BEFORE THE COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

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

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OPENING LEGAL SUBMISSIONS ON BEHALF OF ROTORUA LAKES COUNCIL

Dated 7 October 2026

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Introduction

1. These Opening Legal Submissions are made on behalf of Rotorua Lakes Council (the **Council**) in respect of Proposed Plan Change 10 to the Operative Rotorua District Plan (**PC 10**).

2. PC 10 proposes a series of refinements to definitions and rules within the District Plan to address issues that have arisen through plan implementation, statutory hearing processes and evolving development practices.

3. The purpose of PC 10 is to improve the clarity, consistency, and usability of the District Plan by refining existing definitions and introducing or amending rules and performance standards. Where possible and relevant, PC 10 adopts definitions from the National Planning Standards (**NPS**).

4. PC 10 was granted Ministerial exemption from the plan-stop provisions in accordance with s80W(2)(b) of the Resource Management Act 1991 (**RMA**) on the basis that the plan change will rectify provisions in the District Plan that have had unintended consequences, are unworkable, or have led to inefficient outcomes.

5. These submissions will address:

   (a) The relevance of the Planning Act 2026;

   (b) The scope of PC 10;

   (c) The evaluation of PC 10 under the RMA;

   (d) Issues raised in submissions; and

   (e) Evidence.

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The relevance of the Planning Act 2026

6. The Planning Act 2026 (**PA**) received Royal assent on 30 September 2026. The Act replaces the RMA on the specified transition date, which will be determined by order in council or no later than 30 September 2030. Schedule 1 of the PA confirms that, following the Act receiving Royal assent, and during the transition period, the RMA continues to apply.[1]

7. The PA makes a number of amendments to the RMA during the transition period which will commence on 30 October 2026. These amendments include:[2]

   (a) a reduction in the scope of matters that Council can consider when assessing effects of an application for a district land use consent (s104(1A));

   (b) the Council has a discretion to disregard planning provisions to the extent the provisions seek to regulate matters the Council can no longer consider in an application for a district land use consent (s104(1B));

   (c) the Council may give notice that an activity is permitted if it fails to comply with rules that regulate matters it can no longer consider (s104AA);

   (d) the Council has a discretion to remove rules from its District Plan if they regulate matters it can no longer consider (s76A); and

   (e) Clauses 15-18 of Schedule 3A of the RMA (the Medium Density Residential Standards (**MDRS**)) are repealed (although there is

1 Clause 1 of Schedule 1 of the Planning Act 2026.

2 Part 2 of Schedule 12 of the Planning Act 2026.

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no corresponding requirement to remove them from district plans).

8. There are no amendments, during the transition period, to Schedule 1 of the RMA in respect of the making of new plans or plan changes, or in respect of making decisions on submissions under clause 10.

9. Accordingly, I submit that in making decisions on submissions on PC 10, you are not specifically prevented from including rules in the District Plan which relate to matters which Council must disregard when considering land use consent applications lodged after 30 October 2026. However given the Council's discretion, after 30 October 2026, to remove rules regulating those matters under s76A without using the Schedule 1 process, the Council's s42A authors have taken s104(1A) into account in assessing and making recommendations on the proposed new provisions under PC 10 and have used their best endeavours to ensure that the proposed provisions will not be out of scope following 30 October 2026.[3]

10. It is anticipated that, following the commencement of the transition period, the Council will undertake a complete review of its District Plan to identify any rules that are to be either removed under s76A or disregarded in the processing of applications for land use consents.

The scope of PC 10

11. PC 10 makes targeted changes to the District Plan in respect of the following matters:

    (a) Replacement of the definition of Tourist Accommodation with the NPS definition of Visitor Accommodation.

[3] In particular, s42A Addendum "Community Housing Assessment Criteria".

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(b) Making separate provision for boarding houses and other forms of shared housing previously defined as Tourist Accommodation.

(c) Amending the definition of Community Housing and the associated rules.

(d) Changing the default activity status for activities in the City Centre 1 and 2 Zones from permitted to non-complying.

(e) Introducing the NPS definition of Boundary Adjustment and refining the applicable performance standards.

(f) Minor amendments to the definition of Site.

(g) Introducing the NPS definition of Industrial Activity.

(h) Replacing the definition of Home-Based Business with the NPS definition of Home Business.

(i) Amending the vehicle turning provisions to allow turning into rights of way and private ways.

(j) Amending the subdivision servicing provisions to enable wireless telecommunications.

(k) Consequential changes where defined terms are used throughout the District Plan.

12. Given the targeted nature of the plan change and the limited number of submissions, any decision on submissions arising from this hearing must be:

(a) within the scope of PC 10, which requires consideration of:[4]

[4] *Clearwater Resort Ltd v Christchurch City Council* AP 34/02, 14 March 2003, Young J.

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(i) whether the submission addresses the changes to the pre-existing status quo advanced by the proposed plan change; and

(ii) whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process; and

(b) within the scope of submissions on PC 10, that is, a matter that is fairly and reasonably raised in submissions on the plan change, approached in a realistic workable fashion rather than from the perspective of legal nicety.[5]

13. The Council submits that the recommendations in the Council's s42A report and s42A addendum fall within the scope of PC 10 as they improve the clarity, consistency and useability of the rules and do not change the policy outcomes for the specific topic addressed. Any proposed alternatives have been developed in response to matters raised through submissions, engagement and evidence. The scope to introduce specific alternative amendments is addressed later in these submissions.

Evaluation of PC 10 under the RMA

14. The legal framework for district plans and plan changes is set out in ss72 to 77 of the RMA. The functions of territorial authorities are set out in s31 of the Act, and the evaluation process for district plan provisions is set out in s32 of the Act. The requirements of these sections were summarised by the Court in *Colonial Vineyard Ltd v Marlborough District Council.*[6]

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5 *Clova Bay Residents Association Inc v Marlborough District Council* [2026] NZEnvC 20 at [7] and [8].

6 [2014] NZEnvC 55 at [17].

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15. As PC 10 does not propose any significant amendments to the strategic direction, objectives or policies of the District Plan,[7] the key considerations for the Commissioner will be:

    (a) The National Planning Standards, particularly *14. Definitions Standard*;[8] and

    (b) The relevant objectives and policies of the District Plan.

Issues raised in submissions

16. Notification of PC 10 attracted 27 submissions and five further submissions. Of those, three submitters circulated expert evidence on 28 September 2026 and two submitters circulated statements to be tabled at the hearing. Seven submitters are proposing to address their submissions at the hearing.

17. There is a large degree of agreement between the submitters and the Council on the provisions of PC 10; this reflects both considerable consensus on the need for refinement of the definitions and rules, as well as the significant consultation carried out by Council during the preparation of PC 10 and following receipt of submissions.

18. For the assistance of the Commissioner, I have attached to these legal submissions a summary table of the matters addressed by PC 10, the current District Plan rule, the amendment proposed by PC 10, and the recommendation of the Council's s42A report (including the s42A addendum).

19. The key issues for determination by the Commissioner relate to:

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7 PC 10 proposes an amendment to Objectives RES-07, 014 and 017 to include reference to "public safety".

8 Under s58J of the RMA and clause 6 of *17. Implementation Standard*, the Council was required to comply with *14. Definitions Standard* by seven years from when the planning standards came into effect (November 2026). On 20 August 2025, new s58JA extended that timeframe to 31 December 2027; Schedule 12 of the Planning Act 2026 amends s58JA to extend the timeframe to the specified transition date.

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(a) Whether further clarification is required as to whether the definition of Visitor Accommodation includes recipients of Emergency Housing Grants (EHGs);

(b) The appropriate criteria for assessment, as a restricted discretionary activity, of Community Housing which exceeds 8 persons on site; and

(c) Whether a Boundary Adjustment which creates a new lot of less than 4ha should be assessed against the general performance standards applying to lifestyle lots.

20. These issues will be addressed in detail by the Council's s42A authors. However, I propose to briefly address the legal context for each of these issues, including matters relating to scope.

Visitor Accommodation

21. The Operative District Plan definition of Tourist Accommodation had a number of flaws, including being limited to "tourists" rather than all types of visitors, and encompassing types of accommodation such as boarding houses which may be permanent residences rather than temporary accommodation.

22. PC 10 proposes to replace the definition of Tourist Accommodation with the definition of Visitor Accommodation in the NPS, and to make separate provision for Shared Residential Accommodation such as boarding houses. The new definitions (and accompanying rules) are intended to provide clear and separate rules for visitor accommodation and for residential activity within the District.

23. The new definitions (and accompanying rules) are largely supported by submissions on PC 10. However further submissions and evidence by the Ministry for Cities, Environment, Regions and Transport

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(**MCERT**),[9] while supporting the new definition of Visitor Accommodation, continue to seek greater clarity regarding whether recipients of EHGs fall within the definition. Detailed evidence has been provided regarding recent experience in respect of the use of motels in Rotorua for contracted emergency housing and the current use of EHGs within the City.

24. I submit that the amendments proposed by PC 10 provide a clear definition and resource consent pathway for both visitor accommodation and residential activity. The use of the definitions from the National Planning Standards will provide greater certainty and consistency with other district plans.

25. The Council's s42A report proposes an additional amendment to clarify that three units may be converted from visitor accommodation to residential use as a permitted activity, provided the performance standards are met. This is consistent with the general rules for residential activity (as required by the MDRS).

26. In respect of scope, this additional amendment responds to submissions seeking more permissive rules for those residential activities which are no longer included within the definition of Visitor Accommodation and to PC 10's intention to create clear and separate definitions and rules for visitor accommodation and residential activity.

27. While the recent experience with contracted emergency housing served to highlight some of the problems with the existing definitions, I submit that neither the historical experience with emergency housing, nor the current experience, are directly relevant to

[9] As successor to the submission by the Ministry of Housing and Urban Development.

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developing clear and consistent definitions and rules that will apply to all visitor accommodation and residential activity throughout the City.

Community Housing

28. The Operative District Plan definition of Community Housing included a limit of 8 persons (including staff). This meant that, while Community Housing was specifically provided for as a permitted or restricted discretionary activity, any Community Housing of a scale greater than 8 persons no longer fits within the definition and was therefore assessed as a non-complying activity.

29. PC 10 proposes to:

    (a) amend the definition of Community Housing;

    (b) amend the rules to provide for Community Housing for up to 8 persons as a permitted activity, and for more than 8 persons as a discretionary activity.

30. As a result of submissions from Kainga Ora and Ara Poutama (Department of Corrections), the Council's s42A report proposes to provide for Community Housing for more than 8 persons as a restricted discretionary activity. A specific criterion was proposed for this purpose.

31. In respect of scope, the proposed restricted discretionary rule and associated assessment criteria respond to the submissions by Kainga Ora and Ara Poutama seeking a more permissive activity status for larger scale Community Housing and to PC 10's intention to provide clearer definitions, activity rules and performance standards for Community Housing.

32. The evidence of Ms Beneke for Kainga Ora considers that the existing assessment criteria are sufficient and that the proposed specific

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criterion introduces matters which will be out of scope during the transition period, as they relate to the type of resident to be housed. In response to this evidence, the Council's s42A author has reconsidered the assessment criteria and carried out a s32AA analysis to support the final criteria proposed in the s42A addendum.

Boundary Adjustment

33. While the Operative District Plan contains rules and performance standards specifically providing for boundary adjustments, PC 10 proposes to introduce a definition of Boundary Adjustment consistent with the NPS. This amendment is generally supported by submissions. The Council's s42A addendum also supports the removal of any words of the rule which have now become redundant.

34. However, PC 10 also proposes to clarify the application of performance standard SUB-S11 where an allotment of less than 4ha is created in the Rural zone.

35. The objectives and policies of the District Plan seek to avoid potential adverse effects of the subdivision of land on rural character and, in particular, seek to avoid the adverse effects of the fragmentation of rural land on productive land, infrastructure and reverse sensitivity. To achieve these objectives and policies, the general subdivision standards for the Rural zone require the creation of allotments of less than 4ha to provide environmental compensation in the form of positive effects on the protection of indigenous vegetation, gully/water body margins, or water quality.[10]

36. The Boundary Adjustment rules and performance standards provide a more permissive pathway where the performance standards in SUB-S11 are met. These standards include the creation of new lots that are

[10] Objectives SUB-01, 01, 08 and 10; Policies SUB-P1, P3, P4, P30, P32-P35A, P38, P39; Rules SUB-S6(5)-(7).

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similar in size and that no lots of less than 4ha are created. However, at present, an application for a Boundary Adjustment which fails to comply with the specific performance standards does not fall back into the "general bucket" and be considered against the general subdivision standards for the zone. Instead, it is classified as a discretionary activity, with only general assessment criteria for guidance. The Council's concern is that this fall-back position may enable a subdivision to proceed where it is inconsistent with the objectives and policies for the zone.

37. Since circulating the s42A addendum, the Council's s42A author has continued to consider how best to amend the rule, performance standard and assessment criteria to ensure that:

(a) The objectives and policies for the rural zone are achieved and no change is made to the policy outcomes;

(b) The activity status for boundary adjustments that fail to comply with the performance standards in SUB-S11 is within the scope of PC 10 and the submissions received on the topic; and

(c) Clarity is provided to consent applicants and processing planners in respect of the assessment criteria that will apply to an application for a boundary adjustment, including which of the general subdivision standards are considered to be relevant and whether they are intended to operate as standards or assessment criteria.

Evidence

38. The Council's s 42A report and s42A addendum will be presented jointly by:

(a) Craig Batchelor, planner of Cogito Consulting Limited;

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(b) Jason Ward, planner of Cheal Consultants Limited; and

(c) Kayley Simmonds, planner of Cheal Consultants Limited.

39. Evidence in respect of the implementation of the rules relating to boundary adjustments will be provided by Lorelle Barry, Council's Manager Consenting Services.

Signed this 7th day of October 2026



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W J Embling
Counsel for Rotorua Lakes Council

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