

WELLINGTON CITY COUNCIL

SR 471670

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

MINUTE 4 OF INDEPENDENT HEARING PANEL

1. This purpose of this Minute is to:
 - (a) alert the parties to an email from Mr David King (dated 15 August 2022), in response to Minute 3;
 - (b) refer to the Memorandum of Counsel for Rymans dated 16 August 2022;
 - (c) comment on expert witness matters including expert witness conferencing; and
 - (d) to refer to our proposed site visits.

Mr King's email

2. Mr King responded to Minute 3 as follows:

Hi Krystle

Here is the further information sought about why it is appropriate for expert evidence to be given during the hearing concerning regulatory regimes.

There is a substantial literature on the nature of regulation, the nature of occupational regulatory regimes and the quality of expert advice in the context of their applicable occupational regulatory regimes, including within court settings. There is also relevant literature on psychological factors at work in expert decision making, including literature related to decision making under uncertainty, the role of social context, and the role of bias (including confirmation and unconscious bias); these are now widely factored into the design of regulatory regimes.

Key features of occupational regulatory regimes that are considered important in assessing the quality of expert advice include the presence of and quality of the following: qualifications/experience requirements, codes of conduct, monitoring of compliance, and complaints processes.

I am an expert in these matters by virtue of my 25 years experience as a public servant, 20 years of which were as a senior public servant; during these 20 years I had direct responsibility for a number of years for a

number of regulatory regimes, a number of occupational regulation regimes, and the design, implementation and/or monitoring of specific regulatory regimes. Within the public sector I have also had a number of responsibilities within its overall strategy of regulatory stewardship.

I note that the chair of the Hearings Panel is a lawyer. I understand the Law Society is currently undertaking a review of its part of the co-regulatory regime that applies to her profession, so hope the issues I outline above resonate with her.

I note also that the Government sees the issue of occupational regulation as so important that it has since 1999 had a formal policy framework applying to the regulation of occupations and that this has recently been used to make a decision to formally regulate a discipline not unrelated to this hearing, namely professional engineers. There are open public policy questions about the extent to which professions associated with the hearing should be the subject of more formal regulatory regimes.

I note also that the guide to the hearings linked in para 20 of Minute 1 itself notes that perceptions about the quality of advice are a consideration in hearings; it specifically identifies that the perception of the independence of experts can be affected by the nature of their relationship to (in this case) a submitter. In the same way, perceptions about the independence of expert advisors in the case of applicants are a relevant consideration in a hearing.

I note also that there are relevant considerations within my field of expertise as regard the role of planners in making an overall broad judgement vis a vis the role of Commissioners and that this has been the subject of judicial commentary and practice guidance by the RMA Law Association and the Planners Institute.

I note also that the Hearing is not a formal judicial process so that one formal factor that is relevant to consideration of the quality of the expert opinion does not come into play except to the extent it is adhered to informally, namely the duty to assist the Court impartially.

In summary, the reliability of expert opinion in an area of complexity is a function of many factors, including context, legislative and self-regulatory regulatory structures and incentives, and informal psychological factors. This is clearly a matter of relevance to the hearing and a matter in which I have the expertise to assist and am capable of independent and professional judgement.

Please let me know if any further information is required.

Kind regards

David

3. We note that we are still not persuaded that the matters that Mr King proposes to address us on are relevant to the matters we have to consider under the Resource Management Act. However, at this juncture, we do not propose to comment further on this matter but thank Mr King for this information and note that he will be required to provide his expert evidence in accordance with our timetable set out in Minute 1. We refer to this further below.

Memorandum from Ryman's

4. As per our request Ryman's have set out information regarding its pre-hearing engagement and addresses the need for expert conferencing. We wish to record our thanks to Ryman's for providing this to us it is extremely helpful. We consider the issue of expert conferencing in the next section of this Minute.

Expert Witnesses and Expert Conferencing

5. We have been directly notified that two submitters wish to call expert witnesses. First, Mr King as noted above, and secondly Mr McArdle. We are still waiting for a response from Mr McArdle to Minute 3.
6. Suffice to say at this point that if Mr King and Mr McArdle wish to call expert evidence along the lines they have indicated then this evidence must be provided in accordance with our timetable – namely by 5 September 2022.
7. Ryman's have indicated that it asked submitters if they had engaged experts and noted that it was not aware of any submitter having engaged an independent expert on a topic that is relevant to the consideration of the application. This has been confirmed by the Hearing Administrator, who has advised that, apart from Mr King, no submitter has advised that they will be calling expert witnesses.
8. In terms of expert conferencing Ryman's have indicated that informal conferencing on traffic and wind effects has occurred (or is to occur) between the relevant experts for Ryman's and Council. It appears, therefore, that no formal direction as to expert conferencing is needed at this point.
9. We note that we have not heard from the Council in relation to expert conferencing. If the Council does have anything it wishes to bring to our attention, we invite it to do. To date we have assumed that the Council is in agreement with the information provided to us by Ryman's.

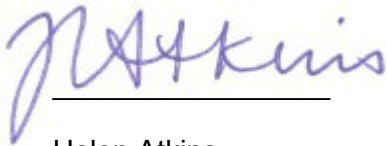
Site visits

10. In Minute 1 we noted that we would undertake site visits. Prior to the hearing we are proposing to visit one of Ryman's existing Wellington facilities and we will also visit the general locality for the proposed facility.
11. After the hearing we are likely to wish to undertake further site visits which may include visits to areas identified by the parties. We have been asked by Mr King to visit his address. We will discuss this further at the hearing.

Directions

12. We do not consider that there is any need to make any further directions at this stage.
13. Finally, we note that it is important that any procedural and process matters are recorded in minutes so that all the parties are kept fully informed.

DATED this 19th day of August 2022



Helen Atkins
Chair – Independent Hearings Panel

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