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*

Statement of Evidence of **Gregory Michael Akehurst** on behalf of the Retirement Villages Association of New Zealand Incorporated and Ryman Healthcare Limited

Dated: 29 March 2023

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STATEMENT OF EVIDENCE OF GREGORY MICHAEL AKEHURST ON BEHALF OF THE RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND AND RYMAN HEALTHCARE LIMITED

QUALIFICATIONS AND EXPERIENCE

1 My full name is Gregory Michael Akehurst. I have a Bachelor of Arts, majoring in Geography and a Bachelor of Commerce, majoring in Economics from the University of Auckland. I am a founding Director of Market Economics Limited ("ME"), an independent research consultancy. I have more than 25 years of consulting and project experience, working for commercial and public sector clients.

2 I have developed models to assess community needs and assess allocation networks set up to meet those needs. I have previously given expert witness evidence in a number of local government hearings, the Environment Court and provided affidavits as an expert for the High Court in the area of development contributions (*DCs*).

3 My experience also includes developing models to assess the economic impact and particularly the labour requirements for major construction projects, including the Christchurch Earthquake rebuild, the Auckland construction and infrastructure sector, the Auckland Airport development and nationally for the construction sector overall. I have also carried out major studies of Auckland's residential and industrial land requirements for both private developers and Auckland Council including providing Auckland's Independent Hearings Panel with advice on business land requirements as part of the Proposed Auckland Unitary Plan process.

4 I drafted MBIE's guidance document for local councils needing to meet the National Policy Statement for Urban Development Capacity (*NPS-UDC*) requirements in respect of providing capacity for business land for economic growth. And have led a number of Housing and Business land assessments under both the NPS-UDC and National Policy Statement on Urban Development (*NPS-UD*) for high growth councils (Hamilton and Future Proof, Queenstown Lakes District, Tauranga City, Auckland City and others).

5 I have a significant amount of experience in assessing the mechanics and rationale behind DC (and financial contribution) policies. In particular I have assisted both private developers and local authorities in the drafting and review of DC policies, including the equitable allocation of funding between existing and growth households, and the definition and application of catchment-based funding structures. I have carried out this work for the legacy councils in Auckland: North Shore City, Waitakere City and Auckland City as well as assisting with work for Rodney District. I have

assessed DC policies in Taupō District for Genesis Energy, Christchurch City and in Tasman District.

6 I provided evidence on behalf of the Developers Group to the High Court in respect of the *Developers Group v North Shore City Council.*[1] My evidence assisted in overturning the DCs policy at the time, on the basis that the council had failed to adequately account for demand and the distribution of benefits between existing users and growth.

7 In 2015 I provided evidence on behalf of Mapua Joint Venture in their objection to a DC charge imposed by Tasman District Council, which I understand is the only reported decision under the DC objections process in the Local Government Act 2002 (*Act*).

8 I prepared evidence on behalf of Ryman Healthcare in their successful application to review the DC charge levied on the village developed at 75 Valley Road, Pukekohe. Ryman objected on the grounds that council had failed to properly take into account the characteristics of Ryman's comprehensive care retirement village and its occupants. I developed a number of surveys of resident's activities and used that to show low levels of demand on council infrastructure. This proved successful in reducing the levy charged.

9 Recently, I prepared analysis and presented to Auckland Council on behalf of Ryman Healthcare Limited (*Ryman*), the Retirement Villages Association of New Zealand Incorporated (*RVA*), Kiwi Development, Fulton Hogan, Oyster Capital, Drury Crossing Ltd and others on the Drury DCs amendments to the Auckland Unitary Plan. In this instance, Auckland Council's model failed to account for differences in consumption of infrastructure and other issues around land price inflation and impact on development viability. Council are now reviewing this model.

CODE OF CONDUCT

10 Although these proceedings are not before the Environment Court, I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it as if these proceedings were before the Court. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

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[1] *NEIL Construction Limited v The North Shore City Council* (High Court, CIV-2005-404-4690, 21 March 2007).

SCOPE OF EVIDENCE

11 My evidence addresses:

11.1 Relevant statutory and economic principles;

11.2 Hutt City Council's (*Council*) proposed changes to the Financial Contributions (*FCs*) policy as a component of Proposed Plan Change 56 (*PC56*) to the City of Lower Hutt District Plan (*District Plan*); and

11.3 Discussion on the implementation issues associated with the FCs.

SUMMARY OF EVIDENCE

12 Council has proposed changes to its FCs policy as part of PC56. The changes allow Council to collect FCs (in the form of land or money or both) such that it is able to avoid, remedy, mitigate or offset any adverse environmental effects that might arise as a by-product of development.

13 I understand that RVA and Ryman oppose (in part) the FCs provisions contained within PC56. Essentially, I understand the RVA and Ryman's position to be that the methodology for charging FCs is unclear and should be clarified. It should also acknowledge that retirement village residents either create no demand or create substantially reduced demand on Council infrastructure compared with the average population in relation to reserves, recreation and community facilities, transport, water and wastewater. This reduced demand applies to both infrastructure installed in anticipation of demand, and infrastructure yet to be installed.

14 This is because (based on the RVA and Ryman evidence):

14.1 For reserves, recreation and community facilities, retirement village residents are significantly older than the general retired population and the population as a whole. Many residents have reduced mobility and are frail. To ensure quality of life and access to appropriate amenities for this type of resident, retirement villages provide a wide range of social and recreational amenities within each village. The combination of these factors means very low demand for council recreation and community facilities and reserves. The demand is substantially lower than an average residential user. Independent residents may place some demand on community infrastructure but residents in care place little to no demand.

14.2 These reduced activity levels are reflected in significantly reduced traffic volumes generated by the villages overall and on a per retirement unit basis. Residents are making far fewer trips to access; parks, reserves, sportsfields and recreational facilities of any sort than the average person. In addition, they make far fewer trips to eat out, to shop, to attend concerts, cinemas and museums per head than the average resident. Traffic movements are generally off peak.

14.3 Finally, due to the nature and age of the residents their consumption of water and generation of wastewater is also significantly reduced on a per capita basis. Also due to commercial kitchens and laundries in retirement villages, many of the residents do not cook their own meals or use their own washing machines.

15 It is clear to me from the PC56 documentation that usage and load differences, such as those present in retirement villages (on a per dwelling basis) that significantly would influence the amount of FCs Council will be seeking are not taken into consideration. The existing provisions do not specify a formula, relate only to reserves and simply state that contributions up to a maximum of $10,000 or 7.5% of the value of each allotment can be applied.[2] While Council recognise that the maximum is not appropriate in all cases,[3] they do not offer a methodology to assess an appropriate charge that might allow developers ahead of time to calculate the FCs owed before developing.

16 Council's own reviewer has indicated that the $10,000 amount is significantly higher than anticipated expenditure when assessed at the macro level. Mr Fletcher noted that the reserve figure should be no higher than $1,765 per dwelling – even when all renewals where included.[4] From the retirement sectors perspective, in my view, the low levels of demand residents place on reserves and open space mean that the per unit charge applied to them should be around 5% of the standard household unit charge.

17 The Financial Contributions proposal will require individual assessments to be made each time to determine the extent to which the development generates adverse effects that cause Council to spend money to avoid, remedy, mitigate or off-set them. I do not support this approach, which is inefficient and unclear.

18 Council collects both Development Contributions (under the Local Government Act 2002 (*LGA*) and Financial Contributions under the

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[2] Amendment 372 to Rule 12.2.1.8.

[3] Rule 12.2.1.8(b).

[4] Proposed Plan Change – Technical Reports – Review of Financial Contributions, Dwayne Fletcher, Vale Consulting, at [48].

Resource Management Act 1991 (*RMA*). DCs are to help fund capital expenditure on water, wastewater, stormwater and transport while FCs help fund reserves and any infrastructure impacts caused directly by a development that are not addressed and funded by development contributions. This opens the possibility for double dipping as it is not clear from the policy if FCs will be used to collect additional funds on a second pass.

19 I note the RVA and Ryman have raised concerns about 'double dipping' between the DC and FC policies. I acknowledge the Council officer has stated this will not occur, as the FC provisions state that this outcome is not allowed.[5] I still have concerns with this approach, as in practice, the distinction between what is covered by a DC policy and what is not may not be sufficiently clear. This is because the policy wording appears to allow for an overlap. In that context, I am concerned that overlaps between FCs and DCs will be inevitable, and charging of FCs will therefore lead to challenges relating to double dipping. I consider the preferred and more robust approach would be for Council to undertake a more holistic assessment of infrastructure needs and the distribution of costs to beneficiaries.

20 The PC56 provisions refine and extends coverage to include developers and developments so that not just the process of land subdivision incurs a financial contribution. The provisions for roading appear to remove an assessment framework that might allow Council to allocate costs based on a distribution of usage or benefits received from the upgraded access, in favour of a blanket provision that the developer pays "*the full and actual cost for all upgrading and/or any new facilities.*"[6]

21 Council reserve the right to reduce the charge from the full and actual cost to some lesser amount only if and when the works provide "*significant benefits to other parties*".[7] Significance is not defined in PC56, so it is difficult for a developer to know the degree to which the costs of upgrading a portion of the roading network that benefits existing or future residents might offset their FC charge, and by how much.

22 This adds a degree of uncertainty to the policy that has the potential to inhibit developers making fully informed decisions and therefore leads to less efficient outcomes.

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[5] Officer's Report Hutt City Proposed District Plan Change 56, at [904].

[6] Rule 12.2.1.1(b).

[7] Rule 12.2.1.1(c).

ECONOMIC PRINCIPLES RELEVANT TO FINANCIAL CONTRIBUTION CHARGES

23 Councils are tasked with providing social and community infrastructure to meet the needs of their communities. Demand for facilities and other community infrastructure is a "derived demand". This means that the demand is not for the facilities themselves. Rather, it is to carry out activities and to participate in events that are accommodated by the community infrastructure. For example, a requirement for a basketball court is due to demand by residents to play the game of basketball, and a requirement for reserves is to engage in passive and active forms of recreation such as walking or exercising a dog or oneself.

24 Therefore, a council setting a FC policy regime needs to understand how the community engages in activities in order to determine the number, scale and location of facilities needed to meet community demands and usage. This includes parks and reserves and the assessment should identify demand from key segments of the community – such as the retirement community.

25 In addition to the direct usage of infrastructure and reserves, residents benefit from the existence value of the infrastructure and there is a public good element to the benefits residents receive. While some account needs to be made of these additional benefits, they are small relative to the direct benefits received.

26 Once the demand profile is established, councils need to translate it into an amount of infrastructure required (by activity group). Then as the city grows, councils can understand and predict how that growth will translate into requirements for additional infrastructure.

27 Once the need for additional infrastructure is established, councils will develop a programme of works and land purchases that should ensure that the provision of new assets generally matches growth in demand such that levels of service are maintained. It is acknowledged that in reality development and growth patterns may differ from the underlying assumptions of a development or FCs policy – so flexibility is allowable.

28 The amount of capital expenditure (once components that cover repairs and improvements in levels of services for existing community are removed) is aggregated and split between growth units. This split should be undertaken in a manner that ensures the amount paid by growth units is commensurate with the demands they place on the system.

29 While it is not administratively possible to align exact usage with FC (or DC) charges, and because areas over time (say a 30 year horizon) tend to aggregate towards the average, an averaging

process is often used in setting FC policies and is generally appropriate. However, it is important that a council stands back from this process and assesses whether the act of averaging everything results in significant inequity and unfairness. Councils need to be able to identify groups within the community that are disadvantaged by the process (if they exist) and that this disadvantaging may cause significant harm. If that is the case, councils need to be able to adjust their funding policies or funding allocation to alleviate this inequality.

HUTT CITY COUNCIL'S FINANCIAL AND DEVELOPMENT CONTRIBUTIONS POLICIES

General

30 Council is instigating PC56 in order to incorporate aspects of central government's requirements to accommodate more residents in Hutt City. Specifically, to incorporate the Medium Density Residential Standards (*MDRS*) into the District Plan. This will allow up to 3, 3 storey dwellings to be constructed on most residential sites as a permitted activity.

31 PC56 also "*updates provisions relating to financial contributions..*" In my opinion, it is important that any improvements to the FCs policy include improvements in estimating demand for additional infrastructure, including demands from the retirement village sector.

32 The changes proposed in PC56 are modest with respect to FCs. As mentioned above they focus on incorporating developers alongside those simply carrying out subdivision within the FC charging regime. It also clarifies timing for payments for FCs and includes wording that gives Council room to negotiate with respect to fees charged in cases where a maximum impact fee may not be appropriate.

33 In these cases, Council have stated "*that each case must be assessed based on the particular circumstances that exist*".[8] To determine if adjustments down from the maximum should occur, they will consider a number of factors. For example, with respect to the Transport Impact Fee for retail activities Council will weigh up:

- Whether there will be an increase in intensity of use of land from that which existed before.

- Whether there is a change in the nature and character of the use of land.

[8] See amendments to Rules 12.2.1.2(c) and 12.2.1.9(b).

- The subsidies that council may receive from the New Zealand Transport Agency.[9]

34 For Reserves, the Plan seeks to impose a blanket contribution of 7.5% of the value of each allotment up to a maximum of $10,000 per allotment ($5,000 in rural areas). Again the Plan recognises that the maximum is not appropriate in all cases and each case must be assessed on its merits. For reserves, Council takes into account:

- Intensity of land use;

- Change in the nature of land use;

- Type, suitability and nature of recreation and open space provided by the development;

- Whether the open space is meeting community needs;

- Topography, natural features vegetation and landscape and visual amenity to ensure protection of amenity values;

- Reserve contribution paid in the past; and

- Plantings and improvements made to new and existing reserves.[10]

35 Many of these metrics are subjective and do not allow a developer to estimate the level of financial contributions they are likely to be charged. Without full information, developers will not be able to make fully informed decisions which is economically inefficient.

36 Mr Fletcher's memorandum to Council makes a number of recommendations on changes to the financial contributions policy, some of which appear not to have been adopted.

37 Importantly, in the area of Reserves and Open Space, Mr Fletcher identifies that even by taking the highest proportion of future population, the growth community makes up (20%) and applying that to the total amount of expenditure outlined in the long term capital expenditure plan, the highest amount of financial contributions that could be charged is $1,765.[11] I note that this also includes all expenditure on renewals as well, which obviously should not be charged to new dwellings.

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[9] Rule 12.2.1.2(c).

[10] Rule 12.2.1.8(b).

[11] Review of Financial Contributions, at [48].

38 This amount is significantly lower than the stated maximum of $10,000 outlined in the proposed financial contributions provisions.

39 Even before making adjustments to take account of the much lower level of demand retirement village residents place on open spaces and reserves, this figure is inappropriate to apply to the retirement village sector.

40 The Plan outlines the matters Council will take into account when faced with an appeal to an imposed FC charge in 12.2.1.8(b) of PC56. However, in my view, it is extremely inefficient for developers to have to go through this type of negotiation or appeal process to set a financial contribution amount that, at the very least, matches Council's own anticipated expenditure.

41 By striking a contribution charge simply based on the number of new dwellings to be developed assumes that all people living in those dwellings utilise the reserves or other infrastructure in the same manner and to the same degree.

42 This is not the case for residents within retirement villages. Most residents move into retirement villages in the very later stages of life. The average age for the Independent Living units in usually in the 80's. Average age in the Care facilities is higher – often in the 90's. Due to frailty and age, the people engage far less frequently in parks and reserves and other community infrastructure than the average retired person – let alone the average resident overall.

43 This fact, combined with the amenity and infrastructure supplied by the retirement village, means that often the additional load they create is extremely low. Retirement villages offer the type of in-house amenities because they understand that residents do not have the ability to engage with those same amenities outside of the village. Grounds are landscaped and gardens maintained at a high level to ensure that residents can enjoy a park like surrounding.

44 The same logic applies for other facilities and amenities provided within retirement villages that mimic amenities provided by Council for the general public. This includes meeting rooms, exercise facilities, often bowling greens, libraries or visits by the mobile library. Interest group meetings are held within the facility and speakers give talks to residents.

45 It is unfair and inequitable to charge retirement residents for these amenities within a public realm (that they make very little use of so gain little or no benefit from), while at the same time, they are paying for the same amenities that they do use (e.g. parks, reserves, community infrastructure) in a private capacity within the villages.

46 Research I have carried out in the Auckland environment where I surveyed residents in a number of retirement villages and compared the activity rates with averages for the city indicate that Independent Unit residents make use of parks, reserves and open spaces slightly less than 5% of the rate of the average Aucklander.

47 Based on the evidence of Dr Kerse and Ms Maggie Owens relating to broader demographic and retirement village characteristics, I would expect to see similar patterns across the retirement sector as a whole, that is at the national level not just within Auckland.

48 If the Hutt City Financial Contribution charge is adjusted to take account of the overage identified in Mr Fletchers memo, it will still result in an overcharging for the retirement sector by around 22 times. However, the policy is not clear on how the financial contribution will be finally settled which produces significant uncertainty leading to sub-optimal investment decisions being made.

49 I have concerns with the approach proposed, which will be inefficient to implement given the uncertainty involved. The regime may also provide a disincentive to development given the inability for developers to undertake accurate feasibility studies given the lack of a robust assessment methodology within the policy.

TRANSPORT, WATER WASTEWATER AND STORMWATER

50 Similar issues will potentially occur in assessing FCs for transport, water, wastewater and storm water, given the lower demands of retirement villages in these areas. However, the charges or approaches for transport may be more in line with demand.

Transport

51 Impacts in terms of traffic and transport tend to follow usage of council community infrastructure parks and open spaces. Residents in retirement villages make far less use of the roading network based both on their age and mobility constraints and also because of the amenities provided in the villages themselves.

52 As mentioned above, there are often gyms, swimming pools, gardens and sometimes sports facilities such as bowling greens and meeting rooms for clubs and activities. All contribute to a significantly lower need to make use of the roading network.

53 To a certain extent this is offset by workers traveling to and from the village and delivery vans and trucks.

54 In the Auckland analysis the per-household transport rate worked out at approximately 30% of the average Auckland household (*HUE*). If through the FCs policy, Council charge based on 0.3 of a

standard EHU, it will be broadly in-line with the load placed on infrastructure.

55 However, as discussed above, this is not certain. The 0.3 of an EHU is outlined in Council's Development Contributions policy – which is the only place where some estimates of demand load are calculated.[12] Without clarity in the FC policy I have assumed Council would default back to the values in the DC policy to estimate the additional load on infrastructure that they are trying to fund but they may not.

Water, Wastewater and Stormwater

56 Demand for water and therefore wastewater from residents in retirement villages is significantly less on a per person basis than the general public. This is due to their overall lower impact lifestyle. And, there is use of commercial kitchens to provide food for a large number of units meaning the number of residents that operate kitchens is very low.

57 In addition, the villages have centralised laundry services which are significantly more efficient in terms of water use than the same number of individual households carrying out their own household laundry.

58 In terms of other water usage, lower numbers of cars per household (on average) and centralised repairs and maintenance of buildings and grounds means efficiencies in water use and significantly less water used per unit than in the district as a whole.

59 Relying on a standard 0.5 of an EHU[13] will significantly overstate water use and wastewater generation resulting in higher development levies than are justifiable.

60 With respect to stormwater, it is often the case that onsite treatment or calming of stormwater flows is associated with the comprehensive developments that Ryman and others in the retirement sector build. This may not be the case with general residential development of house and land package type developments.

61 It is important that the actual load retirement villages put on the stormwater disposal services is assessed and incorporated into the FC policy, and to account for onsite mitigations. Relying on the 0.5 of an EHU is likely to significantly overstate this load leading to disproportionate charges applied to the retirement sector.

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[12] Development and Financial Contributions Policy 2021-2031, at paragraph 41.

[13] Ibid.

62 The lack of clarity of approach may also lead to issues relating to the adoption of a causation versus benefits approach to setting the FC. For example, with respect to stormwater and wastewater, there does not appear to be a mechanism to offset costs of new infrastructure required for a particular development that might serve a wider catchment or for future growth. There is simply a statement that the developer that triggers the additional expenditure shall pay the "*full and actual cost for all such upgrading and new facilities."* In my opinion this could lead to unintended outcomes where a developer ends up funding a significant share of new infrastructure that is over and above what is required for their development.

63 This would be inequitable and is inconsistent with the approach taken for water supply, where Council will pay a share of costs for infrastructure put in place in excess of a single developer's needs.

DOUBLE DIPPING

64 The RVA and Ryman have raised concerns about 'double dipping' between the DC and FC policies. While in a number of locations, in both the Development Contributions and Financial Contributions policies it states that the charges are separate, the distinction between what is covered by a DC policy and what is not, may not be sufficiently clear. This is because Council infrastructure networks are interconnected.

65 The Development and Financial contributions Policy 2021 –states that "*The financial contributions and development contributions in this policy are separate charges, and Council uses them to fund separate categories of expenditure. This ensures there is no double dipping.."*[14] However, there is significant overlap between the categories with both DCs and FCs able to be used to collect for water, wastewater and transport charges.

66 In that context, I am concerned that overlaps between FCs and DCs will be inevitable, and charging of FCs has the potential to lead to challenges relating to double dipping.

67 I consider the preferred and more robust approach would be for Council to undertake a more holistic assessment of infrastructure needs and the distribution of costs to beneficiaries. This would form part of a more robust assessment of needs and benefits that would underpin the DC and FC policy that fully recognised the unique characteristics of retirement villages and set levies accordingly (as described above).

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[14] Development and Financial Contributions Policy 2021 – 2031, at paragraph 86.

CONCLUSIONS

68 It is clear from the research carried out in Auckland and across the country that retirement villages create significantly less demand for reserves, community infrastructure, water, wastewater and traffic than the average residential dwelling due to:

68.1 The demographic and mobility characteristics of retirement village residents;

68.2 The onsite recreational amenities and services provided by the retirement operators such as Ryman;

68.3 The resulting reduced load on the transport network; and

68.4 Lower levels of water consumption and wastewater generation than the average person along with (usually) onsite stormwater mitigation provided by the larger comprehensively developed villages.

69 Council's FCs amendments as part of PC56, could result in development levies that are far higher than the effects of the relevant development.

70 I recommend that a more nuanced policy is developed that:

70.1 Contains a more robust methodology for determining FCs, which is able to be readily quantified and interpreted and proportionately links demands and related benefits and does not overlap with DC charges; and

70.2 Appropriately differentiates the retirement village sector from more general residential development to reflect the lower level of demand placed on Council infrastructure.

Gregory Michael Akehurst
29 March 2023