

**Before Independent Hearings Commissioners  
Rotorua Lakes Council**

**In the matter of      13 applications for resource consent for  
contracted emergency housing by Te Tūāpapa  
Kura Kāinga Ministry of Housing and Urban  
Development**

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**Legal submissions for Te Tūāpapa Kura  
Kāinga Ministry of Housing and Urban  
Development**

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**Counsel**

Nick Whittington  
Hawkestone Chambers  
PO Box 12091, Thorndon,  
Wellington 6144  
+64 21 861 814  
[nick.whittington@hawkestone.co.nz](mailto:nick.whittington@hawkestone.co.nz)

# Legal submissions for Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development

## 1 Summary of submissions

- 1.1 MHUD has made 13 applications for resource consent to operate Contracted Emergency Housing at 13 motels in Rotorua. The applications are made on behalf of the motel operators. Contracted Emergency Housing provides wrap-around support services delivered by expert service providers to assist those living in contracted motels.
- 1.2 The main driver of demand for Contracted Emergency Housing, and emergency housing in general, is the acute shortage of housing in Rotorua. It will take at least five years of sustained effort to reduce the numbers of people without adequate housing in Rotorua. These consents seek to provide for those unable to find housing for that five-year period.
- 1.3 That unmet housing demand is an element of the existing environment for the purpose of the assessment required under s 104(1)(a) of the RMA. Whether the large number of people who do not have housing are living in Contracted Emergency Housing, using Emergency Housing Special Needs Grants, or otherwise in shelters, cars, or the streets, the economic and social consequences are part of the existing environment.
- 1.4 The Council's and MHUD's expert witnesses are largely agreed that the economic and social effects of the 13 applications are not more than minor, and in some respects will improve conditions. The concentration of effects in the Fenton Street corridor can be mitigated adequately by site-specific conditions designed to manage the effects.
- 1.5 The objectives and policies of the District Plan are not easy to reconcile, but on a fair and overall appraisal the applications are not contrary to them. It follows that the applications meet both s 104D gateways.
- 1.6 MHUD considers that all applications should be granted subject to conditions. It is concerned to ensure that conditions proposed do not have unintended constraining effects on the ability of the expert service providers to support whānau and children in the motels and to manage the allocation of units.

## **2 Housing crisis**

- 2.1 Rotorua has a housing crisis. As explained in the evidence of Ms Hampson, Mr McNabb and Mr Eaqub, the market failed to supply sufficient new dwellings over the past decade, and even before, to accommodate Rotorua's growing population. There are various reasons for this. All witnesses highlight regulatory failure: the District Plan did not enable sufficient housing capacity. Plainly the Covid-19 pandemic is a significant factor.
- 2.2 Mr McNabb's evidence helpfully explains the reason why for a long time the housing crisis was masked by the rental market. It absorbed a lot of the excess demand until it could no longer continue to accommodate the demand and the public housing register increased sharply.
- 2.3 While it may appear to the community as if it has happened all of a sudden, and this affects how the issue is perceived, in actual fact it has been brewing for a long time. Then we had the impact of Covid-19.
- 2.4 For these reasons, there is no simple fix. Resolving the problem will take a sustained period of dedicated construction in order to catch up with the excess demand. In the meantime, we are dealing with another aspect of the same regulatory failure: the District Plan does not provide for a necessary activity – short lived emergency housing for when it is required.
- 2.5 Mr McNabb sets out the current pipeline of work. That pipeline will not eliminate the need for emergency housing, which will still need to be provided for in a limited way in any future state irrespective of how many houses are built. But it will, it is expected, reduce sufficiently the numbers of people requiring emergency housing so that contracted emergency housing in the form that the applications provide is no longer necessary. That point is five years away, hence the proposed term of the consents.

## **3 Framework for decision-making**

- 3.1 The approach taken by expert witnesses to assessing the effects of the proposal has not been consistent, which makes comparing the assessments and conclusions by the expert witnesses challenging. In this part of the submission I set out the correct framework for determining the applications under the RMA.

## Scope of applications

- 3.2 MHUD is responsible for strategy, policy, funding, monitoring, and some of the regulation, of New Zealand's housing and urban development system.
- 3.3 As will be apparent from Mr McNabb's and Mr Wilson's evidence, MHUD is not a delivery agency. Its foci are policy and funding. To the extent that policies it has developed relate to the delivery of public housing, MHUD works in partnership and contracts with Community Housing Providers, housing and social service providers, and Māori and iwi organisations to actually deliver the housing.
- 3.4 This can be seen in the background to these applications, set out in the evidence of Mr McNabb:
- (a) The Rotorua Housing Taskforce is a collaborative partnership of the Council, MSD, MHUD, Kāinga Ora, Te Puni Kōkiri, Te Arawa, and various service providers.
  - (b) The Taskforce decided that one way to address the housing crisis was to contract suitable motels specifically for emergency accommodation with a focus on whānau with children.
  - (c) It also set up Te Pokapū, the core function of which is to triage, assess, and where necessary place people into Contracted Emergency Housing or refer people to agencies and services including receiving an Emergency Housing Special Needs Grant (**EHSNG**).
  - (d) The resulting programme is delivered by the operators of the motels in which accommodation is provided, and service providers whose role is to provide the wrap-around services and manage each site.
  - (e) HUD's role is ensuring motel operators and service providers meet their contractual obligations, and overseeing the progress being made in delivering new public, affordable and Māori and iwi housing in Rotorua to meet the pent-up demand.
- 3.5 In these 13 applications, MHUD, on behalf of each motel operator, seeks resource consent to operate existing motel accommodation as contracted

emergency housing with wrap-around support services. Its role as consent applicant is dictated by its facilitative role in the Taskforce and efficiency. It would have been far less efficient for each motel operator to seek consent individually.

- 3.6 Contracted emergency housing is targeted at whānau, rangatahi, and those with disabilities. It must for present purposes be distinguished from other forms of emergency housing that central government provides:
- (a) Transitional Housing is intended as a 12-week programme of housing and support services, with a further 12 weeks of support once a household has moved into permanent housing. Given the lack of public and affordable housing for people to move in to, the duration can be longer. When there are no Transitional Housing places available in an area, those with urgent housing need can fall back on EHSNGs.
  - (b) EHSNGs help those with an urgent housing need with the actual and reasonable costs of short-term commercial accommodation (usually a motel) where the need cannot be met in another way.
- 3.7 Contracted Emergency Housing is an alternative to these programmes more akin to Transitional Housing, but with a less defined timeframe.
- 3.8 Given the extreme lack of housing in Rotorua a very high number of people are currently reliant on EHSNGs to have a roof over their heads. EHSNGs are of an altogether different nature to Contracted Emergency Housing. Contracted Emergency Housing takes an existing motel and repurposes it exclusively for whānau who would otherwise have nowhere else to go, while providing them wrap-around support to address any social issues.
- 3.9 EHSNGs are a financial assistance package. EHSNGs are not in and of themselves a land use activity under the RMA. When some of the evidence uses the term “EHSNG motels”, for example, that is a misnomer and sets up a false dichotomy between Contracted Emergency Housing motels and “EHSNG motels”. MSD, which is responsible for EHSNGs, does not directly contract with motels to change how they operate; MSD’s relationship is with its clients, who may use a voucher from MSD to cover some or all of the cost of staying at a commercial accommodation

provider, if the commercial accommodation provider is prepared to accept it. (The effect is that MSD pays the provider directly.) Where the client stays and whether the accommodation provider will give them a room is entirely a matter between the client and accommodation provider.

- 3.10 Against that background, these 13 applications are to authorise the use of 13 motels for Contracted Emergency Housing, with the parameters of the activity set out above and consistent with the recommendations of the Rotorua Housing Taskforce. The applications do not seek to authorise EHSNGs.<sup>1</sup> This has consequences for the Commissioners' consideration of some of the evidence filed.

### **Environment**

- 3.11 Under s 104(1)(a) a decision-maker must have regard to any actual and potential effects on the environment of allowing the activity.
- 3.12 Recent cases have reinforced the need to cast the environment in real world or realistic terms, and to avoid making artificial assumptions.<sup>2</sup>
- 3.13 Taking such an approach, the existing environment in Rotorua is one in which there is a very high level of housing deprivation, and very high and unmet housing demand.
- 3.14 Those conditions are producing the sorts of economic and social effects described in the evidence of Mr Eaqub and Mr McNabb, and Ms Healy and Ms Foy, respectively.
- 3.15 Importantly, this means that the Commissioners cannot artificially exclude from the environment the operation of uncontracted emergency housing, because that does not account for the unmet housing demand in Rotorua which is necessarily part of the environment in which these applications have been made. In other words, if you exclude uncontracted emergency housing from the existing environment (as, for example, it seems that Ms Foy has done), you must necessarily account for in, or factor into, your "environment" where these otherwise homeless people will go. The

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<sup>1</sup> MHUD does not accept that EHSNGs require resource consent, as suggested in the evidence of Mr Batchelar. In any event, on MHUD's approach, Commissioners do not need to determine that question, and therefore should not do so.

<sup>2</sup> See cases following *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 815.

counterfactual is that they will be forced by circumstance to sleep in cars, streets and parks,<sup>3</sup> and almost certainly in the city centre. Or, assuming EHSNGs are available, they are likely to continue to seek to stay in commercial accommodation.

- 3.16 The existing environment is not a past environment. At various points in her evidence Ms Foy appears to seek to identify a pre-Covid-19 “baseline” and assess the effects of all emergency housing on that environment. But that “environment” is not the real world, is artificial, and in any event was already showing significant signs of housing distress.<sup>4</sup> That approach also has the effect of assessing for the purpose of the application the social and economic effects of all emergency housing provision instead of the effects of the 13 Contracted Emergency Housing sites within the scope of the applications.
- 3.17 The Commissioners must seek to identify, or isolate, what the effects of the 13 Contracted Emergency Housing motels will be on an environment otherwise dealing with the significant unmet housing demand and the social and economic consequences of the housing crisis. Contracted Emergency Housing is not increasing the demand for housing generally or emergency housing in particular. That demand exists. Nor is it adding to the number of motels providing emergency housing as many were previously either Covid-19 motels or took EHSNGs.
- 3.18 Seen in this way, and contrary to the criticisms of Ms Foy, MHUD does not suggest that the effects of emergency housing generally are to be ignored. Nor does Ms Healy. They form part of the existing environment. But because Contracted Emergency Housing is seeking to accommodate existing demand that would otherwise have to be met by the use of EHSNGs or in cars, streets or parks, Contracted Emergency Housing is in most respects likely to mitigate any adverse “cumulative” effects of emergency housing. In particular, the provision of wrap-around services is likely to significantly improve the social impacts of this housing deprivation.

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<sup>3</sup> See, eg, <https://www.rnz.co.nz/news/ldr/412081/homeless-people-doing-nothing-wrong-removed-from-rotorua-park>

<sup>4</sup> Mr McNabb’s evidence identifies that 264 households required an EHSNG in January 2020, leading into the Covid-19 pandemic (at [4.8]), and that a response to the lockdowns was to take the existing rough sleepers and those using the Night Shelter on Pukuatua Street and locate them in contracted motels (at [4.26]-[4.28]).

3.19 Ms Foy's evidence will remain helpful in some respects. Importantly, despite her methodology, she agrees that localised effects in the Fenton Street neighbourhood may be mitigated through conditions. Nonetheless, to the extent that she does not follow the above approach, her evidence will be less helpful than Ms Healy's.

### **Permitted baseline**

3.20 Given the approach outlined above I do not consider that the permitted baseline is likely to feature largely in the overall assessment. Nonetheless, as set out in Ms Blackwell's evidence there are some permitted activities with features that overlap with Contracted Emergency Housing and to that extent, some of the adverse effects will be able to be disregarded.

### **Non-complying activity gateways**

3.21 While MHUD does not necessarily accept that the activity is non-complying under the District Plan, all planners have proceeded on that basis and it is prepared at this point to proceed on this assumption.

3.22 The Commissioners will be familiar with the s 104D gateways for non-complying activities. MHUD considers that both gateways are satisfied – the effects are no more than minor, and the application is not contrary to the objectives and policies of the District Plan.

3.23 As to the latter gateway, to be “contrary” for the purposes of s 104D(1)(b) means that it must be “...opposed in nature, different to or opposite ... repugnant and antagonistic”.<sup>5</sup>

3.24 When determining whether a proposed consent is contrary to the objectives and policies in a plan, what is required is “a fair appraisal of the objectives and policies read as a whole”.<sup>6</sup>

3.25 The only planning witness who considers that the applications are contrary to the objectives and policies read as a whole is Restore Rotorua's planner Mr Murphy. With respect, his assessment appears to

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<sup>5</sup> *New Zealand Rail v Marlborough District Council* [1994] NZRMA 70 (HC) at [11].

<sup>6</sup> *Dye v Auckland Regional Council* [2002] 1 NZLR 337 at [25]; see also *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 and *Royal Forest and Bird Protection Society of New Zealand v New Zealand Transport Agency* [2021] NZHC 390.



turn on his view that the applications are “directly contrary to” COMZ-O1, which provides:

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.

3.26 Mr Murphy’s reason for the statement that the applications are directly contrary to this objective focuses on the words “nationally significant tourism sector”, but he makes no attempt to reconcile, or even engage with, the words “the needs of the surrounding community”.

3.27 As highlighted both in Mr Batchelar’s and Ms Blackwell’s evidence, the District Plan does not provide for emergency housing, and does not present a coherent set of objectives and policies applying to this application. When considered as a whole, the applications are not contrary to the objectives and policies of the Plan.

## **Part 2**

3.28 MHUD agrees with the approach of Mr Batchelar and Ms Blackwell who consider that the emergency housing gap in the District Plan justifies placing substantial weight on Part 2. The District Plan does not present a coherent set of provisions in relation to emergency housing.<sup>7</sup>

## **4 Right of the child to play**

4.1 The Council seeks to impose a series of conditions on a number of the resource consent applications arising from the “right of the child to play”.

4.2 MHUD does not wish to be taken as, nor is it, minimising the importance of play to children’s development. But it is also imperative that children have a bed to sleep in, which is what MHUD is trying to achieve by making these applications on behalf of motel operators. The way in which the Council’s landscape architect, Ms Collins, seeks to apply the right to play as expressed in the United Nations Convention on the Rights of the Child is misguided.

4.3 Ms Collins has sought to establish the right to play, as I read it, as a matter of law. Having set out Article 31 of UNCROC, Ms Collins then defines “play” by reference to a Wellington City Council policy rather than

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<sup>7</sup> See *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

commentary on Art 31. Whether there is a right to play and its scope are matters of law and not for expert evidence.

- 4.4 Nobody thinks that children should be living in motels permanently. In an ideal world the District Plan would have enabled sufficient housing and the market would have provided it, so that the Rotorua Housing Taskforce was not faced with the prospect of having to contract motels to provide a roof for whānau with children.
- 4.5 Nonetheless we are where we are. Without contracting these 13 motels the children staying would otherwise be reliant on EHSNGs, or potentially not having anywhere to sleep. Contracted Emergency Housing gives them a significantly more stable situation than these other forms and has the added benefit of wrap-around services provided by skilled providers.
- 4.6 And the 13 motels themselves have been selected based on a number of criteria including there being play areas on site separate from vehicle routes, and safe and secure fencing of amenities such as swimming pools.
- 4.7 The evidence is that the school aged children are attending school, and picked up for the purpose by a school bus to deliver them to and from the schools they are enrolled in. They are able to play at school. Evidence from service providers suggests that children are encouraged to attend after school and extra-curricular activities.<sup>8</sup> By the same token, service providers are not always able to ensure that whānau can be accommodated into units with suitable play spaces because of availability constraints.<sup>9</sup>
- 4.8 Contracted Emergency Housing does not infringe a children's right to play. If the right to play was given effect through requirements for attached and lawned outdoor play spaces, as required by Ms Collins's evidence, then children could not live in apartments.
- 4.9 Instead, as the UN Committee on the Rights of the Child's General Comment 17 (2013) stated, factors relevant to providing an optimum environment include:

- Freedom from stress;

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<sup>8</sup> Evidence from Emerge at [3.2].

<sup>9</sup> Evidence from WACT at [4.1].

- Freedom from social exclusion, prejudice or discrimination;
- An environment secure from social harm or violence;
- An environment sufficiently free from waste, pollution, traffic and other physical hazards to allow them to circulate freely and safely within their local neighbourhood;
- Availability of rest appropriate to their age and development;
- Availability of leisure time, free from other demands;
- Accessible space and time for play, free from adult control and management;
- Space and opportunities to play outdoors unaccompanied in a diverse and challenging physical environment, with easy access to supportive adults, when necessary;
- Opportunities to experience, interact with and play in natural environments and the animal world;
- Opportunities to invest in their own space and time so as to create and transform their world, using their imagination and languages;
- Opportunities to explore and understand the cultural and artistic heritage of their community, participate in, create and shape it;
- Opportunities to participate with other children in games, sports and other recreational activities, supported, where necessary, by trained facilitators or coaches;
- Recognition by parents, teachers and society as a whole of the value and legitimacy of the rights provided for in article 31.

4.10 There is no focus at all on the provision on physical space attached to houses or dwellings. The significance of space is on its freedom from hazards and freedom from adult management and control.

4.11 It would be an error of law to impose conditions, or worse, decline the consents, on the basis that the applications did not give adequate effect to the right of the child to play.

## **5 Evidence**

5.1 In this section I briefly (to avoid undue repetition) summarise MHUD's position on the evidence of economic and social effects of the applications.

## Economic

- 5.2 There appears to be reasonable agreement between the Council's economist, Natalie Hampson, and MHUD's economist, Shamubeel Eaquab, and Chief Advisor, Nick McNabb about the extent of unmet housing demand driving the need to provide Contracted Emergency Housing and the reasons for it, recognising that there are both elements dictated by national trends and elements that are Rotorua specific.
- 5.3 There is also reasonable agreement between Ms Hampson and Mr Eaquab on the economic impacts of providing Contracted Emergency Housing in 13 motels, including on the tourism sector. In that respect, Mr Counsell's evidence is an outlier.
- 5.4 Ms Hampson, in a passage with which Mr Eaquab agrees, considers that:
- some capacity constraints may (if the market does not fully respond in time) be experienced periodically over the next five years. Those periods may be short in duration and infrequent, especially in the short term. The potential loss (opportunity cost) of guest arrivals over the next five years associated with any shortfalls in capacity is therefore likely to be minor relative to the annual volume of guest arrivals that can and will be accommodated. Only a modest share of any future minor capacity constraints (guest arrival losses) can be attributed to CEH in the existing environment.
- 5.5 This summary follows the correct methodology for assessing the effects of the 13 applications on the existing environment set out above.
- 5.6 By contrast, Mr Counsell's evidence does not follow that approach. He, like Ms Foy in relation to social effects, seeks to identify adverse effects of all emergency housing.<sup>10</sup>
- 5.7 Ms Hampson has identified that while there is no overall increase in crime in the district, there has been an adverse effect on social conditions, including from crime, in the Fenton Street corridor. She concludes:
- There is little evidence that CEH has had a material effect on those social conditions (neither improving nor worsening effects). Relative to the permitted baseline, I consider that 12 CEH sites in the Fenton Corridor and the 1 CEH site in the Koutu catchment are likely to have only a minor adverse effect on crime, incidents and Police activity in the respective local communities.
- 5.8 Mr Eaquab's evidence is consistent with this, if not a little more positive.

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<sup>10</sup> See, eg, evidence of Kevin Counsell at [28].

- 5.9 Mr Counsell appears to adopt Ms Hampson's assessment, but considers that what he calls a doubling of crime rates is material compared to the counterfactual of a 50% increase. However, it is clear from his analysis that the counterfactual he is assessing is one in which there is no emergency housing at all (see at [86]).
- 5.10 MHUD considers that when the economic effects are considered in the context of the existing environment, the effects are not more than minor.

### **Social**

- 5.11 Ms Healy's evidence is that the overall social effects of the 13 applications are what she calls low positive to low negative. She considers that the applications are not likely to change social conditions for the wider community. She considers that adverse social outcomes are more likely in the neighbourhood surrounding Fenton Street, but that the close management and wrap-around support associated with the Contracted Emergency Housing model adequately mitigates these effects. Ms Healy considers that not granting the 13 applications is likely to lead to further negative social change.
- 5.12 On behalf of the Council, Ms Foy's approach is different. She considers that the social effect of operating the Contracted Emergency Housing motels should be assessed collectively with the other forms of emergency housing, particularly those reliant on EHSNGs. MHUD, for the reasons stated earlier, does not consider that this approach is consistent with what s 104(1)(a) of the RMA requires.
- 5.13 Ms Foy considers that one option to address the effects of concentration of social effects on Fenton Street is to decline some applications. It is not clear which ones she considers should be declined. The process of selection of motels is outlined in the evidence of Mr Wilson. The reality is that most of Rotorua's motels are located on or near Fenton Street and the CBD.

### **Conclusion on effects**

- 5.14 Overall, MHUD considers that the effects of the 13 applications are to improve the social and economic conditions relative to a counterfactual in which the applications are declined. In short, the effects are not more than minor, and the s 104D effects gateway is met.

5.15 To the extent that effects on neighbours in the Fenton Street corridor are more directly felt, as Ms Healy notes, this can be mitigated by the site-specific conditions which focus on managing these effects. Despite her different approach, this appears to be a matter on which Ms Healy and Ms Foy agree (see evidence of Ms Foy at [31]).

## 6 Conditions

6.1 MHUD does not consider that many of the Council's proposed conditions are necessary to mitigate adverse effects, appropriate, or in some cases lawful. Many of the proposed conditions apparently proposed to mitigate certain adverse effects are likely to be counterproductive in that they may exacerbate other adverse effects, and will reduce the ability of service providers to allocate motel units to whānau wishing to take up a position in Contracted Emergency Housing.

6.2 Section 108AA of the RMA provides:

### 108AA Requirements for conditions of resource consents

- (1) A consent authority must not include a condition in a resource consent for an activity unless—
  - (a) the applicant for the resource consent agrees to the condition; or
  - (b) the condition is directly connected to 1 or more of the following:
    - (i) an adverse effect of the activity on the environment;
    - (ii) an applicable district or regional rule, or a national environmental standard;
    - (iii) a wastewater environmental performance standard made under section 138 of the Water Services Act 2021; or
  - (c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

6.3 The “direct connection” standard required by s 108AA(1)(b) is a statutory rejection of the Supreme Court’s “logical connection” standard, espoused in *Waitakere City Council v Estate Homes Limited*.<sup>11</sup> The effect is to narrow the scope of conditions that may be imposed.<sup>12</sup> The statutory amendment has not affected the otherwise applicable public law principles that resource conditions must be made for a resource management

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<sup>11</sup> *Waitakere City Council v Estate Homes Limited* [2006] NZSC 112.

<sup>12</sup> Nolan KC (ed) *Environmental and Resource Management Law* (7ed, LexisNexis) at [4.65].

purpose, and not an ulterior one, must be *Wednesbury* reasonable (ie, must not be so unreasonable that no reasonable consent authority could have imposed it), and must not involve an unlawful delegation.<sup>13</sup>

### **Consent holder**

- 6.4 MHUD is the applicant for the 13 consents. Being applications for land-use consents, MHUD has expressly made the applications in the names of the 13 motel operators who have the necessary land use rights (ie, ownership or leasehold) to give effect to them.
- 6.5 The wrap-around services, including site management, are provided by the three contracted service providers. The providers will have responsibility for performing many of the conditions of the resource consents, if granted.
- 6.6 MHUD does not have any direct role in the delivery of the housing or the wraparound services which form the land-use activity that is the subject of the consents. It is the contracting party, and has an oversight and governance role to ensure that the functions are performed in accordance with the contractual terms, but it is not a “consent holder”.
- 6.7 Who is a consent holder, in the particular case of a land use consent, is a question of fact. Land use consents attach to land. Under s 134(1), a consent authority may provide otherwise, but that means it may, as the Council's proposed conditions do, make a land use consent personal to the then-landowner. It does not authorise a consent authority to declare or make a third party, in this case MHUD, a named “consent holder” who does not have direct control over the performance of conditions. The consent holders are the motel operators.
- 6.8 This proposed condition would be unlawful as being outside s 134(1).
- 6.9 Moreover, because of how the RMA allocates responsibility for land use it is unclear what purpose the condition is intended to serve. The proposed condition, together with other “strategic conditions” such as the condition requiring MHUD to concentrate occupancy in a smaller number of Contracted Emergency Housing motels as soon as practicable, appear to have an ulterior purpose. It seeks to predetermine any government policy

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<sup>13</sup> That is, the well-known *Newbury* tests.

response to changing circumstances in Rotorua. And the condition acknowledges that whānau will have to be moved from existing stable locations to give effect to it, which is plainly undesirable from their perspective.

### **Strategic conditions**

- 6.10 It is not clear why the Council seems to consider the strategic conditions necessary. There is an existing partnership relationship between the Council and MHUD through the Rotorua Housing Taskforce in which decisions about policy responses to changing circumstances can be discussed. Through that relationship MHUD will provide data from its monitoring. It therefore does not understand why matters such as this require conditions, which preclude any refinement, development or expansion in response to changing circumstances or new information. As will be seen in relation to the “unit allocation” and “right to play” conditions, there is a sense in which these conditions are overly prescriptive in a way that detracts from the objective that Contracted Emergency Housing, recommended by the Rotorua Housing Taskforce, including the Council, seeks to achieve.
- 6.11 The “ongoing SIA” condition is another one that appears on its face to be unlawful because it relates not only to the 13 within-scope applications, but also the wider existing environment in the form of those using EHSNGs. But neither MHUD nor the motel operators are responsible for the operation of EHSNGs. Furthermore, when coupled with the broad review condition, it raises the prospect of the Council seeking to exercise its powers so as to review the conditions of consent on the basis of information received about the operation of EHSNGs, or the behaviour of those who rely on them. Matters relating to EHSNGs should be discussed through the Taskforce and are not appropriate or sensible matters to include in conditions relating to Contracted Emergency Housing.
- 6.12 Finally, the costs condition is completely unnecessary. Why does the Council wish to dictate who should bear the costs of implementing conditions?
- 6.13 Of the “strategic conditions” the only conditions that should survive are the 0800 condition (of which there already is one) and a slimmed down version of the ongoing SIA condition reframed to make it clear it is about



the ongoing social impact of Contracted Emergency Housing. Both conditions can easily be moved to sit among the site-specific conditions.

### **Site-specific conditions**

- 6.14 Ms Blackwell has set out a number of issues with the proposed site-specific conditions. Most notable from a legal perspective are the following issues.
- 6.15 **The scale and intensity conditions:** MHUD has no objection to seeking to ensure that the 13 motels are not overcrowded. That is, after all, one of the social effects that Contracted Emergency Housing is seeking to alleviate. But it does object to the conditions which seek to control the discretion of the service providers to make appropriate unit allocations by reference to the Canadian National Overcrowding Standard.
- 6.16 Ms Blackwell has highlighted how and why that standard was developed. It specifically states that it should not be used to restrict the provision of emergency housing. More generally, service providers are already cognisant of appropriate numbers of people being allocated to units.
- 6.17 The impact of the proposed conditions could be that, because of availability constraints, a family that wishes to enter Contracted Emergency Housing is declined because their make-up does not meet in every respect the prescriptive allocation conditions. The effect will be that they have to rely on EHSNGs until a compliant unit becomes available, whereas they could otherwise be placed in Contracted Emergency Housing until a better unit became available.
- 6.18 The impact of these conditions too places the Council in the, with respect, odd position of seeking to regulate allocation decisions by the skilled service providers, a decision which it is ill-equipped to fulfil.
- 6.19 Further, counsel has never seen before plan provisions or resource consent conditions that seek to restrict the numbers of people living in residential units based on this or any other overcrowding standard. There is an air of unreality about this condition in that the Contracted Emergency Housing policy is seeking to deal with the fact that so many people do not have houses and are already in many cases living in overcrowding situations.

- 6.20 **Right to play:** It will be apparent from the submissions above that MHUD does not accept Ms Collins' opinion about the right to play. That evidence provides an unreliable basis on which to impose the "right to play" conditions which seek to identify certain units that must not be allocated to whānau with children of certain ages – usually between 6 months and 7 years.
- 6.21 A potential outcome of these conditions is that a whānau happy in an existing unit allocation may need to be shifted between motels, or even between service providers, because of availability constraints when their 6-month-old becomes 7-months-old. Or, to make room for others, a family may be required to move from a position of stability because their 6-year-old has turned 7 and their room(s) is or are required for whānau with younger children. Whether any such changes are made should be in the hands of the skilled service providers considering all relevant matters, including consultation with the affected whānau. Imposing the overly prescriptive "right to play" conditions interferes with that exercise of discretion in a way that is counterproductive. These conditions should be deleted.
- 6.22 **Transferability:** It is not clear why the conditions seek to limit the conditions to the existing motel operators. If one wishes to transfer their interest to another motel operator who will be assigned the burden of the MHUD contract why should the resource consent come to an end? This does not appear to serve any resource management purpose, especially if the effect is that those living in the particular motel at the time end up relying on EHSNGs.
- 6.23 **Bond:** No resource management purpose appears to be served by a bond and Mr Batchelar's s 42A report expresses none. The conditions do not require a significant outlay from motel operators which could potentially leave the Council out of pocket should it decide to step in to complete conditions.
- 6.24 Further, even if a bond was imposed, the sum of \$100,000 appears to have been plucked out of thin air and is highly excessive.
- 6.25 **Permitted activities:** While a minor matter in the scheme of things, it is not considered good practice to impose conditions that amount to no more than the repetition of permitted activity standards relating to noise and the

like. There is no suggestion that granting the consents would authorise, for example, the exceedance of the applicable noise standards.

**Expert planning caucus**

6.26 MHUD will provide at the hearing a tracked-change set of conditions in response to the Council's draft conditions and it is proposed that the parties' planners caucus on conditions that can be agreed.

Date: 14 October 2022



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Nick Whittington  
Counsel for Te Tūāpapa Kura Kāinga Ministry of Housing and Urban  
Development