Before The Hearing Panel

In Rotorua

Under	the Resource Management Act 1991 (the Act)
In the matter of	of Plan Change 10, being a proposed plan change to the Operative Rotorua District Plan

Statement of evidence of Darren Paul Clark for McKenzie & Co Consultants Limited (Planning)

Dated 28 September 2026

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1 Introduction

1.1 My full name is Darren Paul Clark.

1.2 I hold the position of Planner at McKenzie & Co Consultants Limited (MCCL). I have been in this position since January 2023. I have been practicing as a planner in Rotorua for the last 5 years.

1.3 I hold a Bachelor of Planning (Hons) from the University of Auckland. I am currently an Intermediate Member of the NZ Planning Institute.

1.4 I have worked in resource management and planning roles in New Zealand for over 15 years. These roles have primarily been in local government, including 4 years with Auckland Council and former Manukau City Council in a compliance and monitoring role, 8 years with Taupō District Council as a Consents Planner and Intermediate Consents Planner, and one and a half years with Rotorua Lakes Council as a Senior Consents Planner. As a council officer, I presented evidence at two previous limited notified consent hearings, one publicly notified consent hearing and expert conferencing for the appeal to the Environment Court. As a consultant planner, I have prepared and presented evidence at a plan change hearing and a closed consent hearing.

1.5 My relevant experience includes the preparation and processing of land use and subdivision consent applications, with a particular focus on subdivisions. I previously worked in a specialist subdivision team in Auckland Council that provided technical input to consenting planners as well as overseeing section 223/224(c) approval and compliance processes for large multi-lot residential and industrial subdivisions through to rural subdivisions. My more recent work as a planner at MCCL has involved a particular focus on rural subdivisions.

1.6 I have been engaged by MCCL to provide resource management and planning evidence before the Hearing Panel (**Panel**), convened to hearing Plan Change 10 (PC10) to the Operative Rotorua District Plan (**the Plan**). This is with respect to providing comment on the proposed changes as notified, from my experience as a local planning practitioner and regular user of the Plan.

1.7 In preparing this evidence I have reviewed the following:

a) PC10 as notified
b) PC10 s32 Report
b) PC10 s42A Report
c) Submissions
d) Statement of Evidence of Lorelle Jane Barry on behalf of Rotorua Lakes Council

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2 Code of conduct

2.1 While this is not a hearing before the Environment Court, I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court of New Zealand Practice Note 2023 and that I have complied with it when preparing my evidence. Other than when I state I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

3 Scope of evidence

3.1 The purpose of my evidence is to provide planning opinion on the proposed changes by PC10 with respect to the treatment of boundary adjustment subdivisions.

4 Summary

4.1 The purpose of PC10 is to improve the clarity, consistency, and usability of the Operative Rotorua District Plan (the Plan).

4.2 For the activity of a 'boundary adjustment', PC10 seeks to achieve this by adding a definition and amending performance standard SUB-S11.

4.3 The proposed changes as notified, seek to cover two primary matters related to plan implementation for boundary adjustments. These are:

(a) The inclusion of a definition for boundary adjustment (noting there is not one currently) and technical amendments to SUB-S11 to update outdated title terms to 'record of title'. This is to ensure the Plan provisions for boundary adjustments are clear, consistent and avoid any ambiguity in determining what is constituted as a boundary adjustment.

(b) The insertion of new wording into SUB-S11(1) to now require the application of other performance standards of the Plan to a boundary adjustment that fails performance standard SUB-S11(1)(d). This is to address implementation concerns raised by Council consenting staff that the current framework is not clear, that there is an "important assessment framework"[1] they are unable to consider under the current wording of SUB-S11(1). The inability in being able to apply that framework means that "Council's discretion is unnecessarily constrained, reducing its ability to assess the full range of subdivision outcomes and effects associated with the proposal"[2].

[1] Paragraph 8 - Statement of Evidence of Lorelle Jane Barry on behalf of RLC
[2] Paragraph 16 - Statement of Evidence of Lorelle Jane Barry on behalf of RLC

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4.4 With respect to item (a) above, I agree with the intent of this definition update. The definition and its application to the boundary adjustment rules of the Plan should assist with providing improved clarity to users of the Plan. However, in my opinion, Council could go, and should go, further in refining the relationship of the new definition to SUB-S11. In particular, by using the new definition to cover all defining parameters of what constitutes a boundary adjustment and to strip back the SUB-S11 wording to the performance elements that then apply to boundary adjustments. To not do this, in my view, undermines the very intent of introducing such a definition. I provide reasons for this in Section 5 of my evidence.

4.5 With respect to item (b), in my opinion, the proposed change to performance standard SUB-S11 as notified, is distinct from the more technical updates sought by Council. The change ultimately seeks to revise a performance standard to seek the opposite outcome of what it currently requires. In my opinion, the change is not necessary as:

a) It seeks to interfere with an already coherent set of provisions that the Plan specifically provides for the treatment of boundary adjustment subdivisions

b) Is founded on a basis that is not clear. There is confusion between the desire of Council to have the necessary scope to consider the full range of effects of the proposal and its non-compliance, versus the desire of Council to be able to assess and apply other performance standards to the proposal.

c) Will result in a revised set of provisions that are not clear and create more uncertainty for plan users.

I provide supporting reasons for this in Section 6 of my evidence.

5 Boundary adjustment definition

5.1 I agree with the intent of this definition update. The definition and its application to the boundary adjustment rules of the Plan and performance standard SUB-S11 should assist with providing improved clarity to users of the Plan. However, in my opinion, further refinement of SUB-S11 by way of technical amendments to achieve consistent use of terms and removal of duplicate wording, would assist with providing greater clarity to plan users and benefit the consistent implementation of the Plan.

5.2 In following Council's approach as notified, in my opinion, it introduces more duplication and inconsistency in wording than current. This is because the proposed definition sets the defining parameters of what a boundary adjustment is – yet there remains overlapping defining parameters that also apply under SUB-S11. This superfluous wording creates awkward plan reading as both SUB-S11 and the definition are then required to be read and interpreted together to define what constitutes a boundary adjustment under the Plan.

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5.3 For example, the definition as notified refers to "…alters the existing boundaries between adjoining allotments, without altering the number of allotments." Meanwhile, SUB-S11(1)(a) as notified refers to "no additional lots or lease areas for which a record of title can be issued shall be created".

5.4 The above technical parameters are inherent components to a boundary adjustment, and in my view, they should be consolidated into a single new definition. This would then allow SUB-S11 to retain the performance requirements that apply to a boundary adjustment, leaving the definition requirements to the definition. In other words, let the definition do its job and let performance standards do their job.

5.5 Otherwise, I think the intended benefits from the added definition (for the reasons as set out in Section 42A Report) are somewhat diminished when it still must be read together with the very provisions it was intended to replace. This limits the effectiveness and efficiency in creating a definition.

5.6 To address this, the MCCL submission put forward suggested amendments to the boundary adjustment definition as notified, namely for the words "allotment" to be replaced with "site" and for technical updates to SUB-S11 to streamline this performance standard to the definition. The reasons for this were considered in detail in the MCCL submission.

5.7 The proposed wording in the MCCL submission, in my opinion, provides an example of a more streamlined approach to plan writing to achieve the same intended purpose and treatment of boundary adjustments as notified. This evidence has not sought to provide a full s32 evaluation of that option in the MCCL submission, as for all intents and purposes, it seeks the same outcome to plan implementation as the notified option. However, I am of the view that the wording in the MCCL submission may be a more effective and efficient option available to Council. It deserves further consideration accordingly.

5.8 In conclusion, I believe that greater consideration should be given to a more streamlined boundary adjustment definition, with associated technical updates to SUB-S11 to ensure more consistent use of terms and removal of duplicate wording. This would assist with providing greater clarity to plan users and benefit the consistent implementation of the Plan for boundary adjustment subdivision applications.

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6 Proposed changes to performance standard SUB-S11

6.1 The Plan's subdivision provisions recognise and provide for the activity of a boundary adjustment through a specific rule and performance standard framework. This framework is outlined in Council's s32, s42A report and in Ms Barry's evidence and I do not intend to repeat that here.

6.2 It is evident to me that the Plan's framework for a boundary adjustment is distinct from the Plan's other subdivision rules and performance standards that apply to other types of subdivisions. This is seen through the application of different activity statuses and different performance standards to a boundary adjustment subdivision.

6.3 For a boundary adjustment in the rural zones, Rule SUB-R26 applies a more limited set of performance standards, including SUB-S11(1), which reads:

> "The subdivision standards for the zone shall not apply to subdivision undertaken for the adjustment of boundaries between adding lots.…"

6.4 Council's s42A report and Ms Barry's evidence appear to be focused on this wording of SUB-S11 with respect to its limitations on scope of applicable performance standards. I highlight that, importantly, these limitations are also consistent with and seen in the wording of the governing rule itself – Rule SUB-R26.

6.5 Rule SUB-R26(1) applies three performance standards (SUB-S8, SUB-S9 and SUB-S11) to a boundary adjustment. This is unlike the Plan's other subdivisions rules, such as SUB-R25 and SUB-R29 that apply to general rural or lifestyle lot subdivisions. Those rules apply performance standards SUB-S6, SUB-S8, SUB-S9, SUB-S10, SUB-S14, and also "f. Relevant performance standards for the zone and other relevant provisions of the District Plan…" .

6.6 I therefore read both SUB-R26 and SUB-S11 as providing a rule and performance standard framework, that is abundantly clear in applying a more limited set of performance standards to a boundary adjustment subdivision. I note that this framework applies to both a boundary adjustment that meets all standards (controlled activity), and to one that does not meet all standards (discretionary activity).

6.7 For context, it is common knowledge, in the field of subdivision work, that boundary adjustments are distinct from subdivisions that create further lots to be held in additional titles that release land for further development. This distinction is noted in the first two paragraphs of the Introduction section in the Subdivision chapter of the Plan, as below:

> "Subdivision is a legal process that can create new land parcels, or alter existing boundaries. It is often the first step in the development process and can determine the long term pattern of future land use, therefore careful management is required to make sure long-lasting impacts are positive.

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> The subdivision of land releases further potential for development in accordance with the plan for each lot created. The effects of the potential development may have significant environmental effects.
>
> As well as creating new land parcels, the process is also used to adjust boundaries, to create unit titles and to create or extinguish easements such as rights of way, for example."

6.8 I therefore read the Plan as a whole, to recognise the difference in the two forms of subdivision, and being an activity-based plan, it applies a specific rule and performance standard framework for each, accordingly. The more limited performance requirements for a boundary adjustment are reflective of the nature and severity of such subdivisions, noting they are between existing titles and do not create further titles for further development.

6.9 In my opinion, these limitations are not on scope of effects that can be considered, they are limitations on scope of applicable performance standards. Rule SUB-R26(2) anticipates boundary adjustments that fail the listed standards and applies a discretionary activity status accordingly (to allow all actual and potential effects to be considered).

6.10 Where I become confused, is with Council's suggestion that the Plan "…lacks clear direction as to whether a lifestyle lot created through a discretionary activity boundary adjustment needs to be assessed against the 'lifestyle lot' allocation standards (SUB-S6 (4-9))."[3] This suggested issue, appears to be the key driving factor behind the purpose of the proposed PC10 amendments to the boundary adjustment provisions – which seek "clarification in the performance standards relating to the applicable assessment criteria for a Discretionary rural boundary adjustment that results in the creation of a lifestyle lot(s)."[4]

6.11 In my opinion, I read quite the opposite. The Plan provides very clear direction that a lifestyle lot created through a discretionary activity boundary adjustment is not to be assessed against the lifestyle lot allocation standards in SUB-S6. As I outlined above, the Plan, through Rule SUB-R26 and SUB-S11, explicitly limits the application of other performance standards (including those in SUB-S6) to a boundary adjustment. The Plan could not be more clear in its treatment of this activity.

6.12 The evidence of Ms Barry suggests that she also reads the Plan as being clear in this respect. She notes in paragraph 8 of her evidence:

> "The current wording of SUB-S11 gives rise to an implementation issue. By stating that the subdivision standards of the relevant zone do not apply to boundary adjustment subdivisions, this removes an important assessment framework that would otherwise assist in determining the appropriateness of the resulting allotments."

[3] Second to last paragraph under Section 3.6.1 – PC10 s32 Report
[4] "Boundary Adjustment" Definition and rules in Table under Section 1.2 Scope – PC10 s32 Report

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6.13 Ms Barry also states in paragraph 16:

> "The current wording of SUB-S11 provides that the subdivision standards for the relevant zone do not apply to subdivisions undertaken for the adjustment of boundaries between adjoining lots. This creates an issue where the criteria in SUB-S11(1)(a)–(d) are not met, as it limits the matters Council is able to consider when assessing the application. While non-compliance with SUB-S11 appropriately results in a Discretionary Activity status, the operative wording expressly excludes consideration of the applicable zone subdivision standards. Consequently, Council's discretion is unnecessarily constrained, reducing its ability to assess the full range of subdivision outcomes and effects associated with the proposal."

6.14 As I read it, Ms Barry's evidence confirms that the boundary adjustment framework of the Plan is indeed clear, because she acknowledges the current limitations of the Plan prevent Council from being able to apply performance standards SUB-S6(5)-(7) to boundary adjustment subdivisions that may result in a lifestyle sized lot.

6.15 So, on reading Ms Barry's evidence, it seems we agree that the Plan is indeed clear in its treatment of boundary adjustments. If that is the case, then in my view, the Plan is not suffering from a lack of clarity as to the assessment required.

6.16 This is at odds with the defined scope as per the PC10 s32 Report, for which the purpose of the boundary adjustment amendments proposal is to address this lack of clarity in the Plan (as I noted above in paragraph 6.10) and the issues this presents for its implementation. I struggle to understand this inconsistency in the view of Council.

6.17 In my opinion, this is not so much an implementation issue due to the Plan not being clear or ambiguous, rather it is an implementation issue due to Council simply desiring greater control over a consenting process that the Plan specifically seeks to limit.

6.18 This is apparent in Ms Barry's evidence where her opinion is that the limitations of the framework creates an "implementation issue", that it "removes an important assessment framework" and that "Council's discretion is unnecessarily constrained"[5] .

6.19 In my opinion, Council's discretion is not unnecessarily constrained. The activity of concern is a discretionary activity. The PC10 s42A Report discusses this in paragraph 13.

6.20 It appears to me that Ms Barry and Council are seeking the very opposite of what the Plan's framework seeks to limit with respect to expectations of performance. That Council should be able to apply and consider other performance standards of the Plan to boundary adjustments that fail SUB-S11(1)(d).

[5] Paragraphs 8 and 16 - Statement of Evidence of Lorelle Jane Barry on behalf of RLC

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6.21 The wording that Council seek to add to SUB-S11(1) as notified is below:

> *"except that the subdivision standards shall apply when compliance is not achieved with SUB-S11(1)(d)."*

6.22 In my opinion, the insertion of this wording into SUB-S11(1) as notified, is not for the purpose of making the provisions clearer, less ambiguous, and to create more certainty for plan users, for boundary adjustments that create a lifestyle size lot. Instead, it seeks a fundamentally different regulatory outcome to how the Plan currently regulates this activity.

6.23 To follow Council's approach as notified, would seek to undo an important and coherent framework that the Plan applies to a boundary adjustment, including one which fails SUB-S11(1)(d). In my view, this would create a muddled and incoherent set of plan provisions. It would apply other performance standards of the Plan that are regulated by other rules (i.e SUB-R25 and SUB-R29) that apply to other subdivisions that create further lots to be held in additional titles that release land for further development.

6.24 To follow Council's approach as notified, begs the question in my mind – why have a boundary adjustment rule? The rule's current clear purpose and limitations would be diminished to the point that a boundary adjustment that resulted in a lifestyle sized lot (or any size thereabouts) would be required to have the same levels of performance as a subdivision that created further titles for further development. I do not follow this approach.

6.25 For example, it appears from Ms Barry's evidence, that in practice, from her experience, non-compliance with SUB-S11(1)(d) can provide an unintended advantage, whereby a lifestyle-sized lot can be achieved without an allocation (through the SUB-S6 allocation provisions). In other words, the boundary adjustment rule pathway (in its current form) is not intended to allow such activity.

6.26 In my opinion this is not an unintended outcome. It is an enabled outcome under Rule SUB-R26(2) and SUB-S11, and it is only intended on the basis that it may be achieved through the reconfiguration of existing title boundaries, with no additional yield and development of the land. This is subject to the proposal and its non-compliance being considered on merit through a discretionary activity process. This 'means to the outcome' of the lifestyle sized lot (or any size of lots created through a boundary adjustment) is a different means than other types of subdivision and the Plan distinctly recognises this through its rule framework.

7.0 Conclusion

7.1 In summary, in my opinion, the current plan framework is clear and not ambiguous. The limitations of the framework are intentional by the Plan and specific to boundary adjustments. The limitations create certainty to plan users that boundary

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adjustments' and that they will be assessed under the respective performance standard framework accordingly. The outcomes this framework enables are not unintended outcomes.

7.2 To follow Council's proposed changes to SUB-S11(1) as notified, would seek to undo an important and coherent framework that the Plan applies to a boundary adjustment.

7.3 The addition of a new boundary adjustment definition will assist with providing greater clarity to plan users and will benefit consistent implementation of the Plan.

7.4 The discretionary activity rule for boundary adjustments that do not meet the listed performance standards should already provide Council with the necessary scope to consider all actual and potential adverse effects of such proposals. This scope of assessment, in my opinion, should not be confused with scope of applicable performance standards.

7.5 At the end of Ms Barry's evidence and the PC10 s42A Report, it is suggested that there is opportunity to provide further clarity through use of an alternative pathway, such as a new restricted discretionary activity rule. I welcome the opportunity to assist with any alternative rule considerations.

Darren Paul Clark
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