

Annexure 11: 107 Malfroy Road (Ann's Volcanic) – RC17892



Figure 1: 107 Malfroy Road (as viewed from Malfroy Road)

1 Introduction

1.1 Resource consent to use 107 Malfroy Road for Contracted Emergency Housing (CEH) was lodged with Rotorua Lakes Council (RLC) on 20 December 2021. CEH is described in detail in the Application and in my Primary Evidence. To summarise, the Proposal is to:

- (a) Use 9 of the existing motel units for CEH, primarily for whānau with children and vulnerable individuals (such as elderly);
- (b) Use 1 unit for the onsite Service Provider;
- (c) Provide onsite support services for CEH occupants by a dedicated Service Provider. The Service Provider is currently Emerge Aotearoa Trust, but the Applicant would like to retain flexibility so that an alternative Service Provider could provide the necessary Support Services if required;
- (d) 24/7 security on-site and an on-call Senior Security Officer;
- (e) Operate CEH from the site for a maximum of five years (from the date of the decision of the consent);
- (f) Revert back to a motel activity once the site is no longer being used for CEH.

2 Changes to the Application since lodgement

Maximum Occupancy

- 2.1 Since the notification of the Application, having considered the concerns raised by submitters and issues raised in the s42A report the Applicant proposes to reduce the total maximum occupancy onsite from 39 occupants to **31 occupants**.
- 2.2 CEH has been operating from the site at 107 Malfroy Road since 1 July 2021. On 11 May 2022, Ministry of Housing and Urban Development (MHUD) provided to RLC (in response to a s92 request) updated information about the actual number of occupants on the site. This information demonstrated that the number of occupants is far lower than the theoretical capacity (of 39 people) if every bed in every unit was occupied. Updated actual occupancy is provided in Table 1 below.

Table 1: 107 Malfroy Road – Actual Occupancy Units (U) and People (P)
December 2021 – August 2022

Date	15/12/21		7/02/22		30/03/22		27/04/22		23/05/22		30/06/22		1/08/22		30/08/22	
	U	P	U	P	U	P	U	P	U	P	U	P	U	P	U	P
No.	9	10	9	12	8	11	8	12	9	17	8	11	8	13	7	9

NB: All 10 units are contracted by MHUD (but Unit 9 is used by the Service Provider). The site has a maximum theoretical capacity of 39 CEH occupants.

- 2.3 The reality of CEH is that units are allocated to whānau based on their specific needs, and this does not necessarily mean every bed in every unit is occupied. As demonstrated in Table 1 above, the actual number of people onsite has varied between 9 and 17 people. While these levels are notably lower than the maximum occupancy of 31 persons that is now being sought by the Applicant, it is my understanding that reasons for low levels of occupation can vary – for example, on occasion, rooms are decommissioned for maintenance and repairs between whānau stays, and some rooms are set aside for emergency placements.
- 2.4 It is accepted that those staying in CEH are generally onsite longer than typical motel guests. As such, in terms of the potential intensity of use I consider that a reduced maximum occupancy is appropriate and helps to mitigate the potential effects that could result from overcrowding.

Site Fencing

- 2.5 The original fence along Malfroy Street has been replaced. A timber fence is located along the eastern side of road front boundary, and an aluminium fence with sliding gates has been constructed along the western side of the boundary to allow vehicles to enter and exit the site. These are permanent structures.

Signage

- 2.6 The Motel Operator has removed all physical signage from the site, and also removed their digital presence.

3 Activity Status

Operative Rotorua District Plan

- 3.1 The subject site is located entirely within the Residential 2 Zone. All adjoining properties are also in the Residential 2 Zone.
- 3.2 As discussed in my Primary Evidence, the activity has been assessed as a Non-Complying Activity pursuant to Rule RESZ-R2.

4 Site Specific Matters raised in Submissions

- 4.1 The site specific s42A report by Ms Bennie provides an overview of the notification process and submissions raised. I note that many submitters made 'blanket' submissions which related to all Applications. As such, where the issues raised in submissions are relevant to all Applications, I have considered these issues in my Primary Evidence.
- 4.2 There were 309 submissions in relation to the resource consent at 107 Malfroy Road for CEH (including 16 submissions that were provided to the Independent Hearing Panel prior to notification of the application). Two submissions are not considered blanket submissions and were more specific to 107 Malfroy Road. One submission is in support and the other is in opposition of the Proposal. One submitter is adjacent to the subject site, and the other is a local resident.
- 4.3 The issues raised by the submissions are reasonably generic, and can be broadly categorised as follows:

- (a) Social Effects
- (b) Tourism Effects
- (c) Cumulative Effects
- (d) External Amenity Effects
- (e) Internal Amenity Effects

4.4 Submissions relating to social effects and tourism effects have been addressed in my Primary Evidence and that of MHUD's experts. No further discussion will be undertaken regarding these issues here. Further, changes to the application since lodgement (discussed in Section 2 above) together with conditions of consent will effectively mitigate submitter's concerns at the site-based level.

4.5 Cumulative effects have also been discussed in my Primary Evidence; however, I provide additional comments specific to the site at 107 Malfroy Road in my effects assessment below.

4.6 External and internal effects specific to the site are not addressed in my Primary Evidence. These are discussed in my effects assessment below.

4.7 Overall, I agree with the analysis and conclusions within Ms Bennie's s42A report with regard to submissions received on this property.

5 Assessment of Effects

5.1 My Primary Evidence discusses effects as they relate to all Applications. The following section discusses effects specifically relevant to this site under the relevant headings:

- (a) Positive effects
- (b) Character and amenity effects
 - (i) External amenity
 - (ii) Internal amenity
- (c) Transportation Effects
 - (i) Parking and access

- (ii) Traffic generation
- (d) Noise Effects
 - (i) Noise from emergency housing
- (e) Infrastructure effects
- (f) Financial contributions

Positive effects

5.2 The positive effects of the Proposal are outlined in the Application and in my Primary Evidence. From a site specific focus, the site is well located in relation to community amenities, including broader recreation opportunities and schools. Many units have individual open space, and there is further opportunity to enhance open space within the site.

Character and amenity effects

External Amenity - Streetscape / neighbourhood character

- 5.3 No changes are proposed in relation to the buildings and the AEE in the Application for 107 Malfroy Road remains valid in this regard.
- 5.4 As identified above, new fencing has been constructed, and Motel related signage has been removed. These measures, which were recommendations of the Social Impact Assessment (SIA), enhance the appearance of the site while also assisting with site management. As noted in Ms Bennie's 42A report, the buildings and onsite features within the site reflect the surrounding residential character, which aligns with its location within a wider residential neighbourhood. In this regard, Ms Bennie has recommended a condition of consent that existing landscaping be maintained and replaced where necessary. I agree that such measures are appropriate to maintain a positive interface with, and appearance from, the street.
- 5.5 Overall, I agree with Ms Bennie's conclusion that subject to existing external boundary treatments and landscaping features being maintained, the resulting landscape and visual effects are acceptable, and consistent with the character and amenity outcomes anticipated by the zone.

- 5.6 In addition to the above, a number of experts of the Council and MHUD have recommended that all online advertising and websites that promote tourist accommodation and other services should be removed. I agree that such measures are generally appropriate.

External Amenity – Cumulative effects

- 5.7 Cumulative effects of 13 resource consents being considered concurrently is discussed in my Primary Evidence. This was also addressed in the s92 response, the SIA, and in the Evidence of Ms Healy and Mr Eaqub.
- 5.8 Specific to the site at 107 Malfroy Road, I note that there are no other CEH facilities (or broader EH activities) operating in immediate proximity of the subject site.
- 5.9 My conclusion in relation to cumulative effects in my Primary Evidence are equally applicable here. Cumulative effects of the Proposal are considered to be acceptable and with the implementation of proposed management and mitigation measures, are considered to be no more than minor.

Internal Amenity

- 5.10 Internal amenity relates to the quality of the onsite living environment for those staying in CEH, including access to onsite amenities typically associated with domestic living, open space and onsite services.
- 5.11 My Primary Evidence discusses how individuals are allocated to particular units, which among other matters, includes consideration of a unit's size, location, and onsite amenities to suit the requirements of the whānau or individual being homed.
- 5.12 Residents within CEH are accommodated on a relatively short-term basis (when compared with more permanent housing), with the length of stay varying between whānau groups. It is acknowledged, however, that the duration of stay is for a longer period than individuals who previously utilised the accommodation as motel guests. The provision of a quality and safe living environment is an important objective of CEH. Access to onsite amenity is one element that contributes to this. In my opinion, the extent and quality of the onsite amenity (including provision of open space) must be considered within the context of CEH providing a short-term place of residence for members of the community who otherwise have no tenable or better alternative accommodation.

5.13 I further note that the majority of units within this site were originally constructed and utilised as independent residential units, which were subsequently converted to tourist accommodation in the late 1990s. No limitations on the age groups able to be accommodated within the units applied when they were originally functioning as residential units (regardless of unit type), and in my opinion, it is unnecessary to place any such restrictions on the site as part of this process.

Outdoor living space

5.14 The site specific s42A report identifies that all units have access to private outdoor living space, with some units (1-6) having more generous open space than others (7-10). While the available individual areas of private open space is not extensive, it nevertheless provides opportunity for the residents of each unit to flow from the unit to the outdoors, which in my opinion, provides a reasonable quality living environment, particularly when considered in the context of the units being a temporary place of residence. I agree with the s42A site specific report that concludes that the private onsite open space is acceptable for the use of occupants within CEH.

5.15 The site specific s42A report by Ms Bennie, also notes that there is opportunity to enhance the shared open space next to Unit 6, particularly as an area of play for children. I agree with and support these conclusions.

Suitability for children

5.16 The individual outdoor spaces provide some opportunity for play. As acknowledged above, there is opportunity to enhance the shared open space at the rear of the site, near Unit 6, to provide a shared play space for children. I agree with the placement of a condition to ensure that this area is allocated and upgraded for this purpose.

5.17 I further note that the site is well located within an easy walking distance to local schools, which provide considerable amenity and space for children to play, albeit off the site. It is commonplace for local residents to use school grounds for informal recreation and play purposes, and in my opinion this nearby public space can readily mitigate any onsite deficiencies.

5.18 The s42A report, informed by Ms Collins's assessment, recommends restrictions on the use of units to accommodate whānau with children, or certain age-groups from particular units. In my opinion, such restrictions, while well intended, are misplaced in the context of a community

experiencing a significant housing crisis. I acknowledge the evidence that access to play space and more extensive physical living environments are contributors to a child's wellbeing and can aid in a child's developmental process. However, I consider access to a warm, safe, and stable accommodation are overriding factors to achieving the same essential outcomes. In my opinion, restricting whānau with children from occupying studio units, or limiting children of certain age groups from particular units, is likely to result in perverse outcomes, which ultimately would translate to whānau being unable to access CEH accommodation. In forming this conclusion, I note that the wellbeing of tamariki (through the process of undertaking an individual needs-based assessment of each whānau) is at the forefront in any decision making around placement into suitable living environments.

- 5.19 Overall, it is my opinion that the site is adequately suited to accommodating children. I do not support conditions 8-10 recommended in the s42A report.

Occupancy rate

- 5.20 Ms Bennie recommends that the proposed maximum occupancy rate for the site be restricted to 26 occupants. Maximum occupancy rates per unit type (excluding children under the age of six months) are also recommended. These recommendations are carried through to conditions 7-10 of the s42A report. The proposed limits on occupancy rates attempts to mitigate concerns of overcrowding and is based on the Canadian National Occupancy Standard (CNOS) used by Statistics New Zealand.
- 5.21 My Primary Evidence discusses why the CNOS is not appropriate as applied to CEH. In my opinion, the service provider is best placed to determine which rooms are most suitable for occupants, and they consider a multitude of factors including family dynamics.
- 5.22 Considering first the occupancy levels of the wider site, as noted in the s42A report, the Applicant has offered a reduction in the maximum occupancy numbers to a **maximum of 31 occupants**, which is slightly above that recommended by the Council's s42A report. Informed by the advice of Mr Wilson, I consider that it is appropriate to enable additional flexibility over and above what is proposed by the Council, in recognition that on occasion, the placement of whānau groups may require some occasional exceedance to the more restrictive operating limit proposed in the Council's conditions.

- 5.23 Ms Bennie identifies that should the Panel be of the mind to grant consent and impose the occupancy conditions stated in the s42A report, some families may currently be accommodated in units that would no longer meet the recommended occupancy rates. If this is the case, it is requested that the options presented in paragraph 79 of the s42A report also be imposed. This will ensure that those currently occupying the site are able to retain their place of accommodation until a suitable long-term option is found.

CPTED principles

- 5.24 The overview s42A report briefly notes that it would be helpful to better understand the application of the National Guidelines for Crime Prevention through Environmental Design (CPTED) in the context of each site. Such an assessment has not yet been undertaken; however, a condition of consent requiring a CPTED audit be undertaken based on the principles of CPTED could be imposed in the decision of this consent if the Panel considered this was necessary. In my opinion, any recommendations of a subsequent CPTED audit could then inform a site-specific action and implementation plan that can be incorporated into the Site Management Plan.

Transportation Effects

- 5.25 I agree with and accept the s42A analysis with regard to transportation effects and the inclusion of Condition 22.

Noise Effects

- 5.26 I agree with and accept the s42A analysis with regard to noise effects, including reverse sensitivity and noise from emergency housing. As outlined in my Primary Evidence, I do not agree with including permitted activity standards as conditions (i.e. s42A report site specific Condition 23 and 24).

Effects on Infrastructure

- 5.27 I agree with and accept the s42A analysis with regard to effects on infrastructure.

Financial contributions

- 5.28 I agree with and accept the s42A analysis with regard to financial contributions.

6 Relevant Planning Framework

6.1 The higher order planning framework is discussed in my Primary Evidence. Below I will discuss the ODP in the context of 107 Malfroy Road where there are particular matters that are distinct from my assessment in my Primary Evidence.

Operative District Plan (ODP) Zone and CEH

6.2 The site is located entirely within the Residential 2 Zone (RESZ2 Zone). The Residential 2 zone is described in the ODP as:

“Medium density residential areas located close to the city centre. There is a mix of single storey and two-storey apartment style living, with limited outdoor space. The built environment is dominant and much of the space around buildings is taken up by hard surfacing for car parking and turning. There are few trees and shrubs that make an impact on the wider area and the zone is more reliant on the street trees to soften the built environment.”

6.3 The site and onsite activities generally align with this zone description. There are no modifications proposed to the buildings or structures themselves, except the establishment of the new shared onsite play space near Unit 6. As previously noted, the onsite motel signage has been removed, and high quality fence upgrades have recently occurred. Without motel signage, the existing buildings present as attached terrace style residential units. As noted earlier, the onsite buildings were originally constructed for residential purposes, and they reflect this general character. The site is fully fenced on all boundaries, and it is proposed to retain existing vegetation. Each unit has its own area of open space directly accessible from the unit it serves.

6.4 As discussed elsewhere, the Proposal includes the reversion back to traditional ‘tourist accommodation’¹ in the future (which will include reinstatement of motel signage).

6.5 The assessment below considers the Proposal against the relevant provisions of the operative District Plan. I note that there is broad agreement between the conclusions reached by Ms Bennie in the s42A report, and my assessment below.

¹ ODP definition of ‘Tourist accommodation’ (page 35 Part 1 of ODP).

- 6.6 **RESZ-O1** outlines the anticipated design and onsite amenity outcomes, including site design and unit orientation, placement of open space areas, design of parking and vehicle manoeuvring areas, and ability to achieve a safe street through passive surveillance. Relevant supporting policies are **RESZ-P1 to RESZ-P5**.
- 6.7 I agree with Ms Bennie's assessment that the consideration against these provisions is best framed in the context of considering the amenity outcomes through a change in onsite activities, as there are no physical changes to the existing buildings or revisions in the site design and placement of open space areas. All units have direct access to private areas of open space, and in my opinion all units and open space areas will achieve adequate sunlight based on their orientation and placement within the site. The open space areas vary in size, but in my opinion, they are sufficient to serve the needs of residents located within temporary accommodation. Onsite parking and manoeuvring areas are sufficient. Overall, I find that the Proposal is consistent with the outcomes sought by this objective and related policies.
- 6.8 Objective **RESZ-O2** requires character and amenity values of the zone to be maintained and enhanced. This objective is supported by **RESZ-P8**, which articulates the character and amenity outcomes anticipated in the zone. No changes are proposed to the existing buildings and the existing onsite vegetation is proposed to be retained, which, in the absence of street trees, provides a degree of "softening" of the site's built environment.
- 6.9 The Motel Operator has advised that a gardener attends the maintenance of the site grounds regularly, ensuring the streetscape remains attractive. The recent removal of the motel sign and improved fencing at the street have also enhanced the site's presentation and its assimilation into the surrounding residential environment. Overall, it is my opinion that the site reflects the character outcomes anticipated in the RESZ 2 Zone and the onsite activities do not diminish this.
- 6.10 Objective **RESZ-O3** requires non-residential activities to be of a scale and character that can be readily absorbed into the residential environment, while also ensuring the vitality of the primary commercial centres is maintained. This objective is supported by Policies **RESZ-P12, RESZ-P13, RESZ-P14, and RESZ-16**.

- 6.11 The CEH activities are largely akin to residential activities, noting that the onsite support services offered by the Service Provider are ancillary to this and could be constituted to be a non-residential activity. The onsite support services are not an obvious feature of the activities from an external perspective, being largely operated out of Unit 9. The support-services are an integral component of CEH and enhance the onsite operation and wellbeing of residents within the site. Moreover, the support-services provide the framework and social scaffolding to enable residents to live in a supported and safe environment. The onsite support services contribute positively to both the residents, and the wider site operations, and assist in minimising the effects on the surrounding environment. In my opinion, the Proposal is consistent with this objective and related policies.
- 6.12 Objective **RESZ-O6** relates to the design, layout, and appearance of residential sites. The outcome sought is the promotion and maintenance of the character of the zone, onsite residential amenity, and community safety. This objective is supported by **RESZ-P20**, which guides development and site design to achieve positive onsite amenity outcomes and **RESZ-P21**, which seeks to ensure the interface between the site and the street is well considered to enable passive surveillance. As discussed elsewhere, the site reflects the anticipated character of the zone. With regard to amenity, based on orientation and location within the site, each unit receives adequate sunlight and all units have directly accessible private open space. I agree with the recommendation of Ms Bennie that an area next to Unit 6 be designated as a shared open space, which will further improve onsite amenity outcomes. The site's interface with public spaces is generally positive and provides opportunity for passive surveillance. The Proposal is considered to be consistent with these provisions.
- 6.13 With regard to the District Plan provisions relating to Noise, Infrastructure and Transport, I agree that those identified in the s42A report are relevant and agree with the conclusions reached by Ms Bennie in relation to these provisions.
- 6.14 Overall, I consider the Proposal is consistent with the objectives and policies of the District Plan and in my opinion, there is no conflict requiring reconciliation.

7 Response to s42A Report's Recommended Conditions of Consent

- 7.1 Appendix 1 of the site specific s42A Report for 107 Malfroy Road contains draft conditions of consent recommended by Ms Bennie. There is broad agreement around the majority of proposed conditions. The discussion below focuses more specifically upon conditions where I suggest changes or explicitly disagree with those recommended in the s42A report. The Strategic Conditions in the overview s42A report have been discussed in my Primary Evidence.
- 7.2 An updated set of proposed consent conditions will be provided at the commencement of the hearing, and it is anticipated that these will develop over the course of the hearing. In the meantime, I provide the following overall comments on the recommended consent conditions attached to the Council's s42A site specific report.
- 7.3 **Conditions 2 and 3** identify the consent holder as the Operator and MHUD and that it cannot be transferred to and held by any other person. I do not agree with this restriction and have addressed this in my Primary Evidence.
- 7.4 **Condition 7** restricts site occupancy to a maximum of 26 persons (excluding children under six months of age). For the reasons outlined in Section 5 above it is my opinion that the maximum occupancy sought by the Applicant (31 persons) is acceptable. Ultimately, I consider that the Service Provider is best placed to determine which rooms are most suitable for occupants, and they consider a variety of factors including family dynamics.
- 7.5 **Conditions 8-10** specify maximum occupancy levels (excluding children under six months of age) and in the case of Condition 8, restrict the accommodation of children in entirety. I do not support the placement of these conditions, and recommend their deletion.
- 7.6 **Condition 11** provides clarification that the occupancy levels do not limit the length of stay for residents accommodated in the units, and also does not limit the number of people residing in Manager's Accommodation. I recommend that this is instead reframed as an Advice Note under the condition controlling the maximum site occupancy (condition 8). Further to this, if the panel is of the mind to grant consent and impose the maximum number of occupants as stated in the s42A report, it is requested that the options presented in paragraph 90 of the s42A report also be imposed. This

will ensure that those currently occupying the site are able to retain their place of accommodation until a suitable long-term option is found.

- 7.7 **Condition 17** requires the physical motel signage be removed for the duration of the consent. It is my understanding that this has already been implemented, however I support the continued placement of the condition to ensure the signage remains absent for the duration of the consent.
- 7.8 **Condition 18** requires that all online advertising and websites that promote tourist accommodation and other services be removed. The implementation of this condition is difficult due to the nature of online advertising. Notwithstanding this, it is reasonable to require the Motel Operator to amend their website and booking websites to show no room availability and on this basis I agree that a condition to this effect is reasonable.
- 7.9 **Conditions 23-24 and 29** [incorrectly numbered] require compliance with the permitted activity performance standards for noise and light emissions from the site. I do not consider placement of conditions, that simply replicate permitted activity standards, to be in accordance with good practice, and nor do I consider their placement necessary. I recommend deletion of these conditions.
- 7.10 **Conditions 27-31** relate to the taking of a bond. This matter has been discussed within my Primary Evidence, where I dispute the need for a bond, and also the value of the individual bond. I recommend deletion of these conditions.

8 Section 104D Gateway Test and Part 2 Analysis

- 8.1 As discussed in my Primary Evidence, it is my opinion that the effects of the Proposal are no more than minor and the Proposal is not contrary to the objectives and policies of the Rotorua District Plan or Plan Change 9.
- 8.2 As detailed in my Primary Evidence, the Proposal aligns with Part 2 of the Act.

Date: 5 October 2022

AJ Blackwell

.....
Alice Blackwell