

Before the Independent Hearings Panel
Upper Hutt City Council

under: the Resource Management Act 1991 (*RMA*)

in the matter of: Submissions and further submissions in relation to the
Intensification Planning Instrument to the Upper Hutt
City Council's District Plan

and: **Ryman Healthcare Limited**
(*Submitter 57; Further Submitter 15*)

and: **Retirement Villages Association of New Zealand
Incorporated**
(*Submitter S64; Further Submitter 14*)

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

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

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 the Intensification Planning Instrument (*IPI*) plan change (*Plan Change*) to the operative Upper Hutt City District Plan (*Plan, District Plan*).
- 2 Upper Hutt City is already a popular location for retirees in the Wellington region, many of whom choose to live in retirement villages. The population aged 75 and over in Upper Hutt is forecasted to more than double by 2048. 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.
- 3 The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Enabling Housing Act*) represents a significant opportunity to address consenting challenges faced by the retirement sector. Addressing these challenges will ultimately accelerate housing intensification for the ageing population. Accelerating housing is directly in line with the expectations of both the Enabling Housing Act and the National Policy Statement on Urban Development 2020 (*NPSUD*).
- 4 The importance of the present intensification streamlined planning process (*ISPP*) 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 on ageing population housing and health issues. They seek greater national consistency across all Tier 1 planning frameworks to address the housing needs of older members of our communities.¹
- 5 To achieve those housing needs, the *RVA* and *Ryman* propose changes to the *Plan Change*. These changes adopt the key features of the Medium Density Residential Standards (*MDRS*) for multi-unit residential activities. However, the proposals have some necessary nuances relevant to the ageing population's housing needs, noting:

¹ See also Statement of Evidence Dr P Mitchell, at [13].

- 5.1 The objectives and policies of the MDRS that seek to enable a variety of houses and provide for the day-to-day housing needs of people have been further particularised. This approach will give greater clarity to the particular housing needs of the ageing population.
- 5.2 At the rules level, the retirement industry seeks generally consistent treatment as for other multi-unit residential developments in terms of activity status for the construction and development of retirement villages (restricted discretionary). The proposed assessment criteria 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 restriction while “encouraging” high quality design and attractive and safe streets and open spaces.
- 5.3 The industry seeks that the “use” of retirement villages be permitted. This approach will signal the importance of enabling retirement villages in residential zones and appropriate commercial zones. As highlighted by Dr Mitchell, there is no effects-based reason for the land-use component of retirement villages to not be permitted.² The effects of the built form of retirement villages will, however, be managed by the restricted discretionary activity.
- 5.4 Notification presumptions are proposed to be generally the same as for other multi-units developments – no public notification and potentially limited notification where density standards focussed on external effects are breached.
- 5.5 The density standards governing external effects are also the same.
- 5.6 Some relatively minor adjustments are sought to the internal amenity density standards to support the unique unit types and internal amenities of retirement villages, with a supporting new definition of “retirement unit”.
- 5.7 Other objectives, 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 remaining objectives and policy and rule framework. Instead, they are designed to provide specific emphasis on the needs of the ageing population.

² Statement of Evidence Dr P Mitchell, at [92].

- 6 At present, the Plan Change does not adequately provide for retirement villages and other forms of housing for older people in Upper Hutt City. Although the Reporting Officer acknowledges that retirement villages provide an important source of housing for the ageing population,³ he has rejected most of the RVA's and Ryman's submission points. This approach appears to be based primarily on a significant misunderstanding as to the nature of retirement villages and the RVA's proposed planning regime. In particular, the Officer fails to recognise the residential nature of retirement villages, the need for clear and efficient consenting requirements for retirement villages, and the inappropriateness of applying the Council's Medium and High Density Design Guide and the City Centre Zone Design Guide (jointly, *Design Guides*) to retirement villages.
- 7 Because of that, it is submitted that the Plan Change, as it relates to the RVA's and Ryman's submissions, does not appropriately give effect to the NPSUD. It fails to adequately provide for the specific housing needs of the ageing population. And, for the same reason, the Plan Change is inconsistent with the direction set out by the Enabling Housing Act. Specifically, the Plan Change fails to acknowledge:
- 7.1 retirement villages as a residential activity;
 - 7.2 the unique internal amenity needs of retirement villages, their functional and operational requirements and the significant social and economic benefits they generate for Upper Hutt City's society and economy; and
 - 7.3 the need for greater choice of retirement living options in appropriate locations to meet the needs of Upper Hutt City's rapidly ageing population.
- 8 In addition, the Plan Change's proposed financial contribution (*FC*) provisions do not provide sufficient certainty to developers as to the FCs they will be required to pay. The provisions essentially leave the question of how much FCs are to be paid by a developer to the complete discretion of the Council at the consenting stage. There is also no recognition of the lower demand profile of retirement accommodation on Council services. Hence, retirement villages, which are low users of Council services, may end up paying more than their fair share towards upgrades. The provisions also allow FCs to be collected for the same types of activities and

³ Officer's Report, at [164].

infrastructure covered by the development contributions policy, resulting in material risks of unlawful double dipping.

- 9 Accordingly, the Plan needs some significant adjustments to make it clear and certain for users. And, changes are needed to move it into line with the new statutory and policy requirements.
- 10 The changes sought by Ryman and the RVA do just that. The provisions 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.
- 11 The RVA's and Ryman's evidence addresses these matters in further detail:
 - 11.1 **Mr John Collyns** provides corporate evidence for the RVA. He 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;
 - 11.2 **Mr Matthew Brown** provides corporate evidence for Ryman. He highlights his experience with planning and building retirement villages and the desperate need for more of them;
 - 11.3 **Professor Ngaire Kerse** provides gerontology evidence, addressing the demography and needs of the ageing population;
 - 11.4 **Mr Gregory Akehurst** provides economic evidence addressing financial contributions. He comments on the inappropriateness of the current approach and addresses the Council's Evidence Report (*Officer's Report*); and
 - 11.5 **Dr Philip Mitchell** addresses planning matters and also comments on the Officer's Report.
- 12 The particular provisions that the RVA's and Ryman's submissions on the Plan Change relate to are:
 - 12.1 Part 1 (Introduction and General Provisions) in relation to Definitions;
 - 12.2 Part 2 (District Wide Matters) in relation to Strategic Directions, Development Contributions, and Signs;
 - 12.3 Part 3 (Area Specific Matters) in relation to the General Residential Zone (GRZ), High Density Residential Zone (HDRZ), Neighbourhood Centre Zone (NCZ), Local Centre

Zone (LCZ), Mixed Use Zone (MUZ), Town Centre Zone (TCZ), and City Centre Zone (CCZ); and

12.4 Part 4 (Appendices) in relation to the Design Guides.

SCOPE OF SUBMISSIONS

13 These submissions:

13.1 provide a summary of the legal framework relevant to the IPI, including the Enabling Housing Act and the NPSUD;

13.2 comment on the key themes of the IPI at issue; and

13.3 set out Ryman's and the RVA's overall position and requested relief.

LEGAL FRAMEWORK

Enabling Housing Act

14 At the outset, is important to acknowledge that the primary purpose of the ISPP is to address New Zealand's housing crisis. As stated by the Government:⁴

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.

15 As noted above, and expanded on in the evidence of Dr Mitchell, Mr Brown and Mr Collyns, retirement housing is having its own unique crisis. Demand for retirement village accommodation is outstripping supply, as more of our ageing population wish to live in retirement villages that provide purpose-built accommodation and care.

16 The ISPP has a relatively narrow focus. It 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.*"⁵

⁴ Cabinet Legislation Committee LEG-21-MIN-0154 (*Cabinet Minute*), at paragraph 1.

⁵ Cabinet Minute, at paragraphs 2-3.

- 17 A key outcome of the ISPP is to enable housing acceleration by, “*removing restrictive planning rules*”.⁶ These restrictions are to be removed via mandatory requirements to:
- 17.1 incorporate the MDRS in every relevant residential zone;⁷ and
- 17.2 in this case, “*give effect to*” Policy 3 of the NPSUD.
- 18 The force of these mandatory requirements is framed at the highest level, as a “duty” placed on specified territorial authorities.⁸
- 19 Contrary to the Reporting Officer’s view,⁹ in addition to these ‘mandatory’ elements, the Council has the discretion under the Enabling Housing Act to alter the MDRS. There are a wide range of other ‘discretionary’ elements that can be included in IPIs to enable housing acceleration, including:
- 19.1 establishing new, or amending existing, residential zones;¹⁰
- 19.2 providing additional objectives and policies, to provide for matters of discretion to support the MDRS;¹¹
- 19.3 providing related provisions that support or are consequential on the MDRS and Policy 3;¹² and
- 19.4 providing more lenient density provisions.¹³
- 20 Councils can also impose restrictions that are less enabling of development - “qualifying matters” - but only where they meet strict tests.¹⁴
- 21 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:

⁶ Cabinet Minute, paragraph 4.

⁷ Section 77G(1), RMA.

⁸ Section 77G.

⁹ Officer’s Report, at [238].

¹⁰ Section 77G(4).

¹¹ Section 77G(5)(b).

¹² Section 80E(iii).

¹³ Section 77H.

¹⁴ Sections 77I-77L.

- 21.1 substantially reduced timeframes;¹⁵
- 21.2 no appeal rights on the merits;¹⁶ and
- 21.3 wider legal scope for decision-making.¹⁷
- 22 Importantly, this process is not about providing the 'bare minimum' to respond to the statutory requirements. The task ahead is a very important one. The IPIs and the ISPP are a means to solve an important and nationally significant housing issue.
- 23 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:
- 23.1 addressing New Zealand's housing crisis;
- 23.2 accelerating housing supply to enable a variety of homes for all people; and
- 23.3 removing overly restrictive planning provisions.
- 24 For the reasons outlined, the RVA and Ryman's proposed changes to the Plan Change are consistent with and help achieve those aspects of the statutory purpose.
- 25 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.¹⁸

¹⁵ Under section 80F, 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.

¹⁶ There are no appeals against IPIs that go through the ISPP, aside from judicial review (section 107 and 108). 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 (section 105).

¹⁷ Clause 99 of Schedule 1, Enabling Housing Act.

¹⁸ See, for example, *Auckland Council v Teddy and Friends Limited* [2022] NZEnvC 128, at [27].

Preparing and changing district plans under the RMA

- 26 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. A section 32 report must be prepared.¹⁹
- 27 In that context, as part of the usual legal framework, caselaw 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*".²⁰ 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 basis that land use activities are only restricted where that is necessary*".²¹
- 28 Caselaw 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.²² If other means are raised by reasonably cogent evidence then the decision-maker should look at the further possibilities.²³
- 29 Given the above-noted purpose of the IPI and ISPP process, these concepts remain valid here. The statutory and policy intent is to enable intensification and reduce unnecessary planning restrictions. The Panel has broad discretions and wider scope available in making recommendations.²⁴ It should not be assumed that the Council's notified IPI provides the most appropriate response to the legislative context.

NPSUD

- 30 The Plan Change must "*give effect*" to Policy 3 of the NPSUD. The Supreme Court has established that the requirement to "*give effect*

¹⁹ Eg, section 80B, clause 95 of the First Schedule, RMA.

²⁰ *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].

²¹ *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51 at [78].

²² *Federated Farmers of New Zealand Inc v Bay of Plenty Regional Council* [2019] NZEnvC 136 at [41].

²³ *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55 at [64].

²⁴ Clause 96, First Schedule, RMA.

to” means to “implement”; “it is a strong directive, creating a firm obligation on the part of those subject to it”.²⁵

- 31 As noted, the intention of the Enabling Housing Act is to bring forward the intensification enabled by the NPSUD. The MDRS themselves reflect the wider NPSUD policy direction. It is submitted therefore that the Plan Change must take guidance and be read in light of the NPSUD as a whole, beyond just Policy 3. 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 Enabling Housing Act requirements. 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 aspects.
- 32 Particularly relevant objectives and policies of the NPSUD are outlined in Dr Mitchell’s evidence. In addition, Ryman and the RVA submit that the Plan Change should be guided by the following key themes:
- 32.1 the NPSUD is intended to be “enabling” of development;
- 32.2 the NPSUD seeks to enable well-functioning environments for “all” communities; and
- 32.3 urban environments are expected to change over time. Planning regimes should be responsive to that change.
- 33 These themes are addressed in more detail below and we note they are unsurprisingly also reflected in the MDRS objectives and policies.

The NPSUD is intended to be enabling of development

- 34 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.²⁶ In their report, MfE and HUD state that:²⁷

The NPS-UD will enable growth by requiring councils to provide development capacity to meet the diverse demands of communities,

²⁵ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [77].

²⁶ The report includes the Ministers’ final decisions on the NPSUD, and was published in accordance with s 52(3)(b) of the RMA.

²⁷ MfE and HUD, “Recommendations and decisions report on the National Policy Statement on Urban Development” (Wellington, 2020), page 17.

address overly restrictive rules and encourage well-functioning urban environments.

- 35 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).²⁸
- 36 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 was to be primarily enabling. That NPS was designed, "*to provide opportunities, choices, variety and flexibility in relation to the supply of land for housing and business*".²⁹ The objectives of the NPSUDC 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 here.
- 37 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*".³⁰
- 38 The enabling intent of the NPSUD has been addressed in the likes of the *Middle Hill Ltd v Auckland Council*³¹ 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...

²⁸ Ibid, page 85.

²⁹ *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [39].

³⁰ MfE and HUD, "Recommendations and decisions report on the National Policy Statement on Urban Development" (Wellington, 2020), page 16.

³¹ *Middle Hill Ltd v Auckland Council* [2022] NZEnvC 162.

Well-functioning urban environments

- 39 The NPSUD seeks to provide for well-functioning urban environments that:
- 39.1 Enable all people and communities to provide for their wellbeing, health and safety.³² To the RVA and Ryman, achieving this wellbeing objective in relation to older persons within the community means providing for the specific housing and care needs of those people.
- 39.2 Enable a "*variety of homes*" to meet the "*needs ... of different households*",³³ which, it is submitted, cannot be achieved without expressing what the variety and needs of different households are. The RVA and Ryman submit that their proposed changes provide greater clarity on the particular needs of older people and the nature of retirement village accommodation that many of those people wish to live in.
- 39.3 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.³⁴

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

- 40 Urban environments, including their amenity values are recognised as, "*developing and changing over time in response to the diverse and changing needs of people, communities, and future generations*".³⁵
- 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.³⁶ Plans may provide for change that alters the present amenity of some and improves the amenity of other people and communities.
- 42 To address the above, the NPSUD, introduces "responsive" planning provisions (among other provisions). Objective 6(c) requires local authority decisions on urban development to be "responsive,

³² National Policy Statement on Urban Development 2020, Objective 1.

³³ Policy 1.

³⁴ Objective 3.

³⁵ Objective 4.

³⁶ Policy 6.

particularly in relation to proposals that would supply significant development capacity". Retirement villages are a good example of proposals that generate significant development capacity.

- 43 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.
- 44 These provisions send a clear signal that councils need to be sufficiently agile and responsive, and to take account of unanticipated opportunities. Adopting an overly restrictive and unresponsive approach as has been taken in the Plan Change does not align with the NPSUD's direction.

UPPER HUTT CITY'S IPI

RVA's and Ryman's proposed changes

- 45 In their submissions on the Plan Change, Ryman and the RVA seek a more enabling and responsive planning framework for retirement villages in the relevant residential and mixed use commercial zones. This regime was developed by industry experts to reflect the overall experience with consenting, building and operating retirement villages across New Zealand. The specific functional and operational needs of retirement villages are set out in the RVA and Ryman's evidence.
- 46 As explained by Dr Mitchell and noted in the executive summary, the regime proposed by the RVA and Ryman is largely aligned with the planning approach for other multi-unit residential developments involving four or more dwellings. It has some necessary nuances for internal amenity controls which better reflect onsite needs. All MDRS density controls that apply to manage external effects would also apply to retirement villages. The regime also does not seek to exclude any other Plan controls that manage the likes of earthworks, flood management, traffic, noise and hours of operation.
- 47 The policy and rule framework proposed by Ryman and the RVA ensures appropriate and proportionate assessment and management of effects of the buildings and structures associated with retirement villages. Overall, the framework is tailored to:
- 47.1 recognise the positive benefits of retirement villages and the need for many more of them;
 - 47.2 focus effects assessments on exceedances of relevant density standards, 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. A degree of control over longer buildings is also acknowledged as appropriate. This effects management focus reflects the policy framework within the Enabling Housing Act; and

- 47.3 enable the efficient use of larger sites and the functional and operational needs of retirement villages to be taken into account when assessing effects.

The Officer's Report

- 48 Ryman and the RVA are supportive of only limited aspects of the Reporting Officer's position. For example, the Officer acknowledges that retirement villages provide an important source of housing for the ageing population.³⁷
- 49 However, although the Reporting Officer accepts a limited number of the RVA's and Ryman's submission points, he recommends rejecting the majority of the submissions points. The Officer's position is largely based on the *alleged* premise that the Plan Change already appropriately provides for retirement villages³⁸ and more broadly the housing needs for the ageing population.³⁹
- 50 These submissions do not comment on each individual submission point made by Ryman and the RVA. This analysis is covered in more detail in Dr Mitchell's evidence. In Dr Mitchell's view, the Reporting Officer appears to misunderstand the nature of retirement villages and the RVA / Ryman's proposed planning regime.⁴⁰ In his opinion, the Plan Change requires amendments to provide a framework that appropriately gives effect to the NPSUD and responds to the retirement housing crisis.⁴¹
- 51 We primarily address key misunderstandings that, with respect, mean the Reporting Officer's approach with regard to retirement villages is misguided and should be given little weight. In particular, the Officer fails to appreciate that:

³⁷ Officer's Report, at [164].

³⁸ Ibid at [164].

³⁹ Ibid at [160], [231], [306] and [621].

⁴⁰ Statement of Evidence Dr P Mitchell, at [24].

⁴¹ Ibid at [123].

- 51.1 retirement villages (including ancillary amenities and services for the residents) as a whole are a residential activity;⁴²
- 51.2 retirement villages have unique functional, operational and other needs, that must be provided for to ensure clear and efficient consenting requirements;
- 51.3 the use of design guides, as proposed here, is highly inconsistent with the MDRS and the wider purpose of the NPSUD and Enabling Housing Act. The Design Guides impose a disproportionate consenting burden on developments not meeting permitted activity status. Ultimately, the Design Guides go well beyond the legislative and policy directions and accordingly 'over-regulates' housing intensification. In any case, they are not suitable for retirement villages; and
- 51.4 financial contribution policies must be sufficiently clear and certain and supported by robust assessment methodologies in order for conditions under section 108(1) of the RMA to be lawfully imposed.

Retirement villages are a residential activity and should have commensurate activity status

- 52 The Reporting Officer does not recognise that retirement villages are, as a whole, a residential activity.⁴³ The Officer states, "*Retirement villages are not classed as residential activities under the District Plan, although they include residential activities within a wider mix of nonresidential activities*".⁴⁴
- 53 As noted by Dr Mitchell, the Officer's assessment appears to be based on a lack of understanding of retirement villages.⁴⁵ Mr Brown, Professor Kerse and Mr Collyns all highlight that retirement villages are the permanent residence of the residents. Residents consider retirement villages as their 'home', no matter the level of care they need in those homes.⁴⁶ The services and recreational amenities in retirement villages are for the residents and visitors. These services

⁴² Officer's Report, at [165] and [205].

⁴³ The Officer asserts that retirement villages are "not classed as a residential activities under the District Plan, although they include residential activities within a wider mix of non-residential activities", and further notes that retirement activities are provided for within the residential zones as a discretionary activity under rule GRZ-R21, which is a catch-all for "non-residential" activities (Officer's Report, at [205]).

⁴⁴ Officer's Report, at [165]; [205].

⁴⁵ Statement of Evidence Dr P Mitchell, at [24].

⁴⁶ Statement of Evidence Professor N Kerse, at [37] and [38]. Statement of Evidence M Brown, at [50]. Statement of Evidence J Collyns, at [87].

and recreational amenities do not change the essential nature of retirement villages as residential activities.

54 The National Planning Standards define 'retirement village' as:⁴⁷

... a managed comprehensive residential complex or facilities used to provide residential accommodation for people who are retired and any spouses or partners of such people. It may also include any of the following for residents within the complex: recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities.

55 The definition puts residential accommodation 'front and centre' as the primary use in a retirement village. It aligns with the wider definition in the National Planning Standards of "residential activity". Where retirement villages are a "*residential complex or facilities used to provide residential accommodation for people...*", a "residential activity" is:⁴⁸

"the use of land and building(s) for people's living accommodation".

56 The other activities that may be included in a retirement village include recreation, leisure and supported care. Importantly, these activities must be "*for residents within the complex*", essentially meaning they must be ancillary or complementary to the overall residential use.

57 In practice, as Mr Collyns and Mr Brown point out, the services and amenities in retirement villages are designed specifically for the residents. The RVA and Ryman witnesses, including gerontologist expert Professor Kerse, highlight the many health and social factors which contribute to older people having less mobility. These factors make it important that many of the day to day needs of residents are met on site. As Professor Kerse notes, "*[t]he care facility in the retirement village is their home. There is an emphasis from those delivering care to make it homelike and preserve the autonomy of the residents*".⁴⁹ In Ryman villages, these amenities and services provided meet the needs of frail residents, or those with mobility restrictions, and are not available to the general public.⁵⁰

⁴⁷ National Planning Standards (November 2019), page 62.

⁴⁸ Ibid.

⁴⁹ Statement of Evidence Professor N Kerse, at [37].

⁵⁰ Statement of Evidence M Brown, at [52].

58 The activity classification of retirement villages that provide additional services or facilities to their residents has been the subject of rulings by the higher courts.⁵¹ Two High Court cases have found that aspects of a retirement village that are incidental and ancillary to the residential activity (e.g. a hair salon), do not alter the overall status of retirement villages as residences.⁵² In the most recent case, the High Court stated:⁵³

Importantly, services and facilities are limited to "the care and benefit of residents" only, but "activities pavilions and/or other recreational facilities or meeting places" can be used by residents and their visitors. By linking these activities to residents, the purpose of the activities is, in my view, inextricably linked to the definition of "dwellinghouse" and thereby to the definition of "residential activity" in s 95A(b).

59 The Court also stated that the ancillary services provided by the retirement villages in that case were for residents only. They complemented the residential function of retirement villages by meeting the particular needs of older residents.⁵⁴

60 In light of this wider context, it is difficult to conceptualise that the National Planning Standards intended retirement villages to be classified as anything other than residential activities. The terminology used to define 'residential activity' is inextricably linked to the definition of 'retirement village'. Retirement villages are essentially a subset of residential activity.

61 Further, an interpretation that retirement villages are instead a mix of activities that require individual assessment would not align with the clear language of the definition and the facts outlined. The purpose of the National Planning Standards to provide national consistency would not be served by attempting to break down a (singular) defined activity in the National Planning Standards into component parts for separate assessment. If the intention of the National Planning Standards was for individual aspects of retirement villages to be split up, the National Planning Standards definitions would have provided for this through multiple definitions.

⁵¹ *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.

⁵² *Hawkesbury*, at pages 21-22.

⁵³ *Te Rūnanga o Ngāti Awa*, at [63].

⁵⁴ *Ibid.*

62 More broadly, part of the purpose of the RMA is to enable social wellbeing and for health and safety. These purposes are partly articulated in Objective 1 of the NPSUD and Objective 1 of the MDRS (Objective UFD-O2), which are provide for urban environments that enable “all people and communities” to provide for social wellbeing and health and safety. The supporting policies (eg, Policy GRZ-P1A) note the need for planning decisions to contribute to urban environments to have or enable, as a minimum, “a variety of housing types and sizes”.

63 This wider context also supports the view that retirement villages as a whole are a residential use and should be enabled as such. Retirement villages are a housing typology that helps provide specialist care for a particularly vulnerable demographic. Retirement villages are necessarily different to other residential typologies to cater for the specialist day-to-day needs of residents. They need to be located in a variety of residential and mixed use commercial areas to enable older people to ‘age in place’.⁵⁵

Functional and operational needs and effects management

64 The Reporting Officer is also concerned about the adverse effects of retirement villages based on the potential scale of retirement villages and the potential resulting adverse effects such as traffic effects. Hence, they do not agree with the RVA and Ryman’s proposed changes.⁵⁶

65 With respect it is submitted that these concerns are unfounded. The unique functional and operational needs of retirement villages are set out in the RVA and Ryman evidence. However the planning regime does not reduce the ability to manage effects of concern to the Officer:

65.1 Traffic effects are managed by relevant traffic provisions in the Plan - not the MDRS and related density standards.

65.2 The scale of buildings is managed by the relevant density standards. Dr Mitchell proposes these also apply to retirement villages. He recommends additional assessment matters that manage external effects via a restricted discretionary rule for retirement villages. As noted, the regime is largely aligned with the planning approach for other residential developments involving four or more dwellings.

⁵⁵ Statement of Evidence J Collyns, at [89]-[90]. Statement of Evidence of M Brown, at [77].

⁵⁶ See Officer’s Report, at [165] and [166].

- 66 Further, with respect, the Officer appears to misunderstand some of the RVA's and Ryman's proposed new policies. The Officer considers a specific policy to recognise the intensification opportunities provided by larger sites is not necessary as, "*there is no policy, rule or standard impediment on the intensification opportunities provided by large sites*".⁵⁷
- 67 The RVA's and Ryman's concern is not the potential 'impediments' to the ability to intensify large sites. Rather, they seek that the Plan actively 'encourage' the efficient use of larger sites to maximise the benefits from their development. This encouragement is important. Larger sites that meet the operational needs of retirement villages in areas where there is demand for these types of developments are extremely rare.⁵⁸ As noted by Mr Brown, this 'intensification of larger sites' policy has been adopted in the Auckland Unitary Plan.⁵⁹
- 68 The Reporting Officer also considers that a provision addressing the provision of housing for an ageing population is not "*necessary or appropriate*".⁶⁰ The RVA and Ryman strongly disagree. As noted by Mr Collyns, the Government has recognised the ageing population as one of the key housing and urban development challenges facing New Zealand in its overarching direction for housing and urban development – the Government Policy on Housing and Urban Development (*GPS-HUD*).⁶¹ A new provision that explicitly recognises and addresses the ageing population and their housing needs ensures this Government direction is appropriately reflected in the District Plan. As noted earlier, it also gives effect to the NPSUD and the related MDRS objectives. An 'ageing population' policy approach was adopted in the Christchurch replacement District Plan process.⁶²
- 69 The Reporting Officer also appears to misunderstand the RVA's and Ryman's proposal to distinguish between retirement land use and construction activities.⁶³ As explained by Dr Mitchell, the proposal

⁵⁷ Officer's Report, at [159].

⁵⁸ See Statement of Evidence J Collyns, at [91]-[94].

⁵⁹ AUP, H3.3(8), H4.3(8), H5.3(9) (also refer to RVA's submission, at [92]).

⁶⁰ Officer's Report, at [161].

⁶¹ The GPS-HUD records that "[s]ecure, functional housing choices for older people will be increasingly fundamental to wellbeing". The government strategy *Better later life – He Oranga Kaumatua 2019 to 2034* recognises that "[m]any people want to age in the communities they already live in, while others wish to move closer to family and whānau, or to move to retirement villages or locations that offer the lifestyle and security they want" (GPS-HUD, page 10).

⁶² Policy 14.2.1.8, Christchurch District Plan.

⁶³ Council's Evidence Report, at [301].

to provide a permitted activity status for retirement villages as a land use, and the related construction as a restricted discretionary activity status is not uncommon. It is already applied in the District Plan.⁶⁴

- 70 Overall, the policy and rule framework proposed by Ryman and the RVA ensures appropriate and proportionate assessment and management of effects of the buildings and structures associated with retirement villages. It is submitted that this approach is more appropriate than the Reporting Officer's approach for the reasons outlined above and in the evidence of the RVA and Ryman.

**Design Guides
Inconsistent with Policy 5 of the MDRS**

- 71 The RVA's and Ryman's submissions seek that retirement villages are expressly excluded from having to apply the Design Guides. The Reporting Officer declines to make any amendments as he considers the use of design guides to be an, "*effective and efficient method to achieve the relevant objectives of the IPI*".⁶⁵ With respect to the Medium and High Density Design Guide, the Officer considers the Guide may be a "*potentially*" relevant matter of discretion when considering retirement village consent applications,⁶⁶ particularly with respect to public spaces.⁶⁷ However, he also appears to contradict himself by suggesting that the Guide does not apply to retirement villages as it is specific to medium and high density residential development and "*retirement villages are not classed as residential activities*".⁶⁸

- 72 We submit that Policy 5 of the MDRS (GRZ-P1E and HRZ-P4 in the IPI) is of particular relevance. It states:

Provide for developments not meeting permitted activity status, while encouraging high-quality developments.

- 73 Ryman and the RVA submit that the use of "provide" and "encouraging", based off their plain and ordinary meaning, are broadly enabling concepts. The parties submit this reading is consistent with the wider purpose of the Enabling Housing Act, to accelerate the provision of housing and remove overly restrictive planning provisions. By comparison, for the reasons outlined below,

⁶⁴ Statement of Evidence Dr P Mitchell, at [87].

⁶⁵ Officer's Report, at [588].

⁶⁶ Ibid at [184] and [585].

⁶⁷ Ibid at [206].

⁶⁸ Ibid at [205].

the parties consider the Design Guides are inconsistent with Policy 5. These create a disproportionate restriction on multi-unit housing when compared to permitted housing activities, which have no controls on design. Design Guides also establish an overly restrictive consenting burden on non-permitted developments.

Ordinary meaning

- 74 There is no definition of “provide” or “encouraging” in the Enabling Housing Act. The plain and ordinary meaning of “provide” is to “make available for use”. “Encourage” is to “allow, promote or assist (an activity or situation)”.⁶⁹
- 75 Ryman and the RVA submit the Design Guides both fail to make “available for use” non-permitted development and to “allow, promote or assist” high-quality development.
- 76 The Plan Change requires the provision of “*medium and high density residential development that is consistent with the Council’s Medium and High Density Design Guide in Appendix 1*”.⁷⁰ This policy is prescriptive as it requires developments to be “consistent” with the Guide, which includes 84 guidance items. This policy, however, does not align with the Design Guide itself, which provides that the guide “*does not prescribe development requirements but instead supports and complements the design outcomes sought for residential development*”.⁷¹ This discrepancy can easily lead to confusion among plan users in regard to the status of the Design Guide.
- 77 Ryman and the RVA do not dispute that IPIs can include provisions that allow, promote or assist high quality development. But, they submit that requiring developments to be “consistent” with up to 84 guidance items stretches well beyond the concept of “encouraging”. Even where an applicant thinks it meets the guidelines, there is a substantial risk that the consenting authority will disagree and require the design to be revised or justified, or possibly declined. This is both costly and inefficient, and ultimately strains the meaning of ‘providing’ for non-permitted developments. It is therefore inconsistent with Policy 5.

Language of the Enabling Housing Act

- 78 This plain meaning of “providing for” and “encouraging” is consistent with the wider text of the MDRS. Objectives 1 and 2 of the MDRS

⁶⁹ Oxford English Dictionary.

⁷⁰ IPI, Policy UFD-P1 and HRZ-P6.

⁷¹ IPI, Appendix 1, Chapter 2 ‘Design Guide Structure’.

require a well-functioning urban environment that enables *all* people and communities to provide for their wellbeing, and relevant residential zones that provide for a *variety of housing types and sizes*. Objectives 1 and 2 are given effect to through UFD-O1 and UFD-O2. It follows that the Enabling Housing Act intended to enable developments not meeting the permitted activity standards, in order to provide a variety of homes for all sections of the community.

- 79 It would also be inconsistent with this intention to read “encourage” high-quality design as a very restrictive requirement that must be fulfilled before the development can be allowed. To do so would ultimately *reduce* housing variety, given the strong disincentives to undertake developments that require assessment against the Design Guide.

Purpose of the legislation

- 80 Taking a purposive approach,⁷² Ryman and the RVA submit their interpretation of Policy 5 is consistent with the overarching legislative purposes of the IPIs:

80.1 **Addressing New Zealand’s housing crisis:** this is the primary purpose of the ISPP process. Cabinet said this instrument was needed as *“the intensification enabled by the NPSUD needs to be brought forward and strengthened given the seriousness of the housing crisis and this can be done by amending the Resource Management Act 1991 and the NPS-UD ahead of the Government’s resource management reforms.”*⁷³

80.2 **Removing restrictive planning rules:** Enabling housing acceleration is a key outcome of the ISPP, which can be achieved through *“removing restrictive planning rules,”*⁷⁴ both through the mandatory and discretionary aspects of the IPI.⁷⁵

- 81 Policy 5 must also be read within this wider context of the Enabling Housing Act and the NPSUD. While the RVA and Ryman do not dispute high-quality development should be encouraged, ultimately, the purpose of the legislation is about accelerating consenting processes and removing planning restrictions to address New

⁷² *Commerce Commission v Fonterra Co-Operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].

⁷³ Cabinet Legislation Committee LEG-21-MIN-0154 (Cabinet Minute), at [2-3].

⁷⁴ At [4].

⁷⁵ Section 80E, RMA.

Zealand's housing crisis. Requiring development to be consistent with the Design Guide is inconsistent with this purpose.

MFE Design Guide

- 82 The positive and enabling intent of Policy 5 can be understood further by reference to the Ministry for the Environment National medium density design guide (*MFE Guide*).⁷⁶ The MFE Guide is non-statutory; it sets out 'advice' on how to achieve well-functioning and high-quality housing that is well integrated into its neighbourhood.⁷⁷ It explicitly states it does not prescribe mandatory design requirements, which is reflected in the language used throughout the document, for example:

"consider the local climate conditions...This can improve residents' comfort and help save energy" (emphasis added).⁷⁸

- 83 The MFE Guide is intended to help encourage "high-quality housing" through four design principles and a further six design themes which provide further detail. In total there are 46 key design elements, making it much shorter than the Design Guides here. Overall, it "allows, promotes or assists" high quality development, but it does not require it. Counsel submits the MFE Guide provides clear guidance on what it means to "encourage" high quality development under Policy 5. The Design Guide goes well beyond this level of direction on high-quality development.

Design Guide not suitable for retirement villages

- 84 As explained by Dr Mitchell, the Design Guides have been prepared in relation to 'typical' residential developments, not retirement villages, and are at odds with many of the MDRS provisions.⁷⁹ Due to the operational and functional characteristics of retirement villages, these developments do not necessarily 'fit in' with the typical controls imposed on 'typical' residential developments, and are therefore not suitable for retirement villages.
- 85 However, as Mr Brown, Professor Kerse and Mr Collyns have set out, retirement villages are a housing typology that provide specialist care for a particularly vulnerable demographic. This makes retirement villages necessarily different to other residential typologies to cater for the specialist day-to-day needs of residents. The Design Guides are not specific to retirement villages. The

⁷⁶ MfE, May 2022.

⁷⁷ MfE, National medium density design guide, page 3.

⁷⁸ National medium density design guide, 1F.

⁷⁹ Statement of Evidence Dr P Mitchell, at [118].

Guides reflect design principles relevant to standard residential development that are not fit-for-purpose for retirement villages.

- 86 The regime that Ryman and the RVA have proposed is therefore designed to take into account the different functional and operational needs of retirement villages, but still encourage high quality design as proposed by Policy 5. It should be preferred as the more appropriate method for managing retirement villages in accordance with the statutory objectives.

Financial contributions

Introduction

- 87 The Council has exercised its discretion under section 77T of the RMA to include financial contribution (*financial contribution* or *FC*) provisions as part of the IPI. The RVA and Ryman consider the proposed FC provisions to be inadequate and inappropriate. They lack a robust and clear methodology for calculating and assessing appropriate levels of financial contributions. They are highly uncertain, which will make implementation highly challenging.
- 88 As set out in Mr Akehurst's evidence, the financial contribution provisions under the Plan Change do not clarify how usage or load differences would influence the amount of FCs the Council will be seeking.⁸⁰ The provisions also do not specify a formula that might allow developers ahead of time to calculate the FCs owed for a development, and instead will require individual assessments.⁸¹
- 89 In this context, the RVA and Ryman welcome the Reporting Officer's acknowledgement 'in principle' of the lower demand placed by retirement villages on council services.⁸² However, it is still difficult to reconcile the statements in the Officer's Report that the new provisions are "*clear as to the financial contributions that will be required*"⁸³ against the reality of the wide discretions the provisions contain:
- 89.1 Policy DC-P7 states that a financial contribution "*may be required for any land use or subdivision application...*", for the broad purposes, "*to ensure positive effects on the environment are achieved to offset any adverse effects that cannot otherwise be avoided, remedied or mitigated.*" The policy gives no direction on the circumstances where FCs are

⁸⁰ Statement of Evidence G Akehurst, at [16].

⁸¹ Ibid at [16] and [18].

⁸² Officer's Report, at [1102].

⁸³ Officer's Report, at [1100].

to be required. It does little more than restate legislative provisions.

89.2 Then, rules DC-R2A(a) and DC-R2B(b) lack specificity on the circumstances where reductions should be applied.⁸⁴

89.3 And, rule DC-R2E creates further uncertainty, as it appears to be a 'catch-all' rule allowing Council to require FCs for an unspecified amount of money or land or both to 'offset' unspecified effects in all residential, commercial and mixed use zones.

Legislative context

90 Section 77E⁸⁵ of the RMA provides that a local authority may make a rule requiring a FC for any class of activity other than a prohibited activity. Such a rule must specify:

(a) the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and

(b) how the level of the financial contribution will be determined; and

(c) when the financial contribution will be required.

91 Given that section 77E is a relatively new provision there is a lack of caselaw on its application. However, it is submitted that the same principles from prior cases continue to apply. The longer history of financial contributions is submitted to be a helpful source of guidance in this context.

92 Section 108 of the RMA states that a FC condition must be imposed in accordance with the purposes specified in the plan and the level of the contribution must be determined in the manner described in the plan.⁸⁶ Section 108(10) did not change under the Enabling Housing Act, and thus caselaw on its application is submitted to remain relevant.

93 The courts have found that a FC policy can contain a level of discretion.⁸⁷ However, caselaw also warns against the risks of overly discretionary regimes:⁸⁸

⁸⁴ Statement of Evidence G Akehurst, at [21].

⁸⁵ Inserted into the RMA pursuant to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

⁸⁶ Section 108(10), RMA.

⁸⁷ *Retro Developments Ltd v Auckland City Council* CA161/02, 25 February 2003.

...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...

- 94 These warnings are also echoed in *South Port New Zealand Limited* where the Court established that, even where the plan provides a general purpose for a FC, there must still be “sufficient particularity” on how a financial contribution is to be determined.⁸⁹ Open-ended discretions have the potential to result in perverse, unforeseeable or inconsistent outcomes.⁹⁰ At the very least, what is required is a method in which a FC can be determined, which may be broadly descriptive or narrowly prescriptive.⁹¹
- 95 It is submitted that a regime that creates the risks in paragraphs 93-94 above should not be allowed. Council’s FC regime in the Plan Change has such wide discretion⁹² that it has the potential for all of these risks to apply. As drafted, developers will not be able to read the Plan and ascertain what is required of them by way of FC.⁹³ There is a lack of assurance that everyone will be treated alike,⁹⁴ and the prospect of litigation on FC conditions is almost certain.
- Local Government Act provisions on financial contributions**
- 96 The Local Government Act 2002 (LGA) applies further requirements on the procedures and policies that apply to funding and financial policies, including financial contributions. We submit that these provisions assist in determining whether or not the Council’s approach is robust and appropriate in this case.

⁸⁸ *Auckland City Council v Retro Developments Ltd* HC Auckland AP127/01, 22 July 2002, at [29].

⁸⁹ *South Port New Zealand Limited v Southland Regional Council* C91/2002, 26 July 2002, at [17] and [25].

⁹⁰ At [22].

⁹¹ At [23] and [28].

⁹² Statement of Evidence G Akehurst, at [35].

⁹³ Statement of Evidence G Akehurst, at [21-22].

⁹⁴ Statement of Evidence G Akehurst, for example, at [34].

- 97 The purpose of these policies is to provide “*predictability and certainty*” about sources and the level of funding.⁹⁵ Section 106 in particular, requires that financial contribution policies:⁹⁶
- 97.1 Identify separately each activity for which a FC will be required;
 - 97.2 For each activity specify the total amount of funding to be sought by a FC; and
 - 97.3 State the proportion of total cost of capital expenditure that will be funded by FCs.
- 98 We submit that the Council’s approach falls short in all respects. The section 32 assessment does not clearly address these aspects. As the Council appears not to have followed the requirements of the LGA, strong doubt should be cast on the legitimacy of the FC provisions.
- Overlapping contributions regimes***
- 99 Problems resulting from unclear provisions also arise due to the interface between the RMA and the development contributions regime in the LGA. This overlap has traditionally resulted in retirement village operators being significantly overcharged, for their much lower demand on public infrastructure than typical housing.
- 100 Unfortunately, the LGA and RMA regimes are unhelpfully disconnected. This means that retirement village operators are often faced with councils leveraging community facilities through the RMA process, without credit being given at the development contributions payment stage. This gives rise to unfair and inequitable outcomes, disputes, and uncertainty. The significant uncertainty in the Plan Change financial contributions regime is likely to exacerbate this issue.
- 101 Council’s wide discretions under the Plan Change in relation to financial contributions also raise the risk of ‘double-dipping’ where both financial contributions and development contributions are applied for the same developments. Although section 200 of the LGA is intended to manage this issue (which the Council has built into the FC provisions), as Mr Akehurst notes, there is an unclear line as to where a development contribution charge ends and where a FC charge starts. He notes this is particularly a problem given the

⁹⁵ Section 102(1) and (2)(d), LGA.

⁹⁶ Section 106(2)(d), LGA.

Council's interconnected networks.⁹⁷ Accordingly, there is a material risk of the regime resulting in double dipping as well as inconsistent outcomes.

Summary

- 102 In considering the statutory and wider context of FCs, as provided for in the RMA, LGA and caselaw and in the RVA and Ryman's evidence, it is submitted that FC policies must:
- 102.1 be based on a robust assessment of loads on infrastructure, costs of new infrastructure, relative usage of activities and the amounts to be recovered from FCs as compared to other funding sources;
 - 102.2 provide predictability and certainty on both the purpose of the FCs and how they will be determined;
 - 102.3 not result in perverse, unforeseeable or inconsistent outcomes; and
 - 102.4 not result in 'double dipping'.
- 103 As set out above, the provisions currently proposed for the Plan Change do not meet these requirements.

CONCLUSION

- 104 The RVA and Ryman submit that the Plan Change must ensure that the District Plan specifically and appropriately provides for, and enables retirement villages in all relevant residential and commercial / mixed use zones. 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.
- 105 When compared to the Council's proposed provisions, Ryman and the RVA's approach involves reasonably practicable options to achieve the objectives of the Plan Change that are:
- 105.1 more effective and efficient;
 - 105.2 less restrictive, but with appropriate controls as necessary to manage adverse effects; and

⁹⁷ Statement of Evidence G Akehurst, at [70].

105.3 the most appropriate way to achieve the purpose of the RMA (which in this context is articulated by the NPSUD and the MDRS).

106 Accordingly, Ryman and the RVA respectfully seek that the Panel recommends, and the Council accepts, the proposals put forward by Dr Mitchell on behalf of Ryman and the RVA.

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19 April 2023