

Before the Wellington City Proposed District Plan Hearings Panel

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*under:* the Resource Management Act 1991

*in the matter of:* the allocation of topics to ISPP and Schedule 1 of the  
RMA in relation to the Proposed Wellington District Plan

Memorandum of counsel on behalf of Ryman Healthcare Limited  
and the Retirement Villages Association of New Zealand  
Incorporated

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Dated: 3 February 2023

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Reference: Luke Hinchey (luke.hinchey@chapmantripp.com)  
Hadleigh Pedler (Hadleigh.pedler@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 AND THE RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND INCORPORATED**

**MAY IT PLEASE THE HEARINGS PANEL**

**INTRODUCTION**

- 1 This memorandum is filed on behalf of Ryman Healthcare Limited (*Ryman*) and the Retirement Villages Association of New Zealand Incorporated (*RVA*) in response to the Panels' minute dated 31 January 2023 (*Minute 6*).
- 2 Ryman and the RVA respectfully seek clarification from the Panel on the Minute 6 directions setting out a process to resolve legal issues relating to the allocation of plan provisions to the ISPP and Schedule 1 (paragraphs 6-9). They are concerned that the process outlined alters the earlier process set out in Minute 1 (paragraphs 28-29), which they, and potentially others, were relying on. The new Minute 6 process may ultimately prejudice the fair and proper preparation of their cases.

**Ryman and the RVA's understanding of Minute 1**

- 3 Minute 1 sought memoranda from any submitter who disputed the allocation of "*topics*" to the ISPP, as shown in Attachment 1 to Minute 1.<sup>1</sup> It went on to record that the division of any "*matters*" within those topics between the ISPP or Schedule 1 processes would be addressed via evidence and at the hearing of the relevant topic. Ryman and the RVA took the reference to "*matters*" to be "*provisions*" of the plan change.
- 4 Ryman and the RVA do not dispute the allocation of topics to the ISPP or Schedule 1 as shown in Attachment 1- and hence did not file memoranda in response to Minute 1. They do, however, take issue with the allocation of individual matters/provisions as set out in the Council's s42A report. Their intention was to set out their case on the appropriate statutory pathway for those matters in their pre-circulated evidence and legal submissions. They expected that evidence and the legal arguments would be heard at the substantive hearing, as contemplated by paragraph 29, Minute 1.

**Ryman and the RVA's concerns about Minute 6**

- 5 The RVA and Ryman are concerned that the process described in Minute 6 could impact on their ability to fairly and properly argue their case. For example, the Panel could decide it does not have legal scope to hear submissions on provisions notified as falling within the ISPP under the 'normal' First Schedule process, and vice versa through the Minute 6 process. The Panel may then conclude

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<sup>1</sup> Minute 1 – Hearing Procedures, Wellington City Proposed District Plan Hearings Panel, at [28].

that they cannot hear other parties' legal arguments on this matter at the substantive hearings. The Minute also potentially infers (and this may be not be the intention), that the question of allocation of provisions will now be addressed through the Minute 6 process, but only for the small group of parties that have registered their interest in the matter.

**Directions sought**

- 6 In the circumstances, the RVA and Ryman respectfully seek leave to be able to participate in the Minute 6 process, particularly on the first question of, *"Whether the Hearing Panel has the power to hear submissions on provisions notified as falling within the ISPP under the 'normal' First Schedule process, and vice versa (or put another way, whether the Council's identification on the face of the PDP as notified, of the process each provision falls under is conclusive)."*
- 7 On the second question, *"If we find that we have that power, whether the Hearing Panel should exercise it in relation to the provisions put in issue by the parties"*, Ryman and the RVA seek the Panel revert to the original process in Minute 1 for determining the allocation of particular provisions at the substantive hearings.
- 8 They acknowledge that a determination on the first question ahead of the substantive hearings will most likely be more efficient. However, the parties respectfully consider that a determination on the allocation of individual provisions would be better dealt with at the relevant substantive hearing. We submit that the Panel would be better informed in that determination by hearing legal submissions and expert evidence, and considering each provision on its merits and in the wider context of the PDP. This approach would also be more efficient as it would avoid the need for parties to present overlapping evidence and legal submissions both now and later at the substantive hearings. This approach would also allow submitters to respond to the Council planning advisor's view on allocation under the relevant section 42A report.
- 9 If the Panel agrees with the points raised, it may wish to consider granting leave to other parties to able to participate in the Minute 6 process.

Dated: 3 February 2023



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L Hinchey / H Pedler  
Counsel for Ryman and the RVA