

**Before Independent Hearings Commissioners
Rotorua Lakes Council**

**In the matter of 7 applications for resource consent for
contracted emergency housing by Te Tūāpapa
Kura Kāinga Ministry of Housing and Urban
Development**

**Reply submissions by Te Tūāpapa Kura
Kāinga Ministry of Housing and Urban
Development**

29 November 2024



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Reply submissions by Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development

1 Summary of HUD's position

- 1.1 At the conclusion of the hearing the Council recommended that all applications for resource consent to operate CEH for 12 months be granted on conditions, with the exception of the Apollo Hotel.
- 1.2 Having listened to the evidence of submitters, HUD considers that all seven applications should be granted on the conditions outlined in these submissions and in the reply evidence of Will Barris and Angela Jones. However, it accepts that it would be appropriate to grant the consent in relation to the Apollo Hotel for a more limited term, until 31 March 2025. This provides the community certainty as to the date on which the operation at that hotel will be completed, while providing HUD the flexibility necessary to ensure that CEH across the other motels is appropriately managed down.
- 1.3 These submissions cover:
 - (a) The “legal baseline” (as it was put by the Commissioner) or framework for determining a resource consent application for a replacement activity;
 - (b) Some key points about the evidence that emerged during the hearing;
 - (c) HUD's position on several of the conditions recommended by the Council on 20 November 2024.

2 Legal baseline for replacement consents

- 2.1 Section 127 of the RMA provides for the variation of a consent or any conditions except a condition relating to the duration of a consent. The reasoning behind this is that, at least for land use consents, the default duration is unlimited and, in cases where a limited duration is appropriate, only the effects assessed as occurring before the expiry have been considered acceptable.

- 2.2 In such situations, a new consent is required.
- 2.3 I have been unable to find many cases dealing with a situation similar to the present where a party has a limited duration land use consent and seeks new consents to effectively extend the duration. Similarly, the commentary to s 124 does not suggest that its application has led to many disputes about the approach to new consents in these circumstances. While I have been able to find cases relating to wastewater discharges,¹ there is no indication that the Court undertakes a different assessment to any case for a new consent. It is a future-focused assessment of the expected effects of the activity on the environment in the context of the relevant planning framework.²
- 2.4 Applying first principles, that is the approach I consider it is appropriate to take here. Determining these applications is not an exercise of reviewing the decision to grant the previous 13 applications or the implementation of those consents. It requires assessment of the environment at the present time, and the expected future effects of the proposed activity. This requires assessment of the evidence about the acute housing shortage in Rotorua, the anticipated pipeline of housing, and the comparative effects of housing demand being managed through CEH as opposed to a counterfactual in which, if consents are declined, there is no co-ordinated attempt to manage that demand.
- 2.5 Restore Rotorua's position is that the previous decision was for two years, and that this should influence the approach taken to these applications. That approach is not consistent with first principles. Decision-makers are only empowered under ss 104-104D to consider and determine the applications in front of them. A decision made in a particular environment in 2022 cannot control the evaluation of evidence supporting a subsequent set of applications in a different environment two years later.
- 2.6 However, what has occurred over the past two years is relevant as background factual evidence that may inform the assessment of the other evidence. For example, despite the assertions of some submitters, there was a definite sense in the evidence that, while anti-social incidents

¹ *Tararua District Council v Manawatu-Wanganui Regional Council* [2022] NZEnvC 160.

² *Tararua District Council v Manawatu-Wanganui Regional Council* [2022] NZEnvC 160 at [22]-[24].

continue to occur from time to time, there has been a reduction in frequency. Putting to one side the obvious evidential difficulties in linking such incidents to those in CEH, that is consistent with HUD's evidence about incidents in Mr Barris's reply evidence and demonstrates the effectiveness of the CEH model as opposed to the counterfactual. Another example is that when considering what confidence can be placed in HUD's ability to manage CEH down by December 2025, its successful reduction from 13 motels to 7, which has occurred alongside the independent reduction in EHG motels, is highly relevant evidence. When coupled with evidence about the pipeline of social housing, the uncertainty assessed in the evidence in the earlier decision is no longer evident.

3 Response to evidence from the hearing

- 3.1 HUD considers that the evidence demonstrates that CEH is a good process to manage a difficult and complex issue. However, it acknowledges that many in the community do not support its continued use in Rotorua. Accordingly, while HUD considers it necessary to continue operating CEH in the seven motels until December 2025 (other than the Apollo Hotel to 31 March 2025), its intention is to cease using the CEH model at that date.
- 3.2 In that respect, there was a distinct internal contradiction in the position of Restore Rotorua and other submitters in opposition. They expressed concern about the effects of homelessness and emergency housing on Rotorua's reputation, and their primary position was that these applications should be declined. That necessarily involves acceptance that a substantial number of whānau should be evicted and left to find what housing they can through EHG's or otherwise. However, their secondary position was that, if the consents are to be granted, a more rigid, defined delivery plan (not a mere exit strategy) is needed. But if they consider that any whānau left in CEH at the expiry of consents should be evicted, such a plan has no value. At the end of the day, in HUD's view, the best way to avoid more homelessness and increased anti-social behaviour, with its resultant effect on Rotorua's reputation, is to allow an orderly exit from the CEH model by whānau in need over the next year.

- 3.3 Mr Barris's reply evidence details the levels of incidents at CEH motels. This confirms the evidence from service providers that a large portion of incidents are a result of a small number of whānau and there are a broad range of different incident types.
- 3.4 In my submission this evidence suggests that the overall recorded level of incidents is not a reliable indicator of a motel's onsite management performance. Incident recording is primarily used by the service providers for onsite management purposes and to inform and update their Site Management Plans as required.

4 Conditions

- 4.1 The conditions circulated by the Council on 20 November 2024 are based largely on the position reached in caucusing between the respective planners for the Council and HUD, together with representatives of Restore Rotorua.
- 4.2 HUD is largely content with the conditions recommended by the Council on 20 November, except as explained in the reply evidence of Ms Jones and further below.

Exit dates

- 4.3 As the witnesses discussed, it is very difficult with the various factors to consider and events to play out for HUD to be able to provide hard exit dates, or even an order of motels for exit. HUD can certainly advise that the three motels most proximate to Whakarewarewa (Apollo, Pohutu and Alpin) are to be the first three exited, but beyond that the order and dates become more difficult to predict.
- 4.4 Angela Jones has explained the issue well in her reply evidence at [3.2]. HUD is able to commit to an exit date for the Apollo of 31 March 2025, but only on the assumption that the other six applications are granted through to December 2025. That is because HUD remains dependent on the supply of social and community housing outlined in the evidence of Will Barris. It would be counterproductive entirely to set arbitrary quarterly exit dates, as the Council seems to be proposing, with the consequence that settled whānau, preparing for forthcoming moves into new housing, are transferred to a different CEH motel, potentially causing unnecessary

stress and upheaval, and risking the progress they have made working with the service provider with whom they have built a relationship.

- 4.5 Another matter to consider is the outcome if such a condition is, for whatever reason, unable in the circumstances to be complied with. HUD stated at the hearing that it would be focusing on the Apollo, Alpin and Pohutu as the first three motels to exit. It is certainly possible that, depending on supply of housing, it will exit the Alpin and Pohutu by 30 June 2025. But if, because of a short construction delay or other issue outside of HUD's control, some whānau remain in one of those motels into July, HUD will have breached a condition of the consent. This is a substantial downside to requiring hard exit dates within conditions.

Accepting residents at Apollo, Alpin and Pohutu

- 4.6 Ms Jones has made an important point about the conditions prohibiting the accepting of new whānau into the Apollo, Alpin and Pohutu motels. In addition to the ambiguities in the phrasing of this condition, it departs of the principle of leaving management of motel allocation across the CEH motels to HUD and Te Pokapū.

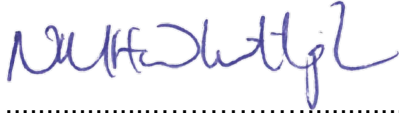
0800 number and CLG

- 4.7 For the reasons expressed in the reply evidence of Ms Jones at [3.5]-[3.6], HUD considers that conditions about maintenance of an 0800 number and relating to the CLG requesting and receiving reports and presentations from agencies should be deleted.
- 4.8 The 0800 number has proved to be barely used. When used, it has only been to request access to, or information about, emergency housing. It is unnecessary.
- 4.9 The condition relating to the CLG requesting and receiving reports amounts to an overreach because it purports to impose on "agencies" (unspecified) an obligation to provide "reports and presentations" (again, unspecified).
- 4.10 If it is limited to requesting reports from agencies that would bring the condition back within the bounds of lawfulness but such a condition hardly needs to be expressly stated. It should just be deleted.

5 Conclusion

5.1 HUD respectfully submits that it is appropriate to grant the seven consents sought on the conditions attached to Ms Jones' reply evidence.

Date: 29 November 2024



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Nick Whittington