

Before Hearing Commissioners at Wellington City Council

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

in the matter of: an application by Ryman Healthcare Limited (*Ryman*)
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

Memorandum of Counsel on behalf of Ryman Healthcare Limited

Dated: 11 September 2022

Reference: Luke Hinchey (luke.hinchey@chapmantripp.com)
Nicola de Wit (nicola.deWit@chapmantripp.com)

chapmantripp.com
T +64 9 357 9000
F +64 9 357 9099

PO Box 2206
Auckland 1140
New Zealand

Auckland
Wellington
Christchurch



**MEMORANDUM OF COUNSEL ON BEHALF OF RYMAN HEALTHCARE
LIMITED**

- 1 The purpose of this memorandum is to provide an update to the Commissioners and parties in relation to the drawing sets, conditions, queries raised in the Council Officer's Report and hearing administration in advance of the hearing.

Drawing set

- 2 As set out in our memorandum dated 5 September 2022, Ryman has prepared updated sets of drawings for the hearing (*Hearing Drawings*). The changes made to the drawing sets since the June 2021 sets are described in **Appendix 1**.
- 3 An electronic copy of the Hearing Drawings has been provided with this memorandum.
- 4 Hard copies of the Hearing Drawings will be provided at the commencement of the hearing. The visual simulations will be provided at the scale required for accurate viewing. Ryman will also provide a hard copy of the visual simulations at A3 scale.
- 5 The Hearing Drawings use bubbles to highlight areas of change for ease of reference. Ryman anticipates lodging a final drawing set removing those bubbles for approval in its final reply.

Conditions

- 6 Ryman and Council met on 8 September 2022 to discuss the proposed consent conditions. There are a number of matters that are still being worked through, including because Council still needs to obtain advice from its advisors on some of the amendments proposed in the Ryman evidence. A further meeting has been scheduled for this Thursday (15 September) to seek to resolve the conditions between Ryman and Council. Based on the last discussion, it is anticipated that the Thursday meeting will result in much greater alignment on condition wording.
- 7 As set out in our memorandum dated 5 September 2022, Mr Turner had intended to present an updated set of proposed conditions as part of his summary presentation. However, in light of the meeting scheduled for Thursday, it is likely to be more efficient for Mr Turner to present an updated set of proposed conditions on Friday morning focusing on any outstanding matters.
- 8 Counsel invites the Commissioners to make a direction in relation to the above.

Matters for Applicant to comment on

- 9 The Council Officer's Report sets out a list of matters that Ryman was invited to comment on.¹ Most of the matters are addressed in Ryman's evidence, but for ease of reference Ryman's responses to these matters are set out at **Appendix 2**.

Hearing administration

- 10 Minute 5 requests that witnesses present written summaries of 2-3 pages in length at the hearing. We wish to note that some of Ryman's witnesses also intend to present visual material (video or images).

Luke Hinchey / Nicola de Wit
Counsel for Ryman Healthcare Limited
11 September 2022

¹ Council Officer's Report, Appendix 14.

APPENDIX 1 – CHANGES TO THE DRAWING SETS

Since the latest sets of drawings were prepared in June 2021, the following key changes have been made to the drawings:

- 1 *Drawings RC04-RC11 Proposed Site Plans*: removal of the central island at the main entrance on Donald Street and reduction of the entrance width (from 9 m to 7.5 m). Removal of the pedestrian path to the walkway along the northern boundary. The gate had been previously removed, but the pathway leading to the boundary was still shown.
- 2 *Drawing RC12 Fencing Plan*: clarification that Fence Type C is a timber paling fence with no gaps between pales to respond to Council wind evidence. Clarification that fencing (Fence Type B) is located at the back of the pocket park fronting Donald Street, not the street frontage. Removal of the central island at the main entrance on Donald Street.
- 3 *Drawings RC13-RC17 Site Elevations and Site Sections*: updated to show the Proposed Plan 11m height standard.
- 4 *Drawing RC31 Ground Floor Plan Apartments B02-B06*: change to the vehicle access gradient to Building B02 as set out in the evidence of Mr Leo Hills (paragraph 46).
- 5 *Drawing RCA08 Proposed Impervious Area and Site Coverage*: amended to confirm site coverage in response to Council officer query.
- 6 *Drawing RCA11 Proposed Building Heights Plan*: update to the key to clarify Building B01B is 6 levels above basement, not 7 levels.
- 7 *Drawings RCA14-RCA17 Site Cross Sections*: update to show the Proposed Plan height and height in relation to boundary standards.
- 8 *Drawing RCA98a Landscaping Plan*: change in plant species along the southern boundary to respond to submissions. Change to require plant species along the Donald and Campbell Street to be sourced at mature sizing of 4m to respond to Council wind evidence. Updated to remove the pedestrian path from the village to the public walkway along the northern boundary reflecting the current design. **Note**: this version is an update to the plan attached to the evidence of Mr Isaac Bright.
- 9 *New drawing RCA101 Proposed Building Heights 3D*: to show the Proposed Plan 11m height standard and related maximum building height exceedances in response to Council officer query.

- 10 *RC35 Elevations – Apartments B02-B06*: updated to show the high level windows on the southern façade of buildings B02-B06, as agreed by Ryman with Scapa Terrace neighbours to address privacy concerns.
- 11 *RCA06 Circulation Way Finding*: updated to identify the removal of the central island at the main entrance on Donald Street and reduction of the entrance width.
- 12 *RCA99 Donald to Campbell Street Path and RCA100 Transformer Screen*: updated to remove the pedestrian path from the village to the public walkway along the northern boundary reflecting the current design.

APPENDIX 2 – RESPONSE TO APPENDIX 14 OF THE COUNCIL OFFICER’S REPORT

Question	Response
<p>1. The maximum cut height and fill depth should be confirmed by the applicant as the Tonkin + Taylor report suggests the maximum cut will be around 5.5m but there is no cross section to confirm the exact excavation height. Tonkin and Taylor also say that “the maximum fill heights are expected to be in the order of 3m” but this looks like it will be circa 4.5m.</p>	<p>See paragraph 12 of the Statement of Evidence of Mr Ajay Desai.</p>
<p>2. The applicant is invited to advise whether the intention is for the pocket park to be used after-dark and if yes, then provide lighting details.</p>	<p>Bollard lighting will be provided. See paragraph 138 of the Statement of Evidence of Isaac Bright. This will be addressed in the conditions.</p>
<p>3. The applicant should confirm if Sheet 3 of the landscape plan set, dated 07/02/2020 is the latest version and is to be included as part of the RC plan set (as it was not included the July 2021 set) Ryman to check and advise.</p>	<p>The latest landscaping plans (<i>Drawing RCA98a Landscaping Plan</i> - dated 26/9/22) are in the Hearing Drawings.</p>
<p>4. The applicant needs to confirm how site coverage has been calculated. Page 39 of the AEE says it will be 47.1% but this has not been included on the plans. RC03 says the total building footprint will be 14,533.15m², which, if the total footprint has been used to calculate the site coverage across the 30,575m² site, the site coverage would be 47.5%. It is also not known if the total footprint includes eaves greater than 1m – this should also be confirmed.</p>	<p>An amended version of <i>Drawing RCA08 Proposed Impervious Area and Site Coverage</i> is included in the Hearing Drawings and responds to this query. The drawing has been updated to highlight the proposed site coverage (48.4%).</p>
<p>5. Building heights need to be confirmed. For example:</p>	<p>All heights have been checked by Ryman’s design team. There were some discrepancies due to the AEE referring to “maximum exceedances” but the plan A0-041 showing the “<i>Location of the proposed building RL at the “highest point”</i>”.</p>
<ul style="list-style-type: none"> Pages 40 and 41 of the AEE list the building height exceedances and the sections in the RC plan set show the exceedances. Drawing A0-041 also includes the RLs for the buildings. It is noted there are some discrepancies between the maximum exceedances between the ones listed on pages 40 and 41, the 	<p><i>Drawing RCA101 Proposed Building Heights 3D</i> has been amended and included in the Hearing Drawings (see para 9 above) and identifies the location of the maximum</p>

<p>sections, when working through the RLs. This is particularly the case with B01B (both buildings) and B07. The exceedance in building heights for B02-B06 are consistent between what is listed in the AEE and with the RLs, however, there are some differences shown in the sections (refer to Long Section 5 on RC16). Ryman and MD to review.</p>	<p>exceedances for each building and the amount of the exceedance by reference to the now applicable height standard (MDRS - 11m).</p>
<ul style="list-style-type: none"> • B01B (building 6): The AEE says the exceedance will be 17.58m, the difference in RL says 23.51m so an exceedance of 15.51m, and the section (refer to Long Section 1 on RC16) shows the exceedance to be 16m. 	<p>See updated <i>Drawing RCA101</i>.</p>
<ul style="list-style-type: none"> • B01B (building 7): The AEE says the exceedance is 14.54m, the difference in RL is 14.49m, and the section (refer to Long Section 6 on RC15) shows the exceedance to be 14.783m. 	<p>See updated <i>Drawing RCA101</i>.</p>
<ul style="list-style-type: none"> • B07: the AEE says the exceedance will be 3.13m, the difference in RL is 2.32m, and there is no section in the RC set for B01, however, the elevations on RC37 show the maximum height at 10.45m, so based on this the exceedance would be 2.45m. 	<p>Exceedance measurements are taken from existing ground levels, the 10.45m measurement is taken from an as designed ground level. See updated <i>Drawing RCA101</i>.</p>
<p>6. This recession plane (for the building to the west of the Oldershaw Block) needs to be confirmed by the applicant as RP07 on RC14 shows this to be 2.979m whereas section 2 on RC14 shows this to be 4.022m and the ground level is the same as is the 181.52 RL. This will determine whether condition 5.3.4.19 is met or not.</p>	<p>An amended version of <i>Drawing RC14 Proposed Site Elevations</i> is included in the Hearing Drawings and responds to the query fixing a Revit view error. An amended version of <i>RC14 Section 2</i> has updated a Revit error. The proposal does not breach any recession planes applying the new MDRS provision.</p>
<p>7. The shading diagrams do not separately show shading from a 2m high permitted boundary fence, which is a relevant consideration in disregarding shading effects from a 2m high solid boundary fence which could be constructed on the site's boundaries as a permitted activity. The applicant may wish to show shading from a 2m high solid boundary fence during the winter solstice at selected times (not all the 15min intervals) to illustrate the extent of the shadow cast on the properties adjoining the site to the</p>	<p>See Appendix A to the Statement of Evidence of Mr Andrew Burns.</p>

south (49 Campbell Street, even numbered Scapa Terrace, and 42 Donald Street).	
<p>8. Boundary fencing will be conditioned be aerodynamically designed. Some areas of landscaping will be conditioned to mitigate wind effects.</p> <p>10. I recommend that further discussions are had with parties to determine the necessity of having an acronymic aerodynamic wind shelter fence along the southern boundary to address southerly winds.</p>	<p>The Type C fencing is 1.8m high solid wooden fencing, with no gaps and is sufficient for wind mitigation: see paragraphs 70 and 75 of the Statement of Evidence of Mr Neil Jamieson and updated drawing RC12 Fencing Plan.</p>
<p>9. Comment from the applicant or further discussions with experts may be beneficial to determine whether landscaping along the western boundary shared with Karori Kids and the northern boundary (to where the Karori Pool is) can include wind-suitable trees that can grow up to 5m in height and whether there is any ability to include trees along this part of the northern boundary as the landscape master plan does not presently include any. This would be to further mitigate wind effects.</p>	<p>No additional landscaping is required in this location: see paragraph 70 of the Statement of Evidence of Mr Neil Jamieson.</p>
<p>11. As for the terrace/courtyard area and the pocket park, further comment from the applicant and/or wind experts should be had to determine wind effects on these two spaces can be mitigated by a change to the fence design. As for the pocket park, CPTED principles would need to be considered here too so input from urban designers should be sought.</p>	<p>No change to the fence design is required: see paragraphs 73-74 of the Statement of Evidence of Mr Neil Jamieson. The updated conditions will address additional wind mitigation.</p>
<p>12. As for the wind effects between B01A and B01B and design of the building, I consider it would be beneficial to have comment from the applicant on this as part of their evidence and/or have the wind experts discussion this further in more detail.</p>	<p>See paragraph 79 of the Statement of Evidence of Mr Neil Jamieson. The updated conditions will address additional wind mitigation.</p>
<p>13. It is not clear whether the 36-40 month construction period includes the earthworks stage of the development as well as construction, so this should be confirmed by the applicant in their evidence.</p>	<p>Ryman confirms that the 36-40 month construction period includes earthworks.</p>
<p>14. The applicant is invited to comment on their intention for working on public holidays.</p>	<p>No works are proposed on Sundays or Public Holidays. This restriction will be specified in the conditions.</p>
<p>15. 2.4m noise barrier fence Marshall Day have adopted in their noise predictions. The applicant is invited to respond</p>	<p>Noise barriers are required to mitigate noise effects, as</p>

<p>to in this fence matter in their evidence and provide further information on its location in relation to the site's legal external boundaries. If it is on or within 1m of the site's external boundaries then it will not comply with 5.6.2.10. If it is setback at least 1m from the boundaries then it will, but it is not known if a setback would alter the acoustic performance.</p>	<p>recommended by Ms Wilkening and will be temporary as needed during construction. See for example, paragraph 33-34 of her Evidence in Chief.</p>
<p>16. It is noted that the Council is not supporting the 9m wide crossing until there is justification from the applicant as to why it needs to be this wide i.e., tracking paths. The applicant is invited to comment on this in their evidence.</p>	<p>The width of the crossing has been reduced to 7.5m: see paragraph 34 of the Statement of Evidence of Mr Leo Hills.</p>
<p>17. Internal road layout must be reassessed to permit emergency service vehicle access and manoeuvring as required in the Designers' guide to firefighting operations – Emergency vehicle access F5-02 GD. The applicant is invited to provide a response to this in their evidence.</p>	<p>See Statement of Evidence of Mr Brady Cosgrove.</p>
<p>18. The applicant may wish to provide comment on the feasibility of complying with clearance heights for emergency service vehicles.</p>	<p>See Statement of Evidence of Mr Brady Cosgrove.</p>
<p>19. FENZ's operational needs to attend emergencies in the basements and undercroft areas is not known – the applicant or FENZ may want to comment on this.</p>	<p>See Statement of Evidence of Mr Brady Cosgrove.</p>
<p>20. A condition requires confirmation that emergency service vehicle access and manoeuvring is catered for in the detailed construction plans. It is suggested that the applicant provides a response to this in their evidence.</p>	<p>See Statement of Evidence of Mr Brady Cosgrove.</p>
<p>21. The applicant may wish to comment on how noise from the garage door and an associated warning device can be suitably designed, specified, and operated so as to comply with the District Plan noise limits.</p>	<p>See paragraph 133 of the Statement of Evidence of Ms Siiri Wilkening. The conditions will address this point.</p>
<p>22. Section 2.1.11 of the AEE states that there will be no direct access to the public pathway along the northern boundary, yet the plans show these will be a pathway directly to the fence. Please clarify.</p>	<p>Amended versions of Drawings RC04-RC11 Proposed Site Plans are included in the Hearing Drawings and remove this pathway (which initially proposed to provide access from the Village to the public pathway).</p>