

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

in the matter of: Submissions and further submissions in relation to
Variation 1 to the Proposed Porirua District Plan and Plan
Change 19 to the Porirua District Plan

and: Hearing Stream 7

and: **Ryman Healthcare Limited**

and: **Retirement Villages Association of New Zealand
Incorporated**

Statement of Evidence of **Philip Hunter Mitchell** on behalf of
Ryman Healthcare Limited and the Retirement Villages
Association of New Zealand Incorporated

Dated: 24 February 2023

**STATEMENT OF EVIDENCE OF PHILIP HUNTER MITCHELL ON
BEHALF OF RYMAN HEALTHCARE LIMITED AND THE RETIREMENT
VILLAGES ASSOCIATION OF NEW ZEALAND INCORPORATED**

INTRODUCTION

- 1 My full name is Philip Hunter Mitchell.
- 2 I hold the degrees of Bachelor of Engineering (Hons) and Doctor of Philosophy, both from the University of Canterbury. I am a Partner in the consulting practice Mitchell Daysh Limited and am based in the firm's Auckland office. Mitchell Daysh Limited was formed through a merger between Environmental Management Services Limited and Mitchell Partnerships Limited, which I established in July 1997. Previously, I was the Managing Director of Kingett Mitchell & Associates Limited, a firm I co-founded in 1987.
- 3 I am a past president of the Resource Management Law Association and a full member of the New Zealand Planning Institute. I was a recipient of the New Zealand Planning Institute's Distinguished Service Award in 2015.
- 4 I have been engaged in the field of resource and environmental management for more than 35 years and I have had a role in many significant planning and consenting projects throughout New Zealand during that time. My specialist areas of practice include providing resource management advice to the private and public sectors, facilitating public consultation processes, undertaking planning analyses, managing resource consent acquisition projects, and developing resource consent conditions.
- 5 I am an accredited Hearings Commissioner (with a Chair's endorsement) and have acted as a Hearings Commissioner on numerous occasions, many in the role of Hearing Chair. Most recently I was the Chair of the Independent Hearings Panel for the Waikato Proposed District Plan.
- 6 I was an appointed mediator / facilitator for the hearings on the Proposed Auckland Unitary Plan (*PAUP*). I was also appointed jointly by the Minister for Canterbury Earthquake Recovery and the

Christchurch City Council as a Hearings Commissioner for the replacement of the Christchurch City District Plan (the district plan that is intended to facilitate the rebuilding of Christchurch). Retirement village planning provisions were a key topic in those processes resulting in bespoke provisions being inserted into both of these plans.

- 7 My work regularly takes me all over New Zealand and I have significant experience in resource management issues associated with retirement villages.
- 8 I have prepared this statement of evidence at the request of the Retirement Villages Association (*RVA*) and Ryman Healthcare Limited (*Ryman*).
- 9 In preparing this statement of evidence, I have reviewed the:
 - 9.1 National Policy Statement on Urban Development 2020 (*NPS-UD*);
 - 9.2 Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Enabling Housing Act*);
 - 9.3 Proposed Porirua District Plan (*Proposed Plan*);
 - 9.4 Variation 1 to the Proposed Plan and Plan Change 19 (*PC19*) to the Porirua City District Plan;
 - 9.5 *RVA's* and *Ryman's* submissions and further submissions on Variation 1 and *PC19*;
 - 9.6 Relevant sections of the section 32 evaluation of Variation 1 and *PC19*;
 - 9.7 Relevant section 42A reports of Variation 1 and *PC19*;
 - 9.8 Relevant supplementary statements of evidence prepared by / on behalf of Porirua City Council (*Council*);
 - 9.9 Wellington Regional Policy Statement (*WRPS*); and

9.10 The evidence of Mr John Collyns for the RVA and Mr Matthew Brown for Ryman respectively.

EXPERT WITNESS CODE OF CONDUCT

10 I have read the Environment Court's Code of Conduct for Expert Witnesses contained within the Environment Court Practice Note 2023 and I agree to comply with it. My qualifications as an expert are set out above. I am satisfied that the matters which I address in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

- 11 My evidence will:
- 11.1 For context, provide an overview of the submissions made by Ryman and the RVA;
 - 11.2 Comment on the overall planning framework that applies to Variation 1 and PC19, including the requirements under section 32 of the RMA and the relevant provisions of the NPS-UD, Enabling Housing Act, the WRPS and the Proposed Plan;
 - 11.3 Comment on the specific planning matters raised in the submissions, and provide my response to the recommendations in the section 42A report; and
 - 11.4 Set out my conclusions.

EXECUTIVE SUMMARY

- 12 This statement of evidence relates to Variation 1 and PC19 - Hearing Stream 7.
- 13 In summary, the submissions by Ryman and the RVA seek to ensure that the Variation 1 and PC19 provide a planning regime that:
- 13.1 Recognises and responds to the needs of an ageing population within Porirua City (the *City*); and

- 13.2 Adopts provisions that are fit for purpose for the functional and operational characteristics of retirement villages and their residents' housing care needs.
- 14 I observe at the outset that the Proposed Plan regime has many similar elements to what Ryman and the RVA sought in their primary submission. And it appears at a principles level the Council Officers, Ryman and the RVA are not that far apart. The Officers largely agree with many of the parties' submissions points. For example, the section 42A report agrees that the objectives and policies for all residential zones should recognise the benefits of retirement village development and their functional and operational needs.¹ However, the Council Officers consider that the Proposed Plan already adequately covers these matters.²
- 15 In my view, where there is a choice of provisions that both achieve the Council and Ryman's and the RVA's objectives and also meet the relevant statutory requirements, I consider the RVA approach should be preferred. This approach will better address efficiency and effectiveness considerations. In support of that, I also note the submitters are seeking a consistent regime for planning to house an elderly population in both Porirua and across New Zealand. Consistency in this context will better enable common approaches to consent applications to be developed over time. I acknowledge in this regard Ryman and the RVA's knowledge and understanding of consenting and operating villages.³
- 16 I also note that the Officers rely on the section 32 report to justify a "Porirua context" approach for retirement villages in support of their preferred approach. On my read of that reporting, the analysis contains very little detail on ageing population housing needs; the local retirement village context; or costs and benefits and the effects of retirement villages.⁴ The Officers also misunderstand both the

¹ Page 1, Appendix F – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023) – Submission Point 0S118.7.

² Ibid.

³ As discussed in the Statements of Evidence of Mr Brown and Mr Collyns (dated 24 February 2023).

⁴ Page 1, Appendix F – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023) – Submission Point 0S118.9.

nature of retirement villages and the RVA's proposed planning regime, which is where the more significant differences between the Officers and the submitters arises. In view of those aspects, I have generally attributed more weight to the evidence of Mr Brown and Mr Collyns for the submitters, as well as my own experience of retirement village planning and development in support of this evidence.

- 17 To assist the Panel, key aspects of the submissions by the RVA and Ryman, and which I address in my evidence, are set out below:

17.1 The proportion of New Zealanders moving into their retirement years is growing, including in Porirua. Their accommodation and healthcare needs are therefore also growing. The demand for retirement villages is already outstripping supply and the population aged 75+ is forecasted to more than double up to 833,000 people nationally by 2048⁵. As identified below, the wider Wellington Region is one of the fastest growing areas in the country. The ageing population in Porirua and how the planning framework responds to that is therefore considered to be a key issue in this hearing process.

17.2 More specifically, the RVA and Ryman consider, and I agree, that the notified planning regime does not adequately provide for retirement villages. Although retirement villages are a subset of multi-unit residential activity, and therefore generally fit under the Medium Density Residential Standards (*MDRS*) category of "four or more" residential units, the proposed provisions of the *MDRS*, do not acknowledge or provide for the distinguishing features of retirement villages, or the different specialist units and amenities within them, particularly well. Therefore, the RVA and Ryman have used the *MDRS* as a "base case" for the relief they seek but adapted it to ensure it accounts for the unique needs and features of retirement villages and their residents.

⁵ Jones Lang LaSalle, NZ Retirement Villages and Aged Care Whitepaper, June 2021, page 7.

- 18 In case there is any doubt, retirement villages are fundamentally a residential activity and a bespoke and nuanced planning regime is required to reflect this.
- 19 However, retirement villages are not typical residential developments, and it is important that the specific needs of elderly people that reside in these villages are recognised and provided for.
- 20 The specific amendments that I consider necessary are:
- 20.1 Insert a new definition: 'Retirement Unit' - means any unit within a retirement village that is used or designed to be used for a residential activity (whether or not it includes cooking, bathing, and toilet facilities). A retirement unit is not a residential unit.
- 20.2 Insert a new objective: RESZ-OX: Ageing Population – Recognise and enable the housing and care needs of the ageing population.
- 20.3 Insert three new policies:
- (a) RESZ-PX: Larger Sites - Recognise the intensification opportunities provided by larger sites within all residential zones by providing for more efficient use of those sites.
- (b) RESZ-PX: Changing Communities - To provide for the diverse and changing residential needs of communities, recognise that the existing character and amenity of the residential zones will change over time to enable a variety of housing types with a mix of densities; and
- (c) RESZ-PX: Role of Density Standards - Enable the density standards to be utilised as a baseline for the assessment of the effects of developments.
- 20.4 Amend RESZ-P13:
1. Provide for a diverse range of housing and care options that are suitable for the particular needs

and characteristics of older persons in [add] zone, such as retirement villages.

2. Recognise the functional and operational needs of retirement villages, including that they:
 - a. May require greater density than the planned urban built character to enable efficient provision of services.
 - b. Have unique layout and internal amenity needs to cater for the requirements of residents as they age.

Provide for retirement villages where:

- ~~1. Significant adverse effects on the residential amenity values of adjoining residential properties and the surrounding neighbourhood are avoided, remedied or mitigated;:~~
- ~~2. Other adverse effects on residential amenity values are minimised, including those from:

 - ~~a. The movement of vehicles and people; and~~
 - ~~b. The layout of buildings, fencing, location and scale of utility areas and external storage areas;~~~~
- ~~3. On site amenity, including outdoor living space, for residents is provided, which reflects the nature of and diverse needs of residents of the village;~~
- ~~4. The site can accommodate the scale and intensity of the activity, in terms of its size, topography and location; and~~
- ~~5. The overall scale, form, composition, and design of buildings does not compromise the planned~~

urban built form of the zone or precinct they are located in.

- 20.5 Insert a permitted activity for the use of land for a retirement village; and
- 20.6 Insert a restricted discretionary activity rule for the construction of retirement villages in residential zones, with specific matters of discretion limited to managing the external effects of a village on the wider environment.
- 21 The parties also see a number of amendments to the notification clauses, matters of discretion, and built form standards as set out in their original submissions.

OVERVIEW OF THE SUBMISSIONS BY RYMAN AND THE RVA

- 22 As explained in the RVA submission and as outlined by Mr Collyns for the RVA and Mr Brown for Ryman, rapidly changing demographics are resulting in major pressures on social and health services for older New Zealanders, including the provision of housing. The submissions explain in detail the wider Wellington Region's ageing population. Put simply, the population of people living in Porirua over the age of 65 is continuing to increase and is projected to continue to increase through to 2031 and beyond. As the submissions and Mr Collyn's evidence notes, the 75+ age bracket is a particularly vulnerable demographic due to relative frailty and the increase of heightened care needs. The demand for retirement living and a range of care options, including dementia care and assisted living options, is growing.
- 23 In my experience, there are a number of challenges in finding suitable sites for the development of new retirement villages given the size of the sites that are typically required (which generally need to provide a range of living and care options, as well as on-site amenities), and the desire of prospective residents to remain close to their families and existing communities.
- 24 A key overarching point raised in the submissions by the RVA and Ryman is that Variation 1 and PC19 do not adequately address the

needs of the retirement village sector in Porirua. While both submissions acknowledge that there are some enabling provisions for them within Variation 1 and PC19, there is a need to provide a more nuanced planning framework to enable the establishment of retirement villages, particularly in the City's residential areas and in appropriate commercial areas.

- 25 Responding to the specific issues associated with an ageing population is critical to enable suitable housing to meet the needs of the elderly residents. This outcome will also ensure the social, economic, and cultural wellbeing of people and communities in the wider Wellington Region in accordance with Objective 1 of the Enabling Housing Act.⁶
- 26 In this regard the requirements of the NPS-UD and the Enabling Housing Act have, in my opinion, fundamentally altered the expectations for development in and around the residential and commercial zones in Tier 1 local authorities such as the wider Wellington Region. There are significantly greater expectations for bulk and density in residential zones, and an associated recognition of the consequential changes of neighbourhood character and private residential amenity. In other words, there is an expectation that any existing built form in residential communities will need to change to support the necessary increases in demand for housing.

OVERVIEW OF THE PLANNING FRAMEWORK

National Policy Statement on Urban Development 2020 and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

- 27 The NPS-UD directs local authorities to enable greater land supply for urban development. It also directs that planning is responsive to changes in demand, while also seeking to ensure that new development capacity enabled by local authorities is of a form and in locations that meet the diverse needs of communities and encourages well-functioning, liveable urban environments. It also

⁶ Resource Management Act 1991, sch 3A, cl 6(1)(a).

requires local authorities to remove overly restrictive rules that affect urban development outcomes in cities.

- 28 The section 42A overarching report describes what the authors consider to be the key matters of relevance to the Variation and Plan Change that emerge from the objectives and policies of the NPS-UD. I consider that the Reporting Officer has not given sufficient consideration to the following directives of the NPS-UD in particular:
- 28.1 Planning decisions ensure that urban environments provide for the needs of all demographics in the community, including by enabling a variety of dwelling types and price points;⁷
 - 28.2 Planning decisions improve housing affordability by supporting competitive land and development markets;⁸
 - 28.3 Policy Statements and District Plans within Tier 1 urban environments enable intensification in areas where there is a high demand for housing, and with building heights of up to 6 storeys in certain circumstances;⁹ and
 - 28.4 Urban environments, including their amenity values, will develop and change over time in response to the diverse and changing needs of people and communities, and future generations.¹⁰
- 29 One clear intent of the NPS-UD is to be enabling of both business and residential development in urban environments through the provision of opportunity, choice, variety and flexibility of land supply for housing, subject of course to maintaining an appropriate level of residential amenity. As I discuss later in my evidence, I consider Variation and PC19 need to expressly recognise the diversity of

⁷ Objective 1 and Policy 1 of the NPS-UD.

⁸ Objective 2 of the NPS-UD.

⁹ Objective 3 and Policy 3 of the NPS-UD.

¹⁰ Objective 4 and Policy 6 of the NPS-UD.

housing stock that will be needed in residential and commercial areas of the City.

- 30 The Enabling Housing Act directs¹¹ the provision of medium density residential standards for Tier 1 local authorities through Schedule 3A of the RMA. It also requires that a variety of housing types and sizes are provided for which respond to housing needs and demand and the neighbourhood's planned urban built character (including 3-storey buildings).
- 31 The Enabling Housing Act has also altered the scale / scope of residential development that can occur as a permitted activity in a medium density residential zone.¹² These new provisions essentially narrow the consideration of density effects in relation to on-site amenity and effects on the surrounding environment (when compared to existing district plans).
- 32 I consider that the clear legislative direction is that the built form of Porirua City will need to change in order to provide for the housing demands of a range of demographics. Therefore, in my opinion, the Variation 1 and PC19 need to be amended to clearly reflect this expectation.

Wellington Regional Policy Statement

- 33 The Proposed Plan is required to give effect to the WRPS.
- 34 The section 42A report¹³ notes that a submission from Wellington Regional Council has sought amendments to the Proposed Plan in part to achieve alignment with its notified Change 1 to the WRPS (*Change 1*). Change 1 was notified on 19 August 2022 with the purpose of implementing and supporting the NPS-UD and the National Policy Statement for Freshwater Management 2020 (*NPS-FM*).
- 35 The operative WRPS includes objectives and policies relating to maintaining and enhancing a compact, well designed and

¹¹ Section 77G, Enabling Housing Act.

¹² Schedule 3A, Enabling Housing Act.

¹³ Paragraph 86-90 - Section 42A Overarching Report (10 February 2023).

sustainable regional form,¹⁴ identifying that housing design and quality of housing developments can have a significant role in improving housing choice and affordability.

- 36 Change 1 introduces new objectives and policies to the WRPS to enable urban development (including housing and infrastructure) to ensure housing intensification and improve housing affordability and housing choice. As outlined in the Change 1 section 32 report, the outcome sought is to enable greater flexibility and choice in housing which will better meet people's needs and lifestyle preferences in line with the MDRS provisions.
- 37 The section 42A report outlines that the Council will be required to review the district plan by 30 June 2025 as a result of Change 1 to the WRPS and suggests it is more efficient and effective to give effect to Change 1 through a future plan change, however I consider that key aspects of Change 1, and the operative WRPS, are relevant to the development of planning provisions in Porirua City including:

37.1 Providing a compact urban form including a range of housing;¹⁵ and

37.2 Addressing housing affordability, including enabling intensification.¹⁶

Porirua City Council Proposed District Plan 2020

- 38 The Proposed Plan has only acknowledged the importance of retirement villages by providing for them by way of a 'restricted discretionary' activity status in relevant residential zones. This planning approach has been carried through under Variation 1 and PC19.
- 39 However, the situation with regard to retirement village development has evolved considerably in recent years. The directives within the NPS-UD now require an even greater focus be placed on residential intensification. Experience in the consenting

¹⁴ Objective 22, WRPS.

¹⁵ Objective 22, Policy 31 and 55 WRPS.

¹⁶ Objective 22, Policy 31 & 55 and Policy UD 3 PC1 WRPS.

stages of a retirement village development means that the existing provisions for retirement villages will not achieve the requirements of the NPS-UD and the Enabling Housing Act. Instead, a more nuanced planning framework for retirement villages has been proposed as summarised below.

SPECIFIC PROVISION FOR RETIREMENT VILLAGES

40 As detailed in the Ryman and RVA submissions, retirement villages are different from typical residential dwellings, and therefore do not necessarily fit in with the typical controls imposed on residential developments. In my experience, I agree that a fit-for-purpose consenting process for retirement villages is required and that the process should comprise:

40.1 Appropriate retirement village activity status;

40.2 Identified matters of discretion; and

40.3 Clear, targeted, and appropriate development standards to guide the notification and planning assessments of these bespoke retirement village developments.

41 Whilst I acknowledge that there are some elements in common with medium density residential development, retirement villages are necessarily different from medium density housing development for the following main reasons:

41.1 Retirement villages provide most, if not all, of the resident amenities on-site without the need for external community infrastructure and open spaces;

41.2 Retirement village buildings and layouts are carefully designed with resident needs in mind. In many modern retirement villages, there is often a central building that contains accommodation for people that need higher care and a range of communal village amenities. Access to that building for other village residents must be convenient, safe, and sheltered from weather. This central building can often be bulkier and of a different height to surrounding residential

activities to enable these functional and operational requirements;

- 41.3 Unit types vary from relatively typical independent townhouses or apartments, through to serviced care suites, hospital care beds and areas for people with dementia. The size and amenity requirements of these units vary substantially from more typical housing typologies;
- 41.4 Elderly residents have a lesser degree of interaction with the surrounding neighbourhood on a day-to-day basis compared to those of a conventional residential apartment or residential subdivision. This is because the majority of retirement village residents are generally far less mobile and therefore have significantly reduced traffic generation requirements and access to public transport infrastructure and parking;
- 41.5 Because of the frailty and vulnerability of elderly people, retirement villages need to be safe and secure. In practice, that means having restricted access and, as a general proposition, not having public roads running through the sites; and
- 41.6 Hard data collected over many years shows that retirement villages place lesser demand on the water, wastewater, and transport networks, noting that these systems are always comprehensively designed on-site to cater for the required demand.
- 42 The above factors combine to mean that retirement villages are generally large format activities, which have a different look and feel to standard housing. Accordingly, applying conventional planning approaches used for standard housing to retirement villages has, in my experience, led to substantial consenting issues.
- 43 I agree with the submissions made by Ryman and the RVA that retirement villages should be recognised as their own bespoke

activity within the residential umbrella of activities, and they should have an activity specific policy and rule framework.

- 44 A fundamental problem throughout the section 42A report is the contention that while retirement units are acknowledged as being residential activities, retirement villages themselves are not. That approach appears to me, to be a significant driver for the reasons the section 42A report has rejected many of the Ryman and RVA submissions, which request bespoke recognition of, and bespoke provisions for, retirement villages.
- 45 In my opinion, there is no doubt that retirement villages are a residential activity, and their own unique circumstances, particularly in respect of the needs of an ageing population require them to be distinguished from conventional housing developments. That is accepted by every other Council I have been involved with throughout New Zealand.
- 46 Furthermore, when assessing infrastructure and transport related provisions, it is critical that the unique nature of retirement villages, and the needs of the residents within them, are recognised.

PART 1 – INTRODUCTION AND GENERAL PROVISIONS - DEFINITIONS

- 47 Ryman and the RVA filed submissions with respect to the definitions contained within Part 1 Introduction and General Provisions – Definitions. In particular, the RVA and Ryman sought the insertion of a new definition of 'retirement units'. The proposed definition is modeled off the similar "residential dwelling" definition in the MDRS. It is required in order to acknowledge the differences from typical residential units in terms of layout and amenity needs, for example, a retirement unit is purpose built for older people with specific design needs. Mr Brown and Mr Collyns set out the features of retirement units that differ from typical dwellings, including that some units in retirement villages are designed for higher care and do not have the likes of kitchens.
- 48 The Reporting Officer states that "*a definition for 'retirement unit' is not needed as the structure of relevant provisions in the PDP is*

related to residential units (which is defined), and this term is not needed to be used.”¹⁷

49 I strongly disagree that a retirement unit definition is not required, as the bespoke and nuanced provisions that I consider are necessary to recognise the importance of retirement villages in addressing the needs of an ageing population require a bespoke definition to support them. If such a definition is not provided, I anticipate consenting complexities and debates as to what is a retirement village and what is separately a residential unit and therefore which suite of rules applies.

50 The definition is:

‘Retirement Unit’ - means any unit within a retirement village that is used or designed to be used for a residential activity (whether or not it includes cooking, bathing, and toilet facilities). A retirement unit is not a residential unit.

PART 2 – DISTRICT WIDE MATTERS - STRATEGIC OBJECTIVES

Ryman / RVA Submissions

51 The RVA and Ryman made a number of submission points relating to the strategic direction objectives for urban form and development, being UFD-O3, UFD-O6 and UFD-O7. The submissions were generally supportive of the urban form and development strategic objectives to the extent they reflect the MDRS. The submissions by the RVA and Ryman did, however, seek amendments to UFD-O3 and UFD-O6 to better respond to the NPS-UD and the amendments generally sought to address, recognise, and provide for the unique characteristics of retirement village developments and their residents.

Section 42A Report

52 The Reporting Officer recommends that the amendments proposed by the RVA and Ryman to UFD-O3 and UFD-O6 be rejected and notes with regards to UDF-O3, it is at a City wide level and in

¹⁷ Paragraph 461 – Section 42A Report: Overarching Report (10 February 2023).

regards to UFD-06 prefers the wording as proposed rather than the amendments sought.

53 It is my view that the amended wording proposed in the submission assists in better aligning the objectives and language used in the NPS-UD.

54 Proposed wording is:

UFD-06: Quality Urban Design and Plan Making

Good quality ~~design~~ development contributes to a well-functioning and ~~healthy~~ urban environment in Porirua.

PART 3 – AREA SPECIFIC MATTERS

Objectives and Policies

Ryman / RVA Submissions

55 The submissions by the RVA and Ryman¹⁸ were largely supportive of the majority of the notified objectives that apply to all residential zones – being RESZ-01 - 03. In this regard, the objectives recognise that residential activities include a wide range of housing types that respond to housing needs and demands and that residents should have access to a range of amenities.

56 The submissions did, however, seek amendments to the policies to better align with the directives of the NPS-UD and the Enabling Housing Act, along with the insertion of a new objective specific to aged care, and three new policies within all relevant residential zones as follows:

56.1 Insertion of a new objective: “Recognise and enable the housing and care needs of the ageing population”;

¹⁸ Refer to the RVA submissions table Part 3 Area Specific Matters pages 26 – 33.

56.2 Insertion of three new policies;

- (a) *“Recognise the intensification opportunities provided by larger sites within all residential zones by providing for more efficient use of those sites”;*
- (b) *“To provide for the diverse and changing residential needs of communities, recognise that the existing character and amenity of the residential zones will change over time to enable a variety of housing types with a mix of densities”;* and
- (c) *“Enable the density standards to be utilised as a baseline for the assessment of the effects of developments”.*

56.3 Deletion of policy RESZ-P5, RESZ-P7 and RESZ-P8; and

56.4 Amendment of policy RESZ-P13.

57 By way of summary, given retirement villages are an expected and critical component of residential and mixed use commercial areas, it is important that they are expressly acknowledged in the policies, so that the “planned urban built environment” is clearly understood at consent stage. Otherwise, Council officers and the community will default to expectations of typical residential activities, as has been the case in the past.¹⁹

Section 42A Report

58 The section 42A report recommends that the amendments proposed by the RVA and Ryman in relation to the new objective and policies be rejected, as they consider:

58.1 RESZ-O1 and RESZ-O2 already appropriately provide for the housing, health and care needs of older residents.²⁰

¹⁹ Statement of Evidence of Mr Brown (dated 24 February 2023), paragraph 55 and Statement of Evidence of Mr Brown (dated 24 February 2023), paragraph 90.

²⁰ Paragraph 396 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

- (a) In relation to the larger sites policy, it is unclear what is being sought, and that no methods have been advanced to implement this policy over and above the density standards.
- (b) In relation to the changing communities policy, that the *"policy and density standards provide for those spatial areas give effect to these urban forms. They intrinsically involve change from the current built form, and I do not believe the submitter's additional policy would provide any greater understanding or direction"*.
- (c) That the proposed density policy, duplicates s104(2) and could inappropriately fetter the consent authority's discretion.

58.2 With regards to RESZ-P7 and RESZ-P8, the section 42A report²¹ writer expresses concern with the submission point to delete RESZ-P7 and RESZ-P8, as *"the policy as drafted is to provide for matters of discretion for the consideration of effects arising from the breach of a permitted activity standard"*. They specifically note that the use of the term "safeguard" in relation to privacy is appropriate as applied to buildings or structures that breach the standards so that any further loss of privacy is subject to rigorous assessment.

58.3 The report writer also disagrees that there is an overlap between the two policies as they address two different sets of effects: one being the effects of a breach on the health and wellbeing of affected residents, the other, the effects on quality urban built environment.

58.4 With regards to RESZ-P13:

- (a) The section 42A report writer notes that the amendment sought by the RVA *"simply provides an enabling policy for retirement villages and does not provide any meaningful direction on how their adverse*

²¹ Paragraphs 454 - 456 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

*effects are to be assessed or otherwise managed”.*²²

They note that as there is a broad range and scale of activities within the definition of retirement villages, this is likely to result in a range of adverse effects that needs assessing and managing.

- (b) The report writer also observes that in combination with the request for RESZ-P7 and RESZ-P8 to be deleted, this leaves no policy framework for assessing and managing the effects of these buildings and the policy framework to be inserted does not provide this.²³

Response

59 I do not agree with the recommendations of the section 42A report. In light of the functional and operational needs of retirement villages and the growing need for specialist housing for the ageing population, I consider it appropriate that Variation 1 and PC19 recognise the specific housing needs of older persons – and that such matters are not generalised in the context of the objectives and policies of the plan. I also do not agree with the Reporting Officer that such relief *‘is not necessary or appropriate to single out an outcome for the ageing population’*. The relief proposed by the RVA and Ryman does not seek to place higher importance on the ageing population and housing for the elderly over other forms of housing development. Rather, the relief seeks to provide linkage to the policies and rules in the Proposed Plan and Variation 1 and Plan Change 19 that follow, and that are specific to retirement villages. Policy clarity and vertical integration with the rules will in my view support more effective and efficient consent processes.

59.1 As such, I support the inclusion of the new objective:
“Recognise and enable the housing and care needs of the ageing population”.

²² Paragraph 504 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

²³ Paragraph 505 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

- 60 In terms of the recommendations to reject the submission in relation to the general residential policies there are two key points I will elaborate on.
- 61 The first being that the objectives and policies as notified serve to protect existing levels of residential amenity, when the clear directives from the NPS-UD and Enabling Housing Act are a significant step change to facilitate high-quality developments, but of course providing an acceptable level of residential amenity (but not the status quo).
- 62 The submission sought deletion of RESZ-P7 and RESZ-P8 on the basis that they conflict with the MDRS because they seek to manage residential development beyond the permitted activity standards in a manner beyond considering the effects of the breach, and whether the development is high quality. I agree with the submission of the RVA and Ryman that the policies as notified do not align with the directives of Policy 6 of the NPS-UD and Policy 5 of the Enabling Housing Act:
- 62.1 That housing intensification may detract from amenity values and are not of themselves an adverse effect;²⁴ and
- 62.2 To provide for development not meeting permitted activity status, while encouraging high quality development.²⁵
- 63 The second key point relates to RESZ-P13. I agree with the submission and consider that the proposed policy does not provide adequate flexibility and enablement of retirement villages, nor does it recognise or address the unique features of these developments.
- 64 Insofar as external effects are concerned, retirement villages should not in my view, be subject to more stringent tests than typical multi-unit developments, as that would be inconsistent with the MDRS. As far as I am aware, there is no evidence that the effects of retirement villages are potentially greater, particularly in relation to neighbours. Further, the "effects management hierarchy"

²⁴ Policy 6 of the NPS-UD.

²⁵ Policy 5 of the Enabling Housing Act.

approach proposed in the section 42A report²⁶ is unusual for an activity which is clearly contemplated in standard residential and commercial zones. Such an approach would generally only be used for highly valued features/areas/landscapes etc.

- 65 The submissions propose a new policy in place of RESZ-P13, which, in my view, is more aligned with the NPS-UD and Enabling Housing Act, as it recognises the functional and operational needs of retirement villages through enabling language such as “provide for”, “recognise” and “may require”.
- 66 Proposed wording is:

RESZ-P13

1. Provide for a diverse range of housing and care options that are suitable for the particular needs and characteristics of older persons in [add] zone, such as retirement villages.
2. Recognise the functional and operational needs of retirement villages, including that they:
 - (a) May require greater density than the planned urban built character to enable efficient provision of services.
 - (b) Have unique layout and internal amenity needs to cater for the requirements of residents as they age.

Ryman / RVA Submissions - Activity Status, Notification and Matters of Discretion

- 67 The submissions by the RVA and Ryman sought a number of amendments to the rules, notification clauses and matters of discretion within all relevant residential and commercial zones.

²⁶ Pages 1-2, Appendix A – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

- 68 The key aspects of the submission points related to:
- 68.1 The establishment of a permitted activity for the use of land for a retirement village;
 - 68.2 A restricted discretionary activity rule for the construction of retirement villages in residential zones, with specific matters of discretion limited to managing the external effects of a village on the wider environment; and
 - 68.3 A presumption of non-notification for retirement villages that meet the relevant building controls.

Section 42A Report

- 69 The section 42A report writer highlights a number of concerns with a retirement village being a permitted activity including that:
- 69.1 There is *"no scale threshold sought for the activity"*, and that *"a retirement village of any scale would be a permitted activity in the relevant zones"*;²⁷
 - 69.2 It is not clear how a retirement village being recognised as a residential activity aligns with the definition of retirement villages, noting further that it is his *"understanding that retirement villages generally include non-residential activities to support the residents and therefore makes the activity uniquely different to residential activities"*;²⁸
 - 69.3 The *"nature of retirement villages means that they are likely to generate adverse effects that need managing"*;²⁹ and
 - 69.4 In terms of notification there are a range of cross boundary effects to be considered.³⁰

²⁷ Paragraph 571 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

²⁸ Paragraph 572 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

²⁹ Paragraph 573 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

³⁰ Paragraph 553 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

Response

- 70 Some of the rules for the residential zones in Variation 1 and PC19 already distinguish between the land use activity (i.e. residential activity, supported residential care activity or home business) and the buildings compromising that activity. In contrast, the land use and building components of a retirement village are collectively managed by the proposed rules.³¹
- 71 I disagree with the Reporting Officer's inference that a retirement village is not a residential activity,³² and "*that a retirement village of any scale would be a permitted activity*". As outlined above, retirement villages are absolutely a residential activity and the inclusion of the activity as a permitted activity is in line with how Variation 1 provides for other residential activities i.e. supported residential care. In addition, the insertion of a new activity for the construction of retirement villages as a "restricted discretionary" activity with specific and tailored matters of discretion ensures the scale, design and layout of the site can be appropriately managed. In other words, there is a distinction to be made between the effects of the physical structures on the one hand, and the use of them on the other.
- 72 In light of the above, and as highlighted in Mr Collyns and Mr Brown, the Proposed Plan should provide for the land use component of a retirement village as a permitted activity, with consent applications focusing on the effects of the built form.
- 73 With respect to the matter of limited notification, ultimately, if a proposed development is able to comply with the built form standards that apply to its boundary interface there is no resource management reason for notifying neighbours of the application. This approach is inherent in the mandatory MDRS regime and also adopted in other district plans around New Zealand (including Christchurch and Auckland). As such, I consider Variation 1 should provide direction regarding the non-notification and limited

³¹ HRZ-R19 and MRZ-R22 – Retirement Village

³² Paragraph 572 – Section 42A Report: Residential Zones, Planning Maps and General Topics (10 February 2023).

notification of resource consent applications for retirement villages in the manner set out in the submissions of the RVA and Ryman.

- 74 Also, in order to simplify the plan process, and to better align with the directives of the NPS-UD and Enabling Housing Act, it is more appropriate to recognise and provide for retirement villages under their own activity status with tailored matters of discretion, with presumptions for notification specifically related to these activities and aligned with the MDRS regime. I support the amendments included within the RVA's and Ryman's submissions and am of the view that they should be adopted in this case.

Development Standards

- 75 Ryman and RVA submitted on the various built form standards, to reflect the MDRS standards and to provide a tailored regime for retirement villages with the inclusion of 'retirement unit' definition.
- 76 The section 42A report included a number of amendments to make it clear many of the standards don't apply to retirement villages as they are not considered a residential activity by the author. As I have explained, this is not considered appropriate, as a retirement village is a residential activity and the inclusion of a definition of a retirement unit is appropriate.
- 77 I agree with the original submission points that the standards should be amended to reflect this, noting the relevant points raised throughout this statement of evidence.
- 78 Section 32AA analysis is included in **Appendix A**.

CONCLUSION

- 79 As noted within this evidence, the submissions by the RVA and Ryman on Variation 1 and PC19 are seeking to ensure that the Proposed Plan provides a consistent and enabling regulatory framework for the establishment of retirement villages within residential areas of the Porirua District.
- 80 Overall, I agree with the submissions by Ryman and the RVA that further amendments to the Proposed Plan are warranted in order to provide a planning framework that appropriately gives effect to the

NPSUD, responds to the retirement housing and care shortage, and is consistent with the approach adopted with neighbouring districts.

Phil Mitchell

24 February 2023

Section 32AA Evaluation

The s32AA evaluation is to be undertaken at a scale and degree that is commensurate with the anticipated effects of the amendments.

Having regard to Section 32AA, the following is noted:

<p>The specific provisions recommended to be amended</p>	<p>Effectiveness and Efficiency</p> <p>The recommended new objective RESZ – OX Ageing population and associated policies fill a critical gap in the policy regime of Plan Change 1 and Variation 19 associated with actively providing support for the ageing population in Porirua and provision for retirement villages. It is considered that including an objective and the three new policies appropriately recognise the acute needs for the ageing population and will more appropriately achieve the efficient use of land and patterns of development which are compatible with the role, function and predominant planned character of each particular zone.</p> <p>Costs/Benefits</p> <p>The recommended amendments enable development to occur within the Residential Zones in line with the direction of the NPS-UD. This will have benefit in encouraging residential redevelopment and intensification to support the outcomes expressed in both the PDP and NPS-UD. It will encourage quality design outcomes for retirement villages. It will provide additional population within residential zones which will contribute to great economic support in the City and provide employment.</p> <p>Risk of acting or not acting</p> <p>I consider that the appropriateness of adopting the relief sought must be considered in the context of the direction set out in the higher order policy documents and in particular the NPS-UD and the Housing Enabling Act which provide a significant step change in meeting the needs of communities including providing a variety of homes for a range of households.</p> <p>The NPS-UD seeks to enable growth by requiring local authorities to provide development capacity to meet the demands of communities, address overly restrictive rules, and encourage quality, livable urban environments. It also aims to provide growth that is strategically planned and results in vibrant cities. In my opinion, the relief sought by the RVA and Ryman will be more in line with the outcomes expressed in the NPS-UD.</p>
<p>RESZ-OX</p> <p>And Policies RESZ-PX Larger Sites, Changing Communities and Role of Density Standards</p>	
<p><u>RESZ-OX Ageing population</u></p> <p><u>Recognise and enable the housing and care needs of the ageing population.</u></p> <p><u>RESZ-PX Larger sites</u></p> <p><u>Recognise the intensification opportunities provided by larger sites within all residential zones by providing for more efficient use of those sites.</u></p> <p><u>RESZ-PX Changing communities.</u></p> <p><u>To provide for the diverse and changing residential needs of communities, recognise that the existing character and amenity of the residential zones will change over time to enable a variety of housing types with a mix of densities.</u></p>	
<p><u>RESZ-PX Role of density standards</u></p>	

Enable the density standards to be utilised as a baseline for the assessment of the effects of developments.

The risk of not acting and council not giving effect to the changes sought by the RVA and Ryman, is that intensification or redevelopment options are not taken up or are unnecessarily prevented from occurring.