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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SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF ROTORUA LAKES COUNCIL

Dated 12 October 2026

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Introduction

1. These Supplementary Legal Submissions are made on behalf of Rotorua Lakes Council (**Council**) in response to the Legal Submissions on behalf of Kāinga Ora – Homes and Communities (**Kāinga Ora**) and on behalf of the Ministry for Cities, Environment, Regions and Transport (**MCERT**) dated 7 October 2026.

Legal submissions on behalf of Kāinga Ora

2. The legal submissions on behalf of Kāinga Ora confirm that Kāinga Ora's concerns have largely been resolved by the recommendations in the s42A report.

3. In respect of the assessment criteria to apply to Community Housing for more than 8 persons, the legal submissions and evidence for Kāinga Ora consider that the "existing" matters of discretion are sufficient and that no additional matters of discretion are required.

4. For clarification, the notified version of PC 10 proposed that Community Housing for more than 8 persons would be a discretionary activity. In response to submissions from Kāinga Ora and others, the Council's s42A report recommended a restricted discretionary activity status. As a result, there are no existing matters of discretion in the District Plan for Community Housing for more than 8 persons.

5. As explained in the s42A addendum, Mr Batchelar has reviewed the matters of discretion which apply to a breach of a performance standard by Community Housing for fewer than 8 persons, to consider whether they are sufficient for assessment of larger scale Community Housing. He has concluded that, for the Residential zone, the current criteria are sufficient. However, he has proposed some additional criteria for the Commercial, City Centre and Rural zones.

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6. The legal submissions confirm that Kāinga Ora supports the amended criteria proposed in the s42A addendum, with one minor amendment to insert “adverse” before “effects”.

Legal submissions on behalf of MCERT

7. The legal submissions on behalf of MCERT raise concerns relating to the distinction drawn by PC 10 between visitor accommodation and residential activity and claim that PC 10 makes an assertion that emergency housing is not visitor accommodation.

8. In response to these concerns:

   (a) It is not uncommon for district plans to treat visitor accommodation as a different activity to residential activity; the inclusion of both definitions in the National Planning Standards supports this approach.

   (b) The distinction between visitor accommodation and residential activity is not a new strategic direction or policy introduced by PC 10 – the District Plan has made separate provision for these activities for many years, with visitor accommodation being a particular focus for the Commercial 4 (City Entranceway Accommodation) Zone.

   (c) PC 10 does not make any assertion as to whether emergency housing falls within the definition of visitor accommodation, as this will be a question of fact relating to a specific site and is not a matter to be determined as part of this plan change. As shown in the evidence of Jonathon Fraser for MCERT, the factual position can vary considerably as a result of changes to policy settings, housing availability and global events such as the Covid pandemic.

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9. In addition, while the legal submissions on behalf of MCERT raise these concerns it is unclear exactly what relief, in the form of changes to PC 10 are being sought, or which original submissions are relied upon, MCERT being a further submitter on PC 10.

10. In respect of the additional performance standards for Visitor Accommodation proposed in the evidence of Ms Stevenson:

    (a) The proposed performance standards, which would apply to all Visitor Accommodation, fall outside the targeted changes proposed by PC 10 and were not requested in any original submission on the plan change.

    (b) The Council's s42A author has considered the proposed performance standards and has concluded that there is insufficient justification, in terms of environmental effects, to impose these additional standards on all Visitor Accommodation.

    (c) The proposed performance standards do not appear to address the matters of concern to MCERT, as set out in their submissions and evidence.

11. Finally, the Council does not consider that a requirement to obtain a resource consent (if a particular fact situation is considered to require a resource consent in the future), is an unreasonable restriction on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (**NZBORA**).

12. Section 4 of NZBORA and the case of *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council*[1] confirm that the requirement to comply

[1] [2020] NZHC 3159.

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with the Resource Management Act 1991 does not cease to apply solely by reason of any inconsistency with NZBORA.

Signed this 12th day of October 2026



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W J Embling
Counsel for Rotorua Lakes Council

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