otherwise is to risk consenting something at such a high conceptual level that the actual outcome is unknown and is then effectively delegated to future decisions.
238. In that regard, we do not accept the point made by counsel via their Joint Memorandum dated 5 May 2021, addressing what they called "matters of substance," that there should be some flexibility through Condition 1 to allow minor changes to the development. We do not agree.

**SECTION 104 and 104B ASSESSMENT**

239. Under sections 104 and 104B, we have reached the view that consent can be granted. However, the granting of consent is very much premised on the conditions of consent attached being met.

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<sup>91</sup> Seventh Minute dated 29 April 2021

**PART 2 MATTERS**

240. In the Court of Appeal decision in *Davidson*<sup>92</sup>, the Court confirmed the application of Part 2 of the Act to resource consent applications but noting also that such recourse to Part 2 may not add anything where planning documents have been competently prepared in a manner that appropriately reflects the provisions of Part 2.<sup>93</sup>
241. We agree with Ms Hamm that the planning documents referred to in our decision do reflect the provisions of Part 2 and that no further analysis is required.

**DETERMINATION**

242. Overall, the activity was assessed as a non-complying activity under the Operative District Plan.
243. For the reasons set out in this decision, we determine that consent should be **granted**, subject to the conditions attached as Appendix 1.

Dated this 10th day of May 2021.



CHAIR, FOR THE COMMISSION

Jan Caunter (Chair)

For the Hearings Commission

<sup>92</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

<sup>93</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at paragraphs [74]-[75]

APPENDIX ONE – CONSENT CONDITIONS

## LAND USE CONDITIONS RC11997L

### General

- The proposed development shall be established and operated in accordance with the application prepared by Momentum Planning and Design dated 21 May 2020, the further information received on 9 October 2020, and including the plans and all information submitted as part of this application, and especially as identified in the table below, except where modified by any conditions of this consent:

Title	Author	Reference/Version	Date
Application for Resource Consent	Momentum Planning and Design	AEE Resource Consent Omokoroa Town Centre.pdf	20th March 2020
Omokoroa Town Centre Masterplan	First Principles Architecture and Interiors	SOU.01 2.1.00 Rev 4	8 <sup>th</sup> March 2021
Architecture Plan Set - Omokoroa Town Centre	First Principles Architects	Resource Consent: Sheets 0.0.10 – 7.0.17	8 <sup>th</sup> March 2021
Omokoroa Town Centre Subdivision Scheme Plan and Subdivision Staging Plan	Momentum Planning and Design Ltd	Omokoroa Town Centre, Subdivision Plan. dwg	26 March 2021
Omokoroa Town Centre Landscape Masterplan Plan	Momentum Planning and Design Ltd	OTC Landscape Masterplan.ai	5 March 2021
Omokoroa Town Centre Masterplan Parking Plan	First Principles Architects	Resource Consent: Sheet 2.1.01 Rev 3	8 <sup>th</sup> March 2021
Omokoroa Town Centre - Design Guidelines	Momentum Planning and Design Ltd	Design Guidelines. Indd	23 March 2021
Omokoroa Town Centre Services Report	Lysaght Consultants Ltd	Rev 1	15 <sup>th</sup> May 2020
Omokoroa Town Centre Cut Fill Contours	Lysaght Consultants	204509 Rev C	29 September 2020
Geotechnical Investigation Report	CMW Geoscience Ltd	TGA2020-0011AB Rev2	9 October 2020

Transportation Assessment and subsequent additional information letter and attachments 23 Sept 2020	Stantec Ltd	Ref 310203882	14 May 2020 23 Sept 2020
Further Information Response and Attachments 1 to 20 unless superseded by the above.	Momentum Planning and Design		9 October 2020

2. The activities identified in the resource consent application which may be established in the town centre, subject to compliance with the other conditions of this resource consent, are those indicated on the Master Plan (motel/hotel, retail/office, medium residential, civic, supermarket, apartment and childcare) and include retailing, convenience retail, shops, cafes, restaurants, bars, and takeaway food outlets. Other "places of assembly" (as defined under the Operative District Plan) shall be limited to activities within the civic building and the plaza.

**Advice note:**

The activities listed in condition 2 reflect those activities applied for by the consent holder and do not necessarily reflect what might be permitted on the subject site or in a commercial zone under the District Plan at the time this consent was applied for. However, for the avoidance of doubt, this does not prevent the landowner establishing an activity on the subject site which is permitted under the District Plan provisions applicable at the time of establishing the permitted activity, provided it is not inconsistent with the conditions of this consent which govern the wider site. Otherwise a resource consent or condition change application under s127 RMA (depending on context) will be required for any activity which is not listed in condition 2.

3. All site development shall be carried out in accordance with the Masterplan, Masterplan Parking Plan, Subdivision Scheme Plan, Subdivision Staging Plan, Landscape Masterplan, Cut Fill Contours, and overall Construction Management Plan (including CTMP and CNVMP) referenced in condition 1 and the conditions set out below.

**Development Plan**

4. At least 3 months prior to commencement of any development stage, as shown on the Subdivision Scheme Plan and Subdivision Staging Plan, a Development Plan shall be prepared for the relevant super lot / stage and be submitted to Council for certification that the layout of the stage is in accordance with the Masterplan, Masterplan Parking Plan and Landscape Masterplan.

The certification required above must be obtained prior to any application for subdivision, or buildings or structures requiring building consent in accordance with the Building Act 2004, being lodged.

The Development Plan shall include, but need not be limited to, the following:

- a Show the layout of all proposed roading, buildings, structures, access, carparking, public areas and plazas and confirm gross floor area(s);
- b Show the finished contours and extent of all earthworks (detailed cross-sections, cut to fill etc) and any retaining walls;
- c Provide an Earthworks Report outlining the extent and nature of the proposed bulk earthworks for the whole application site (required for the first Development Plan to be submitted).
- d Provide Council with a design statement prepared by an independent, suitably qualified urban design or architectural expert confirming that the design of roads, lanes, blocks and public open spaces comply with the consented plans referenced in condition 1 above and meet the relevant design outcomes set out in the "Omokoroa Town Centre – Design Guidelines" prepared by Momentum Planning and Design dated 23 March 2021.
- e Specify the street furniture to be provided and to be vested in Council.
- f Provide a detailed Engineering Design Report and Plan for all proposed public and private infrastructure in accordance with the engineering conditions below, including water, wastewater and stormwater, transport (including provision for access by roads and private ways, loading, public transport, walking and cycling), and open space in compliance with the Council's applicable standards, including the Development Code current at the time the Development Plan is submitted.
- g For transport infrastructure, the Engineering Design Report and Plan shall specifically include:
  - i. Confirmation of compliance with the Transportation Assessment referenced in condition 1;
  - ii. Demonstration of compliance with Council's Development Code, including formal agreement for any departures;
  - iii. Intersection control types e.g. roundabout, signals, priority etc and design;
  - iv. Provision for pedestrians and cyclists;
  - v. Provision for public transport;
  - vi. Access controls;
  - vii. Speed limits and their compliance with current guidance;
  - viii. Safety in Design; and
  - ix. Measures to mitigate all issues identified in any detailed design road safety audit (which has been carried out by an independent and qualified audit team).
- h For three waters infrastructure, the Engineering Design Report and Plan shall specifically include:
  - i. Demonstration of compliance with Council's Development Code, including formal agreement for any departures;
  - ii. Provision for accesses and maintenance;
  - iii. Safety in Design;
  - iv. Pipeline location relative to buildings (existing or proposed), including any formal dispensation for any building to be constructed over a pipeline; and
  - v. Provision for appropriate treatment of stormwater discharges from higher risk specific activities for which the general catchment treatment measures do not cater.

- i The sequencing of building construction, associated car parking and services.
- j Provide confirmation of agreement with utility providers and Council regarding the location of above and below ground assets within the development corridor.
- k Demonstrate that staging will continue to deliver public amenity and the linkages shown on the Masterplan. **Note:** This may be provided through interim or temporary solutions while taking into consideration the timing for the permanent provision and efficient use of resources in subsequent stages.
- l The timing for establishment of on-site landscaping and green areas.
- m The timing of any off-site works, such as roading and infrastructure, to service the superlot(s) in each Stage.
- n For car parking required within the Town Centre site, demonstrate:
  - i. The quantum and convenience of the proposed parking for each stage of the development;
  - ii. The management of proposed parking;
  - iii. The quantum, design and location of bicycle parking appropriate to and in accordance with the Street Design Guide published by the Tauranga City Council (2021);
  - iv. That the quantum and location of vehicle parking is in accordance with the Masterplan and the Masterplan Parking Plan; and
  - v. Safe and convenient walking connections between parking areas and associated activities.
- o A Site Management Plan covering:
  - i. Building of private infrastructure, maintenance and presentation;
  - ii. Rubbish storage, collection and removal;
  - iii. Site landscaping maintenance (in private areas);
  - iv. Driveway and car parking maintenance;
  - v. Proposed activities not permitted unless specific resource consent is obtained from Council; and
  - vi. Manager's / site owner's contact details.
- p Detailed landscape plan showing the species, size and location of planting, including planting and maintenance programs, demonstrating compliance with other requirements of this consent - such as sight lines, road widths etc. The consent holder must consult with Pirirakau with respect to the availability of locally sourced native plant species where these have been chosen for the landscape planting.

For areas of hard landscaping, such as the marketplace area, detailed drawings shall be submitted to Council for certification that all the landscape works proposed are consistent with the Design Guidelines.

**Advice Notes:**

For the avoidance of doubt, enabling subdivision of the site into two lots at the zone boundary for funding purposes prior to undertaking Stage 1 is exempt from this condition.

Following discussions between the consent holder and the consent authority, Condition 4(n)(iii) has been agreed on an Augier basis. This means the consent holder cannot later assert that the condition was

unlawfully imposed. The Augier principle does not prevent the consent holder from making an application to change the condition to be considered on its merits, provided that its reasoning is not that the condition was unlawfully imposed.

5. If the Council notifies the consent holder within 20 working days that the information submitted with the Development Plan is incomplete or inconsistent with the Masterplan, Masterplan Parking Plan or Landscape Masterplan, then the consent holder shall *either* re-submit the information to address the matters identified by the Council as being incomplete or incorrect, *or* submit an application under s127 RMA to change the relevant condition of this consent if that is the more appropriate response. The consent holder shall be entitled to commence development of the site in the following circumstances:
  - i. Council has provided certification within 20 working days of the information being submitted; or
  - ii. Council has not provided any response within 20 working days of the information being submitted.

### Medium Density Residential – Lot 6

6. In addition to the requirements of condition 4, and at least 3 months prior to the application for s224c RMA certification of Lot 6 (Development Stage 4) under RC12296S, or an application for building consent for dwellings within Lot 6 (Medium Density Residential), a Final Design Plan for the full extent of that Stage shall be submitted to the Council for certification of its accordance with the Masterplan and Design Guidelines.

The Final Design Plan shall be accompanied by a design statement prepared by an independent, suitably qualified urban design or architectural expert confirming that the design of the residential units meets the requirements of the Masterplan and Design Guidelines.

- a. The certification required above must be obtained prior to any application being lodged for buildings or structures requiring building consent in accordance with the Building Act 2004.
  - b. The Final Design Plan shall provide full architectural drawings for the proposed medium density housing, including a mix of terraced and duplex style housing and of single and two storey nature.
7. If the Council notifies the consent holder within 20 working days that the information submitted with the Final Design Plan is incomplete or inconsistent with the Masterplan and Design Guidelines, then the consent holder shall re-submit the information to address the matters identified by the Council as being incomplete or inconsistent. The consent holder shall be entitled to submit applications for building consents for the proposed buildings and associated infrastructure and landscape works in the following circumstances:
    - i. Council has provided certification within 20 working days of the information being submitted; or
    - ii. Council has not provided any response within 20 working days of the information being submitted.

### Landscaping/ Streetscape

8. The Landscape Plans certified under conditions 4 and 12 shall be implemented no later than the first planting season (autumn to spring) following the completion of the works in the stage. The consent holder will maintain, on an ongoing basis, all private plantings, including the removal and replacement of any dead plants as required to comply with the details of the landscape plan.
9. Street trees and landscape plantings are required and shall be of a genus listed in the Development Code "Approved Street Trees Species List" and be approved by the Chief Executive Officer, or duly authorised officer in consideration with other relevant approved engineering plans or as otherwise approved by Council.
10. Any street furniture proposed to be vested shall be subject to a pre-approved design.
11. In accordance with a pre-approved design, to be submitted as part of the Engineering Design Plan, the combined private access to the childcare centre and Building N, and public pedestrian and cycle access from Sentinel Ave, shall be designed and constructed with appropriate infrastructure and landscaping to provide:
  - a A suitable method of preventing access to vehicular traffic at or near the common boundary of the site with Kaimai Views / the southern end of Sentinel Avenue; and
  - b A pedestrian and cyclist link from Road 501 to Kaimai Views / the southern end of Sentinel Avenue.

### Site and Building Design

12. Three (3) months prior to making any Building Consent application, a detailed Site and Building Design Plan of the proposed building shall be submitted to Council for certification.

The Site and Building Design Plan shall include:

  - a Full architectural drawings showing the bulk, location, elevations and materials and colour palette for the building. The drawings shall be accompanied by a statement prepared by an independent suitably qualified urban design or architectural expert certifying that the building(s) comply with the consented plans conditioned in 1 above and meet the design outcomes set out in the "Omokoroa Town Centre – Design Guidelines" prepared by Momentum Planning and Design dated 23 March 2021.
  - b A site plan that is in accordance with the Architectural drawings Prepared by First Principles Architects, reference SOU.01, dated 8<sup>th</sup> March 2021 and the Landscape Masterplan Plan prepared by Momentum Planning and Design dated 5 March 2021 showing detailed landscape treatment, consistent with the plans provided in condition 4, but with allowance for minor amendments to reflect detailed design considerations.
  - c Building Design Controls detailing:

- i. Building RL heights as set out in Architecture Plans (Rolling Plan Intrusions – Existing Ground Level – sheet 2.1.15D Rev 4) 8 March 2021.
      - ii. Building setbacks as shown in Architecture Plans (Masterplan - Ground Floor Level – Sheet 2.1.10 Rev 4).
      - iii. Building colour controls of not more than 37% Reflectance Value for walls, roofs, joinery and gutters for the following facades, and all roofs throughout the town centre:
        - Building O – Northern and eastern façades;
        - Building N – Northern, eastern and western façades;
        - Building M – Northern and eastern façades;
        - Building C (eastern block only) - Eastern façade;
        - Building A – Eastern facades;
        - Building B – Eastern façade;
        - Building L – Northern façade.
      - iv. The building design shall:
        - a. Avoid building branding including branding and signage on residential boundary interfaces;
        - b. Avoid illuminated signs within 20m of residential boundary interfaces; and
        - c. Avoid flood lighting at residential boundary interfaces, including carparking areas.
        - d. Ensure technical specifications for the installation and maintenance of the soft landscape mitigation planting.
        - e. Ensure performance standards for mitigation vegetation growth heights.
        - f. Ensure adequate screening of all refuse servicing areas within the site from public areas or designed to be included within each building. Each refuse service area shall be located and designed to be accessible by a waste management recovery vehicle.
    - d. Provide a detailed acoustic design report by an acoustic consultant to the satisfaction of Council's Compliance and Monitoring Manager, for all buildings that will provide residential housing. The acoustic report shall include specific building construction detailing façade construction types, ventilation proposed and glazing ratings to ensure that internal noise levels within the residential units comply with the required internal noise standards detailed in condition 18.
13. If the Council notifies the consent holder within 20 working days that the information submitted with the Final Design Plan is incomplete or inconsistent with the Masterplan and Design Guidelines, then the consent holder shall re-submit the information to address the matters identified by the Council as being incomplete or inconsistent. The consent holder shall be entitled to submit applications for building consents for the proposed buildings and associated infrastructure and landscape works in the following circumstances:
  - i. Council has provided certification within 20 working days of the information being submitted; or
  - ii. Council has not provided any response within 20 working days of the information being submitted.

## Noise

14. All activities shall be conducted so as to ensure that noise from the site does not exceed the following noise limits within the stated times at the boundary of any property within the Kaimai Views residential subdivision or a Residential Zone:

Time Period		Sound Level Not to be Exceeded	
Day	Hours	Leq	Lmax
Monday to Saturday	6am to 10pm	55dBA	N/A
Sunday and Public Holidays	9am to 6pm	55dBA	N/A
At all other times		45dBA	70dBA

15. Noise levels from commercial activities, when measured at or within the boundary of any site or at the outside wall of any building on any site other than the site from which the noise is emitted or as set out in condition 14 shall not exceed the following limits:
- At all times 60dB LAeq (15 min).
  - At all times 85dB LAFmax

### Advice Notes:

- This condition applies to those sources that can be readily controlled by the noise performance standards. Other day to day activities which may cause a noise nuisance can be controlled using the excessive noise provisions of the Act.
  - All activities have a duty to avoid unreasonable noise under section 16 of the Resource Management Act regardless of the conditions of this consent. At all times Council retains its power under the Act to ensure that the general duty under sections 16 and 17 to avoid unreasonable noise and avoid, remedy or mitigate any adverse effects of activities on the environment is met, and section 326 may be used to control excessive noise. The best practicable option shall be adopted to ensure that the emission of noise does not exceed a reasonable level.
16. No delivery vehicles or waste collection vehicles shall be permitted within the Town Centre during the following times:
- Monday to Saturday – Prior to 6am or after 10pm
  - Sunday and Public Holidays – Prior to 9am or after 6pm
17. The mitigation measures outlined in Section 9 of the Earcon Assessment of Noise Effects (dated 18th September 2020, ref J004145) shall be implemented.

**Noise sensitivity**

18. 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 will not be exceeded.

Where windows and doors must be closed in order to meet those internal noise standards, an alternative means of ventilation shall be provided which meets all relevant requirements of the Building Code.

Noise Sensitive Activity	Internal Sound Level not to be Exceeded	
	Daytime period (LAeq)	Night time period (LAeq)
Offices not accessory to any industry, storage or warehousing; places of assembly; medical; veterinary or scientific facilities	45dB	N/A
Residential and accommodation units (habitable spaces)	45dB	30dB

**Acoustic certification**

19. Prior to occupation of the buildings, the consent holder must provide certification from a suitably qualified person that the building has been constructed and where necessary mechanical ventilation provided to bedrooms and habitable rooms in accordance with the report required by conditions 12d and 18.

**Note:** The Council regards the following persons as fulfilling the requirements for being suitably qualified with respect to the above:

- Members of the Association of Consulting Engineers of New Zealand (Incorporated);
- Members of the Institute of Professional Engineers of New Zealand;
- Members of the New Zealand Institute of Architects (N.Z.I.A.);
- Members of Architectural Designers New Zealand (ADNZ); and,
- Registered Clerks of Works.

The certification must include a statement from any glazing subcontractor that the glazing installed is in accordance with the glazing specifications (glass thickness) for each floor outlined in the acoustic design report.

**Advice Note:**

For the purposes of assessing compliance with condition 18, the Council will accept that the condition is met if it is demonstrated that any habitable room in

the building used by a noise sensitive activity is protected from noise arising from outside the building by ensuring the external sound insulation level achieves the following minimum performance standard:

$DnTw + Ctr > 30dB$

**Advice Note:**

Conditions 14-19 were discussed between the consent holder and the consent authority and were agreed to by the consent holder/ offered by the consent holder on an Augier basis. This means that the consent holder cannot later assert that the conditions were unlawfully imposed. The Augier principle does not prevent the consent holder from making an application to change conditions to be considered on its merits, provided that its reasoning is not that the conditions were unlawfully imposed.

### Financial Contributions

20. Should the proposal proceed in a staged manner, the consent holder shall provide to the Chief Executive Officer or duly Authorised Officer a calculation of the Financial Contributions relevant for that stage, in accordance with rule 11.6.2 of the Operative District Plan (or its equivalent at the time of Building Consent) and Council's current fees and charges. This fee will be dependent on the sizing of the connections, stage area and building area. Excluding the childcare centre, the financial contributions calculated in accordance with the provisions of the Operative District Plan, shall be paid in full within two years of the date of commencement of the consent provided that:
- i) Any financial contribution which is not paid in full within two years from the date of commencement of the consent shall be adjusted so that the amount of the financial contribution required by the resource consent shall be the amount calculated in accordance with the relevant formulae using the updated inputs to those formulae as set out in Council's Annual Plan current at the date of payment; and
  - ii) Any financial contributions not paid within two years from the date of the commencement of the consent shall be (where applicable) paid prior to the issue of a Building Consent under the Building Act 2004, subject to the adjustments referred to in sub-paragraph (i) herein.
21. Financial contributions for the childcare centre shall be paid prior to the uplifting of any associated building consent related to that activity and shall be levied proportionate to the childcare activity and or services consumption. At the time of building consent the applicant shall provide an assessment in accordance with Rule 11.6.2 (or subsequent rule) and Council's current fees and charges.

### Earthworks

22. The building development shall be undertaken in accordance with the geotechnical report prepared by CMW Geosciences dated 9th October 2020 reference TGA2020-001AB Rev2 or subsequent geotechnical reports prepared by a chartered professional engineer suitably experienced to the satisfaction of the Chief Executive Officer or duly Authorised Officer.

23. A Chartered Professional Engineer or engineering geologist, who has been pre-approved by Council as suitably qualified and experienced with soils, shall prepare a geotechnical completion report relating to the nominated building sites and roading 'platforms' which describes their suitability for commercial building and road pavement development as required by Rule 12.4.1 of the District Plan. This report shall state the extent of inspection, supply test results and a statement of professional opinion with regard to the nominated building sites and roading platforms.
24. The consent holder shall submit confirmation from the Bay of Plenty Regional Council that all necessary consents in relation to the subdivision have been granted.
25. Prior to undertaking bulk earthworks on site, the underground springs within the property shall be identified and a report prepared by a suitably qualified geotechnical engineer outlining their nature and extent, and how these should be managed as part of the development. This report shall be submitted to Council for consideration at the time of engineering design approval.
26. The bulk earthworks shall be undertaken and be completed as part of the Stage 1 development.

#### **Retaining Walls**

27. Prior to construction of any retaining structures (equal or greater than a height of 1.5m or subject to any surcharge loads) written confirmation shall be submitted to the Chief Executive Officer or duly authorised officer that all necessary building consents for the construction of the retaining walls in relation to the development have been granted.
28. THAT:
  - a All retaining walls constructed on the site and subject to building consent shall obtain a code of compliance certificate.
  - b Any retaining walls not subject to building consents shall be supervised and certified as complying with the building code as part of the geotechnical completion report.
  - c As-built drawings shall be provided showing all subsoil drain connections.
  - d Any retaining walls that are constructed are structurally independent within each allotment.

#### **Earthworks – Cultural Requirements**

29. At least 4 weeks' notice shall be given to hapu prior to earthworks commencing and evidence of that notice shall be provided to Council's Compliance Officer.

30. The monitoring of earthworks and land disturbance by hapu shall be undertaken in accordance with the Earthworks Procedures outlined in Appendix 7 (Section 4.8 paragraph 4) of the Operative District Plan 2012. Evidence of engagement with Pirirakau to enable site access for monitoring shall also be provided to Council's Compliance Officer prior to the commencement of earthworks.

31. Earthworks shall be undertaken in accordance with the Earthworks Procedures outlined in Appendix 7 (Section 4.8) of the Operative District Plan 2012.

### **Construction Management Plan**

32. Earthworks, enabling works and any other construction activities shall be actively managed to avoid or otherwise remedy or mitigate any offsite nuisance effects, any adverse effects caused by debris, noise, vibration matters or any other construction-related adverse environmental effects. The Construction Management Plan required by condition 33 shall remain in place until the completion of Construction Works, with the exception of those matters that continue beyond the completion of construction work or other construction-related adverse environmental effects.

33. At least three months prior to the commencement of earthworks or construction activities onsite (excluding site investigations and enabling works) the consent holder shall submit a Construction Management Plan (CMP) to the WBOPDC Environmental Consents Manager or nominee for certification. CMPs may be submitted for individual or multiple stages of construction works (but shall be updated in the event of the latter if a significant time lapse occurs between the included stages).

- a The objective of the CMP is to establish procedures to manage and control any potential off-site nuisance or adverse effects as described in Condition 32 above
- b If the Council notifies the consent holder within 20 working days that the information submitted with the CMP is incomplete, then the consent holder shall re-submit the information to address the matters identified by the Council as being incomplete. The consent holder shall be entitled to undertake site works, submit applications for building consents for the proposed buildings and associated infrastructure and landscape works in the following circumstances:
  - i. Council has provided certification within 20 working days of the information being submitted; or
  - ii. Council has not provided any response within 20 working days of the information being submitted.

34. The Construction Management Plan (CMP) shall include but not limited to:

- a Details of the works, intended construction timetable (including construction staging) and hours of operation.
- b Quality assurance/quality control including but not limited to:
  - i. contact details of the person in charge of construction works or other person responsible for implementing this Plan;

- ii. staff and contractors' responsibilities;
  - iii. training requirements for employees, sub-contractors and visitors;
  - iv. environmental incident and emergency management (including the procedures required under regional consent conditions);
  - v. communication procedures;
  - vi. complaints management;
  - vii. compliance monitoring;
  - viii. environmental reporting;
  - ix. corrective action;
  - x. construction lighting;
  - xi. methods to control debris on roads and silt laden runoff during construction;
  - xii. methods to clean and inspect all machinery to be used to reduce the risk of the spread of weeds and diseases (such as Myrtle Rust), and ensure all seed and/or plant matter has been removed from all machinery.
  - xiii. measures for the protection of treatment and soakage systems during earthworks periods to ensure sedimentation does not reduce device effectiveness, as consented under the Regional Council consents.
  - xiv. existing network utilities;
  - xv. traffic management;
- c. General methods to mitigate and manage construction noise in order to comply with the noise limits set out in conditions 42 and 43 below;
- d. Identification of any special construction activities (including any pile driving and concrete pours) that may require specific mitigation measures in order to comply with the noise limits;
- e. The methods to engage with stakeholders, including:
- i. how the community will be kept informed of progress with works, including proposed hours of operation outside normal working hours and project construction personnel contact details;
  - ii. identifying stakeholders such as landowners, road users, local community, iwi, regulatory authorities, industry, network utility operators, road maintenance contractors, emergency services;
  - iii. responding to queries and complaints
- f. Any necessary health and safety requirements
35. The consent holder shall implement the certified Construction Management Plan, and any updated certified Construction Management Plan.

**Advice Note:**

Any changes to the Construction Management Plan shall be confirmed in writing by the consent holder following consultation with WBOPDC LDE Manager before implementation.

'Earthworks' means the disturbance of the land surface by moving, removing, placing or replacing soil or earth, by excavation, cutting or filling, but excludes cultivation of land for farming purposes.

'Enabling Works' means the following and similar activities: demolition and/or removal of existing buildings and structures, fencing, tree felling (except as

subject to specific conditions of this consent) and removal of any associated underground or above ground services.

'Construction staging' refers to the extent of works undertaken at any one time.

36. Prior to the commencement of any subsequent stage of construction that is not covered by an approved CMP for multiple stages, the Consent Holder shall provide an updated Construction Management Plan (CMP) for certification by the WBOPDE LDE Manager (or nominee).

### **Construction Traffic Management Plan**

37. Adverse traffic effects, including effects on safety, and adverse effects associated with access to the site, must be avoided or otherwise remedied and mitigated to ensure that the transport network functions at an acceptable level of service during the construction phase of development across all stages.

38. A Construction Traffic Management Plan (CTMP) shall be prepared by a suitably qualified and experienced person in accordance with the NZTA Code of Practice for Temporary Traffic Management and after consultation with the Chief Executive or nominee.

- a The CTMP shall be submitted to the WBOPDC LDE Manager or nominee for certification that the CTMP meets the objective and satisfies the requirements of condition 37 and 38(d) below no later than twenty (20) working days prior to the commencement of any stage involving construction works.
- b If the Council notifies the consent holder within 20 working days that the information submitted with the CTMP is incomplete, then the consent holder shall re-submit the information to address the matters identified by the Council as being incomplete. The consent holder shall be entitled to undertake site works, submit applications for building consents for the proposed buildings and associated infrastructure and landscape works in the following circumstances:
- i. Council has provided certification within 20 working days of the information being submitted; or
  - ii. Council has not provided any response within 20 working days of the information being submitted.
- c Construction of any relevant stage of the development shall not commence until the consent holder has received the LDE Manager or nominee written certification of the CTMP for that stage of works.

When requesting certification of a CTMP, the consent holder shall provide the LDE Manager or nominee with a letter from the New Zealand Transport Agency and Western Bay of Plenty District Council Infrastructure Services Group Manager (or nominee) as road controlling authorities whose roads are affected by the development's construction traffic, confirming that the consent holder has adequately consulted with that road controlling

authority about any effects on their road network and has included adequate and acceptable measures to manage such effects.

- d The objective of the CTMP is to provide a framework of actions and responses which must be implemented by the consent holder to ensure that the adverse traffic and access related effects of the construction of the development will be avoided, remedied or mitigated, and shall include but not be limited to the following:
- i. Describe the measures which must be carried out to avoid, remedy or mitigate any local and network wide construction traffic effects of the development. In particular (but not limited to), the CTMP shall describe the following as they are applicable to each construction stage for the development:
1. Measures to maintain pedestrian, cycling and vehicle access to roads and property to defined and approved levels of service. The CTMP shall identify notification thresholds and processes for communicating with affected parties and shall consider whether there are specific user needs that require specific responses;
  2. Measures to maintain access for emergency vehicles, and methods to ensure that emergency service providers are regularly informed of the timing and sequencing of works, road closures and alternative routes if necessary;
  3. How service providers are to be regularly informed of the timing and sequencing of works, any road closures and alternative routes if necessary;
  4. The timing and sequencing of any road closures that will be required and the nature and duration of any traffic management measures that will result, including any temporary restrictions, detours or diversions;
  5. Measures to ensure safe access to the development site.
  6. Management and sequencing of construction works to avoid, remedy or mitigate traffic-related adverse effects including for heavy vehicle movements through any Council roadworks site;
  7. Routes to be used and times for heavy haulage (and roads and times to be specifically avoided) for development-related Heavy Commercial Vehicles (HCVs) for shifting bulk materials (such as earth fill or pavement materials or water) (Bulk HCVs) and temporary traffic management controls in accordance with the Code of Practice for Temporary Traffic Management; and
  8. Assessment and monitoring of road conditions and response should severe and sudden deficiencies arise directly associated with development-related HCVs.
39. The certificated CTMP shall be implemented throughout the period of the construction works.

### Construction Noise and Vibration Management Plan

40. Prior to any construction works occurring on site, a Construction Noise and Vibration Management Plan (CNVMP), prepared by a suitably experienced and qualified person, outlining how noise and vibration nuisance will be mitigated during construction activities shall be submitted to Council for certification at least 20 working days prior to works commencing.
41. If the Council notifies the consent holder within 20 working days that the information submitted with the CNVMP is incomplete, then the consent holder shall re-submit the information to address the matters identified by the Council as being incomplete. The consent holder shall be entitled to undertake site works, submit applications for building consents for the proposed buildings and associated infrastructure and landscape works in the following circumstances:
  - i. Council has provided certification within 20 working days of the information being submitted; or
  - ii. Council has not provided any response within 20 working days of the information being submitted.
42. The plan shall specify any restrictions on work hours, physical noise mitigation to be employed, and limitations on the timing of specific activities, including high noise generating activities. The CNVMP must address the relevant measures in Annex E of NZS 6803:1999 "Acoustics – Construction Noise" and Appendix B of DIN 4150-3:1999 "Structural vibration – Part 3 Effects of vibration on structures" or equivalent standard.
43. The consent holder must ensure that construction activities and truck movements shall occur only between the hours of 7.30am – 6.00pm Monday to Saturday, and no work on Sunday. No construction activities shall occur on public holidays except in cases of operational necessity and with the prior agreement of the Council. The consent holder must ensure that all construction activities comply with the long-term limits set out in Table 2 of NZS6803:1999 "Acoustics – Construction noise" as far as is practical. The CNVMP required under Condition 40 must include measures for higher noise generating activities that cannot practically comply with NZS6803:1999.
44. The CNVMP is to be implemented at all times.

### Roading and Access:

45. THAT
  - a. All roading shall be approved under Council's Engineering Design Approval process and be constructed to specific designs in accordance with Council's District Plan, Development Code or alternative approved design, and shall be approved prior to commencing any work on site.
  - b. The costs of connecting 'Road 1' to Council's planned Flounder Road/Omokoroa Road roundabout, as depicted on WSP design drawings 2-9C118.00 Sheet C00 Revision 1 and 2-9C118.00 Sheet C02 Revision 1 (or subsequent revisions) shall be at the expense of the consent holder whether the roundabout is existing or not at the time of constructing 'Road 1'.
  - c. The costs include (but are not necessarily limited to):

- i) Additional fill required to support a sufficient length of 'Road 1' from the roundabout into the subject site (approximately 40m);
  - ii) Traffic management to ensure traffic flows on the roundabout (if constructed) are not unduly disrupted; and
  - iii) All pavement, kerbing and signage.
- d. The consent holder's professional representative shall liaise with Council staff and seek to agree on the final levels, gradients and details of Lot 501 "Road 1" such that "Road 1" and Council's roundabout are properly integrated.

**Advice Note:**

Council is in the process of conducting further modelling to determine if the roundabout should be two lanes rather than a single lane (as per the current design). The above condition will apply to both of these scenarios. The agreement in regards final levels, gradients and details will be subject to a side agreement independent of the resource consent process.

46. There shall be no vehicular access to or from the Omokoroa Town Centre site to Sentinel Avenue. Access to Sentinel Avenue shall be designed and constructed for pedestrian and cycle access only.

47. The consent holder shall liaise with Council's transport managers to consider whether safe pedestrian access from Anglers Way to the town centre (at grade) is feasible and, if Council considers it to be feasible, shall provide for such access in the form agreed with the Council.

**Advice Note:**

The purpose of Condition 47 is to endeavour to install a safe pedestrian/ cycle crossing from the stairs opposite the end of Anglers Way and more or less directly across Omokoroa Road to the western side. The words 'at grade' mean that the safe crossing (if possible) is at the same level as Omokoroa Road and does not include over bridges, underpasses and the like.

48. THAT:

- a For the proposed northern access, there shall be no right turn in or out from or to Omokoroa Road.
- b The proposed southern left turn slip lane (northbound on Omokoroa Road) is for entry only and will be subject to traffic calming.

49. THAT:

- a Any street or other lighting that is not serving a public road is deemed to be private and shall be metered independently of public lighting.
- b The consent holder is liable for all ongoing power and maintenance costs associated with private street and other lighting.
- c Prior to engineering design application, the consent holder shall submit details (subject to Council approval) as to how this will be managed in perpetuity.

50. In accordance with the approved Masterplan Parking Plan (2.1.01 Rev 3 dated 08/03/2021), and subject to condition 51:
- a a minimum of 654 on and off street permanent carparks, access (including privateways) and manoeuvring areas shall be constructed for the development;
  - b carparking shall be provided in a staged manner in accordance with the Masterplan and Subdivision Staging Plan;
  - c each park shall be specifically marked in accordance with Council's Development Code; and
  - d appropriate signage and other pavement markings in accordance with the requirements of the NZ Transport Agency's Manual of Traffic Signs and Marking (including for no parking) shall be installed.

**Advice note:** The above shall include provision for electric vehicle charging stations. In proposing the number of electric vehicle charging stations, the consent holder must consider existing commercial area practice (eg: 'The Crossing' at Tauriko) and also look to future increases in these types of vehicles.

51. Two-yearly for a period of 6 years after the completion of each stage, the consent holder shall complete a car park survey to monitor the performance with respect to the supply of car parks within the town centre. If the car parking is shown to be inadequate, the consent holder must obtain a report from an independent traffic engineer which assesses and confirms the number of car parks needed. The consent holder must submit this report to Council for comment and confirmation that the recommended number of additional car parks is appropriate. If that process identifies a need for additional carparks, the consent holder must provide these within 12 months of receiving Council's comments. If the assessment identifies that there is an oversupply of carparks, then fewer than 654 carparks may be provided with Council's written approval.

### Fire and emergency

52. Upon the construction of any public or habitable building, sufficient water volume, pressure and flows be provided in accordance with NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 (or any replacement code of practice approved under s72 of the Fire and Emergency New Zealand Act 2017) and that this water supply be accessible for firefighting purposes.
53. Prior to the construction of any public or habitable building, adequate access shall be provided in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008.

### Childcare Centre – Specific Conditions

54. The childcare centre shall be limited to a single storey building with a maximum occupancy of 100 children.
55. The operating hours (excluding clearing and administration) of the activity shall be limited to 7.00am to 6.00pm, Monday to Friday (excluding public holidays).

**Advice Note:**

For the avoidance of doubt, the above condition does not limit the times that general maintenance, cleaning and tidying up etc activities (i.e. non-childcare specific activities) can occur.

56. Prior to the commencement of the activity, the consent holder shall construct an acoustically effective (close boarded) fence along the north western site boundary, adjacent to 40, 42 & 44 Traverse Lane. The fence shall be 1.8m in height and shall have a surface mass of no less than 10kg/m<sup>2</sup> (e.g. 20mm timber). The consent holder shall maintain the fence on an ongoing basis so as to be acoustically effective for the duration of the activity.
57. Prior to the commencement of the activity under this consent, an Acoustic Engineer shall certify that the fence has been constructed in accordance with Condition 56 above, and a copy of that certification be provided to and confirmed by Council.
58. Noise from the activity shall not exceed the following noise limits at any point within the boundary of a dwelling.

Time Period		Sound Level Not to be Exceeded	
Day	Hours	Leq	Lmax
Monday to Saturday	7am to 10pm	53dBA	N/A
	Sunday	7am to 6pm	50dBA
At all other times and on public holidays		40dBA	65dBA

59. A Noise Management Plan shall be prepared by a suitably qualified acoustic expert and be submitted to Council for approval at least 1 month prior to commencement of the activity. The operator of the childcare centre must maintain operational procedures in accordance with the approved Noise Management Plan to control activities that generate excessive noise.
60. The building must be designed with mechanical services selected, located, and shielded such that noise levels at the boundary are 5dBA below the compliance limits (including night time if services run at night.) This may require that all services are located away from the northern and eastern façades. Prior to building consent being approved an acoustic design report prepared by a suitably qualified and experienced acoustical engineer shall be provided to the Council confirming compliance with this requirement.
61. The perimeter fencing along the western and southern boundaries shall be in 'pool' style open fencing, or other alternative designed agreed to by Council with respect to the reserve / market area.

62. In addition to the development stage requirements of condition 4, a detailed Landscape Plan, including an implementation and maintenance programme, shall be submitted to and be provided for Council's approval at the time of Engineering Design Approval for the childcare centre that satisfies the following minimum requirements:
- a Provide for planting around the site and within the carparking area up to the legal boundary;
  - b Where practicable provide a minimum of one specimen tree (1.2m in height at the time of planting or greater) per 35m<sup>2</sup> of planted area which shall be planted and maintained to best horticultural practice;
  - c The planting plan shall include plant and tree numbers, plant and tree species and the grade of plant and tree at time of planting;
  - d Shrubs and groundcovers shall be a minimum grade of pb2 at the time of planting;
  - e Trees shall be a minimum grade of pb95 at the time of planting; and
  - f All planting shall be maintained on an ongoing basis by the consent holder, including the replacement of dead or damaged vegetation.
63. All landscaping shall be implemented in accordance with the Landscape Plan approved under condition 62 above no later than the first planting season following construction (including of the retaining walls).
64. The design of the building is subject to the certification process set out in condition 12.
65. THAT
- a At least 3 months prior to an application under the Building Act the consent holder shall submit a Transportation Assessment to Council for approval in relation to the childcare centre, taking into account the number of children and staff, carparking requirements, access and traffic safety requirements.
  - b Prior to building occupation, the consent holder shall submit to Council for certification a "Travel Management Plan" prepared by a suitably qualified transportation expert to the satisfaction of the Chief Executive Officer (or delegate authority). The Plan shall set out actions to support access by active modes and manage demands for access by private vehicle. The certified plan shall be implemented, monitored over time, and reviewed by the consent holder or Council and updated as necessary to remain effective.
66. The minimum number of permanent carparks (two designated for disabilities) identified in the Transportation Assessment above shall be provided and all carparks, access roads and manoeuvring areas shall be constructed with 130mm minimum compacted GAP 40 basecourse, two coat chip seal, pavement marking, and provision made for the disposal of stormwater via an approved outlet, in accordance with Council's Development Code.

67. The majority of staff parking shall be located on-site, and the carpark shall remain open and be available for parking at all times during the Centre's operating hours.
68. A double vehicle crossing (6m at edge of carriageway) or approved alternative to serve the development shall be constructed in accordance with Council's Standard Specification Drawing No W435 (industrial).
69. The consent holder's representative shall submit the following to the Chief Executive Officer or duly authorised officer for approval, with the appropriate engineering inspection fee: construction drawings, specifications, calculations and project cost estimate covering the car park and associated stormwater disposal for the car park, in accordance with Council's Development Code. Construction shall not commence until written approval of the plans and specification has been provided by Council.
70. Connections to infrastructure (e.g. roads and wastewater) shall only be undertaken at the time that the infrastructure has been vested in Council as any underlying subdivision consent.
71. All safety recommendations made in the Transportation Assessment required by condition 65 above shall be implemented.

**As-builts and Certification**

72. All works required by Conditions 54-71 for the childcare centre shall be supervised and certified as complete in accordance with those conditions by the consent holder's representative (refer Section 12.3.10.1(f) of Western Bay of Plenty District Council's District Plan) prior to the activity (childcare centre) commencing operation.

**Quality Assurance and Certification:**

73. The consent holder's representative shall submit to the Chief Executive Officer or duly Authorised Officer for approval, with the appropriate engineering inspection fee, construction drawings, specifications, calculations and project cost estimates covering all sections of work which are to be built in accordance with Council's Development Code and will vest in Council or are proposed to be privately owned. Construction shall not commence until written approval of the plans and specification has been provided by Council. Where watermains are to be vested in Council, the disinfection methodology to be used shall be incorporated in the engineering specifications. No pressure testing of watermains or sewer pipes which are to be vested in Council, shall be undertaken by a Council official, unless prior written approval of the plans and specification has been provided by Council.
74. All work required by this consent shall be supervised and certified as complete in accordance with the conditions by the consent holder's representative (refer Section 12.3.10.1(f) of Council's District Plan) prior to the activity commencing.

75. All costs associated with the conditions of this consent shall be met by the consent holder.

### **Milestone**

76. The consent holder shall commence the bulk earthworks for Stage 1 as authorised by condition 4(c) above by 15<sup>th</sup> September 2023.

### **Lapse Period**

77. This consent shall lapse 5 years after commencement unless s125(1A)RMA applies. For the purposes of this condition, consent is given effect upon the completion of the bulk earthworks identified in the Earthworks Report required by condition 4(c) of this consent.

### **Review**

78. In accordance with sections 128 – 132 of the Resource Management Act 1991, the Council may review the conditions of this consent as follows:

- a. If deemed necessary by the Council's Chief Executive Officer (or duly authorised representative) the review may be instigated at the following times:
  - i. 1 year after the date the activity commences; and
  - ii. 3 years after the date the activity commences; and
  - iii. 5 years after the date the activity commences; and
  - iv. 8 years after the date the activity commences; and
  - v. If a car park assessment required by condition 50 identifies an under supply or over supply of carparks.
- b. The purpose of such a review will be to determine the effectiveness of consent conditions in ensuring that any adverse offsite environmental effects relating to noise, construction, traffic or car parking are being appropriately managed; and
- c. Through the review process, to impose new or amended conditions relating to any material identified adverse environmental effects relating to noise, construction, traffic or car parking.

### **Advice Notes**

1. This land use consent should be read in conjunction with the Subdivision consent RC12296S.
2. The consent holder shall provide to the Council's Compliance Officer notice of the date works are to commence. This notice shall be received by the Council prior to the commencement date and shall include the following details:

- name and telephone number of the project manager, contactor and site owner;
  - site address to which the consent relates
  - activity to which the consent relates
  - expected duration of works.
3. It is possible that archaeological sites may be affected by the proposed work. Evidence of archaeological sites may include burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, pits, old building foundations, artefacts of Maori and European origin or human burials. The applicant is advised to contact Heritage New Zealand Pouhere Taonga if the presence of an archaeological site is suspected. Work affecting archaeological sites is subject to a consenting process under Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand Pouhere Taonga must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.
4. You may object to this decision, including any conditions of consent, by notifying Council within 15 working days of receipt of this decision. However you are advised that you may not commence the activity as authorised by this consent until your Appeal is resolved as prescribed by section 116 of the Resource Management Act 1991.
5. Full compliance with the conditions of consent is necessary to carry out the activity to which this consent relates. Your progress towards satisfying the conditions of consent will be monitored by a Council representative and failure to meet these conditions may result in enforcement action being taken in accordance with Council's Monitoring, Compliance and Enforcement Strategy. This may involve the issuing of an Infringement Notice (instant fine) and/or additional monitoring fees.

Omokoroa Town Centre

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## SUBDIVISION CONDITIONS RC12296S

### General

- The proposed subdivision shall be established in accordance with the application prepared by Momentum Planning and Design dated 21 May 2020, the further information received on 9 October 2020 and including the plans and all information submitted as part of this application, and especially as identified in the table below, except where modified by any conditions of this consent:

Title	Author	Reference/Version	Date
Application for Resource Consent	Momentum Planning and Design	AEE Resource Consent Omokoroa Town Centre.pdf	20th March 2020
Omokoroa Town Centre Master Plan	First Principles Architecture and Interiors	SOU.01 2.1.00 Rev 4	8 <sup>th</sup> March 2021
Architecture Plan Set - Omokoroa Town Centre	First Principles Architects	Resource Consent: Sheets 0.0.10 – 7.0.17	8 <sup>th</sup> March 2021
Omokoroa Town Centre Subdivision Scheme Plan and Subdivision Staging Plan	Momentum Planning and Design Ltd	Omokoroa Town Centre, Subdivision Plan. dwg	26 March 2021
Omokoroa Town Centre Landscape Masterplan Plan	Momentum Planning and Design Ltd	OTC Landscape Masterplan.ai	5 March 2021
Omokoroa Town Centre Masterplan Parking Plan	First Principles Architects	Resource Consent: Sheet 2.1.01 Rev 3	8 <sup>th</sup> March 2021
Omokoroa Town Centre - Design Guidelines	Momentum Planning and Design Ltd	Design Guidelines. Indd	23 March 2021
Omokoroa Town Centre Services Report	Lysaght Consultants Ltd	Rev 1	15 <sup>th</sup> May 2020
Omokoroa Town Centre Cut Fill Plan	Lysaght Consultants	204509 Rev C	29 September 2020
Geotechnical Investigation Report	CMW Geoscience Ltd	TGA2020-0011AB Rev2	9 October 2020

Transportation Assessment and subsequent additional information letter and attachments 23 Sept 2020	Stantec Ltd	Ref 310203882	14 May 2020 23 Sept 2020
Further Information Response and Attachments 1 to 20 unless superseded by the above.	Momentum Planning and Design		9 October 2020

2. All site development, including landscaping and infrastructure, shall be carried out in accordance with the Subdivision Staging Plan referred to in condition 1 and the conditions set out below

#### **Financial Contributions:**

3. Should the proposal proceed in a staged manner, the consent holder shall provide to the Chief Executive Officer or duly Authorised Officer a calculation of the Financial Contributions relevant for that stage, in accordance with rule 11.6.2 of the Operative District Plan (or its equivalent at the time of Building Consent) and Council's current fees and charges. This fee will be dependent on the sizing of the connections, stage area and building area.
4. The financial contributions calculated in accordance with the provisions of the Operative District Plan shall be paid in full within two years of the date of commencement of the consent provided that:
  - i. Any financial contribution which is not paid in full within two years from the date of commencement of the consent shall be adjusted so that the amount of the financial contribution required by the resource consent shall be the amount calculated in accordance with the relevant formulae using the updated inputs to those formulae as set out in Council's Annual Plan current at the date of payment; and
  - ii. Any financial contributions not paid within two years from the date of commencement of the consent shall be (where applicable) paid prior to the issue of the Building Consent under the Building Act 2004, subject to the adjustments referred to in sub-paragraph (i) herein.

#### **Survey Plan Approval (S223) Conditions – All Stages**

5. Before the Council will approve a survey plan pursuant to s223 of the Resource Management Act 1991 (RMA) for the stages shown on the Subdivision Staging Plan the following conditions shall be satisfied:

- a. The consent holder shall obtain Council approval for the road name(s) (in accordance with the WBOPDC Road Naming Policy for the roads) to vest in Council and the name is to be shown on the stage survey plan.
  - b. The stage survey plan shall be in accordance with the respective stage shown on the Subdivision Staging Plan and any specific s223 conditions set out below and/ or in addition to any relevant general conditions for all stages that are required to be met for the s223 survey plan certification.
6. Lots 501, 502 & 504 shall be shown on the Survey Plans to vest in Western Bay of Plenty District Council as road at the relevant subdivision stage.

### **Section 224(C) Compliance Conditions - Staging**

7. Any staging of subdivision consent by way of s223/224 RMA certificates issued on separate survey for this subdivision is appropriate subject to that staging complying with all relevant conditions as applicable for that stage within this consent and as agreed with the Environmental Consents Manager.

### **Earthworks**

8. A Chartered Professional Engineer or engineering geologist who has been pre-approved by Council as suitably qualified and experienced with soils, shall prepare a geotechnical completion report relating to the nominated building sites and roading 'platforms' which describes their suitability for commercial building and road pavement development as required by Rule 12.4.1 of the District Plan. This report shall state the extent of inspection, supply test results and a statement of professional opinion with regard to the nominated building sites in respect of the following:
  - a. That the nominated building sites and roading platforms are suitable for conventional commercial and roading development with standard foundations in accordance with NZS3604;
  - b. Where the nominated building sites or roading platforms are not suitable for conventional commercial development, then any non-compliance shall be clearly stated and sufficient geotechnical engineering detail provided, so that at Building Consent stage and roading pavement design stage specific foundations could be designed, without the requirement for further geotechnical input. This geotechnical information may, at the discretion of the Chief Executive Officer or delegate, be incorporated as Consent Notices pursuant to Section 221 of the RMA, on Lots where the building sites have not been certified by the consent holder as suitable for conventional commercial development and that specific design may be required for roading foundations;
  - c. Where the geotechnical report recommends a building set back then a Building Line Restriction shall be shown on the 223 survey plan and included in the consent notice;
  - d. Where a consent notice is required, the notice shall state that all future development shall be in accordance with the relevant geotechnical report (or subsequent approved reports), refer to any Building Restriction Lines and include clear reference to the report including date, author, reference and revision numbers as applicable.

### **Roading**

9. Proposed Lots 501 502, 503 and 504 shall be vested in Council as road with a minimum 20m wide road reserve in accordance with the Omokoroa Town Centre Subdivision Staging Plan prepared by Momentum Planning and Design, dated 26 March 2021, and be constructed in accordance with Council's District Plan and Development Code.
10. A consent notice pursuant to section 221 of the RMA shall be issued against the title of Lot 7 such that Lot 7 remains available for a road connection to Prole Road (if that is required by Council) and for any overflow parking required following the car parking review required by condition 51 of land use consent RC11997L.
11. Access from the Omokoroa Town Centre to Sentinel Avenue shall be designed and constructed for pedestrian and cycle access only and a minimum 2m wide easement in gross in favour of Council shall be provided.
12. All roading associated with this subdivision shall otherwise be subject to the conditions of land use consent RC11997L.

### **Street lighting**

13. That either:
  - a. Street lighting be provided in accordance with AS/NZS 1158 2005 Road Lighting, as modified by NZTA specification M30 (LED luminaires) and in accordance with Auckland Transport's approved Streetlight List or to an alternative design to Council's satisfaction; or
  - b. Street and other lighting be provided in accordance with a specific design pre-approved by Council.
14. The street lighting designs shall be certified to comply with the above requirements and any other relevant New Zealand standards by a suitably qualified person to the satisfaction of the Chief Executive or duly authorised officer prior to construction.
15. Confirmation is also required from the power supply authority that the street lights are operational.

### **Retaining walls**

16. Prior to construction of any retaining structures (equal or greater than a height of 1.5m or subject to any surcharge loads) written confirmation shall be submitted to the Chief Executive Officer or duly authorised officer that all necessary building consents for the construction of the retaining walls in relation the development have been granted.
17. That:

- a. All retaining walls constructed on the site and subject to building consent shall obtain a code of compliance certificate prior to section 224 RMA approval;
  - b. Any retaining walls not subject to building consents shall be supervised and certified as complying with the building code as part of the geotechnical completion report;
  - c. As built plans shall be provided to Council showing all subsoil drain connections.
18. Any retaining walls that are constructed shall be structurally independent within each allotment.
19. Where retaining walls cross proposed lot boundaries, easements shall be provided at the time of section 223 RMA survey plan approval for 'party' wall and drainage requirements.

### **Water Supply**

20. In accordance with a pre-approved design and subject to Council agreement in regards public or private metering, potable water reticulation shall be provided to serve the proposed lots with firefighting capability in accordance with Council's Development Code.
21. A minimum 20mm internal diameter live water supply connection/s to serve all proposed lots/buildings shall be installed in accordance with Council's Development Code, including a meter. The lot/building connections shall be subject to a Council "Water Connection Application & Acceptance" which covers all connections. A schedule of the water meters with serial numbers, building/lot numbers and initial factory readings shall be provided with the aforementioned application and also as part of the as-built drawing requirements.
22. THAT:
- a. Easements in gross granting a right to convey water shall be created in favour of Council by a transfer in accordance with the approved format over any proposed public water mains that cross over private land, and the schedule of easements shall be shown on the survey plan.
  - b. Easements shall be created over private water connections where they cross over other private lots and this shall be shown on the survey plan.

### **Wastewater**

23. Proposed Lot 101 shall be vested in Council as local purpose reserve (wastewater) drainage.
24. In accordance with a pre-approved design, wastewater reticulation shall be provided to serve the subdivision with connections to serve all lots in accordance with Council's Development Code.

## 25. THAT:

- a. Wastewater easements shall be created over private wastewater connections where they cross over other private lots and this shall be shown on the survey plan.
- b. Wastewater easements shall be created over the proposed public wastewater mains in favour of Council as dominant tenement and this shall be shown on the survey plan.

**Stormwater**

## 26. In accordance with a pre-approved design, proposed Lot 102:

- a. shall be vested in Council as Local Purpose Reserve (Drainage) and/or Local Purpose Reserve (Recreation);
- b. shall be constructed to manage the discharge from the proposed stormwater system; and
- c. shall also be constructed in recognition that Lot 102 is an interface between the commercial development and Council's existing gully/stormwater/walkway reserve.

## 27. A consent notice pursuant to section 221 of the RMA shall be issued against the titles of Lots 5 and 7 such that all fencing along the common boundaries of the aforementioned Lots, proposed Lot 102 and Lot 10 DP 548773 (Council reserve) shall be erected at the expense of the respective landowners and/or occupiers of Lots 5 &amp; 7.

## 28. THAT:

- a. Stormwater reticulation shall be provided to serve the development with connections to serve all lots in accordance with Council's Development Code.
- b. All catchpits serving kerb and channelling, public or private, shall be 'back entry' type.

## 29. Design and construction shall be carried out to ensure that stormwater overland flowpaths are provided clear of the buildable area of each lot and take into account the runoff from areas of road, including adjacent catchment where relevant.

## 30. THAT:

- a. Stormwater easements shall be created over any proposed public stormwater mains that cross over private property in favour of Council as dominant tenement and this shall be shown on the survey plan;
- b. Stormwater easements shall be created over private stormwater connections where they cross over other Lots and this shall be shown on the survey plan; and
- c. Stormwater easements shall be created over any overland flowpaths either private or public.

### **Power and Telecom**

31. THAT:
- a. Written confirmation is required from the relevant power authority confirming that the existing power reticulation in the vicinity of the sites has the capacity to serve future development of the sites to a minimum of a residential or commercial (depending on intended use) level of service without upgrading.
  - b. Written confirmation is required from PowerCo as to whether a sub-station is required to service the development.
32. Power and telecommunications reticulation shall be installed to serve each Development Stage. Where appropriate, the capacity and ability to later provide all proposed residential and commercial lots with individual connections (lead in's) will be provided unless future upgrades address future supply needs. Letters are required from power and telecom authorities confirming that this condition has been met to their satisfaction.

### **Streetscape/ landscaping**

33. Street trees and landscape plantings are required to be provided and shall be:
- a. Of a genus listed in the Development Code "Approved Street Trees Species List" and approved by the Chief Executive or duly authorised officer, in conjunction with other engineering plans for this application or as otherwise may be approved by Council; and
  - b. Planted as per the aforementioned engineering design.
34. Any street furniture proposed to be vested shall be subject to a design pre-approved by Council.

### **Quality Assurance and Certification:**

35. The consent holder's representative shall submit to the Chief Executive Officer or duly Authorised Officer for approval, with the appropriate engineering inspection fee; construction drawings, specifications, calculations and project cost estimate; covering all sections of work which it is proposed to be built in accordance with Council's Development Code and vest in Council or proposed to be privately owned. Construction shall not commence until written approval of the plans and specification has been provided by Council. Where water mains are to be vested in Council, the disinfection methodology to be used shall be incorporated in the engineering specifications. No pressure testing of water mains or sewer pipes, which are to be vested in Council shall be undertaken or observed by a Council official unless prior written approval of the plans and specification have been provided by Council.
36. The consent holder's representative shall submit to the Chief Executive Officer or duly Authorised Officer, all quality assurance and testing records that are required in accordance with Council's Development Code, including sealing records.

37. As-built information and drawings shall be provided for all vested assets, service connections and earthworks in accordance with Council's Development Code.
38. A 5 percent maintenance bond (or \$2,500.00, whichever is greater) calculated from the approved asset schedule (Cert 1c) shall be paid in respect to the additional Council assets created by this subdivision, in accordance with the requirements of Council's Development Code.
39. At the end of the maintenance period, all maintenance items are required to be certified as complete including that the berms have been mown, carriageways and footpath swept and catchpits cleaned by the consent holder's representative.
40. The work required by conditions 9-15 and 20-34 shall be supervised and certified as complete in accordance with the conditions by the consent holder's representative (refer Section 12.3.10.1(f) of Council's District Plan) prior to section 224 RMA deposit of survey plan or the activity commencing

**Advice Notes:**

1. This subdivision consent should be read in conjunction with the Land Use consent RC11997L.
2. The consent holder shall provide to the Council's Compliance Officer notice of the date works are to commence. This notice shall be received by the Council prior to the commencement date and shall include the following details:
  - name and telephone number of the project manager, contactor and site owner;
  - site address to which the consent relates
  - activity to which the consent relates
  - expected duration of works.
3. The consent holder is advised that an approved "Corridor Access Request" is required to construct a vehicle crossing and utilities connections. The application can be made through Council's Roading Service Providers, Westlink, via their online service submittica.
4. The consent holder is advised that an approved "Working on Utilities Notice" is required to connect to Council's live utilities assets. The application form may be obtained from Council's Customer Service Department.
5. The consent holder is advised that all engineering designs required by this consent are to be submitted to the Development Engineering team (via consents administration) for review and approval. Designs submitted under the building consent will not be acceptable in regards approved resource consents.
6. It is possible that archaeological sites may be affected by the proposed work. Evidence of archaeological sites may include burnt and fire cracked stones,

charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, pits, old building foundations, artefacts of Maori and European origin or human burials. The applicant is advised to contact Heritage New Zealand Pouhere Taonga if the presence of an archaeological site is suspected. Work affecting archaeological sites is subject to a consenting process under Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand Pouhere Taonga must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.

7. You may object to this decision, including any conditions of consent, by notifying Council within 15 working days of receipt of this decision. However you are advised that you may not commence the activity as authorised by this consent until your Appeal is resolved as prescribed by section 116 of the Resource Management Act 1991.
8. This subdivision consent should not be implemented until the necessary regional consent for On-Site Effluent Treatment (OSET) and disposal has been applied for and approved by the Bay of Plenty Regional Council, if required.
9. Full compliance with the conditions of consent is necessary to carry out the activity to which this consent relates. Your progress towards satisfying the conditions of consent will be monitored by a Council representative and failure to meet these conditions may result in enforcement action being taken in accordance with Council's Monitoring, Compliance and Enforcement Strategy. This may involve the issuing of an Infringement Notice (instant fine) and/or additional monitoring fees.
10. The lapsing of this resource consent shall be governed by section 125 of the Resource Management Act 1991.

**8.2 MINUTES OF THE DISTRICT PLAN COMMITTEE MEETING HELD ON 23 SEPTEMBER 2021**

**File Number: A4350205**

**Author: Barbara Clarke, Senior Governance Advisor**

**Authoriser: Barbara Whitton, Customer Services and Governance Manager**

**RECOMMENDATION**

That the Minutes of the District Plan Committee Meeting held on 23 September 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**ATTACHMENTS**

- 1. Minutes of the District Plan Committee Meeting held on 23 September 2021**

*This meeting, [previously scheduled on 18 August 2021], was cancelled due to Covid-19 Alert Level 4 restrictions at the time, and rescheduled accordingly.*

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL  
DISTRICT PLAN COMMITTEE MEETING NO. DP21-2  
HELD IN THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA  
AND VIA ZOOM (AUDIO / VISUAL LINK) UNDER COVID-19 ALERT LEVEL 2, LIVE-  
STREAMED ON THURSDAY, 23 SEPTEMBER 2021 (ON CONCLUSION OF THE  
REGULATORY HEARINGS COMMITTEE), AND COMMENCED AT 1.25PM**

## **1 PRESENT**

### **Physically**

Deputy Mayor J Scrimgeour (Chairperson), Cr M Dean, Cr G Dally, Cr J Denyer, Cr M Grainger, Cr A Henry and Cr M Murray-Benge

### **Via Zoom**

Cr. M Gray

## **2 STAFF ATTENDANCE**

### **Physically**

J Holyoake (Chief Executive Officer), R Davie (Group Manager Policy Planning and Regulatory Services), C Watt (Environmental Consents Manager), A Curtis (Compliance and Monitoring Manager), J Osborne (Governance Support Administrator), and B Clarke (Senior Governance Advisor)

## **3 ATTENDANCE ON BEHALF OF COUNCIL**

Nil.

## **4 OTHERS PRESENT**

Nil.

## **5 APOLOGIES**

Nil.

## **6 DECLARATIONS OF INTEREST**

Cr Dean declared a Conflict of Interest in relation to Item 8.3, being the 'Appointment of Independent Hearings Commissioner - RC13103S - 1343 Oropi Road, Tauranga'. He took no part in the discussion or voting thereon.

## **7 HEARING**

Nil.

## 8 REPORTS

### 8.1 APPOINTMENT OF INDEPENDENT HEARINGS COMMISSIONER - RC13062L - ELIZA PLACE, KAIMAI VIEWS, ŌMOKOROA ROAD, ŌMOKOROA

The Environmental Consents Manager introduced the report, noting the following:

- An Independent Commissioner was required to consider and determine this application for a combined land use and subdivision consent, for the development of 25 units on the Housing Affordability Forum (HAF) site, at Kaimai Views.
- As it was a Special Housing Area (SHA) site, Council had an interest in the subdivision.

Staff responded to questions as follows:

- Classic Developments NZ Limited was identified as the Applicant on the application form, however, as Council had an interest in the subdivision overall, this could be classified as a joint application between the two parties.
- The status of the ownership of the land could be clarified with the Strategic Property Manager, following the meeting.

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### RESOLUTION DP21-2.1

Moved: Cr M Grainger

Seconded: Cr M Murray-Benge

1. That the Senior Consents Planner's report dated 18 August 2021, titled 'Appointment of Independent Hearings Commissioner – RC13062L - Eliza Place, Kaimai Views, Ōmokoroa Road, Ōmokoroa', be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the District Plan Committee appoints the following Independent Commissioner to consider and determine the land use and subdivision consent RC13062L at Eliza Place, Kaimai Views, Ōmokoroa:
  - Commissioner Alan Withy.

**CARRIED**

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### 8.2 APPOINTMENT OF INDEPENDENT HEARINGS COMMISSIONER - RC12551L - SPENCER AVENUE, MAKETU

The Environmental Consents Manager introduced the report, noting the following:

- An Independent Commissioner was required to consider and determine this application for land use consent for earthworks within a Flood Hazard Area, as Council was the Applicant.
- Essentially, improvements were required to raise the level of the land, so that Spencer Avenue Reserve was more useable for the community.

Staff responded to questions as follows:

- The site was identified as a Flood Hazard area within the District Plan, so earthworks, or displacement of earth required a resource consent.

- There were instances when earthworks had been carried out, within Flood Hazard zones, without resource consents, particularly in the valleys. It did occur, and often Council was not made aware of it until there was a complaint. Council did act upon complaints, and there had been a number of sites where there had been enforceable action.

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### RESOLUTION DP21-2.2

Moved: Cr J Denyer

Seconded: Cr M Murray-Benge

1. That the Environmental Consent Manager's report dated 18 August 2021 and titled 'Appointment of Independent Hearings Commissioner – RC12551L – Spencer Avenue, Maketu' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the District Plan Committee appoints the following Independent Hearings Commissioner to consider and determine the land use consent RC12551L at Spencer Avenue, Maketu:
  - Commissioner Russel de Luca.

**CARRIED**

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### 8.3 APPOINTMENT OF INDEPENDENT HEARINGS COMMISSIONER - RC13103S - 1343 OROPI ROAD, TAURANGA

Cr Dean declared a Conflict of Interest in relation to this item. He requested that he be permitted to remain seated, but take no part in the discussion or voting thereon. The Chairperson accepted his request to remain.

The Environmental Consents Manager introduced the report, noting that this matter was a simple boundary adjustment. However, as Cr Dean was a member of the District Plan Committee, and had declared a Conflict of Interest, an Independent Commissioner was required to consider and determine the matter.

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### RESOLUTION DP21-2.3

Moved: Cr M Murray-Benge

Seconded: Cr G Dally

1. That the Senior Consents Planner's report dated 08 September 2021, titled 'Appointment of Independent Hearings Commissioner – RC13103s – 1343 Oropi Road, Tauranga, be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the District Plan Committee appoints the following Independent Hearings Commissioner to consider and determine the subdivision consent RC13103S at 1343 Oropi Road, Tauranga:
  - Commissioner Alan Withy.

**CARRIED**

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**8.4 APPOINTMENT OF INDEPENDENT COMMISSIONER - RC13112L - 20 NETTLINGHAM PLACE, TE PUKE**

The Environmental Consents Manager introduced the report, noting the following:

- An Independent Commissioner was required, as Council was the Applicant.
  - Structure Plan Area 3, in the District Plan, involved a proposal for earthworks to create storm water pond No.5, primarily to support the Dunlop Road subdivision development in Te Puke. That subdivision, currently, was intending to develop eighty homes.
- 

**RESOLUTION DP21-2.4**

Moved: Cr M Grainger

Seconded: Cr G Dally

1. That the Senior Consents Planner's report dated 7 September 2021, titled 'Appointment of Independent Hearings Commissioner – RC13112L – 20 Nettlingham Place, Te Puke', be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the District Plan Committee appoints the following Independent Hearings Commissioner to consider and determine the land use RC13112L at 20 Nettlingham Place, Te Puke:
  - Commissioner Alan Withy.

**CARRIED**

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**The meeting was declared closed at 1.32pm.**

**The minutes of this meeting were confirmed at the Council meeting held on 4 November 2021.**

**8.3 MINUTES OF THE REGULATORY HEARINGS COMMITTEE MEETING HELD ON 23 SEPTEMBER 2021**

**File Number: A4350246**

**Author: Barbara Clarke, Senior Governance Advisor**

**Authoriser: Barbara Whitton, Customer Services and Governance Manager**

**RECOMMENDATION**

That the Minutes of the Regulatory Hearings Committee Meeting held on 23 September 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**ATTACHMENTS**

- 1. Minutes of the Regulatory Hearings Committee Meeting held on 23 September 2021**

*This meeting, [previously scheduled on 18 August 2021], was cancelled due to Covid-19 Alert Level 4 restrictions at the time, and rescheduled accordingly.*

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL  
REGULATORY HEARINGS COMMITTEE MEETING NO. RH21-1  
HELD IN THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA  
AND VIA ZOOM (AUDIO / VISUAL LINK) UNDER COVID-19 ALERT LEVEL 2  
LIVE-STREAMED ON THURSDAY, 23 SEPTEMBER 2021 AT 1.00PM**

## **1 PRESENT**

### **Physically**

Deputy Mayor J Scrimgeour (Chairperson), Cr G Dally, Cr M Dean, Cr J Denyer, Cr M Grainger, Cr A Henry and Cr M Murray-Benge

### **Via Zoom**

Cr M Gray

## **2 IN ATTENDANCE**

### **Physically**

J Holyoake (Chief Executive Officer), R Davie (Group Manager Policy Planning and Regulatory Services), A Curtis (Compliance and Monitoring Manager), C Watt (Environmental Consents Manager), J Osborne (Governance Support Administrator), and B Clarke (Senior Governance Advisor)

## **3 APOLOGIES**

Nil

## **4 DECLARATIONS OF INTEREST**

Nil.

## **5 PUBLIC EXCLUDED ITEMS**

Nil.

## **6 HEARINGS**

Nil.

## **7 REPORTS**

### **7.1 ANNUAL REPORT ON DOG CONTROL POLICY AND PRACTICES 2020-2021**

The Compliance and Monitoring Manager introduced the report, highlighting key points as follows:

- The Dog Control Act 1996 (the Act) required Council to publicly report on its Dog Control Policy and practices annually. The report detailed activities and fulfilled the statutory requirement for the dog registration year 1 July 2020 to 30 June 2021.

- Following delay due to the recent Covid-19 lockdown protocols, it was helpful the committee was meeting today, as the report was due to the Department of Internal Affairs (DIA) by the 30 September 2021.
- Council was currently consulting on a dog exercise park at Te Puke, the first of its kind for Council. Interesting feedback had been received.
- The dog population in the District continued to grow. This was a positive for Council, in terms of Dog Registration Fees, that helped to fund the activity.
- There had been a drop in the number of dog complaints received, and dog attacks reported over the past year. This was attributed to Covid-19 lockdowns, and underreporting from the public, as the number of incidents did not match Accident Compensation Corporation (ACC) figures.

Staff responded to questions as follows:

- Staff would investigate any complaints of roaming dogs, once areas of concern had been identified.
- In terms of the number of registered dogs increasing by only 27 last year, along with Covid-19 lockdowns, social factors may have contributed. Going out into the community to identify unregistered dogs was a current focus of the team, but there had been limited capacity to do so the previous year.
- Waiuku Forest, controlled by the Department of Conservation (DOC), was not featured in prohibited dog areas, because Council's bylaw only applied to public places owned by Council, such as streets and Council reserves. DOC may choose to approach Council if there was a desire for supporting information relating to the current bylaw.
- Where dog owners had committed offenses under the Act, and had been subject to infringement notices, the provisions allowed Council the option of disqualifying the dog owner or, where there were mitigating circumstances, making them 'probationary' dog owners.

An Elected Member noted that members of the community had expressed appreciation for the work of staff who promoted dog walks and dog entertainment days. The staff were well respected for this work, and were to be congratulated.

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### RESOLUTION RH21-1.1

Moved: Cr A Henry

Seconded: Cr M Murray-Benge

1. That the Compliance and Monitoring Manager's report dated 18 August 2021, titled 'Annual Report on Dog Control Policy and Practices 2020-2021' be received.
2. That pursuant to Section 10A of the Dog Control Act 1996, the Western Bay of Plenty District Council annual report on Dog Control Policy and Practices for 2020-2021 be adopted and publicly notified.

**CARRIED**

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## 7.2 ANNUAL REPORT ON WESTERN BAY OF PLENTY DISTRICT LICENSING COMMITTEE 2020-2021

The Compliance and Monitoring Manager introduced the report, highlighting key points as follows:

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- This annual report was a direct statutory requirement of the Alcohol Regulatory Licensing Authority (ARLA), which came under the Ministry of Justice. It was provided to ARLA in Wellington, as required under the Sale and Supply of Alcohol Act 2012 (the Act).
- It provided a summary of Council's District Licensing Committee activities for the year 1 July 2020 to 30 June 2021.
- There had been no formal meetings or hearings of the District Licensing Committee in the past year, however, there were a number scheduled for the coming year.
- Council had received a number of applications over the past year, despite Covid-19 lockdown provisions and restrictions on event numbers. As a result, there had been an impact on District Licensing operations, although not financially.

Staff responded to questions as follows:

- The introduction of public advertising of licence applications via Council's website was intended to replace the need for newspaper advertisements, however, Council could not require people to use the website option. They could still publicly notify in the newspaper, if that was their preferred option.
- The District Licensing Committee had two reporting agencies, the NZ Police and the Medical Officer of Health (MOH). The biggest delay had been with the MOH, as their staff had been involved in contact tracing for Covid-19 purposes, and associated activities in terms of managing the pandemic. That was why the provisions for extensions of time had been provided.
- Council had begun the scoping process for the review of its Local Alcohol Policy (LAP). One of the key directions given by Councillors to staff, was that this Council would no longer pursue a joint LAP with Tauranga City Council. Council's Compliance and Monitoring Manager and Liquor Licensing Inspector, would be working closely with the NZ Police and subject matter experts, throughout the review of the LAP. All information provided to Elected Members would have input from the Compliance and Monitoring Team.
- In terms of the report before the Committee today, there was no statutory requirement for Council to report on the LAP, other than to note that a review was required every six years, and this review was currently underway.
- Council had an obligation, through its Liquor Licensing Committee, to implement all requirements under the Act. There was an overriding objective in the Act to reduce alcohol related harm in the community. There were limited mechanisms that Council could apply, through a licensing regime, to be able stop certain practices that may be considered harmful. Those could only be attached to specific conditions that could be reasonably applied to licenses. There was a 'natural justice' provision, so if Council proposed a condition on a License that restricted the way alcohol could be displayed or sold, that had to be agreed with the Licensee. Where it could, Council tried to use these mechanisms to bring about change, but it was an unwieldy tool.
- The Liquor Licensing Inspector's role was to make sure the objectives under the Act were achieved. The relationships the Inspector had with Licensees was one of the key aspects in managing issues that arose. There was a proposal from the Inspector to consider creating an 'Off-license Alcohol Accord', which was an agreement with a Licensee, in particular areas across the District, to set protocols or conditions Council might like to impose. This would be voluntary.
- In terms of public objections and the desire to restrict the number of alcohol outlets, it was a nationwide issue, and something that both the MOH, and other health promotion agencies had expressed concern about. Significant changes to this particular legislation had been made, to bring about more community involvement in licensing decisions, e.g. through Liquor Licensing Committees. The reality was that there were still low levels of engagement from the community in terms of alcohol licensing in their District. There was a national programme attempting to get communities more involved, with specific agencies working with 'at risk' communities, to help

them put through objections to licenses. One issue was around establishing the evidence to show there was harm that would arise from that premise in that locality and gathering that evidence. There were communities that did not put in objections because they viewed the barriers as 'to high'.

- The report utilised a template required to be completed by ARLA. Ideally Council would include the fact that every premise had an annual fee they paid, and the only time that did not align was then the ownership of the business changed.
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#### **RESOLUTION RH21-1.2**

Moved: Cr M Dean

Seconded: Cr J Denyer

That the Compliance and Monitoring Manager's report dated 18 August 2021, titled 'Annual Report on Western Bay of Plenty District Licensing Committee 2020-2021' be received and the information noted.

**CARRIED**

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**The meeting was declared closed at 1.24pm.**

**The minutes of this meeting were confirmed at the Council meeting held on 4 November 2021.**

**8.4 MINUTES OF THE COUNCIL MEETING HELD ON 23 SEPTEMBER 2021**

**File Number:** A4355474

**Author:** Pernille Osborne, Senior Governance Advisor - Community Boards

**Authoriser:** Barbara Whitton, Customer Services and Governance Manager

**RECOMMENDATION**

That the Minutes of the Council Meeting held on 23 September 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**ATTACHMENTS**

- 1. Minutes of the Council Meeting held on 23 September 2021**

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL  
COUNCIL MEETING NO. C21-11  
HELD IN THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA  
AND VIA ZOOM (AUDIO / VISUAL LINK) UNDER COVID-19 LEVEL 2 LOCKDOWN  
ON THURSDAY, 23 SEPTEMBER 2021 AT 9.30AM**

**1 PRESENT**

Mayor G Webber, Deputy Mayor J Scrimgeour, Cr G Dally, Cr M Dean, Cr J Denyer, Cr M Grainger, Cr A Henry, Cr K Marsh, Cr M Murray-Benge, Cr A Sole and Cr D Thwaites

**VIA ZOOM**

Cr M Gray

**2 IN ATTENDANCE**

J Holyoake (Chief Executive Officer), K Perumal (Group Manager Finance and Technology Services), G Payne (Strategic Advisor), D Jensen (Finance Manager), H Wi Repa (Governance Technical Support), J Osborne (Governance Support Administration), P Osborne (Senior Governance Advisor – Community Boards) and C Irvin (Senior Governance Advisor).

**VIA ZOOM**

G Allis (Deputy CEO), B Williams (Strategic Property Manager), J Paterson (Transportation Manager), P Watson (Reserves and Facilities Manager), T Abraham (Senior Assurance and Risk Specialist).

Te Puke Community Board

R Crawford (Chairperson)

**3 APOLOGIES**

Nil

**4 CONSIDERATION OF LATE ITEMS**

Nil

**5 DECLARATIONS OF INTEREST**

Nil

**6 PUBLIC EXCLUDED ITEMS**

Nil

**7 PUBLIC FORUM**

**PUBLIC FORUM ADJOURN MEETING**

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**RESOLUTION C21-11.1**

Moved: Cr A Henry

Seconded: Cr D Thwaites

That the meeting adjourn for the purpose of holding a public forum.

**CARRIED**

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**A. Bruce McCabe – Chairperson, Ōmokoroa Residents and Ratepayers Association**

- Mr McCabe spoke to a power point presentation Tabled Item (1) on the Three Waters Reform summarising the following points:

Council Impact Assessment: Four Perspectives:

1. Service: no service delivery improvement in the Three Water services from the Reforms for the district.
2. Finance and Funding: no improvement from the Reforms
3. Social, Community and Economic Wellbeing: negative effect on local economy, development, growth and community self determination.
4. Workforce delivery and capability: negative impacts on District workforce and supply chain procurement.

Conclusion: The Reform is expected to result in adverse outcomes for the District. Data presented makes a strong case for opting out of the Reform.

**B. Wayne Wright – Ōmokoroa Resident**

- Mr Wright spoke to a presentation Tabled Item (2).
- Mr Wright stated that he felt the position to 'opt in' to the Reform was premature, and that the local community had not been appropriately consulted.
- He objected to a 50/50 split of responsibility with Māori who only represented 16% of the community.
- Mr Wright supported full community consultation.

**C. Keith Hay – Secretary, Katikati Waihi Beach Residents and Ratepayers Association**

- Mr Hay stated that it appeared Council would like to 'opt in' to the proposal.
- There needed to be full community consultation on the proposed Reform.
- Mr Hay asked that the word 'generally' be removed from resolution three of the Council Agenda report 'Three Waters Reform: Feedback from Western Bay of Plenty District Council to Government on Reform Direction', and all of resolution four removed.

**D. Christina Humphries – Katikati Waihi Beach Residents and Ratepayers Association**

- The Three Waters Reform was a major issue.
- It was concerning that Elected Members were considering giving away one of Council's major assets.
- There had been little or no consultation with the ratepayers, many of whom were against the proposal.

**E. Ross Goudie – Chairperson, Waihi Beach Community Board**

- The Waihi Beach Community Board had a workshop last week. It was expressed that the Council had not consulted with the community enough on the proposed Reform.
- The biggest issue for most people was the loss of control over a major asset.
- The Waihi Beach Community Board (excluding Elected Members) could not support the Reform or to 'opt in'.

10:15am The CEO entered the meeting

- There had been a lack of information provided.
- When full details became available, a full consultation process with the community was requested.

**F. Ewen Luskie – Katikati Resident**

- Mr Luskie stated that it did not appear that any consultation had taken place with the community on the proposed Reform.
- The water was not broken – it did not need ‘fixing’.
- It was felt that opting into the Reform would, in turn, become an additional cost to ratepayers.

**G. Norm Mayo – Katikati Resident**

- Mr Mayo stated that expert analysis had shown that between 8 and 10 percent in the dollar would be paid for in compensation.
- In support of democracy, there must be a binding referendum, funded by councils.
- It was requested that Elected Members publicly clarify their views.
- Ratepayers were very concerned on how the Reform could impact them, their costs and their rates.

The Chairperson thanked the Public Forum speakers for their comments.

**PUBLIC FORUM MEETING RECONVENED**

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**RESOLUTION C21-11.2**

Moved: Cr A Sole

Seconded: Cr D Thwaites

That the meeting reconvene in formal session.

**CARRIED**

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**CHANGE TO ORDER OF BUSINESS**

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**RESOLUTION C21-11.3**

Moved: Cr M Murray-Benge

Seconded: Mayor G Webber

The Chairperson requested that the next item of business be open Agenda item 10.6: Three Waters Reform: Feedback from Western Bay of Plenty District Council to Government on Reform Direction’ to allow for attendees to be released from the meeting.

**CARRIED**

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**8.1 THREE WATERS REFORM: FEEDBACK FROM WESTERN BAY OF PLENTY DISTRICT COUNCIL TO GOVERNMENT ON REFORM DIRECTION**

The Committee considered a report dated 23 September 2021 from the Strategic Advisor. The report was taken as read.

Staff responded to questions as follows:

- The CEO advised that Council was in the early stages of creating a communication strategy, with the aim of making it far-reaching to access people from all parts of the community.
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## RECOMMENDATION

1. That the Strategic Advisor's report dated 23 September 2021 titled 'Three Waters Reform: Feedback from Western Bay of Plenty District Council to Government on Reform Direction' be received.
2. That the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.
3. That Council approves the feedback generally as drafted in **Attachment 2** (or as amended in this meeting) for submission to Department of Internal Affairs by 30 September 2021.
4. That the Chief Executive Officer be delegated power to make editorial changes to Attachment 2 and incorporate any late additions that may result from collaboration with other local authorities in Entity B and Mana Whenua.

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## MOTION

1. That the Strategic Advisor's report dated 23 September 2021 titled 'Three Waters Reform: Feedback from Western Bay of Plenty District Council to Government on Reform Direction' be received.
2. That the report relates to an issue that is considered to be of medium importance in terms of Council's Significance and Engagement Policy.

## AMENDMENT

That No. 1 remains the same.

That No. 2 be amended as follows:

2. That the report relates to an issue that is considered to be of **high** importance in terms of Council's Significance and Engagement Policy.

The amendment was put. A division was called and recorded as follows:

In Favour: Crs G Webber, J Scrimgeour, G Dally, J Denyer, M Grainger, M Gray, A Henry, K Marsh, M Murray-Benge, A Sole and D Thwaites

Against: Cr M Dean

**CARRIED 11/1**

## SUBSTANTIVE MOTION

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### RESOLUTION C21-11.4 - PART 1

Moved: Cr D Thwaites

Seconded: Cr M Murray-Benge

2. That the report relates to an issue that is considered to be of high importance in terms of Council's Significance and Engagement Policy.

**CARRIED**

**MOTION**

The Mayor accepted a request for a motion from the floor. The motion was moved and seconded.

The Mayor put the following motion:

Moved: Cr Murray-Benge  
Seconded: Cr Marsh

- That Council write to the Government opposing the Three Waters Proposal.

The motion was put. A division was called and recorded as follows:

In Favour: Crs A Henry, K Marsh and M Murray-Benge

Against: Crs G Webber, J Scrimgeour, G Dally, M Dean, J Denyer, M Grainger, M Gray, A Sole and D Thwaites

**LOST 3/9**

The motion was declared lost.

11:00am The meeting adjourned.

11.16am The meeting reconvened.

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**SUSPENSION OF STANDING ORDERS**

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**RESOLUTION C21-11.5**

Moved: Cr M Murray-Benge  
Seconded: Cr A Henry

The Chairperson requested that Standing Orders be suspended at 11.20am to allow for Elected Members to further discuss Agenda report 10.6: 'Three Waters Reform: Feedback from Western Bay of Plenty District Council to Government on Reform Direction'.

**CARRIED**

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**RESUMPTION OF STANDING ORDERS**

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**RESOLUTION C21-11.6**

Moved: Cr M Grainger  
Seconded: Cr M Dean

The Chairperson requested that Standing Orders be resumed at 12.00pm.

**CARRIED**

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**8.1 THREE WATERS REFORM: FEEDBACK FROM WESTERN BAY OF PLENTY DISTRICT COUNCIL TO GOVERNMENT ON REFORM DIRECTION - CONTINUED**

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**RESOLUTION C21-11.7 - PART 2**

Moved: Mayor G Webber  
Seconded: Cr A Henry

3. That Council approves the feedback generally as drafted in Attachment 2 of the Agenda report (and as amended in this meeting) for submission to the Minister of Internal Affairs and Local Government New Zealand by 30 September 2021.

**CARRIED**

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**RESOLUTION C21-11.8 - PART 3**

Moved: Cr J Denyer  
Seconded: Cr G Dally

4. That the Chief Executive Officer be delegated power to make editorial changes to Attachment 2 of the Agenda report and incorporate any late additions that may result from collaboration with other local authorities in Entity B and Mana Whenua.

**CARRIED**

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**RESOLUTION C21-11.9 - PART 4**

Moved: Cr M Murray-Benge  
Seconded: Cr A Henry

5. That it is this Council's intention to take any final proposal to its community for consultation.

**CARRIED**

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**9 COMMUNITY BOARD MINUTES FOR RECEIPT****9.1 MINUTES OF THE WAIHĪ BEACH COMMUNITY BOARD MEETING HELD ON 9 AUGUST 2021**

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**RESOLUTION C21-11.10**

Moved: Cr J Denyer  
Seconded: Cr A Henry

That the Minutes of the Waihī Beach Community Board Meeting held on 9 August 2021, be received.

**CARRIED**

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**10 COUNCIL AND COMMITTEE MINUTES FOR CONFIRMATION**

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**10.1 MINUTES OF THE POLICY COMMITTEE MEETING HELD ON 27 JULY 2021**

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**RESOLUTION C21-11.11**

Moved: Cr A Sole

Seconded: Cr M Murray-Benge

That the Minutes of the Policy Committee Meeting held on 27 July 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**CARRIED**

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**10.2 MINUTES OF THE COUNCIL MEETING HELD ON 12 AUGUST 2021**

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**RESOLUTION C21-11.12**

Moved: Cr A Sole

Seconded: Cr M Murray-Benge

That the Minutes of the Council Meeting held on 12 August 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**CARRIED**

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**10.3 MINUTES OF THE AUDIT AND RISK COMMITTEE MEETING HELD ON 12 AUGUST 2021**

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**RESOLUTION C21-11.13**

Moved: Cr A Sole

Seconded: Cr M Murray-Benge

That the Minutes of the Audit and Risk Committee Meeting held on 12 August 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**CARRIED**

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**10.4 MINUTES OF THE PERFORMANCE AND MONITORING COMMITTEE MEETING HELD ON 31 AUGUST 2021**

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**RESOLUTION C21-11.14**

Moved: Cr A Sole

Seconded: Cr M Murray-Benge

That the Minutes of the Performance and Monitoring Committee Meeting held on 31 August 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**CARRIED**

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**10.5 MINUTES OF THE POLICY COMMITTEE MEETING HELD ON 7 SEPTEMBER 2021**

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**RESOLUTION C21-11.15**

Moved: Cr A Sole

Seconded: Cr M Murray-Benge

That the Minutes of the Policy Committee Meeting held on 7 September 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**CARRIED**

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**11 REPORTS****11.1 RECOMMENDATORY REPORT FROM POLICY COMMITTEE - DELEGATIONS TO CEO TO IMPLEMENT ELDER HOUSING OPERATIONAL POLICY**

The Committee considered a report dated 23 September 2021 from the Senior Governance Advisor. The report was taken as read.

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**RESOLUTION C21-11.16**

Moved: Cr A Henry

Seconded: Cr M Dean

That, in order to implement the Elder Housing Operational Policy, Council delegates Application Criteria guidelines for Elder Housing to the Chief Executive Officer, including:

- a) The ability to suspend some of the eligibility criteria where an individual's circumstances may warrant it;
- b) The ability to negotiate tenancies with community housing providers, where an individual's circumstances may warrant it;
- and
- c) The ability to negotiate rental increases with individual tenants, where an individual's circumstances may warrant it.

**CARRIED**

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**11.2 GREATER TAURANGA TRAVEL PLEDGE**

The Committee considered a report dated 23 September 2021 from the Sustainability and Energy Specialist. The report was taken as read.

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**RESOLUTION C21-11.17**

Moved: Mayor G Webber

Seconded: Cr M Grainger

1. That the Sustainability and Energy Specialist's report dated 23 September 2021 titled 'Greater Tauranga Travel Pledge' be received.

**CARRIED**

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### 11.3 THE SALE OF MIDDLEBROOK DRIVE LAND TO KĀINGA ORA

The Committee considered a report dated 23 September 2021 from the Strategic Property Manager. The report was taken as read.

Staff responded to questions as follows:

- The intended number of dwellings was between 20 and 30, and these would vary in terms of typology.
- There would be between two, three and maybe four bedroom homes, which would be tenanted or owned.

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#### RESOLUTION C21-11.18

Moved: Cr J Denyer

Seconded: Cr A Sole

1. That the Strategic Property Manager's report dated 23 September 2021 titled 'The Sale of Middlebrook Drive land to Kāinga Ora' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That Council notes the process of selling land to Kāinga Ora does not follow its usual process of offering land for sale on a contestable basis for the following reasons:
  - (a) A registered valuation has been received from the purchaser, and the purchaser has offered the amount of the valuation.
  - (b) The sale facilitates implementation of Councils Housing Action Plan.
4. That Council proceed to survey the recreational portion of the property off the parent lot and amalgamate this with Moore Park Reserve.

And
5. That Council approve the sale of 6068m<sup>2</sup> more or less of Lot 2 DP 390751 for \$1.750 million plus GST if any, subject to survey, to Kāinga Ora.

And
6. That Council staff approve the look and feel of the development from an aesthetic perspective. Such approval is not to be unreasonably withheld.

And
7. That the Purchase and Sale Agreement include a clause wherein Council is offered back the land if the development of affordable housing does not proceed within 2 years from date of the Agreement.

**CARRIED**

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### 11.4 PAENGAROA DOMAIN - NEW LAND LEASE FOR EASTERN DISTRICTS RUGBY CLUB 2021

The Committee considered a report dated 23 September 2021 from the Reserves and Facilities Manager. The report was taken as read.

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**RESOLUTION C21-11.19**

Moved: Cr M Murray-Benge

Seconded: Cr K Marsh

1. That the Reserves and Facilities Manager's report dated 23 September 2021 titled 'Paengaroa Domain – New Land Lease for Eastern Districts Rugby Club 2021' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That Council exercise its powers conferred on it as the administering body of the reserve by delegation from the Minister of Conservation under the Reserves Act 1977 and grant Eastern Districts Rugby Club the right to lease for up to 33 years 940m<sup>2</sup> of land being part of Lot 2 DPS 51736 and Section 101 SO 51273 to allow for sport clubrooms situated on Paengaroa Domain.

**CARRIED**

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**11.5 UTILITY SERVICE EASEMENTS OVER PART OF ŌMOKOROA BEACH GROVE RESERVE IN FAVOUR OF 59A ŌMOKOROA ROAD**

The Committee considered a report dated 23 September 2021 from the Reserves and Facilities Manager. The report was taken as read.

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**RESOLUTION C21-11.20**

Moved: Cr M Murray-Benge

Seconded: Cr M Grainger

1. That the Reserves and Facilities Manager's report dated 23 September 2021 titled 'Utility Service Easements Over Part of Ōmokoroa Beach Grove Reserve in Favour of 59a Ōmokoroa Road' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That pursuant to the authority delegated by the Minister of Conservation to the Western Bay of Plenty District Council, and the provisions of Section 48 of the Reserves Act 1977, Council hereby consents to the creation of a storm water/water/electricity/telecommunications and wastewater easements as shown on the attached plan (Attachment 1) on favour of 59a Ōmokoroa Road (Lot 1 DPS 25830) over Section 1 SO 330241.

**CARRIED**

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**11.6 MAYOR'S REPORT TO COUNCIL**

The Committee considered a report dated 23 September 2021 from the Executive Assistant Mayor/CEO that contained the following:

1. Forestry letter to all Council's from Wairoa District Council and Tararua District Council; and
2. Waiāri Kaitiaki Advisory Group – Updated Terms of Reference.

The report was taken as read.

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**RESOLUTION C21-11.21**

Moved: Cr M Murray-Benge  
 Seconded: Cr A Henry

1. That the Executive Assistant to Mayor/CEO's report dated 23 September 2021 titled 'Mayor's Report to Council' be received.  
 And
2. That Western Bay of Plenty District Council takes part in an initiative by Wairoa District Council and Tararua District Council on the impact of forestry plantings, and in doing so, pays the required contribution of \$5000.

**CARRIED****RESOLUTION C21-11.22**

Moved: Mayor G Webber  
 Seconded: Deputy Mayor J Scrimgeour

3. That Council ratify the Waiāri Kaitiaki Advisory Group Terms of Reference.

**CARRIED****RESOLUTION C21-11.23**

Moved: Mayor G Webber  
 Seconded: Deputy Mayor J Scrimgeour

4. That Council approve the appointment of Shadrach Rolleston as Co-Chairperson for the Waiāri Kaitiaki Advisory Group.

**CARRIED****12 INFORMATION FOR RECEIPT**

Nil

**13 RESOLUTION TO EXCLUDE THE PUBLIC****RESOLUTION C21-11.24**

Moved: Cr A Sole  
 Seconded: Cr A Henry

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
<b>12.1 - Confidential Minutes of the Council Meeting held on 12 August 2021</b>	s7(2)(a) - the withholding of the information is necessary to protect the privacy of natural	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for

	<p>persons, including that of deceased natural persons</p> <p>s7(2)(b)(i) - the withholding of the information is necessary to protect information where the making available of the information would disclose a trade secret</p> <p>s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p>s7(2)(c)(ii) - the withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest</p> <p>s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p> <p>s7(2)(i) - the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</p>	<p>which good reason for withholding would exist under section 6 or section 7</p>
<p><b>12.2 - Confidential Minutes of the Audit and Risk Committee Meeting held on 12 August 2021</b></p>	<p>s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p>	<p>s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7</p>
<p><b>12.3 - Confidential Minutes of the Performance and Monitoring Committee Meeting held on 31 August 2021</b></p>	<p>s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the</p>	<p>s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for</p>

	<p>person who supplied or who is the subject of the information</p> <p>s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p>	withholding would exist under section 6 or section 7
<b>12.4 - Chief Executive Officer's Report - Request for Execution of Documents Under Seal of Council</b>	<p>s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p>s7(2)(c)(ii) - the withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest</p>	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
<b>12.5 - Proposed Purchase of Land at 304 Sharp Road Aongatete</b>	<p>s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p>s7(2)(i) - the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</p>	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

**CARRIED**

**The Meeting closed at 12.30pm.**

**The minutes of this meeting were confirmed at the Council Meeting held on 4 November 2021.**

.....  
Mayor G Webber  
**CHAIRPERSON / MAYOR**

unconfirmed

**8.5 MINUTES OF THE DISTRICT PLAN COMMITTEE MEETING HELD ON 14 OCTOBER 2021**

**File Number: A4371492**

**Author: Barbara Clarke, Senior Governance Advisor**

**Authoriser: Barbara Whitton, Customer Services and Governance Manager**

**RECOMMENDATION**

That the Minutes of the District Plan Committee Meeting held on 14 October 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**ATTACHMENTS**

- 1. Minutes of the District Plan Committee Meeting held on 14 October 2021**

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL  
DISTRICT PLAN COMMITTEE MEETING NO. DP21-3  
HELD IN THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA AND VIA ZOOM  
(AUDIO / VISUAL LINK) UNDER COVID-19 ALERT LEVEL 2 AND LIVESTREAMED ON  
THURSDAY, 14 OCTOBER 2021 AT 9.00AM**

## **1 PRESENT**

Deputy Mayor J Scrimgeour (Chairperson), Cr M Dean, Cr G Dally, Cr J Denyer, Cr M Grainger, Cr M Gray, Cr A Henry and Cr M Murray-Benge

## **2 STAFF ATTENDANCE**

J Holyoake (Chief Executive Officer), C Watt (Environmental Consents Manager), and B Clarke (Senior Governance Advisor)

## **OTHERS**

Cr K Marsh, Cr A Sole, Cr D Thwaites

## **3 APOLOGIES**

Nil.

## **4 DECLARATIONS OF INTEREST**

Nil.

## **5 REPORTS**

### **5.1 APPOINTMENT OF INDEPENDENT HEARINGS COMMISSIONER - PANEPANE PURAKAU**

The Environmental Consents Manager introduced the report as follows:

- Councillors were well aware of the process that had been undertaken by Council, in relation to Panepane Purakau, to get to this point.
- Staff anticipated that a Subdivision Consent application for the Panepane subdivision would be lodged. In advance, Council sought to appoint an Independent Commissioner to avoid unnecessary delay with that process.
- Given that Council was the Applicant, an Independent Hearings Commissioner was required. On that basis, Council had identified Commissioner Alan Withy, who would sit solely to hear and determine the matter.
- The Panepane subdivision was anticipated to create three lots. Of those, two lots would be returned to the hapū, and one lot would be 'vested in Council'.

Staff responded to a question, noting that sections would be zoned Rural. The lot to be vested in Council had an underlying Rural zone, however, it would have a 'Reserve' overlaid on top of it.

**RESOLUTION DP21-3.1**

Moved: Cr M Dean

Seconded: Cr M Grainger

1. That the Environmental Consent Manager's report dated 14 October 2021, titled 'Appointment of Independent Hearings Commissioner – Panepane Purakau', be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the District Plan Committee appoints the following Independent Hearings Commissioner to consider and determine the subdivision consent (reference number to be advised once known) at Panepane Purakau, Matakana Island:
  - Commissioner Alan Withy.

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**CARRIED**

**The Meeting closed at 9.02am.**

**The minutes of this meeting were confirmed at the Council meeting held on 4 November 2021.**

**8.6 MINUTES OF THE PERFORMANCE AND MONITORING COMMITTEE MEETING HELD ON 14 OCTOBER 2021**

**File Number: A4377299**

**Author: Carolyn Irvin, Senior Governance Advisor**

**Authoriser: Barbara Whitton, Customer Services and Governance Manager**

**RECOMMENDATION**

That the Minutes of the Performance and Monitoring Committee Meeting held on 14 October 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**ATTACHMENTS**

- 1. Minutes of the Performance and Monitoring Committee Meeting held on 14 October 2021**

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL  
PERFORMANCE AND MONITORING COMMITTEE MEETING NO. PM21-7  
HELD IN THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA  
AND VIA ZOOM (AUDIO / VISUAL LINK) UNDER COVID-19 ALERT LEVEL 2  
AND LIVESTREAMED ON THURSDAY, 14 OCTOBER 2021 AT 9.30AM**

## **1 PRESENT**

Cr D Thwaites (Chairperson), Mayor G Webber, Cr G Dally, Cr M Dean, Cr J Denyer, Cr M Grainger, Cr M Gray, Cr A Henry, Cr K Marsh, Cr M Murray-Benge, Deputy Mayor J Scrimgeour and A Sole.

## **2 IN ATTENDANCE**

J Holyoake (Chief Executive Officer), G Allis (Deputy CEO/Group Manager Infrastructure Services), R Davie (Group Manager Policy Planning and Regulatory Services), J Pedersen (Group Manager People and Customer Services), K Perumal (Group Manager Finance and Technology Services), G Payne (Strategic Advisor), H Wi Repa (Governance Technical Support), J Osborne (Governance Support Administrator) and C Irvin (Senior Governance Advisor).

### **VIA ZOOM**

B Williams (Strategic Property Manager), T Abraham (Senior Assurance and Risk Specialist), P Watson (Reserves and Facilities Manager), R Sumeran (Engineering and Special Projects Manager), K Little (Operations Manager), EJ Wentzel (Utilities Operations Manager), and S Parker (Reserves and Facilities Asset Systems Manager).

### **OTHERS IN ATTENDANCE**

Tauranga City Council  
Kelvin Hill

## **3 APOLOGIES**

Nil

## **4 CONSIDERATION OF LATE ITEMS**

Nil

## **5 DECLARATIONS OF INTEREST**

Nil

## **6 PUBLIC EXCLUDED ITEMS**

Nil

## **7 PUBLIC FORUM**

### **PUBLIC FORUM ADJOURN MEETING**

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**RESOLUTION PM21-7.1**

Moved: Cr A Sole

Seconded: Cr M Murray-Benge

That the meeting adjourn for the purpose of holding a public forum.

**CARRIED**

**A. Kaine Gibson – Kaimai School Student**

- Kaine Gibson was accompanied by his Grandmother, Diane Gibson, along with Eilidh Pettigrew and Leonie French, both teachers at Kaimai School.
- Kaine was in attendance to talk about the pollution occurring at Poripori River which included rubbish and food scraps, beer cans, plastic bottles, tyres, jewellery, knives, rope, car parts, graffiti cans, dead eels, fish hooks, dead fish and bones.
- People who visited the site in their vehicles did skids and doughnuts.
- Kaine and his father regularly went to the site to clean up as they wanted the next generation to be able to enjoy the area, as it would only continue to deteriorate if not properly looked after.
- The eels in the river were endangered 'Short Fin' eels and were protected, but people still caught them.
- Kaine requested that Council look at cleaning up the area and making it a safer place by cutting down overgrowth, installing fences and rubbish bins and installing 'no dumping' signs. He asked that this be done before Christmas, when the river area became very busy.
- It would be good to see picnic tables, stairs, railings, fences, gates, 'no graffiti' and 'no dumping' signs, and rubbish bins that were emptied once a week. This would go a long way to preserving the area so that it could be enjoyed by everyone in the future.

Kaine Gibson responded to Elected Members questions as follows:

- The problem overall had become a bit better over recent years but there was still rubbish everywhere including in the bush and in the water.
- Kaine felt it would be ideal if the area could be cleaned up and made safe as soon as possible. In particular, the rubbish bins and signs before Christmas.
- Cr Thwaites advised that Council had a policy of no rubbish bins in the areas to encourage people taking their own rubbish home with them. Kaine advised that he felt it would be better to install rubbish bins in the area as it would help to stop people dumping their rubbish everywhere.

**PUBLIC FORUM MEETING RECONVENED****RESOLUTION PM21-7.2**

Moved: Deputy Mayor J Scrimgeour

Seconded: Cr J Denyer

That the meeting reconvene in formal session.

**CARRIED**

**8 PRESENTATIONS**

Nil

## 9 REPORTS

### 9.1 GROUP MANAGER FINANCE AND TECHNOLOGY SERVICES' REPORT

The Committee considered a report dated 14 October 2021 from the Group Manager Finance and Technology Services.

The Group Manager Finance and Technology Services and the Finance Manager provided a summary of the following supplementary reports:

- Key Financial Issues;
- Key Performance Indicators;
- Ward and Development Trend Statistics; and
- Quarterly Performance Report
  - A change of format for this report had been implemented and included three specific parts: Strategic Areas of Focus, Long Term Plan activity updates and Internal Services.

Staff responded to questions as follows:

- Capital expenditure was higher than budgeted year to date, due to the timing of the works and the budget spread throughout the year.
- Council had an implied benchmark as to what it expected as an investment return. Council had a technical breach of policy which was due to the investment rates offered by the banks.
- Council worked with rates debtors on a personal level to collect overdue rates.

#### Operational Risk Updates

Staff responded to questions as follows:

#### Rangiuru Business Park:

- Council was working together with Waka Kotahi on funding for the Rangiuru Business Park interchange. There was a shortfall of \$18 million in the funding. In terms of the Business Park's viability, any additional funding that could be received would be useful in terms of the overall park development.
- In its submission to Regional Land Transport, Council requested a \$36 million item for the interchange and \$15 million for local roads associated with Rangiuru Business Park.
- There was an opportunity to receive a subsidy for both these components, outside Councils current approved programme. Both would go through a business case process.

The Transportation Manager provided an update on Waka Kotahi as follows:

#### Waka Kotahi Funding For:

- Maintenance and Operations;
- Asset Renewals;
- Low-Cost Low-Risk Capital Improvements; and
- Larger Capital Improvements.

And

#### 2021 – 2024 National Land Transport Programme:

- Continuous programme allocation;
- Low-Cost Low-Risk (minor improvements);
- Emergency Works; and
- Capital Works.

Staff responded to questions as follows:

- Because traffic volumes on local roads in the Western Bay were so low, Waka Kotahi were unable to accept that roading improvements made by Council contributed to 'Road to Zero'.
- 'Road to Zero' was Waka Kotahi's activity class to fund interventions that had, by default, a business case justification that was a return on investment, such as guard rails, intersections, barriers, and signage. Basically, it was a safety improvement activity.
- Nationally, Waka Kotahi had decided to reduce funding for seal extensions.
- The Waka Kotahi 'top-up' fund had been allocated across all activity classes nationally, which included state highway maintenance operations, state highway improvements, and local road improvements.

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### RESOLUTION PM21-7.3

Moved: Mayor G Webber

Seconded: Cr A Sole

1. That the Group Manager Finance and Technology Services' report dated 14 October 2021 titled 'Group Manager Finance and Technology Service's Report' be received.
2. That the Supplementary Reports to the Group Manager Finance and Technology Services' Report be received.

**CARRIED**

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## 9.2 NEW ZEALAND LOCAL GOVERNMENT FUNDING AGENCY LIMITED ANNUAL REPORT 2020-2021

The Committee considered a report dated 14 October 2021 from the Finance Manager. The report was taken as read.

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### RESOLUTION PM21-7.4

Moved: Mayor G Webber

Seconded: Cr M Grainger

That the Finance Manager's report dated 14 October 2021 titled 'New Zealand Local Government Funding Agency Limited Annual Report 2020-2021' be received.

**CARRIED**

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## 9.3 SCHEDULE OF PAYMENTS FOR THE MONTH OF AUGUST 2021

The Committee considered a report dated 14 October 2021 from the Financial Controller. The report was taken as read.

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### RESOLUTION PM21-7.5

Moved: Cr M Grainger

Seconded: Cr M Dean

That the Financial Controller's report dated 14 October 2021 titled 'Schedule of Payments for the Month of August 2021' be received.

**CARRIED**

#### 9.4 CIVIC FINANCIAL SERVICES HALF YEARLY REPORT - 30 JUNE 2021

The Committee considered a report dated 14 October 2021 from the Finance Manager. The report was taken as read.

##### RESOLUTION PM21-7.6

Moved: Cr J Denyer

Seconded: Deputy Mayor J Scrimgeour

1. That the Finance Manager's report dated 14 October 2021 titled 'Civic Financial Services Half Yearly Report – 30 June 2021' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the Supplementary Report titled 'Civic Financial Services' be received.

**CARRIED**

#### 9.5 KATIKATI WASTEWATER TREATMENT PLANT EFFLUENT REUSE AND DISPOSAL OPTIONS ASSESSMENT

The Committee considered a report dated 14 October 2021 from the Asset and Capital Manager. Kelvin Hill, ex Council Utilities Manager and responsible for the project (now employed by Tauranga City Council), spoke to the report noting the following:

- The report represented a lot of work that had taken place over the last four to five years.
- The advisory group was a collective of people that included Council, Iwi/Hapu and staff working together.
- A 'road map' had been created to progress and move forward with the project.

Staff responded to questions as follows:

- How waste was pre-treated before being deposited back into the land impacted the amount of nitrogen and phosphorus in the soil.

##### RESOLUTION PM21-7.7

Moved: Mayor G Webber

Seconded: Cr M Murray-Benge

1. That the Asset and Capital Manager's report dated 14 October 2021 titled 'Katikati Wastewater Treatment Plant Effluent Reuse and Disposal Options Assessment' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That the Katikati Wastewater Treatment Effluent Reuse and Disposal Options Working Party (Te Ohu Waiora) be thanked for their input, expertise and advice since 2016.
4. That the Katikati Wastewater Treatment Effluent Reuse and Disposal Options report be referred to a joint Performance and Monitoring Committee/Te Ohu Waiora to review the process, findings and next steps. NOTE: this recommendation was rescinded in the confidential section of the Performance and Monitoring Committee meeting.

CARRIED

10:28 The meeting adjourned.10:47 The meeting reconvened.**10 INFORMATION FOR RECEIPT**

Nil

**11 RESOLUTION TO EXCLUDE THE PUBLIC****RESOLUTION PM21-7.8**

Moved: Cr K Marsh

Seconded: Cr M Grainger

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
<b>11.1 - Council Contracts Awarded or Renegotiated for the month of August 2021</b>	s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information  s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
<b>11.2 - Operational Risk Report October 2021 Confidential</b>	s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
<b>11.3 - Katikati Wastewater Treatment Plant Effluent Reuse and Disposal Options Assessment Full Report</b>	s7(2)(e) - the withholding of the information is necessary to avoid prejudice to measures that prevent or mitigate material loss to members of the public  s7(2)(i) - the withholding of the information is necessary to enable Council to carry on, without prejudice or	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

	disadvantage, negotiations (including commercial and industrial negotiations)	
<b>11.4 - Housing Affordability Forum Pilot Project</b>	s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

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**CARRIED**

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**The Meeting closed at 12:28.**

**Confirmed as a true and correct record by Council on 4 November 2021.**

**8.7 MINUTES OF THE POLICY COMMITTEE MEETING HELD ON 19 OCTOBER 2021**

**File Number:** A4378803

**Author:** Barbara Clarke, Senior Governance Advisor

**Authoriser:** Barbara Whitton, Customer Services and Governance Manager

**RECOMMENDATION**

That the Minutes of the Policy Committee Meeting held on 19 October 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**ATTACHMENTS**

- 1. Minutes of the Policy Committee Meeting held on 19 October 2021**

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL  
POLICY COMMITTEE MEETING NO. PP21-6  
HELD IN THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA AND VIA ZOOM  
(AUDIO / VISUAL LINK) UNDER COVID-19 ALERT LEVEL 2 AND LIVESTREAMED  
ON TUESDAY, 19 OCTOBER 2021 ON CONCLUSION OF THE  
COUNCIL MEETING - COMMENCED AT 10.00AM**

## **1 PRESENT**

Mayor G Webber (Chairperson), Cr G Dally, Cr M Dean, Cr J Denyer, Cr M Grainger, Cr A Henry, Cr M Murray-Benge, Deputy Mayor J Scrimgeour, Cr A Sole and Cr D Thwaites

Cr M Gray ([via Zoom](#))

## **2 IN ATTENDANCE**

J Holyoake (Chief Executive Officer), R Davie (Group Manager Policy Planning and Regulatory Services), G Allis (Deputy CEO/Group Manager Infrastructure Services), J Pedersen (Group Manager People and Customer Services), K Perumal (Group Manager Finance and Technology Services), E Watton (Policy and Planning Manager), P Martelli (Resource Management Manager), A Price (Senior Consents Planner), M Leighton (Senior Policy Analyst), T Rutherford (Policy Analyst), and B Clarke (Senior Governance Advisor)

I Kruis (Resource Recovery and Waste Team Leader) ([via Zoom](#))

## **COMMUNITY BOARDS**

Nil.

## **OTHERS**

One Member of the Press (BOP Times), and as listed in the minutes.

## **3 APOLOGIES**

### **APOLOGY**

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#### **RESOLUTION PP21-6.1**

Moved: Cr M Grainger

Seconded: Cr M Dean

That the apology for absence from Cr Marsh be accepted.

**CARRIED**

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## **4 CONSIDERATION OF LATE ITEMS**

Nil.

## **5 DECLARATIONS OF INTEREST**

Nil.

## **6 PUBLIC EXCLUDED ITEMS**

Nil.

## 7 PUBLIC FORUM

### PUBLIC FORUM ADJOURN MEETING

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#### RESOLUTION PP21-6.2

Moved: Cr A Henry

Seconded: Cr M Murray-Benge

That the meeting adjourn for the purpose of holding a public forum.

**CARRIED**

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#### A. Te Puna Springs - Proposed Private Plan Change

Annaliese Michel, CEO of Supermac Holdings Ltd, (Applicant) was in attendance. The Applicant was represented by Aaron Collier of Collier Consultants Ltd., and Neill Raynor of Aurecon Group, who both spoke to Powerpoint Presentation (A), highlighting key points.

##### Scope of Presentation:

- Background / site location & history / existing Commercial zone;
- Proposed Plan Change / Structure Plan;
- Masterplan / Urban Design Concept;
- Boundary treatments.

Ms Michel and Mr Collier responded to questions as follows:

- The comment proposing to relocate the spring had arisen out of a request from Pirirākau, who would like them to divert water from the spring, through to the village green to use as a community water point. This was similar to the water collection point at the top of the Kaimai's. The spring was actually staying where it was.
- The site would be completely redeveloped as a commercial hub, and would, effectively be known as Te Puna Village.
- Everything that was currently on the site would be gone, and it would be developed in its entirety, in order to create something the people of Te Puna would be proud of.
- The Applicant was looking to expand the existing zone. There were some site specific provisions relating to landscaping, but not in terms of an industrial component.

Mr Collier noted the Private Plan Change had been the vision of Rex McIntyre, who was the founder of Supermac Holdings Ltd. Mr McIntyre's contribution was acknowledged, and condolences expressed at his passing.

#### B. Washer Road Business Park - Proposed Private Plan Change (Rural to Industrial)

Vincent Murphy of Momentum Planning & Design was in attendance representing David Marshall (Applicant). Mr Murphy spoke to PowerPoint Presentation (B) highlighting key points.

##### Scope of Presentation:

- Site location, 66 Washer Road, Te Puke;
- Reasons for Plan Change;
- Constraints;
- Structure Plan.

Mr Murphy responded to questions as follows:

- A pedestrian bridge was proposed over Station Road, and a permanent roundabout was proposed at Cameron Road and Jellicoe Street, Te Puke.
- The land to the west dropped away from the road, and the industrial land was higher. Inherent difficulties arose due to the amount of fill required to bring the 'lower lying' part of the land to a flat level.
- Stormwater from the entire site would flow into a purpose-built pre-treatment area with plantings, through the wetlands before it got to the stream. At this stage, the wetlands would be relied upon to treat the water. Structure Plan rules were proposed for certain activities, including stormwater treatment, before reaching the stream system. A resource consent process would allow for conditions of consent.
- The proposed roundabout development, and overbridge, had been agreed through Council's officers, who had advised what needed to be done to achieve this.
- In terms of consideration of a roundabout at the Collins Lane intersection with Te Puke Highway, the Applicant had recently received a comprehensive set of comments from Council's Traffic team. There would be further opportunities for discussion on Plan Change details with Council Officers.

## **PUBLIC FORUM MEETING RECONVENED**

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### **RESOLUTION PP21-6.3**

Moved: Cr D Thwaites

Seconded: Cr A Sole

That the meeting reconvene in formal session at 10.30am.

**CARRIED**

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## **8 PRESENTATIONS**

Nil.

## **9 REPORTS**

### **9.1 NOTIFICATION OF PRIVATE PLAN CHANGES - TE PUNA SPRINGS AND WASHER ROAD BUSINESS PARK**

The Senior Consents Planner requested that the report be taken as read. She noted that the Resource Management Manager had the delegation to approve these Private Plan Changes for public notification, and the report had been provided as information for receipt.

In response to a question, she advised that timing of Council's District Plan Review was further away than the Resource Management Act 1991 statutory time frame required to process the Private Plan Changes.

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**RESOLUTION PP21-6.4**

Moved: Cr D Thwaites

Seconded: Cr M Murray-Benge

That the Senior Consents Planner's report dated 19 October 2021, titled 'Notification of Private Plan Changes – Te Puna Springs and Washer Road Business Park' be received and the information noted.

**CARRIED**

---

**9.2 DRAFT WASTE MANAGEMENT AND MINIMISATION BYLAW**

The Policy Analyst introduced the report, and requested that it be taken as read.

Councillors requested the following draft Bylaw minor amendments prior to public consultation:

- Page 438 – Definition of public places had disappeared; to be included;
- Page 440 – Definition of waste and disposal services; amend first line to read “of waste”, not “or waste”;
- Page 444 – Waste operator licenses issued by Council; amend to “if they do not hold such a licence”.
- Page 445 – A clause repeated the introduction paragraph, and another paragraph had been repeated; capture all in one.

The Policy Analyst thanked Councillors and noted that the above amendments would be actioned prior to public consultation commencing.

Staff responded to questions as follows:

- The rationale behind the proposed reduction in quantum for licensed waste operators from 100 tonnes to 30 tonnes of waste related to the draft waste model bylaw Council had been using, which had come from the Waste Liaison Group. That Group recommended 30 tonnes as the quantum for Council to use, to keep consistency across all Territorial Authorities around the region. This also aligned with Council's approach to reducing unnecessary waste in the District, and holding accountable those involved in the removal and disposal of waste.
  - Establishing a transfer station within the Kaimai area did not directly relate to the purpose of this bylaw review.
  - In relation to battery recycling, this service was currently undertaken by Council, and was not 'cost-neutral'. Customers could bring batteries, (including car batteries), to Council's recycling centres. Council was due to undertake engagement in the lower Kaimai area, to find out where residents would like a recycling service.
  - The issue of Council residents not being able to put compost in their own containers, was not relevant in terms of what the bylaw was trying to enforce, as the compost was not being collected by a Council-operated service, or by a licensed waste operator.
  - To clarify on the burning of rubbish on private properties, staff had updated the draft bylaw to state that the activity had to be in accordance with BOP Regional Council provisions, and Fire and Emergency NZ requirements.
  - Council was aware that more work needed to be done, sub-regionally, to identify appropriate facilities for construction and demolition waste.
-

**RESOLUTION PP21-6.5**

Moved: Cr A Sole

Seconded: Cr A Henry

1. That the Policy Analyst's report dated 19 October 2021, titled 'Draft Waste Management and Minimisation Bylaw', be received.
2. That the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.
3. That pursuant to section 155 of the Local Government Act 2002, the draft bylaw is the most appropriate way of addressing the perceived problems, is the most appropriate form of bylaw, and does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
4. That the proposed draft Waste Management and Minimisation Bylaw, (and associated draft Statement of Proposal and draft Submission Form), is adopted for public consultation in accordance with section 156(1)(b) of the Local Government Act 2002, from 26 October to 26 November 2021.

**CARRIED**

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UNCONFIRMED

### 9.3 ADOPTION OF THE DRAFT LOCAL ALCOHOL POLICY FOR PUBLIC CONSULTATION

The Senior Policy Analyst's report was taken as read.

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#### RESOLUTION PP21-6.6

Moved: Cr M Murray-Benge

Seconded: Deputy Mayor J Scrimgeour

1. That the Senior Policy Analyst's report dated 19 October 2021, titled 'Adoption of the Draft Local Alcohol Policy for Public Consultation', be received.
2. That the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.
3. That the Local Alcohol Policy Review Research Report be received.
4. That, in considering the options set out in Attachment 5 of the agenda report, the Policy Committee approves that the following changes be included in the draft Local Alcohol Policy:
  - a) That the draft Local Alcohol Policy be developed specifically for the Western Bay of Plenty District and not jointly with Tauranga City Council.
  - b) That the draft Local Alcohol Policy introduces a new section to cover club licences, to provide further clarity for the community and applicants.
  - c) That the draft Local Alcohol Policy changes the off licence maximum hours to 7.00am - 9.00pm.
  - d) That the draft Local Alcohol Policy introduces a new clause to prevent the establishment of any further bottle stores in the Te Puke - Maketu Ward.
5. That, in considering the options set out in Attachment 5 of the agenda report, alcohol harm be further considered through other processes, outside of the Local Alcohol Policy.
6. That the draft Local Alcohol Policy, and accompanying Statement of Proposal, and Submission Form, as per attachments 1,2 and 3, be adopted for public consultation between 5 November 2021 and 6 December 2021.
7. That Confidential Attachment 6 of the agenda report, being Police Intelligence Reports and Data, be retained in confidence.

**CARRIED**

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### 9.4 ADOPTION OF THE DRAFT ALCOHOL CONTROL BYLAW FOR PUBLIC CONSULTATION

The Senior Policy Analyst's report was taken as read.

In response to a question, staff advised that the boundaries were currently based on the BOP Regional Council Urban Limits, but could be extended in Council's bylaw if that was the preference of Councillors.

Following discussion, Councillors indicated that they wished the boundaries to be extended in the draft bylaw, as discussed, prior to public consultation. The motion was then put with the addition of No.11.

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**RESOLUTION PP21-6.7**

Moved: Cr M Murray-Benge

Seconded: Cr A Henry

1. That the Senior Policy Analyst's report dated 19 October 2021, titled 'Adoption of the Draft Alcohol Control Bylaw for Public Consultation', be received.
2. That the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.
3. That, in considering the options set out in Attachment 5 of the agenda report, the Committee approves the following change to be included in the draft Alcohol Control Bylaw for consultation:
  - That the Alcohol Control Area currently in place for Te Puke be expanded to cover the entire urban area of Te Puke, as shown on the map on page 15 of Attachment 1 of the agenda report.
4. That, in considering the options set out in Attachment 5 of the agenda report, alcohol harm be further considered through other processes, outside of the Alcohol Control Bylaw.
5. That, pursuant to s147A and s147B of the Local Government Act 2002, Council is satisfied, in relation to the alcohol ban proposed in Te Puke in the draft Alcohol Control Bylaw 2022, that there is evidence that the area to which the bylaw is intended to apply has experienced a high level of crime and disorder, that can be shown to have been caused or been made worse by alcohol consumption in the area.
6. That, pursuant to s147A and s147B of the Local Government Act 2002, Council is satisfied, in relation to the alcohol bans proposed in Katikati and Waihi Beach in the draft Alcohol Control Bylaw 2022, that a high level of crime and disorder (caused or made worse by alcohol consumption in the area concerned) is likely to arise in the area to which the bylaw is intended to apply, if the bylaw is not made.
7. That, pursuant to s147A and s147B of the Local Government Act 2002, Council is satisfied that the draft Alcohol Bylaw 2022 can be justified as a reasonable limitation on people's rights and freedoms, and that the draft bylaw is appropriate and proportionate in light of the crime and disorder.
8. That, pursuant to s155 of the Local Government Act 2002, Council confirms that a bylaw is the most appropriate way of addressing the perceived problems, the draft bylaw is the most appropriate form of bylaw, and that the draft bylaw does not give rise to any implications under the New Zealand Bill of Rights 1990.
9. That the draft Alcohol Control Bylaw and accompanying Statement of Proposal and submission form, as per attachments 1, 2 and 3 of the agenda report, be adopted for public consultation between 5 November 2021 and 6 December 2021.
10. That Confidential Attachment 6 of the agenda report, being Police Intelligence Reports and Data, be retained in confidence.
11. That the proposed boundaries be extended for the Alcohol Control Area in Te Puke, to cover the Te Ara Kahikatea Pathway, Dudley Vercoe Drive (including the Te Puke Cemetery), and the Ronald Lane/Collins Lane area.

**CARRIED**

## 9.5 WESTERN BAY OF PLENTY DISTRICT COUNCIL SUBMISSION - CHANGES TO MĀORI WARD AND CONSTITUENCY PROCESSES

The Policy Analyst's report was taken as read.

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### RESOLUTION PP21-6.8

Moved: Cr M Grainger

Seconded: Cr M Dean

1. That the Policy Analyst's report dated 19 October 2021, titled 'Western Bay of Plenty District Council Submission – Changes to Māori Ward and Constituency Processes' be received.
2. That the following submission, shown as Attachment 1 of the agenda report, is received by the Policy Committee and the information noted:
  - Western Bay of Plenty District Council submission to Changes to Māori Ward and Constituency Processes – Department of Internal Affairs, dated 26 August 2021.

**CARRIED**

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## 10 INFORMATION FOR RECEIPT

Nil.

The meeting was declared closed at 10.55am.

Confirmed as a true and correct record at the Council meeting held 4 November 2021.

**8.8 MINUTES OF THE EXTRAORDINARY COUNCIL MEETING HELD ON 19 OCTOBER 2021**

**File Number:** A4379175

**Author:** Carolyn Irvin, Senior Governance Advisor

**Authoriser:** Barbara Whitton, Customer Services and Governance Manager

**RECOMMENDATION**

That the Minutes of the Extraordinary Council Meeting held on 19 October 2021 be confirmed as a true and correct record and the recommendations therein be adopted.

**ATTACHMENTS**

- 1. Minutes of the Extraordinary Council Meeting held on 19 October 2021**

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL  
EXTRAORDINARY COUNCIL MEETING NO. C21-12  
HELD AT THE COUNCIL CHAMBERS, BARKES CORNER, TAURANGA  
AND VIA ZOOM (AUDIO / VISUAL LINK) UNDER COVID-19 LEVEL 2  
AND LIVESTREAMED ON TUESDAY, 19 OCTOBER 2021 AT 9.30AM**

## 1 PRESENT

Mayor G Webber, Deputy Mayor J Scrimgeour, Cr G Dally, Cr M Dean, Cr J Denyer, Cr M Grainger, Cr A Henry, Cr M Murray-Benge, Cr A Sole and Cr D Thwaites

### VIA ZOOM

Cr M Gray

## 2 IN ATTENDANCE

J Holyoake (Chief Executive Officer), G Allis (Deputy CEO/Group Manager Infrastructure Services), R Davie (Group Manager Policy Planning and Regulatory Services), J Pedersen (Group Manager People and Customer Services), K Perumal (Group Manager Finance and Technology Services), D Jensen (Finance Manager), O McVicker (Manager Corporate Services and Business Improvement), S Bedford (Financial Controller), H Wi Repa (Governance Technical Support), J Osborne (Governance Support Administration), B Clarke (Senior Governance Advisor) and C Irvin (Senior Governance Advisor).

### VIA ZOOM

A Carey (Financial Business Advisor)

## OTHERS IN ATTENDANCE

### Media

K Gillespie

### Audit New Zealand

C Susan (Director)

W Goslett (Audit Manager)

## 3 APOLOGIES

### APOLOGY

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### RESOLUTION C21-12.1

Moved: Cr A Henry

Seconded: Cr M Grainger

That the apology for absence from Cr Marsh be accepted.

**CARRIED**

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## 4 CONSIDERATION OF LATE ITEMS

Nil

## 5 DECLARATIONS OF INTEREST

Nil

## 6 PUBLIC EXCLUDED ITEMS

Nil

## 7 PUBLIC FORUM

Nil

## 8 REPORTS

### 8.1 DRAFT FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2021, FUNDING TRANSFER IN RESERVE ACCOUNTS AND ADOPTION OF THE DRAFT ANNUAL REPORT AND SUMMARY ANNUAL REPORT 2020-2021

The Committee considered a report from the Finance Manager who spoke to the report noting the following:

- Council was statutorily required to prepare, and adopt by resolution, an Annual Report and Summary Annual Report, within six months of the end of the financial year to which it relates. This was the completion of the Annual Report process.

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### RESOLUTION C21-12.2

Moved: Mayor G Webber

Seconded: Cr A Henry

1. That the Finance Manager's report dated 19 October 2021 titled 'Draft Financial Statements for the Year Ending 30 June 2021, Funding Transfer in Reserve Accounts and Adoption of the Draft Annual Report and Summary Annual Report 2020-2021' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.

**CARRIED**

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Clarence Susan spoke to the report noting the following:

- It was good to have the process completed. An unmodified opinion was given. Mr Susan acknowledged his work with Council over the last six years and expressed his appreciation of the good working relationship. It was the sixth audit opinion he had issued for Council. He would now be rotated off, and a new auditor would be appointed from next year.

Warren Goslett spoke to the report noting the following:

- Mr Goslett extended his thanks to the Group Manager Finance and Technology Services and his team for the great collaborative work in getting the Annual Report completed. This was the first year 'Audit Dashboard' was used. This was a very helpful tool that allowed Audit New Zealand to work very closely with Council staff in a protected environment. It was particularly helpful during the short Covid-19 Lockdown phase of the process.

- 
- Mayor Webber expressed his gratitude to Clarence Susan for his work with Council over the last six years, acknowledging the very good working relationship. He also thanked the Group Manager Finance and Technology Services, the Finance Manager and the Financial Controller for all their hard work.
- 

### RESOLUTION C21-12.3

Moved: Mayor G Webber

Seconded: Deputy Mayor J Scrimgeour

3. That the Annual Report and the Summary Annual Report for the year ended 30 June 2021 be received and approved by Council.

AND

Following receipt of the Audit Opinion from the Audit New Zealand representative in attendance:

4. That the Audit Opinion from Audit New Zealand for Western Bay of Plenty District Council's financial statements and performance information for the year ended 30 June 2021 be received.
5. That pursuant to Section 98 and 99 of the Local Government Act 2002, the Western Bay of Plenty District Council's audited Annual Report and Summary Annual Report for the year ended 30 June 2021 be adopted.
6. That the Chief Executive Officer be delegated authority to make such minor editorial changes to the Annual Report and Summary Annual Report for Year Ending 30 June 2021 as may be required prior to printing.

**CARRIED**

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**The Meeting closed at 9:43am.**

**The minutes of this meeting were confirmed at the Council meeting held on 4 November 2021.**

.....  
Mayor G Webber  
**CHAIRPERSON / MAYOR**

## 9 REPORTS

### 9.1 RECOMMENDATORY REPORT FROM PERFORMANCE AND MONITORING COMMITTEE - ESTABLISHMENT OF CCTV WORKING PARTY AND DELEGATIONS

**File Number:** A4370764

**Author:** Carolyn Irvin, Senior Governance Advisor

**Authoriser:** Gary Allis, Deputy Chief Executive & Group Manager Infrastructure Services

#### EXECUTIVE SUMMARY

Following receipt of the report 'Recommendatory Report from Performance and Monitoring Committee - Establishment of CCTV Working Party and Delegations' from the Strategic Property Manager at the Performance and Monitoring Committee meeting, held on 31 August 2021, the Committee resolved to recommend to Council to establish a Closed Circuit Television Camera (CCTV) Working Party to review CCTV applications in terms of the CCTV Management Plan criteria and allocate annual funding.

#### RECOMMENDATION

That Council:

1. Establish a CCTV Working Party comprising:

- Katikati – Waihi Beach Ward 1 Councillor
- Kaimai Ward 1 Councillor
- Maketu – Te Puke Ward 1 Councillor
- Strategic Property Manager 1 Staff Member
- New Zealand Police 1 Representative

2. Delegate Authority to the CCTV Working Party to:

- Advertise for applications to install CCTV cameras
- To evaluate the applications against the CCTV Management Plan Criteria
- To allocate the annual funding.

AND

3. Appoint the following Councillors to the CCTV Working Party:

- Katikati – Waihi Beach Ward Cr Sole
- Kaimai Ward Cr Murray-Benge
- Maketu – Te Puke Ward Cr Gray

**RECOMMENDATION FROM THE PERFORMANCE AND MONITORING COMMITTEE HELD  
31 AUGUST 2021****9.3 ESTABLISHMENT OF CCTV WORKING PARTY AND DELEGATIONS**

The Committee considered a report dated 31 August 2021 from the Strategic Property Manager. The report was taken as read.

Staff responded to questions as follows:

- Cr Thwaites nominated the following Councillors for the working parties: Cr Sole for Katikati – Waihi Beach, Cr Murray-Benge for Kaimai and Cr Gray for Maketu-Te Puke. This was agreed.
- Anyone not successful in receiving annual funding would be notified. The Community Boards could consider requests or determine CCTV requirements; however they could only recommend the expenditure of Community Board funds to Council.
- It was confirmed that the Working Party had the delegated authority to make decisions on funding allocations. Councillors on the Working Party represented the community in their decision making.

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**RESOLUTION PM21-6.1**

Moved: Deputy Mayor J Scrimgeour

Seconded: Cr M Dean

1. That the Strategic Property Manager's report dated 31 August 2021 titled 'Establishment of CCTV Working Party and Delegations' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That it be recommended to Council:
  - a) That a CCTV Working Party be established comprising:
    - Katikati – Waihi Beach Ward 1 Councillor
    - Kaimai Ward 1 Councillor
    - Maketu – Te Puke Ward 1 Councillor
    - Strategic Property Manager 1 Staff Member
    - New Zealand Police 1 Representative
  - b) That the CCTV Working Party be Delegated Authority to:
    - Advertise for applications to install CCTV cameras
    - To evaluate the applications against the CCTV Management Plan Criteria
    - To allocate the annual funding.

And

- c) That the following Councillors be appointed to the CCTV Working Party:
  - Katikati – Waihi Beach Ward Cr Sole
  - Kaimai Ward Cr Murray-Benge
  - Maketu – Te Puke Ward Cr Gray

**CARRIED**

## BACKGROUND

Council has approved funding and a Management Plan for CCTV within the District.

The proposal is to establish a CCTV Working Party, with decision-making responsibility for approval of funding and location for CCTV. The alternative is for the decision to be made by either the Performance & Monitoring Committee or Council, based on a Working Party recommendation.

The proposal for the CCTV Working Party to make the allocation decisions is consistent with the process established for the Community Matching Fund Working Party.

Council has to approve the purchase of CCTV by Community Boards, when they fund the purchase costs and ongoing operational costs from their budget allocations.

It is therefore proposed that a Working Party, comprising of a Councillor from each Ward, the Strategic Property Manager and a member of New Zealand Police, be established, with final decision making delegated to the Working Party as they relate to funding and location of the CCTV's.

The implementation of the decisions will be managed by staff.

## STAFF COMMENTS

Staff support the recommendations in accordance with the report titled 'Recommendatory Report from Performance and Monitoring Committee - Establishment of CCTV Working Party and Delegations, as considered by the Performance and Monitoring Committee on 31 August 2021.

## 9.2 NEW ZEALAND LOCAL GOVERNMENT FUNDING AGENCY ANNUAL GENERAL MEETING - 23 NOVEMBER 2021

**File Number:** A4356259

**Author:** David Jensen, Finance Manager

**Authoriser:** Kumaren Perumal, Group Manager Finance and Technology Services

### EXECUTIVE SUMMARY

1. The purpose of this report is to establish Council's position on the matters being put forward for consideration at the Local Government Funding Agency (LGFA) Annual Meeting (AM) on 23 November 2021.

### RECOMMENDATIONS

1. That the Finance Manager's report dated 4 November 2021 titled 'New Zealand Local Government Funding Agency Annual General Meeting – 23 November 2021' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That Council note the Local Government Funding Agency has advised that its Annual Meeting will be held on 23 November 2021 in Wellington.
4. That Council appoints the Group Manager Finance and Technology Services to attend the Annual Meeting as the shareholder representative for Western Bay of Plenty District Council.
5. That should the Group Manager Finance and Technology Services be unable to attend the meeting, Council appoints Craig Stobo, Local Government Funding Agency Chair, as Council's proxy in his place.
6. That Council agrees that the proxy or alternate votes in favour of the following proposals which require ordinary shareholder resolutions:
  - a. Craig Stobo is re-elected to the Local Government Funding Agency's Board as an independent director.
  - b. Alan Adcock is elected to the Local Government Funding Agency's Board as a non-independent Director'.
  - c. Christchurch City Council is re-elected to the Shareholder's Council.
  - d. New Plymouth District Council is elected to the Shareholders' Council.
  - e. Changes to the Local Government Funding Agency Foundation Policies.
  - f. Changes to the Local Government Funding Agency Shareholders' Agreement
  - g. Changes to Director remuneration.

### BACKGROUND

2. The LGFA is a Council-controlled organisation (CCO), owned 11.1% by the Government and 88.9% by 30 local authorities. Western Bay of Plenty District Council has an ownership stake of 8.3%.
3. The LGFA was established to provide councils with improved access to cost-effective long-term debt. It is a registered financial institution, regulated by the Reserve Bank. Total loans made to local government are approximately \$12 billion. Together, Auckland Council and Christchurch City Council have approximately 44% of the LGFA's issued debt, with the remainder shared between the other councils.

**LGFA Board Composition**

4. The LGFA's Shareholder's Agreement (SHA) currently provides that the Board may comprise between four and seven directors, a majority of whom must be independent. Since inception in 2011, the board has had six directors, one of which was non-independent (aside from one very short period due to a time lag between the retirement of a director and the appointment of a replacement). The SHA currently provides that in each year, the longest serving independent director, and the longest serving non-independent director must retire from the board but may offer themselves for re-election.
5. Current board members are:
  - Craig Stobo (Chair) who was initially appointed in 2011 and was re-appointed in 2017.
  - Philip Cory-Wright who was initially appointed in 2011 and re-appointed in 2016.
  - Anthony Quirk who was appointed 2017.
  - John Avery who was initially appointed in 2011 and re-appointed in 2018.
  - Linda Robertson who was initially appointed 2015 and re-appointed in 2019.
  - Mike Timmer (initially appointed in 2015 and re-appointed each subsequent year as the only Non-Independent Director).
6. This year Craig Stobo, as one of the last appointed Independent Directors, retires by rotation and has offered himself for re-election.
7. Mike Timmer, the sole Non-Independent Director, has retired from his role at Greater Wellington Regional Council. He also retires from the LGFA Board by rotation but does not seek re-election.
8. Alan Adcock represented Whangarei District Council during the original formation of LGFA and has been a member of the Shareholders' Council since inception in 2011. In 2014 he was elected as the SC Chair and has been re-elected unopposed each year since. He is the only nominee for the vacant Non-Independent Director role.

**LGFA Shareholders' Council Composition**

9. Shareholder oversight is provided through a Shareholders' Council. The members are Auckland Council, Christchurch City Council, Hamilton City Council, Bay of Plenty Regional Council, Greater Wellington Regional Council, Tasman District Council, Tauranga City Council, Wellington City Council, Western Bay of Plenty District Council and Whangarei District Council as well as the NZ Government (with oversight through the Ministers of Local Government and Finance).

This year Christchurch City Council retires from the Shareholders Council (SC) by rotation and is seeking re-election.

Whangarei District Council is also retiring by rotation but is not seeking re-election as it wishes to have representation on the Board.

The only new nomination for the SC is from New Plymouth District Council.

**Discussion**

10. Shareholders are entitled to attend and vote at the Annual Meeting with a proxy form for voting to be sent to LGFA at least 48 hours prior to the Annual Meeting.

The following matters are being considered at the Annual Meeting:

- To receive and consider the financial statements for the year ended 30 June 2021.
- Election of Independent Director.
- Election of Non-Independent Director.

- Election of Nominating Local Authorities to Shareholders' Council.
- Changes to LGFA's Foundation Documents.
- Changes to the Shareholders' Agreement.
- Changes to Director remuneration.

11. **Attachment 1** is the Local Government Agency Limited 'Notice of Annual Meeting', which includes Explanatory Notes. The associated 'Proxy Form' is at **Attachment 2**, with the marked-up changes to the Foundation Policies at **Attachment 3** and Shareholders' Agreement at Attachment 4.

The SHA provides that the role of the SC is to advise shareholders on certain matters, and that it shall:

- Review and report to shareholders periodically on the performance of the company and the Board;
- Make recommendations on the appointment, removal, re-election, replacement and remuneration of directors; and
- Make recommendations to shareholders on, and endeavour to ensure that shareholders are fully informed on matters concerning the company.

12. The Shareholders' Council has considered the matters listed above and has written to Shareholders (**Attachment 5**). It should be noted that previously this letter would come from Alan Adcock, the current Chair of the Shareholders' Council. However, he is conflicted due to his nomination as a Non-Independent Director. It is recommended that Council follows the recommendations of the Shareholders Council on all matters.

## ENGAGEMENT, CONSULTATION AND COMMUNICATION

Interested/Affected Parties	Planned Communication	
LGFA	The Directors to be notified via the appropriate Board Chair.	Planned
Internal Staff	Relevant staff will be notified accordingly.	

## FUNDING/BUDGET IMPLICATIONS

Budget Funding Information	Relevant Detail
	There is no budgetary or funding impact associated with the recommendations in this report.

## ATTACHMENTS

1. Notice of LGFA AGM 23 November 2021 [↓](#) 
2. Proxy Form [↓](#) 
3. LGFA Foundation Policies - Proposed Changes (Markup) [↓](#) 
4. LGFA Shareholders' Agreement Proposed Changes (Markup) [↓](#) 



## NEW ZEALAND LOCAL GOVERNMENT FUNDING AGENCY LIMITED NOTICE OF ANNUAL MEETING

Notice is given that the 2021 annual meeting of shareholders of New Zealand Local Government Funding Agency Limited ("**Company**" or "**LGFA**") will be held at the **Bolton Hotel, 12 Bolton Street, Wellington** on **23 November 2021** commencing at **2:00pm**. If measures remain in place to restrict the spread of COVID-19 that results in some shareholders being unable to attend in person, the Board reserves the right to hold the meeting as a virtual meeting and will provide participation details in advance.

### BUSINESS

1. **FINANCIAL STATEMENTS AND REPORTS:** To receive and consider the financial statements of the Company for the year ended 30 June 2021 together with the directors' and auditor's reports to shareholders.

2. **ELECTION OF COMPANY DIRECTORS**

In accordance with clause 3.3 of the Shareholders Agreement ("**SHA**"), **Craig Stobo** retires by rotation and being eligible, offers himself for re-election as an Independent Director.

In accordance with clause 3.5 of the SHA, **Alan Adcock** has been nominated by **Whangarei District Council** to the non-Independent director position made available by the retirement of Mike Timmer.

Accordingly, to:

- (a) Re-elect Craig Stobo as an Independent Director of the Company, by way of Ordinary Resolution;
- (b) Elect Alan Adcock as a non-Independent Director of the Company, by the way of Ordinary Resolution.

(See Explanatory Note 2)

3. **ELECTION OF NOMINATING LOCAL AUTHORITIES**

In accordance with clause 4.6 of the SHA, **Christchurch City Council** and **Whangarei District Council** retire by rotation. **Christchurch City Council** being eligible, offer themselves for re-election.

In accordance with clause 4.8 of the SHA, **New Plymouth District Council** has notified LGFA that it wishes to seek election as a Nominating Local Authority to the Shareholders' Council.

Accordingly, to re-elect or elect (as appropriate) as a Nominating Local Authority, by way of Ordinary Resolution:

- (a) **Christchurch City Council** as a Nominating Local Authority;
- (b) **New Plymouth District Council** as a Nominating Local Authority.

(See Explanatory Note 3)

4. **CHANGES TO FOUNDATION POLICIES**

In accordance with clause 5.1(c) of the SHA, to approve, by way of Ordinary Resolution, the amendments to the foundation policies of the Company ("**Foundation Policies**") as explained in Explanatory Note 4.

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**5. CHANGES TO SHAREHOLDERS AGREEMENT**

In accordance with clause 5.1(b) of the SHA, to approve, by way of Ordinary Resolution, the amendments to clauses 3.1, 3.3 and 3.4 of the SHA of the Company as explained in Explanatory Note 5.

**6. DIRECTOR REMUNERATION**

In accordance with clause 3.6 of the SHA, to approve, by way of Ordinary Resolution, an increase in the Directors' fees payable to:

- (a) With effect from 1 July 2021, the Director acting as chair of the Board, an increase of \$6,000 per annum, from \$102,000 per annum to \$108,000 per annum.
- (b) With effect from 1 July 2021, each of the other Directors acting as members of the audit and risk committee, an increase of \$4,000 per annum, from \$59,000 per annum to \$63,000 per annum.
- (c) With effect from 1 July 2021, the Director acting as chair of the audit and risk committee, an increase of \$4,000 per annum, from \$63,000 per annum to \$67,000 per annum.
- (d) With effect from 1 July 2021, each of the other Directors, an increase of \$3,000 per annum, from \$57,000 per annum to \$60,000 per annum.

(See Explanatory Note 6)

**7. QUESTIONS AND COMMENTS FROM SHAREHOLDERS**

Opportunity for shareholders to comment or question directors, Shareholder Council or management.

**8. GENERAL BUSINESS**

To consider such other business as may properly be raised at the meeting.

Please refer to the explanatory notes that accompany this notice of meeting.

By order of the board:



**Craig Stobo, LGFA Board Chair**  
30 September 2021

**ORDINARY RESOLUTIONS:** *Ordinary resolutions are resolutions approved by a simple majority of more than 50% of the votes of the shareholders entitled to vote and voting at the annual meeting.*

**SHAREHOLDERS ENTITLED TO ATTEND AND VOTE:** *Pursuant to section 125 of the Companies Act 1993, for the purposes of voting at the annual meeting, those registered shareholders of the Company as at 9.00am on Tuesday 23 November 2021 shall be entitled to exercise the right to vote at the meeting.*

**CAPITALISED TERMS:** *Unless otherwise defined in this notice, capitalised terms have the meanings given to them in the Shareholders' Agreement dated 7 December 2011 (as amended and restated on 6 July 2020) ("SHA").*

**EXPLANATORY NOTES****EXPLANATORY NOTE 1 - PROXY VOTE**

A shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the shareholder. The proxy need not be a shareholder. To be effective, a copy of the proxy form must be received by the Company at **Level 8, City Chambers, 142 Featherston Street, Wellington 6145** or **via email to [jane.phelan@lgfa.co.nz](mailto:jane.phelan@lgfa.co.nz)**, not later than 48 hours before the start of the meeting.

A corporation may appoint a person to attend the meeting as its representative in the same manner as that in which it could appoint a proxy.

**EXPLANATORY NOTE 2 - ELECTION OF DIRECTORS**

Clause 3.3 of the SHA provides that, beginning at, and including, the annual meeting for 2013, two Directors comprising one Director who is an Independent Director and one Director who is not an Independent Director shall retire from office at the annual meeting of the Company in each year. The Directors to retire shall be that Independent Director, and that Director who is not an Independent Director, who have been longest in office since their last election. If two or more relevant Directors were last elected on the same day, the Directors to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Director is eligible for re-election.

In this case, **Craig Stobo** (being an Independent Director) who has been longest Independent Director in office since being elected on 21 November 2017 (Craig Stobo having been re-elected on 21 November 2017, Anthony Quirk having been elected on 21 November 2017, John Avery having been re-elected on 21 November 2018, Linda Robertson having been re-elected on 21 November 2019 and Philip Cory-Wright having been re-elected on 19 November 2020) shall retire by rotation at this annual meeting. **Craig Stobo**, being eligible, offers himself for re-election.

**Michael Timmer**, being the only non-Independent Director, retires by rotation at this annual meeting and does not seek re-election.

**Alan Adcock** the current General Manager Corporate Services of Whangarei District Council has been nominated by Whangarei District Council for the vacant non-Independent Director position.

In accordance with the Ordinary Resolution passed by shareholders at the annual meeting for 2017, the size of the Board is set at six Directors, comprising five Independent Directors and one non-Independent Director.

**The following biographies have been provided by the candidates:**

**Craig Stobo Biography**

Craig's biography is attached at Appendix One to this Notice of Meeting.

**Alan Adcock Biography**

The letter of nomination from Whangarei District Council and Alan's biography are attached at Appendix One to this Notice of Meeting.

**EXPLANATORY NOTE 3 - ELECTION OF NOMINATING LOCAL AUTHORITIES**

Clause 4.3 of the SHA provides that a Principal Shareholder may be appointed or removed as a nominator to the Shareholders' Council ("**Nominating Local Authority**") at any time by an Ordinary Resolution, provided that no more than nine Nominating Local Authorities may be so appointed. Each Nominating Local Authority, and the New Zealand Government (for so long as it is a shareholder), may appoint one member of the Shareholders' Council, and remove and replace any member so appointed, in accordance with clause 4.4 of the SHA.

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Clause 4.6 of the SHA provides that, beginning at, and including, the annual meeting for 2013, the shareholders shall ensure that two Nominating Local Authorities retire from office at the annual meeting of the Company in each year. The Nominating Local Authorities to retire shall be those who have been longest in office since their last election, and if two or more of those Nominating Local Authorities were last elected on the same day, the Nominating Local Authority to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Nominating Local Authority is eligible for re-election.

In this case, Christchurch City Council having been elected as a Nominating Local Authority on 24 November 2016 and Whangarei District Council having been re-elected as a Nominating Local Authority on 21 November 2017, are the Nominating Local Authorities who have been longest in office since their last election (Bay of Plenty Regional Council having been re-elected as a Nominating Local Authority on 21 November 2017, Hamilton City Council having been re-elected as a Nominating Local Authority on 21 November 2018, Tauranga City Council having been re-elected as a Nominating Local Authority on 21 November 2018, Western Bay of Plenty District Council having been re-elected on 21 November 2019, Auckland Council having been re-elected on 21 November 2019, Tasman District Council having been re-elected on 19 November 2020 and Wellington City Council having been re-elected on 19 November 2020). Accordingly, being the longest in office since their last election, **Christchurch City Council** and **Whangarei District Council** shall retire by rotation at this annual meeting.

The Shareholders' Council is comprised of between five and ten members. The New Zealand Government can appoint a member and the remaining members are nominated by up to nine Nominating Local Authorities. Following the retirement of **Christchurch City Council** and **Whangarei District Council** there are currently two positions available.

**Christchurch City Council** offer themselves for re-election as a Nominating Local Authority. A letter supporting the nomination is attached at Appendix Two to this Notice of Meeting.

**New Plymouth District Council** offer themselves for election as a Nominating Local Authority. A letter supporting the nomination is attached at Appendix Two to this Notice of Meeting.

#### **EXPLANATORY NOTE 4 – CHANGES TO FOUNDATION POLICIES**

This resolution seeks shareholders' approval for amendments to the foundation policies of the Company ("**Foundation Policies**").

The Foundation Policies of the Company are set out in Schedule 1 to the SHA. Clause 5.1(c) of the SHA provides that neither the Board nor any shareholder shall take or permit any action to cause any alteration to any of the Foundation Policies unless it is approved by Ordinary Resolution of the Company's shareholders (or, if required by law, a Special Resolution). The Company has confirmed that none of the changes to the Foundation Policies are required to be approved by Special Resolution.

The Foundation Policies were created when the company was established in 2011 and have been subsequently revised at various meetings of shareholders. The Foundation Policies form part (but not all) of the LGFA Treasury Policy that is the responsibility of the Board. The Treasury Policy is reviewed annually and there have been several revisions made to reflect the changing nature of the business.

Given that in recent years, shareholders were being asked to approve changes to the Foundation Policies each year, the Shareholder Council requested the company review the Foundation Policies and their interaction with the Treasury Policy. The Board had also wanted to undertake an external independent review of the Treasury Policy to ensure best practice was still being followed since the Treasury Policy was first created in 2011.

An independent review of the Treasury Policy and Foundation Policies was undertaken by Deloitte in mid-2021.

The Deloitte Review noted that there were seventy-six controls in the Foundation Policies and one hundred controls in the Treasury Policy regarding treasury risks. There was a need to avoid duplication and to ensure better alignment of controls with reporting and oversight. Controls needed to be in the right areas where they are best monitored and reported on.

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The duplication across the two policies was highlighted with seventy-three controls and limits common to both Foundation Policies and the Treasury Policy.

The recommendations from the Deloitte Review were to:

1. Refine the Foundation Policy to focus on the controls relating to lending to councils and CCOs including financial covenant compliance. All other controls should be consolidated into the Treasury Policy.
2. Rewrite the Treasury Policy to ensure it is fit for purpose and aligned to contemporary good practice.

The Treasury Policy has been rewritten and approved by the Board subject to shareholders approving the changes to the Foundation Policies.

A tracked change and clean versions of the proposed amendments to the Foundation Policies is attached at Appendix Three to this Notice of Meeting.

#### **EXPLANATORY NOTE 5 – CHANGES TO SHAREHOLDERS AGREEMENT**

This resolution seeks shareholders' approval for changes to the SHA to have the minimum number of Independent Directors set at five (and consequently, to increase the minimum number of directors to five) and to amend the term of appointment for directors.

Clause 5.1(b) of the SHA provides that neither the Board nor any shareholder shall take or permit any action to cause any alteration or amendment to the SHA, unless it is approved by an Ordinary Resolution of the Company's shareholders.

Currently, under clause 3.1 of the SHA, the number of Independent Directors cannot be less than a majority of the total number of Directors and the total number of Directors must be between four and seven.

At the annual meeting held on 21 November 2017, shareholders approved a resolution to set the Board composition as five Independent Directors and one non-Independent Director.

There are currently five Independent Directors and one non-Independent Director on the Board. Mike Timmer, the non-Independent Director, has announced his retirement and three out of the current five Independent Directors have been on the Board since the Company's establishment in 2011.

#### Setting the number of Independent Directors at five:

Following a Board review, the Shareholders' Council has requested the Board size be increased by one to seven and that the minimum number of Independent Directors be set at five. This will facilitate better Board succession planning and rotation of directors as well as reflecting the expected additional workload to be faced by the Company in responding to the likely impact from the proposed Three Waters Reform Programme.

An amendment to the SHA is required to set the number of Independent Directors to five (rather than a majority). This requires also amending the SHA such that the minimum number of all Directors will be five.

#### Fixed Term of Appointment

There is no fixed term of appointment for directors in the SHA. Instead, clause 3.3 of the SHA provides that at each annual meeting, the longest serving Independent Director, and the longest serving non-Independent Director (based on the time since their last election date) must retire.

The current approach to director rotation is:

1. Not best practice from a governance process perspective, as fixed terms for directors are preferred to provide certainty to the Company, its shareholders and the Board. This also provides for better succession planning and rotation e.g. currently, Directors do not know when they are due to retire

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and possibly seek re-election. The term of an existing director will vary and depend upon when new Directors have been appointed and when other Directors have retired since that existing Director's last election date.

2. Problematic if there is only one non-Independent Director, as they are then required to retire and stand for re-election each year. This is both disrupting to the Company but can also lead to the non-Independent Director(s) being treated differently than the Independent Directors on the Board.

Having a three-year fixed term of appointment that applies to any new Director election (or existing Director re-election) provides greater certainty and continuity for the Company.

There is not intended to be a prescribed number of terms that a Director can serve as that is a decision for shareholders on a case-by-case basis.

It is proposed that the existing clauses 3.1, 3.3 and 3.4 in the SHA are changed to:

- 3.1 **Number of Directors:** The Principal Shareholders shall ensure that:
  - (a) the number of Directors shall not at any time be more than seven nor less than five; and
  - (b) no less than five Directors shall be Independent Directors.
  
- 3.3 **Rotation of Directors:** A Director must not hold office (without re-election) past the third annual meeting of the Company following the Director's appointment or three years, whichever is longer. A retiring Director shall be eligible for re-election.
  
- 3.4 **Re-election of retiring Director:** A Director retiring by rotation in accordance with clause 3.3 at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:
  - (a) some other person is elected to fill the vacated office; or
  - (b) it is resolved not to fill the vacated office; or
  - (c) a resolution for the re-election of that Director is put to the meeting and lost.

A tracked change version of the proposed amendments to the SHA is attached at Appendix Four to this Notice of Meeting.

#### **EXPLANATORY NOTE 6 – DIRECTOR REMUNERATION**

This resolution seeks shareholders' approval for an increase in Directors' remuneration with effect from 1 July 2021. The proposed fee increases for Directors (as set out in the notice of meeting) have been calculated based on a 6.8% increase for Directors who are on the risk and audit committee, a 5.9% increase for the Chair of the Board, a 6.3% increase for the Chair of the Audit and Risk Committee and a 5.3% increase for other Directors for the 2021-2022 year.

The fee increases have been set following an independent external review in August 2021 and director fees were last reviewed and adjusted in 2019.

The Shareholders' Council will provide to shareholders a background document outlining the proposed fee increases.

If this resolution passes, the first payment of Director remuneration following the annual meeting will reflect this increased remuneration rate. Each Director shall receive back pay equal to the difference between their current remuneration rate and their increased rate, for any amounts which were paid to that Director at their current remuneration rate, between 1 July 2021 and the date of the annual meeting.

**APPENDIX ONE: CRAIG STOBO AND ALAN ADCOCK BIOGRAPHIES****CRAIG STOBO - BIOGRAPHY**Education

Craig Stobo was educated in New Zealand at Waitaki Boys High School (Milner Prize); Otago University (BA Hons First Class in Economics); and at Wharton Business School, University of Pennsylvania (Advanced Management Programme).

Corporate Career

He has worked as a diplomat for the NZ and Australian Governments; as an economist for DFC/Zealcorp; as economist and an interest rates products manager for Bankers Trust NZ; and also as CEO and Executive Vice President for BT Funds Management NZ Ltd until 2004 after leading its establishment in 1992.

Public Company Independent Directorships

These currently include chairing the NZX –listed company Precinct Properties New Zealand Ltd (including its corporatisation in 2010 and management internalisation in 2021) the Local Government Funding Agency since its inception in 2011; and AIG Insurance New Zealand Ltd since its licensing in 2012. He has also chaired transport and logistics company Fliway Group Ltd leading up to and during its IPO on the NZX and until its delisting in January 2018.

Private Company Equity Interests and Directorships

These currently include global equity investor Elevation Capital Management; national investment advisory firm Saturn Portfolio Management; fund administrator Appello Services Ltd; oyster farmer and exporter Biomarine Ltd; and specialist Bannockburn grape grower Legend Terrace.

Pro Bono Work

He is an Otago University Business School Taumata, leading the inception of its inaugural Tourism Policy School annual conference in Queenstown in March 2019. and its inaugural Assembly of Investment Chairs in Auckland in November 2019; chairs the Waitaki Boys High School Foundation which manages an endowment fund for the school; and is a committee member of the St Marys Bay Association.

Current Memberships

He is an Associate Member of CFA Society New Zealand; is an active member of the NZ Initiative; and is a Chartered Fellow of the NZ Institute of Directors.

**ALAN ADCOCK - BIOGRAPHY**

My working career has revolved around four broad areas (accounting, financial services, IT and local government) in both private and public sectors.

After a post-graduate spell in a Big 5 accounting firm, I joined the fledgling IT sector as personal computers gained a footing in the market. Following this I moved to National Mutual, with my last role being Chief Manager Auckland before their merger with AXA. At this point I moved to the UK, with most of my time there spent with Credit Suisse First Boston providing accounting advice to their global IT divisions.

Returning to NZ in 2000, I joined BNZ, with my last role there heading the Corporate Management function, where my primary responsibilities were liaison with the BNZ Board, management of the MD's office and corporate affairs.

My last move was back to my hometown in 2006, when I joined Whangarei District Council. Virtually all of my time there has seen me leading the corporate functions; with core responsibilities including the roles of CFO and CIO.

My tertiary education provided a solid base for my career; with my first degree, a BCom from Auckland University having an emphasis on accounting, management studies and commercial law. While in the UK I completed an MBA (with Distinction) from the City University of London Business School.

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I offer a broad range of skills and experience that are relevant to a governance role with LGFA:

- My involvement with LGFA began in its initial planning stage, as a representative of the 'tight nine' councils that worked together to turn the concept into reality.
- I was an inaugural member of the Shareholders' Council.
- In 2014 I was elected to the Chair's role; being re-elected unopposed each year.
- Specific governance experience including:
  - Board liaison at BNZ
  - Trustee for two Northland Cricket Trusts – Facilities and Player Development
  - Director of Northland Waste – a profitable Public/Private partnership operating the largest landfill in Northland and a major transfer station/recycling facility
  - Seven years working closely with the LGFA Board in my current role
- Recognised expertise in managing complex IT issues, being ranked #30 in the NZ CIO Awards in 2018 for my work leading the first NZ local government transition to a full cloud environment in 2017. Managing IT risks, particularly cyber-security, is an important part of my role.
- Implementing a financial strategy that has seen WDC move from an initial AA- credit rating to AA+ over 3 LTP cycles.
- Strong networks across the local government sector.
- Executive roles in large financial institutions, including membership of committees managing risk, credit and pricing.

Most importantly, I have demonstrated strong support for LGFA since its inception. I have attended every meeting of the Shareholders' Council since LGFA was formed in 2011 and have taken a proactive role to ensure it has met its primary objective to provide cost effective long term financing for all councils without compromising the interests of its guarantors and shareholders.

I would welcome your support to continue to serve our Shareholders through a role on the Board.

**APPENDIX TWO: CHRISTCHURCH CITY COUNCIL AND NEW PLYMOUTH DISTRICT COUNCIL SUPPORTING DOCUMENTS****Statement from Christchurch City Council supporting its re-election**

The CCC's re-election request is supported by the following:

*Christchurch City Council recognises the importance of representation on the LGFA Shareholders' Council, and takes a proactive approach to its responsibilities on behalf of all local authority shareholders. Christchurch City Council is seeking re-election to the Council and requests the support from other shareholders. Christchurch City Council is one of 11 city councils in New Zealand, and has an estimated population of 394,700 (2018 Census). It is one of two member councils from the South Island.*

*Along with eight other local authorities, the Christchurch City Council has an 8.3% ownership stake in LGFA and is a guarantor of local authority debt in the event of default. The Christchurch City Council is the second largest local authority borrower from the LGFA, holding debt of around \$1.97 billion (16% of total LGFA lending) acquired initially following the Canterbury earthquakes of 2010/11.*

*If the Christchurch City Council is successful in its request for re-election to the Shareholders' Council, it would be represented by Chief Financial Officer, Leah Scales. Leah commenced with the Christchurch City Council in May 2021 after 5 years as CFO at Christchurch City Holdings Ltd. Whilst in her previous role she gained significant experience in the debt capital markets as an issuer with two bonds listed on the NZX. In addition she has governance experience in a number of sectors, and currently is a director on the Institute of Finance Professionals NZ Inc (INFINZ) Board. With a specific interest in climate change initiatives and sustainable finance the Christchurch City Council believes Leah will be a positive and effective addition to the Shareholders' Council.*



27 September 2021

## **NOMINATION OF LOCAL AUTHORITIES TO THE LGFA SHAREHOLDERS' COUNCIL**

New Plymouth District Council (NPDC) is putting itself forward for nomination to the Local Government Funding Agency (LGFA) Shareholders' Council at the Annual General Meeting on 23 November 2021. NPDC has been an active supporter of the LGFA since inception and was one of the original 18 Council shareholders and guarantors. The Council first borrowed in August 2012 and now has 86 per cent of our borrowing is through LGFA. At 30 June LGFA debt was \$175 million.

What NPDC brings to the Shareholder Council is a good understanding of how the LGFA works and strong collaborative working relationships with other local authorities. NPDC provides a diverse range of functions recognising both city and provincial lifestyle needs. We are a moderate-sized provincial council with a growing community, currently at around 86,000 people. The community is diverse, with a city, a mix of large and small towns, and a sizeable rural population. NPDC is the largest territorial authority in the Taranaki region, both by population and by financial size and has approximately 700 staff. NPDC's Long-Term Plan 2021-2031 is investing in a wide range of initiatives to continue to improve community well-being, including beginning its Climate Action Framework to mitigate and adapt to climate change.

NPDC also manages a large investment fund of \$346 million as of 30 June 2021, and has strong financial governance systems to ensure this fund is soundly invested. This investment fund provides strength to the balance sheet enabling the Council to hold an AA+ long-term rating from S&P Global.

Officers who would represent NPDC on the Shareholder Council are Joy Buckingham, Group Manager Corporate Services and Helen Barnes, Financial Services Manager.

Joy has been in Local Government for 13 years in senior leadership roles. Following the Auckland Council amalgamation she was the Treasury Reporting Manager, then the Chief Financial Officer at Auckland Tourism Events and Economic Development prior to joining NPDC in 2019. She has held a number of governance and committee roles and is comfortable adding value to policies, procedures and working with rating agencies. Joy has been a Certified Treasury Professional with Institute of Finance Professionals New Zealand Incorporated since 2010, a qualified Chartered Accountant for 24 years and has a Certificate in Company Direction by the Institute of Directors.

Helen has been a qualified Chartered Accountant for 25 years with 24 years' experience in the Local Government Sector working for both territorial and regional Councils. Her current role is Financial Services Manager at NPDC. Prior to this she was the General Manager Finance and Corporate Services at Whakatane District Council and Financial Accountant/Accounting Manager at the Bay of Plenty Regional Council. Helen has a broad range of expertise in Local Government Funding and Financing which complement the strong treasury skills that Joy is able to bring to the table.

Liardet Street, Private Bag 2025, New Plymouth 4340, New Zealand  
P 06-759 6060 | F 06-759 6072 | E enquiries@npdc.govt.nz

**APPENDIX THREE: FORM OF AMENDED FOUNDATION POLICIES**

**APPENDIX FOUR: FORM OF AMENDED SHAREHOLDERS AGREEMENT**

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## NEW ZEALAND LOCAL GOVERNMENT FUNDING AGENCY LIMITED

## PROXY FORM



I/We \_\_\_\_\_

of \_\_\_\_\_

being a shareholder of New Zealand Local Government Funding Agency Limited ("**Company**") appoint

\_\_\_\_\_

of \_\_\_\_\_ or failing him/her \_\_\_\_\_

of \_\_\_\_\_ as my/our proxy to vote for me/us at the annual meeting of the Company to be held on 23 November 2021 and at any adjournment thereof.

If you wish to direct the proxy how to vote, please indicate with a  in the appropriate box below. Unless otherwise instructed, the proxy will vote as he or she thinks.

<b>1 (a)</b>	To re-elect <b>Craig Stobo</b> as an Independent Director of the Company	<b>For</b> <input type="checkbox"/>	<b>Against</b> <input type="checkbox"/>
<b>1 (b)</b>	To elect Alan <b>Adcock</b> as a non-Independent Director of the Company	<b>For</b> <input type="checkbox"/>	<b>Against</b> <input type="checkbox"/>
<b>2 (a)</b>	To re-elect <b>Christchurch City Council</b> as a Nominating Local Authority	<b>For</b> <input type="checkbox"/>	<b>Against</b> <input type="checkbox"/>
<b>2 (b)</b>	To elect <b>New Plymouth District Council</b> as a Nominating Local Authority	<b>For</b> <input type="checkbox"/>	<b>Against</b> <input type="checkbox"/>
<b>3.</b>	To approve the changes to the Foundation Policies of the Company	<b>For</b> <input type="checkbox"/>	<b>Against</b> <input type="checkbox"/>
<b>4.</b>	To approve the changes to the Shareholders Agreement	<b>For</b> <input type="checkbox"/>	<b>Against</b> <input type="checkbox"/>

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## 5. To approve the following increases in director fees payable

	<b>For</b>	<b>Against</b>
(a) With effect from 1 July 2021 the director acting as chair of the board of directors of \$6,000 per annum, from \$102,000 per annum to \$108,000 per annum	<input type="checkbox"/>	<input type="checkbox"/>
	<b>For</b>	<b>Against</b>
(b) With effect from 1 July 2021, each of the other directors acting as members of the audit and risk committee, an increase of \$4,000 per annum, from \$59,000 per annum to \$63,000 per annum	<input type="checkbox"/>	<input type="checkbox"/>
	<b>For</b>	<b>Against</b>
(c) With effect from 1 July 2021, the director acting as chair of the audit and risk committee of \$4,000 per annum, from \$63,000 per annum to \$67,000 per annum	<input type="checkbox"/>	<input type="checkbox"/>
	<b>For</b>	<b>Against</b>
(d) With effect from 1 July 2021, each of the other directors an increase of \$3,000 per annum, from \$57,000 per annum to \$60,000 per annum	<input type="checkbox"/>	<input type="checkbox"/>

(Please refer to the notice of meeting for details of the resolutions)

---

**Signature of Shareholder**

**Dated:** 2021

**Notes:**

1. If you wish you may appoint as your proxy the chairperson of the meeting.
2. If you are a body corporate, this proxy form must be signed on behalf of the body corporate by a person acting under the body corporate's express or implied authority.
3. For this proxy form to be valid, you must complete it and produce it to the Company at least 48 hours before the time for holding the meeting. You can produce it to the Company by delivering it to **Level 8, City Chambers, 142 Featherston Street, Wellington 6145** or via email to [jane.phelan@lgfa.co.nz](mailto:jane.phelan@lgfa.co.nz). **It must be received at least 48 hours before the time for holding the meeting.**
4. If this proxy form has been signed under a power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must be produced to the Company with this proxy form.
5. If you return this form without directing the proxy how to vote on any particular resolution, the proxy can vote how he or she thinks fit if authorised by you in this proxy form by ticking the appropriate box. Otherwise, the proxy will be deemed to have abstained from voting on that matter.
6. Capitalised terms in this proxy form have the meanings given to them in the shareholders' agreement dated 7 December 2011 (as amended and restated on 6 July 2020) between the Company and its shareholders.

**Foundation Policies**  
(Clause 5.1 of the Shareholders' Agreement)

~~These~~All foundation policies may only be changed by a resolution of shareholders in accordance with clause 5.1 of the Shareholders' Agreement reviewed annually by Principal Shareholders at the annual meeting of Shareholders. Any alteration requires approval pursuant to clause 5.1.

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**Credit Risk**

**Lending Policy**

All Local Authorities that borrow from the Company will:

- Provide debenture security in relation to their borrowing from the Company and related obligations, and (if relevant), equity commitment liabilities to the Company and (if relevant) guarantee liabilities to a security trustee approved for the Company's creditors.
- Issue securities (bonds / FRNs / CP) to the Company and/or enter into facility arrangements with the Company.
- Comply with their own internal borrowing policies.
- Comply with the financial covenants outlined in the following table, provided that:
  - Unrated Local Authorities or Local Authorities with a long-term credit rating lower than 'A' equivalent can have bespoke financial covenants that exceed the:
    - Lending policy covenants outlined in the following table with the approval of the Board;
    - Foundation policy covenants outlined in the following table with the approval of an Ordinary Resolution.
  - Local Authorities with a long-term credit rating of 'A' equivalent or higher:
    - will not be required to comply with the lending policy covenants in the following table; and
    - can have bespoke financial covenants that exceed the foundation policy covenants outlined in the following table with the approval of an Ordinary Resolution; and in any event, will not be required to comply with the Net Debt / Total Revenue foundation policy covenant outlined in the following table until the financial year ending 30 June 2026. Until that date, such Local Authority must comply with the Net Debt / Total Revenue covenant set out in the table entitled "Alternative Net Debt / Total Revenue Covenant" below.
  - Any Board or Ordinary Resolution approval of bespoke financial covenants will only be provided after a robust credit analysis and any approval must also include bespoke reporting and monitoring arrangements.
- If the principal amount of a Local Authority's borrowings, or the Company's commitment under a facility agreement with a Local Authority, is at any time greater than NZD 20 million, be a party to a deed of guarantee and an equity commitment deed (in each case in a form set by the Company).

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Financial covenant	Lending policy covenants	Foundation policy covenants
Net Debt / Total Revenue	<175%	<280%
Net Interest / Total Revenue	<20%	<20%
Net Interest / Annual Rates Income	<25%	<30%
Liquidity	>110%	>110%

Alternative Net Debt / Total Revenue Covenant	
Financial Year ending	Net Debt / Total Revenue
30 June 2020	<250%
30 June 2021	<300%
30 June 2022	<300%
30 June 2023	<295%
30 June 2024	<290%
30 June 2025	<285%

*Total Revenue is defined as cash earnings from rates, grants and subsidies, user charges, interest, dividends, financial and other revenue and excludes non government capital contributions (e.g. developer contributions and vested assets).*  
*Net debt is defined as total debt less liquid financial assets and investments.*  
*Liquidity is defined as external debt plus committed loan facilities plus liquid investments divided by external debt.*  
*Net Interest is defined as the amount equal to all interest and financing costs less interest income for the relevant period.*  
*Annual Rates Income is defined as the amount equal to the total revenue from any funding mechanism authorised by the Local Government (Rating) Act 2002 together with any revenue received from other local authorities for services provided (and for which the other local authorities rate).*

*Financial covenants are measured on Council only basis and not consolidated group basis, unless requested by a Local Authority and approved by the Board.*

**During the initial three years of operation the Auckland Council will be limited to a maximum of 60% of the Company's total Local Authority (including CCOs (as defined below)) assets. After three years Auckland Council will be limited to a maximum of 40% of the Company's total Local Authority (including CCO) assets.**

Subject to implementation of any amendments or other actions considered necessary, advisable or expedient by the Board and the approval of the Board in relation to the relevant CCO (as defined below) (which may be a [Council-Controlled Trading Organisation council-controlled trading organisation, as defined in the Local Government Act](#)), an approved CCO may borrow from the Company provided that:

- The CCO is a "council-controlled organisation" as defined in section 6 of the Local Government Act 2002, where the CCO is a company in which equity securities carrying at least 51% or more of the voting rights at a meeting of the shareholders of the CCO are held or controlled, directly or indirectly, by one or more Local Authorities (respectively, a "CCO" and each such Local Authority being a "CCO Shareholder");
- Each CCO Shareholder provides a guarantee in respect of the CCO in favour of the Company and/or there is sufficient uncalled capital in respect of the CCO to meet the financial obligations of the CCO;
- Each CCO Shareholder provides equity commitment liabilities to the Company, guarantees liabilities to a security trustee approved for the Company's creditors, and provides debenture

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security for its equity commitments to the Company and guarantee liabilities to the security trustee;

- Each CCO Shareholder complies with Lending policy financial covenants, Foundation policy financial covenants or other financial covenants required by the Board (if any) and, in the case of a CCO Shareholder with a long-term credit rating of 'A' equivalent or higher, until the financial year ending 30 June 2026, the Net Debt / Total Revenue covenant in the table entitled "Alternative Net Debt / Total Revenue Covenant" above.
- The CCO complies with any covenants required by the Board; and
- If required by the Board, the CCO will grant security in favour of the Company (which may be subject to any intercreditor arrangements acceptable to the Board).

Where the Company agrees to provide funding to the CCO, it must within 90 days of receiving annual financial covenant reporting from a CCO Shareholder (in its capacity as a borrower) report to the Shareholders' Council, holders of ordinary shares in the Company and any Local Authority guarantors of the Company's liabilities as to whether that CCO Shareholder has complied with its financial covenants on an individual and consolidated group basis.

Notwithstanding the definition of "CCO" set out above, the Board may not approve a CCO to borrow from the Company unless 100% of the equity securities carrying voting rights at a meeting of shareholders of the CCO are held or controlled, directly or indirectly, by one or more Local Authorities and the Crown (if applicable).

**Cash and Liquid Investment Policy**

The Company will only invest in NZD senior debt securities, money market deposits and registered certificates of deposits within the counterparty limits outlined in the following table.

New Zealand Local Authority and CCO securities are excluded from the Company's cash and liquidity portfolio.

Counterparty <sup>1</sup>	S & P Credit Rating or equivalent <sup>2</sup> (Short-term / long-term) <sup>3</sup>	Maximum % Limit (Total Cash + Liquid Assets)	Minimum % Limit (Total Cash + Liquid Assets)	Maximum New Zealand Dollar counterparty Limit (millions) <sup>4</sup>	Maximum term (years) <sup>5</sup>
Category 1: NZ Government or RBNZ <sup>6</sup>	N/A	100%	20%	Unlimited	No longer than the longest-dated LGFA maturity on issue
Category 2	A1+ / AAA	80%	N/A	300	5
Category 3	A1+ or A1 / AA+	80%	N/A	200	5
	A1+ or A1 / AA-	80%	N/A	200	5

<sup>1</sup> Category 2, 3, 4 and 5 counterparties do not include the RBNZ or the NZ Government.  
<sup>2</sup> Equivalent rating from Fitch Ratings or Moody's  
<sup>3</sup> Short term rating applies for all securities with a maturity date of 365 days or less.  
<sup>4</sup> If the counterparty credit rating is downgraded below the allowed limit, LGFA has 30 days to sell the security.  
<sup>5</sup> Maximum term applies from the date of settlement.  
<sup>6</sup> At least 20% of the portfolio must be held at the RBNZ or invested in NZ Government securities.

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Category 4	A1: /A+, NZ Registered Bank	60%	N/A	200	3
Category 5	A1 or A2: / A+ A1 or A2: / A Other Issuers	40%	N/A	50	4

The maximum individual counterparty limit (excluding the NZ Government) cannot be greater than 400% of Accessible Capital. Accessible Capital is defined as issued and paid capital plus retained earnings plus issued and unpaid capital plus outstanding borrower notes.

**Derivative Policy**

Unless explicitly approved otherwise by the Board, all derivative transactions must be transacted with New Zealand Debt Management as counterparty.

**Market Risk**

The Company's total 12 month forecast portfolio PDH (Partial Differential Hedge) Limit is \$100,000<sup>7</sup>.

The Company's total portfolio Value at Risk (VaR) daily limit is \$1,000,000<sup>8</sup>.

**Foreign exchange risk policy**

The Company will take no foreign exchange risk.

**Operational Risk**

Unless explicitly approved otherwise by the Board, the Company will outsource the following functions to New Zealand Debt Management as follows:

- \* Hedging – New Zealand Debt Management is the LGFA interest rate swap counterparty.

**Dividend policy**

The policy is to pay a dividend that provides an annual rate of return to Shareholders equal to the Company's cost of funds plus 2.00% over the medium term, recognising that, to assist in the start-up period, the initial expectation is for no dividend for the part period to 30 June 2012, and for a dividend equal to 50% of the target dividend in the two periods to 30 June 2014 to be paid. Thereafter, the intention is to pay at least the full target dividend until the target dividend return is achieved as measured from commencement, including consideration of the time value of money at the target annual rate of return.

At all times payment of any dividend will be discretionary and subject to the Board's legal obligations and views on appropriate capital structure.

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<sup>7</sup> PDH risk measures the sensitivity of a portfolio to a one basis point change in underlying interest rates. For example a PDH of \$100,000 means that the portfolio value will fall by \$100,000 for a one basis point fall in interest rates.

<sup>8</sup> VaR measures expected loss for a given period with a given confidence. For example, 95% confidence, daily VaR of \$1,000,000 means that it is expected that the portfolio will lose \$1,000,000 on 5% of days, i.e. 1 day in 20 the portfolio value will decrease by \$1,000,000.

Field Code Changed



## Shareholders' Agreement

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### **PARTIES**

Auckland Council, Bay of Plenty Regional Council, Christchurch City Council, Gisborne District Council, Hamilton City Council, Hastings District Council, Hauraki District Council, Horowhenua District Council, Hutt City Council, Kāpiti Coast District Council, Manawatu District Council, Marlborough District Council, Masterton District Council, New Plymouth District Council, Otorohanga District Council, Palmerston North City Council, Selwyn District Council, South Taranaki District Council, Tasman District Council, Taupo District Council, Tauranga City Council, Thames-Coromandel District Council, Wanganui District Council, Waimakariri District Council, Waipa District Council, Wellington City Council, Wellington Regional Council, Western Bay of Plenty District Council, Whakatane District Council, Whangarei District Council and Her Majesty The Queen in Right of New Zealand acting by and through the Minister of Local Government and the Minister Of Finance

each a **Shareholder**

New Zealand Local Government Funding Agency Limited

**Company**

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**AGREEMENT** dated 7 December 2011 (as amended on 16 November 2012 and 19 November 2013 and amended and restated on 4 June 2015 [and 6 July 2020](#) and by the deed to which this agreement is attached as an appendix)

#### **PARTIES**

Auckland Council, Bay of Plenty Regional Council, Christchurch City Council, Gisborne District Council, Hamilton City Council, Hastings District Council, Hauraki District Council, Horowhenua District Council, Hutt City Council, Kāpiti Coast District Council, Manawatu District Council, Marlborough District Council, Masterton District Council, New Plymouth District Council, Otorohanga District Council, Palmerston North City Council, Selwyn District Council, South Taranaki District Council, Tasman District Council, Taupo District Council, Tauranga City Council, Thames-Coromandel District Council, Wanganui District Council, Waimakariri District Council, Waipa District Council, Wellington City Council, Wellington Regional Council, Western Bay of Plenty District Council, Whakatane District Council, Whangarei District Council and Her Majesty The Queen in Right of New Zealand acting by and through the Minister of Local Government and the Minister of Finance

(each a "**Shareholder**")

New Zealand Local Government Funding Agency Limited  
 ("**Company**")

#### **INTRODUCTION**

- A. The Shareholders are shareholders in the Company.
- B. The Shareholders and Company have agreed to enter into this agreement.

#### **AGREEMENT**

##### **1. INTERPRETATION**

- 1.1 **Definitions:** In this agreement, unless the context otherwise requires:

"**Acceptance Date**" has the meaning in clause 10.3.

"**Accession Deed**" means a deed in the form set out in schedule 4, or such other form as is approved by the Board.

"**Auditor**" means the Auditor-General (or any nominee of the Auditor-General).

"**Authorisation**" means an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described.

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**"Bill Rate"** means:

- (a) in respect of any rate of interest to be calculated pursuant to this agreement the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter at intervals of 90 days from that Business Day; or
- (b) if the rate cannot be determined pursuant to paragraph (a) above, the rate determined by the Board in its absolute discretion as a reasonable estimate of the Company's cost of funds on that date.

**"Board"** means the board of directors of the Company.

**"Borrowed Money Indebtedness"** has the meaning given in the Multi-issuer Deed.

**"Borrower Notes"** means notes issued by the Company to Participating Borrowers pursuant to a notes subscription agreement dated on or about the date of this agreement.

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) on which registered banks are open for business in Christchurch, Wellington and Auckland.

**"Buyer"** has the meaning in clause 10.4.

**"CCO"** means a council-controlled organisation as defined in section 6 of the Local Government Act.

**"CCO Shareholder"** means, in relation to a Participating CCO, a person that holds or controls (directly or indirectly) any equity securities of that CCO.

**"Companies Act"** means the Companies Act 1993.

**"Constitution"** means the constitution of the Company.

**"Defaulting Shareholder"** has the meaning given in clause 13.1.

**"Director"** means a director of the Company.

**"Event of Default"** in respect of a Shareholder means an event specified in schedule 5.

**"Event of Review"** has the meaning given in the Multi-issuer Deed.

**"Fair Value"** in respect of Shares means the fair market value of those Shares determined in accordance with clause 1.3.

**"First Opening"** means the initial subscription for, and issue of, Shares in the Company, other than any Shares issued on incorporation of the Company, which shall occur on or about the date of this agreement.

**"Guarantor"** means a guarantor of the obligations of the Company pursuant to a deed of guarantee and indemnity dated on or about the date of this agreement.

**"Guarantor's Equity Commitment"** means the agreement of a Guarantor to subscribe for Redeemable Shares in certain circumstances and being in, or substantially in, the same form for each Guarantor.

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**"Incoming Principal Shareholder"** means a Local Authority which is to acquire Ordinary Shares as part of the Second Opening.

**"Independent Director"** means a Director who is not an employee of any Shareholder, employee of a CCO owned (in whole or in part) by any Shareholder, or a councillor of any Local Authority which is a Shareholder, and was not such an employee or councillor at any time in the five years prior to the time of that person's appointment as a Director. For the avoidance of doubt, a director (or former director) of a CCO (that is not a Participating CCO) shall not, by virtue of this reason alone, be precluded from being an Independent Director.

**"Local Authority"** has the meaning in section 5 of the Local Government Act.

**"Local Government Act"** means the Local Government Act 2002.

**"Multi-issuer Deed"** means the deed entered into on or about the date of this agreement between the Company and the Local Authorities named therein.

**"New Zealand Debt Management Office"** means Her Majesty the Queen in right of New Zealand acting by and through the New Zealand Debt Management Office.

**"New Zealand Government"** means Her Majesty the Queen in right of New Zealand acting by and through the Minister of Local Government and the Minister of Finance, as (and for so long as it is) a Principal Shareholder.

**"Nominating Local Authority"** has the meaning given at clause 4.3.

**"Non-Pro Rata Sell-Down Shareholder"** has the meaning given in clause 8.3.

**"Ordinary Resolution"** means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question (and which shall include any resolution signed in accordance with section 122 of the Companies Act).

**"Ordinary Share"** means an ordinary share in the Company.

**"Participating Borrower"** means a Participating Local Authority or a Participating CCO.

**"Participating CCO"** means a CCO that has entered into one or more arrangements to be provided debt funding by the Company.

**"Participating Local Authority"** means a Local Authority that has entered into one or more arrangements to be provided debt funding by the Company.

**"Policies"** means the policies of the Company relating to the following matters, as the same may be amended or updated by the Board or, where relevant, in accordance with clause 5.1:

- (a) dividends;
- (b) liquidity;
- (c) pricing;
- (d) lending;
- (e) investing;
- (f) borrowing; and
- (g) treasury.

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For the avoidance of doubt, the dividend policy shall be set out in the Statement of Intent, and the other policies may be set out in such individual documents, or composite documents, as the Board may determine.

**"Principal Shareholders"** means those Shareholders who hold Ordinary Shares (and not just Redeemable Shares).

**"Redeemable Share"** means a redeemable share in the Company having the rights and obligations set out in clause 3.4 of the Constitution.

**"Retained Share Number"** has the meaning given in clause 8.3.

**"Sale Interest"** has the meaning given in clause 10.2.

**"Sale Notice"** has the meaning given in clause 10.2.

**"Second Opening"** means the introduction of Incoming Principal Shareholders, to be effected by way of a transfer of Ordinary Shares held by the then current Principal Shareholders (other than the New Zealand Government), in accordance with clause 8.

**"Securities"** has the meaning given in the Multi-issuer Deed.

**"Sell-Down Shareholder"** has the meaning given in clause 8.2.

**"Seller"** has the meaning given in clause 10.2.

**"Share"** means an Ordinary Share or a Redeemable Share.

**"Shareholder"** means:

- (a) any of the parties to this agreement (other than the Company); and
- (b) any person which acquires Shares and which has executed an Accession Deed or is deemed to have agreed to be bound by this agreement.

**"Shareholders' Council"** means the members constituting the shareholders' council established pursuant to clause 4.

**"Special Resolution"** means a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the question (and which shall include any resolution signed in accordance with section 122 of the Companies Act).

**"Specified Sale Number"** has the meaning given in clause 8.2.

**"Statement of Intent"** means a statement of intent for the Company as contemplated by section 64(1) of the Local Government Act initially in the form adopted by the Board on or prior to the date of this agreement, and as the same may be amended or replaced by the Board or, where relevant, in accordance with clause 5.1.

1.2 **Interpretation:** Unless the context otherwise requires or specifically otherwise stated:

- (a) headings are to be ignored;
- (b) "including" and similar words do not imply any limitation;

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- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this agreement);
- (d) any covenant or agreement on the part of two or more persons binds those persons jointly and severally;
- (e) reference to a party, person or entity includes:
  - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (f) a right or power may be exercised from time to time and at any time;
- (g) the singular includes plural and vice versa;
- (h) one gender includes the other genders;
- (i) references to money are to New Zealand dollars;
- (j) references to times of day or dates are to New Zealand times and dates;
- (k) definitions in the Companies Act have the same meaning in this agreement;
- (l) any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- (m) reference to a clause, sub-clause, schedule or a party is a reference to that clause, sub-clause, schedule or party in this agreement;
- (n) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (o) each schedule and any other attachment forms part of this agreement;
- (p) if there is any conflict between this agreement and the Constitution, this agreement shall prevail;
- (q) "**security interest**" means:
  - (i) in respect of any personal property, a security interest (as defined in the Personal Property Securities Act 1999 ("**PPSA**"));
  - (ii) in respect of any other property or any rights in any other property (in each case to which the PPSA does not apply), any interest which, were the PPSA to apply to that property or those rights, would constitute such a security interest;

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- (r) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (s) a reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- (t) reference to "month" or "monthly" means calendar month or calendar monthly; and
- (u) a reference to "year" or "yearly" is a reference to a calendar year.

1.3 **Fair Value:** If it is necessary for any purpose of this agreement to determine the fair market value of Shares:

- (a) the Company and the relevant Shareholder shall, for a period of five Business Days after one of them gives notice to the other, endeavour to agree on the fair market value of those Shares;
- (b) if the Company and the relevant Shareholder do not agree on the fair market value of those Shares within the period of five Business Days referred to in clause 1.3(a), the fair market value shall be determined by an independent valuer agreed upon by the Company and the relevant Shareholder, or failing agreement within five Business Days after the end of that period, appointed on the application of either of them by the president for the time being of the New Zealand Institute of Chartered Accountants or his or her nominee;
- (c) the person appointed as valuer under clause 1.3(b) shall:
  - (i) act as a expert and not as arbitrator;
  - (ii) determine the fair market value of the Shares as soon as possible, which valuation shall be conclusive;
- (d) in determining the fair market value of the Shares, the valuer shall determine the fair market value of all of the Shares in the Company, and shall then determine the fair market value of the Shares in question as the appropriate percentage of the value of all Shares, so that no regard shall be had to the control of the Company, or to any premium for control or discount for lack of control;
- (e) the Company and the relevant Shareholder shall promptly and openly make available to the valuer all information in their possession or under their control relating to the Company to enable the valuer to proceed with the valuation on an informed basis as to the financial position, affairs, performance, and prospects of the Company; and
- (f) the fees and expenses of the valuer shall be paid by the Company and the relevant Shareholder in equal amounts, or in such other manner as the valuer may determine.

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## 2. BUSINESS OF COMPANY

- 2.1 **Business:** The Company shall carry on the business of raising debt funding (both domestically and internationally), and providing debt funding to Local Authorities and CCOs (as defined in the Multi-issuer Deed).
- 2.2 **No other activity:** The Company shall not engage in any business or activity which is not the business or activity specified in clause 2.1, or considered by the Board to be reasonably related or incidental to or in connection with that business or activity.
- 2.3 **CCO:** The Company shall at all times be a CCO.
- 2.4 **Objectives:** In accordance with the Local Government Act, in carrying on its business, the objectives of the Company will be to:
- (a) achieve the objectives of the Shareholders (both commercial and non-commercial) as specified in the Statement of Intent;
  - (b) be a good employer;
  - (c) exhibit a sense of social and environmental responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so; and
  - (d) conduct its affairs in accordance with sound business practice.
- 2.5 **Policies:** The business of the Company shall be carried on in accordance with the Policies and Statement of Intent, except as approved under clauses 3.9 and 5.1.

## 3. BOARD

- 3.1 **Number of Directors:** The Principal Shareholders shall ensure that:
- (a) the number of Directors shall not at any time be more than seven nor less than ~~four~~five; and
  - (b) no less than ~~a majority of five~~ Directors shall be Independent Directors.
- 3.2 **Appointment by Shareholders:** A person may be appointed or removed as a Director at any time by an Ordinary Resolution. The Directors at the date of this agreement are Paul Joseph Anderson, John Richard Avery, Mark Alan Butcher, Philip Wade Cory-Wright, Abigail Kate Foote and Craig Hamilton Stobo who, subject to the previous sentence and to clause 3.3 below, continue in office and are deemed to have been appointed pursuant to this agreement.
- 3.3 **Rotation of Directors:** ~~Beginning at, and including, the annual meeting for 2013, two Directors comprising one A Director who is an Independent Director and one Director who is must not an Independent Director (unless there are only Independent Directors, in which case both shall be Independent Directors) shall retire from hold office at the (without re-election) past the third annual meeting of the Company in each year. The Directors to retire shall be that Independent Director, and that non-Independent Director, who have been longest in office since their last election (following the Director's appointment or if there are only Independent Directors, those Independent Directors who have been longest in office~~

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~~since their last election). If two or more relevant Directors were last elected on the same day, the Directors to retire shall (unless they otherwise agree among themselves) be determined by lot, three years, whichever is longer.~~ A retiring Director shall be eligible for re-election.

- 3.4 **Re-election of retiring Director:** A Director retiring ~~by rotation~~ in accordance with clause 3.3 at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:
- (a) some other person is elected to fill the vacated office; or
  - (b) it is resolved not to fill the vacated office; or
  - (c) a resolution for the re-election of that Director is put to the meeting and lost.
- 3.5 **Nomination of Directors:** No person may be elected as a Director at a meeting (other than a Director retiring at the meeting) unless, not more than three months nor less than two months before the meeting, that person has been nominated by a Principal Shareholder entitled to attend and vote at the meeting by written notice to the Company and Shareholders' Council accompanied by the consent in writing of that person to the nomination. Notice of every valid nomination of a Director received by the Company before the closing date for nominations shall be sent by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of meeting.
- 3.6 **Remuneration:** No remuneration or compensation for loss of office may be paid to a Director, and no other benefit may be provided to a Director, unless approved by Ordinary Resolution, provided that from the date of this agreement (unless and until altered with the approval of an Ordinary Resolution) the following fees shall be paid to Directors:
- (a) a fee of \$75,000 per annum to the Director acting as chairman of the Board, if that Director is an Independent Director;
  - (b) a fee of \$35,000 per annum to each other Director;
  - (c) a fee of \$10,000 per annum to the Director acting as chairman of the audit and risk committee; and
  - (d) a fee of \$7,500 per annum to each other Director appointed as a member of the audit and risk committee.
- 3.7 **Payment of expenses:** Notwithstanding the provisions of clause 3.6, Directors are entitled to be paid for all reasonable travel, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Shareholders, or otherwise in connection with the business of the Company.
- 3.8 **Board meetings:** Board meetings shall be held not less than once in each quarter in each year.
- 3.9 **Board decisions:** The following decisions of the Company shall be made by a resolution of the Board, and may not be delegated to any other person:
- (a) whether to take, and the nature of, any legal, enforcement or other action following the occurrence of an Event of Review;

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- (b) whether to take, and the nature of, any legal, enforcement or other action (including declaring any Securities to be immediately due and payable) following an "Event of Default" (as defined in the Multi-issuer Deed) or a default under clauses 7.6, 7.7, 7.8 or 7.9 of the Multi-issuer Deed;
- (c) without limiting clause 5.1, the preparation of a Statement of Intent as and when required by the Local Government Act; and
- (d) without limiting clause 5.1, any amendment of, or departure from, the Policies or Statement of Intent.

3.10 **Conflict of Interest:** No Director shall vote on a matter relating to any of the following:

- (a) a matter as described in clause 3.9(a) as concerns a Participating Local Authority, if that Director is (or was, at any time in the five years prior to the matter being put to the vote) an employee or councillor of the relevant Participating Local Authority or an employee (which term does not include acting only as a director) of a Participating CCO owned (in whole or in part) by the Participating Local Authority;
- (b) a matter as described in clause 3.9(b) as concerns a Participating Local Authority, if that Director is (or was, at any time in the five years prior to the matter being put to the vote) an employee or councillor of the relevant Participating Local Authority or an employee (which term does not include acting only as a director) of a Participating CCO owned (in whole or in part) by the Participating Local Authority;
- (c) any amendment of, or departure from, the pricing Policy, if a Director is (or was at any time in the five years prior to the matter being put to vote):
  - (i) an employee or councillor of a Participating Local Authority; or
  - (ii) an employee (which term does not include acting only as a director) of a Participating CCO; or
  - (iii) an employee or councillor of a CCO Shareholder;
- (d) a matter as described in clause 3.9(a) as concerns a Participating CCO, if that Director is (or was, at any time in the five years prior to the matter being put to the vote) an employee or councillor of a CCO Shareholder of the relevant Participating CCO or an employee (which term does not include acting only as a director) of the Participating CCO; and
- (e) a matter as described in clause 3.9(b) as concerns a Participating CCO, if that Director is (or was, at any time in the five years prior to the matter being put to the vote) an employee or councillor of a CCO Shareholder of the relevant Participating CCO or an employee (which term does not include acting only as a director) of the Participating CCO.

#### 4. SHAREHOLDERS' COUNCIL

- 4.1 **Establishment:** The Shareholders shall ensure that a Shareholders' Council is established, maintained and operated in accordance with this agreement. The Shareholders' Council shall have no more than ten, and no less than five, members. The initial members of the

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Shareholders' Council shall be Alan Adcock, Mohan De Mel, Douglas Marshall, Matt Potton, Murray Staite, Mike Timmer, Brian Trott, Matthew Walker and Warwick Hayes (together with any person appointed by the New Zealand Government in accordance with clause 4.4).

- 4.2 **Role:** The role of the Shareholders' Council shall be to advise Shareholders on certain matters (with Shareholders, and not the Shareholders' Council, to make decisions with respect to those matters). The Shareholders' Council shall:
- (a) review the performance of the Company and the Board, and report to Shareholders on these matters on a periodic basis, being no less frequently than every six months;
  - (b) make recommendations to Shareholders as to the appointment, removal, re-election, replacement and remuneration of Directors. For this purpose, the Shareholders' Council may request information from, and meet with, Directors (or persons nominated for election as Directors);
  - (c) make recommendations to Shareholders as to any matters which require the approval of Shareholders pursuant to clause 5.1; and
  - (d) endeavour to ensure that Shareholders are fully informed on matters concerning the Company, and endeavour to co-ordinate Shareholders on decisions required of Shareholders with respect to governance of the Company.
- 4.3 **Appointment of Nominating Local Authority by Shareholders:** A Principal Shareholder may be appointed or removed as a nominator to the Shareholders' Council ("**Nominating Local Authority**") at any time by an Ordinary Resolution, provided that no more than nine Nominating Local Authorities may be so appointed.
- 4.4 **Appointment of members of the Shareholders' Council:** Each Nominating Local Authority may appoint one member of the Shareholders' Council, and remove and replace any member so appointed by it, in each case, by notice to the Company. Each member appointed by a Nominating Local Authority must be an employee or councillor of that Nominating Local Authority. In addition, the New Zealand Government (for so long as it is a Shareholder) may appoint one other member of the Shareholders' Council, and remove and replace such other member so appointed by it, in each case, by notice to the Company.
- 4.5 **Notification and consent:** Each member of the Shareholders' Council appointed by a Nominating Local Authority must give consent in writing to the appointment (which consent shall confirm that the person shall comply with the terms of this agreement as they apply to members of the Shareholders' Council). Notice by a Nominating Local Authority of the appointment of a member and consent from that person to the appointment must be received by the Company before any member may attend a meeting of the Shareholders' Council.
- 4.6 **Rotation of Nominating Local Authorities:** Beginning at, and including, the annual meeting for 2013, the Shareholders shall ensure that two Nominating Local Authorities shall retire from office at the annual meeting of the Company in each year. The Nominating Local Authorities to retire shall be those who have been longest in office since their last election. If two or more of those Nominating Local Authorities were last elected on the same day, the Nominating Local Authority to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Nominating Local Authority shall be eligible for re-election.

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- 4.7 **Re-election of retiring Nominating Local Authority:** A Nominating Local Authority retiring by rotation at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:
- (a) some other Principal Shareholder is elected to fill the vacated office; or
  - (b) it is resolved not to fill the vacated office; or
  - (c) a resolution for the re-election of that Nominating Local Authority is put to the meeting and lost.
- 4.8 **Nomination of Nominating Local Authority:** No Principal Shareholder may be elected as a Nominating Local Authority at a meeting (other than a member retiring at the meeting) unless, not less than one week prior to the notice of that meeting being sent to Shareholders, that Principal Shareholder has notified the Company in writing that it wishes to seek that election. The Company shall give notice that the Principal Shareholder is seeking that election to all persons entitled to attend the meeting together with, or as part of, the notice of meeting.
- 4.9 **Meetings:** Meetings of the Shareholders' Council shall be held not less than once in each quarter in each year.
- 4.10 **Quorum:** A quorum for a meeting of the Shareholders' Council shall be a majority of members. No business shall be transacted at a meeting of the Shareholders' Council if a quorum is not present.
- 4.11 **No remuneration:** No remuneration will be paid to the members of the Shareholders' Council for carrying out their functions as members of the Shareholders' Council.
- 4.12 **Expenses:** The Company will reimburse the members of the Shareholders' Council for any reasonable expenses incurred in carrying out their functions as members of the Shareholders' Council, including the reasonable fees and expenses of professional advisers engaged by the Shareholders' Council.
- 4.13 **Information, assistance etc:** The Company and the Shareholders agree that:
- (a) the Company, each Director and each Principal Shareholder shall provide the Shareholders' Council with such reasonable information and assistance as is required by the Shareholders' Council to carry out the role set out in clause 4.2;
  - (b) without limiting clause (a), the Company shall provide the Shareholders' Council with such information and reports as are required by the Statement of Intent;
  - (c) the Shareholders' Council shall provide to the Company, for distribution to Shareholders, a report of its recommendations concerning any of the matters referred to in clause 4.2(b) and 4.2(c) to be considered by a meeting of Shareholders, and the Company shall distribute that report with the notice of meeting for that meeting (or the written resolution to be signed by Shareholders, as the case may be); and
  - (d) if requested by the Shareholders' Council, the Company shall distribute a report for the Shareholders' Council as to the matters referred to in clause 4.2(a) and 4.2(d)

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to Shareholders with reports delivered to Shareholders under clause 12.3(a) or clause 12.3(b).

**4.14 Resignation of a member:** A member of the Shareholders' Council:

- (a) may resign by notice in writing to the Company; and
- (b) shall be deemed to resign if:
  - (i) that person is no longer an employee or councillor of the Nominating Local Authority of which the person was an employee or councillor at the time of appointment to the Shareholders' Council; or
  - (ii) the Principal Shareholder who appointed that member is no longer a Nominating Local Authority.

Where a member of the Shareholders' Council resigns or is deemed to resign under this clause, the Nominating Local Authority of whom that member was an employee or councillor, may appoint a replacement member to the Shareholders' Council in accordance with clause 4.4.

**4.15 Resignation of a Nominating Local Authority:** A Nominating Local Authority:

- (a) may resign by notice in writing to the Company; and
- (b) shall be deemed to resign if that Nominating Local Authority is no longer a Principal Shareholder.
- (c) Where a Nominating Local Authority resigns or is deemed to resign, the member of the Shareholders' Council appointed by that Nominating Local Authority shall be deemed to resign also.

**4.16 Deemed Nominating Local Authorities:** The Principal Shareholders, of whom the members of the Shareholders' Council as at 7 December 2011 were employees or councillors, are each deemed to be a Nominating Local Authority as at the date of the amendment to this agreement to provide for Nominating Local Authorities, and each such Nominating Local Authority is deemed to have an election date of 7 December 2011 for the purposes of clause 4.6. All members of the Shareholders' Council as at the date of the amendment to this agreement to provide for Nominating Local Authorities are deemed to have been appointed in accordance with clauses 4.4 and 4.5 by the Nominating Local Authority of which they are an employee or councillor, or the New Zealand Government (as applicable), at that time.

**4.17 Other:** Except as provided in this agreement, the Shareholders' Council may regulate its own procedure.

**5. SHAREHOLDER APPROVAL**

**5.1 Restrictions:** Neither the Board nor any Shareholder shall take or permit any action to cause any of the following to occur in respect of the Company unless it is approved by an Ordinary Resolution or, if required by law or in relation to clause 5.1(k), a Special Resolution:

- (a) any alteration to, or revocation of, the Constitution;

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- (b) any alteration or amendment to this agreement;
- (c) subject to clause 5.1(k), any alteration to, or departure by the Company from any of the policies set out in schedule 1, whether such an alteration or departure will occur by way of amendment to, or departure from, a Policy or the Statement of Intent, or by way of the adoption of a new Statement of Intent or a new Policy;
- (d) the payment of dividends other than in cash;
- (e) **[not used]**
- (f) any issue of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares except:
  - (i) pursuant to the First Opening;
  - (ii) the issue of Borrower Notes, or the issue of Redeemable Shares on the conversion of any Borrower Notes; and
  - (iii) the issue of any Redeemable Shares pursuant to a Guarantor's Equity Commitment;
- (g) any purchase or other acquisition by the Company of its own Shares and any redemption of Shares (other than of Redeemable Shares in accordance with clause 6.4);
- (h) any consolidation, division, or subdivision of Shares;
- (i) the giving of any financial assistance for the purpose of, or in connection with, the purchase of Shares, except any financial assistance given for the purpose of, or in connection with:
  - (i) a Guarantor's Equity Commitment; and
  - (ii) Borrower Notes, or the conversion of any Borrower Notes; or
- (j) the acquisition or subscription of any shares in a body corporate, except as is consistent with the Policy concerning investing by the Company, and except for the formation of a wholly-owned subsidiary of the Company (and any subsequent subscription of shares in such a subsidiary); or
- (k) any alteration to, or departure by the Company from, the following policy set out in schedule 1 whether such an alteration or departure will occur by way of amendment to, or departure from, a Policy, or by way of the adoption of a new Policy:
 

the Board may not approve a CCO to borrow from the Company unless 100% of the equity securities carrying voting rights at a meeting of shareholders of the CCO are held or controlled, directly or indirectly, by one or more Local Authorities and the Crown (if applicable).

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**6. SHARES**

6.1 **Classes:** The Company may issue the following classes of Shares only:

- (a) Ordinary Shares;
- (b) Redeemable Shares, pursuant to a Guarantor's Equity Commitment or the conversion of the Borrower Notes; and
- (c) any other class of Shares approved by Shareholders under clause 5.1(f).

6.2 **Shareholders:** Only a Local Authority or the New Zealand Government may be a Shareholder, and no person may become a Shareholder without entering into an Accession Deed (so as to be bound by this agreement) or being deemed to have agreed to be bound by this agreement. No person may become the holder of any Ordinary Shares (other than the New Zealand Government) unless that person is a Guarantor and has entered into a Guarantor's Equity Commitment.

6.3 **Calls:** Calls on any Ordinary Shares which are not fully paid up shall be made at such times, and in such amounts, as determined by the Board, provided that the Board has determined that there is a risk of imminent default by the Company under its Borrowed Money Indebtedness. Any call on Ordinary Shares shall be made proportionately across all Ordinary Shares which are not fully paid up on issue at the time the call is made. Payment of a call shall be made within 10 Business Days of notice of the call being provided to a Shareholder.

6.4 **Redemption:** In the event the Company determines to redeem any Redeemable Shares, any redemption must be effected, if the redemption is required by a Guarantor's Equity Commitment, in accordance with the Guarantor's Equity Commitment and otherwise:

- (a) such that the Redeemable Shares are redeemed in the order in which they were issued; and
- (b) if Redeemable Shares were issued at the same time, proportionately across the holders of such Redeemable Shares (in accordance with the number of Redeemable Shares held).

6.5 **Additional funding:** A Shareholder shall not have any obligation to contribute any funding to the Company except as expressly set out in this agreement or in any other legally binding documentation entered into between the Company and that Shareholder.

**7. FIRST OPENING**

7.1 **Initial shareholdings:** Immediately following the First Opening (which shall take place on or about the date of this agreement), each Principal Shareholder as at the date of this agreement (in this clause 7 an "Original Principal Shareholder") will hold the number of Shares as set out in schedule 2.

7.2 **Reimbursement:** From the proceeds received pursuant to the First Opening, the Company shall pay to each Local Authority listed in schedule 3 the amount listed alongside its name in that schedule, in reimbursement of payments made by such Original Principal Shareholder

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to New Zealand Local Government Association Inc. ("**NZLGA**") to fund the establishment costs of the Company.

- 7.3 **Repayment:** The parties acknowledge that the New Zealand Government has made an advance to NZLGA to assist with the funding of the establishment costs of the Company. The Company shall pay to the New Zealand Government an amount of \$950,000.00 by way of set off from the amount to be paid by the New Zealand Government to the Company pursuant to the First Opening. Following such payment and notwithstanding the terms of any facility or other agreement between NZLGA and the New Zealand Government, the New Zealand Government shall forgive (in writing) the advance made by it to NZLGA.
- 7.4 **NZLGA funds:** Following completion of the payments referred to in clauses 7.2 and 7.3, each Original Principal Shareholder shall direct NZLGA (in writing) to pay to the Company all moneys which remain held by NZLGA from payments made to it by that Original Principal Shareholder as referred to in clauses 7.2 and 7.3 (to the extent not required by NZLGA to pay establishment costs).
- 8. SECOND OPENING**
- 8.1 **Board to determine:** The Board shall determine when, and if, the Second Opening is to occur, and shall provide the then current Shareholders with not less than 25 Business Days' notice of the Second Opening in accordance with clause 8.2.
- 8.2 **Pro rata sell down:** In the Second Opening, each Principal Shareholder (other than the New Zealand Government) ("**Sell-Down Shareholder**") shall, subject to the following provisions of this clause 8, be required to transfer a number set by the Company of the Ordinary Shares held by the Sell-Down Shareholder to Incoming Principal Shareholders (as directed by the Company) (which number may comprise a number of paid up Ordinary Shares, and a number of Ordinary Shares which are not fully paid up, as set by the Company). The Company shall, subject to the following provisions of this clause 8, set that number for each Sell-Down Shareholder such that:
- (a) if the Sell-Down Shareholder holds Ordinary Shares which are not fully paid up, the Ordinary Shares to be transferred are such that, following the transfer, the Sell-Down Shareholder would hold paid up Ordinary Shares, and Ordinary Shares which are not fully paid up, in the same proportion as prior to the transfer;
  - (b) the proportion of Ordinary Shares to be transferred by each Sell-Down Shareholder shall be the same, other than:
    - (i) where a Sell-Down Shareholder would, as a result of such a transfer, hold less than 100,000 fully paid Ordinary Shares, in which case the Company shall set the number of Shares for that Sell-Down Shareholder as the maximum number which could be transferred by that Sell-Down Shareholder without the Sell-Down Shareholder thereafter holding less than 100,000 fully paid Ordinary Shares; and
    - (ii) as considered reasonable by the Company to allow for rounding; and
  - (c) Auckland Council, Christchurch City Council, Hamilton City Council, Tasman District Council, Tauranga City Council, Wellington City Council, Wellington Regional Council, Western Bay of Plenty District Council and Whangarei District

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Council shall, following that transfer, retain (in aggregate) 51% of all Ordinary Shares, provided that this clause 8.2(c) shall have no application if such Local Authorities did not hold (in aggregate) 51% of all Ordinary Shares immediately prior to the Second Opening.

The Company shall provide each Sell-Down Shareholder with written notice of the number of Ordinary Shares which it (subject to the following provisions of this clause 8) is required to transfer as part of the Second Opening ("**Specified Sale Number**"), and the numbers of paid up Ordinary Shares and Ordinary Shares which are not fully paid up comprised in the Specified Sale Number, not less than 25 Business Days before the date of the Second Opening.

- 8.3 **Non-pro rata sell down:** If a Sell-Down Shareholder ("**Non-Pro Rata Sell-Down Shareholder**") wishes to sell less than the Specified Sale Number, within five Business Days of receipt of the notice under clause 8.2, the Non-Pro Rata Sell-Down Shareholder shall provide the Company with written notice of the number of Ordinary Shares of the Specified Sale Number that it wishes to retain ("**Retained Share Number**"). Any such notice shall also set out the number of paid up Ordinary Shares, and Ordinary Shares which are not fully paid up, comprised in the Retained Share Number, which numbers must be in the same proportion as they are comprised in the Specified Sale Number (and if they are not, the notice shall be disregarded). If no such written notice is given by a Sell-Down Shareholder, then (subject to the following provisions of this clause 8) such Sell-Down Shareholder shall be obliged to transfer the Specified Sale Number of Ordinary Shares (comprised of such numbers of paid up Ordinary Shares, and Ordinary Shares which are not paid up, as were specified in the notice of the Company under clause 8.2) as part of the Second Opening.
- 8.4 **Other Shareholders:** If one or more Non-Pro Rata Sell-Down Shareholders serves a notice in accordance with clause 8.3, the Company shall, within three Business Days of the expiry of the five Business Day period specified in clause 8.3, issue a written notice offering the other Sell-Down Shareholders the opportunity to transfer additional Ordinary Shares pursuant to the Second Opening, by providing them with written notice of the total number of Retained Share Numbers of all Non-Pro Rata Sell-Down Shareholders (which shall include notice of the aggregate paid up Ordinary Shares, and aggregate Ordinary Shares which are not paid up, comprised in the total Retained Share Numbers). Each other Sell-Down Shareholder shall, if it so wishes, provide written notice to the Company of any additional Ordinary Shares (which may not exceed as concerns paid up Ordinary Shares, and Ordinary Shares which are not paid up, the aggregate numbers set out in the notice of the Company) that such Sell-Down Shareholder wishes to transfer as part of the Second Opening within five Business Days of receipt of such notice from the Company, provided that any such notice must be such that, if a transfer were made of the Ordinary Shares referred to in that notice (together with a transfer of the Specified Sale Number), the Sell-Down Shareholder would continue to hold no less than 100,000 fully paid Ordinary Shares and the same proportions of paid up, and not paid up, Ordinary Shares, and any notice which does not satisfy those requirements shall be disregarded.
- 8.5 **Consequences:** If:
- (a) no notice is received from Sell-Down Shareholders in accordance with clause 8.4, each Non-Pro Rata Sell-Down Shareholder shall be obliged to transfer the Specified Sale Number of Ordinary Shares (comprised of such numbers of paid up Ordinary Shares, and Ordinary Shares which are not paid up, as were specified in the notice of the Company under clause 8.2) in the Second Opening;

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- (b) notices are received from Sell-Down Shareholders in accordance with clause 8.4, the Company shall determine:
- (i) for each Non-Pro Rata Sell-Down Shareholder, the number of paid up Ordinary Shares, and Ordinary Shares which are not paid up, by which the Specified Sale Number of the Non-Pro Rata Sell-Down Shareholder shall be reduced (which may not exceed the numbers set out in the notice given by the Non-Pro Rata Sell-Down Shareholder under clause 8.3); and
  - (ii) for each Sell-Down Shareholder which gave notice under clause 8.4, the number of paid up Ordinary Shares, and Ordinary Shares which are not paid up, by which the Specified Sale Number of the Non-Pro Rata Sell-down Shareholder shall be increased (which may not exceed the numbers set out in the notice given by the Sell-Down Shareholder under clause 8.4).

In making that determination the Company shall act fairly and equitably as between Shareholders. The determination of the Company shall be final and binding on all parties, and each Sell-Down Shareholder shall be obliged to transfer the Specified Sale Number of Ordinary Shares as so reduced or increased by the Company (comprised of such numbers of paid up Ordinary Shares, and Ordinary Shares which are not paid up, as so determined by the Company) as part of the Second Opening.

- 8.6 **Notice:** The Company shall give notice to all Sell-Down Shareholders of the number of Ordinary Shares which it is required to transfer as part of the Second Opening, and the number of paid up Ordinary Shares and Ordinary Shares which are not paid up comprised in that number, in accordance with clauses 8.2 to 8.5, within three Business Days of the expiry of the five Business Days referred to in clause 8.4, if clause 8.5(a) is applicable, and otherwise within three Business Days of its determination under clause 8.5(b).
- 8.7 **Price:** Any Ordinary Shares to be transferred as part of the Second Opening shall be transferred at a price per share equal to the amount paid up on that share at the time of the Second Opening.
- 8.8 **Terms of sale:** The purchase of any Ordinary Shares as part of the Second Opening shall be effected on the following terms:
- (a) each Sell-Down Shareholder shall transfer the Ordinary Shares which it is obliged to transfer as part of the Second Opening to such Incoming Principal Shareholder as notified to such Sell-Down Shareholder by the Company pursuant to clause 8.6;
  - (b) the purchase of the Ordinary Shares shall be settled on the date of the Second Opening;
  - (c) each Sell-Down Shareholder shall transfer to each Incoming Principal Shareholder good title to the Ordinary Shares free of any security interest; and
  - (d) on settlement of the purchase of the Ordinary Shares, each Incoming Principal Shareholder shall pay the purchase price to the relevant Sell-Down Shareholder in cleared funds, the Sell-Down Shareholder shall deliver to the relevant Incoming Principal Shareholder a transfer of the Ordinary Shares in a form reasonably

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acceptable to that Incoming Principal Shareholder, and each Incoming Principal Shareholder and Sell-down Shareholder shall enter into and deliver to the Company an Accession Deed in accordance with clause 10.11. If any Shareholder fails to enter into that Accession Deed, it shall nevertheless be conclusively deemed to have done so. The Board shall take all necessary steps to cause the Incoming Principal Shareholder to be registered as holder of the relevant Ordinary Shares.

- 8.9 **Clause 10:** Nothing in clause 10 (except clause 10.11) applies to a transfer of Ordinary Shares in the Second Opening.

**9. SECTION 107 CONSENTS**

- 9.1 **Consent:** Each Shareholder hereby consents:

- (a) for the purposes of section 107(d) of the Companies Act, to any redemption from time to time, in accordance with this agreement and the Constitution, of any of the Redeemable Shares by the Company, being otherwise than in accordance with sections 69 to 72 of the Companies Act;
- (b) for the purposes of section 107(e) of the Companies Act, to financial assistance (if any) being given by the Company from time to time for the purpose of, or in connection with, the purchase of any Shares, otherwise than in accordance with sections 76 to 80 of the Companies Act, where such assistance is in the form of:
- (i) any loan, advance or other financial accommodation given by the Company which funds (directly or indirectly) the subscription by a Participating Borrower of Borrower Notes, or of the Redeemable Shares issued on conversion of Borrower Notes, and any incidental assistance; or
- (ii) any loan, advance or other financial accommodation given by the Company which funds (directly or indirectly) the subscription by a Guarantor of Redeemable Shares pursuant to the Guarantor's Equity Commitment, and any incidental assistance; and
- (c) for the purposes of section 107(2) of the Companies Act, to any issue of Redeemable Shares from time to time pursuant to conversion of Borrower Notes, or pursuant to a Guarantor's Equity Commitment, being otherwise than in accordance with sections 42, 44 or 45 of the Companies Act.

- 9.2 **No withdrawal:** Each Shareholder covenants that it shall not withdraw any consent provided under clause 9.1. If any Shareholder does withdraw any such consent, this shall constitute a breach of this agreement which shall be an Event of Default.

- 9.3 **Not exhaustive:** For the avoidance of doubt, nothing in this clause 9 prohibits or restricts the Board or the Company from redeeming any Shares, providing financial assistance for the purpose of, or in connection with, the purchase of any Shares or issuing any Shares without consent under section 107 of the Companies Act, where permitted under the Companies Act, and subject to the other terms of this agreement.

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**10. PRE-EMPTIVE RIGHTS**

- 10.1 **No sale:** No Principal Shareholder shall directly or indirectly sell, transfer, or dispose of the legal or beneficial ownership of, or the control of, any of its Ordinary Shares otherwise than in compliance with clause 8, this clause 10 or clause 13. No interest in, or control of, any Ordinary Share may be sold, transferred or disposed of except the full legal and beneficial ownership of an Ordinary Share.
- 10.2 **Sale notice:** If any Principal Shareholder ("**Seller**") wishes to sell, transfer or otherwise dispose of the legal or beneficial ownership of, or the control of, any of its Ordinary Shares ("**Sale Interest**"), that Shareholder shall give notice (a "**Sale Notice**") to the other Principal Shareholders specifying:
- (a) the precise nature of the Sale Interest (including the number of Shares involved, which must be an equal proportion of any paid up, and unpaid, Ordinary Shares held by the Seller),
  - (b) the price which the Seller wishes to receive for the Sale Interest; and
  - (c) any other terms and conditions of sale of the Sale Interest (which shall be described sufficiently precisely to enable an acceptance of the offer in the Sale Notice to constitute a binding contract).
- 10.3 **Acceptance of Sale Notice:** Each Principal Shareholder other than the Seller may, not later than the date ("**Acceptance Date**") 10 Business Days after the giving of the Sale Notice, give notice to the Seller that that Principal Shareholder wishes to acquire the Sale Interest on the terms specified in the Sale Notice.
- 10.4 **Terms of sale:** A Principal Shareholder which gives notice to the Seller in accordance with clause 10.3 that it wishes to acquire the Sale Interest (a "**Buyer**") shall be entitled and bound (subject to clause 10.5) to acquire the Sale Interest. If more than one Principal Shareholder gives notice to the Seller that it wishes to acquire the Sale Interest, those Principal Shareholders shall be entitled and bound to acquire the Sale Interest in proportion to their respective holdings of Ordinary Shares. The purchase of the Sale Interest shall be effected at the price, and on the terms and conditions, specified in the Sale Notice, and, subject to anything to the contrary in the Sale Notice, on the following terms:
- (a) the purchase of the Sale Interest shall be settled on the date 10 Business Days after the Acceptance Date, or if clause 10.5 applies, 10 Business Days after the last of the consents referred to in clause 10.5 is obtained;
  - (b) if there is more than one Buyer, the purchase of the Sale Interest by all Buyers shall be settled simultaneously;
  - (c) the Seller shall transfer to each Buyer good title to its relevant part of the Sale Interest free of any security interest; and
  - (d) on settlement of the purchase of the Sale Interest each Buyer shall pay the relevant purchase price to the Seller in cleared funds, and the Seller shall deliver to each Buyer a transfer of its relevant part in the Sale Interest in a form reasonably acceptable to that Buyer. All Shareholders and the Board shall take all necessary steps to cause the Buyer to be registered as holder of the relevant Shares.

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10.5 **Consents:** Each Buyer and the Seller shall use their reasonable endeavours, with all due speed and diligence, to obtain all necessary consents to the sale and purchase of the Sale Interest, including any consent required from any governmental or regulatory agency or authority. If any necessary consent is:

- (a) not granted within 20 Business Days after the Acceptance Date; or
- (b) granted on terms and conditions that are not reasonably acceptable to the party affected thereby,

the Seller or any Buyer may, by notice to all Principal Shareholders, terminate the obligation to buy and sell the Sale Interest created by clause 10.4.

10.6 **Sale to other Local Authorities:** If:

- (a) no notice is given to the Seller pursuant to, and within the time specified in, clause 10.3; or
- (b) the obligation to buy and sell the Sale Interest is terminated pursuant to clause 10.5 by reason of a consent required on the part of any Buyer not being granted, or being granted on terms and conditions not reasonably acceptable to any Buyer,

the Seller may, subject to clauses 10.8 and 10.11 within 60 Business Days of the date of the Sale Notice, transfer the Sale Interest to a Local Authority or the New Zealand Government for a price not less than, and on terms and conditions no more favourable than, specified in the Sale Notice. For this purpose, terms and conditions offered to another Local Authority or the New Zealand Government shall not be considered to be more favourable to a buyer than those specified in the Sale Notice by reason only:

- (c) that the terms offered to that person include normal and reasonable warranties; or
- (d) of inclusion in the terms offered to that person of terms which give no material value to a buyer.

10.7 **Assistance:** For the purpose of clause 10.6, each Shareholder shall provide such assistance as may reasonably be required by the Seller for the purposes of enabling the Seller to solicit offers for, and sell, the Sale Interest including:

- (a) allowing prospective purchasers and their advisers to carry out reasonable due diligence enquiries (subject to those persons entering into appropriate confidentiality arrangements); and
- (b) enabling completion of any such sale to take place.

10.8 **Approval of purchaser:** The Seller shall not transfer a Sale Interest to any person unless the Seller has obtained the prior written approval of the Board to registration pursuant to clause 12.5 of the Constitution (which approval may be granted or not in accordance with clause 12.5 of the Constitution).

10.9 **Clause to apply again:** If:

- (a) notice is given to the Seller pursuant to clause 10.3, but the obligation to buy and sell the Sale Interest is terminated pursuant to clause 10.5 (other than for the reason specified in clause 10.6(b));

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- (b) the Seller proposes to sell, transfer, or otherwise dispose of the Sale Interest outside the period referred to in clause 10.6, or at a price, or on terms and conditions more favourable to a buyer than, specified in the Sale Notice; or
- (c) the Seller does not obtain the approval referred to in clause 10.8,
- clauses 10.1 to 10.9 shall again apply.
- 10.10 **Redeemable Shares:** Clauses 10.1 to 10.9 shall not apply to Redeemable Shares. No Shareholder shall directly or indirectly sell, transfer, or dispose of the legal beneficial ownership of, or control of, any of its Redeemable Shares except with the prior written approval of the Board (which approval may be granted or not, at the discretion of the Board).
- 10.11 **Accession Deed:** Whenever a Shareholder transfers the legal or beneficial ownership of any Shares to a person who is not a party to this agreement, that person and that Shareholder shall enter into and deliver to each other an Accession Deed. Each person entering into an Accession Deed shall also deliver to the Company such evidence as it reasonably requires in order to be satisfied that that Accession Deed is valid, binding, and enforceable as against that person. The Company is irrevocably authorised to execute each Accession Deed on behalf of all Shareholders (other than the transferring Shareholder).
- 10.12 **Security:** Notwithstanding the other provisions of this clause 10, a Shareholder shall, subject to obtaining the prior written consent of the Board (which approval may be granted or not, at the discretion of the Board), be permitted to grant a security interest over its Shares subject to the holder of the security interest agreeing, in a form reasonably acceptable to the Company, to be bound by this agreement.
- 10.13 **Amalgamation:** Nothing in clauses 10.1 to 10.11 shall apply to a Local Authority succeeding, by process of law, to the Shares of another Local Authority, pursuant to an amalgamation of Local Authorities.
11. **PROTECTED TRANSACTION**
- 11.1 **[Not used]**
- 11.2 **[Not used]**
- 11.3 **Protected transaction:** Each Principal Shareholder (other than the New Zealand Government) warrants that, for the purposes of section 117 of the Local Government Act, the entry by it into, and the performance by it of, this agreement, is:
- (a) in compliance with the Local Government Act;
- (b) not contrary to any provision of the Local Government Act;
- (c) within the capacity, rights and powers of the relevant Principal Shareholder; and
- (d) for the purpose authorised by the Local Government Act or any other statute.

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**12. FINANCIAL**

12.1 **Records:** The Board shall ensure that proper accounting and other records of the Company are maintained in accordance with generally accepted accounting practice (as defined in section 5 of the Local Government Act) and all relevant legal requirements.

12.2 **Audit:** The Board shall ensure that the financial statements of the Company are audited by the Auditor as at the end of each financial year (as defined in section 5 of the Local Government Act).

12.3 **Reporting:** The Company must provide reports to Shareholders in accordance with the requirements of the Local Government Act, including:

- (a) by the end of February in each year, the Board must deliver to Shareholders a report on the Company's operations during the six month period ending on 31 December in the previous year in accordance with section 66 of the Local Government Act; and
- (b) by the end of September in each year, the Board must deliver to Shareholders, and make available to the public, a report on the Company's operations during the year ending on the preceding 30 June in accordance with section 67 of the Local Government Act.

The Company must provide to Shareholders a copy of its unaudited financial statements for the six month period ending on 31 December in the previous year together with the half-yearly report to be delivered pursuant to clause 12.3(a).

12.4 **Debenture Trust Deed Notifications:** The Company shall:

- (a) to the extent known by the Company, notify each Shareholder (in writing) of any Event of Default affecting any other Shareholder or Guarantor as soon as reasonably practicable after its occurrence, and of the steps taken or proposed to be taken in relation to such Event of Default, provided that:
  - (i) the Company's obligation under this clause 12.4(a) only applies in respect of Securities of which it is the Holder; and
  - (ii) the Company shall not be liable for:
    - (aa) any failure to provide such notification to a Shareholder; or
    - (bb) any inaccurate, incomplete or incorrect information given in such a notification, provided the notification is given by the Company in good faith; and
- (b) promptly notify each Shareholder (in writing) if the Board determines that there is a risk of imminent default under any Borrowed Money Indebtedness;
- (ba) to the extent known by the Company, promptly notify each Shareholder (in writing):
  - (i) if any Event of Default (as defined in the Multi-issuer Deed) occurs in relation to a Participating CCO; or

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- (ii) where there is a risk that the CCO Shareholder will not be able to meet an obligation to pay any amount uncalled and/or unpaid in respect of its Participating CCO;
- (c) within one Business Day of receipt of a written request from a Shareholder or the Shareholder's Trustee, notify the Shareholder and the Shareholder's Trustee (in writing) of the "nominal amount" of the Security Stock:
  - (i) held by the Company in respect of the Shareholder's obligations under each of the Multi-issuer Deed and, where the Shareholder is a Guarantor, the Equity Commitment Deed; and
  - (ii) where the Shareholder is a Guarantor, held by the Security Trustee in respect of the Shareholder's obligations under the Guarantee,
 in each case, as at the date of the Company's notification.

In this clause 12.4, "Holder", "Security Trustee", "Trustee", "Security Stock", "Equity Commitment Deed" and "Guarantee" each have the meaning given in the Multi-issuer Deed.

- 12.5 **SOI reporting:** The Company must provide quarterly reports to the Shareholders' Council in accordance with any requirements of the Statement of Intent (which shall include, without limitation, to the extent known by the Company, details of any Event of Review occurring in any quarter, and the steps taken (or proposed to be taken) by the Company in relation to that Event of Review, and provided that clause 12.4(a)(ii) shall also apply to any such notification (or failure to provide any such notification) concerning an Event of Review).

### 13. DEFAULT

- 13.1 **Consequences:** If an Event of Default occurs in respect of a Shareholder (the "**Defaulting Shareholder**"):
  - (a) the Company may, while that Event of Default continues, by notice in writing to the Defaulting Shareholder require that the Defaulting Shareholder transfer all of its Shares to a Local Authority, the New Zealand Government or the Company, as the Board may determine, at Fair Value. Clauses 11.2 to 11.4 of the Constitution shall apply to any such required transfer as if it were the sale of a forfeited Share under those provisions. Clause 10 (other than clause 10.11) of this agreement shall not apply to any such transfer;
  - (b) while that Event of Default continues, the Defaulting Shareholder shall not be entitled to exercise any votes attaching to its Shares; and/or
  - (c) while that Event of Default continues, the Defaulting Shareholder shall not be entitled to receive any dividends or other distributions which may become payable in respect of any of its Shares, provided that, if the Event of Default is remedied, the amount of any accrued but unpaid dividends or other distributions will be paid to the Defaulting Shareholder as soon as reasonably practicable following such Event of Default becoming remedied (after deduction of any amounts owing to the Company by such Defaulting Shareholder).

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13.2 **Default interest:** If any party does not pay any amount payable under this agreement on the due date for payment ("**Due Date**") that party shall pay to the other party interest (both before and after judgment) on that amount. That interest:

- (a) shall be paid at the Bill Rate plus five per cent. per annum;
- (b) shall be paid by instalments at intervals of ten Business Days from the Due Date; and
- (c) shall be calculated on a daily basis from and including the Due Date until the unpaid amount is paid in full.

The right of a party to require payment of interest under this clause does not limit any other right or remedy of that party.

13.3 **Other remedies:** Clauses 13.1, and 13.2 are without prejudice to any other right, power or remedy under this agreement, at law, or otherwise, that any person has in respect of a default by any party. The parties agree that no sale of a Share under clause 11.1 of the Constitution may be made except at a price which is equal to or greater than Fair Value, and that nothing in clause 10 (except clause 10.11) shall apply to any such sale.

#### 14. CONFIDENTIALITY

14.1 **Confidentiality Obligation:** Subject to clause 14.2, each Shareholder and, in respect of (a) and (b) below only, the Company, shall keep confidential, and make no disclosure of:

- (a) the existence and contents of this agreement;
- (b) all information obtained from the Shareholders under this agreement or in the course of negotiations in respect of this agreement; and
- (c) all information obtained from the Company, or developed or held for the purposes of the Company,

(together "**Information**").

14.2 **Exceptions:** Information may be disclosed by a Shareholder or the Company if:

- (a) written consent to the disclosure is given by the party to which the Information relates;
- (b) disclosure is required by law, is necessary to comply with the listing rules of any recognised stock exchange, or if the Company determines disclosure in any prospectus, investment statement, product disclosure statement, offering memorandum or offer or disclosure document of the Company is necessary or desirable; or
- (c) disclosure is necessary to obtain the benefits of, and fulfil obligations under, this agreement or as necessary for the enforcement of, or any proceedings or claims with respect to, this agreement (or any other agreements or deeds which concern the Company);

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- (d) that Information already is, or becomes, public knowledge other than as a result of a breach of clause 14.1 by that Shareholder or the Company (as the case may be); or
- (e) disclosure is made to a lawyer, accountant or other professional adviser of that Shareholder or the Company.

## 15. NOTICES

15.1 **Writing:** Each notice or other communication to be given or made under this agreement to any person must:

- (a) **Writing:** be given or made in writing by email or letter and be signed by the sender or an authorised officer of the sender;
- (b) **Address:** be given or made to the recipient at the address or email address and marked for the attention of the person (if any), from time to time designated by the recipient to the other for the purposes of this agreement;
- (c) **Deemed delivery:** not be effective until received by the recipient, and any such notice or communication shall be deemed to be received:
  - (i) (if given or made by letter) when left at the address of the recipient or 5 Business Days after being put in the post, postage prepaid, and addressed to the recipient at that address; or
  - (ii) (if given or made by email) when dispatched in tangible, readable form by the sender to the email address advised by the recipient from time to time,

provided that any notice or communication received or deemed received after 5pm on a working day in the place to which it is sent, or on a day which is not a working day in that place, shall be deemed not to have been received until the next working day in that place.

15.2 **Initial address and numbers:** The initial address, email address and person (if any) designated for the purpose of this agreement, are set out in schedule 6.

## 16. DISPUTES

16.1 **Arbitration:** Any dispute, difference or claim arising out of or in connection with this agreement, or the subject matter of this agreement, including any dispute as to its existence or validity ("**Dispute**") will be referred to arbitration by a single arbitrator. The arbitration will be commenced by a party giving notice to the other parties stating the subject matter and details of the Dispute and requiring the Dispute to be referred to arbitration. The arbitrator will be appointed by the parties, or failing agreement within 10 Business Days after, and exclusive of, the date of giving the notice, will be appointed at the request of a party by the president or vice-president for the time being of the New Zealand Law Society or the nominee of such president or vice-president. The place of arbitration will be Auckland.

16.2 **Appeals on points of law:** The parties waive any right to seek a determination by the court of a preliminary point of law (pursuant to section 4, Second Schedule to the Arbitration Act

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1996) and to appeal on a question of law (pursuant to section 5, Second Schedule to the Arbitration Act 1996).

16.3 **Costs:** The parties will bear their own costs (including legal costs) and an equal share of the costs of the award in relation to the arbitration, unless the arbitrator determines that a party shall bear some proportion of, or all of, the costs of any other party because of impropriety, lack of cooperation or unreasonable conduct by that party.

16.4 **Binding:** The determination of an arbitrator appointed pursuant to clause 16.1 shall be binding on the parties.

## 17. WARRANTIES

17.1 **Warranties:** Each party represents and warrants that:

- (a) **Power:** it has full legal capacity and power to enter into this agreement and to carry out the transactions that it contemplates;
- (b) **Authorisations:** it holds each Authorisation that is necessary or desirable to:
  - (i) execute this agreement and to carry out the transactions that it contemplates;
  - (ii) ensure that this agreement is legal, valid, binding and admissible in evidence; or
  - (iii) enable it to properly carry on its business, and it is complying with any conditions to which any of these Authorisations is subject;
- (c) **Documents effective:** this agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally); and
- (d) **No contravention:** neither its execution of this agreement nor the carrying out by it of the transactions that it contemplates, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any undertaking or instrument binding on it or any of its property; or
  - (iv) require it to make any payment or delivery in respect of any financial accommodation or financial instrument before it would otherwise be obliged to do so.

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17.2 **Consultation:** Without limiting clause 17.1, each Shareholder which is a Local Authority represents and warrants to each other party that it has complied with section 56 of the Local Government Act in connection with its subscription for and/or acquisition of Shares in the Company.

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McAugh**18. GENERAL**

18.1 **Term:** This agreement shall terminate on the earlier of:

- (a) the date on which the liquidation of the Company is completed; and
- (b) the date on which one person owns all of the Shares.

18.2 **No partnership, joint venture:** Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Shareholders, and a Shareholder may not make, or allow to be made, any representation that any such relationship exists between any of the Shareholders. A Shareholder shall not have authority to act for, or to incur any obligation on behalf of, any other Shareholder, except as expressly provided for in this agreement. No Shareholder has any obligation of good faith or similar obligation to any other Shareholder.

18.3 **Counterparts:** This agreement is deemed to be signed by a party if that party has signed or attached that party's signature to any of the following formats of this agreement:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy;

and if every party has signed or attached that party's signature to any such format and delivered it in any such format to the other parties, the executed formats shall together constitute a binding agreement between the parties.

18.4 **Entire agreement:** This agreement constitutes the entire agreement between the parties relating to the subject matter of this agreement and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.

18.5 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.

18.6 **Further assurance:** Each party shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.

18.7 **Amendment:** This agreement may be amended in accordance with the terms of any Ordinary Resolution. If any such Ordinary Resolution is passed, the amendment recorded in that resolution shall take effect in accordance with their terms, and the Company shall prepare a deed recording such amendments, and may execute that deed on behalf of each Shareholder. Each Shareholder irrevocably appoints the Company as its attorney to execute such a deed on its behalf.

18.8 **Governing law:** This agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.

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18.9 **No guarantee:** The parties acknowledge that the obligations and liabilities of the Company under this agreement are not guaranteed by the Crown.

**SIGNATURES**

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**SCHEDULE 1**  
**Foundation Policies**  
(Clause 5.1)

All foundation policies may be reviewed annually by Principal Shareholders at the annual meeting of Shareholders. Any alteration requires approval pursuant to clause 5.1.

**Credit Risk**

**Lending Policy**

All Local Authorities that borrow from the Company will:

- Provide debenture security in relation to their borrowing from the Company and related obligations, and (if relevant), equity commitment liabilities to the Company and (if relevant) guarantee liabilities to a security trustee approved for the Company's creditors.
- Issue securities (bonds / FRNs / CP) to the Company and/or enter into facility arrangements with the Company.
- Comply with their own internal borrowing policies.
- Comply with the financial covenants outlined in the following table, provided that:
  - Unrated Local Authorities or Local Authorities with a long-term credit rating lower than 'A' equivalent can have bespoke financial covenants that exceed the:
    - Lending policy covenants outlined in the following table with the approval of the Board;
    - Foundation policy covenants outlined in the following table with the approval of an Ordinary Resolution.
  - Local Authorities with a long-term credit rating of 'A' equivalent or higher will not be required to comply with the lending policy covenants in the following table, and can have bespoke financial covenants that exceed the foundation policy covenants outlined in the following table with the approval of an Ordinary Resolution.
  - Any Board or Ordinary Resolution approval of bespoke financial covenants will only be provided after a robust credit analysis and any approval must also include bespoke reporting and monitoring arrangements.
- If the principal amount of a Local Authority's borrowings or the Company's commitment under a facility agreement with a Local Authority is at any time greater than NZD 20 million, be a party to a deed of guarantee and an equity commitment deed (in each case in a form set by the Company).

Financial covenant	Lending policy covenants	Foundation policy covenants
Net Debt / Total Revenue	<175%	<250%
Net Interest / Total Revenue	<20%	<20%
Net Interest / Annual Rates Income	<25%	<30%
Liquidity	>110%	>110%

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*Total Revenue is defined as cash earnings from rates, grants and subsidies, user charges, interest, dividends, financial and other revenue and excludes non government capital contributions (e.g. developer contributions and vested assets).*

*Net debt is defined as total debt less liquid financial assets and investments.*

*Liquidity is defined as external debt plus committed loan facilities plus liquid investments divided by external debt.*

*Net Interest is defined as the amount equal to all interest and financing costs less interest income for the relevant period.*

*Annual Rates Income is defined as the amount equal to the total revenue from any funding mechanism authorised by the Local Government (Rating) Act 2002 together with any revenue received from other local authorities for services provided (and for which the other local authorities rate).*

*Financial covenants are measured on Council only basis and not consolidated group basis, unless requested by a Local Authority and approved by the Board.*

During the initial three years of operation the Auckland Council will be limited to a maximum of 60% of the Company's total Local Authority (including CCOs (as defined below)) assets. After three years Auckland Council will be limited to a maximum of 40% of the Company's total Local Authority (including CCO) assets.

No more than the greater of NZD 100 million or 33% of a Local Authority's or CCO's (as defined below) borrowings from the Company will mature in any 12 month period.

Subject to implementation of any amendments or other actions considered necessary, advisable or expedient by the Board and the approval of the Board in relation to the relevant CCO (as defined below) (which may be a Council Controlled Trading Organisation), an approved CCO may borrow from the Company provided that:

- The CCO is a "council-controlled organisation" as defined in section 6 of the Local Government Act 2002, where the CCO is a company in which equity securities carrying at least 51% or more of the voting rights at a meeting of the shareholders of the CCO are held or controlled, directly or indirectly, by one or more Local Authorities (respectively, a "CCO" and each such Local Authority being a "CCO Shareholder");
- Each CCO Shareholder provides a guarantee in respect of the CCO in favour of the Company and/or there is sufficient uncalled capital in respect of the CCO to meet the financial obligations of the CCO;
- Each CCO Shareholder provides equity commitment liabilities to the Company, guarantees liabilities to a security trustee approved for the Company's creditors, and provides debenture security for its equity commitments to the Company and guarantee liabilities to the security trustee;
- Each CCO Shareholder complies with Lending policy financial covenants, Foundation policy financial covenants or other financial covenants required by the Board (if any);
- The CCO complies with any covenants required by the Board; and
- If required by the Board, the CCO will grant security in favour of the Company (which may be subject to any intercreditor arrangements acceptable to the Board).

Where the Company agrees to provide funding to the CCO, it must within 90 days of receiving annual financial covenant reporting from a CCO Shareholder (in its capacity as a borrower) report to the Shareholders' Council, holders of ordinary shares in the Company and any Local Authority guarantors of the Company's liabilities as to whether that CCO Shareholder has complied with its financial covenants on an individual and consolidated group basis.

Notwithstanding the definition of "CCO" set out above, the Board may not approve a CCO to borrow from the Company unless 100% of the equity securities carrying voting rights at a meeting of

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shareholders of the CCO are held or controlled, directly or indirectly, by one or more Local Authorities and the Crown (if applicable).

**Cash and Liquid Investment Policy**

The Company will only invest in NZD senior debt securities, money market deposits and registered certificates of deposits within the counterparty limits outlined in the following table.

New Zealand Local Authority and CCO securities are excluded from the Company's cash and liquidity portfolio.

Counterparty <sup>1</sup>	S & P Credit Rating or equivalent (Short-term / long-term) <sup>2</sup>	Maximum % Limit (Total Cash + Liquid Assets)	Minimum % Limit (Total Cash + Liquid Assets)	Maximum New Zealand Dollar counterparty Limit (millions) <sup>3</sup>	Maximum term (years) <sup>4</sup>
Category 1: NZ Government or RBNZ <sup>5</sup>	N/A	100%	20%	Unlimited	No longer than the longest dated LGFA maturity on issue
Category 2	A1+ / AAA	80%	N/A	300	3
Category 3	A1+ / A1 / AA+	80%	N/A	200	3
	A1+ / A1 / AA	80%	N/A	200	3
	A1+ / A1 / AA-	80%	N/A	200	3
Category 4	A1- / A+, NZ Registered Bank	60%	N/A	200	3
Category 5	A1- / A+, Other Issuers	10%	N/A	50	1

The maximum individual counterparty limit (excluding the NZ Government) cannot be greater than 100% of Accessible Capital. Accessible Capital is defined as issued and paid capital plus retained earnings plus issued and unpaid capital plus outstanding borrower notes.

**Derivative Policy**

Unless explicitly approved otherwise by the Board, all derivative transactions must be transacted with New Zealand Debt Management as counterparty.

<sup>1</sup>Category 2, 3, 4 and 5 counterparties do not include the RBNZ or the NZ Government.  
<sup>2</sup>Short term rating applies for all securities with a maturity date of 365 days or less.  
<sup>3</sup>If the counterparty credit rating is downgraded below the allowed limit, LGFA has 30 days to sell the security.  
<sup>4</sup>Maximum term applies from the date of settlement.  
<sup>5</sup>At least 20% of the portfolio must be held at the RBNZ or invested in NZ Government securities.

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**Market Risk**

The Company's total 12 month forecast portfolio PDH (Partial Differential Hedge) Limit is \$100,000<sup>6</sup>.

The Company's total portfolio Value-at-Risk (VaR) daily limit is \$1,000,000<sup>7</sup>.

**Foreign exchange risk policy**

The Company will take no foreign exchange risk.

**Operational Risk**

Unless explicitly approved otherwise by the Board, the Company will outsource the following functions to New Zealand Debt Management as follows:

- Hedging—New Zealand Debt Management is the LGFA interest rate swap counterparty.

**Dividend policy**

The policy is to pay a dividend that provides an annual rate of return to Shareholders equal to the Company's cost of funds plus 2.00% over the medium term, recognising that, to assist in the start-up period, the initial expectation is for no dividend for the part period to 30 June 2012, and for a dividend equal to 50% of the target dividend in the two periods to 30 June 2014 to be paid. Thereafter, the intention is to pay at least the full target dividend until the target dividend return is achieved as measured from commencement, including consideration of the time value of money at the target annual rate of return.

At all times payment of any dividend will be discretionary and subject to the Board's legal obligations and views on appropriate capital structure.

**Foundation Policies**  
(Clause 5.1 of the Shareholders' Agreement)

These foundation policies may only be changed by a resolution of shareholders in accordance with clause 5.1 of the Shareholders' Agreement

**Credit Risk**

**Lending Policy**

All Local Authorities that borrow from the Company will:

- Provide debenture security in relation to their borrowing from the Company and related obligations, and (if relevant), equity commitment liabilities to the Company and (if relevant) guarantee liabilities to a security trustee approved for the Company's creditors.
- Issue securities (bonds / FRNs / CP) to the Company and/or enter into facility arrangements with the Company.
- Comply with their own internal borrowing policies.

<sup>6</sup> PDH risk measures the sensitivity of a portfolio to a one basis point change in underlying interest rates. For example a PDH of \$100,000 means that the portfolio value will fall by \$100,000 for a one basis point fall in interest rates.

<sup>7</sup> VaR measures expected loss for a given period with a given confidence. For example, 95% confidence, daily VaR of \$1,000,000 means that it is expected that the portfolio will lose \$1,000,000 on 5% of days, i.e. 1 day in 20 the portfolio value will decrease by \$1,000,000.

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- Comply with the financial covenants outlined in the following table, provided that:
  - Unrated Local Authorities or Local Authorities with a long-term credit rating lower than 'A' equivalent can have bespoke financial covenants that exceed the:
    - Lending policy covenants outlined in the following table with the approval of the Board;
    - Foundation policy covenants outlined in the following table with the approval of an Ordinary Resolution.
  - Local Authorities with a long-term credit rating of 'A' equivalent or higher:
    - will not be required to comply with the lending policy covenants in the following table; and
    - can have bespoke financial covenants that exceed the foundation policy covenants outlined in the following table with the approval of an Ordinary Resolution; and in any event, will not be required to comply with the Net Debt / Total Revenue foundation policy covenant outlined in the following table until the financial year ending 30 June 2026. Until that date, such Local Authority must comply with the Net Debt / Total Revenue covenant set out in the table entitled "Alternative Net Debt / Total Revenue Covenant" below.
  - Any Board or Ordinary Resolution approval of bespoke financial covenants will only be provided after a robust credit analysis and any approval must also include bespoke reporting and monitoring arrangements.
- If the principal amount of a Local Authority's borrowings, or the Company's commitment under a facility agreement with a Local Authority, is at any time greater than NZD 20 million, be a party to a deed of guarantee and an equity commitment deed (in each case in a form set by the Company).

<u>Financial covenant</u>	<u>Lending policy covenants</u>	<u>Foundation policy covenants</u>
<u>Net Debt / Total Revenue</u>	<u>&lt;175%</u>	<u>&lt;280%</u>
<u>Net Interest / Total Revenue</u>	<u>&lt;20%</u>	<u>&lt;20%</u>
<u>Net Interest / Annual Rates Income</u>	<u>&lt;25%</u>	<u>&lt;30%</u>
<u>Liquidity</u>	<u>&gt;110%</u>	<u>&gt;110%</u>

<u>Alternative Net Debt / Total Revenue Covenant</u>	
<u>Financial Year ending</u>	<u>Net Debt / Total Revenue</u>
<u>30 June 2020</u>	<u>&lt;250%</u>
<u>30 June 2021</u>	<u>&lt;300%</u>
<u>30 June 2022</u>	<u>&lt;300%</u>
<u>30 June 2023</u>	<u>&lt;295%</u>
<u>30 June 2024</u>	<u>&lt;290%</u>
<u>30 June 2025</u>	<u>&lt;285%</u>

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Total Revenue is defined as cash earnings from rates, grants and subsidies, user charges, interest, dividends, financial and other revenue and excludes non government capital contributions (e.g. developer contributions and vested assets).

Net debt is defined as total debt less liquid financial assets and investments.

Liquidity is defined as external debt plus committed loan facilities plus liquid investments divided by external debt.

Net Interest is defined as the amount equal to all interest and financing costs less interest income for the relevant period.

Annual Rates Income is defined as the amount equal to the total revenue from any funding mechanism authorised by the Local Government (Rating) Act 2002 together with any revenue received from other local authorities for services provided (and for which the other local authorities rate).

Financial covenants are measured on Council only basis and not consolidated group basis, unless requested by a Local Authority and approved by the Board.

Auckland Council will be limited to a maximum of 40% of the Company's total Local Authority (including CCO) assets.

Subject to implementation of any amendments or other actions considered necessary, advisable or expedient by the Board and the approval of the Board in relation to the relevant CCO (as defined below) (which may be a council-controlled trading organisation, as defined in the Local Government Act), an approved CCO may borrow from the Company provided that:

- The CCO is a "council-controlled organisation" as defined in section 6 of the Local Government Act, where the CCO is a company in which equity securities carrying at least 51% or more of the voting rights at a meeting of the shareholders of the CCO are held or controlled, directly or indirectly, by one or more Local Authorities (respectively, a "CCO" and each such Local Authority being a "CCO Shareholder");
- Each CCO Shareholder provides a guarantee in respect of the CCO in favour of the Company and/or there is sufficient uncalled capital in respect of the CCO to meet the financial obligations of the CCO;
- Each CCO Shareholder provides equity commitment liabilities to the Company, guarantees liabilities to a security trustee approved for the Company's creditors, and provides debenture security for its equity commitments to the Company and guarantee liabilities to the security trustee;
- Each CCO Shareholder complies with Lending policy financial covenants, Foundation policy financial covenants or other financial covenants required by the Board (if any) and, in the case of a CCO Shareholder with a long-term credit rating of 'A' equivalent or higher, until the financial year ending 30 June 2026, the Net Debt / Total Revenue covenant in the table entitled "Alternative Net Debt / Total Revenue Covenant" above.
- The CCO complies with any covenants required by the Board; and
- If required by the Board, the CCO will grant security in favour of the Company (which may be subject to any intercreditor arrangements acceptable to the Board).

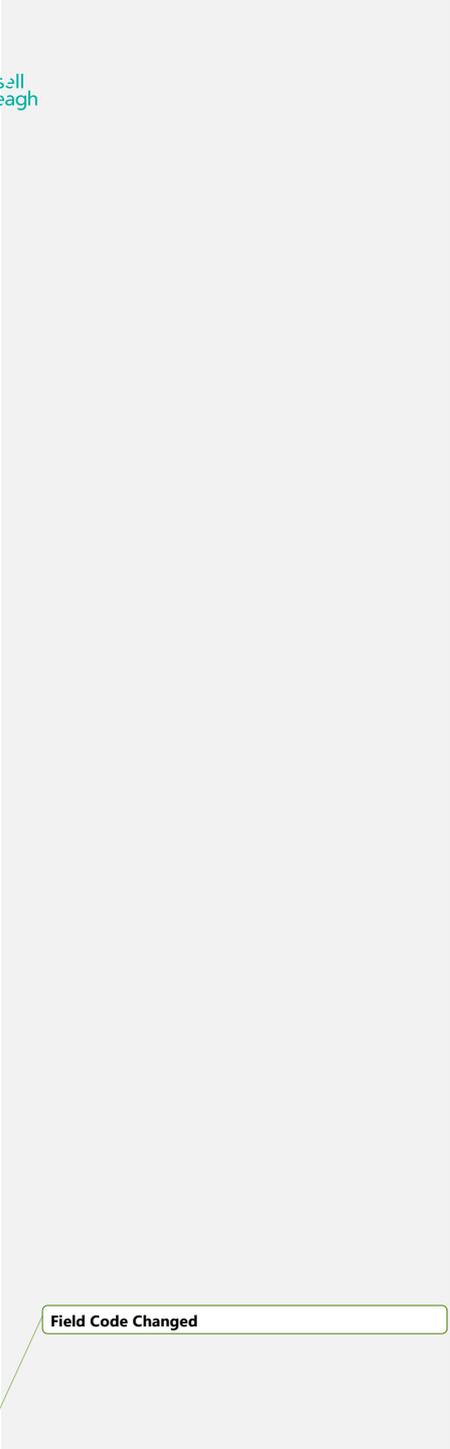
Where the Company agrees to provide funding to the CCO, it must within 90 days of receiving annual financial covenant reporting from a CCO Shareholder (in its capacity as a borrower) report to the Shareholders' Council, holders of ordinary shares in the Company and any Local Authority guarantors of the Company's liabilities as to whether that CCO Shareholder has complied with its financial covenants on an individual and consolidated group basis.

Notwithstanding the definition of "CCO" set out above, the Board may not approve a CCO to borrow from the Company unless 100% of the equity securities carrying voting rights at a meeting of shareholders of the CCO are held or controlled, directly or indirectly, by one or more Local Authorities and the Crown (if applicable).

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**SCHEDULE 2**  
**First Opening**  
(Clause 7.1)

SHAREHOLDER	NO. OF PAID UP ORDINARY SHARES	NO. OF UNPAID ORDINARY SHARES
Auckland Council	2,000,000	2,000,000
Bay of Plenty Regional Council	2,000,000	2,000,000
Christchurch City Council	1,999,999	2,000,000
Hamilton City Council	2,000,000	2,000,000
Hastings District Council	400,000	400,000
Masterton District Council	100,000	100,000
New Plymouth District Council	100,000	100,000
Otorohanga District Council	100,000	100,000
Selwyn District Council	200,000	200,000
South Taranaki District Council	100,000	100,000
Tasman District Council	2,000,000	2,000,000
Taupo District Council	100,000	100,000
Tauranga City Council	2,000,000	2,000,000
Waipa District Council	100,000	100,000
Wellington City Council	2,000,000	2,000,000
Wellington Regional Council	2,000,000	2,000,000
Western Bay of Plenty District Council	2,000,000	2,000,000
Whangarei District Council	800,000	800,000
New Zealand Government	5,000,000	0
<b>Total</b>	<b>24,999,999</b>	<b>20,000,000</b>

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**SCHEDULE 3**  
**Reimbursement**  
(Clause 7.2)

LOCAL AUTHORITY	AMOUNT
Auckland Council	\$250,000.00
Christchurch City Council	\$200,000.00
Hamilton City Council	\$200,000.00
Tasman District Council	\$200,000.00
Tauranga City Council	\$200,000.00
Wellington City Council	\$200,000.00
Wellington Regional Council	\$200,000.00
Western Bay of Plenty District Council	\$150,000.00
Whangarei District Council	\$200,000.00

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**SCHEDULE 4**  
**Form of Accession Deed**  
(Clause 10.11)

DEED dated [            ]

PARTIES            [            ] ("Remaining Shareholder(s)")  
                          [            ] ("Transferor")  
                          [            ] ("Transferee")

**INTRODUCTION**

- A.        The Remaining Shareholder(s) and the Transferor are the parties to a shareholders' agreement dated [            ] 2011 ("**Agreement**") relating to New Zealand Local Government Funding Agency Limited (the "**Company**").
- B.        The Transferor wishes to transfer to the Transferee **[Number]** shares in the Company.
- C.        Under the Agreement the parties are required to execute this deed.

**OPERATIVE PROVISIONS**

1.        With effect from the [date of this deed]:
- (a)        The Transferee becomes a party to the Agreement as if it had been named as a party to the Agreement and had executed it.
- (b)        The Transferor ceases to be a Shareholder. ***[Include only if applicable]***
2.        The Transferor is not released from any liability to the Remaining Shareholders existing as at [the date of this deed]. ***[Include only if applicable]***
3.        New Zealand law governs. New Zealand courts have non-exclusive jurisdiction.

**SIGNED AS A DEED**

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**SCHEDULE 5**  
**Events of Default**  
(Clause 13.1)

An Event of Default occurs in respect of a Shareholder if:

- (a) without limiting paragraphs (b), (c) and (e), that Shareholder commits any breach of or fails to observe any of the obligations under this agreement or the Constitution or the Guarantor's Equity Commitment of that Shareholder and (if that breach or failure is capable of remedy) does not remedy that breach or failure within 10 Business Days of notice from any other Shareholder or the Company specifying the breach or failure and requiring remedy or (if that breach or failure is not capable of remedy) that breach or failure is material in the context of the obligations of that Shareholder under this agreement, the Constitution or the Guarantor's Equity Commitment (as the case may be);
- (b) that a Shareholder fails to pay any calls on any Ordinary Shares within the prescribed time frame following a call being made by the Board;
- (c) that Shareholder fails to subscribe for any Redeemable Shares in accordance with the Guarantor's Equity Commitment of that Shareholder;
- (d) an "Event of Default", as defined in the Multi-issuer Deed, or a default under clause 7.6 or clause 7.7 of the Multi-issuer Deed, occurs with respect to that Shareholder;
- (e) an Event of Default occurs under clause 9.2 with respect to that Shareholder; or
- (f) an "Event of Default" as defined in any other arrangements for the Shareholder to be provided debt funding by the Company.

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**SCHEDULE 6**  
**Addresses for Notice**  
 (Clause 15.2)

PARTY	ADDRESS FOR NOTICES
The Company	Address: Russell McVeagh, Vero Centre, 48 Shortland Street PO Box 8, Auckland 1140  Attention: Deemple Budhia
Auckland Council	Delivery Address: 135 Albert Street Auckland 1010  Postal Address: Private Bag 92300 Victoria Street West Auckland 1142  Email: john.bishop@aucklandcouncil.govt.nz  Attention: John Bishop, Group Treasurer
Bay Of Plenty Regional Council	Delivery Address: 5 Quay Street Whakatāne Postal Address: P O Box 364 Whakatāne 3158 Email: mat.taylor@boprc.govt.nz  Attention: Mat Taylor
Christchurch City Council	Delivery Address: Civic Offices 53 Hereford Street Christchurch  Postal Address: P O Box 73016 Christchurch 8154  Email: Treasury@ccc.govt.nz  Attention: Andrew Jefferies

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PARTY	ADDRESS FOR NOTICES
Hamilton City Council	Delivery Address: 260 Anglesea Street Council Building Garden Place Hamilton 3240  Postal Address: Private Bag 3010 Hamilton 3240  Email: david.bryant@hcc.govt.nz  Attention: David Bryant
Hastings District Council	Delivery Address: 207 Lyndon Road East Hastings 4122  Postal Address: Private Bag 9002 Hastings 4156  Email: brucea@hdc.govt.nz  Attention: Bruce Allan
Masterton District Council	Delivery Address: 27 Lincoln Road Masterton 5810  Postal Address: PO Box 444 Masterton 5840  Email: davidp@mstn.govt.nz  Attention: Manager Finance
New Plymouth District Council	Delivery Address: Liardet St New Plymouth  Postal Address: Private Bag 2025 New Plymouth 4342  Email: alison.trustrumrainey@npdc.govt.nz / carla.freeman@npdc.govt.nz  Attention: Alison TrustrumRainey / Carla Freeman
Ōtorohanga District Council	Delivery Address: 17 Maniapoto Street

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PARTY	ADDRESS FOR NOTICES
	<p>Otorohanga 3940</p> <p>Postal Address PO Box 11 Otorohanga 3940</p> <p>Email: <a href="mailto:grahamb@otodc.govt.nz">grahamb@otodc.govt.nz</a></p> <p>Attention: Graham Bunn</p>
Selwyn District Council	<p>Delivery Address: 2 Norman Kirk Drive Rolleston</p> <p>Postal Address: P O Box 90 Rolleston 7643</p> <p>Email: <a href="mailto:Treasury.management@selwyn.govt.nz">Treasury.management@selwyn.govt.nz</a></p> <p>Attention: Greg Bell</p>
South Taranaki District Council	<p>Delivery Address: 105-111 Albion Street Hawera 4610</p> <p>Postal Address: Private Bag 902 Hawera 4640</p> <p>Email: <a href="mailto:Vipul.mehta@stdc.govt.nz">Vipul.mehta@stdc.govt.nz</a></p> <p>Attention: Vipul Mehta</p>
Tasman District Council	<p>Delivery Address: 189 Queen Street, Richmond, Nelson 7050</p> <p>Postal Address Private Bag 4 Richmond, Nelson 7050</p> <p>Email: <a href="mailto:treasury@tasman.govt.nz">treasury@tasman.govt.nz</a></p> <p>Attention: Corporate Services Manager</p>
Taupo District Council	<p>Delivery Address: 72 Lake Terrace Taupo 3330</p> <p>Postal Address: Private Bag 2005 Taupo 3352</p> <p>Email: <a href="mailto:nward@taupo.govt.nz">nward@taupo.govt.nz</a></p>

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Russell  
McAugh

PARTY	ADDRESS FOR NOTICES
	Attention: Neil Ward
Tauranga City Council	Delivery Address: 91 Willow Street Tauranga 3143  Postal Address: Private Bag 12022 Tauranga 3143  Email: treasury.settlements@tauranga.govt.nz  Attention: Mohan De Mel
Waipa District Council	Delivery Address: 101 Bank Street Te Awamutu  Postal Address: Private Bag 2402 Te Awamutu 3800  Email: Farrah.Templeton@waipadc.govt.nz Kumaren.PerumalSarah.Davies@waipadc.govt.nz Ken.Morris@waipadc.govt.nz  Attention: Ken Morris
Wellington City Council	Delivery Address: Wellington City Council 113 The Terrace Wellington  Postal Address: PO Box 2199 Wellington 6140  Email: martin.read@wcc.govt.nz  Attention: Martin Read
Wellington Regional Council	Delivery Address: Shed 39, 2 Fryatt Quay, Pipitea Wellington 6011  Postal Address: P O Box 11646 Manners Street Wellington 6142  Email: mike.timmer@gw.govt.nz matthias.zuschlag@gw.govt.nz

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PARTY	ADDRESS FOR NOTICES
	Attention: Mike Timmer
Western Bay Of Plenty District Council	Delivery Address: Barks Corner Greerton Tauranga  Postal Address: Private Bag 12803 Tauranga 3143  Email: kumaren.perumal@westernbay.govt.nz  Attention: Kumaren Perumal
Whangarei District Council	Delivery Address: Forum North Rust Avenue Whangarei  Postal Address: Private Bag 9023 Whangarei 0148  Email: alan.adcock@wdc.govt.nz  Attention: Alan Adcock
New Zealand Government	Delivery Address: Minister of Finance Parliament Buildings, Wellington  And to: Minister of Local Government Parliament Buildings, Wellington  With a copy to: William More, The Treasury, No 1 The Terrace Wellington 6011  Postal Address: The Treasury, No 1 The Terrace Wellington 6011 Attention: William More  Fax: 04 473 0982

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### 9.3 TOURISM BAY OF PLENTY ANNUAL REPORT

**File Number:** A4308994

**Author:** David Pearce, Community Manager

**Authoriser:** John Holyoake, Chief Executive Officer

#### EXECUTIVE SUMMARY

The purpose of this report is for Tourism Bay of Plenty (TBOP) to provide their annual report to Council. The report details their financial and non-financial performance.

#### RECOMMENDATION

1. That the Community Manager's report dated 4 November, titled Tourism Bay of Plenty Annual Report, be received.
2. That Tourism Bay of Plenty's Annual Report to 30 June 2021 be received.

#### BACKGROUND

1. Council provide Tourism Bay of Plenty \$232,000 per annum. In return Council and our District receives tourism provider capacity building, including digital capability training, domestic marketing campaigns from horticultural provenance, Maori cultural tourism and coastline promotion, and environmental stewardship. TBOP also research to understand the impact of tourism across the four well beings. Another key focus being growing the visitor economy in the region.
2. New Tourism Bay of Plenty General Manager, Oscar Nathan and Chair Laurissa Cooney will join us in person to take any questions.
3. In accordance with their Statement of Intent, TBOP are required to provide their draft annual reports to Council within two months of the end of the financial year. The final audited annual reports are due to be provided to Council within three months of the end of the financial year (30 September 2021).
4. A legislative change on 5 August 2021 provides for council-controlled organisations, with a 30 June balance date, to extend their statutory reporting timeframe until 30 November.
5. Due to the impact of COVID-19 on public entities, Audit NZ have had to re-prioritise their audits with TBOP's audit being delayed this year. This means that the draft annual report for TBOP is provided at this time.
6. Annual reports are provided by the council-controlled organisations to Council as part of its role to ensure the council-controlled organisation's performance (TBOP) is consistent with their Statements of Intent and other accountability documents.
7. Specifically, the Statements of Intents require that the annual reports include:
  - (i) Statement of Financial Performance (balance sheet);
  - (ii) Statement of Comprehensive Income (income statement);
  - (iii) Statement of Movements in Equity;
  - (iv) Statement of Cash Flows;
  - (v) Disclosure of related party transactions;
  - (vi) Notes to the Financial Statements; and
  - (vii) Such other statements as may be necessary to fairly reflect the financial position of the Company and its subsidiaries, the resources available to the Company and its

subsidiaries and the financial results, of the operations of the Company and its subsidiaries.

8. The board of TBOP is also required to provide a board report, including a summary of the financial results, a report of the operations, and a comparison of performance in relation to objectives.
9. TBOP's draft and final Annual Report has met the legislative and Statement of Intent requirements.
10. The draft unaudited Annual Report is provided as **Attachment 1**.

#### Summary of financials

11. The financial summary shows an overall positive return of \$36,352, with revenue achieving a net result increase of 1% ahead of budget.
12. Pages 30-32 of the Annual Report addresses major variances to the budget, including significantly increased income as a result of funding provided by the Strategic Tourism Assets Protection Programme (STAPP) and Regional Events Fund.
13. The trust has an increase in its cash position from the previous year, with \$1,012,031 in cash and cash equivalents, compared to \$190,683 in 2019/2020. A significant increase in total assets (through cash and cash equivalents), combined with an increase in total liabilities has contributed to a slight increase in the Trust's total equity to \$461,288 (from \$424,935 in 2019/20).

#### Summary of Statement of Intent performance

14. The Chairperson's report on pages 2 and 3 notes that through collaboration of iwi, stakeholders, industry and community, *Te Hā Tāpoi | The Love of Tourism strategy* is the ideal long-term plan, which will assist in building a robust and resilient tourism sector, leaving the TBOP rohe better than it was before.
15. An additional \$700,000 of STAPP funding from the Government enabled TBOP to move quickly with building capacity, fast-tracking projects, contracting passionate locals to lead new activity, including developing new products and creating domestic marketing campaigns.
16. Of the 48 strategic and business plan objectives and performance measures used to track Tourism BOP's progress, 32 were achieved, eight were not achieved, seven are on hold or were delayed due to the cruise sector being unable to operate or due to other delays. The one remaining measure has been indefinitely suspended due to funding limitations.

#### Other comments

17. TBOP's continued focus from 2019/20 has been the domestic market and, despite the ongoing impacts of lockdown, there has been a 12% increase on spend in the region, 19% coming through the domestic market.
18. Most industries have benefitted from the domestic market spend, particularly accommodation, arts, recreation, food and retail businesses. Travel and cruise tour operators are significantly impacted with 70% decrease in spend.
19. 86% of New Zealanders are satisfied or very satisfied with their visit to the Western Bay of Plenty.

### **SIGNIFICANCE AND ENGAGEMENT**

20. The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

21. In terms of the Significance and Engagement Policy this decision is considered to be of low significance because the financial implications associated with the decision are low and community engagement is minimal.

### **ENGAGEMENT, CONSULTATION AND COMMUNICATION**

22. Taking into consideration the above assessment, that the issue is of low significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

### **STATUTORY COMPLIANCE**

23. The final copy of TBOP's audited Annual Report will be provided to Council once received.

### **ATTACHMENTS**

1. **Tourism Bay of Plenty Annual Report 2020-21 (Unaudited)** [↓](#) 

# Annual Report

TO 30 JUNE 2021

TĀPOI TE MOANANUI Ā TOI | TOURISM BAY OF PLENTY

(WESTERN BAY OF PLENTY TOURISM & VISITORS TRUST)

## CHAIRPERSON'S REPORT

Kia ora koutou katoa

It is my pleasure to present the Tāpoi Te Moananui ā Toi | Tourism Bay of Plenty (TBOP) Annual Report 2020-2021. In my first year as Chair to the Board, I have seen the team embrace our Destination Management Plan and roll out new initiatives that are in keeping with our strategy, Te Hā Tāpoi | The Love of Tourism. Despite the challenges of the current tourism environment, we are 'walking the talk' and demonstrating the relevance of regenerative tourism more than ever.

It has become very clear that the COVID-19 world requires a new approach to tourism that better serves communities and visitors in wellbeing terms, not just economic terms.

When we co-created the *Te Hā Tāpoi | The Love of Tourism* strategy through extensive consultation with iwi, stakeholders, industry, and the community, we didn't realise at the time that it would act as a recovery plan. And it is an ideal one at that. Because we can no longer think the way we thought before but need to take a long-term view that builds a robust and resilient tourism sector that leaves our TBOP rohe (region) better than it was before.

The impact of COVID-19 on parts of the sector should not be downplayed, however, and in the first six months of our reporting year, TBOP was focussed on delivering support services to our local operators as well as marketing campaigns targeting mostly domestic visitors in an environment where international travel remained off-limits.

It must also be remembered that border closures came just four months after the eruption of Whakaari/White Island in December 2019, so the level of disruption to normal business operations for many in our rohe (region) has been significant for an extended period. I want to acknowledge the strength and resilience of many operators who have managed to keep their doors open in the face of many challenges, which in recent months have also included severe labour shortages in the hospitality sector.

Throwing our industry and team another major curveball was the recent COVID-19 community outbreak, sparking our country's second Alert Level 4 nationwide lockdown in August. Our team immediately began working remotely to connect and reach out daily to support operators across the sector.

In July 2020 TBOP received a \$700,000 funding boost from the Government's Strategic Tourism Assets Protection Programme (STAPP) for the COVID-19 economic rebuild. Thanks to ahead-of-the-curve planning, and ambitious regenerative goals of our *Te Hā Tāpoi | The Love of Tourism* strategy, the team was well-placed to seize the opportunities this funding enabled.

Consequently, our organisation was able to immediately pour its energy into building capability, fast-tracking some projects, and trialling others, developing products, and creating compelling domestic marketing campaigns. We were also able to trial new initiatives, specifically around the contracting of passionate locals to lead the activity in the identified areas of regional DNA®. This has proved so successful in the horticultural provenance and Māori cultural tourism space that we will continue this work and expand it to include the ocean and beaches DNA® element in this coming financial year.

The key areas of focus for STAPP funding were to:

- **Build industry capability** by delivering a series of tailored workshops to tourism operators, who were able to upskill and meet current industry standards in health and safety and digital capability.
- **Elevate the region's DNA**, in particular this year the horticultural provenance prospects by developing a framework for the horticultural provenance 'passion group'; we also trialled a joint venture with restaurants and developed a regional food brand, Flavours of Plenty.
- **Accelerate regenerative tourism** by hiring a 'Regenerator' to lead activity related to environmental stewardship, to help us to better understand the impact of tourism across the four wellbeing areas, and to identify opportunities to upskill industry players; collaborating with neighbouring regions and other RTOs to complete the 'Back to Life' regenerative tourism programme by international experts Anna Pollock and Michelle Holliday; and progressing the Eco-Destinations' Green Destination Status for the region.

In September 2020, the Government also announced financial support for tourism in the form of a Regional Events Fund (REF). Part of the Government's Tourism Recovery Package, the REF is intended to support the visitor sector by stimulating domestic travel to events, to help replace some of the international visitor spend lost due to the COVID-19 pandemic and international border closures.

TBOP's successful application has resulted in a grant of \$865,000 to be used within three years. We have received several excellent expressions of interest for the contestable portion of this fund (over \$500,000) and look forward to working with event organisers to bring to life some attractive, exciting events that align with the region's DNA.

Of course, the board also appointed acting Tumuaki | Chief Executive Officer and former board trustee Oscar Nathan to the permanent role of General Manager. The robust recruitment process showed excellent talent vying for the role. Oscar stood out as a strong leader with a superb reputation within and outside the industry. It has been heartening to see Oscar's consistent positivity, dedication, and determination to bring to life the organisation's strategy. Something we look forward to seeing more of in the coming year. For the vacancy on the board that Oscar left, we are currently undergoing a process to recruit for this role.

We are only as good as the sum of all our parts, and central to our success at TBOP is the successful collaboration with our key stakeholders. These include Tangata Whenua and funding partners Tauranga City Council, Western Bay of Plenty District Council, Whakatāne District Council, and Ministry of Business, Innovation and Employment (MBIE). Also, Tauranga Airport, Air New Zealand, Tourism New Zealand, and neighbouring tourism partners. Our industry operators are the real heroes though, and to whom we owe a great debt of gratitude for their resilience and persistence during this time.

I would like to acknowledge Kristin Dunne for her commitment and leadership over the last five years as Tumuaki | Chief Executive of TBOP. Kristin was instrumental in transforming TBOP to a leading Destination Management Organisation. Her legacy will live on through TBOP's *Te Hā Tāpoi | The Love of Tourism* strategy. The TBOP Board wish to thank Kristin for her leadership and strong contribution to the organisation and region.

I would also like to thank my trustee colleagues for their strong governance, and the TBOP team for their outstanding contribution and commitment in such unprecedented times. Ngā mihi mahana kia koutou katoa.

*Manaaki Whenua, Manaaki Tāngata, Haere whakamua.*

*The most important things are place, people, and progress.*

Laurissa Cooney  
Chairperson  
Tāpoi Te Moananui ā Toi | Tourism Bay of Plenty  
30 June 2021

## GENERAL MANAGER'S REPORT

Kia ora

As we grapple with the latest effects of COVID-19 during a country-wide lockdown, it throws into focus the critical nature of tourism to our New Zealand economy and why we must tackle our future head on by adding new ways of doing business to our repertoire. The realities of COVID-19 are here to stay.

As newly appointed General Manager at Tāpoi Te Moananui ā Toi | Tourism Bay of Plenty (TBOP), I have relished the responsibility and opportunity to front our stakeholder engagement, to reach out to key entities and community partners and where possible provide support and awahi to our operators. At times like this, activity on the surface simply stops for many tourism-related businesses, making our industry one of the hardest hit by lockdowns. Below the surface, many remain busy providing alternative options, processing refunds, revising bookings and/or rearranging travel itineraries and event or conference plans for affected clients.

Taking this into consideration, what we do know without a doubt is that we need to stamp out the virus. If it takes a short, sharp lockdown, to coincide with the ramping up of our national vaccination programme, then that is what we must do to recover the overall picture of health.

In the year ending June 2021, total visitor spend in the region increased by about 19% on the previous year (YE June 2020). This growth was driven by an approximate 28% increase in spend from the domestic market. The growth of this crucially accessible market has been our focus this year with the absence of the international visitor market, and we are proud of this result.

Yet while there has been some inspirational resilience from many of our operators to date, there are a number that have been precariously close to breaking point and this latest lockdown will not be good news for them. This is particularly the case with those operators affected by closed borders. Retail and hospitality sectors are seeing the benefits of a larger domestic market, but operators in tourism transport, cruise sector, and tours, as well as accommodation providers, are struggling.

As a Destination Management Organisation (DMO) we undertake activities to support the growth of the visitor economy in the region, including campaigns, public relations activity, and social media activity. Whilst we will adapt to the curveballs that the pandemic throws at us, we remain resolute about delivering our overall programme of activity to ensure our local industry is supported. Of course, our immediate focus remains on the local, domestic, and Australian markets, while maintaining a presence in other international markets.

Our major achievements this year include:

- Flavours of Plenty was launched as a brand, a collective, and a vehicle for funding, designed to bring the food community together and to help share the region's food story. Plans for a new food festival are lined up to ignite the region in autumn 2022.
- The launch of Te Whānau Tāpoi Māori ō Tauranga Moana, a Māori tourism operator collective in Tauranga, which continues our activity in the Māori cultural tourism space.
- Digital capability training for operators, which received excellent feedback and almost all the 30+ participants made changes to their digital platforms based on these sessions.
- TBOP's media famil programme, which achieved at least one travel story in a major New Zealand publication every month. The total investment in this media programme was \$38,000, with a total net return in Equivalent Advertising Value (EAV) of \$1.5 million, representing a 3,878% return on the investment.

- The Sure to Make You Smile marketing campaign targeting domestic visitors achieved 3,471,396 impressions and 320,428 full video plays. The campaign includes a suite of videos and marketing material completely aligned to the destination's DNA® and, for the first time, an infusion of Te Ao Māori guided by a cultural advisor.
- The establishment of the Leadership Advisory Group, with Graeme Marshall as our appointed independent chair. The first hui took place with representatives from Ngāti Ranginui, Ngāi Te Rangi, Priority One, Tauranga Chamber of Commerce, Department of Conservation, MBIE, EnviroHub, Zespri, Bay Trust and many others.

The Te Moananui ā Toi | Coastal Bay of Plenty was on a strong growth curve before COVID-19 hit. Since the emergence of the pandemic, our industry has continually adopted new disciplines and ways of operating. As part of our regenerative approach to tourism, as outlined in our strategy Te Hā Tāpoi | The Love of Tourism, we have made moves to better align our focus and delivery on tackling the challenges alongside industry.

Staff resourcing and a reorganisation process has been challenging on the team in recent months. Whilst it has resulted in some of our desired outcomes not being achieved, the conclusion of the organisation-wide realignment now enables us to better deliver on a practical level as we move out of a strategising phase and into much needed delivery.

Essentially, we have now established a delivery team focussed on a two-pronged approach and responsibility to both Destination Management and Destination Marketing. This will future proof us as Tāpoi Te Moananui ā Toi | TBOP to remain a vehicle for tourism transformation. It will also allow us to demonstrate how a destination that is well networked and managed can see tourism benefit the environment, regional economies, Māori, and the community's social wellbeing, and, as it turns out, be a major player in a sound recovery plan.

Throughout the year ending 2021, several performance measures have been met, including budget and business targets, and planning and reporting requirements. Tāpoi Te Moananui ā Toi | TBOP has met all budget and business plan targets and the total income and expenses were both higher than budget due to extra income and costs from the Regional Events Fund (MBIE).

Tāpoi Te Moananui ā Toi | TBOP also met all planning and reporting requirements of Tauranga City Council, Western Bay of Plenty District Council, and Whakatane District Council. Of the 48 strategic and business plan objectives and performance measures, 32 were achieved. Of those remaining, 8 were not achieved, 7 are on hold or were delayed due to the cruise sector being unable to operate, or because of delays by providers or other external parties.

The final performance measure was for progressing the Te Tomokanga (the Visitor Information Centre) plan for Mount Maunganui, which has been indefinitely suspended due to funding limitations.

This annual report 2020-2021 reflects the mahi (work), determination, and motivation behind Tāpoi Te Moananui ā Toi | TBOP. I am proud of the courage and enthusiasm that the team has displayed during these times of transition, and I am equally buoyed by the opportunity that our region has before us.

Nō reira, I would like to thank Tāpoi Te Moananui ā Toi | TBOP, the board, and our funders, partners, and other stakeholders. We look forward to continued success in these surreal times in 2021-2022.

Oscar Nathan  
Tumuaki | General Manager  
Tāpoi Te Moananui ā Toi | Tourism Bay of Plenty  
30 June 2021

## MAJOR ACHIEVEMENTS AND MILESTONES



Launched Flavours of Plenty



Helped establish Te Whānau Tāpoi o Tauranga Moana



Offered operators digital capability training



Reached \$1.5m in AVE\* through media programme



Domestic campaign achieved 1.6m impressions



Launched the Leadership Advisory Group



Achieved 28% growth in domestic visitor spend (compared to last year)



Oscar Nathan appointed as General Manager (July 2021)



**Strategic Tourism Assets Protection Programme funding**  
Value of \$700,000 to be used by December 2021

Secured STAPP funding from MBIE



**Regional Events Fund**  
Value of \$865,000 to be used over three years

Secured Regional Events Fund funding from MBIE



**Low Carbon Circular Economy Programme**  
Value of \$60,000 per year for three years (to upskill operators)

Secured funding from Bay of Plenty Regional Council

\*AVE is Advertising Value Equivalency

## IMPACT OF THE COVID-19 PANDEMIC

The COVID-19 pandemic significantly impacted tourism during the 2020 to 2021 financial year. The global pandemic indefinitely changed the travel sector and is responsible for closing Aotearoa New Zealand's international borders and ceasing nearly all non-essential travel throughout the world.

These impacts present an ongoing challenge that we will face for a long period to come. The international border closures have forced a focus on the domestic market as the key to the survival of the region's tourism industry. While the border has opened to Australia for periods of time, these have been intermittent due to COVID-19 outbreaks in Australia. Te Moananui ā Toi | the Coastal Bay of Plenty did welcome a small number of Australian visitors while borders were open, most of whom were visiting family and friends.

In this uncertain environment, TBOP has been conscious of remaining flexible enough to meet changes while also delivering the organisation's key fundamental functions and meeting our performance measures. There are four planned activities on hold or delayed until the next financial year due to COVID-19 and the cruise ban that is in place because of this. Specifically, measuring cruise sector spend, reviewing the cruise model, and undertaking research to explore perceptions of residents (particularly related to cruise) are currently delayed until more information regarding the return of the cruise sector is available. The pandemic has also interrupted momentum regarding private investment in product development.

The changing face of international tourism and growing demands on Tauranga City Council's limited funds meant that the Council decided not to proceed with Te Tomokanga, the Visitor Information Centre that was planned for Mount Maunganui. The project plan has consequently been indefinitely suspended and the activity will not be achieved.

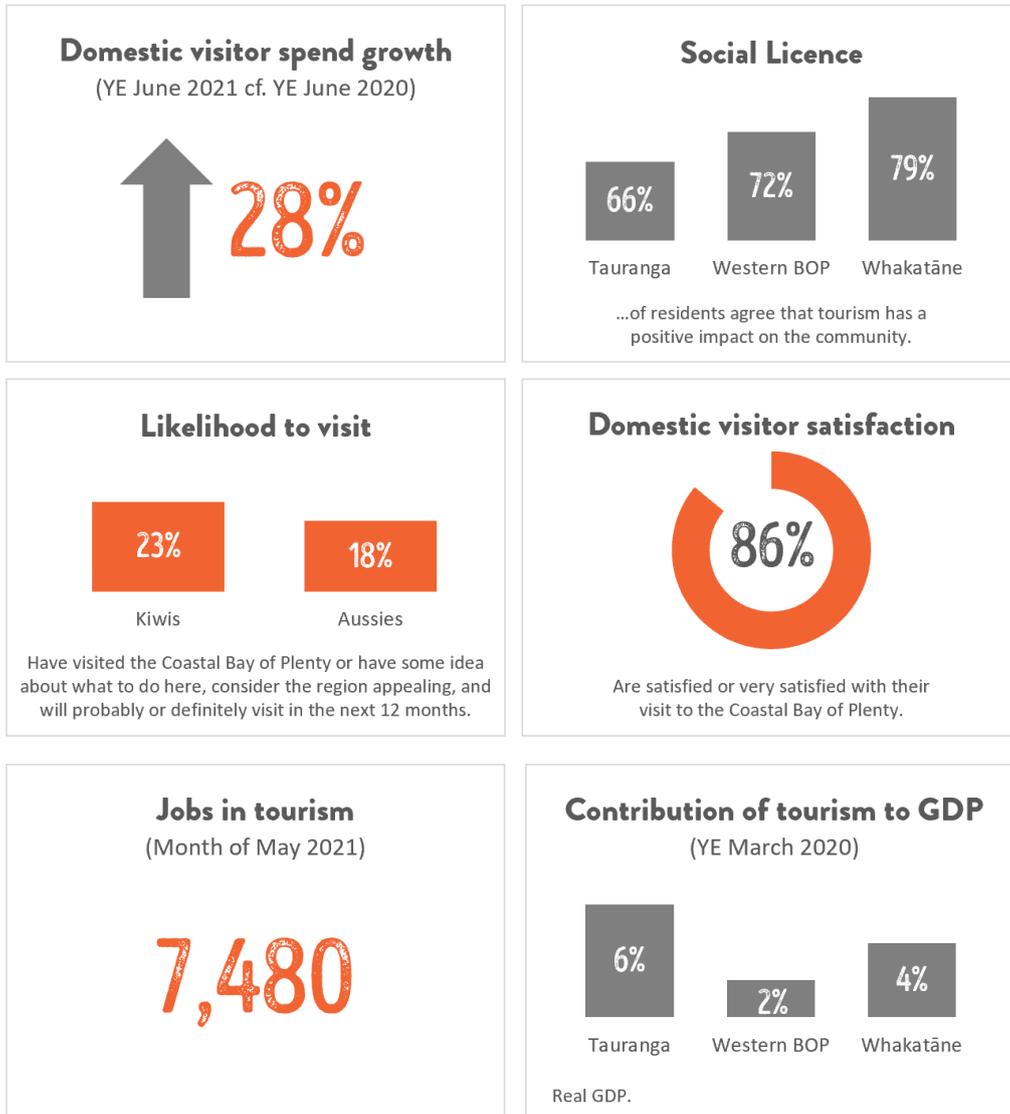
MBIE provided the Strategic Tourism Assets Protection Programme (STAPP) to stimulate domestic tourism in the current challenging environment and to help the industry survive this disruption. TBOP was successful in securing \$700,000 of additional funding through this programme, the maximum for a Regional Tourism Organisation of its size. The STAPP funding has allowed us to extend our activity across the areas of Destination Management and Planning; Industry Capability Building and Product Development; and Domestic Marketing.

COVID-19 has presented the world and Aotearoa an opportunity to rebuild a regenerative tourism future that better serves our people and place beyond monetary value. The pause in travel has forced a rethink of the type of tourism that we welcome into our homes. Te Hā Tāpoi | The Love of Tourism 2020 – 2023 continues to be globally recognised as a prescient roadmap for this regenerative tourism future.

We strongly believe that Te Hā Tāpoi | The Love of Tourism 2020 – 2023 is even more valid in the wake of this global crisis and that this strategy will continue to act as our recovery plan. Now, more than ever, we need to be committed to destination management, to this plan, and to the actions identified therein, to build a more resilient and robust sector for our future manuhiri (visitors) to enjoy.

## 2020-2021 TOURISM LANDSCAPE

Overview of Te Moananui ā Toi | The Coastal Bay of Plenty Tourism Landscape



## Visitor Economy

The COVID-19 pandemic has had a significant impact on the tourism industry overall, and on Te Moananui ā Toi | the Coastal Bay of Plenty's visitor economy. The visitor economy was experiencing a period of significant growth prior to the pandemic.

### Visitor spend year ending June 2021, compared to previous year

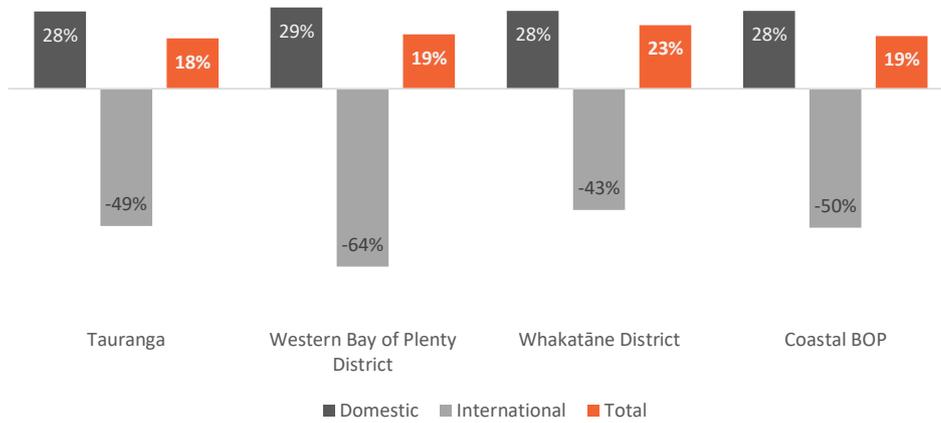
- In the year ending June 2021, **total** visitor spend in the region increased by around 19% on the previous year (YE June 2020). This level of growth is higher than the national average of 4% growth.
- This growth was driven by an approximate 28% increase in spend from the **domestic** market. TBOP undertakes activities to support the growth of the domestic visitor economy in the region. These include campaigns, public relations, and social media activity. While this level of growth is significant, it falls slightly below the national average growth in domestic visitor spend of 30%.
- Meanwhile, **international** visitor expenditure halved over the same period due to continued international border closures. Nationally, there has been a 70% decrease in international visitor spend.
- The COVID-19 pandemic and associated travel restrictions and control measures in the latter half of the YE June 2020 impacted visitor spend during that year. Therefore, it may be more prudent to consider spend relative to the YE June 2019.

### Visitor spend year ending June 2021, compared to year ending June 2019

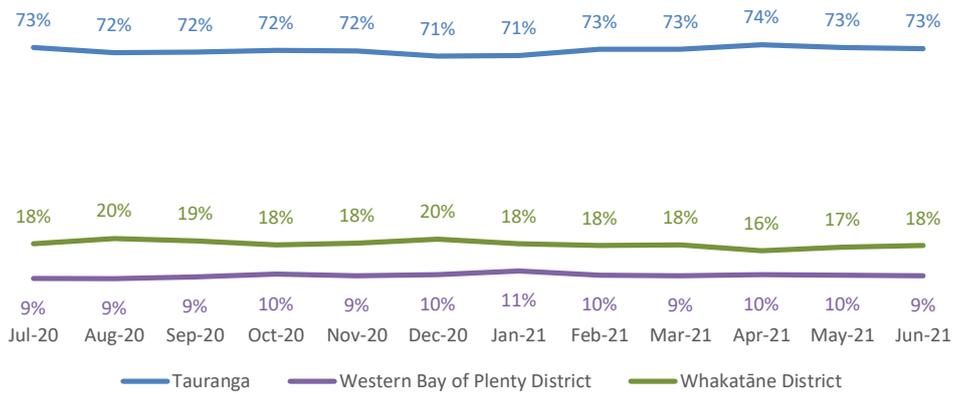
- In the year ending June 2021, **total** visitor spend in the region increased by about 12% compared to YE June 2019. This was driven by a 19% increase in **domestic** visitor spend. The growth of this market has been more than enough to offset the loss of the international market during this time.

Source of all visitor spend figures: Marketview Tourism Dashboard. Note that these data reflect spend via electronic card transactions only and therefore exclude pre-bookings, online purchases, and cash purchases. As such trends should be read as indicative only. International visitor spend may be inflated by repatriating New Zealanders using international cards.

Change in visitor spend  
YE June 2021 compared to YE June 2020



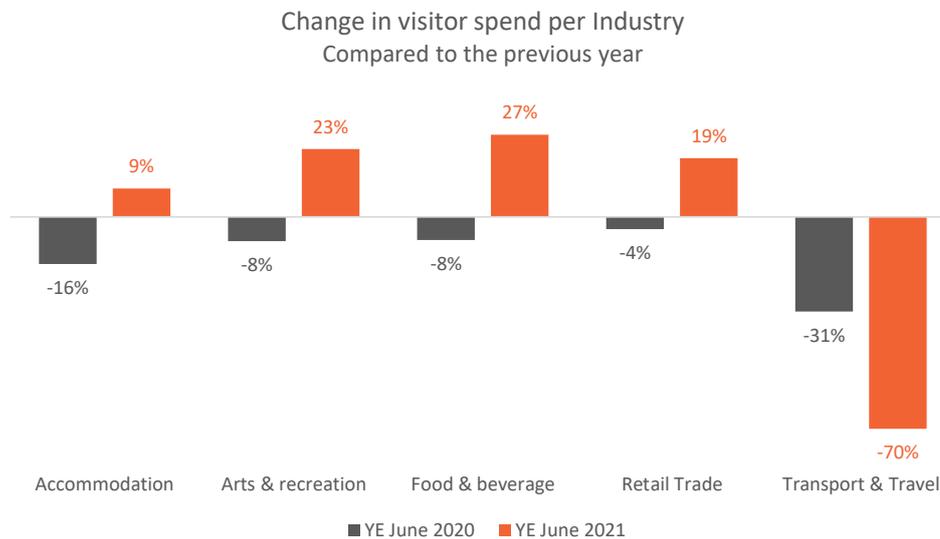
Proportion of DOMESTIC visitor spend per area



Source of all visitor spend figures: Marketview Tourism Dashboard. Note that these data reflect spend via electronic card transactions only and therefore exclude pre-bookings, online purchases, and cash purchases. As such trends should be read as indicative only. International visitor spend may be inflated by repatriating New Zealanders using international cards.

**Total visitor spend per industry**

At the aggregate level, most industries have benefited from the growth of the domestic market. However, operators in the transport and travel sector, such as cruise tour operators, have been significantly affected by COVID-19 and the associated travel restrictions.



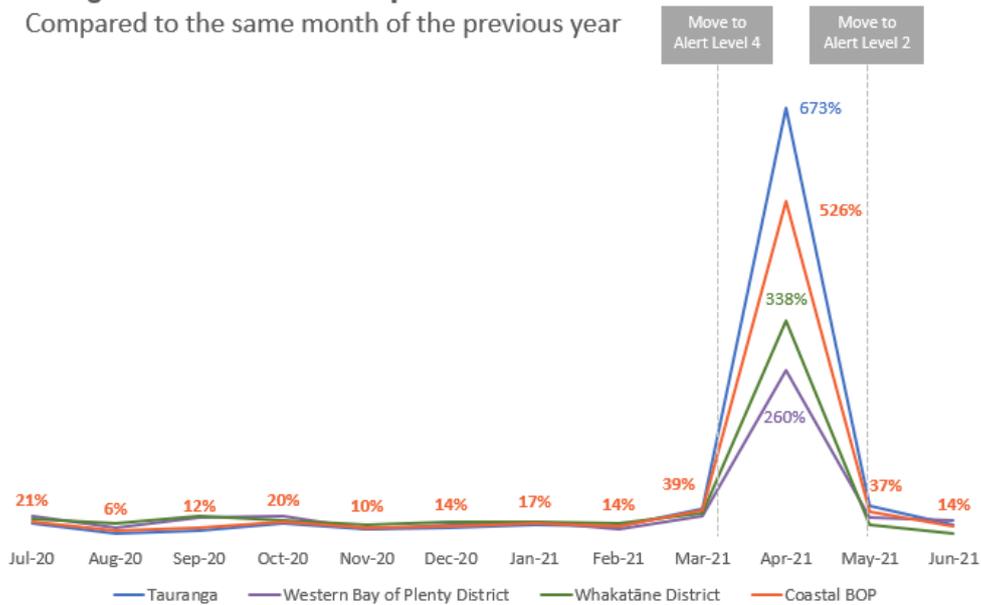
Source of all visitor spend figures: Marketview Tourism Dashboard. Note that these data reflect spend via electronic card transactions only and therefore exclude pre-bookings, online purchases, and cash purchases. As such trends should be read as indicative only. International visitor spend may be inflated by repatriating New Zealanders using international cards.

**Changes in Monthly Visitor Spend**

The recovery of the domestic visitor market across the region and throughout the year is clear when looking at monthly visitor spend compared to the same month in the previous year. It's particularly positive that the growth continues throughout the year. Note that the change in spend in the March to May period is obviously inflated due to the Alert Level four lockdown in 2020.

**Change in DOMESTIC visitor spend**

Compared to the same month of the previous year



Source of all visitor spend figures: Marketview Tourism Dashboard. Note that these data reflect spend via electronic card transactions only and therefore exclude pre-bookings, online purchases, and cash purchases. As such trends should be read as indicative only. International visitor spend may be inflated by repatriating New Zealanders using international cards.

## DESTINATION MANAGEMENT

Te Hā Tāpoi | The Love of Tourism Annual Plan 2020 – 2021 outlines TBOP’s commitment to its role as a Destination Management Organisation. Considering the balance of economic growth with the social, cultural, and environmental well-being of the community, underpins all that TBOP does.

TBOP’s Visitor Economy Strategy 2018 – 2028 and Te Hā Tāpoi | The Love of Tourism 2020 - 2023 identify four strategic pillars to collectively grow demand for the destination, while enhancing the visitor experience and increasing investment and supply. These pillars are:

1. Target the right visitors at the right time with the right messages;
2. Connect with residents;
3. Enhance the visitor experience;
4. Grow capability and increase supply.

The key achievements in these areas for the year July 2020 to June 2021 are highlighted in the sections below.

Pillar 1: Target the right visitors at the right time with the right messages

**New domestic marketing campaign achieved 1.6 million impressions**



The Sure to Make You Smile marketing campaign targeting domestic visitors achieved 3,471,396 impressions and 320,428 full video plays. The campaign, launched in October 2020, includes a suite of videos and marketing material completely aligned to the destination’s DNA® and, for the first time, an infusion of Te Ao Māori guided by a cultural advisor.

**Direct marketing support provided to operators following lockdown**

Travel restrictions resulting from COVID-19 had a significant impact on tourism businesses. To support local tourism operators, TBOP provided direct social media advertising for 20 businesses, resulting in over 5,500 total clicks directly to their websites. TBOP also developed approximately 17 stories focussed on the operators, which were shared via digital channels and paid advertising in print media. In addition to this, our Digital Industry Advisor assisted operators to upskill their digital capability to elevate their own digital marketing.



Domestic packages were also created to align with Tourism New Zealand's campaigns for singles, couples, families, and cashed up retirees. These were shared via newzealand.com and other TNZ digital channels. They were also promoted by the i-SITE team at Fielddays.

TBOP spread awareness of the region and what experiences visitors can do here amongst international agencies. This was done via virtual training alongside eExplore Central North Island and Tourism New Zealand,

**Greater domestic marketing reach through collaboration with neighbouring regions**



In collaboration with neighbouring Central North Island regions, the successful Get Out More NZ campaign was launched in October 2020. It achieved 8.2 million impressions and exceeded 110,000 clicks to the website [www.getoutmorenz.com](http://www.getoutmorenz.com). We also attended the Field Days with the Get Out More collective. As a result of this, we gained over 1,000 new subscribers to the Sure to Make You Smile database.

Tourism New Zealand included Te Moananui ā Toi | the Coastal Bay of Plenty in its Do Something New, New Zealand campaign. Locations included Moutohorā, Mataatua, and Izakai Bar & Eatery. Tourism New Zealand also chose to launch its partnership with Richie McCaw at Skydive Tauranga, and this gained national press coverage.

**Raised awareness of the region as a fantastic destination for business events**



TBOP has attended two Business Event focussed trade shows in the 2020-2021 financial year- BE Reconnected and MEETINGS. These two tradeshow combined had attendance of over 1,000 people, generating leads for business events in 2021 and 2022. TBOP has worked alongside Tourism New Zealand to bring the Royal College of Pathologists Australasia to Tauranga and Trinity Wharf Hotel for its September 2021 Conference.

### \$1.5 million of Advertising Value Equivalency (AVE) achieved

Harley tours to Hangi: Tauranga's best cultural experiences



As a result of hosted media familiarisations and pitched stories, more than 40 stories about Te Moananui ā Toi | the Coastal Bay of Plenty were published, during the 2020-2021 financial year.

The total investment into the media programme was \$38,000. The total net return in Advertising Value Equivalency (AVE) of this media activity was \$1.5 million, representing a 3,878% return on the investment.

### Contribution of STAPP funding

STAAP funding has enabled the following activity in relation to this pillar:

- Tracking and understanding visitation levels and patterns.
- Research to understand perceptions of Te Moananui ā Toi | the Coastal Bay of Plenty among the domestic market.
- Extension of domestic campaigns to entice New Zealanders to visit Te Moananui ā Toi | the Coastal Bay of Plenty, including leveraging opportunities to partner with Tourism New Zealand.
- Participation in a regional collaboration campaign with the eXplore Central North Island collective to drive touring visitation to the region.
- Increased development and sharing of stories and content that align with the region's Place DNA® and the personalities behind the businesses. Sharing of these stories with media and via digital channels.
- Additional familiarisations with key national media.
- Support of local events that drive visitation, in collaboration with the Tauranga City Council events team.
- Development of a sales and marketing plan to drive awareness of business events facilities and drive conference bookings for the region.

Pillar 2: Connect with residents

**Thanks to the No Place Like Home campaign, 41% of locals feel more informed about tourism activities in the region**



The No Place Like Home locals’ campaign was in-market for the majority of the 2020-2021 financial year with monthly e-newsletters, print stories, social media, and radio. E-newsletter subscribers have grown from 2,215 to 2,777.

Campaign effectiveness research conducted in February 2021 showed that 50% of residents have seen the campaign. Of those, 41% were inspired to look for further information on tourism activities; and 41% feel more informed about tourism activities in the region.

**Corporate public relations activity achieved \$9.3 million in Advertising Value Equivalency (AVE)**



TBOP accelerated its position as a thought leader in regenerative tourism, elevating the Bay of Plenty food story, and as an advocate for the local tourism industry during the financial year. AVE for corporate public relations reached an estimated \$9.3 million. This was achieved largely through 20 press releases, and the management and response of 59 media enquiries.

Frequent industry and stakeholder email newsletters were sent out to assist tourism businesses affected by COVID-19 impacts, and to inform them of industry news and upcoming events. A total of 47 industry specific e-newsletters were sent during the year.

**Greater connection with industry**



TBOP has made a concerted effort to increase and improve engagement with all stakeholders, and especially with the industry. Breakfast Business Connect networking functions continue to be well attended and enjoyed as one of the best ways to connect the industry and other stakeholders.

A regular weekly office open hour was trialled to give the industry the opportunity to engage in a more personal and informal chat with the TBOP team. These have moved to monthly with higher attendance achieved per function as a result. TBOP hosted Tourism Connect in September and again in March/April; at these events, operators and stakeholders workshopped priorities and the actions for the year ahead. The feedback provided at these events helped to inform TBOP’s plan for the 2021-2022 financial year.

### Leadership Advisory Group launched



Graeme Marshall was appointed as independent Chair of the TBOP Leadership Advisory Group, and the Terms of Reference were completed. The first Leadership Advisory Group meeting took place on 11 May 2021, with Grant Webster as the guest speaker. The hui was well-attended, with representatives from Ngāti Ranginui, Ngāi Te Rangi, Priority One, Tauranga Chamber of Commerce, Department of Conservation, MBIE, EnviroHub, Zespri, and many other organisations and agencies.

### Strong community and stakeholder engagement



TBOP continues to have strong community and stakeholder engagement. Across the year, TBOP achieved an average of 68 engagements per two-month period with key stakeholders and the community.

### Contribution of STAPP funding

STAPP funding has and will enable the following activity in relation to this pillar (noting the period for using the STAPP funding extends to December 2021):

- Development of a Leadership Advisory Group to build collaboration and support across all aspects of regional destination management.
- Scoping of an Ambassador Programme for Te Moananui ā Toi | the Coastal Bay of Plenty to build industry and community knowledge for engaging with manuhiri (visitors).
- Research to measure and understand residents' sentiment towards tourism and the impact of tourism on the community.
- The ongoing development of iwi and hapū relationships across the region.

### Pillar 3: Enhance the visitor experience

#### Visitor Information Centre in Mount Maunganui for the peak summer season



Alongside Tauranga City Council and Mount Business Association, TBOP opened a temporary Mount Maunganui *i*-SITE Visitor Information Centre in December 2020 (the Pod). This was open in Te Papa o Ngā Manu Porotakataka for seven weeks over the peak summer period and utilised existing infrastructure.

Since the change of location from Salisbury Avenue, spend by domestic visitors at the pod increased by 253% compared to the same time in 2019/2020. It's assumed that this is largely due to the location of the Pod being more visible and easier to access by domestic visitors.

Mount Business Association will continue to activate the Pod and surrounding space during the winter months, before the *i*-SITE reopens in December 2021.

#### Engagement with potential visitors at NZMCA Motorhome Caravan & Leisure Show and Fieldays



In a bid to reach more of the domestic market, TBOP attended two consumer shows in collaboration with eXplore Central North Island. Both held in Hamilton, the New Zealand Motor Caravan Association's Motorhome Caravan & Leisure Show in October 2020, and the Fieldays over 4 days in June 2021, gave TBOP the opportunity to engage with well over 1,000 potential visitors from throughout New Zealand and Australia. Common enquiries about the region related to cycleways, DOC trails, and general walking tracks.

#### Support for local businesses selling their products



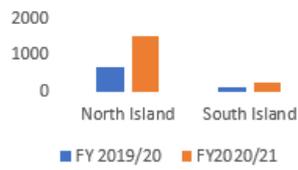
TBOP has continued to support local and New Zealand businesses by selling retail products via our *i*-SITE location. The *i*-SITE has been focusing on changing the offering of products that align with our Place DNA®, including bringing in more environmentally friendly products. Of the current retail stock at the Tauranga *i*-SITE, over half (58%) of the products are locally made and 18% are New Zealand made.

#### Popular new revenue streams for Tauranga *i*-SITE



Tauranga *i*-SITE has established several new revenue streams in the past year. This includes becoming event ticket agents for local theatres and major events through eventfinda. Overall, 700 event, concert, and show tickets were sold to the value of around \$17,000. Tauranga *i*-SITE also partnered with Leisure Tours and local company, Hinterland Tours, to sell packaged domestic tours. These are popular among the senior travel market. Kiwi Cash Tag is another steady revenue stream where travellers purchase the tag for use of the facilities at Kiwi Camps situated around New Zealand.

***i*-SITE saw increase in domestic users**



Across the year, the Tauranga *i*-SITE serviced a total of 1,808 domestic visitors, most from the North Island. This is an increase of 132% or 1,208 visitors compared to the (COVID affected) 2019-2020 financial year.

No STAPP funding was applied to this workstream.

## Pillar 4: Grow capability and increase supply

### Flavours of Plenty launch



In the past year, TBOP has trialled the idea of concentrating efforts on the Place DNA® elements to showcase the tourism possibilities in these areas. The trial in 2020-2021 focussed on Horticultural Provenance. TBOP audited the region's horticultural provenance landscape, developed product ideas, and created a marketing plan. From this work, Flavours of Plenty was launched., including the announcement of the region's inaugural food festival with the theme "Plentiful Produce" – scheduled for Autumn 2022.

Flavours of Plenty is a brand, a collective, and a vehicle for funding, designed to bring the food community together and to help share the region's food story. This activity was led by a steering group of locals passionate about the foodscape.

### Te Whānau Tāpoi Māori ō Tauranga Moana Incorporated Society established



TBOP collaborated with local Māori tourism operators, iwi, and hapū to establish the incorporated society Te Whānau Tāpoi Māori ō Tauranga Moana | The Māori Tourism Family of Tauranga Moana. This is a collaborative initiative of ten active and four potential tourism operators from the Western Bay of Plenty and Tauranga City who are passionate about building the region's cultural tourism proposition. The group's focus now is to collectively engage the tourism market.

### Regeneration in action: Tourism industry helped raise a kiwi chick



Cruise ship passengers during the 2019/20 cruise season donated money toward hatching and raising a kiwi chick from Ōtanewainuku Forest. The egg hatched on 6 October 2020 at the National Kiwi Hatchery and was named Manuhiri (Visitor). Manuhiri will be released back into Ōtanewainuku Forest later in 2021. The National Kiwi Hatchery and Ōtanewainuku Kiwi Trust rely heavily on donations to help support the work they do to ensure wild kiwi chicks have a better chance of survival.

### Operators supported to build capability in key areas



TBOP identified and contracted a digital specialist to work one-on-one with interested tourism industry operators to upskill and develop their digital abilities. Each of these operators received a personalised three phase training session to suit their individual business requirements.

Feedback was incredibly positive with over 90% of the operators reporting that they are likely to make the recommended enhancements to their business. This led to the contract being extended from three to six months.

Other industry workshops included: Health and Safety, and COVID-19 recovery opportunities with the Tauranga Chamber of Commerce.

TBOP also supported the Qualmark COVID Clean Approved assessment tool available for Industry.

## Recognised as a sustainable destination



Te Moananui ā Toi | The Coastal Bay of Plenty has been named as:

- One of the top 100 most sustainable destinations globally. This award from Green Destinations (October 2020) recognises destinations that are making progress towards a more sustainable tourism industry.
- One of the top 5 global destinations in the Best of Green Awards 2021: Sustainable Travel. Treehugger identified destinations leading the way in eco-friendly travel. The region was selected based on its destination management plan, Te Hā Tāpoi | The Love of Tourism, and its focus on creating a thriving, regenerative tourism industry.

## Contributions of STAPP Funding

STAAP funding has and will enable the following activity in relation to this pillar (noting the period for using the STAPP funding extends to December 2021):

- Conduct an infrastructure and experience gap analysis across Te Moananui ā Toi | the Coastal Bay of Plenty.
- Research the potential for business events and conferences to Te Moananui ā Toi | the Coastal Bay of Plenty.
- Support industry capability and sustainability by offering training modules.
- Hold additional workshops for cultural tourism operator development.
- Engage experience managers for the passion groups to leverage the region's Place DNA® into meaningful and authentic visitor experiences and work with stakeholders within our destination to make this happen.
- Engage temporary resource to lead activity related to sustainability and regenerative tourism and to provide leadership to councils and the tourism industry in these areas of expertise.

## WESTERN BAY OF PLENTY TOURISM & VISITORS TRUST

### Purpose of business

The principle objective of Tāpoi Te Moananui ā Toi | Tourism Bay of Plenty is to promote the economic welfare and development of the region and its community through marketing and management that impacts on the region as a visitor and tourist destination.

### Legal basis

Charitable Trust

### Structure

The Trust comprises a Board of up to eight Trustees who oversee the governance of the Trust, a General Manager who is responsible for the day-to-day operations of the Trust and reporting to the Trustees, and 18 other staff who support the General Manager in delivering the Trust's objectives. The Trustees are appointed by the Tauranga City Council and the Western Bay of Plenty District Council.

### Main sources of cash and resources

Operating grants received from the Tauranga City Council, Western Bay of Plenty District Council and Whakatāne District Council are the primary sources of funding to the Trust. The Trust also earns revenue from commissions on sales of local and domestic products.

### Trustees

- L. Cooney - Chairperson
- R. Browne – Deputy Chair
- G. Keel
- J. Hill
- C. Swallow
- O. Nathan (resigned July 2021)

### Registered Office

8 Wharf Street  
Tauranga

### Solicitors

Holland Beckett  
Tauranga

### Bankers

ASB  
Tauranga

### Auditors

Audit New Zealand

## Statement of Comprehensive Revenue &amp; Expenditure

For the year ended 30 June 2021

	Notes	2021 Actual	2021 Budget	2020 Actual
<b>REVENUE</b>				
Funding - Tauranga City Council		2,319,529	2,319,529	2,213,962
Funding - Western Bay of Plenty District Council		216,395	216,396	212,988
Funding - Whakatāne District Council		84,000	84,000	84,000
Retail sales		7,411	37,600	45,860
Finance Revenue		3,268	4,560	4,856
Other revenue	1	1,097,185	814,986	392,047
<b>Total revenue</b>		<b>3,727,788</b>	<b>3,477,071</b>	<b>2,953,713</b>
<b>EXPENDITURE</b>				
Cost of sales	2	6,082	19,400	30,328
Operating & Marketing	3	1,708,133	1,396,867	873,002
Administration & Overhead	4	511,746	457,601	427,395
Finance Costs		129	1,362	749
Employee benefit expenses	5	1,319,654	1,417,600	1,507,465
Trustee Fees		69,375	78,750	42,656
Depreciation and loss on sale of assets	11&12	76,316	105,491	70,010
<b>Total expenditure</b>		<b>3,691,435</b>	<b>3,477,071</b>	<b>2,951,605</b>
<b>SURPLUS/(DEFICIT) before Tax</b>	6	<b>36,352</b>	<b>0</b>	<b>2,108</b>
<b>Taxation</b>	7	<b>0</b>	<b>0</b>	<b>0</b>
<b>SURPLUS/(DEFICIT) after tax</b>		<b>36,352</b>	<b>0</b>	<b>2,108</b>
<b>Other Comprehensive Revenue &amp; Expense</b>				
Other Comprehensive Revenue		0	0	0
<b>Total Other Comprehensive Revenue &amp; Expense</b>		<b>0</b>	<b>0</b>	<b>0</b>
<b>Total Comprehensive Revenue &amp; Expense</b>		<b>36,352</b>	<b>0</b>	<b>2,108</b>

STATEMENT OF CHANGES IN NET ASSETS/EQUITY  
FOR THE YEAR ENDED 30 JUNE 2021

	2021 Actual	2020 Actual
Net Assets/Equity at start of the year	424,935	422,827
Total comprehensive revenue and expenses	36,352	2,108
<b>BALANCE AT 30 JUNE</b>	<b>461,288</b>	<b>424,935</b>

*The accompanying notes form part of these financial statements*

## Statement of Financial Position as at 30 June 2021

	Notes	2021	2020
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and cash equivalents	8	1,012,031	190,683
Investments	9	200,000	200,000
Debtors and prepayments	10	76,510	126,664
Inventories		<u>12,620</u>	<u>17,435</u>
<b>Total current assets</b>		<u>1,301,162</u>	<u>534,782</u>
<b>Non-current assets</b>			
Property, plant and equipment	11	192,380	230,978
Intangible assets	12	<u>70,520</u>	<u>62,988</u>
<b>Total non-current assets</b>		<u>262,900</u>	<u>293,966</u>
<b>TOTAL ASSETS</b>		<u>1,564,062</u>	<u>828,748</u>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Creditors and accrued expenses	13	237,810	211,401
Revenue Received in Advance	13	687,627	3,160
Employee benefit liabilities	14	177,336	185,928
Finance Leases	15	<u>0</u>	<u>3,324</u>
<b>Total current liabilities</b>		<u>1,102,773</u>	<u>403,813</u>
<b>Non-current liabilities</b>			
Loans		0	0
Finance Leases		<u>0</u>	<u>0</u>
<b>Total non-current liabilities</b>		<u>0</u>	<u>0</u>
<b>TOTAL LIABILITIES</b>		<u>1,102,773</u>	<u>403,813</u>
<b>TOTAL ASSETS LESS TOTAL LIABILITIES</b>		<u>461,288</u>	<u>424,935</u>
<b>EQUITY</b>			
Accumulated Funds		<u>461,288</u>	<u>424,935</u>
<b>TOTAL EQUITY</b>		<u>461,288</u>	<u>424,935</u>

*The accompanying notes form part of these financial statements*

**Chairman:**

**Trustee**

\_\_\_\_\_

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## Statement of Cash Flows for the year ended 30 June 2021

	<b>2021</b>	<b>2020</b>
	<b>Actual</b>	<b>Actual</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Receipts of Funding - Tauranga District Council	2,319,529	2,213,962
Receipts of Funding - Western Bay of Plenty District Council	258,994	170,390
Receipts of Funding - Whakatāne District Council	84,000	84,000
Receipts from retail sales	7,411	45,860
Receipts from other revenue	1,781,852	522,215
Interest receipts	2,219	2,463
Dividend receipts	1,164	2,252
Interest payments	-129	-749
Payments to suppliers and employees	-3,234,518	-2,813,134
GST (net)	-356,071	-263,764
<b>Net cash flow from operating activities</b>	<b>864,451</b>	<b>-36,504</b>
<b>CASH FLOWS FROM INVESTING AND FINANCING ACTIVITIES</b>		
Repayment of loans	-3,324	-6,000
Receipts from sale of fixed assets	0	787
Payments to acquire fixed assets	-39,778	-163,673
<b>Net cash flow from investing &amp; financing activities</b>	<b>-43,103</b>	<b>-168,886</b>
<b>ADD OPENING BANK ACCOUNTS AND CASH</b>	<b>390,683</b>	<b>596,073</b>
<b>CLOSING BANK ACCOUNTS AND CASH</b>	<b>1,212,031</b>	<b>390,683</b>

*The accompanying notes form part of these financial statements*

## Statement of Accounting Policies for the year ended 30 June 2021

### **ENTITY STATEMENT**

Western Bay of Plenty Tourism and Visitors Trust is a Council Controlled Organisation (CCO), by virtue of the Council's right to appoint the Board of Trustees. Governance is provided by the Trust Board as per the Trust Deed. The relevant legislation governing the Trust's operations includes the Local Government Act 2002. The financial statements of the Trust have been prepared in accordance with the provisions of section 68 and 69 of the Local Government Act 2002. The Trust is a public benefit entity for financial reporting purposes.

The principle objective of the Trust is to promote the economic welfare and development of the region and its community through marketing and management that impacts on the region as a visitor and tourist destination.

The financial statements of the Trust are for the year ended 30 June 2021. The financial statements were approved by the Board of Trustees on 30th August 2021.

### **BASIS OF PREPARATION**

The financial statements have been prepared on a going concern basis, and the accounting policies have been applied consistently throughout the period.

The financial statements of the Trust have been prepared in accordance with the requirements of the Local Government Act 2002, which includes the requirement to comply with New Zealand generally accepted accounting practice (NZGAAP).

These financial statements have been prepared in accordance with Tier 2 PBE accounting standards on the basis that the Trust is not publicly accountable and expenses are between \$2 and \$30 million. These financial statements comply with Public Benefit Entity Standards Reduced Disclosure Regime.

### **Measurement base**

The financial statements have been prepared on a historical cost basis.

### **Changes in accounting policies**

There have been no changes in accounting policies.

### **Functional and presentation currency**

The financial statements are presented in New Zealand dollars and all values are rounded to the nearest dollar. The functional currency of the Trust is New Zealand dollars.

### **Goods & Services Tax**

The Trust is registered for GST. All amounts in the financial statements are recorded exclusive of GST, except for debtors and creditors, which are stated inclusive of GST. GST is shown as a net amount in the cashflow.

**SIGNIFICANT ACCOUNTING POLICIES****Revenue****Grants**

Council, government, and non-government grants are recognised as revenue when the funding is received unless there is an obligation to return the funds if conditions of the grant are not met ('use or return condition'). If there is such an obligation, the grant is initially recorded as a liability and recognised as revenue when conditions of the grant are satisfied.

**Sale of goods**

Revenue from the sale of goods is recognised when the goods are sold to the customer.

**Sale of services**

Revenue from the sale of services is recognised when the service is provided.

**Interest and dividend revenue**

Interest revenue is recorded as it is earned during the year. Dividend revenue is recognised when the dividend is declared.

**Employee related costs**

Wages, salaries, and annual leave are recorded as an expense as staff provide services and become entitled to wages, salaries, and leave entitlements.

Performance payments are recorded when the employee is notified that the payment has been granted.

Superannuation contributions are recorded as an expense as staff provide services.

**Advertising, marketing, administration, and overhead costs**

These are expensed when the related service has been received.

**Lease expense****Operating leases**

Lease payments are recognised as an expense on a straight-line basis over the lease term.

**Finance leases**

At the commencement of the lease term, finance leases are recognised as assets and liabilities in the statement of financial position at the lower of the fair value of the leased item or the present value of the minimum payments. The finance charge is charged to the surplus or deficit over the lease period so as to produce a constant periodic rate of interest on the remaining balance of the liability. The amount recognised as an asset is depreciated over its useful life. The lease is fully depreciated over the lease term.

**Cash and cash equivalents**

Cash and cash equivalents comprise cash on hand, cheque or savings accounts, and deposits held at call with banks.

**Investments**

Investments are shares, term deposits, bonds, units in unit trusts, or similar instruments held by the entity.

**Debtors**

Debtors are initially recorded at the amount owed. When it is likely the amount owed (or some portion) will not be collected, a provision for impairment is recognised and the loss is recorded as a bad debt expense.

**Inventory**

Inventory held for sale on a commercial basis is valued at the lower of cost or net realisable value. The cost of the inventory is determined using the weighted average method.

**Property, plant, equipment**

Property, plant, equipment is recorded at cost, less accumulated depreciation, and impairment losses.

For an asset to be sold, the asset is impaired if the market price for an equivalent asset falls below its carrying amount.

For an asset to be used by the Trust, the asset is impaired if the value to the Trust in using the asset falls below the carrying amount of the asset.

Depreciation is provided on a diminishing value basis on all property, plant, and equipment, at rates that will write-off the cost of the assets to their estimated residual values over their estimated useful lives.

The useful lives and associated depreciation rates of major classes of assets have been estimated as follows:

Furniture and fittings (10% - 40%)

Computers and software (50% - 60%)

Buildings and leasehold improvements (10% - 25%)

Office equipment (8% - 67%)

**Intangible Assets****Website Development:**

Website development costs are capitalised when it is probable that the expected economic benefits that are attributable to the asset will flow to the entity and the cost of the asset can be measured reliably. Furthermore, the website must be shown to be capable of generating revenues, including direct revenues from enabling orders to be placed.

**Amortisation:**

Website costs are amortised on a diminishing value basis over the asset's useful life. Amortisation begins when the asset is available for use and ceases at the date when the asset is disposed of. The amortisation charge for each year is included with depreciation and recognised in the Statement of Comprehensive Income.

The useful life and associated amortisation rate has been estimated as follows:

Website (50%)

#### **Creditors and accrued expenses**

Creditors and accrued expenses are recorded at their face value.

#### **Employee Entitlements**

A liability for employee costs payable is recognised when an employee has earned the entitlement.

These include salaries and wages accrued up to balance date and annual leave earned but not yet taken at balance date, using current rates of pay.

#### **Loans**

Loans are recognised at the amount borrowed from the lender. Loan balances include any interest accrued at year end that has not yet been paid.

#### **Income Taxation**

The Trust holds a tax exemption from the Inland Revenue Department in terms of section CW40 of the Income Tax Act 2007, as a local or regional promotional body.

#### **Budget figures**

The budget figures are derived from the Statement of Intent as approved by the Board at the beginning of the financial year. The budget figures have been prepared in accordance with Tier 2 standards, using accounting policies that are consistent with those adopted by the Board in preparing these financial statements. Note that the classification of the expenses is different from the Statement of Intent as the employee costs are shown separately in the accounts.

#### **Cashflow**

Operating activities have been presented in accordance with the direct method.

#### **Equity**

Equity is the council's interest in the Trust and is measured as the difference between total assets and total liabilities.

#### **Standards issued but not yet effective**

PBE FRS 48 Service Performance Reporting, this will impact the entity from 1 July 2022 onwards, but the entity has not yet assessed the impact of this standard on the way the entity reports.

## NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2021

	2021	2020	
<b>1 Other Revenue</b>			
Industry Contributions	31,200	101,962	
Regional Events Funding	526,500	-	
STAPP Funding	524,568	-	
Other Income	14,917	290,085	
	1,097,185	392,047	
<b>2 Cost of Sales</b>			
The write-down of inventory during the year was Nil (2020: Nil). The reversal of write-downs for the year was Nil (2020: \$8,647).			
Opening Inventory	17,435	23,353	
Purchases	1,267	24,410	
Closing Inventory	(12,620)	(17,435)	
Total Cost of Sales	6,082	30,328	
<b>3 Operating and Marketing</b>			
Credit card charges	605	23,846	
Events Marketing	561,689	1,529	
Cruise Marketing and Operating	18,071	81,238	
Consumer Marketing	505,490	350,954	
Development & Research	451,628	273,013	
General and Other Marketing	170,650	142,422	
	1,708,133	873,002	
<b>4 Administration and Overhead</b>			
Audit Fees	23,322	22,392	
Cleaning & Security	14,508	34,023	
Rent	133,543	133,509	
Recruitment training & HR	102,253	47,328	
Repairs & Maintenance	1,688	5,554	
Vehicle	31,979	30,285	
Subscriptions	11,253	8,148	
IT expenses	41,426	40,443	
Telephone	10,119	13,063	
Electricity	10,257	13,487	
Other Administration & Overhead	131,397	79,163	
	511,746	427,395	
<b>5 Employee Benefit Expenses</b>			
Salaries and wages	1,283,307	1,459,931	
Employer superannuation contributions	33,805	44,805	
Other employee related costs	2,542	2,727	
	1,319,654	1,507,463	
<b>6 Variance Budget to Actual</b>			
<b>INCOME</b>	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
Retail Sales (Reduced sales due to no cruise/international visitors)	7,411	37,600	- 30,189
Other Revenue (Reduced cruise/commission income offset by Regional events funding received not in budget)	1,097,185	814,986	282,199
<b>EXPENDITURE</b>			
Cost of Sales (Purchases reduced as sales were down on budget)	6,082	19,400	- 13,318
Operating & Marketing (Regional Events costs not in budget)	1,708,133	1,396,867	311,266
Administration & Overheads (Increased costs for HR and CEO cover)	511,746	457,601	54,145
Employee Benefit Expenses (Staff vacancies for part of year)	1,319,654	1,417,600	- 97,946
Depreciation (Website stage 2 and CRM operational later in the year than anticipated)	76,316	105,491	- 29,175
<b>7 Taxation</b>			
The Trust holds confirmation of a tax exemption under section CW 40 of the Income Tax Act 2007			
<b>8 Cash and Cash Equivalents</b>			
Cheque Accounts	34,743	24,351	
Savings Accounts	976,388	165,232	
Cash on Hand	900	1,100	
	1,012,031	190,683	
<b>9 Investments</b>			
Term Deposit ASB Bank 1% for 6 months	200,000	200,000	
<b>10 Debtors and Prepayments</b>			
Debtors	3,318	51,854	
Accrued Income	-	140	
GST	49,303	45,976	
Prepayments	23,889	28,694	
	76,510	126,664	
Debtors and prepayments from exchange transactions	27,207	80,688	
Debtors and prepayments from non-exchange transactions	49,303	45,976	
	76,510	126,664	

## 11 Property, Plant and Equipment

Name	Cost	Accum Dep	1-Jul-20	Purchases	Depreciation	Disposals	30-Jun-21
Total Computers & Software	78,197	62,715	13,136	2,347	7,546	0	7,937
Total Furniture & Fittings	94,141	42,037	51,591	513	7,147	0	44,957
Total Leasehold Improvement	280,890	130,671	150,219	0	19,232	0	130,987
Total Office Equipment	114,552	83,816	16,033	982	6,007	2,508	8,499
<b>Total</b>	<b>567,781</b>	<b>319,239</b>	<b>230,979</b>	<b>3,841</b>	<b>39,932</b>	<b>2,508</b>	<b>192,380</b>

Name	Cost	Accum Dep	1-Jul-19	Purchases	Depreciation	Disposals	30-Jun-20
Total Computers & Software	78,111	56,939	11,547	9,625	7,820	216	13,136
Total Furniture & Fittings	140,047	77,925	36,708	25,414	7,631	2,900	51,591
Total Leasehold Improvement	288,589	113,172	132,388	43,030	21,133	4,066	150,219
Total Office Equipment	115,882	90,107	15,756	10,019	9,167	575	16,033
<b>Total</b>	<b>622,629</b>	<b>338,143</b>	<b>196,398</b>	<b>88,088</b>	<b>45,750</b>	<b>7,757</b>	<b>230,979</b>

## 12 Intangible Assets

Name	Cost	Accum Dep	1-Jul-20	Purchases	Depreciation	Disposals	30-Jun-21
Website & CRM	117,482	12,598	62,988	41,897	34,364	0	70,520
<b>Total</b>	<b>117,482</b>	<b>12,598</b>	<b>62,988</b>	<b>41,897</b>	<b>34,364</b>	<b>0</b>	<b>70,520</b>

Name	Cost	Accum Dep	1-Jul-19	Purchases	Depreciation	Disposals	30-Jun-20
Website	128,585	48,307	4,693	75,585	14,162	3,128	62,988
<b>Total</b>	<b>128,585</b>	<b>48,307</b>	<b>4,693</b>	<b>75,585</b>	<b>14,162</b>	<b>3,128</b>	<b>62,988</b>

## 13 Creditors and Accruals

	2021	2020
Creditors	167,491	133,964
Revenue Received in Advance	687,627	3,160
Accrued Expenses	22,173	23,888
Funds received on behalf of tourism operators	48,147	53,549
	<u>925,438</u>	<u>214,561</u>
Creditors and Accruals from exchange transactions	925,438	211,401
Creditors and Accruals from non-exchange transactions	-	3,160
	<u>925,438</u>	<u>214,561</u>

## 14 Employee Benefit Liabilities

Accrued salaries and wages	95,151	100,058
Annual leave	82,185	85,870
	<u>177,336</u>	<u>185,928</u>

## 15 Finance Lease: Ricoh Photocopier

Finance Lease - Not later than 1 year	-	3,324
Finance Lease - Later than 1 year and not later than 5 years	-	-
	<u>-</u>	<u>3,324</u>

Finance leases are for photocopiers and printers. The net carrying amount of the plant and equipment held under finance leases is nil (2020 \$2,634).

Finance leases can be renewed at the Trust's option, the Trust does not have the option to purchase the assets at the end of the lease terms.

There are no restrictions placed on the Trust by any of the finance leasing arrangements.

## 16 Capital and Operational Commitments and Operating Leases

Non-cancellable operating leases as lessee:

The Trust leases property, equipment and two vehicles in the normal course of its business. The following amounts relate to rental 8 Wharf Street, rental 103 The Strand, VW vehicle lease, Nissan vehicle lease and lease of Eftpos machines.

The future aggregate minimum lease payments to be paid under non-cancellable operating leases are as follows:

Payable no later than one year	131,065	131,374
Later than one year, not later than five years	141,626	251,578
Later than five years	-	-
	<u>272,691</u>	<u>382,952</u>

## 17 Contingent Liabilities

The Trust has no contingent liabilities

## 18 Related Party Transactions

The Trust received a significant amount of operating grants from the Councils to deliver its objectives as specified in the Trust Deed.

Related party disclosures have not been made for transactions with related parties that are within a normal supplier or client/recipient relationship and/or on terms and condition no more or less favourable than those that it is reasonable to expect the Council and group would have adopted in dealing with the party at arm's length in the same circumstances.

Key Management Personnel compensation

Trustees		
Full-time equivalent members	6	6
Remuneration	69,375	42,656

	2021	2020
Senior Management Team including CEO		
Full-time equivalent members	5	4
Remuneration	480,334	472,983
Total Full-time equivalent members	11	10
Total Remuneration	549,709	515,639

Due to the difficulty in determining the full-time equivalent for Trustees, the full-time equivalent figure is taken as the number of Trustees.

**19 Donations**

A donation was made to The Tauranga Womens Refuge for \$500.00  
This was paid in lieu of the fee for hosting a famil at the request of the host.

**20 Financial Instruments**

Financial Instrument Categories

FINANCIAL ASSETS

Cash & Cash Equivalents	1,212,031	390,683
Debtors & Other Receivables	52,621	97,830
Total Financial Assets	1,264,652	488,513

FINANCIAL LIABILITIES

Creditors & Other Payables	237,809	211,401
Revenue Received in Advance	687,627	3,160
Finance Leases	0	3,324
Total Financial Liabilities at Cost	925,436	217,885

**21 Events After Balance Date**

There are no significant events post balance date.

**22 Covid-19 impact disclosures**

Management and the Trustees have considered the current and future potential effects on the business caused either directly or indirectly by Covid-19.

The effect on the overall results for the year ended 30 June 2021 has been positive with extra funding received from STAPP and the Regional Events Fund.

Future potential effects are speculative and unknown however the Bay of Plenty is in the priviledged position to already attract mostly domestic tourists. Around 80% is domestic tourism visitor spend and 20% international visitor spend (cruise less than 5% visitor spend) so we may see a lessor impact in the Bay of Plenty than in other regions.

CRUISE

Cruise ships were banned in New Zealand on 14 March 2020 resulting in the loss of cruise income for this financial year.

There is no certainty of when the cruise ships will return to our region and we have budget options for every eventuality.

TAURANGA ISITE

The Tauranga iSite has had reduced income due to the lack of cruise and other international visitors, the opening of the Australian bubble has had no impact. The iSite is now closed on Sundays.

MARKETING

STAPP Funding of \$700,000 was received in August 2020, \$526,500 has been spent as per the criteria and the remaining \$173,500 will be spent in the next financial year. Regional Events Funding of \$1,038,695 was received in January 2021, \$524,568.40 has been allocated as per the criteria and the remaining \$514,126.60 will be spent in the current financial year.

WAGE SUBSIDY

The MSD Wage subsidy was received for cruise and iSite staff. A total of \$126,266.40 was received in the last financial year and \$123,106.49 paid to staff up to June 2020 the remainder \$3159.91 paid in July 2020.

## SERVICE DELIVERY REPORT JULY 2020 – JUNE 2021

Across All Pillars

**LoE – TBOP's Strategic Priority:** Provide leadership for the visitor economy, including the destination management strategy, and work with both Councils to explore alternative funding mechanisms.

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Implement the destination management strategy and provide leadership to Councils to protect the sub-region for future generations. Provide leadership for the recovery and restart of the visitor economy to mitigate the impacts of the COVID-19 pandemic on the local economy.	TBOP Six Month and Annual Reports.	Implemented year 1 of Te Hā Tāpoi   The Love of Tourism 2020 – 2023.	Achieve the success measures set out in Te Hā Tāpoi   The Love of Tourism Annual Plan 2020 – 2023, which align to the Visitor Economy Strategy 2018 – 2028.	Of TBOP's 28 strategic priorities for this financial year, laid out in Te Hā Tāpoi   The Love of Tourism 2020-2021, 22 have been completed and six were not completed. Of those not completed, two were delayed and one indefinitely suspended due to circumstances beyond TBOP's control. The remaining three are underway with slower timeframes than expected.	Not achieved
Support Councils to explore alternative funding mechanisms.*	TBOP Six Month and Annual Reports.	First stage: Alternative Funding Study completed by TCC in 2017. Second stage: To be led and funded by TCC.	Support investigation of additional alternative funding mechanisms, dependent on Tauranga City Council budget and timings.	Tauranga City Council has not progressed its alternative funding mechanisms project. TBOP has achieved alternative funding via the STAPP and Regional Events Fund.	Not achieved
Measure visitor spend.	MBIE Monthly Regional Tourism Estimates (MRTE). As of November 2020, MBIE suspended the MRTE due to concerns over accuracy given the COVID-19 related market changes. The only visitor spend data currently available is based on electronic card transactions and excludes online purchases, cash purchases, and pre-bookings. As this only covers a portion of the visitor economy, only changes in spend will be reported, and the figures should be read with caution and as approximates. Information source: Marketview Tourism Dashboard.	Total visitor spend was \$1,019m to YE May 2020.	Monitor and report on visitor spend and use the information to set new benchmarks for future years.	In the YE June 2021, total visitor spend grew by 28% compared to the YE June 2020. No forecast or targets will be set for future years yet, due to the current levels of market uncertainty.	Achieved
		Domestic visitor spend was \$803m to YE May 2020.	Monitor and report on visitor spend and use the information to set new benchmarks for future years.	In the YE June 2021, domestic visitor spend grew by 19% compared to the YE June 2020. No forecast or targets will be set for future years yet, due to the current levels of market uncertainty.	Achieved
		International visitor spend was \$216m to YE May 2020.	Monitor and report on visitor spend and use the information to set new benchmarks for future years.	In the YE June 2021, international visitor spend decreased by 50% compared to the YE June 2020 due to the COVID-19 related international border closures. No forecast or targets will be set for future years yet due to the current levels of market uncertainty. Note that spend on electronic cards by repatriating New Zealanders may be impacting international visitor spend figures.	Achieved
	MBIE Tourism Satellite Account.	Cruise sector spend increased by 35% to \$90.3m for the 2018/19 season (spend for the 2019/20 season is likely to be much lower given the COVID-19 pandemic shortened the season).	Monitor and report on cruise sector spend, if applicable, and use the information available to set new benchmarks for future years.	No update as the cruise sector is still unable to operate due to the COVID-19 pandemic and associated travel restrictions. No forecast or targets will be set for future years yet due to the current levels of market uncertainty.	Not achieved

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Measure the contribution of tourism to GDP.	Infometrics.	Tourism GDP for Tauranga & Western BOP was \$511m, representing 5.6% of total real GDP (YE March 2019).	Monitor and report on the contribution of tourism to GDP and use the information to set new benchmarks for future years.	Tourism GDP for Tauranga was \$487m, representing 6.1% of total real GDP (YE March 2020). Tourism GDP for Western BOP was \$49m, representing 2.0% of total real GDP (YE March 2020). No forecast or targets will be set for future years yet due to the current levels of market uncertainty.	Achieved
	Infometrics.	Tourism GDP for Whakatāne was \$75m, representing 4.5% of total real GDP (YE March 2019).	Monitor and report on the contribution of tourism to GDP and use the information to set new benchmarks for future years.	Tourism GDP for Whakatāne was \$71m, representing 4.0% of total real GDP (YE March 2020). No forecast or targets will be set for future years yet due to the current levels of market uncertainty.	Achieved
Measure the number of jobs provided by the tourism industry.	Infometrics.	Tourism provided 8,135 jobs in Te Moananui ā Toi   the Coastal Bay of Plenty (YE March 2019).	Monitor and report on the number of jobs the tourism industry provides and use the information to set new benchmarks for future years.	Tourism provided 7,480 jobs in Te Moananui ā Toi   the Coastal Bay of Plenty in the month of May 2021. No forecast or targets will be set for future years yet due to the current levels of market uncertainty.	Achieved

\*While TBOP can support Council with the investigation of additional funding mechanisms, the actual securing of funding is outside TBOP's control. Thus, this performance measure relates to an outcome that TBOP can directly affect.

Pillar 1: Target the right visitors at the right time with the right messages

LoE – TBOP’s Strategic Priorities:

Target the right visitors at the right time with the right messages, which will involve working with stakeholders.

Help to manage and promote the city and region’s reputation nationally and internationally, to increase attractiveness and ensure share of voice.

Support Tauranga City Council’s City Events team and other key stakeholders to develop a city-wide events strategy which clearly articulates our event investment priorities and strengthens Tauranga’s reputation as a premier events destination.

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Understand current visitation levels and patterns.	MBIE Monthly Regional Tourism Estimates, Marketview Tourism Dashboard, AA Traveller Monitor, and other methods to be determined.	Understand the trend of visitation across the year based on visitor spend.	Continue to track and provide greater visibility and understanding of visitation levels and patterns, visitor perceptions and motivators.	TBOP is tracking visitor numbers and patterns using visitor spend data and newly released visitor numbers primarily. This information is then shared with key stakeholders.  The visitor satisfaction research is underway and providing insight into perceptions and motivators.	Achieved
Implement campaigns to drive domestic visitation including collaboration with strategic partners for advertising, digital and PR initiatives.	Campaigns in market.	There is no current baseline data. The 2020/21 campaign calendar was scoped based on current market conditions.	Implement campaign calendar as set out in Te Hā Tāpoi   The Love of Tourism 2020 – 2023.	The Sure to Make You Smile campaign was in-market from October-December 2020, and again from April-June 2021, as per the calendar in Te Hā Tāpoi   The Love of Tourism 2020 – 2023. These dates were selected to promote the region during the shoulder seasons.	Achieved
	Campaign Post Analysis Performance Reports.	There is no current baseline data; a new measure is to be implemented in 2020/21.	Monitor and report on campaign measures and use the information to set new benchmarks for future years.	The monitoring of campaign measures is underway. Key current measures being used are: <ul style="list-style-type: none"> <li>Video views (to the end): 320,428</li> <li>Impressions: 3,471,396</li> <li>New users to bayofplentynz.com: 17,987 (9% of total new users to site)</li> <li>Website users’ average session duration: 1m 23secs (site average 1m 36secs)</li> <li>Website users’ pages/session: 2.35 (site average 2.1)</li> <li>Bounce rate: 57% (site average 66%)</li> </ul> The best performing traffic was generated from display remarketing (targeting users who have already visited the site), which had an average time on site of 2m 11secs, and on average users looked at 4.6 pages per session. This traffic comprised 0.5% (199 users) of the total campaign traffic to the website.  In comparison, the next best performing traffic was from Google Search ads, comprising 15% (6,781 users) of total campaign traffic. These users spent an average of 2m 12secs per session and viewed an average of 3 pages per session. This provides a benchmark for future campaigns and direction on where to focus our spend.	Achieved

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Build the destination's reputation as per Place DNA® by implementing story theme strategies identified in Brand Storybook research and embed across Te Moananui ā Toi   the Coastal Bay of Plenty.	Tourism Sentiment Index™ (Destination Think!).	Score of +56 to YE December 2019.	Maintain or improve Tourism Sentiment Index™ scores in areas associated with Te Moananui ā Toi   the Coastal Bay of Plenty's Place DNA®.	<p>A score of +20 for July 2020 to June 2021 was achieved. This is a total of 36 points below the score for YE December 2019, with COVID-19 likely affecting the 2020 results. This compares to a score of +21 for New Zealand overall.</p> <p>Scores for categories related to Place DNA® elements for July 2020 to June 2021:</p> <ul style="list-style-type: none"> <li>▪ Horticultural Provenance: +20</li> <li>▪ Natural Environment:                             <ul style="list-style-type: none"> <li>○ Wildlife viewing: +6</li> <li>○ Biking &amp; cycling: +11</li> <li>○ Hiking &amp; rock climbing: +27</li> </ul> </li> <li>▪ Ocean &amp; Beaches:                             <ul style="list-style-type: none"> <li>○ Surfing: +20</li> <li>○ Beaches: +26</li> <li>○ Fishing: +20</li> <li>○ Diving and snorkelling: +21</li> </ul> </li> <li>▪ Māori Culture: +21</li> </ul>	Not Achieved
	Perceptions Research (for the New Zealand and Australia markets).	No current baseline data; a new measure is to be implemented in 2020/21.	Maintain or improve levels of association of Te Moananui ā Toi   the Coastal Bay of Plenty with Place DNA® themes.	50% of adult New Zealanders and 34% of adult Australians agree that the region offers a blend of natural landmarks, wildlife, authentic Māori culture, a range of local produce and stunning beaches (YE March 2021). These are consistent with results for YE December 2020.	Achieved
	Digital analytics.	No current baseline data; a new measure is to be implemented in 20/2021.	Explore and identify the best digital analytics to measure engagement with, and performance of, digital content.	A website UX report has been completed that identifies several metrics for measuring digital content performance. The report contains a series of recommendations to improve the user experience, and these are being gradually implemented.	Achieved
Work with Tauranga City Council City Events team to support events aligning with our Place DNA®.	Collaborative marketing output and feedback from Tauranga City Council City Events team regarding support provided.	Bi-monthly meetings with Tauranga City Council City Events team and support of events on social media and website.	Bi-annual meetings between Tauranga City Council City Events and TBOP Go-to-Market teams identifying the key events for collaborative marketing and executing associated marketing activity.	Bi-monthly meetings have been held with the TCC Major Events team to determine what promotional support TBOP can provide around key events that align with our Place DNA®. Major support was provided by way of sponsorship of the Aramex Kiwi Walk/Run event in May where we were able to highlight the Horticultural Provenance with themed tables and branding. 33% of event participants came from outside the Bay of Plenty region.	Achieved

Pillar 2: Connect with Residents

**LoE – TBOP's Strategic Priority:** Connect with residents to maintain a community social licence, and measure this via likelihood to recommend the area to others to visit (Net Promoter Score™) and perceptions of the impact of tourism on the community.

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Measure and understand residents' sentiment towards tourism. This is measured by the percentage of residents who agree that tourism has a positive impact on the community. Residents provide a rating of 1 to 10, where 1 is strongly disagree and 10 is strongly agree.  Note: Sentiment may be impacted by the COVID-19 pandemic and perceptions of the link to international visitors.	Tauranga City Council residents' satisfaction survey results.	Tauranga: The score for the YE June 2020 is 76% agree (scores of 7 to 10).	Continue to monitor and report on residents' perceptions and use information to set new benchmarks for future years.	The score for the year ending June 2021 is 66% agree (scores of 7 to 10). This will be the benchmark for next year.	Achieved
	Western Bay of Plenty District Council residents' satisfaction survey results.	Western Bay of Plenty: The score for YE June 2020 is 72% agree (scores of 6 to 10).	Continue to monitor and report on residents' perceptions and use information to set new benchmarks for future years.	The score for the year ending June 2021 is 72% agree (scores of 6 to 10). This will be the benchmark for next year.	Achieved
	Whakatāne District Council residents' satisfaction survey results.	Whakatāne: The score for the YE June 2019 is 75% agree (scores of 7 to 10).	Continue to monitor and report on residents' perceptions and use information to set new benchmarks for future years.	The score for the year ending June 2020 is 79% agree (scores of 6 to 10). This will be the benchmark for next year.	Achieved
Residents' likelihood to recommend the city or district as a holiday destination, using the Net Promoter Score™.  Note: Sentiment may be impacted by the COVID-19 pandemic and perceptions of the link to international visitors.	Tauranga City Council residents' satisfaction survey results.	Tauranga: The score for the YE June 2020 is +27.	Continue to monitor and report on residents' satisfaction and use information to set new benchmarks for future years.	The score for the year ending June 2021 is +17.	Achieved
	Western Bay of Plenty District Council residents' satisfaction survey results.	Western Bay of Plenty: The score for the YE June 2020 is +13.	Continue to monitor and report on residents' satisfaction and use information to set new benchmarks for future years.	The score for the year ending June 2021 is +11.	Achieved
	Whakatāne District Council residents' satisfaction survey results.	Whakatāne: The score for the YE June 2019 is +50.	Continue to monitor and report on residents' satisfaction and use information to set new benchmarks for future years.	The score for the year ending June 2021 is +37.	Achieved
Undertake research to further explore perceptions of the tourism industry (particularly cruise) among the local community (via Vital Signs and/or other projects).	Research results.	No current baseline data – a new measure is to be implemented in 2020/21.	Measure satisfaction with the tourism industry in Te Moananui ā Toi   the Coastal Bay of Plenty.	This research was put on hold until there is more information available regarding the cruise sector restart.	Not achieved
Implement the Connect with Residents strategy and implement a local's communications plan.	Strategy implementation and outcomes.	No Place Like Home campaign is currently in-market. There is no current baseline data; a new measure is to be implemented in 2020/21.	Review, refine and continue to implement the Connect with Residents strategy, including measuring the performance of the No Place Like Home campaign.	No Place Like Home campaign in-market with monthly e-newsletters, print stories, social media, and radio.  E-newsletter subscribers have grown from 2,215 to 2,777.  Campaign effectiveness research conducted in February 2021 showed that 50% of residents have seen the campaign. Of those: <ul style="list-style-type: none"> <li>▪ 41% were inspired to look for further information on tourism activities; and</li> <li>▪ 41% feel more informed about tourism activities in the region.</li> </ul>	Achieved

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Develop and maintain an Ambassador Programme.	Completion of workshops.	Have begun discussions with Queenstown Resort College regarding implementation.	Complete one course.	Queenstown Resort College (QRC) appointed as provider. Due to QRC's other commitments, the course development has been delayed until the first quarter of the 2021-2022 financial year.	Not achieved
Implement the Stakeholder Engagement & Communications Plan including iwi and hapū relationships, Leadership Advisory Group, and industry events.	TBOP dashboard.	Achieved an average of 74 engagements with key stakeholders per two-month period in the 2019/20 financial year.	Achieve an average of 70 engagements with key stakeholders per two-month period.	Achieved an average of 68 engagements with key stakeholders per two-month period, falling just short of the goal of 70 engagements.	Not achieved

## Pillar 3: Enhance the visitor experience

**LoE – TBOP's Strategic Priority:** Enhance the visitor experience by providing fit-for-purpose visitor information services, including the development of Te Tomokanga and the use of digital services.

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Understand, measure, and improve visitor satisfaction and perceptions.	Visitor satisfaction research findings.	There is no current baseline data; a new measure is to be implemented in 2020-2021.	The implementation of visitor satisfaction research.	The visitor satisfaction research began in March 2021, with monthly surveying. At end of June 2021, 86% of visitors to the region were satisfied with their visit.  Research conducted by Forward HQ. Sample size n=277, resulting in an associated margin of error of +/-6%.	Achieved
Continue to implement the Visitor Experience Plan including continuing to provide fit-for-purpose visitor information services and exploring new opportunities.	Visitor Information Services user survey.	No current baseline data - new measure to be implemented in 2020-2021.	The implementation of the Visitor Information Services user survey.	Customer Radar was implemented in the Tauranga i-SITE from January 2020. However, there was little customer engagement with a total of six responses (all from satisfied customers).	Achieved
Continue the project plan for Te Tomokanga.	Design progress.	Local and central government funding is confirmed.	Complete the concept and detailed design, commence site investigations subject to national i-SITE review and market conditions.	The Te Tomokanga plan has been indefinitely suspended as Tauranga City Council withdrew funding due to restrictions on its capital budgets.	Not achieved
Review the cruise sector model post-COVID-19.	Summary report from workshops.	TBOP identified the need to review the current shore excursion contracts due to the COVID-19 pandemic.	Undertake three workshops to explore ideas for the re-development of the cruise industry to operate post-COVID-19 (and implement any changes, depending on market conditions).	The government's cruise ship ban remains in place meaning there will be no cruise ship visits for this coming 2021 to 2022 season. However, bookings for the 2022 to 2023 season are ramping up. The review of the cruise model is underway with TBOP taking a leadership role in exploring all the factors (social, economic, cultural, and environmental) that will come to play in preparing for what the return of the sector. As part of this, TBOP's General Manager has joined the Cruise NZ board to champion these issues at a national level in addition to working closely with Port of Tauranga, industry, and other cruise ship port locations. TBOP will continue to review the model in preparation for the 2022 to 2023 season commencement.	Not achieved
Review and action the i-SITE Future Network Strategy.	Report prepared for Council.	Consulting on Future Network Strategy.	Participate in the review of the Future Network Strategy with i-SITE New Zealand and report to Tauranga City Council.	The proposed Future Network Strategy is yet to be finalised by the i-SITE NZ board. The forum has consequently been delayed to 30 August 2021 (due to Covid lockdown) and TBOP will attend.	Not achieved

Pillar 4: Grow capability and increase supply

**LoE – TBOP’s Strategic Priority:** Grow capability of operators and increase supply of tourism product, including identifying and assisting in the product development of indigenous cultural experiences.

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Map regional natural and build assets to identify experience gaps and opportunities.	Digital map (produced by Stafford Strategy).	Phase one of the mapping project is underway; the database of experiences has been collated and categorised.	The map of regional infrastructure and experiences developed (phase one), and gaps analysis completed (phase two).	The map of regional infrastructure and experiences has been developed. Phase two, the gap analysis, is underway.	Not achieved
Identify and implement options for understanding and measuring environmental regeneration and implement any suitable options.	Green Destinations certificate.	No current baseline data; a new measure is to be implemented in 2020/21.	Achieve the Green Destinations certification (to measure environmental sustainability).	TBOP is on the journey to becoming an eco-certified destination through EcoTourism Australia, with 50% of the criteria filled out. The ECO Destination Certification combines Ecotourism Australia’s criteria with the Green Destinations standard for sustainable tourism.	Not achieved
Enable, empower, and facilitate opportunities for Māori economic development to identify, enhance, and promote tourism experiences that feature our unique culture, heritage, and history.*	Workshop delivery.	Two roopū established that meet quarterly or more frequently.	Deliver four workshops for new and existing cultural tourism businesses per annum aimed at upskilling operators and assisting with the evolution of their businesses.	Two workshops/events were delivered as follows: <ul style="list-style-type: none"> <li>One cultural tourism exemplar is the hīkoi to Waitangi and Hokianga for a group from local Hapū Ngāti Hangarau.</li> <li>Digital Marketing/Developing an Effective Social Media Presence workshop for Tauranga Moana roopū.</li> </ul>	Not achieved
	Workshop feedback surveys.	Two roopū established and meeting quarterly or more frequently.	50% of workshop attendees report that they are likely to make enhancements to their business based on the workshops.	Survey was not conducted due to resource constraints.	Not achieved
Proactively identify and support the development of new products and experiences and engage with potential investors regarding product development.*	Engagement with investors.	TBOP identified the need for investment to stimulate product development.	Create an investor attraction package to support new tourism product that aligns with one target market and deliver this to relevant parties.	The COVID-19 pandemic has disrupted our ability to attract private investment in the tourism sector.	Not achieved
Develop and implement an industry capability programme and collaborate with tourism operators and help enhance tourism experiences that align with TBOP’s target audiences and Place DNA®.*	Workshop delivery.	There is no current baseline data; a new measure is to be implemented in 2020/21.	Deliver three workshops for new and existing tourism businesses aimed at upskilling operators and assisting with the development of their businesses.	Five events/workshops were delivered as follows: <ul style="list-style-type: none"> <li>Digital marketing upskilling.</li> <li>One-on-one digital training.</li> <li>Regional Business Partner Network funding webinar held with the Tauranga Chamber of Commerce for tourism operators.</li> <li>Two Tourism Connect workshops.</li> <li>Health and Safety training.</li> </ul>	Achieved
	Workshop feedback surveys.	There is no current baseline data; a new measure is to be implemented in 2020/21.	50% of workshop attendees report that they are likely to make enhancements to their business based on the workshops.	Capability building workshops: 92% of attendees report that they are likely to make enhancements to their businesses based on the workshops. Digital capability one-on-one sessions: 91% of participants report that they are likely to make enhancements to their businesses based on these sessions.	Achieved

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Establish and maintain passion groups for niche development to align experiences with target audiences.*	Passion groups.	Surfers & beach lovers group established and one meeting held.	Deliver four passion group workshops for niche development to align experiences with target audiences.	<p>Horticultural Provenance passion group:</p> <ul style="list-style-type: none"> <li>▪ Experience Manager has been appointed and group members recruited.</li> <li>▪ Three passion group meetings held.</li> <li>▪ Developed strategy and created marketing plan that is being implemented.</li> <li>▪ Flavours of Plenty collective and new brand launched.</li> <li>▪ Announced the inaugural Flavours of Plenty food festival (Autumn 2022).</li> </ul> <p>Ocean &amp; Beaches passion group:</p> <ul style="list-style-type: none"> <li>▪ Experience Manager has been appointed.</li> <li>▪ First passion group meeting took place in June 2021.</li> </ul>	Achieved
Identify and support opportunities for new 'tourism with purpose' and environmental stewardship initiatives*.	Feedback from applicable organisations.	Tourism with Purpose strategy completed.	Identify opportunities for new tourism with purpose initiatives and provide support via workshops, networking and PR activity where needed.	TBOP is currently collaborating with Rotary and environmental groups to identify opportunities for visitor volunteers to work alongside the local community. Challenges such as ad hoc volunteering days and times, health and safety, and others are slowing progress.	Not achieved
Business Events development.	Summary report from research.	No current baseline data.	Update the Business Events Market Feasibility report and present to the TBOP board with recommendations.	2019 Business Events Research Report update complete, and recommendations presented to TBOP board in August 2020 for implementation.	Achieved

\*These performance measures relate to attempting to influence the development of tourism products and experiences which are aligned with our destination's Place DNA™ and target markets. While we can support, advocate for, help to upskill operators and promote products, the development of product and how those organisations operate is outside of TBOP's control. Thus, these performance measures relate to outcomes TBOP can directly affect.

## Governance and leadership

**LoE – TBOP's Strategic Priority:** Demonstrate a commitment towards measuring, developing, and improving organisational culture and staff well-being, including exploring opportunities to link in with Tauranga City Council's staff culture survey. Detailed investigation into moving towards the Living Wage for all employees.

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Investigate moving towards the Living Wage for all employees.	Financial records.	Achieved.	Payment of the living wage (as a minimum) to all permanent employees.	TBOP is currently paying the living wage to all permanent employees.	Achieved
Improve organisational culture and staff well-being.	To be determined.	Employee Engagement Score: 80% (June 2020; TBOP Employee Engagement Survey).	Measure staff engagement via either Tauranga City Council's staff culture survey and/or TBOP Employee Engagement Survey.	Employee Engagement Score: 76% (April 2021 TBOP Employee Engagement Survey).	Achieved

## Governance best practice

**LoE – TBOP's Strategic Priority:** Prudent management of TBOP including risk and financial control, and compliance to regulatory and Code of Conduct frameworks.

Performance Area	Source	Baseline	2020-2021 Goal (June 2021)	Result to June 2021	Status
Manage P&L to budget and aim for best effort cost recovery through revenue growth opportunities and cost management strategies.	TBOP Six Month and Annual Reports.	Achieved.	Variance of profit to budget for year within 5% of total revenue.	Achieved, net result is 1% ahead of budget at year end.	Achieved
Code of Conduct compliance.	TBOP Six Month and Annual Reports.	Achieved.	Code of Conduct compliance.	Achieved.	Achieved
Compliance and regulatory obligations met.	Councils' feedback.	Achieved.	Compliance and regulatory obligations met.	Achieved.	Achieved
Enterprise Risk Management Policy adherence.	Board confirmation.	Achieved.	Enterprise Risk Management Policy adherence.	Achieved.	Achieved
Maintain good working relationships with Council staff and elected members, observing the 'no surprises' principle.	Councils' feedback.	Achieved.	No surprises principle maintained.	Achieved.	Achieved

## 9.4 DISTRICT PLAN COMMITTEE AND REGULATORY HEARINGS COMMITTEE QUORUMS

**File Number:** A4330009

**Author:** Barbara Clarke, Senior Governance Advisor

**Authoriser:** Rachael Davie, Group Manager Policy Planning And Regulatory Services

### EXECUTIVE SUMMARY

The membership of both the District Plan Committee, and the Regulatory Hearings Committee has increased to eight, due to the accreditation of additional members through the 'Making Good Decisions Programme' and following the establishment of these committees at the start of the triennium.

This report seeks to amend the delegations for both committees, solely in relation to changing the quorum from 2 Members to 4 Members (for meetings other than Hearings), in order to reflect the increased membership. It is recommended that the quorum (in relation to Hearings) for both committees change from members to 3.

### RECOMMENDATION

1. That the Senior Governance Advisor's report dated 4 November 2021 titled 'District Plan Committee and Regulatory Hearings Committee Quorums' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That, (for meetings other than Hearings), the quorum of the District Plan Committee, and the Regulatory Hearings Committee respectively, be changed from 2 members to 4 members, and the Delegations in relation to the quorum of both committees be amended accordingly.
4. That, in the case of Hearings, when District Plan Committee Members or Regulatory Hearings Committee Members are appointed to a Hearings Panel, (either with an Independent Commissioner as Chair, or to a Panel comprised solely of Councillor Members), that the quorum shall increase to 3 members: and
5. That the delegations of the District Plan Committee, and the Regulatory Hearings Committee be amended to note that for Hearings only, the quorum is 3 members.

### BACKGROUND

#### 1. District Plan Committee

It is the role of consent authorities to appoint decision makers to Resource Management Act 1991 (the RMA) Hearing Panels. Under section 39B of the RMA, appointees on Hearings Panels must have accreditation to make decisions on:

- Applications for resource consent;
- Notice of requirements given under section 168 or 189;
- Requests under clause 21(1) of Schedule 1 for a change to be made to a plan;
- Reviews of resource consents;
- Applications to change or cancel resource consent conditions;
- Proposed policy statements and plans that have been notified; and
- Any hearing of an objection under section 357C of the RMA.

The requirement is for all Members of RMA Hearing Panels, given authority by a Local Authority under sections 33, 34 or 34A, to be accredited, unless there are exceptional circumstances.

The District Plan Committee is comprised of accredited elected members and has delegated authority to hear submissions and make recommendations to Council on District Plan Changes, Private Plan Changes and other RMA 1991 related matters.

## 2. Regulatory Hearings Committee

When Council established its new Governance Structure at the start of the triennium, as a matter of good practice, it was agreed that accredited members also sit on the Regulatory Hearings Committee.

This Committee conducts hearings and makes decisions of a quasi-judicial nature on statutory and regulatory matters, including exercising functions and duties under the Dog Control Act 1996, Gambling Act 2002, Food Act 2014, Litter Act 1979, LGA 1974 & 2002.

### Note:

- The Committee does not have power to hear matters relating to the RMA 1991, as that delegation falls to the District Plan Committee.
- The Committee does not have power to hear matters relating to the Sale and Supply of Alcohol Act 2012 as that delegation falls to the District Licensing Committee.

## 3. Quorums

The quorum for a Committee is set at 2 in Clause 23, Schedule 7 of the Local Government Act 2002, (as below), unless the Council changes it. The Council can choose to change the quorum as it considers appropriate.

### *Conduct of meetings*

#### **23 Quorum of councils and committees**

- (1) A meeting is duly constituted if a quorum is present, whether or not all of the members are voting or entitled to vote.
- (2) Business may not be transacted at any meeting unless at least a quorum of members is present during the whole of the time at which the business is transacted.
- (3) The quorum at a meeting of—
  - (a) a local authority consists of—
    - (i) half of the members if the number of members (including vacancies) is even; or
    - (ii) a majority of members if the number of members (including vacancies) is odd; and
  - (b) a committee—
    - (i) is not fewer than 2 members of the committee (as determined by the local authority or committee that appoints the committee); and
    - (ii) in the case of a committee other than a subcommittee, must include at least 1 member of the local authority.

At that time of the establishment of the above two committees, there were three accredited Councillors, one of whom had a Chairperson's Certification. However, subsequently, a further five Councillors achieved accreditation and these Councillors were duly appointed to both the District Plan Committee and Regulatory Hearings Committee by Council. As the accredited membership of both committees now stands at 8, it is recommended that the quorum, for meetings other than hearings, be amended to 4 members to reflect this.

In the case of Hearings, District Plan Committee Members or Regulatory Hearings Committee Members appointed to a Panel, either with an Independent Commissioner as Chair, or a Panel comprised solely of Councillor Members, it is recommended that the quorum be increased from 2 to 3 members.

## **SIGNIFICANCE AND ENGAGEMENT**

4. The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council's Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

In terms of the Significance and Engagement Policy this decision is considered to be of low significance because Council is required to establish a governance structure and delegate authority to its committees to carry out its business. Committee delegations include the quorum requirement for the committee and are included on Council's standing committee agendas for ease of reference.

## 9.5 APPOINTMENT OF LOCAL RECOVERY MANAGER AND LOCAL CONTROLLER - WESTERN BAY OF PLENTY DISTRICT COUNCIL

**File Number:** A4339161

**Author:** Kerrie Little, Operation Manager

**Authoriser:** Gary Allis, Deputy Chief Executive & Group Manager Infrastructure Services

### EXECUTIVE SUMMARY

This report seeks Council consent, under its delegated authority, in respect of appointing Anita Brown to the position of Local Recovery Manager, and Scott Parker to the position of Local Controller, Western Bay of Plenty District Council. This will allow for succession planning and a roster better placed to ensure coordination and facilitation of immediate, medium and long term recovery activities.

### RECOMMENDATION

1. That the Operations Managers report dated 4 November 2021 titled 'Appointment of Local Recovery Manager and Local Controller - Western Bay of Plenty District Council' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That in accordance with the Civil Defence Emergency Management Act 2002 and the Bay of Plenty Emergency Management Group Policy for selection and appointment of Recovery Managers, Western Bay of Plenty District Council:
  - a) Recommends to the Bay of Plenty Joint Civil Defence and Emergency Management Committee that Anita Brown be appointed as Local Recovery Manager - Western Bay of Plenty District Council.
  - b) Recommends to the Bay of Plenty Joint Civil Defence and Emergency Management Committee that Scott Parker be appointed as Local Controller - Western Bay of Plenty District Council.

### BACKGROUND

The Emergency Management Bay of Plenty's new policy for the appointment of Recovery Managers and Controllers requires a resolution from the manager's local Council.

It is recommended that Anita Brown be appointed as Local Recovery Manager and Scott Parker as Local Controller to bolster the current roster and allow for succession planning.

Anita has been actively involved in Civil Defence Emergency Management (CDEM) both in New Zealand and Australia and has recently held the position of Response Manager at Tauranga City Council. Anita is currently employed as the Asset Manager for Veros and will perform Response Manager duties for Western Bay of Plenty District Council under contract, as required.

Scott has been actively involved in CDEM for fourteen years and has been the Operations Manager within the Emergency Operations Centre for several years. His current role within Council is Reserves and Facilities Projects and Assets Manager but Scott has a background of 20 years in the Air Force as an Aircraft Engineer.

### SIGNIFICANCE AND ENGAGEMENT

The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council's Significance and Engagement Policy in order to guide decision on approaches of engagement and degree of options analysis.

In making this formal assessment, it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

In terms of the Significance and Engagement Policy, this decision is considered to be of low significance because this appointment is to ensure more cover is provided within the Emergency Management roster.

### ENGAGEMENT, CONSULTATION AND COMMUNICATION

Interested/Affected Parties	Completed/Planned Engagement/Consultation/Communication		
Name of interested parties/groups	Anita Brown, Scott Parker, Blaise Williams, Kerrie Little, Emergency Management Bay of Plenty, Council.	Planned	Completed

### ISSUES AND OPTIONS ASSESSMENT

<b>Option A</b>	
<p>That in accordance with the Civil Defence Emergency Management Act 2002 and the Bay of Plenty Emergency Management Group Policy for selection and appointment of Recovery Managers, Western Bay of Plenty District Council:</p> <p>a) Recommends to the Bay of Plenty Joint Civil Defence and Emergency Management Committee that Anita Brown be appointed as Local Recovery Manager - Western Bay of Plenty District Council.</p>	
<p><b>Assessment of advantages and disadvantages including impact on each of the four well-beings</b></p> <ul style="list-style-type: none"> <li>• Economic</li> <li>• Social</li> <li>• Cultural</li> <li>• Environmental</li> </ul>	<p>Maintains Council's requirement to appoint a Local Recovery Manager. Note: that Blaise Williams and Kerrie Little are also Local Recovery Managers.</p>
<p><b>Costs (including present and future costs, direct, indirect and contingent costs).</b></p>	<p>Existing budgets. Recent changes to the CDEM Act places greater obligations on Council to have trained recovery managers and for detailed recovery planning.</p>

### STATUTORY COMPLIANCE

The recommendation meets:

- Legislative requirements/legal requirements;
- Current council plans/policies/bylaws; and
- Regional/national policies/plans.

## 9.6 PUKEHINA DEVELOPMENT RATE

**File Number:** A4359693

**Author:** Tom Rutherford, Policy Analyst

**Authoriser:** Emily Watton, Policy and Planning Manager

### EXECUTIVE SUMMARY

1. Council is asked to consider undertaking community consultation with the Pukehina community regarding the Pukehina Development Rate.

### RECOMMENDATION

1. That the Policy Analyst's report dated 4 November 2021 titled 'Pukehina Development Rate' be received.
  2. That the report relates to an issue that is considered to be of medium significance in terms of Council's Significance and Engagement Policy.
  3. That Council undertake community consultation with the Pukehina community regarding the Pukehina Development Rate, alongside the Annual Plan 2022/2023.
- OR
4. That Council defers community consultation on the Pukehina Development Rate to beyond 2024.

### BACKGROUND

2. Council has been collecting the Pukehina Development Rate for the past 21 years. This rate is charged at \$20 per ratepayer within the defined area of benefit, of which there are currently 632 properties.
3. The rate has been collected for the purpose of contributing towards a future sewerage scheme for the Pukehina area.
4. The current balance of the fund is \$483,501.71.
5. The Local Government (Rating) Act 2002 allows for local authorities to set targeted rates. The targeted rate may be set on a uniform basis for all rateable land in a defined area of benefit. Council can only use the funds for the purpose they were collected. In setting a rate, Council is effectively raising a mandatory tax from the community on the basis of the stated purpose for the funds. Therefore, Council must consider the views of the community when making its decision and to not change the direction in any material way without undertaking community consultation. This could include ceasing collection of the rate, re-purposing the collection of the rate (and accumulated funds), or refunding the accumulated funds to those who contributed.
6. Through the Long Term Plan 2021-2031, Council received a submission from the Pukehina Beach Ratepayers and Residents Association requesting that Council consider consultation on changing the purpose of the Pukehina Development Fund. Through the Long Term Plan, Council agreed to consult with the Pukehina community on the future of the targeted rate and funds collected. The outcome of the consultation would be implemented in the 2022/2023 Annual Plan.
7. Currently, there are some considerations that need to be made, that may affect the use of the Fund in the future.
  - (a) Bay of Plenty Regional Council (BOPRC) sets the rules for wastewater disposal. In 2018, BOPRC commissioned a report that concluded that monitoring of the Pukehina foreshore seeps show some indications of contamination from septic tank effluent. These weren't

confirmed as human. Monitoring results from June 2021 show that there does appear to be some septic tank contamination to drains and harbour foreshore of limited extent. Central Government has established a National Policy Statement for Freshwater Management, which will require BOPRC to set new rules for wastewater in 2024. At the moment, it is too early to know what the requirements may be for Pukehina. BOPRC’s process to set new rules will require updated science, as well as Iwi and community engagement.

- (b) The Government has announced it proposes to transfer ownership and management of drinking water, wastewater and stormwater from 67 independent councils to four large publicly owned entities. Each entity would be governed by an independent board. Under the current Three Waters Reform direction (as of 18 October 2021) it is possible that the proceeds of the Pukehina Development Fund may have to transfer to a new water entity because its purpose is to fund future wastewater infrastructure. Government has not made its final decisions in relation to the Three Waters reform, so this is an area of uncertainty.

**SIGNIFICANCE AND ENGAGEMENT**

- 8. The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council’s Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.

The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.

- 9. In terms of the Significance and Engagement Policy this decision is considered to be of medium significance. The consultation and final decision on whether to continue charging the Pukehina Development Rate (or to cease collecting it and re-purpose the funds) are expected to have a moderate impact on the residents and ratepayers of the Pukehina Beach community. The level of financial consequence of the decision, the effects of the decision on a large part of the community and whether the decision is reversible, indicate a medium level of significance.
- 10. If Council elects to proceed with consultation, it is proposed that the primary engagement tool would be Council’s Have Your Say website. It’s proposed that Council would contact every property owner in Pukehina Beach, through a letter and email (where available), to advise of the community consultation and a community information session. This session would be to enable residents and ratepayers can come along, ask questions of staff and Councillors, and leave their feedback.

**ENGAGEMENT, CONSULTATION AND COMMUNICATION**

Interested/Affected Parties	Planned Consultation		
Name of interested parties/groups	Pukehina Beach Ratepayers and Residents Association.	Planned	Completed
General Public	Pukehina Ratepayers and Residents beyond the members of the Association.	Planned	Completed

**ISSUES AND OPTIONS ASSESSMENT**

11. Council may choose to either:

- (a) Undertake community consultation with the Pukehina community regarding the Pukehina Development Rate, alongside the Annual Plan 2022/23.
- (b) Defer community consultation with the Pukehina community regarding the Pukehina Development Rate until a later date.

<b>Option A</b>	
<b>That Council undertake community consultation with the Pukehina community regarding the Pukehina Development Rate, alongside the Annual Plan 2022/23.</b>	
<p><b>Assessment of advantages and disadvantages including impact on each of the four well-beings</b></p> <ul style="list-style-type: none"> <li>• <b>Economic</b></li> <li>• <b>Social</b></li> <li>• <b>Cultural</b></li> <li>• <b>Environmental</b></li> </ul>	<p><u>Advantages:</u></p> <ul style="list-style-type: none"> <li>• The community can provide feedback on whether they wish to continue to contribute towards the Development Rate, cease collecting the rate and repurpose the funds, or continue collecting the rate and repurpose the funds to another local project.</li> </ul> <p><u>Disadvantages:</u></p> <ul style="list-style-type: none"> <li>• There are a number of uncertainties at present which may impact the usefulness of engaging with the Pukehina community at this time. Most notably those uncertainties relate to the proposed Three Waters Reform and future wastewater requirements that might arise from the BOPRC giving effect (through its plans) to the NPS on Freshwater Management.</li> <li>• Under the current Three Waters reform direction (at 18 October 2021) the existing and future proceeds of the Development Fund may transfer to a new water entity and therefore the Fund may not be available to be utilised for either a future sewerage scheme or for any other local project.</li> <li>• There is uncertainty as to what the future wastewater upgrade requirements may be for Pukehina, although there is work to be undertaken by BOPRC by 2024 to develop a new rules framework to meet the National Policy Statement on Freshwater Management.</li> </ul>
<p><b>Costs (including present and future costs, direct, indirect and contingent costs).</b></p>	<p>Consultation costs will be incurred but these can be met within existing budgets. Staff time will be required to undertake the consultation and to respond to queries from the community about the Development Rate. These costs can be managed within existing staffing and budgets.</p>

<b>Option B</b>	
<b>That Council defers community consultation with the Pukehina community regarding the Pukehina Development Rate until a later date beyond 2024.</b>	
<p><b>Assessment of advantages and disadvantages including impact on each of the four well-beings</b></p> <ul style="list-style-type: none"> <li>• <b>Economic</b></li> <li>• <b>Social</b></li> <li>• <b>Cultural</b></li> <li>• <b>Environmental</b></li> </ul>	<p><u>Advantages:</u></p> <ul style="list-style-type: none"> <li>• Consultation costs will be delayed.</li> <li>• With the current Three Waters reform direction (at 18 October 2021) deferring consultation will allow Council to review the ramifications of the reform and the potential impact that it may have on the Fund.</li> <li>• We may have greater certainty on any future wastewater upgrade requirements for Pukehina.</li> </ul> <p><u>Disadvantages:</u></p> <ul style="list-style-type: none"> <li>• Through the Long Term Plan 2021-2031 Council made a resolution to consult with the Pukehina community on the future of the targeted rate and funds collected. This decision is not consistent with this resolution.</li> </ul>
<p><b>Costs (including present and future costs, direct, indirect, and contingent costs).</b></p>	<p>Consultation costs will not be incurred at this time.</p>

### STATUTORY COMPLIANCE

12. The collection of the Pukehina Development Rate is provided for by the Local Government (Rating) Act 2002 and the Local Government Act 2002. The recommendations of this report enable Council to meet its obligations under the Local Government (Rating) Act 2002 and the Local Government Act 2002, in relation to potentially changing the purpose of a rate.
13. The Local Government Act 2002 outlines that if sources of funding for local authorities include a targeted rate, then a funding impact statement must specify the activities or groups of activities for which the targeted rate is to be set. The Long Term Plan 2021-31 includes this information.

### FUNDING/BUDGET IMPLICATIONS

<b>Budget Funding Information</b>	<b>Relevant Detail</b>
Consultation Costs	Can be met within existing budgets.
Pukehina Development Rate Reserve	Currently \$483,501.71. Any proposal to change the purpose of the rate and the accumulated funds would impact on this reserve.

**10 INFORMATION FOR RECEIPT****11 RESOLUTION TO EXCLUDE THE PUBLIC****RECOMMENDATION**

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48 for the passing of this resolution
<p><b>11.1 - Confidential Minutes of the Council Meeting held on 23 September 2021</b></p>	<p>s7(2)(a) - the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons</p> <p>s7(2)(b)(i) - the withholding of the information is necessary to protect information where the making available of the information would disclose a trade secret</p> <p>s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p>s7(2)(c)(ii) - the withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest</p> <p>s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p> <p>s7(2)(i) - the withholding of the information is necessary to</p>	<p>s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7</p>

	enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)	
<b>11.2 - Confidential Minutes of the Performance and Monitoring Committee Meeting held on 14 October 2021</b>	<p>s7(2)(a) - the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons</p> <p>s7(2)(b)(i) - the withholding of the information is necessary to protect information where the making available of the information would disclose a trade secret</p> <p>s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p>s7(2)(c)(ii) - the withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest</p> <p>s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p> <p>s7(2)(i) - the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</p>	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7
<b>11.3 - Chief Executive Officer's Report - Request for Execution of Documents under Seal of Council</b>	s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the	s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7

	<p>person who supplied or who is the subject of the information</p> <p>s7(2)(c)(ii) - the withholding of the information is necessary to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest</p>	
<p><b>11.4 - Appointment of independent consultant for the Chief Executive Officer Performance Review Process</b></p>	<p>s7(2)(b)(ii) - the withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</p> <p>s7(2)(h) - the withholding of the information is necessary to enable Council to carry out, without prejudice or disadvantage, commercial activities</p> <p>s7(2)(i) - the withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</p>	<p>s48(1)(a)(i) - the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7</p>