

Before the Independent Hearings Panel
Hutt City Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to Plan
Change 56 to the City of Lower Hutt District Plan

and: **Retirement Villages Association of New Zealand
Incorporated**
(Submitter 211)

and: **Ryman Healthcare Limited**
(Submitter 204)

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

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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 56 (*PC56*) to the City of Lower Hutt District Plan (*Plan, District Plan*).
- 2 Hutt City (*City*) is already a highly attractive location for retirees in the Wellington region. Between now and 2048, the population aged 75 and over in Hutt City is forecasted to more than double. 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 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. They seek greater national consistency across all Tier 1 planning frameworks to address the housing needs of older members of our communities.¹
- 5 The relief sought 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. This approach will give greater clarity to the particular housing needs of the ageing population.
 - 5.2 At the rules level, the industry seeks generally consistent treatment as for other multi-unit residential developments in

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

terms of activity status for the construction and development of retirement villages (restricted discretionary). The assessment criteria proposed 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 ensuring attractive and safe streets.

- 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 Phil 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 the same as for other multi-units residential developments.
 - 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, policy and rule framework. Instead, they are designed to provide specific emphasis on the needs of the ageing population.
- 6 At present, PC56 does not adequately provide for retirement villages and other forms of housing for older people in Hutt City. Aspects of the Plan go beyond the legislative and policy directives and accordingly ‘over-regulate’ development. The relevant definitions are inconsistent with the National Planning Standards definitions. The stipulated activity status classifications for retirement villages are more onerous than other forms of residential development.
 - 7 Overall, it is submitted that PC56, as it relates to the RVA’s and Ryman’s submissions, does not appropriately give effect to the NPSUD by failing to provide for the specific housing needs of the ageing population. And, for the same reason, PC56 is inconsistent

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

with the direction set out by the Enabling Housing Act. Specifically, PC56 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 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 Hutt City's rapidly ageing population.
- 8 PC56's proposed financial contribution provisions are also unclear. They do not adequately provide for the substantially reduced demand that retirement villages have on Council infrastructure compared with the average population. The provisions essentially leave the question of how much financial contributions are to be paid by a developer to be individually assessed, based on the adverse effects to be generated by the activity (that cause Council to spend money to off-set them). This approach is inefficient and does not provide an appropriate level of certainty for financial contributions.
- 9 There is also no analysis of the City's infrastructure needs and the beneficiaries of that. Hence, housing developments such as retirement villages, which are low users of council services, may end up paying more than their fair share towards upgrades. The provisions also allow financial contributions to be collected for the same types of infrastructure covered by the current Hutt City Development Contributions policy, resulting in material risks of unlawful double dipping.
- 10 Accordingly, the Plan needs some significant adjustments to make it clear and certain for users and to move it into line with the new statutory and policy requirements.
- 11 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.
- 12 The RVA's and Ryman's evidence addresses these matters in further detail:
- 12.1 **Ms Maggie Owens** 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;

- 12.2 **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;
 - 12.3 **Professor Ngaire Kerse** provides gerontology evidence addressing the demography and needs of the ageing population;
 - 12.4 **Mr Gregory Akehurst** provides economic evidence addressing financial contributions and comments on the Officer's Report in this respect; and
 - 12.5 **Dr Philip Mitchell** addresses planning matters and comments on the section 42A Officer's report (*Officer's Report*).
- 13 The particular provisions that the RVA's and Ryman's submissions on PC56 relate to are:
- 13.1 Chapter 1.10 – Area Wide Issues;
 - 13.2 Chapter 3 – Definitions;
 - 13.3 Chapters 4 and 5 – Objectives and Policies in Residential and Commercial Areas;
 - 13.4 Chapter 12 – Financial Contributions; and
 - 13.5 Chapter 14 – General Rules – Wind.

SCOPE OF SUBMISSIONS

- 14 These submissions:
- 14.1 provide a summary of the legal framework relevant to the intensification planning instrument (*IPI*), including the Enabling Housing Act and the NPSUD;
 - 14.2 comment on the key themes of PC56 at issue; and
 - 14.3 set out Ryman's and the RVA's overall position and requested relief.

LEGAL FRAMEWORK

Enabling Housing Act

- 15 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:³

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.

- 16 As noted above, and expanded on in the evidence of Dr Mitchell, Mr Brown and Ms Owens, 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.
- 17 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.”*⁴
- 18 A key outcome of the ISPP is to enable housing acceleration by, *“removing restrictive planning rules”*.⁵ These restrictions are to be removed via mandatory requirements to:
- 18.1 incorporate the MDRS in every relevant residential zone;⁶ and
- 18.2 in this case, *“give effect to”* Policy 3 of the NPSUD.
- 19 The force of these mandatory requirements is framed at the highest level, as a *“duty”* placed on specified territorial authorities.⁷
- 20 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:
- 20.1 establishing new, or amending existing, residential zones;⁸

³ Cabinet Legislation Committee LEG-21-MIN-0154 (*Cabinet Minute*), at paragraph 1.

⁴ Cabinet Minute, at paragraphs 2-3.

⁵ Cabinet Minute, paragraph 4.

⁶ Section 77G(1), RMA.

⁷ Section 77G.

⁸ Section 77G(4).

- 20.2 providing additional objectives and policies, to provide for matters of discretion to support the MDRS;⁹
 - 20.3 providing related provisions that support or are consequential on the MDRS and Policy 3;¹⁰ and
 - 20.4 providing more lenient density provisions.¹¹
- 21 Councils can also impose restrictions that are less enabling of development - "qualifying matters" - but only where they meet strict tests.¹²
- 22 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:
- 22.1 substantially reduced timeframes;¹³
 - 22.2 no appeal rights on the merits;¹⁴ and
 - 22.3 wider legal scope for decision-making.¹⁵
- 23 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 national housing issue.
- 24 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:
- 24.1 addressing New Zealand's housing crisis;

⁹ Section 77G(5)(b).

¹⁰ Section 80E(iii).

¹¹ Section 77H.

¹² Sections 77I-77L.

¹³ 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.

¹⁴ 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).

¹⁵ Clause 99 of Schedule 1, Enabling Housing Act.

- 24.2 accelerating housing supply to enable a variety of homes for all people; and
- 24.3 removing overly restrictive planning provisions.
- 25 For the reasons outlined, the RVA and Ryman’s proposed changes to PC56 are consistent with and help achieve those aspects of the statutory purpose.
- 26 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 (section 80E being a key ‘scope’ provision, as discussed later). 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.¹⁶
- Preparing and changing district plans under the RMA**
- 27 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.¹⁷
- 28 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*”.¹⁸ 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*”.¹⁹
- 29 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.²⁰ If other means are raised by

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

¹⁷ Eg, section 80B, clause 95 of the First Schedule, RMA.

¹⁸ *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].

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

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

reasonably cogent evidence then the decision-maker should look at the further possibilities.²¹

- 30 Given the above-noted purpose of the ISPP process, these concepts remain valid here. The statutory and policy intent is to enable intensification and reduce planning restrictions. The Panel has broad discretions and wider scope available in making recommendations.²² It should not be assumed that the Council's notified IPI provides the most appropriate response to the legislative context.

NPSUD

- 31 PC56 must "give effect" to Policy 3 of the NPSUD. The Supreme Court has established that the requirement to "give effect to" means to "implement"; "it is a strong directive, creating a firm obligation on the part of those subject to it".²³
- 32 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 PC56 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.
- 33 Particularly relevant objectives and policies of the NPSUD are outlined in Dr Mitchell's evidence. In addition, Ryman and the RVA submit that PC56 should be guided by the following key themes:
- 33.1 the NPSUD is enabling of development;
 - 33.2 the NPSUD enables well-functioning environments for *all* communities; and
 - 33.3 urban environments are expected to change over time. Planning regimes should be responsive to that change.
- 34 These themes are addressed in more detail below.

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

²² Clause 96, First Schedule, RMA.

²³ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [77].

The NPSUD is intended to be enabling of development

- 35 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.²⁴ In their report, MfE and HUD state that:²⁵

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.

- 36 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).²⁶

- 37 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 housing and business*".²⁷ 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.

- 38 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*".²⁸

- 39 The enabling intent of the NPSUD has been addressed in the likes of the *Middle Hill Ltd v Auckland Council*²⁹ 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

²⁴ The report includes the Ministers' final decisions on the NPSUD, and was published in accordance with s 52(3)(b) of the RMA.

²⁵ MfE and HUD, "Recommendations and decisions report on the National Policy Statement on Urban Development" (Wellington, 2020), page 17.

²⁶ Ibid, page 85.

²⁷ *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [39].

²⁸ MfE and HUD, "Recommendations and decisions report on the National Policy Statement on Urban Development" (Wellington, 2020), page 16.

²⁹ *Middle Hill Ltd v Auckland Council* [2022] NZEnvC 162.

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

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

- 40.1 Enable all people and communities to provide for their wellbeing, health and safety.³⁰ 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.
- 40.2 Enable a "*variety of homes*" to meet the "*needs ... of different households*";³¹ which, it is submitted, cannot be achieved without expressing what the variety and needs of different households are.
- 40.3 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.³²

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

- 41 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*".³³
- 42 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.³⁴ Plans may provide for change that alters the present amenity of some and improves the amenity of other people and communities.

³⁰ National Policy Statement on Urban Development 2020, Objective 1.

³¹ Policy 1.

³² Objective 3.

³³ Objective 4.

³⁴ Policy 6.

- 43 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, particularly in relation to proposals that would supply significant development capacity”. Retirement villages are a good example of proposals that generate 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.
- 45 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 PC56 does not align with the NPSUD’s direction.

PC56

The RVA’s and Ryman’s proposed changes

- 46 In their submissions on PC56, Ryman and the RVA seek a more enabling and responsive planning framework for retirement villages in the relevant zones included in PC56. 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.
- 47 As explained by Dr Mitchell, 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.
- 48 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:
- 48.1 recognise the positive benefits of retirement villages and the need for many more of them;
 - 48.2 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 Enabling Housing Act. A degree of control over longer buildings is also acknowledged as appropriate; and

- 48.3 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

- 49 Ryman and the RVA support only limited aspects of the Reporting Officer's position. For example, the Officer has proposed to preclude public and limited notification requirements where an activity is unlikely to result in effects beyond the boundary of a site. This is consistent with what the MDRS require.
- 50 However, many other aspects of the Officer's position are overly restrictive or unsuitable for retirement villages. The officer also makes broad assertions that the RVA and Ryman's submissions are out of scope.
- 51 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 (and, in the case of financial contribution provisions, Mr Akehurst's) evidence. 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.³⁵ In particular, the Officer fails to appreciate that:
- 51.1 retirement villages as a whole are a residential activity, with some notable differences to other residential activities. A specific rule framework for retirement villages is therefore appropriate;
- 51.2 the application of the Medium Density Design Guide is inconsistent with Policy 5 of the MDRS and not suitable for retirement villages;
- 51.3 the proposed retirement village regime 'supports' and is 'consequential on' the MDRS and Policy 3 of the NPSUD. Accordingly, it is within the scope of, and "on" PC56; and
- 51.4 financial contribution policies must be sufficiently clear, certain and supported by robust assessment methodologies in

³⁵ As also outlined in Mr Brown's and Ms Owens' Statements of Evidence.

order for conditions under section 108(1)) to be lawfully imposed.

Retirement villages are residential activities and should have commensurate activity status

- 52 The Reporting Officer considers that a specific rule framework for retirement village, including the permitted activity status for retirement villages as a land use, is inappropriate.³⁶ Part of the reasoning appears to be a failure to accept that retirement villages are a residential activity.
- 53 As Mr Brown, Professor Kerse and Ms Owens highlight, 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.³⁷ The services and recreational amenities in retirement villages are for the residents and visitors. These services and recreational amenities do not change the essential nature of retirement villages as residential activities.
- 54 The National Planning Standards define 'retirement village' as:³⁸
- ... 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:³⁹
- "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.

³⁶ Paragraph 452 – Council Officers' Section 42A Report.

³⁷ Statement of Evidence Professor N Kerse, at [36-37]. Statement of Evidence M Brown, at [51-53]. Statement of Evidence M Owens, at [81].

³⁸ National Planning Standards (November 2019), page 62.

³⁹ Ibid.

- 57 Further clues to aid that interpretation can be drawn from other definitions and the drafting conventions in the National Planning Standards. The retirement village definition contains a list of other activities for the residents without cross referring to other definitions such as "commercial activities" or "community facilities".⁴⁰ Whereas, other definitions do use this cross referencing convention.⁴¹ We submit that this context emphasises the self-contained nature of retirement villages as a type of residential activity that also has a range of related services and amenities. Those related services and amenities are not separate uses in themselves.
- 58 In practice, as Ms Owens 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, "*the care facility in the retirement village is their home and there is an emphasis on those delivering care to make it homelike and preserve the autonomy of the residents*".⁴² 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.⁴³
- 59 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.⁴⁴ 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.⁴⁵
- 60 In the most recent case, the High Court stated:⁴⁶

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,

⁴⁰ Which are separately defined in the National Planning Standards.

⁴¹ For example, the definition of residential activity cross-refers to the definitions of "land" and "building(s)".

⁴² Statement of Evidence Professor N Kerse, at [36].

⁴³ Statement of Evidence M Brown, at [53].

⁴⁴ *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.

⁴⁵ *Hawkesbury*, at pages 21-22.

⁴⁶ *Te Rūnanga o Ngāti Awa*, at [63].

inextricably linked to the definition of "dwellinghouse" and thereby to the definition of "residential activity" in s 95A(b).

- 61 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.⁴⁷
- 62 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.
- 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'.⁴⁸
- 64 As retirement villages are, as a whole, a residential activity, it follows that the land-use and operation of retirement villages should be permitted in all zones where residential activities are anticipated.

Design guide

Inconsistent with Policy 5 of the MDRS

- 65 PC56 proposes to require Council to be "principally guided by" its Medium Density Design Guide (*Design Guide*) when considering certain urban design elements for retirement villages in the MDRAA and HDRAA.⁴⁹
- 66 The RVA and Ryman seek the removal of references to the Design Guide in relation to retirement villages in the MDRAA and HDRAA.
- 67 Policy 5 of the MDRS (Policy 4F 3.2A and Policy 4G 3.4 within PC56) is particularly relevant. It states:

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

⁴⁷ Ibid.

⁴⁸ Statement of Evidence M Owens, at [84-85]. Statement of Evidence of M Brown, at [11]. Statement of Evidence Professor N Kerse, at [68-75].

⁴⁹ Rule 4G 4.1.7 Retirement Villages.

68 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 and in the evidence, the parties consider the Design Guide is inconsistent with Policy 5. It creates a disproportionate restriction on multi-unit housing. This is when compared to permitted housing activities, which have no controls on design.

Ordinary meaning

69 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)”.⁵⁰

70 Ryman and the RVA submit the Design Guide both fails to make “available for use” non-permitted development and to “allow, promote or assist” high-quality development.

71 Ryman and the RVA do not dispute that Council can include provisions that allow, promote or assist high quality development. But, they submit that the current requirement, for Council to be “principally guided by” the Design Guide, stretches well beyond the concept of “encouraging”. It is therefore inconsistent with Policy 5.

Language of the Enabling Housing Act

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

73 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

74 Taking a purposive approach, Ryman and the RVA submit their interpretation of Policy 5 is consistent with the wider enabling

⁵⁰ Oxford English Dictionary.

context of the Enabling Housing Act and therefore the NPSUD (as discussed earlier in these submissions).

- 75 Policy 5 must also be read within this wider context. The RVA and Ryman do not dispute high-quality development should be encouraged. But, ultimately, the purpose of the legislation is about accelerating consenting processes and removing planning restrictions to address New Zealand’s housing crisis. Requiring development to be principally guided by the Design Guide is inconsistent with this purpose.

MFE Design Guide

- 76 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*).⁵¹ 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.⁵² 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).*⁵³

- 77 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. Overall, it “allows, promotes or assists” high quality development. 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

- 78 As set out by Dr Mitchell, the Design Guide was prepared in relation to more typical residential development and is at odds with many of the MDRS provisions.⁵⁴ It is not fit for purpose for retirement villages.⁵⁵
- 79 As Mr Brown, Professor Kerse and Ms Owens have set out, retirement villages are a housing typology that provide specialist care for a particularly vulnerable demographic. This makes

⁵¹ Ministry for the Environment, May 2022.

⁵² Ministry for the Environment National medium density design guide, page 3.

⁵³ National medium density design guide, 1F.

⁵⁴ Statement of Evidence Dr Mitchell, at [93].

⁵⁵ Ibid, at [101].

retirement villages necessarily different to other residential typologies to cater for the specialist day-to-day needs of residents.

- 80 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 in that context.

Legal scope

- 81 The Council Officer considers that many of the RVA and Ryman's submissions are out of scope and not on the plan change. They say this because the provisions in PC56 relating to retirement villages have been carried over from the Operative District Plan.⁵⁶
- 82 As commented by Dr Mitchell, at a general level, it is common for submissions on plan changes to suggest the insertion of new matters.⁵⁷ The legal ability to do this is also supported in the RMA.
- 83 It is also submitted that the regime proposed by Ryman and the RVA includes "*related provisions*" that "*support or are consequential on*" the MDRS or Policy 3 in this case.⁵⁸

Section 80E

- 84 Section 80E of the RMA limits the scope of amendments that may be made to PC56 by the IPI through specifically defining the extent and scope of the IPIs. The extent of this limitation needs to be read in light of the wider purpose of the IPI process, the language used in section 80E and the wider statutory context.
- 85 It is submitted, that read as a whole, section 80E anticipates that a package of authorisations is required to properly enable housing activities (eg. district-wide matters, earthworks and infrastructure). In some cases, restrictions will also be appropriate (qualifying matters) to ensure that the new regime does not result in adverse effects that are not properly managed.
- 86 In particular, "related provisions", including objectives, policies, rules and standards that support or are consequential on the MDRS or Policy 3 should be given a reasonably wide interpretation. That is, provided such provisions are necessary to either enable or, as appropriate, restrict housing intensification activities, then they are within scope.

⁵⁶ Paragraph 470 – Council Officers' Section 42A Report.

⁵⁷ Statement of Evidence Dr P Mitchell, at [63].

⁵⁸ Pursuant to section 80E, RMA.

87 In that sense, the Enabling Housing Act doesn't purport to provide all provisions necessary to enable (or restrict as appropriate) housing activities. For example, it does not attempt to provide for the nuances of different types of residential housing, such as retirement villages. It also does not provide matters of discretion for the (mandatory) restricted discretionary activity status for residential activities that do not comply with the MDRS.⁵⁹

88 We note that the allowance for 'related provisions' was added at the select committee stage of the legislation-making process. The committee characterised the provisions as enabling changes to provisions that are, "*consequential and complementary to the MDRS and NPS-UD intensification policies*".⁶⁰ It stated:

We consider that the scope of what could be included in an IPI is too narrow, and recommend broadening it. We propose an amendment to enable councils to amend or develop provisions that support or are consequential on the MDRS and NPS-UD. This could include objectives, policies, rules, standards, and zones. It could also include provisions that are used across a plan relating to subdivision, fences, earthworks, district-wide matters, infrastructure, qualifying matters,⁷ stormwater management (including permeability and hydraulic neutrality), provision of open space, and provision for additional community facilities and commercial services.

89 The need for a wider discretion to include related provisions is submitted to be in the context of the speed through which the Enabling Housing Act was processed through select committee.⁶¹ And, the select committee heard concerns raised by many submitters (including the RVA and Ryman) about integration challenges, gaps in the MDRS regime and potential unintended consequences of adding the MDRS into existing plans. The "related provisions" discretion can therefore be seen as a practical way to ensure these implementation issues are appropriately addressed through the plan-making process and is framed reasonably broadly as a result.⁶²

Ryman / RVA provisions

90 The regime proposed by Ryman and the RVA provides a package of measures including objectives, policies, rules, notification provisions, activity status and matters of discretion specific to Hutt City's ageing population and retirement villages. The provisions

⁵⁹ Schedule 3A, clause 4, RMA.

⁶⁰ Resource Management (Enabling Housing Supply And Other Matters) Amendment Bill Environment Select Committee Report, pages 4 and 7.

⁶¹ See for example, the Committee's comments on page 3, "*Some of us remain concerned that the shortened time frame has prevented the usual full scrutiny of the bill, and consideration of whether there are any implementation issues*".

⁶² See for example the select committee discussion on infrastructure at page 21 of their report.

proposed by Ryman and the RVA are “related provisions” that “support or are consequential on” the MDRS or Policy 3 in this case:

- 90.1 They are objectives, policies, rules and standards.
- 90.2 They support the MDRS or Policy 3. They help make the MDRS work for retirement villages, given the differences of this housing typology compared to conventional housing. The additional objectives and policies give better expression to the need to enable housing for the ageing population of Hutt City and the related retirement living crisis. The MDRS objectives and policies in Schedule 3A, RMA are relatively broad in that regard, and require all housing types to be provided for (emphasis added):

Objective 1 - a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future;

Objective 2 -A relevant residential zone provides for a variety of housing types and sizes that respond to—

(i) housing needs and demand...

Policy 1 - Enable a variety of housing types with a mix of densities within the zone, including 3-storey attached and detached dwellings, and low-rise apartments

Policy 4 - Enable housing to be designed to meet the day-to-day needs of residents.

- 90.3 The matters of discretion provide a proportionate and targeted set of considerations for consenting retirement housing, which as noted, are not otherwise found in the MDRS. These provisions also directly respond to the MDRS objectives and policies. They assist in integrating the MDRS into PC56 in a way which is efficient and effective.
- 90.4 Or, the provisions are consequential on the MDRS or Policy 3 in the sense that they are a result of or follow on from the MDRS. The MDRS provide specifically for intensification of a subset of residential developments, being permitted “residential units”. Further consequential changes are required to the rules and policies applying to other forms of residential development, for the reasons outlined in the evidence.

90.5 In terms of the wider statutory purpose, the RVA and Ryman’s proposals will assist in achieving the intent of the Enabling Housing Act by enabling retirement village housing, which is a type of residential use, with appropriate restrictions. The language used and intent of the Act is to be enabling of all residential uses. If retirement villages are not appropriately provided for in the IPI, then their development will be slowed, which is in direct conflict with the legislative intent.

Other relevant sections

91 The wider context surrounding section 80E provides further support for a reasonably wide interpretation of what are “related provisions”, Sections 77G-77R set out a range of topics that may be included in IPIs.

92 Section 77H in particular provides additional discretion to councils and panels to include provisions that allow a greater level of development than that provided for in the MDRS:

- (1) ... a specified territorial authority may enable a greater level of development than provided for by the MDRS by –
 - (a) omitting 1 or more of the density standards set out in Part 2 of Schedule 3A:
 - (b) including rules that regulate the same effect as a density standard set out in Part 2 of Schedule 3A, but that are more lenient than provided for by the MDRS.
- (2) To avoid doubt, more lenient means the rule (including a requirement, condition, or permission) permits an activity that the MDRS would restrict.

93 It is submitted that Ryman and the RVA’s proposed rules comfortably comply with section 80E on its face. However, they can also find legal scope in the sense that they can be said to enable a greater level of development than provided for by the MDRS. The discretion addresses matters that can be included in an IPI and hence must be part of the section 80E context.

94 Accordingly, Ryman and the RVA submit that their submissions are squarely within the scope of section 80E. All provisions sought by the RVA and Ryman are directly referenced in section 80E(b)(iii) and are in support of or consequential to the MDRS or Policy 3.

The amendments sought by Ryman and the RVA are within the scope of, and “on” PC56

95 It is also submitted that the relief sought by the RVA and Ryman is ‘within scope’ based on the general principles established by case

law applying to clause 6 as to whether a submission is 'on' a plan change.⁶³

- 96 A submission can only fairly be regarded as "on" a plan change if it is addressed to the extent to which the variation changes the pre-existing status quo.⁶⁴ Relevant considerations include:
- 96.1 Whether a submission seeks a new management regime for a particular resource when the plan change did not propose to alter the management regime in the operative plan (ie. proposing something "completely novel").⁶⁵
- 96.2 Whether the effect of the submission would be to amend a planning instrument without a real opportunity for participation by those potentially affected. This is a powerful consideration against any argument that the submission is truly "on" the variation.⁶⁶
- 97 In relation to the submissions by RVA and Ryman, with respect, there is little room to consider these submissions are not 'on' PC56 as:
- 97.1 PC56 introduces a completely new management regime for residential activities in residential and commercial zones, with new objectives, polices and rules all flowing from the new MDRS requirements.
- 97.2 It provides separately for retirement villages as a restricted discretionary activity.⁶⁷
- 97.3 PC56 amends rules in residential areas applying to retirement villages.⁶⁸
- 98 Further, the outcomes sought by Ryman and the RVA are not fundamentally 'new or novel'. They are simply a different way of managing retirement villages in PC56 than promoted by Council.

⁶³ The leading authorities on when a submission is "on" a plan change are the High Court decisions in *Clearwater Resort Limited v Christchurch City Council* (HC, Christchurch, William Young J, 14/3/2003), *Option 5 Inc v Marlborough District Council* (HC, Blenheim, Ronald Young J, 28/9/2009) and *Palmerston North City Council v Motor Machinists* (HC, Palmerston North, Kos J, 31 May 2013).

⁶⁴ *Clearwater Resort Limited v Christchurch City Council*.

⁶⁵ *Motor Machinists* at [69].

⁶⁶ *Clearwater Resort Limited v Christchurch City Council*.

⁶⁷ For example, Rule 4F 4.1.7.

⁶⁸ For example, Rule 4F 4.2.6 Outdoor Living Space and Rule 4G 4.1.7 Retirement Villages.

- 99 In the wider context of PC56 setting out to comprehensively amend the District Plan as it relates to residential activities, it could not be said that affected persons may have lost the opportunity to participate. The Enabling Housing Act requirements and expectations for intensification were widely publicised. Anyone with an interest in the management of retirement villages or other residential activities should have become involved in the plan-making processes. Further, PC56 was publicly notified, and Ryman and the RVA's submissions and further submissions were publicly available. These submissions specifically sought that a comprehensive retirement village-specific framework be applied through the ISPP.⁶⁹ The provisions are not site specific.
- 100 Accordingly, Ryman and the RVA can see no legal barrier to their retirement village provisions forming part of the Panel's recommendation on PC56.

Scope gateway

- 101 In any case, it is also submitted that the standard case law on scope and what it means to be "on" a plan change requires careful application in the context of the IPI as directed under the Enabling Housing Act. Councils have an express statutory duty to incorporate the MDRS and to give effect to Policy 3, with little discretion available in relation to these matters. This is in contrast to other plan changes, which are promoted at Council's discretion. As noted, section 80E contains reasonably wide scope to enable related provisions. Clause 99 also expressly enables an ISPP hearings panel to make recommendations that extend beyond the scope of submissions made on the IPI. Clause 101(5) expressly empowers territorial authorities to accept such recommendations. These provisions are ultimately designed to ensure that a package of plan provisions that enable housing are included in the final IPI decision.
- 102 Accordingly, cases that address the extent to which a plan change or variation changes the pre-existing status quo are submitted to be of limited assistance. The "overarching gateway" in section 80E(1)(b) is whether the provisions 'support', or are 'consequential on' the MDRS.⁷⁰ This should be the focus, not the notified version of PC56. The crux of the RVA and Ryman's proposed provisions is to enable a particular type of housing, being retirement villages, to support the MDRS. The provisions therefore directly meet this 'overarching gateway' and are within the scope of the IPI.

⁶⁹ RVA submission, paragraph 67.

⁷⁰ *Waikanae Land Company Ltd v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056, at [29-30].

Financial contributions

Introduction

- 103 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.
- 104 The financial contribution provisions include a series of uncertainties which:
- 104.1 In relation to roading, include a blanket provision that the developer pays “the full and actual cost for all upgrading and/or any new facilities”.⁷¹ Council’s right to reduce charges from the full and actual cost to a lesser amount arises where works provide “significant benefits to other parties”,⁷² however ‘significance’ is not defined in PC56;
- 104.2 Lack clarity as to how usage or load differences would influence the amount of FCs the Council will be seeking;⁷³
- 104.3 Lack a specific formula in the provisions that might allow developers ahead of time to calculate the FCs owed for a development, and instead require individual assessments;⁷⁴ and
- 104.4 Include blanket contributions in relation to reserves, with reductions in contributions based on subjective metrics that fail to allow developers to estimate the level of FCs they are likely to be charged.⁷⁵
- 105 As stated by Mr Akehurst, Mr Dwayne Fletcher’s memorandum to Council on FCs makes a number of recommendations, including some of which that are not adopted within PC56.⁷⁶ Of particular concern is the disparity between Mr Fletcher’s proposed maximum amount of FCs (in the area of Reserves and Open Space) being \$1,765 compared to the PC56 amount of \$10,000.⁷⁷

⁷¹ Rule 12.2.1.1(b).

⁷² Rule 12.2.1.1(c).

⁷³ Statement of Evidence G Akehurst, at [15].

⁷⁴ Ibid.

⁷⁵ Statement of Evidence G Akehurst, at [34].

⁷⁶ Statement of Evidence G Akehurst, at [35].

⁷⁷ Statement of Evidence G Akehurst, at [37] and Mr Fletcher’s review of financial contributions memorandum, at [48].

Legislative context

106 Section 77E⁷⁸ 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.

107 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.

108 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.⁷⁹ Section 108(10) did not change under the Enabling Housing Act, and thus caselaw on its application is submitted to remain relevant.

109 The courts have found that a FC policy can contain a level of discretion.⁸⁰ However, caselaw also warns against the risks of overly discretionary regimes:⁸¹

...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...

110 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"

⁷⁸ Inserted into the RMA pursuant to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

⁷⁹ Section 108(10), RMA.

⁸⁰ *Retro Developments Ltd v Auckland City Council* CA161/02, 25 February 2003.

⁸¹ *Auckland City Council v Retro Developments Ltd* HC Auckland AP127/01, 22 July 2002, at [29].

on how a financial contribution is to be determined.⁸² Open-ended discretions have the potential to result in perverse, unforeseeable or inconsistent outcomes.⁸³ 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.⁸⁴

- 111 It is submitted that a regime that creates the risks in paragraphs 109-110 above should not be allowed. Council's FC regime in PC56 has such a high level of uncertainty⁸⁵ 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.⁸⁶ There is a lack of assurance that everyone will be treated alike.⁸⁷ And, the prospect of litigation on FC conditions is almost certain.

Local Government Act provisions on financial contributions

- 112 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.
- 113 The purpose of these policies is to provide "*predictability and certainty*" about sources and the level of funding.⁸⁸ Section 106 in particular, requires that financial contribution policies:⁸⁹
- 113.1 Identify separately each activity for which a FC will be required;
- 113.2 For each activity specify the total amount of funding to be sought by a FC; and
- 113.3 State the proportion of total cost of capital expenditure that will be funded by FCs.
- 114 We submit that the Council's approach falls short in all respects. As the Council appears not to have followed the requirements of the

⁸² *South Port New Zealand Limited v Southland Regional Council* C91/2002, 26 July 2002, at [17] and [25].

⁸³ At [22].

⁸⁴ At [23] and [28].

⁸⁵ Statement of Evidence G Akehurst, at [21-22] and [48-49] in particular.

⁸⁶ Statement of Evidence G Akehurst, at [21-22].

⁸⁷ See, for example, Statement of Evidence G Akehurst, at [34] regarding merits assessments for contributions on Reserves.

⁸⁸ Section 102(1) and (2)(d), LGA.

⁸⁹ Section 106(2)(d), LGA.

LGA, strong doubt should be cast on the legitimacy of the FC provisions.

Overlapping contributions regimes

- 115 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.
- 116 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 PC56 financial contributions regime is likely to exacerbate this issue in Hutt City.
- 117 The policy wording of FCs under PC56 raises the risk of 'double-dipping'⁹⁰ 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 (and the Council Officer has stated this will not occur), as Mr Akehurst notes, there is an unclear line as to where a development contribution charge ends and where a financial contribution charge starts. He notes this is particularly a problem given the Council's interconnected networks.⁹¹ Accordingly, there is a material risk of the regime resulting in double dipping as well as inconsistent outcomes.

Summary

- 118 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:
- 118.1 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;
- 118.2 provide predictability and certainty on both the purpose of the FCs and how they will be determined;

⁹⁰ Statement of Evidence G Akehurst, at [19].

⁹¹ Statement of Evidence G Akehurst, at [64].

118.3 not result in perverse, unforeseeable or inconsistent outcomes; and

118.4 not result in 'double dipping'.

- 119 As set out above, the provisions currently proposed for PC56 do not meet these requirements.

CONCLUSION

- 120 PC56 must ensure that the City of Lower Hutt 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.
- 121 The RVA and Ryman submit that their proposed provisions and relief sought are squarely within the scope of PC56. They see no legal barrier to the retirement village provisions, as set out in the RVA's submissions, being considered as part of the various topics of PC56, and ultimately being part of the Panel's recommendation on PC56.
- 122 When compared to the Council's proposed provisions, Ryman and the RVA's approach involves reasonably practicable options to achieve the objectives of PC56 that are:
- 122.1 more effective and efficient;
- 122.2 less restrictive, but with appropriate controls as necessary to manage adverse effects; and
- 122.3 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).
- 123 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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18 April 2023