

Before the Independent Hearings Panel  
Waikato District Council

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*under:* the Resource Management Act 1991

*in the matter of:* Submissions and further submissions in relation to  
Variation 3 to the Proposed Waikato District Plan

*and:* **Retirement Villages Association of New Zealand  
Incorporated**  
*Submitter 107*

## Summary of legal submissions on behalf of the **Retirement Villages Association of New Zealand Incorporated**

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Dated: 22 August 2023

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**SUMMARY OF LEGAL SUBMISSIONS ON BEHALF OF THE  
RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND  
INCORPORATED**

- 1 This summary of legal submissions is provided on behalf of the Retirement Villages Association of New Zealand (*RVA*) in relation to Variation 3 to the Proposed Waikato District Plan (*District Plan*).
- 2 As a preliminary point, I note that the issues and areas of difference between the Council planners and Ms Nicki Williams have been substantially narrowed through various discussions prior to the Variation 3 hearing. Accordingly, the planners are largely agreed on the necessary changes for the MRZ2.<sup>1</sup> That said, larger differences between the planners remain in relation to provisions in the Commercial Zones.

**MRZ2**

***Objectives and policies***

- 3 The planners agree that greater clarity is needed in the policies for retirement villages.<sup>2</sup> Ms Williams suggests a new objective and a more detailed policy.<sup>3</sup>
- 4 In my submission, Ms Williams' evidence should be preferred given it:
  - 4.1 Better gives effect to the National Policy Statement on Urban Development 2020 (*NPSUD*) and the directions of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Enabling Housing Act*), whereas the Officer's policy uses outdated concepts;
  - 4.2 Is more enabling of retirement villages in the key residential zone that is to be used for intensification in the Waikato District. It is submitted that consistency with policies in other zones is not necessary or appropriate in this context;
  - 4.3 Better responds to the issues addressed in the evidence lodged by the RVA, which is not contested;
  - 4.4 Includes an objective and policy which will provide greater clarity for the subsequent planning provisions as they cascade down, and in resource consent processes; and

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<sup>1</sup> See the Section 42A Rebuttal Report (dated 19 July 2023) and the Summary statement of evidence of N Williams (dated 31 July 2023).

<sup>2</sup> Section 42A Rebuttal Report (dated 19 July 2023), at [81].

<sup>3</sup> Summary statement of evidence of N Williams (dated 31 July 2023), at [5] – [10].

4.5 Provides an approach that is consistent with what the industry is seeking in other Tier 1 council processes.

- 5 Aside from the consistency point, I would observe there is no obvious downside to including more detailed provisions than those raised by the Officer. The upsides of greater clarity are significant for retirement village operators, as the evidence outlines.

**Rules**

- 6 In terms of rules, the key outstanding issues relate to the matters for assessment and whether retirement villages should be subject to the same non-notification presumptions as other residential developments involving four or more residential units.<sup>4</sup> Again, for similar reasons, Ms Williams' evidence should be preferred.

- 7 In particular, the Panel should, with respect, ensure the statutory directions on notification presumptions for four or more residential units, of which retirement villages are a specialist subset, are met. These provisions show a clear intent to reduce the opportunities for notification in order to speed up the provision of necessary housing. It is noted that several other Tier 1 councils have accepted that these notification presumptions should also apply to retirement villages.

**Commercial Zones**

- 8 The RVA have accepted that the Local Centre Zone is not within the scope of Variation 3. The planners are otherwise agreed that residential activities should be enabled in the Commercial Mixed Use and Town Centre zones.<sup>5</sup>
- 9 The Council Officer considers these zones already adequately cater for residential activities.<sup>6</sup> They also do not consider the retirement village provisions are 'related provisions' in terms of the language used in Policy 3.<sup>7</sup>

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<sup>4</sup> Section 42A Rebuttal Report (dated 19 July 2023), at [86]. Summary statement of evidence of N Williams (dated 31 July 2023), at [12].

<sup>5</sup> Statement of evidence of N Williams (dated 7 July 2023), at [93]. Paragraph 216 – Section 42A Report, Report on submissions and further submissions – Variation 3 to the Proposed Waikato District Plan, dated 15 June 2023.

<sup>6</sup> Paragraph 216 – Section 42A Report, Report on submissions and further submissions – Variation 3 to the Proposed Waikato District Plan, dated 15 June 2023.

<sup>7</sup> Paragraph 20 – Section 42A Report Enabling Housing Supply – Addendum 1, dated 23 June 2023.

- 10 In response it is submitted that:<sup>8</sup>
- 10.1 The RVA do not need to rely on their relief sought being 'related provisions' within section 80E. The provisions sought give effect to Policy 3 when properly interpreted. Giving effect to Policy 3 is a mandatory, rather than a discretionary requirement;
  - 10.2 That said, if there is any doubt, the 'related provision' discretion could be called upon. We have lodged separate submissions<sup>9</sup> with the Panel on the scope of these provisions being wide;
  - 10.3 Policy 3 cannot be read as narrowly as the Officer suggests and also cannot be looked at in a vacuum;
  - 10.4 Policy 3(d) refers to enabling "building heights and densities of urban form". The reference to "urban form" must include both residential and commercial activity. It is submitted to be appropriate that the relevant commercial zones articulate the urban form for which the building heights and densities apply;
  - 10.5 There is no direction in the NPSUD, as the Officer suggests, that all residential uses should be equally provided for in commercial zones. Rather, the NPSUD states that district plans are to enable a variety of homes. The uncontested RVA evidence provides a strong basis for distinguishing between retirement villages and other residential uses to better provide for that variety. In fact, the need for a different approach is agreed by the Officer as it relates to the MRZ2. But, they are not minded to take the same approach as for the commercial zones. Given the evidence that has been lodged, there is no principled basis for applying a different approach. Rather, the provisions will assist with greater consistency across the zones where residential intensification is contemplated. This approach will ultimately aid the consistent administration of the Plan and increase certainty.
  - 10.6 As acknowledged by the Panel,<sup>10</sup> the Panel must give effect to the NPSUD in its entirety to the extent that the matters are in scope of the respective plan changes. In that regard, other objectives and policies support the wider interpretation of Policy 3 applied by Ms Williams. For example:

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<sup>8</sup> See also full legal submissions on behalf of Ryman and the RVA (dated 21 July 2023), at [41].

<sup>9</sup> Legal submissions on behalf of the RVA and Ryman (dated 21 April 2023).

<sup>10</sup> Minute (14 June 2023) concerning legal submissions on the *Southern Cross* decision.

- (a) Objective 3 - district plans are to enable more people to live in areas in or near a centre zone or other areas with many employment opportunities, in areas well-served by existing or planned public transport, and/or where there is high demand for housing relative to other areas within the urban environment; and
- (b) Policy 1 - urban environments are to have or enable a variety of homes, including homes that have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport.

10.7 The provisions recommended by Ms Williams will help achieve the wider purpose of the Enabling Housing Act process, which is to speed up the provision of housing intensification by reducing planning restrictions.

11 Accordingly, Ms Williams' evidence should be preferred on all matters.

**Luke Hinchey**  
Counsel for the RVA  
22 August 2023