BEFORE THE HEARING PANEL
AT ROTORUA

IN THE MATTER **of the Resource Management Act 1991 (RMA)**

AND

IN THE MATTER **of Proposed Plan Change 10 to the Operative Rotorua Lakes Council District Plan**

LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES

7 October 2026

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OVERVIEW

1. These submissions are made on behalf of Kāinga Ora – Homes and Communities (**Kāinga Ora**).

2. Kāinga Ora made a primary submission and a further submission on proposed Plan Change 10 (**PC 10**).[1]

3. The essence of the concerns of Kāinga Ora, as explained in the planning evidence of Lezel Beneke,[2] are that several notified provisions of PC10 move beyond requiring an assessment of environmental effects and instead focus on the characteristics and behaviour of occupants.

4. These submissions briefly address the legal issues arising from that approach to assist the hearing panel.

5. Kāinga Ora acknowledges that the changes recommended by the reporting officer, including in the addendum to the section 42A Report (**s42A Addendum**)[3] which responds to Ms Beneke's evidence, largely resolve its residual concerns.

6. These submissions are filed in support of the section 42A Officer's recommendations and seek that they be upheld by the Hearing Panel.

SCOPE OF PC10

7. PC10 itself has a limited scope and purpose. Council was granted an exemption to proceed with PC10 pursuant to section 80W(2)(b) of the RMA, which allows certain plan changes to proceed despite the government's "plan stop". The plan stop policy[4] is intended to prevent councils spending time and money on RMA plan-making that the replacement system will overtake, and to redirect that effort into preparing for the new system.

8. The purpose of PC10, as recorded in the section 32 Report[5], is to:

> … improve the clarity, consistency, and usability of the Operative Rotorua District Plan (District Plan). This will be achieved by refining existing definitions and introducing or amending rules

[1] Primary submission dated 23 March 2026, and further submission dated 20 April 2026.
[2] Planning evidence of Lezel Beneke on behalf of Kāinga Ora dated 25 September 2026.
[3] Section 42A Report Addendum 1 – Response to Circulated Submitter Evidence, October 2026.
[4] Enacted through the Resource Management (Consenting and Other System Changes) Amendment Act 2025.
[5] Prepared for Rotorua Lakes Council dated 10 February 2026, Section 1.1, p 5.

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and performance standards**. Importantly, none of the proposed changes seek to alter the strategic direction, objectives, or policies of the District Plan.** [emphasis added]

9. It is submitted that some of the notified provisions move beyond improvements to clarity, consistency and useably of the Operative Plan, and seek to implement substantive changes to the underlying policy or strategic direction of the provisions.

10. The recommendations made by the relevant reporting officer, Mr Batchelar, are more aligned with the scope and intention of PC10 than the notified provisions and are therefore considered more legally sound.

LEGAL BASIS FOR THE KĀINGA ORA POSITION

11. Brendon Liggett, the Kāinga Ora Manager of Development Planning, has explained why Kāinga Ora has become involved in PC10.[6] Its focus is on ensuring that the planning framework appropriately recognises and supports the role of Community Group Housing (**CGH**) in meeting the housing and support needs of vulnerable members of the community. He explains that this should, in turn, enable sustainable, inclusive and well-functioning urban environments, thereby giving effect to the core purpose of the RMA.

12. The essential submission is that CGH homes are residential accommodation. Their occupants live in a manner broadly consistent with other residential households. The planning framework should therefore ensure that CGH activities are assessed having regard to effects that are comparable in nature and scale to other residential activities. As explained by Brendon Liggett:

> This approach supports residents' access to appropriate housing and necessary support services, while recognising that Community Group Housing is an integral component of the residential housing continuum rather than a distinct institutional or commercial activity.[7]

13. This approach is reinforced in the expert planning evidence of Lezel Beneke, who explains that the "health and safety" aspect of section 5 of the RMA has traditionally been interpreted in the context of resource management outcomes and the effects arising from the use and development of land and physical resources. She draws an important distinction between health and safety effects that arise from an activity or

[6] Evidence of Brendon Liggett dated 5 October 2026.
[7] *Ibid*, para 5.3,

environmental hazard[8] and broader notions of public safety that may relate to the perceived behaviour, characteristics, or legal status of particular individuals.

14. This evidence reflects the orthodox legal position. Since the leading decision in *Beadle v Minister of Corrections* in 2002,[9] it is now well settled that the personal characteristics of residents, or neighbours' unsubstantiated fears based on residents' personal characteristics, are not, in themselves, relevant resource management considerations. These matters are ultra vires the RMA and instead fall to be managed by the criminal justice system, social service agencies, and other regulatory frameworks rather than through district plan provisions. To be relevant resource management considerations, the issues being addressed through planning provisions (or in a consenting context) must be clearly and objectively framed as location-based matters relating to effects on the environment such as noise, traffic management, or visual amenity.

15. Personal character-based provisions also fall outside the scope of PC10's narrow ambit, which is focussed on improving clarity and consistency of the operative provisions rather than seeking to implement a new strategic direction. While there was an acknowledged issue in Rotorua relating to emergency housing during Covid, that matter required a strategic policy approach with co-ordination from relevant agencies. It is not a matter which PC10 can or should address.

16. The orthodox legal and planning approach is also reflected in the transitional provisions of the Planning Act 2026, which will come into force on 30 October 2026.[10] As recognised in Ms Beneke's evidence and the s42A Addendum, new section 104(1A) of the RMA will require consent authorities to disregard the type of residents to be housed in a new development and other considerations that are not directly related to environmental effects.

17. Importantly, councils may amend their plans to remove or modify consent requirements for these out-of-scope activities during the transition period, without using a Schedule 1 process.[11] It would therefore make little sense for this Council to implement changes to its operative plan through PC10 (itself intended to be a limited exemption from the

[8] For example, those referenced in the s42A report, such as traffic safety, site design, noise, hazardous activities or the interface between incompatible land uses.
[9] [2002] ELHNZ 144.
[10] Being one month after the Planning Act received royal assent on 30 September 2026.
[11] New section 76A RMA, which comes into force on 30 October 2026.

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government's plan stop policy) were such changes seek to implement a policy approach which is inconsistent with the new policy direction of the Planning Act.

SUMMARY OF KĀINGA ORA SUBMISSION POINTS NOW RESOLVED

18. Based on Ms Beneke's evidence, the following table summarises the Kāinga Ora submission points, how they have been addressed through the notified plan change and the s42A officer's recommendations (prior to the s42A addendum), and whether they have been resolved by the s42A officer's recommendations.

Submission point	Kāinga Ora concern	s42A recommendation	Status
Definition of Community Housing	The notified definition excludes facilities where residents are subject to legal orders (e.g. home detention), which draws a distinction based on legal status rather than effects.	Substantially revised definition focused on the nature and purpose of the activity (specialised care or support, with accommodation secondary), excluding only prisons under the Corrections Act 2004.	Resolved. No further amendment sought, provided the wording is retained.
"Public safety" in RESZ-O7, RESZ-O14, RESZ-O17	Public safety concerns about individuals are matters for the criminal justice system and social agencies, not the district plan, and risk decision-makers considering irrelevant matters.	Delete the references.	Resolved.
"Other Residential Activities" (Rule RESZ-R8A)	The broad catch-all could capture ordinary residential activities that should be anticipated in the zone.	Replace with a specific Shared Residential Accommodation framework.	Largely resolved, not opposed. Ms Beneke has reservations that the definition could capture ordinary flatting, and doubts that shared housing of up to eight people has materially different effects, but treats these as drafting matters.
Activity status for Community Housing of more than eight persons	Should be restricted discretionary rather than discretionary.	Restricted discretionary.	Resolved.
Resident number limits in the Commercial and City Centre Zones	These zones are well suited to larger numbers of residents.	Eight-person threshold retained, but with a restricted discretionary pathway for larger activities.	Resolved "on balance".

RESIDUAL CONCERN AND RESPONSE TO S42A ADDENDUM

19. The sole issue raised in the Kāinga Ora submission that remained in contention following the s42A officer's recommendations relates to larger scale Community Housing (accommodating more than 8 persons). The reporting officer had proposed a new matter of discretion for the residential zone (RESZ-MD4) and its commercial and rural zone equivalents (COMZ-MD7, CCZ-MD4 and RURZ-MD5). Based on Ms Beneke's evidence, Kāinga Ora does not support this recommendation. Rather, Kāinga Ora maintains its primary submission, which supports the use of the operative general assessment criteria, rather than creation of bespoke criteria for Community Housing.

20. The provision recommended by the reporting officer directs an assessment of the activity's location and interface with "*nearby sensitive activities or places*", having regard to site layout, access, lighting, fencing, security measures, supervision arrangements and other operational characteristics.

21. Ms Beneke's concerns about this provision relate to ambiguity, duplication of existing provisions, focus on matters other than environment effects (e.g. security and supervision), and the absence of justification for bespoke criteria for Community Housing when the operative provisions already enable an assessment of the relevant resource management considerations relating to amenity, design, layout, access, servicing and compatibility.[12]

22. In the s42A Addendum, Mr Batchelar has considered Ms Beneke's evidence and agrees that the additional Community Housing -specific matters of discretion are unnecessary in their proposed form. He has undertaken a section 32AA evaluation and has recommended deleting the proposed new matter of discretion in the residential zone and relying on existing RESZ-MDB.

23. In relation to the commercial and rural zones, Mr Batchelar recommends deleting the proposed new matters of discretion and amending existing provisions to include new matters of discretion which are more narrowly focussed on the relevant environmental effects of larger Community Housing activities, without introducing criteria directed at security, supervision or the characteristics of residents. While this approach represents an improvement on the proposal to include a new matter of discretion, Kāinga Ora has residual concerns about the broad nature of the wording proposed and questions whether it is necessary. The references to "effects on adjoining sites, in so far as they

[12] Evidence of Lezel Beneke, Section 6.

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are not otherwise managed by performance standards" should at least be qualified by a reference to "*adverse* effects".

24. Ultimately, Kāinga Ora remains of the view that the existing performance standards sufficiently and appropriately address the relevant RMA issues and therefore the proposed additional wording is unnecessary.

25. Mr Batchelar also addresses Ms Stevenson's proposed additional performance standards for Visitor Accommodation on behalf of MCERT[13], including the proposal to require a complaints' register. Mr Liggett expressed concerns in his evidence on behalf of Kāinga Ora about this aspect of MCERT's evidence. In his experience, complaints are inherently subjective and do not necessarily indicate the existence of adverse environmental effects beyond those reasonably anticipated within a residential environment.

26. Mr Batchelar's section 32AA evaluation in the s42A Addendum does not support a complaints' register. Kāinga Ora supports that conclusion.

CONCLUSION

27. With the exception of the proposed additional wording relating to Community Housing in Commercial and Rural Zones, Mr Batchelar's recommended provisions are well supported by his section 32AA analysis. They are lawful and appropriate and are supported by Kāinga Ora. Apart from the limited exception raised above, if adopted by the Hearing Panel, Kāinga Ora's submission points will be fully resolved.



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[13] Evidence of Sarah Jane Stevenson dated 21 September 2026.

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