

Before the Hearing Commissioners at Wellington City Council

under: the Resource Management Act 1991

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

between: **Ryman Healthcare Limited**
Applicant

and: **Wellington City Council**
Consent Authority

Opening legal submissions on behalf of Ryman Healthcare Limited

Dated: 13 September 2022

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OPENING LEGAL SUBMISSIONS ON BEHALF OF RYMAN HEALTHCARE LIMITED

Overview of Ryman's case

- 1 Ryman Healthcare Limited (*Ryman*) seeks resource consent from Wellington City Council (*Council*) to establish a high quality, comprehensive care retirement village (*Proposed Village*) at 26 Donald Street and 37 Campbell Street, Karori, Wellington (*Site*).
- 2 Ryman is New Zealand's leading provider of retirement living. Ryman currently has 38 retirement villages in operation across New Zealand providing homes for over 13,200 elderly residents. Ryman is a New Zealand company, having been established in Christchurch in 1984. It has five villages in operation in the Wellington region. Ryman is committed to providing the elderly residents of Wellington with modern and top-quality accommodation, care and amenities.
- 3 The Proposed Village is needed now. Its benefits are substantial:
 - 3.1 The Proposed Village will make a strong contribution to the wellbeing and health and safety of one of the most vulnerable demographics within Wellington, some of which have particular health needs. The Proposed Village will provide a specialist continuum of care for elderly residents with a range of needs - from independent living in apartments, to assisted living, and rest-home, hospital and dementia care. The Proposed Village will allow these residents to remain living within their community (to 'age in place') maintaining close links with family, friends and familiar amenities. It will also improve the quality of life of its future residents.¹ And, pressure on public health services will be reduced.
 - 3.2 As will be explained by Mr Matthew Brown, there is a critical lack of retirement and aged care in New Zealand and in Wellington. There were 8,681 people in Wellington City aged 75+ in 2018. By 2043, that number will more than double to 23,643.² Existing and consented retirement villages only have the capacity to house around 1,400 residents, which is inadequate to meet the increasing demand.³ Ryman already has a list of over 440 people who wish to live in the Proposed Village, without having undertaken any official marketing.⁴ Purpose built, high quality homes for the elderly in Wellington are desperately needed.
 - 3.3 Wellington is one of only five 'Tier 1' urban environments under the National Policy Statement on Urban Development

¹ Statement of Evidence of Mr Brown, paragraph 11.

² Statement of Evidence of Mr Brown, paragraph 28.

³ Statement of Evidence of Mr Brown, paragraph 30.

⁴ Statement of Evidence of Mr Brown, paragraph 10.

2020 (*NPSUD*). This policy statement makes new housing and intensification in the city the government's highest priority. The Proposed Village will make a substantial contribution towards the projected demand for housing in Wellington. It will provide new accommodation for around 360 people. It will also free up a substantial stock of existing houses for other individuals and families in need of homes.⁵

- 3.4 The Site is ideally suited for the Proposed Village. It is a large, residentially zoned brownfield site – a very rare resource in existing urban areas. The Site is the only one available in this part of Wellington that Ryman, as a retirement care expert, considers to be appropriate to provide the best quality of life for its residents.⁶ The Proposed Village will therefore represent a highly efficient use of a scarce land resource.
- 3.5 The Site is located in close proximity to a range of local amenities, such as supermarkets, a library, cafes, a medical centre and more, that residents will continue to use and enjoy. It is easily accessible via pedestrian, road and public transport links.
- 3.6 It previously contained the former Teachers' College which played an important community role, just as the Proposed Village will.⁷ The large, tall, education buildings with their distinctive brutalist architecture, made the Site a 'landmark' within the Karori community, which the Proposed Village will continue.⁸
- 3.7 The Proposed Village will ensure the history of the Site is carried forward by allowing the restoration and reuse of the Allen Ward VC Hall, the Tennant Block and the Oldershaw Octagonal Block, as well as the retention and restoration of the Lopdell Gardens. These features are part of a Category 1 Historic Place under the New Zealand Heritage List (although these features are not listed in the Operative Plan or Proposed Plan). The retention of these features will ensure the Proposed Village connects to the past, while providing an important resource for the future.
- 3.8 The Wellington City District Plan (*Operative Plan*) envisages more intensive development of 'windfall sites' like the Site. The Wellington City Proposed District Plan (*Proposed Plan*) has included the Site and surrounds in the Medium Density

⁵ Statement of Evidence of Mr Brown, paragraph 16.

⁶ Statement of Evidence of Mr Brown, paragraph 48.

⁷ Statement of Evidence of Mr Brown, paragraph 48.

⁸ Statement of Evidence of Ms Skidmore, paragraph 13.

Residential Zone, and therefore envisages intensification occurring in this area.

- 3.9 The Proposed Village will provide significant economic benefits to the community and the local workforce during construction, as well as providing employment and utilising local suppliers once it is operational.
- 4 The Proposed Village application is the culmination of many years of work by the Ryman team, its designers and experts. Ryman has engaged extensively and collaboratively with Council officers. It has adapted its design to address their feedback, where it will improve and enhance the overall design outcomes. This approach has led to overall support from the Council officer team. There are now only matters of relatively minor detail in the conditions that have not yet been resolved. Ryman continues to work with the Council to agree the appropriate conditions for the Proposed Village. Consultation with the community has also been extensive.
- 5 The widespread support for the Proposed Village, including strong endorsement from the local Karori Residents Association, is evidenced in the many positive submissions lodged (around half of all submissions received). The submissions in support identified Ryman as a reputable operator, said the Site was appropriately located for a retirement village, and supported the high quality design of the Proposed Village. They also identified the provision of housing, the investment in the local economy and the reduction in health system pressures as key benefits.
- 6 In terms of those submissions that have expressed concerns, Ryman has carefully considered the issues raised. A key issue raised by submitters relates to the character and scale of the Proposed Village. This is a point of difference between Ryman/Council (whose independent experts are aligned) and the submitters. And, as Mr Brown and Mr Isaac Bright will explain, the scale and design of the Proposed Village responds to its functional and operational needs and the expectations of residents. A reduction in scale would impact on the scale required to provide the necessary services. The reductions in scale sought by some submitters would also see many older people miss out on much-needed retirement housing and care.
- 7 Another key issue raised by submitters relates to the construction effects of the Proposed Village. Ryman has amended its application to address some of the concerns raised by submitters as follows:
 - 7.1 A Construction Management Plan and ancillary management plans will establish widely used, industry standard protocols for the management of dust, noise and vibration, traffic, construction hours, removal of contaminated soil and sediment and erosion controls, during construction of the Proposed Village;

- 7.2 Pre and post-construction building surveys will be offered to the owners of properties adjoining the Site to ensure any damage (which is unlikely) is appropriately documented and remedied. In addition to surveys, Council has proposed a ground movement monitoring plan condition. Ryman has accepted that condition, subject to some amendments to ensure workability;
- 7.3 Although Ryman will carefully manage construction to minimise potential dust impacts, house washing will be offered to neighbours as reasonably necessary;
- 7.4 A draft construction traffic management plan has been provided. A final management plan will be submitted to Council for certification based on that draft; and
- 7.5 Responsible Development Karori will be invited to form a community liaison group to enable proactive discussions throughout the construction process.
- 8 The Proposed Village fits comfortably with the general direction set out in the Operative Plan. To the extent that there is any potential inconsistency, the Operative Plan is now out-of-date in seeking to “not detract from”, be “compatible with” or “maintain” existing residential character and amenity.⁹ Nevertheless, it does encourage multi-unit developments to locate on ‘windfall sites’ such as this one, which provides some counterbalance. And, more importantly, the Proposed Village fits even more comfortably with the direction of the Proposed Plan with regard to character, amenity and intensification. Those aspects of the Proposed Plan, as directed by the government through the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Enabling Housing Act*), focus heavily on enabling residential intensification, encouraging change to occur, and substantially deprioritising existing amenity expectations.
- 9 Overall, the application is a non-complying activity. Accordingly, the discretion of the Commissioners is not limited to particular effects categories. The Commissioners must also determine whether the Proposed Village passes one of the ‘gateway tests’ in section 104D of the RMA, before considering whether to grant consent to the Proposed Village under s104.
- 10 Ryman’s expert team have comprehensively assessed all potential effects of the Proposed Village. In most cases, the effects are assessed as being positive, negligible or less than minor. And, the effects are assessed as being no more than minor overall when viewed against the environment and the planning expectations for the area.

⁹ Policy 4.2.1.5, Policy 4.2.3.1 (explanation), Policy 4.2.4.1 and Objective 4.2.7.

- 11 Ryman proposes to manage any residual effects through a comprehensive suite of conditions. These conditions are informed by robust industry practises and guidelines, as well as the experience of Ryman's and the Council's experts. Ryman has an excellent track record of delivering similar-scale projects in residential environments across New Zealand.
- 12 The Council Officer's Report (*Officer's Report*) concludes that the environmental effects of the Proposed Village are acceptable, and that the Proposed Village is not contrary to the objectives and policies of the Operative and Proposed Plans. The Officer's Report recommends granting consent for the Proposed Village, subject to conditions.¹⁰
- 13 We submit that the Commissioners can be comfortable granting the resource consent for the Proposed Village. The application meets the necessary statutory tests under the Resource Management Act 1991 (*RMA*). We also submit that there is no legal impediment - under the RMA or any other legislation - that would prevent the Commissioners from granting the resource consent.
- 14 Ryman will call the following witnesses in support of the Proposed Village:
 - 14.1 **Mr Matthew Brown**, Ryman's New Zealand Development Manager. Mr Brown will set out Ryman's philosophy and why Ryman wishes to use the Site for a retirement village. He will also outline the consultation and public open days undertaken by Ryman, which have helped better inform submitters and other locals and address some concerns about the Proposed Village.
 - 14.2 **Mr Isaac Bright**, Ryman's Group Design Manager. Mr Bright will speak to key plans to provide an overview of the design and layout of the Proposed Village and will explain the design philosophy.
 - 14.3 **Mr Andrew Burns**, Director at McIndoe Urban. Mr Burns will address the urban design-related effects of the Proposed Village.
 - 14.4 **Ms Rebecca Skidmore**, Urban Designer and Landscape Architect. Ms Skidmore will address the landscape and visual effects of the Proposed Village.
 - 14.5 **Mr David Pearson**, Principal of Dave Pearson Architects. Mr Pearson will address historic heritage, particularly focusing on the reuse of the former Teachers' College buildings and their fit within the new retirement village setting.

¹⁰ Council Officer's Report – Laura Brownlie, paragraphs 639-641.

- 14.6 **Mr Neil Jamieson**, Research Leader (Wind Engineering) at WSP New Zealand Limited. Mr Jamieson will address the wind effects of the Proposed Village.
- 14.7 **Mr Brady Cosgrove**, founding Director, Board Chairman and Principal Fire Engineer at Cosgroves Limited. Mr Cosgrove will address the New Zealand Building Code fire safety requirements and the fire safety design for the Proposed Village.
- 14.8 **Mr Leo Hills**, Traffic Engineer and Director at Commute Transportation Consultants Ltd. Mr Hills will address the traffic and transportation effects of the Proposed Village.
- 14.9 **Mr Ajay Desai**, Senior Associate – 3 Waters Engineer at Woods. Mr Desai will address the earthworks and stormwater-related effects of the Proposed Village as well as the wastewater and potable water infrastructure provision.
- 14.10 **Ms Siiri Wilkening**, Acoustic Engineer, and Director at Marshall Day Acoustics. Ms Wilkening will address noise and vibration effects arising from construction and operation of the Proposed Village.
- 14.11 **Mr Richard Turner**, Consultant Planner and Director at Mitchell Daysh Limited. Mr Turner will provide his assessment of the Proposed Village against the provisions of the RMA, commenting particularly on the relevant statutory planning provisions and how they influence the assessments of effects. He will also discuss the status of the proposed conditions.
- 15 In accordance with Minute 5, Ryman is not calling Mr Pierre Malan (geotechnical) and Mr Paul Walker (contaminated land). Both experts are available to respond in writing to any questions from the Commissioners should they arise.

Submission structure

- 16 These submissions address the following topics:
- 16.1 Preliminary administrative matters;
- 16.2 Preliminary legal matters;
- 16.3 A summary of the correct approach for the consideration of planning provisions under section 104(1)(b) of the RMA;
- 16.4 A summary of the key effects on the environment for consideration under section 104(1)(a) of the RMA and the main areas of contention; and
- 16.5 Our conclusions.

Preliminary administrative matters

Drawings, conditions, clarifications

- 17 Our memorandum dated 11 September 2022 sets out the current position in terms of the most up to date Resource Consent Drawings, the status of the conditions and responses to the Council’s Matters for the Applicant to comment on.

Amended submission

- 18 Ms and Mr Cheng Hao¹¹ of 40 Campbell Street lodged a submission in support of the Proposed Village. The submitter recently sought to amend the submission to oppose the Proposed Village.¹² Ryman does not oppose the late change of position of this submitter. The issues raised by the submitter (relating to visual effects, shading, operational traffic and noise) have been generally addressed in the Ryman evidence. The relevant experts will also provide a more specific response to the submission points in their summary statements.

Preliminary legal matters

Affected party approvals

- 19 Ryman is the owner of the unoccupied 33 Campbell Street and has provided its written approval to the Proposed Village. Accordingly, the Commissioners cannot consider any effects of the Proposed Village on it.¹³

Activity status

- 20 The Proposed Village is a non-complying activity.¹⁴ This activity status arises due to the breach of some standards in the Operative Plan.¹⁵ Most of these standards have now been overtaken by the new standards in the Proposed Plan, which have immediate legal effect.¹⁶ Nevertheless, the non-complying activity status remains.¹⁷

Section 104D test

- 21 Accordingly, the ‘gateway tests’ in section 104D of the RMA apply. The Commissioners must be satisfied that *either*:

21.1 The adverse effects of the activity on the environment will be minor; or

¹¹ Submission 67 (L Hao).

¹² Email dated 4 September 2022.

¹³ RMA, s104(3)(a)(ii).

¹⁴ Statement of Evidence of Mr Turner, paragraph 163.

¹⁵ Statement of Evidence of Mr Turner, paragraph 37.

¹⁶ RMA, s86BA.

¹⁷ Statement of Evidence of Mr Turner, paragraph 58; Council Officer’s Report – Laura Brownlie, paragraph 76.

- 21.2 The application is for an activity that is not contrary to the objectives and policies of both the relevant plan and the relevant proposed plan.
- 22 We make some brief observations in relation to the correct approach to the application of the gateway tests:
- 22.1 In relation to the first gateway test, the Commissioners must consider the residual adverse effects of the Proposed Village that will arise *after* mitigation is applied. The Commissioners cannot however take into account the positive effects of the Proposed Village;¹⁸ and
- 22.2 In relation to the second gateway test, the Commissioners must consider whether the activity is “*not contrary to*” the objectives and policies. It is not necessary for the activity to be supported by the relevant plan provisions.¹⁹ As highlighted by Mr Turner, “not contrary to” means “*clearly 'opposed in nature' or 'repugnant' to the overall policy direction*”.²⁰
- 23 Based on the evidence of Mr Turner, supported by Ms Laura Brownlie, it is submitted that the Proposed Village satisfies *both* of the gateway tests in section 104D of the RMA. In any case, if either of the gateway tests is met, then the application can be considered on its merits under s104.

Relevance of Part 2 RMA

- 24 The Commissioners will be aware of the Court of Appeal decision – *Davidson v Marlborough District Council* – which addresses the consideration of Part 2 in the context of resource consent applications. The Court of Appeal stated that, where a plan has been competently prepared having regard to Part 2 of the RMA, the decision maker should simply implement the plan provisions, as reference to Part 2 would “*likely not add anything*”.²¹
- 25 The planning context here is in a state of flux and there is the potential that the Operative Plan may not meet the “*competently prepared*” test as it is significantly out-of-date, particularly in relation to the NPSUD and the Regional Policy Statement. Further, the Proposed Plan is a full plan review, but is at an early stage of development. It has, however, been prepared to give effect to the NPSUD in places. For those reasons, Mr Turner provides a Part 2

¹⁸ *Director-General of Conservation (Nelson-Marlborough Conservancy) v Marlborough District Council* [2010] NZEnvC 403, paragraph 703.

¹⁹ *Outstanding Landscape Protection Society Inc v Hastings District Council* [2008] NZRMA 8, paragraph 15.

²⁰ Statement of Evidence of Mr Turner, paragraph 172. See *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2021] NZHC 390, paragraph 24.

²¹ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, paragraphs 74-75.

assessment in his evidence.²² Ms Brownlie has also provided a Part 2 assessment.²³ Both planners agree the Proposed Village is consistent with Part 2 of the RMA and does not otherwise alter their conclusions.

- 26 That said, the application can also be granted without resort to Part 2 with appropriate guidance from the NPSUD as needed. In that sense, Part 2 is unlikely to add anything. Ryman does not rely on Part 2 of the RMA to support its case (albeit Part 2 does in fact support its case).

Section 104(1)(b) – relevant planning provisions

- 27 This section of our legal submissions addresses the approach to the planning documents relevant to this application under section 104(1)(b) of the RMA. It also discusses the Enabling Housing Act given its immediate impact on the planning context.

Section 104(1)(b)(iii): National Policy Statement on Urban Development

- 28 The NPSUD took effect on 20 August 2020. As noted, given the planning context here is in a state of flux it is submitted that reference to the NPSUD will be particularly important when considering the relevant aspects of the Proposed Village.²⁴
- 29 The key objectives and policies of the NPSUD, which resource consent decision-makers must have regard to,²⁵ are summarised in Mr Turner’s evidence.²⁶ The NPSUD underlines the importance of:²⁷

29.1 Well-functioning urban environments that:

- (a) Enable all people and communities to provide for their wellbeing and their health and safety. As Mr Brown will explain, the Proposed Village will provide for a particularly vulnerable segment of the community, where wellbeing and health and safety are particularly important;
- (b) Enable a “*variety of homes*” that meet the needs of different households. As Mr Brown and Mr Bright will explain, the Proposed Village form and the variety of living options is comprehensive and driven by the needs of the future residents as they age;

²² Statement of Evidence of Mr Turner, paragraphs 209-223.

²³ Council Officer’s Report – Laura Brownlie, paragraphs 619-633.

²⁴ See also, Statement of Evidence of Mr Turner, paragraph 193.

²⁵ RMA, s104(1)(b)(iii).

²⁶ Statement of Evidence of Mr Turner, paragraphs 195-196.

²⁷ NPSUD, objectives 1, 3, 4 and policies 1, 3 and 6.

- 29.2 Enabling “*more people*” to live in areas that are in or near a centre zone, well-serviced by public transport, and where there is high demand for housing. All of these characteristics apply to the Site; and
- 29.3 Urban environments, including their amenity values, developing and changing over time in response to the needs of people, communities and future generations. The NPSUD records a well-understood principle in resource management practice, that change is not of itself an adverse effect. Plans may provide for change that alters the present amenity of some and improves the amenity of other people and communities.
- 30 The NPSUD also bars the use of minimum car parking requirements and as Mr Turner points out, the Proposed Village no longer triggers a consent requirement related to minimum carparking.²⁸ While the NPSUD does not expressly exclude the consideration of car parking in consenting processes, it sends a strong signal that car parking effects will carry less significance in consenting processes than previously. This point is not raised because there is any disagreement between the traffic experts as to the appropriateness of the number of carparks provided by Ryman. It is raised because there is an outstanding issue as to the need for a condition requiring monitoring of car-parking in the future.²⁹ It also addresses Ms Brownlie’s suggestion that, “*the proposal needs to be assessed on the framework that existed at the time of the application being submitted*”,³⁰ which is not strictly correct.
- 31 Mr Turner’s evidence addresses the NPSUD. Overall, he concludes that the Proposed Village is consistent with, and gives effect to, the urban development expectations of the NPSUD.³¹
- 32 It is submitted that granting the consent for the Proposed Village will make a material contribution to achieving the objectives and policies of the NPSUD. The NPSUD clearly does provide additional support for the Proposed Village. In saying that, Ryman does not rely on the NPSUD in relation to its application. The application also stands on its own merits, when considered under both the Operative Plan and the Proposed Plan.

Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

- 33 Since the application was lodged, the Enabling Housing Act has entered into force. The Enabling Housing Act was intended to

²⁸ NPSUD, Policy 11 and 3.38; and see the Statement of Evidence of Mr Turner, paragraph 39.

²⁹ Statement of Evidence of Mr Hills, paragraphs 140-145.

³⁰ Council Officer’s Report – Laura Brownlie, paragraph 427.

³¹ Statement of Evidence of Mr Turner, paragraph 197.

*“dea[l] with one of the barriers to boosting housing supply: overly restrictive council planning laws” and “speed up the NPSUD implementation”.*³²

- 34 As Wellington is a ‘Tier 1’ urban environment, the Enabling Housing Act creates a duty for the Council to incorporate the Medium Density Residential Standards³³ (MDRS) and to give effect to Policy 3 of the NPSUD in relevant residential zones.³⁴ Only in very limited circumstances (ie where a ‘qualifying matter’ is present) can development be restricted.³⁵
- 35 To comply with that duty, the Enabling Housing Act required Council to notify an ‘intensification planning instrument’, which must proceed through an ‘intensification streamlined planning process’.³⁶ The Council met this requirement through the notification of its Proposed Plan on 18 July.
- 36 The MDRS include objectives, policies, rules and density standards that set out the new framework for development in residential zones.
- 37 It is submitted that the Enabling Housing Act represents a ‘step change’ in residential intensification expectations in our cities, particularly in Wellington where the Operative Plan is relatively old. It locks in an expectation of change, and rejects protection or maintenance of status quo amenity.
- 38 We discuss the weighting to be given to the Proposed Plan provisions (including the MDRS) in light of the Enabling Housing Act below.

Section 104(1)(b)(vi): Proposed Plan

- 39 The Proposed Plan was notified on 18 July 2022. Mr Turner’s evidence provides a detailed assessment of the relevant Proposed Plan provisions,³⁷ which is generally consistent with Ms Brownlie’s opinion.
- 40 The Proposed Plan has been prepared in part to give effect to the NPSUD generally, and to implement the Enabling Housing Act. It therefore represents a significant policy shift from the Operative Plan, particularly in relation to density and intensification expectations.

³² (26 October 2021) 755 NZPD, Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill - First Reading, Hon Dr Megan Woods.

³³ RMA, Schedule 3A.

³⁴ RMA, s77G.

³⁵ RMA s77I.

³⁶ RMA, ss80E and 80F.

³⁷ Statement of Evidence of Mr Turner, Appendix C.

- 41 The Site is zoned Medium Density Residential (*MRZ*) under the Proposed Plan. The MDRS objectives, policies, rules and density standards have been applied to the MRZ. The MDRS create the following key expectations:
- 41.1 A well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.³⁸
 - 41.2 A residential zone that provides for a variety of housing types and sizes that respond to housing needs and demand and the neighbourhood's planned urban built character, including 3-storey buildings.³⁹
 - 41.3 The use or construction of a building is permitted if it complies with the density standards.⁴⁰ These standards include 3 residential units per site, buildings to 11m in height plus a roof allowance, a 60° recession plan measured from 4m height at the boundary, setbacks of 1 – 1.5m, and a building coverage of 50%.⁴¹
 - 41.4 Developments not meeting permitted activity status are provided for, while encouraging high-quality developments.⁴²
- 42 The MRZ also includes a policy to “*provide for*” retirement villages, indicating that they are an expected part of the MRZ.⁴³
- 43 In light of the intensification expectations of the Proposed Plan, it is submitted that the Proposed Village is highly consistent with the residential development expectations of the Proposed Plan.

Section 104(1)(b)(vi): Operative Plan

- 44 Mr Turner's and Ms Brownlie's evidence provide a detailed assessment of the relevant Operative Plan provisions.⁴⁴
- 45 The residential development expectations of the Operative Plan are set out in the evidence of Mr Turner.⁴⁵ Under the Operative Plan, policy support for residential intensification within the Outer Residential Area is relatively limited. However, the Operative Plan recognises the residential intensification opportunities presented by

³⁸ Objective 1. RMA, Schedule 3A, clause 6(1).

³⁹ Objective 2. RMA, Schedule 3A, clause 6(1); Policy 1. RMA, Schedule 3A, clause 6(2).

⁴⁰ RMA, Schedule 3A, clause 2.

⁴¹ RMA, Schedule 3A, part 2.

⁴² Policy 5. RMA, Schedule 3A, clause 6(2).

⁴³ Proposed Plan, Policy MRZ – P7.

⁴⁴ Statement of Evidence of Mr Turner, Appendices A and B.

⁴⁵ Statement of Evidence of Mr Turner, paragraph 26.

'windfall sites' – being "relatively large properties within an established residential area which have not been developed for residential purposes".⁴⁶ Mr Turner and Ms Brownlie, as well as the urban design experts for Ryman and Council, all agree the Site is a 'windfall site'.⁴⁷ This context supports the views they have reached, that the Proposed Village is generally consistent with the residential development expectations of the Operative Plan.

Relevance of built form standards and breaches

46 Some submitters raise concerns about the Proposed Village's breach of the Operative Plan built form standards. From a legal perspective, built form standards are not immutable limits. Rather, they are simply triggers for additional assessment. A breach of a standard cannot, of itself, be assumed to create unacceptable adverse effects.

47 The assessment of effects must also be informed by the planning context and not be undertaken in a vacuum.⁴⁸ That said, the built form standards are not to be used as a quasi-'permitted baseline'.

48 Ryman's experts refer to the standards as a factor that has informed their assessments. The original assessments were informed by the Operative Plan, and they have been updated in evidence to also address the Proposed Plan. In our submission, that is an appropriate approach and it can therefore be adopted by the Commissioners.

Weighting of Plans

49 The weight to be given to the Plans tends to become more important in the event of material conflict between the Operative and Proposed Plan provisions. Mr Turner and Ms Brownlie have only identified one area of material conflict between the Plans in this case.⁴⁹ This conflict relates to Operative Plan provisions that seek to maintain existing residential character and amenity and the Proposed Plan provisions that seek greater change and intensification.

50 The weight to be given to the Operative Plan and Proposed Plan is relevant to both the test in s104D of the RMA (in relation to objectives and policies) and the test in s104 of the RMA (in relation to all provisions).

⁴⁶ Operative Plan, Policy 4.2.1.5 explanatory text.

⁴⁷ Statement of Evidence of Mr Turner, paragraph 28. Council Officer's Report – Laura Brownlie, paragraphs 307 and 341.

⁴⁸ *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673, paragraphs 77-82, 85. *Summerset Villages (St Johns) Ltd v Auckland Council* [2019] NZEnvC 173, paragraphs 31-32 and 66.

⁴⁹ Statement of Evidence of Mr Turner, paragraph 29. Council Officer's Report – Laura Brownlie, paragraphs 635-637.

- 51 The general position is that the weight to be given to a proposed plan is considered on a case-by-case basis. Relevant factors include the extent to which it has proceeded through the planning process (and therefore the extent to which the provisions are subject to change) and whether there has been a significant shift in policy.⁵⁰
- 52 This case is perhaps unusual compared to previous cases involving weighting in that the Proposed Plan contains a number of “mandatory” provisions that must be included due to the Enabling Housing Act – the MDRS. The MDRS have immediate legal effect and cannot be modified through the planning process, because they are specified in legislation.⁵¹ It is submitted that the Proposed Plan provisions based on the MDRS fall within the category of a ‘significant shift in policy’ and are designed to give effect the NPSUD. Overlaid with their mandatory nature, it is submitted that these provisions can and should be given substantial weight.
- 53 It is submitted that Mr Turner and Ms Brownlie have correctly given greater weight to the Proposed Plan provisions that anticipate residential intensification and change to the existing environment.

Section 104(2) – ‘Permitted baseline’

- 54 The RMA allows decision-makers to disregard an adverse effect of an activity on the environment, if the plan permits an activity with that effect (a ‘permitted baseline’). Neither Mr Turner nor Ms Brownlie have applied a permitted baseline relating to the overall buildings. They do agree that a 2m high fence can be used as permitted baseline to inform the effects of shading.⁵²

***Section 104(1)(a) - Effects on the Environment
Approach to considering effects***

- 55 The effects for the Commissioners to consider and assess are matters for expert opinion rather than legal submission. They are addressed in the evidence prepared on behalf of Ryman, which is largely supported by the Council’s expert evidence.
- 56 There is, of course, a need to focus on the effects on the environment arising from the Proposed Village, rather than on the magnitude of the ‘numbers’ (for example, height, length, number of storeys, etc) or the fact that you can see it. The numbers and views of the Proposed Village are not, on their own, effects.

⁵⁰ *Keystone Ridge Limited and Auckland City Council* (AP24/01 HC Auckland 3 April 2001), at [16].

⁵¹ Some of the MDRS (rules authorising a permitted activity) also have immediate legal effect: RMA, s86BA.

⁵² Statement of Evidence of Mr Turner, paragraphs 73-75. Council Officer’s Report – Laura Brownlie, paragraphs 70-74.

57 In particular, a 'change' resulting from the use of the Site should not be construed as an adverse effect in itself.⁵³ The residential zoning of the Site means that change is anticipated and encouraged. Given its many positive characteristics, it would be unreasonable to expect the Site not to be developed efficiently. Further, as noted by Ms Skidmore, the Site currently has a poor visual quality in many respects and, while the magnitude of change will be high in some cases, the introduction of a residential character will be positive.⁵⁴

Positive effects

58 The positive effects of the Proposed Village are substantial, as outlined earlier in these submissions and in Mr Brown's evidence. The key positive effects relate to:

58.1 The wellbeing and health of the future residents. The Proposed Village will provide appropriate accommodation and care for its future residents, with a layout and environment designed to meet the specific physical and social needs of elderly people. As Mr Brown will explain, there is a desperate need for a comprehensive care retirement village in this area and the Proposed Village will improve the quality of life of its residents;

58.2 The repurposing of a vacant, residentially zoned site for residential intensification;

58.3 The restoration and reuse of the Allen Ward VC Hall, the Tennant Block and the Oldershaw Octagonal Block, along with the preservation and restoration of the Lopdell Gardens (which is not required under the planning provisions – Ryman have chosen to preserve and restore these areas);

58.4 The establishment of a pocket park on Donald Street for the community's use;

58.5 The release of family homes back onto the market as residents move into the Proposed Village;

58.6 Flood reduction benefits along Donald Street, Campbell Street and Scapa Terrace; and

58.7 The provision of jobs and other economic benefits during the construction and operation of the Proposed Village.

59 In any event, Ryman does not rely on any positive effects to 'balance out' any adverse effects of the Proposed Village. All of the potential adverse effects of the Proposed Village have been fully

⁵³ The NPSUD also indicates that change is not of itself an adverse effect: Policy 6(b)(ii).

⁵⁴ Statement of Evidence of Ms Skidmore, paragraph 99.

addressed by the Ryman expert team on their merits and have been avoided or mitigated to appropriately low levels.

Neighbourhood character and residential amenity effects

- 60 Ryman has put significant effort into producing a high quality architectural design that suits the Site's 'landmark' nature and its history, and makes a positive contribution to the surrounding neighbourhood.⁵⁵
- 61 The design process was led by Ryman's in house design team. As described by Mr Bright, the design of the Proposed Village evolved into the current scheme in response to:⁵⁶
- 61.1 The Operative Plan provisions;
 - 61.2 The surrounding environment and neighbouring properties;
 - 61.3 The design, heritage values and structural integrity of the former Teachers' College buildings;
 - 61.4 The functional and operational needs of the Proposed Village;
 - 61.5 Daylight, wind, orientation and massing considerations;
 - 61.6 Vehicular and pedestrian connectivity needs;
 - 61.7 The existing vegetation on the Site and the evolution of the landscaping design; and
 - 61.8 The impact of overland flowpaths.
- 62 The design of the Proposed Village was also refined in response to feedback from Council officers during the course of 2021. The focus of the design refinements was to improve the fit of the Proposed Village within its context. As a result of that further work, the design of the Proposed Village has the support of Council's urban design and landscape experts.
- 63 Some submitters raise concerns about the 'character' of the Proposed Village, the scale and bulk of the buildings and the potential for the buildings to affect the amenity of neighbouring properties. Despite the concerns raised by submitters, there are no material areas of disagreement between Ryman's experts and the Council's experts as to residential amenity and urban design effects. All experts are agreed that the residential amenity and urban design effects of the Proposed Village are acceptable.

⁵⁵ Statement of Evidence of Mr Brown, paragraph 13. Statement of Evidence of Mr Bright, paragraph 58.

⁵⁶ Statement of Evidence of Mr Bright, paragraph 58.

Landscape and visual assessment

- 64 Ms Skidmore provides a comprehensive assessment of the landscape and visual effects of the Proposed Village.
- 65 In terms of landscape effects, Ms Skidmore considers the Proposed Village will reinforce the distinctive character and landmark qualities of the Site.⁵⁷ She notes that the Proposed Village will result in an increased scale and density of buildings on the Site, but unlike the former collection of buildings, it will be residential in character.⁵⁸
- 66 In terms of visual effects, Ms Skidmore identifies that the Proposed Village will be visible, and in some instances prominent, from the surrounding streets, other public spaces and surrounding properties. However, the residential character of the Proposed Village and various design features and landscaping means the visual effects will be low adverse to positive.⁵⁹
- 67 Ms Angela McArthur, the Council's landscape expert, agrees with Ms Skidmore's conclusions and notes that the Proposed Village "*seems a predictable and reasonable option given the size of undeveloped land and the location*".⁶⁰

Urban design assessment

- 68 Mr Burns has provided a comprehensive assessment of the urban design-related effects of the Proposed Village.
- 69 Mr Burns agrees with Ms Duffel that it is not appropriate for new development on the Site to 'match' the surrounding residential character but that a level of 'contrast' is appropriate. He considers the approach of locating taller buildings in the central portion of the Site with smaller scale buildings along boundaries to be appropriate.⁶¹ Ms Sarah Duffell agrees.⁶²
- 70 Mr Burns assesses the sunlight shading and privacy effects of the Proposed Village on all potentially affected properties. He considers potential privacy effects have been appropriately mitigated through a range of design techniques.⁶³ He assesses potential shading effects by reference to a range of considerations and considers the amenity outcome to be acceptable in all cases.⁶⁴ Although she has applied a slightly different methodology, Ms Brownlie also concludes

⁵⁷ Statement of Evidence of Ms Skidmore, paragraph 17.

⁵⁸ Statement of Evidence of Ms Skidmore, paragraph 18.

⁵⁹ Statement of Evidence of Ms Skidmore, paragraphs 133, 137 and 138.

⁶⁰ Council Officer's Report, Appendix 3 – Landscape and Visual Effects – Angela McArthur, paragraph 94.

⁶¹ Statement of Evidence of Mr Burns, paragraph 23.

⁶² Council Officer's Report, Appendix 2 – Urban Design – Sarah Duffell, paragraph 5.6.5 and pages 14-15.

⁶³ Statement of Evidence of Mr Burns, paragraph 27.

⁶⁴ Statement of Evidence of Mr Burns, paragraph 28.

that shading effects will not be more than minor and notes that the shading effects are a consequence of the land being used for its intended purpose.⁶⁵ Ms Duffell also notes the potential shading effects have been moderated through the design of the Proposed Village along the southern boundary.⁶⁶

71 As noted by Ms Brownlie, the neighbouring residents have benefited from “*borrowed amenity*” as much of the Site has remained undeveloped for decades.⁶⁷ However, it is submitted that the submitters cannot reasonably expect that amenity to remain given the residential zoning of the Site. In light of the Proposed Plan, the potential change in amenity expected is even greater.

72 Mr Burns considers a high level of on-site amenity will be achieved⁶⁸ and the Proposed Village will deliver suitable safe spaces.⁶⁹

73 It is acknowledged that submitter views as to amenity effects are relevant. That said, it is noted that submitters have an inherent interest in the outcome, whereas an independent expert does not.⁷⁰

Heritage effects

74 Mr Pearson has provided a comprehensive assessment of the heritage effects of the Proposed Village. He considers the reuse of the retained Teachers’ College buildings to be a positive heritage aspect of the Proposed Village.⁷¹ He considers the design of the new buildings respect the retained Teachers’ College buildings and will have only minor heritage impacts.⁷² Ms Moira Smith, the Council’s heritage expert, agrees with Mr Pearson and the proposed conditions have been agreed between the experts.⁷³

Operational transportation effects

75 Mr Hills has provided a comprehensive assessment of the operational transport effects of the Proposed Village.

⁶⁵ Council Officer’s Report – Laura Brownlie, paragraphs 303-304.

⁶⁶ Council Officer’s Report, Appendix 2 – Urban Design – Sarah Duffell, paragraph 5.7.4.

⁶⁷ Council Officer’s Report – Laura Brownlie, paragraphs 94, 151, 153, 194, 201, 229, and 286.

⁶⁸ Statement of Evidence of Mr Burns, paragraphs 31 and 33.

⁶⁹ Statement of Evidence of Mr Burns, paragraph 35.

⁷⁰ In *Yaldhurst Quarries Joint Action Group v Christchurch City Council* the Environment Court decision stated that it is important to determine whether amenity values are reasonably held “because the residents’ views on their existing amenity is subjective and influenced by personal feelings or opinions, including the strength of their attachment to this place”: [2017] NZEnvC 165, paragraph 117; (upheld in *Harewood Gravels Company Ltd v Christchurch City Council* [2018] NZHC 3118, paragraph 226).

⁷¹ Statement of Evidence of Mr Pearson, paragraph 16.

⁷² Statement of Evidence of Mr Pearson, paragraphs 18-20.

⁷³ Statement of Evidence of Mr Pearson, paragraphs 23-24.

- 76 The Proposed Village complies with most of the Operative and Proposed Plan transport permitted activity standards. Following discussions with Council's transport expert, Ryman has reduced the width of the Donald Street access to 7.5m. It remains wider than the standard, but that is required for service vehicle and fire appliance access.⁷⁴
- 77 Mr Hills considers the traffic that will be generated by the Proposed Village will have minimal effects on the surrounding road environment.⁷⁵ Council's transport expert agrees.⁷⁶
- 78 Mr Hills considers the Proposed Village will provide an acceptable number of parking spaces for residents, staff and visitors.⁷⁷ Council's transport expert agrees that "*the total parking provision of 229 spaces for the Karori site is acceptable to meet the combined parking demands from residents, visitors and staff without encroachment onto adjacent streets*".⁷⁸ Despite that agreement, there is a difference between the experts as to the necessity of conditions relating to parking surveys, monitoring and parking management within the Site.⁷⁹ Mr Hills proposes an alternative condition requiring an on-site parking management strategy to be prepared to ensure residents, staff and visitors to the Site are directed to appropriate parking areas.⁸⁰
- 79 It is submitted that the conditions proposed by Council are unnecessary given the experts agree that the Proposed Village will provide sufficient parking spaces to meet the needs of residents, staff and visitors. The approach proposed by Mr Hills is also more appropriate in light of the NPSUD direction, addressed earlier.

Operational noise effects

- 80 Ms Wilkening has assessed the operational noise effects of the Proposed Village. All Site operations that are required to, will materially comply with the Operative Plan noise limits. Noise from light vehicles on the Site is also predicted to comply with the Operative Plan noise limits. The emergency generator can also comply with relevant limits.⁸¹

⁷⁴ Statement of Evidence of Mr Hills, paragraph 11.4.

⁷⁵ Statement of Evidence of Mr Hills, paragraph 11.6.

⁷⁶ Council Officer's Report, Appendix 7 – Transport – Soon Teck Kong, paragraph 8.3-8.7.

⁷⁷ Statement of Evidence of Mr Hills, paragraph 11.7.

⁷⁸ Council Officer's Report, Appendix 7 – Transport – Soon Teck Kong, paragraph 9.6.

⁷⁹ Statement of Evidence of Mr Hills, paragraph 140.

⁸⁰ Statement of Evidence of Mr Hills, paragraph 145.

⁸¹ Statement of Evidence of Ms Wilkening, paragraphs 15-17.

81 The Council's acoustic expert agrees that the operational noise effects of the Proposed Village will be similar in nature and scale to existing residential activities.⁸²

Infrastructure effects

82 Mr Desai has assessed the three water infrastructure requirements and related effects of the Proposed Village.

83 Mr Desai notes that the stormwater strategy for the Site was discussed and agreed with Wellington Water earlier on in the design of the Proposed Village.⁸³ Stormwater quality will be appropriately managed through the installation of propriety treatment devices to treat runoff from roads and uncovered carparks.⁸⁴ Stormwater runoff in smaller rain events will marginally increase baseflows to the Karori stream, with hydrological mitigation provided through the harvesting of roof runoff.⁸⁵ In larger rain events, a flood attenuation device will provide flood storage within the Site.⁸⁶ The Proposed Village will not increase flood risk to other properties and will decrease flood risk along Donald Street, Campbell Street and Scapa Terrace.⁸⁷ Wellington Water's expert agrees.⁸⁸

84 Mr Desai considers there is sufficient capacity in the local water and wastewater networks to accommodate the Proposed Village.⁸⁹ Wellington Water's expert agrees.⁹⁰

Wind effects

85 The Operative and the Proposed Plan do not specifically require consideration of wind effects within the zones that apply to the Site. Nevertheless, Mr Jamieson has provided a comprehensive assessment of the potential wind effects of the Proposed Village.

86 Mr Jamieson considers the Proposed Village design includes some intelligent choices to avoid and mitigate wind effects. These design features include: the alignment of the buildings approximately parallel to prevailing wind directions, massing of lower height elements near the perimeter of the Site, setbacks from the Site

⁸² Council Officer's Report, Appendix 6 – Acoustics – Lindsay Hannah, paragraph 25.

⁸³ Statement of Evidence of Mr Desai, paragraph 47.

⁸⁴ Statement of Evidence of Mr Desai, paragraph 55.

⁸⁵ Statement of Evidence of Mr Desai, paragraphs 59-62.

⁸⁶ Statement of Evidence of Mr Desai, paragraph 51.

⁸⁷ Statement of Evidence of Mr Desai, paragraph 67.

⁸⁸ Council Officer's Report, Appendix 12 – Wellington Water Limited – David Wilson, paragraphs 22 and 31-32. The issues raised by the Mr Wilson were addressed in the Statement of Evidence of Mr Desai.

⁸⁹ Statement of Evidence of Mr Desai, paragraphs 89-91 and 79-84.

⁹⁰ Council Officer's Report, Appendix 12 – Wellington Water Limited – David Wilson, paragraph 10.

boundaries, boundary fencing, landscaping and provision of enclosed or covered linkages.⁹¹

- 87 In terms of offsite wind conditions, Mr Jamieson does not consider there will be any safety issues or any noticeable change in the wind-related amenity of surrounding streets, footpaths and open spaces.⁹² Similarly, neighbouring properties will not experience any noticeable adverse change, and some will experience improvements in wind conditions as a result of the shelter the Proposed Village will provide.⁹³ Mr Jamieson does not consider any additional mitigation of offsite wind effects to be required.⁹⁴
- 88 In terms of on-site wind conditions, Mr Jamieson has not identified any safety issues. In relation to amenity, he considers the proposed buildings, fencing, landscaping and pedestrian treatments are appropriate to avoid or mitigate wind effects or to provide sheltered alternative routes.⁹⁵ He acknowledges that some localised areas of the Site will be windy at times and additional wind mitigation would best be considered at detailed design or early operational stages.⁹⁶
- 89 Dr Mike Donn, the Council's wind expert, generally agrees that the wind effects of the Proposed Village can be reasonably mitigated.⁹⁷ There are limited differences of opinion between Mr Jamieson and Mr Donn relating to wind conditions in different areas of the Site, particularly within the internal courtyard between Buildings B01A and B01B. Mr Donn considers this area will be exposed to swirling wind flows in northerly winds, whereas Mr Jamieson considers the area will have limited exposure.⁹⁸
- 90 Despite its expert advice, Ryman will be offering a condition to address wind effects in the locations of concern to Dr Donn through the detailed landscape plan. It is also in the process of considering additional design treatments to further mitigate wind in the courtyard between Buildings B01A and B01B.⁹⁹ It considers these treatments can be finalised as part of the detailed landscaping plan process with input from appropriately qualified specialists at that time.

⁹¹ Statement of Evidence of Mr Jamieson, paragraph 17.

⁹² Statement of Evidence of Mr Jamieson, paragraph 18.

⁹³ Statement of Evidence of Mr Jamieson, paragraph 19.

⁹⁴ Statement of Evidence of Mr Jamieson, paragraph 20.

⁹⁵ Statement of Evidence of Mr Jamieson, paragraph 21.

⁹⁶ Statement of Evidence of Mr Jamieson, paragraphs 52-53.

⁹⁷ Council Officer's Report – Laura Brownlie, paragraph 336.

⁹⁸ Statement of Evidence of Mr Jamieson, paragraph 79.

⁹⁹ Statement of Evidence of Mr Jamieson, paragraph 79.

Fire safety

91 The submission of Fire and Emergency New Zealand (*FENZ*) raises matters relating to the fire safety design for the Proposed Village and in particular the adequacy of water supply and fire-fighting access to the Site.

Adequacy of water supply

92 Mr Desai has considered the firefighting water supply requirements for the Proposed Village. He considers compliance with the relevant standard will be achieved.¹⁰⁰ Mr Desai explains that adequate supply of water for firefighting has been proven and the Council experts agree.¹⁰¹ Ryman will, in any case, be offering a condition addressing water supply to be provided to the specification in the relevant New Zealand standard.

Firefighting access

93 Ryman considers fire safety access matters are regulated through the building consent process under the Building Act 2004. They are generally not matters that can or should be considered as part of this resource consent process.

94 The evidence of Mr Cosgrove provides a detailed overview of the building consent process as it relates to access for fire safety. He explains that the Building Act specifically set its mind to access arrangements. Two of the main ways to demonstrate compliance with the Building Code's performance requirements are an "Acceptable Solution" (which is deemed to comply with the Building Code) or an "alternative solution" developed for the particular building design and use.¹⁰²

95 There is no requirement in the Building Code, Acceptable Solution or otherwise to comply with the 'Designers' guide' identified in the FENZ submission.¹⁰³ The Guide itself acknowledges "[t]his guide does not replace any part of the Building Code or Standards or other mandatory building requirement."¹⁰⁴

96 Mr Cosgrove confirms that the building consent process provides for FENZ involvement if an alternative solution is proposed. A range of factors are considered during that process to address the risks of fire safety. The decision on the building consent application is then

¹⁰⁰ Statement of Evidence of Mr Desai, paragraph 92.

¹⁰¹ Council Officer's Report, Appendix 12 – Wellington Water Limited – David Wilson, paragraph 56.

¹⁰² Statement of Evidence of Mr Cosgrove, paragraphs 37-38.

¹⁰³ Statement of Evidence of Mr Cosgrove, paragraphs 41 and 45.

¹⁰⁴ Designers' guide to firefighting operations Emergency vehicle access F5-02 GD, P1.

made by the appropriate decision maker at the Council (not FENZ).¹⁰⁵

- 97 Importantly here, the Building Act bars any requirement to achieve performance criteria that are additional to, or more restrictive than, the performance criteria prescribed in the Building Code (save as expressly stated in other legislation).¹⁰⁶ Case law also establishes that RMA processes should not be used to more stringently regulate matters that are already addressed under the Building Code where there is no additional resource management purpose for such regulation.¹⁰⁷ It is submitted that no specific resource management purpose has been raised by FENZ. The statutory planning documents do not suggest there is such a separate purpose in this case.¹⁰⁸ It is submitted that the safety matters raised by FENZ will be appropriately addressed through the building consent process.
- 98 In any case, Mr Cosgrove has provided an overview of the Proposed Village fire safety design.¹⁰⁹ Mr Cosgrove considers the concept fire safety design presents a holistic solution for the Proposed Village which can adhere to the performance requirements of the 'C' clause of the NZ Building Code and will meet the fire safety needs of the residents, staff and visitors. He also considers access to the Site for aerial vehicles can be provided.¹¹⁰

Conclusion on fire safety

- 99 Overall, it is submitted that the Commissioners can be satisfied that the fire safety design for the Proposed Village will be appropriately managed under the Building Code and that this resource consent process raises no additional resource management purpose justifying intervention. We also note that, as set out in the evidence of Mr Brown, Ryman is of course highly concerned to ensure its Proposed Village is safe for its future residents, staff and visitors and fire service teams.¹¹¹ Ryman will keep talking to FENZ in good faith as it progresses the detailed design of the Proposed Village and the building consent requirements.¹¹²

¹⁰⁵ Statement of Evidence of Mr Cosgrove, paragraphs 47-51.

¹⁰⁶ Building Act 2004, s18.

¹⁰⁷ Eg, *Petone Planning Action Group Inc v Hutt City Council* EnvC Decision No W020/2008; affirmed by the High Court (CIV 2008-485-1112 – paragraphs 35-40).

¹⁰⁸ As outlined in the Statements of Evidence of Mr Hills (paragraphs 127-130) and Mr Turner (paragraphs 117-120).

¹⁰⁹ Statement of Evidence of Mr Cosgrove, paragraph 53.

¹¹⁰ Statement of Evidence of Mr Cosgrove, paragraph 56.

¹¹¹ Statement of Evidence of Mr Brown, paragraph 73.

¹¹² Statement of Evidence of Mr Brown, paragraph 75.

Construction effects – noise and vibration, traffic, earthworks, contamination

- 100 A degree of construction activity can be expected in any urban environment. The reality is that some form of development will inevitably be built on this vacant and highly desirable Site. As with any construction activity, there will be temporary effects that may generate some disruption for nearby residents.
- 101 As Mr Brown explains, Ryman has its own construction team. It comprehensively manages the construction process. It thus has full control and accountability for construction activities.¹¹³ Ryman is also strongly incentivised to minimise its construction effects, given it operates its villages for the long term. It places a high value on positive and lasting relationships with the communities in which its villages are located.¹¹⁴ It will continue to engage with the community through the construction process, including through a site based project manager and regular newsletters.¹¹⁵
- 102 Mr Brown explains that the construction of the Proposed Village will be completed within 36 - 40 months.¹¹⁶ Construction works will move around the Site during this period, so neighbours will not be exposed to construction effects for the total time.¹¹⁷ Residents will also start occupying the Proposed Village while construction continues. Ryman will obviously manage construction effects to ensure the amenity and quality of life of its residents. The benefit of this approach gets passed on to the community outside of the Site.¹¹⁸

Noise and vibration

- 103 Ms Wilkening has provided a comprehensive assessment of the construction noise and vibration effects of the Proposed Village. Ms Wilkening considers that construction will generally comply with appropriate noise criteria, with any exceedances being slight and for a limited period.¹¹⁹ The construction will also comply with the vibration criteria, provided vibratory rollers are not used within 8m of any dwelling.¹²⁰
- 104 Ms Wilkening considers the construction noise and vibration effects can be appropriately managed through a Construction Noise and Vibration Management Plan (*CNVMP*), which is a standard and well known industry best practice tool. The best practicable option will

¹¹³ Statement of Evidence of Mr Brown, paragraph 62.

¹¹⁴ Statement of Evidence of Mr Brown, paragraph 51.

¹¹⁵ Statement of Evidence of Mr Brown, paragraph 71.

¹¹⁶ Statement of Evidence of Mr Brown, paragraph 64.

¹¹⁷ Statement of Evidence of Ms Wilkening, paragraph 12.

¹¹⁸ Statement of Evidence of Mr Brown, paragraphs 66.

¹¹⁹ Statement of Evidence of Ms Wilkening, paragraph 11.

¹²⁰ Statement of Evidence of Ms Wilkening, paragraph 13.

be implemented to ensure noise does not exceed a reasonable level.¹²¹ The Council's acoustic expert agrees that noise effects can be managed via conditions that require the preparation and implementation of a CNVMP.¹²²

Traffic

- 105 The construction traffic for the Proposed Village will be managed through a Construction Traffic Management Plan. A draft plan has been prepared. This plan will be updated and certified by Council before construction commences. Mr Hills considers this approach will ensure construction activities are managed to achieve an appropriately low level of traffic effects.¹²³ Council's transport expert agrees.¹²⁴

Earthworks

- 106 The Proposed Village requires earthworks, but the extent of earthworks has been minimised through the provision of undercroft carparking for buildings B02-B06.
- 107 Mr Desai describes the proposed erosion and sediment control approach, which will comply with the relevant guidelines. Mr Desai considers an erosion and sediment control plan will ensure potential erosion and sedimentation effects from the earthworks are appropriately managed.¹²⁵ The potential for dust effects will be appropriately mitigated by limiting the area of earthworks exposed at any one time and using water over the exposed areas of the Site.¹²⁶ The Council's earthworks engineer agrees this approach is appropriate.¹²⁷
- 108 Mr Malan addresses the potential for excavation and construction to cause ground deformation effects on neighbouring properties. He does not identify any potential for deformation that will cause adverse effects.¹²⁸ The Council's geotechnical expert agrees the Proposed Village can be successfully constructed in line with Mr Malan's report.¹²⁹

¹²¹ Statement of Evidence of Ms Wilkening, paragraphs 77-78.

¹²² Council Officer's Report, Appendix 6 – Acoustics – Lindsay Hannah, paragraph 39.

¹²³ Statement of Evidence of Mr Hills, paragraphs 88-89.

¹²⁴ Council Officer's Report, Appendix 7 – Transport – Soon Teck Kong, paragraph 12.2.

¹²⁵ Statement of Evidence of Mr Desai, paragraphs 34-39.

¹²⁶ Statement of Evidence of Mr Desai, paragraphs 40-41.

¹²⁷ Council Officer's Report, Appendix 8 – Earthworks – John Davies, paragraphs 15 and 18.

¹²⁸ Statement of Evidence of Mr Malan, paragraphs 54-55 and 57-60.

¹²⁹ Council Officer's Report, Appendix 10 – Geotechnical – Ayoub Riman, paragraph 12.

Contamination

- 109 Ground contamination investigations revealed the presence of asbestos at the Site. In order to manage potential contamination-related risks, standard industry good practice control measures will be set out in a Site Management Plan and implemented during earthworks and construction. Mr Walker considers that the proposed controls will ensure potential contamination-related risks to human health and the environment will be low and suitably managed.¹³⁰ The Council's contamination expert agrees with this approach.¹³¹

Conclusion on construction effects

- 110 Construction effects will be temporary, and will be appropriately managed through the implementation of good practice measures, and management plans secured through the proposed consent conditions.

Conclusion

- 111 The Proposed Village will be an important physical resource that is a necessary part of community life – the provision of residential accommodation and comprehensive care for the elderly. There is a desperate need for the Proposed Village in Wellington.
- 112 As discussed by Mr Brown, the Site is ideally suited for a comprehensive care retirement village. The Site is zoned for residential use and the planning context supports intensification of the Site. It is located in a pleasant neighbourhood in close proximity to local amenities. The Site previously contained an important community asset (the former Teachers' College) – and the Proposed Village will play a similarly important community role. The Proposed Village will provide significant positive benefits for its future residents, their families and the wider community.
- 113 In our submission, Ryman has achieved a design outcome that appropriately responds to the existing environment and the planning context. The Proposed Village will result in minor adverse effects at most, which are primarily confined to the construction period. Both Ms Brownlie and Mr Turner conclude that the adverse effects of the Proposed Village are acceptable, and can be appropriately managed through consent conditions.
- 114 The Proposed Village is generally consistent with the relevant objectives and policies of the Operative and Proposed Plan. Accordingly, it represents the use, development, and protection of natural and physical resources, in a manner which enables people and communities to provide for their social and cultural wellbeing, and for their health and safety. Wellbeing and health and safety

¹³⁰ Statement of Evidence of Mr Walker, paragraphs 12-18.

¹³¹ Council Officer's Report, Appendix 11 – Contamination – Suzanne Lowe, section 5. Note there is a matter of detail outstanding as to whether further asbestos investigation is required as a condition of consent.

considerations are particularly important given the vulnerable demographic that the Proposed Village will serve.

- 115 For all of the above reasons, and as described in the evidence to follow, Ryman respectfully requests that the Commissioners grant consent to the Proposed Village.

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13 September 2022