

**BEFORE THE INDEPENDENT HEARINGS PANEL - DAVID HILL (CHAIR), GREG HILL
AND SHEENA TEPANIA**

UNDER the Resource Management Act 1991

IN THE MATTER of Various applications by Te Tūāpapa Kura Kāinga - the
Ministry of Housing and Urban Development (MHUD) to
the Rotorua Lakes Council

BETWEEN **MINISTRY OF HOUSING AND URBAN DEVELOPMENT**
Applicant

AND **ROTORUA DISTRICT COUNCIL** Consent Authority

AND **SUBMITTERS**

SUMMARY STATEMENT OF CRAIG BATCHELAR

Dated 18/10/2022

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INTRODUCTION

1. This Summary Statement (**Summary**) has been prepared on the basis that the Independent Hearing Panel (**Panel**) has read my pre-circulated Overview Planner Report for all 13 sites (**Planner Report**). It is on this basis that my Summary simply records:
 - (a) A summary of the key points of my Planner Report; and
 - (b) Areas of disagreement, points requiring clarification and updates to my expert opinion as a result of my review of the evidence subsequently filed by other parties relevant to my area of expertise.

KEY POINTS OF MY PLANNER REPORT

Applications

2. MHUD is applying for 13 separate resource consents to use existing tourist accommodation facilities for Contracted Emergency Housing (CEH) accommodation, with on-site support services.
3. The CEH applications are for 294 CEH accommodation units to be used across 13 sites, accommodating up to 1081 people in total. MHUD has proposed a reduction of the maximum occupancy by about 20%. I noted the comments by Mr Wilson on current (5 October) occupancy which appears to be about 50% of the maximum occupancy sought in the applications.
4. Most of the application sites are located in the Fenton Street corridor which is the main tourist accommodation precinct in Rotorua.

District Plan

5. The CEH proposals do not fit any activity categories under the applicable Operative District Plan (ODP) zones and have been assessed as Non-complying Activities.

6. There are no zones in the district where the CEH activity is expressly provided for. It is a non-complying activity in all zones.
7. CEH residential activities (households) come within the ODP definition of "Household Unit":

"any building, part of a building or vehicle, whether temporary or permanent, that is occupied as a residence, including any structure or outdoor living area that is accessory to and used wholly or principally for the purposes of the residence".
8. It is the addition of 'support services' that differentiates the CEH activity from the residential uses that are generally anticipated and enabled by the ODP, with the activity then characterised as a type of "residential care facility' or 'residential institution'.
9. The inclusion of on-site support services is with the express intention of better placement of households into suitable accommodation and more efficiently and effectively mitigating adverse social effects when compared to uncontracted emergency housing. If the support services were not included, a lesser activity status would apply to most of the applications (generally as a restricted discretionary activity, with Apollo the only exception).
10. As reported in the s42A Overview Report, I have looked into the background of the provisions for Community Housing (which includes emergency housing) and identified that the ODP provisions are inconsistent with the intent of the Plan Review decisions. Scale increase above 8 people was intended to be provided through a resource consent, not to become Non-complying as an activity "not expressly provided for"

Submissions

11. All of the applications were publicly notified. 3,841 submissions were received from about 350 submitters. Most submissions oppose the applications because of adverse social and economic effects on the wider community, but also raise concerns about the suitability of motels for use as family housing.

Economic Effects

12. Refer to Ms Hampson's evidence.
13. Economic factors mean that the need for EH in Rotorua will not disappear in the next few years and the 5 year consent duration sought by the applicant is therefore not unreasonable. There is no scope to extend the duration beyond 5 years.
14. Recommendations include, in summary:
 - (a) Removing signage, websites and any presence on online booking platforms to avoid associating CEH with Rotorua's tourism industry;
 - (b) If MHUD are in a position to reduce the number of CEH contracts, giving priority to releasing CEH that is in close proximity to tourist attractions

Social Effects

15. Refer to Ms Foy's evidence.
16. Emergency housing has as an important and necessary role in addressing housing needs in Rotorua.
17. Recommendations include:
 - (a) On site improvements, similar to those recommended in the applicants SIA;
 - (b) An independent communication hub for CEH clients and a community forum to enable local residents to provide and receive feedback, similar to that recommended in the applicants SIA;
 - (c) Ongoing social impact assessment.

Site Specific Effects

18. For external character and amenity effects, the general conclusion of the site specific assessments is that effects will less than minor as result of existing buildings and site development remaining largely unchanged.
19. Recommendations include conditions that require:

- (a) Maintenance of buildings and landscaping,
 - (b) Keeping sites and street berms clear of rubbish
 - (c) Removal of motel signage.
20. For internal effects, the facilities do not provide a level of amenity equivalent to typical residential units due to their small size and the lack of private or shared outdoor living space. Mitigating factors include the temporary nature of the occupation by households and that the surrounding area is generally well served with local amenities and social infrastructure.
21. The period of occupation for CEH is variable and remains somewhat unclear, but appears to be well beyond the 'success' indicators identified from the Homes and Thriving Communities Strategic Framework 2020:

OBJECTIVE

Safe emergency housing options that meet differing needs are available for short-term use

Success will look like:

- There is a range of emergency housing options to meet different needs
 - Emergency housing is needed for no more than seven days
 - Emergency housing options are supervised and safe from violence, alcohol and drug abuse
 - Emergency housing facilities are safe and sanitary
 - Users and their neighbours feel safe
 - Te Arawa organisations participate in the co-design, co-development and co-delivery of emergency housing to ensure effective delivery to diverse communities
22. The proposed maximum occupancy levels, based on motel bed numbers, is likely to create a risk of crowding. Accepted criteria for assessing crowding have been applied to determine an appropriate maximum occupancy.
23. A detailed assessment of play space has identified that some sites lack suitable play space for children.
24. Recommendations include:
- (a) Reducing maximum occupancy to approximately 70% of that applied for;

- (b) Restricting occupancy in some units and certain age groups of children from staying in the CEH facilities where play space is unacceptable for those age groups.
25. Restrictions in b may not be required based on the rigorous systems and procedures in place for whanau placement. Recommendation on play space can be applied as guidance, within the scope of an advice note.

Conditions

26. Draft conditions provide a starting point for consideration should the Panel determine that consent should be granted to some or all of the applications. These include:
- (a) 'Site Conditions' that apply to individual CEH application sites including standard conditions, tailored conditions for site occupancy, and any other site specific considerations. Compliance is solely the responsibility of the facility operator.
 - (b) 'Strategic Conditions' that apply collectively across all CEH application sites, where compliance would be the responsibility of both the site operator and MHUD.

Policies and Plans

27. Provision of EH is a necessary component of meeting housing needs in Rotorua in the present and foreseeable future, but this must be implemented in a manner that also enables other people and communities to provide for their social, economic, and cultural wellbeing.
28. Residential use, including conversion of existing tourist accommodation to residential use, is generally enabled by the ODP.
29. District Plan Objectives and policies have a strong focus on the environmental outcomes deriving from the physical properties of built form. They do not identify the social and economic issues of current concern for EH and CEH.

30. These social and economic effects issues were not contemplated when the ODP was drafted. However, these issues can be considered under Part 2 of the Act.

Non-complying activities Gateway Test

31. The conclusion on environmental effects is that adverse effects of the CEH activities on the environment will be minor if the recommended conditions of consent are imposed and are fully complied with. The particular challenge in this case is to be able to consider the effects of the proposed CEH activities aside from those from the wider EH activities that are currently operating without consent.
32. The conclusion on objectives and policies is that CEH activities are not contrary to the ODP which, in simple terms, provides for a wide range of residential activities in the relevant zones. At its core, CEH is a residential activity.
33. On this basis, the tests of Section 104D are met and the Panel is able to consider whether or not to grant or to refuse consent.

AREAS OF DISAGREEMENT, POINTS REQUIRING CLARIFICATION AND UPDATES

Existing Environment

34. Paragraph 8.4 of Ms Blackwells evidence states
- In terms of the existing environment, I consider that the starting point for this assessment should be the environment as it currently exists. In my opinion, to ignore the wider social and economic conditions that are being experienced as a result of a shortage of appropriate and affordable housing in Rotorua, would be artificial.
35. I agree that it is artificial to ignore emergency housing as part of the existing environment. Homelessness is a societal failure that has developed over a long period of time and is, by its nature, unplanned and manifests in ways that fall outside the established planning framework and intended outcomes. The real policy levers for addressing homelessness obviously sit outside the RMA.
36. This existing environment includes the implementation of EH policy in a way that has resulted in the repurposing of visitor accommodation for

residential use that does not have the required authorisations, including resource consents, and also possibly building consent.

37. The formal policy response to these circumstances is that the Council is obliged to fulfil its statutory duties to enforce compliance under the RMA and BA which it is endeavouring to do. The social consequences of enforcement on people and families without a place to live are obvious when there are severe constraints on the supply of alternative public and affordable housing. Therefore, the Council is taking a measured approach to bring about compliance.

Cumulative Effects

38. I agree with the other witnesses that the effects of the housing crisis manifesting as emergency housing are part of the existing environment. CEH has been operating as part of this environment.
39. In my opinion it is appropriate to impose conditions that remedy actual and potential adverse effects of CEH in terms of:
- Site specific conditions to address localised effects;
 - Strategic conditions to address aggregate effects, including a reduction in the effects of concentration over time.

Consideration of Economic Effects on Tourism from Conversion of Motels to Residential Units

40. The evidence of Mr Murphy (paragraphs 41-52) places significant weight on the adverse economic effects of using motels for housing, which is the basis for his conclusion that the application fails to meet the non-complying activity gateway test.
41. The planning criteria for conversion of visitor accommodation to residential use do not require consideration of the economic effects of removing tourist accommodation from the city's pool of tourist accommodation.
42. In forming this view I have considered the progression of the land use policy for tourist accommodation in the District Plan, from the 1980s through to the ODP, and the Spatial Plan in 2018.

43. In the 1980s, the District Plan provision for tourist accommodation focussed on managing the potential conflicts between the activities of transient tourist population and permanent residents, particularly during peak periods. Opportunity was taken from the evident clustering of tourist accommodation to minimise conflict through *segregation*. A *Residential 5 Zone - Travellers Accommodation* provided for *traveller's accommodation* as a conditional use along Fenton Street.
44. In the 1990s, the District Plan provision for tourist accommodation focussed on the economic growth opportunities from tourism, while recognising that permanent residential activities were also located within the tourist accommodation precincts. A *Resort B Zone* provided for visitor accommodation as a permitted activity along Fenton Street.
45. The Operative District Plan (ODP) Strategic Direction, developed in the 2000s recognises that the district is one of the country's leading tourism centres, offering a wide variety of tourist accommodation and attractions. The ODP promotes new activity and investment in tourist accommodation and commercial activity in the Strategic Direction for the City Centre¹. The vision is for the City Centre lakefront to have a focus on dining, tourism, accommodation, and speciality retail activity². Tourist accommodation is generally a permitted activity in the City Centre 1 and 3 Zone.
46. There is no equivalent Strategic Direction *promoting* tourist accommodation in areas outside the City Centre. The Commercial 4 Zone - City Entranceway Accommodation Zone (COMZ4) and Commercial 5 Zone - City Entranceway Tourism Zone (COMZ4) do recognise the existing concentration of tourist accommodation and attractions along city entranceways and arterial routes including Fenton Street and Lake Road.
47. Objectives are to efficiently service and support the needs of the surrounding community and nationally significant tourism sector³, and

¹ Ibid Issues SDVC-I1 A vibrant, compact city centre

² City Centre Zones Introduction

³ COMZ-01

policies are 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 to the inner city⁴. Tourist accommodation is generally a permitted activity in the COMZ4 Zone and a Discretionary Activity in the COMZ5 Zone⁵.

48. As set out previously, while the COMZ4 Zone provides for tourist accommodation, it also provides for residential uses and makes specific provision for the conversion of tourist accommodation to residential activities as a controlled or restricted discretionary activity. In my assessment, there are no matters of control or discretion that suggest economic effects on the loss of tourist accommodation were intended to be a considered as part of the consent process for these conversions.
49. As further context, the strategy for the central city or CBD (Central Business District) as the focal point of the city is included in the Rotorua Lakes Council Spatial Plan 2018 with the following action:

CONSOLIDATING TOURISM ACCOMMODATION INTO THE CBD

The accommodation along Fenton Street can be transitioned into areas for homes in the longer term, with tourist accommodation moving to the CBD or the surrounding area. This would not only free up land for homes close to transportation and places of work, but would also result in more people moving around the central city, contributing to vibrancy.

50. Fenton Street is also identified as a place where land can be used more efficiently and creating a variety of housing types:

FENTON STREET

Entering Rotorua from the south there are a number of older tourist accommodation properties that could be converted or redeveloped with town houses or terrace style homes. New apartments could also be placed on the edges of the CBD.

51. Plan changes are also envisaged to:

“...encourage the movement of tourism accommodation in Fenton Street into areas for homes (with an expectation that these businesses will transition over time into the central city).”

⁴ COMZ-P4

⁵ Visitor accommodation is a non-complying activity in other commercial zones and a discretionary activity in all residential zones.

52. Proposed Plan Change 9 Housing for Everyone is consistent with the 2018 Spatial Plan direction.

Conditions

53. I note the intention that the planners should caucus to consider an appropriate set of conditions. The following comments are made in recognition of this.

Strategic Conditions

54. Paragraph 13.7 of Ms Blackwell's evidence states:

Strategic Conditions 1 and 2 relate to the strategy behind reducing the total number of CEH motels. In my opinion, these conditions aim to influence government policy decisions, rather than mitigating a specific effect related to one of the application sites and would be better suited as advice notes or left to be discussed between MHUD and the Council through the Taskforce.

55. The condition does seek to influence government policy given the concentration of EH has been shown to have adverse economic and social effects and there is a land use policy gap for the wider management of EH over time.
56. The strategic conditions are not typical but are appropriate in the context of 13 separate but interrelated applications being made by a one applicant at the same time, on behalf of multiple operators.
57. The condition wording is not precise, but I disagree that it is ambiguous. The primary aim of the condition is to frame a strategy for reducing the number of CEH motels based on the managing down cumulative social and economic effects over time. If demand for CEH does reduce over the course of the consent period, the preference is to avoid incremental reductions in occupancy across all CEH contracts and instead retain fewer sites at the approved maximum occupancy.
58. This strategic condition does not require CEH numbers to reduce per se. A possible scenario is that as other uncontracted emergency housing activities operations reduce over time, occupants may transfer to better equipped and supported CEH.

59. At paragraph 3.6 of legal submissions for submitter Noahs Hotel, it is stated that:

...Noahs does not support the inclusion of “limiting the geographic concentration of [contracted emergency housing] sites relative to each other” as a matter to be considered when MHUD makes decisions to reduce the scale of its contracted emergency housing activities. Noahs submits that the matters to be considered should include:

- (a) the adverse effects of any changes to the distribution of contracted emergency housing relative to that approved as a part of these applications; and
- (b) feedback received by MHUD from the local community, including the tourism and accommodation sectors.

60. The proposed strategic conditions recognise proximity to tourist sites as consideration. I agree that feedback received by MHUD from the local community, including the tourism and accommodation sectors, should be included as matters for consideration.

0800 Telephone Number

61. I agree that the 0800 number and complaints process could be part of the Service Provider’s role. However, this should be standardised across all CEH sites and it should be coordinated by one agency. Clarification is needed on how this coordination can occur across the 13 consents if not by MHUD.

Costs

62. Costs should be the responsibility of the consent holder. Any cost attribution is a non-regulatory matter between parties.

Site Specific Conditions

Noise, Glare and Light

63. In my view, it is preferable that the consent conditions are comprehensive and self-contained, providing certainty for the consent holder and interested parties.
64. I agree that condition 28 (internal noise compliance affected by highway traffic) is unnecessary for the reasons set out by Ms Blackwell.

Site Management Plan

65. I generally agree with the recommendations in paragraphs 13.27-13.30 of Ms Blackwell's evidence with respect to standardisation of 'house rules' and improved staffing (in addition to security) in the evening and weekends for onsite management, but also noting that some sites have specific requirements that need to be addressed, notably those adjacent to the Whakarewarewa Village.
66. Legal submissions by submitter Noah's Hotel raise general concerns about the proposed conditions, including that they lack a statement of purposes or objectives and do not set out how the SMP is to be prepared, and reviewed and updated.
67. I generally agree with this critique and will propose amendments to the suggested conditions to address the points raised.

Bonds

68. The bond condition is primarily to ensure that where there is non-compliance in maintaining sites, there is the ability for council to respond quickly to resolve matters. This is particularly important in the Fenton St corridor where maintenance of local amenity is important to tourist activities and residents and there is a greater concentration of CEH. The application of more conventional enforcement proceedings may not have the same benefit of immediacy.

CPTED

69. No specific safety concerns have been raised about any of the site development and layout, and this condition is no longer recommended.

Craig Batchelar

18 October 2022

