

Before the Independent Hearings Panel  
Western Bay of Plenty District Council

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*under:* the Resource Management Act 1991

*in the matter of:* Submissions and further submissions in relation to Plan  
Change 92 to the Proposed Western Bay of Plenty  
District Plan

*and:* **Retirement Villages Association of New Zealand  
Incorporated**  
(Submitter 34)

*and:* **Ryman Healthcare Limited**  
(Submitter 35)

Legal submissions on behalf of the **Retirement Villages  
Association of New Zealand Incorporated** and **Ryman  
Healthcare Limited**

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Dated: 7 September 2023

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## **LEGAL SUBMISSIONS ON BEHALF OF THE RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND INCORPORATED AND RYMAN HEALTHCARE LIMITED**

### **INTRODUCTION**

- 1 These legal submissions are provided on behalf of the Retirement Villages Association of New Zealand (*RVA*) and Ryman Healthcare Limited (*Ryman*) in relation to Plan Change 92 (*PC92*) to the Proposed Western Bay of Plenty District Plan (*District Plan*).
- 2 Like most of New Zealand, the Western Bay of Plenty District (*District*) has a rapidly ageing population. Between 2018 and 2048, the number of people aged 75 and over is forecast to more than triple. The wider region is experiencing similar ageing population growth patterns. However, the shortfall of appropriate retirement housing and care capacity to cater for that population is already at a crisis point. Delays and uncertainty caused by Resource Management Act 1991 (*RMA*) processes are a major contributor to that shortfall.
- 3 The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Enabling Housing Act*) represents a significant opportunity to address the consenting challenges faced by the retirement sector. Addressing these challenges will ultimately accelerate housing intensification for the ageing population directly in line with the expectations of both the Enabling Housing Act and the National Policy Statement for Urban Development 2020 (*NPSUD*).
- 4 The importance of the present intensification streamlined planning processes (*ISPP*) underway around the country led to the *RVA*'s members working together to adopt a combined approach. They have drawn on their collective experience. They have pulled together a team of leading industry and technical experts. They seek greater national consistency to address the housing needs of older members of our communities.<sup>1</sup>
- 5 The relief sought by the *RVA* and *Ryman* in the Residential Zones adopts the key features of the Medium Density Residential Standards (*MDRS*) for multi-unit residential activities. It has some necessary nuances, noting:
  - 5.1 The objectives and policies of the *MDRS* seeking to enable a variety of houses and provide for the day to day needs of people have been further particularised through more detailed provisions. This clarity is submitted to be necessary in this case due to the significant proportion of the Western Bay of Plenty population affected by specialist housing shortages,

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<sup>1</sup> Evidence of Ms N Williams, paragraph 12.

which differ from other housing needs, as well as to avoid the issues that have occurred in the past due to poor planning provisions for housing older people. The plan therefore needs to provide clear direction that ageing population housing needs are a resource management issue that needs to be actively addressed. The mandatory MDRS objectives and policies are by themselves insufficiently directive. Accordingly, the objective and policy proposed by Ms Williams address the issue and plan expectations squarely. The provisions are also aligned with the enabling intent of the NPSUD and MDRS. And, they recognise the functional and operational needs of retirement villages.

- 5.2 At the rules level, the RVA and Ryman seek generally consistent treatment as for other multi-unit residential developments in terms of activity status for the development of retirement villages (restricted discretionary).
- 5.3 Bespoke matters of discretion are proposed by the RVA and Ryman, instead of the 'four or more residential unit development' matters of discretion applying, as proposed by Council. The retirement village matters of discretion are focussed on the positive and potential adverse effects of retirement villages that the MDRS and NPSUD signal are of importance. They contain an appropriate degree of discretion, to "encourage" high quality design and attractive and safe streets and public open spaces.
- 5.4 The RVA and Ryman seek a public and limited notification preclusion for retirement villages that comply with the relevant standards, in line with the MDRS. A public notification preclusion is also proposed for retirement villages that breach standards. As the evidence points out, notification of retirement village applications causes significant delays and uncertainty. The legislative provisions designed to reduce public participation in consent processes in favour of speeding up housing are deliberate and clear.
- 5.5 The density standards governing external effects are the same as the MDRS. A number of the additional standards set out in the Section 42A Report are also not fit for purpose for retirement villages.
- 5.6 Some adjustments have been made to the internal amenity density standards to support the unique unit types and internal amenities of retirement villages, including a consequential definition to differentiate retirement units from residential units.

- 6 The RVA and Ryman also seek more enabling provisions for retirement villages in the Commercial Zones. The RVA and Ryman consider amendments to the rules are required, as well as a policy addressing the provision of housing for the ageing population. These amendments will give better effect to Policy 3 of the NPSUD, and respond to the critical need for retirement housing and care.
- 7 Other objectives and policies and rules in the plan (transport, noise, earthworks etc) will continue to apply as relevant. As such, the new provisions do not seek to exempt retirement villages from the broader planning framework. Instead, they are designed to provide specific emphasis on the housing needs of the ageing population.
- 8 The RVA and Ryman also seek amendments to the financial contributions provisions to ensure they are proportionate to the lower demand created by retirement villages on council services.
- 9 It is submitted that the RVA and Ryman's proposed adjustments to PC92 will make PC92 clear and certain for users and move it into line with the new statutory and policy requirements. The provisions sought by Ryman and the RVA are more appropriate in terms of meeting the objectives of the RMA, as clarified in the NPSUD and the Enabling Housing Act. They are also more efficient and effective and better respond to the uncontested evidence on the importance of providing for the specific housing needs of the ageing population.
- 10 The evidence for the RVA and Ryman addresses these matters in further detail:
  - 10.1 **Mr John Collyns** provides corporate evidence for the RVA and addresses retirement village industry characteristics, demographic information, health and wellbeing needs of older people and the important role that retirement villages play in providing appropriate housing and care options;
  - 10.2 **Mr Matthew Brown** provides corporate evidence for Ryman, highlighting his experience with planning and building retirement villages and the desperate need for more of them;
  - 10.3 **Professor Ngaire Kerse** provides gerontology evidence addressing the demography and needs of the ageing population;
  - 10.4 **Mr Gregory Akehurst** provides economic evidence addressing financial contributions; and
  - 10.5 **Ms Nicola Williams** addresses planning matters and comments on the Section 42A Report.

## SCOPE OF SUBMISSIONS

- 11 These submissions:
- 11.1 Outline the legal framework that applies to PC92 focusing on the Enabling Housing Act and the NPSUD; and
- 11.2 Address the further amendments to PC92 that are required to enable retirement villages, and why the RVA and Ryman position should be preferred by the Panel.

## LEGAL FRAMEWORK

### Enabling Housing Act

- 12 At the outset, it is important to acknowledge that the primary purpose of the IPI is to help address New Zealand's housing crisis. As stated by the Government:<sup>2</sup>

New Zealand is facing a housing crisis and increasing the housing supply is one of the key actions the Government can take to improve housing affordability.

- 13 As explained in the evidence of Ms Williams, Mr Brown and Mr Collyns, retirement housing is having its own unique crisis. Demand for retirement village accommodation is outstripping supply. This increasing trend is due to our rapidly ageing population and as more older people wish to live in retirement villages that provide purpose-built accommodation and care.
- 14 The ISPP seeks to expedite the implementation of the NPSUD. As Cabinet notes, the NPSUD *"is a powerful tool for improving housing supply in our highest growth areas"*. And, *"the intensification enabled by the NPS-UD needs to be brought forward and strengthened given the seriousness of the housing crisis."*<sup>3</sup>
- 15 A key intended outcome of the ISPP is to enable housing acceleration by *"removing restrictive planning rules"*.<sup>4</sup> These restrictions are to be removed via mandatory requirements to:
- 15.1 incorporate the MDRS in every relevant residential zone;<sup>5</sup> and

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<sup>2</sup> Cabinet Legislation Committee LEG-21-MIN-0154 (*Cabinet Minute*), at paragraph 1.

<sup>3</sup> Cabinet Minute, at paragraphs 2-3.

<sup>4</sup> Cabinet Minute, at paragraph 4.

<sup>5</sup> RMA, section 77G(1).

- 15.2 in this case, to also “give effect to” Policy 3 of the NPSUD in residential and non-residential zones.<sup>6</sup>
- 16 The force of these mandatory requirements is framed at the highest level, as a “duty” placed on specified territorial authorities.<sup>7</sup>
- 17 In addition to these ‘mandatory’ elements, there are a wide range of other ‘discretionary’ elements that can be included in IPIs to enable housing acceleration, including:
- 17.1 establishing new, or amending existing, residential zones;<sup>8</sup>
- 17.2 providing additional objectives and policies, to provide for matters of discretion to support the MDRS;<sup>9</sup>
- 17.3 providing related provisions that support or are consequential on the MDRS and Policy 3;<sup>10</sup> and
- 17.4 providing more lenient density provisions.<sup>11</sup>
- 18 Councils can also impose restrictions that are less enabling of development - “qualifying matters” - but only where they meet strict tests.<sup>12</sup>
- 19 Housing acceleration is also intended to be enabled by the ‘non-standard’ and streamlined process that the IPI is required to follow. This process materially alters the usual Schedule 1 RMA process, particularly in terms of:
- 19.1 substantially reduced timeframes;<sup>13</sup>
- 19.2 no appeal rights on the merits;<sup>14</sup> and

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<sup>6</sup> Sections 77G and 77N.

<sup>7</sup> Section 77G.

<sup>8</sup> Section 77G(4).

<sup>9</sup> Section 77G(5)(b).

<sup>10</sup> Section 80E(iii).

<sup>11</sup> Section 77H.

<sup>12</sup> Sections 77I-77L.

<sup>13</sup> Under section 80F of the RMA, tier 1 councils were required to notify IPIs by 20 August 2022. Under the ISPP the usual timeframes for plan changes are compressed and the decision making process is altered.

<sup>14</sup> There are no appeals against IPIs that go through the ISPP, aside from judicial review (clauses 107 and 108, Schedule 1, RMA). The new process will allow for submissions, further submissions, a hearing and then recommendations by an Independent Panel of experts to Council (section 99). If the Council disagrees with any of the recommendations of the Independent Panel, the Minister for the Environment will make a determination (clause 105, Schedule 1, RMA).

19.3 wider legal scope for decision-making.<sup>15</sup>

20 The task ahead is a very important one. The IPIs and the ISPP are a means to solve an important and national housing issue.

21 We respectfully submit that the above overarching legislative and policy purposes should therefore resonate heavily in all of your considerations through the ISPP. Key aspects of that purpose include:

21.1 addressing New Zealand's housing crisis;

21.2 accelerating housing supply to enable a variety of homes for all people; and

21.3 removing overly restrictive planning provisions and providing greater clarity for consent processes.

22 For the reasons outlined, the RVA and Ryman's proposed changes to PC92 are consistent with and help achieve those aspects of the statutory purpose.

23 Careful consideration will of course also need to be given to the wording used in the various RMA sections and in the MDRS provisions themselves. The Panel will need to operate within those terms. But, applying the usual "purposive approach", the overriding purpose of IPIs and the ISPP cannot be separated from the text in the various RMA sections and MDRS provisions when assessing and interpreting them.<sup>16</sup>

**Preparing and changing district plans under the RMA**

24 To the extent not modified by the ISPP, many of the usual Schedule 1 requirements for preparing and changing district plans under the RMA apply, and a section 32 report must be prepared.<sup>17</sup>

25 In that context, as part of the usual legal framework, case law has established a presumption that where the purpose of the RMA and objectives and policies "*can be met by a less restrictive regime that regime should be adopted*".<sup>18</sup> The Environment Court also confirmed that the RMA is "*not drafted on the basis that activities are only allowed where they are justified: rather, the Act proceeds on the*

<sup>15</sup> Enabling Housing Act, Clause 99 of Schedule 1.

<sup>16</sup> See, for example, *Auckland Council v Teddy and Friends Limited* [2022] NZEnvC 128 at [27].

<sup>17</sup> Eg, RMA, s80B, Clause 95 of Schedule 1.

<sup>18</sup> *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* C153/2004 at [56]. In 2017 the Environment Court confirmed that this remains the correct approach following amendments to section 32 of the Act in *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51 at [59].

*basis that land use activities are only restricted where that is necessary*".<sup>19</sup>

- 26 Case law on the RMA plan change process has also established there is no legal presumption that proposals advanced by the Council are to be preferred to the alternatives being promoted by other participants in the process.<sup>20</sup> If other means are raised by reasonably cogent evidence, then the decision-maker should look at the further possibilities.<sup>21</sup>
- 27 Given the above-noted purpose of the ISPP process, these concepts remain valid here. The statutory and policy intent includes to enable intensification and reduce planning restrictions. The Panel has broad discretions and wide scope available in making recommendations.<sup>22</sup> It should not be assumed that the Council's notified IPI provides the most appropriate response to the legislative context.
- NPSUD**
- 28 As noted, the intention of the Enabling Housing Act is to bring forward the intensification enabled by the NPSUD.
- 29 PC92 is required to "give effect" to the NPSUD.<sup>23</sup> The requirement to "give effect to" the NPSUD is "a strong directive, creating a firm obligation on the part of those subject to it".<sup>24</sup> PC92 must provide clear directions to decision-makers rather than leaving issues to be resolved at the consenting stage.<sup>25</sup> It is submitted that PC92 must take guidance and be read in light of the NPSUD as a whole.<sup>26</sup> PC92 can provide "related provisions" to address broader NPSUD direction.
- 30 It is also perhaps trite to observe that any provisions that do not give effect to the relevant parts of the NPSUD would most likely also be inconsistent with the specific Enabling Housing Act mandatory

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<sup>19</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51 at [78].

<sup>20</sup> *Federated Farmers of New Zealand Inc v Bay of Plenty Regional Council* [2019] NZEnvC 136 at [41].

<sup>21</sup> *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55 at [64].

<sup>22</sup> RMA, cl 96, sch 1.

<sup>23</sup> RMA, s75(3)(a).

<sup>24</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [77].

<sup>25</sup> *Port Otago Limited v Environmental Defence Society Inc* [2023] NZSC 112 at [72]-[73].

<sup>26</sup> *Southern Cross Healthcare Limited v Eden Epsom Residential Protection Society Incorporated* [2023] NZHC 998, although not a decision on an IPI, the reasoning in this decision provides support for this submission.



requirements to implement the MDRS and give effect to Policy 3. It is submitted that the wider NPSUD context thus provides a useful 'check and balance' to the specific mandatory requirements under that Act and the implementation of any discretionary "related provisions" aspects.

31 The key objectives and policies of the NPSUD are outlined in Ms Williams' evidence.<sup>27</sup> These objectives and policies give rise to the following key themes which should guide PC92:

31.1 the NPSUD seeks to enable development;

31.2 the NPSUD enables well-functioning environments for *all* communities; and

31.3 urban environments are expected to change over time. Planning regimes should be responsive to that change.

32 These themes are addressed in more detail below.

***The NPSUD is intended to be enabling of development***

33 The enabling nature of the NPSUD is set out by the Ministry for the Environment (*MfE*) and the Ministry of Housing and Urban Development (*HUD*) in their final decisions report on the NPSUD.<sup>28</sup> In their report, MfE and HUD state that:<sup>29</sup>

The NPS-UD will enable growth by requiring councils to provide development capacity to meet the diverse demands of communities, address overly restrictive rules and encourage well-functioning urban environments.

34 The final decisions report also states that the NPSUD "*is intended to help improve housing affordability by removing unnecessary restrictions to development and improving responsiveness to growth in the planning system*" (emphasis added).<sup>30</sup>

35 The Environment Court, in relation to the NPSUD's predecessor, the National Policy Statement on Urban Development Capacity 2016 (*NPSUDC*), held that the intention of that NPS is to be primarily enabling. That NPS was designed, "*to provide opportunities, choices, variety and flexibility in relation to the supply of land for*

<sup>27</sup> Evidence of Ms N Williams, page 13, paragraph 55.

<sup>28</sup> The report includes the Ministers' final decisions on the NPSUD and was published in accordance with s 52(3)(b) of the RMA.

<sup>29</sup> MfE and HUD, "Recommendations and decisions report on the National Policy Statement on Urban Development" (Wellington, 2020), page 17.

<sup>30</sup> Ibid, page 85.

*housing and business*".<sup>31</sup> The objectives of the NPSUD that the Court was referring to in making that statement (Objectives QA1 to QA3) contain similar terminology and concepts to the NPSUD (eg, Objectives 1, 3 and 4 and Policies 1 and 3). Therefore, the Court's guidance continues to have relevance.

36 However, the NPSUD goes further. It is intended to be more enabling of development than its predecessor. It "*builds on many of the existing requirements for greater development capacity... has a wider focus and adds significant new and directive content*".<sup>32</sup>

37 The enabling intent of the NPSUD has been addressed in the *Middle Hill Ltd v Auckland Council*<sup>33</sup> case, where the Environment Court stated that:

[33] ... The NPS-UD has the broad objective of ensuring that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments. It also requires councils to remove overly restrictive rules that affect urban development outcomes in New Zealand cities...

### ***Well-functioning urban environments***

38 The NPSUD seeks to provide for well-functioning urban environments that:

38.1 Enable all people and communities to provide for their wellbeing, health and safety.<sup>34</sup> To the RVA and Ryman, achieving this wellbeing objective in relation to older persons within the community means expressly providing for the specific housing and care needs of those people in the plan provisions.

38.2 Enable a "*variety of homes*" to meet the "*needs ... of different households*".<sup>35</sup> It is submitted that such enablement cannot be achieved without expressing what the variety and needs of different households are. As the Ryman and RVA evidence

<sup>31</sup> *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [39].

<sup>32</sup> MfE and HUD, "Recommendations and decisions report on the National Policy Statement on Urban Development" (Wellington, 2020), page 16.

<sup>33</sup> *Middle Hill Ltd v Auckland Council* [2022] NZEnvC 162.

<sup>34</sup> Objective 1, NPSUD.

<sup>35</sup> Policy 1.

highlights, the type of housing and resident needs for older people are different to typical residential housing.

- 38.3 Enable "*more people*" to live in areas that are in or near a centre zone, well-serviced by public transport, and where there is high demand for housing.<sup>36</sup>

***Urban environments are expected to change over time. Plans need to be responsive***

- 39 The NPSUD recognises that urban environments, including their amenity values will develop and change, "...over time in response to the diverse and changing needs of people, communities, and future generations".<sup>37</sup>
- 40 The changing needs of the growing ageing population are particularly relevant here. Retirement villages are necessary to respond to the needs of older persons in our communities, as expressed in the uncontested evidence for the RVA and Ryman.
- 41 Further, the NPSUD recognises that amenity values can differ among people and communities. The NPSUD also recognises that changes can be made via increased and varied housing densities and types. Changes are not, of themselves, to be considered an adverse effect.<sup>38</sup> Plans may provide for change that alters the present amenity of some and improves the amenity of other people and communities.
- 42 Again, this direction is particularly relevant to retirement villages. The evidence presented for the RVA and Ryman establishes that retirement villages are specifically designed to meet the unique amenity needs of older persons. Further, while retirement villages may change the existing amenity of communities, they can be designed in a way that does not result in inappropriate adverse impacts on neighbours and public spaces.
- 43 The NPSUD also includes "responsive" planning provisions (among other provisions). Objective 6(c) requires local authority decisions on urban development to be "*responsive, particularly in relation to proposals that would supply significant development capacity*".
- 44 In addition, Policy 8 of the NPSUD requires local authority decisions affecting urban environments to be "responsive" to changes to plans that add significantly to development capacity. That direction applies even if developments are out of sequence or are unanticipated by the relevant planning documents.

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<sup>36</sup> Objective 3.

<sup>37</sup> Objective 4.

<sup>38</sup> Policy 6.

- 45 Retirement villages are a good example of proposals that generate significant development capacity. This is due to both the scale at which they provide homes for older persons, and as they release many existing homes back into the market to be used more efficiently.<sup>39</sup>
- 46 Given the significant development opportunities that retirement villages provide, applying overly restrictive provisions to this housing typology will not give effect to the NPSUD's direction to be "responsive". PC92 therefore needs to provide enabling planning provisions for retirement villages.

### **AMENDMENTS TO PC92 TO BETTER ENABLE RETIREMENT VILLAGES**

- 47 Overall, the RVA and Ryman submissions on PC92 seek more enabling and responsive planning provisions for retirement villages in the relevant zones. Their proposed provisions were developed by industry experts to reflect the overall experience with consenting, building and operating retirement villages across New Zealand. The specific features of retirement villages and their residents are set out in the uncontested evidence presented by the RVA and Ryman witnesses.
- 48 As explained by Ms Williams, the provisions proposed by the RVA and Ryman are largely aligned with the planning approach for other multi-unit residential developments involving four or more dwellings.<sup>40</sup> Appendix B to Ms Williams' evidence identifies the connections between the NPSUD, the MDRS and the provisions she recommends. The retirement village provisions provide some additional specificity to recognise the functional and operational needs of retirement villages. They also have some necessary nuances for internal amenity controls which better reflect on-site needs. All MDRS density controls that apply to manage external effects would also apply to retirement villages. The RVA/Ryman also do not seek to exclude retirement villages from any other Plan controls that manage the likes of earthworks, flood management, traffic, noise and hours of operation.
- 49 The planning provisions proposed by Ryman and the RVA will ensure appropriate and proportionate assessment and management of

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<sup>39</sup> Evidence of Mr J Collins, paragraph 69.

<sup>40</sup> Evidence of Ms N Williams, paragraph 121 and Appendix B.

effects of the buildings and structures associated with retirement villages. Overall, the provisions are tailored to:

- 49.1 Recognise the positive benefits of retirement villages and the need for many more of them;
  - 49.2 Focus effects assessments on exceedances of relevant standards, effects on the safety of adjacent streets or public open spaces, and effects arising from the quality of the interface between the village and adjacent streets or public open spaces to reflect the policy framework within the MDRS. A degree of control over visual dominance effects is also acknowledged as appropriate; and
  - 49.3 Enable the efficient use of larger sites and the functional and operational needs of retirement villages to be taken into account when assessing effects.
- 50 The rebuttal evidence of Mr Jeffrey Hextall identifies a "*philosophical difference*" between the Council Officers and the RVA and Ryman experts as to whether "*specific age-based*" provisions are necessary.<sup>41</sup> The Panel is not tasked with choosing a philosophy. Rather, the Panel is tasked with implementing the NPSUD and Enabling Housing Act, in light of the evidence presented to it PC92 must provide clear directions to decision-makers, and minimise the issues to be resolved at the consenting stage.<sup>42</sup>
- 51 The RVA and Ryman team have presented extensive evidence on the ageing population, the desperate need for appropriate housing and care for older persons and the consenting challenges that retirement villages face. In that sense, a significant resource management problem affecting a large proportion of the District's older population has been identified that the planning system needs to address. This is not philosophical. It is factual. There is no competing technical evidence on those matters. Rather the question is what is the appropriate planning response. It is submitted that the amendments sought by Ryman and the RVA directly address the problem. In doing so, they will better achieve the NPSUD objectives, including enabling all people and the community to provide for their social, economic and cultural wellbeing and in particular the health and safety of older people.<sup>43</sup> It is submitted that, in light of that evidence and the statutory requirements, the Panel must provide specific planning provisions for retirement villages in PC92.

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<sup>41</sup> Evidence of Mr J Hextall (6 September 2023), paragraphs 85 and 106.

<sup>42</sup> *Port Otago Limited v Environmental Defence Society Inc* [2023] NZSC 112 at [72]-[73].

<sup>43</sup> Objective 1, NPSUD.

- 52 These submissions do not comment on each individual submission point made by Ryman and the RVA. We address the key matters outstanding following the Section 42A Report. Ms Williams' evidence addresses the full suite of outstanding points.

**Accurate and clear definitions are required, otherwise unnecessary consenting complexities will arise**  
***Retirement Village***

- 53 The Section 42A Report does not consider it appropriate to adopt the RVA and Ryman's proposed National Planning Standards definition for a 'retirement village'. The Officer's reasoning for this is that National Planning Standards definitions have only been added where necessary to incorporate the MDRS, and the inclusion of additional definitions would cause complexity.<sup>44</sup>
- 54 As Ms Williams' sets out, the current definition of 'retirement village' in the District Plan is not fit-for-purpose.<sup>45</sup> The National Planning Standards definition is preferred. It provides clear direction that retirement villages, as a whole, are residential activities. It also provides a comprehensive list of the various amenities provided for residents.
- 55 The fact the Council is not 'required' to align the District Plan definitions to the National Planning Standards as part of PC92<sup>46</sup> is not, and should not act as, a barrier to doing so. Indeed, amending definitions (where relevant to the subject matter of PC92) to be consistent with the National Planning Standards aligns better with the overarching purpose of the Enabling Housing Act. And, the Council has already added other National Planning Standards definitions.
- 56 The Council's current approach would require relevant parts of the Plan amended by PC92 to be further amended in several years to align with the provisions with the National Planning Standards. This approach is highly inefficient, which in itself is contrary to the purpose of the National Planning Standards.<sup>47</sup> Adopting the definitions proposed by Ryman and the RVA will also provide consistency with the approaches taken by other Tier 1 Councils across the country.
- 57 The rebuttal evidence for Council suggests that amending the definition would have consequential effects for parts of the District

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<sup>44</sup> Section 42A Report, Section 14A – Ōmokoroa and Te Puke Medium Density Residential, Part 2 (Definitions, Activity Lists & Activity Performance Standards), dated 11 August 2023, page 11.

<sup>45</sup> Evidence of Ms N Williams, paragraph 61.

<sup>46</sup> National Planning Standards (November 2019), chapter 17, clause 6.

<sup>47</sup> RMA, s58B(1)(b)(iii).

Plan that are not within the scope of PC92.<sup>48</sup> The replacement of the existing retirement village definition with the correct definition will not substantively change other parts of the District Plan that rely on that definition. The deletion of the definitions of 'retirement village dwellings' and 'retirement village independent apartments' will require two consequential changes to Section 13 – Residential and Section 14 – Medium Density Residential.<sup>49</sup> Amendments to Section 11 – Financial Contributions are also required, but those are squarely within the scope of PC92 and addressed in the evidence of Mr Akehurst and Ms Williams.

- 58 However, if the Panel is not minded to make consequential changes to other parts of the District Plan, it is submitted to be more appropriate to apply the National Planning Standards definition to the parts of the District Plan amended by PC92. The Council Officer says that two sets of definitions may be confusing.<sup>50</sup> However, any confusion can be addressed through clear drafting. It is submitted that a split approach is more appropriate than continuing on with the use of an inaccurate definition.

#### **Retirement Unit**

- 59 The Section 42A Report does not support the RVA and Ryman's proposed definition of a 'retirement unit'.
- 60 The District Plan currently contains two definitions relating to retirement units, which are unclear and do not cover the range of housing typologies in retirement villages. For example, it is not clear why the District Plan distinguishes between *Retirement Village Dwellings* and *Retirement Village Independent Apartments*. On the other hand, the District Plan does not provide a definition for aged care rooms, which do not contain a kitchen or bathroom. As Ms Williams explains, this situation is likely to give rise to consenting complexity and inefficiency.<sup>51</sup> One definition encompassing all accommodation types within a retirement village is submitted to be clearer and more efficient.
- 61 The rebuttal evidence for Council suggests that excluding retirement villages from 'residential unit' would mean various provisions intended to apply to retirement villages no longer apply.<sup>52</sup> However, the term 'residential unit' is only used in the parts of the District Plan amended by PC92. Accordingly, this issue can be addressed by

<sup>48</sup> Evidence of Tony Clow (6 September 2023), paragraph 101(a).

<sup>49</sup> Section 13 – Residential, 13.3.2. Section 14 – Medium Density Residential, 14.3.2. Replace "for retirement village dwellings and retirement village independent apartments on a one to one basis" with "for retirement units that contain a kitchen and bathroom on a one to one basis".

<sup>50</sup> Evidence of Tony Clow (6 September 2023), paragraph 101(a).

<sup>51</sup> Evidence of Ms N Williams, paragraph 65.

<sup>52</sup> Evidence of Tony Clow (6 September 2023), paragraph 101(e).

adding reference to 'retirement unit' in the relevant locations within PC92. Ms Williams evidence makes recommendations to this effect.<sup>53</sup>

- 62 The Section 42A Report suggests that the RVA and Ryman's approach of bundling serviced apartments and care rooms into 'retirement units' will make these units subject to *more* restrictions (for example, outdoor living space requirements would apply).<sup>54</sup> It is submitted that, in fact, the Council's approach is more restrictive and less focused as it would require all parts of a retirement village (including serviced apartments and care rooms) to be assessed against broad urban design-related matters of discretion. In contrast, providing permitted standards is more enabling as it provides retirement village operators with certainty that the consenting pathway will be relatively straightforward if they design it to comply with the standards.
- 63 Further, the RVA and Ryman also propose some amendments to the internal amenity standards to ensure they are workable for all retirement units including serviced apartments and care rooms. However, those amendments are also required for other retirement units (for example, all units within a retirement village benefit from communal spaces and do not require individual outdoor living spaces to the same extent as standard residential dwellings). The RVA and Ryman seek planning provisions that are clear and consistent, and appropriately enabling. It is submitted that the definition of 'retirement unit' (and other relief sought) achieves this outcome.

**Retirement villages are residential activities, and need to be enabled through tailored policies and rules**

***Policies***

- 64 The Council Officer has recommended rejecting the policies sought by Ryman and the RVA . They do so on the basis that the requested policies do not add greater policy direction than those contained in PC92, and the inclusion of policies for a particular land use is inconsistent with the structure of PC92.<sup>55</sup>
- 65 It is submitted that the Council Officer's approach fails to respond to the uncontested evidence (provided in the RVA and Ryman submissions, and developed in the evidence of Mr Collyns, Mr Brown and Professor Kerse) in relation to the retirement housing crisis. As noted, this crisis is affecting a large portion of the District's population and is predicted to worsen. It is submitted that this evidence establishes the need for a specific policy response. Further,

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<sup>53</sup> The addition of 'retirement unit' within 14A.4.1 Density Standards – (f), (g), (h), (i) and 14A.4.2 Other standards – (f). Note, 14A.4.1(f) was not included in the statement of evidence, and will be addressed at the hearing.

<sup>54</sup> Section 42A Report, Section 14A – Omokoroa and Te Puke (Definitions, Activity Lists and Standards), page 11.

<sup>55</sup> Ibid, pages 39-40.



a policy response is necessary to implement the PC92 objectives (particularly Objective 1 relating to the wellbeing of people and communities and Objective 2 relating to a variety of housing types that respond to needs and demand) in light of that evidence. It is noted that Ms Williams' evidence also recommends an ageing population objective to support Objectives 1 and 2.<sup>56</sup>

- 66 The Section 42A Report says the matters covered in the requested 'provision of housing for an ageing population' are already covered in policies 1, 4 and 6 within PC92. It is submitted that that is not correct, for the following reasons:
- 66.1 Policies 1 and 4 are the directly inserted MDRS policies. They are general, and do not respond to the specific challenges created by the ageing population.
- 66.2 It is acknowledged that Policy 6 does seek to enable retirement villages, and requires "*the specific needs of the community*" to be taken into account. That approach is supported in principle, but the policy does not go far enough. In particular, the policy provides no direction on the specific functional and operational needs of retirement villages to assist plan users. It also does not acknowledge that those requirements may result in developments with a different design, layout and density to other multi-unit residential developments. It is important that the District Plan anticipates that retirement villages are 'different' to avoid the consenting challenges outlined in Mr Collyns and Mr Brown's evidence.<sup>57</sup>
- 67 For these reasons, it is submitted that the Council's policies do not go far enough and the 'provision of housing for an ageing population' policy proposed by Ms Williams is necessary to respond to the uncontested evidence on the retirement housing crisis. The policy will also ensure appropriate and proportionate assessment and management of effects of retirement villages. The policy is also aligned with the MDRS, gives effect to the NPSUD, and appropriately recognises the functional and operational needs of retirement villages.
- 68 The Council Officer has also generally recommended rejecting the RVA and Ryman submission points seeking amendments to the PC92 policies and two other new policies, with one new policy

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<sup>56</sup> Evidence of Ms N Williams, paragraph 75.

<sup>57</sup> Evidence of Mr M Brown, paragraph 48. Evidence of Mr J Collyns, paragraphs 72 and 82.

accepted in rebuttal evidence.<sup>58</sup> The evidence of Ms Williams sets out the reasons why the Panel should insert these additional provisions into PC92.<sup>59</sup>

***Rules – activity status***

- 69 The Section 42A Report expresses confusion as to why the RVA and Ryman have sought a more restrictive activity status for temporary construction activities, and permitted activity status for permanent establishment of retirement villages.<sup>60</sup>
- 70 The Council Officer appears to have misunderstood the relief sought by the RVA and Ryman. The purpose of the requested permitted activity rule was to recognise that retirement villages are residential activities that are anticipated in this Zone. The restricted discretionary rule would ensure the effects associated with the establishment of a retirement villages are appropriately addressed.
- 71 Despite the confusion, it appears the Council Officer and the RVA and Ryman are closely aligned as to the outcome. That is, retirement villages as a whole require resource consent as a restricted discretionary activity.<sup>61</sup>
- 72 Ms Williams has recommended drafting that addresses the confusion expressed in the Section 42A Report.<sup>62</sup> Her recommendation is that 'up to three retirement units on a site' are a permitted activity, with retirement villages with 'four or more retirement units' provided for as a restricted discretionary activity. This approach provides recognition that retirement villages are anticipated, with relevant construction and operational effects managed through a restricted discretionary process.

*Retirement villages are a residential activity*

- 73 It is noted that the Section 42A Report, when responding to the submission on activity status, comments that retirement villages contain non-residential activities that are not appropriate to be permitted in a residential zone.<sup>63</sup> While it is not material to the outcome, given the alignment on the appropriate activity status, it is necessary to respond to this statement. The statement reflects a common misconception that retirement village operators often face

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<sup>58</sup> Section 42A Report, Section 14A – Ōmokoroa and Te Puke, Part 1 (Section Labelling, Statement, Objectives, Policies), dated 11 August 2023, pages 39-40. Evidence of Mr J Hextall (6 September 2023), paragraph 108.

<sup>59</sup> Evidence of Ms N Williams, paragraphs 81-83.

<sup>60</sup> Section 42A Report, Section 14A – Ōmokoroa and Te Puke, Part 2 (Definitions, Activity Lists and Standards), dated 11 August 2023, page 17.

<sup>61</sup> Ibid, page 18.

<sup>62</sup> Evidence of Ms N Williams, paragraph 95.

<sup>63</sup> Section 42A Report, Section 14A – Ōmokoroa and Te Puke, Part 2 (Definitions, Activity Lists and Standards), dated 11 August 2023, page 17.

during consenting processes. This misconception is one of the key reasons that the RVA and Ryman seek the policy and rule provisions set out in their submissions.

- 74 As the evidence of Mr Brown, Professor Kerse and Mr Collyns highlights, retirement villages are the permanent residence of the residents, who consider the retirement village their 'home', no matter the level of care they need in those homes.<sup>64</sup> The services and recreational amenities in retirement villages are for the residents and visitors. They are not available to the general public. As has been confirmed by two High Court decisions, these services and recreational amenities do not change the essential nature of retirement villages as residential activities as a whole.<sup>65</sup>
- 75 Further, the National Planning Standards definition of a 'retirement village' puts residential accommodation 'front and centre' as the primary use in a retirement village.<sup>66</sup> The Council's rebuttal evidence notes that this definition includes recreation, leisure and supported care and "other non-residential activities".<sup>67</sup> Importantly, these activities must be "*for residents within the complex*", essentially meaning they must be ancillary or complementary to the overall residential use.
- Rules – notification presumptions**
- 76 The Section 42A Report removes the notification presumptions for four or more units from PC92 on the basis the presumptions do not need to be repeated in the District Plan.<sup>68</sup> This approach is at odds with the requirement for PC92 to "*incorporate the MDRS*".<sup>69</sup> Further, unless the notification presumptions are included in the Plan, they will not apply when the consenting authority makes notification decisions under sections 95A and 95B of the RMA.
- 77 As set out in the evidence of Mr Brown and Ms Williams, issues associated with notification are a key driver of the protracted consenting processes that retirement villages often face.<sup>70</sup>

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<sup>64</sup> Evidence of Mr M Brown, paragraph 50. Evidence of Mr J Collyns, paragraph 83. Evidence of Professor N Kerse, paragraph 8.

<sup>65</sup> *Hawkesbury Avenue, Somme Street and Browns Road Residents Association Inc v Merivale Retirement Village Ltd*, AP 139/98 (Christchurch), 3 July 1998, Chisholm J, at pages 21-22. See also *Te Rūnanga o Ngāti Awa v Whakatāne District Council* [2022] NZHC 819 at [63].

<sup>66</sup> See the National Planning Standards (November 2019), page 62.

<sup>67</sup> Evidence of Tony Clow (6 September 2023), paragraph 98.

<sup>68</sup> Section 42A Report, Section 14A – Ōmokoroa and Te Puke, Part 2 (Definitions, Activity Lists and Standards), dated 11 August 2023, page 86.

<sup>69</sup> RMA, s80E(1)(a)(i).

<sup>70</sup> Evidence of Mr M Brown, paragraph 79. Evidence of Ms N Williams, paragraph 102.

- 78 The RVA and Ryman seek notification presumptions for retirement villages that align with those set out in the MDRS for retirement units that comply with the relevant density standards. They seek retirement village-specific notification presumptions to ensure the approach is clear and not open for interpretation at a later date, particularly given the specific definitions provided in the Plan for retirement villages.
- 79 Ryman and the RVA also consider the retirement village rule should also preclude public notification for developments (4 or more units) that breach the relevant standards. It is accepted that limited notification may be appropriate in these circumstances given the potential for neighbour impacts. However, it is submitted that public notification is not appropriate for a residential activity in a residential zone. Public notification is highly unlikely to provide the decision-maker with any helpful information. But, as set out in Mr Brown's evidence, notification will contribute significantly to the length and complexity of consenting processes. Providing notification preclusions is therefore essential to better enable retirement villages in the District and expected by the Enabling Housing Act.

**Retirement villages are different, and require bespoke matters of discretion**

- 80 The Council Officer recommends rejecting the retirement village specific matters of discretion sought by Ryman and the RVA.<sup>71</sup> These submissions respond to the various reasons for that recommendation in the following paragraphs.

***The matters of discretion proposed by the RVA and Ryman do not deal with the interface with adjacent development***

- 81 This proposition is incorrect based on the current approach supported by Ms Williams. The proposed matters of discretion do address those effects to the extent they arise from a breach of the density standards as well as providing a matter of discretion relating to visual dominance effects. For example, if a retirement village proposal breaches the height in relation to boundary, the potential shading, privacy and dominance effects on neighbours would need to be considered. The purpose of the density standards is to provide direction as to the effects that are considered appropriate and effects that require assessment. Therefore, it is submitted that it is not appropriate to enable consideration of effects covered by the density standards where the standards are met.

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<sup>71</sup> Section 42A Report, Section 14A – Ōmokoroa and Te Puke, Part 3 (Matters of Discretion), dated 11 August 2023, page 11.

***The matters of discretion relate to effects, rather than looking to achieve a positive design outcome***

- 82 The matters of discretion have been drafted to focus decision making on the effects of relevance in light of the MDRS and the NPSUD. They also enable the consideration of the design outcome at the interface with neighbours (through matter a, where standards are breached as described above, and through matter d relating to visual dominance) and at the interface with the public realm (through matters c relating to the quality of the interface with streets and public open spaces and d relating to visual dominance).

***Positive effects can be considered through the resource consent process, so are not needed in the matters of discretion***

- 83 The matters of discretion proposed by Council do not allow the positive effects of retirement villages to be considered in decision-making.<sup>72</sup> This is a significant gap given the policy intent of the Enabling Housing Act, NPSUD and PC92 is to enable the benefits associated with providing appropriate housing for the community. The matters of discretion must include 'positive effects' to allow the enabling objectives and policies set out in PC92 to be considered in decision-making.

***Matters of discretion requiring consideration of operational and functional needs and efficient use of large sites are unclear***

- 84 The matter of discretion relating to the functional and operational needs of retirement villages is intended to work in combination with the 'provision of housing for an ageing population' policy sought by the RVA and Ryman. That policy provides clear direction on the operational and functional needs of retirement villages and therefore addresses the uncertainty that concerns the Council Officer.
- 85 Similarly, the matter of discretion relating to the efficient use of large sites is intended to work in combination with the 'large sites' policy sought by the RVA and Ryman. This matter of discretion is intended to allow Council officers to consider the internalisation of environment effects that can be achieved on larger sites. For example, greater height can be located in the centre of larger sites, while ensuring that adverse effects on neighbours (eg shading, dominance) are no greater than anticipated by the density standards.<sup>73</sup>

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<sup>72</sup> RMA, s104C.

<sup>73</sup> Evidence of Mr M Brown, paragraph 12.

***The matters of discretion for four or more residential units enable a comprehensive assessment of all types of residential development including retirement villages***

86 The four or more residential units matters of discretion are indeed comprehensive. However, it is submitted that matters of discretion must be focused on the key matters for decision-making. Broad matters of discretion do not restrict discretion, and are inefficient and ineffective. They result in overly complex consenting processes.

87 It is submitted that the four or more residential unit matters of discretion are not proportionate to the type and scale of the effects arising from the construction of retirement villages and are not tailored to the effects of relevance in light of the MDRS and NPSUD.

***Conclusion – matters of discretion***

88 It is submitted that the bespoke retirement village matters of discretion recommended by Ms Williams should be preferred as they are better aligned with the MDRS, give effect to the NPSUD, and appropriately recognise the functional and operational needs of retirement villages.

***Providing for retirement villages in the Commercial Zone***

89 The NPSUD, MDRS and Enabling Housing Act are not limited to residential zones. Section 77N of the RMA expressly requires territorial authorities to give effect to Policy 3 of the NPSUD in urban non-residential zones.

90 The town centres of Ōmokoroa and Te Puke have been zoned Commercial Zone.<sup>74</sup> Nevertheless, Policy 3 of the NPSUD applies because these are “*town centre zones (or equivalent)*”.

91 Policy 3 therefore requires PC92 to enable “*building heights and densities of urban form commensurate with the level of commercial activity and community services*” in relation to town centres. In relation to the interpretation of Policy 3, it is submitted that:

91.1 What is “*commensurate*” to the level of commercial activities and services is context specific. In this case, there will be a population of older people that wish to “*age in place*”, within and adjacent to the town centres, so they have continued access to the commercial activities and services provided by these centres. Accordingly, PC92 needs to provide for “*building heights and densities of urban form*” that specifically

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<sup>74</sup> Proposed Plan Change 92, Chapter 19 – Commercial Explanatory Statement says “*The Western Bay of Plenty District has established town centres at Te Puke, Katikati and Waihi Beach. A new town centre has been planned at Ōmokoroa*”, page 1.

respond to the need to provide suitable and diverse housing choices and options for our ageing population.

- 91.2 To “*enable ... urban form*” as directed by Policy 3, PC92 must do more than provide new density standards. To give effect to that direction, it is necessary for enabling activity statuses to be provided for the activities that give rise to urban form (eg dwellings, retirement units, etc). Doing so will also provide clear direction on the “*planned urban built form*” anticipated in these zones, which is needed to implement Policy 6.
- 92 The Council Officer says that it is not appropriate to provide for retirement villages in the Commercial Zone because its purpose is to provide for commercial activities. It also says there is no capacity for retirement villages in the Commercial Zone in Ōmokoroa and Te Puke.<sup>75</sup>
- 93 This is clearly not an enabling approach. At a principle level, the RVA and Ryman generally seek a planning approach for retirement villages in commercial zones that is as enabling as for other residential activities. The District Plan enables dwellings in the Commercial Zone as a controlled activity.<sup>76</sup> There is a ground floor control to ensure that residential activities do not affect the ongoing viability of the Commercial Zone.<sup>77</sup> The District Plan therefore provides for and enables other residential activities in the Commercial Zone, despite the Council Officer’s view on the purpose of the Zone. It is submitted that retirement villages should be treated in a similar manner to other residential activities. Retirement village-specific rules are however required to ensure the approach is clear and not open for interpretation at a later date, particularly given the specific definitions provided in the Plan for retirement villages. In this case, the RVA and Ryman are seeking restricted discretionary activity status (not controlled) for retirement villages and do not seek an exclusion from the ground floor control.<sup>78</sup>
- 94 Further, as Ms Williams explains, the NPSUD envisages that urban environments will change over time.<sup>79</sup> The fact that the Commercial Zone in Ōmokoroa and Te Puke is fully developed or fully consented for development is irrelevant. The potential for redevelopment to

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<sup>75</sup> Section 42A Report, Sections 19 and 20 – Commercial and Commercial Transition, dated 11 August 2023, page 3.

<sup>76</sup> District Plan, rule 19.3.1(j).

<sup>77</sup> Rule 19.3.4(e).

<sup>78</sup> See the recommended amendment to the ground floor control in the Evidence of Ms N Williams, paragraph 122.

<sup>79</sup> Evidence of Ms N Williams, paragraph 115.

occur over the 10 year lifetime of the District Plan cannot be dismissed.

- 95 The evidence of Mr Collyns and Mr Brown sets out the importance of enabling retirement villages in the Commercial Zones, given the shortage of appropriate sites in residential areas.<sup>80</sup> Similarly, Ms Williams explains in her evidence why these zones are part of the solution to the retirement housing crisis.<sup>81</sup> She also identifies that it will be clearer and more efficient to apply similar provisions in the Commercial Zones as for the Residential Zones.<sup>82</sup>
- 96 The key amendments to the Commercial Zone sought by the RVA and Ryman<sup>83</sup> reflect those sought in the Ōmokoroa and Te Puke Medium Density Residential Zone, and are addressed above.

### **Financial contributions**

- 97 PC92 includes amendments to the financial contributions (FC) chapter of the District Plan. The Section 42A Report proposes that retirement villages are charged financial contributions at 50% of the rate of a standard household.<sup>84</sup>
- 98 The Council has chosen to charge FCs under the RMA, rather than development contributions levied under the Local Government Act 2002. The RMA is not a funding mechanism. FCs are conditions, and therefore must be focussed on the management of the specific effects of a proposal.<sup>85</sup> The Section 42A Report acknowledges that the purpose of financial contributions is to manage effects relating to the use of infrastructure, not to help Council recover its costs.<sup>86</sup>
- 99 It is submitted that the Council's approach does not reflect the evidence on the effects of retirement villages relating to the use of infrastructure. The 50% rate recommended in the Section 42A Report responds solely on the lower occupancy rates of retirement villages (an average of 1.3 persons per unit compared to an average of 2.7 persons per dwelling).<sup>87</sup> The Section 42A Report says it "*is the view of Council staff that those living independently are still going to use Council services just as much as any other independent residents living in a community and it would be fair that they be treated as such*". However, the evidence of Mr Akehurst is that

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<sup>80</sup> Evidence of Mr M Brown, paragraph 72. Evidence of Mr J Collyns, paragraph 87.

<sup>81</sup> Evidence of Ms N Williams, paragraph 40.

<sup>82</sup> Ibid, paragraph 41.

<sup>83</sup> Ibid, paragraph 42.

<sup>84</sup> Section 42A Report – Section 11 Financial Contributions, page 7.

<sup>85</sup> *Newbury DC v International Synthetic Rubber Co Ltd* [1980] 1 All ER 731 (HL). RMA, s108AA.

<sup>86</sup> S42A Report – Section 11 Financial Contributions, page 13.

<sup>87</sup> Ibid, page 14.



retirement villages create substantially reduced demand for Council infrastructure (recreation and leisure, transport, and water/wastewater). Mr Akehurst's evidence is based on independent expert research undertaken at a number of retirement villages. It is submitted that this evidence should therefore be preferred over the views of Council officers. The rebuttal evidence of Mr Clow seeks to establish that Mr Akehurst's evidence does not apply to the Western Bay of Plenty context. Mr Akehurst will respond to those matters in his summary statement.

- 100 The Section 42A Report suggests that financial contributions can be varied on a consent-by-consent basis to address the particular effects of a proposal.<sup>88</sup> This approach is inconsistent with section 77E of the RMA, which requires financial contribution rules to specify "*how the level of the financial contribution will be determined*". It is also inconsistent with case law that warns against the risks of overly discretionary FC regimes.<sup>89</sup>
- 101 It is submitted that retirement village operators should not have to rely on the uncertainty of a potential discretionary assessment. Developers should be able to read the District Plan and know what financial contributions will be required. Without this certainty, the prospect of appeal against financial contribution conditions is high.

### **CONCLUSION**

- 102 PC92 must ensure that the District Plan specifically and appropriately provides for, and enables, retirement villages in the Ōmokoroa and Te Puke Medium Density Residential Zone and the Commercial Zone. Appropriate provision for retirement villages will meet Enabling Housing Act requirements, give effect to the NPSUD, and respond to the significant health and wellbeing issues created by the current retirement housing and care crisis.
- 103 When compared to the Council's proposed provisions, Ryman and the RVA's approach involves reasonably practicable options to achieve the objectives of PC92 that are:

103.1 more effective and efficient;

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<sup>88</sup> S42A Report – Section 11 Financial Contributions, page 14.

<sup>89</sup> *Auckland City Council v Retro Developments Ltd* HC Auckland AP127/01, 23 May 2002, at [29] says: *...There is much to be said for a policy permitting of limited discretion. Developers can read the plan and can ascertain exactly what will be required of them by way of financial contribution. Developers and the public generally can be assured that everyone is being treated alike. The risk of corruption at local body officer level is greatly reduced. The prospect of litigation which is virtually non-justiciable is significantly reduced...*

103.2 less restrictive, but with appropriate controls as necessary to manage adverse effects; and

103.3 the most appropriate way to achieve the purpose of the RMA (which in this context is informed by the purposes of the NPSUD and the Enabling Housing Act).

104 Accordingly, Ryman and the RVA respectfully seek that the Panel recommends, and the Council accepts, the proposals put forward by Ms Williams on behalf of Ryman and the RVA.

**Luke Hinchey and Nicola de Wit**

Counsel for Ryman and the RVA

7 September 2023