

Before the Hearing Panel for Wellington City Council

In the matter of: an application by Ryman Healthcare Limited for resource consent to construct, operate and maintain a comprehensive care retirement village at 26 Donald Street and 37 Campbell Street, Karori, Wellington

Summary Statement of **Laura Brownlie** on behalf of the Wellington City Council

Dated: 20 September 2022

Purpose

1. This document includes responses to key questions and matters raised throughout the course of the hearing.

Alignment of experts

2. As I noted on Friday in the summary of my section 42A report, I consider that, for the most part, there was general alignment between the Council's and the applicant's experts. Where there was a more discernible difference in opinion was between the wind experts. Since the section 42A report was circulated, there has been significant progress in amending the wind mitigation conditions to address Dr Donn's concerns such that I consider the requirements as set out in the Landscape and Pavement Plan ameliorates Dr Donn's concerns if the applicant agrees to the additional wording which I provided them with on yesterday morning (19/09/22).

Application of the MDRS

3. The applicant has a different approach to Council insofar as it relates to applying the MDRS. Firstly, I would like to acknowledge that the approach Council has taken has been determined by the District Plan Team (not the Resource Consents Team) and that I have not be privy to the legal advice they have obtained due to legal privilege. Accordingly, there are some limitations of the information available, so what I will do is outline my understanding of the approach.
4. Section 77I provides for the inclusion of less enabling provisions due to a qualifying matter, and natural hazards are a section 6 matter, so these are included. The way this is achieved in the Proposed District has not been to impose a greater level of restriction through the zone-based rules, but to address the less enabling aspect separately through district wide chapters, such as the natural hazards chapter and coastal hazards chapter.
5. The site is subject to three qualifying matters: stream corridor, which has a high hazard ranking, overland flow, which has a medium hazard ranking, and inundation area, which has a low hazard ranking. The Council treats all natural hazards as a qualifying matter. With natural hazards, the starting point for hazard sensitive activities (which includes retirement villages) in an inundation area is Restricted Discretionary (Rule NH-R11). Where within the overland flow path the starting point is Discretionary (NH-R13) and where within the stream corridor the starting point is Non-Complying (NH-R15).



6. It is my understanding that these are qualifying matters and the MDRS does not apply because the framework would not allow for a permitted development to occur as set out in Schedule 3A.
7. In terms of immediate legal effect, section 86BA(1)(c) specifies that the MDRS rule cannot apply to either a new residential zone or a qualifying matter area. By implication s86BA(1)(c)(ii) envisages there can be a MDRS rule that would permit a residential unit in a qualifying area, but where it is the rule does not have immediate legal effect as not all the criteria of s86BA(1) would be met. Section 86BA(7) provides interpretation that a qualifying matter area is an area proposed as a qualifying matter in accordance with section 77I. Section 77I(a) relates to section 6 and section 6(h) pertains to natural hazards. Section 2 of the Act lists flooding in the definition of natural hazards and therefore the three qualifying matters that overlay the site meet the definition of a natural hazard.
8. As such, I do not consider that the MDRS apply to the parts of the site where a qualifying matter exists and that the Operative District Plan applies where there are qualifying matters as the MDRS do not have legal effect.

Removal of minimum car parking

9. The minimum car parking standards were removed from the District Plan on 4 May 2021. As outlined on Friday in my summary statement, I have made a correction to paragraph 427 and consider that traffic and parking effects can be considered given Rules 5.3.7 and 5.3.10A list this as a specific matter of discretion and the Non-Complying Activity status of the application.
10. MfE's guidance on car parking expressly states that a Council can consider car parking effects using resource consents with a Discretionary or Non-Complying activity status. I have also tabled a copy of the Council's legal advice regarding traffic effects and the implications of the NPS-UD and note the applicant was provided with a copy of this on the 8th of September. This advice suggests that traffic effects are a valid consideration regardless of there being no minimum car parking requirements (this was more around Rule 5.3.7 as opposed to the activity status, but I note the proposal also triggers this rule). I understand this is the approach applied by Wellington City Council throughout the City.

11. The intensity of the scale of the development is greater than could be reasonably expected under the District Plan noting this site is not required for an educational facility and that aspects of this proposal are not of a usual residential nature, for example an intensive multi-unit development would not ordinarily require staff car parking. As such, it is not unreasonable to consider traffic effects generated by the proposal.
12. Policy 4.2.12.4 – *Provide appropriate parking, loading, and site access for activities in Residential Areas*. In terms of the wording of this policy, I do not consider the word “appropriate” to refer to matters such as car parking dimensions, aisle widths etc as this is a requirement of standard 5.6.1.3 and, similarly, site access requirements are requirements in 5.6.1.4. I consider this policy to be broader in a sense that it encompasses traffic safety, site access, parking and travel demand, provision of public transport to name a few.
13. I submit that the rule framework and policy provide Council with the ability to consider traffic-related effects.

Shading

14. There have been discussions on the applicant’s shading diagrams and the line that shows shading from buildings built to residential building standards. As outlined in my section 42A report, I have not relied on this in my shading effects assessment as a development built to the residential standards would invariably have breaks/gaps in between buildings which would mean there isn’t a continuous line like the one that has been shown. Mr Burns also acknowledged this on Tuesday. While I did not rely on it, I did state that this shading line *is* helpful to see where a shadow from an 8m high built form that also complied with recession planes of the ODP would fall.
15. In terms of the methodology I used, I did not rely upon the degree of compliance with the four hours (for internal living rooms) and three hours (for outdoor living areas) as a benchmark. As Mr Burns and Ms Duffell acknowledged, the hours stipulated in the RDG are a guide only – they are not a permitted activity standard. They also relate to new dwellings - not existing dwellings - and in Ms Duffell’s summary statement she referred to the section of the RDG that references adjacent dwellings and the notes the wording here is avoiding necessary or unreasonable shading of private outdoor spaces or windows to main living rooms in adjacent dwellings.
16. The methodology I used was more qualitative and included the consideration of:
 - Shading from the existing environment (either from the Allen Ward VC Hall and Tennant Block) and recognising shading from neighbouring properties where there would clearly be an effect i.e 42 Donald Street would shade 6 Scapa Terrace to a degree)
 - I noted that there would be shading from a 2m permitted fence although that the diagrams showing this had not been produced, so the extent of the shading was not known. I knew would be some shading (as confirmed by the photograph provided by 12 Scapa Terrace in their submission), and the diagrams produced in Mr Burns’ evidence as well as the ones presented to the panel today are very informative and have changed some of the conclusions I reached in terms of the extent of effects.
 - I looked at the locations where the shading fell in the outdoor living areas and on the northern elevations as I had visited all the sites along this boundary (except for 22 Scapa Terrace) and I had taken photographs which I referred back to in confirming the use of the outdoor living area, window and door placement, and utility of the room.

- Whether the outdoor living area/dwelling was fully shaded or if the shading fell on certain parts
- The times of the year (i.e. summer solstice, winter solstice, equinox) when the adjacent sites are shaded
- The duration of shading
- The duration of where the site is not shaded
- How much shading is on the dwelling vs how much is on the outdoor living area
- Where I thought the shading effect was close to being minor or more than minor, I clearly detailed the reasons why I did not consider it to be a greater effect.

FENZ

17. As part of the review of the draft conditions, Mr Kong has advised that the references to FENZ's requirements in (then) condition 16 can be removed as they are addressed via other statutory processes.
18. Some advice was obtained from the Council's Building Consent Manager on this matter who advised this was a matter of concern.

The response from the fire engineer is correct as far as I can tell but very disappointing in that they are attempting to put the issue off for a while longer knowing full well it will still need to be addressed at the issuing of the code compliance certificate (CCC) stage. The BCA will not issue a CCC for the project until FENZ sign off on the access and inlet location. When the fight gets to this stage it is very costly to deal with and there is often a lot of political pressure put on council to ignore the fire service at this stage.

As a general rule, council will have to grant the building consent if it complies with the acceptable solution, it is a legal issue that has been tested (as correctly stated by Cosgrove). What is disappointing about this is the fact that the acceptable solution does not align with FENZ operations sometimes as is clearly the case here. The issue has just been deferred.

As a general rule, FENZ issues are our issues, it is in our best interests that the issues be dealt with as early as possible.

19. The site access issue will still need to be addressed at the building consent stage and the issuing of the Code of Compliance Certificate stage. As for the resource consent process, if changes are required to the site access as a result of the building consent / CCC process then a section 127 may have to be obtained to reflect any changes. I understand the applicant is aware of this.
20. I note that when FENZ advised that they no longer wished to appear at the hearing, they stated that "the imposition of proposed conditions 21 and 82 (contained within Appendix 1 of the Section 42A report) would be supported." I am merely highlighting to the Hearing Panel that the references to FENZ's requirements have been removed from former condition 21 and there have been some tweaks to former condition 82.

Updated shading diagrams

21. On Monday (19/09/22) afternoon, I was shown the new shading diagrams that have been produced that show the shading in July and August and also include the 2m permitted fence overlay. Due to time constraints, I have not been able to undertake a detailed review of the plans and a review of Mr Burns' written summary. One thing I would like to highlight is that I

consider the 2m permitted fence to be a credible permitted baseline and thus the shading effects from this fence can be disregarded if the Panel accepts this permitted baseline. I would also note that now having seen the shading from the 2m permitted fence (which I had not seen at the time of writing my section 42A report), at a high level, I consider shading effects will be less than previously assessed, particularly on the outdoor living areas on the properties at 49 Campbell Street, the even numbered Scapa Terrace properties, and 42 Donald Street. However, as there has not been the time from receipt of the information for me to undertake a detailed site by site analysis of the difference in shading effects, my overall view as outlined in my section 42A report remains at this point in time.

Permitted baseline

22. Paragraph 71 of my report provides a high level permitted baseline as it relates to building bulk and location. The Council accepts this as a permitted baseline scenario and I note that it is not uncommon for smaller scale developers to develop their land in an incremental way consistent with this.
23. However, it is acknowledged that the site is a contaminated / potentially contaminated site. To be fully permitted, contamination would need to be investigated and any contaminated areas avoided. To be fully permitted any earthworks would also need to be permitted, potentially carried out incrementally as 'separate' works.
24. Whether this is credible given the contaminated land aspect would need to be considered further if it were to be relied on. I note the applicant's position on the permitted baseline at paragraph 18 of Mr Turner's summary statement and that they are not pursuing a permitted baseline.
25. Regardless, I have not relied on the use of a permitted baseline (except for the 2m high boundary fence) so this does not change my assessment and conclusions reached or my recommendation.
26. While not a true permitted baseline, building development could be 'anticipated' where the site (or part of it) was remediated of contamination and earthworks across the site carried out in advance of development under a separate consent process (that could be a restricted discretionary activity), and subsequent building and subdivision development then carried out as a series of permitted activities – again there would be more information required regarding the potential for this but I note the applicant is not pursuing this.

Conditions

27. On Friday morning (16/09/22) the applicant provided me with the latest set of conditions which reflected the conditions conferencing session that was held on Thursday (15/09/22) between Council and the applicant. I would like to make a few comments on these.

Wind:

28. Dr Donn and Mr Jamieson advised on Thursday (15/09/22) that they were in agreement with the revised wording to the landscape and pavement plan condition and the CMP (which requires temporary wind mitigation), however, in Dr Donn's presentation on Friday (16/09/22) he still expressed concerns with B01B's building entries, especially where they relate to the dementia courtyard. To clarify, Dr Donn did not have concerns with all building entries and require specific wind mitigation (wind lobbies). Following Dr Donn's presentation,

the applicant clarified that there were no entries along the north-eastern elevation of B01B where it faces the Lopdell Gardens, but they did acknowledge there is a fire exit. I understand there are two building entries within this part of B01B that connect to the dementia terrace. Dr Donn advised that including the additional wording (refer to the wording in bold) would address his concerns. I was present during this discussion and understand that Mr Jamieson was comfortable with this inclusion. It is therefore Council's request that the below is included in the final wording of the landscape and pavement plan condition.

iv. the courtyard between Buildings B01A and B01B, including the location and type of wind mitigation landscaping (planting, vertical screens or walls **and details for shelter of the entranceway(s)**)

Lighting

29. Following on from Ms Duffell's presentation on Friday (16/09/22), I understand the applicant is in the process of drafting a revised lighting condition. At the time of writing my reply, the revised wording of the condition had not been sighted.

Signage

30. Ms Duffell and I are satisfied with the revised wording of the signage condition.

Landscaping

31. Ms McArthur is seeking for greater planting density in the area between B02-B06 and the southern boundary. Ms McArthur considers it can be addressed via the detailed landscape plan, but there needs to be a balance between additional shading effects and ensuring there is enough planting there (density). 4m is a good height to create a visual buffer. I support Ms McArthur's recommendations and note that Mr Cooper, as well as others in the written submissions, expressed concerns about shading from tall trees along the southern boundary. Ms McArthur recommended a condition which limits the species to small-medium evergreen trees. The applicant does not agree with this, however, I support Ms McArthur's position on this that she outlined on Friday (16/09/22) which was to retain this aspect of the condition (or remove the pittosporum specie). Selecting small to medium evergreen trees would avoid unnecessary shading on the properties to the south whilst still providing visual mitigation that is required.

CNVMP

32. Mr Hannah was not able to attend when Ms Wilkening's presented her summary statement on Wednesday and there were questions asked of her about specifying certain mitigation measures in the CNVMP. As Mr Hannah was not able to attend, I sought advice from the Council's Manager of Compliance and Advice, Mr Matthew Borich. Mr Borich advised that he does not consider it necessary to specify specific mitigation at this stage and that the important factor is to assess non-complying construction activities as they arise prior to undertaking them and working out what mitigation meets best practice at the time (including communication with affected parties). Mr Borich advised that the CNVMP facilitates this and provides flexibility. However, if the applicant knows exactly what would be the best practice now for certain non-complying works and offers up to specify the mitigation in a condition it would be satisfactory to include.

Condition restricting servicing

33. Commissioner McMahon queried whether there is a need for a condition that restricts delivery vehicles / servicing. I raised this with Mr Borich and he advised that such a condition is only considered where there is a significant number of servicing vehicles (including large

vehicles, such as trucks) and when the site directly adjoins residential properties. I note that in Mr Kong's summary statement he said that limiting the servicing hours to 7am-7pm, for example, would minimise servicing effects on adjacent properties. The applicant advised on Friday that they are in the process of obtaining information on servicing and the number of movements, so until such time that this has been confirmed and further considered, I do not agree to the imposition of such a condition just yet as it may not be appropriate.

On-site parking management strategy

34. I note there is not agreement on this condition. Subsequent to Mr Kong's statement summary I sought some further advice from Mr Kong on suggested wording. For completeness, I understand that Mr Kong is satisfied with the wording of the staff travel plan. Mr Kong has suggested the below wording, which I will now talk to, and I note the applicant has not seen this wording in blue (the wording in yellow is what we drafted and agreed to in principle at the conferencing session. I have also included the agreed wording on the staff travel plan (paragraph 36) for ease of reference.

35. *The consent holder shall prepare and implement an on-site parking management strategy to ensure residents, staff and visitors to the proposed village (including service deliveries) are directed to appropriate parking areas, including during shift change overs. The strategy shall identify:*

- Permanent parking areas for staff and visitors (25 for staff and 36 for visitors).*
- Signs and markings that specify the intended use for staff and visitors.*

The consent holder will continue to monitor the resident and staff parking requirements (through the staff travel plan) on a regular basis to adjust the on-site parking management to achieve a high level of on-site parking occupancy through shared use of unallocated parking spaces by staff and visitors.

36. *The consent holder must prepare and implement a staff travel plan for the proposed village. The purpose of the staff travel plan is to encourage staff to use transport modes for commuting to, and from, the proposed village which do not involve the use of a private motor vehicle where practicable.*

The staff travel plan must generally follow the "Workplace Travel Plan Guidelines (NZ Transport Agency, August 2011)" and is to include detail on:

- Staff shifts.*
- Changeover period.*
- Staff number on-site at any given time during the weekday and weekend.*
- Staff travel behaviour and mode choices.*

The staff travel plan must be completed by the consent holder and submitted to the Council's Compliance Monitoring Officer for certification after six months of occupation by the first residents, and then again 12 months after the Proposed Village is fully occupied, that it meets the purpose outlined above.

Matters raised by submitters

37. I want to thank the submitters for presenting at the hearing over the last few days. I always appreciate hearing the real-life experiences of how they live within their properties and this

helps me as a planner. I understand that for some submitters this may have been a challenging experience and I acknowledge that this project does represent a change to their properties and local area. I have listened to the matters that have been raised and have considered them within the context of this application. There are some particular points I would like to respond to, and these are as follows:

38. Mr Andrew Cooper of 49 Campbell Street raised the following matters “that the assessors visit each property to accurately locate the position of windows to inform their assessment.” As the Panel is aware, I visited all the directly adjoining properties (excluding 22 Scapa Terrace) in May 2020. I took photographs of each site, including window placement, and room utility and drew upon that evidence when undertaking my effects assessment.
39. Mr Cooper advised that the bay window (which is located on the northern elevation of his dwelling) is a “sanctuary” and that it is an important source of sunlight for his family. I would like to note that my section 42A expressly considers this window and its utility at paragraph 232. It is because of this window that drew me to disagree with Mr Burns’ conclusion that the effects would be less than minor and I concluded the effects would be minor.
40. I note that since Mr Cooper spoke on Wednesday, the applicant has included a condition of consent that requires the entrance to the undercroft parking area (which close to Mr Cooper’s dwelling) to not be fitted with an audible alarm and that the access barrier is regularly inspected and maintained to ensure any noise from this is minimised.
41. Mr Major of 37 Donald Street queried whether the wider Donald Street crossing would result in the loss of car parking on Donald Street, whether there is a requirement for this development to provide an on-site turning bay, and if it would be possible for the Council to widen the footpath (south of the Allen Ward VC Hall). Mr Kong responded to these matters in his summary on Friday (16/09/22) and his responses are reproduced here for ease.

The proposed 7.5m vehicle crossing is located in a similar location as the existing 6m vehicle crossing. No loss of on-street parking is expected. An on-street park will be added along Donald Street where the redundant vehicle crossing is reinstated with footpath, kerb and channel [which is directly adjacent to the Allen Ward VC Hall].

The internal roading layout is adequate to provide service vehicle turning on-site.

The existing 2m footpath along Donald Street can be widened by 0.5m by removing the grass berm adjacent to the boundary.

42. The potential widening of the footpath would be a decision for Council to make if it is deemed to be required.
43. Privacy effects are a key concern of many submitters. Since my section 42A report was circulated, the applicant amended the upper level windows along the southern elevation of B02-B06 that face 49 Campbell Street and the Scapa Terrace properties. With this change, which includes the use of high level windows with sill heights of 1600mm, I consider privacy effects on these properties will now be less than what I assessed them to be. As for the upper level terraces, we have agreed to remove the reference to the planting being a minimum height of 1.5m on the upper level terraces as the proposed landscape plan said the finished combined height of the pot and plant would be 1.5m, which is considered to be acceptable. The removal of this minimum plant height from the condition does not change my conclusions

reached as the revised landscape and pavement plan condition wording lists a specific line item for that requires the landscaping to reduce privacy effects on the Scapa Terrace properties. I also would like to emphasize that the upper level terraces are setback from the edge of the building (so the setback is more than the 5.5m/4.2m setback from the ground level).



Yellow circles show the setback of the upper level terraces.

44. Mr Cooper and Mr and Mrs Ingham, as well as other submitters in their written submissions, expressed dissatisfaction with the consultation undertaken by Ryman. I note section 36A of the Act which states that an applicant for a resource consent does not have a duty to consult any persons.
45. I appreciate Mr King has gone to a lot of effort with his submission and has raised a number of points. For the purposes of my response, I have limited these to a planning response as this is where my expertise lies. If the Panel has questions that are more of a legal nature, then such a response would need to be sought by the Panel after the completion of my right of reply.
46. While Mr King has raised the possibility that the effects on a person with a disability are greater than what he characterises as a “normal” person, as a planner I am guided by the District Plan’s objectives, policies, and rules (including departures from any permitted standards) in determining the extent of effects on the environment and on persons. I am also guided by the expert assessments provided by both Council and the applicant in determining the extent of effects. The expert assessments help inform my overall effects assessment effects and my conclusions reached on whether the effects will be less than minor, minor, or more than minor.
47. Mr King discussed multi-unit developments and policy framework around multi-unit developments and noted that the effects can be more difficult to manage or that the interface becomes more challenging. Mr King advised that with a multi-unit development, the Council has given itself discretion in relation to building height to go up to 10m and that if they are below 10m then the Council has gone through a process in considering effects and concluded its discretion can be exercised. I understand Mr King was suggesting that buildings that exceed 10m are a Non-Complying Activity.

48. A multi-unit development triggers consent under Rule 5.3.7 as a Restricted Discretionary activity. Under this rule, the matters of discretion relate to design (including bulk, height, and scale), provision of parking and site access, the efficient use of land on any site within a Medium Density Residential area (note I am referring to a zone in the Operative District Plan, not the Medium Density Residential Area in the Proposed District Plan so this is not applicable), traffic effects, the visual character of the coastal environment, which again is not applicable.
49. I would like to highlight here that there is not a specific matter of discretion under Rule 5.3.7 that provides for buildings to go up to 10m. 8m is the permitted activity standard for a residential building in the Outer Residential Area and where a proposal exceeds 20% of the permitted activity standard, as outlined in condition 5.3.4.16 under Rule 5.3.4 (not Rule 5.3.7), it would then become a Non-Complying Activity. Thus, any building in the Outer Residential area would have to exceed the permitted building height by 20% to be assessed as a Non-Complying Activity and that this applies to all buildings in the Outer Residential Area where the height is exceeded – it does not exclusively relate to multi-unit developments. There are also other conditions which would elevate the activity status to a Non-Complying Activity, such as site coverage exceeding 42% and recession planes exceed more than 3m in height.
50. On the other side of the ledger, in addition to other matters raised Mrs Ho talked about the positive benefits in being able to retire in their suburb where they currently live and Mrs Marshall talked about the site's close proximity to public transport and how this was a

Other matters

51. In terms of other matters raised throughout the hearing (not by submitters) that I would like to clarify, these include the below:

High Trip Generator

52. I can confirm that the ODP does not control the number of vehicle movements associated with residential activity in the Outer Residential Area. TR-S1 in the PDP outlines that the maximum number of light vehicle movements is 200 per day and eight heavy vehicle movements per week.

Relationship between conditions 1 and 65

53. On day one of the hearing, the Commissioners invited Ms Duffell and I to consider the relationship between conditions 1 and 65. The wording of this condition, which includes exterior envelope materials and colour palette, has been agreed to by the applicant and Ms Duffell.

Correction

54. I would like to make a correction to paragraph 208 of my section 42A report as follows:

“Submitter 72 (Bernadette and Tristram Ingham of 22 Scapa Terrace) stated that...”

55. I apologise to Mr and Mrs Ingham for this error.

Conclusion

56. My section 42A report, which draws upon the advice of various experts, concludes that the effects will be no more than minor. The proposal has significant positive effects and, subject

to imposition of suitable conditions, is on balance considered to have effects that are acceptable.

57. My section 42A report provides an assessment of the NPS-UD and RPS and I consider the proposal aligns with the strategic intent of these higher policy documents and I consider that the proposal achieves the outcomes sought by the NPS-UD. I consider the proposal is not contrary to the objectives and policies of the Operative District Plan or the Proposed District Plan and note that aside from inconsistency with three policies, the proposal is generally consistent with the Operative District Plan and achieves a greater degree of consistency with the Proposed District Plan.
58. I consider the proposal to be consistent with Part 2 of the Act.
59. I note that there are some conditions in which there is not complete agreement between the applicant and Council. These relate to the on-site parking strategy, the landscape and pavement plan (as it relates to density and the tree type along the southern boundary). I also note that at the time of writing this reply the Council was not in receipt of the updated lighting condition and I have not received confirmation from the applicant that they have accepted Dr Donn's supplementary wording that addresses providing additional shelter at the building entranceway(s) between B01B and the dementia terrace) – I stress that the inclusion of this into the landscape plan is critical in ameliorating Dr Donn's concerns.
60. I have considered the evidence and matters raised throughout this hearing process from the Council experts, applicant and their experts, and submitters and I can confirm that my position and recommendation, as outlined in my section 42A report, has not changed.
61. I therefore recommended that proposal to establish a comprehensive care retirement village be granted subject to the imposition of conditions of consent to manage and mitigate effects.