Retirement Villages Association

Submission on "Options for change" Discussion Paper

Date 20 November 2023

Retirement Villages Act Review
Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development
PO Box 82 , Wellington 6140

Contents

Foreword **2**

RVA's Introductory Comments on the Overview of the Review **4**

Part A: Overview **9**

Overview of the Review 9

Part B: Moving in **11**

General Comments on Standardised Documents 11

Disclosure Regime Proposals 11

Occupation Right Agreements 14

Part C: Living In **18**

Maintenance of Operator-Owned Chattels and Fixtures 18

Dispute Resolution Scheme 21

Moving to Aged Residential Care 25

Minimum Building Standards 34

Part D: Moving Out **35**

Summary of RVA's position on this section of the Discussion Paper 35

Repayment of the Resident's Capital Sum 37

Stopping Outgoings and Other Fees 47

Fixed Deductions 48

Capital gains/losses 49

Part E: Future-Proofing the Definition of Retirement Village **50**

Future-Proofing the Definition of Retirement Village 50

Part F: Other Topics **51**

Insurance Cover for Retirement Villages 51

Security for Residents' Capital Sums 53

Culturally Responsive Services and Models of Care 54

Roles and Powers of Government Agencies in the Retirement Village System 55

Operation of the Retirement Villages Register 57

Code of Practice 57

Code of Residents' Rights 61

Offences and Penalties 61

Application of the Real Estate Agents Act to Sale or Transfer of a Retirement Village Unit 62

RVA
NEW ZEALAND
Retirement Villages Association

Schedule 1 –Definitions 65

Schedule 2 – RVA's Comments on Proposed Standardised Terms 67

Appendix 1– UMR Residents Vulnerability Survey (September 2021) 69

Appendix 2 – RVA Blueprints for New Zealand's Retirement Villages Sector
(Part A - original Blueprint) 85

(Part B - June 2023 update) 93

Appendix 3 – RVA Key Terms Summary 97

Appendix 4 – JLL - New Zealand Retirement Villages And Aged Care Whitepaper 99

Appendix 5 - Sense Partners Review of Martin Jenkins Report 153

Appendix 6 – RVA Best Practice Guidelines for Disclosure of Right
to Transfer to Care in a Retirement Village 161

Appendix 7 –UMR Relicensing Data (October 2023) 162

Appendix 8 – John Ryder Report on Questions of the New Zealand
Retirement Villages Industry 171

Appendix 9 – Ross Currie's Report 189

Foreword

The Ministry of Housing and Urban Development's discussion paper on the retirement village sector is an important and positive contribution to shaping the future of one of New Zealand's retirement village living in New Zealand.

The Retirement Villages Association (RVA), which represents 96 per cent of the country's retirement villages by unit number, welcomes the opportunity to share our views and perspectives on the proposals.

In our experience, older people look for four main things – an age-appropriate place to live, companionship, financial security, and a pathway to care. That is the promise that retirement villages offer, and we believe that need will remain unchanged for future generations.

The growing popularity of retirement village living and the overwhelming satisfaction levels among residents is something the sector is very proud of.

More than 50,000 Kiwis now call a retirement village home and approximately 100 older New Zealanders are choosing to move to a village every week. This is around 14% of the +75 population, a figure that has been stable for the last four years.

There is no doubt that New Zealand's population is ageing quickly. Between today and 2043, people aged 75+ will increase from around 383,510 people to 759,630 – almost double. Based on a market share of 14%, that means that by 2033, almost 80,000 people will be living in a village, and by 2048, that figure will increase to 116, 600 people.[1]

To meet the demand for retirement villages, the retirement village industry has built on average for each of the last five years 1,854 units.

Today, there are 95 villages in the development pipeline with the capacity to deliver 24,770 units over the next five or so years.[2] The growth is not confined to the main centres – it is spread across the entire country so that all regions have the opportunity of a retirement village nearby.

However, this development pipeline can only be realised if the sector's model's integrity is maintained. This submission identifies where improvements can be made, but is equally clear about changes that will undermine the sector's ability to deliver what older people want in the future.

The sector's success has been underpinned by our commitment to ensuring we continue to evolve to meet the needs of our village residents – they mean the world to us.

However, we accept there is always room for improvement and refinement around certain practices as our sector, our offering evolves and the expectations of our residents change.

That's why the retirement villages sector has been undergoing the most significant change in more than a decade.

Our Blueprint for New Zealand's Retirement Village Sector in 2021 set out tangible and definitive steps to improve the retirement village living experience.

In one of the most significant developments, we have also supported the establishment of an independent Residents' Council, chaired by a consumer champion, to advocate for the interests of village residents.

The discussion paper released by the Ministry of Housing and Urban Development in August 2023 canvassed a wide variety of options and proposals for retirement village living.

We were pleased the discussion paper picked up many of the substantial reforms the sector is already voluntarily rolling out in retirement villages across the country.

The sector certainly supports some changes to industry regulation, but we also need to be mindful of potential negative unintended consequences of any changes.

---

[1] Refer Jones Lang LaSalle Retirement Villages White Paper, August 2023.

[2] Ibid

RVA NEW ZEALAND
Retirement Villages Association

For us, one of the great benefits of the current legislation is that it enables flexibility and competition between operators, so that they can develop business models that meet current and future residents' needs – it would be a backwards step to undermine this.

In our submission we have raised concerns about some aspects of the discussion paper, in particular the mandatory repayment deadline to return a resident's capital sum, which we believe will impact the financial viability of many operators, including smaller regional retirement villages and slow the development of much-needed new villages, many with hospital-level aged care.

We think it is vital the integrity of the retirement villages model in New Zealand is preserved because it works.

The RVA remains committed to working with the Ministry and the Government to ensure the best outcomes for retirement village residents and operators alike.

John Collyns
Executive Director
RVA

Graham Wilkinson
President
RVA

November 2023

RVA's Introductory Comments on the Overview of the Review

"The retirement village industry plays a key role in catering for the needs of our growing older population, so it is important that the regulatory settings underpinning the retirement villages regime can continue to enable growth, innovation, and consumer choice within the sector."

[From the foreword of the Discussion Paper]

The Retirement Villages Association of New Zealand Inc (RVA) agrees with this statement, and it succinctly describes and reflects the RVA's focus in responding to the Discussion Paper. The RVA considers that a number of proposals set out in the Discussion Paper will have the opposite effect and, if implemented, would result in restricted growth and innovation and a reduction in consumer choice.

The RVA's principal concerns arising from the Discussion Paper are as follows:

1. **Opposed to mandatory repayments** - The RVA is categorically opposed to mandatory repayments for the reasons set out later in this submission.
2. **Focus on disclosure and transparency, not on imposing commercial terms** - The RVA considers that any proposed legislative reform should focus on improving transparency and disclosure for residents rather than forcing one commercial model on operators (for example, instead of operators being forced to cover the costs of maintenance of operator's chattels and unit fixtures, the ORA should clearly set out, who owns the chattels in the unit (operator or resident) and who is responsible for the cost of the maintenance of the chattels (operator or resident).
3. **Evidence before change** - Many assertions in the Discussion Paper have been made with limited, or no, objective quantitative evidence (in particular the proposals regarding complaints and disputes) and the RVA strongly recommends that quantitative evidence be obtained as to whether there is in fact any problems with a particular area of the current regime before any changes are made in respect of that area.

Background to the RVA

The RVA is a voluntary, nationally-based membership association representing owners and operators of retirement villages throughout New Zealand.

It represents 413 member villages, with a combined total of 41,100 dwellings and 50,200 residents. Our member composition is approximately 68% corporate operators, 16% independent, 16% not-for-profit.[3] Approximately 96% of the registered retirement villages in New Zealand are operated by RVA members.

The RVA has reviewed the proposals set out in the Discussion Paper from a resident-centric perspective (recognising that in a resident-funded retirement village model, resident satisfaction is key to the success of our members' villages). At the same time, it must be recognised that the success of the retirement village sector depends on operators being able to continue to run their villages in a manner that is financially sustainable.

As part of the preparation of this submission, the RVA has held consultation meetings with its members in Auckland, Wellington and Christchurch. Therefore, this submission is representative of the views of our members who make up the vast majority of operators in New Zealand.

Any legislative review of the retirement villages sector must be considered in the context of overall resident satisfaction[4] and the continued growth of the sector that has occurred under the current regime. The sector has grown and developed over the 16 years since the RV Act first came into force (RVA membership data shows an increase from 15,900 retirement village units in 2008 to 41,100 retirement village units in 413 RVA member villages by December 2022).

[3] RVA membership data shows the following breakdown of ORA types: independent living units 85%, care suites 13% and unit titles 2%.

[4] For example, a survey of 1,692 residents completed by UMR in 2021 found that 91% of residents surveyed declared they were satisfied with their experience of living in their retirement village. A copy of this report is attached at Appendix 1.

RVA NEW ZEALAND Retirement Villages Association

Alternative way to make changes

The RVA would be supportive of implementing some key changes by way of amendments to the Retirement Villages Code of Practice (**Code of Practice**) such as a requirement for operators to stop charging weekly fees, and for the accrual of the fixed deduction to cease, on the termination date or later date that the resident vacates the unit. This will enable initial changes to be made in the shortest time without the need for full legislative reform. Such changes would capture many of the points raised in the RVA's Blueprint for New Zealand's retirement village sector[5].

General Observations

Before answering the specific questions posed by the Discussion Paper, the RVA would like to make the following general comments:

- **Retrospective legislation is bad public policy and undermines the rule of law** - The Discussion Paper proposes that a number of changes could retrospectively apply to existing ORAs. ORAs are the cornerstone of an operator's business. Operators must have contractual certainty in respect of all ORAs that have already been entered into. The RVA strongly disagrees with imposing any retrospective provisions that would alter the terms of existing contracts.
- **Legislative duplication** - Retirement villages are subject to a wide range of legislation. The Discussion Paper has focused on some areas that are already covered by other primary legislation and dealt with by other government agencies (such as privacy law and unfair contract terms). Therefore, there is no need for retirement villages legislation to be amended to duplicate regulation.
- **Diversity of choice** – A strength of the current retirement villages legislative regime is that it allows flexibility of business model and a wide variety of ORA terms, allowing residents to choose the model that suits them. It is imperative that any legislative change reflects this diversity and freedom of choice. The RVA is concerned that much of the Discussion Paper seems to be premised on the licence to occupy model and also suggests that this model is homogenous (which it is not).
- **Imposition of one ORA model** - Regulating and homogenising key commercial terms as proposed in the Discussion Paper (such as responsibility for maintenance and how much can be charged as a fixed deduction) will result in the need for operators to change their offering to compensate for these obligations. This will effectively result in the imposition of one model on all retirement village operators.
- **Anti-competitive** - The RVA considers any proposed legislative change that would result in the Government effectively setting an operator's commercial terms of their offering to be anticompetitive.
- **Residential Tenancies Act** - There are references throughout the Discussion Paper suggesting that aspects of the retirement villages regime should align with the residential tenancies regime. They are distinct offerings and there are many reasons why such alignment is not appropriate.
- **Protection of consumer rights** - The role of the statutory supervisor is integral to the successful operation of the retirement villages legislative regime and the protection of the rights of all residents. It can be argued that the absence of the role of statutory supervisor in Australia has led to Australian legislation developing protections that are not necessary in New Zealand. It is surprising that the role and contribution of statutory supervisors is barely recognised or touched upon in the Discussion Paper. In particular, statutory supervisors' role in the complaint resolution process is not adequately recognised.

Conclusion

This is a particularly important moment for the retirement village industry. The RVA would be happy for MHUD to contact us regarding this submission, and we would welcome the opportunity to speak further about any aspect of this submission. In the first instance, please contact John Collyns, the Executive Director of the RVA. John can be contacted at:

- Phone: 021 952 945
- Email: john@retirementvillages.org.nz
- Address: Level 13, 342 Lambton Quay, Wellington, 6011

The RVA consents to this submission being released, if requested, under the Official Information Act 1982.

[5] Retirement Villages Association "Blueprint for New Zealand's Retirement Villages Sector" (2021). A copy of which is attached to this submission at Appendix 2 (Part A).

Summary of the RVA's Submission

The following is a summary of the main points that are included in the RVA's submission.

Moving in

Disclosure Statements

- Supports a new shorter disclosure statement, but with no word or page limit. Does not support having two documents ("village comparison" and "information statement").
- Supports a shorter village comparison document similar to the RVA Key Terms Summary.

Occupation Right Agreements

- Does not support a standardised ORA (on the basis that there is no one-size-fits-all ORA, different operators have different terms, would not work for unit title and capital gain sharing and other 'non-standard' ORAs, and would stifle innovation).
- However, supports having some standardised terms that could be annexed to the back of an ORA. The agreed standard terms would mostly be terms that are set out in legislation (e.g. operator's grounds for terminating an ORA, cooling off right, procedure if there ceases to be a statutory supervisor).
- Does not support proposal for operators to make documents available on their websites.

Consumer protections

- Considers that there is already good, robust consumer protection available under the Fair Trading Act and the RV Act.
- Does not support the Fair Trading Act regime regarding false or misleading statements being duplicated in retirement villages legislation. (The Registrar already has sufficient powers to act regarding misleading or deceptive advertisements.)
- Does not support any new powers under the RV Act to declare ORA terms to be unfair. (The existing process under Fair Trading Act for the Commerce Commission to assess claims of unfair contract terms (and refer for prosecution if considered necessary) is sufficient).

Living In

Maintenance of operator-owned chattels and fixtures

- Supports the proposal that operators provide a list of operator-owned chattels to incoming residents.
- Supports that marks from mobility devices arising from normal use and incontinence are classified as fair wear and tear.
- Does not support providing a list of fixtures. Does not support that the list be required to state the condition of the operator's chattels and fixtures.
- Does not support the proposal that operators be required to cover costs of repairs and maintenance of all operator's chattels and fixtures. Instead, the RVA considers that the focus should be on disclosure and transparency of costs not forcing all operators to use the same model.
- Does not support any requirement for operators to pay for "upgrades" to operator's chattels and/or fixtures.

Complaints and disputes

- The RVA considers that the current dispute resolution system is relatively effective and that it should be retained (in whole or in part). However, recognises that some improvement could be made to the existing system.
  - The RVA offers to fund a research role in the Retirement Commissioner's office to gather quantitative evidence as to resident dissatisfaction and how the complaints system is currently working.
  - Supports work to educate the public about the role of the statutory supervisor and to address perceptions as to lack of independence.
  - Retirement Commissioner to appoint dispute panel members rather than operators.

RVA NEW ZEALAND Retirement Villages Association

- Supports statutory supervisors continuing to have a role in the dispute resolution process.
- If there is to be a new scheme, it should be delivered by a non-governmental dispute resolution provider/ service (and not the Retirement Commissioner).
- Does not support the cost of any new scheme being spread across all operators regardless of their complaints history.

Moving into residential care

- Supports proposal that the disclosure document should include a statement that there is no guarantee of a bed at the time resident may need one.
- Does not support increased level of disclosure unless such disclosure would be relevant to residents. E.g. does not support providing occupancy info (and it would be administratively burdensome to calculate and provide this).
- Submits that operators must be able to charge a second fixed deduction for residents moving into care suites and that there should not be any cap on a care suite fixed deduction.

Minimum building standards

Supports position set out in the RVA Remit, being that if an operator is refurbishing a unit and changes or replaces part of a unit that is subject to healthy homes standards (e.g. insulation) then that changed/replaced item must comply with healthy homes standards.

Moving Out

Repayment of capital sum

- Supports requirement to pay interest after nine months if unit not resold BUT only if a mandatory repayment regime is not imposed.
- Supports interest rate calculated under Interest on Money Claims Act 2016.
- Categorically against any mandatory repayment/buy-back requirement.
- The RVA argues that this would:
    - Reduce consumer choice
    - Increase costs for residents
    - Slow down new village development
    - Mean that few operators would have sufficient liquidity to manage mandatory repayments
    - Have an adverse effect on financial viability of operators.

Stopping outgoings and other fees

- Supports proposal to stop charging weekly fees on later of termination date or vacation date (but not retrospective)
- Supports proposal to stop accruing the fixed deduction on same date (but not retrospective)
- BUT – the there must be a carve-out for villages where the resident sets resale price and/or controls sale process.
- AND the RVA supports these proposals on the basis that a mandatory repayment regime is not introduced.

Fixed Deductions / DMFs

- Does not support any limit on the size of the fixed deduction.
- Does not support any requirement for operators to be required to disclose what the fixed deduction covers.

Treatment of capital gains/losses

Supports the proposal that residents should only be liable for capital loss to same extent as entitled to capital gain.

Other Topics

Insurance cover

- Agrees that the legislation on insurance requirements needs to be updated to reflect what insurance is actually available in NZ market (i.e. full replacement insurance difficult to obtain).
- Supports the proposal that operators be required to maintain insurance polices that are sufficient (together with other funds and assets) to pay out all residents' capital sums if a village is damaged or destroyed.
- Does not support a 12 month transition because it is not enough time to amend existing policies so instead proposes a 24 month transition.
- Supports the proposal that insurance excesses are not be charged to residents unless residents are at fault for loss, damage or destruction.

Statutory supervisor's security

- Supports proposal that statutory supervisors should be entitled to hold both land and personal property security/GSA BUT on the basis that the statutory supervisor should have discretion to decide whether to take such security.
- Submits that the GSA does not need to be first ranking and that the statutory supervisor should have the ability to take specific-asset security rather than GSA, if appropriate.

Government Agencies

- Considers there is no proven need for a government agency having an RV audit and monitoring function. The RVA is not aware of any other industry that does not receive government funding that is subject to a regular government audit.
- Does not believe there is a need for one government agency to have sole responsibility for RV sector (all businesses are governed by multiple government agencies).

Code of Practice / Code of Residents' Rights

- Supports a plain language Code of Practice but does not support any requirement to make all registered documents available in 'alternative formats' (cost prohibitive).
- The Code of Practice should be updated when a response to specific issues is needed (e.g. review following Canterbury earthquakes).
- Does not support any changes to way the Code of Practice is currently varied. Current process ensures that all stakeholders are properly consulted and can input into any proposed changes.
- Supports annual general meeting alternatives for care suite only villages.
- Considers consultation requirement in Code of Practice are robust and no change is needed to the consultation requirements.
- Supports proposal to amend the Code of Residents' Rights to clarify and strengthen residents' rights and obligations towards each other.

Real Estate Agents Act

- Supports status quo regarding the application of REA Act to sale of ORAs. In some situations, real estate agents may need to be appointed to sell an ORA but, in most cases, operators will sell an ORA itself.
- Does not support any requirement to use real estate agents for all ORA sales or the addition of principles from the REA Act into the RV Act. Existing protections for sale of ORAs are extensive and sufficient.

Miscellaneous

- Does not support conveyancers being able to give intending residents legal advice on ORAs.
- Does not support any privacy law provisions being added to RV legislation. Privacy law matters are thoroughly covered by the Privacy Act 2020 and there is no need to replicate in the RV Act or associated legislation and regulations.

Part A: Overview

Overview of the Review

Q1: Do you agree with the scope and objectives of the review? Why/why not?

See introductory section above.

Q2: Do you have any comments on how the proposed changes, by themselves and collectively, might affect different parts of the sector (such as different types of villages, residents and other stakeholders)?

See introductory section above.

Q3 Do you have any information you could share on Māori interest in and experiences of retirement villages that we should take into account in the review?

The RVA sees Māori interests and iwi represented in its membership and is aware of member village operators who are either wholly owned or partially owned by iwi organisations.

Where the operators are partially owned, they generally operate under a co-governance model. An example of this type of model is Village at the Park in Wellington which is owned 50/50 by The Tenths Trust (which is an ahu whenua trust constituted under Section 244 of Te Ture Whenua Māori Act 1993) and Arvida Group. Each owner has the right to appoint three directors to the board of the operator and the chairperson does not have a casting vote. The board has appointed Arvida to manage the village on a day-to-day basis, and the manager refers any major decisions to the board. At the village entrance is a Pou that was designed by the Tenths Trust. A number of the wings of the village are named after Kaumatua and the village encourages Te Reo education and has regular visits from members of the iwi.

Other examples of partnerships or shared ownership with local iwi include:

- **Silverstream and Whitby Lakes villages** are part-owned by Te Rūnanga o Toa Rangatira (which is the mandated iwi authority for Ngāti Toa Rangatira).
- **Eastcliffe on Orakei retirement village** which is ultimately owned by the Ngāti Whātua Ōrākei Trust.
- **Generus Living Group** - Generus has two partnership arrangements with Mangatawa Papamoa Block Incorporated (MPBI), a Māori Incorporation based at Papamoa in the Bay of Plenty. (See www.mangatawa.com)

MPBI was formed in 1957 as part of an amalgamation of various land. In 2007, a partnership was negotiated with Generus Living Group, an experienced retirement village operator, for around one third of a large block of land known as "The Asher Block" at Maranui Street, Papamoa. The entire land area was vacant, and the only income received were minimal grazing fees. The village, Pacific Coast Village, commenced operations in 2010 and currently comprises 227 villas, 36 serviced apartments and 57 aged care suites. Due to the success of the partnership, a second partnership was formed in 2017 for a second village, Pacific Lakes, on a further part of the land, which currently has 170 villas completed of a planned 250. In both cases the land areas involved have been leased to the partnership under long term leases to preserve MPBI ownership of their land.

Based on annual reports for the 2022 financial year obtained from the Retirement Villages Register and the disclosure statements for both villages, the current value of the two villages is in excess of $200 million, i.e. MPBI has over $100m of value as their share of the partnership and this will eventually allow the development of other assets and benefit for their shareholder base. The ORAs for the villages already contain terms of compensation for residents if repayment was to take longer than nine months, although to date no resale has taken more than nine months. However, the partnership is concerned and believe the requirement for a compulsory repayment would require a significant amount of capital to be held and substantially delay distributions to the partners.

Over recent years there has also been an increase in developers of new villages partnering with the local iwi at the inception stage to ensure that local customs are followed and that the cultural heritage of the land is appropriately acknowledged.

An example is Te Puna Waiora, which is a village located in Kerikeri. As representatives of mana whenua, Te Rūnanga o Ngāti Rēhia gifted the name for this community. Te Puna Waiora is translated as "The Source of Wellbeing" to reflect the developer's vision. Puna means a fountain or a spring, signifying regeneration and Waiora means health and wellness. As the village develops, milestones are acknowledged, such as the laying of a Mauri stone from Te Awa O Ngā Rangatira at the entrance to the clubhouse. Ngāti Rēhia also provided a name for the clubhouse - Te Ripo Wai which means gentle swirling waters and bringing lifeforce and calm from the river. The partnership has also included a successful community landscaping plan of native plants and trees, as well as apprenticeships for iwi.

It is expected that the increasing involvement of Māori interests in the ownership of villages and acting in an advisory role will result in villages being seen as an attractive option for older Māori.

RVA NEW ZEALAND Retirement Villages Association

Part B: Moving in

General Comments on Standardised Documents

The RVA's comments on this part of the Discussion Paper are premised on the need for both the disclosure statement and the ORA to be sufficiently flexible so that operators can differentiate themselves and their offers. The documents must be in a form that allows for the clear and logical documentation of the terms that apply for all retirement village structures currently in existence and must be flexible enough to accommodate new offers and structures. The standardisation of documents, in particular the ORA, will not allow this to occur and has the potential to stifle innovation.

It is evident from a review of the proposed template documents set out in the appendices to the Discussion Paper that they were prepared on the basis of the predominant licence to occupy model with a fixed deduction based on the amount paid on entry and payable on exit. To standardise document form and content based on the current predominant model fails to recognise the needs of villages that have different terms. Further any operator wanting to introduce an innovative structure will be at a disadvantage in that they will need to "shoehorn" their offer into a rigid framework. The Discussion Paper proposes that additional terms can be set out at the end of an ORA. This is a clumsy approach, likely to lead to cross referencing and overall a less clear document for residents.

Disclosure Regime Proposals

Q4 Which of the proposed options for new disclosure documents do you agree with?

- **Option 1 – Two documents: A Village Comparison and Information Sheet**
- **Option 2 – A new shorter disclosure statement**
- **Neither of these**

Please give reasons for your answer, including any alternative suggestions about how the issues with disclosure statements could be addressed.

If there is to be a change to the form of disclosure document(s), the RVA would prefer Option 2 over Option 1.

The RVA prefers Option 2 as it considers having all the required disclosure in one document will be easier for intending residents to read and understand rather than having the information spread across two separate documents (as contemplated by Option 1). Further, having one disclosure document will be more practical and cost-efficient for operators to maintain.

Having a Village Comparison and an Information Sheet (Option 1) may risk giving residents an incomplete picture of a village should they only refer to one document. While there is some duplication across some of the disclosure required for the Village Comparison and the Information Sheet, there is also some information that is only disclosed in the Village Comparison and not the Information Sheet (and vice versa). The splitting of information between two disclosure documents will simply add to intending residents' confusion and the likelihood of key information being overlooked.

While the RVA supports Option 2, it has serious reservations as to a word or page limit.

As part of the RVA's review of the Discussion Paper, we prepared example forms of the disclosure statement set out in appendix 3 of the Discussion Paper for two existing villages. The Discussion Paper proposes that such a document would be no more than 15 pages long and no more than 6,000 words. Including the required disclosures set out in appendix 3 of the Discussion Paper resulted in the first disclosure statement being 7,367 words over 16 pages with the second being 6,113 words over 14 pages (noting that neither village had a care facility on site and therefore a village with a care facility would have a longer disclosure statement to take account of the expanded transfer to care disclosure requirements).

While the villages did not offer care, one was a unit title village and the other a licence to occupy village where residents paid for all maintenance and had the benefit of capital gain. Villages such as these, with less common terms and more complex structures, cannot be accommodated if word limits are imposed. Page limits are meaningless and potentially will result in information being presented less clearly, with less white space, and smaller fonts simply, so the page limit can be met.

If there is to be a word and/or page limit for a new "shorter" disclosure statement then the items that are required to be disclosed, must be commensurate to any new word or page limits. Care also needs to be taken to ensure that such word or page limits allowed operators to make full disclosure on the matters required. On balance, the RVA submits that both a word and page limit should not be imposed but rather the length of a disclosure document can be reduced if the disclosure statement does not have to replicate information that is also contained in the ORA.

The RVA would be happy to participate in any discussions with MHUD on the form of any proposed new disclosure document.

Lastly, the RVA does not object in principle to the concept of having a very brief "village comparison" document, however we consider that the form set out in appendix 1 of the Discussion Paper requires disclosure of too much information to serve the purpose of providing a high-level comparison between villages.

The rationale behind the Key Terms Summary (attached at Appendix 3 of this submission) created by the RVA for its members to use is that it is a summary of limited key information that is set out in an easy-to-read (and easy to compare) format with the use of simple tick boxes and a clear layout. The RVA would therefore support a shorter disclosure document in this form for use alongside the Option 2 disclosure statement.

The RVA also has the following comments on some of the points raised in the Discussion Paper regarding the form of disclosure document:

- **Complaints** - A notable new disclosure in both appendix 2 and 3 of the Discussion Paper is how to make a complaint, which replicates information in both the Code of Practice and the village's complaints policy and therefore provides additional length to the disclosure documents without adding any real information or benefit.
- **Total Cost Calculation** - Both appendix 2 and 3 of the Discussion Paper provided for a "total cost" calculation which cannot be provided if the fixed deduction is not ascertainable until resale or if the weekly fee increase is not fixed. We also have concerns that including such information borders on financial advice.
- **Content Requirements in Regulations (paragraph 56(b) of the Discussion Paper)** – The RVA supports the proposal that the content requirements be prescribed in the RV General Regulations, rather than the current approach of them being included in the RV Act, the RV General Regulations, and the Code of Practice. We are of the view that this makes compliance more easily achievable and measurable.
- **Electronic Versions of Documents (paragraph 56(c) of the Discussion Paper)** – The RVA does not support the proposal that electronic versions of the new documents be required to be in a searchable format and published on each village's website in a prominent place. This may be technologically difficult for a number of reasons, for example smaller operators who do not have the internal resource to be able to quickly upload new documents as and when they are registered, or for larger groups where it would necessitate many links to the different documents for each village. Also, it is sufficient that the documents are publicly available on the RV Register and are available from the operator on request.

The RVA would instead support the RV Register being upgraded to provide for searchability of registered documents.

Q5 Is any information missing from the proposed documents? (Appendix 1, Appendix 2, Appendix 3) If yes, please tells us what this is.

While appendices 1-3 of the Discussion Paper do not include all the information that is currently required to be included in disclosure statements under the existing legislation, the RVA does not have any objection to a such information not being in a new form of disclosure document.

Under the current regime there is a considerable degree of duplication between the information required to be included in an ORA and the information required to be included in a disclosure statement. Therefore, the RVA has no objection to (and would in fact welcome) a reduction in duplication, noting that most of the information missing from appendices 1-3 is information that is already included in an ORA.

Q6 Would the proposals to deal with false and misleading statements and inconsistency between a disclosure document and an ORA address the issues we have outlined? Please give reasons for your answer, including any alternative suggestions about how these issues could be addressed.

Better resident rights for false or misleading statements

Proposal One - Make it easier for residents to make a complaint against an operator for making a misleading or false statement to an intending resident either verbally or in writing. Resident who relied on that statement to have a right to make a complaint or take a dispute against the operator through the retirement villages disputes regime.

The RVA acknowledges that residents should be able to get redress for false or misleading statements and that this right already exists under the Fair Trading Act 1986. The purpose of Proposal One seems to be that residents, rather than using the Fair Trading Act, will be able to bring a claim directly under the RV Act either by making a complaint or bringing a dispute against the operator through the retirement villages disputes regime.

Under the RV Act a complaint about a false or misleading statement could be raised under the complaints process as both an informal and/or formal complaint. Depending on the facts, an allegation of a false or misleading statement could form part of a claim under a dispute notice. At present, if the statement cannot be the subject matter of a dispute panel hearing, it can be raised by a resident with the Disputes Tribunal or through the Courts.

Should it be decided that disputes about alleged false or misleading statements should be dealt with entirely within the RV Act framework it is important that the same general rights and protections available under the Fair Trading Act will also apply so that the scope and process for making complaints is fair to both operators and residents.

For example, it is important that the time limit for raising a complaint mirrors that found in the Fair Trading Act, i.e. claims can only be made within three years after the date on which the loss or damage or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered (section 43A Fair Trading Act). Residents may live in a village for a long time, and it can be extremely difficult for an operator to disprove an alleged verbal representation if it is raised many years later, especially if the person who may have made the statement has left the operator's employment.

In light of the above the RVA suggests that in order to avoid duplication of avenues to challenge false or misleading statements the status quo should remain.

Increased Registrar powers

Proposal Two -Strengthen or amend the power of the Registrar to act against an operator if they consider a registered document or advertisement is likely to mislead or confuse.

The RVA does not consider any amendment is required. The Registrar already has the following rights:

- to suspend a village if any registered document is likely to mislead or deceive any resident (section 18(1) RV Act);
- it is an offence if an operator does not take all practicable steps to ensure that the advertisement is not misleading or deceptive (section 79(2) RV Act);
- the Registrar may apply to the Court for an injunction restraining an operator from engaging in conduct that constitutes or would constitute a contravention of section 26 (advertising), an attempt to contravene that section and various associated acts (section 80(1)(a) RV Act);
- the Registrar may apply to the Court for an order requiring an operator to publish corrective statements (section 81 RV Act); and
- the Registrar may also apply for a further range of broad orders as set out in section 82 of the RV Act.

Further, as noted in the Discussion Paper the statutory supervisor already has the power to direct an operator not to publish or distribute an advertisement that they consider is inconsistent with the legislation, the disclosure statement or ORA.

Inconsistency between documents

Proposal Three - If a term in an ORA is inconsistent with information in a disclosure document, to the detriment of the resident, the term should be interpreted (as far as possible) in favour of the resident. A resident should be able to apply to the retirement villages dispute regime for resolution.

The RVA supports this Proposal.

Q7 Please add any other suggestions you have for improving the retirement villages disclosure regime

It is important to note that disclosure statements provide information regarding the village as at a particular point in time (i.e. the date of the disclosure statement) and the fact that such information is correct and up-to-date at that point in time does not mean that it will not change and evolve over the years of a resident's occupation. The RVA would support a statutory requirement to include a statement in the disclosure statement to this effect.

Occupation Right Agreements

Q8 Which proposed options for standardising ORAs do you agree with?

- **Option 1 – Standardising the format (i.e. the headings and layout)**
- **Option 2 – Standardising both the format and some of the terms**
- **Neither of these**

Please give us your reasons including any suggestions for how the issues with ORAs could be addressed

The RVA does not support either Option 1 or Option 2 and considers that it is not practical or workable to have a standardised format for ORAs.

As we have discussed throughout this submission, there is no one-size-fits all ORA offering. Operators need to have the scope to identify, properly describe, and distinguish their individual offering from others in the market. There is a risk that a standardised layout would effectively result in the majority of operators having almost the same offer and same structure in terms of the way they do business thereby significantly reducing competition. Operators differentiate themselves on more than just price and fixed deduction percentage, and ORAs need to have the ability to reflect the spectrum of ORA terms and options offered in the market by different operators.

For example:

- some operators offer various different capital gain sharing options;
- there are different variations in how maintenance responsibilities and costs are allocated between operators and residents;
- there are variations in the responsibility and process for finding a new resident for the unit on termination;
- some operators offer different internal transfer terms;
- some operators may offer various services packages, while other villages are only aimed at independent living residents,

and the ORAs need to be flexible enough to reflect all these different terms.

Further, some operators offer ORAs for care suite (residential care) rooms and these ORAs can be quite different from ORAs for independent living units.

Standardisation is particularly challenging for ORAs that do not follow the 'standard' licence to occupy model, such as unit title villages, villages where residents share in the capital gain, or for care suite ORAs (as mentioned above). In preparing this submission, the RVA prepared two forms of ORAs using the *"proposed standardised layout for ORA"* set out in appendix 4 of the Discussion Paper. One form was for a unit title village and one form was for a village where residents share in the capital gain and are consequently largely responsible for maintenance of the unit. We found that for these types of villages, the appendix 4 structure does not easily accommodate the complexities and differences of these models and therefore much of the key information ended up in the "Additional Terms" section at the back of the document. Having important terms (especially financial terms) including in the Additional Terms section is contrary to plain language drafting.

Another example of how the standardised format does not work for different models is that it is not possible to describe periodical payments that make up the "capital sum" in the section "Overview of payments (dollar amount)". The RV Act recognises that the capital sum payable for a unit in a retirement village can be paid periodically, but the standardised ORA format does not allow for this possibility, it only anticipates an upfront capital sum.

Some of the sections in appendix 4 would not be applicable for some villages. For example, a village that offers capital gain will not be able to *"include the maximum amount in dollars payable and what percentage of the entry payment this represents"* in the fixed deduction section (see paragraph 10 of appendix 4) as the amount and percentage will not be known at the time the ORA is prepared.

Further, the standardised headings caused some clauses to be shoe-horned under those specific headings when the document would have read much more coherently if there was flexibility to determine their placing within the ORA. The RVA's conclusion from this exercise was that an appendix 4-type document would be detrimental to a resident's clear understanding of an offer. Further it would stifle innovation and variety and lead to a homogenisation of offerings and could potentially have the inadvertent effect of being anti-competitive. Lastly, it should be noted that RVA's support for a new shorter, standardised disclosure statement (see Option 2 Question 4 above) is predicated on operators being able to retain the flexibility to prepare their ORAs in the form that is appropriate for their village and offering.

Also, in preparing the different appendix 4 example documents we noticed that there were a number of key information sections that appeared to be missing from the template such as:

- Transferring to another unit (non-care), which is required to be in the appendix 2 and 3 documents.
- Details on what happens after termination i.e. vacating the unit and resale.
- There is no requirement to disclose the exit payment amount, nor to disclose the mechanics for how to calculate the net amount due to the resident.
- Boiler plate clauses including breach, invalidity, notices, counterparts, privacy etc.
- Requirements to provide for EPOAs – this is essential so that operators know who to deal with if a resident loses capacity.

Lastly, the RVA also has the following comments on some of the points raised in the Discussion Paper regarding the form of ORA:

- **Content Requirements in Regulations (paragraph 56(b) of the Discussion Paper)** – As stated above, the RVA supports the proposal that the content requirements be prescribed in regulations, rather than the current approach of them being included in the RV Act, the RV General Regulations and the Code of Practice. We are of the view that this makes compliance more easily achievable and measurable.
- **Electronic Versions of Documents (paragraph 56(c) of the Discussion Paper)** – See our comments above in relation to disclosure documents.

Q9 Which terms should be standardised in ORAs and which terms should not be standardised? Please give us your reasons.

While the RVA does not consider that a standardised layout is sensible or desirable, the RVA does consider that there is scope for some standard terms that could be annexed to all ORAs as a separate "standard terms" sheet. However, these terms must only be terms that are truly standard across the industry and must not interfere with an operator's ability to properly set out the terms of its offering in its ORA.

We have set out in Schedule 2 of this submission the RVA's comments on the proposed standardised terms set out in appendix 5 of the Discussion Paper. The RVA also considers that the following sections from appendix 4 of the Discussion Paper could also be standardised:

- Section 21 – Operator's duty to consult with you.
- Section 22 – Operator's duty to provide you with certain documents.
- Section 25 – Complaints facility.
- Generally, any provisions that simply replicate requirements under the RV Act, Regulations or Code of Practice.

Q10 Are there certain types of retirement villages that the proposed standardised format would not work for? Please give us your reasons.

Yes. As discussed above and for the reasons listed above, a standardised format will not work for villages that do not fit the 'standard' licence to occupy model such as unit title villages, villages where residents share in the capital gain and villages where the fixed deduction is calculated in any way other than as a percentage of the capital sum. The RVA does not believe that an adequate form can even be developed for the "standard" licence to occupy model.

The retirement villages' sector's experience with the Government produced standardised form of disclosure statement, made available for operators to use when the RV Act came into force, was poor. The standardised document, was hard to work with, required information to be repeated in multiple places, was not logically laid out and did not even provide for all the matters that were required to be disclosed.

The RVA when preparing its Key Terms Summary has first-hand experience of the difficulty in preparing a standardised document. Even though this was a very simple two-page document the RVA is aware that by forcing operators to follow a prescribed format some operators (including those with so-called 'standard' licence to occupy models) are not able to clearly set out the terms of their offer to intending residents.

The RVA reiterates its position that the best way to ensure clarity for intending residents is to allow operators to prepare their own form of ORA subject to complying with content inclusion as may be required by regulation.

Q11 Are there terms currently included in ORAs that could be considered unfair to residents? If yes, what are they and why are they unfair?

The RVA is not aware of any unfair terms in its members' current ORAs. The RVA has actively worked with its members educating them on the need to ensure that their ORAs do not contain any unfair terms.

Q12 Should a specific power be included in the Act to declare certain terms in ORAs to be unfair? If yes, who or what body should hold this power?

The RVA does not agree with this proposal and considers it to be unnecessary. The law around determining whether a contract term is unfair is complex and specialised and there is already specialised legislation (Fair Trading Act) in place that deals with unfair contract terms. The Commerce Commission acting under the Fair Trading Act is the appropriate body for assessing whether a contract term is unfair and if it is of this view, the matter can be referred to the Court for a decision.

The Commerce Commission is well resourced and has significant market overview of multiple sectors so it is well-placed to maintain a consistent approach in the exercise of its powers. As far as we are aware there are no other business sectors which have their own separate unfair terms regime.

The ORA contract is at the core of an operator's business and the operator should be entitled to rely on the terms of that ORA unless a Court has determined that a term is unfair. The right to alter a contract by declaring a contract term unfair must be exercised with caution, bearing in mind that such a declaration may have a significant effect on an operator. The RVA submits that the Fair Trading Act process for dealing with unfair contract terms is the appropriate way for such decisions to be made.

The Discussion Paper sets out the proposed basis on which a term could be considered unfair. These considerations are taken directly from the Fair Trading Act (section 46L) and if they were to be carried through to the RV Act would need to be expanded on and qualified in the same manner as set out in section 46L. This would amount to a replication of the unfair contract terms regime in the RV Act.

Duplicating one legislative regime within another regime does not seem to be an efficient use of government resources and time and the RVA cannot see any rationale or benefit in having such replication.

Q13 Are there any ORA terms which may breach a resident's privacy? If yes, what are they and what additional measures are required to address potential privacy breaches?

Operators of retirement villages, like all other businesses operating in New Zealand, are bound by the Privacy Act 2020 and its codes of practice. Each operator is required to comply with the provisions of the Privacy Act when collecting, holding, using or disclosing personal information. The Privacy Principles set out in the Privacy Act are broad, intending to cover all ways in which any agency (as defined in the Privacy Act) may deal with an individual's personal information. The Privacy Act also provides a simple and free complaints process for any complaint regarding interference with an individual's privacy. Therefore, the RVA does not see any need to also have privacy provisions set out in retirement villages legislation. Nor does the RVA think it would be appropriate to do so.

The inclusion of a clause in an ORA which authorises the collection of personal information from third parties does not breach the Privacy Act 2020 or Health Information Privacy Code provided there is a lawful purpose for collection of the information, the resident is made aware of the purpose of collection, and the operator complies with the Privacy Act 2020 and its Codes.

The Discussion Paper suggests that *"ORAs could contain a statement the Privacy Act 2020 applies to any personal information held by operators".* A number of ORAs already contain a statement to this effect and other operators will include this statement in their privacy policy that is available to residents or in other documents that may be provided to residents. The RVA has no strong view as to the necessity of including such a provision in an ORA, although it is concerned that this is yet another generic provision being included in a document that is already subject to criticism for being overly long.

If there were any allegations that an operator had breached the Privacy Act, then as with all alleged privacy breaches, this should be dealt with in accordance with the Privacy Act regime. Subject to the above comment about personal information, the RVA is of the view there is no need to introduce additional provisions into the retirement villages legislation to address privacy and to do so is likely to lead to confusion and undermine the role of the Privacy Commissioner.

If there were any amendment to the dispute process provided under the current RV Act then any new system should provide that any dispute which is more properly within the jurisdiction of the Privacy Commissioner, whether wholly or in part, must be referred to the Privacy Commissioner. This approach would be consistent with other similar complaint processes (refer to section 75 of the Privacy Act and section 36 of the Health and Disability Commissioner Act 1994).

Q14 Should conveyancers to be able to provide intending residents with legal advice on ORAs? Please give us your reasons

No. The RVA is firmly of the view that only New Zealand qualified and registered lawyers should be able to advise incoming residents on their ORAs and provide the requisite statutory certification that they have explained to that resident the *"general effect of the agreement and its implications"*.

Advising on entry into an ORA is a significant responsibility for a legal practitioner. Entry into an ORA by an intending resident involves payment of a substantial capital sum and agreeing to comply with terms of an ORA that will govern the resident's occupation of their unit for many years to come. Residents need to fully understand the implications and risks associated with entering into an ORA. Further in addition to advising on the ORA itself, it is likely that an intending resident's overall personal affairs will be reviewed including potentially creating or reviewing existing enduring powers of attorney for both personal care and welfare and property and reviewing or completing a will. Conveyancers are unable to provide advice on these broader issues.

Conveyancers can act on property sale and purchase transactions, however they are not trained or qualified to advise on the terms of an ORA. To enable conveyancers to advise on an ORA would require an amendment to not only the RV Act but also the Lawyers and Conveyancers Act 2009 and the introduction of additional training for conveyancers. There is no evidence that any perceived benefit of such change would outweigh the cost of implementing such change.

It is vital that residents receive high quality independent legal advice before they sign their ORA. This is a cornerstone of the consumer protection offered to intending residents under the RV Act.

Part C: Living In

Maintenance of Operator-Owned Chattels and Fixtures

The RVA considers that it is important that residents have a range of options available when they are deciding which retirement village to move into. To enable that choice, the retirement village legislation must be flexible enough to allow a range of models rather than prescribing one model.

The changes proposed by MHUD in respect to repairs and maintenance of operator's chattels and fixtures will have the effect of limiting options and curtailing resident choice. The RVA strongly opposes such changes and instead considers that the focus should be on clear and transparent disclosure to residents regarding who is responsible for maintenance and who is responsible for paying the costs.

As a general comment, the RVA notes that this section of the Discussion Paper excludes units owned by residents (e.g. unit title villages) but appears to then assume that if a resident occupies a unit under a licence to occupy structure that they cannot be entitled to capital gain. The proposed changes in this section would therefore capture all licence to occupy villages regardless of whether the residents at those villages are entitled to capital gain.

If any of the changes in this section were to be adopted, then they must not apply to villages where a resident is entitled to at least 50% or more capital gain on relicensing of a unit. This is because if a resident is entitled to all or some capital gain, it is entirely reasonable that they also bear the cost of maintaining the unit to a standard which maximises the capital gain that they will receive.

The reason for excluding resident owned properties is said to be because residents have the benefit of ownership. It is possible that unit title villages can include contractual arrangements whereby the resident agrees to forgo some "benefits of ownership", i.e. that they are not entitled to capital gain on resale.

<u>Comment on Residential Tenancies Act 1986</u>

There are a number of references in the Discussion Paper to "aligning" the retirement villages legislative regime with the Residential Tenancies Act. The RVA does not consider any such alignment to be appropriate.

The concept of a residential tenancy is not akin to the occupation of a unit at a retirement village under an ORA and the regime governing the former should not be overlaid into the latter.

Residential tenancies do not have the same security of tenure as residents under ORAs, tenants do not receive a refund of their rent payments on termination of a tenancy and residential tenancies do not offer the same level of services and facilities that are available to residents of retirement villages.

Further, retirement village offerings are far more diverse than residential tenancy arrangements and if the Government wishes to ensure the ongoing growth and development of this sector with its attendant benefits it is not appropriate to simply overlay standard residential tenancy terms on ORAs without fully considering the impact of such changes.

Q15 Do you agree with the proposal to amend the definition of "retirement village property" to specifically include operator-owned chattels and fixtures? Please give us your reasons.

At this stage, the RVA has no comment on this proposal because the RVA's view will depend on how any amended definition of "retirement village property" is going to be used in any amended legislation or amended Code of Practice.

Q16 Do you agree with the proposal to require operators to provide a list of operator-owned chattels and fixtures and the condition of these to intending residents? Please give us your reasons.

The RVA supports a requirement for operators to provide a list of operator-owned chattels to intending residents. This requirement forms part of one of the voluntary RVA Remits recently adopted by the RVA and therefore the majority of its members will already do this, most likely by including the list as schedule to each ORA.

However, the RVA strongly disagrees with any requirement to provide a list of fixtures and/or to list the condition of such fixtures or the condition of operator's chattels.

Regarding fixtures, if these are taken to mean items that are attached to the property, this is an extensive list as it would include items such as, electrical fittings, taps and door handles. The amount of time it would take to prepare such a list (particularly for older units that do not have full build specifications) does not seem commensurate to the limited benefit for an intending resident to receive such a list.

Turning to the proposed requirement to state the condition of operator's chattels and/or fixtures, the RVA does not support this for a number of reasons. Firstly, an intending resident will be shown round the unit they are intending to purchase (and in many cases the resident will view their unit multiple times before moving in) and will have ample opportunity to inspect the condition of the unit and the chattels and fixtures contained within it. It is therefore not necessary for an operator to also provide a list describing the condition of something that the resident has already seen and assessed for themselves.

Secondly the 'condition' of a chattel or fixture is highly subjective and therefore ascribing "excellent" or "good" to an item is of limited value, as these terms will mean different things to different people. Further, as mentioned above, the administration and work involved in maintaining a list of the condition of these items (particularly if the requirement extends to all fixtures in a unit) is going to take up a lot of staff time, which itself will come at a cost, and it is difficult to see the benefit outweighing the costs involved.

For villages where the operator contracts to cover all the cost of all internal maintenance and maintenance of operator's chattels, it is completely unnecessary for the resident to be provided with a list of fixtures and the condition of each chattel and fixture, given that the operator is going to pay for all the costs of repairs and maintenance anyway. However, even if the resident is moving into a village where the resident is responsible for the costs of repair and maintenance of operator's chattels and fixtures, the resident will have seen the condition of these items when they viewed the unit and taken such condition into consideration when accepting the ORA price.

Q17 Do you agree with the proposal to assign responsibility for maintenance and repairs (including the direct cost of these) of operator owned chattels and fixtures to the operator, except where the resident or their guest causes intentional or careless damage or loss? Please give us your reasons.

The RVA strongly disagrees with any requirement for operators to be forced to follow the same model and to pay for all costs of repairs and maintenance to operator owned chattels and fixtures.

One of the benefits of the retirement villages sector is variety of options and models on offer to residents, with differences in fixed deduction percentages, fee levels and maintenance responsibilities (to name a few). Some operators cover the costs of all interior maintenance of

the unit while other operators pass these costs on to residents. Residents are therefore able to choose financial certainty (where the operator bears costs of repairs and maintenance) while other residents can choose to receive capital gain with the flip-side of taking on more risk (and under these models the residents may bear the costs of repairs and maintenance). The key point being that there is diversity of choice.

The fact that some operators have a model where they pay the cost of repairs and maintenance does not automatically mean that all operators should be forced into this model. The consequences of forcing this model on to operators will likely mean that the other differences in offerings that give residents the choice of a variety of offerings will narrow, as operators are shoehorned into making the same offer. For example, some operators will offer a lower fixed deduction on the basis that the resident is responsible for the costs of repairs and maintenance. Making these operators cover these costs will likely make their current lower fixed deduction model unsustainable. Further, for villages where the weekly fee is linked to actual maintenance costs, the weekly fees may well need to be increased dramatically as the operator's overall maintenance costs will increase.

Instead of trying to force all operators to offer the same model, the RVA considers that there should instead be a focus on clear and transparent disclosure of firstly, who owns the chattels in the unit (operator or resident) and secondly who is responsible for the cost of the maintenance of the chattels (operator or resident). As long as the ORA is clear on these points and it is drafted in a way that residents can understand, it is up to the resident to decide which model they wish to sign up for and not for the Government to impose it on them.

For the models where residents are responsible for the cost of repairing and maintaining operator's chattels throughout the term of the licence, it is reasonable for such costs to be passed on. This is because those residents will be living in the unit and using and having the benefit of these chattels on a daily basis, for a number of years. Provided that the ORA is clear that the resident is responsible for such costs and the residents chose to enter into the ORA on that basis, the RVA does not consider that it is up to the Government to say that this is not acceptable.

Q18 Do you agree with the proposal to clarify that marks due to use of mobility aids and incontinence are classified as "fair wear and tear"? Please give us your reasons.

The RVA generally agrees that marks due to normal use of mobility aids and damage caused by incontinence be classified as fair wear and tear. .

Q19 Do you agree with the proposal to require operators to meet the cost of replacing or upgrading operator owned unit chattels and fixtures when they wear out? Please give us your reasons

An initial key point that the RVA wishes to make is that operators should not be required to bear any cost of "upgrading" chattels. If there was a requirement for operators to replace an operator's chattel it must only be on a like-for-like basis, requiring replacement of a chattel of a similar quality and standard. "Upgrade" is a subjective term and it could potentially be interpreted as, for example, requiring operators to replace a standard element stove top with the latest model induction hob, or an ordinary kitchen tap with a billi tap.

Turning to the cost of replacing operator's chattels when they reach the end of their economic life, the RVA's view on this question is the same as its view to question 17 above. The RVA considers that this is not something that should be forced on operators, but rather it should form part of the terms of an ORA, with some operators bearing this cost while some operators pass it on to residents. This question comes back to the issue of forcing one model on all operators and residents rather than retaining a variety of models and enabling consumer choice. While the RVA supports its members voluntarily choosing to replace operator's chattels when they reach the end of their economic life, the RVA does not agree that this should be a mandatory legislative requirement.

Some operators may offer all incoming residents brand new appliances when they move in, but impose an obligation on residents to repair, maintain and replace those appliances during the term of the ORA. Other operators may offer older existing appliances (i.e. without replacing these when a unit is licenced to a new resident) but will cover the cost of repair, maintenance and replacement when the item wears out – again, choosing which village to move into is up to the resident. Lastly, villages that offer capital gain may require residents to cover all costs of replacing operator's chattels and fixtures, with the residents then receiving the corresponding benefit of obtaining a higher price for the unit on resale to an incoming resident.

Lastly, should such a requirement requiring operators to cover the costs of replacing chattels and fixtures be imposed, replacing carpets and window covers during the term of a resident's ORA must be excluded on the basis that determining when such items "need" to be replaced is highly subjective (e.g. does one stain on the carpet mean it needs to be replaced, two stains, five stains, ten stains?). Placing an obligation to replace in these circumstances is likely to result in numerous disagreements between residents and operators.

RVA NEW ZEALAND Retirement Villages Association

Q20 If introduced, should the proposals apply to existing ORAs? Please give us your reasons.

As mentioned throughout this submission, the RVA strongly disagrees with making a change of this nature retrospective.

Any changes to maintenance responsibilities should not apply to existing ORAs where the financial terms will be based on the resident-operator maintenance cost allocation set out in that ORA as this distorts the agreed commercial terms. Imposing financial obligations retrospectively on the operator could jeopardise the financial stability of the village. If there are changes these should only apply to new ORAs, with an appropriate implementation period, so that operators are able to adjust their model to take account of any prescribed changes.

Q21 If there are other issues with maintenance and repairs that we should be aware of, please tell us about them.

The RVA has no comment on this question.

Dispute Resolution Scheme

The RVA considers that the current dispute resolution scheme is relatively effective, and consideration should be made to its retention (in whole or part). However, the RVA acknowledges that there is always scope for improvement and that there is a perception that the system is not independent of operators.

There is little robust evidence to support the suggestion that the current complaints system is not fit for purpose. To the extent that defects within the existing system can be objectively identified, improvements should be considered rather than the wholesale replacement of a generally well-functioning system.

The available evidence, being the most recent information gathered by the Retirement Commissioner, relating to complaints shows that the majority of complaints are resolved at village level and others are then resolved with the assistance of the statutory supervisor. During the last reported six-month period there were 334 complaints, which represents approximately 0.66% of retirement residents in New Zealand[6]. Of those 334 complaints, 69.46% were resolved or closed during the reporting period, with 61.21% being resolved within the initial 20 working days.[7] These figures indicate that there is not a significant number of complaints and that there is an excellent rate of resolving these complaints at village level.[8]

Operators are motivated to maintain high levels of resident satisfaction and enjoyment of their villages for reputational reasons and to enhance the attractiveness of their villages for future residents. While a robust dispute resolution scheme is important, operators are commercially motivated to seek to avoid complaints, and to the extent they are received, to deal with them as efficiently as possible. Our members invest in staff training and development for this purpose.

The RVA, in conjunction with our Australian partners, has developed a professional development programme called Te Ara, that provides village managers and other staff who have contact with residents necessary skills to, for example, manage complaints and disputes, manage successful annual general meetings, understand resident welfare and encourage well-being, ensure resident committees are facilitated, and a range of other courses.

A statement is made in paragraph 133 of the Discussion Paper that *"Retirement Commission investigations and reports suggest the current number of complaints may not accurately reflect resident satisfaction levels with their retirement village"*. There is no objective evidence to support this statement.

[6] The 0.66% is based on an estimated 50,791 residents in retirement villages as at 31 December 2022. See page 5 of the "New Zealand retirement villages and aged care" research report whitepaper prepared by JLL in August 2023 which is based on data for the year ended 31 December 2022. This whitepaper is attached as Appendix 4.

[7] It is expected that there will always be complaints open at the end of each reporting period while such complaints are being worked through.

[8] Te Ara Ahunga Ora Retirement Commission "Retirement Villages Six-monthly Complaint Reporting Summary" (1 October 2022 to 31 March 2023) <https://assets.retirement.govt.nz/public/Uploads/Monitoring-and-Reports/RV-Complaints-Report-1-Oct-31-Mar-2023.pdf> [Last accessed on 17 November 2023]

In our view, the relatively low number of complaints received is attributable to the relatively high level of satisfaction reported by retirement village residents. For example, a survey of 1,692 residents completed by UMR (a market research firm) in 2021[9] found that 91% of residents surveyed declared they were satisfied with their experience of living in their retirement village with only 2% not satisfied (meaning that of those residents that had an opinion, 98% were either very satisfied, satisfied or neutral).

While there will likely always be a proportion of residents who are reluctant to make a complaint, we do not consider that the changes proposed by MHUD will materially change resident engagement with or outcomes of the complaints / dispute resolution system. Nor does the RVA agree that there is a direct correlation between low levels of complaint and the existing dispute resolution system, and no evidence has been given to support this conclusion.

Q22 Do you agree with the proposal to establish a new dispute resolution scheme that is independent of retirement village operators? Please give us your reasons including any alternative suggestions about how issues with the current scheme could be addressed.

At this stage the RVA is not convinced that it is necessary to establish an entirely new dispute resolution scheme for retirement village complaints for the reasons outlined above in the Introduction. However, the RVA does recognise that some improvement could be made to the existing system.

<u>Trial advocacy offer</u>

As set out above, the RVA is concerned about the lack of hard evidence in respect of the alleged levels of resident dissatisfaction and therefore the suggestion that residents' concerns may go unreported. It also takes issue with the assumption that the low number of decisions of disputes panels suggests the process is not fit for purpose.

Prior to any legislative change being made to the complaints process the RVA would like the opportunity to fund a research role in the Retirement Commissioner's office to gather quantitative evidence as to resident dissatisfaction and how the complaints system is currently working. It is suggested that this role would be for up to two years at an agreed funding rate. At the end of this period the evidence collected will enable better informed policy decisions to be made as to whether or to what extent change is required.

<u>Perception of lack of independence</u>

One of the criticisms of the current system is the perception that it is not independent of the operator. Rather than changing the system because of the perception, the RVA submits that work should be done to correct this perception. This education piece should ideally rest with the Retirement Commissioner.

Statutory supervisors while paid for by operators are truly independent and are rigorously monitored and audited by the Financial Markets Authority. The entities that provide statutory supervision services also provide trustee services for debt securities and are used to having to maintain the highest standards of independence in their work regardless of the fact that their fee is being paid by an operator or issuer. Statutory supervisors have significant statutory duties under the RV Act that they are required by law to discharge.

Likewise, while the dispute panel member is paid for by the operator, this does not mean that a dispute panel member is not independent. A dispute panel can only be selected from a limited list of persons approved by the Retirement Commissioner as being fit and proper persons. No appointment can be made without consultation with the resident. A panel member is required to confirm in writing that there is no conflict of interest in them accepting appointment.

A relatively easy way of modifying the current system to remove the perception of bias would be to give the Retirement Commissioner the power to appoint both panel members and mediators for complaints rather than the operator.

<u>Essential aspects for consideration in any revised system</u>

If a decision is made to move forward with a proposed new structure, we ask that the following points be given due weight and consideration.

1. *Operator Involvement*

   As identified in the Discussion Paper, users should be at the centre of all aspects of the system and therefore every opportunity should be given to enable complaints to be resolved at village level before being escalated to an external agency. Further, in the RVA's discussions with independent dispute resolution firms, those firms have highlighted the importance of attempting to resolve complaints at village level first. The RVA believes the best way to resolve complaints is for there to be direct communication between

[9] See UMG research report attached in Appendix 1.

an operator or village manager and a resident. The reporting by the Retirement Commissioner referred to above identifies that most complaints are resolved at this level (with 61.21% of all complaints for the latest reporting period being resolved within the initial 20 working days), and this suggests that this aspect of the complaints system works well.

Allowing operators time to address and resolve complaints early in the process potentially avoids unnecessary cost and delays in resolving complaints.

2. *Statutory Supervisor Involvement*

   The RVA considers the perspective that a statutory supervisor can bring to a complaint is invaluable due to the breadth of their knowledge of the operator, the village, how villages work as communities, and the law relating to retirement villages. It gives them a unique skill set, as an independent party, to work with both the village and a resident to establish the key concerns of the resident, to then form a view as to the merit of the complaint and to recommend a way forward.

   The RVA is strongly of the view that any new system should continue to preserve the role and involvement of the statutory supervisor and this input should be immediately after an operator has been unable to resolve the complaint at village level.

3. *Appeal Rights*

   The right to appeal to the District Court or as appropriate the High Court from any adjudication should be preserved. Any appeal should be on the basis that the Court will hear the dispute as a Court of first instance.

4. *Adjudicator qualifications*

   Any person who has the power to make a legally binding decision should be both qualified and experienced. Adjudicators who are making decisions on legal matters as opposed to interpersonal issues should have a law degree and have practiced as a lawyer for a reasonable period of time. Failure to appoint adjudicators with appropriate skills will potentially result in unnecessary appeals.

5. *Award of costs*

   An adjudicator should retain the power to award costs against either party in situations where the behaviour of that party has been egregious or where a resident persists with a vexatious and frivolous complaint.

6. *Allocation of costs*

   Costs should rest with those who have complaints, as this drives good behaviour.

Q23 Should the new scheme be delivered by:

- **A dispute resolution scheme provider**
- **A government appointed commissioner**
- **Neither of these**

Please give us your reasons.

If there is to be a new scheme, the RVA prefers that the scheme be delivered by a non-governmental dispute resolution provider/service. The RVA does not consider that any new scheme should sit within the Retirement Commission as there should be a separation of the role of the government entity that, amongst other functions, monitors the effects of the RV Act and an entity that is tasked with resolving complaints.

Costs

The Discussion Paper suggests that a new scheme would be funded by operators, potentially by an annual fee paid by all operators based on the number of units, with additional charges where a complaint is accepted. Until the costs of such a scheme are accurately determined, the RVA cannot support this approach, as essentially villages that have no, or few complaints will be subsidising those villages which have complaints. This unfair approach is reflected in the Martin Jenkins Report prepared for MHUD in connection with its release of the Discussion Paper[10].

The current system protects residents from costs and places the burden of the costs of complaint management on the villages that have complaints. The effect of this is to incentivise villages to avoid complaints or resolve complaints to residents' satisfaction as quickly as possible to avoid these costs.

[10] Martin Jenkins "Costs and benefits of proposed changes to the Retirement Villages Act 2003 – final report" (10 July 2023) <https://www.hud.govt.nz/assets/Uploads/Documents/RVA-Consultation/Cost-benefit-analysis-on-the-RVA-review-large-text.pdf> [Last accessed 17 November 2023]

We refer you to pages 7 and 8 of the "Review of Martin Jenkins Report" from Sense Partners (attached at Appendix 5 of this submission) which contains a critique of the cost benefit analysis of the complaints reforms.

Q24 Should residents be required to contribute to the costs of resolving disputes between residents (where the operator is not a party to the dispute)? If yes, what costs should residents contribute to?

The RVA supports residents being required to contribute to the cost of resolving disputes between residents. It is difficult to see a rational reason why a third party should be responsible for meeting the costs to resolve a dispute which it is not party to. By passing on part or all of the cost of resolution to the residents this will help ensure that the dispute resolution process is not abused. It should be noted that resident versus resident disputes are rare.

Q25 Should legal representation be limited in a new scheme? If yes, how should it be limited?

Parties should be entitled to have access to legal representation during any adjudication process, i.e. where a negotiated settlement is not reached.

The Discussion Paper refers to legal representation not being available for tenancy disputes. Retirement village disputes cover a far wider range of matters and the dollar value may be far greater than arise from a tenancy arrangement including matters relating to resident capital sums and fixed deductions. A decision relating to a dispute in a retirement village can have precedent value and may result in significant cost being imposed on an operator.

In a tenancy situation a dispute relates solely to an individual resident and landlord, whereas in a retirement village dispute although the dispute may just relate to one resident, if the issue applies to multiple residents and the decision finds in favour of the complainant then practically the operator will need to pass on the benefit of the judgement to any other residents who have the same fact situation. With such significant consequences it is only fair that legal representation is permitted. Failure to allow legal representation at this stage is likely to result in an increase of matters being appealed.

The right to legal representation is equally important for residents. For example, the costs that a retirement village resident is required to pay on termination of an ORA (e.g. the fixed deduction) is likely to far exceed any costs a tenant may be required to pay on termination of a residential tenancy.

Q26 Do you have information you could share on the costs of the current complaint and dispute resolution scheme for operators or for residents?

The RVA has no comment on this question.

Q27 Would independent advocacy support that is free for residents to access be needed under a new dispute resolution scheme? If yes, please give us your reasons and suggestions for how it might work.

The RVA does not support a separate advocacy support service for residents if a new dispute resolution scheme is introduced. However as mentioned in Question 22 above the RVA is interested in financially supporting, for an agreed period, the employment of a person to investigate the level and type of complaints and their path to resolution.

Moving to Aged Residential Care

The RVA supports clear relevant disclosure by operators of issues relating to moving into residential care.[11] However, there needs to be care taken to ensure that the disclosure provided at the time of moving into a village is relevant and proportionate to the resident's needs. There can be a considerable elapse of time between a resident moving into independent living and then transferring to residential care.

In fact, many residents may not even move into residential care. Information provided five to 10 years in advance will almost certainly be out of date by the time a resident may need to move into residential care. For example, any change in government funding or the licensing of residential care providers could render much of the information out of date.

The construction of almost all new care facilities occurs in conjunction with the development of new retirement villages because stand-alone care facilities are increasingly seen as not being financially viable. This is illustrated by the New Zealand Aged Care Residential Care Financial Performance Study completed by Ansell Strategic and published in September 2023[12] which found that the average reported EBITDA per occupied bed day at the aged care facilities that participated in this study fell from $23.82 for the 2017 financial year to just $3.84 in the 2022 financial year.

The RVA is strongly opposed to any restrictions being placed on operators' ability to charge a second fixed deduction for care suite ORAs. As discussed further below, it is likely that such restrictions would result in fewer care suites being offered.

Q28 What information on occupancy levels of aged residential care should be provided to intending residents:

- **Average occupancy across the previous 12 months**
- **Current occupancy levels at a clearly dated point in time**
- **Other information**
- **No information?**

Please give us your reasons, including details if you answered 'other information'.

The RVA does not consider that including such disclosure would be of use to potential residents. To collate and provide the proposed information would be administratively onerous for operators and could be potentially misleading. Occupancy information of itself is not meaningful because:

- A village with high occupancy may be using rooms for respite or other short-term care making it seem as though the care rooms are almost permanently unavailable (when in reality they could be made available to a village resident who needs one).
- High occupancy is likely to be an indication of a care facility that has a good reputation and is well run, yet intending residents may perceive the high occupancy as a negative.
- The corollary of the above is that a lower occupancy rate could be seen as more desirable than a care facility with a higher occupancy rate, yet the lower occupancy may be due to a poor reputation of the care facility.
- However other reasons for low occupancy may be that a wing of care beds is closed due to staff shortages, and this situation could change at any time, or a care facility may be recently opened, and it is in the process of admitting residents to the facility.
- Further, the information disclosed may have no bearing on the expected occupancy in two, five, or ten-years' time and could lead to unrealistic expectations later when a resident needs to move into care.
- Occupancy data can change daily.

Disclosure that would be more relevant for intending residents is whether any residents have had to leave the village in the last 12 months because a room was not available in the care facility when they needed it.

Lastly, it is important to note that disclosure statements provide information relating to a village as at a particular point in time (i.e. the date of the disclosure statement) and the fact that such information is correct and up-

[11] To this end, the RVA has prepared the "*Best Practice Guidelines for Disclosure of Right to Transfer to Care in a Retirement Village*" set out in Appendix 6 as a minimum level of disclosure by its members relating to moving into a rest home or hospital care facility in a retirement village.

[12] Ansell Stretic " New Zealand Aged Residential Care Financial Performance Study - Summary of Findings Document" (September 2023) <https://www.ansellstrategic.com.au/new-zealand-aged-residential-care-financial-performance-study-summary-of-findings/> [Last accessed on 16 November 2023]

to-date at that point in time does not mean that it will not change and evolve over the years of a resident's occupation. As is mentioned in the general comments above, information regarding occupancy levels of aged residential care disclosed in a disclosure statement when a resident moves into a village is unlikely to remain at the same level over the next 5-10 years.

As an alternative to the proposal to set out this information in the disclosure document, the disclosure document could instead contain a link or description as to where an intending resident can access the latest care facility's audit report.

Q29 Should a clear statement that a suitable aged residential care unit cannot be guaranteed be included in one of the new disclosure documents? Please give us your reasons.

The RVA agrees that including this statement is important to ensure that intending residents understand that there can be no absolute certainty as to the immediate availability of a care bed when required and in some situations a resident's care needs may not be able to be met by the care facility at the village, e.g. the facility may not offer dementia level care.

Q30 If there any other issues related to transferring from an independent living unit to aged residential care that should be considered as part of the review, please tell us about them.

The RVA has no comment on this question.

Q31 Should operators be allowed to charge aged residential care residents in ORA care suites a second fixed deduction (deferred management fee)? Please give us your reasons, including if it should be capped or limited in some way.

Operators must be entitled to charge a second fixed deduction when a resident transfers to residential care and there should not be a cap or limit placed on this.

Aged care residential facilities and retirement villages, while often co-located, are separate economic businesses. The fixed deduction on a care suite ORA is the premium revenue component that would otherwise be charged as daily premium accommodation fees. Instead of charging the daily premium on an ongoing basis, the premium component is payable only when a resident leaves. The other benefit to the resident under a care suite ORA is certainty of costs, given the fixed deduction is normally percentage capped and ceases to accrue after an agreed period of time, rather than the daily premium which continues for the duration of occupation.

For most operators it would not be financially viable to offer care suites, which provide a far higher level and quality of accommodation to that found in standard care facility rooms, if the operator could not charge a new fixed deduction.

A second fixed deduction is not only required to cover the cost of the premium services provided to residents but also to cover the costs of refurbishment that will be incurred when the resident leaves the care suite.

Any restriction on the right to charge a further fixed deduction or to limit the amount of the deduction under a care suite ORA will likely result in:

- fewer operators choosing to build new care facilities. New Zealand already has a shortage of aged residential care beds and to restrict operators in setting the terms of their own commercial offerings will result in an exacerbation of this problem;
- operators ceasing to offer care at all;
- operators recovering the costs in other ways such as increased capital sums, therefore resulting in fewer people being able to afford care suites;
- operators moving away from care suites and switching to premium charge rooms thereby reducing resident choice, i.e. loss of the financial certainty as to the total cost of care; and/or
- operators may separate the operation of their care suites from their independent living units and register each as a separate village.

To limit the charging of a second fixed deduction or to limit the amount of such fixed deduction, equates to restricting a free market from operating and the development of different pricing models. Current care suite offerings are allowing residents financial choice and giving operators the opportunity to provide different levels of accommodation and offering more premium offerings for those residents that wish to have a more personalised experience. To provide this variety of offerings, operators need the flexibility and ability to be free to charge in accordance with the type and level of service being offered.

What is important, is clear and transparent disclosure by operators of whether or not a further fixed deduction is payable and the maximum amount of that further deduction. These disclosure details are addressed in the Discussion Paper and our comments are as follows.

RVA NEW ZEALAND Retirement Villages Association

Proposals for additional information for intending residents

The RVA has the following comments on the *"proposals for additional information for intending residents"* set out in paragraph 185 of the Discussion Paper. If the additional information is not referred to below, the RVA either does not have a view, or supports the disclosure of the information.

We are concerned as to the level of detailed information required by these additional disclosures which, if answered comprehensively, will result in a longer disclosure document. We are aware that some operators have developed extensive internal policies to address what happens if one person in a couple requires care (and these policies can run for pages). We suggest that rather than include all this information in a disclosure document it would be preferable if operators were instead required to make such policies available to residents and intending residents upon request.

It is worth noting that each individual's circumstances surrounding their transfer to care is unique, and personal to them, and operators work closely with the resident and their family with the aim of making this transition as smooth as possible. Therefore, having a set of standard disclosures will not reflect what happens given that there is not a one-size-fits-all approach.

There needs to be a clear statement that the additional disclosure information is correct as at a point in time but will be subject to change. Potentially, a standard statement to this effect could be included in all disclosure documents in the same way there is a sentence about no guarantee of a bed.

It is unclear from the Discussion Paper as to whether villages without care will be required to answer the additional information questions. It is our view that it would be unduly onerous for an independent living village with no care to be required to explain what the process is to be assessed for aged resident care or explain what will happen if one person in a couple should require care.

Information Operators would need to provide	RVA Comments
Are there aged residential care facilities on site or at an affiliated site? Yes/No	Agree, subject to there being clarity as to the meaning of "affiliated site"." Is it intended to refer to any aged residential care facility either onsite or elsewhere that the resident has a right to transfer to, subject to availability and payment or costs or capital?
What categories of aged residential care are available at a separate site affiliated to the operator (rest home, hospital level, secured dementia care), and what are the ownership details of the affiliated aged residential care facility	If the intended definition of "affiliated site" is as set out above this could result in an excessive amount of information being provided. Some large operators have a policy of allowing residents to transfer to any of their care facilities throughout New Zealand and it would be extremely onerous in situations such as that to require disclosure of the numbers of beds in every facility. The RVA suggests that this be reconsidered. Further such detailed information is not genuinely helpful for an intending resident. We question the need or benefit of providing details of ownership given that ownership of an operator entity may subsequently change between the point that a resident moves into an independent living unit to when they move into a care facility.
What were the average occupancy levels over the past 12 months of on-site aged residential care rooms by care category	The RVA strongly objects to any requirement for such information to be provided. See Question 28 for further commentary.
What is the process for being assessed for aged residential care?	It is unclear what the question is asking, is this about needs assessment or funding assessment? This should be clarified. We are not convinced that this information should be included in the disclosure document. Ideally this information should be provided directly by Te Whatu Ora and Work and Income. If this information is to be included possibly standardised wording could be agreed on the basis that answering this question is about educating the public, which is not strictly the role of a retirement village operator.

Information Operators would need to provide	RVA Comments
What are the financial implications of transferring to an aged residential care facility? Operators, please include details about: • what types of rooms are available (standard rooms, premiums, care suites, or other types of rooms)? • What costs are associated with each type of room? For example, ongoing accommodation costs, capital sum, deferred management fee. • Whether a resident would have to terminate their current ORA and enter into a new ORA and if so, what would this mean for the resident's deferred management fee? • What the financial implications are if one person in a couple has to transfer to aged residential care?	This initial question is too broad and can be interpreted as an operator providing financial advice about a potential resident's financial arrangements. The specific questions posed by the first three bullet points are reasonable to answer as long as it is accepted that actual costs are not disclosed but rather disclosure is of the types of costs that may be charged. The information in bullet points 1 and 2 is likely to change over time, ie the type of beds that may be offered at a care facility and the types of costs. Costs being charged will be dictated by government policy and funding. The question in the fourth bullet point is again too broad. The answers to both the initial question and the last bullet point in this section will be dependent on each resident's financial circumstances, how long the resident has been in the village and what government funding may be available at the time the resident needs to move into care. Essentially transfer arrangements are unique to each individual and most likely will not be standardised.
What financial assistance (if any) does the operator offer residents who are transferring to a supported living unit or aged residential care, including: • assistance where one person in a couple will remain in their independent living unit? • Where assistance is limited to on-site/ affiliated aged residential care facilities?	This question is extremely broad and open to different interpretations therefore making it difficult for operators to answer in a meaningful way. As with the question above, the answer to this question will be dependent on a number of factors that include the resident's individual financial position at the time care is required and availability of care options at the village, and could be complex. Operators work with individual residents to ensure that if a resident or one of a couple needs to transfer to residential care that the resident will not be placed in a position of being unable to pay for their care. These arrangements are usually bespoke and therefore for most operators it is not possible to formulate a standardised disclosure of their approach. This therefore is likely to result in the question being answered in a generic fashion that in effect offers little or no value to intending residents. The provision of this type of information will also require compliance with regulation 33 of the RV General Regulations (explanation of nature of financial assistance and the terms on which residents may receive the assistance). Including additional (extensive) disclosure on care will make the disclosure document longer and this will need to be considered in light of the fact that the Discussion Paper also proposes placing word and page limits on village disclosure document and further to our comments above that such disclosures are unlikely to provide any real benefit to residents. Further, as there are a number of villages that provide independent living units with no associated care facilities, the RVA queries whether an increased focus on care and an imposition of a one-size-fits-all disclosure requirement is appropriate for all villages. Lastly what is meant by "supported living unit"? Is this intended to be accommodation that is between independent living and NASC (Needs Assessment & Service Co-ordination) assessed long term residential care? If so, in our experience operators would almost never facilitate one person in a couple moving into a "supported living unit". We suggest that this question be limited to a transfer to "aged residential care".

Q32 Do you have information on different practices across the sector relating to ORAs for aged residential care you can share with us, including different terms and conditions offered?

Example of Operator A's approach to transfer to care

The following is a summary of the financial implications for residents of one large operator when transferring to care.

- The rooms available at the operator's residential aged care facilities vary from village to village, but generally include a mix of standard rooms, premium rooms, serviced apartments (sold under ORAs and residential level care can be provided) and care suites/memory care suites (sold under a care suite ORA).
- The costs associated with each type of room are:

Room type	Associated costs
Standard room *(Rest home level care and hospital level care are available in this room type)*	• The daily care fee for a standard room, which is based on the Maximum Contribution set by the Director-General of Health • Fees for any additional services the resident chooses to receive
Premium room *(Rest home level care and hospital level care are available in this room type)*	• The daily care fee stated above • The premium room charge, which varies from village to village • Fees for any additional services the resident chooses to receive
Serviced Apartment *(Generally only rest home level care is available in this room type)*	• Licence payment • 25% fixed deduction • The daily care fee stated above • Fees for any additional services the resident chooses to receive
Care Suite (sold under a Care ORA) *(Rest home level care and hospital level care are available in this room type)*	• Licence payment • 25% fixed deduction • The daily care fee stated above • Fees for any additional services the resident chooses to receive
Memory Care Suite (sold under Care ORA) *(Rest home level memory care is available in this room type)*	• Licence payment • 25% fixed deduction • The daily care fee stated above • Fees for any additional services the resident chooses to receive

- Where a resident transfers to this operator's aged care facility, their existing ORA will terminate. They will be required to sign new documentation in respect of their new room. If their new room is sold under an ORA, this will include signing a new ORA under which a 25% fixed deduction is payable. For serviced apartments, the fixed deduction is reduced by the fixed deduction already accrued on the previous unit. For care suites and memory care suites, the full fixed deduction of 25% (accrued over 2 years) will be payable under the Care Suite ORA. If the repayment sum from the resident's previous unit is insufficient to cover the capital sum for their new unit, then the operator does not require any further capital contribution from the resident (operator provides an interest free, fee free advance to cover the shortfall).
- Where a couple are living in an Independent Living Unit and only one resident needs to transfer to aged residential care, the following financial implications may apply:

Situation	Financial Implications
Transfer to a Serviced Apartment *(Serviced Apartments can accommodate two residents)*	Both residents may transfer to a Serviced Apartment that is accredited for the provision of rest home level care. The fixed deduction payable on the Serviced Apartment will be reduced by the fixed deduction already accrued on the previous unit. If the repayment sum from the previous unit is insufficient to cover the capital sum for the new unit at the same village, then the operator does not require any further capital contribution from the residents.
Transfer to Care Suite or Memory Care Suite *(Care Suites and Memory Care Suites can generally only accommodate one resident)*	The affected resident may transfer to a Care Suite or Memory Care Suite while the other resident remains living in the existing unit. No further capital contribution is required for this transfer. The fees noted at para 2 above are payable, including a new fixed deduction of 25% for the Care Suite or Memory Care Suite.

The above information is indicative of the amount of information that is required to be disclosed by the proposed new information disclosure requirements. It should be noted that the above information does not even cover off all the matters included in the proposed information disclosure.

<u>**Example of Operator B's approach to transfer to care**</u>

The following is a summary of the financial implications for residents of another large operator when transferring to care.

- The rooms available at the operator's residential aged care facilities vary from village to village. The aged care facilities include different combinations of the following room types: standard rooms, premium rooms, serviced apartments (sold under ORAs, and residential care can be provided) and care suites (sold under a care suite ORA, and residential care can be provided).
- The costs associated with each type of room are:

Room type	Associated costs
Standard room *(Rest home level care, dementia level care and hospital level care are available in this room type)*	• The daily care fee for a standard room, which is based on the Maximum Contribution set by the Director-General of Health • Fees for any additional services the resident chooses to receive
Premium room *(Rest home level care, dementia level care and hospital level care are available in this room type)*	• The daily care fee stated above • The premium room charge, which varies from village to village and within the aged care facility • Fees for any additional services the resident chooses to receive
Serviced Apartment *(Up to rest home level care is available in this room type)*	• Capital sum • 30% fixed deduction • The agreed service package level or the daily care fee stated above if the resident is receiving rest home level care • Fees for any additional services the resident chooses to receive
Care Suite (sold under a Care ORA) *(Rest home level care, dementia level care and hospital level care are available in this room type)*	• Capital sum • 30% fixed deduction • The daily care fee stated above • Fees for any additional services the resident chooses to receive

RVA NEW ZEALAND Retirement Villages Association

- Where an existing resident of the operator transfers to this operator's aged care facility, their existing ORA will terminate. They will be required to sign new documentation in respect of their new room. If their new room is sold under an ORA, this will include signing a new ORA under which a 30% fixed deduction is payable. For serviced apartments, the fixed deduction payable is reduced by the fixed deduction already accrued on the previous unit. For care suites, the fixed deduction of 30% (accrued over 2 years) is halved (i.e., reduced to 15%) and will be payable under the Care Suite ORA. If the repayment sum from the resident's previous unit is insufficient to cover the capital sum for their new unit, then the operator does not require any further capital contribution from the resident (operator provides an interest free, fee free advance to cover the shortfall).
- Where a couple are living in an Independent Living Unit and only one resident needs to transfer to aged residential care, the following financial implications **may** apply:

Situation	Financial Implications
Transfer to a Serviced Apartment *(Serviced Apartments can accommodate two residents)*	Both residents may transfer to a Serviced Apartment that is accredited for the provision of rest home level care. The fixed deduction payable on the Serviced Apartment will be reduced by the fixed deduction already accrued on the previous unit. If the repayment sum from the previous unit is insufficient to cover the capital sum for the new unit at the same village, then the operator does not require any further capital contribution from the residents.
Transfer to Care Suite *(Care Suites can generally only accommodate one resident, however provision for double occupancy is provisioned at some sites to a limited extent)*	The affected resident may transfer to a Care Suite while the other resident remains living in the existing unit. No further capital contribution is required for this transfer. The fees noted above are payable, including a new fixed deduction at the reduced rate of 15% for the Care Suite. Typically, if the resident that is living independently passes away, the termination proceeds from the resale of the Independent Living Unit would be first applied to cover the capital sum for the Care Suite, with any balance paid to the resident in the Care Suite. If there is a shortfall, then no further capital contribution is required. Similarly, if the resident that is living in the Care Suite passes away, the cost of fixed deduction accrued on the Care Suite would be a charge against the Independent Living Unit. This means that the Care Suite fixed deduction would be deducted from the termination proceeds upon the resale of the Independent Living Unit (in time).

The above information is indicative of the amount of information that is required to be disclosed by the proposed new information disclosure requirements. It should be noted that the above information does not even cover off all the matters included in the proposed information disclosure.

Example of Operator C's approach to transfer to care

- The rooms available at the operator's residential aged care facilities include a mix of standard rooms and premium rooms, which are configured in three different sizes and priced accordingly. In the dementia facilities, rooms are configured in two different sizes and priced accordingly.
- The costs associated with each type of room are:

Room type	Associated costs
Care Suite *(Generally only Hospital level care is available in this room type)*	• The daily care fee for a standard room, which is based on the Maximum Contribution set by the Director-General of Health • Fees for any additional services the resident chooses to receive
Medium Care Suite *(Rest home level care and hospital level care are available in this room type)*	• The daily care fee stated above • The premium room charge, which varies from village to village • Fees for any additional services the resident chooses to receive
Large Care Suite *(Rest home level care and hospital level care are available in this room type)*	• Capital sum • 30% fixed deduction • The daily care fee stated above • Fees for any additional services the resident chooses to receive
Dementia Care Suite *(Rest home level care and hospital level care are available in this room type)*	• Capital sum • 30% fixed deduction • The daily care fee stated above • Fees for any additional services the resident chooses to receive
Transfer to Care Suite or Dementia Care Suite	• The affected resident may transfer to a Care Suite or Dementia Care Suite while the other resident remains living in the existing unit.

- Where a resident transfers to this operator's aged care facility, their existing ORA will terminate. They will be required to sign new documentation in respect of their new room. If their new room is sold under an ORA, this will include signing a new ORA under which a 30% fixed deduction is payable. (This includes a 10% commencement fee and 15% fixed deduction) The fixed deduction is reduced by the fixed deduction already accrued on the previous unit.
- Where a resident has a financial shortfall, the Directors will assist on a case by case basis.

The above examples show the complexity and diversity of arrangements that may apply. Ultimately operators work with individual residents should they need to transfer to care to ensure that their needs can be met. There is no one size fits all approach.

What kinds of different terms and conditions do operators offer where a resident has a second ORA for living in the same village?

There are a wide variety of terms and conditions. In responding to this question, we are only referring to a transfer to a new accommodation unit in which residential care services can be provided. Examples of terms that may be provided are as follows:

- In almost every case the original ORA will be terminated and the resident will need to enter into a new ORA that relates to the new accommodation unit and deals with the services to be provided to the resident.
- If a resident does not receive sufficient monies from the termination of their first unit to pay for the new unit the operator will not require the resident to make up the shortfall.

- Operators will usually allow residents to move into a care suite prior to the resident's former unit having first been relicensed, thereby allowing the resident access to care as soon as possible
- Approaches to second fixed deductions are set out below.

Is it common practice for operators to charge a second fixed deduction or is there variability across the sector?

There is variability across the sector although in most cases a second fixed deduction is charged. Where a second fixed deduction is not charged the capital payment is likely to be higher to compensate.

Where a second fixed deduction is charged, does the percentage increase by length of stay, and at what percentage is it capped?

The second fixed deduction percentage charged will usually increase based on length of stay, replicating the general retirement village model. Of course there will be some operators who take a different approach. The percentage at which the fixed deduction is capped is variable and this will reflect an operator's pricing model and offering. A review of market offerings indicates that most fixed deductions are between 25% to 30% of the capital sum.

There is an advantage for residents in paying a fixed deduction rather than a daily premium room charge in that residents are aware upfront of the maximum amount that is payable for the premium accommodation (excluding the usual daily care charge) whereas the cost to a resident of premium room charges is dependent on the length of time a resident is in a room. Residents and their families when choosing a resident's care accommodation can select accommodation based on whether they wish to pay daily premium room charges or a fixed deduction.

What potential implications of stopping or limiting second fixed deductions should we be aware of, such as increased weekly fees for residents, or reduced new supply of aged residential care facilities?

There are a raft of possible serious consequences that almost certainly will arise if there is a stopping or limiting of charging of second fixed deductions including:

- Operators choosing not to build care facilities in their new villages as the funding model for many operators is dependent on the recovery of a second fixed deduction. Operators build care facilities that provide not only for their own residents but also for the wider community so any reduction in construction of care facilities will impact not just on the village but on the overall supply of beds to the community.
- Care options available for residents who initially move into an independent unit in a village will be severely restricted. We expect that many operators will simply say that there is no right to transfer to a care suite and existing residents will only have the option of a standard or premium room payable on a daily basis and giving no certainty as to tenure.
- The corollary is that operators will only offer care suites (i.e. a premium accommodation option with certainty of tenure) to new residents to the village.
- Operators may increase the capital sum for care suites to compensate for not charging a second fixed deduction.
- An operator may set up two separate villages one for care suites and one for independent living.

Minimum Building Standards

Q.33 If there any other issues with minimum building standards that we have not covered, please tell us about them.

The RVA has no comment on this question.

Q.34 Do you or someone you know live in a retirement village unit that is regularly cold or damp? If yes, please tell us about it.

The RVA has no comment on this question.

Q35 Should retirement villages be upgraded to meet certain building standards, such as the healthy homes standards? Please give us your reasons.

The RVA supports the concept of healthy homes standards and accepts that villages should move towards complying with such standards. However, this should be implemented over a period of time because:

- Any works are best undertaken when a unit is vacant, that is following termination of the current ORA. This avoids inconvenience to the resident and is logistically easier.
- If works were required to be completed in a short time frame there will likely not be sufficient availability of tradespersons to complete the required work.
- the corresponding cost will likely cause financial difficulty for many operators, particularly smaller operators and not-for profit operators.

The RVA proposes that where, as part of the refurbishment of a unit following termination of an ORA, an operator changes or replaces any part of the unit that is the subject of the healthy homes standards (e.g. changing or replacing heating, insulation, ventilation, draught stopping measures or moisture ingress or drainage systems), the operator must ensure that the relevant item as changed or replaced complies with such standards. This has already been adopted by RVA members as part of the RVA Remits.

This will be an economically sensible and sustainable way to bring existing village units up to these standards, without imposing excessive costs on operators all at once.

Many RVA members are already working with and assisting eligible residents to apply for relevant grants/ subsidies (such as the EECA 'Warmer Kiwi Homes' grant).

Consideration also needs to be given to where residents own their own unit.

Q36 Is the design of your retirement village age-friendly and accessible to support residents to age in place? If no, what changes would be needed?

The RVA does not have any comment to make on this question but expects that individual operators will wish to comment on this question in their separate submissions.

Part D: Moving Out

Summary of RVA's position on this section of the Discussion Paper

The RVA is categorically opposed to any form of mandatory buy-back/repayment.

On the basis that no mandatory repayment obligation is imposed, the RVA supports legislative change that would (subject to the below exceptions):

1. require operators to cease charging weekly fees and to cease the accrual of the fixed deduction on the later of the termination date of the ORA or the date on which the resident stops living in the unit.
2. require operators to pay interest on the termination proceeds if not paid to the outgoing resident within nine months of the termination of the ORA.
3. require that residents only be liable for any capital loss to the same extent that they are entitled to the benefit of any capital gain.

However, if the resident is responsible for finding a new resident to occupy their unit and/or for setting the sale price of the ORA, then this model of ORA must be exempt from proposals 1 and 2 above, as further discussed below.[13]

The RVA considers that the combination of the above measures achieves a fair balance between the interests of residents and the sustainability and stability of operators' businesses.

Introduction

An initial point that needs to be made clear is that the retirement village business model uses the capital sums paid by residents (in exchange for the right to occupy their unit and enjoy the benefits of the village facilities) to pay down bank debt, maintain and develop the village, invest in new amenities such as the community centre and an aged care facility, and ensure the village remains attractive to future residents.

The capital sums are therefore not sitting in bank accounts and available to immediately repay outgoing residents' capital sums. Any requirement to repay capital within any hard legislative deadline will require the operator to obtain access to a line of credit or other funding over and above their current requirements, and/or accumulate capital reserves over a period of time and will have the significantly negative consequences set out in this section of the submission.

[13] These types of ORAs are a relatively small percentage and the RVA would estimate these comprise approximately 5% of all ORAs.

The RVA has proactively worked with its members over the past few years to address and encourage members to remove or change financial clauses that are now seen as inappropriate and potentially unfair. The RVA released a Blueprint for the retirement villages sector in response to issues raised in a White Paper from the Retirement Commission.

In August 2022, the RVA passed a number of remits setting certain standards for RVA members to trial on a 12-month basis (to identify any unintended consequences). In November 2022, the RVA engaged Covenant Trustee Services Limited (**Covenant Trustees**) to review all ORAs on the Registrar's website to ascertain the extent to which operators were implementing these RVA Remits and other best practice terms. This survey work showed that many RVA members have already implemented some of the key changes proposed in this section of the Discussion Paper.

RVA members endorsed the RVA Remits at their 2023 annual general meeting in August. Covenant Trustees have been engaged to undertake a similar exercise in November 2023 to check movement in ORA terms in the 12 months since the original remits were passed.

The aim of the RVA Remits was to address two of the key reasons why residents and their families want a prompt repayment of their capital sum – stopping weekly fees continuing until the unit is relicensed (which can total several thousand dollars) and helping residents manage the funding of the cost of their care needs until a unit is relicensed. The RVA has also encouraged its members to pay interest on the exit payment when not repaid within nine months. This was not included in the RVA Remits as there were concerns that this could breach the Commerce Act 1986.

Research completed by UMR[14] (attached to this submission at Appendix 7) demonstrates that most units are relicensed within nine months. In 2022, only 10% of units took longer than nine months to relicense (11% in 2020 and 9% in 2021). The research indicated that some of the reasons for units taking longer than six months to relicense included reasons largely beyond the operator's control such as: intending residents' house sales falling over, time taken to refurbish the unit due to building consent delays, labour and/or material shortages, and increased competition in the area.

This therefore demonstrates that it is a relatively small percentage of units that are taking longer than nine months to relicense under the current system without any mandatory repayment requirement. However, as is detailed below, imposing such a requirement would have significantly detrimental consequences to the retirement village sector. The RVA considers that the potential impact of a mandatory repayment regime is not proportionate when considering the small number of units that remain unlicensed after nine months, especially when considering other protections and rights available to residents.[15]

[14] Research was conducted by UMR into the times taken to relicense units in calendar years 2020, 2021 and 2022. The research shows that in 2022 32% of units were re-licensed within three months, 73% within six months, 90% within nine months, and 10% took more than nine months. See Appendix 7, page 169 for the data for 2020, 2021 and 2022.

[15] See table on page 41 entitled *"Existing Resident Protections Under Retirement Villages Legislation"*.

RVA NEW ZEALAND Retirement Villages Association

Repayment of the Resident's Capital Sum

Q37 Do you agree with:

- **The proposal to require operators to repay a former resident's capital sum within a fixed period after the ORA has been terminated and the unit has been fully vacated, and if so, how long should the fixed period be?**
- **The proposal to require operators to pay interest on a former resident's capital sum if the unit remains vacant after six months?**
- **Neither of these**

Please give us your reasons, including any additional suggestions for how the issues covered could be addressed.

Option 1 - Mandatory Repayment

The RVA is categorically opposed to any legislative change that would impose any form of mandatory repayment requirement.

Summary

The proposal is that mandatory repayment would improve fairness for former residents by improving their consumer protections. However, the introduction of a mandatory repayment regime would in fact have an adverse effect on all residents of retirement villages over time. Amongst other things, it will result in a reduction of choice for future consumers, increase the cost for residents of moving into and living in a village, slow the development of new villages and new aged care facilities, affect the financial viability of a number of operators and result in the failure of villages.

Funding of repayments/liquidity

The vast majority of ORAs in New Zealand provide for former residents to receive their net termination proceeds only when a new resident has paid their capital sum for the unit. By matching the timing of repayment to the settlement of a new ORA, this avoids the risk of liquidity issues and the potential failure of a village. This is a benefit for all residents in a village and not just the first few residents (or their families) who leave the village.

A paper released by John Ryder, *"Questions of the New Zealand Retirement Villages Industry"* in 2023[16], describes in a clear and articulate way the consequences that will flow from the introduction of mandatory repayment. A copy of this paper is attached as Appendix 8.

The successful operation of a mandatory repayment regime is premised on operators having sufficient liquidity and capital and/or having access to external funding to meet these obligations. This premise is flawed.

It is well understood that profits shown on retirement village operators' balance sheets are unrealised gains and locked up in fixed assets. These gains are not represented in cash and, as John Ryder points out *"it is a characteristic of New Zealand retirement villages that it is very difficult to make a cash surplus on the development of a village just from occupation loans received from residents"*[17].

Only a few retirement village operators in New Zealand would have sufficient liquidity to manage the risk of mandatory repayments 12 months after termination, even if there was a lead in time of 12 months prior to the implementation of such a proposal. For many operators it would take a considerable time to be in this position and for some they may never get to this position, especially smaller villages. The putting aside of cash reserves for a just-in-case scenario will have a flow on effect to the operation of the village as a whole.

How to ascertain liquidity requirements is a very complex exercise. Realistically it will be difficult to determine how much money an operator will need to have access to in order to meet any potential liability under a mandatory repayment regime. The following points are of note:

- An operator would need to provision for the potential cost to the satisfaction of the statutory supervisor and auditor of the village. This analysis would need to be carried out on an ongoing basis not just once.
- The amount required could vary substantially from year to year depending on factors such as property down turns, pandemics and an event of sector wide reputational damage (for example, the *Four Corners* treatment of Aveo and the resulting media storm undermined the Australian retirement village sector that it is only now recovering from, five years after the event).

[16] John Ryder "Questions of the New Zealand Retirement Villages Industry" (2023)

[17] John Ryder report page 184.

- The amount required would be particularly challenging to ascertain for care suites where there is a real risk of a significant number of units being terminated in a short time period because of a pandemic or even simply a severe influenza season.
- For capital gains sharing villages, there would need to be a clear mechanism to set the repayment amount before a resale has been achieved. If this reflects current valuation amount, the cash/liquidity requirements would be very hard to predict.
- Statutory supervisors and auditors will need to work with operators to agree a provisional amount, which could well involve actuarial input. This exercise will result in increased fees for the operator, the costs of which will ultimately be passed on to residents.

As an alternative to cash reserves, a bank line of credit facility may be an option for some operators to manage their mandatory repayment obligation. **However, for many operators, banks will not be prepared to provide such a facility**. For those operators whose banks would grant them such a facility, again it will result in increased bank facility fees and interest payments, the costs of which will ultimately be passed on to residents.

Long term maintenance and reinvestment in the village property is also likely to reduce so that operators can increase their cash reserves to protect the operator's liquidity. Retirement villages by their nature need a greater level of reinvestment than other businesses to remain competitive and attractive to potential residents. Underinvestment will result in less attractive villages potentially resulting in delays in resale, in turn leading to an increase in mandatory repayments.

Villages whereby a committee of residents constitute the operator (such as small unit title villages where residents retain capital gain) would be required to have large liquidity facilities / capital amongst those residents to meet mandatory repayment obligations. This would make it unlikely that this type of village could exist.

Impact on financial model

A mandatory repayment obligation is likely to lead to many operators needing to revisit and revise their financial model, with the consequence being a homogenisation of models (if all ORAs and payment terms have to be structured to address a mandatory repayment requirement), and ultimately reduced consumer choice.

As mentioned above, the exercise of determining liquidity needs, and the cost of potential bank liquidity lines, may result in further operational costs being pushed on to residents (for example by increased capital sums, higher percentage fixed deductions, or higher/unlimited increases in weekly fees).

Many operators have a fixed weekly fee model and as a result recover less than the full cost of operating the village from residents. Even in villages where the weekly fees are not fixed, operators in many cases are subsidising the cost of the weekly fees which is a drain on operators' cash reserves. In many larger villages, the subsidy amounts to two or more million dollars annually. With the introduction of mandatory repayment, it is likely that operators will be less willing to subsidise weekly fees and potentially there will be fewer offers of fixed weekly fees as operators move towards full cost recovery of village outgoings.

A mandatory repayment regime is likely to affect different types of operators in different ways. The RVA considers that a likely result would be that smaller operators and charitable operators may leave the sector due to the unaffordability of such a regime and the severe financial impact it would have on such villages.[18] This could lead to a sector comprised solely of the larger corporate operators. Often it is the smaller and charitable operators that operate villages in rural and provincial New Zealand and if they are to leave the sector there will be considerably less or potentially no retirement village offerings in these areas.

There are some villages who do offer a guaranteed buy-back after a certain period following termination and if this was of priority to an intending resident, they would be free to choose to move into one of these villages. Such a model should not be forced on all operators.

Impact on development

In a number of villages, the development of an onsite care facility is only possible because of the returns generated from the sale of ORAs. Should these returns reduce, this could lead to decisions not to develop such care facilities therefore impacting on the total number of aged care beds available in New Zealand, potentially placing a higher burden and cost on the public health system.

[18] The RVA understands that several not-for-profit and smaller independent villages have made this point to MHUD and the RVA support their submissions.

There are a limited number of banks in New Zealand who fund retirement villages. This is because retirement villages are complex businesses for some funders to fully understand and they expose banks to greater risk than traditional property funding, particularly with residents' interests having priority over bank debt. In addition, there are a limited number of buyers and sellers of retirement villages in New Zealand resulting in reduced sector liquidity.

The introduction of a mandatory repayment regime will result in a significant reduction of banks' risk appetite to fund the sector. This crucial point is reinforced by an opinion from a recently retired banker with many years' experience in funding retirement village developments attached to this submission in Appendix 9.

For those villages that can negotiate a bank funding line for mandatory buybacks this will simply reduce the amount of funding available for other operator activities, in particular development funding (which will slow down existing development pipelines and ultimately lead to fewer village options overall).

Specific comments on Martin Jenkins' report

The RVA has commissioned a report from Sense Partners to review and critique the overall approach and key assumptions set out in the Martin Jenkins Report. Sense Partners identify what they term "several important weaknesses" with the approaches adopted to quantify costs and benefits in the Martin Jenkins Report. A copy of the Sense Partners report is included in Appendix 5.

Sense Partners have identified that the Martin Jenkins Report:

> *"does not adequately consider the potential outcomes and risks of unintended consequences of the proposed changes – financial stress for marginal operators, higher costs and less choice for residents, and reduced investment."*

The other key points that the Sense Partners' report makes are that:

- because the cost of capital assumption has a material impact on the estimated cost of mandatory repayments, it should have been subject to sensitivity analysis.
- transfers should have been excluded from the social cost-benefit analysis.
- the assumptions in the Martin Jenkins Report as to an 8% annual growth in the number of units and a 5% annual growth in the sale price should have been subject to sensitivity testing because they have a material effect.
- it is not credible that a mandatory repayment time would increase incentives to maintain and improve villages or generally hurry up the sales process

The Martin Jenkins Report talks of the estimated cost across the sector. However, the RVA considers this analysis to be flawed as an analysis of this type fails to recognise that the issue is not the overall cost to the retirement village sector but rather the impact of mandatory repayment on individual operators, and the likelihood that an individual operator or operators will fail. The retirement village sector is comprised of multiple operators and the cost burden of mandatory repayments is a cost that individual operators will need to bear.

It is also unwise and short sighted to look at the time frame recommended for mandatory repayment based on the ability to dispose of units over the last 10 years, which has seen a period of significant growth and demand in the residential property market and this past performance does not guarantee that the market will perform to the same level in the next 10 years. The average length of time to dispose of units in New Zealand (four months)[19] compares well to Australia (eight months)[20] and while it is hoped it will remain this way it will not necessarily be the case.

The RVA disputes both the qualitative assessment of *"potential magnitude of unquantified benefits under each option"* in Table 7 of the Martin Jenkins Report and the *"potential magnitude of unquantified costs under each option"* in Table 8 of the report[21]. Considering the issues we have raised above; our assessment is that the benefits to residents are overstated and the costs to operators are understated. Further the RVA rejects the assertion that there are unquantified benefits to operators in adopting the mandatory repayment regime. There is unlikely to be *"increased confidence in retirement villages"* if the sector sees villages fail after being unable to fund mandatory repayments. If individual operators want to increase confidence in their village(s) by including repayment timeframes in their offering, they are at liberty to do so.

[19] Four month average calculated by the RVA based on the UMR research data set out in Appendix 7.

[20] PwC and Property Council of Australia "2022 PwC / Property Council Retirement Census". See statement on page 2 of this report that the average number of days between vacant possession to settlement increased from 223 days to 253 days over the 18 months to December 2022.

[21] See Martin Jenkins Report page 22.

Potential for village failures

While a mandatory repayment regime may be premised on increased consumer protection, the likely unintended consequence is that while the first resident/s to leave a village are repaid in full, funding the mandatory repayment may place financial stress on the operator and then subsequent residents who leave may lose out if the village failed due to having insufficient funds to pay for mandatory repayments. This is a scenario that happened at Abbeyfield Whangarei House which failed as a result of a well-meaning, but eventually fatal, guaranteed buy-back arrangement that the operator was unable to finance.[22] Clearly this did not result in consumer protection for the affected residents.

Potentially, villages could be put in a stressed financial position simply by having to hold cash reserves, even if they have not yet been drawn upon to fund repayments.

A failure of one or more villages due to liquidity issues will result in reputational damage to the sector and associated loss of confidence in the market. This has the potential to result in a contagion effect such as was seen in the finance company sector during the Global Financial Crisis.

In addition, the failure of any village in New Zealand would cause considerable distress and anxiety for residents of other villages leading to fears that their village could suffer the same fate.

Statutory supervisors, who have a duty to monitor the financial position of a village, have advised the RVA that they strongly oppose mandatory repayment.[23] Their experience of this complex sector enables them to have a real and deep understanding of the potential adverse consequences of introducing such a change.

Villages where outgoing resident is responsible for the sales process

It is important to note that not all ORAs are the same and in some villages (including unit title villages) the sales process is not controlled by the operator. Imposing mandatory repayment obligations for villages where the outgoing resident is responsible for the sale and marketing of the unit and/or is responsible for setting the price of a new ORA for the unit is unreasonable and inappropriate. This could, for example, result in a situation where a resident has set an unrealistic sales price, so the unit has not sold and the operator is then forced to buy back the unit. There is also potential for abuse of this "protection" if a resident has not taken any steps to try to sell the unit knowing that after a certain period of time the operator would be forced to buy back the unit.

Caution when referring to Australian regimes

Caution should be applied when looking at mandatory repayment regimes in Australia as they may not be directly analogous with what the Discussion Paper is proposing.

For example, under the regime in New South Wales, a resident has the right to apply for an order from the Commissioner for Fair Trading to receive their exit payment if their unit remains unsold after 6 months in metropolitan areas or 12 months in other areas and an order will only successful if the operator cannot show that they have not 'unreasonably delayed' the sale of the unit.[24] This is therefore neither an automatic, nor an absolute, right for a resident to receive their exit payment. (This process is not dissimilar to the current dispute panel regime in New Zealand where a resident can issue a dispute notice for resolution of a dispute involving the operator's disposal of the unit at any time from nine months after the unit became available for disposal.)

Further, such types of 'mandatory' repayment regimes in Australia are still relatively new and therefore it is too soon to objectively assess the consequences of such regimes.

Media commentary

Media commentary regarding retirement villages, especially financial analysis, is at times ill informed, misleading, inaccurate, or simply wrong.

The RVA would advocate for independent verification, and a forensic accounting analysis of, of any claims made in such commentary before relying on such commentary to support legislative change.

For example, a number of claims made by commentator Janine Starks in an article on stuff.co.nz[25], were subsequently challenged by head of research at Jarden, Arie Dekker[26]

---

[22] See case studies below that demonstrate the unintended consequences and failures reslting from mandatory repayments.

[23] We understand that the Corporate Trustees Association will be submitting on this point.

[24] Retirement Villages Act 1999 No 81 [NSW] Section 182AB and 182AC <https://legislation.nsw.gov.au/view/whole/pdf/inforce/2023-11-13/act-1999-081> [Last accessed on 13 November 2023]

[25] Janine Starks "How do operators make money on retirement villages?" (24 June 2023) <https://www.stuff.co.nz/business/opinion-analysis/300909614/how-do-operators-make-money-on-retirement-villages> [Last accessed on 13 November 2023]

[26] Arie Dekker "Are retirement villages really super-profiters?" (15 July 2023) <https://www.stuff.co.nz/business/opinion-analysis/300925334/are-retirement-villages-really-superprofiters> [Last accessed on 13 November 2023]

There has been a recent comment in the media that operators that can't afford mandatory repayments should not be in business. This is fundamentally short-sighted and has no regard to the harm that may be suffered by the current residents in those villages.

Conclusion

The RVA recognises that if there is a significant delay in relicensing it is fair for a resident to be paid interest after a period of time. After considering all the issues that arise from mandatory repayment the RVA does not consider that imposing this requirement is a proportionate response to address concerns regarding delays in relicensing, given the serious risks to the sector that such a requirement will create.

There are numerous protections in place in the current legislation and Code of Practice (see below) to ensure that operators must relicense a unit in a timely manner, and the introduction of an obligation on an operator to pay interest is yet another protection for a resident.

Further it is irrefutably in an operator's best interests to relicense a unit as soon as possible, as each time a unit is relicensed, the operator will receive a new fixed deduction and, where applicable any uplift in the relicensing price, therefore operators are already sufficiently incentivised to secure a new resident for that unit so as to ensure regular cashflows. The RVA strongly refutes any suggestion that our members are not already doing all that they can to relicense vacant units as soon as they can, or that any legislative change is needed to "incentivise" operators to relicense units as quickly as possible.

Existing Resident Protections Under Retirement Villages Legislation

- The resident can issue a dispute notice for resolution of a dispute involving the operator's disposal of the unit previously occupied by that resident at any time from nine months after the unit became available for disposal. A disputes panel has the right to order an operator to buy back a unit, pay interest, and/or market the unit at a certain price (section 70 RV Act).

  An operator is required to appoint three dispute panel members to hear a dispute regarding where a unit has not been resold within nine months. The costs associated with this type of dispute (which fall on the operator) are such that in most cases an operator will repay the resident rather than allowing the dispute to proceed (which could also potentially lead to reputational damage).

- When an operator is responsible for relicensing the unit the operator is required to comply with clause 51 of the Code of Practice. This sets out in detail the obligations relating to the disposal of a unit such as, including that an operator must:
  - Take proper steps to market the unit.
  - Respond to all enquiries about the unit in a timely and helpful way.
  - Take all reasonable steps to enter into a new ORA for the unit in a timely manner and for the best price reasonably obtainable.
  - Consult with the former resident as to the general nature of the marketing plan for the unit.
  - Disclose the actual charges relating to marketing and sale of the unit that the former resident is required to pay.
  - Keep the former resident regularly informed including written reports.
  - Obtain a valuation of the unit and discuss with the resident if the unit is still not disposed of after 6 months.
- The ORA must set out the process involving the operator of the village finding a new resident for the unit after it is vacated by the resident (regulation 11 RV General Regulations)
- The operator must not give preference to finding residents for units in the village that have not previously been occupied by a resident under an ORA (regulation 11 RV General Regulations).
- The operator must make all reasonable efforts to find a new resident for the unit (regulation 11 RV General Regulations).

Option 2 - Interest after nine months

The RVA is generally supportive of interest being paid on a resident's net termination proceeds if the unit is not re-licensed within nine months of the termination date (or any later date of vacant possession of the unit) on the following provisos:

- the interest calculation should apply from nine months until the date of payment of the termination proceeds to the statutory supervisor's trust account (or other stakeholder's trust account if the village has an exemption from the requirement to appoint a statutory supervisor); and
- the payment of interest should not apply to villages where the resident has the responsibility for re-sale/ finding a new resident, or where the resident sets the re-sale price.

The RVA supports interest being paid in one lump sum on the date that the resident receives their termination proceeds. In circumstances where a resident is entitled to all or part of the capital gain, their termination proceeds cannot be calculated until the unit has sold.

Concern has been raised by operators as to the need to deduct resident withholding tax. It would be helpful if MHUD could give this issue consideration.

It is important that interest ceases to be payable by the operator once the termination proceeds are made available by the operator, so the suggestion is that the interest period ceases on the earlier of the date the former resident receives the funds, or the date they are paid to the statutory supervisor's trust account to be held as stakeholder on behalf of the former resident. There are often situations where a former resident is not in a position to be paid the termination proceeds. Examples are where the former resident has died and probate or letters of administration have not yet been obtained (noting lengthy Court delays currently in processing such applications), or in blended family situations where the parties may not have reached agreement as to who is to be paid the termination proceeds (again, payment may not occur until Court proceedings are completed).

Once the termination proceeds are held by the statutory supervisor (or other stakeholder if the village has an exemption from the requirement to appoint a statutory supervisor) the former resident or their estate would be entitled to any interest earned on the termination proceeds at the rate that is available to the statutory supervisor /stakeholder in its trust account.

A key point regarding this proposal is that interest should be payable on the resident's "net termination proceeds" which is the amount that the resident is due to receive net of all deductions under their ORA (i.e. after the deduction of the fixed deduction, any outstanding weekly fees and any other amounts due under the ORA). Interest should not be calculated on the resident's capital sum because the resident will not receive all of that capital sum back on termination.

A further important point is that this proposal is not appropriate for all types of villages and if such a requirement to pay interest was introduced it must not apply to villages where the outgoing resident is responsible for the sale and marketing of the unit and/or is responsible for setting the price of a new ORA for the unit. In these circumstances, as the operator does not control the sale process and/or set the price, any delay in the resale cannot be attributed to the operator's decisions and as such the operator is not (and should not be) responsible for the cost of delay in the resident receiving their net termination proceeds.

Q38 Which option/s do you consider would most improve fairness for residents?

As stated above, the RVA considers a requirement to pay interest after nine months to be the fairest option.

The RVA fundamentally disagrees with the assertion at paragraph 214 of the Discussion Paper that: *"introducing a mandatory repayment timeframe would improve fairness for former residents by improving their consumer protections."*

This statement is premised on the fact that such a regime would be able to be funded by all operators with no increased cost to residents and without any risk that operators' financial stability could be jeopardised by such a regime.

We have discussed these issues and assumptions in Question 37. We have referred to the Abbeyfield Whangarei situation, which is an example of the consequences of introducing this policy. There are also earlier pre-RV Act examples of the consequences of mandatory repayment at The Peninsula Club and at villages run by United Lifecare.

Further, the RVA is also aware of Australian examples, such as the collapse of RV operator Settlers Lifestyle, that arose as a result of a guaranteed buy-back rule.

What may have improved the financial position of, and been 'fairer' for, the first few residents who benefited from a buy-back regime, resulted in an overall negative consequences for residents of these villages as a whole.

Case Study: Abbeyfield Whangarei

Abbeyfield Housing Company Limited (AHC) set up a small retirement village in Whangarei. The village was a large house divided into a number of small self-contained apartments.

Abbeyfield is a not-for-profit organisation whose aim is to provide accommodation and companionship for lonely older people. With this ethos in mind AHC included in its ORA a number of resident-friendly terms including:

- Resident entitlement on exit to receive in addition to their capital sum, 90% of the increase in value of the ORA
- A repurchase pool account was established and 10% of the value of each ORA was deposited into this account. If a resident had not been repaid within 90 days of termination the resident would be repaid out of the repurchase pool. Access to this fund was on a "first come first served basis"
- The village operated well for a number of years but following new larger corporate competitors opening up in the area, the operator was unable to resell the apartments. The repurchase pool was exhausted and there were residents awaiting repayment.

The operation of the village was uneconomic without it being fully occupied and this placed financial strain on AHC. After more than a year it was acknowledged that the village was unlikely to attract sufficient new residents to enable it to continue. After no purchaser of the village could be found and following consultation with the statutory supervisor and the residents, it was agreed that the village would have to be wound up, the property sold and the residents repaid from the sale proceeds. The sale proceeds available for distribution were inadequate to reimburse residents their full capital sum and all residents, apart from the residents who benefitted from the repurchase pool account, suffered a considerable financial loss and the loss of their home.

AHC worked with the remaining residents to ensure that they were found other suitable accommodation.

Case Study: United Lifecare

Few people today will remember the name United Lifecare, one of the first parties to develop commercial retirement villages.

United Lifecare was a joint venture between Paynter Corporation then a listed property company, and United Bank, a subsidiary of the State Bank of South Australia. Villages developed by the joint venture in the early 1980s were, Sommervale in Mount Maunganui, Oakwoods in Nelson, Highlands in Pakuranga and Crestwood in Titirangi (both in Auckland). Operating under a scheme very similar to today's villages, residents obtained a licence to occupy.

However, the licence to occupy provided for a compulsory repayment 3 months after termination. By the late 1980s to early 1990s, after a significant downturn in the residential market, State Bank of South Australia became insolvent, Paynter Corporation was liquidated, and residents were unable to enforce the repayment obligation.

The situation was only resolved by industry pioneer Cliff Cook, forming a new company Metlifecare and obtaining a significant credit line from an Australian finance company, who were effectively the underwriters in a public floating in 1994 involving multiple villages.

In addition, Metlifecare made offers to residents whereby residents waived their rights to a compulsory repayment and in return obtained favourable fixed weekly fees and some other benefits. The vast majority accepted the new terms, largely because the option and consequence of enforcing the original repayment terms would not benefit them in real terms.

In summary, the joint venture was unable to honour the repayment terms and became dysfunctional. Metlifecare was able to negotiate conventional terms and this allowed the villages to once again begin to operate successfully.

Case Study: The Peninsula Club

In the mid 1980's, prior to any RV legislative requirements other than the then Securities Act, a developer designed, on a cross lease basis, a Whangaparaoa retirement village called The Peninsula Club. The developer registered various companies which took ownership of the cross lease title to units, and offered these units to the public by way of a mortgage scheme.

The company owned the title to the unit, and the resident advanced a sum equivalent to an ORA capital sum today, secured by a mortgage issued to the resident. The mortgage provided that when the resident wished to terminate the unit, they would call upon the repayment of the mortgage within 3 months, with the repayment amount to be reduced by the costs to refurbish the unit and by a fixed deduction of up to 20% dependent on the resident's length of tenure. Effectively it was similar to the transaction common today, other than the change to refurbishment which was not legislated for until 2008.

Post the 1987 share-market crash, several residents terminated possession and they or their estates requested repayment of their mortgages. Due to market conditions, the developer was not able to sell the units either within 3 months or at all. Eventually, some residents sought to take action against the various companies that owned the cross lease titles and were now failing to repay the mortgages as demanded. Their only recourse was to force a mortgage sale.

The resultant publicity of a dysfunctional village however ensured no sales could be made at anything like the original pricing.

The units became "sale proof" and eventually management of the village ceased and had to be taken over by residents, and the extensive common facilities also on a separate cross lease were closed.

Eventually, the principal of Generus Living Group became involved and the companies that owned the various cross leases were placed under statutory management by way of Order In Council. Negotiations lead to Generus taking ownership of all titles and conversion to a standard village with a single title and ORAs issued to existing residents in exchange for the surrender of each resident's mortgage. The village has since operated under a standard licence to occupy model.

To facilitate this, 100% of the existing residents agreed to a compromise scheme whereby if the unit was sold by the village, after deduction of refurbishment and fixed deduction, at an amount that was lower than the amount owed, the residents would accept the reduced sum. If the net amount was greater than the resident was due to receive, the Crown received the surplus proceeds to compensate for the costs of statutory management. Residents would only be repaid once their unit was relicensed.

In summary, having a compulsory buyback was unable to be sustained and led to failure of the village, new owners and a reduction in entitlement for some residents.

Case Study: Settlers Lifestyle Group Pty Ltd

The Administrator of Settlers Lifestyle Group Pty Ltd, Damien Hodgkinson of DEM Asia Group stated publicly that Queensland Government legislation, which requires retirement village operators to buy back units from residents if they are not re-licensed after 18-months, had triggered an "insolvency event".

A mandatory maximum exit entitlement period in Queensland, applied to all existing retirement village contracts, effectively altered the accounting treatment of loan and fixed deduction operator liabilities, requiring them to be reclassified from "reasonably assessed non-current liabilities" to "current liabilities".

The consequence of these changes in Queensland was an immediate loss of business enterprise value, which impacted loan to value ratios (LVR) and the ability of banks to provide additional funding for operators at the maximum LVR. On this basis, if a retirement village operator cannot guarantee that debts, like the payment of an exit entitlement at the expiration of the mandatory maximum period, can be paid as they fall due, an insolvency event will need to be triggered.

Q39 What impacts would the proposed options have for operators?

See our answer above. While the RVA supports the introduction of interest after nine months the RVA strongly opposes any mandatory repayment requirements and our answer to the above question details the potentially devastating effect that such a regime could have on individual operators and the sector as a whole.

Q40 Should operators be able to apply for an exemption from the proposed mandatory repayment timeframe because of undue financial hardship? If yes, what should qualify as undue financial hardship?

As stated above and for the reasons set out above, the RVA does not support mandatory repayment for any participants in the sector and therefore this question is moot.

Q41 Should certain types of retirement villages (for example not-for-profit villages) be either exempt from the proposed mandatory repayment timeframe or subject to a longer repayment timeframe? Please give us your reasons.

As stated above and for the reasons set out above, the RVA does not support mandatory repayment for any participants in the sector and therefore this question is moot.

Q42 How long should operators have to relicense a unit before they need to start paying interest to the former residents? Please give us your reasons.

The RVA engaged UMR to review the times taken to relicense units over the last three years, and the results of the survey for 2023 re-licensing times are included in Appendix 7, which shows that 90% of units were relicensed within nine months. We agree that those 10% of residents whose ORAs are not relicensed within nine months should be entitled to compensation for the delay in the form of interest on their termination proceeds.

The RVA considers that nine months following the date of termination of the former resident's ORA (or any later date the resident vacates the unit) to be a reasonable period of time to commence an obligation to pay interest. A nine-month period balances the interests of the resident in receiving compensation if the unit takes longer than usual to be relicensed, while giving operators a reasonable period of time to carry out marketing, bring the unit up to an acceptable standard for a new resident, wait for a new resident to satisfy conditions such as sale of their house, and achieve a sale of a new ORA. Nine months is also the point at which a resident can issue a dispute notice for resolution of a dispute involving the operator's disposal of the unit previously occupied by that resident.

It is important to note that an operator is not able to immediately resell the unit following the termination date. The operator must wait for the resident to remove all their belongings from the unit and then the unit must be cleaned and refurbished. If a unit has been occupied for a long period of time and more substantial works need to be completed, it is possible that the refurbishment process may require building consent.

Delays in obtaining building consents and then subsequent inspections and sign-off of work can slow down the resale of a unit by months. Any requirement to bring the unit up to the healthy homes standard may also have an impact on the refurbishment schedule. Further, through factors beyond an operator's control, an operator may not be able to commence refurbishment works on a unit immediately, for example due to supply chain issues for building products or if there are multiple units at the village that need to be refurbished and a limited supply of tradespersons that are able to complete the refurbishment work. Delays of the type outlined can be particularly common in provincial areas.

It is often suggested that an operator should commence marketing a unit prior to refurbishment, operators consistently say that it is very difficult to market an un-refurbished or partly refurbished unit.

The above demonstrates that the length of time it takes to resell a unit in a retirement village cannot be compared to the time taken to sell an ordinary home. If homeowners are doing work on their house, they do not put their property on the market until any such refurbishment or works are complete. Given these factors, the RVA considers nine months to be a reasonable period of time before the obligation to pay interest commences.

The RVA considers that 24 months would be an appropriate transition period to give operators sufficient time to adjust their business model to reflect such a change.

Q43 If implemented, does the Interest on Money Claims Act 2016 provide a fair interest rate for operators to pay former residents if they have not relicensed the unit within six months? Please give us your reasons.

Yes, the RVA supports the use of the Interest on Money Claims Act for the purposes of calculating interest on the termination proceeds if a unit is not relicensed after nine months, on the terms outlined above in our response to Q38.

The RVA considers that the Interest on Money Claims Act offers both a fair rate of interest and a clear and transparent way for operators and residents to agree and calculate the interest owed, particularly with use of the online calculator tool on the Ministry of Justice website.

Q44 If implemented, should the proposal to introduce a mandatory repayment timeframe for residents' capital sums apply to existing ORAs? Please give us your reasons.

The RVA is strongly opposed to any retrospective legislative amendments and particularly any retrospective amendments that would change the key financial terms of the approximately 50,000 existing contracts between residents and operators (signed after the residents obtained legal advice). This particular change if retrospectively implemented would have a significant and immediate financial impact on all operators and would likely lead to the failure of a number of businesses and cause others significant hardship. Such consequences are not in the best interests of either operators or residents.

The RVA considers that retrospective legislation is bad public policy and undermines the rule of law.

Q45 If implemented, should the proposal to require operators to pay interest on former residents' capital sums apply to existing ORAs? Please give us your reasons.

No, as stated above, while the RVA supports operators paying interest on a resident's termination proceeds, for operators whose ORAs do not already provide for such interest payment, this must be a prospective change that will be applied to new ORAs.

RVA NEW ZEALAND
Retirement Villages Association

Stopping Outgoings and Other Fees

Q46 Do you agree with the proposal to require operators to stop charging weekly fees upon a unit being vacated or shortly after? Please give us your reasons, including any additional suggestions for how the issues with outgoings and other fees can be addressed.

The RVA supports operators being required to stop charging weekly fees on the later of the termination date of the ORA (i.e. the date that the resident's ORA ends) or the date on which the resident stops living in the unit and removes all of their belongings from the unit (subject to the proviso below).

The cessation date must be the later of these two dates because if a resident has not left the unit and/or has not removed all their possessions from the unit then the operator is unable to take steps to clean and refurbish the unit so that it is ready for relicensing. It is fair and reasonable for the resident to be responsible for continuing to pay the weekly fees after termination of the ORA if the resident is still using or storing possessions in the unit.

For administrative reasons, operators should be free to structure their ORAs so that the fees stop on the latter of the above two dates, or alternatively at the end of the next weekly or monthly billing period directly following this date (reflecting that many weekly fees are paid in advance).

Research undertaken for the RVA by Covenant Trustee Services Limited has shown that for villages with over 50 units, occupants of 76% of those units will not be charged weekly fees after the termination date (or later vacation date).[27]

Paragraph 237 of the Discussion Paper says that not charging weekly fees following termination would provide an additional incentive for operators to relicense vacant units as quickly as possible. This statement suggests that the charging of weekly fees is a reason why operators may not act quickly to relicense a unit. In most licence to occupy villages the weekly fees are insufficient to cover the day-to-day operating overheads of a village. Other revenue streams cover this shortfall such as the fixed deduction and re-licensing proceeds and therefore it is in the operator's interest to relicense a unit as soon as possible regardless of whether this proposal is introduced or not.

However, while the RVA supports this proposal for the majority of villages where the operator is responsible for finding a new resident to enter into an ORA for the unit, any change to stopping weekly fees on termination must include an exception for those villages where the resident is responsible for finding a new resident for the unit and/or sets the price that the unit is marketed for. In these situations, any delay in the resale cannot be attributed to the operator's decisions and as such it would be unfair for a resident to have no obligation to pay weekly fees or other outgoings for a unit.

Q47 Should the proposal to require operators to stop charging weekly fees upon a unit being vacated or shortly after apply to existing ORAs? Please give us your reasons.

No. As stated above, the RVA is strongly opposed to any retrospective application of legislative changes and the change should only apply to new ORAs. Further a retrospective change of this nature is likely to create cash flow constraints for operators with a low working capital base, notably smaller and not for profit villages. This could have a flow on effect to services provided to residents and the ability to maintain a village in good condition and repair. Operators need to have time to review their financial model, and if necessary make changes to accommodate the loss of revenue from weekly fees.

[27] See page 3 of the RVA Blueprint June 2023 update at Appendix 2 (Page 95).

Fixed Deductions

Q48 Do you agree with the proposal to require fixed deductions to stop accruing upon a unit being vacated or very shortly after? Please give us your reasons, including any additional suggestions for how issues with fixed deductions can be addressed.

Yes, the same as for Question 46 above, the RVA supports operators being required to stop accruing the fixed deductions on the later of the termination date of the ORA or the date on which the resident stops living in the unit and removes all of their belongings from the unit.

However, as above and for the reasons stated above, there must be an exception for villages where the resident is responsible for finding a new resident for the unit and/or sets the price that the unit is marketed for.

Paragraph 241 of the Discussion Paper explains the fixed deduction approach used by many operators using the standard licence to occupy model. However, there are other ways that the fixed deduction may be approached, including a one-off upfront payment. Villages may even have more than one type of fixed deduction. This variety of arrangements needs to be borne in mind and is illustrative of the diversity of offerings that are able to be offered under the current legislative structure.

Q49 Should limits be placed on the size of the fixed deduction? Why/why not?

No. The RVA is strongly opposed to any attempt to limit the size or percentage of the fixed deduction. This is a key commercial term of each operator's offer and any attempt to limit this could have the effect of reducing competition, restricting innovation and limiting new ORA models. As we have mentioned throughout our response to the questions posed in the Discussion Paper, there is no one-size-fits-all ORA model and different operators offer different ORA terms and models and operators must be free to set their own commercial terms.

Further, attempts to limit the size of fixed deductions could actually make it more difficult for residents with less capital to purchase an ORA. Some operators may have special terms for residents who cannot afford the full capital sum and may offer a lower capital payment in exchange for a higher fixed deduction.

For example, an Australian operator offers three different levels of capital sums and fixed deductions whereby one option available to residents is to pay a lower capital sum in exchange for the fixed deduction being a higher percentage of the capital sum. This option enables residents to move into villages who would otherwise not have had sufficient money to pay the full market capital sum. The RVA is aware that some operators in New Zealand are contemplating the introduction of a similar model and any efforts to limit the size of the fixed deduction would make it impossible for operators to introduce such a model in New Zealand, therefore limiting the increased resident choice that such a model would bring.

Q50 Is greater transparency needed about the specific costs covered by fixed deductions? Why/why not?

The RVA does not consider that there is a need for greater transparency in terms of costs covered by the fixed deduction. There is already full transparency as to the quantum of the fixed deduction in the ORA and therefore resident certainty as to cost.

Q51 If introduced, should the proposal of ceasing the charging the fixed deduction on vacation apply to existing ORAs?

No. As stated above, the RVA is opposed to any retrospective application of legislative changes, particularly any retrospective changes that will affect the commercial terms of an ORA. The proposed change should only apply to new ORAs.

RVA NEW ZEALAND Retirement Villages Association

Capital gains/losses

Q52 Do you agree with:

- **the proposal to require that operators can only make a resident liable for a capital loss on resale of their unit to the same extent as they would be entitled to any share of the capital gains?**
- **the proposal that operators that share capital gains with residents would not be required to make residents liable for capital losses to the same extent.**

Please give us your reasons, including any additional suggestions as to how the issue in this section can be addressed.

With regard to the first proposal, the RVA supports measures to provide that residents only be liable for capital loss to the same extent that they are entitled to the capital gain (e.g. if a resident's ORA provided that the resident received the benefit of 50% of any capital gain, then the resident should only be liable for 50% of the capital loss). For the purposes of calculating capital gain and loss, the RVA is of the view that this should not include any fixed deduction. For example if a resident is entitled to 100% of the capital gain but less a fixed deduction, they would also be liable for 100% of the capital gain less a fixed deduction.

With regard to the second question, the RVA agrees with the proposal but does not consider that it is necessary to legislate for this scenario as this is the status quo. Operators will be free to set more favourable terms regarding exposure to capital loss and the market is free to respond.

Q53 If implemented, should the proposal apply to existing ORAs? Please give us your reasons.

No. The RVA is against any retrospective application of legislative changes. As stated above, while the RVA is supportive of legislating for equality in the exposure to capital gain/loss, this should be a prospective change that would apply to new ORAs going forward. Noting also that very few villages ORAs provide for capital loss to be charged where residents are not entitled to any capital gain[28], and even if the ORA provides for this to occur, in practice those operators are unlikely to seek to enforce this contractual term.

Q54 If there are any other issues with capital gains or losses from relicensing of a unit that should be addressed in the review, please tell us about them.

The RVA is not aware of any other issues.

[28] See the RVA Blueprint June 2023 update at Appendix 2 (Part B) on page 96 which shows the results of research conducted by Covenant Trustee Services Limited. This research showed that 90% of villages with over 50 units do not charge capital loss where residents are not entitled to capital gain.

Part E: Future-Proofing the Definition of Retirement Village

Future-Proofing the Definition of Retirement Village

Q55 Is the definition of "retirement village" easy to understand? Why/why not?

In general, the RVA does not have any issues with the definition of "retirement village". However, we would comment if this definition was to be changed, care would need to be taken to ensure that any amended definition did not capture any developments that were not retirement villages, as that term is commonly understood by the public, or likewise exclude any developments that should be treated as retirement villages.

Q56 Are any aspects of the definition unnecessary or redundant? If yes, please tell us which ones.

The RVA has no comment on this question.

Q57 Does the definition enable operators to respond to changing demographics and housing needs? Why/why not?

The RVA does not consider that the definition of what is or is not a retirement village will drive change or innovation.

Rather, it is the role of the market, and operators' responses to market needs, that will result in any changes required to accommodate demographic trends and different housing needs. It is important that the legislative framework remains as flexible as possible to allow operators to respond to individual residents' needs as well as the market in general.

Part F: Other Topics

Insurance Cover for Retirement Villages

Q58 Do you agree with:

- **the proposal to require that operators maintain insurance policies that, at all times, are sufficient (alongside other funds) to pay out all residents' capital sums in the event that a village is entirely destroyed, unable to be reinstated and all ORAs are terminated?**
- **the proposal to restrict operators from passing on any insurance excess to residents if the loss, damage or destruction relates to retirement village property; and if the resident was not at fault for the loss, damage or destruction?**
- **neither of these?**

Please give us your reasons, including any additional suggestions for how issues with insurance cover can be addressed.

The RVA agrees that the current village insurance requirements set out in the Code of Practice should be updated so that it reflects the types of insurance policies that are actually available to operators in New Zealand. In particular, any changes should reflect the fact that true full replacement cover is very difficult (if not impossible) to obtain.

With regard to the first proposal set out above, the RVA is generally supportive of a requirement that operators have sufficient insurance policies in place alongside other funds in order to meet the operator's obligation to pay out all residents' capital sums if a village was destroyed. The RVA considers that the reference to "other funds" should be extended to "other funds and/or assets". However, any revised insurance wording should be flexible enough to accommodate changes in the insurance market. The level of cover should be as determined by agreement between the operator and statutory supervisor.

The RVA would appreciate the opportunity to review and offer feedback on any proposed new wording to change insurance requirements. Further, the RVA expects that MHUD would consult with operators, insurers and statutory supervisors to ensure that any amended wording reflects the realty of the insurance market and the availability of cover. Insurance for retirement villages can be a very complicated area and the RVA would suggest that insurance specialists with expertise in retirement villages be involved in reviewing any changes before they are implemented.

However, the RVA has two main comments regarding the first proposal.

The RVA agrees that operators should, where possible, be maintaining sufficient insurance cover, together with other funds and/or assets, to repay all residents' capital sums, however, there should not be any requirement for operators to ring-fence other funds or assets or take out external financing for this purpose.

Secondly, it is important that any new wording should focus on the general requirement for the operator to have sufficient insurance and funds/assets to repay all residents' capital sums rather than prescribing any particular type of insurance policy. Operators' insurance requirements are likely to vary depending on factors such as the number of villages each operator has and/or the operator's entity/organisation type (i.e. charitable trust, part of a listed group, standalone private company etc). For example, any proposed amendment to the operator insurance requirements must not restrict an operator's ability to insure on a loss limit basis. Operators with multiple village sites are likely to be insured on this basis and should be permitted to do so, provided that the operator and statutory supervisor agree that the level of cover is sufficient (noting that the loss limit is typically based on the output of a loss modelling exercise).

Having a general requirement to have sufficient cover/funds/assets to repay all residents' capital sums rather than prescribing specific types of insurance policies also future proofs the legislation in the event that types of available policies were to change in the future.

With regard to the second proposal, the RVA supports a restriction on operators passing on any insurance excesses to residents for the loss, damage or destruction of retirement village property that is the subject of an insurance claim, if the resident was not at fault for the loss, damage or destruction.

However, as we have mentioned throughout this submission, such a change should only be prospective and not affect existing contractual arrangements between operators and residents where such excesses, or part-excess, are passed on to residents.

Lastly, although this is not something that the Discussion Paper mentions, the RVA considers that there should be a legislative requirement requiring the statutory supervisor's interest to be noted in the operator's insurance policy.

Q59 Do you foresee any issues with the proposal to remove the requirement that operators should have "full replacement cover" and instead allow them to obtain sum-insured and collective type insurance policies? Why?

As discussed above, the RVA supports the proposal to remove the requirement for operators to have full replacement cover and to allow alternative insurance arrangements.

Q60 Is a 12-month transition period sufficient for operators to update insurance policies or obtain new ones to meet the proposed sufficient coverage requirement? Why/why not?

The RVA does not consider that 12 months would be sufficient time for operators to implement any changes to their insurance arrangements following any legislative change coming into force. Most operators' insurance policies are on a 12-month renewal cycle and operators will therefore have limited ability to make any changes to their policy outside of the annual renewal and to do so is likely to incur additional costs. Consideration also needs to be given to the fact that most insurance for retirement villages is managed by a small number of specialised brokers and they are also unlikely to have the capacity to manage such change in a short time period.

If, for example, a change to the legislation came into force in April and an operator's renewal was due in May, it would be very unlikely that an operator would be able to restructure their insurance arrangements and negotiate any changes with their insurer (or, if necessary, find a new insurer) prior to the renewal in May of that current year. It would be more reasonable for this operator to have until the next renewal in May the following year to implement any required changes.

The RVA therefore proposes that a 24-month implementation period would be more appropriate so as to give all operators at different points in their renewal cycle sufficient time to make the necessary changes to their insurance policies.

Q61 Are there any other scenarios in which operators' ability to pass on insurance excess amounts to residents should be restricted? If yes, please tell us about them?

The RVA does not consider that there are any other such scenarios.

RVA NEW ZEALAND
Retirement Villages Association

Security for Residents' Capital Sums

Q62 Do you agree that statutory supervisors should have the ability to hold both land and personal property security on behalf of residents? Why/why not?

In our members' experience, statutory supervisors almost always take security over village land (either in the form of a registered mortgage or encumbrance, depending on which statutory supervisor is acting). While personal property security is becoming more common, there are still a number of villages where the statutory supervisor has only taken security over land, especially villages that have been in existence for some time and are debt free.

In many cases, this personal property security takes the form of a general security agreement over all of the operator's present and after-acquired personal property (**GSA**) however in some cases, this security will be specific asset security over some (but not all) of the operator's personal property (as discussed further below).

Under the terms of the typical Corporate Trustees Association deed of supervision (this form is used for almost all retirement villages), the statutory supervisor already has a general ability to "reasonably request" both security over land and security over the operator's property (i.e. includes non-land property).

The RVA agrees that it is important for statutory supervisors to have the ability to take security over village land and property in order to secure an operator's obligations to a statutory supervisor and residents and to enable to statutory supervisor to perform its functions and to act in the interest of residents as a whole.

However, there must be scope for statutory supervisors to determine that it is not necessary in some circumstances to take a charge over land or personal property security at all; or that personal property security should only be taken over some of the assets of the operator. The following are three examples of why the "one size fits all" approach does not work:

- In some circumstances (for example when dealing with an operator that forms part of a listed group), the statutory supervisor may be comfortable with just taking security over land and not over the operator's personal property. The RVA considers that this flexibility should be retained.
- When operating a unit title village, the operator has no right to grant the statutory supervisor security over the land that is owned by the residents (this being village land) and in these cases a GSA is an appropriate security.
- A charitable operator entity may own a retirement village, an aged care facility, and a number of other assets in connection with its charitable purposes, for example assets used for the provision of social services and housing for non-elderly persons. For this operator, it would not be appropriate for all of this non-village property to form part of the security granted in favour of the statutory supervisor. In this situation, it is appropriate that the statutory supervisor would only take specific asset security over the personal property that forms part of the retirement village, or alternatively the statutory supervisor may be comfortable in not taking a personal property security at all.

The RVA supports statutory supervisors having the right to require an operator to grant personal property security at any time but does not support an absolute requirement that imposes an obligation on statutory supervisors to take land and/or personal property security from every operator.

Q63 Would legislating that statutory supervisors have to hold both types of security affect banking arrangements? If yes how?

Yes, introducing retrospective changes that require additional security to be granted in favour of statutory supervisors would mean that an operator with existing external funding will need to renegotiate its existing security arrangements with the funder in order to comply with any new security requirements.

It is most likely that any operator with existing external funding will have given a negative covenant to its funder that it will not grant any further security over any property over which its existing funder has taken security. Granting new security in favour of the statutory supervisor would therefore require consent from the existing funder.

In addition, amending existing financing arrangements will have cost implications for the operator, as the operator will in almost all circumstances be required to cover the funder's legal fees in additional to its own.

To address such a scenario, the RVA considers that a longer implementation/transition period would be appropriate. We would suggest two years instead of the one year referred to in the Discussion Paper.

Q64 If the legislation was to empower a statutory supervisor to hold a GSA, should this be first ranking or is it sufficient for this to rank second in priority behind the bank lender? Please give us your reasons.

The RVA is opposed to any legislative requirement for the statutory supervisor's GSA to rank ahead of a bank's (or other lender's) GSA.

The standard security position that is generally accepted by banks and other entities that lend to retirement villages is that the statutory supervisor will have first ranking security over the village land, but that the statutory supervisor's GSA (or specific asset security) ranks behind the funder's GSA. Imposing a requirement for the statutory supervisor to have a first ranking GSA will cause issues for operators with existing external financing (as discussed above), could potentially impact on an operator's ability to obtain financing in the future (if it is not able to offer a first ranking GSA) and will also disrupt current standard industry practice.

Further, from the RVA's discussions with statutory supervisors on this point, it is the RVA's understanding that statutory supervisors do not need, or want, to be mandated to take first ranking security. The RVA understands that the primary reason that statutory supervisors take a GSA (or other form of personal property security) from an operator is so that they have the ability to appoint a receiver over the village property (in those very rare 'worst-case scenarios' where a statutory supervisor considers that it needs to step-in and act to protect the interests of residents as a whole). The statutory supervisor will retain this ability regardless of whether its GSA is first or lower ranking.

Where an operator has granted security in favour of both a statutory supervisor and a third-party lender, it is normal for the operator, the statutory supervisor, and the lender to enter into a security sharing and priority deed. This deed regulates the ranking and priority of the parties' respective securities and also agrees various mattes concerning the exercise of their powers under their respective securities. This is the practical way that the parties record their priority arrangements, and this practice has worked successfully in the retirement village sector for decades and allows for maximum flexibility.

Q65 What impact would requiring auditors of retirement villages to report to statutory supervisors if there was concern about solvency have on the security of residents' capital sums?

The RVA is supportive of measures that would require auditors to make statutory supervisors aware of any significant concerns as and when they arise.

If such a requirement was to be introduced, the RVA is supportive of the adoption of similar reporting requirements to those set out in sections 198 and 199 of the Financial Markets Conduct Act 2013, but modified to reflect the operation of a retirement village.

However, the cost implications of introducing such a requirement need to be considered, because operators would be covering any increased auditors' costs incurred in connection with any new reporting requirements. Further, it is not just the cost implications of this particular requirement that need to be considered but rather the cumulative cost implications of this new requirement together with the cost implications of all other new requirements imposed on operators as a result of any eventual legislative changes resulting the Discussion Paper.

Culturally Responsive Services and Models of Care

Q66 What could retirement villages do to provide more culturally responsive services and models of care? Please tell us how.

While the RVA considers this area to be outside the focus of legislative reform, the RVA understands that our members are aware of the role that they play in local communities and aim to provide an environment which meets the needs of people from the diverse range of cultures and nationalities that make up New Zealand and we consider that the market will develop further in response to meet any such needs.

Retirement Villages currently serve mainly, but not exclusively, European/Pakeha communities. One of the reasons for this is the larger percentage of European New Zealanders that are over 75 years. The industry is aware of the importance of ensuring that their communities are welcoming of every ethnicity, and steps are being taken to ensure that the Te Tiriti principles are guiding operators in the way their communities are set up and staff are trained and upskilled to meet the needs of diverse ethnic communities. This also includes disabled older New Zealanders.

The RVA is aware of examples of villages that have developed to meet different cultural needs (for example Ons Dorp (Dutch Village) in Henderson. Further, the RVA is aware of a number of potential villages that are intended to be developed and will be aimed at New Zealanders of Asian origin. These villages intend to offer services in a

culturally appropriate manner for the ethnic group being catered for, including food, service, design elements and staffing with relevant language skills.

Retirement village operators are also focussed on sustainability objectives to ensure that they protect the land and minimise resource use for the future of our planet and our people. The residents participate enthusiastically in recycling, food waste minimisation, measurement of resource use like electricity and gas and organic gardening initiatives.

The retirement village industry strives to be inclusive of operators with different models that enable lower entry capital sums, rentals and options that offer capital gain in some circumstances. Retirement village operators will often investigate options where iwi can work together with operators in joint ventures and explore opportunities that enable a wider group of New Zealanders to live in retirement Villages.

In order to enable non-Pakeha New Zealanders to feel more comfortable in retirement villages – operators are incorporating a wide selection of practices which will make ethnic communities feel more at home in the retirement villages. This includes training staff in Te Reo, including cultural practices in blessing of land and the opening of communities and beginning meetings with a mihi and karakia. Operators are also working to the guidelines of Nga Paerewa Health and Disability Service Standards when they run care facilities. Retirement village operators are also identifying ethnic communities in independent and care settings by recording ethnicity, connecting with local iwi and seeking meaningful engagement in practices which protect and nurture land and resources for the next generations.

Q67 Are there any changes you would like to see in how retirement villages provide a culturally responsive environment and/or services? If yes, please tell us how.

The RVA does not have a view on this question.

Q68 Are there any areas we should be aware of in the review that may impact Māori or other cultural groups differently? If yes, please tell us about them

The RVA does not have a view on this question.

Roles and Powers of Government Agencies in the Retirement Village System

Q69 Do you think government agencies have sufficient powers to carry out their functions within the retirement villages system? Why/why not.

Yes, the RVA is not aware of any evidence that government agencies do not have sufficient powers. The RVA does not consider that any change is required. This question is to be read in conjunction with Question 70 below.

Q70 Do you think a government agency should be tasked with monitoring and auditing villages' compliance with the legislative framework? Why/why not?

No, the RVA does not consider that such an audit function is needed.

Village operators are required to regularly report to the village's statutory supervisor (in most cases by way of a quarterly director's certificate) and this includes disclosure of any matters that may affect the residents' interests, the operator's financial position, maintenance of insurance and the operator's compliance with its documents. Further, a village statutory supervisor visits the village at least once a year and meets with residents. Residents are able to contact the statutory supervisor at any time with concerns. Operators are also required to report six monthly to the Retirement Commissioner as to complaints received by a village. Residents may also make a complaint to an operator or the Registrar if they consider the operator is not complying with the legislative framework.

In addition, RVA member villages (being approximately 96% of all retirement villages), as a condition of membership, undergo regular independent audits every three years to monitor compliance with the standards that the RVA sets for its member villages, including compliance with the Retirement Villages Code of Practice.

The RVA has additional standards (above those set out in RV legislation and the Code) which members must agree to as a condition of membership. These include: a requirement for the abovementioned compliance audit, mandatory use of the Key Terms Summary, comprehensive disclosure terms around the transfer to

care (see Appendix 6 of this submission), a disciplinary authority to deal with egregious behaviour that brings the industry into disrepute, as well as a range of good practices outlined in the remits passed at the 2023 annual general meeting. All these standards have been discussed and agreed to by members voluntarily via the RVA's annual general meetings.

We believe that a regular audit of a business that does not receive government funding by a government agency is without precedent. Villages that offer aged residential care services are already subject to regular and spot audits by Te Whatu Ora. However, these audits can be distinguished as care facility operators are parties to funding contracts with Te Whatu Ora and therefore the recipient of government funding.

Operators are required to comply with the RV Act and related legislation and there are penalties under the Act for non-compliance (ranging from monetary fines to Court orders).

The RVA considers the potential cost of being required to fund and participate in an additional audit regime would far outweigh any potential benefits of such a regime (and we understand that the cost of audits for aged care facilities can cost around $15,000 every four years). Before any significant change (like a new audit regime) is introduced, there should be an identification, and detailed analysis, of the problem/issues it is purporting to address, including a cost-benefit analysis.

The RVA would also like to highlight the importance of education; and one of the purposes of the RVA is to provide advice and guidance to its members to enable them to comply with their legislative requirements. If MHUD has identified areas where one or two operators may not be behaving in a fully compliant manner, then the way to address this may be to provide more education on what is required instead of imposing further legislative requirements that will affect all operators.

Q71 System roles are currently spread across a range of government agencies, and stakeholders have observed that there is no clear system leader. Do you think one agency should have an overall leadership role? Why/why not?

The RVA does not consider there is a need for one government agency to have sole responsibly for the retirement village sector.

The nature of running a business in any sector of the economy is that every business is governed by multiple government agencies and retirement villages are no different. It is appropriate that the agencies with the relevant expertise in particular areas oversee retirement villages compliance with those matters, for example the Registrar (being the same as the Registrar of Companies) has expertise in operating a register and the Financial Markets Authority has expertise in licensing statutory supervisors.

The RVA is not aware of any evidence that there are currently any issues in having multiple government agencies involved in the different aspects of regulating the retirement villages sector.

The Discussion Paper refers to the Retirement Commission's *"Submissions Summary and recommendations 2021"* report which stated that there were *"calls for a simplified structure with one central authority responsible for RVs, rather than the multiple government and statutory entities currently involved"*. On a review of this report there is no discussion as to why multiple agencies overseeing retirement villages does not work. All the report said was that there *"was support from individual submissions for a more simplified structure"*.

We have reviewed the submissions received from individuals in response to the Retirement Commission's report released by the Retirement Commissioner to identify any concerns raised as to multiple agencies having a role in oversight of retirement villages. None of the submissions that referred to multiple agencies contained any evidence or examples that the sector being overseen by a number of agencies has resulted in adverse or negative consequences for residents, operators or the public in general.

RVA NEW ZEALAND Retirement Villages Association

Operation of the Retirement Villages Register

Q72 What additional information and documents should be required under the Act to be available to the Registrar?

The RVA agrees that the additional documents listed at paragraph 325 of the discussion paper should be required to be uploaded to the RV Register (and in particular that statutory supervisor exemption notices should be uploaded).

Q73 Do you agree that the Registrar should have the power to correct minor or technical errors in the Register? Why/why not

Yes, the RVA agrees that the Registrar should have the power to correct minor/technical errors on the RV Register.

Q74 Do you agree that the Act should be amended to provide the Registrar with a power to specify the manner in which documents are to be filed or lodged? Why/why not

The RVA agrees that the Registrar should have the power to specify that documents submitted for registration must be in electronic form.

Q75 Do you agree that the Act should be amended to provide the power to regulate the purposes for which the RV Register can be searched and the manner in which it can be searched? Why/why not?

The RVA does not have any issues with the current position regarding the ability to search the RV Register but is not opposed to the proposals relating to the purposes for which the RV Register can be searched and the way it can be searched.

Q76 If there are other improvements that could be made to the Register, please tell us about them

Yes, it would be beneficial if the functionality of the RV Register was modernised and updated and brought in line with other electronic registers.

Code of Practice

Q77 Do you agree with the following improvements to address the issues identified with the Code of Practice?

- **Introducing a regular review of the Code of Practice (for example every five or 10 years)**
- **Introducing a plain language Code of Practice**
- **Providing the Code of Practice (and other registered documents) in alternate formats such as NZSL and Braille**
- **None of these.**

Please give us your reasons.

The RVA is supportive of a Code of Practice being written in plain language and with a review of legislation this would be a sensible time for this work to be completed. The RVA has previously engaged plain language specialists to rewrite the Code of Practice and this draft that was prepared in 2017 is available as the basis for any further work. This draft was reviewed carefully to ensure that changes in the wording did not result in changes to the intention of the Code's application.

We are not aware of demand for the Code of Practice or registered documents to be made available in alternate formats. The cost to have all registered documents available in alternate formats other than writing would be prohibitive. Documents are often updated every year if not more regularly. We are not aware of any other documents that are on a public register that are required to be made available in alternate formats.

We consider that intending residents and residents already have support through the following mechanisms:

- Intending residents are required to receive legal advice and the person providing that advice is obligated to explain the general effect of the agreement and its implications in a manner and in language that is appropriate to the age and understanding of the intending resident (sections 28(5) & (6) of the RV Act).
- If the operator is aware that a resident or intending resident has a limited ability to communicate the operator must – at any time when the rights and obligations of the resident may be affected – inform the resident of their right to use a support person or representation. (clause 57 of the Code of Practice and right 6 of the Code of Residents' Rights). Family and support persons are often involved when intending residents move into a village.

Changes to the Code of Practice can have a material impact on the operation and management of a retirement village and can affect existing contractual rights as any provision of the Code of Practice that is more favourable to a resident than a term of their ORA will prevail. The current process of amending the Code of Practice when a need has been identified, e.g. the response to the Canterbury earthquakes and complaints, has worked well and ensured that issues that arise can be dealt with promptly as needed. Should it be determined that there is genuine merit in a regular review of the Code of Practice, in order to provide certainty for retirement village businesses, the RVA would not support the Code of Practice being reviewed any more frequently than ten yearly.

Q78 What changes, if any, should be made to:

- **The way the Code of Practice is currently varied?**
- **The requirements for annual and special general meetings in the Code of Practice?**

The way the Code of Practice is currently varied

The Code of Practice can only be varied by the Minister (who is responsible for the administration of the RV Act) after considering any recommendations of the Retirement Commissioner and any groups of persons, who the Minister considers represent interests of stakeholders. This has in practice involved consultation. Once this process is complete the Minister determines when any variation will come into effect. This process is fair, reasonable, and fit for purpose.

The effect of changes to the Code of Practice can have a significant impact on retirement villages, especially since the Code of Practice will prevail over any less favourable term that may be in an existing resident's ORA. While the Code of Practice is not itself a legislative instrument, its provisions can result in the altering of contractual terms and the imposition of obligations on operators that may have substantial cost implications. Therefore, it is essential that there remains a fair and robust process for considering and implementing any changes. The RVA is strongly of the view that the current process should remain, and any weakening of the process would potentially be challengeable from a public law perspective.

Annual general meeting and special general meetings

Annual general meetings are an important opportunity for residents to meet as a group and express their views to both the operator and the statutory supervisor. Generally, the RVA does not see a need to amend the requirements. If the requirements were to be amended this would likely result in the need to amend each deed of supervision as the meeting process is contained in that document.

Having an annual general meeting in person was difficult, if not impossible, during the Covid pandemic. Allowing for virtual annual general meetings or allowing for the date to be extended in certain circumstances would be useful.

The RVA recognises that the conduct of meetings in villages that only provide care can be challenging as residents in these villages often choose not to participate in these meetings. There are a range of reasons for this including illness, residents developing a lack of mental capacity, and generally not being interested in such matters. Residents' representatives are encouraged and welcome to attend meetings, but this does not happen that often. We have heard from operators and statutory supervisors that often it can be challenging to form a quorum at these meetings.

MHUD may like to consider whether an alternative to an annual general meeting should apply for villages that are only catering to those who need long term residential care. This could involve annually sending to the resident or their EPOA (as appropriate):

- Audited financial statements for the operator or village (as appropriate)
- Statutory Supervisor's report
- Maintenance report
- Operator report
- Invitation to attend meeting with operator and statutory supervisor to discuss any issues arising from the attached materials or alternatively an opportunity to talk directly with the operator at any time about issues arising. The meeting would not have a quorum requirement and could be held electronically for any EPOAs who were not able to attend a meeting at the village.

This process allows residents to participate if they wish but avoids the stress and formality of an annual general meeting. The process for a special general meeting should remain unchanged. Residents at such villages (or their EPOAs) are also free to raise an issue with the operator at any other time (i.e. informally outside of a structured meeting).

RVA NEW ZEALAND
Retirement Villages Association

Q79 Are there any other issues with the current Code of Practice? If yes, please tell us about them.

The Discussion Paper refers to operators being able to apply to the Registrar for an exemption from complying with any provisions in the Code of Practice for up to two years. In practice it is not possible to obtain such an exemption as no criteria have been prescribed under section 105 of the RV Act. With the likelihood of changes being made to the Code of Practice the RVA requests that MHUD introduce regulations that prescribe the criteria for the grant of exemption.

Q80 If your weekly fees have increased during occupancy, please tell us about the experience including whether residents were consulted.

While this question is addressed to residents the RVA has engaged with its members and asked for examples as to how operators consult on and review weekly fees. Below is a representative sample of how fee increases are addressed as described by village managers. The RVA notes that research completed by Covenant Trustee Services Limited for the RVA shows that approximately 91% of retirement village units have the benefit of fixed fees for life or alternatively increase fees in line with CPI or New Zealand Superannuation increases. Therefore, in these villages the process of increasing weekly fees (if at all) is straight forward and not dependent on a line-by-line review of increased expenditure.

Village 1

"I draft a budget after looking closely at the previous year's forecast to actual expenditure and then I look at likely increases in wages, rates, water rates and insurance and other costs for the next financial year.

Once I have formulated a budget, I hold a special meeting with our Residents Committee to discuss it with them. Usually, it goes really well bearing in mind that each month I go through budget to actuals with them anyway so there is rarely any real surprises and historically any increases are the same % increase as the % increase in the NZ pension. We have formally amended our documents this month to formalise this link.

I then send out a notice to all residents advising of the increase and an explanation for last year's variances as well as the basis of any projected Increases. (eg. 7.2% increase in rates and $150 increase in EQC levies etc) I attach a schedule of last year's projections and actuals and this year's budget. I then Invite all residents to join me at 3 informal budget meeting where the can ask me questions, make suggestions and comment. I also send a copy of the budget to the statutory supervisor.

The levy increases then start 3 months later"

Village 2

"We review our village outgoings each year. We work off 10 months actuals extrapolated up to 12 months to get a full year figure. This is the result of timing and the need to have the fees finalised in time for the new budget year. We call a meeting with 15 days' notice as a minimum. We also invite the statutory supervisor to attend this meeting. We share the planned increase on paper with the residents prior to the meeting. Minutes are taken and supplied to those who request them. We have the odd request for last year's actuals; however these are not available until 1 month after the financial year end.

At the meeting we go over each line item on the sheet and explain how it is made up.

Understanding that these fees are village outgoings and not something we profit from helps the residents to understand the need for an increase when inflation is running high. This year our trust board is looking to subsidise a portion of the weekly fee as they feel the residents will be struggling to come up with the additional funds."

Village 3

"The process operates as follows:

- Management puts budget proposal to Board
- Letter sent to residents and meeting date set
- Meeting/presentation + copy provided to all Villagers
- Consultation process and responses received
- Board considers feedback
- Board make decision
- Decision presented in writing and time frame given of increase and support given e.g. budgeting etc

Minutes of budget meeting are circulated and actuals from last year's weekly fee are provided to residents."

Village 4

"An initial budget proposal is circulated to residents prior to holding a physical meeting to discuss the budget. Circulated with the budget are the current year actuals to budget YTD plus forecast to end of year. There is also a written explanation of what is included in some of the summarised reporting lines and information regarding any large increases or decreases as to how they have come about i.e. Insurance changes to EQC which resulted in large jumps in insurance costs. Request for written questions to assist us in providing answers in the meeting. Residents are welcome to raise additional questions at the meeting. Following the meeting the feedback received is considered before setting the final budget. Residents are then provided with written confirmation of the fee increase. Minutes are available."

Village 5

"We send out in writing along with the Regulation 9 Report (at the end of September), a proposal for the new village fees for the year. These fees are discussed and agreed at our Residents annual general meeting which is held in November/ December and the new fee payment starts in January. Minutes are circulated, last year's actuals are included in the financial statements given to residents."

Village 6

"Written paperwork goes out to residents with explanations regarding why increase for discussion. Feedback is sought with questions answered prior to resident meeting. There is a meeting with residents where they have an opportunity to put forward ideas on any changes that could be made for the Operator consideration. The Operator then considers residents ideas before a final decision is made. (Note: weekly fees are done on a cost recovery basis). Once the final budget is completed this is then presented at the village annual general meeting. The operator when preparing the budget for initial discussion includes as much information as possible to explain why there is a change in the costs. Actuals from the prior year's weekly fee calculation are disclosed as part of the process."

RVA NEW ZEALAND Retirement Villages Association

Q81 Should consultation requirements for weekly fees in the Code of Practice be changed or strengthened? Why/why not?

The RVA does not consider that there is any need for the consultation requirements to be changed or strengthened. The Code of Practice sets out how the operator must consult with residents (clause 28 (subclauses 3 to 7 inclusive). The process set out in the Code of Practice reflects the general principles of proper consultation as established by the Courts and is fit for purpose. Should there be evidence of consultation not been carried out properly then this ideally should be addressed through further education and residents also have the right to make a complaint if the process is defective.

The RVA has made significant investment in and is committed to provide ongoing training for people working in retirement villages through its Te Ara Institute programme. The programme specifically covers how to run effective, informative and engaging annual general meetings where consultation with residents is central.

Other comments on the Code of Practice

There is a question in the Discussion Paper as to whether the Code of Practice should specifically include a resident's right to safety. The RVA is concerned about the inclusion of this right due to its open-ended nature and the difficulty in defining what safety may mean when dealing with independent living residents. A right of this nature could be taken as placing a responsibility on an operator of an independent living village to ensure that residents are not subject to any violence or property crime or to ensure that residents do not suffer any injury within the village. The RVA recognises that the operator has an obligation to comply with all health and safety legislation, but a general obligation to ensure resident safety could easily be interpreted as going beyond this.

Code of Residents' Rights

Q82 Are changes needed to the Code of Residents' Rights, such as clarifying and strengthening residents' rights and obligations to one another? If yes, please tell us how.

The RVA strongly supports amending the Code of Residents' Rights to clarify and strengthen residents' rights and obligations to one another that reflect the rights and obligations set out in the New South Wales Retirement Villages Act 1999 and as detailed in paragraph 354 of the Discussion Paper.

If the Code of Residents' Rights is be amended, consideration should be given to how this code can be made legally enforceable against residents other than by having to include a contractual provision to this effect in the resident's ORA.

Offences and Penalties

Q83 Are there any issues with the current provisions for offences, penalties and enforcement tools under the Act? If yes, please give us your reasons including any changes you would like to see

No. The RVA considers that the current range of offences and penalties and enforcement powers set out in the current RV Act (which include various levels of fines, and powers for a Court to make a range of orders) are sufficient and therefore there is no need for any change.

Application of the Real Estate Agents Act to Sale or Transfer of a Retirement Village Unit

Q84 Should all sales and transfers of retirement village units have the same consumer protections? Why/why not?

The RVA considers that the current status quo as to whether the Real Estate Agents Act 2008 (REA Act) applies to the sale of an occupation right agreement should remain and the situation is adequately governed by the REA Act.

It is important to understand that in licence to occupy villages, the "transaction" for the purposes of the REA Act is not the transfer of an interest directly from one resident to another. Rather, the first occupation right agreement is terminated, a new resident is found, then the operator enters into a new occupation right agreement with the new resident. Therefore, the operator is not acting as an agent for, or on behalf of, the former resident and is not procuring a sale and purchase agreement, but simply finding a prospective new resident for the operator to consider. The operator retains the responsibility and prerogative to decide whether to sign a new ORA with the prospective resident.

As pointed out in the Discussion Paper, in some instances a real estate agent must be appointed, but in most situations this will not apply, for example if a resident chooses to find a new resident for their unit themselves (if they have a contractual right to do so or the operator otherwise permits them to do so) or if the operator has the responsibility for finding a new resident. The RVA does not agree that former residents and operators should be required to use real estate agents simply because a unit forms part of a retirement village. To do so would be anti-competitive and create a situation where there are more restrictions on retirement villages than there are on private property owners who are not required to use a real estate agent.

The RV Act offers extensive protections to intending residents, such as:

- The provision of a detailed disclosure statement together with copies of the ORA, Code of Practice and Code of Residents' Rights prior to signing an ORA (section 30 RV Act). The disclosures set out in the disclosure statement are designed to specifically address information that a resident in a retirement village needs and ought to know.
- The right to be provided upon request with other documents including the audited financial statements of the village, deed of participation, management agreement and copies of all or any of the policies that apply at the Village (regulation 37 RV General Regulations).
- The intending resident must receive legal advice and the lawyer must explain the terms of the ORA to the intending resident and certify that they have explained the general effect of the agreement and its implications in a manner and in language that is appropriate to the age and understanding of the intending resident (section 27 RV Act).
- A cooling off right for 15 working days after a resident signs their ORA permitting a full refund of all monies paid (section 28 RV Act).
- A resident has a right to make a complaint and raise a dispute under the RV Act.

The RV Act also offers extensive rights and protections to outgoing residents, including:

- When an operator is responsible for relicensing the unit, the operator is required to comply with clause 51 of the Code of Practice. This sets out in detail the obligations relating to the disposal of a unit such as, including that an operator must:
    - o Take proper steps to market the unit.
    - o Respond to all enquiries about the unit in a timely and helpful way.
    - o Take all reasonable steps to enter into a new ORA for the unit in a timely manner and for the best price reasonably obtainable.
    - o Consult with the former resident as to the general nature of the marketing plan for the unit.
    - o Disclose the actual charges relating to marketing and sale of the unit that the former resident is required to pay.
    - o Keep the former resident regularly informed including written reports.
    - o Obtain a valuation of the unit and discuss with the resident if the unit is still not disposed of after 6 months.

- The ORA must set out the process involving the operator of the village finding a new resident for the unit after it is vacated by the resident (regulation 11 RV General Regulations).
- The operator must not give preference to finding residents for units in the village that have not previously been occupied by a resident under an ORA (regulation 11 RV General Regulations).
- The operator must make all reasonable efforts to find a new resident for the unit (regulation 11 RV General Regulations).
- A former resident or their estate can raise a formal complaint at any time if they are of the view that the operator has failed to comply with any of the above obligations (section 51 RV Act).
- A former resident or their estate can raise a dispute notice specifically concerning an operator's breach of the resident's ORA or the Code of Practice in disposing of a residential unit in a village formally occupied by the resident (section 53(3) RV Act).
- A resident is of course able at any time to also raise concerns with the Statutory Supervisor of the village and the Registrar.

The protections and rights set out above are relevant and meaningful for both a former resident who is waiting to be paid their exit payment and an intending resident of a unit in a retirement village, unlike some of the generic provisions of the REA Act. For example:

- An agency agreement may be inappropriate in the circumstances (particularly if the former resident has died and there is no-one to enter into the agreement for some months until probate has been granted, thereby delaying the resale process).
- The amount of commission that a village operator may pay a staff member to facilitate a sale as part of their salary structure is often not payable by the former residents, so does not affect the former resident's interests and should not be disclosed.
- Where commission is payable by a resident, this is already required to be disclosed as per the Code of Practice.
- The Real Estate Agents Authority is not the correct body to deal with complaints on the resale of an occupation right agreement as it does not have the requisite expertise or understanding of the retirement villages legislation.

The marketing of licence to occupy units in a retirement village is in many ways different to a sale or lease of land. RVA operators have often reported that when real estate agents have been engaged, they do not understand the RV Act and this can result in intending residents being misled. Rather, sales staff employed by the operator are in the best position to find intending residents as they are at the village on a regular basis, have good links with existing residents and the local community and understand the provisions of the ORA, the services and facilities offered at the village, and the practicalities of living there.

The RVA also runs training modules for village staff under its brand, the Te Ara Institute. These modules include village sales.

When selling a unit in a retirement village it is not just about obtaining the best price or the fastest sale but it also ensuring that any intending resident meets the entry requirements for the village. Allowing an inappropriate person to move into the village can be detrimental to the interests of the other residents and in turn affect the saleability of units at the village.

The above statements are equally applicable to unit title or leasehold villages and licence to occupy villages that offer a share in capital gain. Those models are more likely to include an ability in the ORA for the former resident to find a prospective resident themselves, and they should not be restricted to only doing so through a real estate agent.

Q85 Do you think the third party facilitating the sale or transfer of a retirement village unit (whether that is the retirement village operator or an independent third party) should have a general fiduciary duty to act in the best interest of the outgoing resident?

This question is largely answered by the response to Question 84 above. An operator of a licence to occupy village is not a third party when it is relicensing a unit in the village as the underlying property is owned by that operator, and it is not carrying out a transaction on behalf of another person. A general fiduciary duty to act in the best interest of the outgoing resident should not apply. The operator has a contractual obligation to pay a resident a termination amount and there are numerous protections in place to ensure that an operator pays the termination amount in a timely manner (see Question 84).

A third-party agent engaged by either the resident or the operator to facilitate the sale of an occupation right agreement for a unit is already required to comply with the provisions of the REA Act, so no amendment is required in this regard.

The RV Act carefully balances the interests of operators and residents on the relicensing of a unit. The strict application of a general fiduciary duty to act only in the best interest of the outgoing resident could well have unintended consequences. Where a resident has a fixed termination amount owing to them, it would be in their best interest to have the quickest sale possible.

This fails to take into account the legitimate interests of the operator (and other residents of the village). These include ensuring an incoming resident meets the entry criteria for the village, and the operator's right to a return on its ownership of the village, which goes to the overall financial stability and viability of the village. It is for this reason that the Code of Practice and the RV General Regulations set out what an operator must do in order to facilitate the entry into a new ORA in a timely manner and for the best price reasonably obtainable (clause 51 of the Code of Practice).

RVA NEW ZEALAND Retirement Villages Association

Schedule 1 –Definitions

The following definitions apply to this submission.

capital sum	A sum of money paid by a retirement village resident as consideration for their right to occupy a residential unit and to receive the benefit of the services and facilities offered at a village. Also called an 'entry payment' or 'licence payment'.
Code of Practice	The Retirement Villages Code of Practice 2008.
Code of Residents' Rights	Summarises the basic rights that the RV Act gives to all residents.
deed of supervision	The document setting out the terms and conditions under which a statutory supervisor is appointed by an operator.
Discussion Paper	The discussion paper released by MHUD in August 2023 entitled: 'Review of the Retirement Villages Act 2003: Options for change'.
EPOA	Enduring power of attorney.
fixed deduction	Fixed deduction means any payment that may be payable by a resident to an operator in terms of that resident's occupation right agreement if the: • amount or method of calculation of the payment is fixed and known at the start of the resident's occupation right agreement • payment is made to or to be made by the resident to the operator at the start of or on termination of the occupation right agreement • payment amortises or accrues to the operator over a specified period of time against the resident's capital sum or former resident's capital repayment. Also called a 'deferred management fee', 'exit fee', 'facilities fee' or 'village contribution'.
GSA	General security agreement.
Key Terms Summary	The summary of key terms of a village's ORA set out in a form produced by the RVA for use by its member villages.
Martin Jenkins Report	The report prepared by Martin Jenkins entitled "Costs and benefits of proposed changes to the Retirement Villages Act 2003 – final report" (dated 10 July 2023).
MHUD	Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development.
Occupation Right Agreement (ORA)	Any written agreement or other document or combination of documents that: • confers on any person the right to occupy a residential unit within a retirement village; and • specifies any terms or conditions to which that right is subject.
operator	The operator of a retirement village.

REA Act	The Real Estate Agents Act 2008.
Registrar	The Registrar or Retirement Villages, being the person appointed under section 87 of the RV Act to maintain the RV Register.
Retirement Commission	Te Ara Ahunga Ora – Retirement Commission.
Retirement Commissioner	The Retirement Commissioner appointed under the Retirement Income Act 1993.
RV Act	Retirement Villages Act 2003.
RV General Regulations	The Retirement Villages (General) Regulations 2006.
RVA	Retirement Villages Association of New Zealand Incorporated.
RVA Remits	The 'best practice' remits introduced by the RVA at its 2022 annual general meeting and adopted at its 2023 annual general meeting. Compliance with these remits is a condition of membership for all RVA members.
statutory supervisor	A person appointed under section 38 of the RV Act whose role includes monitoring the financial position of retirement villages, and the security of residents' interests.
RV Register	The register of all registered retirement villages maintained by the Registrar.
weekly fees	Costs relating to the operation, management, supervision and maintenance of the village as a whole, recovered from all residents as agreed in the ORA. Weekly fees do not include costs of providing personal services to a resident. Also referred to as 'village outgoings', 'monthly fees' and 'periodical charges'.

Schedule 2 – RVA's Comments on Proposed Standardised Terms

RVA Comments on appendix 5 from Discussion Paper – Proposed standardisation of terms

What Can Be Standardised	RVA Comments
Type of occupancy right – nature of resident's right to occupy a unit.	Not agreed. The nature of an occupancy right will vary across different types of villages (e.g. unit titles) and therefore should not be standardised.
Maintenance, repairs and upgrades – obligations of each party.	Not agreed. There is a wide variety of different terms relating to maintenance and operators must be free to set these terms in the ORA.
Operator's obligations relating to residents' meetings (Regulation 10, General Regulations 2006)	Agreed that this can be standardised.
Resident's right to receive audited financial statements from the operator.	Agreed that this can be standardised (with the operator to select the option that applies to them)
Procedure if there ceases to be a statutory supervisor.	Agreed that this can be standardised.
Duty to make all reasonable efforts to find new residents – Operators obligation to find a new resident for a unit after it has been vacated.	Agreed that this can be standardised, but only on the basis that any such standardised wording will only be required to be included in ORAs where the operator is responsible for finding a new resident for the unit after it is vacated by the resident.
Duty not to give preference to finding new residents for unoccupied units	Subject to comments immediately above. Agreed that this can be standardised.
Information on the Code of Practice and the Code of Residents' Rights (1(f) of Schedule 3, Retirement Villages Act 2003).	Agreed that this can be standardised.

What Could Be Standardised	RVA Comments
Operators' introduction section at the beginning of the ORA.	Not agreed. This section must be able to contain terms that reflect each operator's specific offer.
Termination of ORA by agreement between the resident and operator.	Not agreed. Different operators may set different terms e.g. timing of termination, giving of notice etc.
Termination of ORA by resident.	Not agreed for the same reasons set out above.
Termination of ORA on death.	Agreed that this can be standardised, but possibly no point as best if all causes of termination are grouped together.

Operator's grounds for termination due to: • **Medical grounds** • **Serious damage, injury, harm or distress to others** • **Permanent abandonment or breach of agreement**	Agreed that this can be standardised as prescribed by the Code of Practice.
Complaints and disputes process.	If this is a generic description of the legislative regime then agreed that this can be standardised.
Cooling off period and cancellation rights (Section 28, Retirement Villages Act 2003).	Agreed that this can be standardised.

What Cannot Be Standardised	RVA Comments
Name and address of village	Agreed that each term listed here **cannot** be standardised.
Details of parties, such as their names and addresses.	As above.
Transfer of residents within a village to aged residential care facilities.	As above.
All the commercial arrangements such as the financial terms in an ORA.	As above.
Specific terms, such as the services and facilities available at the retirement village as these would be unique and specific to each operator and village.	As above.

Appendix 1

Residents Vulnerability Survey

Retirement Villages Association

September 2021

Executive summary

- RA vast and increasing majority of residents are satisfied with their retirement village and likely to recommend their village to a friend or family member.
- Most residents feel their village is maintained and operated responsibly and professionally and also feel well-informed of any plans and changes to be made to their village that may affect them.
- Almost all residents feel safe and secure, have peace and quiet and feel their village is somewhere where they feel completely comfortable.
- A strong majority of residents also feel their village is somewhere they can afford and where their wants and needs are met.
- A tiny minority of residents feel alone or vulnerable in their villages. Those more likely to feel alone are residents aged 85 years or more or that were living alone in their unit.
- Most residents agree that their village staff are: helpful, caring, treat them in a respectful way and are professional.
- At a slightly lower level, but still a strong majority of residents agree that their village staff understand residents perspective.
- Once again, a very small minority of residents agree that their village staff are: controlling, patronising, dismissive and bulling of residents.
- A minority of residents had a complaint or concern about how they were treated by their village staff. The vast majority of these residents expressed this complaint or concern to their village manager and the largest portion of them were satisfied with the outcome.
- Around one third of residents who expressed a complaint or concern to their village manager are dissatisfied with the outcome -- this equates to an estimated 3.5% of all residents.

Methodology

- Results in this report are based on questions asked in an online survey distributed to a randomly selected 160 Retirement Villages across New Zealand. Of the 160 villages invited, 105 had at least one resident take part. The total number of residents that completed the survey was 1,692
- Fieldwork was conducted from the 1st to the 20th of September 2021.
- The margin of error for sample size of 1,692 for a 50% figure at the 95% confidence level is ± 2.4%.
- To ensure representativeness, results were weighted to population figures for number of units in village and location.

Note on rounding:

- *All numbers are shown rounded to zero decimal places. Hence specified totals are not always exactly equal to the sum of the specified sub-totals. The differences are seldom more than 1%.*
- *For example: 25.7 + 31.5 = 57.2 would appear: 26 + 32 = 57.*

* A total of 50 Retirement village residents took part in the survey via telephone as they did not have access to email.

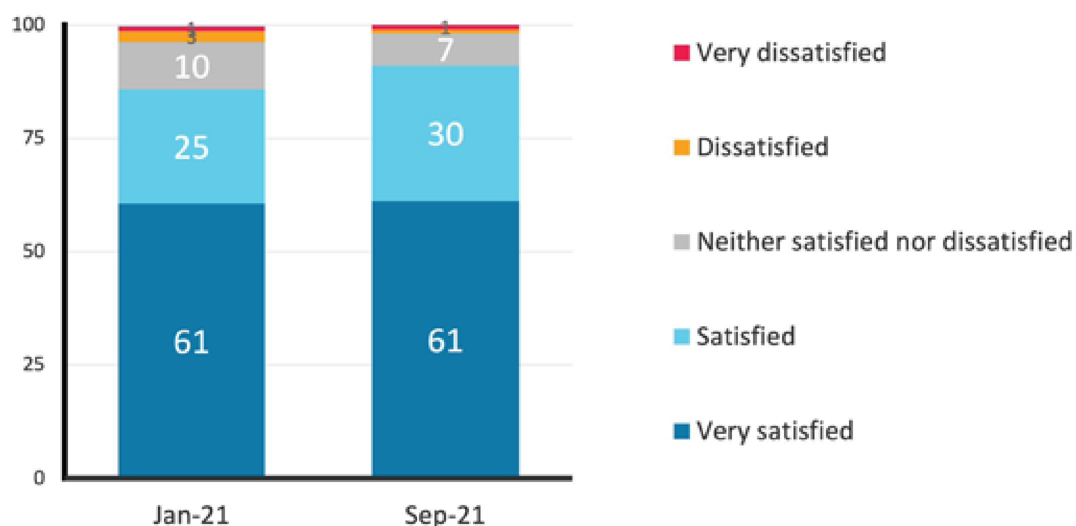
Overall satisfaction

Residents express very strong levels of satisfaction with village life

- Almost all (91% up 5% since January 2021) of residents declare they are satisfied with their experience of living in their retirement village with only 2% not satisfied. This meant of those that had an opinion, 98% (95% January 2021) were either very satisfied, satisfied or neutral.
  - The only significant difference across the demographics was recorded for residents living in Canterbury where 73% declare that they were 'very' satisfied compared to only 50% of residents living in the rest of the South Island who also declare being 'very' satisfied with their experience of living in their retirement village.
- The net promoter score among residents also increased significantly from earlier this year up 10 points to a solid + 53.
  - When interpreting a net promoter score, between 0-30 is generally considered to be good (it means your customers are more likely to recommend you than not). A score between '30 and 70' is considered great and anything above 70 is rarely achieved and considered excellent.
- The vast majority of residents (86%) feel that their village is maintained and operated responsibly and professionally
  - There appears to be a relationship between size of village and how professionally residents feel their village is run. A majority (82%) of residents living in villages with less than 100 units feel their village has been run responsibly and professionally, this increases to 86% of residents in villages with between 100 and 199 units, while the vast majority (89%) of those living in villages with 200 or more units held the same view.
- A majority of residents (78%) feel that they are kept well-informed of any plans and changes made to the village that may affect them.

Most residents are satisfied with living in their retirement village

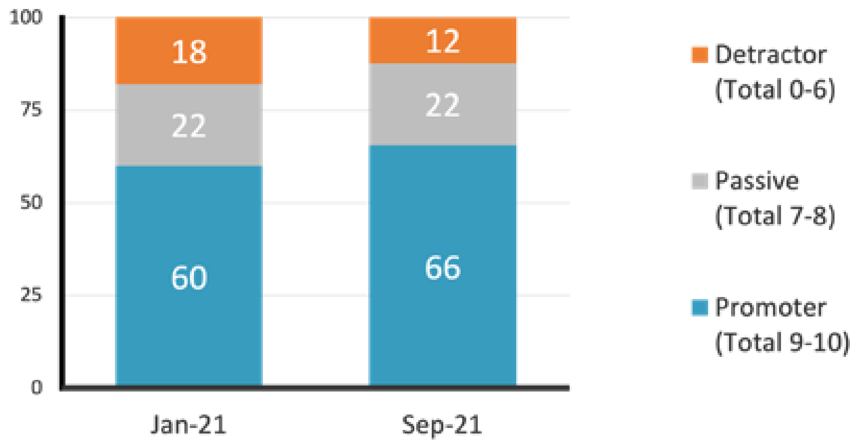
Q: Overall, how satisfied or dissatisfied are you with your experience of living in this retirement village? (%)



Base: All respondents (n=1,692)

Residents declare a 10-point increase in the net favourability score for their villages

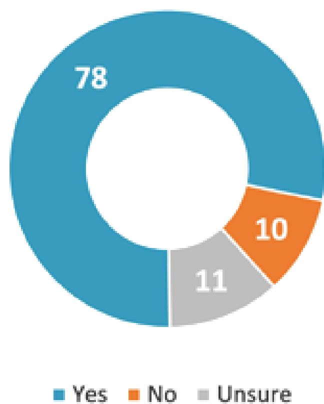
Q: How likely is it that you would recommend this retirement village to a friend or family member? (%) (Please note the scale for this question is: 0 – Not likely at all and 10 – Very likely)



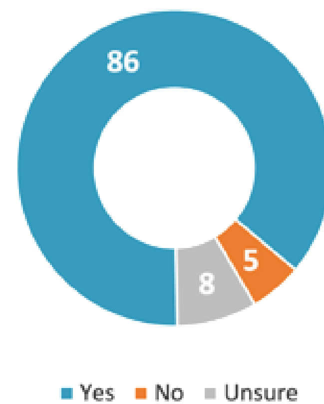
Note: NPS = Promotors – Detractors; Base: All respondents (n=1,692)

Most residents feel well-informed of village changes and that their village is maintained and operated responsibly and professionally

Q: Do you feel well-informed of any plans and changes to be made to the village that may affect you? (%)



Q: Do you feel your village is maintained and operated responsibly and professionally? (%)



Base: All respondents (n=1,692)

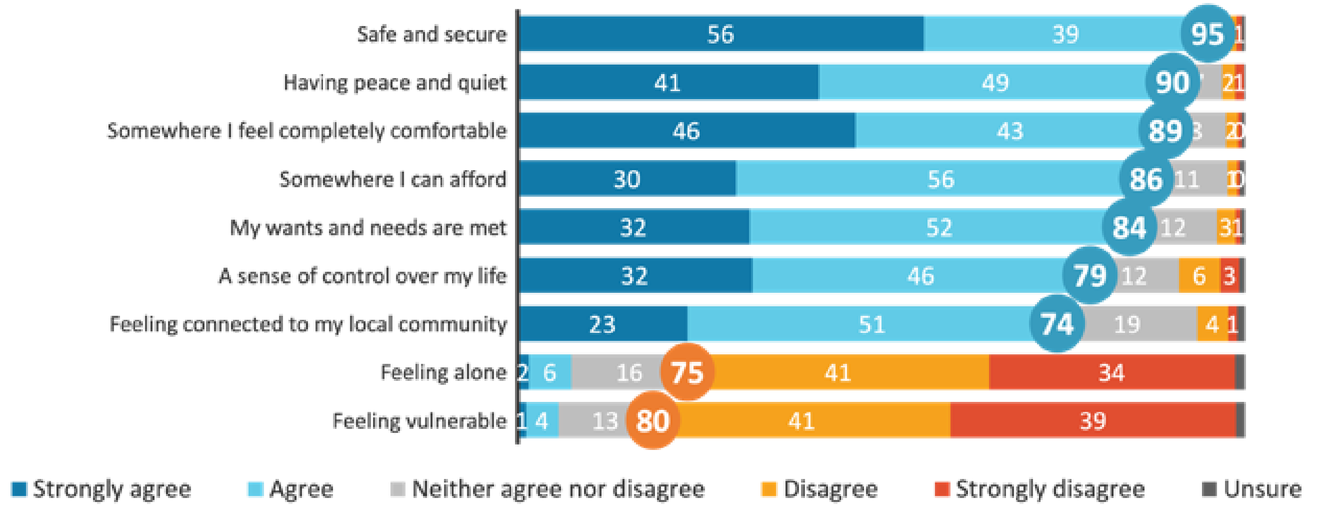
Experiences of village living

Most residents are feeling safe and secure, they have peace and quiet and feel completely comfortable

- Almost all residents (95%) agree that feeling 'safe and secure' applies to their experience of living in their retirement village.
- A similar strong number (90%) agree 'having peace and quiet' applies to their experience of living in their retirement village.
- Just dipping out of the nineties, a very strong (89%) agree 'somewhere I feel completely comfortable' applies to their retirement village.
- The vast majority also agree (86%) that 'Somewhere I can afford' applies to their retirement village.
- Another strong majority (84%) agree that in their retirement village their 'wants and needs are met'.
- Almost 8 in every 10 (79%) agree that 'a sense of control over my life' applies to their retirement village.
- Just under three quarters (74%) agree than 'feeling connected to my local community' applies to their retirement village.
- At the other end of the scale only 8% of residents agree that 'feeling alone' applies to their experience of living in their retirement village.
  - This is almost twice as high (14%) for residents aged 85 years or more and is also higher at 11% for residents who were living alone in their unit.
- Almost as low as 1 in 20 (6%) of residents agree that 'feeling vulnerable' applies to their experience of living in their retirement village.
  - There is no significant demographic differences among those feeling vulnerable.

The vast majority of residents feel safe and secure, with almost none declaring a strong sense of vulnerability

Q: How strongly do you agree or disagree that each of the following apply to your experience of living in this current retirement village? (%)



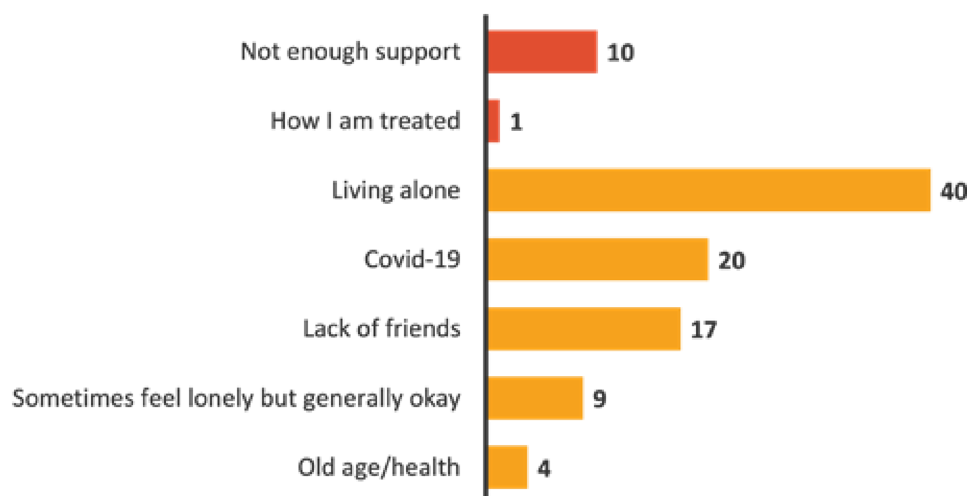
Base: All respondents (n=1,692)

A tiny minority of residents are less happy with their experience of retirement village life

- When asking survey participants about potentially sensitive topics, it is inappropriate to force an answer. Residents were given the option to provide a reason why they felt less happy with their retirement village, but not all were comfortable with recording their reason.
- Across the entire resident population only a tiny minority of residents feel less happy with their retirement village experiences. To ensure these reasons are not overblown in this report before every set of reasons we first state what percentage of all residents are being reported on. We also report on the percentage who then were willing to give a reason.
- 7.8% of residents indicate that they 'feel alone', out of these residents about two fifths (n=81) went on to say why. The three main reasons given for this view are: They were living alone, Covid-19 and a lack of friends.
- 5.9% of residents indicate that they 'feel vulnerable', out of these resident about half (n=47) went on to say why. The three main reasons given for this view are: How they are treated by village management, village security and the fact that they were living alone.
- 3.8% of residents indicate that their 'wants and needs', were not being met, out of these residents about three quarters (n=48) went on to say why. The four main reasons given for this view are: They want more activities and facilities, poor communication, not enough support and need repairs.
- 2.4% of residents indicate that they are 'not feeling comfortable', out of these residents about three quarters (n=31) went on to say why. The three main reasons given for this view are: Not enough support, too many rules and neighbours.
- 2.0% of residents indicate that they feel their village is 'not somewhere that they can afford', out of these residents about two-fifths (n=21) went on to provide reasons. The main reasons given for this view are: It is expensive, lack of affordable options, increasing fees and losing capital gains.

Feeling alone - reasons

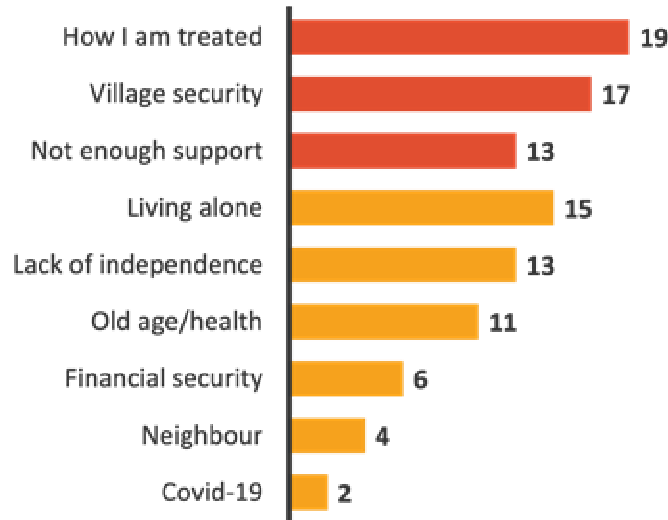
Q: What are the main reasons you agreed that 'feeling alone' applied to your experience living in your village? (7.8% said they feel alone; 4.8% gave a reason: n=81)



Base: those who agreed to feeling alone and provided a reason (n=81)

Feeling vulnerable - reasons

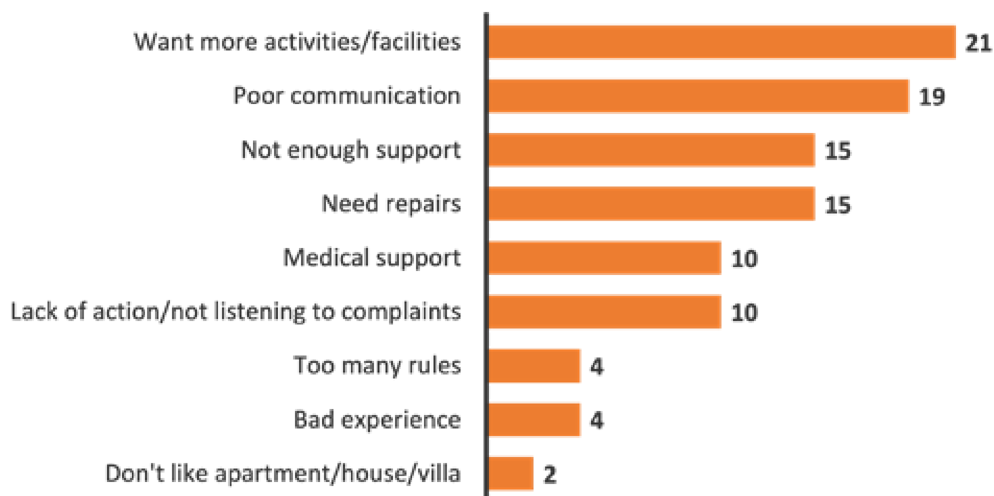
Q: What are the main reasons you agreed that 'feeling vulnerable' applied to your experience living in your village? (5.9% said they feel vulnerable; 2.8% gave a reason: n=47)



Base: those who agreed to feeling vulnerable and provided a reason (n=47)

Not meeting wants and needs - reasons

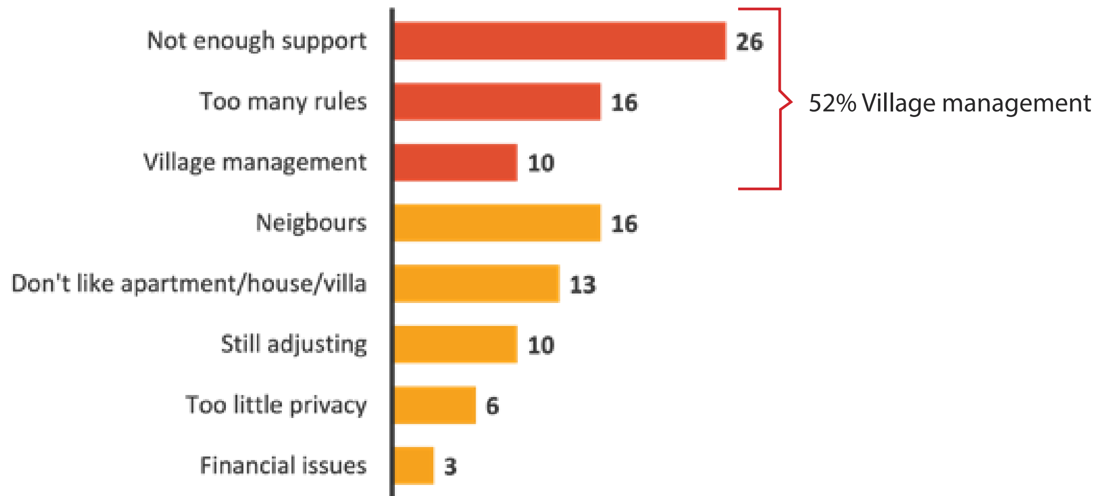
Q: What are the main reasons you said 'my wants and needs are met' does not apply to your experience living in your village? (3.8% said their wants and need were not met; 2.8% gave a reason, n=48)



Base: those who disagreed to 'my wants and needs are met' and provided a reason (n=48)

Not feeling comfortable - reasons

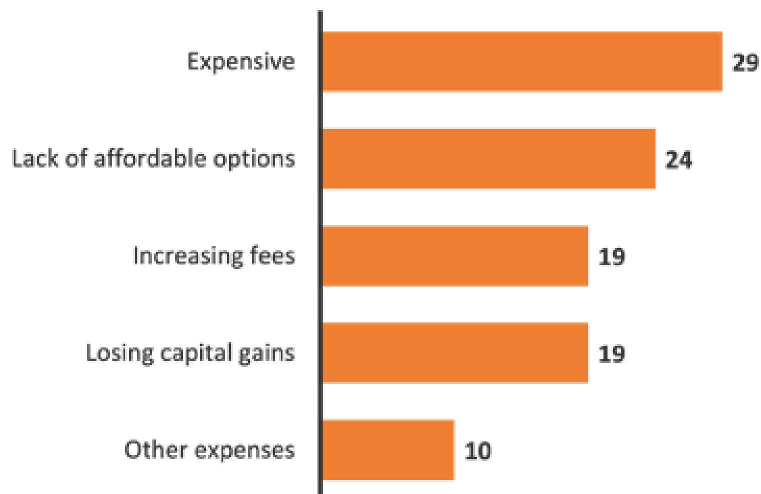
Q: What are the main reasons you said 'somewhere I feel completely comfortable' does not apply to your experience living in your village? (2.4% said the don't feel comfortable; 1.8% gave a reason: n=31)



Base: those who disagreed to feeling completely comfortable and provided a reason (n=31)

Lack of affordability - reasons

Q: What are the main reasons you said 'somewhere I can afford' does not apply to your experience living in your village? (2.0% said it wasn't somewhere they could afford; 1.2% gave a reason: n=21)



Base: those who disagreed to 'somewhere I can afford' and provided a reason (n=21)

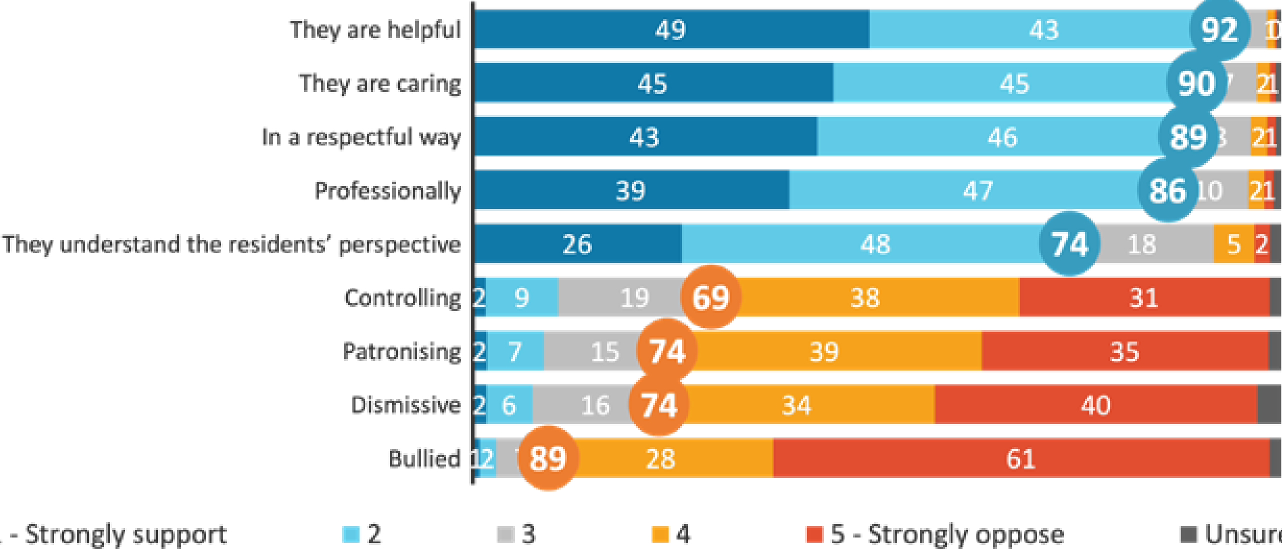
Views on staff treatment of residents

Most residents declare staff at their villages to be helpful, caring, respectful and professional

- Most residents (92%) declare that staff at their village 'are helpful'.
  - Residents in larger villages (200 plus units) are more likely at 95% to declare this and residents from other parts of the North Island (outside the centres of Auckland, Waikato, Bay of Plenty and Wellington) are less likely to share this view, albeit still very high at 88%.
- A similar number of residents (90%) declare that staff at their village 'are caring'.
  - Older residents (85 plus years) are more likely (96%) to find their village staff to be caring. Those living in an attached single level home were less likely to declare this at 83%.
- Almost 9 in every 10 (89%) declare that they are treated 'in a respectful way'.
  - Residents living in larger villages (200 plus units) and who had been in their village for less than two years were more likely to hold this view both at 92%.
- A strong majority (86%) of residents declare that staff in their retirement village treat them 'professionally'.
- Just under three quarters (74%) of residents declare that staff in their retirement village 'understand the residents perspective'
  - Residents living in the Bay of Plenty were more likely to feel better understood by their village staff at 88%.
- Only small numbers of residents declare that staff in their retirement village are controlling (11%), patronising (9%), dismissive (7%) and feel bullied (3%).
  - Males were more likely to feel that staff were controlling (14% compared to 8% of females).
  - Residents living in the South Island outside of Christchurch were more likely to feel staff were patronising at 17% as were older residents (aged 80-84 years) - 13% feel patronised compared to 5% of residents aged 75-79 years.

Residents declare staff in their villages to be overwhelmingly helpful and caring

Q: How strongly do you agree or disagree that each of the following apply to how you are treated overall by your Retirement Village staff? (%)



Base: All respondents (n=1,692)

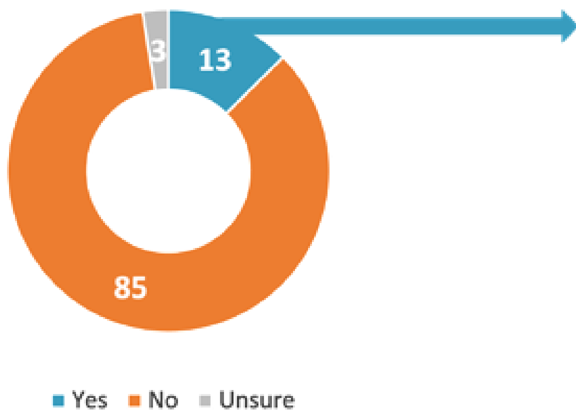
Understanding complaints

A minority of residents had concerns or complaints about how they were treated, most expressed the issue to management and the greatest portion of these are satisfied with the outcome

- Just over one in ten (13%) of residents indicate they had a complaint or concern with how they were treated by their village.
  - Residents who had been in their village less than two years were almost half as likely (8%) to have had a complaint or concern.
- Out of this 13% of residents the vast majority of them (88%) expressed their complaint or concern to their village manager.
  - It appears that residents in larger villages were more likely to express their complaint or concern to their village manager 89% of residents in larger villages (200 plus units) compared to 84% of those in villages of less than 100 units expressed their concern.
  - The main reason why the small minority did not express their concern to their village manager is they talked to someone else about it.
- The greatest portion of this 13% who expressed their complaint or concern to their village manager were satisfied with the outcome at 42% satisfied, 24% were neither satisfied nor dissatisfied with the outcome, while less than a third (32%) were dissatisfied with the outcome.
  - Across the entire resident population this equates to an estimated 3.5% of residents who had a concern or complaint, expressed it to their village manager and were dissatisfied with the outcome.

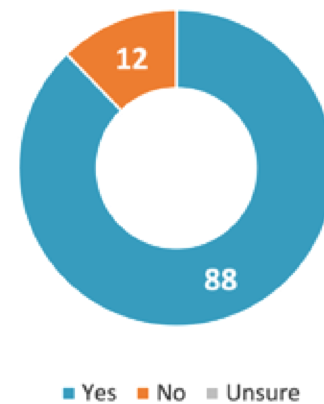
A minority (13%) of residents had a complaint or concern and almost all raised it with their village manager

Q: Have you ever had a complaint or concern about how you were treated by your village? (%)



Base: All respondents (n=1,692)

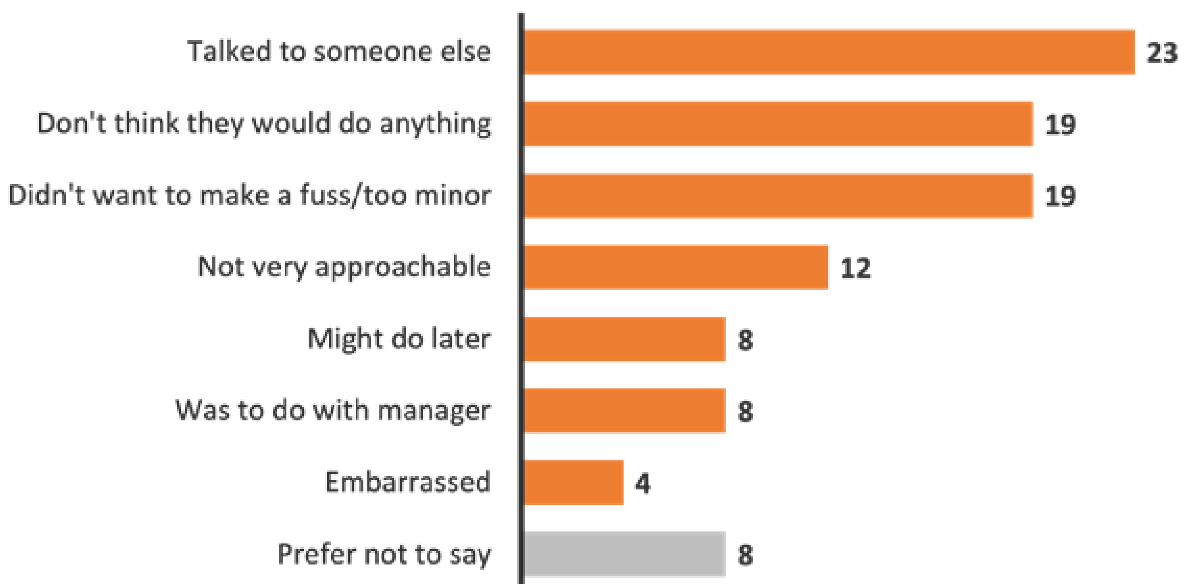
Q: [If yes] Did you express the complaint or concern to your village manager? (%)



Base: Had a complain or concern (n=212)

Main reason for not formally expressing a complaint is they talked to someone else

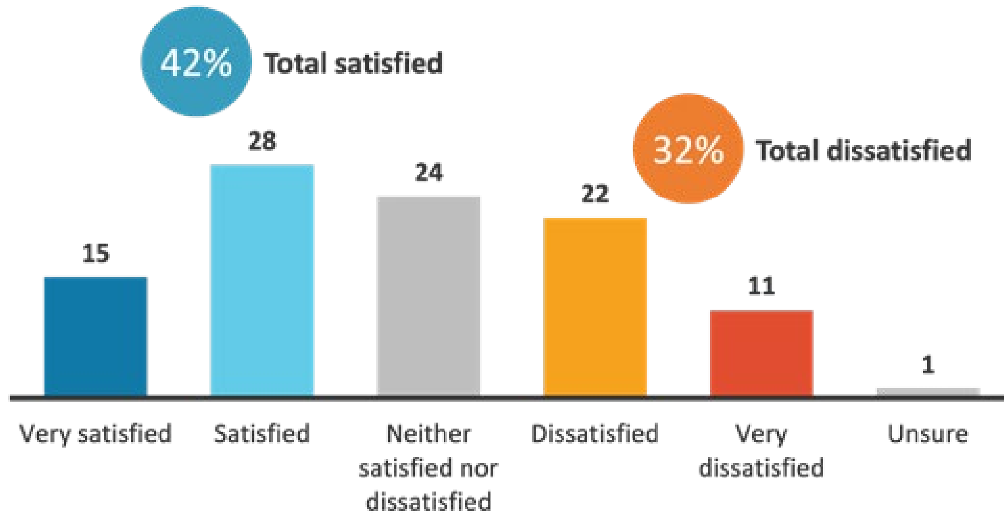
Q: What was the main reason why you did not express your complaint or concern to your village manager? (1.5% of the total sample - coded, n=26)



Base: those who had a complain/concern by did not raise it with the manager (n=26)

Largest portion of residents that complained are satisfied with the outcome

Q: Overall, how satisfied or dissatisfied were you with how your complaint/concern was managed by your Village manager? (%)



Base: those who expressed a compliant/concern to their village manager (n=187)

Conclusions

Conclusions and suggestions

- This research clearly shows that most residents are happy with their experiences of retirement village life.
- It also shows over the last eight months or so, both satisfaction with their village and likelihood of recommending their village to someone else has increased among residents.
- Retirement villages are delivering to residents on many of the aspects that can make retirement enjoyable for our older people such as feeling safe and secure, having peace and quiet and feeling completely comfortable.
- This is supported by retirement village staff that most residents agree are helpful, caring, respectful and treat residents in a professional way.
- Only a tiny minority have complaints. The greatest portion of these that express a complaint are satisfied with the outcome of their complaint. However there is a very small minority of residents who had made a complaint to their village manager and are not satisfied with the outcome.
- It seems the industry should think carefully before they make too many changes based on the concerns of a tiny minority that are at odds with the experiences of the vast majority.

Appendix – Sample overview

Gender, age and region

	%
Male	36
Female	64
Prefer not to say	1

	%
60-64	1
65-69	3
70-74	18
75-79	27
80-84	30
85-89	14
90+	6

	%
Auckland	34
Waikato	9
Bay of Plenty	11
Wellington	11
Other North Island	16
Canterbury	12
Other South Island	7

Village

Which of the following best describes the place you live in?

	%
Villa/ Standalone house	50
An attached single level home	15
An apartment	33
Other:	1

How long have you been living in this retirement village?

	%
Less than 6 months	7
Over 6 months and up to 1 year	11
Over 1 year and up to 2 years	15
Over 2 years and up to 5 years	27
Over 5 years and up to 10 years	29
Over 10 years.	10

Size of village (by units)

	%
Less than 50	10
50-99	16
100-149	16
150-199	16
200+	42

Who do you live with

	%
Your partner or spouse	49
Friend/s + Relative/s	.4
By yourself	50
Prefer not to say	.2

Base: All respondents (n=1,692)

Appendix 2 – RVA Blueprints for New Zealand's Retirement Villages Sector - Part A

BLUEPRINT FOR NEW ZEALAND'S RETIREMENT VILLAGES SECTOR

New Zealand's retirement villages sector has launched a comprehensive blueprint to introduce a range of improvements in the industry.

The growing popularity of retirement village living and the overwhelming satisfaction levels among residents clearly demonstrates that our sector has struck the right balance between robust regulatory oversight and effective self-governance.

However, we accept there is always room for improvement and refinement around certain practices as our sector and our offering evolves.

That's why the RVA signed a Memorandum of Understanding with the Retirement Village Residents Association of New Zealand to work together on issues to ensure the interests of our residents continue to remain paramount in everything we do.

This blueprint sets out the tangible and definitive steps we will be taking to achieve that goal.

John Collyns
Executive Director

OUR PROMISE

- Provide residents with a stronger voice
- Strengthen the complaints process by exploring establishing an Ombudsman to hear and resolve complaints and invite an independent member of the public to sit on the RVA Executive to represent residents' interests
- Survey all members annually to examine emerging trends
- Work with members, residents and the Retirement Commissioner to design a best practice approach to re-licensing that reflects the reality of the local real estate market, yet ensures residents' estates do not wait an unreasonable period of time for a refund
- Review Occupation Rights Agreements (ORAs) to address any perceived unfair terms or confusing clauses and ensure clarity around what the resident and operator are responsible for, in particular, repairs, maintenance and replacement of operator-owned chattels
- Continue to work with the Commission for Financial Capability (CFFC) to develop best practice standards around disclosure of information about residents' transfer to care and incorporate these into the Retirement Villages Code of Practice.

96% of residents were either very satisfied, satisfied or neutral

83% of residents satisfied with the quality of the legal advice they received before moving into their retirement village

70% of residents satisfied with their overall consumer protection

*UMR Insight, 2021. See page 8 for further information

BACKGROUND

The Commission for Financial Capability's (CFFC) White Paper advocating a review of the retirement village legislation framework was published in June 2021. The CFFC raised a number of issues that it believes are a concern for some residents and others.

These include:

1. **Relicensing issues**
   - Treatment of any gains on re-licensing
   - Unit re-licensing times
2. **Operational issues**
   - Transfers, within a village [mostly to care]
   - Treatment of fees for units post vacation
   - Code compliance
   - Giving residents an effective voice
3. **Broader issues**
   - Whether the regime allows for affordable future supply, social housing, potential lack of capital for new residents, and the role of rentals.

The RVA understands the importance of these matters raised and we're committed to exploring options to address any relevant issues in a way which meets the needs of our residents and village operators.

INSIGHTS

The regulatory framework is broadly working as intended and is sufficiently flexible to allow operators to develop new innovative models to meet residents' concerns.

More than 100 New Zealanders are moving into a village every week and they are required to receive legal advice, with their solicitor certifying that their client fully understand the terms and conditions involved.

All valid research, including research by UMR Insight in January 2021, demonstrates residents are very satisfied with the current framework.

The industry has grown strongly over the past 20 years as residents seek safety and security, peace of mind and a hassle-free lifestyle.

However, as would be expected with legislation that is almost 20 years old, some fine-tuning, particularly around operational issues, is necessary to enhance a model that has served older New Zealanders well for almost 40 years.

Summary responses to the CFFC

RELICENSING ISSUES

1. There would be a catastrophic effect if government interfered with the commercial model. The village model is not comparable to purchasing a property. The facilities and care involved in villages represent a significant investment, which operators recover over the long term, not on an initial licensing. Residents tell us they enjoy certainty of cost with a majority on fixed ongoing fees and the avoidance of major capital expense, leaving operators to cover these
2. The entry cost to move into a retirement village is attractive and the ongoing cost of living in the village is subsidised. When a tenure ends, the operator pays back the entry sum and takes an agreed fee for doing so
3. Residents balance financial security and know to the last dollar how much they will get back when they leave against the ownership risks. Any gain on re-licensing a village unit is used by the operator to refurbish the unit to which the resident does not contribute a cent and to off-set these risks
4. Any requirement to mandate some form of payment to a resident's estate on exit, based on what a new resident will pay for a licence of the same unit, fails to recognise that the resident does not contribute to refurbishment of the unit or the cost of other capital expenditure in a village. Furthermore, it could immediately render many operators insolvent
5. In the future, if such a change was mandated, operators would need to increase the deferred management fee charged to residents, defeating the intended purpose of the change
6. Regulation 25(2)(d) of Retirement Villages (General) Regulations 2006 requires that the disclosure statement addresses the extent to which the former resident is exposed to a capital gain or capital loss arising as a result of the termination. This incorrect characterisation has confused residents and any regulatory reform should address this wording
7. We appreciate that re-licensing a unit is a stressful time for residents and their families, especially if a resident is moving to care and needs the capital for that. An increasing number of operators offer short-term loans to cover these costs, and others offer to refund the capital sum (less the Deferred Management Fee (DMF) after a period of time if the unit remains unlicensed. The Ministry of Social Development (MSD) also can provide loans to village residents moving out of the village to care elsewhere, if need be
8. It is unreasonable and impractical to mandate a maximum relicensing period as villages face the same ebbs and flows of the real estate market. To cherry pick issues and rigidly prescribe some commercial terms fails to appreciate the interdependent nature of the terms of a village offering.

The RVA agrees that there is a role for continuously educating operators and residents about these options and to encourage best practice around some (e.g. drawn-out relicensing times).

OPERATIONAL ISSUES

1. In conjunction with the CFFC, the RVA has developed best practice standards around the disclosure of information about the transfer to care, and we believe that these standards should be incorporated into the Code of Practice. We are happy to work with the CFFC and Retirement Villages Residents' Association (RVRA) to achieve this

2. We also agree that the sector can encourage best practice standards around issues such as stopping all fees when a resident moves out. This is an example of education and market pressure. The practice was extremely rare 20 years ago, but today the majority of retirement villages in New Zealand have adopted this and more continue to do so to ensure they remain competitive

3. The RVA has secured a comprehensive training programme for staff and others involved in running retirement villages based on a highly successful Australian programme

4. Our Memorandum of Understanding, signed in December 2020, created a Residents' Advisory Group of residents and operators who review issues and recommend ways to mitigate them.

RVA'S COMMITMENT

While the RVA believes no major changes to the Act itself are required, we agree some changes to the regulatory framework could be beneficial for all parties and have developed the following seven-point action plan.

1. ENSURING THE RESIDENT'S VOICE IS HEARD

The RVA understands that without happy residents we don't have a viable sector. Therefore, it's essential that the residents have an effective voice in the sector's governance.

We propose to co-opt an independent person, who may be a village resident, onto the RVA's Executive Committee who can ensure that the residents' voice is heard and their perspective on relevant issues is taken into account. The exact method of selecting this person will be determined by the Residents' Advisory Group.

This initiative would follow the precedent set during the first level 4 and 3 lock-down when the Retirement Commissioner was a member of the RVA's Pandemic Task Force.

2. MONITORING RE-LICENSING TIMES

The RVA surveyed its major operators in early 2020 to ascertain times taken to re-licence units that became vacant in 2019. The survey covered 23,039 units from 195 individual villages. 13%, or 2,992 units, qualified as being empty during 2019.

Overall, 71% of the units were re-licensed within six months, although this varied by region. 26% took more than six months and 3% were still vacant at the end of the period. The reasons given were the impact of the COVID-19 lockdown, a less buoyant real estate market pre-lockdown (i.e. new residents took longer to sell their own homes), buyers selected other units in the village that were more attractive, more units than usual became available, and more competition from other villages. Since lockdown, we believe resale times have accelerated significantly.

The RVA has agreed with the CFFC to survey all members on an annual basis to see what trends emerge and work with members, residents and the Retirement Commissioner to design a best practice approach that reflects the reality of the real estate market in the region yet ensures that residents' estates do not wait an unreasonable period of time for a refund.

We believe that a "one-size-fits-all" approach through a mandatory buy-back rule has the potential to create solvency issues and seriously disadvantage many villages, and even make them unsustainable.

Once we understand whether a long-term issue around re-licensing delays actually exists, we will be in a better position to develop best practice standards for the sector, in conjunction with the CFFC and RVRA.

3. ADDRESSING ANY UNFAIR CLAUSES IN ORAs

Residents can express confusion regarding the boundary between what they are responsible for and what the operator is responsible for, in repairs, maintenance and replacement of operator-owned chattels.

The RVA will work with members, residents and the Retirement Commission to identify best practice for future ORAs that define each party's responsibilities so that residents are not responsible for maintaining operator-owned chattels but also protect the operator from abuse of the same chattels. Already some operators have moved towards this position and we believe market forces will ensure a majority of operators adopt this position quickly.

The RVA will also review ORAs in general and continue to work with the RVRA and the CFFC in identifying clauses that are unfair and engage with members to ensure that any unfair terms are removed.

4. IMPROVE THE COMPLAINTS PROCESS

Generally, the cost of maintaining the complaints and disputes regime falls on the operator, and we are comfortable with this approach. It provides an incentive to resolve complaints promptly.

The CFFC's analysis of complaints shows that in fact there are very few serious complaints and relate to individual problems rather than systemic failure.

However, we also acknowledge that some residents are unwilling to complain due to fear of retribution or discrimination, even if that fear is unreasonable, and accept that the regime could be improved.

The RVA also runs an internal complaints management regime with a Complaints Committee that investigates complaints lodged with the RVA's office and where necessary, will intervene with the operator to get a better outcome for the residents.

In the last two years, the Committee has intervened successfully five times to persuade the operator to take a different approach to a problem. This includes issues around slow re-licensing times, the treatment of village maintenance and unclear transfers to care.

We appreciate that this approach is still operator-centric. **We propose to include an independent member (as is common in other organisations) on the Complaints Committee to be part of the review process and to guide both operators and residents on the justice or otherwise of the complaint or dispute.**

This process would continue to run in parallel to the legislated Disputes resolution process in the Code of Practice.

The RVA has a Disciplinary Authority to deal with complaints about egregious operator behaviour. The current independent Chair of the Authority is the Hon Dr John Priestly QC, a retired High Court Judge.

Finally, if it was felt on a cost benefit basis, that an "Ombudsman" was necessary, we will work with the relevant parties to ensure the terms of engagement will address the perceived issues.

5. DISCLOSURES AROUND THE COMMERCIAL TERMS

The current Act, regulations and Code provide a comprehensive list of disclosures for intending residents that must be included in the village's disclosure statement or ORA. However, it is possible that the commercial terms can become lost in the body of the paperwork, which is not helpful for residents wishing to compare one village's offering with the next.

The RVA recently required all members to give intending residents a **Key Terms Summary** (KTS) in a standard template format so that matters such as capital payment, weekly fees, the Deferred Management Fee (DMF), availability of care and the transfer process, and other important conditions about living in the village are made clear to intending residents. The summary was produced in conjunction with the CFFC and has been endorsed by them.

The **KTS could be expanded to further inform prospective residents and encourage best practice** approaches in other appropriate areas, as agreed between the RVA, CFFC and RVRANZ.

The Industry Code of Practice that evolved in 1990 was adopted by the Government as the basis for the legislated Code of Practice in 2007.

As there is no Government agency that audits retirement village compliance with the Code, the RVA has taken this on itself. **It is a condition of membership that every village must undergo and pass a robust compliance audit every three years, and a certificate** Aged Residential Care Facilities, so it is credible and independent of the RVA.

As the audit is managed by the RVA, we have added additional standards to the check, such as ensuring operators provide the Key Terms Summary and observe transparent disclosures about the transfer to care. We can add other best practice requirements, as necessary.

7. AWARENESS OF OTHER BUSINESS MODELS

The RVA does not believe it is the sector's role to provide social housing options but appreciate that with declining home ownership in the 65+ demographic, refusing to adapt the business model could be a disadvantage in the longer term.

We are committed to supporting our members **to explore new business models and encourage them to adapt their models to cater for a greater number of older peoples' circumstances**. This could include offering more rentals beyond those already in the market and looking for solutions for people who have some but not enough capital to move to a village, etc. We do not accept that we can or should impose any particular business model on members. We are committed to working with the Retirement Commissioner on any suggestions they may have in this area.

For more information, please contact

John Collyns

Executive director

RVA

john@retirementvillages.org.nz

Independent research by UMR Insight in January 2021 showed:

Overall strong satisfaction with retirement villages

- Most residents (**86%**) are satisfied with the village they reside in, **10%** were neutral and only **4%** said they were not satisfied. This meant of those that had an opinion, **96%** were either very satisfied, satisfied or neutral

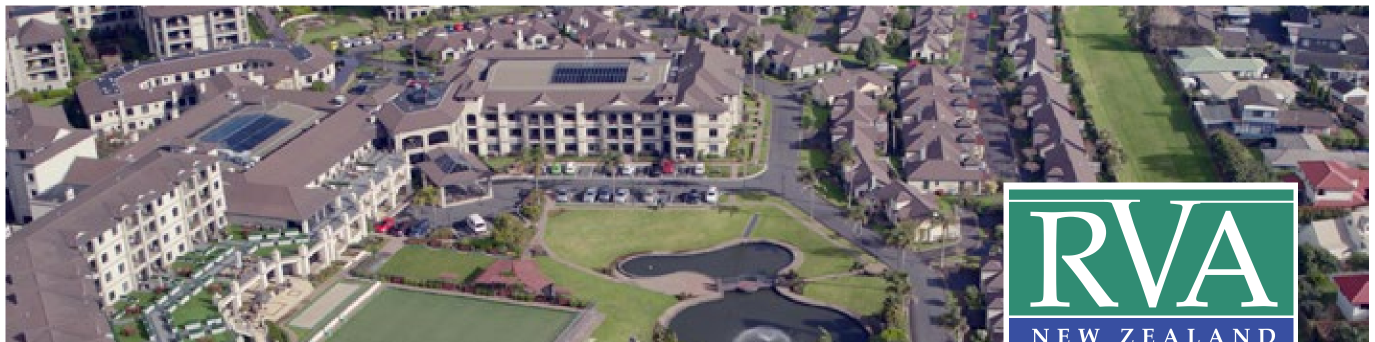
Most residents were satisfied with their village's response to COVID-19

- The vast majority of residents (**87%**) were satisfied with how the management and staff of their village managed their safety during COVID-19

Most residents were satisfied with quality of legal advice they received and with the consumer protection they have

- Around four out of five residents **(83%**) were satisfied with the quality of the legal advice they received before moving into their retirement village
- Seven out of ten residents (**70%**) indicated they were satisfied with, 'The overall consumer protection for residents, this includes the Retirement Villages Code of Practice, Code of Resident Rights and Retirement Villages Act'.

Appendix 2 – RVA Blueprints for New Zealand's Retirement Villages Sector - Part B



Retirement Villages Association

An update on the retirement village sector's Blueprint

Important information on the industry

June 2023

More than 100 people are moving into retirement villages every week and independent research shows nearly 90 per cent of over 50,000 residents are satisfied or very satisfied with village living.

Retirement village operators are also the only organisations building aged care facilities, providing desperately-needed facilities in many communities.

However, as a sector, we're not standing still.

After the introduction of the *Blueprint for Change* in 2021, last year RVA members voted at the sector's AGM to trial reforms and to identify any unintended consequences in the way our members operate. This included encouraging all members to amend if necessary their Occupation Rights Agreements to eliminate any perceived unfair clauses.

These changes represent the most significant voluntary reforms to the industry since legislation was passed in 2003.

These reforms will be reconsidered at the 2023 AGM next month (July 2023), and if agreed, they will become industry standards against which RVA members are audited against every three years.

The RVA also recently commissioned a study to gain an accurate picture of industry practice around key issues. We are aware that some villages, particularly older ones, have clauses that need to be updated to match the public's expectations. We engaged Covenant Trustee Services to review the ORAs of every registered village in New Zealand to determine how members operations align with the following areas:

- Weekly fees continuing after a unit has been vacated
- The DMF continuing to accrue after a unit has been vacated
- Whether any compensation is made for slow unit repayment
- Capital loss clauses without a sharing of the capital gain

This is the first quantitative study to ascertain practices and gain an accurate picture within and across the industry.

We are pleased to confirm there has already been some progress in these areas — as the RVA has shone the light on our members' practices, many are already making changes to the way they operate.

But we are not finished yet. The RVA wants to set ambitious targets in consultation with our members. We want as many operators as possible striving for best practice, and we will be doing everything to ensure our members' villages meet our expectations. This will include a further review by Covenant later this year of all villages so we can see how our members' practices have evolved and what changes, if any, need to be made to ensure our industry's satisfaction, reputation and success is maintained.

Graham Wilkinson
President
RVA

Comparison of village compliance with key RVA best practices

In August 2022, RVA members at the sector's Annual General Meeting considered various industry practices that some stakeholders had expressed as "unfair." One focus was on the issue around re-licensing of units. The standard business model generally releases the outstanding capital sum once the operator has the incoming resident's capital payment, and from that sum, the outgoing resident is paid out.

Members were asked to trial implementing the best practices over the following 12 months and advise whether there were any unintended consequences. The RVA also excluded villages with fewer than 50 units from the trial as they are less able to quickly implement changes which are likely to constrain village income, such as stopping weekly fees when the unit is vacated. However, we encouraged them to see if it was possible to grandfather certain changes, perhaps by changing their business model prospectively.

This paper is based on 401 RVA member villages with 38,844 units as at 1 August 2022. There are 167 villages with fewer than 50 units, a total of 3,728 units. Once new and developing corporate villages are excluded from this figure, there are 72 villages (including not-for-profits, small privately-owned developments, and organisations such as Presbyterian Support and the Masonic villages) with 1,489 units, which are used in the calculations below.

Based on surveys by UMR Insight into operators' re-licensing times in 2020 and 2021, we know that 90% of capital sums are paid out within nine months of the operator getting vacant possession of the unit. This includes the time taken to refurbish the unit and market it to the public.

Based on evidence presented to the Social Services and Community Select Committee considering a petition from the Retirement Villages Residents' Association (RVR) requesting a mandatory buy-back period after 28 days, it is clear that any hard legislative deadline will incur significant costs and will cause some villages to fail.

We are investigating issues, such as the continued payment of weekly fees after the unit is vacated, whether the DMF continues to accrue after the unit is vacated, and whether there is any compensatory payment made after a period of time if the capital sum remains unpaid. The RVA sees a compensation payment as fair and not something that will create solvency issues. A fourth element was also reviewed – whether the operator requires the resident to pay any capital loss without sharing capital gain.

The following tables show a high degree of support by members for the best practice approach taken by the RVA. However, we believe that these outcomes can be improved and the RVA's Executive Committee will be considering realistic targets and a deadline for members to meet the standards (in line with Commerce Act requirements).

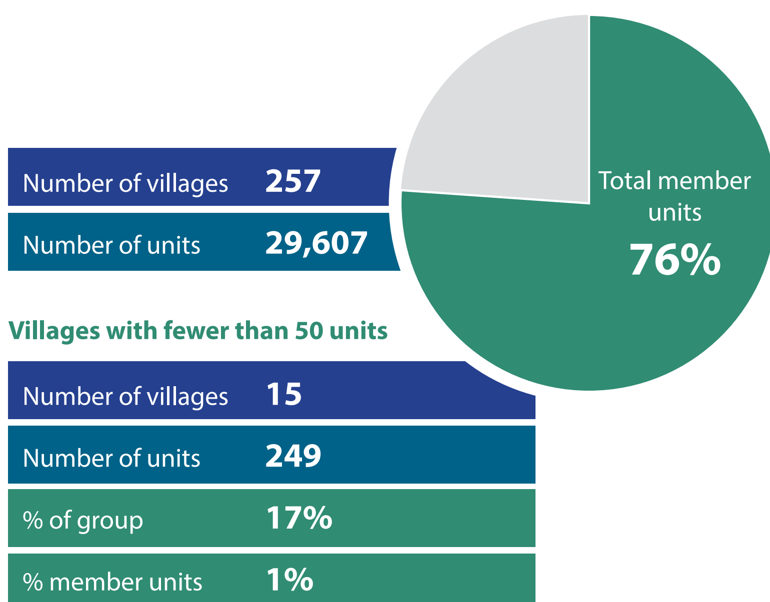
Methodology

The RVA engaged Covenant Trustees to review all 465 Occupation Right Agreements on the Registrar of Retirement Villages website to accurately determine their terms. This paper considers the 401 RVA member villages that follow best practice outcomes.

We are encouraging those that haven't yet amended their business models, (so far as that is possible in a competitive environment), that they will do so in the future. We will review registered ORAs later to check the number of villages and units that have aligned themselves with the agreed "best practice".

RVA NEW ZEALAND
Retirement Villages Association

1. Villages that stop charging weekly fees once the unit is vacated



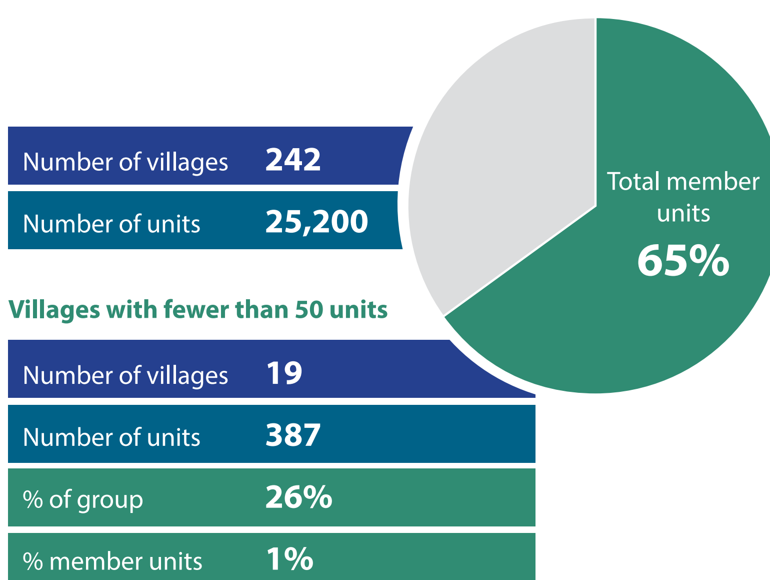
Comment

The Code of Practice allows operators to keep charging weekly fees until the unit is re-licensed, however long that might take. The fees must be reduced by 50% after six months if the unit remains unlicenced. This approach recognises that some charges (rates, insurance, maintenance, staff salaries, etc) continue.

The outgoing resident's family might fund deductions from the repayment for the period the unit is empty until relicensing. Where the operator can absorb the additional cost, we encourage them to do so. In some cases, the business model has had to be changed (e.g. a higher DMF) to allow this.

Already for villages over 50 units, 76% of units have no weekly fees post-vacation.

2. Villages that do not continue to accrue the DMF once the unit is vacated



Comment

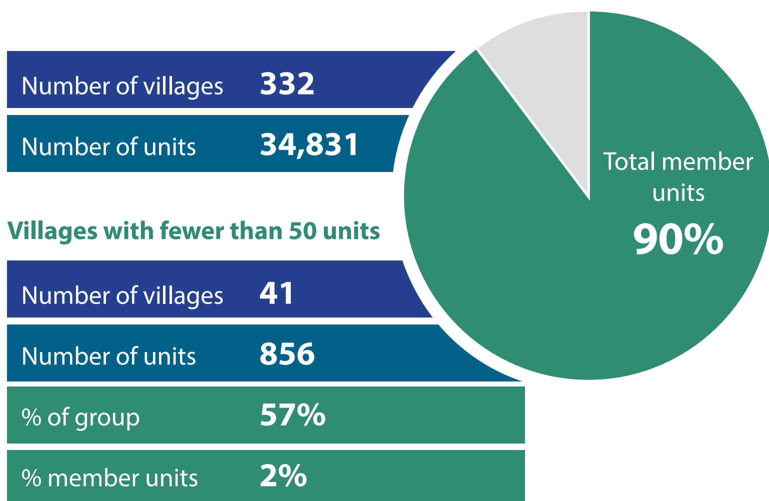
Operator terms may include accruing the DMF after the unit is vacated until a new licence is issued. This could occur when a resident has been in the village less than the period over which the standard DMF accrues – e.g. a 25% DMF may accrue at 5% over five years but if termination occurs after two years, further accrual is possible.

This is largely a historical practice and the RVA considers this to be unfair. We are encouraging members to cease accruing the DMF once the unit is vacated.

While 65% of units in villages over 50 units have ceased this practice, further encouragement is required.

RVA
NEW ZEALAND
Retirement Villages Association

3. Villages that do not have a capital loss clause without sharing capital gain



Number of villages	332
Number of units	34,831

Villages with fewer than 50 units

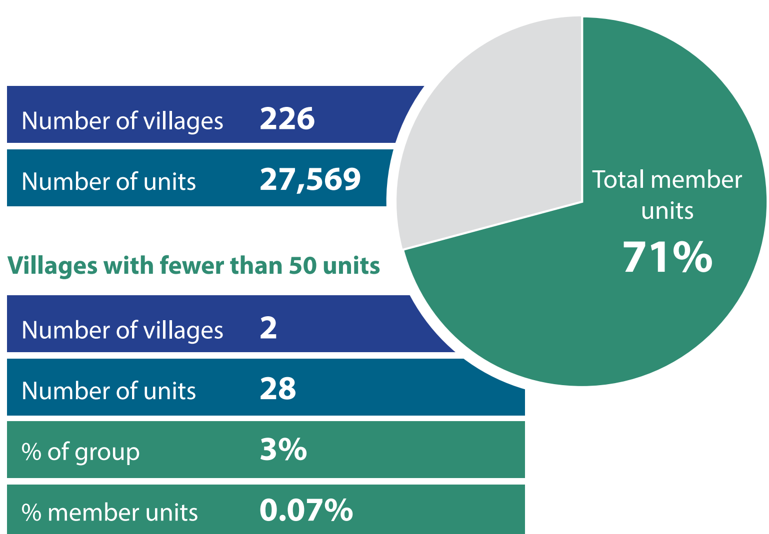
Number of villages	41
Number of units	856
% of group	57%
% member units	2%

Comment

The RVA has lobbied members for several years to remove any capital loss clauses where the resident does not share any capital gain. It is considered unreasonable for the operator to take all the upside and leave the resident with the downside. We understand this came about at the insistence of financiers when the industry first started, and operators with such clauses advise that "they're never enforced". The RVA believes they should be removed.

90% of villages over 50 units have discontinued this practice.

4. Villages that make a compensatory payment when the capital sum remains unpaid for any period.



Number of villages	226
Number of units	27,569

Villages with fewer than 50 units

Number of villages	2
Number of units	28
% of group	3%
% member units	0.07%

Comment

How operators deal with slow relicensing times varies. Some agree to pay interest on the outstanding amount after varying periods while others credit the DMF at the same rate it accrued to them after a period.

Operators are actively managing their buy-back times. The RVA strongly believes that any mandatory buy-back in legislation will be fatal for many, especially villages in provincial centres where house sale times can be protracted. Other issues, such as a pandemic, or a group of residents wishing to act in unison, could also cause business failure in a mandatory buy-back environment. It is worth noting that the dispute provisions under the Code of Practice provide a methodology to resolve perceived excessive relicensing times.

Next Steps

July 2023

Consider these and other issues at the RVA AGM to encourage members to adopt these best practices.

November 2023

Further review by Covenant Trustee Services of all villages' contractual terms.

For further information

John Collyns
Executive Director
john@retirementvillages.org.nz
021 952 945

RVA
NEW ZEALAND
Retirement Villages Association

Appendix 3

SUMMARY OF KEY TERMS

Village: ______________________________

Accommodation Type: ______________________________

Correct as at ___/___/_____

KEY TERMS		DETAILS FOR RESIDENT/UNIT
Fees payable by resident		
Maximum Deferred Management Fee (DMF) (or equivalent fees) payable by resident for unit	Maximum total as a percentage of capital sum: ________ % **Method of calculation:** On entry ______________________ % Per annum: Year 1______% Year 2______% Year 3______% Year 4______% Year 5______%	
Weekly fees payable by resident • How much? • Can these be increased by the operator? • If yes, how often?		$ ______________ per week for a ______________ $ ______________ per week for a ______________ $ ______________ per week for a ______________ ☐ Yes ☐ No ☐ Annually ☐ Any time ☐ Other -specify
Are there any other regular fees payable by the resident to the operator and can these be increased? [For example, service fees.]		
Does the resident contribute to long term maintenance through a contribution to a specific village sinking or maintenance account?		☐ Yes ☐ No
Fees payable on termination (excluding DMF) [For example, admin, marketing fees.]		
Capital gains/losses		
Does the resident share in any capital gain on the sale of the unit? • If yes, what share? [Specify]		☐ Yes ☐ No
Is the resident exposed to any capital loss on the sale of the unit? • If yes, what is the exposure? [Specify]		☐ Yes ☐ No

KEY TERMS	DETAILS FOR RESIDENT/UNIT
When does the resident or their estate receive the capital refund (Less DMF and other fees/ charges)?	☐ When the unit is re-licensed ☐ At the end of the cooling-off period ☐ Some other formula
Do you offer any compensation if a unit is not resold within a specific period?	☐ Yes ☐ No
When leaving the unit is the resident required to contribute to the refurbishment of the unit, and if so, what amount or formula will be used ?	☐ Yes ☐ No
Transferring between units within the village*	
Does the resident have priority over non-residents to transfer to another unit at the village?	☐ Yes ☐ No
For the resident's new unit, is there a credit for any DMF (or equivalent fees) paid by the resident for their earlier unit(s) at the village?	☐ Yes ☐ No
Current aged care options at the village	
Is there an aged care facility currently available at the village? **If so how many rooms are currently available in each care category?**	☐ Yes ☐ No ☐ Rest home ☐ Hospital ☐ Dementia care ☐ Other – specify
Does your facility currently contain any standard aged care rooms, i.e. where there is no requirement to pay premium room charges or purchase an ORA?"	☐ Yes ☐ No
Does the resident have priority over non-residents to transfer to the care options outlined above?	☐ Yes ☐ No ☐ N/A

This Summary is a general statement of the key terms of the offer at Village Name.

For full details refer to the disclosure statement and occupation right agreement for this Village.

* Different terms [may] apply if the resident leaves the unit due to a damage or destruction event or if the operator has terminated the resident's occupancy.

Appendix 4 – JLL - New Zealand Retirement Villages And Aged Care Whitepaper

Research

New Zealand | August 2023

New Zealand retirement villages and aged care

New Zealand Retirement Village Database (NZRVD) and Aged Care Database (NZACD) year ending 2022

JLL SEE A BRIGHTER WAY

jll.nz

New Zealand retirement villages and aged care

Contents

Executive summary	**03**
Demographic environment	**07**
New Zealand demographic drivers	**09**
Ageing population	**10**
Economic environment	**17**
Demand forecasting	**18**
Retirement villages	**19**
Retirement village and unit numbers by region	**23**
Six large retirement village operators	**25**
Penetration rates	**28**
Retirement village development pipeline	**31**
Estimated development pipeline distribution 2022	**32**
Estimated development pipeline – six largest operators	**36**
Aged care facilities 2022	**37**
Aged care facilities within retirement villages	**40**
Future supply and demand	**41**
Analysis of future supply and demand numbers	**42**
Demand beyond 2033	**44**
Influencers of future supply and demand	**46**
Summary	**51**
JLL Retirement Village team	**54**

Executive summary

1

Introduction

Pleasure to release JLL's 11th whitepaper based on JLL's New Zealand Retirement Village (NZRVD) and Aged Care (NZRACD) databases.

The population forecasts for this report were sourced from the 2018-2048 projections by Statistics New Zealand. The results provide a snapshot of the year ending 31 December 2022 for the New Zealand retirement village industry, examining the future development pipeline and potential future demand for the sector.

With New Zealand's population getting older, this increases the number of people 75 and over who fit the demographic for the Retirement Village and Aged Care sector by adding to the demand for this type of accommodation. Although the usual starting age for retirement villages is 70 years, some allow entry for residents as young as 65. However, the analysis in this paper is based on population forecasts for those 75 and over, in keeping with the average age of new occupants.

Some of the pandemic challenges of 2021 continued into 2022 alongside the emergence of new challenges:

Retirement villages were not immune to the labour shortages experienced by many industries across the country

The cost of business has been highly impacted by the inflationary environment

While supply chain constraints have eased somewhat, they still have some impact on current and future property developments

Reduction in New Zealand median house prices and impact of days to sell is pushing out in all regions

The performance of the sector throughout these times coupled with the pull-back in the residential property markets through 2022 meant many retirement village operators continued to receive high levels of enquiry, supporting their future development strategies.

New Zealand Retirement Village Database (NZRVD)

JLL's 2022 NZRVD identified 452 villages, with 39,070 units, which is based on an estimated 1.3 residents per unit, resulting in an estimated 50,791 residents currently in retirement villages. By comparison, JLL's 2021 NZRVD identified 425 villages, with 37,489 units, which resulted in an estimated 48,736 residents in retirement villages.

Since our whitepaper series started in 2012, retirement village numbers have grown 32%, from 343 villages to 452 villages, and unit numbers have grown from 21,815 to 39,070, representing an increase of 79%. The significant increase in unit numbers compared to the overall increase in village numbers reflects the continuing trend over the last five years that modern villages are generally larger in scale and feature greater intensification through extension or refurbishment.

5

The Auckland region accounts for the majority of retirement villages with an estimated 23% of the national village stock. The six largest retirement village operators continue to dominate the sector (Ryman, Metlifecare, Summerset, Bupa, Oceania, and Arvida). These operators hold an estimated 48% of villages throughout the country, and 65% of the country's units.

The sector continues to see expansion with several existing villages being extended and refurbished as new villages come online. The development pipeline we have identified suggests this trend is continuing. Therefore, the challenge for the sector is to ensure the units are delivered in the right locations to meet future residents' demands and requirements.

New Zealand Aged Care Database (NZRACD)

The JLL NZRACD records details of aged care facilities across New Zealand and the proportion of rest home, hospital, and dementia care beds located at each facility.

This is closely connected to the retirement village market, as of the 452 villages identified within the NZRVD, 296 (65%) contained an aged care facility. We continue to see villages promoting the synergies between retirement villages and care facilities.

Building care suites into new aged care facilities continues as a response to development feasibility constraints and growing demand for premium accommodation options from residents and their families.

This is also a strategic decision by operators of retirement villages that advertise on the basis that residents can remain in their home in the village or facility in their later years when they require a higher level of health services and support.

Demographic environment

2

The World Social Report 2023 by the Department of Economic and Social Affairs of the United Nations identified that population ageing is furthest along in Europe and Northern America, Australia, and New Zealand, and most of Eastern and South-Eastern Asia. Globally, the number of people aged 80 years or over is rising faster than the number aged 65 or above.

By 2050, the world will have an estimated 459 million people aged 80 or over, almost triple the number from 2021 when it was around 155 million. According to the analysis in the paper for New Zealand, between 2021 and 2050, this age group is projected to increase by more than 60% in our country. New Zealand (along with Australia) also has the highest life expectancy, as seen below:

Figure 1: Life expectancy at birth by sex, world, regions, and income groups – 1950, 2021 and 2050

	1950		2021		2025	
Region	Female	Male	Female	Male	Female	Male
World	48.4	44.6	73.8	68.4	79.8	74.8
Sub-Saharan Africa	38.7	36.2	61.6	57.8	69.1	64.3
Northern Africa and Western Asia	43.4	39.8	74.8	69.7	80.8	76.0
Central and Southern Asia	40.2	41.5	69.6	65.9	79.4	74.9
Eastern and South-Eastern Asia	45.6	40.3	79.6	73.6	84.1	79.4
Latin America and the Caribbean	50.8	46.5	75.8	68.8	83.1	78.1
Australia/New Zealand	71.6	66.7	85.6	82.7	88.6	85.4
Oceania (excluding Australia and New Zealand)	43.9	40.3	70.1	64.6	74.9	68.4
Europe and Northern America	66.6	61.2	80.4	73.9	86.1	81.6
World Bank income groups						
High-income countries	65.0	58.2	83.1	77.5	87.6	83.4
Middle-income countries	44.9	42.2	72.7	67.6	79.6	74.8
Low-income countries	35.1	28.6	65.0	60.0	71.6	66.0

[1]https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2023/01/2023wsr-fullreport.pdf
Source: United Nations (2023) [1]

Although New Zealand is not among the top three countries with the oldest populations or fastest ageing populations, it still has an "inverse pyramid" population, which means that its 75+ population bracket is the biggest, while its 12-18 years bracket is the smallest.

New Zealand demographic drivers

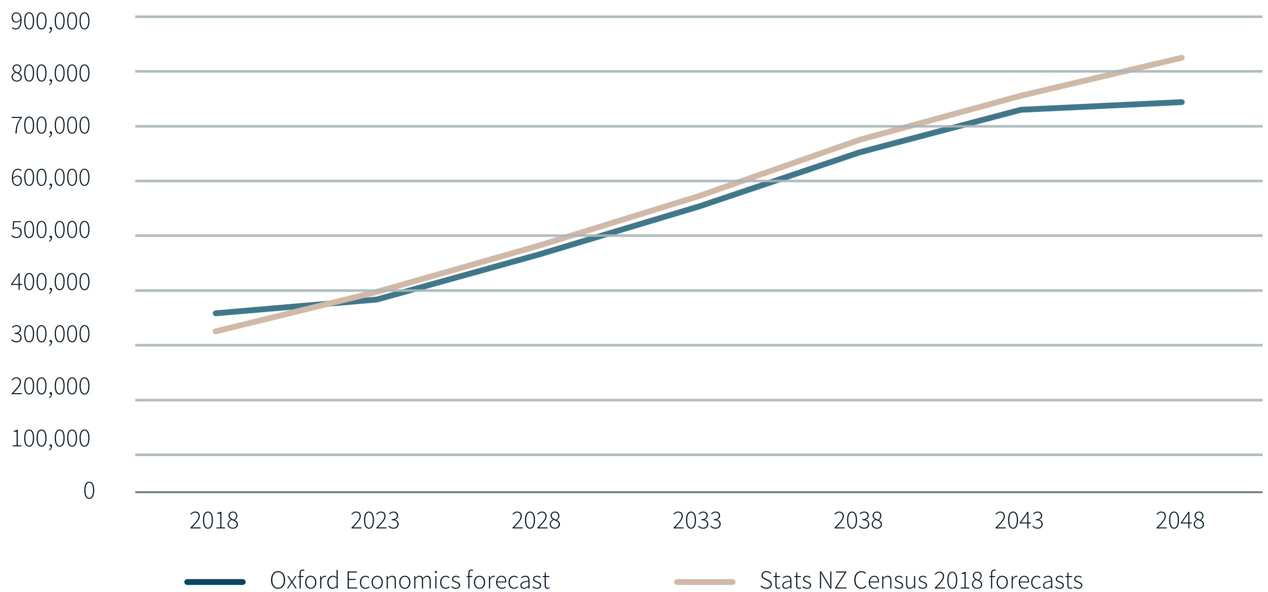
3

Ageing population

The key target population for retirement villages is those who are 75+ years old. According to Statistics New Zealand, there were 308,140 people in the country in this age bracket in 2018. In 2023, this figure is expected to be 383,510, showing an increase of 24.5% in 5 years. By 2043, this key demographic is forecast to increase by 376,120 to reach 759,630, an increase of 98.1% in 20 years.

The increase in population in this age bracket will continue to provide enormous demand for retirement villages. Figure 2 below provides an illustration of how New Zealand's population is expected to grow.

Figure 2: Total New Zealand 75+ years population 2018-2043

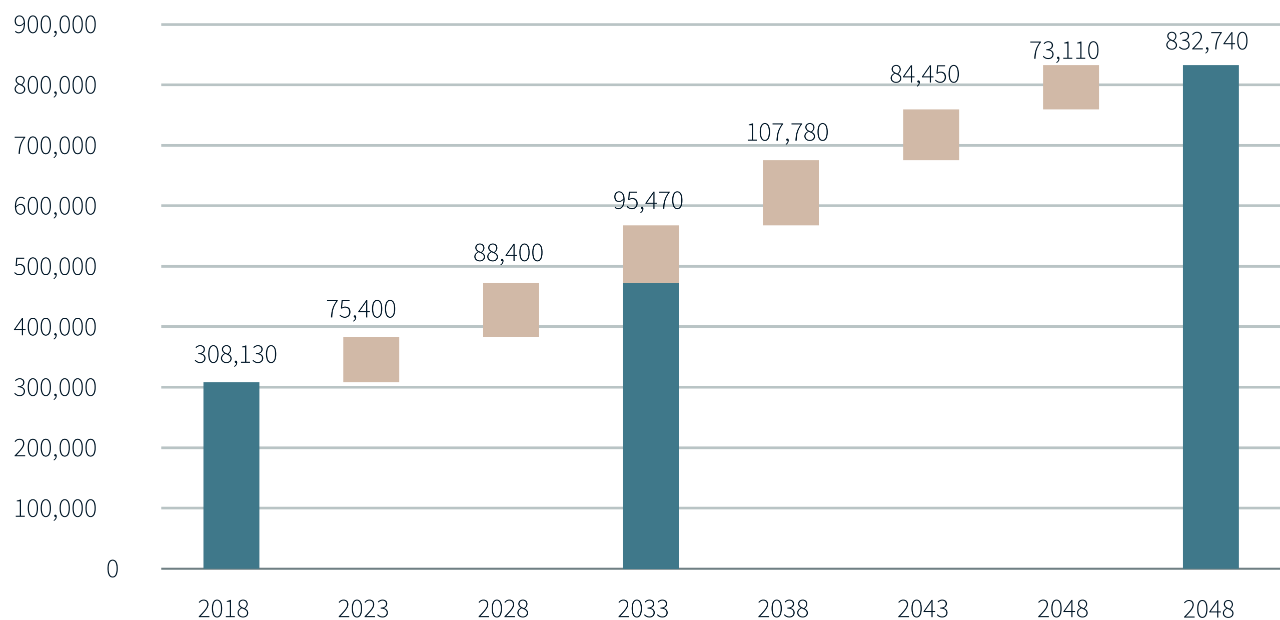


Source: JLL Research; Statistics New Zealand, Oxford Economics

When looking at the forecast growth for the 75+ year age bracket (in 5-year time periods), this shows the number of New Zealanders expanding to this age group is expected to peak in 2038, with an estimated additional 107,780 between 2033 and 2038. After 2038, we expect to see the number adding to this age bracket to reduce, and by 2048 there will be under 10% growth. This is driven by two factors:

The number of New Zealanders entering this age bracket will start to decrease.	In 5-year time periods, the number of 75+ year New Zealanders increases until 2038 when growth numbers start to reduce.

Figure 3: Growing number of New Zealanders in the 75+ age bracket

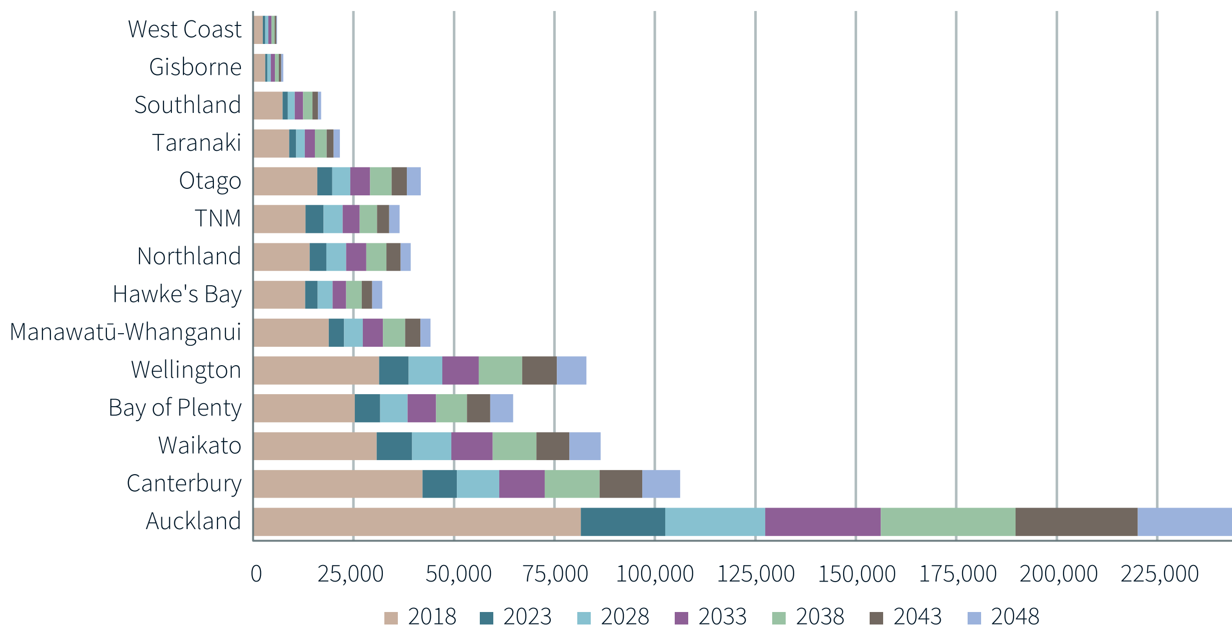


Source: JLL Research; Statistics New Zealand

Figure 4 below illustrates the forecast 75+ years population distribution by region to 2048.

The impact of large populations in Auckland, Hamilton, and Tauranga are likely to continue to be attractive to potential retirement village residents, continuing the demand within the 'golden triangle'. It is estimated by 2033 the 'golden triangle' area will equate to 46% of the total 75+ years population in the country, growing to 48% by 2048.

Figure 4: 75+ years population by region 2028-2048

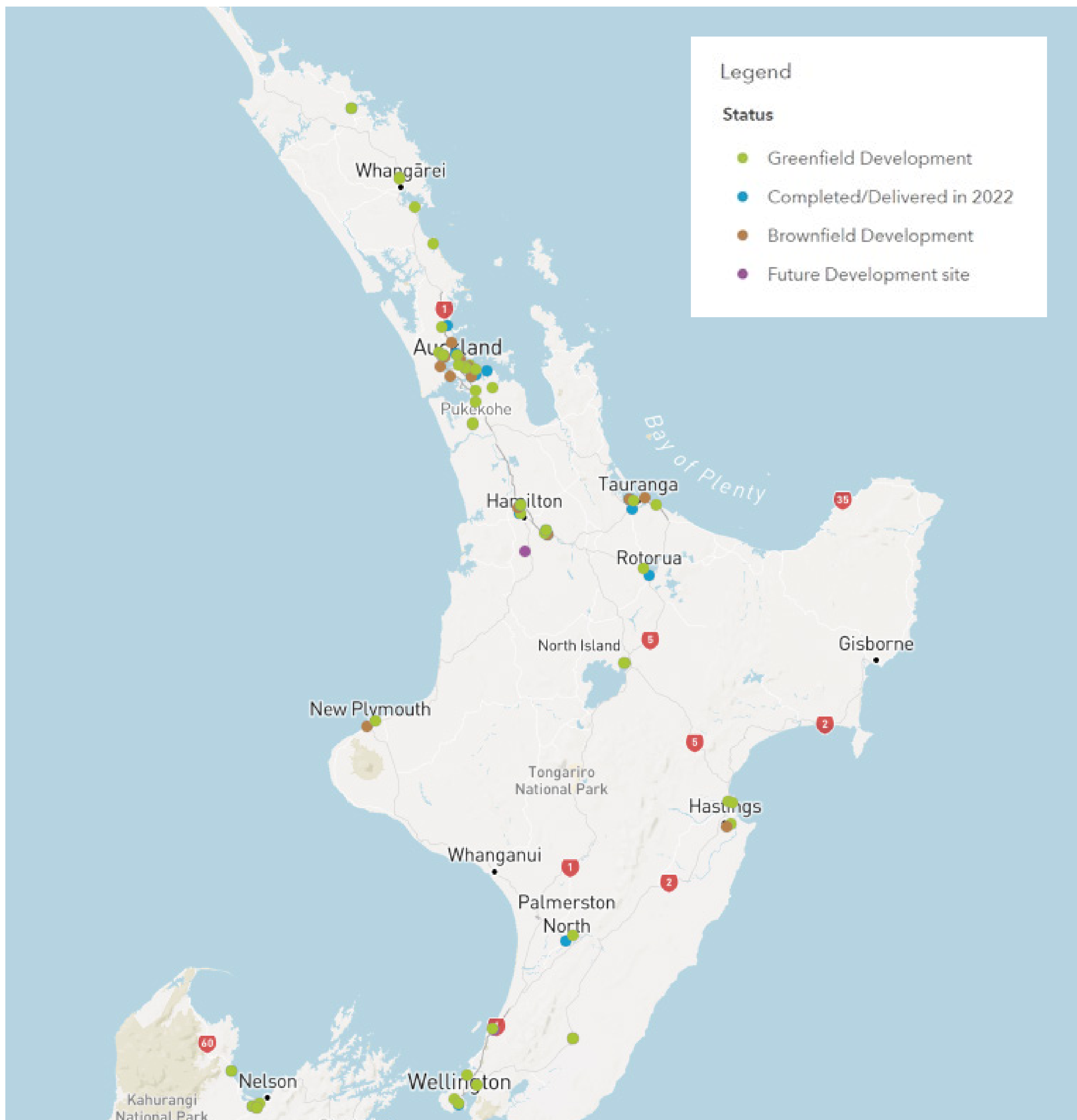


Source: JLL Research; Statistics New Zealand
Note: TNM stands for Tasman, Nelson, and Marlborough

When looking at forecast growth in the regions for the 75+ age group through to 2048, surprisingly Nelson is expected to have the largest growth of 3.27x, with Auckland being the next largest at 3.02x, and the lowest growth is forecast in Southland at 2.29x, and Marlborough at 2.38x.

The distribution of New Zealand's growing population will be reflected in new developments. The following four maps illustrate developments by the 'big six', segregated by type of development and operator. The first map illustrates that the majority of greenfield developments are in Auckland, and that most future development sites are located within the 'golden triangle'.

Map 1: Developments by the Big 6 – North Island – by status

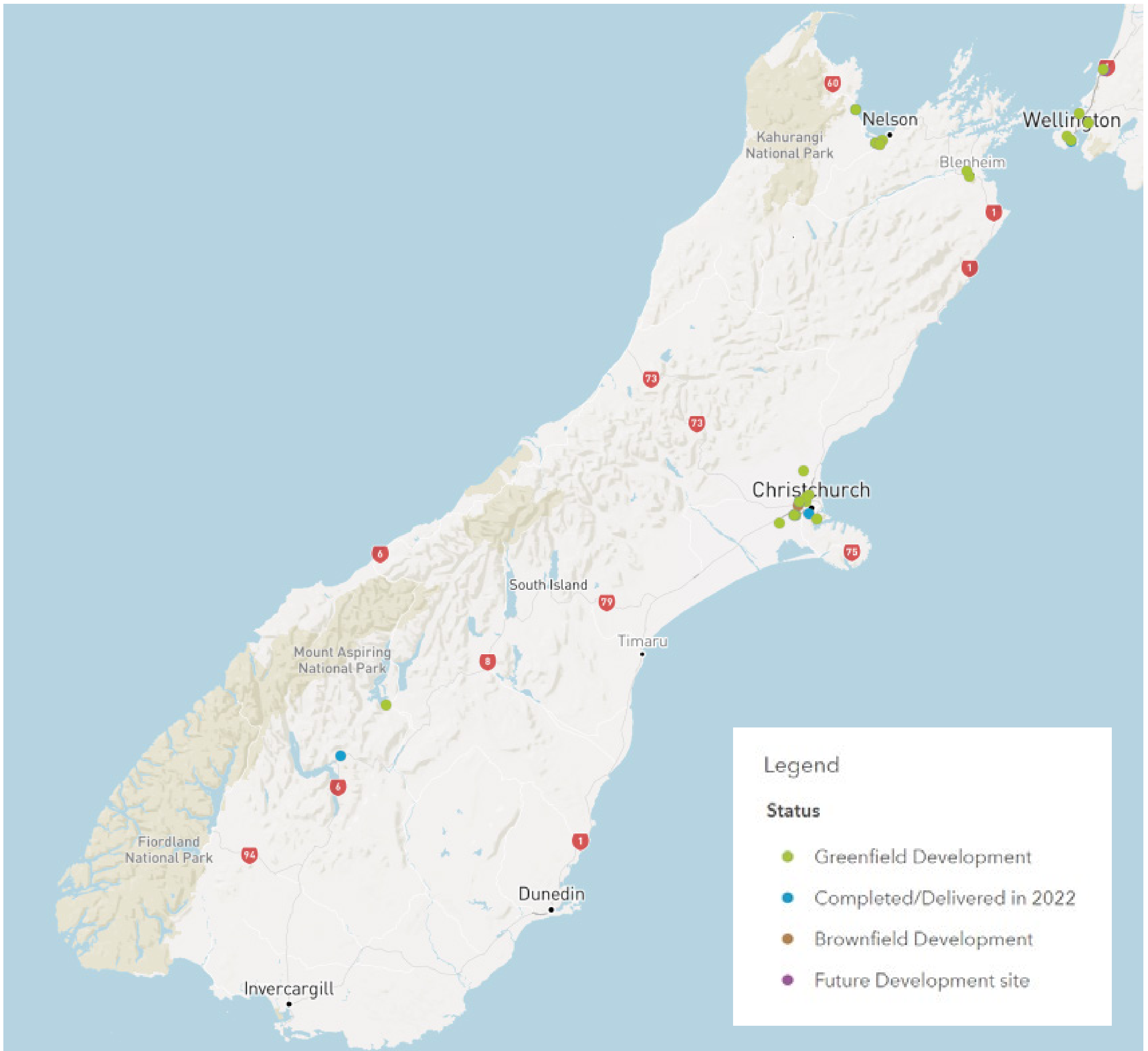


Source: NZRCD 2022; Annual reports 2021-2023

13

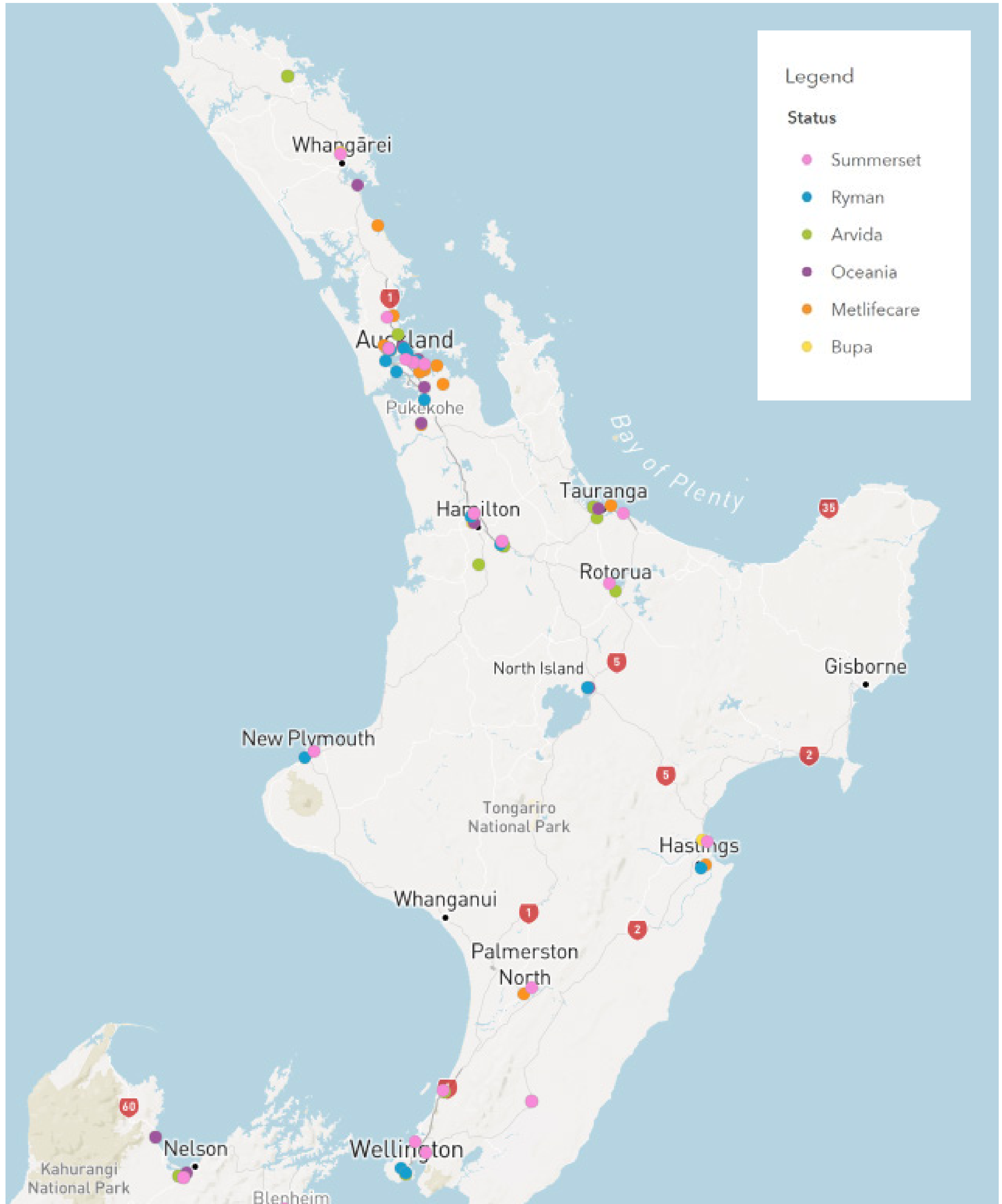
New Zealand retirement villages and aged care

Map 2: Developments by the Big 6 –South Island – by status



Source: NZRCD 2022; Annual reports 2021-2023

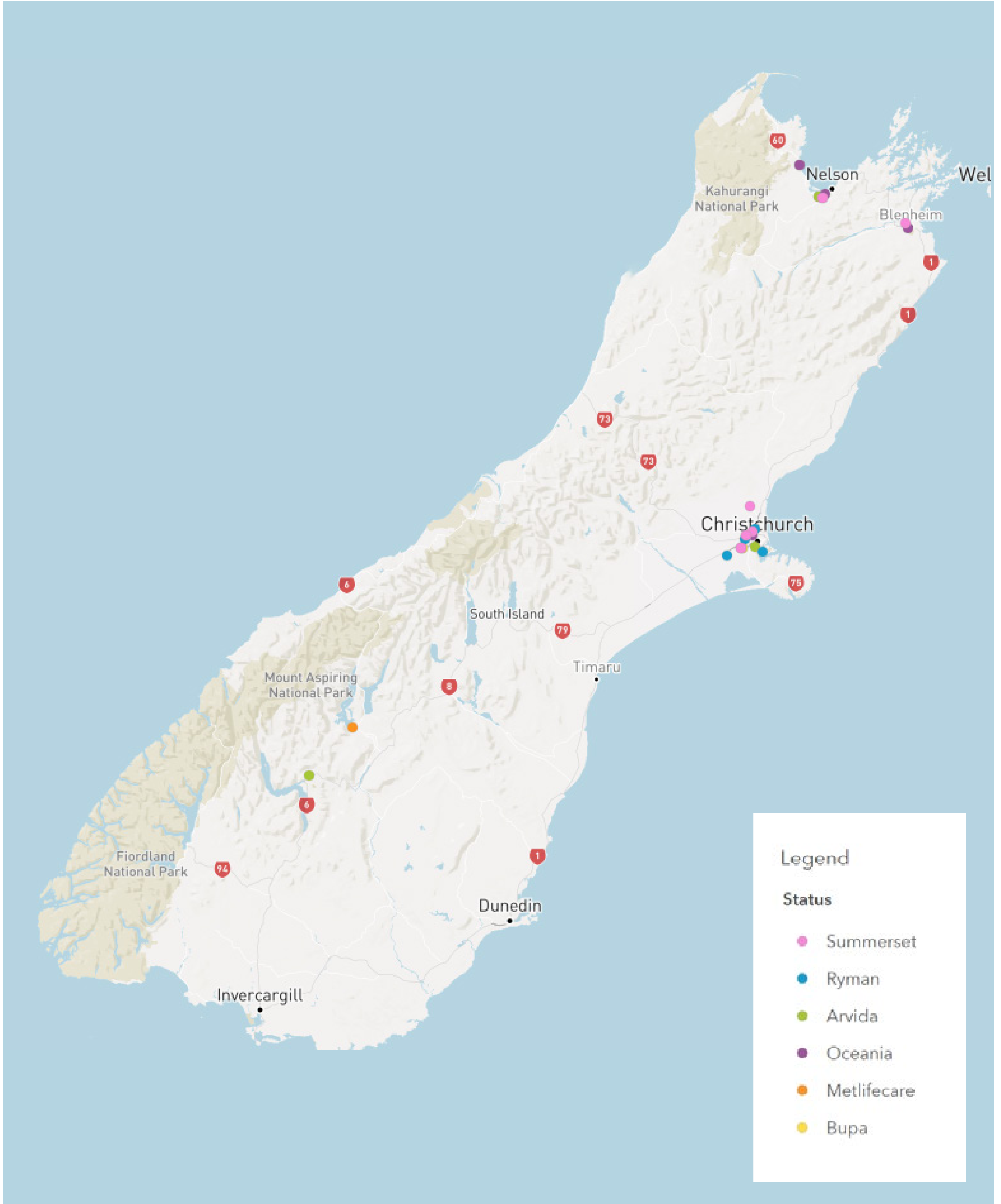
Map 3: Developments by the Big 6 – North Island – by operator



Source: NZRCD 2022; Annual reports 2021-2023

New Zealand retirement villages and aged care

Map 4: Developments by the Big 6 – South Island – by operator



Source: NZRCD 2022; Annual reports 2021-2023

Economic environment

The changing economic environment[2] is also impacting the retirement village sector – construction prices on the supply side and house prices on the demand side. On the supply side, inflation, which currently stands at 7.2%[3], is impacting construction costs. CoreLogic's Cordell Building Index, a construction cost index, registered a quarterly growth of 1.7% and an annual growth of 10.4% for Q4 2022[4].

On the demand side, the New Zealand median house price decreased in the last twelve months from $880,000 to $762,500[5], representing an annual decrease of -$117,000 (-13.6%), with sales volumes significantly down (-27.0%). The median days to sell increased by 17 days to 51 days[6] at the start of the year.

---

[2]These factors are discussed in more detail towards the end of the paper.
[3]As at December 2022.
[4]https://www.corelogic.co.nz/news-research/reports/cordell-construction-cost-index
[5]As at February 2023.
[6] As at January 2023.

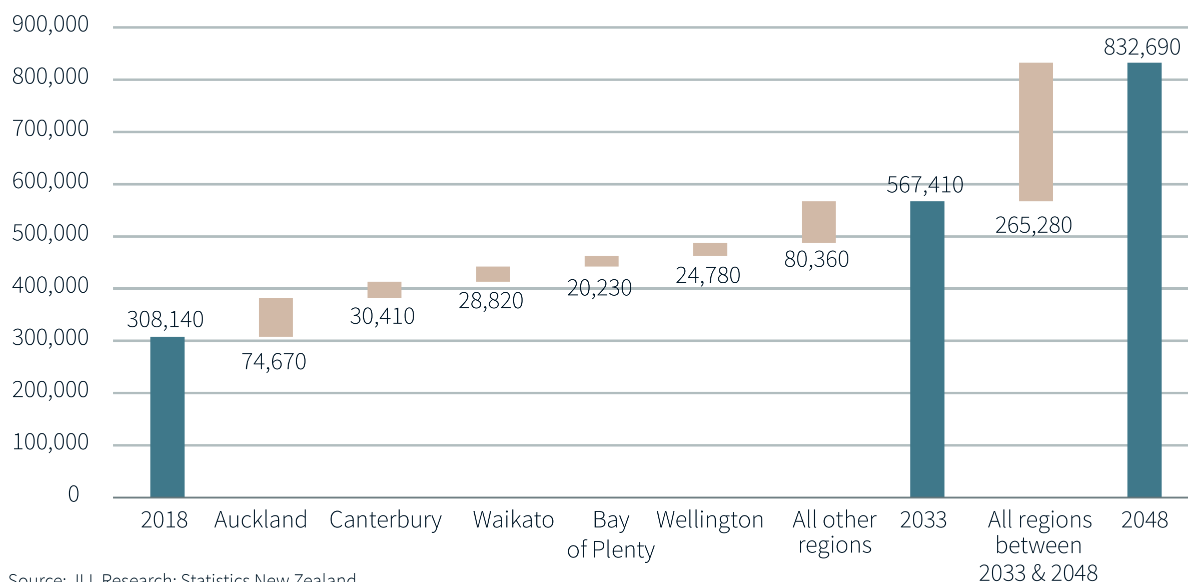
Demand forecasting

For our demand forecasting for developments to 2033, we forecast the population for the 75+ age bracket to be 567,410.

Figure 5 below shows the expected increases regionally in the 75+ years population across New Zealand, with the five largest regions identified separately.

We look at how this translates into unit demand later in this paper, as well as considering how the industry is providing units in response to this demand. Forecast population for 2048 is also shown below to demonstrate ongoing demand for retirement villages over the next 25 years.

Figure 5: 75+ population in 2018 and forecast to 2033 and 2048



Source: JLL Research; Statistics New Zealand

Retirement villages

4

Retirement villages

JLL's 2022 NZRVD identifies 452 villages, with 39,070 units. Based on a historical calculation of 1.3 residents per unit, this results in an estimated 50,791 residents currently in retirement villages. By comparison, JLL's 2021 NZRVD on the same calculation of residents per unit identified 425 villages, with 37,489 units, and an estimated 48,736 residents in retirement villages. The numbers indicate a 5-year rolling average increase of 1,854 units per year and a 10-year rolling average increase of 1,726 units per year.

Since our whitepaper series started in 2012, retirement village numbers have grown 31.8%, from 343 villages to 452 villages, and unit numbers have grown from 21,815 to over 39,000, an increase of 79.1%. The significant increase in unit numbers compared to the overall increase in village numbers reflects modern villages are larger in scale and intensified through extension or refurbishment.

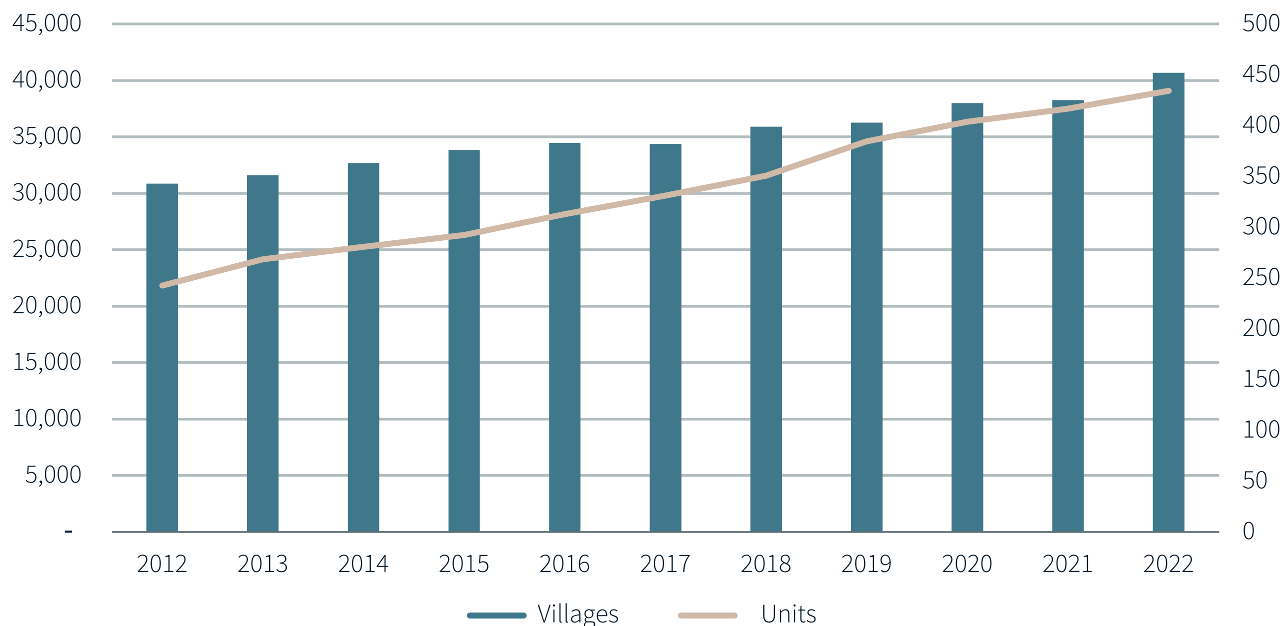
During 2022, there were several changes that impacted the numbers in the NZRVD:

- A total of 36 new villages were added to the development pipeline. While the number of units in several of these villages is not published, these will add a minimum of 1,800 units across the country. Some of the proposed larger villages include Summerset Rotorua (300+ units), Summerset Masterton (300+ units), Putaruru Country Estate Retirement Village (250+ units), West Melton Retirement Village (200+ units), Ryman Taupo (300+ units), and Arvida's Waikanae Beach (200+ units).
- 13 villages were delivered during the year. These included 1,615 units which were delivered by the 'big six'[7].
- Six villages previously reported under development have been removed as the land parcels have been sold and therefore initial plans have been cancelled.
- Construction began at Ryman's Northwood, which will accommodate 350 residents on a 12.9ha site. As well as having townhouses and apartments, it will feature 60 rest homes, a hospital, and dementia-care beds. Ryman has two more villages in the pipeline in the Christchurch area. It has resource consent to build a large complex in multi-storey buildings on Park Terrace in the central city. In Rolleston, Ryman also owns a 9.5ha site on Goulds Road in the Faringdon subdivision, where it plans to build a village for 280 residents.
- Christchurch has several other ongoing retirement village developments:
  - Qestral Corporation has almost completed building its Banbury Park complex on 14.0ha in Halswell. Banbury Park will have 191 free-standing houses, 42 apartments, and a rest home with hospital and dementia care plus a pool and restaurant.
  - In Rangiora, Summerset has bought a 9.0ha site on South Belt where it is planning a 300-home complex.
  - The first stages of Ashford retirement village in Prebbleton have been opened by Porirua-based operator Bupa, with 16 serviced apartments and a 56-bed care home due to open early next year.
- Arvida divested four villages with a total of 161 beds, 39 serviced apartments, and four villas.
- Oceania acquired Remuera Rise Village and Bream Bay Village, with an option to acquire 6.7ha of development land at Bream Bay.
- Metlifecare acquired Selwyn Village, as well as two retirement villages in Christchurch.
- Radius Care acquired a total of four villages from Ultimate Care Group.

[7] Which operators constitute the 'big-six' is explained below.

New Zealand retirement villages and aged care

Figure 6: New Zealand retirement village sector over time



Source: JLL NZRVD 2022

The following table illustrates the growth of retirement villages over the last five years:

Year	Villages			Units			Residents
	Total	Increase No.	Increase %	Total	Increase No.	Increase %	Number
2018	399	17	4.5%	31,545	1,744	5.5%	41,009
2019	403	4	1.0%	34,592	3,047	8.8%	44,970
2020	422	19	4.7%	36,345	1,753	4.8%	47,249
2021	425	3	0.7%	37,489	1,144	3.1%	48,736
2022	452	27	6.4%	39,070	1,581	4.0%	50,791
5-year average	**14**			**1,854**			

This shows an increase of 1,854 units each year **over the last five years despite the pandemic. There has been a 13% increase in the number of villages and a 24% increase in the number** of units over the last five years.

Retirement village and unit numbers by region

The Auckland region accounts for the majority of retirement villages in New Zealand, with 103 (22.8% of national total). Auckland also has the largest average village size (121 units per village) which is significantly larger than the national average of 78, therefore accounting for 32.0% of unit and resident numbers.

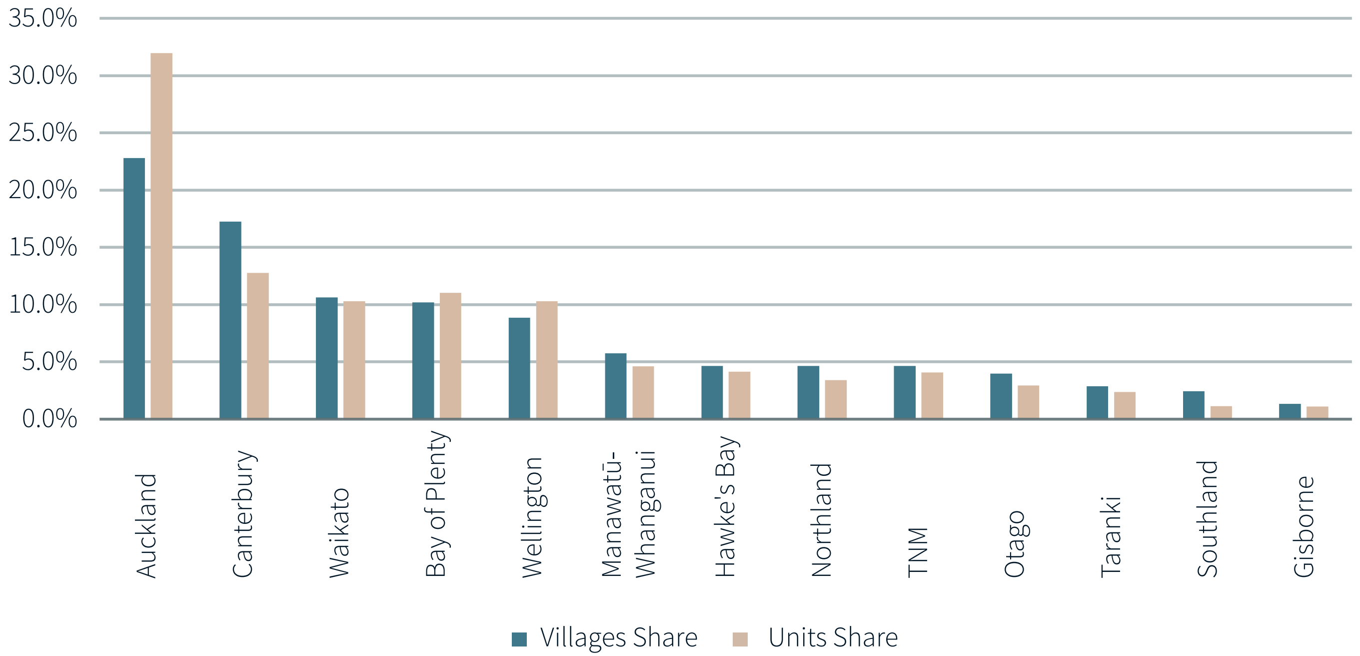
Canterbury has the second-largest concentration of villages with 78 villages (17.3% of the national total), however the average number of units in a village is smaller (64 units per village) so the Canterbury region accounts for 12.8% of the national unit and resident numbers.

Map 5: Retirement village unit distribution

Source: NZRVD 2022; ESRI

New Zealand retirement villages and aged care

Figure 7: Operating villages distribution by region 2022



Source: JLL NZRVD 2022
Note: TNM stands for Tasman, Nelson and Marlborough

Six large retirement village operators

The six largest retirement village operators – Ryman, Metlifecare, Summerset, Bupa, Oceania, and Arvida – the "big six" are significant players in the New Zealand retirement village market. Between them they hold an estimated 48% of villages throughout the country and 65% of the country's units.

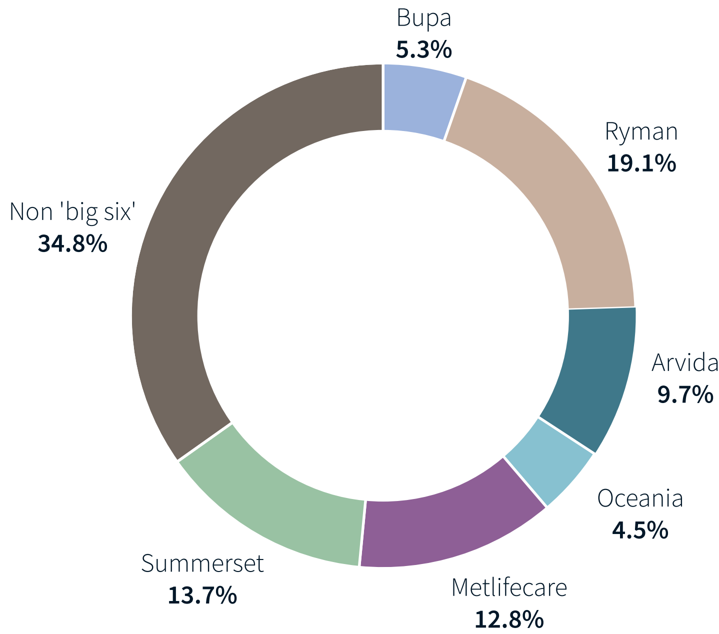
Ryman has the largest average village size at 197 units per village on average, with Summerset just behind at 162 units and Metlifecare with 143.

Most new villages opened by the 'big six' are larger, with around 200 units, as operators focus on economies of scale in terms of cost of construction and operating costs. Currently, average village size for the 'big six' is 119 units, average village size for the non-'big six' is 52, with the overall average retirement village size in New Zealand at 112 units.

Figures 8 and 9 below illustrate the proportion of the industry held by the 'big six'.

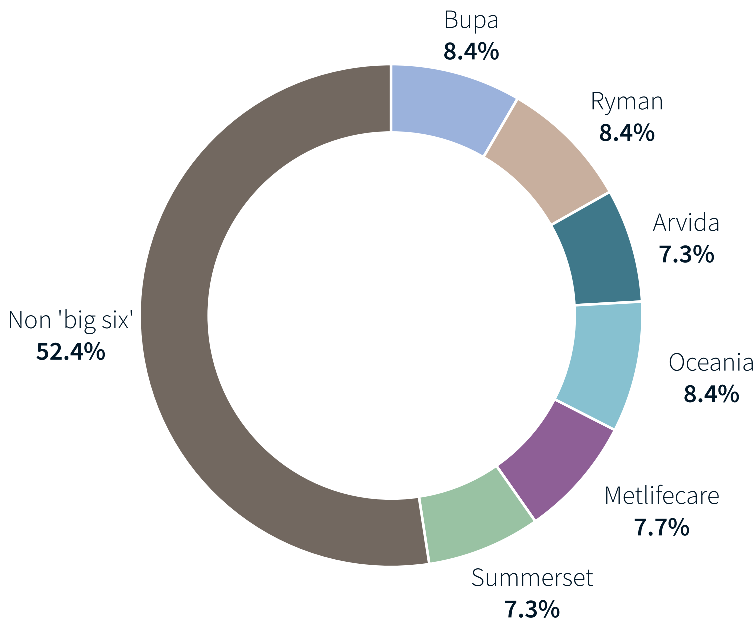
New Zealand retirement villages and aged care

Figure 8: 'Big six' percentage share of national total by unit



Source: NZRVD 2022

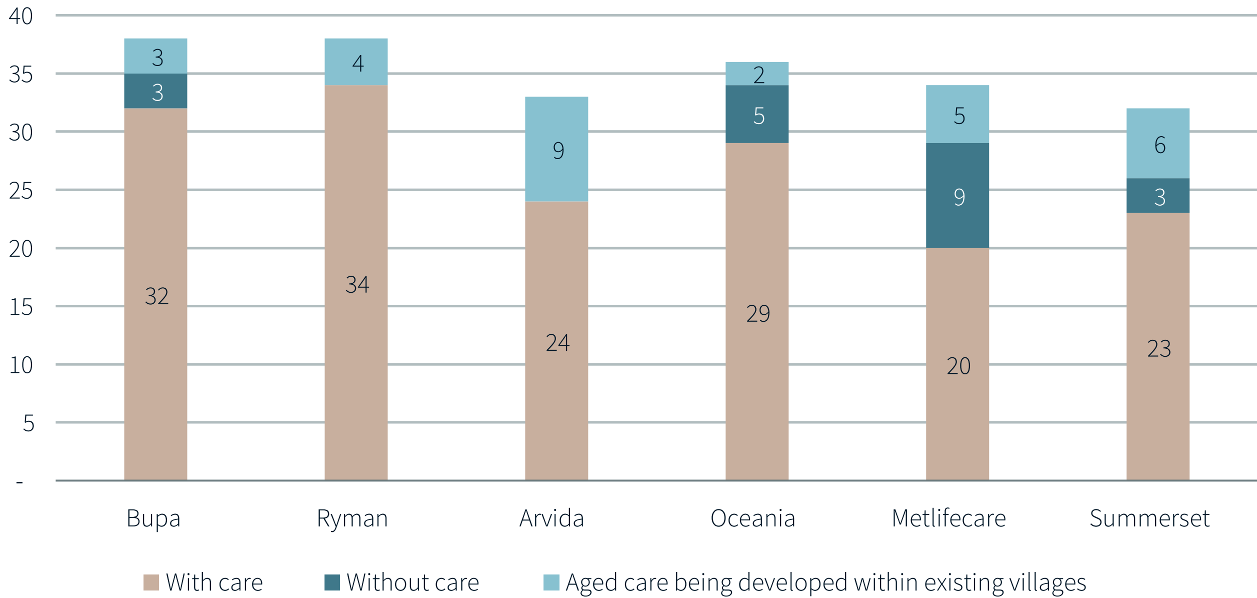
Figure 9: 'Big six' percentage share of national total by village



Source: NZRVD 2022

As identified in last year's paper, associated care facilities are now an important part of a retirement village's "continuum of care" so a resident can remain in the same village if their level of care requirements increases. As a result, 72% of the 'big six' operators have villages offering care. In comparison, Ryman has the highest proportion at 89% currently. Figure 10 highlights where the 'big six' have facilities without care currently, and which of these facilities have future plans for care.

Figure 10: 'Big six' villages aged care offering



Source: NZRVD 2022

The 'big six' retirement villages employ a total of ~19,560 staff and house ~45,420 residents. For 2022, the top three operators reported an occupancy rate of an average of 95% and an average length of stay for their residents of 5.28 years.

Other significant operators include Heritage Lifecare Group with 17 villages, Presbyterian Support with 10 villages, and Ultimate Care Group with six villages across the country.

Penetration rates

5

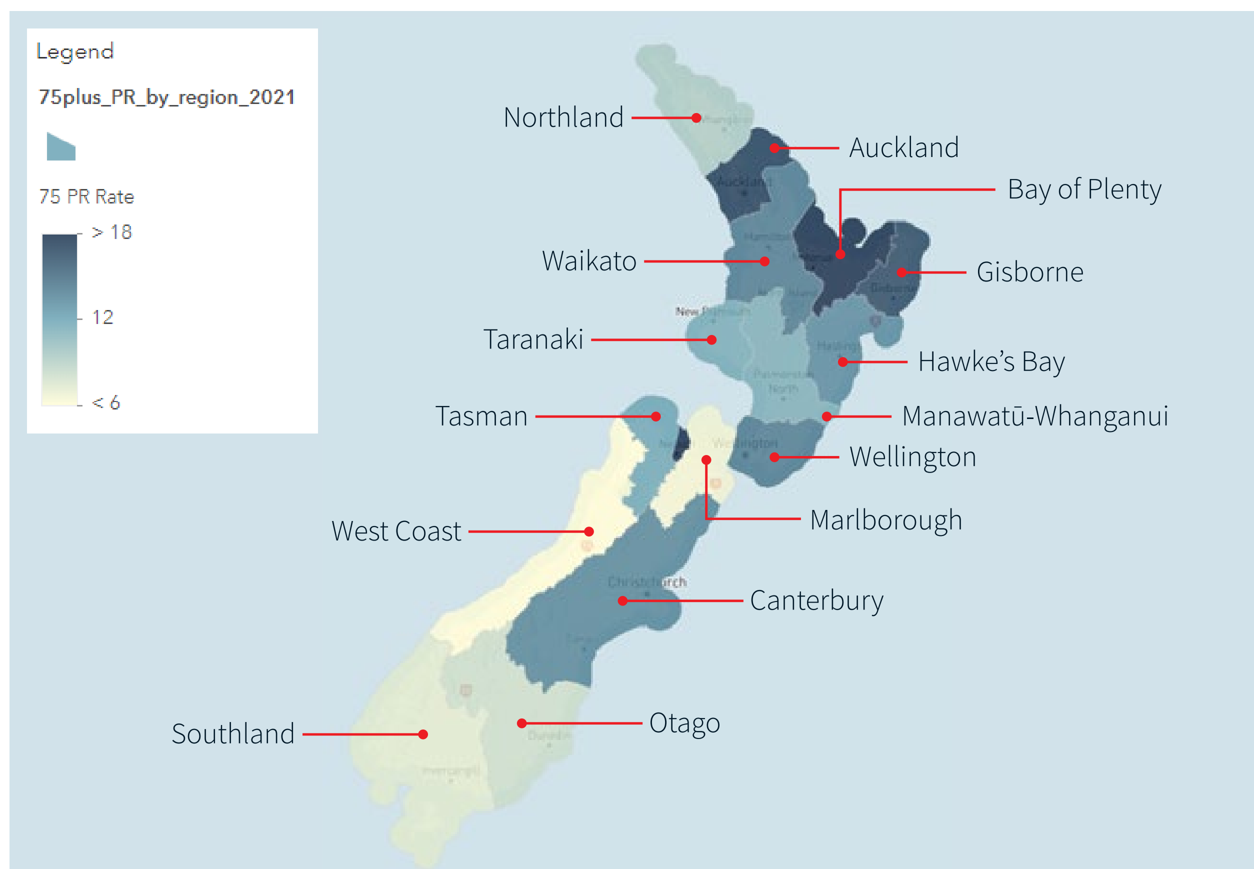
Penetration rates

Penetration rates (PR), which we define as the estimated resident numbers in retirement villages as a percentage of the 75+ years population, gives an indication as to the current demand for retirement village living, and is a key input to forecast future demand.

Overall, the national penetration rate is 14% with the highest regional penetration rates in the Bay of Plenty region (19%), followed by the Auckland (17%) and Gisborne (16%).

Overall penetration rate for the country has remained consistent from 2021 to 2022 at 14%, with only slight variation experienced by some regions. For example, the penetration rate for Canterbury marginally increased, from 13% to 14%, while for Gisborne, it marginally decreased, from 17% to 16%.

Map 6: Penetration rates by region in New Zealand



Source: NZRVD 2022; ESRI

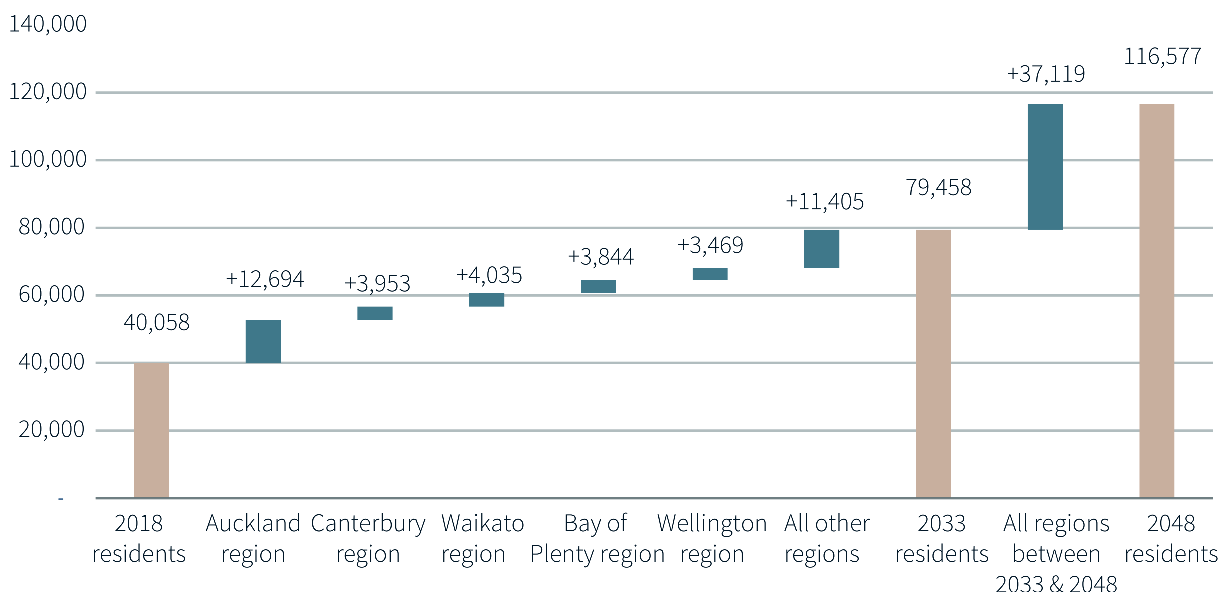
29

Using the regional penetration rates and combining these with the 75+ population forecast to 2033 (see earlier section), we have the expected resident numbers and can derive expected unit demand.

In Figure 11 below, we set out the expected growth in resident numbers (split out for key contributing regions) over the 10 years to 2033.

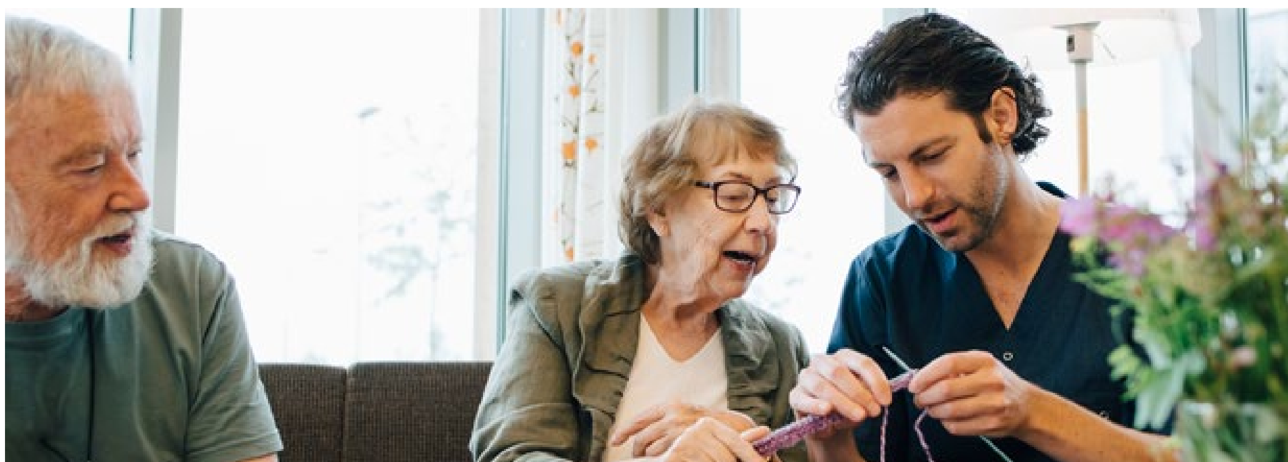
It is forecast that total retirement village population would be approximately 79,458 residents by 2033. Assuming the resident-to-unit ratio remains at 1.3, this would mean there would be demand for an additional 61,121 units by 2033. We discuss how this has generated a supply response by the operators below.

Figure 11: Forecast retirement village residents to 2033, then out to 2048



Source: JLL Research; Statistics New Zealand

In the next section we look at how the industry could deliver these units.



Retirement village development pipeline

6

Estimated development pipeline distribution 2022

As part of the NZRVD, we record development, actual and planned, to identify when competing supply is due to come online. The new supply is comprised of both extensions to, and/or refurbishments of existing villages together with the development of new villages.

There are 95 villages in the development pipeline, with 33 being existing villages with expansion or refurbishment plans. These 95 villages have capacity to deliver a total of approximately 24,770 units. These numbers include developments in all stages of development: early planning, in planning, and under construction.

The Auckland region has the largest share of the development pipeline with 29 villages underway, along with enhancements already started in 39 existing villages. This is followed by Canterbury with 14 new and 18 existing villages under development. For Waikato, these numbers stand at 14 new villages and 14 existing villages. Overall, these three regions capture ~55% of New Zealand's retirement village unit development pipeline.

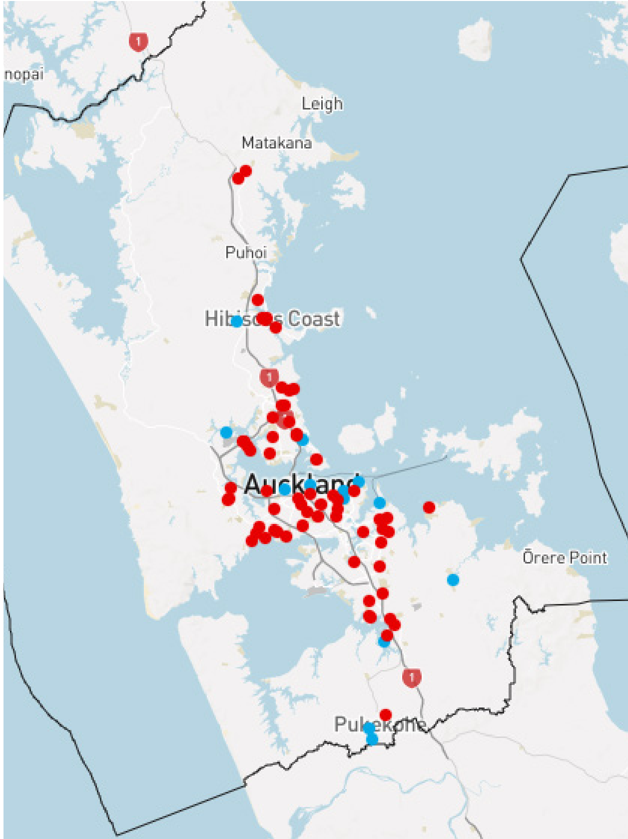
These three regions also make the largest contribution to New Zealand's estimated 75+ years population growth.

According to Statistics New Zealand forecasts for the 75+ year population growth to 2033, we see the Auckland region growing by the highest proportion (29% or 74,670 people), followed by Canterbury and Waikato contributing 12% (30,410 people) and 11% (28,820 people). Overall, these three regions make up 52% of the 75+ year population growth.

Map 7: Retirement village unit distribution

Source: NZRVD 2022; ESRI

Map 8: Retirement village development pipeline, Auckland region: Existing and new



Source: NZRVD 2022; ESRI

Auckland development 2021

New build · Existing

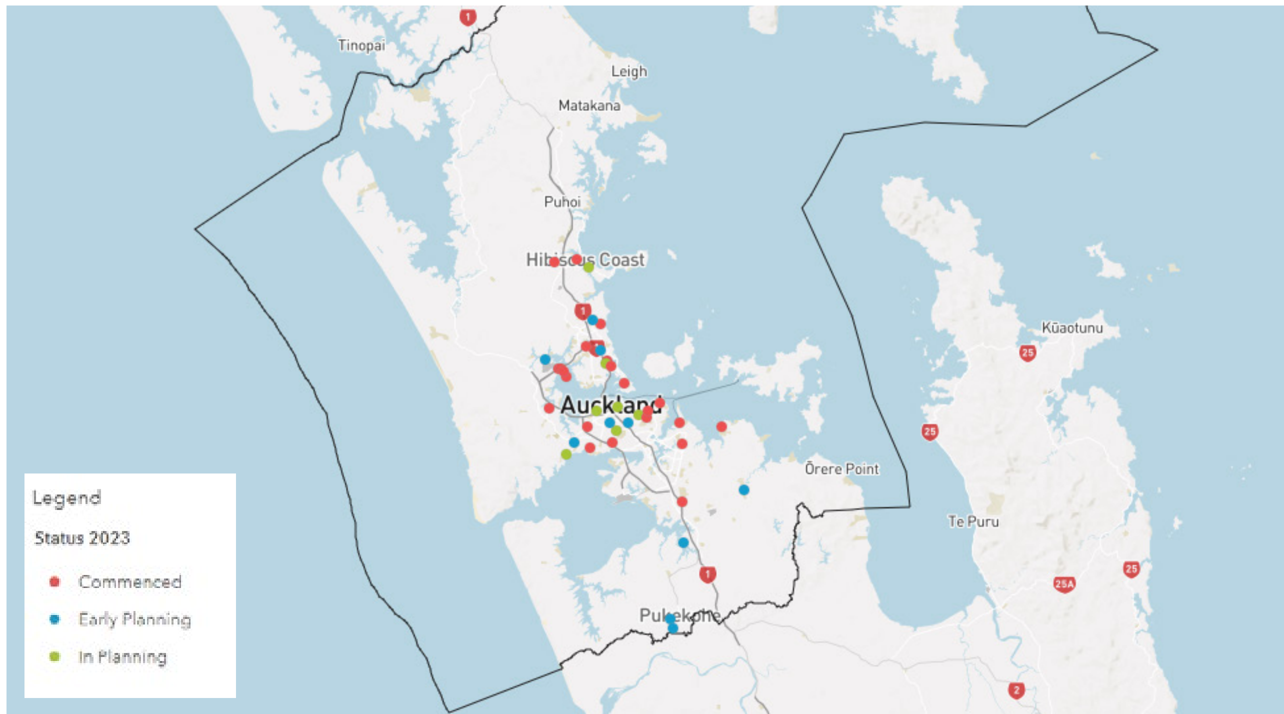
Map 9: Retirement village development pipeline: Status

Source: NZRVD 2022; ESRI

Status

Commenced · Early planning · In planning

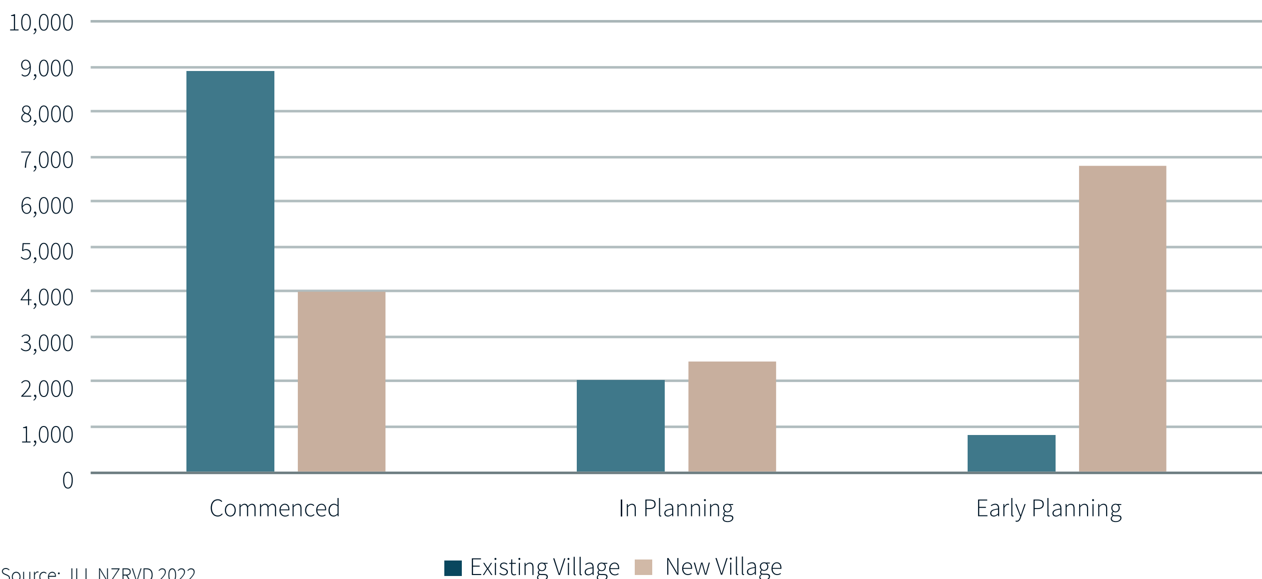
Map 10: Retirement village development pipeline, Auckland region: Status



Source: NZRVD 2022; ESRI

Figure 12 below shows that within the development pipeline, a greater proportion of extensions at villages have commenced construction, whilst the proposed new villages (which in total account for a larger proportion of development units) have a much lower proportion that have commenced, therefore a higher proportion are still in planning.

Figure 12: Development pipeline by status



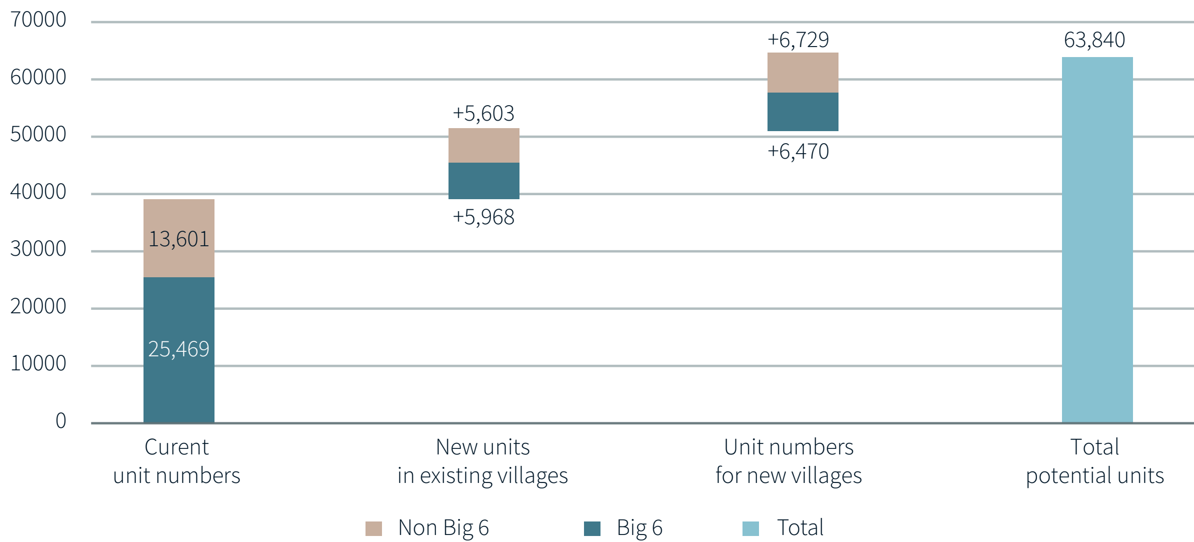
Source: JLL NZRVD 2022

35

Estimated development pipeline – six largest operators

The 'big six' operators are significant contributors to the development pipeline data. Together they have an estimated development pipeline of 11,259 units, of which 46% are located at existing villages and 54% at new villages.

Figure 13: Development pipeline split between 'big six' and 'non-big six'.



Source: NZRVD 2022

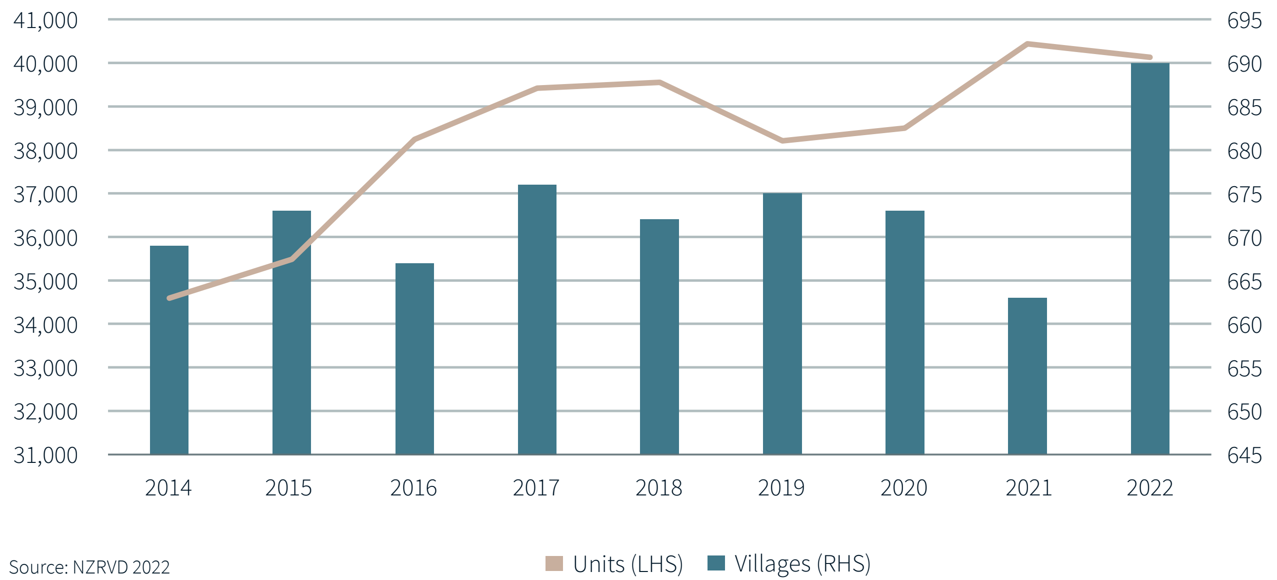
Aged care facilities 2022

7

Aged care facilities 2022

JLL's Aged Care database recorded 40,081 beds across 689 facilities. The figure below illustrates the New Zealand aged care sector over time:

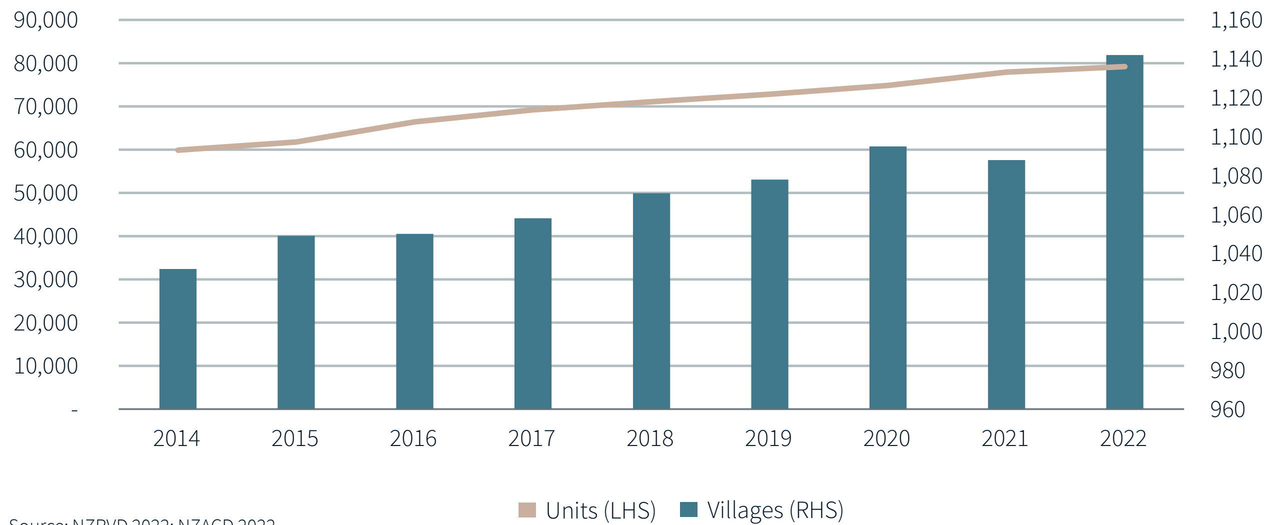
Figure 14: New Zealand aged care sector over time



Source: NZRVD 2022

The figure below combines Figure 6 and Figure 14 to illustrate the total number of units over time.

Figure 14A: New Zealand retirement village and aged care sectors over time



Source: NZRVD 2022; NZACD 2022

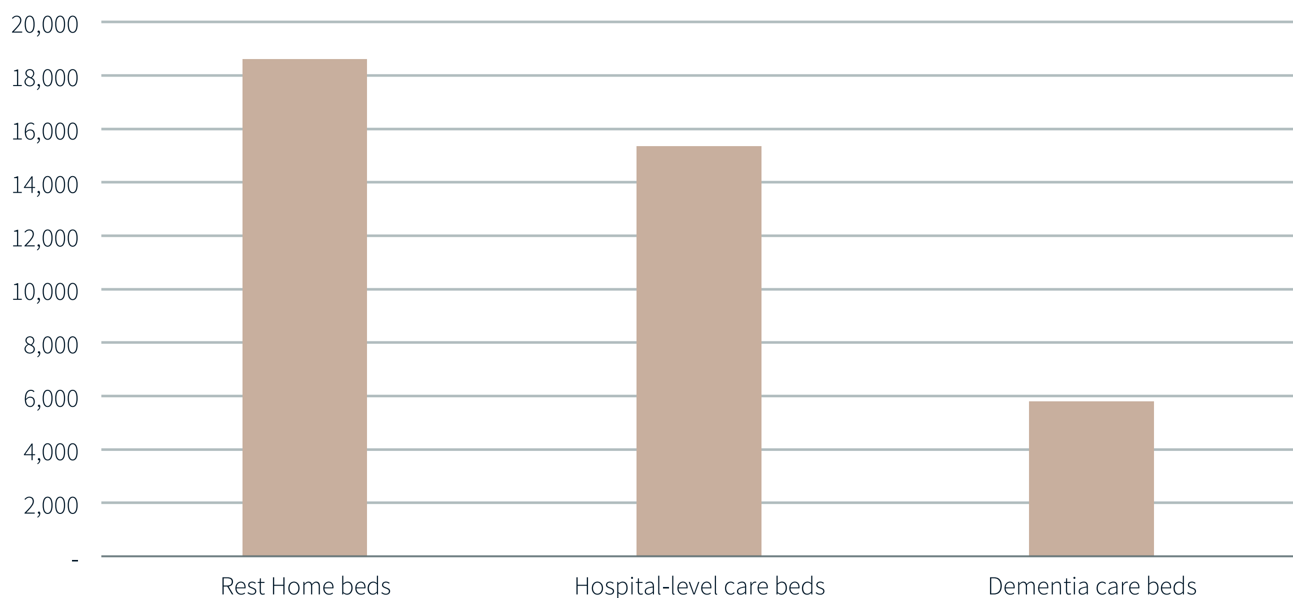
The distribution of aged care bed numbers by region is aligned with the distribution of New Zealand's population aged 85+ years. For example, the Auckland region had an estimated count of 22,520 residents aged 85+ years (27% of national 85+ population) as at the most recent Census. The Auckland region contains approximately 10,800 aged care beds, which also represents 27% of the national stock.

Figure 15: Regional distribution of care beds against population 85+

Source: JLL NZRACD 2022; Statistics New Zealand
Note: TNM stands for Tasman, Nelson, and Marlborough

These beds are divided into three types, as shown in the figure below:

Figure 16: Classification of aged care beds 2022



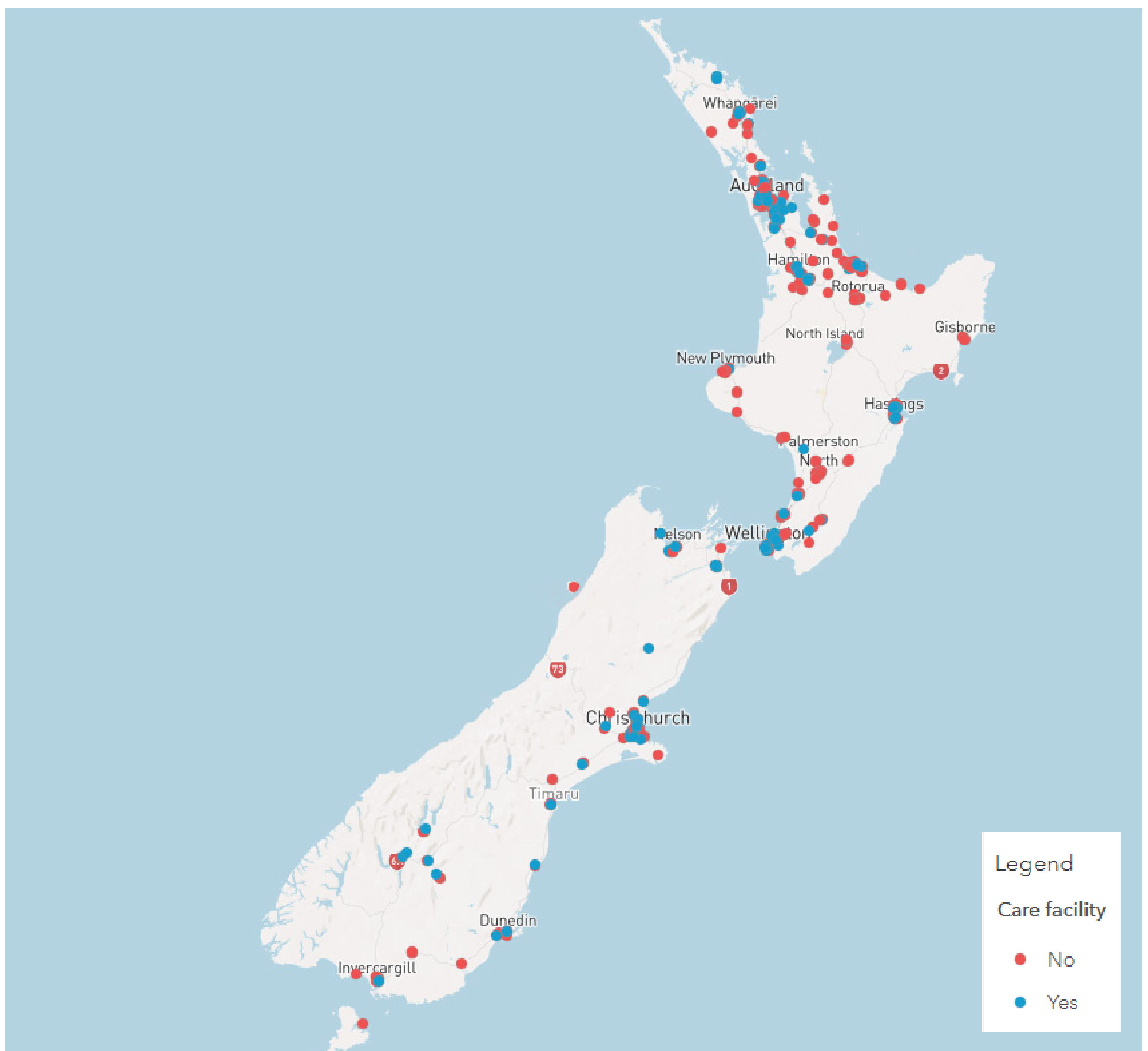
Source: JLL NZRACD 2022

39

Aged care facilities within retirement villages

Of the 425 villages identified within the NZRVD 2021, we estimate that 275 (65%) contain an aged care facility. Among the 'big six', 74% of villages contain an aged care facility.

Map 11: Retirement village unit distribution



Source: NZRVD 2022; ESRI

Future supply and demand

8

Analysis of future supply and demand numbers

Analysis of future supply and demand is based on the following assumptions:

01

Region-specific penetration rates as set out in the section above will stay consistent at least for the next 10 years with a country average of 14%

02

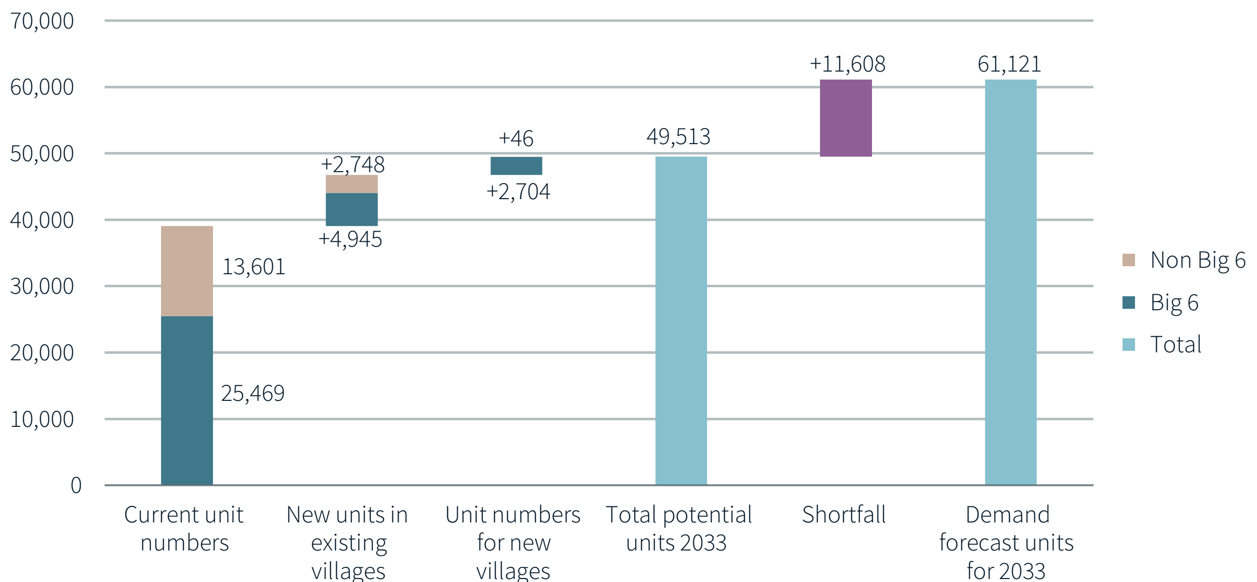
Unit to resident ratio of 1.3

03

The actual timing of developments is not overly transparent as to when these will be available for occupancy. We consider two scenarios: First, we consider whether those units which have commenced construction will be ready by 2033, and second, we consider whether those units which are currently under early planning or planning will also be ready by 2033

Considering only the units that have commenced construction (exclusive of aged care), we estimate there will be a shortfall of 11,608 units by 2033. This is based on the 10,443 units which are currently under construction to be ready for occupancy by 2033.

Figure 17: Comparison between forecast unit demand and commenced units

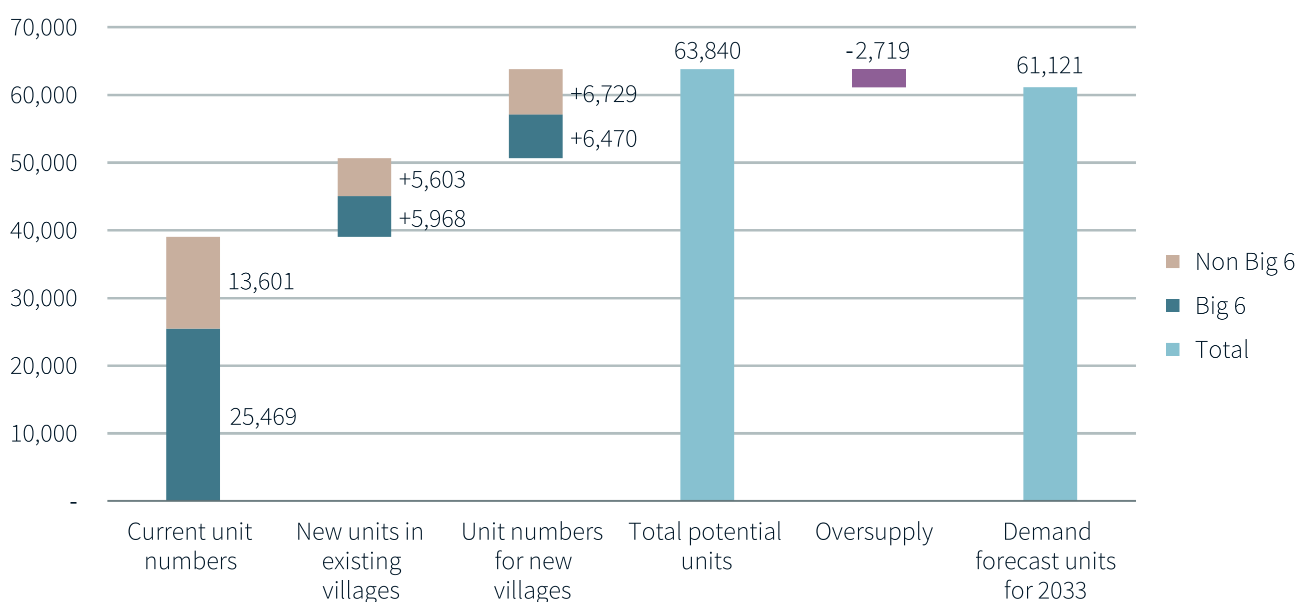


Source: JLL NZRACD 2022

However, when we add in the 14,327 units in 'planning' (categorised as planning or early planning), the forecast of new units increases to 24,770. Should all the 24,770 units be completed within the next 10 years, this would represent an oversupply of 2,719 units.

This raises the question of whether operators can develop 24,770 units in 10 years. Historically, over the last five years, the average number of units completed each year has been 1,854. Based on a similar completion rate, the risk of oversupply is not expected to occur, or at least be minimal.

Figure 18: Comparison between forecast unit demand and all units in development pipeline



Source: JLL NZRACD 2022

Demand beyond 2033

For the first time, we also analysed demand and supply up to 2048, that is, for the next 25 years. We use the following assumptions:

01
Units currently under early planning or planning stages will all proceed as expected

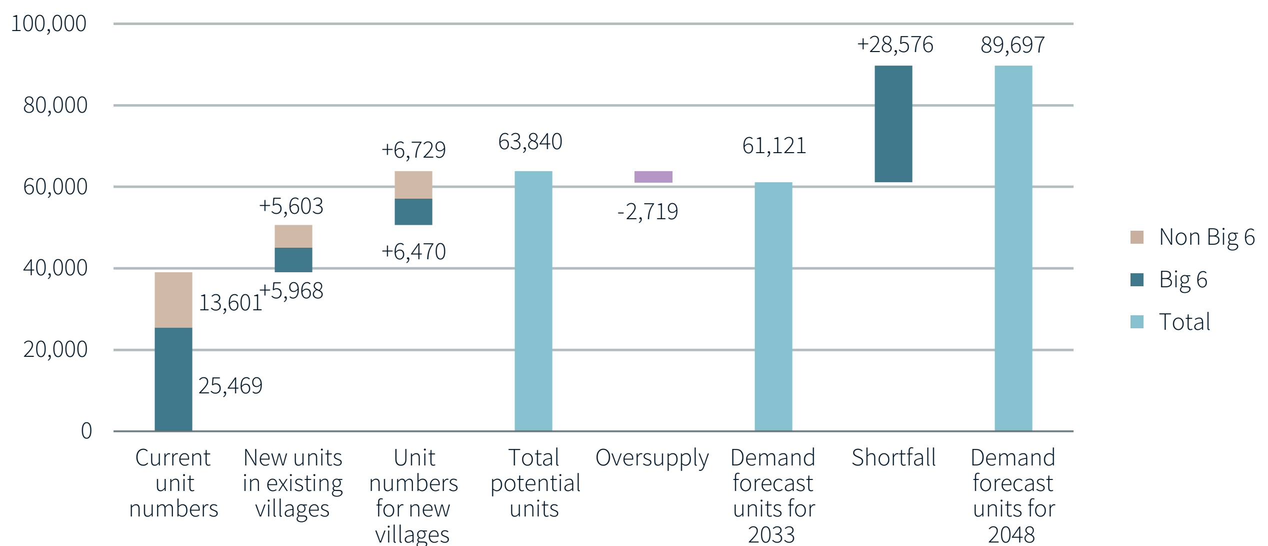
02
Resident-to-unit ratio will stay consistent at 1.3

03
75+ years population will be 759,630 (based on estimates by Statistics New Zealand)

04
For penetration rate, we consider two scenarios: First, we assume that it will stay consistent at 14.0%; and second, based on the trend that it has been marginally declining over the years, we assume it will drop to 12.8%

The following figure depicts that there will be a shortfall of 28,576 units by 2048.

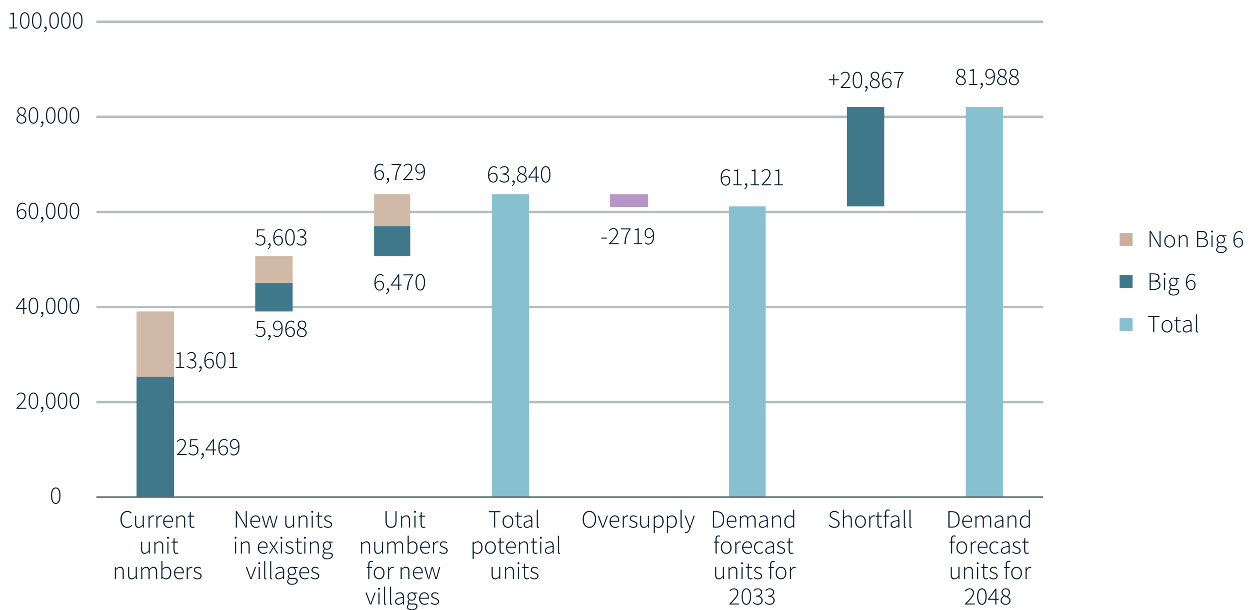
Figure 19: Comparison between forecast unit demand by 2048 at current penetration level



Source: JLL NZRACD 2022

The following figure depicts that even with a fall of penetration rate to 12.8%, there will be a shortage of 20,867 units by 2048.

Figure 19A: Comparison between forecast unit demand by 2048 at a lower penetration level



Source: JLL NZRACD 2022

Influencers of future supply and demand

- Factors impacting future demand and supply: Our demand analysis is based on population forecasts for 2033 and assumes that current penetration rates and the resident per unit ratio across the regions will continue to define the industry. As mentioned at the start of this paper, future supply and demand for retirement villages is influenced by economic factors in addition to the country's ageing population:

01

On the supply side, inflation, which stood at 7.2% is impacting construction costs. CoreLogic's Cordell Building Index, a construction cost index, registered a quarterly growth of 1.7% and an annual growth of 10.4% for Q4 2022[8].

02

On the demand side, the New Zealand median house price has decreased in the last twelve months from $880,000 to $762,500[9], representing an annual decrease of -$117,000 (-13.6%), with sales volumes significantly down -27.0%. The median days to sell increased by 17 days to 51 days[10] at the start of the year. The residential real estate market is expected to see further softening in house prices during 2023, driven by the tighter lending environment, higher interest rates, and low consumer and business confidence.

- As discussed in last year's paper, the introduction of care suites into new aged care facilities continues as a response to development feasibility constraints and growing demand for premium accommodation options from residents and their families:

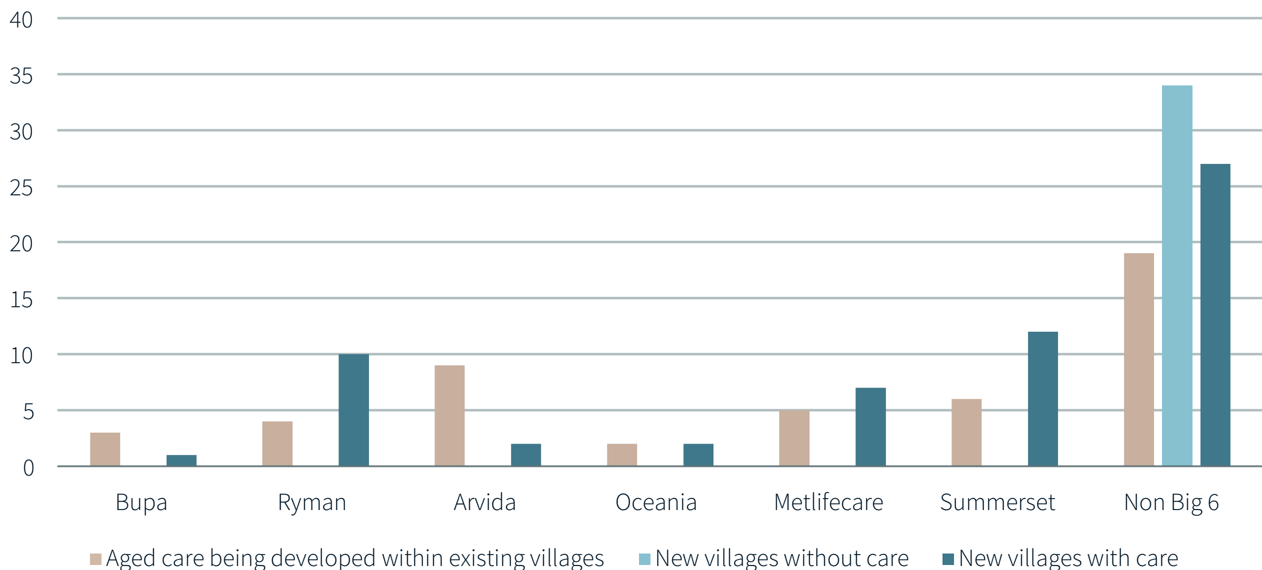
01

On the supply side, this is a strategic decision by operators of retirement villages who advertise on the basis that residents will not have to move to a different location in their later years if they require aged residential care services. However, a concern for any new integrated village will be the development cost of the care facility and the ability to run the operation profitably facing cost pressures and staff resourcing constraints. Construction of a village with a continuum of care comes with its own challenges

02

On the demand side, the call for care suites has already risen as older couples realise they can still live together if one or both require aged residential care services

Figure 20: Number of retirement villages within development pipeline

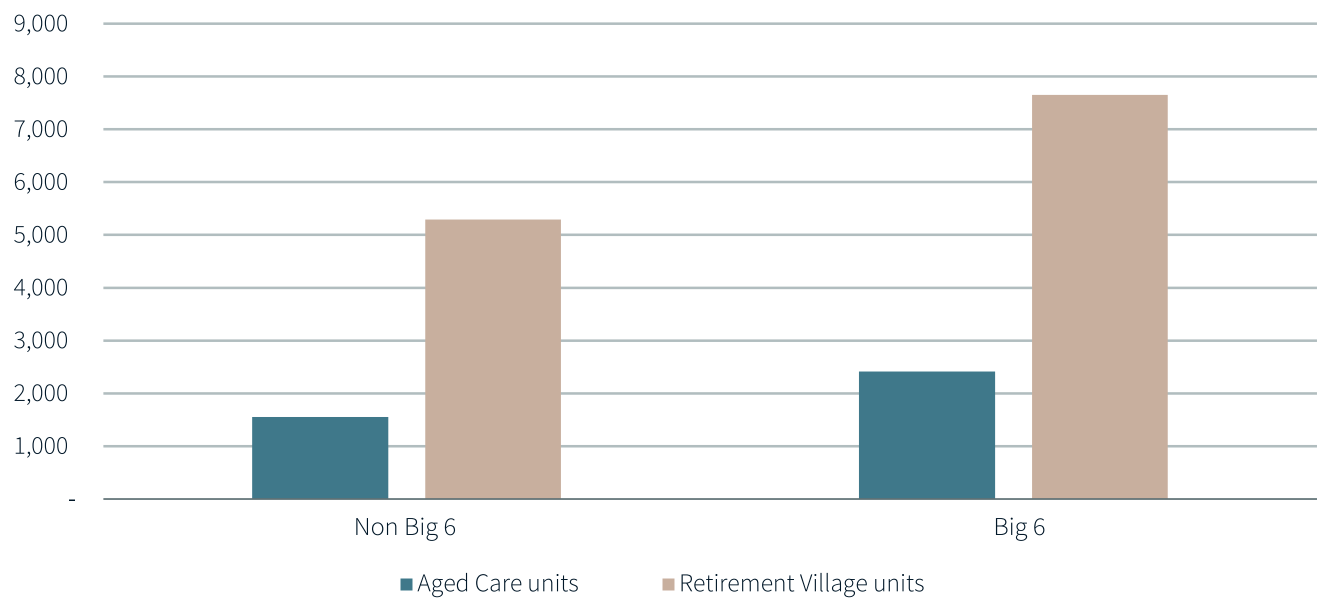


Source: JLL NZRVD 2022

[8]https://www.corelogic.co.nz/news-research/reports/cordell-construction-cost-index
[9]As at February 2023.
[10]As at January 2023.

- A comparison of the number of retirement village units versus the number of aged care units under development is shown below. In addition to the aged care units shown, there are 38 villages which have plans to add aged care units, but information on the number of these units was not available at the time of writing.

Figure 21: Retirement village versus aged care units within development pipeline



Source: JLL NZRVD 2022

- The 'big six' operators are seen to invest in Environment-Social-Governance (ESG) credentials, especially for their ongoing developments. For example:

01

Arvida has stated they will have best practice governance ready for FY24 Task Force on Climate-Related Financial Disclosures (TFCD) reporting

02

Metlifecare, Ryman and Oceania have all signed up to International Science-Based Targets Initiative (SBTi). Oceania plans to measure material scope 3 emissions inventory, has increasingly diverted rate of construction away from landfill, and will put out climate risk disclosures soon

03

Metlifecare's new development called Gulf Rise, based in Red Beach in Auckland, is 6 Green Star. It joined the Carbon Disclosure Project. In addition, it plans to build six new aged care villages with a 6 Green Star rating

04

Summerset's latest development is a net carbonised village, with 1,276 tonnes of construction waste diverted from landfill. It also reported a 16% reduction in $CO2$ emissions per $1 million of revenue against 2017 baseline. In addition, it has three new lightweight sustainable main buildings planned

New Zealand retirement villages and aged care

- Apart from ESG credentials, a number of developments by the 'big six' will be compliant with New Zealand's Healthy Homes standards:

01

Bupa's newest village, Foxbridge in Hamilton, has a Homestar L6 rating

02

73% of Arvida's portfolio meets gold standard ministry certification in accordance with the Ngā Paerewa Health and Disability Standard introduced in February 2022

03

All refurbishments for Metlifecare now follow Healthy Homes standard including LED lighting

Summary

The JLL Retirement Village team has a wealth of data, knowledge, and location analysis tools to deliver a range of services for the retirement village industry. JLL recognises that the retirement village and aged care industry in New Zealand is world-leading, and plays an important social role, providing communities for New Zealand's ageing population as well as contributing to the nation's general economic growth through jobs and investment.

The development and completion of the NZRVD and NZRACD whitepaper for now 11 years, together with the efforts undertaken by JLL's Retirement Village team in compiling the NZRVD and NZRACD, has allowed us to provide greater transparency and understanding of various important influences affecting New Zealand's retirement village industry to all stakeholders. We hope this whitepaper proves to be a valuable resource and we look forward to discussing the findings with industry participants.

Conclusions and key takeaways

1 Retirement villages across New Zealand continue to deliver new units to meet increasing demand, however demand will continue to challenge forecasted future development numbers

2 New Zealand's ageing population will continue to support present and future demand for retirement villages

3 Even with a challenging economic backdrop, this is not expected to materially impact future supply for retirement villages

4 The market share of the 'big six' operators has remained high and is expected to continue given their growth and development strategies. The 'big six' operators help raise awareness of the retirement village product, which benefits the industry as a whole. Niche operators can provide bespoke products catering to local markets

5 The aged care market provides a key part of the continuum of care that is offered by the private sector, however any significant reduction in this investment has the potential to impact future demand for hospital care/services from the public sector. We continue to monitor the introduction of care suites in villages

References

Leaving No One Behind in an Ageing World: World Social Report 2023. United Nations, Department of Economic and Social Affairs.

Cordell Construction Cost Index: Measuring the rate of change of residential construction costs. CoreLogic.

JLL Retirement Village team

Research Team

Gavin Read
Head of Research, New Zealand
gavin.read@jll.com

Hina Imran
Senior Research Analyst
hina.imran@jll.com

Value And Risk Advisory Team

Glenn Loraine
Director, Value and
Risk Advisory
glenn.loraine@jll.com

James Smithies
Associate Director, Value
and Risk Advisory
james.smithies@jll.com

Nigel Fenwick
Director, Value and Risk Advisory
nigel.fenwick@jll.com

Stephen Campen
Director, Value and Risk Advisory
stephen.campen@jll.com

Capital Markets Team

Jonathan Ogg
Head of Capital Markets
New Zealand
jonathan.ogg@jll.com

JLL Auckland
Level 16, HSBC Tower
188 Quay Street
Auckland 1010
+64 9 366 1666

JLL Wellington
Level 1, Bell Gully Building
40 Lady Elizabeth Lane
Wellington 6011
+64 4 499 1666

JLL Christchurch
Ground Floor, Iwikau Building
93 Cambridge Terrace
Christchurch 8013
+64 3 375 6600

© 2023 Jones Lang LaSalle IP, Inc. All rights reserved. All information contained herein is from sources deemed reliable; however, no representation or warranty is made to the accuracy thereof.

JLL SEE A BRIGHTER WAY

jll.nz

Appendix 5

SENSE PARTNERS
UNCOMMON KNOWLEDGE

16 November 2023

Review of MartinJenkins report

Purpose

The Retirement Villages Association commissioned Sense Partners to review the overall approach and key assumptions in the MartinJenkins (MJ) 2023 **cost-benefit analysis on proposed changes to the Retirement Villages Act 2003**.[1]

Key points

Some elements of the approaches adopted by MJ to quantify costs and benefits are broadly reasonable. But we have identified several important weaknesses.

A key weakness is that the MJ report does not adequately consider the potential outcomes and risks of unintended consequences of the proposed changes – financial stress for marginal operators, higher costs and less choice for residents, and reduced investment.

Sensitivity testing is lacking. The MJ report quantifies the effect of some very limited alternative policy scenarios. But our testing shows results are *highly* sensitive to modelling assumptions.

The MJ report does not make any allowance for the impact of the Association's *Blueprint*. The latter asks the sector to voluntarily adopt many of the proposals being analysed. We understand there is already a high adoption rate, which may increase in time. This means proposed legislative changes may have only limited or no benefits to counter the added costs.

In conflict with standard practice in cost-benefit analysis, the MJ report includes transfers (or estimated returns on such transfers to vacating residents). It is only a minor aspect of the quantified financial impact of the proposed maximum repayment timeframes. But we consider the reader cannot rely on the quantified estimates of the proposals on interest payments and stopping weekly payments.

The qualitative assessment of benefits and costs raised questions for us. For example, we do not follow the logic of the MJ assessment that maximum repayment timeframes would:

- increase incentives for operators to speed up the relicensing of units – operators already have strong incentives to relicense quickly to start earning management fees
- give operators greater certainty – instead, they may *reduce* certainty, as repayments before units are relicensed may need to be based on estimates of market value.

[1] https://www.hud.govt.nz/assets/Uploads/Documents/RVA-Consultation/Cost-benefit-analysis-on-the-RVA-review-large-text.pdf

Proposals being evaluated

The MJ cost-benefit analysis covers five proposals related to payments and one proposal on dispute resolution:

- a maximum timeframe to repay residents after vacating units
- payment of interest on capital sums after a given timeframe
- stopping weekly fees once a unit is vacated
- treating capital gains the same as capital losses in determining repayment[2]
- stopping the accrual of the deferred management fee once a unit is vacated
- changes to dispute resolution.

Key concepts to frame the review

Cost-benefit analysis of a legislative or regulatory proposal seeks to identify whether its benefits to society exceed the costs.

Efficiency vs equity

Cost-benefit analysis considers the efficiency impacts of a proposal – whether it promotes:

- the supply of goods and services of a certain standard at least cost
- the optimal allocation of society's scarce resources given their costs and consumers' preferences and budgets
- investment and innovation over time.

This analysis excludes transfers – the redistribution of dollars between individuals or businesses.[3] This is because a transfer from one person to another does not change the *real* use of resources in the economy; the loss of one is cancelled out by the gain of the other. Inappropriately, however, the MJ report does include transfers in its calculations – specifically estimates of the value of returns on such transfers. This goes against the fundamental economic principle that we cannot presume to *know* how much any individual values an extra dollar compared to another individual (and so little can be said about their efficiency impacts).

---

[2] This proposal and the following one were not evaluated in the MJ report.

[3] This is a well-accepted principle in conducting cost-benefit analysis. For example, see:

- page 10 of the Treasury's guide on cost benefit analysis (referred to in the MJ report): https://www.treasury.govt.nz/sites/default/files/2015-07/cba-guide-jul15.pdf
- page 58 of the United Kingdom Treasury's Green Book: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063330/Green_Book_2022.pdf

Depending on the topic, redistribution can be of interest to policymakers for equity reasons, which is why policymakers may seek a distributional analysis. But this is separate from estimating efficiency impacts, which is what cost-benefit analysis is about.

Compared to what?

Policy proposals are often assessed relative to what would happen under current policy settings – the status quo. MJ's report references the *Blueprint for New Zealand's Retirement Villages Sector*, but its modelling of the status quo does not appear to make an allowance for it.

This is odd as the Blueprint calls for the sector to voluntarily address the issues targeted by the proposals – such as paying interest on outstanding amounts or stopping weekly fees once a unit is vacated. We understand the adoption of such practices is already high among RVA members.[4] But MJ's report implicitly assumes that the Blueprint will have zero effect, and thus likely overstates the size of any problem and the benefits, and maybe costs, of addressing it.

Dealing with uncertainty

Inevitably, the MJ report relies on assumptions. This introduces uncertainty in modelling. This is normal, but it is good practice to analyse the sensitivity of results to assumptions.

The MJ report includes only some rudimentary sensitivity analysis – taking some assumed low and high value for one modelling assumption (such as solvency threshold, or number of complaints). But it presents little or no evidence to inform those choices. Other assumptions are not tested at all, but we find results are highly sensitive to these other assumptions.

Subsequent outcomes and risks of unintended consequences

The MJ report includes some brief comments that increases in operator costs could flow through to resident charges. But the flow-on effects on consumers and operators have not received adequate attention. If costs cannot be passed on to residents, then a reduced rate of return could dampen future investment in units. And some operators may struggle to finance the proposed changes, threatening their ongoing viability. Ultimately, these effects could negatively affect competition, consumer access, and choice.

The five proposals related to payments appear to cover matters that are, or could be, resolved through the Occupation Rights Agreements. That would offer operators and residents the flexibility to agree to terms and conditions that best match the capabilities, circumstances and preferences of both parties.

A downside of using legislation is that it is less flexible, and so could stifle adaptation and innovation. That may cause residents to be worse off in the long run. Repayment before the sale price is confirmed may create new issues. Such potential costs were not considered.

---

4 RVA, June 2023. *An update on the retirement village sector's Blueprint*.

Review of the MartinJenkins CBA of proposals

Mandatory timeframe to repay

A mandatory repayment timeframe would require operators to hold more reserves, which comes at a cost.

Overall approach

We were able to replicate MJ's calculations and broadly agree with the approach taken to modelling these costs, subject to several issues as set out below.

MJ's estimates differ from PwC's estimates prepared in 2022 for the RVA, for obvious reasons. PwC assumed repayment after 28 days of a resident vacating their unit, whereas the MJ report considers repayment after 6 or 12 months. The latter naturally reduces the volume of cases where payments would be made before vacated units are relicensed.

The MJ report also aggregates costs over 10 years, expressed in present values by applying a 5% discount rate. The latter is consistent with Treasury guidance.

The choice of a 10-year timeframe is not explained. Treasury guidance prefers whole-of-life valuations, as shorter periods could understate impacts. However, a longer valuation timeframe increases the degree of uncertainty around key assumptions. As there is no major difference between the timing of costs and benefits, the choice of a 10-year timeframe does not seem to distort the results in any major way.

The cost of capital assumption is important

The MJ report agrees with PwC that reserves would likely be equity-funded. But it adopts a lower cost of capital (10%) than the cost of equity that was assumed by PwC (13%).

MJ takes 10% from PwC's 2022 Cost of Capital report. However, the latter is concerned with the weighted average cost of capital (WACC), that is, equity and debt not just the cost of equity which usually exceeds the cost of debt. In any case, except for Arvida, the WACC of listed aged care providers is 11%+. And it seems reasonable to assume that on balance smaller, unlisted operators face a higher cost of capital.

Whatever the appropriate assumption for the cost of capital might be, the key point is that the assumption has a material impact on the estimated cost, and thus should have been subject to sensitivity analysis. For example, using 13% increases the 10-year present value cost of option 1A (6-month maximum repayment timeframe, with a 3-12 month solvency threshold) by approximately a third, from $265m-$1,103m to $364m-$1,454m.

Inappropriate treatment of transfers

The MJ report also estimates the value to the resident of getting their capital sum returned earlier than expected under the status quo.

We consider that the MJ's approach is inappropriate as it:

- *assumes* residents benefit from being able to put their money in a term deposit (earning 3% per year) sooner
- *omits* the offsetting loss to the operator of the 'cost-free' use of this money (opportunity cost of 10-13%?).

Whatever the right rate of return or opportunity cost might be[5], as noted above, transfers should be excluded from social cost-benefit analyses. Further, as a fundamental economic principle, we lack knowledge about who would benefit more from an additional dollar, stymying interpersonal comparisons.

In the context of the proposal being analysed, the impact on the result from this inappropriate treatment of transfers is small, however.

Other economic costs

Given the potential cost impact, this option also warranted comment on the subsequent economic impacts.

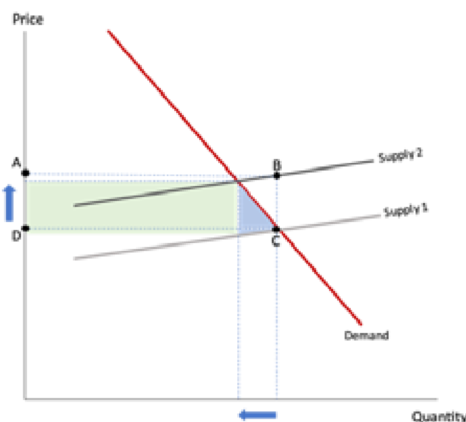
It seems reasonable to assume that, to maintain their margins, operators would try to raise prices. This may reduce demand for units, all else constant.

If operators cannot raise prices, reduced margins would discourage investment in units and put marginal operators out of business. This would reduce supply, all else constant.

The MJ report does make some minor qualitative comments along these lines, but these effects are not explicitly captured in the quantitative analysis and appear underdone.

If price and volume effects are small, it may be reasonable not to quantify them, but that judgement should be made explicit. If the price and volume effects are likely to be material, then these should be estimated, including any 'deadweight losses'. See Figure 1.

FIGURE 1



The figure (not to scale) shows an increase in costs of supply (Supply 1 to Supply 2).

MJ's estimate of cost is represented by rectangle ABCD – possible if demand was not responsive to price (the demand line would then be vertical).

If demand were responsive to price (as shown), quantity consumed would reduce (as would-be residents select alternative accommodation).

After this adjustment, the proposal's cost (increase in resources used) is shown by the green box plus the blue triangle which is the deadweight loss.

---

[5] Based on the treatment in other options. Assuming reasonably efficient capital markets, the presence of such material differential in rates suggests estimated returns are not risk-adjusted.

Results are sensitive to assumptions about volumes and sale price growth

We note that the 10-year projections that underpin the MJ report assume an 8% annual growth in the number of units and a 5% annual growth in the sale price (with reference to recent trends). We have not verified these assumptions but note they have a material effect and should have been subject to sensitivity testing too.

For example, halving the growth rates would take the present value cost estimates for option 1A down 8%, from $265m-$1,103m to $243m-$1,010m.

Similarly, the analysis should have revealed the sensitivity of the result to MJ's assumption of a 10% 'capital adequacy buffer' (which increases the potential proportion of units that take longer than 6 months to relicense, from an assumed 23% to 33%).

The reason for this buffer in addition to the solvency thresholds is unclear. We consider the 3- and 12-month solvency threshold scenarios already deal with uncertainty about how much operators may need to pay ahead of relicensing. Setting the assumed buffer to 0% would reduce the cost of option 1A by 30% (to $185m-$769m).

Qualitative assessment raises questions

The qualitative assessment of unquantified benefits seems to consider mostly relevant effects.

However, we do not consider it credible that a mandatory repayment time would increase incentives for operators to maintain and improve villages or generally hurry up the sales process.

Our impression is that operators already have strong incentives to relicense units as quickly as possible. This is because it allows them to charge new deferred management fees and weekly fees sooner than if they go slow.

It also seems a stretch to assume that operators would benefit from greater certainty provided by a requirement to repay within a certain timeframe. The requirement shifts price risk from the vacating resident to the operator. That is, the operator faces greater *un*certainty.

Payment of interest on capital sums

The MJ report estimates the cost of paying interest on outstanding capital sums after a certain time. The interest rate paid to residents is assumed to be 3.15% p.a., with operators funding these payments from more debt (assumed to cost 9.4%). The proposal increases the cost of delivering retirement village services.

While the incidence of this increase in costs is unclear, the costs will be shared by residents and operators, through some combination of increased charges, lower quality, and reduced margins. Increased charges would likely dampen demand, and reduced margins would discourage investment, compared to the status quo.

We note that there is evidence that a high proportion of RVA members already make compensatory payments if the capital sum remains unpaid for any period, and this proportion could increase over time.[6] This means the additional impact of legislating for it may be small.

We are unsure about the calculations underpinning table 14 in the MJ report.[7] We have not been able to replicate the numbers based on the assumptions and data set out in the report.

However, we do not think it appropriate to subtract from the cost estimate some estimate of the return on the funds transferred from operators to residents (for reasons discussed above).

Stop weekly payments

Our comments on this are similar to those set out directly above. The estimated impacts over 10 years, which are small, are solely related to transfers.

We note that the sector is also already implementing this proposal voluntarily.

Dispute resolution

We were able to (more or less) replicate the status quo costs cited in the MJ report. The approach to making this estimate seems reasonable (though an analysis of the sensitivity of results to assumptions used is missing).

Some assumptions used to estimate the costs of the different proposals seem arbitrary.

The key assumption is the assumed increase in complaints due to a new dispute resolution approach. This can have a major effect on modelled costs. The costs of Option 2 for example range between +$3.5m (or +47%) to +21.2m- (+276%) depending on the impact on complaints volumes.

Uncertainties around other values (average cost of, for example, mediation or legal costs) are not considered in the sensitivity analysis.

The options have different start dates (eg option 2 starts at year 2, option 3 at year 3). This makes the costs of option 3 look relatively cheaper, making it hard to compare the present value of options (eg table 21).

Option 2 is said to save legal costs (p60), by 50% per case according to the appendix. But the same paragraph on p60 then states that legal costs increase, as does table 24 on p61. The numbers in the text do not align with the numbers in that table. It is unclear whether this is an editorial slip or represents issues with the estimates.

---

[6] RVA 2023, op cit.

[7] If vacating residents present value return on invested funds at 3.15% (p77) is $66.8m, it implies they were paid (and invested) a present value of $2,210m. But a present value $70m cost to operators suggest a cost of borrowing of 3.3% ($70m/$2,210m), rather than the 9.4% cited.

The qualitative assessment needs to be taken with a grain of salt (table 22). For example:

- strong effects are assumed in terms of reduced stress or increased satisfaction. There could be some effect, but no evidence is cited to back up the strength of this effect
- some increases in operators' productivity are assumed due to changes in and streamlining of complaints processes. However, any productivity effect could prove illusive as operators would still need to understand the facts of and appropriate response to all complaints, *and* MJ assumes the number of complaints to increase compared to the status quo
- somewhat greater cohesion among residents is assumed, but it seems a stretch to assume that, when disputes between residents are serious enough to require outside help, the method of dispute resolution would improve cohesion among residents.

MJ comments on p55 that commissioners would generally be government-funded because they provide a public good, like health services. However, we consider dispute resolution services are in fact a private good, since they are clearly rivalrous and excludable.

It is possible that the authors simply mean that there is merit in spreading the cost of the dispute resolution services across all residents and operators who may use it – like insurance or club membership fees. There may or may not be merit to this, but it cannot be declared. Government funding would take these insurance or club-fees concepts a step further, and socialise the costs of commissioners among all tax-payers. The MJ report does not offer reasons why this would be appropriate.

END

Appendix 6

RVA
NEW ZEALAND
Retirement Villages Association

Best Practice Guidelines for Disclosure of Right to Transfer to Care in a Retirement Village

Regulation 31 of the Retirement Villages (General) Regulations 2006 sets out the requirement to make various disclosures relating to moving into a rest home or hospital care institution in a retirement village. The RVANZ recommends that the following disclosures should as a minimum be addressed when complying with this Regulation.

1. Whether the retirement village shares premises with or includes as part of the village a rest home and/or hospital care institution.

2. Whether the retirement village operator offers a resident the right to move from the village to a rest home and/or hospital care institution located elsewhere, whether owned or operated by the operator, an associated party or a third party.

3. If the operator answers yes to either question 1 or 2 or both above, describe the care levels currently offered in the relevant care institution, e.g. rest home, hospital, dementia or psychogeriatric.

4. State the total number of rooms and how many rooms are currently available in each care category.

5. Whether a resident has priority over non-residents to move to the care institution.

6. Whether an independent assessment required before a resident can transfer to the care facility? If not, explain that a resident will not be able to access subsidies administered by the government.

7. Whether a resident is obliged to pay any additional resident funded charges in addition to the daily care fee set in the Territorial Local Authority. If yes, describe the charges, e.g. daily premium room charges or a capital payment for an occupation right agreement.

8. If an independent resident elects to purchase an occupation right agreement in the care institution explain the key financial terms, e.g. whether a transfer policy is applicable.

In addition, where relevant, all operators must ensure that their ORAs comply with clauses 24 and 25, Retirement Villages' Code of Practice.

Appendix 7

ORA Relicensing Data Report

Retirement Villages Association

October 2023

Methodology

- The RVA sent an excel spread sheet template to all villages on their data base and requested them to insert their data on ORA relicense times for 2022. The completed spread sheets were then sent to Primary Purpose for analysis.
- ORA units that were in scope for this study needed to be empty in 2022 and relicensed within 2022.
- The unit may have become empty in 2021 but if they were still empty at the start of 2022 they qualified. Also, if they became empty at any time during 2022, they were included. However, we excluded from calculations any ORAs that remained empty at the end of 2022 (this is to avoid double counting as these units will then fall into the 2023 data calculations). From the 85 retirement village businesses that participated in this research there were:
  - 352 individual retirement villages with a total of 33,971 ORA units
  - 4,947 of these were empty at the start of 2022, or became empty during the year
  - 3,042 of these units were relicensed in 2022.

Note on rounding:

- All numbers are shown rounded to zero decimal places. Hence specified totals are not always exactly equal to the sum of the specified sub-totals. The differences are seldom more than 1%.

Summary of findings - Time taken to re-license ORA units

Six-month relicense rate remain steady with previous years

- Across New Zealand, 74% of ORA units that were empty in 2022 and relicensed within that year were reported as being re-licensed within six months, this is down from 77% reported in 2021 but is similar to the 75% figure recorded in 2020.
- The fastest six-month re-licensed rate of ORAs was reported in the Otago/ Southland region (89% down 2% from the previous year). This was followed by the Hawkes Bay/ Gisborne region where 84% (down 3%) of units were re-licensed within six months.
- The Auckland region reported the lowest six-month ORA re-licensed rate of 63% (however this is up 9% from the previous year). The next slowest rate was reported in the Nelson/ Marlborough/ Tasman/ West Coast combined region with a six-month re-licensed rate of 67% (down 20%).
- Auckland and Canterbury were the only two regions where the six-month re-licensed rate improved this year. Auckland (up 9%) as already reported and Canterbury up 6%. This is the reverse of last year when these two regions were the only ones to report a drop in their six-month re-licensed rate from the previous year.

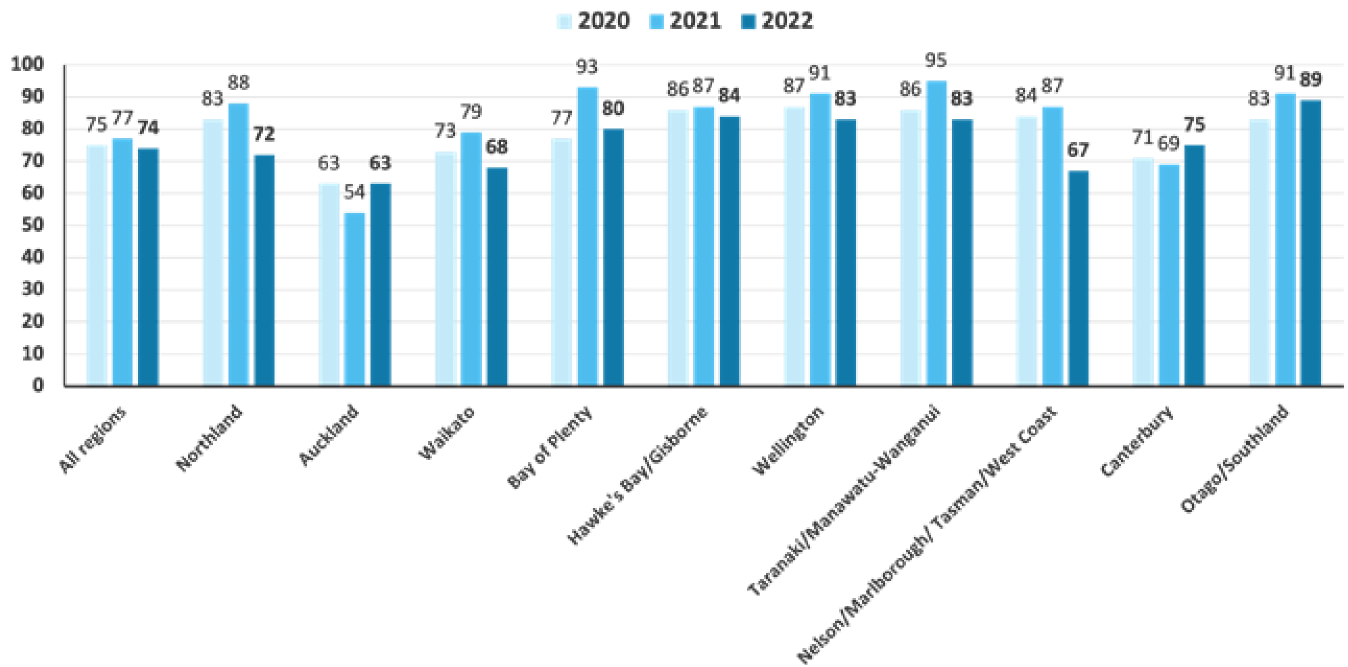
Main reasons for ORA re-license rate taking longer than six months

The four main reasons for ORA units taking longer than six months to settle in 2022 were:

- ORA units for relicensing were less appealing than others in the village/ new apartments impacted on sale of older units (20% of mentions down 4%).
- An increased supply in their region/ competitive market (19% up 4%).
- Low number of enquires (13% - was not mentioned in the 2021 data and was 4% of mentions in 2020 data).
- A range of issues leading to applicant holding up the sale such as failed to sell their own home/ a health event/ longer settlement/ changed their mind/ held up estate and probate issues (12% down 3%).

Percentage settled in less than six months– comparing 2020/2021/2022 - Out of those relicensed and settled in each year

For the units that were under an ORA how many were re-licensed within each of the following time periods?



Note: *The total population for deriving percentages are based on units that were either empty at the start of 2022 or became empty during that year –but also re-licensed within 2022. Any units that were not relicensed at the end of 2022 were excluded from the percentage calculation.*

Base: All respondents (n=1,692)

Time taken to settle ORA units during 2022 (Out of units re-licensed in 2022)

For the units that were under an ORA that were empty at the start of 2022 or become free during that year how many were re-licensed within each of the following time periods?

Region	In less than 6 months		More than 6 months	
	n=	%	*n=*	%
All regions (n=3042)	***2239***	**74%**	***803***	**26%**
Northland (n=83)	***60***	**72%**	***23***	**28%**
Auckland (n=953)	***601***	**63%**	***352***	**37%**
Waikato (n=269)	***184***	**68%**	***85***	**32%**
Bay of Plenty (n=304)	***242***	**80%**	***62***	**20%**
Hawke's Bay/Gisborne (n=178)	***149***	**84%**	***29***	**16%**
Wellington (n=372)	***307***	**83%**	***65***	**17%**
Taranaki/Manawatu-Wanganui (n=230)	***192***	**83%**	***38***	**17%**
Nelson/Marlborough/Tasman/West Coast (n=122)	***82***	**67%**	***40***	**33%**
Canterbury (n=368)	***277***	**75%**	***91***	**25%**
Otago + Southland (n=163)	***145***	**89%**	**18**	**11%**

Note: *The total population for deriving percentages are based on units that were either empty at the start of 2022 or became empty during that year –but also re-licensed within 2022. Any units that were not re-licensed at the end of 2022 were excluded from the percentage calculation.*

Summary of reasons for ORAs taking longer than six months to re-license

Summary of reasons for ORA's taking longer than six months to re-license

What are the range of reasons for these ORA units taking longer than six months to re-license?

Reasons	% of mentions 2022 n=95	% of mentions 2021 n=93	% of mentions 2020 N=149
ORA unit for relicense was less appealing than others in the village/ new apartments impacted on sale of older ones	20	24	21
Increased supply in their region/competitive market (mainly Auckland and Tauranga in 2020) (mainly West Auckland in 2021)	19	15	4
Low number of enquires	13	-	4
A range of issues leading to applicant holding up the sale such as failed to sell their own home/ a health event/ longer settlement/ changed their mind/ held up estate and probate issues	12	15	19
Time taken to undertake remedial work/ refurbishments required/ extension renovations	7	16	26
COVID-19 lockdown – prevented some viewing of units by potential residents	2	19	26
Other	22	8	7
Unsure/ does not apply	6	-	-

Base: 2022 n=95 village business, 2021 n=93 village businesses , 2020 n= 149 village businesses,
Note: due to multiple mentions total will not equal 100%

Time taken to settle – comparing 2020/2021/2022 - Out of those re-licensed and settled in each year

For the units that were under an ORA how many were relicensed within each of the following time periods?

Region	*Sample size n=*			In less than 6 months %			More than 6 months %		
	2020	*2021*	*2022*	*2020*	*2021*	*2022*	*2020*	*2021*	*2022*
All regions	*3,127*	*3,147*	*3042*	75	77	**74**	25	23	**26**
Northland	*103*	*173*	*83*	83	88	**72**	17	12	**28**
Auckland	*888*	*882*	*953*	63	54	**63**	37	46	**37**
Waikato	*303*	*242*	*269*	73	79	**68**	27	21	**32**
Bay of Plenty	*280*	*288*	*304*	77	93	**80**	23	7	**20**
Hawke's Bay/Gisborne	*173*	*161*	*178*	86	87	**84**	14	13	**16**
Wellington	*365*	*356*	*372*	87	91	**83**	13	9	**17**
Taranaki/Manawatu-Wanganui	*300*	*235*	*230*	86	95	**83**	14	5	**17**
Nelson/Marlborough/ Tasman/West Coast	*142*	*157*	*122*	84	87	**67**	16	13	**33**
Canterbury	*420*	*467*	*368*	71	69	**75**	29	31	**25**
Otago/Southland	*153*	*186*	*163*	83	91	**89**	17	9	**11**

Note: *The total population for deriving percentages are based on units that were either empty at the start of 2022 or became empty during that year –but also relicense within 2022. Any units that were not re-licensed at the end of 2022 were excluded from the percentage calculation*

Time taken to settle ORA units during 2022 (Out of units re-licensed in 2022)

For the units that were under an ORA that were empty at the start of 2022 or become free during that year how how many were relicensed within each of the following time periods?

Region	*0-3 Months %*	3-6 months %	*6-9 months %*	9+ months %
All regions (n=3042)	32	41	17	10
Northland (n=83)	49	23	6	22
Auckland (n=953)	23	40	20	17
Waikato (n=269)	34	34	22	10
Bay of Plenty (n=304)	37	43	15	5
Hawke's Bay/Gisborne (n=178)	33	51	12	4
Wellington (n=372)	34	49	15	3
Taranaki/Manawatu-Wanganui (n=230)	37	47	11	5
Nelson/Marlborough/Tasman/West Coast (n=122)	34	34	23	10
Canterbury (n=368)	29	46	16	8
Otago + Southland (n=163)	58	31	9	2

Note: *The total population for deriving percentages are based on units that were either empty at the start of 2022 or became empty during that year –but also re-licensed within 2022. Any units that were not re-licensed at the end of 2022 were excluded from the percentage calculation*

Time taken to settle – comparing 2020/2021/2022 - Out of those re-licensed and settled in each year

For the units that were under an ORA how many relicensed within each of the following time periods?

Region:	*Sample size n=*			0-3 months %			3-6 months %			6-9 months %			9 + months %		
	2020	*2021*	***2022***	*2020*	*2021*	***2022***	*2020*	*2021*	***2022***	*2020*	*2021*	***2022***	*2020*	*2021*	***2022***
All regions	*3,127*	*3,147*	*3042*	28	38	**32**	47	39	**41**	14	14	**17**	11	9	**10**
Northland	*103*	*173*	*83*	40	56	**49**	43	32	**23**	9	7	**6**	9	5	**22**
Auckland	*888*	*882*	*953*	15	16	**23**	48	38	**40**	18	27	**20**	18	18	**17**
Waikato	*303*	*242*	*269*	42	36	**34**	31	43	**34**	19	11	**22**	8	11	**10**
Bay of Plenty	*280*	*288*	*304*	34	51	**37**	43	43	**43**	15	4	**15**	8	3	**5**
Hawke's Bay/Gisborne	*173*	*161*	*178*	31	48	**33**	54	39	**51**	10	9	**12**	4	4	**4**
Wellington	*365*	*356*	*372*	29	48	**34**	58	43	**49**	10	6	**15**	3	3	**3**
Taranaki/Manawatu-Wanganui	*300*	*235*	*230*	35	61	**37**	51	34	**47**	9	4	**11**	5	-	**5**
Nelson/Marlborough/ Tasman/West Coast	*142*	*157*	*122*	39	39	**34**	44	48	**34**	9	12	**23**	7	1	**10**
Canterbury	*420*	*467*	*368*	21	36	**29**	50	33	**46**	15	18	**16**	14	12	**8**
Otago/Southland	*153*	*186*	*163*	46	55	**58**	37	37	**31**	7	5	**9**	10	4	**2**

Note: *The total population for deriving percentages are based on units that were either empty at the start of 2022 or became empty during that year –but also re-licensed within 2022. Any units that were not re-licensed at the end of 2022 were excluded from the percentage calculation*

Time taken to settle – comparing 2019/ 2020/ 2021/ 2022 for the large group retirement village businesses (8/ 10* in total) - Out of those re-licensed and settled in each year

For the units that were under an ORA how many relicensed within each of the following time periods?

Region	*Sample size n=*				In less than 6 months %				More than 6 months %			
	2019	*2020*	*2021*	*2022*	*2019*	2020	2021	*2022*	*2019*	2020	2021	*2022*
All regions	*2,909*	*2089*	*2361*	***2264***	73	75	74	**73**	27	25	26	**27**
Auckland	*990*	*678*	*719*	***782***	58	61	53	**62**	42	39	47	**38**
Hamilton	*201*	*153*	*179*	***190***	67	63	71	**58**	33	37	29	**42**
Bay of Plenty	*202*	*210*	*240*	***241***	72	78	93	**83**	28	22	7	**17**
Wellington	*370*	*223*	*266*	***289***	89	89	91	**84**	11	11	9	**16**
Rest of North Island	*546*	*414*	*405*	***325***	87	88	90	**87**	13	12	10	**13**
Christchurch	*350*	*276*	*340*	***269***	74	77	68	**75**	26	23	32	**25**
Rest of South Island	*250*	*153*	*212*	***168***	86	84	88	**76**	14	16	12	**24**

*Arvida absorbed Arena living in late 2021 AND Selwyn didn't return a form this year hence there were only 8 village groups

Note: *based on 8/10 retirement village groups that participated in the 2019 to 2022 research includes 208 individual retirement villages. The total population for deriving percentages are based on units that were either empty at the start of 2022 or became empty during that year - but were also re-licensed within 2022. Any units that were not re-licensed at the end of 2022 were excluded from the calculation.*

Appendix 8 – John Ryder Report on Questions of the New Zealand Retirement Villages Industry

Questions
of the New Zealand
Retirement Villages Industry

John Ryder
M.Com (Hons); FCA; CMA

Questions
of the New Zealand Retirement Villages Industry

John Ryder was a founding shareholder and joint CEO of Ryman Healthcare, is Executive Chair of Qestral Corporation, a Fellow of the New Zealand Institute of Accountants and has been inducted into the New Zealand Business Hall of Fame.

Introduction

In May 2023 the New Zealand Commerce Commission said it will be launching an investigation into potential breaches of the Fair Trading Act by retirement villages. This was after a series of complaints, including from Consumer NZ and village residents, about what they claim are unfair contract clauses that leave retirees out of pocket.

It was also in spite of retirement village legislation that rules that all occupational right agreements for residents should be signed off only after appropriate legal advice.

A key issue was potentially misleading advertising, with some retirement villages pitching a continuum of care to potential residents and not able to fully provide it. Consumer NZ also took issue with retirement village occupation rights agreements (ORAs) which they said "clearly" benefited village operators.[1]

They said that residents pay large capital sums for ORAs and get their capital back, minus a large "deferred management" fee when they leave. Residents usually do not get the benefit of any capital gains during the period. Many were "being required to keep paying weekly management fees for months after vacating a unit".

The Retirement Villages Residents Association have a range of demands, which were first set out in its 2021 Framework for Fairness document. It includes making village operators repay the capital sum soon after they leave a village, perhaps as soon as 28 days.[2]

This paper looks at how arrangements arose in the industry, the contribution that retirement villages are making to the healthcare system in New Zealand, and whether the new demands on the industry are reasonable or fair.

Executive Summary

- The number of elderly people in New Zealand is rapidly increasing, and personal healthcare costs rise exponentially with age.
- To keep a lid on funding requirements, government assessment units have been continually raising the entry level criteria for resthome residents – leading to growth in the unsubsidised retirement villages sector as an alternative.
- It is no longer economic to construct stand-alone private aged care facilities. They are only being built as part of integrated retirement villages – which (compared to Australia) have predominantly adopted a "continuum of care "model.
- Home care is only a partial solution, because of the number of elderly who live alone.
- Privately operated care facilities are an essential safety net to keep the elderly out of public hospitals.
- The industry is a large contributor to the New Zealand housing stock.
- Residents are protected by the 2003 New Zealand Retirement Villages Act.
- The government makes no financial contribution to the retirement villages sector.
- Operators do not sell units as they need to continue to operate the villages. Any property gains are unrealised.
- Because there is no sale of units, occupation loans were introduced to help fund village development. They are also a quid pro quo for deferring management charges until the end of the residency. It enhances the weekly cashflow of residents, allowing many to live off their pensions.
- As a result, the New Zealand retirement villages industry is extremely popular.
- Retirement villages are complex, integrated businesses, not just providers of accommodation.
- A private tax, by the resident, on the unrealised capital gains of part of a village, would be an unprecedented arrangement for property and business rights in this country.
- Relicensing of units occurs in an orderly manner.
- The industry has resident occupation and bank loans exceeding $20 billion. Legislating to place licence repayments on short-term call would financially destabilise the industry. Banks would reappraise their commitments to the sector.

- The profits of retirement village companies, under official international accounting standards, are largely unrealised. It is difficult to make an overall cashflow surplus on the development of retirement villages.

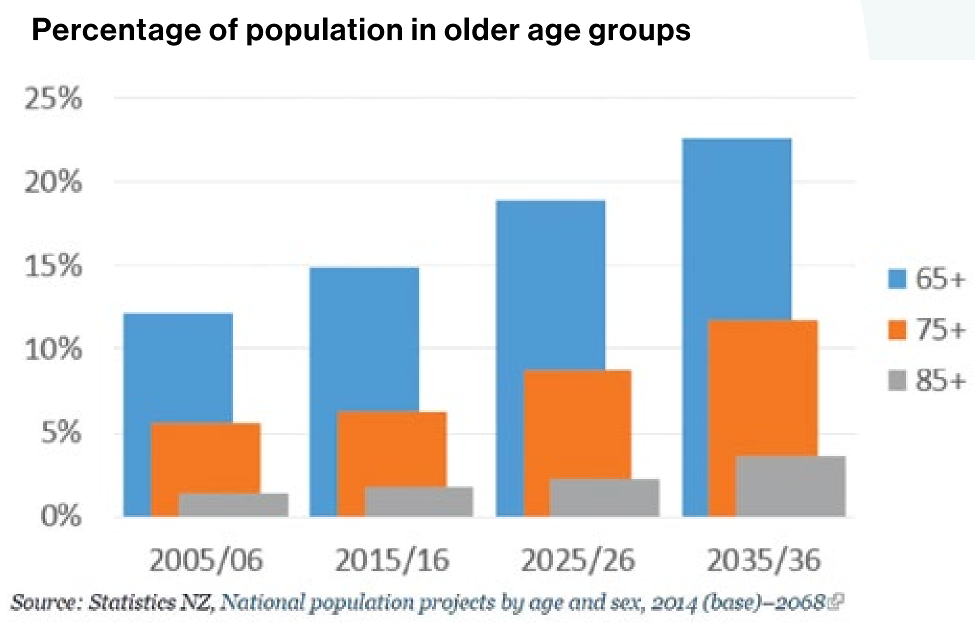
- The Retirement Villages Association has made a number of recommendations to improve practices in the industry.

- There are high levels of satisfaction among retirement village residents.

Resthomes, Private Hospitals and Dementia Centres

The number of elderly people in New Zealand is rapidly increasing. The baby boomers are retiring, and medical science is assisting people to live longer. Statistics NZ say that there will be 1 million people in New Zealand over the age of 65 by 2028.[3]

Percentage of population in older age groups



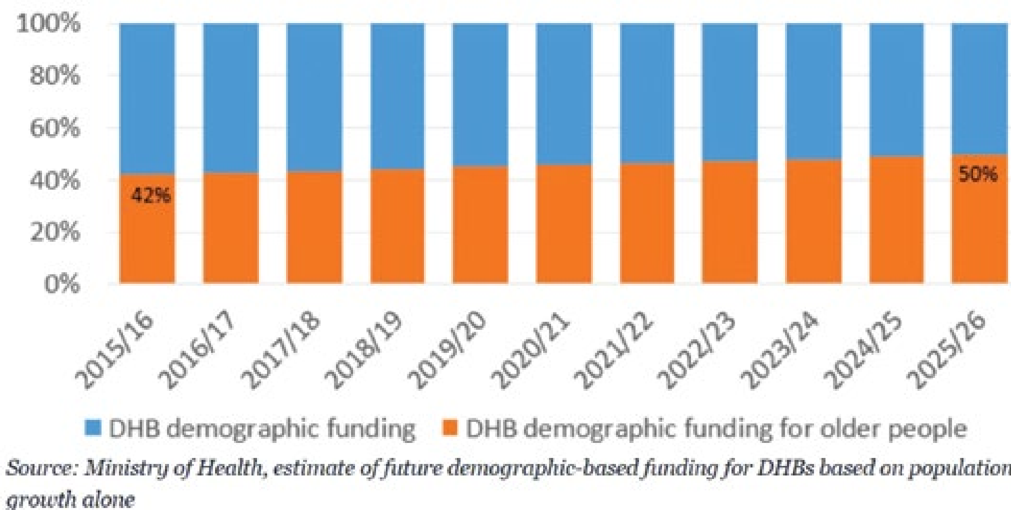
This has created a problem for the Government when allocating the limited healthcare dollar. To help solve funding issues they have adopted a strategy over the years of consistently raising the care subsidy criteria - until the entry level criteria for resthome residents has become close to what was previously used in private hospitals. Average care levels per resident (and therefore costs to operators) have escalated.

People unable to qualify for subsidised resthome and hospital level care instead have turned to the private retirement villages sector, to give them security, indirect healthcare assistance and a continuum of care. The industry has become increasingly popular and a useful solution for issues arising from the ageing process.

Personal healthcare costs rise exponentially with age.

A 2016 New Zealand DHB study reported that the elderly (over 65) group made up 15% of the population but consume 42% of the health services. This was expected to rise to 50% by 2025/26.[4]

Share of health services used by people aged 65 and over



Source: Ministry of Health, estimate of future demographic-based funding for DHBs based on population growth alone

They said:

> ***Over the last 10 years, DHB spending on services for older people has increased twice as fast as their [DHB] overall expenses... and 5 times as fast as the consumer price index (CPI).***

How are elderly health problems being serviced?

A 2020 survey by the NZ Aged Care Assn reported that there were around 40,000 private aged care beds in New Zealand.[5] This compares with just under 8,000 public hospital beds.[6]

At a cost, including land, of around $250,000 a bed, it is no longer economic to construct stand-alone private aged care facilities. By themselves they are not being built – and are only viable as part of integrated retirement villages.

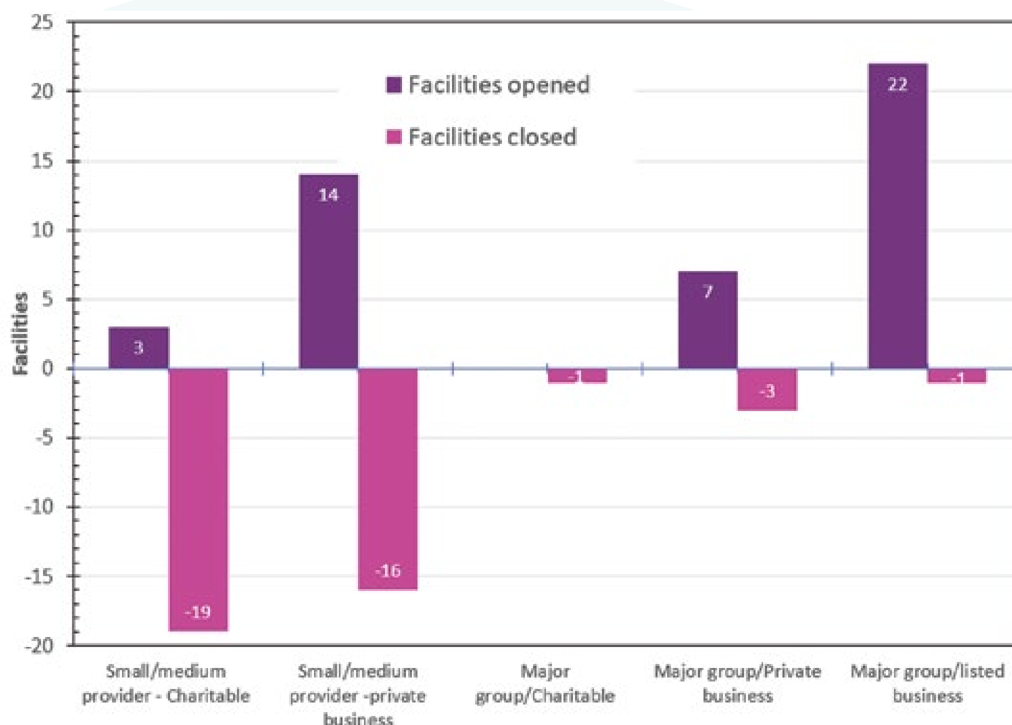
More than 50% of aged care facilities (resthome/hospitals) in New Zealand are over 30 years old and the median age is 33 to 35 years.[7]

The sector is also under significant operating financial stress.

According to a May 2022 article by Newshub:

> ***New data shows more than a third of aged care facilities may be forced to close this year due to a lack of funding.***
>
> ***A survey by Aged Care Matters reveals 35 percent of facilities said it's very likely, or likely, they will wind up over the next 12 months.***[8]

Facilities opened and closed since June 2017



The above chart shows the changes (opening and closing) since 2017 in aged care facilities (resthomes, private hospitals and dementia centres) and how dependent they now are on expansion by the large retirement village operators.[9] The smaller and charitable aged care operators have become unprofitable and are closing facilities - 1260 beds were shut in 2022.[10]

However, the larger operators are also scaling down the size of their care facilities, with Ryman announcing that they will significantly decrease their bed numbers for new facilities in future, due to commercial viability concerns.[11]

Home care is a partial solution, but over 50% of women in the 75+ age group in New Zealand live alone, making it difficult for them to live independently.[12]

The Government does not owe operators in the aged care industry a living. However, let us be clear - resthomes, private hospitals and dementia centres are a triage system and safety valve for public hospitals – and they are now only being built as part of retirement villages.

And with the growth in the supply of private care facilities lagging significantly behind expanding demand, there is a danger that a lack of private care facilities will cause elderly people to cascade into the public hospital system.

Which leads us to the first major assertion on aged care by this paper:

> ***Privately operated care facilities are an essential safety net to keep elderly people out of public hospitals.***

The Contiuum of Care Model

In New Zealand over 70% of retirement villages have integrated care facilities, in comparison to just 30% in Australia.[13]

Former Minister of Health and now New Zealand High Commissioner to Australia, Dame Annette King, said in September 2022:

> ***The Continuum of Care model – widely used in New Zealand but only in its infancy in Australia – offers a strong basis on which to address two key issues facing the aged care sector: financial viability and, most importantly, improving the quality of care delivered to residents.***[14]

The CEO of Ryman Australia recently said:

> ***I'm a fiercely proud Australian, but the simple truth is the Kiwis' approach to aged care has been streets ahead of ours for decades.***[15]

It has been frequently said in the media that the Australian aged care industry is "in crisis".[16]

The continuum of care model in retirement villages provides greater healthcare solutions in New Zealand.

Retirement Villages

Increased assessment criteria for care facilities caused many New Zealanders to turn to retirement villages. As popularity grew, many operators expanded facilities on offer to also include swimming pools, bars, cafes, restaurants, gyms, movie theatres etc. As well as providing health solutions, the complexes also became "lifestyle villages".

Which leads us to the second major position by this paper:

> ***The government subsidises suitably assessed elderly people into resthomes and hospitals but makes no financial contribution to the retirement village sector.***

Independent units in retirement villages cater just for the private market.

The Housing Stock

Apart from providing essential healthcare services and acting as a gatekeeper to the public

hospital system, the retirement village industry is a major contributor to building new houses and apartments across the country.

According to PwC:

> ***Between 2014 and 2019, approximately six to seven percent of all new building consents issued in New Zealand were retirement village units. In 2018, Ryman Healthcare, the country's largest village operator was also named the biggest residential builder with a total project value of circa $900 million across 39 projects, ahead of Fletcher Construction at $867 million. Summerset, Metlifecare, Oceania and Arvida were all ranked in the top fifteen.***[17]

Elderly people, moving into retirement villages, also free up housing stock for the balance of the population.

Legislation

The New Zealand Retirement Villages Act was established in 2003 to recognise the interests of residents. A village needs to be registered, have a statutory supervisor to represent resident rights and loans from residents have priority over other creditors, including banks. This provides financial security.

A resident must receive independent legal advice before an occupation right agreement is valid and villages must have a code of residents' rights. Financial statements must be audited and provided to residents on an annual basis.

Occupation Loans

In the early development of retirement villages there was debate over the ownership structure of independent units. They couldn't be sold in the manner of a property developer, as there was an ongoing obligation for the operator to maintain the village and service future residents... irrespective of the ebb and flow of occupants. The operator could not just sell, then up stakes and leave. The units were part of an "integrated" concept, rather than something that could be "hived off" in the property market.

Which leads us to the third fundamental rule in the aged care industry:

> ***Retirement village operators do not sell units. Any valuation gains are unrealised.***

The question at the outset was: if you can't sell units, then how do you fund village development?

An associated but important factor was that residents were generally retired and wanted to mainly live off their pensions. They no longer had wages or salaries to supplement accommodation costs. They had their own homes, but in commercial terms could be described as "asset rich, but cash poor". They could not afford large amounts of service charges to come out of their weekly cashflow. There were no government subsidies.

Integrated retirement villages can employ up to 100 staff - in roles like management, nursing, general care, activities, maintenance, cleaning, laundry work, and in reception. Behind the scenes there is a multitude of administration workers. There are specialised activities staff and free access to a wide range of events and activities. These are available to residents, who also usually have priority access to higher level nursing care in resthomes, hospitals and often dementia centres on site.

Which leads us to the fourth fundamental position in the aged care industry:

> ***Retirement villages are complex and integrated businesses, not just providers of accommodation.***

The government subsidy for a private hospital bed in New Zealand is (depending on the region – the example is for Canterbury) around $2,038 a week (including GST) and $1,283 for a resthome bed.

This compares to the estimated cost of a public hospital bed of between $1,200 and $1,500 a day.[18]

So, what would occupants of independent units in an integrated retirement village normally pay for the accommodation, village facilities and services?

A reasonable charge for a motel in New Zealand, with basic services, is around $130 a day, or over $900 a week. Also, consider what it costs for a week in a resort in Fiji. Retirement villages are more complex, so around $1,000 to $1,200 a week would be a fair estimate.

As the industry developed the operators knew that this type of weekly figure would be untenable to the average pensioner, and so a "quid pro quo" arrangement was offered:

- To fund the village the resident would be asked to provide an interest free occupation loan, repayable when a new occupant is secured.

- The charges would be simplified, and similar to the rates system – based on the capital contributed by the occupation loan.

- The charges would be capped and deferred – not payable until the occupant exited the premises (and then deducted from the loan amount). This meant a low weekly cash inflow to the operator, and a low weekly outflow for the tenant. The deferral on average was for 8 to 10 years.

It worked. The resident had clarity. They knew the capital sum, that it would be repaid and the exact deferred fixed charges – providing certainty. There would be a regular service fee, currently only around $150 a week, to cover rates and insurance. In many villages this weekly fee is permanently fixed, and the daily cost of living for many can be contained within the pension.

The New Zealand retirement villages industry became exceptionally popular. There are now over 50,000 residents in around 38,500 houses and apartments [19] and about 1,800 new units are developed each year. The elderly embraced the concept.

Capital Gains

It has been popular for the media and the Retirement Village Residents Association to demand that legislation be introduced for residents to receive a share of the capital gains in retirement villages, but no mention of sharing capital losses. They are effectively seeking a share of the business gains. In spite of existing contractual arrangements, they also believe it should be retrospective – which is not the usual procedure for new legislation in New Zealand.

Let us discuss this.

As previously mentioned, retirement village operators (with a few exceptions) do not sell independent houses or apartments. They receive a loan, pay it back and deduct deferred charges. They then receive another loan, and the same applies. There is no sale and resale, and *titles do not change.*

The demand therefore is for a private tax, by the resident, on *unrealised capital gains* of a part of a village – an unprecedented arrangement for property and business rights in this country.

Although New Zealand may in future have a capital gains tax, it is generally recognised that this would not apply to *unrealised* capital gains.

The suggested structure would have serious implications for the commercial world. Retirement village residents, like tenants in flats, motels, hotels, resorts, and commercial buildings, do not generally have a share of ownership. The business needs to continue providing services to each successive resident, and an accommodation unit is just part of the overall complex. For a resident to be guaranteed a share of the unrealised capital gain of the accommodation portion of an integrated commercial facility would be highly unusual. It has implications across all property and business markets.

And how do you assess the value of a unit – when the resthome, hospital, community centre and availability of staff all contribute to this figure? Valuers will tell you that there are many moving parts to a retirement village.

Which leads us to the fifth fundamental principle:

> ***It is unprecedented for governments to legislate for residents to be paid a share of unrealised business gains.***

Repayment of Loans

As previously discussed, instead of selling a unit the operator usually receives an interest free loan to compensate for deferring the management charges until the end of the residency. It is similar to a mortgage but ranks above mortgages, bank loans and bonds for security. In most villages, it is repaid when a new resident is secured.

There is a demand by the Retirement Village Residents Association for an automatic repayment period, such as 28 days, on vacating the premises.

Let's discuss this.

At last count (from their audited balance sheets), the four major publicly listed retirement village companies (Ryman, Summerset, Arvida and Oceania) as well as unlisted Metlifecare - had $11.5 billion of occupation loans from residents and $6.2 billion in interest bearing loans (mainly banks and bonds) – a total outstanding of $17.7 billion.

The listed corporate sector is estimated to comprise about 65% of the retirement village market.[20] This suggests that when accounting for the balance of the market the total figure for occupation loans, banks and bonds is well over $20 billion.

This is equivalent in size to 5% of the New Zealand economy[21], or 29% of the net New Zealand Government debt (of $70.2 billion), as at 30 June 2022.[22]

These loans, from residents, banks, and bonds, are classified in company balance sheets as long-term liabilities. The average resident stays for about 8 to 10 years.

Because most occupation right agreements provide for repayment on the reoccupation of a new resident, repayments tend to occur in an orderly manner, fluctuating up and down according to new resident demand and the real estate market. If the repayment was "on short-term demand", then the $11.5 billion would be reclassified by auditors as short-term liabilities, as potentially all residents could leave and demand repayment immediately. The statutory supervisors would require operators to have large amounts of cash reserves to cover this contingency. Loans would be repayable irrespective of the circumstances, such as the state of the property market or economy. The orderly market would become disorderly.

PwC has calculated that based on CBRE valuation data, a repayment period of 28 days, and an orderly 9 to 12% turnover a year, then the financial cash reserves for funding repayments would need to be around $2.2 billion for the industry.[23]

But this assumes an orderly market. Markets can be severely disrupted, from property crashes and financial crises (such as the GFC). If confidence fades there can be a run on markets. The potential for business liquidity events would be greatly enhanced.

PwC comment:

> ***Whilst larger operators (such as the listed entities) may have additional sources of working capital to draw from, the additional cost requirement is likely to disproportionately impact smaller or not-for-profit operators. These operators are typically more capital constrained and therefore would be exposed to liquidity or financial viability issues, particularly in market down-turns. Ultimately, the cost and risk associated with a mandatory repayment period may lead to less smaller scale development and therefore a reduced range of village options for residents. In many instances, these operators are located in rural or provincial New Zealand, and there could therefore be a disproportionate impact on these areas.***[24]

In the history of commerce there have occasionally been much-feared situations when industries have collapsed due to a syndrome known as “borrowing short and lending (or investing) long”. This is where an industry has a predominance of creditor funds on call and cannot quickly repay these because the related assets are unable to be readily realised.

Prior to the Global Financial Crisis, the New Zealand finance company industry was reasonably sound. However, because of the mismatch between call terms and investment terms 51 finance companies in New Zealand between 2006 and 2012 either went into liquidation or receivership or had payments frozen.[25]

Many New Zealanders, particularly the elderly with retirement funds on term deposits, lost their money.

By instigating an automatic repayment regime, irrespective of the circumstances, the retirement village industry (with funds invested in fixed assets such as houses, apartments, care facilities and community centres), would be in exactly the same position.

Realising the exposure, the banks (who rank behind residents in priority) would reappraise their positions and likely reduce their commitment to the sector – becoming concerned (if not alarmed) at the new risk. There would be a good chance that the development of retirement villages would grind to a halt, puting further pressure on the health system.

Because they make a financial and lifestyle commitment, residents are exposed to retirement village risk. Although residents have priority over other debt instruments, they don’t want village operators to become financially unstable. Owner instability leads to resident stress.

Which leads us to the sixth major assertion by this paper:

> ***Making occupation loans repayable on demand could financially destabilise the industry***

This does not mean that the operator should not accept responsibility for occupation loans. Most loan agreements have a clause saying that after a fixed period (such as 6 months) the resident can use their own agent to market the unit, and good operators also have a clause paying interest on the loan if not repaid after a reasonable time.

Financially there have been multiple incidences of stand-alone care facilities in New Zealand becoming illiquid and being forced to close, because government funding is insufficient to cover expenses.

However, this is rare with integrated retirement villages. The industry to date has been stable and financially resilient (particularly compared to Australia).

Financials

Pundits often look at the financial results of retirement villages and comment on the significant profits being made. For example, Ryman healthcare reported an after-tax profit of $257.8 million in the financial year ended 31st March 2023, and Summerset to 31st December 2022 made a profit of $269.1 million. However, Ryman's figures were down 61% (from $692.9 million in the previous year) and Summerset's fell 51% (from $543.7 million).

Why the fluctuation?

Under International Accounting Standards (IFRS), retirement village earnings are calculated from operating net revenue (but excluding development margins, as they do not sell houses) as well as gains from incremental property values... for the whole village. This is the same as international accounting rules for all property holding companies. Valuations are based on expectations of a future stream of earnings, adjusted for time and risk by a discount rate. This rate fluctuates according to economic and real estate circumstances and the ongoing addition of fixed facilities for residents at the village (i.e. to the extent that the village is integrated).

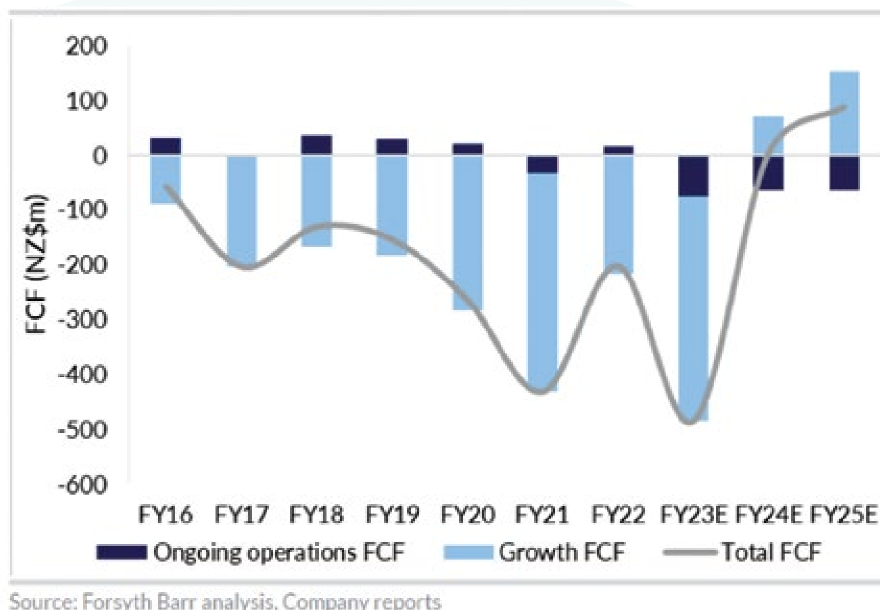
The point being made is that they are not realised figures and are not cash figures.

When looking at earnings on a cash basis it is a characteristic of New Zealand retirement villages that it is very difficult to make a cash surplus on the development of a village just from occupation loans received from residents. This is why the companies also require bank debt and why Ryman recently had a capital raise from shareholders of over $900 million to strengthen their balance sheet (along with suspending dividends). Analysts calculated that they had been making development shortfalls for a number of years.

Forsyth Barr said (February 2023):

> ***Ryman added $2.5 billion of net debt to its balance sheet between the 2016 financial year and now, despite not having a single year of positive free cash flow since the 2014 financial year.***[26]

RYM free cash flow



Source: Forsyth Barr analysis, Company reports

Note from the above chart that it has even been a struggle to generate a free cashflow from "ongoing operations" – indicating the difficulty in making care facilities profitable.

Summerset, in their December 2022 results presentation, for 18 villages currently under development (totalling $3.5 to $3.8 billion), calculated that they would have a projected net cash surplus of approximately (just) 7% on completion of the projects.

Which illustrates the following:

> ***It would not be equitable to pay a percentage of unrealised gains on accommodation to residents... and putting occupation loans on short-term call would destabilise the industry.***

RVA and other recommendations

The Retirement Villages Association has articulated a number of shortfalls in the industry and recommended that:

- Service fees and deferred management charges cease after terminating the residency.
- The responsibilities for repairs and maintenance of operator-owned chattels be clearly set out to residents.
- Operators pay interest on occupation loans if not setled within 9 months.[27]

The RVA says that in a member survey the average time to repay was four months, with 77% of units relicensed within six months, and a further 14% within a further three months. Six months is probably a more appropriate time to start paying interest on loans.

The Ministry of Housing and Urban Development "Retirement Village Code of Practice 2008", issued under the Retirement Villages Act 2003, also stipulates under S51 and S52 the process for remarketing a unit, with a disputes procedure available if the occupation loan has not been repaid after 9 months.

Most occupation loan agreements allow for residents to appoint their own agents if a unit is not relicensed within a specified period of time.

The RVA said that the average time to relicense a unit in Australia is in the order of 240 days (eight months), whereas the period in New Zealand is less than half that.

Misleading advertising on the availability of care beds within a village is a concern, but this is a matter for the Commerce Commission to spell out, with warnings, to the industry. S26 of the 2003 Retirement Villages Act says that operators must ensure that advertisements are not misleading or deceptive.

However, operators – like public hospitals - do not keep beds empty, waiting for unannounced transfers... but instead rely on the natural rotation of care bed participants.

The RVA has said that numerous independent surveys show high satisfaction levels among retirement village residents. The last reporting period to the Retirement Commissioner resulted in 271 complaints from a total of 50,000 residents.

> ***Despite a faltering economy, falling real estate markets and negative media attention, demand remains strong... and there are high levels of satisfaction among retirement village residents.***

June 2023

References:

[1] https://www.stuff.co.nz/business/132002777/commerce-commission-investigating-retirement-villages

[2] Christchurch Press 20th May 2023.

[3] https://www.stats.govt.nz/news/one-million-people-aged-65-by-2028/ July 2022.

[4] https://www.health.govt.nz/nz-health-statistics/health-statistics-and-data-sets/older-peoples-health-data-and-stats/dhb-spending-services-older-people

[5] https://nzaca.org.nz/wp-content/uploads/2020/08/ARC-Industry-Profile-2019-20-Final.pdf

[6] https://www.health.govt.nz/system/files/documents/information-release/h202205523_response.pdf

[7] Aged Residential Care Industry Profile Report of 2017-18.

[8] https://www.newshub.co.nz/home/new-zealand/2022/05/new-data-shows-third-of-aged-care-facilities-may-be-forced-to-close-due-to-lack-of-funding.html

[9] Facility and bed gains and losses since June 2017. NZ Aged Care Assn, May 2023.

[10] https://www.nzherald.co.nz/nz/shortage-of-rest-home-beds-puting-pressure-on-health-system-providers-say/IH6RFZMKLRBIJGCPVTUULQS2SY/

[11] https://www.nzherald.co.nz/business/aged-care-crisis-ryman-healthcare-downsizes-new-hospital-bed-numbers/GASAJYL54IKH5LCOSHCQKY256M/

[12] https://www.stats.govt.nz/assets/Uploads/Retirement-of-archive-website-project-files/Reports/Twos-a-crowd-Living-alone-in-New-Zealand/living-alone-02may2015.pdf

[13] https://www.rymanhealthcare.com.au/community-news/ryman-releases-aged-care-discussion-paper

[14] Ditto.

[15] https://www.rymanhealthcare.com.au/community-news/ryman-releases-aged-care-discussion-paper

16 https://www.theguardian.com/australia-news/2022/jul/10/aged-care-is-in-crisis-batling-to keep-community-nursing-homes-in-the-bush

https://www.ceda.com.au/ResearchAndPolicies/Research/Economy/Duty-of-Care-Aged-Care-in-Crisis

https://australiainstitute.org.au/post/australias-aged-care-crisis-is-nothing-new-its-just worse-than-before/

https://www.news.com.au/finance/business/other-industries/chilling-warning-that-aged-care-sector-at-risk-after-huge-losses/news-story/b6a53ed0e2b8eb9ab97ff7b-90896cd71

17 Letter by PwC to RVA 10th June 2022.

18 Letter on underfunding to the political parties and Government by the NZ Aged Care Assn, 23 May 2023.

19 RVA Submission to the Social Services and Community Select Commission June 2022.

20 Letter by PwC to RVA 10th June 2022.

21 https://www.stats.govt.nz/indicators/gross-domestic-product-gdp/

22 https://www.stats.govt.nz/information-releases/government-finance-statistics-general-government-year-ended-june-2022/#:~:text=Net%20debt%20increased%20from%20%2452.3,the%20year%20ended%20June%202022.

23 Letter by PwC to RVA 10th June 2022.

24 Ditto.

25 https://www.fma.govt.nz/about-us/enforcement/cases/finance-company-collapses/

26 https://www.nzherald.co.nz/business/the-debt-explosion-that-led-to-ryman-healthcares-mea-culpa-moment/4HUAHC6QENGRTCFKXG6TQVAFNY/#:~:text=%E2%80%9CThe%20debt%20build%2Dup%20has,in%20the%20past%20five%20years.

27 RVA Assn website.

Appendix 9 – Ross Currie's Report

Te Tuapapa Kura Kainga (Ministry of Housing and Urban Development) Review of the Retirement Villages Act 2003 Discussion Paper. A Retired Bankers Feedback on Moving Out - the Proposed Mandatory Buyback Regime.

Section 1 – How the Retirement Village Sector is currently funded.

To assess the impact of the mandatory buyback proposal outlined in Te Tuapapa Kura Kainga's discussion paper on banks' funding appetite for the retirement village sector, we first need to review the role of debt financing to the sector and how banks assess the risks of funding the sector.

Valuers note that retirement villages are a micro market that reflect a higher level of risk than other forms of property. There are limited buyers and sellers reducing sector liquidity in addition to sector specific legislation/regulations, non-compliance with which would adversely impact the value of a village or portfolio of villages. Valuers also note that retirement villages require a greater level of re-investment than other forms of property to remain attractive to future residents and therefore achieve re-sales when units become available. Re-investment should be funded from working capital, being the cashflow from village operations including new unit sales and re-sales. In addition to these market risks lending to retirement villages carries a higher level of risk compared to lending to other sectors including:

- Debt repayment is limited to cashflow from operations. Generally, banks require two viable exits being cashflow from operations plus one or combination of: (i) new equity; (ii) realising on security provided; (iii) refinance by another lender; or (iv) sale of the assets or business. Alternate exits, other than new equity, are unlikely to be viable if a retirement village operator is in financial difficulty owing to limited market liquidity and alternate lender appetite.
- Reputational risk. While a lender could exercise its security if all other options to remedy a default have failed, which is subject to the consent of the Statutory Supervisor and limited to selling the village/s as a going concern, plus other conditions included in the Security Sharing and Priority Deed being met, banks would be reluctant to take such action owing to the risk of adverse publicity and damage to their own reputation.
- Industry complexity. Understanding the drivers of cashflow from village development and operation requires industry specific knowledge and takes time.

For the above reasons some banks choose not to fund the sector or limit their funding to the listed operators only. Those banks that do fund the sector generally limit funding to experienced operators who are appropriately capitalised, provide an offering demanded by the market and have a long-term investment horizon.

In theory debt funding should be limited to village development, subject to relevant development controls. Once a village is fully developed and sold down, all debt funding should be repaid from sale of the Occupation Right Agreements ("ORA's") and the village should be funded by the amounts due to existing residents on re-sale of their units, the associated deferred management fees that accrue to the operator over time and equity.

However, in practise, bank funding does extend to working capital and acquisition funding in addition to brownfield and greenfield development funding where, among other things; (i) the operator has a sound operating track record; (ii) the village/s meet market demand (right product at the right price in the right location); (iii) there is sufficient critical mass in the number of ORA's to reduce re-sales volatility, noting that when units will become available and can be relicensed is

uncertain, and provide sufficient surplus cashflow to service and repay debt; and (iii) the village/s have a resident maturity profile such that re-sales are expected to occur in line with sector benchmarks.

Where banks provide working capital and acquisition funding (core funding), they require financial covenants which include that the cashflow available for debt servicing, (surplus cashflow after meeting all operating expenses, re-investment in the village/s referred to above, repairs, maintenance, capital expenditure and tax), will be sufficient to cover interest expense. The covenant includes a buffer, with cashflow available for debt servicing covering interest by at least two times being a common covenant. A loan to valuation ratio is also included. All debt financing requires the consent of the Statutory Supervisor who will also require the operator to meet certain terms and conditions in consideration of consenting to debt financing.

Excluding development cashflows, cashflow is derived from; (i) weekly fees charged to residents; (ii) fees for service packages if these are offered and residents choose to take these up which are generally provided at a nominal profit; and (iii) net cashflow from re-sales (re-sale prices, less payments to the formers residents or their estates, less refurbishment and selling costs). In the early days of the sector weekly fees were set to cover village operating costs assuming a village was fully occupied, therefore largely a breakeven cashflow for the operator. As the sector grew, fixed fees for life were introduced, providing certainty of outgoings for the residents. However, subsequent increases in rates and insurance, and more recently general inflation above what operators had allowed for when setting fixed fees means that weekly fees, in most cases, no longer cover village operating costs. Other than high end villages, operators often set fees at a level that allows residents to cover weekly fees and other living costs from their superannuation which maybe their only source of income. Operators are therefore reliant on achieving ORA re-sales to cover the shortfall between weekly fee income and village operating costs, often referred to as the village subsidy. The amount of the village subsidy varies from village to village, although could be a material percentage of total operating cashflow. Banks are mindful of this expense when calculating cashflow available for debt servicing. Operators are incentivised to achieve re-sales to cover villages operating costs and comply with banking covenants.

Section 2 – Impact on bank funding appetite of a mandatory buyback regime.

My opinion is that if a mandatory buyback regime is introduced it will reduce or eliminate bank appetite to fund the sector. The high-level reasons for this include:

- Where banks already fund operators, they would need to support the operators with buybacks, subject to the capital resources of an operator, to protect their existing exposure. In a severe market downturn, a bank's requirement to fund buybacks, would effectively be uncapped. This is because the total number of buybacks is unknown, the cash outflows to repay departing residents is significant and the timing of re-sales is difficult to forecast. Opened ended funding lines are outside all banks' policies that I am aware of.
- While listed operators should have access to further capital from the market (although this may be dependent on market conditions) the ability of private operators to provide further equity depends on their financial resources. In addition to the capacity to provide further equity there needs to be the willingness to do so. A bank's ability to enforce further equity injection will depend upon security/support provided to a bank by the shareholders, generally personal guarantees, and absent the shareholders voluntarily providing further equity and subject to a bank enforcing security over the village, making demand under those

guarantees. Banks only make demand under guarantees as a last resort and the increased risk of needing to do so to fund mandatory buybacks would likely exceed bank risk appetite.

- Introducing new equity shareholders to private operators is unlikely if the existing shareholders are unable to fund buybacks unless those potential new shareholders are of the view that re-sales can be achieved in time and, they will earn an acceptable return on investment for the risks involved.
- Where banks are already funding operators, regardless of their policies discussed above, they would be implicitly compelled to fund buybacks, subject to the capital resources of the operators, so that the villages can keep operating with a view to obtaining full debt repayment in time. The higher debt servicing costs resulting from increased funding at a time when cashflow from re-sales is reduced would likely lead to breaches of financial covenants. Banks may be willing to provide covenant relief for a period, although that would be dependent on a pathway to usual banking covenants being re-instated within an agreed period. In a severe market downturn that is difficult to forecast.
- A likely breach of financial covenants, or an unresolved breach of financial covenants which would be an event of default under a financing agreement, would require reporting to the Statutory Supervisor, the residents, and in the case of the listed operators, the market. If an option is to sell the village/s (either voluntarily by the operator, or by enforcing security with the consent of the Statutory Supervisor and selling the villages/s as a going concern) the village/s would be known distressed assets likely leading to a sale at a discount to valuation and potentially a loss to a bank.
- Absent a sale a bank may have no alternative other than to continue supporting an operator, or replace the operator, with a view to debt being reduced/repaid as the market recovers and re-sales can be achieved. However, the debt burden may exceed the village/s debt capacity, possibly requiring a bank to discount its debt to return the village/s to an acceptable financial position.

The increased risks mandatory buybacks would impose on banks combined with the sector risks discussed in Section 1 would make much of sector an unattractive financing risk, exceeding bank risk appetite. Banks would likely; (i) cease further lending to the sector; (ii) require all operators to reduce debt over time from operating and if relevant, development cashflows; (iii) require operators to increase capital; (iv) exit relationships completely from those operators considered most at risk; and (iv) consider existing the sector completely.

Section 3 – Discussion Paper Option 1 - Mandatory buybacks and the repayment timeframe

A six or twelve month mandatory repayment timeframe is unlikely to alter a banks view on its appetite to fund the sector for the reasons outlined in Section 2.

<u>Large Operators (the Big Six)</u>

Banks may be willing to continue funding large operators including providing liquidity facilities to fund mandatory buybacks. Such facility amounts would be assessed as best as possible based on each operators' total number of units, their re-sales history and resident maturity profiles with a buffer added to address a severe market downturn. In consideration banks would likely require operators to increase capital by possibly increasing the interest cover ratio and reducing the loan to valuation ratio. This would require operators to utilise cashflows from sales of new unit developments to reduce development debt with banks then reducing the amount of development facilities and/or operators holding larger cash reserves. This would likely result in a slow-down in

new unit development leading to unmet demand. JLL's 2022 White Paper notes that the known development pipeline is less than forecast demand to 2030.

Where large operators enjoy core funding facilities, they can buyback units funded by those facilities, subject to banking covenants being met, although the amount able to be spent on buybacks in often capped by an undertaking in the funding facility agreements. No operator wants a reputation as "easy in, hard out" as that can negatively impact their reputation and future sales. Large operators also have the financial resources to vary purchase terms for future residents to stimulate sales.

It would be up to each operator whether or not it passed the increased costs of the increased capital and/or financing cost on to residents.

Larger Private Operators

Banks would be unlikely to provide liquidity facilities to fund mandatory buybacks for the reasons outlined in Section 2.

Where banks provide development facilities to these operators' banks may require repayment from new unit sales with the development facilities then reduced/terminated meaning that any further unit development would need to be equity funded. New unit development by these operators would significantly reduce and possibly cease again leading to unmet demand.

As no operator wants a reputation as "easy in, hard out" operators have, in need, bought back units with equity/cash reserves. Banks have also agreed to fund buybacks on a case-by-case basis where operators have the financial resources to service the debt.

A mature village should re-sell 10% - 12% of its units each year. As cashflow from re-sales is also required to fund the village subsidy and village re-investment, it is unlikely that a twelve-month introduction period for a mandatory buyback regime would provide sufficient time for an operator build up capital from village operations alone to meet a mandatory buyback obligation. There is also a risk that operators would reduce village re-investment to build up capital reducing the attractiveness of the villages to future residents and the existing residents' enjoyment of the villages.

The undue financial hardship exemption proposal is noted, although how undue financial hardship would be determined is not specified. Larger private operators may not meet the test owing to their relative size and financing arrangements. Banks would be uncomfortable with this uncertainty, hence why they may reduce or terminate their exposures to these operators.

Smaller Private Operators

These operators generally do not have any bank funding for the reasons outlined in Section 1. Small villages vary from older to modern with limited community facilities reflecting village size. Banks would not be willing to provide liquidity facilities to fund mandatory buybacks. For micro villages, less than 50 units, and assuming re-sales of 10% - 12%, they would not have the capacity to build up capital from village operations alone, even by reducing village re-investment. They would likely be reliant on the proposed hardship exemption to continue operating.

Not For Profit Operators

Most not for profit operators, with a few exceptions, provide affordable accommodation. This reflects their history as either charitable or faith-based operators. Their villages are generally older

offering smaller units and limited community facilities compared to the large operators and larger private operators.

As they have no access to further capital banks are unlikely to provide liquidity facilities to fund mandatory buybacks. Where banks are providing development facilities they may reduce or terminate these, the same as the larger private operators.

Capital Gains Sharing

Many operators already offer a capital gain sharing option. The exemption from the proposed mandatory buyback regime is noted. Banks are ambivalent whether or not operators offer capital gains sharing. In simple terms the inward and outward cashflows for a village are what they are. Where operators offer capital gains, they need to increase cash received from other sources to offset the capital gain payment, either higher deferred management fees or higher weekly fees.

Fixed Deductions or Deferred Management Fee

Any proposal to cap fixed deductions or the deferred management fee may reduce bank appetite to fund the sector. The deferred management, along with net re-sales cashflow is used to fund the village subsidy in addition to village re-investment, repairs, maintenance, and capital expenditure, for villages to remain attractive to future residents and existing resident enjoyment. Operators need to be able to set fees to achieve these objectives, meet financing costs, and in the case of commercial operators, earn an acceptable return. This fee should be set by market forces rather than being imposed by regulation which may impact on the financial viability of the sector.

Other Observations

There are other ORA arrangements that the discussion paper does not address when proposing a mandatory buyback regime. These include the deferred management fee calculated on the re-sale price rather than the purchase price and residents or their estates responsible for re-selling their units. If a mandatory buyback regime is introduced, then presumably there would need to be exemptions for these types of ORA's.

Section 4 - Conclusion

A mandatory buyback regime is likely to reduce or eliminate bank appetite to fund the sector. The increased risk to banks in addition to existing sector risks that are greater than lending to other sectors will likely exceed bank risk appetite.

Reduced bank appetite to fund the sector would likely lead to reduced new unit development. The consequences of this include: (i) unmet demand with many intending residents unable to enter a village; (ii) fewer family homes being vacated for younger families requiring an increase in housing supply; and (iii) increased demand on the health system and home care services where senior citizens that are partially dependent and would take up service packages in a village are unable to enter a village owing to undersupply.

My experience is that older, smaller, and affordable units that are less desired by the market and are mostly provided by not-for-profit and smaller private operators that operate on limited cashflows take the longest to re-sell. If 75 percent of units are relicensed within six months of being vacated and 90 percent within nine months as the Retirement Villages Association indicates, it is logical that the remaining 10 percent are those less desirable units provided by operators which would either be exempt or obtain an exemption (on a case-by- case basis) from the mandatory buyback regime.

capital sum. Large operators and larger private operators already have the ability and do buyback units where required to protect their reputation. Therefore, it is questionable if a mandatory buyback regime would achieve the stated objectives. The counterfactual is that large operators and larger private operators should be able to operate within the proposed mandatory buyback regime, although this is more than outweighed by the risk of reduced bank funding to the sector.

Finally, changes proposed in the discussion paper including if a mandatory buyback would apply to all units after the regime is introduced or only those units relicensed after the regime is introduced, and proposed exemptions will make understanding, analysing, and sensitising an operators cashflows more complex for a bank potentially reducing appetite.

Ross Currie

Ross Currie is a retired banker that specialised in lending to the retirement village and aged care sectors for more than twenty-five years, working for a number of banks.

RVA
NEW ZEALAND
Retirement Villages Association