

**IN THE MATTER OF** the Resource Management Act 1991  
**AND**  
**IN THE MATTER OF** 13 applications to Rotorua Lakes District Council under section 88 of the Resource Management Act 1991 for resource consent for contracted emergency housing by Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development.

**Decision following the hearing of the bundled non-complying activity applications.**

The applications were heard at Te Arawa Park Hotel, Rotorua, on 18-21 & 31 October and 1 November 2022.

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**Proposal:**

To use 13 motels in Rotorua exclusively for Contracted Emergency Housing (CEH) with associated support services.

We note that Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development (MHUD) was the “agent” for the 13 individual Applicants and was not itself the Applicant.

**Summary Decision:**

1. Pursuant to sections 104 and 104D, and Part 2 of the Resource Management Act 1991 (RMA), the 13 non-complying activity land use applications are each granted consent with conditions. Those conditions, among other things, require a more ‘active’ involvement from the MHUD than it proposed.
2. Consents have been granted for a duration of 2 years and not the 5 year duration sought by MHUD.

**Introduction**

3. This decision is made on behalf of the Rotorua Lakes Council (RLC or the Council) by Independent Hearing Commissioners David Hill (Chair), Greg Hill and Sheena Tepania (the Panel), appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (the RMA).
4. This decision contains the findings from our deliberations on the 13 applications for resource consent and has been prepared in general accordance with section 113 of the RMA.
5. For convenience, and to avoid unnecessary duplication, we are issuing one formal decision covering all 13 applications - with separate consent conditions as appropriate. We consider this approach acceptable in the circumstance because, in the main, submissions and submitters were focussed more broadly on the larger issues rather than the particular motels. Where we found particular issues with individual motels, these are addressed in this decision.

6. The following thirteen applications were heard jointly:

RC17647	Lake Rotorua Hotel	131 Lake Road.
RC17648	Alpin Motel	16 Sala Street.
RC17650	Newcastle Motor Lodge	18 Ward Avenue.
RC17661	Pohutu Lodge Motel	3 Meade Street.
RC17662	Malones Motel	321 Fenton Street.
RC17673	Union Victoria Motel	26/28 Victoria Street.
RC17887	Ascot on Fenton	247 Fenton / 12 Toko Streets.
RC17889	RotoVegas Motel	249 Fenton / 14 Toko Streets.
RC17890	Midway Motel	293 Fenton Street.
RC17891	Geneva Motor Lodge	299 Fenton Street.
RC17892	Ann's Volcanic Motel	107 Malfroy Road.
RC17893	Apollo Hotel	7 Tryon Street.
RC18244	Emerald Spa Motor Inn	284 Fenton Street.

7. The initial six applications were lodged on 21 August 2021 by The Property Group as sub-agent for MHUD on behalf of the motel operators. A further seven applications (Ascot down to Apollo in the above list) were lodged on 20 December 2021 – one of which was subsequently withdrawn.
8. Per s.95A(3)(a) RMA, MHUD requested that all applications be publicly notified.
9. Twelve of the applications were publicly notified by the Council on 11 June 2022 with submissions closing on 11 July 2022.
10. The thirteenth application for Emerald Spa Motel was lodged on 22 July 2022 and publicly notified on 6 August 2022, with submissions closing on 2 September 2022.
11. All applications sought a duration of 5 years from the date of decision<sup>1</sup>.
12. By the close of the hearing the maximum overall resident capacity was resolved at 868 persons over 297 contracted motel units, based on the re-worked assumption that where rooms contain more than one double bed, only one bed was counted as sleeping two persons. Those are the aggregate proposed occupancy and unit condition maxima.
13. 3,841 submissions were received from 350 submitters on all applications (including 88 on Emerald Spa). The significant majority of submissions were in opposition and sought a decline of each and all consents.
14. A summary of submissions was provided in section 6 of the s.42A hearing report. That summary was not disputed and is adopted for present purposes.
15. Sixty four late submissions were received. The Panel accepted all late submissions; there being no prejudice to any party in terms of time or their content.

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<sup>1</sup> Blackwell, Statement of evidence, para 6.5.  
RLC: MHUD Applications - CEH

16. The Panel was not advised of any written approvals.
17. The s.42A RMA hearing report was prepared by the Council's consultant planner Craig Batchelar (principal author) and was made available to parties on 23 September 2022. The report was also informed by technical reviews by consultant planners Bethany Bennie and Charlotte Macdonald (individual site-specific motel assessments), Natalie Hampson (economics), Rebecca Foy (social impact), and Sarah Collins (children's play).
18. The s.42A report recommended that 11 of the applications be granted but that further information was required for 2 motels (Apollo Hotel Rotorua and Pohutu Lodge Motel) before a recommendation could be made. By the close of the hearing the s.42A authors (including Bethany Bennie and Charlotte Macdonald) were satisfied that consents could also issue to those latter two motels.
19. The Applicants' expert evidence was made available to parties on 5 October 2022.
20. Submitters' expert evidence was made available to parties on 15 October 2022.
21. The hearing opened on 18 October 2022 and was closed on 25 November 2022.

## **Housing crisis**

22. Mr Whittington stated<sup>2</sup>:

*Rotorua has a housing crisis. As explained in the evidence of Ms Hampson, Mr McNabb and Mr Eaqub, the market failed to supply sufficient new dwellings over the past decade, and even before, to accommodate Rotorua's growing population. There are various reasons for this. All witnesses highlight regulatory failure: the District Plan did not enable sufficient housing capacity. Plainly the Covid-19 pandemic is a significant factor.*

23. No party disagreed that Rotorua has a housing crisis; but submitters disagreed that granting 13 applications to enable the longer term (5 years) high density residential living in motels was an appropriate way to address that crisis. This was in terms of the social, cultural and economic effects (including community and individual safety, amenity and Rotorua wide reputational 'damage') that were and had, they said, been created by the use of motels for contracted and non-contracted emergency housing.
24. That, in a nutshell, was the central focus of this hearing.

## **Government policy background**

25. As discussed in the evidence of Nicholas McNabb (MHUD, Chief Advisor)<sup>3</sup>, in May 2016 government funding set up a programme of contracted places with wrap-around support, which has become the Transitional Housing Service under MHUD in concert with Kainga Ora and now includes new builds, residential homes, re-purposed and long-term leased properties. In Rotorua that now comprises 145 contracted transitional housing places.
26. The Emergency Housing Special Needs Grant policy (EH-SNG), administered by the Ministry of Social Development Te Manatu Whakahiato Ora (MSD), was also

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<sup>2</sup> Opening legal submissions, para 2.1.

<sup>3</sup> McNabb, Statement of evidence, section 4.

introduced in 2016 - the purpose of which was to support urgent housing needs not otherwise met by, for example, transitional housing (discussed further below).

27. Mr McNabb also discussed two other government programmes assisting people to quickly find properties:
  - Housing First, which began funding Te Taumata o Ngāti Whakaue Iho Ake Trust (Te Taumata) in 2019 to support whānau experiencing homelessness. That has now increased to 180 whānau in partnership with The Lifewise Trust and Airedale Property Trust.
  - Rapid Rehousing, designed to help individuals, family and whānau with low to medium social needs to quickly exit homelessness, which currently funds 58 rapid housing places in Rotorua through LinkPeople Limited.
28. Finally, Mr McNabb noted that there are 866 public homes / rentals provided by Kainga Ora and Community Housing Providers (CHPs) across the Rotorua District, with 341 new public homes either planned or under construction through the Public Housing Plan 2021-2024.
29. In March 2021 the Rotorua Housing Taskforce (the Taskforce) was established, which involves Council, Te Arawa Iwi, Ngāti Whakaue, Central Government (MHUD, MSD, Kainga Ora, Te Puni Kokiri, NZ Police, Health NZ, Department of Corrections) and community stakeholders. The aim of the Taskforce was to develop short-term housing solutions while more permanent solutions were being developed.
30. The Action Plan developed by the Taskforce and agreed with Cabinet in May 2021 proposed the three key planks of the CEH programme – being the use of contracted dedicated motels; wrap-around social support services; and a collective triage and housing placement hub to be known as Te Pokapū. Budget 2022<sup>4</sup> approved 5-year funding of \$147.5 million for that purpose.
31. MSD then established Te Pokapū with Te Taumata, and MHUD contracted WERA Aotearoa Charitable Trust (WACT), Visions of a Helping Hand Charitable Trust (Visions) and Emerge Aotearoa Limited (Emerge) to provide the social services. This has resulted in a provider collective being formed – Te Hau Ki Te Kāinga.
32. MHUD then engaged in a desktop selection exercise with the Taskforce to identify potentially suitable motels. From a shortlist of 24 motels, the final 13 were selected. In answering questions from the Commissioners, Lyall Wilson (MHUD's Team Leader, Contract Management, System Delivery and Performance) acknowledged that those 13 were largely self-selected as other preferred motels declined involvement. He explained the selection checklist criteria in his evidence.
33. In July 2021 MHUD put in place the policy of Contracted Emergency Housing (CEH) in Rotorua using 12 motels (initially) and adding a further one in September 2022.
34. Nine of those motels<sup>5</sup> had previously been accepting recipients of EH-SNG vouchers provided by MSD as follows:
  - Pohutu and Ann's Volcanic Motels from early 2017 (at least) – June 2021;

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<sup>4</sup> Ibid, para 4.32(1.5).

<sup>5</sup> Hampson, Statement of evidence, Figure 1 para 40.

- Union and RotoVegas Motels from May 2018 – June 2021;
  - Geneva Motel from February 2019 – June 2021;
  - Ascot Motel from February 2020 – June 2021;
  - Malones, Newcastle and Alpin Motels from March/April 2020 – June 2021.
35. Those nine motels (representing some 205 units for 595 persons based on the currently proposed maxima) were brought into the CEH programme in July 2021 along with Midway, Lake Rotorua and Apollo Motels (representing some further 92 units for 273 persons based on the currently proposed maxima).
  36. Emerald Spa Motel, which had been a contracted Covid Response Facility from March 2020 – June 2022, was brought into the CEH programme from July 2022 (adding a further 30 units for 93 persons based on the currently proposed maximum).
  37. To complete the picture<sup>6</sup>, at the end of August 2022, 32 individuals and whānau remained in the Four Canoes and Tuscany Covid-19 motels.
  38. Mr McNabb reported<sup>7</sup> that between November 2021 and October 2022 the number of motels used for EH-SNG reduced from 45 to 29.
  39. Under the EH-SNG programme<sup>8</sup> whānau recipients may receive a grant for up to 7 nights (standard) or 21 nights of emergency accommodation if engaging with an MSD approved support service. That grant can be renewed at MSD's discretion. The essential difference between EH-SNG and CEH is that, in the former programme, the grant recipient can determine where to reside (provided the voucher is accepted) and is not part of a required support service. As such there is no "support" management as under CEH. Whānau under CEH are not counted in the EH-SNG statistics.
  40. The temporal distribution of EH-SNG whānau recipients for Rotorua was shown in a chart produced by Mr McNabb in reply<sup>9</sup> as follows:

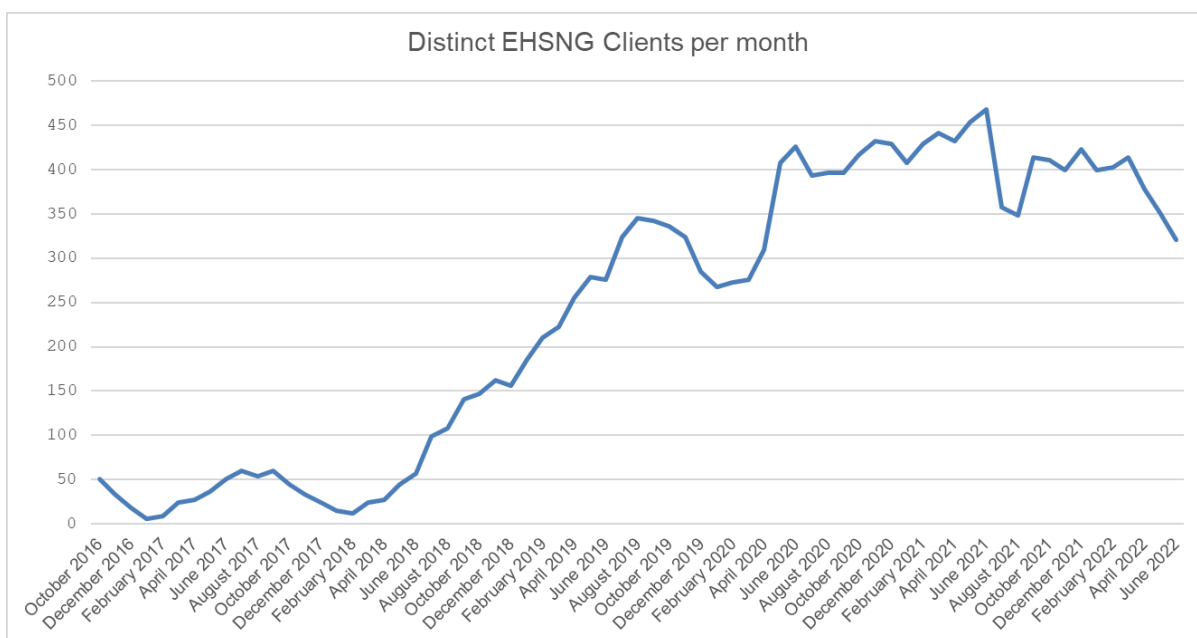
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<sup>6</sup> McNabb, op cit, para 4.30.

<sup>7</sup> McNabb, Further evidence, para 5.1.

<sup>8</sup> An instrument under s.101(1) of the Social Security Act 2018.

<sup>9</sup> McNabb, op cit, para 2.3.



41. In the above chart, CEH whānau are not included which explains the c.100 client dip in July 2021 when that programme came on stream.
42. Therefore, the complete EH picture post-July 2021 requires the addition of those in the CEH (and COVID) programmes which, from Mr McNabb’s evidence<sup>10</sup> showed a similar reduction from 316 clients<sup>11</sup> in September 2021 to 230 clients in September 2022, with an overall year-end September 2022 EH programme reduction from 640 to 461 clients (with 17 fewer motels in use – 16 EH-SNG and 1 COVID).
43. That *overall* programme number of 461 clients is approximately equal to the peak EH-SNG at July 2021 when the CEH programme commenced.
44. Mr Wilson noted<sup>12</sup> that as of 5 October 2022, 221 [sic] of the 297 contracted units were occupied – 168 by 203 parents and 288 children, 5 by couples, 29 by singles and 11 by support service providers. Furthermore, of the 482 whānau supported by CEH since 1 July 2021, 80 have moved to transitional or public housing, 51 to private rentals, 73 to alternative unknown accommodation, 39 to their whānau homes, 29 have left Rotorua, and 47 left due to non-compliance with the rules of stay.

### Consents required and activity status

45. As noted by Alice Blackwell (Planner)<sup>13</sup>, and set out in the 'site specific' s.42A reports, the 13 motels are located in the following zones:
  - Commercial 4 (7);
  - Commercial 4 and Residential 1 (1);
  - Commercial 4 and Residential 2 (2);
  - Residential 2 (2); and

<sup>10</sup> Ibid, para 5.10.

<sup>11</sup> A *client* signifies a whanau regardless of number of persons.

<sup>12</sup> Wilson, Statement of evidence, para 8.1.

<sup>13</sup> Blackwell, Statement of evidence, para 7.1.

- Commercial 3 (1).

46. The relevant zone descriptions and key provisions follow (our emphases).

Commercial 4 – City Entranceway Accommodation (COMZ4)

47. The description of the zone is:

*Tourism accommodation concentrated along city entranceways and arterial routes such as Fenton Street and Lake Road. Activities within the Commercial 4 zone consist of motels or large apartment style buildings commonly two storeys in height, with signage that maintains surrounding amenity. The buildings are designed to cover the majority of the land area and have minimal yards that are landscaped where they adjoin the road.*

48. The relevant objectives are:

*COMZ-O1 - A hierarchy of vibrant compact commercial and tourism centres that efficiently service and support the needs of the surrounding community and nationally significant tourism sector.*

*COMZ-O3 - Commercial buildings and activities designed and operated in a manner that avoids adverse effects on the amenity of residential zones<sup>14</sup>.*

49. The relevant policies are:

*COMZ-P4: Entranceway Accommodation and Tourism*

*Provide for the development of tourism enterprises and Māori cultural experiences that maintains or enhances the amenity and vibrancy along the northern and southern city entranceways to the inner city, as shown on Planning Map 206*

*COMZ-P6: Manage the design of activities within commercial centres to maintain or enhance the character, public safety and efficient functioning of the transport network.*

*COMZ-P7: Manage the effects and design of activities to ensure that the amenity of adjoining residential properties is not adversely affected.*

50. We do not find the other Commercial Objectives and Policies relevant as they relate to other zones, specifically relate to the design and appearance of buildings (which are essentially unchanged by this/these application(s)), address commercial activities located within non-commercial zones, and reverse sensitivity.

Commercial 3 – Neighbourhood Centres (COMZ3)

51. The description of the zone is:

*Small clusters of convenience stores such as dairies, chemists, hairdressers and takeaway outlets that provide day to day services to residential areas located within the immediate vicinity. These centres are dispersed throughout the residential zones and are normally located on corner sites. Buildings are no more than 300m<sup>2</sup> in ground floor area and are usually no more than one storey in height. These areas have lower pedestrian and traffic movement compared to other commercial centres, however they*

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<sup>14</sup> This objective is under the header - Design and appearance of buildings, however the objective also related to “activities”.

*provide an active environment, with higher levels of lighting and traffic movement in comparison to the surrounding residential environment.*

52. The relevant objectives are the same as those for the Commercial 4 zone.
53. The relevant policies are COMZ-P6 and COMZ-P7 listed above for the Commercial 4 zone plus the following:

*COMZ-P3: Provide for small neighbourhood centres within easy walking distance that support the day to day needs of the surrounding residential area.*

Residential 1 - Low Density living (REZSZ1)

54. The description of the zone is:

*Low density residential areas, such as Ngongotahā, Kāwaha Point, Western Heights, Hillcrest, Springfield and Lynmore. There is a mix of single storey and two-storey houses of various styles and materials. There is a balance between the built and natural elements of the environment in this zone. There is a sense of space around buildings, which is enhanced by the landscaping on site and trees within the road reserve. Other characteristics include generally low levels of noise and low traffic levels.*

55. The relevant objectives are:

*RESZ-O2 - The character and amenity values of the residential zones are maintained and enhanced.*

*RESZ-O3 - Non-residential activities in residential zones that are domestic in scale and character and do not have an adverse impact on the amenity values and character of the residential zones, or the vitality and viability of the City Centre or Commercial zones.*

56. While there is a range of policies, none are particularly relevant to these applications. They mostly address the physical attributes of the zone's development as opposed to the use of the zone.

Residential 2 - Medium density living (RESZ2)

57. The description of the zone is:

*Medium density residential areas located close to the city centre. There is a mix of single storey and two-storey apartment style living, with limited outdoor space. The built environment is dominant and much of the space around buildings is taken up by hard surfacing for car parking and turning. There are few trees and shrubs that make an impact on the wider area and the zone is more reliant on the street trees to soften the built environment.*

58. The relevant objectives are the same as those for the Residential 1 zone.
59. In the same vein as Residential 1, none of the policies are particularly relevant to these applications. They mostly address the physical attributes of the zone's development as opposed to the use of the zone.
60. While there was some commentary that the activity status of some of the motels in the commercial zone might qualify as restricted discretionary (RDIS), it was accepted by MHUD and Council that it was safer to assume that all were non-complying (NC) under rule COMZ-R1 - *where an activity is not expressly stated in this table.*
61. Similarly for those motels with a residential zoning, NC rule RESZ-R2 - *where an activity is not expressly stated in this table* – applies.



62. The Panel proceeded on that agreed basis.

### **Permitted baseline**

63. As all 13 motels are lawfully established for that particular purpose, a permitted baseline technically applies. That baseline relates primarily to development controls and since there was no dispute about that - and was largely irrelevant in terms of the issues before us - we simply accept that to be the case. We record that nothing turned on that question.

64. We discuss the related question of “existing environment” below.

### **Procedural and other matters**

65. The Panel issued 10 Directions between November 2021 and August 2022. Those dealt in the main with procedural questions. We record that those directions were observed by all parties and the Panel records its appreciation for that.

66. No other procedural matters were raised for consideration.

### **Relevant statutory provisions considered**

67. In accordance with section 104 of the RMA we have had regard to the relevant statutory provisions including sections 104 and 104D, and sections 108 and 108AA with respect to conditions, and Part 2 because we determined that there is incomplete coverage of the matter in the RLDP (as was generally accepted) and doing so would, in the words of the Court of Appeal<sup>15</sup>, add value to the evaluative exercise. We explain our reasoning on that later in this decision.

### **Relevant standards, policy statements and plan provisions considered**

68. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statement and plan provisions of the documents noted below.

69. We note that those provisions and their application were not in dispute (albeit respective weightings and interpretation were not necessarily agreed). Accordingly, as no party disputed these matters, in the interest of brevity they are not specifically discussed further or the details repeated in this decision – but are adopted and cross-referenced per section 113(3) of the RMA. Those provisions are contained in the following statutory documents:

- Bay of Plenty Regional Policy Statement 2014; and
- Rotorua District Plan 2022 updated.

70. We discuss specific objectives and policies in the narrative of this decision below because, of course, one of the s.104D gateway tests requires that the proposal(s) is not contrary to those plan provisions.

71. While the respective planners (Ms Blackwell, Mr Batchelar and Mr Murphy) referred to the NPSUD in support of the contention that this freed up land for residential development, and that this would assist the housing crisis in due course, that seemed to us a tenuous connection at best. The NPSUD was not designed to promote the use

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<sup>15</sup> R J Davidson Family Trust, CA97/2017, para 75.

of motels for EH purposes – indeed quite the opposite (as the planners acknowledged). We do not accord any weight, therefore, to the NPSUD in this matter.

72. We find that no relevant provisions of any national policy statement or national environmental standard directly applied.

## Existing environment

73. Fundamental to a consideration of the significance of adverse effects is the establishment of a baseline for the existing environment. Because these resource consents have a degree of retrospectivity about them – all motels (bar 1) have been operating under CEH (at least) since July 2021 and therefore the effects for which consent is sought are already occurring – that baseline is less clear.

74. We therefore need to make a finding on that question.

75. In his opening legal submissions Mr Whittington submitted that<sup>16</sup>:

*The main driver of demand for Contracted Emergency Housing, and emergency housing in general, is the acute shortage of housing in Rotorua. It will take at least five years of sustained effort to reduce the numbers of people without adequate housing in Rotorua. These consents seek to provide for those unable to find housing for that five-year period.*

*That unmet housing demand is an element of the existing environment for the purpose of the assessment required under s 104(1)(a) of the RMA. Whether the large number of people who do not have housing are living in Contracted Emergency Housing, using Emergency Housing Special Needs Grants, or otherwise in shelters, cars, or the streets, the economic and social consequences are part of the existing environment.*

76. He further submitted<sup>17</sup>:

*Under s 104(1)(a) a decision-maker must have regard to any actual and potential effects on the environment of allowing the activity.*

*Recent cases have reinforced the need to cast the environment in real world or realistic terms, and to avoid making artificial assumptions.*

*Taking such an approach, the existing environment in Rotorua is one in which there is a very high level of housing deprivation, and very high and unmet housing demand.*

[Underlining is our emphasis].

77. Mr Whittington went on to state<sup>18</sup>:

*The Commissioners must seek to identify, or isolate, what the effects of the 13 Contracted Emergency Housing motels will be on an environment otherwise dealing with the significant unmet housing demand and the social and economic consequences of the housing crisis. Contracted Emergency Housing is not increasing the demand for housing generally or emergency housing in particular. That demand exists. Nor is it adding to the number of motels providing emergency housing as many were previously either Covid-19 motels or took EHSNGs.*

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<sup>16</sup> Opening legal submissions , paras 1.2 and 1.3.

<sup>17</sup> Ibid, paras 3.11 – 3.13.

<sup>18</sup> Ibid, para 3.17.

78. Ms Blackwell's planning evidence on the existing environment reflected the Applicant's legal submissions – stating<sup>19</sup>:

*Existing Environment*

*In terms of the existing environment, I consider that the starting point for this assessment should [be] the environment as it currently exists. In my opinion, to ignore the wider social and economic conditions that are being experienced as a result of a shortage of appropriate and affordable housing in Rotorua, would be artificial.*

*At the same time, the wider adverse effects of emergency housing (outside of CEH) should not become the responsibility of the subject applications to mitigate. As is evidenced by the different approaches taken by different experts, there is no one way to assess the subject applications.*

*All the existing emergency housing operations form part of the environment as it currently exists. It is then a matter of implementing an appropriate methodology to isolate for assessment the effects of CEH from the effects of other activities.*

*It is not appropriate to attribute the adverse effects of other emergency housing operations to the subject applications. If there are emergency housing activities that do not have resource consents and are required to, this is an enforcement issue and not something that should compromise the consideration of the subject CEH Applications.*

*In order to assist in isolating the potential cumulative effects of CEH from other forms of emergency housing, I consider it appropriate to consider the counterfactual whereby CEH does not exist and what effect that has on the social and economic conditions in Rotorua.*

79. She went on to state (in relation to cumulative effects), but relevant to the issue of the "existing environment", the following<sup>20</sup>:

*In my opinion it is important to be cognisant of the environment within which consent is sought. However, if resource consents are required for other emergency housing activities, it would be unreasonable to attribute the effects of those emergency housing activities to the subject CEH Applications. This is particularly relevant to the assessment of cumulative effects, noting that these Proposals specifically seek to legitimise onsite activities, which includes appropriate mitigation to minimise attributable effects.*

80. In her closing legal submissions Ms Le Bas<sup>21</sup> set out the following:

*The Panel's regard under section 104(1)(a) of the RMA to any actual and potential (adverse and positive) effects on the environment from allowing CEH, involves the 'real world' environment. That environment as noted previously, incorporates both uncontracted emergency housing (UEH), the 13 CEH activities and the associated social, economic and cultural conditions which affect the people and community of Rotorua.*

*It is submitted to otherwise exclude the 13 CEH activities from the environment when assessing effects under section 104 would require the Panel to adopt an artificial environment. This would be contrary to judicial guidance and it would also involve the incorrect application of an analytical tool that was judicially considered in the context of assessing effects on the future environment applicable to the more common assessment of a proposed land use that has not yet commenced.*

[footnotes excluded]

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<sup>19</sup> Blackwell, evidence, paras 8.4 – 8.9.

<sup>20</sup> Ibid, para 9.68.

<sup>21</sup> Legal submissions, paras 3-4.

81. In short, Ms Le Bas submitted that the existing environment needs to be viewed, and interpreted, in a 'real world' context and that we should not adopt an artificial "purist" approach. We agree.
82. Furthermore, she noted that the projection of future effects that would normally be required for an application is not necessary in this instance because those effects have been occurring since July 2021. We actually know what those effects are and therefore a large degree of uncertainty (i.e. the future state hypothetical) is removed.
83. Mr Batchelar opined<sup>22</sup>:
- At an aggregate level, the existing environment is not currently a reflection of permitted or consented activity, with many EH activities not having the required resource consents. This adds complexity in assessing the relevant social and economic effects of the proposed CEH on neighbours and the community.*
84. While all parties seemed to agree that we should take a real-world view of the existing environment (we address RRI's position below) and consider the environment as it currently exists, Mr Whittington and Ms Blackwell went further. They added that we should "isolate" the effects of the 13 applications to determine (we assume) what effects each of the 13 applications was having (given that they are already established and occurring) and whether those effects have been or could be avoided or mitigated by the recommended consent conditions.
85. In that regard we were somewhat puzzled by Ms Blackwell's suggestion (noted above) that we should not take into account the effects from other emergency housing operations – effects that are clearly part of the existing environment as conceived. We presume that comment is made on the assumption that *those* effects can in fact be isolated so that the particularised assessment of each of the 13 motels can be undertaken as proposed.
86. Having said that, we note that no-one appeared able to analyse and provide that differentiated effect information – and we return to that point later.
87. We conclude at this point that if the "*unmet housing demand is an element of the existing environment*" and the Government's response to addressing some of that demand is by emergency housing within motels (be it contracted or uncontracted), then it follows that the effects (both positive and adverse) arising from that approach must also be part of the existing environment. This is real-world and the environment as it currently exists. We understand Ms Hamm for RRI agreed with that conclusion.
88. Ms Hamm, legal counsel for RRI, largely agreed with Mr Whittington in that addressing the "existing environment" we needed to take a 'real world' view, but disagreed with Ms Blackwell's apparent view stating<sup>23</sup>:
- RRI agrees that it is the environment as it currently exists including all emergency housing whether or not that is lawfully established.*
- RRI specifically notes that given the extent of other emergency housing being provided in Rotorua, it would be artificial and certainly not 'real world' to try and approach the existing environment in any other way.*

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<sup>22</sup> S.42A report, para 198.

<sup>23</sup> RRI's legal submissions, paras 59 – 60.

[Underlining is our emphasis].

89. Ms Hamm went on to state<sup>24</sup>:

*It is not clear whether these statements [i.e. paragraph 9.68 of Ms Blackwell's evidence cited above] are an attempt to water down the earlier acknowledgement that the starting point for assessment should be the environment as it currently exists, by somehow minimising the widespread extent of existing emergency housing in Rotorua by just being 'cognisant' of it. If so this is not accepted by RRI, and, if submitted, is a legally incorrect approach. The receiving environment against which these applications are being assessed must (on a real world approach) include the existing effects arising from other widespread emergency housing.*

*This does not mean that the effects of existing emergency housing are being attributed to these applications. But the effects of existing emergency housing are part of the 'existent situation' against which the effects of these applications are being assessed.*

90. In turn, Mr Murphy (planning witness for Restore Rotorua Incorporated (RRI)) gave his opinion as follows<sup>25</sup>:

*The environment as it exists, and upon which the effects must be assessed, includes other Emergency Housing (EH) use of motels in Rotorua not sought as CEH by MHUD. Effects generated by these activities are appropriate to consider and it follows that the same effects must be considered cumulatively or in aggregate i.e. as added to by the proposals. To do otherwise would create an artificial starting point for effects consideration, in my view.*

91. We agree that the existing environment for all practical purposes in this instance includes all EH effects and that, absent any compelling evidence, any conjecture as to what effects pertain to the differentiation between EHSNG and CEH would be both specious and unsafe.
92. We go further. The burden is and was on the Applicant – in this case their agent MHUD – to bring forward evidence distinguishing the effects of EHSNG from CEH if they wished to rely upon any such differentiation for the purpose of refining the existing environment. They did not do so.

#### **Cumulative or Accumulative effect?**

93. The term “cumulative effect” was frequently used by witnesses – often inappropriately in our view. As that term has specific connotation because of s.3(d) RMA (meaning of “effect”) and caselaw, we think it important to clarify.
94. In relation to cumulative effects, Mr Whittington submitted that the 13 CEH applications were not adding to the number of motels providing emergency housing as many were previously either Covid-19 motels or took EHSNGs<sup>26</sup>.
95. Ms Hamm addressed cumulative effects stating<sup>27</sup>:

*Then, in relation to cumulative effects, it is not clear if:*

- (a) *These are approached narrowly by MHUD on the basis that any accumulative effect only arises across the 13 concurrent applications.*

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<sup>24</sup> Ibid, paras 65 -66.

<sup>25</sup> Murphy, evidence, para 11.

<sup>26</sup> Op cit, para 3.17.

<sup>27</sup> Op cit, paras 67–68 and 70-71.

- (b) *The applicant seeks to minimise cumulative effects by taking an approach which says ‘the impact of our activities is so minimal that there cannot be an adverse cumulative effect’ even if the existing situation is unacceptable.*

*These approaches over complicate the assessment of cumulative effects. If “the starting point for this assessment should [be] the environment as it currently exists” (which includes the effects of existing emergency housing), then potential cumulative effects arising from these 13 resource consent applications are effects that are proposed to occur over and above the existing situation....*

*This is the very point of a cumulative effects assessment - an effect that is proposed to occur over and above an existing situation. On its own the effect may well be minimal, but it must be assessed against the existing situation.*

*RRI says simply that the cumulative adverse effects of granting resource consent to 13 sites for CEH will add to the existing situation in an unacceptable way by cementing the use of tourist accommodation in Rotorua for emergency housing.*

96. We have noted above that many of the 13 CEH motels were, prior to being contracted by MHUD, used for non-contracted emergency housing (both mixed and exclusive). Notwithstanding this, it is the Panel’s view, that we can, and should, take into account the accumulative effects on the environment arising from all 13 CEH applications and the other forms of emergency housing in Rotorua. To not do so would be artificial.
97. In that regard we make an important distinction between a cumulative effect and an accumulative effects. The former involves establishing a degree of direct nexus between an activity and an adverse effect; the latter is simply a mathematical fact whereby 1+1=2. While Ms Hamm cited the Unison Windfarm case as an example where an additional activity was accepted by the Court as a cumulative effect in combination, we note that was essentially a landscape matter where the windfarm clearly added to and enlarged existing adverse landscape effects – and therefore was cumulative in the former sense.
98. In the present instance we know that adding motels to EH creates more EH facilities. What is more problematic is to tie any particular additional motel to generated adverse effects of the sort of concern to the wider community. Correlation (at best) is not sufficient to establish a cumulative effect.
99. That is a matter that Ms Foy also drew attention to in her Social Impact Assessment (SIA) when she remarked<sup>28</sup>:
- In my opinion, adequate consideration has not been given by the applicant to the effects of all the CEH and UEH motels operating collectively. For example, the social effects of one motel may not give rise to significant adverse social effects, but as more motels are used the social effects of that aggregation of activity may become untenable from a social perspective.*
- It would appear due to the heightened awareness of EH issues raised in submissions and media reports, that this hearing is the point at which residents are expressing that the line has been crossed. My analysis of effects on social wellbeing confirms this outcome.*
100. Furthermore, as noted, we have no evidence on or by which to “isolate” the effects of the 13 CEH sites from the other forms of emergency housing (or from each other).

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<sup>28</sup> Foy, Evidence, paras 19 – 20.  
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This is because, in part, many of the 13 CEH sites had previously been used for non-contracted emergency housing.

101. Moreover, the Applicant presented no evidence demonstrating that the operation of the 13 CEH sites was creating fewer adverse effects than previously; and submitters who presented to us contended that the adverse effects from all emergency housing had not reduced since the establishment and operation of the CEH.
102. We should also note, of course, that we are determining the *use* of the motels and not the people who might reside or have resided in them. However, while most submitters told us they accepted that people needed to be housed, they considered it was the concentration of the numbers of people, many with complex needs (drug and alcohol and mental wellbeing issues), that was creating the adverse effects (which we outline later). The Applicant accepted and understood this which, in large part, influenced the range of conditions they offered including that the site must be subject to a contract for the operation of CEH with MHUD at all times, the appointment of a “suitable representative”, and the Site Management Plan.

### **Evidence heard**

103. Whilst s.113(1)(ad) RMA requires a summary of the evidence heard, we think it more appropriate (and helpful) in this instance to focus on the principal issues raised. This in no way ‘down plays’ the evidence we heard, particularly from those submitters opposing the proposal, and we do address that evidence when we discuss the principal issues raised.
104. We do, however, note the s.42A report’s identification of the five most frequently raised submission points – which were reflected and elaborated on by submitters who appeared - being:
  - behaviour of emergency housing tenants;
  - neighbourhood safety;
  - crime;
  - adverse effects on the tourism sector, and
  - adverse effects on the amenity/reputation of Rotorua.
105. We attach a record of those who appeared and spoke at the hearing as Attachment 3 to this decision.

### **Section 104D Gateway**

106. Section 104D RMA, the non-complying activity gateway tests, requires either that the overall adverse effects are minor (s104D(1)(a)) or that the activity will not be contrary to the objectives and policies of the respective plans (s104D(1)(b)), otherwise consent must be refused.
107. As noted above, the s.42A report concluded that the proposal was not contrary to the objectives and policies of the plan(s) and the adverse effects were no more than minor – and therefore consent could be granted. The Applicants’ experts agreed.

108. We deal with the s.104D(1)(b) objectives and policies matter first since that was, arguably, less contentious.

## **RLDP Objectives and Policies**

109. As a preliminary point we note that we are required under s.104D(1)(b) to consider not just operative plans but also proposed plans.
110. Plan Change 9 – Housing for Everyone to the RLDP was recently notified with submissions closing on 12 November. The summary of submissions was notified for further submission on 25 November – and the further submission period closed on 9 December 2022.
111. Plan Change 9 seeks to change the objectives and policies of the commercial and residential zones (which apply to these motel sites) to provide for greater intensification. Given the recency of this plan change and the fact that the further submission period closed after we closed this hearing, we have placed very little weight on it.
112. In summary we note that, following their detailed analysis of provisions, both Ms Blackwell and Mr Batchelar concluded that any inconsistency that might be argued with respect to the relevant objective and policy provisions of the RLDP failed to reach the threshold of being “contrary”. Their opinion was that the s.104D(1)(b) gateway test was passed.
113. Mr Murphy concluded differently with respect to the commercial zone objectives.
114. In the interest of brevity, therefore, we focus on that particular difference.
115. It was Mr Murphy’s opinion that the applications were contrary to the relevant objectives and policies.
116. Objective COMZ-01 states: *A hierarchy of vibrant compact commercial and tourism centres that efficiently service and support the needs of the surrounding community and nationally significant tourism sector.*
117. With respect to that objective he stated<sup>29</sup>:

*Granting the applications within the Commercial 4 Zone would be directly contrary to this objective, diminishing the potential to support the nationally significant tourism sector based in Rotorua, at a most sensitive time for that industry, in a location that is specifically planned for that purpose.*

118. Objective COMZ – O3 states: *Commercial buildings and activities designed and operated in a manner that avoids adverse effects on the amenity of residential zones.*
119. With respect to that objective, it was Mr Murphy’s opinion that while the activities were not commercial activities, the activity / use is sought to be located in the Commercial 4 Zone, and that:

*The activities significantly affect the established Tourist Accommodation and ancillary services character of Fenton Street, by way of introducing high-intensity residential accommodation. This being a use considerably different to the specifically-planned use of the sites, with proven*

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<sup>29</sup> Murphy, evidence, para 83.



*adverse safety and social impacts to business owners, customers, guests and the passing public of the Commercial 4 zone.*<sup>30</sup>

120. He further stated<sup>31</sup>:

*The sought use of the proposed sites would not avoid adverse effects on the amenity of residential zones, with adverse social impacts, and effects in respect of noise and general disturbance (function of intensity of use) and streetscape (function of parking demand) also identified.*

121. It was Mr Murphy's overall opinion that<sup>32</sup>:

*Notwithstanding a temporary duration, I am of the view the proposal would be contrary to specific operative objective COMZ-O1 in that the proposals do the exact opposite of what is expected – rather than supporting the nationally important tourism sector within Rotorua as expected at the zoned sites, the developments would actively remove the potential to do so, at a sensitive time for tourism industry. The proposal would also be contrary with COMZ-P4 and the direction to provide for safety within commercial areas.*

*I am therefore of the view that the proposal will be contrary to the objectives and policies of the specific planned purposes of the operative City Entranceway Accommodation and as modified by Plan Change 9, of sufficient importance to the zone and plan overall so as to be contrary to the operative and proposed plans.*

122. Under questioning Mr Murphy accepted that removing the six COMZ4 motels on Fenton St – the relief he supported<sup>33</sup> - from being available for tourist accommodation, for the limited period sought (5 years) would not undermine the entire Commercial 4 zone. He also accepted that while the zone's description and thrust of the objectives and policies were geared toward "tourist accommodation", other activities such as household units and community housing were permitted activities (but making clear that these activities were permitted at reduced scale not met by these applications).

123. While we accept that the proposed re-use is not squarely consistent with the referenced zone objectives, does that meet the required threshold of being "contrary to"?

124. With respect to the s.104(1)(b) gateway test, we accept Mr Whittington's opening legal submissions, where he stated<sup>34</sup>:

*As to the latter gateway, to be "contrary" for the purposes of s 104D(1)(b) means that it must be "...opposed in nature, different to or opposite ... repugnant and antagonistic"<sup>35</sup>.*

*When determining whether a proposed consent is contrary to the objectives and policies in a plan, what is required is "a fair appraisal of the objectives and policies read as a whole"<sup>36</sup>.*

125. Ms Le Bas' opening legal submission, and maintained at the end of the hearing, was

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<sup>30</sup> *ibid*, para 84.

<sup>31</sup> *Ibid*, para 85.

<sup>32</sup> *Ibid*, paras 101 and 103.

<sup>33</sup> *Ibid*, para 148.

<sup>34</sup> Opening legal submissions, paras 3.23 - 3.24.

<sup>35</sup> *New Zealand Rail v Marlborough District Council* [1994] NZRMA 70 (HC) at [11].

<sup>36</sup> *Dye v Auckland Regional Council* [2002] 1 NZLR 337 at [25]; see also *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 and *Royal Forest and Bird Protection Society of New Zealand v New Zealand Transport Agency* [2021] NZHC 390.

that<sup>37</sup>:

*Taking into account guidance provided by the Courts, including that a consent authority considering a non-complying activity must:*

- (a) *Read the objectives and policies as a whole;*
- (b) *Exercise a broad judgement; and*
- (c) *Take a holistic view of those objectives and policies,*

*RLC's expert planning witnesses remain of the view, at the opening of this hearing, that the CEH activities are not contrary to the ODP's objectives and policies. The second limb of the non-complying activity gateway is, accordingly, open under s104D of the RMA allowing the Hearing Panel to proceed to consider whether to grant land use consent for CEH under s104 of the Act.*

126. Ms Hamm had a contrary view to both the Applicants and the Council. She submitted<sup>38</sup>:

*Granting consent to CEH will mean that the CEH sites deliver neither tourism accommodation nor high quality residential for a period of time which is limited but is not insignificant given housing supply issues. To that extent it is contrary to both operative and proposed District Plan objectives and policies.*

*It follows that in RRI's submission, the applications should not pass through either of the gateways in s 104D of the RMA.*

127. We agree with Mr Whittington's and Ms Le Bas' submissions about how we must consider and apply section 104D(1)(b). The question therefore is – whether these proposals are opposed in nature, different to or opposite, and/or repugnant and antagonistic to those relevant objectives and policies, when read as a whole?
128. We accept that the RLDP's commercial zones' objectives and policies have a strong outcome focus – in this case in providing for tourist accommodation and activities which support or complement that activity. The requirement to maintain and enhance the amenity of that zone to create an appropriate environment for tourist accommodation is also emphasised.
129. While the provisions seek to provide for tourist accommodation, it permits a range of other activities which, albeit at a different lesser scale, are similar to CEH – being community housing (maximum of 8 persons) and household units. Moreover, as already set out, Mr Murphy accepted that removing 6 motels in Fenton St from being available for tourist accommodation, for a limited period, would not undermine the entire Commercial 4 zone (nor, we intuit, the RESZ or COMZ3 for that matter), and that a range of other 'related' residential activities were permitted activities within the zone(s) – indeed community housing (whose definition includes emergency housing) is provided with varying activity status in almost all zones except Industrial.
130. None of the commercial zones' objectives and policies are particularly directive – other than COMZ-O3 – *Commercial buildings and activities designed and operated in a manner that avoids adverse effects on the amenity of residential zones”* and COMZ-P7 - *Manage the effects and design of activities to ensure that the amenity of adjoining*

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<sup>37</sup> Opening legal submissions, para 4.

<sup>38</sup> Legal submissions, paras 97 – 98.

*residential properties is not adversely affected [emphasis added],* which we address below. It is certainly arguable as to whether the present *activities* (i.e. CEH) within the zone are designed and operated in a manner that avoids adverse effects on the amenity of residential zones – and we also address that “effect” matter further below.

131. The residential zones’ objectives and policies, relevant to these applications, essentially seek that amenity values of those zones are maintained and enhanced.
132. It was Ms Blackwell’s and Mr Batchelar’s opinion that the adverse amenity effects, including maintaining or enhancing character and public safety, would be “*avoided*” by the conditions of consent and in particular the Site Management Plan (SMP).
133. However, and in light of our finding on the existing environment, as the SMP can only address on-site matters and has little if any control or influence over the off-site adverse effects of concern, we disagree and prefer the evidence of Mr Murphy on the matter.
134. We find that there are degrees of inconsistency with the policy framework – sufficient to open the question of duration and whether a 5-year term is reasonable in the overall circumstance. However, having said that, inconsistency is not the threshold for this test – and if the avoidance objective is to be given full weight for one or more motels, an unqualified nexus must be established. That, as discussed earlier, simply was not made out.
135. Overall, it is our finding that on a fair appraisal of the objectives and policies when read as a whole, none of the applications are contrary to the plan provisions, as submitted by Mr Whittington. On this basis section s.104D(1)(b) is satisfied, and the ‘gateway test’ is met.
136. Given our finding that the gateway test is met, it is not necessary for us to make a finding as to whether or not s.104D(1)(a) applies; namely, whether (or not) the adverse effects of the activities on the environment will be “minor”. We address later in this decision the question as to whether or not the adverse effects can be avoided, remedied or mitigated (the wording in section 5 of the Act). For completeness, we record that had we been required to make a finding, we would have found them to be more than minor, in light of our consideration of the principal effects in contention below.

### **Principal effect issues in contention**

137. In terms of s.104(1)(a), the principal issues in play were whether the actual and potential adverse effects of the activity on the environment could be avoided, remedied or mitigated, including on:
  - (a) the amenity values of the immediate neighbourhood;
  - (b) the tourism sector; and
  - (c) the reputation of Rotorua.
138. Other issues in contention were:
  - (a) whether, if consent(s) were to be granted, what an appropriate duration of consent would be; and

(b) whether, if consent(s) were to be granted, what an appropriate suite of conditions to manage the proposal and its adverse effects would be.

139. Further issues arose concerning consultation with Tūhourangi Ngāti Wāhiao, and the matter of an appropriate assessment of cultural values in relation to Whakarewarewa and Te Puia. We discuss those below.

140. We now consider the principal adverse effect issues in contention identified above.

### **Neighbourhood amenity**

141. The submitters who appeared and spoke at the hearing recounted anecdotal stories of either witnessing or being a party to intimidation, verbal abuse, altercations, property damage, street fighting, domestic violence, drug dealing, trespass, littering and assorted behaviours. While those behaviours generally were not typically tied back to a particular motel (and in some cases where they were, those motels were not one of the thirteen CEH motels before us) the increasing incidence of such was often identified as correlating with the arrival of Covid-19 and the associated policy of emergency housing provision.
142. Graphical representation of the significant increase in police-recorded offences and incidents 2018 – 2021 was presented as part of RRI's submissions by Gary Smith, a retired District Commander of the Bay of Plenty Police. That information was formally released by the NZ Police in June 2022 pursuant to Mr Smith's OIA request.
143. Aside from those direct experiences of antisocial behaviour, we heard stories about the destabilising of people's family situation; young people, some with disabilities, whose certainty and security of the parameters within which they operate have been compromised – leading in a number of cases to families leaving Rotorua, dislocating wider family connections; residents now so fearful that avoidance behaviours are restricting their movement; the cost of individual security measures now required; businesses having to add security details and regularly cleaning up after incidents; and a general concern about the increasingly "secure" look both of Fenton Street with its CEH motel-required security and the increasing number of residential dwellings in the Glenholme neighbourhood installing and exhibiting security cameras and fencing.
144. We also heard from the NZ Seventh-day Adventist Schools Association Ltd about the impact of the use of motels for EH<sup>39</sup>. This included theft from and vandalism of the school buildings and grounds, serious intimidation of the children and teachers, deposition of unsavoury items on school grounds, as well as the additional costs to install security measures (fencing and security cameras) - money that was allocated to a new playground.
145. Without rehearsing the many personal, business and community stories we heard during the hearing, and with no disrespect to the emotional time and effort expended by those submitters in preparing and presenting their submissions, suffice to say that the Panel accepts that the world in which the residents of Rotorua and Glenholme (in particular) now find themselves has been significantly impacted by the policy of

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<sup>39</sup> Specifically in relation to Emerald Spa Motel as this was the only application they were notified of – but said at the hearing they had broader concerns about all of the applications and their impacts.

supporting emergency housing in the way that has eventuated. Of that there can be no doubt. The amenity of the neighbourhood has been diminished – and that amenity value is a legitimate resource management matter.

146. In that regard the Panel wishes to formally acknowledge the pivotal role played by Trevor Newbrook and Restore Rotorua Incorporated in coalescing the views, opinions and concerns of the many individuals who submitted and/or appeared before us.
147. Section 7 requires that, among other matters, we *have particular regard* to:
  - (c) *the maintenance and enhancement of amenity values.*
148. Section 2 of the RMA defines *amenity values* to mean:

*those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*
149. This is not a matter, as in Policy 6(b) of the NPSUD, where amenity values can simply be discounted as an adverse effect, because it is not a situation arising from a planned change to the urban form. Nor should it simply be batted away as an inevitable consequence of a growing and changing urban demographic.
150. Many submitters were at pains to emphasise that their present opposition did not derive from a NIMBY position. They noted that Rotorua had embraced the use of its motels during the key Covid-19 programme period – and supported the temporary use of motels for its genuine own citizens. Manaakitanga was a concept value frequently stated as being at Rotorua's core. The impression left with the Panel was the feeling that the manaakitanga that Rotorua is internationally famous for (and for at least a century) has been abused.
151. The strength and genuineness of that feeling throughout the hearing was palpable.

### **Finding**

152. We accept that EH has had an adverse effect on the amenity of Rotorua, and the neighbourhood of Glenholme in particular.
153. We find that adverse neighbourhood amenity effect to be significant from all of the EH activities, and we cannot with any confidence say this is or is not the result of the 13 CEH applications as we have already found earlier. We do not consider that the suite of conditions proposed by the Applicants can appropriately avoid, remedy or mitigate those adverse effects.
154. As said, we are not able to differentiate or allocate that adverse effect between UCEH and CEH – or other sectors of the community.

### **Tourism and Business sector**

155. The tourism sector (using that term broadly) expressed concern that it was not recovering as quickly as other centres against which it benchmarked (e.g. Taupo and Queenstown) and considered that this was due both to reputational issues (discussed next) and the unavailability of sufficient motel accommodation because so many were providing EH – either mixed (i.e. both EH and casual) or exclusive.

156. For example, Bruce Thomasen, a Board member of Rotorua Investment Tourism Partnership (RITP), summarised some of the issues facing the sector as follows:

- *Tourism industry has had its hardest 30 months ever.*
- *Pre covid 1 in 5 residents employed in tourism sector in the city compared to National average of 1 in 10.*
- *Reputational damage been done from bad headlines on homeless issue is creating an increase in day tripping to Rotorua instead of staying the night – leading to lost sales.*
- *Losing Corporate and school group business.*
- *Tourism sector lost sales revenue from our under performance compared to rest of NZ over last 3 months has been \$184k per day, or \$1.3m per week, or \$17m from May to July 2022 or \$92m per annum.*
- *If we took industry average of 30% wage cost (this is light) then lost wages paid is \$27.6m per annum*
- *Visitor spend pre covid 2019 was \$841m, (\$493m domestic, 58% & \$348m International)*
- *Motels are making 2 to 3 times the profit of pre covid due to the high contracted rates from MHUD. This is creating an incentive situation where motels are targeting and advertising to homeless around the country as it more profitable than tourists.*
- *Homeless motels super profits come from two areas 1) high rates being charged e.g., \$1500 to over \$2k per week and 2) costs are substantially lower to host long term homeless as there is no marketing channel costs ( e.g. booking.com charge 10% to 17%) Credit card fees 2.75%, no sales and marketing costs, no shampoo and amenities, no daily cleaning of rooms or laundry costs ( around \$25 to \$35 per room night)*
- *In addition to the labour shortage the country is facing we are facing the additional challenge of potential staff and their families not wanting to move to Rotorua for work / schooling due to reputation damage done by homeless policy.*

157. Debbie Guptil, also from RITP, tabled a report<sup>40</sup> commissioned by RotoruaNZ, whose findings included that in the 3 months to July 2022:

- *Guest nights in Rotorua were only 50% of their 2019 peak, while nationally guest nights reached 86% of their 2019 level.*
- *Visitor spending in Rotorua was at 84% of its 2019 level (inflation-adjusted), compared to nationally where spending had already fully recovered to 101% of its 2019 level.*
- *Rotorua is ranked second lowest in visitor spending compared to 30 other regional tourism areas in NZ.*
- *Even though available visitor accommodation capacity was at 69% (because of EH), only 40% of the available units were actually booked.*

158. We note that Mr Patterson, the author of that report, was not brought as a witness so that material carries due qualification.

159. Mr Equb responded to that report by referring to his earlier comments about the prior dominance of the Chinese budget tourism market segment that had not yet returned. As he noted<sup>41</sup>:

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<sup>40</sup> Benje Patterson, The potential costs to tourism of negative perceptions of Rotorua, September 2022.

<sup>41</sup> Equb, Evidence, paras 8.3 – 8.4.

*Rotorua's tourism revenue pre-pandemic was roughly 60% domestic and 40% international. If contracted motels reduce accommodation supply by 296 units (out of around 4400), it is unlikely to cause severe shortages. Over the last two years, which have been mainly domestic tourists, occupancy rates have been less than 50%. Given domestic tourism makes up 60% of visitor spend in Rotorua, even a return to pre-pandemic levels can be accommodated with higher occupancy rates.*

*In my view, the outlook for international tourism is for a slow return to pre-pandemic levels. There are fears of a global recession, evidenced by slumping stock prices, and lingering pandemic effects in our key market, China. China is still pursuing zero covid policy, which means that there is little travel out of China and could be a drag on recovery.*

160. The importance of that market segment was reinforced by Blair Chalmers, General Manager of the Copthorne Hotel, Rotorua, who told us that pre-Covid China / Korea provided 92% occupancy but that was now down around 21%. He noted that the perceived safety of international tourists was a significant issue.

161. Ms Hampson had also noted:<sup>42</sup>

*... with international guest arrivals starting to return and the event industry returning to normal, some capacity constraints may (if the market does not fully respond in time) be experienced periodically over the next five years. Those periods may be short in duration and infrequent, especially in the short term. The potential loss (opportunity cost) of guest arrivals over the next five years associated with any shortfalls in capacity is therefore likely to be minor relative to the annual volume of guest arrivals that can and will be accommodated. Only a modest share of any future minor capacity constraints (guest arrival losses) can be attributed to CEH in the existing environment....*

*Nonetheless, taking out the 295 stay units in CEH establishments (if all consented) would represent a minor and temporary adverse effect on tourist capacity relative to the permitted baseline – estimated at an 8% loss of stay unit capacity. In the context of projected demand for commercial tourist accommodation over the next five year (with international tourism recovering), an 8% loss in capacity would be easily absorbed by the rest of the market in my view.*

162. We also heard from a number of submitters who were involved in the food and beverage and tourism ventures industry, who told us about the negative impacts of the use of motels for EH on their business. This included Richard and Julie Sewell (Urbano), Robert Parry (owner of 3 fast food outlets), Reginald Hennessy (Hennessy's Irish Bar), Trevor Weir (Rotorua Duck Tours), Vipin Gulati (Restaurant owner) and Logan Okiwi Shipgood and Dianna Doughty (Gallery Owners). They told us they had all experienced anti-social and threatening behaviours and this had led them to variously - increase security measures, reduce operating hours, finding it more difficult to recruit staff (due to perceived security issues) and to generally having to be far more conscious of potential threats to them and their staff both on-site and off-site after work.

163. A number of other commercial / business submitters, including Bryce Heard (Rotorua Chamber of Commerce), Ray Singh (business owner), Donna-Marie Welsh (Willow Boutique), Clinton Lovell (Silver Fern Motel) and Donnarae Raukawa- Doughty (business owner) also identified the adverse financial and business confidence consequences of the loss of overnight tourists and increase in day-trippers.

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<sup>42</sup> Hampson, Evidence, paras 21 - 22.

### **Finding**

164. We accept that, presently, accommodation capacity for tourists does not appear to be an over-riding issue. However, that could change depending on the speed of recovery of international and domestic visitors. That is a matter that we can confidently leave to the sector, Council, and the Housing Taskforce to monitor and respond to as appropriate over the next few years.
165. We are not persuaded that curtailing the use of motels for CEH on the ground of insufficient tourist accommodation alone is presently justified.

### **Rotorua's reputation**

166. The matter of Rotorua's reputation and the alleged damage it is causing for tourism and its downstream businesses is more problematic.
167. We heard many anecdotes from submitters about tourists (both international and domestic) searching the web for information about Rotorua before finally committing to a trip, being confronted by the "EH" issue because of the way in which the internet algorithms operate, and then cancelling out because of concerns.
168. The Patterson report discusses this matter noting that the cited "Barriers to visiting Rotorua" survey question relating to safety, was ticked by 11% of travellers – but only scored 9<sup>th</sup> of the 16 reasons presented.
169. It must also be noted that while the report considers the 5% rise in travellers citing safety concerns, from 6% in 2018 to 11% by 2022, to be 'alarming', it does not make similar comment about the increase of 22% of travellers (from 31% to 53%) citing the fact they had been there before as reason not to visit, nor the increase of 10% of travellers citing Rotorua as being too touristy.
170. Clearly submitters, who left no doubt about their love of and loyalty to Rotorua, are quite reasonably concerned to re-establish the reputation of Rotorua as a safe and enjoyable visitor destination – and bad press sticks more in these days of social media and web-based information.
171. However, we were not presented with hard evidence about the relationship between reputational effects and their specific nexus with the EH or CEH programme. We acknowledge that the anecdotal evidence from a number of submitters demonstrated a clear impression that there have been adverse reputational effects to Rotorua from the use of motels for EH overall. What is less clear is the extent to which we can attribute adverse reputational effects to CEH as opposed to all EH.

### **Finding**

172. We find it more probable than not that EH has affected the reputation of Rotorua adversely as a potentially unsafe place for visitors. We say "probable" because social media, and the media itself, has spotlighted the issue and reputation is a multi-faceted issue – not always factually based – which can be created or besmirched simply by repetition and exposure, of which there has been much.
173. The Patterson report referred to above provides further evidence of the connection with the tourism downturn – as did many submitters who provided anecdotal examples from friends and relations outside Rotorua. However, as that report (section 6) cautions:



*“The reasons for these negative perceptions can be broadly split into those related to products offered and their cost, as well as those related to safety.”*

174. We also note that we heard no evidence either way about the extent to which CEH has or has not contributed to the reputational issue. Again we are unable to disentangle CEH from the wider EH matter.

## **Consultation and cultural effects**

175. The proximity of three CEH motels to the culturally significant sites of Whakarewarewa and Te Puia brought into question the adequacy of the Applicants’ consultation with Ngāti Whakaue and Tūhourangi Ngāti Wāhiao. We heard, for example, from James Warbrick<sup>43</sup> and Katherine Warbrick (among others), regarding the impacts of trespassing, vandalism, drug use, disrespect of both the Village and kaumatua, and loss of safety for residents.

176. We note that MHUD did not provide an assessment of cultural effects and did not appear to have undertaken any direct consultation with Ngāti Whakaue or Tūhourangi Ngāti Wāhiao. While Ngāti Whakaue were notified of the applications, Tūhourangi Ngāti Wāhiao were not, although Mr Whittington reminded the Panel that the applications had been publicly notified (at MHUD’s request) to ensure that all parties, including any iwi or hapū entities, were able to give their views. We did not receive any submissions on behalf of any iwi or hapū entities.

177. Mr Whittington submitted in his reply<sup>44</sup> that:

*MHUD does rely on the involvement of iwi in the Taskforce to demonstrate the consultation that occurred. As far as MHUD was concerned, it was fulfilling a role that the Taskforce had asked it to. This was a locally led solution to address the impact of emergency housing on whānau and children. It was asked to design and implement the solution at pace and it responded to that request with due urgency. It consulted with the Taskforce, including iwi, on both design and on the identities of the contracted motels.*

178. Mr McNabb confirmed in his evidence in reply<sup>45</sup> that the Taskforce included Te Arawa, that Te Arawa Iwi representatives were involved in initial Taskforce workshops and kept up to date on progress by RLC and central government agencies, that advice to Ministers based on Taskforce recommendations was tested with iwi representatives, and that a list of the initial 12 motels contracted was circulated to the Taskforce, including iwi representatives, for any comments before contracting. No adverse comments about the particular motels were made. We also received a submission in support of the applications on behalf of the Taskforce.

179. Mr Whittington appropriately acknowledged in reply<sup>46</sup>:

*It would have been preferable to consult more directly with Whakarewarewa Village given the proximity of the Apollo Motel to the village. MHUD accepts that. As such, the condition proposes to strengthen the role of the Whakarewarewa Village and Te Puia in influencing the*

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<sup>43</sup> As a Director of Whakarewarewa The Living Maori Village, Trustee of Whakarewarewa Village Charitable Trust, Trustee of the Rahui Trust and as a long term resident of Whakarewarewa Village

<sup>44</sup> Op cit, para 3.34.

<sup>45</sup> McNabb, op cit, paras 7.1 – 7.8.

<sup>46</sup> Op cit, para 3.37.

*mitigation employed by the consent holder in the operation of CEH, particularly at the closest motels to these culturally significant sites.*

180. However, as Mr Whittington submitted<sup>47</sup>, incomplete consultation is not a basis to decline resource consents and MHUD had proposed a cultural effects condition and additional requirements through the conditions<sup>48</sup> as a way to ensure that the effects on Whakarewarewa Village and Te Puia are better mitigated.
181. We accept that Te Arawa has had a role to play in the Taskforce (with the aim of finding immediate short-term solutions) and the pace at which those solutions were to be found, but a lack of direct consultation with Tūhourangi Ngāti Wāhiao in particular, and a lack of an appropriate assessment of cultural values in relation to Whakarewarewa and Te Puia, with no assessment of relevant Iwi Management Plans (if any), adds weight to our assessment that a longer term consent is not appropriate.

## **Section 104 Consideration of applications & Part 2**

182. Section 104 of the RMA requires us, subject to Part 2, to have regard to:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) *any relevant provisions of—*
  - (i) *a national environmental standard;*
  - (ii) *other regulations;*
  - (iii) *a national policy statement;*
  - (iv) *a New Zealand coastal policy statement;*
  - (v) *a regional policy statement or proposed regional policy statement;*
  - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

183. We confirm that we have considered the matters required under s.104 of the RMA, as discussed above, and have concluded that the actual and potential effects on the environment of allowing the activity, in relation to neighbourhood amenity, are significant and cannot be avoided, remedied or mitigated appropriately as proposed. That effectively means that the application(s) could not pass through the gateway test of s.104D(1)(a), which requires that the adverse effects on the environment of allowing the activity *will* be minor.

184. However, as we have found that the applications are not *contrary* to the objectives and policies of any relevant plan and would, therefore, pass the s.104D(1)(b) gateway test, that s.104D(1)(a) finding is not material.

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<sup>47</sup> Op cit, paras 3.38 – 3.39.

<sup>48</sup> Condition 7 (Apollo only), Conditions 15, 16, 29 (k)(ii)&(iii) & 30

185. The applications note a number of positive effects from the proposal - primarily in terms of the social well-being of those for whom the facilities and wrap-around services would be made available. It is the wrap-around services and the more active management of the site by the service providers which distinguishes CEH and EH; and it is this, we were told by MHUD, that would better assist (positive social effects) those people residing in the CEH sites.
186. Mr McNabb's evidence was that the wrap-around services are critical to navigating whānau from this unsettled state towards a state of wellbeing and providing better outcomes for whānau and children compared to the alternative of receiving an EH-SNG or being in some other insecure or unsatisfactory housing situation.
187. As noted earlier, we are satisfied that we do need to engage with Part 2 of the RMA. This is because: the RLDP does not particularly address the matter; that the proposal(s) is not consistent with the relevant commercial and residential zones objectives and policies; and that the adverse effects, particularly off-site effects cannot be adequately avoided, remedied or mitigated such that a longer-term consent (5-years) could be justified.
188. We therefore turn now to consider those broader matters required by:
- Section 5(2) *use ... of ... physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety;*
  - Section 7(c) *the maintenance and enhancement of amenity values* [defined as meaning the qualities and characteristics of an area that contribute to people's appreciation of its pleasantness]; and
  - remind ourselves that Schedule 4 cl.7(1) specifically requires an assessment of environmental effects to address:
    - (a) *any effect on those in the neighbourhood and, where relevant, the wider community, including any social, economic, or cultural effects:*
189. The present situation is that the needs of one part of the community (those in the CEH) are having to be weighed with the needs of the local and business community. The two sections of the community are polarised. We record that submitters were, in the main, careful not to diminish or trivialise the needs of those for whom CEH has been designed. The opposition was not so much to the programme as to its implementation, scale and adequacy of facilities.
190. With respect to s.6(e) – *the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga*, Ms Blackwell discussed the potential cultural effects in relation to the specific Whakarewarewa and Te Puia sites in her evidence - although focused her consideration on the services and on-site operations provided by WERA at Apollo and Visions at Pohutu Lodge.
191. In terms of Apollo she noted the measures already implemented by WERA to promote awareness and build respect and knowledge in relation to the Whakarewarewa Village, and also recommended that the SMP require WERA to seek feedback from the residents and operators of Whakarewarewa Village and Te Puia, and consider any recommendations relevant to mitigating potential cultural effects of the proposal into the Site Management Plan. She made a similar recommendation in respect of Pohutu

Lodge. Those recommendations are particularly important given the concerns highlighted by Mr Warbrick.

192. The above also brings into question the extent to which particular regard has been had to s7(a) Kaitiakitanga.
193. We also note that while Ms Bennie, in her response, recommended a number of amendments to conditions to address the issues raised, she confirmed in response to questions from the Panel that she had not seen sufficient evidence from the Applicants to satisfy her that cultural effects had been properly assessed and, on that basis, could not be satisfied that the conditions proposed would appropriately mitigate those potential effects.
194. Of the remaining s.7 RMA other matters, to which particular regard is to be had, we consider the following relevant:
- (b) the efficient use and development of ... physical resources;
  - (c) the maintenance and enhancement of amenity values; and
  - (f) maintenance and enhancement of the quality of the environment.
195. Those matters were rehearsed in the respective documentation, submissions and evidence and we have had regard to them in this decision.
196. In terms of section 8, Treaty of Waitangi, Ms Blackwell relied<sup>49</sup> on the evidence of Mr McNabb, referring to the involvement of the Taskforce working in partnership with Te Arawa Iwi (among others), an initiative that in her view enabled Iwi to exercise rangatiratanga, supported also by Te Taumata o Ngāti Whakaue Iho Ake Trust leading the operation of Te Pokapū. She therefore considered the Applications aligned with Part 2. We have a different view.
197. While we (as above) acknowledge the role of Te Arawa in the Taskforce, we find that there has been an over-reliance on that role to justify a divergence from RMA best practice in terms of consultation and consistency with other Part 2 matters, including recognising and providing for the relationship of Ngāti Whakaue and Tūhourangi Ngāti Wāhiao.
198. In the final analysis the RMA seeks enablement for all – a lofty goal but in the present matter, patently not achieved.
199. As Ms Foy concluded<sup>50</sup>:
- ... there are mainly positive outcomes for CEH occupants, and mainly short-term negative outcomes for Rotorua residents, though for some areas the effects are high such as for health and safety.*
200. While the applications were promoted as a temporary solution and deviation from the motels' primary tourist visitor purpose, the question remains, how short a term is appropriate?

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<sup>49</sup> Blackwell, op cit, paras 15.13 – 15.15.

<sup>50</sup> Foy, op cit, para 233.

201. While clearly the s.5(2) injunction can be read to encourage this use for emergency housing, it runs counter to the reasonable expectations of local residents regarding their same enablement and to the amenity values that we were told they have enjoyed.
202. That is the paradox that we must be able to resolve through conditions if both ends are to be met.

## **Duration**

203. The Applicants sought a duration of 5 years for all consents. That duration was supported by the s.42A authors.
204. The default term for land use consents is unlimited so 5 years is unusual. The reason given for the 5 years was the expectation that with the current pipeline for new public housing and anticipation of private rentals, this would provide the headroom to reduce the need for CEH motels so that their use would become far less conspicuous.
205. A secondary concern was articulated by Mr Eaquib in terms of his counterfactual that, absent this option, and assuming that the majority of the otherwise homeless would want to remain in Rotorua, their options for adequate shelter would be minimal, potentially exacerbating the present undesired behaviours.
206. Submitters in opposition generally rejected the 5 year term arguing that they had already suffered the adverse effects of the policy for at least 2 years or more and a further 5 years, with no clear and confirmed government exit strategy, was an unfair burden on the community. Such a term was also advanced by Mr Loutit, counsel for Noahs Hotels (NZ) Limited.
207. We have weighed the arguments about term very carefully.
208. We acknowledge the unusual nature of the limited term sought and the risk that the counterfactual poses. We are also mindful that parties may elect to appeal our decision on various grounds including the term. That would further extend the effective duration while matters are heard and disposed – potentially including through the upper appellate courts.
209. In the end we find that the term sought is not justified. The exit strategy, inasmuch as there is one, rests on assumptions regarding new buildings and affordable rentals that, at this stage, would be insufficient to satisfy present demand let alone any demand growth that might eventuate over the next few years. It is simply too conjectural in the face of the evident pain that the community presently experiences.
210. While we acknowledge MHUD's expressed intention to draw down the use of UCEH motels as a priority, that is not entirely within the present powers of MHUD but MSD (which did not appear before us). Presumably Mr Eaquib's counterfactual applies to that demographic equally, unless they are housed, and we assume, in the same new builds / rentals that we are told will assist the exit from CEH.
211. We think it important that a coherent strategy is developed to assist the community. That is not presently before us. We therefore find that a shorter term than 5 years is appropriate in the circumstance. Such is consistent with the overall s. 5 purpose of the RMA to "... enable[s] people and communities to provide for their social, economic, and cultural well-being and for their health and safety."

212. We recognise that the use of motels for EH provides precisely this for the beneficiaries of that policy – but it is at the expense of a significant segment of the immediate community. That is not an acceptable outcome. A shorter term provides breathing space in which to resolve that contradiction. That may or may not involve further resource consent requirements.
213. Accordingly, we impose a duration of 2 years on all 13 resource consents.
214. For the record we note that we have not given material weight to the tourism market question in determining this reduced term. We accept that there is likely to be a rebalancing of motel and other tourist accommodation over time as the market recovers. We agree with Mr Eaquib that this is likely to occur steadily over the next few years, not in a rush.

## **Conditions**

215. We were not satisfied that the conditions initially proffered by the Applicant would satisfactorily avoid, remedy or mitigate the adverse effects of the CEH.
216. By the close of the hearing a revised draft set of agreed conditions between the Applicants and Council were filed.
217. What remains, however, is a continuing residual concern about the contribution CEH may or may not make to the off-site behavioural issues discussed above. Clearly the site-specific conditions do not address that matter – but those are adverse effects of the wider intertwined policy of consented, unconsented and transitional emergency housing.
218. We address three condition matters in the following.

### **MHUD's role**

219. The option that the community and the s.42A author(s) sought was to tie MHUD more closely to the consents so that there was direct accountability through to the policy programme by naming MHUD as a co-consent holder. That option was strongly resisted by Mr Whittington in legal submissions. He submitted (in summary) that MHUD was simply the agent for the motel operators, had no operational or managerial responsibility for the running of the motels, did not agree to it under s.108AA(1) RMA, and therefore it would not be lawful to attach it to the consent.
220. Ms Le Bas disagreed, noting<sup>51</sup> that:
- While a number of recommended conditions may be considered extraordinary given the involvement by third parties such as MHUD and Rotorua Lakes Council (RLC), among others, the s42A Team considers these conditions are appropriate under section 108(1) and satisfy the criteria in s108AA(1) of the Resource Management Act 1991 (RMA) to be imposed on correspondingly extraordinary proposals.*
221. While we were attracted to that option, given MHUD's strong opposition, and therefore the high likelihood of an appeal point and further delay, we gave serious and careful consideration as to whether that justified declining all or some of the applications. With respect to the latter "option", we concluded that we had insufficient evidence on which to penalise any individual motel, notwithstanding that the most obvious candidates

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<sup>51</sup> Op cit, para 2.

were those at the southern end of Fenton Street close to Whakarewarewa and Te Puia as we have already discussed.

222. In the end we concluded that the non-inclusion of MHUD in the consent conditions would leave such uncertainty as to outcome that a decline could be appropriate. However, in a “real world” sense such a refusal would, in all likelihood, simply extend the process by forcing an appeal which could consume an equivalent 2 year duration with associated costs on all parties as well as the community.
223. We have therefore settled on a solution which requires MHUD to confirm in writing that the SMP accords with the conditions and its contracts before the SMP is submitted to Council for certification. We have also required MHUD to confirm that it is satisfied that the nominated “suitable representative” is in fact, a suitable representative.
224. We have required this of MHUD not as consent holder or approval agency but as a key party to these applications. This is not a “normal” third party agency interest where placing conditions on such brings forward the question of *vires*. MHUD has sought the conditions it has effectively *in loco parentis*. It is responsible for the CEH programme and the use of the motels for that purpose. But for its contracts this situation and these applications would not arise. It is, we conclude, disingenuous to assert otherwise. It must accept some responsibility in the absence of clear ownership by the operators (and we noted that two motel *owners* actually opposed the use of their motels for CEH – albeit that MHUD submitted that their approval was not required in law and that the existing leases enabled that consideration). The community clearly expects that role to be accepted and supervised by MHUD as the Government agent responsible – and certainly in the absence of an explicit, time-related, exit strategy. We agree.

#### **Bond and Monitoring Fee**

225. Council sought a bond condition under ss.108A / 108(2)(b) RMA. We agree with the Applicants that is not appropriate – nor did we have sufficient evidence of reason or individual quantum in justification.
226. We have, however, provided for a monitoring fee to be charged by Council in having to ‘administer’ these consents – and leave the setting of the reasonable quantum of that fee (which may differ between motels) to Council. That will be an active role required of Council for the duration. This means the costs of monitoring these consents falls to the consent holders and not the Council.

#### **Cultural effects**

227. The Applicants had proposed conditions directly addressing concerns expressed by Whakarewarewa / Te Puia Village and a further condition in relation to the Apollo Motel which recognised an existing practise undertaken by the relevant social service provider. Regarding that condition we have concluded as follows.
228. We acknowledge the evidence of Ms Maka, on behalf of WERA, that through the triaging process, priority is given to the placement of people who whakapapa to Tūhourangi Ngāti Wāhiao, in Apollo Hotel. We understand and accept the sentiment and intent behind this proposed condition (26(a)(v)) and, subject to the consent of Tūhourangi Ngāti Wāhiao, would both support and encourage that practice. However, in RMA terms, we find this condition problematic and, on the evidence presented to us, not appropriate to condition.

229. It was unclear to us how 'whakapapa to Tūhourangi Ngāti Wāhiao' is determined and we have some reservations placing the onus on MHUD (in its role of confirming the SMP) and RLC (in its role as certifier) to approve an appropriate system and procedure for that purpose.
230. Further, given the opposition from Mr Warbrick on behalf of Whakarewarewa Village and where the Applicants have neither consulted with nor assessed the cultural effects on Tūhourangi Ngāti Wāhiao, Whakarewarewa and Te Puia, we are unclear as to whether this condition provides an appropriate or even necessary form of mitigation.
231. Should the service providers choose to place people in Apollo Motel on that basis, that is a matter for them to determine in consultation with Tūhourangi Ngāti Wāhiao, if they are willing, but not one we consider it appropriate to compel.
232. Both this condition and the cultural conditions overall, to the extent they place an onus on the participation of Whakarewarewa and Te Puia, which may not be welcomed or supported by them, reinforces our view that these applications (Apollo, Pohutu & Alpin) do not sit entirely well with ss.6(e), 7(a) and 8 RMA and would not be granted in their current form as notified and presented to us.
233. However, we do note that while we did not have a submission from Tūhourangi Ngāti Wāhiao, they are of course part of Te Arawa and therefore have a role in the Taskforce. That provides some degree of comfort (such that we are not declining these applications for consent) but granting them subject to amendments to the conditions and the duration sought.
234. On that basis we have determined not to impose the specific condition, noting that does not prevent the consent holder pursuing the same end outside of the particular consent.
235. We accept those other proposed conditions - with minor editorial amendments made by us - as appropriate.
236. We find that the amended conditions are appropriate and will help to manage the identified relevant adverse effects over the 2-year period.

## **Conclusion**

237. This was not an easy decision. At the heart of the matter is a community clearly experiencing degrees of anxiety, dread, material inconvenience, significant loss of residential amenity, and a loss of business confidence. On the other hand the Applicants propose to use facilities that have been underutilised for their express purpose for a much-needed social purpose with wrap-around support.
238. However, at the end of the day this is a resource management decision and the ability to resolve the contradiction is constrained. By granting a realistic short-term consent(s) we are effectively giving the parties the opportunity to find a better solution – aware also, as we were advised, that RLC is intending to promote a plan change shortly on the matter (although we were not told what the policy basis for that might be). Certainly, amending the plan to directly address the matter with submitter input is one practical and appropriate way forward in the time we have made available.



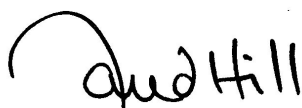
## Decision

239. In exercising delegated authority under sections 34 and 34A of the RMA, and having regard to the foregoing matters, sections 104, 104D, and Part 2 of the RMA, the 13 land use applications by Te Tūāpapa Kura Kāinga the Ministry of Housing and Urban Development to use motels for Contracted Emergency Housing are granted for the reasons discussed in this Decision (and as summarised below) and, per sections 108 and 108AA RMA, subject to the conditions attached as Attachment 1.

## Summary reasons for the decision

240. After having regard to the actual and potential effects on the environment of allowing the proposed activity(ies) and taking into account the relevant statutory and statutory plan provisions, we find that consent for the proposed activity should be granted for all 13 motels for the reasons discussed throughout this decision and, in summary, because:

- (a) the adverse effects of the proposed activity on the environment are not able to be determined with any particularity, but in the round, associated as they are with all Emergency Housing, are significant;
- (b) while elements of the proposed activities are not entirely consistent with all relevant provisions of the district plan, overall the application is not contrary to those provisions;
- (c) submitter concerns will be more appropriately managed through the conditions and the two year consent duration imposed; and
- (d) granting consents in this manner is consistent with promoting the sustainable management purpose and principles of Part 2 of the RMA, and the relevant provisions of the statutory plans.



David Hill (Chair)  
Independent Hearings Panel  
and for Commissioners Greg Hill and Sheena Tepania

15 December 2022