

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF seven publicly notified resource consent applications by Te Tūāpapa Kura Kāinga – the Ministry of Housing and Urban Development (**MHUD**) to the Rotorua Lakes Council

LEGAL SUBMISSIONS ON BEHALF OF RESTORE ROTORUA INCORPORATED

DATED 4 NOVEMBER 2024

1. These legal submission are filed in support of Restore Rotorua Incorporated (**Restore Rotorua**) in respect of the above resource consent applications. Restore Rotorua opposes all seven resource consent applications to continue to use motels in Rotorua for Contracted Emergency Housing (**CEH**).¹

Restore Rotorua

2. I begin by setting out the deep sense of disappointment and frustration that the members of Restore Rotorua feel in having to engage in another process for resource consent for contracted emergency housing.
3. Restore Rotorua was heavily engaged in the previous resource consent process and did so due to a deep-seated care for Rotorua and to fulfil its purpose of

¹ Alpin Motel, 16 Sala Street (LU24-010186), Apollo Hotel, 7 Tyron Street (LU24-010187), Ascot on Fenton, 247 Fenton Street and 12 Toko Street (LU24-010188), Geneva Motor Lodge, 299 Fenton Street (LU24-010189), Lake Rotorua Motel, 131 Lake Road (LU24-010190), Pohutu Motor Lodge, 3 Meade Street (LU24-010191) and RotoVegas Motel, 245-251 Fenton Street, 8A, 8B, 10B and 14 – 16 Toko Street (LU24-010192).

ensuring Rotorua is a desirable place to work and live for all residents of Rotorua and the surrounding area.

4. Despite providing a weight of evidence as to the adverse impacts of emergency housing at a personal and community level, the resource consents were granted with a clear direction from the Commissioners that a two-year term was appropriate.
5. The Applicant did not appeal that term. The community of Rotorua resolved to endure the effects of emergency housing in its community for a further two years with the knowledge that there was light at the end of the tunnel and a defined end date in sight.
6. Yet the Applicant has now applied to extend that term for a further year. Restore Rotorua finds itself again having to spend significant time, money and emotional energy to engage in a process which it understood from the Applicant was finished. You will hear from the members of Restore Rotorua as to the huge toll of having to go through another resource consent process and the very valid feeling that the Applicant is not being held accountable for failing to comply with its obligations to exit all motels by December 2024. Restore Rotorua say that the community deserve better and that this situation must end.

Adverse social and amenity effects

7. The evidence for Restore Rotorua is that the CEH motels are continuing to cause significant negative adverse effects on the social well-being and residential amenity for the community of Rotorua. As was acknowledged in the prior consent decision, the community's feelings of anxiety, dread, the material inconvenience and the significant loss of residual amenity are as real today as they were in 2022. Restore Rotorua says that it is wholly unacceptable that these effects be allowed to continue for a further year.

8. The ongoing negative social and amenity effects of the use of motels for emergency housing remain significant. The witnesses for Restore Rotorua describe:
- (a) The ongoing concerns that Glenhome is not the safe, friendly, quiet suburb it used to be.²
 - (b) Changes to residents' way of life, such as the increased feeling of needing to lock doors when at home and driving, installing new security measures, feeling unsafe in their own homes and feeling too unsafe to go for walks around their community.³
 - (c) Regular occurrences of witnessing fighting in public and being subject to verbal abuse and intimidating and threatening behaviour.⁴
 - (d) Continuing vandalism, burglaries, graffiti, property damage, anti-social behaviour and trespassing.⁵
 - (e) Continuing presence of rubbish and dumped shopping trolleys, mattresses and furniture around CEH and Glenholme.⁶
 - (f) Continuing presence of Police (including in responding to incidents) and security measures which does not give a welcoming or safe feel to Rotorua.⁷

² Evidence of Stu Smith, paragraphs 6-7, Evidence of Jenny Peace, paragraphs 5-6.

³ Evidence of Jenny Peace, paragraph 11, Evidence of Stu Smith, paragraph 6. Tony Hadlow, Memorandum of Counsel for Restore Rotorua dated 30 October 2024, page 4. Craig Littlejohn, Memorandum of Counsel for Restore Rotorua dated 30 October 2024, page 4.

⁴ Tony Hadlow, Memorandum of Counsel for Restore Rotorua dated 30 October 2024, page 4. Craig Littlejohn, Memorandum of Counsel for Restore Rotorua dated 30 October 2024, page 4.

⁵ Evidence of Jenny Peace, paragraphs 11, 13-18, Evidence of Trevor Newbrook, paragraphs 43-49, Evidence of Stu Smith at paragraph 5.

⁶ Evidence of Stu Smith, paragraphs 3(c)-(d), Evidence of Jenny Peace paragraphs 5-6. Tony Hadlow, Memorandum of Counsel for Restore Rotorua dated 30 October 2024, page 4.

⁷ Evidence of Trevor Newbrook, paragraph 44, Evidence of Paul Romanes, paragraphs 17 and 46.

9. These ongoing negative effects have also come at a huge personal cost to many residents as described by the witnesses for Restore Rotorua:
- (a) The burglary and arson of Trevor Newbrook's home in which they lost most of their personal belongings with huge sentimental value.⁸
 - (b) Carlyne Hall's decision to move from their home of over 20 years in Glenholme due to the ongoing anti-social behaviour experienced from residents of CEH and her fears for the safety and well-being of her special needs son.⁹
 - (c) Trevor Newbrook's daughters' decision to move from Rotorua to Nelson and Lake Tarawera to escape the issues from emergency housing.¹⁰
 - (d) The cancellation of Carlyne Hall's house sale due to the proximity of the property to CEH, which was recorded on the LIM report.¹¹
 - (e) Paul Romanes' decision to move his office from Fenton Street and sell his house on Marguerita Street to relocate to Lynmore due to continual anti-social behaviour such as domestic violence, fights, yelling, theft and unruly behaviour.¹²
 - (f) Rosanne Park's decision to move away from CEH due to regular abuse and feeling that she could not safely walk around her neighbourhood.¹³

⁸ Evidence of Trevor Newbrook, paragraph 2.

⁹ Evidence of Carlyne Hall, paragraph 15.

¹⁰ Evidence of Trevor Newbrook, paragraphs 40-42.

¹¹ Evidence of Carlyne Hall, paragraph 16.

¹² Evidence of Paul Romanes, paragraphs 8 and 17.

¹³ Rosanne Park, Memorandum of Counsel for Restore Rotorua dated 30 October 2024, page 4.

10. This is not merely a case of NIMBYism. These are valid concerns under the RMA. Social impacts are a relevant effect under s 104 RMA and social well-being is recognised in the purpose of the RMA.
11. The maintenance and enhancement of amenity values¹⁴ and the maintenance and enhancement of the quality of the environment¹⁵ are recognised under s 7 of the RMA as matters to which a decision maker shall have particular regard when achieving the purpose of the RMA.
12. The Court has held that the assessment of amenity values requires the following approach:¹⁶
 - (a) Identify the values of people and communities;
 - (b) Determine whether the amenity values are reasonably held. Experts are expected to objectively test the basis of the values that are derived from the environment. This is necessary because the residents' views on their existing amenity is subjective and influenced by personal feelings or opinions, including the strength of their attachment to this place;
 - (c) Assess whether the proposal gives rise to adverse effect on the relevant attribute or characteristic;
 - (d) Ascertain whether the District Plan identifies any valued attributes or characteristics for the relevant zone, landscape or more broadly the receiving environment.

¹⁴ Section 7(c) RMA.

¹⁵ Section 7(f) RMA.

¹⁶ *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 165.

- (e) If it does, then to consider whether, those valued attributes or characteristics are maintained and second, whether there are any consequential effects on the existing amenity values; and
 - (f) Finally, to assess those effects in light of the outcomes for the relevant resources and values under the District Plans.
13. My submission is that the evidence of Restore Rotorua demonstrates that their key amenity values centre on safety, peacefulness and ability to enjoy their home and go about their lives in a manner that any reasonable person would. There can be no question that these values are not reasonably held.
14. These values are squarely reflected in the District Plan which provides:
- (a) Key Issue 1 – Activities in Residential Zone - A high level of amenity is anticipated in residential areas where an environment is provided that is primarily residential in character, peaceful and safe.
 - (b) Key Issue 3 – The establishment of new activities within incompatible zones or in close proximity to existing activities that have a different level of amenity can create adverse reverse sensitive effects. This has the ability to reduce the efficient operation of the existing activities or undermine the intended amenity of the zone.
 - (c) Development contributes to attractive and safe streets and open spaces;¹⁷
 - (d) Development provides healthy, safe and quality living environments that contribute to the well-being of residents; and¹⁸

¹⁷ Objective RESZ-03 (Residential 1) and Objective RESZ-10 (Residential 2), Policy RESZ-P3 (Residential Zone 1).

¹⁸ Objective RESZ-04 (Residential 1), Objective RES-11 (Residential Zone 2).

- (e) Non-residential activities in residential zones that are domestic in scale and character and do not have an adverse impact on the amenity values and character of the residential zones, or the vitality and viability of the City Centre or Commercial zones.¹⁹
15. I note that the definition of Development in the District Plan is the “change involving new buildings, alteration of buildings, or a new or altered use of land or buildings.” I submit that the use of motels for emergency housing fits within the definition of Development as a new use of a building and that these provisions are relevant. This appears to have been overlooked in the s 42A Report.
16. My submission is that the residents of Glenhome are the experts in their own amenity and social well-being. This is their way of life, their home and their community. They are the ones best placed to speak to the negative impacts of CEH as they are suffering the impacts of these applications on a daily basis, such as not feeling safe in their neighbourhood, increasing the security measures in their house, witnessing violence, inappropriate language and behaviour, and higher presence of litter and graffiti. Their evidence is that the negative social and amenity effects are significant and wholly unacceptable.²⁰
17. Further, I submit that the past two years provides more than ample real-world evidence of the negative effects of emergency housing. The Council and Applicant both do not appear to dispute that these effects are occurring, albeit at a different scale.²¹

¹⁹ Objective RESZ-08 (Residential Zone 1).

²⁰ For the avoidance of doubt, Restore Rotorua’s position is that the receiving environment against which these applications must be assessed on a real world approach includes the effects arising from all emergency housing motels in Rotorua, as determined by the Commissioner in his decision of 15 December 2022:

“We agree that the existing environment for all practical purposes in this instance includes all EH [emergency housing] effects and that, absent any compelling evidence, any conjecture as to what effects pertain to the differentiation between EH-SNG [Emergency Housing Special Needs Grant policy] and CEH [contracted emergency housing] would be both specious and unsafe.”

²¹ Refer S42A Overview Report, paragraph 257 “...Other than the effects of off-site antisocial behaviour which could potentially be significant.” Refer Evidence of Rebecca Foy, paragraphs 72-74. Refer Evidence of Joanne Healy, paragraph 9.2.

18. Turning to the evidence for the Council and the Applicant, with respect to those experts, Restore Rotorua says this does not accurately capture the impact being caused by CEH.
19. Ms Hampson says that the anti-social behaviour effects would be minor at the community level and temporary.²² My submission is that such a statement disregards the real-world experiences of the community. Further, calling these effects temporary is false. Temporary would imply that these effects would only happen for a short time within the consent duration or that they are of less magnitude. That is not correct. Should the consents be granted, these effects will continue to be experienced over the duration of the consents and should be considered in that context.
20. Ms Foy's evidence for the Council paints a more accurate picture, being that the negative impacts of CEH are still live within the community²³ and for some, have been significant.²⁴ Ms Foy also confirms that the conditions are not capable of avoiding off-site anti-social behaviour.²⁵
21. This is also supported by Ms Healy who concludes that proximity to the CEH motels increases the potential severity and likelihood of negative social impacts for local community members and in particular neighbours.²⁶
22. Ms Hampson provides that the economic effects of the motels are considered temporary and that no adverse property values are expected to last longer than the timeframe that the CEH motels are operating.²⁷ Ms Hampson also says that a rational house buyer would be expected to assess the situation at the time given the data on EH locations published online. With respect, this fails to recognise the direct and immediate impact felt by residents attempting to sell their properties as evidenced by Ms Hall's evidence about her cancelled

²² Evidence of Natalie Hampson, paragraph 90(d).

²³ Evidence of Rebecca Foy, paragraphs 72-73, 140.

²⁴ Evidence of Rebecca Foy, paragraph 141.

²⁵ Evidence of Rebecca Foy, paragraph 141.

²⁶ Evidence of Joanna Healy, paragraph 9.2.

²⁷ Evidence of Natalie Hampson, paragraph 42.

house sale due to CEH being recorded on her LIM. It is little comfort in this economic climate that a person may need to wait 12 months to sell their house and shake the stigma of being located near CEH.

23. I submit that the Commissioner should take a pragmatic approach and rely on the voice of the community. Their overwhelming voice is that there is continuing distress, fear and degradation of their amenity and way of life.
24. My submission is that the evidence of Restore Rotorua should be preferred and can be relied upon to find that the social and amenity effects from CEH are wholly unacceptable.

Toll on residents from resource consent process

25. The evidence from Restore Rotorua is that this process has taken a significant emotional toll on many members of the community who are now unwilling or unmotivated to engage in the resource consent process.
26. I submit that the fewer number of submissions to the previous applications should not be taken as any form of tacit acceptance of these applications by the community. Rather it is a symptom of the community feeling unheard and unvalued. The evidence from Restore Rotorua is that they have continued to feel unheard and unvalued during the Community Liaison Group meetings.²⁸
27. Ms Foy acknowledges that the survey response rates to her evidence on the Social Impact Assessment was low which makes it difficult to understand the wide range of responses to CEH.²⁹ In my submission this correlates with the evidence of Restore Rotorua that the community is feeling defeated and battle-weary from this process.

²⁸ Evidence of Paul Romanes, paragraph 13, Evidence of Jenny Peace, paragraph 20.

²⁹ Evidence of Rebecca Foy, paragraph 47.

28. The Environment Court recently held that the demands of participating in a consent process is a relevant effect:

In this case, however, it is a significant effect in the context of the relationship of tangata whenua with Te Awanui and the apparent continuing disregard for that relationship. The evidence of tangata whenua witnesses is that their views have been largely ignored in the history of Port development and associated consent processes which have enabled that development. For this reason, the demands which the process puts on tangata whenua is an effect that is relevant to our assessment of cumulative effects.³⁰

29. I submit that the stress and demands on the residents in this case of having to describe in detail numerous difficult personal events and incidents, speak to significant challenges for their family and way of life, provide details of their personal lives – in a public forum – and continue to put their time, money and resources into a second application process which they understood was complete, has been significant.
30. This is compounded by the Applicant effectively future-proofing its ability to prolong the use of CEH by reapplying for consent under s 124 RMA. Even if these applications are declined, the Applicant can appeal and continue to operate under the protection of s 124 until the appeal is resolved.
31. The s 124 RMA protection has also meant Council has chosen not to take compliance action against the Applicant, meaning there is a keen sense that the Applicant is not being held accountable for its failure to comply with its obligation to exit all motels by December 2024.³¹
32. In that context, it is easy to see the degree of mistrust felt by the community and understand their feelings about the futility of again participating in this process. My submission is that this is a very real effect that should be taken into account.

³⁰ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 270 at [336].

³¹ Section 42A Overview Report dated 8 October 2024, paragraph 35.

Consents are ineffective to manage effects

33. In Ms Lorelle Barry's evidence³² she concludes that there has been a high degree of compliance with all existing resource consents. With respect, Restore Rotorua disagrees.
34. The real issue here is that there has been a fundamental non-compliance with the key obligation of the consent – the requirement to exit all motels by 15 December 2024. Restore Rotorua says that this demonstrates that these resource consents are ineffective to manage the effects of CEH.
35. The Applicant should not receive any credit for reducing the number of motels since 2022 and only reapplying for seven motels, as seems to be the tenor of the applications.
36. The Applicant has chosen not to comply with the resource consent. It is not facing any compliance action from Council due to s 124 RMA. Now the community is being asked to suffer the on-going effects of this non-compliance for another year.
37. In light of this, Restore Rotorua also remains concerned that there is no clear commitment from the Applicant that it will not apply for a further resource consent application.
38. There is also no clear evidence that the motels will no longer be needed by December 2025:
- (a) Ms Hampson speaks about the new supply of social housing in Rotorua and considers that the housing supply response by providers has been effective to significantly reducing the number of households in emergency housing. However no detail is given as to the exact number

³² Evidence of Lorelle Barry, paragraph 32.

of houses expected to come available by December 2025 and whether this supply will be sufficient to meet the demand.

- (b) Ms Hampson acknowledges that the socio-economic drivers such as cost of living and inflation that were applicable in 2022 remain today. However no evidence has been given as to how those drivers are will be overcome to reduce the demand for emergency housing in the next 12 months.
- (c) Mr Equab also refers obliquely to an expected increase in supply of social housing, but no firm data is given that sufficient housing will be available by the end of 2025.³³

- 39. This questions whether (if the consent is granted) the Applicant can exit all motels by December 2025 or whether the community will be faced with a third resource consent application in one years' time.
- 40. My submission is that the past two years, and the renewal applications themselves, demonstrates that these resource consents are simply not an appropriate tool to manage the ongoing adverse effects of CEH.

Lack of alternative assessment

- 41. Restore Rotorua says that based on its lay evidence, clause 6(1)(a) of the Fourth Schedule of the RMA is clearly engaged where an Assessment of Environmental Effects 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 locations or methods for undertaking the activity.

³³ For example, refer evidence of Mr Shamubeel Equab, paragraph 11.4.

42. The Applicant has not provided any sufficient form of alternatives assessment for using the motels as CEH. Mr Eaquib has given some cursory comment on what would happen if the consents were declined, but this lacks any real detail to constitute an alternatives assessment.
43. There has been no detail provided whether the increased supply of social housing available in Rotorua is being used to full extent and, if not, why. There is also no detail about alternative housing options. In my submission, the onus is on the Applicant to put this information before the Commissioner and it has failed to do so.
44. As set out above, my submission is that the evidence for Restore Rotorua is grounds alone to decline the applications. However, should the Commissioner disagree with the level of effects, I submit that the absence of a robust consideration of alternatives invokes s 104(6) RMA and provides grounds for the Commissioner to decline the applications on the grounds of insufficient information.

Section 104D

45. Given the Applicant's failure to properly take into account the social impact and amenity effects, my submission is that the Applicant's s 104D RMA assessment is flawed.
46. Section 104D RMA provides that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either:
 - (a) the adverse effects of the activity on the environment will be minor;
and
 - (b) the applications are for an activity that will not be contrary to the objectives and policies of a district plan.

47. The s42A Report concludes that the effects of CEH activities on the environment will be no more than minor if the recommended conditions are imposed and complied with, other than the effects of the off-site anti-social behaviour which could potentially be significant.³⁴ The s42A Report also concludes that the effects test of s 104D is only “potentially” met.³⁵
48. As I set out above, I submit that the effects of the applications are significant and unacceptable and the past two years have proven that the adverse effects cannot be avoided, remedied or mitigated by the conditions. The Applicant’s lack of ability to comply with those conditions further supports that. This means the applications cannot pass the first limb of the gateway test.
49. I also question whether the applications can meet the second limb of the gateway test as the applications appear to be in conflict with the provisions of the District Plan which seek to maintain residential amenity. I submit this has not been given appropriate assessment by the Applicant or Council.

Part 2 matters

50. Turning to Part 2, the applications are fundamentally contrary to sections 7(c) and (f) of the RMA. The evidence for Restore Rotorua speaks to the on-going severe negative impacts on their way of life and ability to live safely in their community.
51. It has caused residents to leave Rotorua, fear for their safety in their own homes, become victims of burglary and arson and be subject to inappropriate behaviour through their daily lives. The overwhelming evidence is the amenity and quality of the environment is being degraded – which falls far short of the direction in sections 7(c) and (f) RMA have particular regard to the maintenance and enhancement of these values.

³⁴ Section 42A Overview Report dated 8 October 2024, paragraph 259.

³⁵ Section 42A Overview Report dated 8 October 2024, paragraph 257.

52. Turning to s 5 RMA, I submit for the reasons already discussed that the applications do not meet the purpose of the RMA as they fail to provide for the social wellbeing of the community and for their health and safety. Further, the lack of compliance with the consents at a fundamental level to date, demonstrates that the adverse effects of this activity cannot be avoided, remedied or mitigated.
53. Simply put, this is not an activity that can be appropriately managed within the legal parameters of a resource consent or the RMA.
54. I submit that overall the applications are inconsistent with the purpose of the RMA and should not be granted.

Conclusion

55. Restore Rotorua feels strongly that the past two years have demonstrated that the effects of CEH remain unacceptable and cannot be managed. The onus is on the Applicant to find another option.
56. Restore Rotorua accepts that there are many people that need to be housed. In 2022 the residents had to endure the effects of CEH for a further two years, at great detriment to their communities and way of life and, for some, at huge personal cost.
57. What it now cannot accept is that being left to suffer the consequences of the Applicant's failure to meet its resource consent obligations and for this untenable situation to be prolonged for another year. The community of Rotorua deserve better.
58. I respectfully submit on behalf of Restore Rotorua that the resource consents be declined.

Evidence for Restore Rotorua

59. Restore Rotorua has filed evidence in support of its case from lay witnesses:

- (a) Jennifer Peace;
- (b) Carlyne Hall;
- (c) Paul Romanes; and
- (d) Trevor Newbrook.

60. Restore Rotorua has also provided evidence from Stu Smith and tabled comments from members of the public who wish to support Restore Rotorua but do not wish to speak at the hearing. I ask that the you give consideration to their statements.

DATED this 4TH day of November 2024



Bridget Bailey
Counsel for Restore Rotorua Incorporated