



**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

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

UNDER THE RESOURCE MANAGEMENT ACT 1991

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

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

Subdivision – establish super lots and lots for roads and infrastructure

Certificate of compliance – contaminated site

Council Files: RC11997L and RC12296S

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

INTRODUCTION

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

THE PROPOSAL

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

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

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

NOTIFICATION AND SUBMISSIONS

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

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

PROCEDURAL MATTERS

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

THE HEARING

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

² Second Minute dated 3 March 2021

³ Third Minute dated 5 March 2021

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

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

SITE VISIT

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

THE DISTRICT PLAN AND RESOURCE CONSENTS REQUIRED

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

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

RELEVANT STATUTORY PROVISIONS

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

- (i) *a national environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*
 - (iv) *a New Zealand coastal policy statement:*
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

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

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

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

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

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

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

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

TRADE COMPETITION

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

RELEVANCE OF OMOKOROA STRUCTURE PLAN

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

⁴ Evidence of Kay Knight, paragraph 1.2

⁵ Opening legal submissions for Applicant, paragraphs 33 and 34

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

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

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

SUMMARY OF SUBMISSIONS AND EVIDENCE HEARD/ TABLED

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

Applicant

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

⁷ Opening legal submissions for Applicant, paragraphs 15-20

⁸ Opening legal submissions for Applicant, paragraph 22-23

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

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

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

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

¹¹ Opening legal submissions for Applicant, paragraphs 2-7

¹² Opening legal submissions for Applicant, paragraphs 15-24

¹³ Opening legal submissions for Applicant, paragraphs 30-37

¹⁴ Opening legal submissions for Applicant, paragraphs 39-64

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

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

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

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

¹⁶ Evidence of Graham Price, paragraph 22

¹⁷ Evidence of Graham Price, paragraph 48

¹⁸ Evidence of Graham Price, paragraph 56

¹⁹ At paragraph 62

²⁰ Evidence of Craig Lemon, paragraph 13

²¹ Evidence of Craig Lemon, paragraph 17

²² Evidence of Craig Lemon, paragraphs 22-34

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

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

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

²⁴ Evidence of Craig Lemon, paragraph 65.

²⁵ Supplementary evidence of Craig Lemon, paragraph 5

²⁶ Supplementary evidence of Craig Lemon, paragraph 9.

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

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

²⁷ Evidence of John Polkinghorne, paragraph 31

²⁸ Supplementary evidence of John Polkinghorne, paragraph 11.

²⁹ At paragraph 12

³⁰ At paragraph 13

³¹ Evidence of Dr Beattie, paragraph 8

³² Evidence of Dr Beattie, paragraph 10

³³ Evidence of Dr Beattie, paragraph 17(b)

³⁴ Evidence of Dr Beattie, paragraph 17(c)

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

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

³⁵ Evidence of Dr Beattie, paragraph 19(e)

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

³⁷ Evidence of Thomas Watts, paragraph 25

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

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

³⁸ Evidence of Thomas Watts, paragraph 27

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

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

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

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

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

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

⁴⁰ Evidence of Richard Coles, paragraphs 20-22

⁴¹ Evidence of Richard Coles, paragraphs 26-27

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

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

Submitters

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

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

⁴³ Evidence of Mr McCabe, paragraph 6

⁴⁴ Evidence of Mr McCabe, paragraphs 5 and 6

⁴⁵ Evidence of Mr McCabe, paragraphs 13-15

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.⁴⁶ 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.⁴⁷
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 11.⁴⁸
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.

⁴⁶ Evidence of Ailsa Fisher, table in paragraph 2.2

⁴⁷ Evidence of Ailsa Fisher, paragraphs 4.1- 4.4

⁴⁸ 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.⁴⁹
89. **Fire and Emergency New Zealand** ("Fire and Emergency") tabled a letter though its consultants, Beca.⁵⁰ 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 2020.
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

⁴⁹ Evidence of Kay Knight paragraph 7.2

⁵⁰ 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.⁵¹ 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 113,000m³ 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

⁵¹ 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 assessment⁵² 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

⁵² 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.⁵³

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 50,000m³. 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 113,000m³ 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 Council⁵⁴ 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

⁵³ 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.

⁵⁴ 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.⁵⁵
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.

⁵⁵ Our acceptance of these submissions on scope excludes the 30,000m³ 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 contention⁵⁶:

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

⁵⁶ 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 evidence⁵⁷, 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.⁵⁸
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

⁵⁷ Evidence of Dr Beattie, paragraph 19

⁵⁸ 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.⁵⁹

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

⁵⁹ 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.⁶⁰
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 high⁶¹, but considered it was anticipated as an outcome of the District Plan given the provisions addressing the Omokoroa Town Centre.⁶²
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

⁶⁰ Evidence of Thomas Watts, paragraphs 48-53

⁶¹ Based on the NZILA 7 point rating system

⁶² 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.⁶³

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.⁶⁴ 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 proposed⁶⁵ and the lack of certainty of the delivery of the proposal. Ms Ryder said this:⁶⁶

"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

⁶³ Evidence of Thomas Watts, paragraph 57-61

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

⁶⁵ This report referred to conditions tabled by the Applicant at that time the report was prepared

⁶⁶ 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 2020.⁶⁷ 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

⁶⁷ 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.⁶⁸ 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.⁶⁹
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:⁷⁰
 - 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

⁶⁸ Supplementary evidence of Richard Coles, paragraph 20

⁶⁹ Evidence of Ian Carlisle, paragraph 42

⁷⁰ 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.⁷¹ 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

⁷¹ 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:⁷²
- 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.⁷³
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 113,000m³. However, we note the Cut Fill Contours Plan in fact refers to 115,550m³ 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

⁷² Report of Ms Curtis dated 2 March 2021, pages 6-8

⁷³ 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.”⁷⁴ 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 115,550m³) 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 30,000m³ 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 30,000m³ 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

⁷⁴ Applicant’s Reply, Appendix table, in answer to our questions on this

wastewater pumping station on Lot 1 was too small. An area of 124m² was proposed by the Applicant. The Council wanted an area of 225m² 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 225m²) 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.⁷⁵

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.⁷⁶
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.⁷⁷ 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.⁷⁸ 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).⁷⁹ 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

⁷⁵ Supplementary evidence of Richard Coles, paragraph 25

⁷⁶ Evidence of Daniel Hight, paragraph 20

⁷⁷ Evidence of Daniel Hight, paragraphs 21 and 22

⁷⁸ Supplementary evidence of Richard Coles, paragraph 23

⁷⁹ 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.⁸⁰

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.⁸¹
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

⁸⁰ Reply submissions paragraph 37, referring to the updated Design Guidelines page 36

⁸¹ 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.⁸²
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.⁸³
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.⁸⁴
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.⁸⁵

⁸² Evidence of John Polkinghorne, paragraphs 17-18

⁸³ Evidence of John Polkinghorne, paragraphs 40-45

⁸⁴ Evidence of John Polkinghorne, paragraphs 57-77

⁸⁵ 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,⁸⁶ 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:⁸⁷
- "...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

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

⁸⁷ 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.

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

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 RPS⁸⁸. 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 events⁸⁹, and to liquefaction⁹⁰. 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.

⁸⁸ 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

⁸⁹ 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.

⁹⁰ 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 invited⁹¹ 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.

⁹¹ Seventh Minute dated 29 April 2021

PART 2 MATTERS

240. In the Court of Appeal decision in *Davidson*⁹², 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 2.⁹³
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

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

⁹³ *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

1. 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 th March 2021
Architecture Plan Set - Omokoroa Town Centre	First Principles Architects	Resource Consent: Sheets 0.0.10 – 7.0.17	8 th 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 th 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 th 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

- 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.

- 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

- 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 8th 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:

- a At all times 60dB LAeq (15 min).
- b At all times 85dB LAFmax

Advice Notes:

1. 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.
 2. 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:
- a Monday to Saturday – Prior to 6am or after 10pm
 - b 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/m² (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 Sunday	7am to 10pm	53dBA	N/A
	7am to 6pm	50dBA	N/A
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 35m² 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 watermain are to be vested in Council, the disinfection methodology to be used shall be incorporated in the engineering specifications. No pressure testing of watermain 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 15th 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

1. 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 th March 2021
Architecture Plan Set - Omokoroa Town Centre	First Principles Architects	Resource Consent: Sheets 0.0.10 – 7.0.17	8 th 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 th 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 th 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 watermain 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 & 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 watermain are to be vested in Council, the disinfection methodology to be used shall be incorporated in the engineering specifications. No pressure testing of watermain 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 submitica.
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.