

Before the Independent Hearings Panel
Christchurch City Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to Plan
Change 14 to the Christchurch City Plan

and: **Retirement Villages Association of New
Zealand Incorporated**
(Submitter 811)

and: **Ryman Healthcare Limited**
(Submitter 749)

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 14 (*PC14*) to the Christchurch City Plan (*Plan*).
- 2 Like most of New Zealand, Christchurch City has a rapidly ageing population. Between now and 2048, the number of people aged 75 and over is forecast to almost double. Many more retirement villages will be needed to meet the rapidly growing population. Unless ongoing development of retirement villages is enabled, many of Christchurch's older residents will be forced to live in unsuitable accommodation affecting their health and wellbeing.
- 3 Delays and uncertainty caused by Resource Management Act 1991 (*RMA*) processes have been a major contributor to substantial delays, unnecessary costs and ultimately shortages of appropriate retirement housing around New Zealand. Intensification Planning Instruments (*IPIs*) represent a significant opportunity to address the consenting challenges faced by the retirement sector. Addressing these challenges will ultimately accelerate housing intensification for the ageing population directly in line with the expectations of both the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Enabling Housing Act*) and the National Policy Statement for Urban Development 2020 (*NPSUD*).
- 4 The importance of the intensification streamlined planning processes (*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. The *RVA* seek greater national consistency to address the housing needs of older members of our communities.
- 5 The case presented by the *RVA* and *Ryman* was well received in the first recommendation and decision that was released. Although not

binding, it is noted that the Kapiti Coast Intensification Planning Instrument Panel strongly endorsed the RVA/Ryman position. The Panel said:¹

The Retirement Village Association and Ryman Healthcare promoted provisions to accommodate the increasing demand for retirement villages to meet the growing needs of an aging population as a distinct residential activity. The submissions were supported by a highly qualified team of experts, including experts who identified the trajectory of retirement village provision powerfully to meet special needs and the demographic 'tsunami' New Zealand and, indeed most of the Western world faces. The submitters' request was partially accommodated in Mr Banks' reply but not to the extent requested by the submitters. We found the arguments for the Retirement Village Association and Ryman Healthcare persuasive and have recommended the adoption of their proposed provisions.

- 6 Christchurch City's approach to the ageing population in its Plan has been held out by the retirement village industry as a leading example of providing for the ageing population in a relatively clear, consistent and enabling way. This was because of the Replacement Plan panel's strong endorsement of Christchurch's ageing population issues (having heard the submissions and evidence of the retirement industry at the time):²

[332] Dr Humphrey's evidence stressed the clear health and social evidence of people ageing in their own communities. We have also taken particular note of Dr Humphrey's evidence as to the importance of providing choice for ageing in place. That evidence was supported by the evidence of Mr de Roo. We find that ageing in place, whereby older persons have choices to downsize from their family homes yet remain within their familiar neighbourhoods, is important not only for the wellbeing of our older citizens but also for the communities of which they should continue to contribute to and be part of. In addition to providing choice, assisting affordability is also important. Those priorities are also generally reflected in the Statement of Expectations.

[333] We do not accept the Council's evidence that the needs of older people are met when they are essentially left to compete in the market

¹ IHP report of Plan Change 2 (20 June 2023), page 7.

² Independent Hearings Panel – Decision 10 (Residential part) dated 10 December 2015.

for this relatively special dwelling type (bearing in mind it was originally conceived with the specific needs of the elderly in mind).

- 7 Plan Change 5 to the District Plan also provided increased clarity in particular commercial zones for retirement villages.
- 8 As a result, the Plan already contains a reasonably well-developed and consistent framework for retirement villages. Nevertheless, the operative provisions are now outdated. They need to be amended to give effect to the new directions provided in the NPSUD and the MDRS. In addition, the RVA's members (including Ryman) have had significant experience implementing the District Plan. This experience has highlighted a number of implementation issues that have presented challenges for retirement village proposals. PC14 provides an opportunity to address those issues, and better enable housing and care for older persons.
- 9 The Council's approach to PC14 is, however, a significant retrograde step. PC14 would make the Plan far more complex and less enabling than the operative scheme for retirement villages. It also fails to give effect to the new policy directions on many counts. This outcome appears to be because the Council officers have taken the incorrect view that the MDRS only provides for "residential units" and therefore that retirement villages should not be addressed as part of the PC14 process.
- 10 With respect, the MDRS are not confined to "residential units" when read properly and in the wider context of the NPSUD. The MDRS are all of the provisions and requirements in Schedule 3A of the RMA, not just the density standards and other provisions that directly refer to 'residential units'.³ Objective 2 and Policy 1 seek to accelerate housing supply to enable a variety of housing types for all people - not just those that live in 'typical' housing. Policy 5 requires developments not meeting permitted activity status to be "provided

³ RMA, s2, definition of "medium density residential standards or MDRS".

for”, “while encouraging high-quality developments”. Again, this applies to all housing types.

- 11 The flaws in the Council Officer’s narrow approach are most stark when looking at his proposal to apply an 8m suburban zone height standard to retirement villages in the medium density residential zone (*MRZ*) (rather than the 11m height standard provided for in the MDRS). There is no evidential basis for a distinction of this nature. And, this approach does not achieve the need to “*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 1, MDRS).
- 12 PC14 needs substantial work to address the resulting anomalies and inconsistencies. It is noted at the time of writing that further planning conferencing is being arranged. The RVA and Ryman agree that conferencing is the most appropriate forum to address the details of PC14 as they relate to retirement villages.
- 13 The key elements of the RVA/Ryman relief Ryman and the RVA seek are:
 - 13.1 Greater recognition of the changes in amenity values that are anticipated to result from intensification to give effect to Objective 4 and Policy 6 of the NPSUD;
 - 13.2 Explicit recognition that retirement villages are appropriate activities in the MRZ and High Density Residential Zone (*HRZ*);
 - 13.3 Some amendments to the existing ‘Provision for housing for an aging population’ policy (14.2.1.6) to recognise the functional and operational requirements of retirement villages that differ from other forms of residential development;
 - 13.4 A new ‘role of density standards’ policy in the residential and non-residential zones in order to provide clear direction to

decision-makers, council officers, and plan users as to the correct approach to assessing effects;

- 13.5 A new 'larger sites' policy in the non-residential zones to recognise the opportunity provided by larger sites to enable increased intensification while internalising environmental effects. An equivalent policy is already provided in the residential zones (14.2.5.2(vi));
 - 13.6 A clear and enabling activity status for retirement villages in the relevant residential and non-residential zones. The RVA and Ryman consider the Plan should provide for the land use component of a retirement village as a permitted activity, and for the establishment of buildings as a restricted discretionary activity;
 - 13.7 A public notification preclusion for retirement villages in all residential and non-residential zones, as well as a limited notification preclusion for retirement villages that comply with the relevant built form standards regarding external amenity effects;
 - 13.8 Improvements to the existing matters of discretion for retirement villages to more appropriately reflect the expectations of the MDRS and to address challenges that have arisen during the implementation of the operative matters of discretion; and
 - 13.9 Density standards governing the external effects of retirement villages that are the same as the MDRS. The internal amenity density standards are amended to support the unique unit types and internal amenities of retirement villages.
- 14 The evidence for the RVA and Ryman addresses the relief sought, and the reasons in further detail:
- 14.1 **Mr John Collyns** addresses ageing population demographics, the health and wellbeing needs of older people and the

important role that retirement villages play in providing appropriate housing and care options;

- 14.2 **Mr Matthew Brown** highlights his experience with planning and building retirement villages (including three relatively recent villages in Christchurch) and how PC14 can better enable retirement village development;
- 14.3 **Professor Ngaire Kerse** provides gerontology evidence addressing the demography and needs of the ageing population; and
- 14.4 **Mr Richard Turner** responds to the Section 42A Reports in relation to the planning framework for retirement villages. His evidence benefits from his considerable experience from implementing the Plan and consenting a number of retirement villages in Christchurch. He also comments on two site specific matters relating to the zoning of Ryman's Northwood site and the height standard applying to Ryman's Park Terrace site.
- 14.5 In response to the Council's rebuttal evidence and in contemplation of expert conferencing, Mr Turner has prepared an updated version of relief to address the RVA and Ryman submissions. Mr Turner will present this updated relief at the hearing as further updated (assuming the conferencing can occur before the hearing).

LEGAL FRAMEWORK

Enabling Housing Act

- 15 The primary purpose of the IPI is to help address New Zealand's housing crisis by increasing housing supply.⁴ The ISPP seeks to expedite the implementation of the NPSUD. As Cabinet notes, "the

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

*intensification enabled by the NPS-UD needs to be brought forward and strengthened given the seriousness of the housing crisis”.*⁵

- 16 As explained in the evidence of Mr Brown and Mr Collyns, aging population demographics mean there is increasing demand for retirement housing and care. There is a serious need to continue to increase the supply of retirement villages. PC14 also provides a significant and necessary opportunity to address this particular housing issue as part of the response to the broader housing crisis.
- 17 A key intended outcome of the ISPP is to enable housing acceleration by “*removing restrictive planning rules*”.⁶ These restrictions are to be removed via mandatory requirements (framed as a “duty” placed on specified territorial authorities) to:
- 17.1 incorporate the MDRS in every relevant residential zone;⁷ and
- 17.2 in this case, to also “*give effect to*” Policy 3 of the NPSUD in residential and non-residential zones.⁸
- 18 In addition, there are a range of other ‘discretionary’ elements that can be included in IPIs to enable housing acceleration, including relevantly:
- 18.1 providing additional objectives and policies, to provide for matters of discretion to support the MDRS;⁹
- 18.2 providing related provisions that support or are consequential on the MDRS and Policy 3;¹⁰ and
- 18.3 providing more lenient density provisions.¹¹

⁵ Cabinet Minute, at paragraphs 2-3.

⁶ Cabinet Minute, at paragraph 4.

⁷ RMA, section 77G(1).

⁸ Sections 77G and 77N.

⁹ Section 77G(5)(b).

¹⁰ Section 80E(iii).

¹¹ Section 77H.

- 19 We respectfully submit that the above overarching legislative and policy purposes should resonate heavily in all of your considerations through the ISPP. Key aspects of that purpose include:
- 19.1 addressing New Zealand’s housing crisis;
 - 19.2 accelerating housing supply to enable a variety of homes for all people;
 - 19.3 removing overly restrictive planning provisions; and
 - 19.4 providing greater clarity and efficiency for consent processes.
- 20 For the reasons outlined, the RVA and Ryman’s proposed changes to PC14 are consistent with and help achieve those aspects of the statutory purpose.

Preparing and changing District Plans under the RMA

- 21 In the context of the usual legal framework, case law has established a presumption that where the purpose of the RMA and objectives and policies, "*can be met by a less restrictive regime that regime should be adopted*".¹² 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*".¹³
- 22 Case law on the RMA plan change process has also established there is no legal presumption that proposals advanced by the Council are to be preferred to the alternatives being promoted by other participants in the process.¹⁴ If other means are raised by

¹² *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 RMA in *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51 at [59].

¹³ *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51 at [78].

¹⁴ *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.¹⁵

- 23 These concepts remain valid here. The Panel has broad discretions and wide scope available in making recommendations.¹⁶ It should not be assumed that the Council's notified IPI provides the most appropriate response to the legislative context.

NPSUD

- 24 PC14 is required to "give effect" to the NPSUD.¹⁷ The requirement to "give effect to" the NPSUD is "a strong directive, creating a firm obligation on the part of those subject to it". PC14 should also provide clear directions to decision-makers rather than leaving issues to be resolved at the consenting stage.¹⁸ It is also submitted that PC14 must take guidance and be read in light of the NPSUD as a whole.¹⁹ PC14 can provide "related provisions" to address broader NPSUD direction.
- 25 It is also perhaps trite to observe that any provisions that do not give effect to the relevant parts of the NPSUD would most likely also be inconsistent with the specific Enabling Housing Act mandatory requirements to implement the MDRS and give effect to Policy 3. It is submitted that the wider NPSUD context thus provides a useful 'check and balance' to the specific mandatory requirements under that Act and the implementation of any discretionary "related provisions" aspects.

¹⁵ *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55 at [64].

¹⁶ RMA, sch 1 cl 96.

¹⁷ RMA, s75(3)(a).

¹⁸ The Supreme Court's discussion in *Port Otago Limited v Environmental Defence Society Inc* [2023] NZSC 112 at [72]-[73] of the benefits of clarity and resolving conflicts in planning policy rather than leaving issues to be dealt with at the consent stage are highlighted in support of this submission. It is acknowledged that the policy context and issues in play were different in that case, but the general reasoning is submitted to be applicable and aligned with good planning practice in any case.

¹⁹ *Southern Cross Healthcare Limited v Eden Epsom Residential Protection Society Incorporated* [2023] NZHC 998, although not a decision on an IPI, the reasoning in this decision provides support for this submission.

26 The key objectives and policies of the NPSUD are outlined in Mr Turner's evidence.²⁰ These objectives and policies give rise to the following key themes, which it is respectfully submitted should guide your consideration of PC14:

26.1 The NPSUD seeks to enable development. Enablement requires, among other things, the removal of unnecessary restrictions to development.²¹

26.2 The NPSUD seeks to enable well-functioning environments for *all* communities including by enabling a "*variety of homes*" to meet the "*needs ... of different households*".²² This directive requires express provision for the housing and care needs of older persons in plan provisions, as well as other residents in the District.

26.3 Urban environments are expected to change over time "*in response to the diverse and changing needs of people, communities, and future generations*".²³ The changing needs of the growing ageing population are particularly relevant here. Retirement villages are necessary to respond to the needs of older persons in our communities, as expressed in the uncontested evidence for the RVA and Ryman. Any changes in amenity are not, of themselves, to be considered an adverse effect.²⁴

AMENDMENTS TO PC14 TO BETTER ENABLE RETIREMENT VILLAGES

27 As noted, the Operative Plan contains a relatively consistent and enabling regime for retirement villages. However, the provisions are now out of date and need to be refined to address implementation issues. Therefore, overall, the RVA and Ryman submissions on PC14

²⁰ Evidence of Mr R Turner, page 7.

²¹ MfE and HUD, "Recommendations and decisions report on the National Policy Statement on Urban Development" (Wellington, 2020), pages 17 and 8.

²² Policy 1.

²³ Objective 4.

²⁴ Policy 6.

seek refinements to the operative planning provisions for retirement villages that:

- 27.1 Appropriately reflect the NPSUD and the MDRS. The proposed retirement villages provisions are largely aligned with the planning approach for other multi-unit residential developments. They have some additional specificity to recognise the functional and operational needs of villages; and
 - 27.2 Respond to the challenges that have arisen during the implementation of the Operative Plan to date. These are described in detail in the evidence of Mr Brown and Mr Turner.
- 28 The RVA and Ryman team have presented extensive evidence on the ageing population, the need for appropriate housing and care for older persons and the consenting challenges that retirement villages face. In fact, the Plan already acknowledges the resource management issues arising from the predicted ageing of Christchurch's population.²⁵ There is no apparent conflicting technical evidence on those matters. The Council's rebuttal evidence also does not address the consenting challenges identified in the RVA/Ryman evidence.
- 29 It is submitted that the planning provisions proposed by Ryman and the RVA will ensure appropriate and proportionate assessment and management of effects of the buildings and structures associated with retirement villages. Overall, the provisions are tailored to:
- 29.1 Recognise the positive benefits of retirement villages and the need for many more of them. It is noted that the Operative Plan does not allow the positive effects of retirement village to be assessed under the existing matters of discretion. This is an obvious anomaly given the many social and economic

²⁵ Christchurch City Plan, Chapter 3, 3.2.4.

benefits of retirement villages and their contribution to well-functioning environments;

- 29.2 Focus effects assessments primarily on exceedances of relevant standards, effects on the safety of adjacent streets or public open spaces, and effects arising from the quality of the interface between the village and adjacent streets or public open spaces to reflect the policy framework within the MDRS. A degree of control over visual dominance effects is also acknowledged as appropriate. These controls fall directly out of the MDRS objectives and policies; and
- 29.3 Enable the efficient use of larger sites and the functional and operational needs of retirement villages to be taken into account when assessing effects. These changes provide greater clarity to ensure the unique aspects of retirement village are accounted for in the consent processes.
- 30 In view of the main factual evidence being uncontested, the key question for this Panel is, with respect, what is the appropriate planning response? It is submitted that the amendments sought by Ryman and the RVA directly address the problem. In doing so, they will better achieve the NPSUD and MDRS objectives and policies than the Council Officer proposals. For example, they will:
- 30.1 enable all people and the community to provide for their social, economic and cultural wellbeing and in particular the health and safety of older people;²⁶
- 30.2 enable a greater variety of homes;²⁷
- 30.3 better provide for the day to day living needs of older people;²⁸

²⁶ NPSUD, Objective 1.

²⁷ NPSUD, Policy 1.

²⁸ MDRS, Policy 4.

- 30.4 provide for retirement villages as a non-permitted development type, while encouraging high quality design;²⁹
- 30.5 make consenting processes more efficient and effective by reducing planning restrictions;³⁰ and
- 30.6 be more responsive to the changing needs of the community.³¹

31 These submissions do not comment on each individual submission point made by Ryman and the RVA. We address the key matters outstanding following the circulation of evidence. Mr Turner's evidence addresses the full suite of outstanding points.

Policies

- 32 The Operative Plan contains a policy that specifically addresses housing for an aging population (14.2.1.6). This policy goes some way to responding to the significant resource management issue of housing and caring for the ageing population. However, as Mr Turner explains, further refinements are required.³²
- 33 PC14 proposes a number of new and amended policies that apply to all residential development, including retirement villages. Many of these provisions are broadly framed and subjective, which will create implementation hazards.
- 34 Further, if applied to retirement villages without qualification, some aspects of these policies will create consenting hurdles for retirement villages. This is because they do not recognise the unique characteristics of retirement villages that differ from other residential development. For example, Policy 14.2.5.1(a)(iii) strongly directs developments to provide a public front entrance to each street-fronting unit separate from any private outdoor space. For retirement villages, providing such public entrances may not achieve the safety and security requirements of residents. It is

²⁹ MDRS, Policy 5.

³⁰ MDRS, Policy 2; NPSUD, Policies 6 and 8.

³¹ NPSUD, Objective 4.

³² Evidence of R Turner, paragraph 74.

therefore important that the housing for an aging population policy requires decision-makers to recognise the functional and operational requirements of retirement villages alongside other policy considerations.

Rules

- 35 The Council Officer has proposed a new retirement village framework for the Medium Density Residential Zone in rebuttal evidence.³³ The recommendation responds to Mr Turner’s evidence that the Medium Density Residential Zone should contain the rules and standards that apply to retirement villages located in that Zone.³⁴
- 36 The new framework is aligned with the MDRS in some respects. However, there are some key differences.
- 37 For example, the Council officer proposes an 8m permitted height standard for retirement villages. This would contrast with the 11 metre height standard that applies to all other buildings in the MRZ (14.5.2.3). The Council Officer justifies this approach on the basis that almost 90% of the MRZ was previously zoned Residential Suburban or Residential Suburban Density Transition.³⁵ Mr Kleybos also says the 8m height standard is a “*pragmatic solution*”.
- 38 As noted, this approach is fundamentally flawed. The Operative Plan approach is no longer relevant given the new directives in the NPSUD and MDRS. The approach also creates anomalies. This approach would ultimately make it more difficult to consent retirement villages compared to other multi-unit developments – despite there being no evidence to justify a more restrictive height approach. And, this approach would fail to respond to the evidence on the aging populations and the need for housing and care for older people. And, this approach will not achieve the need to “*enable a variety of housing types with a mix of densities within the*

³³ Rebuttal evidence of Mr I Kleybos (dated 16 October 2023), Appendix E.

³⁴ Evidence of R Turner, paragraph 98.

³⁵ Rebuttal evidence of Mr I Kleybos (dated 16 October 2023), paragraph 122.

zone, including 3-storey attached and detached dwellings, and low-rise apartments” (Policy 1, MDRS).

- 39 A further example is a more restrictive height in relation boundary standard³⁶ compared to the MDRS equivalent³⁷. This standard seems to apply to all other buildings in the MRZ, but it is clearly inconsistent with the requirement to incorporate the MDRS.³⁸
- 40 It is acknowledged that the Council Officer has proposed some more lenient standards to reflect the particular characteristics of retirement villages (such as outdoor living space).³⁹ This approach is supported. Amendments to some other internal amenity standards (such as outlook space) are also required.
- 41 Similar issues arise in relation to the Council Officer’s proposed framework for the HRZ.⁴⁰
- 42 As noted, planning conferencing may assist in narrowing the areas of difference.

Notification

- 43 The Plan does not contain notification presumptions for retirement villages. As explained in the statements of Mr Brown and Mr Turner, issues associated with notification are a key driver of the protracted consenting processes that retirement villages often face.⁴¹
- 44 The RVA and Ryman seek notification presumptions for retirement villages that align with those set out in the MDRS for retirement units that comply with the relevant density standards. They seek

³⁶ Taken at 3.0m above boundary. N: 60°. E/W: 55°. S: 50°. Only applicable for perimeter units.

³⁷ RMA, Sch 3A, clause 12.

³⁸ RMA, s80E.

³⁹ Rebuttal evidence of Mr I Klynbos (dated 16 October 2023), paragraph 121.

⁴⁰ The proposed building height standard is 11m or 14 m (or 20m for the Park Terrace site), compared with 14 for other multi-unit developments (14.6.2.1). The daylight recession plane is taken from 2.3m above the boundary and N: 55°. E/W: 50°. S: 35°, which is even more restrictive than the proposed MRZ standard.

⁴¹ Evidence of M Brown, paragraphs 34-35. Evidence of R Turner, paragraph 41.

retirement village-specific notification presumptions to ensure the approach is clear and not open for interpretation at a later date.

- 45 Ryman and the RVA also consider the retirement village rule should preclude public notification for developments that breach the relevant standards. It is accepted that limited notification may be appropriate in these circumstances given the potential for neighbour impacts. However, it is submitted that public notification is not appropriate for a residential activity in a residential zone. Public notification is highly unlikely to provide the decision-maker with any helpful information. But, as set out in Mr Brown's evidence, notification will contribute significantly to the length and complexity of consenting processes. Providing notification preclusions is therefore essential to better enable retirement villages in Christchurch and expected by the Enabling Housing Act.

Matters of discretion

- 46 The rebuttal evidence of Mr Hattam recommends a small number of amendments to the retirement village matters of discretion which he says are intended to "*tailor*" the matters to the "*anticipated environment rather than the existing*".⁴² The amendments proposed by Mr Hattam are somewhat helpful, but it is submitted they do not go nearly far enough.
- 47 A key issue with 14.15.9 is the opening words of the matters of discretion "*whether the development ... is appropriate to its context*". As identified in the evidence of Mr Turner, this wording has meant that limited weight is given to the anticipated residential character of the wider area and existing amenity is locked in.⁴³ This wording is submitted to be inconsistent with Objective 4 and Policy 6 of the NPSUD which recognise that urban environments will change over time.
- 48 Another key issue with 14.15.9 is the omission of positive effects as a matter of discretion. As Mr Turner explains, this gap has meant

⁴² Rebuttal evidence of Mr D Hattam (dated 16 October 2023), pages 11-14.

⁴³ Evidence of R Turner, paragraph 42.

decision-makers have been unable to give appropriate weight to positive effects.⁴⁴

- 49 Finally, we note that Mr Turner has proposed matters of discretion have been drafted to focus consent decision-making on the effects of relevance in light of the MDRS and the NPSUD. The existing matters of discretion cover a broad range of topics. It is submitted that matters of discretion must be focused on the key matters for decision-making. Broad matters of discretion do not restrict discretion, and are inefficient and ineffective. They result in overly complex consenting processes.

THE RELIEF SOUGHT BY THE RVA AND RYMAN IS WITHIN THE SCOPE OF THE IPI

- 50 As described earlier in these submissions, the RVA and Ryman seek planning provisions for retirement villages that are aligned with the approach for 'four or more residential units' with some amendments to recognise their unique characteristics.
- 51 Accordingly, the RVA and Ryman *agree* with the Council that a retirement village contains 'residential units' but is not made up of 'residential units' alone. This position is clear from the retirement village definition contained in the Plan. The definition requires that a retirement village "*includes not less than two residential units*". And, it may also include "*nursing, medical care, welfare, accessory non-residential and /or recreation facilities and/or services*". The RVA and Ryman also agree with the Council Officer that it would be "*unwieldy*" to apply a split planning approach to retirement villages – with residential units governed by one set of rules and other aspects of a retirement village governed by another set of rules.⁴⁵
- 52 The Council says those points means the MDRS do not apply to retirement villages and the RVA/Ryman relief is outside the scope of

⁴⁴ Evidence of R Turner, paragraph 43.

⁴⁵ Rebuttal evidence of Mr I Klynbos (dated 16 October 2023), paragraph 107.

the plan change.⁴⁶ With respect, it is submitted that the Council's position is untenable.

53 As noted earlier in these legal submissions, the position adopted appears to be on the basis of the officer's view that the MDRS only apply to "residential units". This approach is fundamentally flawed. Schedule 3A is much broader than that, as has been explained. The Council's approach to the scope of PC14 would result in anomalous outcomes, including:

53.1 enabling other multi-unit residential developments, but not retirement villages (which is inconsistent with the intent of the Enabling Housing Act and the directives in the NPSUD and MDRS); and

53.2 failing to respond to the uncontested evidence on the ageing population and ongoing need for more retirement housing and care options.

53.3 in the non-residential zones, the scope of the IPI is defined by reference to Policy 3 of the NPS-UD, rather than the MDRS. The Council Officer says this means there is "*far greater scope*" in non-residential areas.⁴⁷ The Council's approach could therefore better enable retirement villages in commercial zones through PC14, but not better enable retirement villages in residential zones. That would be a very unusual result given retirement villages are residential in nature.

Scope of the IPI process

Section 80E interpretation

54 Section 80E defines the scope of an IPI. It requires an IPI to incorporate the MDRS and give effect to (as relevant here) policy 3 of the NPSUD. It also allows an IPI to "*amend or include the following*":

⁴⁶ Council legal submissions, pages 7-8. Rebuttal evidence of Mr I Klynbos (dated 16 October 2023), pages 23-24.

⁴⁷ Rebuttal evidence of Mr I Klynbos (dated 16 October 2023), paragraph 108.

(iii) related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on—

(A) the MDRS; or

(B) policies 3, 4, and 5 of the NPS-UD, as applicable.

- 55 The RVA and Ryman rely on the discretion to include ‘related provisions’ within an IPI to provide scope for provisions that address retirement villages as a whole.
- 56 It is submitted that Section 80E provides broad discretion to include “*related provisions*” based on a plain reading of its terms. This broad discretion is evident in the inclusive language used (terms such as “*including*”, “*that relate to*”, “*without limitation*”) and the widely framed dictionary definitions of “*support*” and “*consequential*”.⁴⁸ The *Waikanae* decision also supports this interpretation. The Court said that the scope provided by Section 80E is “*extremely wide*” on its face.⁴⁹ Nevertheless, there is an “*inherent limitation*” provided by the need for the provision to “*support*” or be “*consequential on*” the MDRS.⁵⁰ The Enabling Housing Act did not purport to provide all provisions necessary to enable (or restrict as appropriate) housing activities. For example, it does not provide matters of discretion for the (mandatory) restricted discretionary activity status for residential activities that do not comply with the MDRS.⁵¹ Rather, Policy 5 requires plans to “*provide for developments not meeting permitted activity status, while encouraging high-quality developments*”.
- 57 Section 80E was designed to ensure an appropriate package of provisions are included in the final IPI decision. The legislative history supports this broad interpretation. The “*related provisions*” clause was added to Section 80E following the Select Committee process because “*the scope of what could be included in an IPI is*

⁴⁸ Support: give help or countenance to, back up; second, further. Consequential: following as a result or consequence. The New Zealand Oxford Dictionary, Oxford University Press, reprinted 2008.

⁴⁹ *Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056 (*Waikanae decision*), paragraph 27.

⁵⁰ *Waikanae decision*, paragraphs 28-30.

⁵¹ Schedule 3A, clause 4, RMA.

too narrow".⁵² It was a practical way to address the challenges of implementing the MDRS into district plans that were raised by a number of submitters on the Bill.

- 58 Accordingly, it is submitted that the 'related provisions' limb of section 80E should be given a wide interpretation. In effect, any provisions that are necessary to either enable or, as appropriate, restrict housing intensification activities, are arguably within the scope of section 80E given the board coverage in the MDRS objectives and policies, Policy 3 NPSUD and the wider NPSUD provisions.

Ryman / RVA provisions

- 59 The provisions proposed by Ryman and the RVA are submitted to be "related provisions" that "support or are consequential on" the MDRS and/or Policy 3 as:

- 59.1 The NPSUD and MDRS objectives and policies are broad, and require all housing types to be provided for:

Objective 1 - A well-functioning urban environment that enables all people and communities to provide for their ... 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.

Policy 5 - Provide for developments not meeting permitted activity status, while encouraging high-quality developments.

(emphasis added)

⁵² Enabling Housing Bill, page 7.

- 59.1 The provisions proposed by the RVA and Ryman provide “support” for those more general directives, by giving better expression to the need to enable housing for the ageing population of Christchurch to respond to the retirement living crisis.
- 59.2 The rules proposed by the RVA and Ryman also “support” the MDRS rules, by making small adjustments to ensure they work to enable retirement villages given the different characteristics of this housing typology.
- 59.3 The MDRS do not provide matters of discretion, requiring these to be developed through ISPPs instead. The matters of discretion proposed by the RVA and Ryman provide a proportionate and targeted set of considerations for consenting retirement housing. These provisions also directly respond to the MDRS objectives and policies. They assist in integrating the MDRS into PC14 in a way which is efficient and effective.
- 59.4 In the non-residential zones, the provisions proposed by the RVA and Ryman will either “give effect to” to Policy 3 of the NPSUD or “support” its implementation by enabling more people to live in areas in or near a centre zone.
- 59.5 It can also be said that the provisions proposed by the RVA and Ryman are “consequential” in the sense that they are a result of or follow on from the MDRS or Policy 3:
- (a) The MDRS density standards provide specifically for permitted activities. Some of those standards apply specifically to “residential units” (although not all – many of the standards apply to “buildings” rather than “residential units”). Further consequential changes are therefore required to the rules to enable other forms of residential development, for the reasons outlined in the evidence.

- (b) Policy 3 does not provide specific provisions to achieve the intensification directed. Consequently, specific policies and rules that articulate the anticipated demand and built form of residential development, including retirement villages are therefore needed.

59.6 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 that Act is to be enabling of all residential uses. If retirement villages are not appropriately provided for in PC14, then their development will be slowed, which is in direct conflict with the legislative intent.

Other relevant sections

60 The wider context surrounding section 80E provides further support for a wide interpretation of what are "related provisions". Sections 77G-77R set out a range of topics that may be included in IPIs. 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. The discretion addresses matters that can be included in an IPI and hence must be part of the section 80E context.

61 It is submitted that Ryman and the RVA's proposed provisions 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.

Conclusion

62 Ryman and the RVA submit that their requested relief is squarely within the scope of the IPI as set out in 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 on, the MDRS or Policy 3 and or/give effect to Policy 3.

The amendments sought by Ryman and the RVA are within the scope of, and “on”, PC14

63 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 relating to whether a submission is “on” a plan change.⁵³

64 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.⁵⁴ Relevant considerations include:

64.1 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”).⁵⁵

64.2 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.⁵⁶

64.3 A submission point or approach that is not expressly addressed in the section 32 analysis ought not to be considered out of scope of the plan change, if it was an option that should have been considered in the section 32 analysis. Otherwise, a council would be able to ignore potential options for addressing the matter that is the subject of the plan change. It would prevent submitters from validly raising those options in their submissions.⁵⁷

⁵³ 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).

⁵⁴ *Clearwater Resort Limited v Christchurch City Council*.

⁵⁵ *Motor Machinists* at [69].

⁵⁶ *Clearwater Resort Limited v Christchurch City Council*.

⁵⁷ *Bluehaven Management Limited and Rotorua District Council v Western Bay of Plenty District Council* at [39].

- 65 The High Court case of *Albany North Landowners v Auckland Council* is also of assistance on the present scope question.⁵⁸ In *Albany North Landowners*, the Court was tasked with considering scope issues applicable to the special legislation process for the Proposed Auckland Unitary Plan (PAUP).⁵⁹ As is the case for the IPI, submissions were required to be “on” the PAUP.⁶⁰ The Hearings Panel was not limited to making recommendations that were within the scope of submissions.⁶¹ His Honour, Justice Whata, held:

[129] ...the Auckland Unitary Plan planning process is far removed from the relatively discrete variations or plan changes under examination in *Clearwater, Option 5* and *Motor Machinists*. The notified PAUP encompassed the entire Auckland region (except the Hauraki Gulf) and purported to set the frame for resource management of the region for the next 30 years. Presumptively, every aspect of the status quo in planning terms was addressed by the PAUP. Unlike the cases just mentioned, there was no express limit to the areal extent of the PAUP (in terms of the Auckland urban conurbation). The issues as framed by the s 32 report, particularly relating to urban growth, also signal the potential for great change to the urban landscape. The scope for a coherent submission being “on” the PAUP in the sense used by William Young J [in *Clearwater*] was therefore very wide.

- 66 In relation to the submissions by the RVA and Ryman, it is submitted that they are ‘on’ PC14:
- 66.1 PC14 substantially alters the management regime in the operative plan for retirement villages. Most aspects of the status quo have been altered by PC14. There are two completely new zones to replace the most common suburban residential zone and the commercial zone provisions have been substantially amended. The MDRS and other new and

⁵⁸ *Albany North Landowners v Auckland Council* [2017] NZHC 138.

⁵⁹ Note that the powers of the IHP are even broader than those of the PAUP Hearings Panel that were considered in *Albany North*. The PAUP Hearings Panel could only make recommendations that were “on” the PAUP: Local Government (Auckland Transitional Provisions) Act 2010, section 144. While submissions on PC78 must be “on” the plan change, the IHP is not subject to that same restriction.

⁶⁰ Section 123(2), Local Government (Auckland Transitional Provisions) Act 2010 (*LGA Auckland*).

⁶¹ Section 144(5), LGA Auckland.

amended policies contemplate substantially different building forms and resource consent assessment requirements in these zones. The rule framework is also amended, including new density standards in the new medium and high density zones.

- 66.2 In relation to the retirement village rules, PC14 proposes to apply the old Residential Suburban Zone rules to retirement villages in the new Residential Medium Density Zone. This proposal cannot be viewed as a continuation of the status quo given the completely new zone and provisions.
- 66.3 Further, in the wider context of PC14 being to accommodate the new MDRS and related changes to give effect to Policy 3,⁶² 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 in both residential and non-residential zones should have become involved in the plan-making processes. Further, PC14 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.⁶³ The provisions are not site specific.
- 66.4 The submissions are within the purpose statements set out by the Council in the Section 32 Report, being to incorporate the new MDRS and give effect to Policy 3 of the NPSUD.⁶⁴
- 66.5 Although PC14 is not a full plan review, it proposes significant amendments to the parts of the Plan that relate to the urban environment. It does so in light of a clear direction from Parliament to enable greater intensification. In that context,

⁶² Section 32 Report, section 1.1, page 7.

⁶³ Evidence of Mr J Collyns, paragraph 73.

⁶⁴ Section 32 Report, page 4.

a narrow interpretation of whether a submission is “on” PC14 is not appropriate.

- 67 Accordingly, it is submitted that there is no legal barrier to retirement village provisions forming part of the Panel’s recommendation on PC14.

Scope gateway

- 68 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.
- 69 Further, as noted, section 80E contains reasonably wide scope to enable related provisions, including financial contributions 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.
- 70 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.⁶⁵ This should be the focus, not the notified version of PC14. 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 and Policy 3. The provisions therefore directly meet this “overarching gateway” and are within the scope of the IPI.

⁶⁵ *Waikanae Land Company Ltd v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056, at [29-30].

CONCLUSION

- 71 PC14 must ensure that the Plan specifically and appropriately provides for, and enables, retirement villages in residential and commercial zones. Appropriate provision for retirement villages will meet the Enabling Housing Act requirements, give effect to the NPSUD, and respond to the significant health and wellbeing issues created by the ageing population.
- 72 When compared to the Council's proposed provisions, Ryman and the RVA's approach involves reasonably practicable options to achieve the objectives of PC14 that are:
- 72.1 more effective and efficient;
 - 72.2 less restrictive, but with appropriate controls as necessary to manage adverse effects; and
 - 72.3 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).
- 73 Accordingly, Ryman and the RVA respectfully seek that the Panel recommends, and the Council accepts, the proposed amendments to PC14 put forward by Mr Turner on behalf of Ryman and the RVA.

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7 November 2023