

*Under:* the Resource Management Act 1991 (*RMA*)

*In the matter of:* Submissions and further submissions in relation to the  
proposed Wellington District Plan (Hearing Stream 4)

*and:* **Ryman Healthcare Limited**  
*Submitter ID: 346 and FS 128*

*and:* **Retirement Villages Association of New Zealand  
Incorporated**  
*Submitter ID: 350 and FS 126*

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

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Dated: 20 June 2023

**LEGAL SUBMISSIONS ON BEHALF OF THE RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND INCORPORATED AND RYMAN HEALTHCARE LIMITED**

**OVERVIEW**

- 1 These legal submissions are lodged jointly on behalf of the Retirement Villages Association of New Zealand Incorporated (*RVA*) and Ryman Healthcare Limited (*Ryman*) in relation to Hearing Stream 4 – Centres (*Hearing Stream 4*) to the Wellington City (*City*) Proposed District Plan (*Proposed Plan*).
- 2 These submissions address legal issues associated with Ryman and the RVA’s submissions for Hearing Stream 4, specifically on:
  - 2.1 The City Centre Zone (*CCZ*), Neighbourhood Centre Zone (*NCZ*), Local Centre Zone (*LCZ*), Metropolitan Centre Zone (*MCZ*) (together, *Centre Zones*); and
  - 2.2 The Commercial Zone (*CZ*) and Mixed Use Zone (*MUZ*).
- 3 Planning evidence on the need for changes to the Centre Zones, *CZ* and *MUZ* is provided by Ms Nicki Williams. Ms Williams also comments on the section 42A Officers’ reports and application of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Enabling Housing Act*) and National Policy Statement on Urban Development 2020 (*NPSUD*).
- 4 Ryman’s and the RVA’s legal submissions and evidence on Hearing Streams 1 and 2 covered the growing ageing population in Wellington City in urgent need of specialist housing and care options. They also addressed the legal framework relevant to the intensification planning instrument (*IPI*), including the *NPSUD* and *Enabling Housing Act*.
- 5 The legal submissions lodged for Hearing Streams 1 and 2 are not repeated in full here but are also highly relevant to the submissions made below. By way of summary:
  - 5.1 Wellington City houses a high number of retired people – a number which is continuing to grow. Those aged 65+ will increase from 21,900 in 2018, to 26,100 in 2023, and to 43,100 by 2043.<sup>1</sup>
  - 5.2 The *Enabling Housing Act* represents a significant opportunity to address consenting challenges faced by the retirement sector.

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<sup>1</sup> Statement of evidence Professor N Kerse for Hearing Stream 2 (dated 16 March 2023), at [7].

- 5.3 Accelerating housing is directly in line with the expectations of both the Enabling Housing Act and the NPSUD.
- 5.4 The importance of the present intensification streamlined planning process led to the RVA's members working together with industry leading experts to adopt a combined approach that seeks greater national consistency across all Tier 1 planning frameworks.
- 6 Ryman and the RVA are seeking consistent provisions that provide for retirement villages across all relevant zones in the Proposed Plan. As set out in the evidence of Ms Williams, the Enabling Housing Act and the NPSUD have fundamentally changed the expectations for development in and around residential and commercial zones.<sup>2</sup> The need for both large sites, and locations near to transport services, community facilities and commercial services, means that retirement villages need to be provided for in all of Wellington's zones that contemplate residential activities.

#### **WHAT THE RVA AND RYMAN SEEK**

- 7 The pressing need for bespoke provisions for retirement villages and the context for the changes sought by the RVA and Ryman are set out in the evidence of Mr John Collyns, Ms Maggie Owens, Mr Matthew Brown, Professor Kerse and Dr Phil Mitchell for Hearing Streams 1 and 2. This evidence also sets out the unique attributes of retirement villages that make it appropriate to provide for enabling provisions beyond exclusively residential zones. In summary:
- 7.1 centres, commercial and mixed-use zones provide opportunities for retirement villages. These areas serve the surrounding local communities, thus allowing residents to 'age in place'<sup>3</sup> and provide close access to amenities for residents who are often unable to walk long distances. Many general business areas are also located between centres and residential areas and are therefore potentially suitable for retirement villages;
- 7.2 finding suitable sites for retirement villages can be highly challenging.<sup>4</sup> The framework proposed by Ryman and the RVA

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<sup>2</sup> Statement of evidence Ms N Williams for Hearing Stream 4 (dated 12 June 2023), at [17].

<sup>3</sup> Statement of evidence Professor N Kerse for Hearing Stream 2 (dated 16 March 2023), at [67-75].

<sup>4</sup> Statement of evidence Ms M Owens for Hearing Stream 2 (dated 24 March 2023), at [85-88] and Statement of evidence Mr M Brown for Hearing Stream 2 (dated 24 March 2023), at [70-74].

enables the efficient use of appropriate sites and locations in all zones that are appropriate for residential activities; and

- 7.3 the NPSUD promotes an integrated approach to working and living environments, rather than strict separation into different zones.

### **POLICY 3 AND NPSUD CONTEXT**

- 8 The medium density residential standards are not required to be integrated into non-residential zones such as the Centre Zones, CZ and MUZ. However, sections 77G and 77N of the RMA require that a specified territorial authority must give effect to Policy 3 of the NPSUD, in relation to the intensification of urban environments, such as the Centre Zones, CZ and MUZ. Policy 3 requires:

- (a) *in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and*
- (b) *in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and*
- (c) *building heights of at least 6 storeys within at least a walkable catchment of the following:*
  - (i) *existing and planned rapid transit stops*
  - (ii) *the edge of city centre zones*
  - (iii) *the edge of metropolitan centre zones; and*
- (d) *within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.*

- 9 Policy 3 therefore provides a clear directive for greater intensification opportunities in and around centres to be provided for in district plans. The Council must ensure that the provisions in its district for every commercial and relevant residential zone give effect to the changes required by Policy 3, as the case requires.<sup>5</sup> As was emphasised in earlier submissions, Policy 3 cannot be looked at in a vacuum. Instead, Policy 3 must be interpreted within its wider context. A recent High Court case has confirmed that plan changes

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<sup>5</sup> Section 77N, RMA.

must give effect to the whole of the NPSUD,<sup>6</sup> and supports a broad approach to the consideration of the NPSUD. It is submitted that the Proposed Plan must give effect to the NPSUD as a whole because it is practicable to do so.

- 10 It is also noted that although these legal submissions are focussed on the directions in the Enabling Housing Act, the relevant plan change process here is a full plan review, and therefore must give effect to the NPSUD as a whole.<sup>7</sup>
- 11 Overall, it is submitted that the Centre Zones, CZ and MUZ provisions within the Proposed Plan do not appropriately give effect to the NPSUD as they do not adequately enable the specific housing needs of the ageing population.

### **KEY OUTSTANDING ISSUES**

- 12 Ms Williams has responded to the key issues raised in the section 42A reports. In summary, these key issues are:
  - 12.1 Whether the policy framework sought by Ryman and the RVA in the Centre Zones, CZ and MUZ should apply (which is similar to the policies sought for the residential zones);<sup>8</sup>
  - 12.2 Whether certain internal amenity development standards for retirement villages should not apply;<sup>9</sup>
  - 12.3 Whether the wind provisions would apply only to specific listed public spaces or more broadly;<sup>10</sup>
  - 12.4 The inappropriateness of the City Outcomes Contribution mechanism for retirement villages, which do not fit in with the typical controls imposed on residential developments;<sup>11</sup>
  - 12.5 The appropriate rule framework for retirement villages in the Centre Zones, CZ and MUZ and the application of residential

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<sup>6</sup> *Southern Cross Healthcare Limited v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948, at [88].

<sup>7</sup> Section 75(3)(a), RMA.

<sup>8</sup> Statement of evidence Ms Williams for Hearing Stream 4 (dated 12 June 2023), at [28-33] and [52-56].

<sup>9</sup> Statement of evidence Ms Williams for Hearing Stream 4 (dated 12 June 2023), at [46-51] and [65-68].

<sup>10</sup> Statement of Evidence Ms Williams for Hearing Stream 4 (dated 12 June 2023), at [79].

<sup>11</sup> Statement of Evidence Ms Williams for Hearing Stream 4 (dated 12 June 2023), at [73] – [74].

activity rules and associated building rules and standards for retirement villages;<sup>12</sup> and

12.6 The Officer's proposed discretionary activity status for retirement villages in the CZ and MUZ,<sup>13</sup> where other residential activities are permitted above ground floor or restricted discretionary.<sup>14</sup>

13 Ms Williams has responded to these issues in detail<sup>15</sup> and we support her reasoning. We also emphasise some particular aspects below.

***Specific rule framework for retirement villages***

14 As has been explained in prior hearings, residential activity rules and associated building rules and standards are not appropriate for retirement villages. This is due to the unique functional and operational needs of retirement villages, including resident vulnerability, wider ranges of communal amenities and services onsite etc.<sup>16</sup>

15 Nuanced rules in relation to internal amenity controls, are required in order to better reflect the on-site needs of residents. These rules will also ensure consenting processes are efficient and focussed on the effects of relevance. Not providing these tailored rules and standards will create significant consenting complexities, through the application of controls that are wholly unsuited to the design of retirement villages.

***Discretionary activity status in CZ and MUZ and ground floor controls***

16 In relation to the CZ and MUZ, the Officer is concerned that the specific rule framework sought by Ryman and the RVA will reduce the opportunity for commercial/publicly accessible activities at ground level.<sup>17</sup> The Officer recommends a discretionary activity

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<sup>12</sup> Paragraph 375 – Section 42A Report Hearing Stream 4 (Part 3 Commercial and Mixed Use Zones) – Part 4: Neighbourhood Centre Zone. Paragraph 100 – Section 42A Report Hearing Stream 4 (Part 3 Commercial and Mixed Use Zones) – Part 6: Commercial Zone. Statement of evidence Ms Williams for Hearing Stream 4 (dated 12 June 2023), at [34-45].

<sup>13</sup> Paragraph 218 – Section 42A Report Hearing Stream 4 (Part 3 Commercial and Mixed Use Zones) – Part 1: Overview and General Matters.

<sup>14</sup> COMZ-R2 and MUZ-R10.

<sup>15</sup> Statement of evidence Ms Williams for Hearing Stream 4 (dated 12 June 2023), at [28-33], [52-56], [69-75] and [76-80].

<sup>16</sup> Statement of evidence Mr M Brown for Hearing Stream 2 (dated 24 March 2023), at [57]-[59]. See also statement of evidence Ms Williams for Hearing Stream 4 (dated 12 June 2023), at [29].

<sup>17</sup> Paragraph 108 – Section 42A Report Hearing Stream 4 (Part 3 Commercial and Mixed Use Zones) – Part 1: Overview and General Matters.

status for retirement villages within these zones.<sup>18</sup> This approach is inconsistent with the permitted activity status for residential activities (where located above ground floor) / restricted discretionary activity status (where located on the ground floor).<sup>19</sup>

- 17 The regime sought for retirement villages in the CZ and MUZ does not seek to exempt retirement villages from relevant controls, such as ground floor controls. Instead, it seeks to provide a retirement village-specific regime that appropriately recognises the needs of retirement villages in terms of location and layout. Limitations on non-commercial activity at ground floor level would apply to retirement villages in the CZ and MUZ.<sup>20</sup>
- 18 Retirement villages should therefore be provided for as a bespoke residential activity in a similar way to other residential activities, as a permitted activity where they are located above ground floor. The construction of a retirement villages buildings and structures would also be restricted discretionary, as for other residential buildings and structures.<sup>21</sup> The specific rule framework proposed by Ryman and the RVA addresses the key concerns of the Officer by managing relevant effects and maintaining the opportunity for commercial/publicly accessible activities at ground level in the CZ and MUZ.

## **CONCLUSION**

- 19 The Proposed Plan must specifically and appropriately provide for, and enable retirement villages in all relevant residential, centre, commercial and mixed use zones.
- 20 When compared to the Council's proposed provisions, Ryman and the RVA's approach in the Centre Zones, CZ and MUZ is:
- 20.1 more effective and efficient;
  - 20.2 less restrictive, but with appropriate controls as necessary to manage adverse effects; and
  - 20.3 the most appropriate way to achieve the purpose of the RMA (which in this context is informed by the purposes of the NPSUD and the Enabling Housing Act).

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<sup>18</sup> Paragraph 218 – Section 42A Report Hearing Stream 4 (Part 3 Commercial and Mixed Use Zones) – Part 1: Overview and General Matters.

<sup>19</sup> COMZ-R2 and MUZ-R10.

<sup>20</sup> Statement of evidence Ms Williams for Hearing Stream 4 (dated 12 June 2023), at [64]. See also COMZ-R2 and MUZ-R10.

<sup>21</sup> COMZ-R9 and MUZ-R16.

- 21 Accordingly, Ryman and the RVA respectfully seek that the Panel recommends, and the Council accepts, the proposals put forward by Ms Williams on behalf of Ryman and the RVA.

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20 June 2023