**Before an Independent Hearing Panel**

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| **In the matter** | **of the Resource Management Act 1991 (RMA)** |
| **And in the matter** | **of Proposed Plan Change 10 - Definitions and Rule Refinements (PC 10) to the Rotorua Lakes Council's District Plan** |

# Legal submissions for the Ministry for Cities, Environment, Regions and Transport

**7 October 2026**

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# Legal submissions for the Ministry for Cities, Environment, Regions and Transport

**May it please the Panel –**

## 1 Introduction and summary of submissions

1.1 The Ministry of Housing and Urban Development lodged a further submission on Proposed Plan Change 10 to the Rotorua Lakes District Plan. The Ministry has since been subsumed into the Ministry for Cities, Environment, Regions and Transport (**Ministry** or **MCERT**).

1.2 These submissions address the Ministry's concerns about PC 10, being particularly:

(a) The introduction of references to public safety into residential zone objectives; and

(b) The basis of the distinction drawn by PC 10 between visitor accommodation and residential activity.

1.3 The Ministry welcomes the position of the s 42A author in concluding that it is not appropriate to include references to public safety in the relevant residential zone objectives.

1.4 The Ministry continues to consider that the use of motel accommodation by persons using an emergency housing grant (**EHG**) is fundamentally "visitor accommodation" as defined in PC 10, and that the distinction drawn between visitor accommodation and residential activity is not the most appropriate way to achieve the purpose of the RMA. In particular:

(a) Whether a person has another residence is of no legal or rational significance to the proposed rule framework;

(b) There is inadequate evidence in a s 32 sense to justify the distinction being drawn; and

(c) By purporting to make it more difficult for people to use EHGs in visitor accommodation in Rotorua, PC 10 engages the right in s 18 of the New Zealand Bill of Rights Act 1990 (freedom of movement



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and residence) but the evidence does not attempt to show that the limit resulting from PC 10 is demonstrably justified in a free and democratic society.

1.5 If the Panel considers that there are effects from visitor accommodation that are not being properly controlled, the Ministry recommends adoption of the performance standards proposed in the evidence of Sarah Stevenson.

## 2 Current operation of emergency housing

2.1 Evidence about how the provision of emergency housing operates currently was provided by Jonathon Fraser, Director in the Place-Based team at MCERT. Mr Fraser understands Rotorua's housing context, including the causes of past housing challenges in Rotorua.

2.2 His evidence highlights:

(a) An EHG is a grant to help a person with an urgent housing need with the actual and reasonable cost of short-term commercial accommodation (usually a motel).

(b) An EHG does not involve a contractual arrangement between MSD (which operates the scheme) and a visitor accommodation provider.

(c) Delivery of the pipeline of social housing units has enabled MCERT to exit all contracted emergency housing motels in December 2025 and to reduce the number of people requiring the use of EHGs in 2026 to 24 or below at any one time (229 unique households) with a range of exit pathways.

(a) Persons using an EHG are accommodated by a motel in the same units, pay the same market nightly rate, and receive the same service as any other occupants of visitor accommodation including daily linen, towel changes, cleaning, and the provision of tea, coffee, sugar, milk, and other basic amenities. Operators of motel accommodation make no physical, operational, security or management changes or measures to accommodate EHG recipients.



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(b) This works the same way across New Zealand. RLC is the only local authority that has taken steps to make the operation of emergency housing more difficult.

## 3 References to public safety

3.1 MCERT welcomes the indication of the s 42A author that references to public safety should not be introduced to the relevant residential zone objectives. In light of that indication, the issue will be addressed only briefly.

3.2 The s 32 report identified difficulties with the definition of community housing and proposed an amendment. It did not explain the inclusion of references to "public safety" being added to three residential zone objectives except by oblique reference to community concerns of social effects arising from "recent experience with emergency housing in Rotorua".[1] The assessment of alternatives suggested that including management of impacts on public safety as an objective for non-residential activities in the residential zones was consistent with its treatment in commercial zones.[2] But this does not stack up. The only reference to public safety in the commercial zones is in COMZ-P9, which relates to managing the design and appearance of buildings to maintain and enhance the character, public safety and efficient functioning of the transport network.

3.3 The Environment Court has consistently held that "there is no place in the process for the Court to be influenced by mere perceptions of harm which are not shown to be well founded."[3]

3.4 The alleged community concerns are inconsistent with the evidence referred to in Ms Stevenson's statement. She refers to the evidence of Shamubeel Eaqub during the application for resource consent for CEH to the effect that the available data did not show a sustained increase in victimisation in the affected area alongside increased use of emergency accommodation in motels and did not demonstrate victimisation trends in Rotorua that exceeded national patterns. In light of that evidence, the s 32 report would have to delve into and evaluate the basis of the alleged

1 Section 32 Report, p 26.
2 Section 32 Report, p 28.
3 *Beadle v Minister of Corrections* EnvC Wellington A074/02, 8 April 2002 at [787].



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community concerns to provide an adequate justification for seeking to manage people's behaviour through this planning framework.

## 4 Visitor accommodation / residence

4.1 PC 10 proposes to replace the definition of tourist accommodation with the National Planning Standards definition of visitor accommodation. There is no difficulty in principle in doing that. As Ms Stevenson says, the use of nationally standardised definitions is a matter of good planning practice.

4.2 However, the overall planning outcome is a contested one. MCERT considers that visitor accommodation proper is materially similar, from an effects perspective, to accommodating a person with urgent housing need using an EHG. In his s 42A report, Mr Batchelar does not suggest otherwise. But he sees the issue as a definitional one, rather than an effects one.

4.3 That approach seems inconsistent with the origin of the proposed change, which was that emergency housing was a "residential activity" requiring a different consent pathway.[4] A different consent pathway (or at least a different activity status) can only be justified on effects grounds.

4.4 It also effectively kicks the can down the road. The point raised in MCERT's further submission is that use of motels for emergency housing is visitor accommodation, or should be treated in the same way. Mr Batchelar has not addressed that question.

4.5 One of the main reasons Mr Batchelar gives for the substitution of "visitor accommodation" for "tourist accommodation" is that it addresses the internal inconsistencies in the definition. But visitor accommodation has the same issues. What is a visitor? If it means visitor to the district, then that means it would not be possible for a person resident within the district to stay in a motel. It also, perversely, would enable a person from outside the region to stay at a motel using an EHG. The reality is that the word visitor is not intended to be used in an unduly precise or prescriptive way

[4] Section 32 Report, p 13. The s 32 Report also asserted, wrongly, that "most, if not all emergency housing use of motels and other tourist accommodation was found to be in breach of the District Plan." MCERT is not aware of any decision to that effect.



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in the same way that "tourist" was not intended to confine the use of motels to those undertaking tourism.

4.6 Mr Batchelar suggests that "Where a person occupies premises as their place of residence because they have no other accommodation, there is a significant question whether that person is properly characterised as a "visitor" in the ordinary meaning of that term".[5] In my submission that relies on an incorrect understanding of "residence". Residence can refer to the place where a person lives at any given time. It can also refer to a place where a person usually or ordinarily resides. A woman in urgent housing need and using an EHG because of the effects of an abusive relationship has not necessarily ceased to reside at the former family home and may well return there.

4.7 As a concept, whether a person has an established residence elsewhere or is between residences is irrelevant to the question of what environmental effects they will create by staying in a motel, and whether those effects should be controlled by a district plan.

4.8 The reality is that in making the proposed change and asserting that emergency housing is not visitor accommodation, the Council is making the operation of emergency housing more difficult.[6] It is apparently the only place in New Zealand trying to do that.[7]

4.9 That being the case, to justify such a step one would expect to see locality-specific evidence justifying the change. No such evidence, or at least no evidence adequate to satisfy s 32, has been identified.

4.10 The focus on residence also creates a further evidential problem for the Council. Under s 18 of the New Zealand Bill of Rights Act 1990, everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand. The reference to "residence" provides a freedom for people to choose where to live. Deciding to adopt a district plan framework that makes it harder for people in housing need to put a roof over their head limits that right. But there is no analysis of whether the planning framework resulting from the changes proposed in PC 10 is demonstrably justifiable in a free and democratic society under s 5. And

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5 Section 42A Report, [3.22] para 7.

6 The additional regulatory barriers is a point also made in the careful submission by Lauren James, with which MCERT agrees.

7 Statement of Evidence of Jonathon Fraser, [9.5].



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any such analysis would inevitably run into the difficulty that there is no material effects-based distinction between visitor accommodation proper and housing a person in urgent housing need using an EHG. It cannot therefore be a proportionate limit.

## 5 Performance standards

5.1 MCERT notes that Ms Stevenson proposed some performance standards at [9.11]. Mr Batchelar did not adopt these standards because they could only apply prospectively to any new visitor accommodation offerings. That may be true, but all district plan changes are by operation of law prospective. MCERT recommends adoption of the performance standards proposed in the evidence of Sarah Stevenson, should the Panel be concerned that there are effects from visitor accommodation, including emergency housing, that are not being properly controlled.

## 6 Other submissions

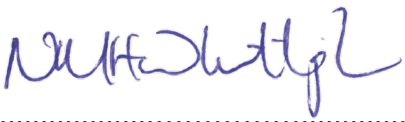
6.1 Finally, MCERT notes for completeness that it continues to support/oppose the appeals identified in its further submission even if not directly addressed here. In particular, it highlights:

(a) the submissions of Stratum Consultants and New Zealand Defence Force relating to CCZ-R1 retaining a permitted activity pathway for unspecified activities.

(b) the submissions of Kāinga Ora and Ara Poutama Aotearoa in relation to the introduction of RESZ-R8A.

(c) the submissions of Kāinga Ora in relation to the definition of "community housing".

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