

## WELLINGTON CITY COUNCIL

### SR 471670

## RESOURCE CONSENT: PROPOSAL TO ESTABLISH A COMPREHENSIVE CARE RETIREMENT VILLAGE, 26 DONALD STREET AND 37 CAMPBELL STREET, KARORI

### MINUTE 3 OF INDEPENDENT HEARING PANEL

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1. This Minute is in response to email correspondence to Ms Leen, the Hearing Administrator, from Mr David King (dated 10 August 2022), and Mr John McArdle (dated 8 August 2022), both submitters on the above application for consent.
2. Mr King has asked two things via Ms Leen, as follows:
  - (a) That the Council experts provide details of the regulatory (i.e. occupational) regime (whether legislative or self-regulatory) that governs their activity.
  - (b) The right to be notified of and attend any expert conferencing between Council and Ryman's experts (as an observer).
3. Mr McArdle has indicated that he is calling expert evidence on Corporate ethics, taxation, and financial reporting.
4. We have decided it is important for us to intervene in relation to these matters for the reasons covered below.

### **Regulatory regimes and Corporate ethics, taxation and financial reporting evidence**

5. In relation Mr King's reference to regulatory regimes and Mr McArdle's reference to corporate ethics, taxation and financial reporting evidence, we are unclear as to how this is relevant to the resource consent matter we have to determine. Our consideration is governed by the Resource Management Act 1991 and, in particular section 104, as follows (note only those parts of section 104 that are relevant are included):

#### **104 Consideration of applications**

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

- (a) any actual and potential effects on the environment of allowing the activity; and
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and

- (b) any relevant provisions of—
  - (i) a national environmental standard:
  - (ii) other regulations:
  - (iii) a national policy statement:
  - (iv) a New Zealand coastal policy statement:
  - (v) a regional policy statement or proposed regional policy statement:
  - (vi) a plan or proposed plan; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

- 6. We draw particular attention to subsection (1)(c) which on the face of it does seem to allow us wide scope to allow us to consider other matters. However, the crux here is we do not understand how the information Mr King is seeking, and the evidence Mr McArdle refers to, is relevant and reasonably necessary for us to determine the application.
- 7. We include a direction with regards to this below.

## **Attendance at expert conferencing**

- 8. With regards to Mr King's request to attend the expert conferencing as an observer we refer to Appendix 3 of the [Environment Court's Practice Note 2014](#) which we apply to conferencing in these proceedings.
- 9. We want to reiterate that, at this stage, we have not directed any expert conferencing but have indicated that it may be helpful in narrowing the issues.<sup>1</sup>
- 10. The general rule is that only experts attend expert conferencing. Lawyers do not attend conferencing nor do experts attend any conferencing that does not relate to their area or expertise.
- 11. We include a direction with regards to this below.

## **Directions**

- 12. We make the following directions:
  - (a) That, to the extent they wish to pursue the matter, Mr King and Mr McArdle to provide further information as to why they consider reference to regulatory regimes and to evidence on corporate ethics, taxation and

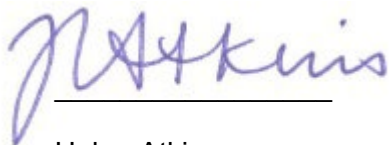
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<sup>1</sup> We will decide on that once we have received the Applicant's "state of play" update on engagement earmarked for 16 August. At that time, we have requested (to the extent it is possible), submitters to alert the Hearings Administrator as to their intentions (if any) regarding calling their own expert witnesses. See Para 8 of Minute 2.

financial reporting, respectively, is relevant and necessary for us to consider in terms of s104(1)(c);

- (b) that, we consider it is not appropriate for Mr King to attend expert conferencing on matters that he is not an expert on even if an observer capacity.
- 13. As per our previous minutes all communications should be with the WCC Hearing Administrator who can be reached at Krystle.Leen@wcc.govt.nz or by ringing 021 193 4081.
- 14. As a final point we note that there has been requests to visit certain places on our site visit. We will be addressing this matter in a later minute.

**DATED** this 12<sup>th</sup> day of August 2022



Helen Atkins  
Chair – Independent Hearings Panel

For and on behalf of:  
Commissioner Angela Jones  
Commissioner DJ McMahon