

IN THE MATTER of the Resource Management Act 1991 (the **RMA**)

A N D

IN THE MATTER of applications to the Rotorua Lakes Council (**Council**) by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (**MHUD**) for thirteen resource consents to use various sites and existing buildings within those sites for Contracted Emergency Housing

(Council file references: RC17647, RC17648, RC 17650, RC17662, RC17661, RC17673, RC17887, RC17889, RC17890, RC17891, RC17892, RC17893, RC18244)

(the Applications)

LEGAL SUBMISSIONS ON BEHALF OF RESTORE ROTORUA INCORPORATED (RRI) AND MOUNTAIN SURF TRUST

Introduction

1. RRI is an incorporated society with a clear and simple purpose to:¹
 - (a) Restore Rotorua to its status as a premier tourist destination;
 - (b) Ensure Rotorua is a desirable place to work and live for all residents of Rotorua and the surrounding area; and
 - (c) Do anything necessary or helpful to the above purposes.

2. RRI has over 200 members.

¹ Rules and Constitution of Restore Rotorua Incorporated, rule 3.1.

3. RRI's involvement in these applications is solely motivated by and entirely consistent with its purpose. Its principal concern relates to the cumulative effects of granting 13 applications.
4. RRI's preference is that the Commissioners decline all thirteen resource consent applications, based on the lay and expert evidence before the Commissioners from RRI.
5. There is a wide array of evidence that has been submitted on behalf of RRI ranging from direct neighbours that are being negatively impacted by the current unlawful use of these motels as emergency housing; to elderly parents of disabled children who no longer have a safe community for their most vulnerable whanau members to call home; to business owners who have suffered significant economic loss from the reduction in tourism; and to residents in the area the motels are consolidated within. In addition, RRI calls expert economic evidence on the economic effects of resource consents being granted for the 13 motels, and expert planning evidence.
6. Should the Commissioners consider that the grant of some applications is warranted, RRI submits that:
 - (a) All applications relating to Fenton Street should be declined;
 - (b) The remaining applications should be granted for a range of short term durations to enable a managed retreat / phase out of contracted emergency housing (**CEH**).
7. I also appear for the Mountain Surf Trust, which owns a property at 110 Lake Road, in close proximity to 131 Lake Road (the Lake Rotorua Motel).

The Trust's concerns are similar to those of RRI and accordingly these submissions are also made on behalf of the Trust.

Structure of legal submissions

8. These submissions are structured as follows:
 - (a) RRI concerns
 - (i) Rotorua – tourism destination
 - (ii) Fenton Street – gateway since the 1880s
 - (iii) Rotorua - desirable place to work and live
 - (iv) The suitability of motels for CEH tenants
 - (v) Is there an exit plan?
 - (b) Legal issues
 - (i) Existing environment and cumulative effects
 - (ii) Alternatives assessment
 - (iii) Is it appropriate to apply the permitted baseline?
 - (c) Effects of the activity
 - (d) Planning considerations
 - (e) Proposed conditions if consents granted
 - (f) Evidence for RRI
 - (g) Conclusion

RRI concerns

9. RRI's concerns with the applications are brought into sharp focus by the widespread emergency housing which already exists in Rotorua. RRI's very formation came about as a result of the adverse effects being experienced by Rotorua residents and business owners, and their observations and experience of the detrimental impact this was also having on 'Brand Rotorua'.

10. It is reasonable for RRI to be concerned at the apparent systematic increase in the use of accommodation facilities within Rotorua with no apparent corresponding plan to reduce the use of accommodation facilities for emergency housing. The resource consent applications describe CEH as a 'pilot model'.² Given that the definition of the term "pilot" is an experiment or test before being introduced more widely, RRI is concerned that if these applications are successful, more will follow.
11. Furthermore, MHUD's evidence looks to create a clear distinction between uncontracted emergency housing relying on the Special Needs Grant (**EH SNG**) and delivered by the Ministry of Social Development (**MSD**), which appear to be a feeder for CEH facilities. There is no clarity or certainty for the community about any sort of plan for reducing emergency housing facilities in Rotorua generally.
12. RRI's concerns should not be interpreted as being Rotorua centric at the expense of the tenants of CEH. One of RRI's concerns is the unsuitability of motel style accommodation for CEH. Nor should RRI's case be interpreted as a larger scale version of NIMBYism. The evidence from RRI's lay witnesses is not driven by fear of what might result from CEH but from direct and actual experience of adverse effects from emergency housing and/or which correlates with the increase of emergency housing in Rotorua.
13. RRI is clear that if any resource consents are granted by the Commissioners, then they should be granted on a basis which places responsibility with MHUD as the instigator of the pilot model, which incentivises MHUD (and central government more generally) to secure alternative and more suitable accommodation, and which contain sufficient rigour to enable effective enforcement by the Council (something which does not appear to have occurred to date).

² Contracted Emergency Housing Factsheet.

14. At the forefront of RRI’s concerns is its wish to restore Rotorua to its status as a premier tourist destination.

Rotorua – tourism destination

15. Rotorua’s status as a key tourism destination within New Zealand is reflected both in the operative District Plan, and in the Council’s current Long Term Plan.
16. The Long Term Plan contains three “Agreed key priorities”, the first of which resonates with RRI’s purpose:³

#1 Rotorua, a place of choice

Rotorua is a leader in providing authentic experiences; a place that provides the space to connect with friends and family; and has a natural environment to inspire and sustain wellbeing.

Success will mean attracting and retaining, talent, students, visitors and investors who contribute to the vibrancy of our bilingual city, engage in regenerative tourism, and sustain year-round productive jobs.

17. The District Plan recognises and looks to provide for tourism at a strategic level, where policy SDED-P4 states:

Manage the environment to enable ongoing growth of tourism and recreational activities that support the social, cultural and environmental attributes that are valued by the community and contribute to the identity of Rotorua.

³ Page 16.

18. The District Plan then contains strong support for tourism in the Commercial centres provisions, both through objective COMZ-O1,⁴ and policy COMZ-P4:

Entranceway Accommodation and Tourism

Provide for the development of tourism enterprises and Māori cultural experiences that maintains or enhances the amenity and vibrancy along the northern and southern city entranceways to the inner city, as shown on Planning Map 206.

19. These depict both Lake Road (where the Lake Road Motel is located) and Fenton Street as “City Entranceway”:



20. The Applications which include six sites on Fenton Street and one site on Lake Road are clearly contrary with these policies, and that conflict is not,

⁴ A hierarchy of vibrant compact commercial and tourism centres that efficiently service and support the needs of the surrounding community and nationally significant tourism sector.

it is submitted “reconciled with the positive impacts the Proposals have in terms of meeting the needs of the surrounding community by providing a short-term housing solution to those without suitable alternative accommodation, in a manner whereby effects of the activity are largely contained”.⁵

21. The section 42A report suggests that the use of tourist accommodation for CEH is not contrary to the objective and policies of the Commercial 4 zone because the conversion of tourist accommodation to residential use is a controlled activity if all performance standards are met, and a restricted discretionary activity if they are not, where none of the ‘matters of control’ or ‘matters of discretion’ for conversion require consideration of the economic or any other effects of removing tourist accommodation from the city’s pool of tourist accommodation.⁶
22. That approach is not correct, as a matter of control is compliance with the household unit density standards in COMZ-S4 which is one household unit per 450m² of site area. The matters of control/discretion include considerations regarding the *amenity* of the streetscape/sites in the same and adjacent zones. This directly links back to COMZ-P4 for the city entranceways to provide for the development of tourism enterprises and Māori cultural experiences that maintains or enhances the *amenity* and vibrancy along the northern and southern city entranceways.
23. RRI appreciates that during the Covid-19 pandemic when the country’s borders were closed and travel was at an all time low, motel operators have had emergency housing to fall back on as an alternative income stream. However, with the country now being open for business, steps should not be taken to cement the use of tourist accommodation for

⁵ Statement of Evidence of Alice Blackwell, Appendix D, page 17.

⁶ Paragraphs 259 & 260.

emergency housing by granting consents for CEH – even for a term of 5 years - particularly on Rotorua’s key city entranceways.

24. One of those city entranceways, Fenton Street, is a core part of Rotorua’s identity with a long history.

Fenton Street – gateway since the 1880s

25. The “Thermal Springs District” has always been a tourism destination.
26. In the 1870’s the Government sought to gain access to land in the District. Its vision was to create a township that would be the gateway to a thermal wonderland including the world-renowned Pink and White Terraces.
27. In 1880, 295 members of Ngāti Whakaue entered into a contract with the Crown to set aside land so that this vision could materialize.
28. The contract became known as the “Fenton Agreement” after Native Land Court Judge Francis Dart Fenton. Fenton negotiated with the original owners and entered into the contract on behalf of the Crown. The Thermal Springs District Act 1881 ratified the contract.
29. The concept was that:
 - (a) Ngāti Whakaue would gift land to the Crown for recreation, sanatoriums, railways, hospitals and other amenities;
 - (b) The Crown would control the thermal waters;
 - (c) Māori would retain ownership of their land and receive perpetual income through 99-year leases.

30. The total area of land included in the new township was around 12 square kilometres. It ran from the “west end of Te Pukeroa to Puarenga Stream and from Lake Rotorua up to the mountains, excluding the native village of Ohinemutu”.
31. Running through this block of land is Fenton Street as it is known today. It would have connected the route from the Pink and White Terraces (south of Rotorua at Lake Rotomahana) with Lake Rotorua. Its placement as a gateway to Rotorua is recognised in the operative District Plan.
32. The Fenton Agreement is mentioned in the Strategic Direction of the District Plan in the context of Te Arawa’s contribution to the district’s identity:⁷

The Fenton agreement in 1880 saw approximately 3,000 acres of land included in the new township, close to the Ngāti Whakaue kāinga of Ōhinemutu, Whakarewarewa and Ngāpuna.

33. Within the Commercial 4 Zone “City Entranceway Accommodation”, the zone description is:⁸

Tourism accommodation concentrated along city entranceways and arterial routes such as Fenton Street and Lake Road. Activities within the Commercial 4 zone consist of motels or large apartment style buildings commonly two storeys in height, with signage that maintains surrounding amenity. The buildings are designed to cover the majority of the land area and have minimal yards that are landscaped where they adjoin the road.

34. Known colloquially as Rotorua’s Golden Mile, the District Plan reflects the long historic associations, and contemporary associations, that locals and

⁷ Part 2, page 5.

⁸ Part 3, page 4.

visitors alike have with Fenton Street. Its current state is far from golden, and the Commissioners are particularly urged to decline the resource consent applications as they relate to Fenton Street.

35. A review of the submissions shows that there is support for this outcome.⁹

Rotorua – desirable place to work and live

36. Referring back to the first key priority of the Long Term Plan, and RRI's purpose, these both look to ensure that Rotorua is a desirable place to work and live.

37. Unfortunately, the widespread extent of emergency housing within Rotorua is having the opposite effect. In terms of the evidence before the Commissioners from RRI:

- (a) Rolly Rolston has moved from Rotorua to Papamoa. Having lived in Rotorua for 23 years, his main reasons for moving to Papamoa were for his personal safety and for those who visited him.
- (b) Gary Smith, ex District Commander of the Bay of Plenty Police, his wife, and son Carl, moved to Cambridge in February this year to move to a safer environment.
- (c) Marie Tassell and family are planning to move to Nelson in an effort to leave behind emergency housing and its effects. Ms Tassell's evidence also speaks to the Long Term Plan's priority of attracting and retaining investors – saying that through the property investment agency she owns (iFindProperty) she has

⁹ Submitter Richard Shand.

noticed a decrease in people prepared to invest in Rotorua, especially in the central locations which used to be very popular.

- (d) Trevor Newbrook's daughter, son-in-law and their 4 children moved to Nelson in January 2022. They were all born in Rotorua and have extended family here. They do not believe Rotorua is any longer a safe or suitable place to raise a family.
 - (e) Carlyne Hall gives evidence that 6 immediate neighbours have moved, with her family now the last one standing in her immediate neighbourhood.
 - (f) Richard Sewell, owner of Urbano Bistro, is regularly asked by potential employees whether Rotorua is safe because they have read about Rotorua's issues and the negative feedback Rotorua has received.
 - (g) Reginald Hennessy, owner of Hennessy's Irish Bar, gives evidence about safety concerns for staff and the impact this is having on staff retention.
 - (h) Donna Walsh, owner of Willow Fashion Boutique (next to Urbano Bistro) keeps her door locked for significant periods of time to ensure the safety of her and her staff member.
38. The evidence given by these witnesses is of direct experience of living in Rotorua in the period through which emergency housing has increased. It clearly shows that Rotorua is no longer perceived as a desirable place to work and live.

The suitability of motels for CEH tenants

39. RRI also holds concerns about the suitability of motels for CEH – and indeed, it is perhaps the unsuitability of motel accommodation for permanent living arrangements that leads to the consequential amenity and safety effects for Rotorua.
40. One of RRI's witnesses, Christina Phillips, is a retired teacher with over 34 years' experience who has lived in Rotorua for over 30 years. She is concerned about risk to the learning and development of children living with their families at emergency housing motels in central Rotorua, including that it increases risk factors for well-being and there is little to non-existent play equipment and green space available for the children to play. This is corroborated by the s 42A evidence from Sarah Collins which has looked at the level of acceptability for children of different age groups from a 'right to play' perspective, and identified those facilities and units which are unacceptable or 'low (bare minimum)'.
41. In a similar vein, those motels located on busy roads are hardly suitable (in safety terms) for children. Mr Murphy highlights this as a concern in his evidence given the function, features and character of the Fenton Street road corridor, and his observation of children playing on the road berm.¹⁰
42. RRI holds further concerns with respect to whether the sites provide generally for the health and safety of CEH tenants. This was explored by the Sunday programme which aired on TVNZ on 4 September 2022, but evidence is also available in this process transcribed by one of the reporting planners as follows (with name redacted):¹¹

¹⁰ Statement of Evidence of Vincent Murphy, paragraphs 110-111.

¹¹ Email from Bethany Bennie to Planning Submissions dated 10 August 2022 5:37:09pm.

Me and my son's health in this environment – in and out of hospital. I must be in a well-ventilated place. My son's Doctor has stated that he needs to be in a well ventilated house. That has been ignored by the housing provider. Not good quality rooms – not proper cooking facilities. I was here before WERA came in and it was better. WERA are not family orientated ... If you come back after 10pm you get kicked out. You can't leave till 6am (which doesn't work if you get a job that starts early)...

...

I was told that if I make this submission I can get kicked out and get others kicked out and living in on the street.

43. Quite apart from the comments made about the standard of accommodation, the suggestions that in making the submission a tenant might get kicked out is highly concerning.
44. In addition:
- (a) Fire & emergency compliance is difficult to ascertain. It is well documented that the Golden Glow Motel (not CEH), Four Canoes (not CEH) and Roto Vegas (CEH) have suffered fires, and a response to an OIA request shows that “structure fire with damage” was occasioned at the Geneva Motor Lodge in 2021, and “structure fire with damage” and “structure fire with no damage” occasioned at the RotoVegas Motel in 2022.¹² Documentation from the applicant does not confirm whether the sites are compliant with the Fire and Emergency New Zealand Act 2017.
 - (b) In respect of Building Act compliance, it appears that the Council requires guidance on whether the use of motels for emergency housing means further steps are required to achieve compliance, as it has applied to MBIE for a determination. It is not clear from

¹² Appendix A.

the s 42A report whether this applies to all emergency housing (including CEH) or just uncontracted emergency housing.¹³

(c) The following applications contain a number of studio rooms (with living and sleeping in the same room) which RRI does not consider are suitable for permanent or semi-permanent living:

- (i) RC 17650 – New Castle Motor Lodge;
- (ii) RC17673 – Union Victoria Motel;
- (iii) RC17662 – Malones Spa Motel;
- (iv) RC17893 – Apollo Motel;
- (v) RC17892 – Ann’s Volcanic;
- (vi) RC17889 – Roto Vegas Motel;
- (vii) RC17891 – Geneva Motor Lodge.

45. The checklist developed by the applicant to “guide” selection of motels does not appear to guarantee any minimum standard.¹⁴ It appears to be a list that someone would work through to describe what exists, rather than a minimum standard. “Insulation of property – detail” is listed and it is reasonably suggested that many if not most motels would not meet Healthy Homes standards, although MHUD may be able to clarify this.

46. RRI says every effort should be made to house CEH tenants appropriately.

Is there an exit plan?

47. There does not appear to be any plan to phase out emergency accommodation whether EH SNG or CEH.

¹³ Section 42A report, paragraphs 304-313.

¹⁴ Statement of Evidence of Lyall Wilson, Appendix 1.

48. EH SNG appears to be a feeder for CEH, with redacted Cabinet documents about the CEH proposal stating that “HUD contracting specific motels to provide emergency accommodation, with an initial focus on the approximately 200 families and whānau with children in EH-SNG motels”.¹⁵ This then apparently frees up demand in the EH SNG:¹⁶

Although EH-SNG spend is expected to reduce (as a direct result of the 200 families moving from EH-SNG accommodation to contracted accommodation), it is anticipated that contracting emergency housing accommodation in Rotorua could free up approximately 75 percent of current EH-SNG supply (used for those families) which would then be made available to meet latent demand in the city.

49. However, as these resource consent applications are made by MHUD, and EH SNG sits under MSD, the Commissioners have no reach over the EH SNG.
50. Indeed, MHUD distances CEH from MSD’s EH SNG, with MHUD’s representative stating:¹⁷

While I work closely with MSD to ensure that people with urgent housing needs have access to emergency housing, I am not responsible for or involved in the operation of EHSNGs or the motels that accept customers reliant on EHSNGs.

51. It follows that while RRI and others are asked to accept that CEH is better than uncontracted emergency housing,¹⁸ it is still on top of EH SNG for which MHUD has no ‘involvement’, and which appears here to stay.

¹⁵ Statement of Evidence of Trevor Newbrook, Appendix 10.

¹⁶ Statement of Evidence of Trevor Newbrook, Appendix 10.

¹⁷ Statement of Evidence of Lyall Wilson, paragraph 9.4.

¹⁸ See for example Ms Blackwell’s ‘counterfactual’ at paragraph 9.52.

52. There is no corresponding reduction in EH SNG and nor does this appear to be an issue which the Council is able to effectively enforce.

Legal issues

Existing environment and cumulative effects

53. There are two RMA terms, which are relevant to the Applications:

- (a) "Environment"; and
- (b) "Effect" which includes cumulative effects.

54. These terms come into sharp relief in s 104(1)(a) RMA where the consent authority must have regard to:

any actual and potential effects on the environment of allowing the activity

Environment

55. In order to appropriately assess effects, it is necessary to consider the 'environment' upon which such effects are being assessed.

56. Some key principles can be distilled from the cases and these are as follows:

- (a) It is for the decision maker to determine the existing environment. This is essentially an evaluative factual assessment.¹⁹
- (b) This analysis includes having regard to lawfully authorised activities, including the environment as it might be modified by

¹⁹ *Arrigato Investments Limited v Auckland Regional Council* [2002] 1 NZLR 323 (CA); *Queenstown-Lakes District Council v Hawthorn Estate Limited* (2006) 12 ELRNZ 299 (CA).

the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.²⁰

- (c) When a territorial authority is deciding the plan for the future, there is nothing in the RMA to constrain a forward looking thinking, and the 'likely to be implemented' test (in respect of resource consents) was intended to be a real-world analysis.²¹

57. What falls within the "environment" is essentially an evaluative exercise for the decision maker. In this case, the reporting officer has stated:²²

At an aggregate level, the existing environment is not currently a reflection of permitted or consented activity, with many EH activities not having the required resource consents. This adds complexity in assessing the relevant social and economic effects of the proposed CEH on neighbours and the community.

58. The consultant planner for the applications considers that the starting point for this assessment should be the environment as it currently *exists*.²³
59. RRI agrees that it is the environment as it currently *exists* including all emergency housing whether or not that is lawfully established.
60. RRI specifically notes that given the extent of other emergency housing being provided in Rotorua, it would be artificial and certainly not 'real world' to try and approach the existing environment in any other way. The s 42A report refers to enforcement order applications having been

²⁰ *Queenstown Lakes District Council v Hawthorn Estate Limited* (2006) 12 ELRNZ 299 (CA). See in particular [84].

²¹ *Shotover Park v Queenstown Lakes District Council* [2013] NZHC 1712 at [115]-[117].

²² Section 42A report at para 198.

²³ Statement of evidence by Alice Blackwell, at para 8.4.

sought in relation to nine sites, and then withdrawn,²⁴ and operators of a further 41 sites having been sent letters.²⁵

Cumulative effects

61. The definition of "effect" is extremely wide and includes cumulative effects which arises over time "or in combination with other effects".
62. The concept of cumulative effect has been expressed by the Environment Court as an "assessment of an effect that is proposed to occur over and above an existing situation. That is, against an existent situation whether that came about gradually or as the result of a single event".²⁶

This case

63. The applicant's planning evidence acknowledges that "13 applications ... are being applied for concurrently and it is important to consider whether this will result in an unacceptable cumulative effect".²⁷
64. The applicant's planning evidence goes on to state that it is (emphasis added):²⁸

important **to be cognisant** of the environment within which consent is sought. However, if resource consents are required for other emergency housing activities, it would be unreasonable to attribute the effects of those emergency housing activities to the subject CEH Applications. This is particularly relevant to the assessment of cumulative effects, noting that these Proposals specifically seek to legitimise onsite activities, which includes appropriate mitigation to minimise attributable effects.

²⁴ Paragraph 23.

²⁵ Paragraph 24.

²⁶ *Blampied v Whangarei District Council* [2012] NZEnvC 54, at [58].

²⁷ Statement of evidence by Alice Blackwell, at para 9.65.

²⁸ Statement of evidence by Alice Blackwell, at para 9.68.

65. It is not clear whether these statements are an attempt to water down the earlier acknowledgement that the starting point for assessment should be the environment as it currently *exists*, by somehow minimising the widespread extent of existing emergency housing in Rotorua by just being ‘cognisant’ of it. If so this is not accepted by RRI, and, if submitted, is a legally incorrect approach. The receiving environment against which these applications are being assessed must (on a real world approach) include the existing effects arising from other widespread emergency housing.
66. This does not mean that the effects of existing emergency housing are being attributed to these applications. But the effects of existing emergency housing are part of the ‘existent situation’ against which the effects of these applications are being assessed.
67. Then, in relation to cumulative effects, it is not clear if:
- (a) These are approached narrowly by MHUD on the basis that any accumulative effect only arises across the 13 concurrent applications.²⁹
 - (b) The applicant seeks to minimise cumulative effects by taking an approach which says ‘the impact of our activities is so minimal that there cannot be an adverse cumulative effect’ even if the existing situation is unacceptable.³⁰
68. These approaches over complicate the assessment of cumulative effects. If “the starting point for this assessment should be the environment as it currently *exists*” (which includes the effects of existing emergency

²⁹ Statement of evidence by Alice Blackwell, at para 9.65.

³⁰ Referring to “appropriate mitigation to minimise attributable effect”.

housing), then potential cumulative effects arising from these 13 resource consent applications are effects that are proposed to occur over and above the existing situation.

69. An analogy is degraded water quality in a catchment with diffuse discharges. If the water quality within a river is degrading due to diffuse discharges, a new entrant with a point source discharge is not able to neatly segregate the effects of its activity from the background water quality by saying it would be unreasonable to attribute the poor water quality to the point source discharge. This would simply not fly.
70. This is the very point of a cumulative effects assessment - an effect that is proposed to occur over and above an existing situation. On its own the effect may well be minimal, but it must be assessed against the existing situation.
71. RRI says simply that the cumulative adverse effects of granting resource consent to 13 sites for CEH will add to the existing situation in an unacceptable way by cementing the use of tourist accommodation in Rotorua for emergency housing.

Alternatives assessment

72. A key issue in this case is whether the applicant should have provided an assessment of alternatives.
73. Ms Blackwell 'does not understand these applications to be ones for which an assessment of alternatives need be considered'³¹ (presumably on the basis that she does not consider adverse effects to be significant). She says Mr McNabb has considered alternatives. Ms Healy hasn't considered alternatives – seemingly because she wasn't asked to – but

³¹ Statement of Evidence of Alice Blackwell, paragraph 9.28.

doesn't disagree with Ms. Foy that alternatives to address adequate housing supply for the community should continue to be sought. However, she does not believe consenting these applications precludes this process from occurring.

74. This approach to the application, particularly in the face of the overwhelming number of submissions in opposition to the application, is concerning, and suggests that MHUD has no regard for the pulse of the Rotorua community.
75. RRI submits that based on both its lay and expert evidence, clause 6(1)(a) of the Fourth Schedule to the RMA is clearly engaged, where an AEE *must* include the following information:

if it is likely that the activity will result in **any** significant adverse effect on the environment, a description of **any possible alternative locations or methods** for undertaking the activity

76. Further, the *discretionary* assessment criteria in the District Plan for the commercial zones clearly include "The extent to which the proposal is an efficient use and development of commercial zoned land and consideration of alternative locations for the activity",³² which signals that the District Plan considers the exploration of alternative locations for discretionary activities in commercial zones is a relevant consideration. The non-complying activity status of these applications does not act to neutralise that relevance (and indeed it would be perverse if it failed to be relevant due to activity status becoming less permissive).
77. If Mr McNabb's evidence (which appears to be the only applicant evidence going to alternatives) is intended to consider alternative options then it is, with respect, cursory and couched in the extreme. He discusses

³² COMZ-AC1 General.

the housing pipeline at a high level with reference to various government initiatives, spends, and housing units. He then refers to the impact of consent being declined in extreme terms – leading to the placement of people in insecure or unsafe situations. Mr McNabb / MHUD have not considered:

- (a) Other locations:
 - (i) Locations not in Rotorua;
 - (ii) Locations not in the commercial zones;
 - (iii) Locations which are more dispersed and not so concentrated together and/or concentrated on Rotorua's key city entranceways.
- (b) Formats other than motels through the provision of short-term relocatable housing or more permanent housing as suggested by Ms Foy. She refers to a pilot programme in Raukokore in the East Coast, for example.³³
- (c) Whether resource consents are required for all 13 sites (particularly those on Fenton Street).
- (d) Alternative consent durations which align with expected delivery of housing. For example, Mr McNabb states that the managed reduction will be supported by the anticipated delivery of new public housing in the first half of 2023 with 153 new builds expected to be complete.

78. In summary, despite Ms Foy clearly signalling the lack of an alternatives assessment in her s 42A evidence, the applicant has failed to deliver any sort of realistic alternative assessment. The evidence of Mr Counsell and

³³ Statement of Evidence of Rebecca Foy, paragraph 239.

Mr Murphy for RRI has explored a feasible alternative (declining those applications that relate to Fenton Street and granting the remaining applications for short term durations of 1-3 years), including an assessment that tenants displaced from Fenton Street could be housed elsewhere.

79. The absence of a robust consideration of alternatives, and an appropriate social impact assessment (**SIA**) (given that the cumulative effect of adding more EH and CEH motels over time has not been considered by the Beca SIA)³⁴ are such that s 104(6) would be engaged were there not overwhelming evidence against the grant of the Applications as sought.

Is it appropriate to apply the permitted baseline?

80. Under s 104(2) of the RMA, when forming an opinion for the purposes of s 104(1)(a) of the actual and potential effects on the environment of allowing the activity, a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.
81. In my submission, it is *not* appropriate to apply the permitted baseline in the present case for the following reasons:
- (a) The activities are not in any way shape or form provided for by the District Plan. They cannot be characterised as “Community Housing” at this scale.
 - (b) This is appropriately reflected in the activity status which the applications fall under to be determined – non-complying. The activities are simply not contemplated by the District Plan (and nor are they contemplated by Plan Change 9).

³⁴ Statement of Evidence of Rebecca Foy, paragraph 22.

- (c) It would therefore be artificial to apply the permitted baseline.
- (d) Nor should the permitted baseline be applied as regards bulk and location elements. This is because such standards might be relevant if these applications were for activities which were anticipated by the District Plan. However, emergency housing is far removed from the activities anticipated by the District Plan in terms of scale and intensity of use.³⁵

82. In summary, RRI submits that the permitted baseline should not be applied.

Effects of concern to RRI

83. The key effects of concern to RRI are:

- (a) Adverse social effects from emergency housing (contracted and non-contracted) experienced by residents of Rotorua;
- (b) Adverse economic effects from granting consent to the resource consent applications;
- (c) The consequences that this will have for Rotorua as both a tourist destination and a place to live and work.

³⁵ For example, in the application for Ann's Volcanic Motel (occupancy of 31 sought plus on-site service provision and security) the following is noted as the permitted baseline:

- One dwelling per lot in the Residential 2 Zone
- Bed and Breakfast for a maximum of 8 guests including the owner or manager who is a resident onsite.
- Short term holiday accommodation for up to 12 people at any one time.

Adverse social effects

84. Ms Foy's s 42A evidence on the issue of social effects is balanced and closely aligned with the concerns that RRI holds about the adverse social effects of these applications. This includes that:
- (a) The social impact assessment produced by Beca has not considered cumulative effects or the evidence from neighbours and community members about the adverse social effects; and that
 - (b) The social wellbeing effects (of CEH) for immediate neighbours and the surrounding community are more likely to be negative but mitigation can be used to reduce the scale of these effects; and that
 - (c) Careful consideration needs to be given as to what degree the cumulative effects are being triggered by such significant concentrations of uncontracted emergency housing and CEH activity along Fenton Street. It may be desirable to grant some consents for CEH and not others.³⁶
85. Using Ms Foy's definition of social effects as changes to individuals and communities resulting from proposed changes that will alter the day-to-day way in which they live, work, play, relate to each other, organise to meet their needs, and generally participate as members of society, RRI points to strong evidence from its witnesses of a range of effects as follows:

³⁶ Ms Foy notes – or move uncontracted emergency housing tenants and use the CEH sites – but RRI notes that this solution does not appear achievable through these consent applications by MHUD.

Gary Smith – retired policemen with an adult special needs child	<ul style="list-style-type: none"> • Crime • Moving from Rotorua due to safety and child can no longer live independently
Clinton Lovell – owner of Silver Fern Motel (one of few fully operable motels on Fenton Street)	<ul style="list-style-type: none"> • Crime • Impacts on motel operation
Richard Sewell – owner of Urbano Bistro	<ul style="list-style-type: none"> • Struggle to hire staff (especially from overseas as they hear of Rotorua’s reputation) • Operation of business • Economic effect on business
Donna Walsh – owner of Willow Boutique	<ul style="list-style-type: none"> • Crime • Keeps door locked for long period of time for personal and staff safety
Robert Parry – owner of McDonald’s	<ul style="list-style-type: none"> • Staff retention/hiring • Crime • Operation of McDonald’s on Fenton Street vs other McDonald’s
Rolly Rolston – ex resident of Glenholme and retired army veteran	<ul style="list-style-type: none"> • Impact on daily life • Moved to Papamoa
Carolyn Hall – Glenholme resident with special needs son	<ul style="list-style-type: none"> • Crime and effects affecting daily life and fears for safety of son
Reginald Hennessy – Owner of Hennessy’s Irish Bar	<ul style="list-style-type: none"> • Effect on hospitality • Crime • Staff retention • Economic effects

Peter Gilford – real estate agent	<ul style="list-style-type: none"> • Changes in the ability to sell homes in Rotorua
Marie Tassell – Glenholme resident and investor	<ul style="list-style-type: none"> • Crime and effects affecting daily life • Impacts on investment in Rotorua • Looking to move away

86. Amongst this group there is evidence of social impacts about alterations to the day-to-day way in which they live,³⁷ work,³⁸ play,³⁹ relate to each other,⁴⁰ organise to meet their needs,⁴¹ and generally participate as members of society.⁴²
87. RRI does not agree that significant adverse cumulative social effects on the wider Rotorua community are ‘acceptable’ contingent on the conditions recommended by the s 42A report. Granting consent to CEH will cement emergency housing as an acceptable use in Rotorua (including on the key city entranceways) irrespective of superficial conditions such as removing motel signage. The Commissioners have credible direct evidence from residents and ex-residents of the Rotorua community and that should not be minimised on the basis of conditions which largely address physical aspects of the motels housing CEH.

³⁷ For example, Rolly Rolston altering his walking route.

³⁸ For example, the evidence of the Weir brothers that they had to change their Duck Tours driving route; Clinton Lovell using Watchdog Security now to deal with noise complaints.

³⁹ For example, Marie Tassell’s son who no longer walks to the gym.

⁴⁰ For example, the way RRI witnesses related to each other in terms of their patronage of Urbano (Marie Tassell).

⁴¹ For example, the way in which Gary Smith and his wife had to re-organise their son’s living arrangements which were previously meeting his needs.

⁴² Two people have moved away from Rotorua (Rolly Rolston, Gary Smith and family), two more are thinking of moving (Carolyn Hall, Marie Tassell), and Trevor Newbrook has family members who have moved away.

Adverse economic effects

88. When considering the relevance of economic effects to this matter, it is relevant to consider the wider context. The tourism sector is the largest employer in Rotorua, and tourism accounts for around 17% of Rotorua's Gross Domestic Product (GDP), compared to 6% nationally. Therefore, adverse economic effects on the tourism sector could be particularly detrimental.⁴³
89. RRI has engaged Kevin Counsell to assess the the economic effects of resource consents being granted for the 13 motels, and whether any adverse economic effects (including cumulative effects) are more than minor. He has previously provided evidence and is possibly the first economist to have considered the economic impacts of MHUD's pilot emergency housing.⁴⁴ Mr Counsell has updated his evidence to respond to the 13 resource consent applications, and consider and respond to the evidence produced by other economists for the Council and MHUD.
90. His assessment is that the impact of the 13 application motels being used for CEH purposes is likely to result in a total loss of \$31.4 million per year to the Rotorua economy.⁴⁵ RRI says this is significant (and certainly more than minor for the purposes of the s 104D assessment).
91. The critique of Mr Counsell's approach by the Council and MHUD economists appears to be that the effect of removing only 8% of accommodation stay units (being the CEH) is minor. However, that approach appears to ignore the fact that there is already a huge proportion of accommodation stay units removed from the market due to the widespread use of uncontracted emergency housing. In other words, it does not follow that removing 8% of accommodation stay units

⁴³ Statement of Evidence of Kevin Counsell, paragraph 8(e).

⁴⁴ Statement of Evidence dated 13 December 2021.

⁴⁵ Statement of Evidence of Kevin Counsell, paragraph 73.

leaves 92% available, because a huge amount of that capacity is taken up with uncontracted emergency housing.

92. Mr Counsell considers positive economic effects that may offset adverse effects, being motel owners who profit from CEH, and employment, but finds that this is likely to be marginal.
93. In my submission Mr Counsell's evidence should be preferred. Mr Counsell fully considers the impact of the proposal appropriately using the environment as it exists as the starting point, and being fully cognisant of tourism which is key to Rotorua's identity. Ms Hampson's evidence does not use an appropriate baseline, and Mr Eaquab engages with tourism impacts at a high level only. Mr Counsell's evidence is well reasoned and balanced, and he considers and responds respectfully to the economic evidence from Ms Hampson and Mr Eaquab.

Consequences for Rotorua

94. In light of these matters RRI has real concerns about the consequences of cementing CEH at a time when New Zealand is re-opening so that tourism can regenerate. Further to that, emergency housing has already had an impact on the community leading to long term residents opting to move away and others looking to do so.
95. RRI does not consider that granting consent to 13 establishments for CEH for a period of 5 years (in reality a term of 6 years + from date of application) assists with Rotorua's wellbeing. In light of the significant adverse effects which have been experienced by RRI's witnesses, effects which continue to be experienced, and the significant adverse economic effects predicted, it behoves MHUD to more critically examine alternatives to the proposal currently before the Commissioners to ensure that the tenants of the 13 sites are appropriately re-housed.

Planning considerations

96. I do not propose to repeat the evidence of Vincent Murphy, which has comprehensively considered the objectives and policies of both the operative District Plan and proposed Plan Change 9.
97. I have discussed the operative District Plan in respect of its tourism provisions; with respect to Plan Change 9 which should be accorded low weight given its early stage, there is undeniably a strong focus on the word *quality* in terms of quality environments, high-quality developments, quality living environments, quality of housing, and quality on site living environments. The applicant's planner responsibly acknowledges that CEH does not necessarily provide a perfect living environment. However, that does not mean that CEH aligns with Plan Change 9. I contend it is the opposite. Granting consent to CEH will mean that the CEH sites deliver neither tourism accommodation nor high quality residential for a period of time which is limited but is not insignificant given housing supply issues. To that extent it is contrary to both operative and proposed District Plan objectives and policies.
98. It follows that in RRI's submission, the applications should not pass through either of the gateways in s 104D of the RMA. Should the Commissioners find otherwise, then further relevant considerations are:
- (a) If not contrary, the strong inconsistency of the applications with operative and proposed District Plan objectives and policies, *particularly* as the applications relate to the key city entranceways.
 - (b) The precedent effect that granting consent to these applications will have; and

- (c) The current Long Term Plan as an expression of the community's aspirations for Rotorua.⁴⁶

Precedent effect

99. RRI is concerned about the precedent that will be set if these applications receive resource consent.
100. As the s 42A report describes, there are a range of emergency housing providers. There were nine sites in relation to which enforcement orders were sought, which were then withdrawn after “a suitable level of engagement and agreement was reached with owners and operators on becoming compliant”,⁴⁷ and “the owners and operators **of a further 41 EH premises**” have been sent letters setting out RMA/Building Act requirements with those premises subject to ongoing monitoring to ensure “progress towards becoming compliant”.⁴⁸ As all of the motels in Rotorua that have emergency housing residents are currently operating without the required resource consent,⁴⁹ this suggests around 50 establishments.
101. RRI expects on behalf of both the Rotorua community and the tenants of emergency housing that central government can do better in terms of providing for housing needs. To grant consent to the 13 applications will set a precedent for the remaining establishments in Rotorua, when what is needed is a better solution than small accommodation units not built for semi-permanent housing.

⁴⁶ Relevant under s 104(1)(c) RMA.

⁴⁷ Section 42A report, paragraph 23.

⁴⁸ Section 42A report, paragraph 23.

⁴⁹ Section 42A report, page 1.

Proposed conditions

102. As a general comment, it is disappointing to read MHUD's systematic dismissal of conditions proposed by the s 42A report. The reporting has been generous to the applicant, by recommending a stringent suite of resource consent conditions in an effort to closely manage the demonstrated adverse effects caused by emergency housing (contracted or otherwise).

Consent personal to MHUD

103. A theme of MHUD's application is that contracted emergency housing, which connects whānau to "wrap around support services" to improve their quality of life and ultimately move into secure, more permanent housing is distinct from and more beneficial to the community than non-contracted emergency housing (not delivered by MHUD). Given the community concern, it is therefore surprising that MHUD does not readily accept that any resource consents granted should be personal to the operator and MHUD.

104. The reason for disagreeing with this suggestion is that within the five year consent duration, the operator may change. That concern is easily dealt with by the consent being made personal solely to MHUD.⁵⁰

105. Ms Blackwell also states that such an approach would not enable the service provider to be a consent holder.⁵¹ Given the concerns expressed by an anonymous submitter about one service provider in particular, RRI would be highly concerned if service providers could obtain the benefit

⁵⁰ Section 3A of the RMA allows the operator to act under the consent with MHUD's permission. It states: Subject to section 134 and any specific conditions included in the resource consent, any reference in this Act to activities being allowed by a resource consent includes a reference to a person acting under a resource consent with the permission (including implied permission) of the consent holder as if the resource consent had been granted to that person as well as to the holder of the resource consent.

⁵¹ At 13.19.

of these consents. Experience (including experience of RRI witnesses of adverse effects from specific contracted sites) has shown that management under service providers has not been ideal.

106. MHUD should put its money where its mouth is and assume responsibility as consent holder. This would also provide some comfort that when MHUD ceases delivering contracted emergency housing at a particular site, the consent is no longer able to be relied on.

Scale and intensity

107. For the reasons outlined above, RRI has concerns about leaving service providers as the best managers of occupancy numbers, ages and units. Appropriate conditions can and should be settled now.

Noise, glare and light

108. For the same reason that Ms Blackwell raises (the proposed conditions reflect permitted activity standards) there is no reason not to include the proposed conditions 25, 26, 27 and 29 on any resource consents granted. Having to interpret both resource consent conditions, and the District Plan (in terms of whether the consent granted did or did not seek departure from District Plan standards) creates uncertainty for all.
109. It is concerning that the push back on an internal road-traffic design is proposed on the basis that the consent is for a fixed five year duration and to use an existing building. Motels are not suitable for long term habitation and any effort to improve internal amenity for residents should be pursued.

Consent duration

110. The s 42A report recommends a consent term of:
- (a) 5 years from the date the consent commenced; or
 - (b) The date of termination or expiry of MHUD's contract for emergency housing applying to the site; or
 - (c) The date imposed by a Council review under section 128 of the Resource Management Act 1991 pursuant to Condition 35 of the consent.
111. Such a condition is unlawful. The consent duration must be fixed by the Commissioners. Conditions as to consent duration are the only conditions which cannot then be changed:
- (a) Through a s 127 application to change or cancel conditions;⁵²
 - (b) Through a review of conditions.⁵³
112. If the intention is to make sure that within the term applied for (maximum 5 years), the resource consent will only operate so long as MHUD has a contract for emergency housing applying to the site, then:
- (a) This would be achieved by making the consent personal to MHUD; and/or
 - (b) The conditions can include a requirement that the site be operated under an MHUD contract for emergency housing applying to the site.
113. For clarity, RRI does not consider that any consents should be granted for 5 year terms, and is proposing that if consents are granted then this is on the basis of 1-3 year terms for those sites which are not on Fenton Street.

⁵² Section 127(1)(b).

⁵³ Section 132(1).

114. I also note that the applications were made over one year ago (August 2021) so MHUD is over one year into a 5 year term.

Evidence for RRI

115. RRI calls evidence from a range of lay witnesses (to be finally confirmed by 19 October 2022) as well as expert witnesses Kevin Counsell and Vincent Murphy.
116. Many witnesses appearing at the hearing have prepared updated versions of their statements of evidence previously supplied to the Council by Chen Palmer. RRI otherwise asks the Commissioners to consider the statements provided to the Council by Chen Palmer in late 2021.

Conclusion

117. Perhaps most concerningly for RRI, there does not appear to be a coherent plan to cease reliance on emergency housing. The housing pipeline is discussed and otherwise there is a loose promise that MSD and MHUD will work with the Council to “determine how over time the exit from EH SNG motels and CEH is sequenced”.⁵⁴
118. RRI says that the Rotorua community and the tenants of emergency housing deserve better.
119. RRI asks the Commissioners to make a decision which assists the applicant and the Council to formalise that plan and incentivise that exit, by declining the applications, or in the alternative declining those

⁵⁴ Statement of Evidence of Nicholas McNabb, paragraph 8.41.

applications that relate to Fenton Street and granting the remaining applications for short term durations of 1-3 years.

DATED this 14th day of October 2022



Vanessa Hamm
Counsel for Restore Rotorua Incorporated