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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LEGAL SUBMISSIONS IN REPLY OF COUNSEL FOR ROTORUA LAKES COUNCIL

Dated 30 October 2026

TOMPKINS | WAKE

1105 Arawa Street
PO Box 248
Rotorua 3040
New Zealand

Ph: (07) 347 9466
tompkinswake.com

Wendy Embling (Wendy.Embling@tompkinswake.co.nz)

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026

Introduction

1. These legal submissions in reply are submitted on behalf of Rotorua Lakes Council (the **Council**) following the hearing of submissions on Proposed Plan Change 10 to the Operative Rotorua District Plan (**PC 10**) on 12 October 2026. These submissions address matters raised by submitters and the Commissioner during the hearing.

2. These submissions are accompanied by Addendum 3 to the Section 42A Report (**Section 42A Reply**), including an updated set of PC 10 provisions at Appendix 1 (**final PC 10 provisions**).

3. Before finalising the Section 42A Reply and final PC 10 provisions, the Council carried out further consultation with Ms Beneke of Kāinga Ora – Homes and Communities (**Kāinga Ora**) and Mr Clark of McKenzie & Co Consultants Ltd (**MCCL**).

4. These legal submissions in reply will address:

   (a) Legal submissions and evidence from the Ministry of Cities, Environment, Regions and Transport (**MCERT**) in respect of the proposal to replace the definition of Tourist Accommodation with the National Planning Standards definition of Visitor Accommodation.

   (b) Legal submissions and evidence from Kāinga Ora in respect of the assessment criteria to apply to Community Housing for more than 8 persons.

   (c) Evidence presented at the hearing in respect of the definition, rule and assessment criteria applying to Boundary Adjustments.

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026

Visitor Accommodation

5. The legal submissions and evidence on behalf of MCERT raise concerns relating to the distinction between visitor accommodation and residential activity, and seek further clarity as to whether emergency housing falls within the definition of Visitor Accommodation.

6. The Supplementary Legal Submissions on behalf of the Council dated 12 October 2026 requested clarification as to the relief sought by MCERT, and the original submissions relied upon, given that MCERT is a further submitter on PC 10. The Supplementary Legal Submissions were circulated in advance of the hearing to provide an opportunity for this clarification to be provided at the hearing.

7. At the hearing, counsel for MCERT stated that MCERT is seeking that PC 10 be sent back to the drawing board and a new planning regime developed for emergency housing. No clarification was provided as to which original submission is relied upon in seeking this relief.

8. Counsel assumes that MCERT's request that PC 10 be sent back to the drawing board relates to that part of PC 10 which proposes to replace the definition of Tourist Accommodation with Visitor Accommodation. There were a number of original submitters on this aspect of PC 10. While some of the original submitters sought additional clarification, all of the original submitters generally supported the replacement of the definition of Tourist Accommodation with the National Planning Standards definition of Visitor Accommodation.[1] The Council therefore submits that there is no scope to adopt a different form of relief now sought by MCERT as a further submitter.

9. In the event that the Commissioner considers that there is scope to consider the relief sought by MCERT, the Council's Section 42A Reply

[1] Section 3.2 and Appendix 2 of the Section 42A Report.

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026

considers the matters raised in the legal submissions and evidence given by MCERT at the hearing. In summary:

(a) Assessment of whether emergency housing falls within the definition of Visitor Accommodation requires a case-specific assessment which will vary between sites and over time, taking into account matters such as the number of units in use, continuity and duration of occupation, and household size and composition. A certificate of compliance can be requested if greater certainty is required in specific cases.

(b) Where resource consent is required, the District Plan does not impose significant regulatory barriers; PC 10 provides a permitted activity pathway for up to three units per site, with more than 3 units requiring assessment as a restricted discretionary activity. This contrasts to the non-complying activity assessment required of contracted emergency housing in 2022 and 2025.

10. In response to MCERT's request for a new planning regime for emergency housing, the Council notes that PC 10 is an interim measure intended to assist with interpretation of the District Plan pending full replacement of the planning documents under the Planning Act 2026 (**Planning Act**). The development of National Standards and Land Use Plans under the Planning Act is expected to provide an opportunity to revisit the planning regime for emergency housing in a nationally consistent way. However, the ability for the new planning documents to specifically confirm the activity status of emergency housing may be limited by section 17 of the Planning Act which excludes from consideration of the effects of an activity the "*type of residents to be housed in a new development*".

11. Finally, in response to MCERT's submissions at the hearing regarding the New Zealand Bill of Rights Act 1990 (**NZBORA**), the Council submits

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026

that there was no specific obligation on the Council to consider consistency with the NZBORA as part of its evaluation under s32 of the Resource Management Act 1991 (**RMA**). As noted in paragraph 9(b) above, the proposed amendments in PC 10 provide a potentially more permissive consent pathway for emergency housing, whether it is categorised as visitor accommodation or residential activity.

Assessment criteria for Community Housing

12. The legal submissions and evidence on behalf of Kāinga Ora supported retaining the "existing" matters of discretion for Community Housing for more than 8 persons.

13. The Supplementary Legal Submissions on behalf of Council dated 12 October 2026 clarified that, as the Council's Section 42A Report recommended accepting Kāinga Ora's request that Community Housing for more than 8 persons become a restricted discretionary (rather than a discretionary) activity, a new set of matters of discretion are required. The Supplementary Legal Submissions endeavoured to provide that clarification in advance of the hearing.

14. At the hearing, Ms Beneke on behalf of Kāinga Ora requested that some of the criteria which currently apply to discretionary activities be included in the new matters of discretion. These have been considered by the Council's s42A author and further consultation has taken place with Ms Beneke following the hearing. The final matters of discretion are discussed in the Section 42A Reply and set out in the final PC 10 provisions.

Boundary Adjustments

15. PC 10 proposed to insert a new definition of Boundary Adjustment and to clarify the application of SUB-S11 where an allotment of less than 4ha is created in the Rural zone.

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026

16. Following circulation of evidence on behalf of Mr Clark for MCCL, the Council revised the proposed wording of SUB-S11 and circulated Addendum 2 for consideration by the submitters. Unfortunately, due to the timing of the hearing, it wasn't possible to circulate Addendum 2 as far in advance as intended. However, the Council wished to ensure that the information available to the parties at the hearing was the most up to date analysis available.

17. In summary, the changes proposed in Addendum 2:

    (a) Accept that, with the new definition of Boundary Adjustment, parts of the introductory paragraph of SUB-S11 can now be refined and subparagraph (a) can be deleted.

    (b) Clarify that only those standards referred to in the governing rule (SUB-R26) are relevant to Boundary Adjustments.

    (c) Update SUB-S11 to refer to "record of title" consistently with the proposed changes to the definition of Site.

18. Evidence and submissions were presented at the hearing by Mr Clark and Mr Feuillade on behalf of MCCL, Mr Farquhar on behalf of Stratum Consultants Ltd and Mr Nelson. Mr Farquhar and Mr Nelson indicated their agreement with the amendments proposed in Addendum 2.

19. The changes to the definition and rules for Boundary Adjustments are intended to clarify the way that Boundary Adjustments are considered by the Council, rather than to amend the strategic direction of the District Plan. No changes are proposed to the objectives and policies for the Rural zone. Discussion at the hearing considered whether this clarification is required or whether the current rule framework is sufficiently clear.

20. The Council submits that clarification is required as different interpretations and expectations have emerged during the processing

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026

of applications for subdivision for the purpose of Boundary Adjustment in recent years. As estimated by Ms Barry at the hearing, the Council has received upwards of 20 applications for Boundary Adjustment in the last 12 months, with the majority of those applications falling to be considered as discretionary activities. The need for further clarification was supported by Mr Farquhar of Stratum Consultants Ltd at the hearing. All submitters supported the need for clarity and certainty for consent applicants.

21. In the Council's submission, the proposed wording in Addendum 2 (which is confirmed in the Section 42A Reply) provides greater certainty regarding the application of SUB-S11 to Boundary Adjustments by:

(a) Inserting a new definition of Boundary Adjustment and removing those aspects of SUB-S11 that are no longer required. This will ensure that applications which fail to meet all of the standards in SUB-S11 can still be considered as Boundary Adjustments.

(b) Clarifying which performance standards and assessment criteria apply to an application for Boundary Adjustment. This will ensure that all applications which fail to comply with the performance standards which apply to Boundary Adjustments can be considered as discretionary (rather than non-complying) activities.

(c) Ensuring that the Council has full discretion to consider the matters in s104 of the RMA when considering an application for Boundary Adjustment as a discretionary activity. In particular, while Boundary Adjustments are not required to provide compensatory measures in accordance with SUB-S6, any proposed compensatory measures or mitigation of

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026

adverse effects are relevant considerations which can be taken into account in the s104 assessment.

(d) Ensuring that the assessment criteria in SUB-AC1 can be taken into account under s104(1)(b)(vi), but do not limit the extent of the Council's discretion.

Clause 16(2) amendment

22. In the course of preparing Addendum 2 the Council's s42A author noted that, while the words "*Whilst not limiting the exercise of its discretion, Council may consider the particular matters below*" appear above the subheading for SUB-AC1, the words "*Council may impose conditions in relation to*" appear below the subheading. As the reference to conditions is inaccurate for a discretionary activity, the Council supports removing this phrase. However, as SUB-AC1 applies more broadly than the targeted matters addressed by PC 10, the Council will consider making this amendment pursuant to clause 16(2) of Schedule 1 of the RMA.

Conclusion

23. The Council seeks the Commissioner's approval of PC 10 in the form attached as Appendix 1 to the Section 42A Reply. The Council submits that PC 10 will improve the clarity, consistency and usability of the District Plan by refining definitions and associated rules in a manner that is consistent with the National Planning Standards.

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026

24. The Council acknowledges that these amendments are interim changes to its District Plan under the RMA which will continue to apply until the specified transition date under the Planning Act.

Dated 30 October 2026



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W J Embling
Counsel for Rotorua Lakes Council

Document Set ID: 23315049
Version: 1, Version Date: 30/10/2026