TE ARA AHUNGA ORA
Retirement Commission

# Individual Email Submissions

(Please note: this submissions document excludes any submissions without permission to publish)

What a welcome paper. It is disgraceful that previous Commissioners have failed to put significant reforms in place in an industry where people have long been calling for change. Several personal observations.

If there is no hospital on site, residents in villages are forced to sell/move if they become ill. Then the village can enforce weekly rent, under no obligation to advertise that unit or apartment once someone dies or moves. My aunt kept paying for nearly a year when she was moved into another village with a hospital attached. The family was fobbed off whenever we tried to investigate progress regarding the sale of her unit.

It is appalling that the client currently has no legal rights. Halving the rent payable after three months is a small step in the right direction. There should be a vigilant watchdog that ensures advertisements are placed immediately and that potential clients are clear about the parameters surrounding purchase in a village.

Most operators are in this multi-billion business for financial reward, not for client health and happiness. Any compassionate owner-operators have long been side-lined by ‘corporate raiders’ with the excuse that retirement villages are businesses that must deliver maximum profits to Boards and shareholders. Kindness is rare in this competitive environment. Our experience at [redacted] was average in terms of compassion.

During lock-down, my visits to two residential homes in [redacted] were fraught with questions about whether clients were well served or whether operators were taking advantage of the situation because the usual public scrutiny was lacking. These homes were [redacted] and [redacted]

Too much uncertainty and increased isolation resultant from the pandemic has lead to a great deal of anxiety for ageing clients.

My 94 year old Aunt repeatedly asked if she'd been ‘a naughty girl’ because no one visited or kissed her. She was wanting hugs but was not allowed. The masks frightened her. Her son and family, many nieces and nephews had visited regularly but two short visits a week over both lockdowns were her entire quota (despite there being barely a visit for other residents in the home therefore no chance of large numbers inundating the place - which we were told was the reason visits to her were limited.)

Another 94 year old friend in a residential home noticed a fellow resident ‘closing down’ during the second lockdown. She'd been very sociable and was now sitting alone for meals and visibly deteriorating. He went to sit with her at lunchtime for over a week but was called into the office and told not to break his bubble again. He replied that he felt staff lacked compassion, were unconcerned about her mental and physical welfare and that he would go to the media and the medical association if she died. He was immediately told he could continue eating at her table. As an elderly resident he had had to organise informal services for people who died during Covid because ministers weren't allowed into his village and people were grieving alone. Fortunately he was computer savvy and could down-load appropriate music and readings.

I watched my father with dementia being brought food which was left in front of him then taken away because he hadn't touched it. We made a point of having a family roster to overcome that problem despite the huge emotional cost of driving across [redacted] when the village staff were being paid to do this simple task. I believe the statistics for elderly residents starving in residential villages are high. If staff need more pay to attract better qualified, more caring professionals, then the government must look at increasing basic pay for nurses and care-givers.

Night after night my gentle father waited patiently to be put to bed hours after his normal bedtime because staff were watching television and knew he wouldn’t complain. We felt nervous about complaining when we discovered this because of possible repercussions.

12 December 2020

Retirement Commissioner Jane Wrightson
CFFC
Wellington

Dear Commissioner Jane Wrightson

I'm 83 years of age and have looked after my wife, who is the love of my life, for 11 years with Alzheimer's. I have had to put her into care after over 60 years together. I looked at getting an ORA unit. To my dismay, the market value was $580,000 and all it did was give you the right to occupy - you don't own it. In other words, it's key money. Then you have to pay up to $250 a week to have someone look after the gardens. If, after, say, five years, you need fulltime care you get back what you paid for it less 25 – 35%. On top of that, they take all the capital gain. Of late, this has been up to 50%, which is tax free. Talk about a rip off, of the elderly. Even greater than the banks with their fractional banking.

I think they should have to operate under the Tenancy Act. The business model should not be allowed in elderly care because the first thing in any business is to make a profit. To that, they cut the overheads to the bone. For instance, some of the homes that got COVID-19, had one caregiver to 16-20 oldies, as per an article in the New Zealand Herald. A home run as a trust, that I know of, has one caregiver to four residents and because it is not profit motivated, pays no tax. The principals of these profit orientated rest homes are big shareholders. The bigger the pay out, the larger the increase in the value of the shares. All tax free - that's where the money goes.

A friend of mine's son has the contract with a large rest home/village conglomerate, to clean the units when they change hands. He steam-cleans the carpets, his wife takes the drapes home and washes and irons them. They steam clean walls and ceilings. When carrying out this work for a particular unit, he found that the switch for the back porch was faulty. His wife went home to get a new one. He was sitting on the back steps and overheard the following. The manager came in with a prospective couple, and said – "We have put in new carpets and drapes and papered the place right through." Enough said. They have a licence to print money. They will do their best to wear you down.

Keep up the good work.

There is a group of New Zealanders that are not normally seen to be seriously disadvantaged but in fact are. My generation have largely looked after themselves and saved ,staying out of consumer debt.
The long term effect of Retirement Village contracts will be progressively poorer New Zealanders . More and more money will be concentrated in fewer hands.

The problem old folk want security, care ,a safe place .Something no longer provided by family. Fewer family can afford to look after us especially with shrinking family funds. A compounding situation.
Retirement Villages are the obvious choice for many . Now one of the biggest scams yet with a respectable look. These companies use this to their advantage. When villages started in NZ people were encouraged to join in their 50's The companies cottoned on fast to the fact that there was more money to be made with 'bodies' being regulary been turned over so raised the age to over 70 yrs. Very cynical.
An example Licence to occupy $600000 . You do not own anything for your full priced home. Then you agree to forfit a further 30% when you leave. Effectively they are charging you $780000 to occupy. Furthermore your heirs will only receive $400000 and lose any capital gain. With sleight of hand they have made a huge profit. And repeat this probably every 7 years on the same dwelling. Some of these villages are now $1 million plus 30% to occupy a 2 bedroom dwelling.

There is also a maintaince fee weekly (fair enough ) They usually say "thats all you have to pay in year" forgetting they are effectively charging more than $60000 pa from capital gain .

These companies usually pay a very small return to shareholders .They retain most of capital within company. Shareholders then are reliant on capital gain share price to make income. No cost to company. The CEO and directors make a very good living from all of this.

The government also get very little or no tax . Example [redacted]
paid for 20 years no tax , paying around $37000 about 2 years ago on multi billion dollar income.
This is a serious problem as people become less wealthy it will mean government has to chip in more from a decreasing tax base.

It is fair and reasonable for those companies to make a reasonable even excellent profit ( i need them to) but to take all of the Capital Gain is very wrong.

Nb. I declare my to show no sour grapes. I am a shareholder in a number of these companies and receive income but the system is not right and fair.

**Retirement Commissioner**
**Submissions – December 2020**

My husband (81 yrs.) and I (80 yrs.) have been living in the [redacted] retirement village, [redacted] for the past 2 years and 3 months.

The sales lady did an excellent job of selling us all the benefits of being in such a village – security, windows cleaned every 3 months, lawns kept cut regularly plus support and help if needed. However, we soon found that not to be so: - windows cleaned once per year; lawns when they are 30cms tall (not to mention them being dangerous when that high); help of any sort is charged to us in spite of paying annual fees of $7,000 plus!

We signed a consent form for the village to direct debit our bank account monthly for the fees; but now find they also debit our account for anything they do, including mending leaks in garden soak hoses, which are theirs!

As keen gardeners we elected to do our own garden. However, we find ourselves on edge every time we go into the garden, mindful that each time we inadvertently put the fork through their buried soak hoses, we will be debited another $20!

We wanted to extend our front patio path about 1.5 metres to connect it to our front porch so that we could freely walk (safely) between the two areas. We were told that the work could only be done by the village nominated contractors. Their quote was $2,068!

We have done many paving projects, over the years, in our many homes so knew that that was clearly a 'rip-off'! We then got a quote from an outside landscaper (whom, of course, we were not allowed to use) and his quote was just $300!

The price of the Licence to Occupy (LTO) for our villa was quoted as $510K by the sales lady. When she later checked with the village manager he said, "No, it would be $520K because we would have more ground around us". We now realise that was absurd because the ground is common ground, available for all and sundry to use and walk around on, which they do.

We later found many other inconsistencies with some people getting a $10K 'cash-back' (as an encouragement to buy), free heat pumps, garage carpet, dishwasher, blinds and drapes, and other items whereas we had to pay for all of ours. One resident even said they were surprised – and happy - to get their 'cash-back' reduction even though they didn't know why!

We have had a lot of trauma and tragedies in our family: – [redacted]; Losing all of our retirement funds at an age too old to recover from; and my husband who had [redacted] (never to be regained). After 62 years of marriage we were looking forward to some quiet time together, without any further stress! But we now find ourselves trapped, unable to afford to move and constantly depressed. Added to that we often feel we are disrespected and spoken down to by some staff, who forget they have a job because of us, and that we pay their wages!

We agree with all the issues you raised in the NZ Herald, but thought you should also hear some of the more personal issues, from one of the 'Silent Generation'! In spite of what the media projects about our generation 'having it easy' the majority of us had it tough… A country recovering from WW11 with very few men left - many of us, including myself, lost a father in that war and had a subsequent life of struggle without any inheritances – so now we just want a life of peace and respect!

Sincerely… [redacted]

*Additional emails received*

A further point... [redacted] recently commissioned independent research group's survey of it's residents, NZ wide, is also important. One question was, "Would you recommend [redacted] to your friends"? A whopping 50.4% said <u>NO</u>, which very clearly shows that most residents are dissatisfied and unhappy. That is also very clear from just informal discussions amongst residents around the village.

My apologies for contacting you again. Referring to the results of [redacted] national survey in my email of 23 December I gave you incorrect results. (At 22 years of age I had 20/20 vision but at 82 yrs I'm thankful to just have 'vision'.)

In response to, "Would you recommend [redacted] to your friends"?... **<u>Only</u>** **<u>50.4%</u>** (nationwide) said they **<u>would</u>** and only <u>50.7%</u> from our village said they would. (Our manager was delighted with those results because he was able to brag that we beat the national average!!)

The overall conclusion though is that most residents are dissatisfi ed, which may be why the From their points of view, however, their success has been very happy and satisfied shareholders..

There is no doubt that [redacted] focus is prof it not people. What they sell sell is a Licence to Occupy (LTO) not any interest in the title or real estate.

The villa we moved into was new. We had to pay for the garage carpet, dishw asher and all window coverings. We didn't install a heat pump, waste disposal or sun shade awning, but would have had to pay for them if we had. Any such items installed become the ro ert of and must remain in the villa even if the resident dies or vacates. then add those it ems into the LTO price then increase the overall price for the next purchaser, creat ing 'capit al ga in' for [redacted], none of which is shared with previous occupiers.

Finally ... [redacted] charge a weekly fee on each villa. If residents decidesto vacate their villa, they must cont inue to pay that fee for 6 months or until the LTO is sold to someone else (wh ichever comes first). In the event of the death of a resident who lives alone, the fee ceases at that time.

22 December 2020

Office of Te Ara Ahunga Ora / Commission for Financial Capability.
(Letter sent *via* e-mail only).

**RE: Consultation Submission to White Paper – Retirement Villages Legislative Framework: Assessment and Options for Change 2020.**

Dear Commissioner,

Firstly let me commend you and your team on the excellent white paper above. I appreciate the time which has gone into explaining how the increasingly complex aged care industry works, and particularly the retirement village sector. I am also grateful for the layout and language used, and the paper's easy-to-read and non-jargon style. Well done and done well.

Secondly, I thank you for the opportunity to make comments on the paper. I fully support all the existing recommendations within it. I do wish to comment on three aspects relating to retirement villages not covered – or only mentioned in passing – in section six or elsewhere within the paper.
I should say at the outset that I am making this submission as a private individual. I have no vested interest in the retirement village industry other than my family relationship to a former resident of one.

I do apologise for the length of this letter, but I wish to be clear in the points made. The three points are:
**I).** Increased recognition within processes of the role families and personal advocates play in retirement villages.
**II).** Raising the question of a possible need for a parallel process for raising certain issues.
**III).** (By far the most significant issue): The unreasonable and unfair practice of with-holding unit exit payments for reasons beyond anything to do with a resident or their own unit.

These points are covered as follows:

**I).** I wonder whether the increasingly important role of families and personal advocates of residents is underplayed within the white paper and within current legislation and codes.

There is perhaps an issue here about some village residents' capacity to understand and / or to complain. As the paper quite rightly points out, in a modern village complex there is often interplay between retirement village life and rest-home care on the same site or even within the same building or complex. The rules and agencies involved in independent living in a unit and rest-home (or above) level of care are quite different. Nevertheless, the lines between the village and rest-home parts within a site can easily become blurred. I note that the distinctions between retirement villages and rest homes, and some of the possible interaction between them – especially in terms of operator and site management – are outlined in the paper.
I know from my (relative's) personal experience that it is entirely possible that a resident living in a retirement village in a licence to occupy (LTO) system under an occupation right agreement (ORA) contract is receiving some rest-home-level care.

It is also possible (although I don't know how common) that the village resident, while still living in a unit, has had their enduring powers of attorney (EPoA) enacted. The resident may be capable and content to be safely living with some degree of independence in their unit[1] while receiving some rest-home level cares from elsewhere within the site.

Regardless of whether or not the EPoA has been enacted, it may fall to a relative or other personal advocate to ensure the resident's rights are being upheld and adhered to by the village.
A relative's concerns are likely to be more about the resident's clinical care, health and welfare: These concerns are in general outside the scope of the white paper and of retirement village legislation and codes. I know from personal experience, however (see (III), below), that sometimes the concerns are contractual and / or have to do with the operation of the retirement village rather than the rest home.

As the paper rightly highlights, the number of village residents in New Zealand is set to climb dramatically in coming years. This may mean that the number of family supporters and personal advocates will also rise – numerically if not proportionally. It therefore occurs to me that there may be consequences to this:

- Perhaps any review (as proposed in the white paper) should ensure that village residents' rights are protected even if it is not the resident themself who is making a complaint (*ie*; on a resident's behalf).
- Maybe separate processes are needed (*eg*; under a code of practice or an act) when dealing with residents' family or personal advocates (see (II), below).

**II).** The white paper notes some limitations to the existing processes and options residents may use to make a complaint: I wish to raise two aspects further to this.

I should firstly say, though, that I have never had occasion to use the formal complaints processes as outlined in the paper, nor have I seen them used. I am therefore not in a position to add any value to the existing processes or comment on their efficacy.
It seems to me, however, just through observation of the model, that the processes are designed for a resident to make a specific complaint about their own situation. The stories offered at the end of the paper are good examples of situational problems which a sound complaints process should be able to solve (…although, as the paper points out, some stronger industry regulation would certainly help!).

**1).** Sometimes, as noted in the paper, residents do not raise concerns with the village or operator. Reasons for this reluctance may include that they:

- 'don't want to make a fuss'.
- Don't have the energy.
- Don't want (to put themselves under) the stress involved.
- Aren't aware that there's a problem.

For exactly these same reasons, it may be a family member or personal advocate that may raise a issue with the village or operator on behalf of the resident: Out of concern and respect for their loved one, a relative or personal advocate may act on the issue so that the resident doesn't have the stress or worry of

[1] I suspect that this situation is more likely where the unit is an apartment within a building complex than a stand-alone villa, but I don't know what may be safely and reasonably possible on some sites.

dealing with it. If the issue is particularly complex, has significant consequences, and / or if the resident's EPoA has been enacted, a family member may even choose – for such compassionate reasons – to act without the resident's knowledge.[2]

**2).** A second aspect is when the issue is not a (formal) complaint, in that it is not about a specific matter relating to their specific situation. What if the matter relates to a wider issue? Examples may include:

- Where residents don't think, or are unsure if, their concern constitutes a 'complaint'.
- Something which affects all residents on a site or under an operator (or the whole industry).
- A matter of principle in the operator's style or method of management.
- A systemic practice of which there is uncertainty about the ethics.
- Residents are simply unsure to whom to direct their concern.[3]

It is acknowledged that many villages will have a 'suggestion box' and are required to hold regular meetings with residents: These are helpful tools. In many cases, however, these tools are limited in that they are at site level only. Even if the operator requires that they are to be informed of actions from village residents' meetings, residents are often unsure if their voice has been heard at operator level.

As outlined previously in this letter, it may fall to the families and personal advocates to raise concerns. These may include the 'non-individual' issues being discussed here.[4]

Here is an example of what I'm talking about:
In most other service-based and property-based industries, businesses generally have a public entry point for wider issues which (may or) may not be formal complaints: Their web-site. I note that some retirement village operators' websites have little or no scope for this[5]. In general, retirement village websites are heavily geared towards marketing, sales and investment.

In summary of (II), above, I think that any review (as proposed in the white paper) should also consider:

- Do complaints processes fit well when a family member or personal advocate may wish to make a complaint on a resident's behalf.
- What process should be in place when a resident (or their family or personal advocate) does not wish to make a personal, specific complaint, but wishes to raise a more general matter of concern or principle with the village or the operator.

**III).** The white paper speaks in some depth about the unfair way LTOs handle the financial arrangements when an ORA is termination and / or a unit is vacated. There is a further practice which I cannot find mentioned in part six or elsewhere within the paper and so I wish to outline it here. This practice is the withholding of exit payments for reasons **beyond** anything to do with a resident vacating **their own** unit.

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[2] I would think that this situation would be rare in a village (rather than a rest-home) context, but, as discussed in (I), above, it is possible.

[3] The white paper well draws out the sometimes confusing array of agencies involved – especially on a combined village and rest-home site – and the limited powers of some of these agencies to act on complaints or concerns.

[4] The whole situation described in (III) below is a good example of this.

[5] A quick look at major operators' web-sites shows that [redacted] do this quite well, and that [redacted] has a 'feedback' portal. [redacted] appear to have no specific provision for on-line complaints or feedback.

I should say at the outset that in what follows my experience is with only one operator – [redacted]. I do not know how other operators handle exit payments, but I would be very concerned if what is described below is universal industry practice. (Just to be clear, this letter is **not** some back-door method to complain about [redacted] nor to seek any remedy). What I do know is that the with-holding of exit payments is intentionally implied as part of [redacted] standard ORA, and that [redacted] village management interpret the ORA in a way which allows this practice.

Only for convenience, and just in case the practice outlined below applies only to [redacted], I have here used their name.

By way of background I am a relative of a current resident in an [redacted] residential aged-care complex. The name of the resident and of the specific [redacted] site are not relevant to this letter and have been deliberately with-held. Just to be clear, both my relative and the wider family are otherwise very happy with [redacted], the site and the service provided.

The situation which led to this letter developed when my relative (who we'll call resident 'A') moved out of an apartment (under a LTO ORA) into another part of the site (not under an ORA) due to increasing health needs. This process was fine. Another existing resident (who we'll call resident 'B') moved into resident A's vacated apartment shortly after. Resident B had a nearby apartment (under their own existing ORA), but considered A's apartment more desirable and so moved. This process too was fine.
We (resident A & the family) were then told by site management that A's termination / exit payment is being with-held until a new ORA is signed / paid up for **resident B's** now vacant apartment (*ie*; until a yet further party has moved into B's previous apartment).
Section 17.25 of resident A's [redacted] ORA was cited to us.

Just to complete our own story:
B had been in A's former apartment for over two months and A had yet to receive an exit payment. In the end, [redacted] did a buy-back on A's former apartment (although B was, and still is, living there). We suspect that they took this action only because I wrote to [redacted] CEO pointing out how the ORA was being used[6].
We have no idea how [redacted] has reconciled occupation of the unit(s) with B: Although this is none of our business, we do hope that B is being treated fairly.
I emphasise at this point that we bear no animosity whatsoever towards B. This letter relates to a wider, contractual issue: The above-cited provision (enabling exit-payments to be with-held) within the standard ORA.

It's our strong belief that the above provision in an ORA allowing exit payments to be with-held in this way is unreasonable and grossly unfair, and that it must be removed.
I note the following:

**1).** Any resident surely cannot be bound to a contract to which they are not a party. For instance, A is not party to [redacted] ORA with B. Whatever contractual or other private relationship the operator has with

[6] This was not a letter of complaint, and I purposely did not name my relative or the [redacted] site or its staff, nor did I provide any specific information about the case. The CEO must have figured it out, however, and suddenly we were advised that a buy-back by [redacted] was underway! My letter to the CEO was purely about the principles at stake, and, in fact, this section (III) of the letter you're reading now is based on it.

another resident (*eg*; resident B) or with another unit (*eg*; B's former apartment) is none of resident A's business.

**2).** Similarly each resident's ORA must surely be in respect of their own unit (*ie*; apartment or villa) **only**. For instance, whatever steps the operator's site management need to take to prepare, market and sell B's previous apartment can have nothing to do with the ORA of A's original apartment.

**3).** If an operator or village site management choose to do B some favour by waiving or delaying usual financial or other conditions as part of B's transfer then A must not be disadvantaged by this. I stress that we do not know whether this was the case in my relative's situation, and that it's none of our business. (We do understand that each of an operator's clients' personal situation will be slightly different: [redacted] is right to try to accommodate these).

**4).** It should make no (financial) difference to a resident where the replacement occupant for their vacated unit comes from. For instance, it seems that A has actually been disadvantaged by B being an existing [redacted] village resident, as opposed to a 'new' resident coming in from elsewhere.
Furthermore, clause 17,25(a) of the [redacted] ORA states that payment is reliant on '…finding a new Resident…for your Unit…'. The strong implication is the new occupant of an apartment is being defined as 'new' **to the unit**, not 'new' to the village / site. Surely where the new occupant comes from is irrelevant under the ORA in the sense of resident A's exit payment.
If there is ambiguity about this, I note that 'new (resident)', 'resident' and 'exit' are not included under Schedule One (definitions) of [redacted] ORA.

**5).** The practice of with-holding payment based on a third party's (*eg*; resident B's) transactions goes against norms in the property-related industry.
You would not find it acceptable if you had sold a house to then be told after the purchaser had moved in that you weren't going to be paid until they had sold their previous house.
Likewise, if you were a landlord you would find it unacceptable to hear that your newly installed tenant was not going to pay their bond or rent because the bond from their previous tenancy hadn't been returned to them.
The LTO system operated though ORA contracts, falling as it does somewhere between the property ownership and tenancy models, should surely follow similar transactional and financial protocols.

**6).** I can think of no other industry where the cost-of-risk is passed on to clients as in [redacted] ORA provision. If an operator has made a business decision to invest in building units (*ie*; villas and apartments), then that operator needs to wear its own risk (*eg*; of units being vacant). Even if units are vacant for only a short period, that cost-of-risk must be an overall business cost. It is totally unreasonable to pass that cost on to a few existing (and loyal!) residents just because they happened to be the last occupier of a unit. This is especially so as operators' clients are, by definition, vulnerable people. I note that clause 16.8 of the [redacted] ORA specifically – and quite correctly – forbids [redacted] to exploit or take advantage of its clients (as is required under the Code of Residents' Rights).

**7).** Village residents are almost invariably of a generation who are used to straightforward transactions. They appreciate that when they sell something they get should paid for it in short order. Complex ORA provisions create unforeseen (by residents) barriers and delays to the process of selling their unit causing

the operators' clients stress and worry. This stress is even higher in the case where the resident quickly needs the proceeds from sale of their unit to pay for a higher level of care elsewhere.
Operators are in a position to alleviate those concerns for very little financial loss to the company:

- Interest rates are low for the foreseeable future, so the opportunity cost of reducing delayed / with-held exit payments is also low.
- Village units are in high demand for the foreseeable future, so vacancy periods are likely to remain short.

**8).** The situation which led to this letter also raises the question about the effect of the ORA provision if more than one transfer is at play. The provision appears to be open to a 'domino' effect. Say, for instance, resident B's apartment was bought by a third resident who was also bound by and existing ORA, and then their previous unit bought by a fourth such party, and so on: Does resident A have to wait until a resulting vacancy (…from resident 'Z'!) is filled by an outsider – or at least, filled by some party who does not have an existing ORA to that same village – before A is finally entitled to receive A's exit payment?

**9).** I am neither a lawyer nor an expert in legislation, but I cannot find any specific reference to the practice of with-holding exit payments in either the Retirement Villages Code of Practice (CoP)(2008, *var* April 2017) or the Retirement Villages Act 2003 (Act) except in circumstances of repairs, damage *etc*.
For clarity, please note that:

- In resident A's case, there was no remedial or refurbishment work to be completed as A had been the occupier of the apartment for only ten months and there were no fixings to be removed or other damage to be made good. As for resident B's former apartment, we don't know whether any remedial work was required and this is none of our business. In any case, any such making good to B's previous apartment should be immaterial to A's exit payment.
- Section 50 of the CoP does not apply to the situation outlined in this letter.

I do note that [redacted] ORA and clause 49.4 of the CoP require an exit payment to be made within five working days.

**10).** As far as I as a layman can make out, the CoP and the Act do not say outright that operators are entitled to with-hold exit payments that are based on other units / ORAs from which other residents have transferred. Neither, as far as I can see, do these documents say outright that operators should not do so. I suspect that there could be an ambiguity or unclarity here which can be (or is being) exploited by operators. Maybe this ambiguity – if one does indeed exist – should be clarified with input from you as Commissioner or as part of any proposed policy review.

**11).** It could be that the central issue here is one of poor interpretation of existing rules. Regardless of whether or not a policy review needs to lead to changes within the Act and / or the CoP, I hope that – for the reasons outlined in this letter – you will see fit to direct[7] [redacted] standard ORA (and those of any other operators with similar ORAs) be altered to remove this totally unfair and unreasonable provision.

[7] I note from the white paper the current limitations of the Retirement Commissioner (RC)'s authority to act. For clarity, please note that my comment here (in (11)) assumes:

- That [redacted] (and any other operators') actions described in this submission are (possibly) not permitted under the current CoP and / or Act, and,
- This submission is not a formal complaint, and I am not asking the RC to act in the context of a formal complaint.

In summary of (III), I support a policy review which would lead to change in the rules for all villages so that exit payments are dependent on **only** each individual resident, **their own** immediately-terminated ORA, and **their own** immediately-vacated unit, and that exit payments are unaffected and unencumbered by any other resident, occupier or unit.

Finally, I should say that:

- My motivation for writing this submission is less about my own relative's personal situation (which was eventually resolved) and more about highlighting a systemic injustice which must surely affect many other [redacted] residents and possibly those under other operators.

- You are free to forward this submission to any relevant party, and to use it in any way you see fit.

- I am prepared to participate further in the consultation process – including in person or *via* any suitable media – if requested.

Thanks again for your time.

Kind regards,

There is a need for the revised law to be to be equally fair to all of the parties who are financially connected to the larger for profit retirement villages and indeed all retirement villages if possible.

There should be a guaranteed timeframe in the revised law for buy-back after a resident vacates the unit and therefore also in the ORA.

The ORA should clearly spell out that weekly fees should be reduced after 3 months from vacating the unit and cease after 6 months.

The steps involved in transferring within a retirement village from an independent unit to a serviced unit or care facility should be clearly spelt out in the ORA.

The complaint procedure should be clearly and simply spelt out in the ORA

Attention: Jane Wrightson, Retirement Commissioner
Re: The Commission for Financial Capability
Retirement Villages Act 2003

Dear Rebecca,

I'm writing this email in response to the article published in the New Zealand Herald, written by Anne Gibson, regarding changes required to the Retirement Villages Act 2003 and feedback has been invited to the commission.

It is clearly obvious to everyone that some retirement village agreements are fundamentally unethical, draconian and lacking a great deal of financial equity.

I can only relate my knowledge of such agreements to the case of our elderly mother who has occupied an independent townhouse for a number of years. The townhouse was purchased at the equivalent market value for a non-retirement townhouse at the time, however instead of owning the townhouse she only has a right to occupy it. The capital value of the townhouse has now risen at least a million dollars and the village operator will benefit entirely from this gain, not my mother's estate, when she passes away.

If my mother has to transfer to a serviced apartment, she would have to make up the difference between her original townhouse purchase price (not the current value) and the current value for a serviced apartment. This difference could be as much as $700,000. My mother is not a wealthy person.

When my mother does pass away her estate will receive only her original townhouse purchase price less at least 20%, which the operator will apparently use to refurbish the town house - the cost of refurbishment will be far less than that 20% amount. Not only will the operator benefit from the total capital gain of the townhouse but also the 20% charge for refurbishment and any surplus of that cost!

How can there be justification for continuing to charge service fees on the townhouse once the occupier has passed away and the contents have been removed from the property - the right of occupation is no longer taking place. The article suggests that fees are continued to be charged after the property has been vacated and while it is being refurbished and until the property is reoccupied. Equally, there is no interest credited to the family's estate for the amount owing for the townhouse during this period. There is no time limit for the house to be reoccupied. There is also no inflation adjustment for the balance of the original purchase price owing to the estate.

The article states that this a "vulnerable population" and therefore they should be entitled to a higher level of protection under the Retirement Villages Act 2003. It could be argued that retirees sign these agreements with an open mind and without coercion but, as stated in the article, "even lawyers advising their clients cannot understand them".

If a test case went to court, surely the court would rule that these agreements are totally one sided in favour of the retirement village operators and therefore should not be enforced and a remedial solution should be found. It could be argued that vulnerable people are being exploited for financial gain and their effective charge is disproportionate to what would be considered a fair and reasonable fee to charge for their services and facilities.

The importance of the "fiduciary duty of care" should be taken by the operators, the provisions of the Fair Trading Act should be applied and the financial issues which arise when retirees have to transit from independent to serviced and then to medical care facilities should be looked at.

I highly support the review of the outdated Retirement Villages Act 2003 and I recommend that better safe guards are put in place to protect and not allow operators to blatantly financially exploit our vulnerable population to the extent that is currently being allowed. Any changes to the Act should be retrospective. Is the current model still appropriate?

Yours Sincerely,

Q1: Has this White Paper canvassed the issues fairly and accurately?

Yes

Q2: Are there any important points that are missing?

Yes

Q3: Do you agree that a full review of the retirement villages framework should be undertaken?

Yes

Q4: If you replied No to Q3, are there any issues that still need attention?

Yes

Q5: Is there anything else you would like to say?

Yes

**Comments related to the Paper**

I thank you for the opportunity to comment on the White Paper. As a person who has been involved in a Formal Complaint, I have decided to make comments that primarily relate to that area of the Code of Practice, Code of Rights and Complaints procedures

**1.00: General comment**

It is interesting that persons entering a village focus mainly on the Occupational Rights Agreement (ORA) and the Disclosure document.

Villages often have separate documents to cover The Code of Practice and Village rules that may have the Standard Code of Rights included and, in some cases, they will include the Villages own Code of Rights which are an enhancement of the standard version. They do all carry legal status under the Act.

**2.0: Put all the information together**

**The Disclosure document should include The Standard Code of Practice, Standard Code of Rights for all New Zealand, and the Village rules**

The writer agrees with the statement on page 6 of the paper that there is a lack of a simple system or authorised advocate.

**3.0 : Accountability**

The obligations of the Operator and the residents should also be clearly explained

- In the existing Code of Practice, the Operator appears to be responsible for dealing with Informal and Formal Complaints from the moment they are initiated.
- **Is the operator responsible for just managing the process or are they expected to actively solve the problems**?

*In my own case no minutes were kept of the informal discussion and no attempt was made to solve the problem. I would have accepted a handshake.*

### 4.0: Research and reality

The White paper suggests that 73% of Villages had no complaints in the reviewed period.

It would appear that those Villages or organisations have an environment and structure that is resident friendly and they are proactive and understanding of the residents wants, needs and problems**. However, there is a line of thought that suggest residents fear or just find it to difficult so problems do not get dealt with**

The White paper snapshot for a twelve-month period shows 183 complaints. Around 18% of cases are not solved and this would be 33. This leaves around 150 cases. Based on the reported information,

40% are being solved at Operator /Manager level

40% are solved by the Statutory Supervisor, Dispute procedures, or by other non-management intervention

**What this research does not show is that complaints are solved often by the desire to end them not by getting a quality resolution**

**There are villages where the Complaint rate is exceptionally high and reaches double figures annually. *My village had 11 in 2020.***

Empirical research would suggest that in these villages the residents have no understanding of The Code of Practice or the Code of rights. **Similarly, management is likely to be unfamiliar with the Codes and untrained in the techniques needed to mediate and reach solutions**.

The Management/ Operator can show bias, and in many cases, they hope the problems will just go away.

**The existing procedures for solving complaints are toothless**

In Complaints Resident V Resident, the respondents have no reason or compulsion to respond to any stage of the Informal, Formal Complaint, Mediation or Dispute process. Respondents in disputes between residents just don't participate. ***In my own experience the respondents just refused to discuss the complaint with the Statutory Supervisor. The Statutory Supervisor made recommendations which they just did not answer. They indicated they would not participate in Mediation***

**The process is set to fail before it starts**

### 5.0 Privacy and Confidentiality

Privacy is also a problem. It is not possible to stop gossip in a village, but again there is strong evidence (from the writer's own experience) that persons involved in complaints have distributed confidential correspondence to other residents, hold meetings to discuss one side of a problem, organise petitions of support their group view. The existing system actually makes small problems into big ones because they are not dealt with in a neutral and confidential environment.

***My own experience is unbelievable. After the informal discussion one respondent emailed 30 people with details of the discussion. He also added a derogatory remark about me. The operator did and said nothing. The Statutory Supervisor did see it as a problem that required an apology. That has never happened.***

***The wife of the above communicator called for a public meeting and 20 people attended. It was chaired by the Chairperson of the Residents Committee. He then wrote a letter to me asking for the complaint to be withdrawn. A similar letter was written by another committee member privately. Both letters have now appeared as attachments to minutes. The Statutory manager agreed that they were third parties to the complaint. The operator was also emailed the meeting information but did nothing to stop the outside intervention.***

**6.0 Residents Committee**

There is also a problem with the involvement of Residents Committees. These Committees are basically filled by people with social aspirations and the reasons for committees is unclear. They do not attract sufficient skilled people to tackle key problem-solving tasks.

There is an assumption that the described Resident Committees are ORA holders that volunteer or are voted for. They often have no constitution, objectives or purpose. **They are not "Resident Associations"**

**There linkage to the industry nationally is weak. The role and relationships to the operator and ORA holders needs to be standardised nationally**. Residents can have separate social committees.

They are often seen as an adjunct to the management and are not a strong tool available to residents.

**They should only operate on behalf of all Residents and not take sides in complaints or disputes between residents**

All Resident Committees are not equal. Nationally many villages supply alcohol outside of the Licensing Act. Others are forced to become Incorporated Societies (Resident Associations) so that they can apply and maintain a Liquor Licence. In theory they have the same legal relationship with the operator as the nearest Rugby Club. They have their own constitution which relates to the benefits of membership.

In the future the new Incorporated Societies Act will require extensive changes that include rules that can challenge membership and rules that allow Committee operation and membership to be challenged.

Again, there is empirical evidence of Resident Incorporated Society committees making public statements as to the Rights of individual ORA holders and wanting to include rules that will allow the Committees to discipline ORA holders and that they should play a lead part in dealing with formal complaints between ORA holders. This is not simplifying the complaints process but complicating it.

A standard format for the industry could be

**ORA holders Committee.**

Role fully described in Code of Practice with operating guidelines.

- Village activities and monitoring
- Actions on behalf of all Residents
- Actions related to national Issues.

**Incorporated Society**

**Resident Social Committee**

As required by each village
Villages only

- Set up a group of 10 or more and become an Incorporated Society with an appropriate constitution.
- Become the Licence holder

## 7.0 The Code of Residents Rights is unsatisfactory

The existing Code of Rights looks like a quick fix add on to meet the requirements of the Act. **It certainly does not reflect the current or the future needs.**

**Basic rights of residents**
**This is a summary of the basic rights given to you by the Retirement Villages Act 2003.**

*Services and other benefits*1

You have the right to services and other benefits promised to you in your occupation right agreement.

*Information*2

You have the right to information relating to any matters affecting, or likely to affect, the terms or conditions of your residency.

*Consultation*3

You have the right to be consulted by the operator about any proposed changes in the services and benefits provided or the charges that you pay that will or might have a material impact on your—
(a)
occupancy; or
(b)
ability to pay for the services and benefits provided.

*Right to complain*4

You have the right to complain to the operator and to receive a response within a reasonable time. This makes no comment on the Code of Practice procedures or the range of complaints

*Informal and Formal Complaints and Disputes*5

You have the right to a speedy and efficient process for resolving disputes between you and the operator or between you and other residents of the village. The present system is not speedy or efficient.

*Use of support person or representative*6

You have the right, in your dealings with the operator or other residents of the village, to involve a support person or a person to represent you. The cost of involving a support person or person to represent you must be met by you. This is totally unclear. In formal complaints it seems you can have a support person. In disputes it is unclear. What is the role of a support person.?

*Right to be treated with courtesy and have rights respected*7

You have the right to be treated with courtesy and have your rights respected by the operator, the people who work at the village, and the people who provide services at the village. The problem here is that there are no actual rights that are meaningful to what occurs in a Village between people. (Compare with Health and disability Rights)

*Right not to be exploited*8

You have the right not to be exploited by the operator, the people who work at the village, and the people who provide services at the village. (Can you be exploited by other residents and resident groups. Many problems are Resident v Resident)

Your obligations to others

Your rights exist alongside the rights of other residents and the rights of the operator, the people who work at the village, and the people who provide services at the village. In the same way that these people are expected to respect your rights, it is expected that you in return will respect their rights and treat them with courtesy. (What are these rights? The Code of Rights for Health and Disability are in much greater depth. The rights of one Village includes the following but no one actually knows what they mean)

Freedom from Discrimination. (Does this relate purely to The Human Rights Act descriptions)

Freedom from Coercion

Freedom from harassment

Right for privacy to be respected.

Right to be treated with respect

Ri8ght to religious freedom

<u>Are the above rights best dealt with within a village complaints process? Are there existing agencies such as Human Rights Commission &HRC) that could handle complaints?</u>

<u>Other typical headings are)</u>

<u>The right to service</u>

<u>The right to use of facilities</u>

<u>The right to information</u>

<u>The right to see your records</u>

<u>The right to autonomy to you own affairs</u>

<u>The right to participate in meetings</u>

**In one situation it says you have the right to vote for the Residents Committee. That is irrelevant if the Residents Association is an Incorporated Society as they will set their own rules**

Operator's contact person

If you want more information about your rights or wish to make a complaint against the operator or another resident, the operator's contact person is [*name*] [*telephone number*]

The Rights should be known and be part of an education policy at all times. If the Rights are known the problems might be eliminated early).

**Health and disability Consumer Code of Rights**

**Compare the detail in the Health and disability Services Consumer Code of Rights. This Code of Rights merges the Code of Practice information so that Rights and complaint options relate. There are 10 key headings.** They provide much more detail and explain the process to be followed if a right is breached or is going to be challenged.

Here is one example.

_*Right to complain*

(1) Every consumer has the right to complain about a provider in any form appropriate to the consumer.

(2) Every consumer may make a complaint to—

(a) the individual or individuals who provided the services complained of; and

(b) any person authorised to receive complaints about that provider; and

(c) any other appropriate person, including—

(i) an independent advocate provided under the Health and Disability Commissioner Act 1994; and

(ii) the Health and Disability Commissioner.

(3) Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.

(4) Every provider must inform a consumer about progress on the consumer's complaint at intervals of not more than 1 month.

(5) Every provider must comply with all the other relevant rights in this Code when dealing with complaints.

(6) Every provider, unless an employee of a provider, must have a complaints procedure that ensures that—

(a) the complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the consumer within that period; and

(b) the consumer is informed of any relevant internal and external complaints procedures, including the availability of—

(i) independent advocates provided under the Health and Disability Commissioner Act 1994; and
(ii) the Health and Disability Commissioner; and
(c) the consumer's complaint and the actions of the provider regarding that complaint are documented; and
(d) the consumer receives all information held by the provider that is or may be relevant to the complaint.
(7) Within 10 working days of giving written acknowledgement of a complaint, the provider must, —
(a) decide whether the provider—
(i) accepts that the complaint is justified; or
(ii) does not accept that the complaint is justified; or
(b) if it decides that more time is needed to investigate the complaint,—
(i) determine how much additional time is needed; and
(ii) if that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it.
(8) As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of—
(a) the reasons for the decision; and
(b) any actions the provider proposes to take; and
(c) any appeal procedure the provider has in place.

**The Health and Disability Code treats all persons as Consumers. What makes Residents in a Retirement Village different? Are not ORA holders Consumers**

**8.0 : Key Points**

1. **A comprehensive new code of practice that includes the Code of Rights needs to be established that is consumer friendly**
2. **The new combined document should be part of each villages Disclosure document. Disclosures and Agreements should be complete to the buyer**

3. **Residents need some education and awareness of codes of Practice and Rights. Shoving them in a folder is meeting the requirement but not improving problems**

4. **Those that are involved in any Code processes should be fully trained in the part they are expected to play**

5. **Any complaints policy and procedures should be totally independent and guaranteed Private and Confidential**

6. **Participation in any complaint or dispute policy needs to be more than voluntary**

7. **AI complaints should have clear findings and judgements even if they are not accepted of enforceable**

8. **The following should not be involved in Complaints or disputes**

- **The Operator**
- **The Statutory Supervisor**
- **The residents Committee**

9. **Residents do need access to funded resources and skills that are available to the operator but not to individual residents**
10.

11. **Each Village should have an ORA holders Committee that has at least part of its role defined in the Code of Practice**

12. **The role of other dispute processes that already exist should be explored for Human Rights issues Etc.**

**<u>Submission Form - White Paper - CFFC – Retirement Villages Discussion Feedback</u>**

**Q1: Has this White paper canvassed the issues fairly and accurately.**

- No

**Please say why:**

- The Retirement Village Residents have not been canvassed regarding their views or concerns.

**Q2: Are there any important points that are missing?**

- Yes

**Please describe the missing points.**

- Timeframe for when Villa is vacated and sold.
- ORA's written are in favour of owners not Village residents.

**Q3: Do you agree that a full review of the retirement villages framework should be undertaken?**

- Yes

**Q4: If you replied No to Q3, are there any issues that still need attention.**

- Replied Yes because Village residents' issues are not fully covered.
- Refurbishing of the internal maintenance and upgrade needs timeframe say: 10years.
- Replacement items should be on a shared cost basis.
- Monthly payments by residents need to be fixed amount.
- Sale of Villas timeframe: after completion of the normal 6monthly fees - the capital held by owners needs to be paid out. Presently owners can hold these monies for long period up to over 2 years before a villa is fully marketed
-

**Q5: Is there anything else you would like to say.**

- Yes
-
- The 2003 ACT need to be updated taking in account of Village Residents concern – two decades it too long for only minimal changes.

# Retirement Village White Paper.

While I support the contents of the paper I feel there is a danger that the impact of some changes may be detrimental to the smaller villages although the problems are the same.
I feel the impact could be similar to the effect Super Markets had on the small grocer stores driving them out of business. Indeed for any review to be comprehensive, perhaps a survey of our Village would be useful.

I would ask that the following details about the village I live in, [redacted] on the [redacted]
- be considered.

Our village comprises [redacted] self contained apartments, located in between a- [redacted]. There are other shops & services in close proximity, with bus service outside the gates. In addition the beach is 5 minutes walk away.
Surely an ideal location for a Retirement Village!!
However over the past year there is a problem in selling units even at the price of low $700,000s.
This is contributed to by the actions of the big six players in the market & their marketing tactics.
Incentives such as monthly fees being fixed or not being applied for up to two years after taking up occupancy, the combining of care facilities with traditional retirement facilities giving the impression that residents can always have whole of life care if required. In addition their cash flow strength enables them to handle faster settlement on vacation of the unit.
In a case such as ours these benefits cannot be available as it normally takes 3 months for units to be renovated on vacation and any free periods of monthly fees puts a greater burden on other residents to meet the operating costs.
At the present time we have five empty units due to death or the need for care facilities. One has been vacant for over 12 months & some of the others 6 months. Our monthly fee reduces to 50'/o after 6 months & remains at this until a new resident takes possession- with no maximum period.
We do receive a share of any capital profit, which varies depending on possession date, but the delay in sale of units defeats some of this benefit.
Unfortunately there is no incentive for the owner to push for a new resident as their costs are not dramatically affected. The sale of apartments is handled by the Management who have no experience in Real Estate, & if any costs are incurred in selling these are the responsibility of the resident or their estate.
I do feel that some alterations to the Act are required to either allow the resident to be more active in generating a sale, or some interest be charged, & payable monthly, to encourage quicker settlement in obtaining a sale.
Some will say the owner has not the money to pay until a sale is achieved, but in our case the owner borrows any available funds to fund his other companies. Admittedly he is charged interest but the loans are unsecured, thereby raising the concern of residents in the event of financial difficulties being experienced by those associated companies. This might be allowed by company law but appears morally wrong to the vacating residents.
Should any further details be required I would be happy to assist in any way.

RE: Retirement villages.

Before deciding to live in a retirement village we researched all the villages within a 20km radius from our home. We chose [redacted] because it was the best by a country mile!
As we intend to die in this village any “so called ‘loss of capital gain is of no consequence to us- we will be dead! Our will beneficiaries know the situation and are quite happy with the amount they are guaranteed to receive for the buy back of the licence to occupy.

We (and others in our village) see the [redacted] contract as a “win win” and we are very happy with our choice.

There may be some “cow boys” out there BUT [redacted] is not one of them and the media and so called watchdogs should stop plying everyone with the same brush.

Yours

Retirement Villages or pensioner housing.

[redacted] in [redacted] has 10 Villas that have LTOs. Registered as a charity the residents soon find they have no rights and no formal tenancy body they can turn to. The Villas raise money for [redacted] through the 15% the Trust gets when Villas are vacated.
When asked why the Trust is not registered as a retirement village....because that's what it is, .... all occupants have to be 65 or over, their lawyer replied they did not have to be
"as they don't provide any services".

They do in fact provide services, paid for by a monthly maintenance fee, that was put up with a couple of weeks notice last year and again with three weeks notice this year. Lawns are mowed, occasionally windows cleaned (once last year) security lights provided and exterior of Villas are meant to be kept in good repair .. but it's always a battle to get leaks around windows, through window's that don't close properly and front and back doors that don't close tightly letting in drafts etc.

When my lawyer asked them why not registered there was two month delay in reply. It appears in that time they opened a separate account for maintenance and the rise in fees came on unheaded paper evidently from a parishoner body. But we
are not dealing with a new representative, just one of the only two trustees who ignore most genuine complaints.

My lawyer has written to the commissioner, but this is an expensive exercise and in light of a recent Consumer article on the subject, I am probably wasting my money.

Not everything is made clear to purchasers of LTOs. In my case after I decided to purchase and ACC had approved it for modification for paraplegic, when it came to settlement day the Trustees presented me with four pages of fine print conditions and a 14 day cool off period from signing. In my case it was too hard to go through hassle of purchasing elsewhere so I signed everything they wanted.

I hope my comments are useful. Essentially residents have no disputes procedure and are at the mercy of our supposedly [redacted]. It's truly awful and I would be out of here like a shot if the housing market had not gone mad in the 4 years since I moved in.

My lawyer still waiting for reply from overworked Commissioner regarding the cases where organizations are required to register as a retirement village. It has not covered the cynical separation out of maintenance account from other [redacted].

**Subj ect:** Reti remen t homes

Greet ings

As_____ for different older persons I have had experience with dealing with [redacted] and [redacted]

Li e Consumer I have feltt hat cont racts are loaded against t he resident. The retirement home persondid no answer the Consumer queries. I have been to seminars andthey have trott ed out the same platitudes of being the good guys.

My concerns areas follows.

1. As- I had to sign contracts on behalf of prospective residents. One standard clauseI always changed(after a prolonged argumentthat wentto HO in one case) . I had to give a personal guarant ee (asagent) for any debt s incurred by my friend t he resident (t he principal). I refused andhadthe terminology of the clause changed by the addition of the words 'limited to the amount of fundsunder my control'. As- I hadcontrol of fundsto pay the residentsbills.
2. The clause that limits repayment to the amount paid initially less x%pa (usually a total of 30%). A deduction after the propert y has gone up in value? The reti rement homes know the value of units on an annual basisas they have to do a revaluation of assets for accounting and financial reporting purposes. I woudn't mind so much the deduction from the market value of the unit, unit, roometc but for them to keep 100% of the capital gain is contrary to normal propert y purchases andsales. I know the contracts are generally 'licences to occupy' but he residenthas to pay t he upfr ont market value of the what hey occupy but do not own. The price is set as if the resident was a buyer sowhy cant they be treated as a seller when they exit the property.
3. When a resident exitsthey are obliged to sell (relinquish) their licenceback to the retirement home at the contract set price of cost les x%. But t he resident has to still pay the monthly fee until the retirement home findsthe new resident. I can accept t hat until the place is clearedby the old resident or thei r re present at ivesthatthefeeshould be paid but generally the place can be cleared in a week or two. In my experiencethe homestake close to the six months t hey have allowed t hemselves to resell. The usual re ply rom Management is the market is slow. My reply is that there are waiting lists in many homes. Right now t he re is a building boom because of a shortage of ret iremen t accommodation. My complaint has added weight in that I have said to them - you have no incentive to make a timely sale. You have inbuilt inertia to take your time knowingthe monthly fee isstill being paid and the value of the propert y is going up. I do not like paying until the new resident comes, whenas the ow ner of the licence, I have no say in the f inding a new ow ner. I agree the home has to vet the new owner. I am not suggesting that home sales staff becomelike aggressive land agents pressuring buyers but the six month period is too long. It should be one monthmax. See point 5 also.
4. Where there is a clause to pay for R&M of the unit that tis loaded against the resident asthe repairer can charge w hat t hey like but the resident and payer has no power of cont ribut ion to the work or paying.
5. In t he case where the unitis to be repaired or upgraded t he monthly fee is still payable while the work is done. The fact is t he contract is fr ustrat ed becauset he home cannot provide the accommodation they have contractedto provide. I know mostsuch work is done on the exit of a resident by change or death. If such work is done the unit cannot be sold to new resident until the work is completed. The ability of the home to sell is thus compromised. I feel in suchcases the start of the contract or the intention to do the work is the point when the home resumescontrol of the unit and therefore the monthly fee should stopat that point.

6. The advice to get independent legal advice in one case was the home's solicitor? Conflict? Chinese wall?
7. Another recent development is that some homes now use an [redacted] to run the resident incidentals account. I feel that the NZ home should guarantee the resident's funds if the provider gets into financial difficulties. I have checked the NZ office out and they assure me that they met all NZ regulatory requirements! Is that sufficient guarantee in this day and age?
8. I am aware that the homes argue the contracts are set up with a model that guarantees them a flow of funds to maintain future development. But why should I as a present resident be funding future residents. I am aware that none of the main homes are making losses.
   They would argue if we don't get funds from resident through cessation of licences they will probably think up other ways to make up the shortfall. In the end the resident may be no better off.

   I am an accountant if you hadn't guessed already. Being told all the contracts were standard as approve by HO was like a red rag to a bull!

   Trust this will be a help to your project

I have just seen a section in the latest notice from the MSD seniors newsletter.
My wife and I (64 and 67 nb respectively) have been seriously looking into retirement villages and had several discussions with a few and visited a couple to view.

We currently live in a large home that is too big for just the two of us and would be happy to sell and buy a villa in a retirement village.
However we have a couple issues that may be also a further detrimental thing for many similar mature people to do likewise.

We are very keen to move into a village setup that has better control over who our neighbours are and control activities to limit excess noise from cars and music and parties in the public neighbourhood (council and police don't seem to care about these types), making it a very undesirable lifestyle in public areas, and only creates excessive stress on us and reduces ability to enjoy our own home and yards.

The big problem is many of us older people do still have mortgages for various reasons.
Although I have to still work (and will do for many more years) as pension insufficient to cover any mortgage and basic living costs (even without extravagance).

We have one now when eventually bought a home (that needed a lot of work in a small town) after many years renting, as lost all our equity in a home we bought in [redacted] several years ago and thinking we could not loose, but due to attitudes from real estate, bankers and lawyers any homes with any minor issues, yet still a very good home and area meant we had to sell our home for a loss (about 8 years ago [but that's a separate long storey].

Also my wife got [redacted] about 14 years ago, so we had to survive all that time on just my mid-range income as she is unable to work yet because she is married she cannot get any form of sickness benefit and the government does not consider it met the criteria as an ACC accident yet it is an internal attach on her body by a foreign virus transferred from a large air conditioning system (being an internal, attack on body compared to an external attack on the body to be an accident).

So we and many do still have mortgages (although fairly minimal [140k]) so we cannot buy a retirement villa as their cost (for license to occupy) are not much less than what we can sell out home for.
But we cannot transfer our mortgage that we pay regularly and ahead of minimum payment, so only have a few years to go.

The issue is we and many cannot buy into a retirement village and let our home be sold to a family that could better utilise our home and property.

The other little issue is when we eventually die at the retirement village (if and when we can buy into one) our estate only get **75% of what we paid for it**, yet in some cases the property may be worth double that price and on sold to new occupiers at the later value price, which seems very unfair and not good caring approach for residents who bought the unit.
However admittedly it is realised we would be at least in a better environment so also a better lifestyle and would not expect the same level of profit if in the normal community, but a fairer approach is needed for the village to make a reasonable profit but also the owners.

Yet with all the other concerns these days about people's rights and fairness etc etc etc, it seems odd this very old approach for buying into a retirement village and passing on any estate value when we are deceased, seems extremely one sided and saying all this modern attitudes do not count when it comes to the elderly being able to get into retirement villages and how they (or their estate) are treated when they leave or die.

Just some thoughts and concerns from an aging married couple that has to still work and carry on working for many more years due to pension not being sufficient for us to live basically and buy a small villa in a retirement village, despite being volunteers in may community groups for many years (over 50 in my case) to help the communities we lived in over the years.

thanks

**<u>To Whom it may concern</u>**

**<u>Re - Retirement Villages Act</u>**

Thank you for the opportunity to make comment on the seemingly long delayed overhaul of the one - sided legislation by which operators currently abide.

My understanding is that there is a severe imbalance created by an operator-led Code of Practice which is of no, or little benefit to the residents.

In addition, I would like to make comment on the following vital points of change required......

1. The practice of villages charging weekly fees to the resident (or their estate) AFTER they have left - and sometimes for <u>long periods</u> after they have left, must cease. There is no other situation in which 'landlords' can charge a previous resident such fees after their departure. It may be legal under the prevailing Act, but it is immoral and takes unfair advantage of those who, most often, are the ones who can least afford it.

2. The vast majority of villages do not return a resident's capital until their Unit is relicensed. There is great room here for underhanded practices which indeed have been reported and written about by many ex residents. Example: new units are advertised over vacated ones causing a significant delay in the return of capital to the resident. In addition, the resident gets no say in the sale price or process. There needs to be a specific, maximum time frame for the return of the resident's capital. This should not exceed one to two months at the VERY most.

3. Some villages charge a $10,000 (plus) admin. fee when one transfers from one unit to another. This practice must stop. There are other villages which will "not allow" a resident to shift from one Villa to another. This has been directly advised to me by a village administrator.

4. Residents should have a simple, legal Code of Practice which protects their rights. This should include being able to make a formal complaint against a village operator through a legal and just complaints process.

5. Residents need and should have extended to them by right, the respect and dignity enjoyed by every other New Zealander. There must be no overt or covert infantilisation of older people in our society. Unreasonably restricting a resident's ability to make choices - as in villages withholding consent to carry out common activites for example - is a form of elder abuse. As is bullying, which also takes place at the present time.

There are other aspects of concern but at this stage, I would like to conclude my submission there. At the present time, I am on a waiting list for a villa at a local Retirement Village, but on investigation of current practices (as above for instance) I am having serious second thoughts about the potential loss of autonomy and capital should the Act not change very soon as it urgently needs to.

Dear Jane

I was, just before Christmas, looking to buy a lovely 2 bedroom unit at [redacted], near the [redacted] shopping complex.
I had almost put pen to paper, when I found out I could not get myself a lovely small woolly dog. I had always wanted a loving relationship with a dog.
I was told it was ok if I already had a dog, but I could not move in and then get a pet. I found this to be ridiculous, we all know how ones wellbeing improves
when animals are around, loneliness fly's out the window, and love fills the heart.
Retirement villages should have a Doggy day care, and Doggy get tog ether's, and a Doggy club.
They take them to the Hospital’s, and retirement Homes.

Food for thought

4 February 2021

**Commission for Financial Capability (consultation@cffc.govt.nz)**
Re: Retirement Villages Act 2003 - Discussion Paper

**My Submission**

My name is -- and I am a resident in [redacted], [redacted] and have been fo my wife• . [redacted].

I am making this submission mysel,f having been a Residents Association Committee member for 2 years and then – for an additional 4 years.

I am choosing to write to you direct, rather than through the RVRANZ as I regard this organisation as poorly equipped and a disappointing organisation, who provided no practical help in our Residents Association making an official complaint with our Operator – [redacted]. We also took this to your [redacted], to our [redacted] and NZ Overseas Investment Corporation. This dispute was satisfactorily settled eventually by Mediation, again without any offer of help or practical assistance by RVRANZ. In fact, the Operators RVA were of more value.

My background is as a qualified [redacted] with many years running heavy engineering companies in New Zealand, including the largest. I followed this with Business Development Manager for the [redacted]), then Marketing Manager for [redacted] (who later facilities managed the [redacted]) and then as a Consulting Engineer including many years for the [redacted]. I was a chairman for 11 years of [redacted] and an [redacted].

**Introduction:**
The problem for residents of a Retirement Village is the significantnumber of documents received prior to "signingup". This includes a Code of Residents Rights - around 50 pages,the Disclosure Agreement - around 50 pages and the Occupation RightsAgreement - also around 50 pages. It is not just about the amount of information; it is the understanding of the interpretationwithin these documents that gives rise for disagreements and complaints.

Lawyers / Solicitors generally do not understand the ramifications of this, nor do the incoming Residents until after settling into a Retirement Village under its RVA Group umbrella.

**Problems with Current Contracts**

a) **Interpretation.** The Occupation Rights Agreement (ORA) is drafted by the Operato,r signed by the Resident but all the interpretation of its clauses is decided by the Operator. When things go wrong, or they fail - the Operator is the <u>sole</u> arbiter of whatis to be done and whopays for it - whichis inevitably the Resident. When raising a justified complaint over the interpretation, the Operator will reply with their decision (usually non-negotiable) and direct you should you still have an issue to refer this to the Statutory Supervisor. The Statutory Supervisor will in the first instance direct you to reach an agreement with the Operato.r Should you still contest the decision - the Statutory Supervisor will again ask that you seek to resolve this with the Operatorand will also advise something to the effect "havingconsidered the matter we do not believe there is any legal infringement of the ORA contract clauses".

**Interpretation is totally on ided and to the exclusive benefit of the Operator.**

b) **Who Pays for What:** The <u>largest</u> problem for a new Resident and all Resident Committees is "who pays for what" after the initial warranty period of settling-in. Generallythe unspoken rule is that anything that needs to be repaired inside the Villa / Apartment is the Residents responsibility and anything outside is the Operators responsibility. The Resident only finds this out at a later stage.

This leads to farcical arguments. For example, Our Operator contends that the garage door is the Residents responsibility as the garage door opener and push button are installed inside the garage – even though it is in effect, an external door. Front door external lock repairs are also the Residents responsibility for repair, even though the security of the Village is the responsibility of the Operator.

**The decision on these topics is one-sided and to the exclusive benefit of the Operator.**

c) **Operator Chattels:** In our ORA and many others, A schedule of Chattels – <u>specifically defined in the ORA</u> as Operator Chattels, are included. Such as heat pumps, stove tops, extraction fans, etc.

Logically, all repairs or replacements of the Operator Chattels (as they belong to the Operator) would be the Operators responsibility. Not so. Here again, the Operator will refer us to the maintenance clauses that advise that all maintenance is to the Residents account. This makes no sense at all.

**Interpretation is one-sided, the decision making is one-sided and to the exclusive benefit of the operator.**

d) **Maintenance:** In all our ORA's there is a section regarding maintenance. This makes it clear that correct maintenance of the Villa / Apartment equipment or items within this, is the Residents responsibility.

In our Village, the Operator has <u>never</u> provided any maintenance instructions or procedures or guidance, despite many years of asking.

This is equivalent to a "Get Out of Jail Free" card in Monopoly. **If the other clauses and parameters in the ORA are not applicable in replying to a complaint, this trumps everything.**

e) **At Point of Signing:** The points made previously are not explained to Residents at signing the Licence to Occupy. We all believe at the time of signing, it is similar to a Landlord / Tenant relationship where the Landlord picks up the cost of household items when they are life-expired, such as tapware and electric points. This is not the case in Retirement Villages where the Operator regards these items as "maintenance" and deems payment is the responsibility of the Resident.

**This is grossly unfair**.

**Final Comments:** Having been at the "front-end" of Residents Committee versus Operator discussions over 6 years within the Residents Committee and fronting Residents complaints, it seems a continual battle to "hold the line". It depends far too much on the skill and energy for Committee chairpersons to logically argue the Residents causes in an ORA that in practice is so open to interpretation and decisions that are made purely by the Operator.

I wish to make the following submissions :-

1. There should be a guaranteed timeframe for buybacks of 6 months.

2. Capital gain- suggest this should be shared on basis of 70% to Village Operator and 30% to Resident.
   Operators have the free use of the Residents money during occupation whilst the appreciation is occuring.
   With villa unit prices increasing so much, often if a resident wants to transfer to a serviced apartment, the cost of the apartment exceeds the return amount the resident receives from the villa.

3. Weekly fees should cease once the Villa or Apartment is vacated, cleaned out, and the keys handed back.

4. I fully agree that information for transferring to higher levels of care needs to be standardised and improved.

**Subject:** Re  Retirement homes

I have a three bedroom town house with two bathrooms . But according to the rules of my retirement home I can only have a visitor for two weeks   This  applies to a career, a relation , a friend, etc  we are not allowed to let out a room, or let someone in when we go for a holiday.  The big one for me is not being allowed to have a relation yet if I was still married I could have a husband living with me but not a son or daughter for more than two weeks.

What do you think?

I can understand not letting out a room, but not allowed a carer!or a relation is I think a bit tough especially if the relation was also a carer

Other wise we are completely spoilt old people Looked after wonderfully especially during the covid shut down

SUBMISSION ON WHITE PAPER ON RETIREMENT VILLAGES
– LEGISLATIVE FRAMEWORK

I make this submission as an independent resident of a retirement village.

1. OPTIONS GIVEN IN PART 9

I do not support Option 1 – the status quo. The White Paper itself reveals enough issues to warrant significant changes are needed. New Zealand does not do self-regulation well compared to a number of European countries. We have a sorry history in the use of self-regulation for example, the building industry (leaky homes), and the mining industry (the Pike River tragedy) are examples demonstrating this.

I do not support Option 2. I agree that piecemeal change by repeated variation to the Code is cumbersome, could render it hard to follow, and over time risks inconsistencies gradually accumulating within the Code.

I support Option 4 – a policy framework review. The sector will continue to grow and what should be sought is a framework which will meet present needs, and as far as is possible anticipate future requirements.

2. MISCELLANEOUS COMMENTS:

Part 1 – I support the need for a resourced leadership agency.

Part 2. Services to residents.

Residents coming into a village have no means of knowing how the charges for services are calculated or whether they are reasonable.~~; this must accept them as part of the price of the Licence to Occupy..~~
The Paper suggests in p.13 that those operators who fix their regular charges to residents over their occupancy, in time subsidise those residents. However, I believe that at least one operator has increased the village entry age to 70, thus increasing the turnover, so both reducing the potential number of years a resident will be in the village paying fees at that level, but also providing an earlier opportunity to recalibrate the level of those charges for new residents. (As an aside, not being able to enter a village until a later age can mean that some residents are no longer as physically able to enjoy those amenities, to make new friends or adjust as easily to village life as they would have at an earlier age.)

Furthermore, I have observed from nearly 5 years' residence in a village, that residents' use of amenities and activities decline steadily with age. In addition, our indoor pool and some gym equipment such as the treadmill - amenities vital to residents' health and wellbeing - were out of action for most of 2019, without any change to our weekly fees.

~~p. 24~~ Weekly fees continuing after termination. The Paper says that some operators claim the continuing charging of weekly fees for a vacated unit 'is essential to the sustainability of their business.' I would suggest that if they are so dependent on the weekly fees from one or two vacant units in their village, their business is already unsustainable, and that the value of that money and the need for it is for greater – indeed crucial – for the elderly person having to move out. Continuing such charges for month after month is exploiting old people.

Part 6 - Consumer issues. ~~p.23.~~The resale/buy back provisions vary widely among operators but there is pronounced hardship caused to some village residents. I submit that at the very least it is untenable that village operators can both keep capital gains on termination and continue charging the weekly or monthly fees. This is too weighted in favour of the operators, to the detriment of often poorly resourced residents trying to move, often by dire necessity.

While not in favour of a future where the retirement village sector is dominated by a few big players, I wonder if the smaller, usually private operators of villages are resourced enough to operate villages adequately or whether they will always disadvantage their residents who, for example, wish to move out of a unit but cannot cope with waiting months for it to be sold while forced to keep paying fees in the interim

It appears that some village operators are making double gains on termination – a capital gain together with a so-called 'deferred management charge' while, as stated, are having the use of the residents' stake as interest-free loans for many years.

I support a guaranteed buy back provision, and while I generally support the proposed policy review in the blue box, I have concerns about what is meant precisely by 'Consideration could be given to restricting any changes to larger, for-profit operators.' The larger ones are well-resourced and not especially in need of special consideration; they are very ones refusing to give back the Government's Covid-19 wage subsidy while declaring large profits, until the weight of public opinion changed their minds.

The continuance of the weekly payments after termination is another matter severely impacting some village residents and needs urgent attention.

Transfer to Care.
I strongly support creating a separate regulatory

~~Transfer to care. I strongly support creating a separate regulatory framework for higher care settings (p.25) and a policy review as per blue box p.26.~~

~~Part 7 Emerging Issues~~
~~I recognise the issues outlined in this Part, but will not offer comment. Can I add a further thought. The demand, cost and availability of land will see operators seeking to establish villages further and further away fro~~ framework for higher care settings (p.25) and a policy review per blue box p. 26.

PART 7
I recognise the issues outlined in this Part, but will not offer comment.

Can I add a further thought to the point about the increasing future numbers of older people. The demand for, cost and unavailability of land will see village operators increasingly taking two courses of action. They will be wanting to establish villages at further and further distances from urban centres, away from desirable amenities of life – shops, libraries, galleries, performing arts centres, sports grounds, etc. and out of reach of regular, frequent public transport. It thus will affect the quality of residents of those villages. Over time, they may suffer from isolation, and inability to have breaks away from village life. I'm aware of this beginning to happen to acquaintances in a [redacted].

Secondly, the same land issues will see village operators building only high-rise apartment buildings to get the most value from a piece of land. Already, the big operators are doing this; they are not building town houses in the developments I know about. Many people I know, myself included, who are in townhouses, treasure the open space around them (while also regretting that their village operator does not enable them to have a garden of their own.) People like us would suffer greatly if their only choice of retirement village life was in a high-rise apartment block: we have already seen the effect of village lockdowns, because of Covid-19, on our residents in low-rise apartment blocks here. They felt as though they were prisoners in their own units or in quarantine, while we townhouse residents could sit at least sit outside. In short, I am saying that there should be some study done of the psychological effects on old people having to live in high rise apartment retirement villages.

Thank you for the opportunity to make submissions, and for considering this.

**Response to CFFC Questionnaire 0n the White Paper**

Q 1**. Has this White Paper canvassed the issues fairly and accurately?**

Basically yes.

Q 2. **Are there any important points that are missing**?

Yes.

1. Promises which are made when buying into the village should be given in writing if not already listed in the ORA.

2. Not enough attention has been given to the need for a simple, easy to access, complaints process. Currently there is a Retirement Commissioner, but he seems to be more concerned with liking the suggestion of reducing superannuation costs by a tax increase for 'over 65' aged superannuitants than with their well-being.

   We strongly recommend that there be a Retirement Village Ombudsman specifically concerned with residents of retirement villages and nursing homes. An Ombudsman is charged with the duty of investigating and redressing complaints lodged by private citizens against businesses, institutions and officials, with particular reference to government organisations.

Q 3. **Do you agree that a full review of the retirement villages' framework should be undertaken?**

Yes.

Q 5. **Is there anything else you would like to say?**

1. We would like to see an Ombudsman appointed, as described under Q. 2 above.

2. Recycling of waste should be mandatory in all villages. This could include re-use of items such as heat pumps, dishwashers where appropriate, and if in a suitable condition.

3. Consultation with village residents, and where appropriate with families, should be mandatory on important matters, e.g. fee increases, appointments of Village Manager and other key staff. If/when there are changes in policy or other matters, new residents would be presumed to receive up-to-date information, including but not exclusively in the Disclosure Statements and Codes of Practice. In this situation, residents who have received earlier documents should be given advice which would update their information.

4. The whole process when a villa or apartment is vacated, needs to be reviewed. All monies due to a resident, or to their estate, after termination of ORA should be repaid within a maximum of 6 months. The process for selling villas and apartments varies between villages. There has been an unprecedented increase in the financial value of housing of any type. Because of this, we support the suggestion (page 22, White Paper) the capital gain that is ultimately realized on sale of the unit could be allocated between both operator and resident.

5. We support a full review of the process which is in place when a resident transfers to another village, including if the transfer is made to another village of the same or a different organization. In particular, the costs involved need to be fully explained when a resident enters a village.

6. The situation regarding options available to a resident, if/when further care is needed, should be fully explained when the decision to enter a village is made. Currently the possibilities seem to be described more positively than are really available. In fact, the possibility of a resident moving into higher care will depend on the availability of an appropriate bed. The White Paper (page 26) proposes that information requirements in ORAs about changes in charges and costs involved when residents transfer from an independent unit to a serviced unit or care unit be strengthened, and we support this.

7. A point was raised regarding the need to have clarity about residents' rights in such events as earthquakes, fires, floods and other disasters. How are residents' rights maintained if they are unable to occupy their apartment or villa? Also, who is responsible for the cost incurred when a

resident needs to vacate a villa or apartment while essential work is carried out? Residents’ stories of what has happened in other villages in such situations were shared.

## CFFC Recommendations and Our Commentary

- **Resale and Buy-back times for units occupied under an ORA**

**(1) Consideration of options to improve the resale and buy-back procedure**

*Our committee strongly supports giving greater certainty and more timely implementation of unit buy-backs in the event of a resident quitting a unit. We support the option of* ***a guaranteed time for buy-backs*** *but feel this is* ***insufficiently specific*** *as to the length of time operators may set for this purpose.*

*Our strong preference is that the capital due to the parting resident or their estate* ***should be made available as soon as the unit has been cleared of their property*** *and the village manager certifies the vacancy. It is manifestly financially unfair to require that resident or their estate to have to wait until another ORA has been entered into for that unit.*

*To that extent,* ***village operators should be required to hold contingency funds*** *to enable payouts to be made promptly, without waiting for the new sale.*

**(2) Interest payable by the operator during the vacancy period**

*We support this recommendation, but see it* ***as a lesser option*** *to a more accelerated buy-back under (1) above. At present, in our situation, such interest does not begin to accrue until 6 months after the vacancy has occurred. That is unreasonable, and given the current very low interests rates, would provide very little compensation for the withheld capital.*

*If interest is to be payable, it should begin to accrue* ***at the latest one month*** *after the vacancy has been certified by the village manager. The rate of interest payable should* ***be determined by the Retirement Commission****, not left to the discretion of the village operators.*

**(3) Allocation of capital gain on the sale of the unit between the resident (or their estate) and the operator.**

*We firmly support negotiation on this principle, given that the capital still held by residents during their* ***occupancy accrues no gain and remains essentially inert****, while this money is completely at the disposal of the operator to fructify for their benefit. The importance of sharing in any capital gain is especially important for residents who may quit the village while still living, as they may well need an increased level of capital to fund any subsequent living arrangements, and since they will already be* *disadvantaged in this by the deduction of the Deferred Management Fee from their original investment.*

- **Weekly Fee Continuance after termination**

  **Consideration of options restricting the charging of weekly maintenance fees after a unit is vacated.**

  *While this does not currently apply at our village, we in principle are **opposed to any continuation** of the weekly maintenance fee for parting village residents on the principle that the **departing resident is no longer receiving the service** that the maintenance fee covers. Villages should factor occasional vacancies, and hence any temporary loss of income from these, into their maintenance budgets.*

  *If such fees are to continue, then we strongly support the proposal that these should be reduced by 50% after three months, and cease altogether after six months. But our strong preference is that they should **cease one month** after the unit has been cleared.*

- **Transfers from independent units to serviced care facilities**

  **Better information about transferring to higher levels of care, especially around the treatment of fixed deductions**

  *We strongly agree that more information and certainty about the opportunity and activation of such transfers needs to be made available, both in the information for prospective residents, and periodically to current residents, especially those contemplating, or imminently requiring, such a transfer.*

  *The White Paper recommendations make no mention, however, **of issues around the manner of adjustment of an LTO** held by a unit resident who then transfers to a care suite or similar which involves purchasing a new LTO, although probably at a lesser cost than that of the previously occupied unit. Given the freezing of the resident's capital under the initial LTO, **it seems highly unreasonable to us** that that residents should then be required to pay what has in the interim become the probably higher "market value" of the care suite, hence seeing their capital "investment" reduced even further.*

  *We believe that, where an initial contract enables a transfer within a village/care-centre complex at any time that this is deemed advisable or necessary, then this transfer should be accomplished **at the market rate for the care suite at the time the resident took up their residential unit LOA.,** not that at the time of transfer. They should thus have their capital "investment" in the village reassessed at that rate. Such seems to us requited by the **principle of natural justice**, since otherwise the operator is able to reap a double advantage* *in "selling" both the care suite and vacated occupation unit at the new market rates.*

*The village operator could still deduct the Deferred Maintenance Fee from the vacated unit, but should then refund any subsequent difference between the residual capital on that unit and the new (lesser) LTO on the care suite. This capital would then enable the resident to in part defray the extra costs that accompany accommodation in care suites or other parts of the care centre.*

- **Code Compliance**

  **A review of the Code including the ORA to better balance operator control and residents' rights.**

  *We firmly support such a review, notably covering the matters canvassed above.*

- **Simpler Complaints System**

  *We give general support to any simplification of the complaints system, although to date have not encountered any specific problems with current arrangements.*

- **A voice for residents**

  **A consideration of whether changes are required to better support residents' welfare.**

  *In general we support all such consideration to enable residents' welfare to be better supported, but see this more in terms of **better support for residents' rights and living conditions.***

  *More specifically, however, we are aware of a **distance** between **decisions made by the central management** of operator companies and **the residents** who purchase their services. While the Act requires Statutory Supervisors to monitor operator compliance with the Legislative Framework, we perceive that such supervisors are **not in a position to advocate for residents' interests** to and operator's management or governance board. Residents are left with having to forward concerns or complaints via the village managers with **little opportunity for direct dialogue** with the village owners.*

  *We acknowledge that sector-wide advocacy does occur through the Retirement Village Residents Association of New Zealand, which has been instrumental in obtaining certain improvements in code conditions. But that body is unable to represent residents to the management of their particular operator.*

*We therefore recommend that the Legislative Framework should provide for* ***direct representation of the residents of each separate Retirement Village Operator in the form perhaps of an elected national consultative committee*** *to engage with the Board and central Management of that Operator. This on the basis that each operator holds large sums of capital "invested" by residents in that Operator, but over whose use they have to date no say.*

*Such a consultative committee could also assist the operator to better meet the perceived general needs of current and prospective residents of their retirement villages in terms of unit design, provision of facilities and how the relationship between the operator and the residents should be perceived and managed. The* ***underlying principle governing this relationship should be one of partnership*** *in a residential facility supported by appropriate access to health care where necessary. A consultative body able to directly represent the residents of the operator's villages could help to better establish and maintain this balance.*

- **Interface of care and residence provision**

  **Consideration of whether the presence/opportunity of care changes the nature of a village from a "housing proposition" to a "care proposition".**

  *While appreciating to opportunity for some level of health care to be provided to residents, we wish to affirm the principle that* ***our relationship with the operator is primarily one of housing provision****. The contractual relationship between the parties should therefore principally be governed by codes and safeguards applying in the housing sector rather than the health sector. Retirement villages should be* ***regarded primarily as housing communities, not health care centres.***

I started this journey over one year ago but gave up the battle. It was looking and feeling like way too hard. Along with the other battles of 2020.
But I understand things might be changing?
If I can share with you my/our story and views:

I want to add some distressing information about another one of the Retirement Village groups that have not been mentioned in the Consumer report as they are not large.
But I have to say that they are probably the worst offender of all !
As you might know, [redacted]
I have first hand gripes with [redacted] where my 91 year old father is.
He has been a resident with since [redacted]. First at- then after my mother died 2014 we were able to negotiate a move to [redacted] to be closer to me and his sister.

They have had somewhere between 10 and 15 empty apartments. Most of them have been empty for around 2 years. It's all very obscure just how many are vacant.
I understand 3 have sold in recent months with a renewed push to market. I wonder if they negotiated better terms??

A friend, - his mother passed away there November over 2 years ago.
The family are still waiting on a Sale of her apartment . They must continue to pay the weekly fees (now at 50% after the first 6 months) It is atrocious that they and all the other families are being held to ransom for this long.

My situation is slightly different but very stressful and distressing.
I want to have my father move down- way where I am now living since I moved after losing my job in- one more time, this time to Covid19 .
Because of the all the empty apartments and money grabbing policies of the Village, it seems it won't be possible.
As it stands we will be losing the 25% deferred management fee but also they will charge between $25,000 and $35,000 for refurbishment costs. They seem to go overboard with their refurbishment since the outgoing resident is the one who pays.
But it doesn't help the apartments sell !
And it took nearly 6 months before they started the work on my dentist's mother's apartment.

I believe it is to do with the unfair T&C's that they arenot selling. The apartments are NOT overpriced. It is a nice feeling village. Only management lets them down.
Apart from a looming threat of higher-rise development. Tho I understand that plan has now finally been shelved for a couple of years. Their consents have been rejected a couple of times.

The frustrating thing I see is that there are all these families of deceased who are left out of pocket but because they don't live there, they don't know who these other familiesare and so they haven't banded together to lobby and complain to Management.
My dentist continually just gets fobbed off with his attempts (while following procedure) It really is a case for Fair Go or some such media exposure.
A pity we haven't found the strength to take it there!

Can I now be a little bit hopeful that with this White Paper, things will change to be fair and reasonable? I just hope they can move fast enough.

RETIREMENT VILLAGES LEGISLATIVE FRAMEWORK 9 Feb 2021

CONSULTATION ON CFFC 2020 WHITE PAPER.

Q1. Has this white paper canvassed the issues fairly and accurately?

A. Yes. It has been encouraging to see the impartial role of the Retirement Commissioner and the branches of government interested in consumer protection. The white paper is fair and sufficient to establish the need for a full review of the framework.

Q2. Are there important points missing?

A. Yes. See under Q5.

Q3. Do you agree that a full review should be carried out?

A. Yes. Fully support the need for a full review. There is a wide range of issues that need to be considered. Significant change is needed but the current Act and Regulations in their present form restricts what can and needs to be done- so there is a need to review the whole framework. Also the Code of Practice is a document generated by owners and inevitably favours owner's interests over resident's interests both in what it says and what it doesn't say. To comply with current law and regulations, Disclosure Documents and ORA'S are extremely complex and very difficult to understand. The failure to deal with CFFC Monitoring Reports done by independent consultants also shows why a full review is necessary. Options 1,2 & 3 listed in Part 9 of the White Paper cannot deal with all the issues.

Q4. Have answered Yes to Q3.

Q5. Is there anything else you would like to say?

A. Yes. The following comments cover aspects for consideration in a full review that should include a fresh emphasis on resident's needs, rights and interests:

1. My Background.

Prior to 1995 I spent 10 years in a governance role for a group of Rest Homes.

Following that, I acted with Power of Attorney in Financial and Health matters for my two parents and my wife's two parents who lived in various levels of care for lengths of time varying between 4 and 15 years in different retirement villages.

Now, my wife and I have been residents in a Retirement Village for the last 6 years.

Based on the above three levels of experience, I have a good understanding and experience of what we and many other residents (past and present) face/faced within the current framework.

2. Complex and Unique Framework.

Retirement Villages offer a complex and unique proposition for a prospective resident to understand.

Prospective residents have a wide range of characteristics and knowledge. A significant number of elderly single people may never have bought or sold a property before. Some may be making a decision when they or their partners are having health problems.

Many residents will enter a village (either in a licence to occupy apartment or a serviced apartment) with an "all of life, peace of mind" objective. But prospective residents also need to be able to understand the many unique conditions in a licence to occupy an apartment, conditions on a transfer to a serviced apartment and conditions that apply for transfers to health care options such as to rest home, hospital or dementia unit. It is extremely important that this total offering is explained clearly and is well understood from the outset. After a few years of occupancy it becomes increasingly impossible to move out of a village when the residents initial capital advance has attracted no interest, a deferred management fee has been deducted and the outside property prices have escalated.

In my own case I was provided with an application form to apply for Occupation Rights for a unit that required me to get my solicitors approval within 5 working days and independent legal advice on the effect of the Occupation Agreement. I was provided with a Disclosure Statement of 36 pages, Code of Practice of 64 pages and a draft Licence to Occupy of 32 pages all of which formed part of the contract.

Presumably some Village Owners find the existing complex legal framework prevents them from providing a clear understandable, comprehensive and fair description of their offering to prospective residents. Otherwise, they would already provide less complex documents to sign.

Things are quite different in the open market where licensed agents assist buyers and have disciplines that provide buyer protection against failure to disclose and misrepresentation. Most use well understood and standard Sale and Purchase agreements. In the rental market standard tenancy agreements also prevail along with an easily accessed tribunal dealing with disputes.

3. Consequences of Complex and unique Framework.

Many potential residents are likely to focus on a few immediately understandable factors and only learn of other more complex (but important) considerations once they have been living in a village for a period of time.

Potential residents will compare the capital grant needed to sign the proposed ORA with that for other similar villages. Many might also make a comparison of the weekly service charges compared to other villages. But that could be an illusion because the services provided vary from village to village and there is seldom if ever a quantifiable service performance measure established for each of the many services listed within the overall charge. As well, some owners promise to fix service charges for life but everyone knows this can't be done unless initial charges are set too high (unlikely) or increases are offset in some other unclear way that could affect the level or quality of services provided or not provided.

Other more informed residents might examine things of particular interest to them such as mortgage arrangements (if any) that might secure repayment of their reduced capital advance or whether an owner has sufficient business interruption insurance cover in case of unforeseen events like leaky building repairs, repairs following fire or earthquake etc.

Although some protection for a resident is built in by requiring legal and independent legal advice to be given, this is given under a short time pressure and experience shows that some otherwise competent legal advisers do not understand some of the complexities and have been known to give misleading or incomplete advice. Some residents may resist the cost if a comprehensive review of a 130 page complex document were undertaken. In other cases "lawyers are often unaware of or inexperienced in" these complex provisions according to an independent CFFC Monitoring report. Seeing most owners ORA's could be similar, doesn't that suggest a straightforward document analogous to tenancy agreements and sale and purchase agreements be required with only a few special clauses to deal with local or company variations?

Under the current framework very few residents would have an understanding of all the steps and conditions that attach to a licence to occupy. There is the temptation for prospective residents to allow their dominant "peace of mind, all of life care" objective to override the need for them to fully understand all the factors involved.

The outcome of a full framework review should include revised and clarified descriptions of resident's basic rights such as: What information they have the right to before entering into an agreement; the right to be consulted on anything material or significant; the right to free and uninterrupted access to and quiet enjoyment of their apartment; right to existing light and air being maintained; right to have complaints heard and resolved etc. The current Code of Residents Rights is very general and is not be clear enough to know whether it covers specific problems or issues that should be covered. This Code needs to be rewritten so it is fair and clear.

4. Requirements for a Lifetime Agreement.

Residents when they sign any agreement to occupy should be told about the normal living conditions they can expect throughout their occupation.

It is quite possible if there is an entry age requirements set at age 70, for a resident to occupy an apartment for 15-25 years. It is vital that conditions applying to normal living are well understood right from the start.
For instance, residents should be able to see the owner's life cycle renewal plan for the village and their apartment in particular. Such a plan providing for renewing all depreciating assets both externally and internally is good practice. If a village owner does not have a long-term plan with annual budgets to implement the plan that can be readily explained, they should provide residents with their alternative plan approved by an appropriate regulatory authority -not some vague statement that amounts to "all is well, we know what we are doing."

There is also the need for a review of internal refurbishment policies that apply to longstanding residents. It would be regarded as unreasonable if a private sector rental property owner refused point blank to consider reasonable renewals of internal things supplied by the owner like drapes, carpets, fittings and any appliances- all of which wear out over an extended period. Also, standards for buildings change over the years and residents in occupation should expect that any upgrading of building standards the owner applies to new occupancies should be applied also to long standing resident's units provided it does not involve shifting out of a unit (e.g. installing double glazing). It is counter intuitive and unfair that the longer a resident stays the more disadvantaged they become when compared to shorter term residents all of whom benefit from apartments regularly upgraded to the latest standards.

At a broader policy level a supply contract entered into for a long period such as 20 years would normally have provision for mutually agreed variations to be made. In such cases both parties have an incentive to reach agreement or else they must choose to walk away from the contract. But in the case of a licence to occupy agreement all the power is with the owner because (as noted in 2. above) the resident would find it increasingly impossible to move out of the village and effectively has to accept the original conditions if an owner is inflexible or unresponsive to any possible changes or improvements. This example further reinforces the need for residents to be provided with a comprehensive, understandable and fair view of the contract before it is agreed to. It also suggests the need to have provisions allowing for changes to be made to the contract to reflect inevitable changed circumstances over a long period that provides for how to deal with the unequal powers of the two parties to the contract.

5. Handling Emergencies.

Residents when they sign an ORC should be given details of how various emergencies are to be handled.

Licence to occupy units are often called "Independent Apartments" but this is a misnomer because they are part of an interrelated complex of buildings and services. Owners need to recognize that most elderly residents in independent apartments are not in a position to be able to handle various emergencies affecting the village as a whole.

If services are cut off for any significant period including electric power supplies to a village or part of a village (affecting heating, cooking, garage doors, other automatic doors, village gates telephones, lifts etc.), water, fibre broadband, tv reception, drain blockages, then residents are in no position to solve or reduce the problem as they could if they owned an independent apartment in the community. Owners plans should deal with with Health and Safety issues like being trapped in buildings, not being able to get cars out of a garage or on to a street, not being able to cook anything for days, lack of heating, inability to communicate by phone or email etc.

Owners need to be required to fully think through emergency plans for each particular emergency and describe them clearly to residents at the outset. It is too late for residents to learn what the owner will do and not do and what they have to do when some major problem occurs.

6. Statutory Supervisors.

   The role of these supervisors is confused. They have a role in specific cases to represent residents. (E.g. in any receivership - Regulation 56) Yet they have the role to decide whether residents should be prevented from having any information on a range of potentially important matters. (Section 34 of the Act) Another role they have is monitoring the financial position of a village and certifying that the operator is managing the village adequately. (One has to wonder how a village without a transparent asset lifetime renewal plan is being run adequately). Anyway, based on the experience of interaction between statutory supervisors and residents, such a role is confusing and ineffective in dealing with resident issues raised. There is an incentive for Statutory Supervisors to take more notice of owners interests when dealing with an individual residents complaint.

   A full review of all regulatory provisions for villages as set out in Part 3 of the White Paper is warranted.

7. Consumer Issues and Resident case Studies.

   A notable gap in the White Paper Part 6 and the Appendix “Resident Case Studies” is brought about by a seeming concentration on issues advised by RVRANZ to do with resale and buy back arrangements and time taken, weekly fees continuing after termination and payments for refurbishment after moving out. These incidents are right at the end of the occupancy experience.

There is a strong case for resolving problems right at the start when the legislative framework is being reviewed. The Act, Regulations, Code and agreements between owners and residents need to be fair, clear and clearly explained and understood by everyone right from the beginning. If this is done, then residents would understand the full package they were signing up to and not get surprises later. Whilst termination issues need to be considered in the review it is even more important that issues I have raised in 2-6 above are also dealt with because they deal with practicalities throughout the resident's occupancy- not just when they come to leave.

One of my main conclusions from the White Paper is the need for a fresh emphasis in the legislative framework on resident's needs, rights and interests.

8. CFFC Monitoring Reports.

After completing my above comments, I turned to reading a number of CFFC monitoring reports to check whether or not my thoughts were compatible with impartial professional reviews commissioned by the CFFC.

The Report on Residents Perspectives (2011) has statements similar to mine on a range of issues including residents not appreciating the meaning and implications of their contracts, there being deficiencies around processes by which they came into a village and the risk of residents "peace of mind" focus overriding other important concerns.

The Report on Interface between Retirement Villages and Age Care (2018/19) is also in line with my comments- for instance “interface not well understood by residents, nor are lawyers confident about giving advice”; “lawyers are often unaware or inexperienced” “ORA’s … typically do not deal with conditions, practices, probabilities and liabilities……”.

The Report on Effectiveness of Legal Advice (2016/17) has a conclusion that “Many residents find Disclosure Statements overly legalistic and inaccessible …” Another conclusion that “Most intending residents report understanding the information they receive” is hard to reconcile with the material being said to be “inaccessible.” The two other monitoring reports cited above and my own experiences don’t bear out any conclusion that incoming residents fully understand the complex information they are given.

Reports on Statutory Supervisor 2009 and 2017/18. Section 5 of the 2009 report specifically reports on the level of involvement with residents and is compatible with my comments and those in Part 3 of the White paper.

I am pleased that I have found my comments reasonably compatible with most of the impartial conclusions in CFFC monitoring reports. They show the need for a full review of the Law, Regulations and Code of Practice which leads to disclosure statements and occupational agreements that are onerous, unfair, complex and out of date.

It is clear that Village Owners, Statutory Supervisors and previous Retirement Commissioners have been unable to make any significant changes in response to the important issues highlighted in many years of CFFC monitoring reports. This failure is a clear endorsement for the proposal to review the whole legislative framework.

9. Disclaimer.

These submissions are not to be taken as a commentary on the performance of the management of the village in which I am a resident. The Village manager and his staff maintain high standards and are people who care about residents. Also, the company performance during the 2020 Covid crises was superb.

Rather, my answers and comments are directed at the framework and structure which needs a full review with a fresh emphasis on a fairer framework that takes more account of resident's needs, rights and interests. Time and circumstances have moved on from when the current framework was established.

Charging of maintenance fee as well as an exit fee. My parents had bought a brand new villa, lease to occupy, in the [redacted] village 2009 and sadly mum was diagnosed with [redacted] and they exited but were billed another $1500 on top for maintenance??? I paid to have villa cleaned. This was very upsetting as we felt there was no maintenance required.
My next complaint is charging an exit fee more than once in the same facility eg Dad bought mum a hospital room $85k and a villa for him $375k in 2011 at [redacted].
Mum died 5months later a d exit fee was $10k. Dad was told at the start that there was no problem transferring into next level of care. There was no mention of more exit fees each move. In 2016 he transferred into resthome and he is now in hospital care. His exit fee was $125k and then paid $145k for his new room and ensuite. He is 97 now and when he passes away [redacted] will no doubt require another exit fee. He has been paying a monthly fee of approximately $5300 per month. I feel that having to pay that many exit fees is obscene and is taking advantage of the sick and elderly.

I fully support the review - particularly regarding the unfair and biased position regarding capital gain.

My wife's family went through a bad experience when my father-in-law passed-away. The Retirement Village retained all capital gain, charged a 30% Deferred Management Fee, plus refurbishment costs and continued to charge the weekly maintenance fee well after his death. While there is great fanfare about the benefits of village life through advertising, the village operators are clearly more focussed on their profit margins and share-holder returns, rather than toward the residents - they see money in old people and are determined to ensure that they get their hands on it, rather than have the main benefit of inheritance go back to the families, where most elderly would hope it would go.

My sister and her husband recently purchased a unit at [redacted] (perhaps an example model that you might like to peruse) - my sister and her husband will retain all capital gain and will only pay a 4% exit fee, so there are models that exist that certainly have a fairer outcome for the residents than the many large village operators. My wife and I certainly won't be looking at retirement villages until fairer regulations are in-place.

Not directly related to what you're reviewing, but I can recall reading an article in recent months where one of the large village operators was asking its shareholders to approve an increase in Directors Fees to $110k per year - the Chairperson of that Board was on eight other Boards. So, being on nine Boards in total, one doesn't have to be a mathematician to estimate how few hours per week he must be doing for each Board to earn $110k from just one, which is double the NZ average weekly wage for a full 40 hours work in a single role!!!

Again not directly related, but I wonder if government shouldn't consider establishing and running state-owned retirement villages for elderly state beneficiaries. This would free-up a lot of stand-alone state housing for the homeless and younger state beneficiaries with families, who are having to rent privately and the pensions would largely meet any weekly maintenance fee charged through the village.

Thank you for the opportunity to comment - I don't believe that many of the large village operators are operating ethically, or in the best interests of the elderly.

## RVRANZ Survey

You have asked for reactions to the proposed submission of RVRANZ to the Commission for Financial Capability. I have no knowledge of the relevant Act or the Code of Practice, but am directly affected by the [redacted] and my own Occupation Agreement.

I feel that these documents are very fair in most respects, but I am uneasy in regard to the provisions setting out what happens when a resident ceases to occupy their unit – the first three bullet points on the RVRANZ summary document.

As I understand it, when a person ceases to occupy a unit, the whole matter of resale and reimbursement of part of the Occupancy Advance is entirely in the hands of [redacted]. It is some comfort to know that there is currently high demand for units and little delay in effecting a resale. However:

1. If demand for these units should slacken – and nationwide there is a considerable number of such units under construction at the moment – resale might become more difficult. Under the current provisions the risk is borne, not by [redacted], but by the ex-occupant. If a sale acceptable to [redacted] is not immediate, the ex-occupant's investment is effectively frozen.

It would be much fairer If the owner of the unit – i.e. [redacted] – were required to refund the Occupancy Advance say two months after the occupant has moved out.

2. At present the refundable Occupation Advance is capped at the actual amount initially paid. In the present housing market the resale value of a unit will almost certainly be considerably more than the original Occupation Advance; this capital gain goes solely to [redacted]. If the occupant had been living in their own property, the gain would be theirs.

It would be much fairer If the gain – and indeed also the loss if any – were shared between the owner [redacted] and the ex-occupant.

Hi, first of all I apologise by saying that I have not yet read the White Paper as I have only just received your notice and need to complete this note now in order to meet your target date.

My concerns largely cover Health and Safety for residents in villas and apartments where existing installations often fall below current standards.
These include such items as; heating, ventilation, insulation, smoke alarms, safety call buttons and hand rails. Double glazing could also be included.
These have all be raised with village management at various times and meetings without any positive action. The main excuse being 'that they only need to carry out upgrades if major structural work is carried out'. A copout. The removal of handrails in bathrooms and toilets is unbelievable. The reasons for this have been given as; 'we need to know the height the residents require'. This may be acceptable except the residents then get charged for the installation. The second excuse is, 'people viewing may not like to see the hand rails'.
An additional item which has recently emerged concerns the installation of water sprinklers inside wardrobes. How this was approved during final inspection is unbelievable but it has since been pointed out to Fire Dept inspectors without comment.
Because of the complete lack of progress within the village I wrote to the then Minister of Housing Phil Twyford on the basis that accommodation at retirement villages should also be included in the proposals to make Healthier Homes. I enclose a copy of this correspondence for your information. Other than a standard acknowledgement the answer was zero. A similar response came following an email to [redacted].
I am unsure how this can be dealt with in the proposed legislative review but they are important items for many village residents. As pointed out in the email to Mr Tyford, many residents have under taken these necessary improvements at their own cost.

As a resident in a Trust owned village I have concerns about, and experience of, shortcomings in the present classification of “Retirement Villages”.

**Anomalies:**

1) Trust owned villages are not required to register as “Retirement Villages”.
2) While offering much needed and appreciated rental accommodation for the Elderly not in a position to buy a unit, Trust villages are “Retirement Villages” in every respect except name.
3) Residents in trust owned and run villages are covered only by the Residential Tenancy Act 1986.

**Welfare:**

1) Health and safety, under the Residential Tenancy Act 1986, does not fully provide for, nor fully protect, the Elderly.
2) Physical and mental wellbeing must be paramount for all residents in any Village.
3) Vulnerability can be, indeed is , very evident among village residents.

With respect, I believe it is timely for these anomalies to be taken under consideration. The Retirement Villages Act MUST cover all providers of accommodation for Seniors whether owners or tenants.

Thank you .

To the Commission for Financial Capability,

I wish to make the following submissions on the White Paper:

1. Charges should cease upon vacation: there should be no charges or very limited charges when a unit is vacated. I am aware of a reputable operator charging the full monthly fee for 6 months and then 50% of the fee until the unit is sold (transferred), with no deadline for cessation of fees. Yet no services are provided following vacation of a unit, and a sale can take months. This is a transfer of wealth to an operator with no corresponding risk and without any obligation to minimise the loss to (usually) the estate of the person vacating. This aspect is weighted wholly in favour of operators, yet the very business model that operators are running has units being vacated regularly. Challenge is difficult because an operator can deduct fees from the proceeds of sale that would otherwise be paid to the estate. If fees cease, the operator will have an incentive to sell or ensure sale of the unit.
2. Sale to be conducted within statutory timeframes: operators should be required to institute a system that ensures maximum potential for sale as quickly as possible – that is, to prepare a unit for sale and ensure conduct of the sale efficiently and with minimal loss to the estate (statutory obligations and set timeframes; charges to cease once services cease). If a unit does not sell, the operator should not continue to benefit at the expense of the estate – remember, the operator received payment for the unit, usually many years before; it is the estate that does not receive payment until it sells.
3. Sale price upon vacation should fairly reflect risk and reward: operators' terms that set the future sale price at a percentage of the original purchase price lock in value for themselves and remove risk, but should not exclude the occupier from benefiting from future capital gain. Any upside in value should be shared. For example, a unit purchased for $400,000 on the basis that the estate receives 70% of the original purchase price on sale means that if the unit sells for $1,000,000, the operator receives $720,000 and the estate receives $280,000. This is not sustainable where the elderly (i) live in retirement homes for much longer than they used to and (ii) often are in unequal bargaining positions at the time of moving in. The operator may, of course, sell the unit again (and again) in a few years' time. The license to occupy model is too skewed against the resident or occupier.
4. Stricter oversight of construction standards may be needed: to ensure quality of life is not reduced by, for example, noise.
5. Greater clarity on the respective rights and obligations of occupiers and operators: the license to occupy is on the lowest rung of real property rights, and most people, including operators, may not be familiar with what it means. There should not be any dispute, for instance, on what constitutes fixtures and chattels, and who is responsible for repair of them.

The XXX Residents Association has 180 members who are residents of XXX Retirement Village. The Association's Committee has considered the White Paper and considers it to be comprehensive, coherent and well written. The issues canvassed are very relevant to our village and definitely merit review. The Committee therefore strongly supports the White Paper's recommendation for a comprehensive review of the legislation and relevant policies.

**Summary of facts:**

- Mum moved into the village in 2001 and died there in 2020
- Designed the interior of her home and upscaled it.
- Within that timeframe there were three different owners, the latest claiming to care for people, environment and profit
  In our mother's case, it appears that Number 3 is more important in the order than the other two.
- Construction of the village has occurred throughout most of her time in the Village so it has been neither peaceful nor
- restful as the original Villas did not have the benefit of noise reducing double glazing and owners would only retrofit after original occupiers had died.
- Lived in a leaky home most of her time in the Village with a seeming apathy from owners to fix it with any immediacy
- Three sets of weekly fee increases
- No compensation for the very extensive establishment and care of a garden.
- Environmentally reprehensible due to the refurbishments going to landfills when villas are refurbished to 'as new' that
- includes lighting, carpets, fixtures and fittings, toilets, vanities,tiling and appliances

In conclusion, I believe that in our Mum's case, she had very little rights in relation to home ownership and in some ways was worse off than being a renter. We have documents to support our claims made in the letter. On the positive side of village life, she made some lovely friendships.

I wish to contribute to your Paper to Parliament about my experience at the [redacted] in the [redacted]

1. The Manager refused to do anything about changing the time when the huge rubbish truck would zoom noisily past my bedroom window at 6AM. There may have been a rule about this in the contract I signed??? I'm unsure if noise control was covered.

2. When I left this Village after only one year's occupancy we only received back what we paid for the Villa in spite of the fact that we had built on a substantial verandah costing over $10,000 (3 x 6 metres) as I was tired of other residents taking a short cut past the windows giving me frights. But also due to the fact that the rain would blow in if the ranch slider was opened.

It is now time for an overhaul of the legislation about Retirement Villages.

Best wishes for a positive change.

Submission to CFFC on white paper on Retirement Villages

My submission is in support of the recommendation of the White Paper by the CFFC that the whole legal framework should be reviewed.

1. I have knowledge arising from dealing in various apects of the Retirement Village industry. As a practising lawyer I acted in setting up two small charity owned villages prior to the 2003 legislation. I assisted them to obtain registration under the Retirement Villages Act. I subsequently acted on several occasions for clients taking up an ORA in some of the larger retirement villages. Finally my wife and I acquired an ORA ourselves and have lived in a Retirement Village for nearly three years and for two of those I was the secretary of the village's Residents Association.

2. **Complexity of the legal framework**

2.1 The principle issue I have is the complexity of the legal framework and the documents that go with it. I do not consider that it meets the objective of being readily understandable particularly by a resident or intending resident . I consider that it needs to be easily able to be understood both at the pre ORA signing stage by an intending resident and over the ensuing years by a resident when different stages of life are reached and needs change.

An intending resident is not just required to think about the new home and living in a retirement village complex . There are clauses in the ORA dealing with the possible termination by the operator if the resident is no longer physically or mentally capable, a requirement for Enduring Powers of Attorney to have been completed, provisions about what may happen if a transfer from one unit to another. or to residential care, is required

2.1.1 For an intending resident, moving to a retirement village is moving to a different stage in life at an age where changes may not easily be made or understood. The intending resident will often have had an illness, accident or bereavement, that has been instrumental in causing that person to feel that a move to a retirement village would be beneficial, but is at a vulnerable and often hesitant stage of life. I think it is fair to say that the advertising put out by retirement villages generally paints them in a "bed of roses" style and does not refer to what later on may be seen as downsides.

The intending resident is then confronted by what I can only describe as a daunting wadge of documents. An ORA, a Disclosure Statement, a Code of Residents rights and the Retirement Villages Code of Practice. For my wife and I this was a total of 148 pages. Also there were house layout plans, a map of the development and the village landscape policy. I doubt that this is much different to what any retirement village is now required to produce to an intending resident.

It is a requirement of the legislation that the intending resident has legal advice. Good. But think for a moment of how much of the detail of that advice will stay in the mind of the resident when 148 pages may have to be covered. Is it any wonder that residents may not be aware of some of the items like the resale process after termination, or the ongoing payment of monthly fees (which have been the subject of discussion in the white paper)?

Fortunately for me and my wife I was accustomed to dealing with and understanding these type of documents. Even so nothing in the documents warned us that we might not necessarily be able to enter the care facility when it was built, and that this might depend on an assessment by the District Health Board.

I do consider though that a real effort needs to be made in a redraft to follow the KISS principal . Also to ensure that the lawyer acting is easily able to draw the attention of the resident to all matters considered of significance

2.1.2 For an existing resident the difficulty is finding in the ORA the provisions that will apply when that resident may wish to transfer to a different unit within the village or may need to be moving to a care facility. Difficulties also in understanding the provisions relating to maintenance of capital items, what is considered fair wear and tear , and many more.

2.1.3 I would like to see a rewrite of the legislation and the Code of Practice with the emphasis on the KISS principle

2.1.4 I would like to see a standard form of ORA produced which must be used by all operators with only such amendments as might be needed for a particular village. In the same way as nearly all agreements for sale and purchase of residential property follow a similar format. It would be important that in settling such a form that residents interests were properly represented - as are both Vendors and Purchasers when any amendments are made to the standard real estate agreement for sale and purchase

3. **The Disclosure Statement.** This is an important document but the law at present is not clear about it's enforceability and effect. This should be clarified in any review of the legislation. Further if, as the white paper suggests, it is a prospectus, then the legislation should state clearly what amendments may be made to it, and how, and what consent may be needed from existing residents. As it stands it appears that promises of future development, facilities or services may be amended by an operator without sanction or recourse by the residents.

4. **Complaints and Disputes**.

I agree that the present provisions are confusing and tend to be discouraging for residents. I have been involved, in the village where I live, on behalf of the residents, in assisting with the drafting of a complaints policy. The legislative provisions are not easy to follow.

It has seemed to me that probably most complaints are able to be dealt with satisfactorily and easily within the village and the legislation should emphasise and assist this. But there will be some complaints (or complainants) for which this will not be possible. I would like to see consideration given to setting up a RV Ombudsman service to which a resident or an operator could easily make reference but who would always be an independent voice to try to resolve difficult issues. One of the powers of the RVO being to require that the parties mediate before they embark on further proceedings. While not perfect the Family Court legislation which has established a framework whereby many issues are able to be resolved without court action could be used as a model

5. **Statutory Supervisor.**

If I ask residents in the Village where I live what they understand the role of the Statutory Supervisor to be I will get minimal information (and probably vacant looks). This is of concern as the SS is supposed to be representing the residents interests.

I consider that the role should be made clearer as well as the limitations on the SS powers. I think there is a perception that the SS and the operator work together.

I suggest it would be helpful if the SS circulated residents with reasonably frequent reports (not just once a year) on matters or issues that the SS has been dealing with.

6. **Process after termination of ORA**.

It is apparent from the white paper that there are many concerns about the process after termination. I do not submit that these will be resolved simply by a rewrite.

6.1 **Continuation of monthly fee.**

It has been noted in the white paper that the resident does not have any interest in the land or the unit. However I consider that there is an interest (be it legal or equitable) in the "proceeds of sale". The protection of this interest until it can be paid out has to be balanced against the responsibilities of the operator to do all things necessary to achieve a reasonably quick "sale".

My submission is that if that "sale" has not been achieved within 6 months of the termination then the monthly fee payable should be reduced by half and after 12 months not payable at all.

I would submit though that an exception to this should be made for RVs where the monthly fee is calculated on an annual basis and where the result of an outgoing resident no longer paying the fee will be that remaining residents are in effect subsidising the outgoing resident.

6.2 **Time before new resident signs an ORA**. There are clearly imponderables here. Refurbishment may be more complex than expected; contractors may not be readily available; market conditions (particularly where an intending resident's existing home has to be sold) are variable. However operators should not be able to use these reasons for over long periods.

My submission is that if there is no new ORA within 12 months of the date of termination the operator should be required to buy the unit in at not less than the price it has been on offer for.

A requirement similar to this was incorporated into one of the ORAs of the small Village I acted for and over a period of about 10 years operation never had to be used.

**6.3 Transfer to another unit within the village.**

My submission is that any arrangement for transfer which requires the operator to be paid a Deferred Management Fee additional to that paid when the resident first entered the village should be made unlawful.

There appears to me to be no justification for what amounts to double dipping and particularly when the transfer will result in an operator having the DMF for a new ORA on the unit vacated. It is surely also preferable that a resident be able to move to smaller accommodation without financial penalty.

Such a move is likely to be needed when a resident reaches a different stage of life as I referred to in para 2.1. The operator should not be allowed to use this opportunity to make further money out of a vulnerable resident.

6.4 **Operator to pay interest on unpaid value of residence.** I do not support this suggestion. It should be made clear by the lawyer acting for a resident at inception what money will be payable after termination. I doubt that the outgoing resident (or family) would want a situation where the operator was leasing the former home until its sale (and under proposed tenancy law it might be very difficult to get a tenant out) and thus the operator does not have opportunity to make money out of the vacant home.

6.5 **Sharing of any increase in capital value.** I understand this is done in some RVs. In the village I live in it was used in the early part of development as a sales incentive.

However I think that that is what it is limited to. The financial model being used by operators for the development of RVs relies on there being a capital appreciation which ultimately will be for the benefit of the shareholders. No landlord is required to share any capital appreciation with a tenant. Neither should an operator of a RV unless it chooses to.

7. **Lack of lead role**. I fully support the suggestion that a single ministry/department should have the lead tole for dealing with regulatory legislation applicable to RVs .

This is a developing industry. Issues will continue to arise and government should have in place an efficient system to address those issues.

February 2021

Hello and thanks for engaging with us re- retirement options, villages, care, hauora and well being.
I'm nearly 70 and am seriously considering a move into a nearby, new build retirement village in the next year or two.

My reasons are varied - less garden and section to deal with, down sizing from a family sized house to a 2 bedroom villa, newly built, double glazed windows, more security, but most importantly to be more closely connected to my friends and other people and having a sense of belonging to a community.
My family don't live in my area, so my friendship circle, my local gym and pool, nearby beach and other amenities and activities are all close by.
I've enquired about several nearby villages and have looked at their different models, plans and fee structures etc.

Two things are causing me to pause and are delaying my decision making.

1. As a single lady, I try to live on my fortnightly superannuation payments.
The village weekly fee is approximately $150, so if I multiply that by 4 for a month its $600.
My monthly super amounts to approx $1600, take away $600 = $ 1000, divide by 4 = $250 per week for all other living costs, power, phone, car, groceries, chemist, doctor etc.
My point is that if a couple move into the villa next to me, they are charged exactly the same weekly fee with a two person superannuation.
Therefore I suggest that there be a review of these weekly fees for single people. For example, I'd be happier if it was no more than $100 per week for a single person.

2. My other concern is that the village company (yes, I know it's a business) reserves the right to take 25-30% of my initial villa purchase cost and all the capital gain on my exiting the villa. This might be fine for wealthy couples but it is not okay for most simple living single people.
There needs to be an in depth look into many different village models because I know that there are villages with different options and agreements in place, ie the Occupational Rights Agreement, ORA's.

Please consider the above points in your review, discussions and considerations.
Many of us will be eagerly awaiting the outcomes and decisions as they will and do affect our third age living arrangements.

Thank you so much for the opportunity to contribute my ideas to the commissioner.

Dear Commission for Financial Capability,

**White Paper RETIREMENT VILLAGES LEGISLATIVE FRAMEWORK; Assessment and Options for Change 2020 – Feedback**

Thank you for the opportunity to provide feedback.

The following is my feedback on the above White Paper;

1 Has this White Paper canvassed the issues fairly and accurately? **YES**

2 Are there any important points that are missing? **NO**

3 Do you agree that a full review of the retirement villages framework should be undertaken? **YES**

4 If you replied No to Q.3 are there any issues that still need attention? N/A

5 Is there anything else you would like to say? **YES**

**The following feedback is based on my personal experience of Retirement Villages and their operation.**

**PART 1: Legislative Framework**
The Retirement Villages Act 2003 provides in Section 6, the Meaning of a Retirement Village.

I would like to see greater clarity of the "Meaning of a Retirement Village" in the Act.

There is now a greater prevalence of "Lifestyle villages" catering to the baby boomers down-sizing once they reach the "retirement" age of 65 years. These "Lifestyle villages" provide independent residential accommodation often with a club-house. They do not have on site a residential care facility providing rest home/hospital level care or are staffed by health professionals; i.e., Nurse.

In my opinion these "Lifestyle villages" are not a Retirement Village as they generally operate on the free-hold business model. I would like to see these villages which do not provide on-site residential care facilities excluded from the "Meaning of a Retirement Village" in the Act.

Any new "Lifestyle villages" would operate on a free-hold business model instead of having an option to operate on a Licence to Occupy model which some currently make use of as a "retirement village".

A "Retirement Village", which operates on the Licence to Occupy model, in my view is one that provides independent residential accommodation and also care facilities; i.e., rest home, hospital level care and/or a dementia unit and which are staffed by health professionals.

**PART 1 – 1.2 The Framework in action**

When new retirement villages are developed and designed, there are minimum standards that are required to be met. However, some lack basic design features.

As these residences are accommodating the 65+ age group, hand rails in the bathroom and toilet should be standard. Some retirement villages do not have these fitted. Where possible bathroom and toilet doors should open outwards. This makes it easier to attend to a resident should they fall. “Overheight” toilets should also be standard.

Also, some villages have steps to the front door of villas, necessitating a ramp to be installed later on. Level access to accommodation should be standard.

Retirement villages generally provide underfloor heating in villas as a source of heating. However, should this fail it will not be repaired by the operator.

Under the Residential Tenancies Act, Landlords are required to provide warm, dry and ventilated accommodation for tenants.

It is my view that Retirement Villages are no different and should provide accommodation for residents that is well insulated, kitchens and bathrooms are able to be ventilated, and a source of heating be provided. If the underfloor heating fails and is not able to be repaired then a separate source of heating should be provided; i.e., heat pump.

Some retirement villages require residents to undertake and pay for plumbing and electrical repairs and of appliances. Requiring them to do so, is in my view, a health and safety issue. This could also breach consumer law?

<u>Alterations</u>

Currently the Retirement Villages Code of Practice 2008, section 45 makes provision for the alteration of residential units for residents with disabilities (*Human Rights Act 1993*).

However, the ORA or the Code does not appear to include information about other alterations which operators may allow residents to alter or personalise their home environment, subject to certain criteria.

These alterations are called “Extras” and may be classified as either “Lifestyle” or “Substantive” Extras. A Lifestyle extra is one where the value of the extra does not materially increase the value of the dwelling; e.g., extra cupboards, heat pump or heated towel rail. A Substantive extra is one where the value of the dwelling is materially increased, or where it would be impracticable to remove the extra and reinstate structural changes; e.g., a conservatory.

I would like to see information about Extras included in the ORA and Code. It should also spell out who “owns” these Extras and who is responsible for any maintenance. In the case of a Substantive Extra, whether the value is included in the calculation of the Deferred Maintenance Fee (DMF) at the termination of the ORA? If a Building Consent is required, should the cost of this fee be included in the total cost of the extra, which is subject to the DMF?

This information should not be spelt out solely in the Operator's Policy documents.

**PART 6: Consumer Issues Identified with the Framework**
**Re Sale and buyback times**

An "Occupation Right Agreement (ORA)" also known as a Licence to Occupy gives "any person the right to occupy a residential unit within a retirement village". This does not give a person "ownership" of the residential unit. Ownership remains with the operator. In other words, the right is similar to a person being a "tenant".

Currently a prospective resident pays a "fee" to the operator for an ORA. On exit the operator repays the "fee" LESS a deferred maintenance fee to the resident <u>once</u> the operator receives the funds from a new resident for the dwelling and no later than five working days after payment has been received (Section 54 (6) of the Code of Practice).

It is my view that the process of resale should be fair and reasonable to both the operator and the former resident. Currently the financial benefits are all one-sided and are on the side of the operator and dis-advantage the former resident.

On exit in a majority of cases, but not all, the ORA cost less the deferred maintenance fee is paid to a former resident's **estate.**

The operator is running a business, and it should be up to them to bear any risk associated with the sale of an ORA. The risk should not be borne solely by the resident.

I see no reason why the balance of the ORA should not be paid to a former resident (or their estate) when "vacant possession/Licence" is handed back to the operator. In a majority of cases the operator shows "Refundable occupation right agreement" as a Liability on their balance sheet and should therefore have the funds available.

The following are the financial benefits to the Operator

1 Capital gain on the resale of the Licence of a residential unit
2 Interest free loan on the use of the money paid by the resident for the term of the ORA
3 Operators refund the resident only when they have signed up a new resident
4 Deferred maintenance fee monies deducted on exit

**Suggested outcomes:**
I would like to see any capital gain achieved on the resale of the ORA shared between the operator and former resident, with a starting point of a 50/50 share. Provided a former resident share in the capital gain, I would not support interest being payable during the vacant period.

Where there is a share in the capital gain, the refund of the ORA less deferred maintenance fee, be paid to the former resident upon the new occupation right going "unconditional"

If capital gain is shared between the operator and former resident, any legal costs associated with the resale of the residential unit should lie where they fall.

Where there is no share in the capital gain, the ORA cost less the deferred maintenance fee be paid to the former resident within five working days of "vacant possession" being returned to the operator.

**Transfers from independent units to serviced care facilities: Information Requirements and treatment of fixed deductions**

Where residents residing in an independent villa seek to move into care facilities within the retirement village, greater clarity should be given in respect of how the waitlist is determined.

What priority is accorded to residents of a retirement village against those from outside the retirement village who seek to enter the care facility? Do former residents assessed as requiring rest home level care but who have had to move into a rest home elsewhere because no beds were available in the retirement village, but who seek to return to the retirement village take priority or not on the waitlist?

Some retirement villages combine rest home and hospital level care with a 1/3 2/3 split respectively as there is greater funding received for hospital level care. These villages may also have a separate dementia unit or wing. Clarity around the number of beds for each level of care would assist prospective residents made an informed decision around future care options.

Should a dementia unit be required to provide hospital level care to a resident? Some dementia level residents who require hospital care are moved into the rest home/hospital level care facility. As a result, this impacts on the "quiet enjoyment" of their rest home room for other residents.

Retirement village care facility documentation should be clear around what care level is provided within what part of the facility and whether dementia level care residents can be moved into the hospital level care facility. Also, the number of beds for each level of care should be stated.

I look forward to a full policy review of the framework.

Yours faithfully

# Submission to CFFC on White Paper

# Retirement Villages Legislative Framework 2020

I submit that immediate changes should be made to the current legistrative framework to achieve a fairer deal for residents and their families. The current situation is a take it or leave it operation and is non-negotiable for intending residents. It has been seen by some as a con-job. Current residents are encouraged to accept the situations and "not rock the boat". Most residents are too scared in case they find themselves out on the street. They also wish to have a quiet retirement without worrying about their financial situation.

Selling one's house to buy an ORA is not clever, especially when you do not end up owning any physical property, but only a piece of paper, an ORA. It is also "on the nose" to expect residents to refurbish a unit after occupation, when compared to normal rental properties. Thus there should be no "Deferred Management Fee" and the owner should fund refurbishment the same way as normal rental properties. The cost of refurbishment should be a cost on the owners capital gain, or a cost of being in business.

When selling one's original house, the resident pockets the capital gain, but when selling a retirement unit, after funding the original unit with an interest free market value loan, the owner should not be entitled to the capital gain because they did not fund it in the first place, the resident did. Of course there is some argument here.

A compromise is suggested whereby the the capital gain should be shared 50/50 with the outgoing resident. The village owners would still be ahead to cover the cost of refurbishment. In this way, refurbishment choices and costs would not be an unfair (and uncontrolled) charge on the outgoing resident.

There is another iniquitous situation at some retirement villages, whereby the resident is expected to pay for maintaining village chattels or any "inside" maintenance. This should be abolished. Maybe some aspects of the Tenancy Act should be considered. It should also be remembered that the resident's weekly fee is calculated to fund all operating costs of the retirement village.

There are now so many flaws in the existing system, that maybe a new business model for Village owners should be considered. Another consideration might be to offer new residents a complimentary package of shares in the village, as a reward for making a capital contribution.

Preservation of lifetime retirement funds

I wish to address the appropriate authority with a discussion about the preservation of lifetime retirement funds after retirement. This is a broad topic but when one retires with a lifetime buildup of retirement funding. How can such a fund be utilized to retain its full value (or purchasing power)? Of course this becomes the family inheritance.

This particularly involves for example, a retirement village resident who sells their family home to move into a retirement village with a significant capital contribution and then retain the surplus (if any) to fund living expenses and retain living options into the future.

In the past we have relied on making interest to retain the replacement value of continuing living options. Mostly this has been achieved with interest on investments. Living in a retirement village has seriously inhibited options with the current financial structure whereby Bank interest rates have reduced below 1% coupled with the deferred management fee clawed back from any upgrading activity by existing residents. This is further eroded by the actual property equity being limited to the original purchase price. Thus any upgrade of RV residence values seriously inhibits existing residents from making headway.

As an example, consider an RV resident who purchased an RTO for an independent villa eleven years ago in 2009 for $389,000, then transferred to another village in 2016 for $564,000, then a serviced apartment for $495,000, so then the final equity becomes $414,000 minus the legal fees compulsorily applied of over $4000. Now the next change could be another independent apartment at another village at $850,000+ or another serviced apartment at a new village. It is obvious that all capital gain in these circumstances goes to RV operators. We have obviously had no capital gain over the last 12 years.

Please advise any activity in CFFC or other government office about preserving purchasing power for senior citizens as they progress through senior care. Another issue alongside this is the apparent penalty on seniors for being good stewards of their working life rewards, and accumulating moderate wealth rather than spending everything they get and to hell with the future. How come we work our way out of rest-home subsidies?

# Jane Wrightson – Retirement Villages

I am so glad that you have issued a white paper on this subject. I have recently moved into a new [redacted]. You might like to read comments of my experiences to date.

## The Financial Model

This is of course well in favor of village operators to the detriment of residents. Whilst we know detail of the model before fronting with our cash – it does not make the model fair or reasonable.

- The entry price is close to what we can sell our properties for. These prices rise as fast as other property prices rise. That is to say, the entry price bears no resemblance to the build cost.
- Their model depends heavily on the "churn" factor. Each time a resident leaves, they lose approximately $150,000 after four years. At the same time, and based upon current housing market trends, outside property prices have escalated by around 15% per year for four years. That means an $800,000 property will become worth approximately $1.4 million. A resident then has to bridge the gap between around $550,000 and a house outside of the village in the $1.4 million price bracket. Clearly this cannot be done in retirement.
- The weekly management fee is of course additional to this

## The Ownership Model

Yes, we know that we are buying a "License to Occupy".

- However, once we are in the balance tilts against us. Tension arises where the company sees it as "their" village and the residents see it as "their home". We have little control of what they do to the property and we are not consulted, but told, often with little prior notice.
- When arriving in this new village, most properties had common faults. These included things such as:
    - Flooding bathrooms and bathroom matsbecause the gap was too big under the shower door. When brought to theirattention they remarked that the architect said that it could not happen. Never attended to, I fixed it myself by buying a $11 strip from M10, it took three minutes to fix. This epitomizes the lack of respect that [redacted] have for their clients
    - Other faults include bathroom fans that run for up to 15 minutes after the light is switched off. This took them nearly four months to fix
    - Other faults are common such as faulty external lights that randomly come on in the middle of the night flooding the bedroom suddenly with light. The light is above the bedroom window. Three months to fix this.
    - Other construction faults are evident but are not attended too.

All indicative of [redacted] who will not divert labor from continuing to build new homes on site rather than attending to residents' complaints. Does this make one feel valued or respected? Emphatically no; it also fly's in the spirit of the contract where they state that they will respect residents and expect the same from residents towards their management.

Your paper raises other issues and quite rightly. The financial model is stacked against the resident especially when it comes to exiting the villa. These are noted in your article.

We are without any ability to redress complaints. I feel sorry for the village manager in many ways. There is a systematic problem in [redacted] which has construction in a separate silo to village management. The latter are not supported by [redacted] management, and it is the resident that is at the receiving end of the tension.

I would prefer that my identity not be given to [redacted] as it is possible that it would disadvantage me in the future. And once in; it is impractical to get out unless one is in a box.

To Whom It May Concern

I have visited and researched many retirement villages over many years but currently I have decided not to 'go into a village'. I think I would feel like a tenant with so many rules apart from the cost. Some retirement villages have told me that the independent villas/apartments subsidise the care facilities. I have since learned that they are separate entities. I have also been told that serviced apartments offer rest-home care. I learned that they do not by emailing and asking specific questions. Of course they are businesses and have relentless marketing people.

I am 72 but have looked since 2009 when my Father died and my Mother considered a village. So I welcome a more standardised contract. Often when I have challenged village representatives I have been told *This is the model we follow and this is not negotiable/this is not going to change.* So much confusion. On Radio NZ on 2 February John Collyns of the Retirement Villages Assn said *It is a flexible model and villages do offer capital gain...you need to ask.* Not in my experience. I am single and feel that although I have some savings and a modest freehold home, I am unsure if I could afford to live in a retirement village. I see this is addressed in the White Paper as are some of my main concerns which follow.

1] The contract should be negotiable - not a standard form contract

2] There needs to be a share of capital gain upon vacancy - perhaps could be negotiable

3] The weekly fee needs to be lower for single occupants - a couple weekly superannuation is $652, a single is $424 - ie single is 65% of couple. Or a fee for maintenance etc and activities charged on a user pays basis. I like to do Tai Chi and/or Yoga and Villages where I have asked, charge for these, but not in the small print...

4] The 20% to 30% deferred management fee needs to be reviewed alongside the capital gain issue.

5] There needs to be a Chef in the main restaurant. A friend in a [redacted] tells me the food there is terrible - such as Shepherds pie and potatoes for dinner and often different from the menu. I know this is anecdotal but seems a Chef is not a requirement in a [redacted].

It will be very interesting to see the outcome of the Review and what changes will be implemented.

Thank you

White Paper Submission

I have read the White Paper thoroughly and agree with the overall conclusion that the current Legislative Framework favours the operator against the residents an many areas. I agree with the recommendations . The CFFC monitoring Project in 2011 came to similar conclusions and there has been little change since then and when the legislation framework was put together20 years ago.

Part of my submission will include anecdotal evidence supporting the proposed changes and part will include issues not adequately covered or not covered at all in the white paper .

1. **Chattels maintenance.**
   I totally agree with the RVRANZ on maintenance of chattels. Why should residents be responsible for maintenance of chattels belonging to the owners. Would this apply in a rental situation? In the event of a accident for a homeowner a claim could be made on householders insurance with a typical $250 excess. For an ORA holder the excess is $500 and because the chattels belong to operator residents cannot insure against accidents. Our ORA gives no indication of the circumstances when chattels are to be replaced although it is assumed it is when it is no longer repairable. The ORA indicates residents are responsible for repairs but there has been a period when they were not charged and the conditions of ORA not enforced , surely this establishes a precedent and therefore residents should not be charged. There has also been inconsistencies , some repairs charged, some not. The ORA also says the resident is responsible for electrical sockets etc, surely this part of the building fabric and not chargeable. It was discovered that incorrect transformers were fitted for recessed light fittings and operators agreed these would not be charged . This is a change to terms of the ORA and residents should each have been individually advised accordingly but this was not done. Residents relatives who may be looking after them have no way of knowing whether any charges are legitimate. Following detailed discussions between the operator and residents committee a list of who pays for what was prepared but never issued to residents . The current ORA includes carpets as chattels , although this did not appear in some previous lists of chattels . Chattels are normally replaced by the operator at the end of their life. This means they should be replaced by the operator who decides when . In addition In the event of accident damage, e.g. a bottle of ink or wine spilt, for a householder this would normally be covered on household insurance . Should the village insurance cover this or could the resident be expected to pay for a new carpet .  Residents cannot insure against this. Although they are included in chattels , in the latest ORA residents seem to have been made  responsible for replacement … "if you wish or **need** any floor coverings including carpet ..to be replaced …you will be responsible for the cost " (Note <u>need</u> could mean worn out or damaged) **The whole issue of chattels repair costs and replacement needs to be carefully looked and changed** .Here is an example of restrictions to repairs

   **Items for which a recharge to the Resident will be made, as per section 2.11 of the Residents Information Handbook include but is not limited to:**

   Replacing batteries and light bulbs, Repair and/or replacing worn tap washers and/or similar water flow regulating devices, Replacing shower heads and hoses, Replacing range hood filters, Any repairs to electrical appliances or white ware that were in situ at the time of taking up residency. (Wall Ovens, range hoods, cooktops, microwaves, waste disposal units, dishwashers and dish drawers, garage door openers,) Glass breakage (windows and doors) resulting from the residents actions, Cupboard doors coming off their hinges, Blocked waste disposal units blocked by the residents action, Clearing toilets or any other drainage system blocked by the residents actions, Repairs to listed chattels where the damage was caused by the resident, Repairs to cracked or broken floor tiles caused by the resident.

2. **Effect of total destruction or damage to residents homes.**

   a) **Total Destruction.** Currently if the unit <u>cannot be rebuilt</u> the resident simply gets his original investment back.  After living in a unit  10 years purchased at $650k a  resident would  need about $1.2 million to get an equivalent property . If the operator is insured for full replacement he gets substantially more than what the resident put into the unit, and it if does not rebuild can simply bank the remaining money whereas resident is left with insufficient funds to find alternative accommodation. The funds of course belong to the resident as they are returned on termination ( less DMF) **This needs to be changed. The resident is totally disadvantaged and has no protection for the future with a massive reduction in his investment.**

**b) Partial and repairable damage**. Example ..At a budget meeting 2015 residents were informed that "insurance now included 6 months resident rental cover." This is clearly stated in the Power-point presentation. It was assumed that the village had met the market where in most villages residents are offered 6 months rental in the event of the village buildings made uninhabitable either in part or as a whole after a catastrophic event. **This a major change to ORA conditions yet this was never been formally communicated to residents individually for their records , surely this should be mandatory**

In minutes of AGM Sept 2016 CFO made presentation indicating insurance now included temporary off site accommodation in the budget year 2016-7. This was recorded in the disclosure Statement of 3/10/16 which indicated the business interruption cover was for $7.720 million but no detail of amount in this figure for rental cover for residents was given . A resident queried this and the CFO wrote "So no, 6 months cover for <u>all</u> residents is not correct,…. benefit for both villages has been calculated at $10,000 per ORA, which then translates to approx. 66 days( only 2 months ) at $150 per night" ( email 7aug2017 ) For 6 months accommodation we would be looking at approx.. $30,000 cover per ORA which will come at an additional cost.( circa $4000pa) <u>We will need to update the wording in the Disclosure Statement to better reflect this. " This has never been done</u>

The ORA of Oct 2016 stated "The village will take reasonable steps to minimize disruption if units have to be vacated because of damage and will arrange to or provide temporary accommodation…or otherwise advise you if it is unable to do so… If the village provides or arranged temporary accommodation while unit is repaired…you shall be required to meet the costs… The village is not required to and is in no liability to provide such temporary accommodation. <u>A complete contradiction.</u> The Disclosure Statement was saying rental support is provided but the ORA says the operator has no liability to offer it. The ORA was not changed until Nov 2018 some 2 and a half years after telling residents rental insurance was in place and promising to change the disclosure statement . The Nov. 2018 ORA says The village will be responsible for temporary accommodation costs but only for as long as the village receives adequate amounts from its insurer for such costs.

The amount of cover was queried in 2017 and management said the cover was for $1.92 million which at say $150 night represents 6 months for 70 units or 2 months for all units. Currently the Disclosure Statement simply states there is business interruption cover including residents alternative accommodation . **The purchasing resident and existing residents have no idea what cover is provided and the current ORA and disclosure statement give no indication whatsoever of what is offered. Because disclosure statement gives no details it can be changed without residents knowing. At best this is bad management at worst it is deception,**

**The description above is an excellent illustration of lack of coordination by operators in the two important documents for residents describing conditions of living in the village. This needs to be changed**

3. Maintenance.
   a) There is a ventilation fan in one building, It is required to ensure there are sufficient air changes in the building which is presumably part of building compliance. When the fan runs it produces and unacceptable noise to two apartments it has therefore been non-operational for **10 years**. Repeated promise to fix it have never been met, it is suspected this would make the building non compliant. **Another example of long delays to larger scale maintenance projects mentioned in the White Paper**

b) There have been persistent problems on many decks since 2013-4. The operator stated by letter to a number of residents in 2015 that there was a failure on the Mapie waterproof membrane. Initially the decks were fully repaired on one building, the operator doing an excellent job. Some unconsented repair work has been done since on other decks but the problem has not been properly fixed. Problems have developed on other decks since 2015. They have now been outstanding for 5 years. On 16/3/17 the operator agreed that the repairs for the second building would be deferred until the units became vacant, in return when residents vacated they would be immediately paid out. This has happened on at least two occasions and the units have not been offered for resales as they have "maintenance issues."
Problems on some newer decks have been reported about 2 years ago
The current disclosure statement says . ..
"A building report has been commissioned which indicated there were some failures with the membrane product on the decks. The operator is undertaking further investigations and will design a remedial plan the cost of which will be met by the operator. It intends progress with a remedial plan in stages to deal with the decks in stages according to priority." ( abbreviated)
The seems to be taking the issue seriously although late in doing so. The issue here is what sort of detail on problem issues with particular unit should be declared to a prospective resale buyer. If a prospective buyer was not told before purchase that their life would be disturbed by repairs they would be most upset, if a buyer was told thespecific unit was in need of repair the buyer would be put off buying the unit. This could delay sale of the unit and settlement to the unit resident's estate. Residents can be patient, but immediate buy outs should be made to any ORA holders or descendants where the ORA holder's unit requires remedial work before resale or where the resident has to move for health or domestic reasons. **Could the buy back rules cover this evantuality**

4. **Buy backs (Page 5 0f White paper)**

The White Paper says "consideration should be given to restricting buy back changes to larger for profit operators." Where the line is drawn here is critical , what is larger , is an operator with say just two villages and very profitable to be regarded as small. **Maybe a better definition should be " consideration should be given for small not for profit villages to be exempt ." (Page 22 )**

5. **Fees after vacation of unit( page 5 )**

As 66% villages do not charge why can't this be can this be made mandatory immediately by changing code of practise.

6. **Disclosure statements and ORA's and rules and consultation**

In the last 10 years in some villages these two documents have been revised about 9 times. The language used is far too lengthy and there are duplication both within and between these documents. The contents and schedules in each version are different ( see example re destruction/damage para 2 above ) Another simple one is , in some ORA's medical visits from nurse are free in one version but chargeable in the next one.Some say residents should be consulted about manager appointments, from the operators point of view they should be in total control of appointments and Residents Association need not be consulted. How can they unless they are on the interview panel. In the experience of many consultation often means residents are just told what is going to happen, their influence is minimal particularly when clauses like " can be varied at management' s discretion " are inserted. Residents are consulted about rule changes and accept them but management do not enforce them and/or they are not enforced equally.
Frequent changes of ORA's causes confusion , I was told once that if the village ORA was changed then if the new content was beneficial to old ORA holders the new rule applied to the older version, if it was detrimental it did not. **It is not clear whether the changes apply to all residents or not. If they do apply to all then operators should formally inform residents of changes so they can be kept with their original ORA for future reference by residents and relatives. If they do not apply then in my case I would be significantly disadvantaged in the unit damage example above(**

**Section 2 )** Likewise in the case of charges or none charges for medical visits this has changed several times so before charges will be made the nurse would have to refer to the individual's ORA. Another question, if something is added to one version of an ORA but is then removed on next version, if the beneficial rule applies as above can the operator remove something from their benefits? **The whole area of what happens when ORA's and disclosure statements are changed needs to be revised and clearly defined.**

7. **Definition of Village contribution or deferred management fee**
   One definition is "means the sum of money payable by you on termination of the agreement and is calculated in accordance with formular set out in the agreement and is a contribution to the village <u>general costs</u> incurred in the supply of accommodation community facilities and common areas used by residents." Another says "used for operational expenses." **This money should therefore be 'ring fenced ' and used for this <u>purpose only</u>. It should be shown separately in the accounts. There is a suspicion that this is simply put into income, not protected and goes towards profits.**

8. **Insurance and warrant of fitness.**
   If insurance cover is changed in any way , residents need to be informed, indeed it should be mandatory for operators to do so. Insurance details in disclosure statements and ORA's should be supplied to residents especially where it can directly affect them living in their units.
   Operators declare total value of cover for buildings etc and show excesses, but no detail is given on residents cover in the event of their unit being damaged. The disclosure statement merely states the operator has business interruption policy which includes rental cover for residents if their units have to be vacated while they are repaired. There needs to be greater transparency on insurance cover as it affects a resident's home. **What cover is available should be clearly stated not an obscure reference in the disclosure statement.**
   **It is not clear whether buildings have warrants of fitness and no information is passed on the residents about the results of warrant of fitness reviews yet it is a resident's home. Surely a resident should be aware if there are compliant issues in their home and what remedial action is required as it may cause inconvenience**

9. **Information supplied to prospective resident**.
   Some examples (a ) Resident told all tiled areas to have underfloor heating. This was not provided and documentary evidence is available that the omission was deliberate. Management agreed to install it but no compensation for the considerable inconvenience. (b ) Resident told that construction of a new facility was imminent….it was never done, indeed management announced the project would not go ahead very soon after ( c) Some weeks after moving in operator said there was a mistake on the agreement and wanted it changed, resident had to engage lawyer refute . ( c) Items are mentioned in the schedule of services but are not available, in some cases they are in the schedule in one version then removed in the next. **Once a change ( for the better ) is implemented it is assumed it applies to all previous ORA's , if so previous residents should be informed, how can it then be removed without consultation.**

10. **Liquor licensing arrangements regulations need to be tidied up**. Liquor is being sold without license, sometimes the operator holds the license and sometimes the residents association. It is the cause of friction in some villages

11. **The white paper says there is an element of fear amongst residents ( page 27),** they are afraid to complain for fear of operator and what operator might do. Example .. A resident ,concerned about an on going maintenance issue in a building and supported by the residents association made a short presentation at the village AGM. Management were pre-informed of the plan. Immediately afterwards the resident receives a threatening letter from owners telling them not to raise the issue because it frightened vulnerable residents, no mention of the vulnerability/concern of the complaining resident. The statutory supervisor told the presenter to sit down before his presentation was complete yet they is supposed to be represent village residents The writer knows

two occasions when the minutes of Residents Associations were removed from public files because the management did not like what was in them.

12. **Legislation enforcement and complaints**

    The CFFC is referred to as the "regulatory watchdog ' and the Statutory Supervisor is said to look after residents interests. Neither of these two have any "teeth ." They have no power to direct operators to meet their obligations. There is an act of parliament , a code of practise and residents rights but **no body to check that operators are doing what they are supposed to do., there should be.** The complaints process is ineffective and there is a **definite need for an impartial independent organisation** with a simple process and the power to compel parties .

**Consultation is open until 5pm Friday 26 February 2021.**

Q1: Has this White Paper canvassed the issues fairly and accurately?*

- (•) Yes
- ( ) No

Q2: Are there any important points that are missing?*

- (•) Yes
- ( ) No

Q3: Do you agree that a full review of the retirement villages framework should be undertaken?*

- (•) Yes
- ( ) No

Q4: If you replied No to Q3, are there any issues that still need attention?

- ( ) Yes
- ( ) No

Q5: Is there anything else you would like to say?

Missing points are detailed above

**Addendum**

**The government has announce they are to support a bill to reform apartment living legislation(23 Feb.2021) See NZ herald https://www.nzherald.co.nz/nz/politics/labour-will-support-bills-first-reading-to-reform-apartment-living-legislation/A4GUNTCAJX3AJTR6VUFDFXJQZQ/**

The current legislation ( unit titles act 1972 and 2010 ) is said to be “ not fit for purpose for owners and buyers.” **“**Issues include the disclosure regime for seismic issues, and the management of long-term maintenance plans.” "This reform is an attempt to cut through some of that, make it simple, professionalise the governance and management of unit title dwellings, ensure conflict of interests are declared and properly managed," Willis said.”

The labour party has concerns that the bill does not include powers for the regulator to investigate and enforce the act. However the bill addresses issues for apartment and unity holders around how the body corporates operate and disclosure requirements for buyers that we think are important," she said.

The national party have said” "We need to see more apartments .. the bill addresses issues for apartment living around how the body corporates operate and disclosure requirements for buyers that we think are important,"

Body Corp Chairs Group said “ the new regime would mean weathertightness and earthquake-prone building issues would be highlighted as part of initial disclosure, which potential buyers would then need to do their own homework on.”

Areas for reform include..

• Improving the information disclosure ( page 32 ) regime to prospective buyers of units;

• Strengthening the governance arrangements of the body corporate, the entity responsible for the management and operation (page27 )of a unit title complex;

• Increasing the professionalism and standards(page 26) of body corporate managers;

• Ensuring that planning and funding of long-term maintenance projects was adequate and proportionate to the size of the complex concerned;

• Providing the ability to opt out of some requirements for smaller buildings such as requirements around long-term maintenance plans;

**Many of the issues above are covered in the government White Paper and apply in some way to Retirement villages . The quotations above clearly have wide support throughout the apartment living business and seems to be totally supported by the political parties so the Government seems to be proceeding quickly here. If the Government can proceed quickly for apartment living it is considered that Residents in Retirement Villages should expect an equally quick response to changes in legislation for retirement villages ( Original Act is 18 years the Apartment act reviewd 11years old )**

**(In red are items similar to those raised for retirement villages**

To: The Commissioner, 25 February 2021

Commission for Financial Capability

# White Paper Submission from [redacted]

## A. Introduction

I am in my eighties, and I have lived with my wife in a retirement village since November 2007. I am a retired professional.

In this submission on the White Paper on the Review of the Retirement Villages Legislative Framework, I have assumed that my experience is representative of behaviour across all the members of the Retirement Villages Association, and is not exclusive to the particular village in which I reside. I have provided examples of my experiences to illustrate my submission, but prefer not to name the village in order to avoid the possibility that the submission might negatively affect my residency status and relationship with the village operator.

Despite the critical nature of the comments used to illustrate my submission, the village in which I live does many things very well, and I have written to them to say so on any number of occasions – praise where praise is due. This has been particularly true of the dedicated village staff, and the manner in which it has managed the national covid-19 situation over the past twelve months. Of course, that has no bearing on the significant issues I raise in this submission.

## B. Themes of submission

There are two main themes to my submission.

First, the terms of the contract between operators and residents are overwhelmingly weighted in favour of the operators, not unlike insurance contracts, that can also not be negotiated. The licence and terms are unilaterally presented as "take it or leave it" to incoming buyers. While there is now a "cooling off" period of 90 days to allow a buyer to change his or her mind (not available when we took up residence), it is not until a resident has been in the village for a longer period that issues with the contracts typically emerge.

In addition, because operators are commercial enterprises, many of them publicly listed, the law currently requires them to put the interests of shareholders above the interests of residents. This drives the terms of the contracts, and the operation of the villages, in a manner that makes residents losers in the contest between their wellbeing and the operator's profits.

All of the topics in my submission, listed below, are examples of the impact of that power imbalance and relationship. Addressing individual issues is absolutely necessary, but will not be as effective as they could be, unless the two overarching issues are also addressed in the committee's review and recommendations.

The topics covered in this submission are, in this order:

1. Resale and buy back times
2. Weekly fees after termination
3. Code compliance
4. Complaints and disputes
5. Powers of the statutory supervisor
6. Emerging consumer issues (including non-sharing of capital gains)
7. Legal framework – disclosure statements

## C. Submission

### 1. Resale and buy back times.

Problem:
Despite the claim to have "one of the best transfer policies around," our contract with our village operator (ORA) provides that, on termination of our residency, payment of the amount due to us or to our estate may be delayed until after the operator has received payment for a new licence from the incoming resident. There is no limit on this time period, which can amount to six months or more. If by chance the operator chooses to leave the residence empty for some reason (for tax purposes, for example), it must give notice to the departed resident or their estate, and make payment at that time.

While this may seem unlikely, it is not a given that a commercial operator will want to turn a residence around as quickly as possible, as even in a heated property market there may be financial or tax reasons to delay resale. No legislative or contractual controls are in place to incentivise the operator to find a new licensee as soon as possible, although there is a contractual undertaking to prioritise resale of "old" dwellings over "new" dwellings. There is also no independent means to verify whether an operator is having difficulty in reselling a licence or is purposefully delaying resale without notifying the departed resident or their estate.

In the meantime, no compensation is paid to the former resident or their estate for the use of that money during the period between termination and refund.

Impact:
The only possible explanation for this arrangement is so that the operator can enjoy interest free use of the former resident's money for an extended period. It means that any resident seeking to move to another location within the same village, or to another location, or to a different retirement village is unable to do so unless they have an unusually large reserve of money available to bridge the gap, or enough security to be able to raise bridging finance. In either case, this term of the ORA imposes a significant financial burden, effectively locking residents into their current accommodation whether they like it or not.

It also impedes efficient management and winding up of the estate in a timely fashion by the beneficiaries of a resident's will. This imposes unfair hardship and additional costs on those beneficiaries, solely for the benefit of the operator.

This is yet another example of the power imbalance, where operators have unilaterally chosen a non-standard commercial approach to suit their own interests at the expense of the residents and their families, while insisting on a commercial approach in other areas of the relationship. It is immoral, not to mention completely unfair on residents and their estate, that they have to wait so long for their money, small as it is these days, to be returned to them.

Solution:
Legislative controls are required to restore fairness to the transaction between operator and resident. Normal property transactions include exchange of consideration at the time of the transaction. It is necessary to set a maximum - and limited – time frame in which to pay the amount due to the former resident (I would propose at the most within five working days of termination) and, if longer, for the operator to pay a defined (by the Reserve Bank perhaps?) commercial interest rate on the unpaid amount for the period between termination and payment.

## 2. Weekly fees after termination.

Problem:
ORA terms for Weekly Fees in some villages provide for payments to continue in full for up to at least six months after termination, and potentially at a reduced rate thereafter, until the earlier of when a new resident has taken up residence, or the issue of a new occupation Licence.

Impact:
Former residents are continuing to pay for goods and services that they no longer receive, which is clearly far from being good or fair consumer protection practice, and another example of benefit imbalance. As noted above, in part 1,

there are no controls that incentivise the operator to find a new licensee as quickly as possible.

Solution:
The village operator with which we have an ORA discontinued this practice some years ago, which we applaud. However, this was voluntary, not mandatory. It should be discontinued by all operators. This would also be consistent with what we are proposing in item 1 above, if repayment took place upon Termination.

### 3. Code compliance

Problem:
The current version of the Code of Practice (CoP) was subject to intense lobbying by the Retirement Villages Association (RVA), and is heavily biased in its favour. There was no significant offsetting lobby at the time. Such was (and remains) the influence of the RVA that it managed to have the original version rescinded and replaced a year or so later by a version even more favourable to operators.

Impact:
There are no sanctions for non-compliance with the CoP (other than making a Formal Complaint – see point 4 below for why this is onerous and ineffective). That means that when it comes to consultation, or satisfactorily meeting code requirements, operators can get away with non-compliance in both large and small ways.

For example, annual meetings are an important forum for residents to talk about and discuss their issues with senior staff, and the support of their peers, but in my experience, the formal Notice of Meeting rarely meets the format requirements of the CoP, and has never attached "all the papers to be discussed at the meeting" in relation to General Business, denying other residents the opportunity to identify whether any of the topics to be discussed at the meeting are of interest to them. Promises to feed back after the meeting, to those who attended the meeting, are rarely honoured.

At another level, although our contract is with the village in which we reside, it is the in-house legal department at the head office of the corporate operator (its shareholder) that reacts and responds to any significant challenges or incipient disputes, by-passing both the policy and the village manager.

That procedure has the impact of removing the friendly face at village level, and instead substituting potentially daunting strangers at arm's length. It is not hard to imagine that such a situation can be intimidating for an older citizen (see also item 4). It might be acceptable if the Head Office people came to the village and talked it over with the resident in the presence of the friendly familiar village manager.

However, that rarely, if ever, happens. Instead, too often the response to any challenge is that the operator has “met all its legal obligations,” even though the operator has not complied with all of its contractual obligations. In one case, the particular issue was further aggravated by the operator insisting that any policy changes must apply equally to all its villages, even though the suggested policy change was the result of a resolution passed without dissent at an AGM of the village in which we reside, and with which we have a contract (making the outcome binding on both parties), and was intended to apply only to this village (see also 6(iv)).

Solution:
It is now high time to restore the balance on all of the points raised by this review. I therefore strongly support a wholesale review of the Code of Practice, including introducing sanctions in the case of non-compliance by an operator (see also item 5) and ensuring that contracts with residents are honoured in full, by the village contracting party rather than its corporate group shareholder.

Failing to honour our contract, and refusing to discuss that position with us, is disrespectful in the extreme. Fighting for our contract to be honoured is tiring, difficult and at times overwhelming (see Complaints and Disputes, below). Perhaps the Statutory Supervisor could have the power to support the affected resident by applying pressure on the operator, appointing an independent conciliator, or even to fine a non-compliant operator in extreme circumstances.

## 4. Complaints and Disputes

Problems:

a) Entering into a formal complaint or dispute situation is a stressful situation for most people, but especially so in their golden years, and it needs to be made more resident friendly.

b) The complaint/dispute system (ie after having exhausted “issues or concerns” at village level), is set up to be actively managed by the operator, with the aim of resolving any formal complaint to the resident’s satisfaction within 20 working days. Other steps follow if there is no resolution. My experience has been that the practice does not match the theory, the first departure point being that the village manager, with whom we have our contract (ORA), will not normally discuss any significant or procedural "issue or concern", but will instead pass it on to Head Office.

Impact:
There are many residents for whom making a complaint is so distressing that they prefer to put up with an unwelcome situation rather than complain about it. Residents would in general much prefer to sort the issue out with a familiar friendly face "on the ground" with their village manager before it escalates into either a formal complaint or a dispute, at which point many of them would choose to cut their losses and abandon the complaint, because the prospect of proceeding further has become too daunting to contemplate.

If the issue (complaint) is instead referred to Head office, the resident is dealing remotely with unfamiliar faces, and loses control of the situation. That might be acceptable, if Head Office then came to the village to discuss it with the manager and the person who raised the issue. What actually happens instead is that the process is no longer swift (within 20 working days), in some documented cases having routinely taken up to 40 days to respond to written submissions on the topic.

Solution:
There needs to be a more simple staged process, after genuine discussion *at village level*, that is more resident friendly, including being able to call upon support from the Statutory Supervisor (or other independent person – see below and item 5 of this submission) before embarking on a more formal process.

The next step needs to be more like the disputes committee in earlier versions of the ORA (the resident gets to share in choosing the make-up of the tribunal), before bringing mediation into play, including dealing with serious breach of contract by the operator.

There also needs to be better provision for residents to call upon a third party to bring pressure to bear on the operator if it does not live up to its side of the agreement on operational issues, for example gardening or window washing defaults. Such defaults are frequent, and are often blamed on "lack of funding for adequate staff", despite the operator enjoying significant reported levels of profitability at village level (another good example where payment of dividends to shareholders is considered more important than residents' comfort).

## 5. Powers of the Statutory Supervisor (SS)

Problem:
As things stand, the SS powers are largely in relation to financial issues. Its alleged independence is also questionable, when one considers that it has been invited to the role by the operator, under terms set by the operator, and paid by

the operator. He/she/it needs to have the authority to support residents when they are having difficulty in resolving a difference with the operator before it escalates to a formal complaint, or to at least appoint an independent and confidential support person.

Impact:
I have had, on more than one occasion, to challenge the independence of the SS when it has aligned itself as part of the management team, for example at AGM meetings when it has been listed as part of the management attendees, or in answering questions directed at management, instead of directing the question to the relevant member of the management team in attendance. It has also used on many occasions at such meetings, the pronoun “we” in conjunction with the operator, indicating that it felt that it was part of the management team. It was a clear indication of mind-set in relation to lack of true independence, when it should instead have referred to “management” or “the manager”. My experience at this village does not therefore align with the findings of CFFC on page 32 of the White Paper.

Solution:
An alternative, and possibly better, arrangement is discussed under item 4, where I have suggested that the powers of the SS should be widened to include an independent advocacy role in support of residents who are experiencing an unresolved complaint situation. Alternatively, create an Ombudsman type of role or something like an Advocates Office, akin to the Office of the Commissioner for Disabilities, with staff whose role is to act as advocates for residents in this situation.

Finally, in relation to resolving the thorny question of independence, I have suggested that the SS should be selected and appointed by an independent body, such as the Retirement Commission, but paid for by the Retirement Village.

## 6. Emerging consumer issues

i) Problem: sharing capital gain. The ORA provides for the *original* price of the dwelling (less DMF) to be refunded after termination. This represents a gross incompatibility between the parties, with the operator taking all of the benefit of the increased value of the dwelling since its original occupation, thereby taking advantage of vulnerable residents who were unable to negotiate that part (or any part) of their ORA – take it or leave it.

Impact: This effectively condemns the residents to remain in their original accommodation in the village, whether they like it or not, unless they have considerable assets beyond the repayment price of their actual accommodation ([redacted] residents were affected that way after the Christchurch earthquake, for example). It is shameful that agreements do not provide for this. The arrangement benefits only the operator's shareholders, and does nothing for residents, especially when there may be compelling reasons for them to move elsewhere.

Solution: Compel owners to share the net capital gain 50/50, and refund the amount due upon termination, or at least within five working days of termination. If the refund is not made until a later date, then require the owner to pay interest on the unpaid amount for the period between termination and actual payment. The rate of interest to be comparable with commercial rates, and determined from time to time by an independent party, say, the Governor of the Reserve Bank.

ii) Problem: Transfers from Independent Units. This topic is in effect a sub-set of sub-section 6(i). In our case the cost of such moves is unfairly weighted against the resident planning to make the change, by being forced to sell back the "old" unit at the original price less DMF, and then pay for the "new" unit at the "new" current price, thereby allowing the operator to effectively "double dip" on the capital gain of both units. This does little to support the mantra that "our residents are our first concern".

Impact: the pricing policy makes it more or less impossible to transfer from say a villa to an apartment, without incurring heavy additional costs and allowing the operator to double dip on capital gain. Most residents would not have the financial resources to be able to easily shrug off such a financial burden, and wind up being either impoverished by the move, or deciding to put up with living without the benefits of being able to make the move.

Solution: The cost of the transaction should be based on time compatible pricing of the units, whether at the "new" prices or at the "old" prices.

iii) Problem: Value of Extras. Any additions to a dwelling at the village in which we reside, other than substantial or structural additions, are deemed to be gifted to the corporation – ie the cost is met by the resident, but not added to the price paid for the dwelling, as it should be. This was not made clear in the disclosure statement.

Impact: Originally, extras could be on-sold to the next resident/occupier, but that has now been scrapped in favour of formally gifting the extras to the operator at the time of installation, yet another inequitable provision that is in favour of the operator. In the open market, such extras are not priced separately in house sales, but are valued by the price agreed with the buyer – in other words the seller enjoys the capital gain that has accrued from the cost of the extras.

Solution: Either add the cost of extras to the original price of the dwelling, or preferably, share the net capital gain as proposed above.

iv) Problem: Consultation too frequently does not lead to any meaningful change to such draft documents as might have been offered to residents for comment. Policy changes (rules) are sometimes announced, but are seldom discussed.

Impact: Residents are denied the opportunity to even discuss a proposed change in policy, when consultation is not offered, and when it is, the response is too often lacking in substance, with no more than cosmetic alterations being agreed, even under the influence of well-argued submissions.

There have been times when the changes have been an attempt to unilaterally change the terms of a resident's ORA, but when that is pointed out we are simply told that our ORA will always take precedence, but without any matching statement in the policy documents. The impression given to residents is that it is not worth taking up an offer to take part in consultation, because their efforts will be disregarded. Too often it feels more like information than consultation – ie this is what we're going to do, whether you like it or not.

Solution: There needs to be a way to encourage operators to undertake meaningful consultation, and to respond sympathetically to reasonable consultation submissions, perhaps by way of involving the Statutory Supervisor or other independent person (see also item 5 above) in facilitating or mediating discussion between residents who have not been satisfied by the operator's responses and the operator, so that consultation becomes real and not merely a token gesture.

v) Problem: Village Autonomy. I believe that the operator of the village in which I am living, is not alone in demanding an inflexible homogeneous policy structure across all their villages.

Impact: Our ORA is not with the corporation at head office, but with the individual village.The village manager therefore needs to have enough autonomy to allow it to act in the interests of its own village residents, and to provide its own version of the village rules (as defined in Clause 2 of the CoP), instead of having to fit in with inflexible corporation-wide rules. The operator no doubt has good reasons for managing its business as independent villages, and so should respect its residents' rights under that arrangement.

Solution: Provide the wider powers to the SS discussed in item 5 above, or an easily accessible independent support structure with powers to compel the operator to act reasonably in accordance with its residents' ORA at individual village level.

7. **Disclosure statements**

Problem:
Much of what happens in the village is governed by the operator's Rules (as defined at Clause 2 of the CoP), but most of these were not provided, with the Disclosure Statement that we received when we signed our ORA, perhaps in part because the operator considers the rules to be limited to the Village Rules, that govern the behaviour of residents and staff within the village. A related issue is communication from operators about important (or even low importance) issues, for which our operator has a poor track record.

Impact:
This comes in the context of an ORA which is quite possibly the worst form of contract I have ever come across in business, and I have written and managed a very large number of them in the construction industry over my working life. There were some 24 points that I felt bound to query with our legal advisor prior to signing the agreement, some of which were perhaps semantic (for better clarity of meaning), but many of them were answered by the statement that the agreement is non negotiable, being yet another aspect of the imbalance between the parties.

I have over the years engaged in correspondence with the operator to clarify some of the many points of ambiguity or uncertainty in the contract, leading to some 15 or so clarifications which now form part of our ORA, in addition to operator initiated changes. One particularly onerous point of contention was the need for the resident to accept liability for certain undefined uninsured risks, for which the operator has refused to supply details to this day. That has been my experience, but what about the many new or intending residents who are not contract literate, but whose legal advisors have provided much the same response as ours – where does that leave them if the operator rides roughshod over their rights ? By way of example, our ORA contains a reasonable term requiring the resident to inform the village manager when it is having visitors to stay over, but recent changes to the village rules included the requirement to instead obtain the *consent* of the village manager, which is not only offensive but is highly likely to amount to a breach of human rights, in my view.

As for sharing information, some examples of issues that might have had an impact on residents, and that were not communicated to them, were the rescinding of the original CoP, and the subsequent reinstatement of the replacement CoP, then the listing of the company on the stock exchange, which I uncovered accidentally by reading the newspaper, and finally this review which the operator has not mentioned to us, despite my attempt to get them to do so.

Solution:
Operators need to be more diligent in disclosing information about life in the village, much of which came as a surprise to us when we moved in, covering far more than was made known to us by way of the ORA and the other documents that were supplied, which did not include any of the policy documents that set out many of the rules. This type of disclosure/information needs to be extended throughout the occupation, to comply with the Code of Residents' Rights to be kept informed, for example telling residents about this Review, which the operator has not yet done, despite my prompting.

## D. Conclusion

My wife joins me in this submission. We support the closing paragraphs in Part 4 of the White Paper, and as members of the RVRANZ, support its comments as written on the last page of Part 4.

The overall theme of this submission, to remind you before closing, is that the terms of the contract between operators and residents are overwhelmingly weighted in favour of the operators, not unlike insurance contracts, that can also not be negotiated. The licence and terms are unilaterally presented as "take it or leave it" to incoming buyers. While there is a "cooling off" period of 90 days to allow a buyer to change his or her mind (not the case when we took up residence), it is not typically until a resident has been in the village for a longer period, that issues with the contracts emerge.

In addition, because operators are commercial enterprises, many of them publicly listed, the law currently requires them to put the interests of shareholders above the interests of residents. This drives the terms of the contracts, and the operation of the villages, in a manner that makes residents losers in the contest between their wellbeing and the operator's profits.

All of the topics in this submission are examples of the impact of that power imbalance and relationship. Addressing individual issues is absolutely necessary, but will not be as effective as they could be, unless these two overarching issues are also addressed in the committee's review and recommendations.

In summary:

1. Resale and buy back times. There needs to be a regime where consideration is exchanged at the time of termination and no later, or as a second preference, payment of commercial interest rates for the period between termination and settlement, which also needs limits placed upon it
2. Weekly fees after termination. Need to be discontinued at termination, as many operators apparently do already.
3. Code compliance is lacking in enforceability short of making a Formal Complaint.
4. Complaints and disputes. I lean more towards an Ombudsman role at an early stage in dispute management, as being more resident friendly, having used this service satisfactorily in an insurance complaint a few years ago – even though I was not successful on that occasion. However, the first port of call should be to the village, supported by the Statutory Supervisor or other independent person, by widening its powers, as explained in more detail in item 5.
5. Powers of the statutory supervisor. Need to be widened to provide more support for residents over more than just financial matters, and to strengthen an appearance of independence from the operator. Perhaps transparency could be improved if the SS were to be appointed and paid for by the Retirement Commissioner with reimbursement to the Commissioner by the operator.
6. Emerging consumer issues. Five topics are discussed of which village autonomy is probably the most significant.
7. Legal framework – better risk apportionment is required in the ORA as part of developing a better quality document, more clarity is required in disclosure

statements, and more accountability is required in observation of the Code of Practice.

8. Transfers from independent units. Payment amount needs to be calculated at time compatible pricing.

 

To whom it may concern:
I am writing to support the attached submission to the White Paper Review of the Retirement Villages Legislative Framework, prepared by my father, XXX.

The opportunity for New Zealanders to move into retirement villages is one I support. Given New Zealand’s urgent housing shortage, it is also vital that the opportunity exists. However, unfortunately, commercial operators have one priority, and it is not the best interests of residents, no matter what their brochures may say. The law requires that it is their shareholders who are the first priority, and therefore their profits. Compounding this, commercial operators take advantage of their situation in offering residents long and complex non-negotiable occupation licences, on a “take it or leave it” basis, in a similar fashion to insurance contracts. While this may be practical, it reflects a spectacular imbalance of power between the two contracting parties to occupation licences.

As you will see when you read the submission, this does not necessarily become clear until well past of the current “cooling off” period. If a resident wants to leave at that point, it is too late. The current position on capital gains on termination licences means that residents are effectively trapped as the sum they would receive on termination would not be anywhere near enough to purchase a new home elsewhere, or even in another village.

I have witnessed first hand the struggle for fair treatment. It is not a struggle that people in their seventies and eighties should have to undertake on their own. Urgent action by the government to protect the interests of residents in the highly imbalanced relationship between them as individuals, and these stock exchange-listed multinational corporations, is required.
Thank you for your consideration of this submission.
Regards

Friday 26th of February 2021.

Dear Commissioner Jane Wrightson,

I am making a submission to the discussion paper on the retirement village legislative framework.

I have attached two separate documents for your information and for you to fully understand the gravity of the situation I am going to explain.

For my submission I would like to highlight the unfairness of the situation incurred by my late mother in law.

I would like to start by bringing to your attention an example of a situation incurred by my late mother in law, [redacted], who resided at the [redacted] for 10 years until her death on the [redacted] 2020.

On the 3rd of November 2009 [redacted] duly signed an Occupation Right Agreement For Independent Apartment [redacted] and Carspace [redacted] at [redacted].

The apartment and carspace were bought for a total of $399,000.00 and $10,000.00 respectively.

The carspace was sold on the 7th of December 2018 for $8000.00. This included a deferred management fee of $2000.00 - 4% pa of the occupancy advance from October 2010 to October 2015(capped at 5 years).

The $399,000.00 apartment under the Occupation Right Agreement is now worth $326,434.00 after the deduction of the deferred Management fee of $81,800.00 and the [redacted] Retirement Village legal fees of $766.00

The Independent Apartment [redacted] is currently being sold on the open market by [redacted] for $670,000.00.

The financial gains [redacted] obtain from capital gain could appear to be excessive.

I believe this whole situation to be grossly unfair and this is how [redacted] make their money while the occupant is left out of pocket.

It is my understanding that since [redacted] purchased her Independent Apartment in November 2009 the minimum age for entering into such agreements has been lifted from 65 years old to 70 years old. (The ages of 65 and 70 may not be exactly correct but the point of the argument still stands.)

This means that [redacted] are now able to use the capital gain, relating to the 5 years at 4%) on resales more quickly than with the previous agreements like [redacted]

Would it be prudent to assess [redacted] financial statements to gain more insight into whether they are gaining a pecuniary advantage?

I believe that this Occupation Right Agreement needs to be investigated and to be made illegal so that any resident who wants to sell prior to death and the estates of the deceased benefit fairly.

I trust that in your capacity as Commissioner for Retirement Villages you will investigate this situation of my mother in law [redacted] in full please.

I will look forward to receiving any outcomes/recommendations from this review.

Please note the personal details, of [redacted], in my submission to
“The discussion paper on the retirement legislative framework” are confidential and any further publication of these personal details will require my permission.

Thank you in great anticipation.

Yours sincerely,

[redacted]

[redacted]

[redacted]

Good afternoon.

I refer to the review of the Retirement Villages Act 2003; its regulations and Code of Practice. I've looked your web site and see that the paper is about 40 pages. This is too much for me to wade through these days. I have the Retirement Villages Code of Practice 2008: Variations included April 2017. This is about 55 pages and, as per the Act, is too long for me to read and fully comprehend. I would like to make a full and detailed submission but I am not up to doing this.

I know that Consumer NZ is intending to make a submission. And possibly also Grey Power. The best I can do is to support their submissions, as they speak for residents and potential residents of retirement villages, for this review. I fully support the reasons for the review, as outlined in the Herald newspaper of 3 December 2020.

When a unit or apartment in a retirement village is vacated, the resident is not paid out until the unit is sold, which might be several months. In the meantime, the resident, or his/her estate, must continue to pay the regular weekly fee for maintenance. I think that the proceeds should be paid out no later than 30 calendar days from moving out. The weekly maintenance fee should cease 30 calendar days from moving out. The contract should specify this.

If the Operator of a retirement village fails to comply with any aspect of the Retirement Villages Code of Practice, it should be specified, in the Code, to whom a resident may make a complaint to about non-compliance.

The retirement village, not the resident, should pay for the replacement of electrical and plumbing and garage door components, should they need repair or replacement, due to their age, with the exception, possibly, of light bulbs.

The documentation provided to prospective residents is far too lengthy, complicated and difficult to fully comprehend, especially at what is a very stressful time for new residents, who have to deal with the sale of their existing property, downsizing their goods and chattels, arranging for the shift, dealing with their finances, lawyer and the retirement village. Prospective residents should be given documentation that is concise and able to be comprehended, without having to rely on their lawyer, even if it is a summary document. I had to rely on my lawyer to draw my attention to the important points when I moved to a retirement village.

Regards,

# Comments on the CFFC white paper. ‘Retirement Villages Legislative Framework Assessment and Options for Change 2020’

[redacted]

February 26, 2021

## 1 My situation

With age and health conditions providing more difficulty in maintaining our comfortable housing situation which we had occupied since 1964, and members of the family in [redacted], and a single member still in [redacted], we decided it was necessary to consider moving to a simpler living situation. That led to joining a waiting list for a retirement village. However we were concerned about the absence of full time care and delayed to consider a new village being developed in the local area. As our general situation developed, it seemed advantageous to move to a smaller retirement village in [redacted]. We therefore explored options from major operators in the industry and a smaller village with long term care capabilities.

All those we considered had similar terms of Management fees on the the ORA deposit, and provision for regular fees which had could be changed in limited ways.

A major concern was the ability to handle future conditions which may arise. In each case, there would be approximately a 30 percent deduction in the ORA deposit to be refunded, and in the rapidly increasing housing price market, there would obviously be major difficulty in making adjustment as mortality and changing mental and physical health conditions arose.

This submission is a perspective from an emeritus professor with a life long concern with micro economic issues.

## 2 Key Questions Page 2

1. Has the White Paper canvassed the issues fairly and accurately. Yes, but perhaps with over much concern for the larger operators in the industry.

2. Are any important points missing? No. I hope the main revision process continues, but perhaps it needs to give more attention to the mental wellbeing of persons faced with diminished ability to deal with many practical issues. It is important to reduce levels of stress for older folk.

3. Do you agree a full review of the retirement villages framework should be undertaken? Yes, there are many respects in which the situation can be improved.

4. Are there any issues that still need attention? Nearly all aspects of the system need careful policy review from an equity perspective, and a sense of treating all retirees as important

members and past contributors to society. In a review the focus should be on the Christian principle of treating all others as we would like to be treated.

5. Is there anything else you would like to say? I hope there is a significant review of the whole process of proceeding to higher levels of care, and in particular the level of funding support. It is important to enable other members of the whanau to continue to assist and participate in making some contribution to retirement living and other activities in a variety of ways.

## 3 Part 6: Consumer Issues Page 5

- Resale and buyback times These can be an important feature if one partner of in an ORA is in a situation where they can maintain independent living. Extended delays make a very big impact on their ability to re-establish their mode of living after the changes.

  The review recognizes that the usual conditions favour the financial position of the operator of the village.

  This is relevant for all residents. The situation is currently fairer for those with some features similar to title for their housing. In a comparison with Australian villages, those with some provision for capital gain on the property subject to an ORA are in an advantageous position. The CFFC paper makes appropriate recommendations for a thorough review of these processes

- Weekly fees continuing after termination

  A careful cost-benefit analysis would be very helpful in examining the issues that continuation of the weekly fees raise for different resident situations. The need to deal with some continuing outlays such as rates can be shared, but all items related to services no longer consumed by the resident need to be eliminated. The proposed review on p.23 could make a substantial increase in fairness for residents who need to terminate an ORA.

- Transfers to Serviced Care or Care facilities

  The CFFC recommends a policy review on improving and standarizing information about moving to higher levels of care, which would be extremely useful. It would have been very helpful in some of our decisions. The ability to move to higher levels of care is vary important for some moving to a retirement facility, but the circumstances leading to such decisions are generally subject to much uncertainty. The recommendations at the base of Page 25 need to be followed through.

- Code compliance

  The conditions in this section of the report refers to a paper in the Family Law Journal which raises a number of areas where the situation can be improved.

- Lack of a simple complaints system or authorised advocate and a voice for residents

  The discussion of this sections raises an issue where substantial improvements could be made. These improvements should be within the remit of the Retirement Commisssioner. The personal relationship issues recognised under the Voice for Residents heading need to be included in tools to deal with issues arising from residents who believe they have a significant problem.

## 4 Aspects of the Operation of the ORA conditions

The current legislation permits operators to make significant charges against the capital outlay for an ORA. These amount to 25-30 percent of the total outlay. There is no reward for increases in capital values of the investment that the occupier has contributed.

According to January 2021 Monthly house price report of The Real Estate Institute of New Zealand, the average annual percentage increase over the last five years ranged from 5.6 to 17.0 percent depending on the area. For NZ excluding Auckland it was 11.0 percent and the national average was 8.8 percent. Those are large gains which persons would obtain if not in a retirement village. According to the CFFC report only about 5 percent of residents in villages would obtain a share of property valuation increases if their occupancy terminated. That additional funding can make a very large difference for persons who move from dual to single occupancy, and to the level of care thay can afford. Moving from a situation where you have a property with reasonable expected price increases, to a situation where your capital is reduced with Deferred Management Charges and no recognition of the asset price increases that it is currently supporting gives a sense of lack of fairness in the transaction.

The operators like [redacted] are exploiting use of the capital of village residents with ORA's and gaining the capital value increment as a contribution making a large difference to the return they can obtain on their initial outlay. In their 2019 report, they reported 5500 residents and 175.3*m.profitsaftertax.Thatmeansthattheyhadprofitsof* 31,800 for every resident. This means that for units with two residents they made profits 3.75 times the value of their national superannuation. For units with a single resident they made on average a little under twice their national superannuation. These figures suggest that the current conditions of their ORA are heavily weighted in favour of the retirement village operator.

Retirement villages do provide a valuable range of services, but there needs to be a better balance in the impact they can have of remaining members of a partnership, or the longer time implications for single persons in excellent health.

# Submission on

# The Commission for Financial Capability's White Paper:

# "Retirement Villages Legislative Framework: Assessment and Options for Change 2020"

Submitted by

[redacted]

26 February 2021

# Contents

## Introduction

This submission is not intended to support either residents or operators.

I have worked in the retirement village industry.

I was actively involved in the process of my parents moving into an independent living unit in a retirement village. I have also experienced the process of them subsequently moving through the continuum of care into rest home and hospital level care in the village care facility.

I am CA qualified and I understand the ORA and related documentation, the accounting and tax treatment of retirement village transactions and the valuation methodology to value retirement village investment property.

There are two matters I would like to submit on:

1. It would be useful for legislators to understand the underlying economic substance of contracts between residents and operators as part of the process to assess whether changes should be made to the legal framework. The retirement village investment property model is complex and not generally well understood.

2. To what extent should legislators decide what is fair in respect of contract financial terms between residents and operators?

I have used definitions and terms as used in the CFFC White Paper.

# Part 1: Underlying Economic Substance

The White Paper notes the dominant model in the retirement village industry is a licence to occupy (LTO) model, the common features being:

- Residents pay a significant capital sum to the operator for the right to live in a unit for the rest of their lives or until they choose/require alternative accommodation. The capital sum is repayable to a resident when they have vacated the unit but not until it has been relicensed to a new resident. Capital payments by residents are treated as interest free loans in the accounts of operators. Residents do not have a freehold title to their unit, the operator owns the freehold interest.

- A deferred management fee (DMF) is deducted from the capital repayment to residents. These fees are typically between 20-30% and accrue over a period of 3-5 years.

- Residents pay a weekly village fee to cover the operating and property costs of the village.

Part 2 of the White Paper summarises operators' income as coming from the following sources:

- Development margin – the margin between cost to develop the unit and amount for which the ORA is sold (the operator is usually also the developer)
- Property revaluations
- Interest free use of capital
- DMF
- Village fees and service fees

Under headings below, I have discussed what I believe is the correct economic substance of the various income streams identified in the White Paper.

## Development Margin

I don't think the development margin as described in the White Paper is income.

A developer develops property with the objective of creating a finished asset worth more than the cost of development. On completion a developer could sell the finished property and realise a development margin (assuming a successful development) or hold the property for investment purposes which would normally mean to generate a rental income stream. Even if they keep ownership of the property they have still made a development gain because they own a property worth more than the cost of development. This unrealised gain could be measured by reference to a property valuation and included in the developer's accounts accordingly.

Investment property developed by a retirement village operator is valued as stages of development are completed and gains are reflected in the operator's Income Statement (as are subsequent changes in the value of investment property as measured by annual valuations). ORA capital payments by residents are treated as liabilities because that is what they are, they are required to be repaid. Therefore, **ORA receipts are not income and should not be used to calculate a "development margin"**.

Having said that, listed retirement village operators do present a "development margin" in their annual reports. It is the difference between the proceeds from the first-time sale of occupation rights and the development cost allocated to the underlying units, excluding development costs allocated to community facilities and care facilities. It is not a number that complies with generally accepted accounting practice and is not part of the Income Statement. The only reason I can think of as to why operators present this manufactured number is to demonstrate to their shareholders and the investment community they are developing profitably by using a simplistic surrogate measure.

As noted in the preceding paragraph, operators exclude the development cost allocated to community facilities and care facilities when presenting development margin. Care facilities are correctly excluded because they do not form part of the investment property. They are classified instead as Property, Plant & Equipment in the Statement of Financial Position as a separate asset class with a separate income stream (fees for rest home care, hospital level care & dementia care).

However, community facilities are an integral part of retirement village investment property and these facilities are, correctly, part of the assets included under investment property in the Statement of Financial Position. The total value of retirement village investment property is made up of, principally, the following components:

- Liability outstanding to residents under ORA contracts.
- Operator's interest represented by the present value of future cash flows resulting from relicensing ORA's for higher amounts and from DMF.

**Although reselling or relicensing ORAs for a higher amount is commonly referred to as a capital gain, it is not. It simply reflects the ability to borrow a higher amount from incoming residents because the underlying value of the property has gone up**. It is not dissimilar to other residential property investors borrowing more on a property when the value has increased.

**Retirement village operators are the freehold owners of village investment property and therefore as freehold owners they enjoy the benefits of the property increasing in value. Their capital gains are unrealised but they are able to borrow more from new incoming residents as the value of the property increases. Residents are tenants and tenants don't share capital gains.**

At this point it is also worth giving some thought as to the amount paid/lent by residents to operators for an ORA. In my view, the amount paid reflects the existence of and access to community facilities. If an operator developed a village without community facilities and used the land and space these facilities would otherwise take up to build additional units, I believe the average selling price of ORAs in that village would be less than the same village with facilities, simply because residents would be getting less.

Assuming residents pay an amount reflective of existence and access to community facilities, I think it is also reasonable to assume residents do not pay a freehold value for an ORA because they are not getting a freehold title.

A further reason why residents should not, theoretically, pay/lend a freehold price for an ORA is the DMF component of the contract. However, residents and their advisors may not fully understand the justification for DMF and combined with the timing of the DMF deduction well in the future (when it may have more impact on their estate than the resident personally), this component may be a little "out of sight, out of mind" at the time an ORA contract is entered into. DMF is considered further under its own heading below.

If it is reasonable to assume residents pay/loan an ORA amount that reflects access to community facilities but they do not pay a freehold value (because they are not getting a freehold title) then the "development margin" presented by operators in annual reports based on loan amounts and excluding community facilities from the development cost makes little sense.

The listed operators state a target for this margin of 20-25% and regularly achieve it or better but only because they exclude community facilities from the development cost. If they included community facilities I think a reasonable target, given ORA's are unlikely to sell for a freehold value, would be breakeven, i.e., total first-time sales of ORAs less total cost of development of units and community facilities would be breakeven[1]. In reality this is saying the total cost of the investment property was funded by borrowing – from residents rather than from a bank or other lender once all ORAs are sold.

In this situation, the freehold value of the investment property, as valued by an independent expert valuer, would be well in excess of the cost of the development – as noted above the value of retirement village investment property is the sum of resident loans and present value of future cash flow from relicensing and DMF. The value of the investment property on completion compared to the development cost of units & community facilities is a more accurate measure of the development profit made by the operator/developer.

Retirement village development is usually funded by bank debt (or other lenders) up until first time sales of ORAs enable interest bearing debt to be repaid and replaced by resident lending. For this reason, retirement villages are highly geared on completion but this is often overlooked/misunderstood because the resident lending is viewed as interest free – its not as discussed below. In the years after completion of development the gearing ratio of a village decreases as the investment property rises in value and DMF accruals reduce the level of borrowing from residents (DMF is offset against resident loans in the financial statements).

## Interest Free Use of Capital

The White Paper says advances from residents are, in effect, interest free loans to the operator and act as wealth transfers from residents to operators the longer the loan is retained.

I don't believe this is correct (with the exception of when the lease ends as noted below). The residents do obtain a benefit as a result of making the loan to the operator – they get to occupy a unit. The economic benefit of that could be measured by the rent they would otherwise pay as a tenant of the unit if they had not made an advance. From an operator's perspective, if residents paid rent instead of making a loan advance, operators would have

[1] Some of the major operators have actually stated their development objective is for first time sales of ORAs to cover the entire cost of development including community facilities.

substantial bank or other interest-bearing debt which they would have to make interest payments on. Under the model being discussed, operators don't collect rent but they don't pay interest expense either – in one sense, the foregone rental income and not having to pay interest on debt net off to zero.

This model does actually work in the favour of residents (as well as operators), assuming they have the capital to make an ORA loan. A reasonable illustrative example would be the purchase of an ORA for $800,000 where the freehold value of the unit might be $1m. At a rental yield of say 4% it would otherwise cost $40,000 a year to rent the unit. The economic benefit to the resident is $40,000 a year on capital of $800,000, a 5% tax paid return. Further, effectively there are no rental increases during the term of the resident's lease (the average length of stay in independent living units is 7-8 years). Under this scenario, there is actually a small wealth transfer to the resident as they are never faced with an increase in rent, i.e. the longer the lease, the greater the economic benefit to residents.

However, there is a wealth transfer effect to operators over the period from when a resident vacates a unit and the operator re-leases it as the outgoing resident does not get their loan back until the new resident has settled. There is no economic justification for this. Once a resident has vacated their unit they are no longer getting any economic benefit from their loan to the operator. If the resident had being paying rent instead, the rent would stop on vacation. Operators own the property so when it is empty, they should bear the cost of no income, not the previous tenant – particularly as operators enjoy long average lease periods, 7-8 years for independent living units.

A further reason why this model works for residents who have the capital to make an ORA loan is they have the required capital but not the level of income they would require if they had to pay rent instead. The average age of entry into retirement villages is 75+ and at this age, ingoing residents have been out of paid employment for a substantial number of years. For income, most of them rely on superannuation and investment income and the sum of that is not sufficient to pay an expensive rent and meet other living costs.

## Village Fees & Service Fees

Service fees relate to services directly provided to residents, e.g. meals, cleaning, laundry etc.

Village fees contribute to the cost of operating the village which include rates, insurance, maintenance, staff costs to run the village and costs to operate community facilities.

Village fees are normally paid monthly in advance and set at a level around $120 - $170 per week depending on the village. Major operators fix the village fees for a resident at the time of entry into the village which provides certainty of the cost to residents. The White Paper says this means an operator generally subsidises the resident from increased operating costs of the village over time. I don't agree that operators subsidise residents on village operating costs. The freehold owner of residential investment property generally pays rates, insurance & maintenance and meets those costs out of rental income. However, where residents are benefitting from operating services represented by staff costs and operation of community facilities, residents should pay that component of village costs. Also, as discussed above, residents receive an economic benefit from effectively never facing a rent rise and so some contribution to property costs that would otherwise fall to the owner is not unreasonable to compensate for that.

As noted in the White Paper, residents don't think it is fair for them to be charged for village costs once they have vacated their unit. That's a reasonable view for them to have because tenants don't normally continue to pay the costs relating to a property when their lease ends. Costs relating to vacated property should be borne by the owner as they enjoy the risk and rewards of ownership - it is up to owners to re-lease the property to a suitable tenant as soon as they are able to (and as noted above, operators do enjoy long average lease periods).

## DMF

My view is DMF is a wealth transfer from residents to operators.

Operators develop retirement villages using interest bearing debt. They aim to cover the cost of developing the units and community facilities through the first-time sale of ORAs – the interest-bearing debt being repaid from those receipts and replaced by debt owing to residents. The operator doesn't pay interest to the residents but doesn't collect rent from those resident lessees either. If the resident lessees didn't make an interest free advance to operators, presumably they would pay rent instead and operators would use that rent to service the interest-bearing debt.

Retirement village investment property is in effect, on completion of development, a highly geared property investment. Assume a simple example where the total cost of developing investment property in a village is \$200m of which \$160m is allocated to cost of units and \$40m is allocated to cost of community facilities. If the development has been successful, the freehold value of that investment property should be higher than \$200m, say for example purposes \$240m giving a development gain of \$40m or 20% on cost (which is a result I think most large-scale property developers would be happy with). If a large-scale developer spent \$200m developing a residential property community (not a retirement village), financed with interest bearing debt and decided to hold the property as an investment rather than sell off freehold titles to realise a development margin, they would instead derive rental income from the development – say 4% on \$240m = \$9.6m p.a. initially. They would use that income to service the debt on the \$200m cost of development, say at 5% = \$10m p.a.[2] The rental income/interest expense deficit would be increased by rates, insurance & maintenance costs. Just like any other highly geared residential investment property, it would be negatively geared and the investor would by relying on capital gain, and of course tenanted properties – **the final paragraph of part 2 of the White Paper notes retirement village operators assume two things, rising property values and leased units. This is essential for any highly geared property investor.**

Continuing with the example in the preceding paragraph, if the developer/investor intended to be a long-term owner of the property, they would eventually enjoy a positive cash flow as rents rose over time. What they could also do periodically is refinance the property as it rose

[2] I don't believe banks would actually lend 80% of the value of the property in this example which highlights a further advantage of retirement village investment property – the ability to be more highly geared on completion of development with higher returns on equity as a result.

in value. This would be a cash flow to the owner and although it is possible because of capital gain it is not a capital gain cash flow, it is a refinancing cash flow. Imagine if on top of this the developer/investor also received a DMF type payment of 20-30% of the original loan amount when they refinanced and that they received such a payment every time they refinanced – it would seem too good to be true, supercharging the return on their property investment.

DMF gives retirement village operators a superior return on property investment compared to other property investors. DMF represents a transfer in wealth from residents to operators.

Retirement village operators also enjoy lessees who stay on average 8 years, treat their unit as if it is their own and look after it accordingly, live quietly and don't create noise and disturbances for their neighbours. Contrast that with the tenancy situation a developer/owner of a large 200+ unit development would face in the example above – higher tenant turnover, some tenants who would damage units beyond fair wear & tear and some who would cause disturbances in the community.

## Can a Case be Constructed to Justify DMF?

How do operators justify DMF? In the financial statements of the five listed operators, DMF is portrayed as a fee for the right to enjoy and use community facilities. It is also described as rental or lease income. An odd feature of it is that typically the full fee contractually accrues over 3 years so a resident who occupies their unit for 15 years pays substantially less per annum than a resident who stays 3 years. Further, although residents have the same opportunity to enjoy community facilities, those who pay for an ORA for a more expensive unit, pay more DMF.

Assume again the simple example above where the total cost of developing investment property in a village is $200m of which $160m is allocated to cost of units and $40m is allocated to cost of community facilities. Also assume the first-time sale of ORAs totals $200m:

When completed, under accounting standards the investment property would be shown at valuation in the Statement of Financial Position. The value has two key components:

1. The operator's interest in the property represented by the present value of future cash flows arising from relicensing at higher amounts and DMF (with key inputs to the present value calculation including expected property growth rate and resident length of stay)

2. The resident lender interest in the property represented by the liability outstanding from ORA loans (these loans are also shown as a liability in the Statement of Financial Position).

Under this example where the total cost of the investment property has been covered by the first-time sale of ORAs, the owner's interest represents the development margin and is reflected in the Income Statement as a fair value movement of investment property, increasing equity as a result.

However, as noted above under the heading “development margin”, the listed operators also like to separately disclose in their annual reports a different development margin on first-time sales of ORAs being the difference between the proceeds from the first-time sale of occupation rights and the development cost allocated to the underlying units, excluding development costs allocated to community facilities and care facilities. It is not a number that complies with generally accepted accounting practice and is not part of the Income Statement. Operators target a 20-25% return on this measure and have consistently achieved 25+% in recent years. In the example above, ORA sales of $200m on cost allocated to develop the units of $160m would be presented as a 20% margin ($40m margin on “revenue” of $200m). This level of margin is one I think any developer would be happy to achieve if they were selling freehold titles.

That leaves community facilities which represent a substantial upfront cost to operators (in this example $40m) and the narrative presented by operators is they require a return on this investment also but to make it easier for incoming residents they delay the payment of this until a resident departs and then take it as a DMF payment deducted from the ORA loan repayment. In the example being discussed, the first time DMF receipts at 30% of $200m would be $60m (received in the future with some units relicensing with terms less than the average of 8 years and some relicensing with terms greater than 8 years). Given DMF continues to be generated every time a unit is relicensed and at a percentage of increasing ORA loan amounts, it represents a fairly good return on the community facilities.

I don’t agree with this narrative but if I did I would point out that operators were making a freehold sale level of realised development margin on units and then all also benefit from future capital gains on those units. Under this scenario you could understand why residents would feel aggrieved on missing out on the capital gains - the operator gets to have their cake and eat it too – getting capital gains on top of DMF.

To be economically fair, operators shouldn’t have it both ways – either they give capital gains to residents but charge a DMF or they, more correctly in my opinion, enjoy the capital gain but do not charge a DMF.

## Other Cash Flows

Refurbishment Costs

When a resident vacates a unit and it is refurbished, often to an “as new” condition, the refurbishment cost clearly should, and these days generally does, fall to the account of the operator. The operator owns the property and benefits from the maintenance aspect of the refurbishment and presumably can relicense it at a higher price than what they would be able to do if they did not refurbish. Refurbished units are probably easier to re-lease as well.

Operators should pay to repair or replace appliances which come with the unit.

Selling & Marketing Costs

These costs usually fall to the account of the operator and they should because they are the owner and lessor of the unit. There is no reason the outgoing lessee should pay this cost.

## Summary of the Economic Analysis of What is Fair to Operators & Residents

Based on the above analysis:

1. Operators should get the benefits from the capital gain of their investment property. Residents should only expect to get back the amount they lent to the operator to obtain the accommodation benefit.

2. Residents should be repaid their ORA loan when the unit is vacated, or at least be paid interest from when it is vacated to when the loan is repaid (and there should be a reasonable time limit to repaying the loan after the unit has been vacated).

3. DMF is a wealth transfer from residents to operators.

4. There is justification for village fees to be charged but they should stop when the unit is vacated.

5. Operators should pay refurbishment costs.

6. Operators should pay to replace appliances in units.

7. Operators should pay for the cost of selling and marketing ORAs.

## Part 2: To What Extent Should the Legislative Framework be Changed to Influence Business Models or Determine What is Financially Fair to Residents & Operators?

Part 1 of the White Paper refers to section 3 of the Retirement Villages Act which sets out the purpose of the Act. Broadly, the purpose is to protect the interests of residents and to try and ensure they understand what they are getting themselves into contractually when they enter a retirement village.

I have read Disclosure Statements and ORAs for many different operators and I think they do clearly set out the terms on which residents enter their villages. I have experience in the industry so perhaps that gives me an advantage in understanding the documentation. However, I think the requirement for residents to obtain legal advice and sign off from a lawyer, along with the 15 working day cool off period[3], provides a significant protection. Further, this is a major transaction for intending residents and they are likely to give it serious consideration and, in many cases, discuss with family. Therefore, I think residents have plenty of opportunity to be well informed and carefully consider their decision.

I find it difficult to believe that any credible lawyer finds the documentation difficult to understand – if they do then unfortunately the resident probably is not obtaining adequate legal advice.

On the assumption residents are not in a desperate social or economic situation and are willing, informed parties to ORA contracts, to what extent should legislators dictate contract terms and influence the operation of the market? As the White Paper points out in the first paragraph of its Executive Summary:

> *The majority of retirement village residents appear content with their choice of living arrangements. Most operators provide very good services and care to their residents.*

As I have outlined above, I think from a perspective of economic substance, ORA contracts favour operators, not because residents don't get capital gains but because the DMF is a transfer of wealth from resident to operators. This industry dominant model has been the norm from early days and I think the main reason it remains so prevalent is **supply and demand**.

As the White Paper points out, the 75+ demographic has and is growing rapidly. There is strong demand from retired people with the equity in their own homes to buy into retirement villages and that demand is growing. That is why operators are developing new villages at a rapid rate. If there was sufficient or surplus supply, some operators might start offering more competitive contracts (e.g., a share of capital gain or a lower DMF rate). The White Paper notes there is sustainable demand for the current business model over the next two decades.

An imbalance of supply and demand is a feature of the entire housing market in New Zealand and has arisen over 30+ years as the result of policies by successive governments. At least

[3] Major operators also give a 90-day period after a resident has moved in to change their mind and receive their capital sum back without any DMF deduction. This seems a good additional protection for residents and could be considered for the industry as a whole.

retirement village operators are building high quality housing that meets the requirement for much new housing to be more intensive and frees up the houses sold by residents for younger generations to live in. As the White Paper also notes, without a development model based on resident funding, the retirement village industry may not have developed the level of housing it has – it suits operators and it also suits residents who have the capital to afford the lifestyle of a retirement village but would not have sufficient income to pay for it on a rental model basis (even if they invested the capital from the sale of their home, most would have to also use capital to afford rental payments and meet other living costs).

The White Paper also recommends a policy review investigate whether different models should be investigated for the retirement village industry and notes:

> *There are indications that the capital-based, resident-funded business model supported by the existing framework will need to change in the future. Operator financial assistance is expected to increase, and the numbers of owner-occupiers reaching 65 with mortgages or renting is also increasing, meaning fewer people may have the large capital sum needed to purchase a village license.*

My comment is that commercial operators will adjust their business model to respond to changing market conditions if they have to but while there is demand for units under the current model that is the model they will continue to offer because it is the most profitable for them.

It is not the responsibility of commercial operators to provide retirement housing for people who cannot afford the capital to make an ORA loan. Home ownership is a major issue across all demographics in New Zealand and the reality is a large percentage of the population will never be able to own their own home and will rent instead.

Commercial operators won't provide a rental model if the demand for the ORA loan model is high enough. If commercial operators do offer a rental model in the future the standard of accommodation and community facilities offered will depend on the rental income that can be generated.

Currently there will be many retired people living in rental accommodation in the community. Some will be paying for it from their own resources but others will rely on government/community housing support.

The solution to retirees being able to afford retirement village accommodation in the coming decades is not one the private retirement village industry can solve. The problem is too big and affects the whole country as constant news stories remind New Zealanders of the incredibly high cost of housing and rising inequality. These problems can only be solved by massive commitment and investment by the Government.

## Summary

The prevalent industry LTO model encourages development of much need housing units. It suits retirees with sufficient capital to enter into LTO contracts.

Commercial retirement village operators would offer alternative models if there was commercial incentive to do so. They may need to respond to changing market conditions at some point in the future but that could be some way off as demand for the current model may remain strong for a long time.

The government has the primary responsibility for solving inequality and housing affordability.

Retirement village operators own the freehold title to investment property in retirement villages. Residents are lessees. Therefore, operators own the economic right to benefit from capital gains.

On the assumption it is a reasonable development target for operators to recover all the development costs of units and community facilities from the first-time sale of ORAs, and that they generally do (if they don't, that reflects development is a risky business and a successful development is not guaranteed):

- There is no economic justification for DMF charges. DMF is a transfer of wealth from residents to operators.

- Resident loans are not interest free in the sense residents do obtain an economic benefit as a result of making the loan – they have the right to the benefit of occupying their unit.

Given the framework's requirements around disclosure of contract terms, consultation with and sign off from a lawyer and a 15 working day cool off period, to what extent should the government legislate what is financially fair in contracts between willing residents and operators. That's a matter of government policy. My views are:

- Capital gain and DMF should not be determined by rules in the framework because these are pricing matters and should be determined by the market. Further, operators have the right to determine what happens to capital gains because they are the freehold owners. If operators want to vary pricing and offer different options relating to capital gain and DMF those options will be up to the market to assess.

- Under the existing prevalent model where residents do not get capital gain:

    - Resident loans should be repaid when the unit is vacated. If loans are not required to be repaid when the unit is vacated then interest should be paid and there should be a maximum period that the loan is allowed to remain outstanding, say 6 months.

    - Village fees should cease when the unit is vacated (major operators already do this)

- Refurbishment costs should be paid by the operator (major operators already do this)

- Operators should pay to replace appliances that come with the unit.

- The cost to market and re-lease units should be paid by the operator (major operators already do this).

There may well be areas where the framework should be reviewed, such as making the complaints process easier, better defining the roles and powers of regulatory authorities and allowing more flexibility for alternative retirement village models. This submission has focussed only on the two matters outlined in the introduction to the submission.

Here are my responses:
**<u>Question 1</u>**: Yes, I feel that the White Paper has generally canvassed the issues fairly and accurately

**<u>Question 2</u>**: Yes, there is one important point that I think is missing in the discussion paper. This is the role of government and not-for-profit agencies in the provision of support for retirees, including the policy issues around giving people the option of staying longer in their own homes (with ample publicly-funded support systems in place to facilitate this) as opposed to moving into a retirement village. And if retirees choose a retirement village, why is this mostly provided by the private sector? New Zealand generally provides excellent publicly-funded education and health systems, with the private sector providing options for those who can afford higher levels of service. So why not replicate this for housing for the retirement community, especially at a time when we have an ageing population?

**<u>Question 3</u>**: Yes, I agree that a full review of the retirement villages framework should be undertaken. I agree with the statement in the discussion paper (page 9) that: "In most cases ... residents entering Occupation Right Agreements (ORAs) relinquish rights to an asset that is capable of appreciating in value over time. Any capital gain on the property is made by its owner – the operator." This is my main concern with the current operating model for retirement villages.

I believe that residents (or their estates once they die) should share any capital gains made when they leave the facility, rather than the owner receiving all the capital gain. New Zealanders expect fair treatment and this is blatantly unfair. Many elderly people entering retirement villages are vulnerable to exploitation at the time when they are presented with an ORA for signing and may have little or no access to independent legal or financial advice about the contents of an ORA (even though this is a legal requirement), or whether they have any options or ability to negotiate the terms. Similarly, residents may be exploited through the structure and terms of the "deferred management fee" or DMF.

As noted in the discussion paper, there is little incentive for operators to sell retirement units once a resident leaves or dies. This system works to the advantage of owners and to the detriment of residents or their estates. This issue may be able to be addressed relatively quickly through variations to the Code, as discussed on page 22:
"This paper recommends a policy review considers options to improve the resale and buy-back process. Options include introducing a guaranteed timeframe for buy-backs, interest payable during vacant period, and allocation of any capital gain on sale between the resident (or their estate) and the operator.

Such amendments to clause 53 of the Code would be within the scope of the Code, given the Act says that requirements relating to payments due when an ORA is
terminated are among the matters the code must address."

The discussion paper also identifies four options (page 35) for consideration:

1. Maintain the status quo
2. Approve a Code variation to add some consumer protections
3. Conduct a regulatory systems assessment
4. Conduct a policy framework review

The paper recommends Option 4 - Conduct a policy framework review. I support this option, but I would also like to see an interim Code variation (Option 2) done quickly and to itself be subject to the fuller review proposed in Option 4. This would provide an opportunity to more quickly address the urgent resale and buy-back issues.

**Question 5**:
I note that [redacted], a major player in the provision of retirement villages, states on its website that "We always have, and always will, challenge the status quo, and adapt to better serve our residents." So I trust that they too will welcome changes to the legal framework and ORAs that will better protect residents and their assets.

As part of CFFC's review of the legislative framework, I'd like to see widespread consultation with people who already live in retirement villages, retired people who don't live in retirement villages, and people in their 50s and 60s who aren't yet retired but who may be affected in future (when they retire) by the outcome of this review.

Thanks for the opportunity to make this submission.

**I see the current laws and regulations for Retirement Villages as un-balanced. They provide a lot more consumer protection for Operators than for Residents. Correcting this might change the industry from one of quick profits for shareholders to one of slower profits, but nevertheless I believe the industry would become more viable and sustainable in the long term. Without corrections I believe the market will shrink away as the next generation looks to other models for their retirement housing. The current one is widely seen as unfair and thus unappealing. I am pleased to have this opportunity to submit some common concerns and issues with the hope some overdue realignments will be made. I need to add that there are some excellent outcomes with the Retirement Village industry (I am happy to continue living in one) but there are legal improvements and safeguards that should be established as soon as possible..**

**1) SOME STANDARDISATIONS OF REGULATIONS.**

**I see no reason why the following should not be standardised across the industry at least as bottom lines.**

**a) Chattels : ORA's should list all chattels owned by the operator outlining who is responsible for their maintenance. Misinformation on this has caused widespread angst.**

**b) Weekly Fees :**

**i) After any short term special sales promotions, weekly fees should reflect equally the shared costs of building maintenance and services, insurance, rates, a proportion of village staff wages and salaries etc. that we are told the fees cover. The perception that newer residents are subsidising earlier ones can be resented.**

**ii) The relevant regulations and services to be covered should be clearly outlined in ORA's. Verbal promises have proved absolutely not reliable .**

**iii) Could the Village's Annual Financial Report show the amount collected in weekly fees and the amount spent on the above costs? There is a strong feeling among residents that money collected in a village should be spent in that village. They are often told there is no money in the budget for decent upkeep while they see big investment in new villages occurring. Transparency here could benefit both operators and residents. Our contracts are with our villages and there seems no good reason to have individual figures lost in a nation -wide soup.**

**c) Occupancy terminations :**

**i) Weekly fees ,which are service fees, should stop eg one week after the keys have been handed back. No service is being received at that point. We have heard the horror stories of weekly fees charged until a new occupant had been installed taking months. Imagine if that happened to a renter!**

**ii) Buy back Timelines: The practice of not returning the original lease purchase money less the DMF until a new buyer has been found is wrong. We hear of people having to wait months, even years for their money, causing severe financial distress. The resident's capital held by the operator should be ring fenced and returned within say four weeks of termination of the right to occupy. There should be no need to wait until the property is turned over by the Operator..**

**d) Transfer costs within a village or to another of the corporation's villages:** **This is due to downsizing eg from a villa to a one bedroomed apartment because of ill health, or may be due to moving to another village to be closer to caregivers. It is ridiculous that because of capital inflation which currently benefits only the operator, a resident has to lose their DFM fee on relinquishing their leasehold, possibly wait to receive their 70/75% of their original purchase price, then worst of all find hundreds of thousands of dollars more to buy something smaller! This is not what was promised. Some operators have come up with different policies to help with this, eg paying only one DMF at the end of all occupations; but there needs to be standardised and fairer regulations established for transferring properties within an organization and these must be outlined in the ORA's.**

**2) THE SHARING OF CAPITAL GAINS AND OR LOSSES:**

**Due to the huge inflation in housing prices, the time is overdue for the industry to vary its original model of operators being the sole beneficiaries of associated capital gains. The residents after all pay the original market price for a villa or apartment matching freehold prices, and go on to pay their share of the upkeep and other overheads. A concrete example: 6 years ago I paid $600,000.00 for my apartment which is now apparently valued at around $1.000.000.00 My buy back price would be $450,000.00 I suggest a 50/50 or perhaps 60/40 split of capital gains/losses between the operator and the resident selling. This would immediately deal with many of the current concerns including that of transferring. It would restore empowerment to residents who are presently caught by being unable to afford to move on from unsatisfactory situations. It would lessen any feeling of being powerless and vulnerable. It would probably reduce immediate shareholder profits but would not destroy them. It would definitely boost the future viability of the industry. It would confirm Retirement Villages as a service industry, not just property developers. I realise the operators will fight strenuously against this , but it is a fair and reasonable idea whose time has come; and it is a market readjustment that will eventually be forced on the industry.**

**3) THE COMPLAINTS PROCESS:**

**Simpler, faster, more accessible procedures would really help (i) with an effective consumer protection for residents and (ii) enabling a cooperative and friendly village culture. (No need to moan!) I therefore absolutely support an improved process which includes a confidential advocate. Most residents do not wish to get offside with management and having a go-to advocate would be a great start in meeting the two aims above..**

**4) MORE FEMALE REPRESENTATION ON DECISION MAKING BODIES:**
**A large majority of village residents are women yet they and their particular insights are underrepresented at organizational levels. Remedying this imbalance could enhance the operations of the Retirement Village Industry, so while this aspiration may not strictly belong in this submission , I include it for future thought**

**My final thought is: If something is right it should be done, no matter the difficulties. If the above law changes are made it will make for a better power balanced and happier industry, one also where the Operators will understand that communication only is not consultation. All will benefit!**

We are in the process of looking for a village to move to.
The one we really like has draconian conditions.
It is the XXX Village (a XXX village) which is a license to occupy arrangement.
We have several concerns , the main ones being:
-the Pay back at the end is 30% (most are capped at 20%)
-if the appliances for example break down (owned by the provider) the tenant has to pay for it to be fixed or replace it
-If the infrastructure fails the tenant has to pay for its repair (verbally, they say it won't happen, but it is part of the contract we have to sign)
- we can't do anything to the house ourselves (eg picture hooks)
- the management fee is not fixed (e.g. like Ryman) but linked to CPI
- there is no clarification in the contract on moving through the levels and retaining the limit of 30% payback at the end of residency.

I hope you are able to address some of these issues in the review.

There are 13 villas in our village which have this configuration (or a mirror image), which arises because of their orientation to the road. I can supply a lot more background correspondence but I don't want to overwhelm you with too much information at the start.

SUITABLE BUILDINGS:

All of us bought off the plans about four + years ago, most only actually viewing a 2 brm show villa which had a back door. We were so busy looking at room sizes and furniture placement to notice or attach any significance to the fact that there was no back door. Once in residence members of our group realised the seriousness of the safety situation, especially as several villas were occupied by couples where one partner had multiple sclerosis, stroke, etc. They were able to live independently during the day with assistance from outside agencies and their spouse, and could escape in an emergency situation through either of two exits from the living area – the front door and the ranchslider. However it was a totally different scenario at night, exacerbated by the mindless design decision to put the smallest opening windows in the whole villa in the main bedroom! These windows are top-hung, with security stays, double-glazed, and an opening width of only 54 cms, 1m above ground level. Some of the affected residents have already removed the security stays, and others keep a hammer in the bedside cabinet, but in reality very few of them would actually fit through the window should a fire break out in the kitchen and prevent egress through the three options in the living area. I later confirmed through Consumer that windows are not regarded as part of a Fire Exit plan anyway because of the potential for injury. In actual fact the exit through the garage doesn't really count, as in the event of a power cut residents of our demographic, whether disabled or not, would find it really difficult to manually lift a double garage door.

LACK OF MEDIATION OPTIONS:

Initially, various members of our group spoke individually to either [redacted] or [redacted] during their visits to the village, as well as the Village Manager, but their concerns were brushed aside with a brief "They comply with the building regulations". I visited our local Council office and confirmed that this is correct under the current MBIE Building Code, which seems to use the sq.m. of the unit as their sole design criteria, not the demographic who will be living in them. Tired of being brushed off individually we decided to set up an action group and make a formal approach to [redacted] for the installation of suitable egress from the rear of the villa. We had already seen the plan of a villa of similar design at the [redacted], which had a rear door opening from a bedroom. Our initial application was turned down by the [redacted] Design Board, so I took a deep breath and approached our Statutory Supervisor, who suggested to [redacted] that they should take another look at the situation. We then started discussions with [redacted], the Area Regional Manager. Their first response was to get in a Fire Safety Officer (!) who gave us tips such as setting up a "phone tree" – as one of our members remarked "what is the point of that, we are all as doddery as each other!" In actual fact we have several panic buttons in the villa and a hard-wired smoke alarm, but as recent Fire Service advertisements have shown, you only have three minutes to escape a fire. Our kitchens sit in the middle of a totally open space so the whole of the passageway right from the bedroom to the front door would be smoke-filled by the time we tried to get out. I am asthmatic but may be able to make it but am I going to leave my husband of 50+ years behind because he is in a heavily-medicated sleep and can't be roused! Any First Responder who arrives has to make their way from the front door to the main bedroom, AND RETURN BACK THE SAME WAY TO EXIT THE BUILDING, past the potential seat of a fire.

Further discussions ensued with [redacted] and it was agreed that we would be allowed to put in a ranchslider with a side opening window, BUT THAT WE WOULD HAVE TO PAY FOR IT! We totally rejected this as we felt that it was remediating a design flaw, which should have been incorporated into the initial construction, and also because it was going into a building that [redacted] owned (!), and it would be of benefit to any future resident. We then approached the Retirement Village Residents Assoc. for their assistance, but their response was that because the villas were legally compliant that they would not be able to assist us. They also advised us not to go to a Dispute situation as [redacted] would be able to "Lawyer up" and we could find ourselves facing a big bill. They even suggested that we would have more success if we went to Fair Go!! However, as we were trying to keep it civil, I then approached the [redacted] of Grey Power [redacted], as I am a member. He was keen to support us and set out a few ideas, but was then unfortunately caught up with family illness. So two months later I was about to phone [redacted] and ask for his help, when I heard that he had resigned, with a new appointee not expected before the beginning of February.

RIGHT TO USE YOUR OWN CONTRACTOR:

While we continued discussions on the payment side of things [redacted] obtained two quotes for the work, and we were given permission to get a quote from a reputable builder that one of our group had used previously. This quote worked out to be the cheapest, but we were told by [redacted] that even if we eventually gave in and agreed to pay for the remediation ourselves, we had to use their chosen contractor. The really sad thing is that the ranchsliders will only cost about $7,000 each to install, but [redacted] is set to make $500,000 + on the resale of each of these villas!! We paid $750,000, the 25%DMF will see us eventually receive approx.$580, 000 of that back, and the new 3brm villas are selling for $1.1m!!

We would really appreciate some assistance with our project, as we feel that there are principles and safety at stake here. As I read in a comment in the White Paper – we are worse off than renters!

As a resident of one of the well known retirement village groups, i was interested in your article.

One point which was not mentioned and is very significant is the amount deducted from the purchase price when the home is sold. Say a home is purchased for 400,000 then sales proceeds eventually paid out when you finally leave are that amount less 5% for each year of occupancy up to 5 years. So that means 400,000 less 100,000 is repaid. The village owners make not only the capital gain but also this deduction.

Therefore residents are paying all the refurbishment costs as well and i doubt any home would need such an amount spent on it over a 5 year period. Indeed i have been in my home for almost that time and they have not spent a single cent on refurbishment of any kind. If i were to leave today they would only repaint it, nothing else at all would be replaced.

I freely admit when moving in to a village you are made aware of these things but does that make them fair ?

Yes i am happy for my comments to be used.

They are not just my opinion but are freely available facts which are stated in the occupation document signed by every incoming resident.

This situation applies to what are probably the two largest retirement villages. I have no knowledge of what regulations may be in other such places.

All i will add is when i moved in to my home it was repainted and one thing replaced at my estimated cost of $2000. If i left now after 5 years all that would be done is repainting. So deductions from the previous occupant together with my own would be well in excess of $100,000 with less than $10,000 having been spent. I think it fair that the village make either the capital gain or "deferred maintenance" but not both especially bearing in mind all residents pay a weekly fee to cover the running costs of the village.

I can only repeat, we know these things when we move in but that doesnt make them fair or proper.

First name: [redacted]

Last name: [redacted]

Email: [redacted]

Date: Monday 22 March 2021

**Q1: Has this White Paper canvassed the issues fairly and accurately?**

Generally yes. It is a balanced and thoughtful review of the retirement village sector and the statutory and institutional framework that it operates in.

**Q2: Are there any important points that are missing?**

Sort of! Part 7 touches on the possibility of other retirement accommodation models being necessary and feasible. A problem with the Retirement Villages Act is that it is a response to a fairly specific and dominant model – the "common ORA" model.

However the Act effectively constrains innovation in the model. For example:

1. The statutory conditionality of ORA during the development phase is quite different from other forms of tenure and creates a financing problem that for example effectively precludes resident-led development models (co-development and cooperative models in particular).
2. The statutorily imposed operating requirements (for example Code of Practice policies and procedures) creates economies of scale that make small resident-led development models less economic.

Importantly and relatedly the White Paper does not address the constraints around the financing of the development of retirement villages and in particular the unnecessary problems that the Reserve Bank's banking standards (BS2A and BS2B) create for financing alternative models.

**Q3: Do you agree that a full review of the retirement villages framework should be undertaken?**

Yes

**Q4: If you replied No to Q3, are there any issues that still need attention?**

Yes

**If Yes, please briefly describe the issue(s):**

As above. How the statutory structure including other legislation and regulation enables and permits the development of alternative retirement accommodation models.

**Q5: Is there anything else you would like to say?**

No

These comments refer to Retirement Villages COP(2008) Clause 21.4 Emergency Response Procedure and are a matter of life and death to RV residents.

1) The COP is curated by the Retirement Village industry via the Retirement Village Association (RVA) which is the collective of signed-up Retirement Villages in NZ. In other words, the industry is self-regulating.
2) The current COP, especially Clause 21.4, has been operative since 2008, and in my submission, it is time that the Govt totally reviewed all aspects and moved toward regulation. This would eliminate conflict of interest considerations.
3) A possible major medical emergency associated with any group of elderly persons is cardiac arrest. Suffice to say that a cardiac arrest will be fatal unless addressed within 10 minutes of onset. In a retirement village the response time of care staff is typically greater than 10 minutes and so the ambulance would report DOA (dead on arrival).
4) I believe that a very simple and reasonable query by the Commissioner to every RV Operator in NZ, would yield very surprising and disturbing data and information. The query could be framed e.g. *"What is your policy regarding medical emergencies, especially, with respect to cardiac arrest."* The Commissioner would be looking for detailed response to all of the COP 21.4 items (a) through (d).
5) Under COP(2008) it is possible for the operator to opt out of the need for rapid response in individual cases. For example a poll amongst residents may indicate that particular residents would refuse resuscitation via DO NOT RESUSCITATE orders.

I would like to highlight a couple of aspects

1. Today I have been following the Royal Commission of Enquiry into Abuse in Care. Too bad, I reckon, that there are limitations upon your powers under the White Paper which would preclude at this time a review of the Retirement Villages COP2008 with a bit of the rigour that the Royal Commission is pursuing their evidence. My concerns are with respect to the matter of response readiness to medical emergencies within a village. It is a literal matter of life and death in terms of any incident involving sudden cardiac arrest. The maximum response time for trained carers carrying an AED should be only 5 minutes. I can assert with evidence and authority that this is possible in all but exceptional situations for any village with trained staff and appropriate protocols.
2. All that it would require in order to stocktake the medical emergency readiness of the Retirement Provider Industry would be to simply survey all villages with a demand to certify their documented policies (a) **emergency response procedure** and (b) **expected response time** in terms of Clause 21 of the COP(2008).

I submit that this is a necessary and very desirable humanitarian exercise which would equip the authorities to act to save many lives per year in our nation.
Please compare the response policies that are in place to cater for fire emergencies in NZ Retirement Villages. These are rightly very onerous.
But please note that the existing and historical death rate for fire emergencies is virtually nil, while I suspect that the notional rate of deaths from sudden cardiac arrest in NZ retirement villages would be of the order of dozens per year. This figure is elusive because no such data in truth is available because such incidents are recorded by the ambulance as Dead on Arrival. This is because the response time in such incidents are most probably excessive and also because response procedures need to be efficient and rapid to save lives.
I had imagined that you would be able to conduct a test poll of say a score of villages representing a variety of Providers to discover real data in this matter of response time to reach residents suffering from a sudden cardiac arrest.

<u>Online sub (98218751)</u>

Q1 Yes

Q2 Yes

The current documentation presented to purchasers by [redacted] (viz. ORA and Disclosure Statement) does not adequately describe the practical operation of the Deferred Maintenance Fund, particularly relating to adjustments to the fee charged for village amenities that are not available to residents during periods of enforced lockdown. The village design model and the documentation did not anticipate the impact of a serious health threat such as Covid-19 on the most vulnerable residents being accommodated so close to the village amenities. Obviously, the documentation needs to be revised to recognise the new realities.

Q3 Yes

Q4 No

Q5

SUBMISSION RE CFFC WHITE PAPER

The Covid-19 epidemic in 2020 has exposed the weaknesses of the current [redacted] model (e.g. [redacted]): Locating the village amenities in very close proximity to the care facilities of the most vulnerable group of residents is a sure recipe for having to close down the amenities whenever a serious infectious health threat may occur. Thus the independent residents, who would normally expect to enjoy the uninterrupted use of the community facilities and are paying a hefty fee (albeit deferred DMF) for the right to do so, are deprived of that right for the duration of any lockdown which usually turns out to be for a longer period than stipulated by government.

The [redacted] ORA document says only that the DMF is a fee for them providing the Unit for us for life (or shorter period as we determine) together with the right to use the community facilities. There is no indication of the apportionment of the DMF between these two components which in my own case amount in total to 20% of $795000 over 5 years. If we assume that the DMF is split 50/50 between Unit and Amenities, if I live for a further 4½ years I will one day be paying [redacted] the equivalent of $300 per week for Amenities during the 5 years I will have spent here. Since moving into [redacted] 7 months ago, I estimate that about 20% of that time has been spent under lockdown (no amenities) at a cost to us of $1800 – not an insignificant charge for a contractual obligation that was not fulfilled by [redacted]. Should they not be required to reimburse residents who were penalised by this default?

Purchasers of an ORA know (and must accept) that they are paying a high premium to gain residence in a [redacted] vlllage. But having paid market price for their unit which will never yield to them any profit on sale in spite of ever-rising property values, and in the light of the foregoing matters which are stacked heavily in favour of the village owner, ORA purchasers deserve much more comprehensive documentation than the current ORA and Disclosure Statement, in order to reflect the new realities of 2020.

## Addendum submission

"A summary of my two earlier submissions"

1. Since the lockdowns were announced in March 2020, the Covid-19 pandemic has brought the shortcomings of the [redacted] model and its Occupancy Agreement into sharper focus:

[redacted] Retirement Village Model

2. The business model adopted by [redacted] enables it very successfully to fund its rapidly expanding operations and growth from the upfront payments received from new residents into its villages.
3. It must have been regarded by [redacted] as a great idea to base their village construction model on the concept of having the care centres (accommodating the most vulnerable residents) and most of the village amenities located together in one particular building. The arrival of Covid-19 in the country a year ago has shown the fallacy of such thinking. Whenever there is any threat of major infection (e.g. Covid-19), the amenities must be shut down completely. When this occurs, it is most inconvenient to the independent residents who largely depend on the facilities being available to them. When these facilities are not available, there are no other common spaces In the residential buildings where people can spend time socialising freely. Every day that residents are shut out from the amenities is costing them dearly, both financially and in terms of mental health. Vaccines have now been developed to counter Covid-19 but their effectiveness has not yet been established. There can be no doubt that other dangerous infections will arise in the future, which will also cause serious disruption if the current [redacted] model remains unchanged.
A portion of the DMF charged by [redacted] to its residents is for their right to use the village amenities for life. Whenever these amenities are not available to the residents (duringCovid-19 lockdowns or for maintenance or any other reason), there ought to be somerecognition and reimbursement of the overcharge to residents. As they are not privy to the [redacted] methodology, they are themselves powerless to follow this up but this should not allow [redacted] to disregard its contractual obligation to make the facilities available to village residents. I can find nothing in our Occupancy Agreement which removes this obligation whenever some possible occurrence takes place (e.g. Government lockdown edict).

**A change in design of the [redacted] construction model is well overdue, for the sake of the health and wellbeing of all residents, not just those who are most susceptible to infections.**

[redacted] Occupancy Agreement

4. This document is most deficient in explaining the DMF and how a resident's contribution is utilised or apportioned.
5. The only definition of the DMF in the Agreement signed by my wife and me in 2019 is "a fee for providing the Unit for life together with the right to use the village facilities."

6. In spite of the lack of clarity in the Agreement, I think It has generally been understood by residents that the DMF pertains to their contribution to the refurbishment and management of the village, its overheads or other costs and business profit. However, the Occupation Agreement has never explained the DMF in this manner; to the contrary, it states very clearly that [redacted] is responsible for all maintenance in respect of the village dwellings and community facilities as well as refurbishment of the Unit interior following termination of the Occupation Agreement.
7. Recent advertising material issued by [redacted] indicates a change in its marketing strategy: "The deferred maintenance fee (DMF) is your contribution to the refurbishment and management of the village. It is charged on an 'enjoy now pay later' basis…."
8. New residents pay market price for the cost of their Unit as an Occupancy Advance, 20% of which will go to the DMF over five years. Residents are virtually purchasing an asset without ever themselves owning it. Furthermore, the full amount of any capital profit resulting from the eventual resale of the Unit is claimed by [redacted] as owner. If a resident occupies a Unit for five years, very modest capital growth of say 5% p.a. would yield a profit on termination of about $220000 to Ryman.
9. In my own case in five years' time, my wife and I would have contributed $160000 to the DMF apart from the estimated $220000 profit on sale and we contend that we ought to get more information and accountability than [redacted] has been prepared to give us. We would not normally fork out $2666 every month without some itemised accounting supporting the charge. While there is no liability for the DMF until the Occupancy Agreement ends (and it is then deducted from the Occupancy Advance repayment from [redacted]), we have in fact prepaid the full amount, $160000, before moving into the village. and I do not think it unreasonable to expect the itemised details to be provided to us.
10. In our Occupancy Agreement there is no indication anywhere of the values placed by [redacted] on:
    a. The right to occupy a Unit
    b. The right to use the village facilities
    c. Contribution to the refurbishment and management of the village
    d. Refurbishment of the Unit interior on termination
    e. Contribution to corporate overheads and profit
11. It is thus impossible to estimate how the monthly DMF fee of $2666 is being apportioned in our case.
12. [redacted] prides itself in its longstanding reputation for excellence in every aspect of its provision of care to its elderly customers and its concern for their wellbeing. The company relies on the cashflow from customers (100% sales of new Occupancy Advances less the portion transferred to DMF plus any realised profits from units resold) to fund the ongoing development of new villages. It is very happy to take and use our free money – why is it so coy about explaining the various charges that make up our $2666 DMF monthly fee?

**With the financial implications already weighted heavily in favour of [redacted], I think residents and prospective customers deserve much better than this and the time has come for the Occupancy Agreement to be more forthcoming with all the comprehensive information people expect when contemplating a purchase of such major significance to them.**

Online Submission (61124801)

Q1 No

generally speaking it does, but I am concerned with residents being required to pay for interior maintenance of the unit ...operator's fixtures taps electrical switches appliances. Also the older 80/20 contracts, where the 20% DMF IS UNCAPPED AND IS SUBJECT TO THE ADDITION OF FURTHER COSTS such as refurbishment, a 2% pls gst administration fee on the CURRENT value of the unit

Q2 Yes

refer to my comments above

Q3 Yes

Q4 Yes

Q5 on the 80/20 uncapped matter I have mentioned above, with the additional charges residents are now effectively losing around 58% of their capital compared to the general standard of 30%

Addendum: SUBMISSION TO THE WHITE PAPER

Submitted on behalf of residents in the village where I live, (similar circumstances may also apply in other villages), who are subject to the old 80/20 contracts which pre date 2006. The 20% is not capped at 20%, and the following additional charges apply

1. Refurbishment costs currently being quoted as $90,000
2. A 2% plus administration fee on the CURRENT market value of the residential unit. The fee is now around $22,000
3. Legal fees $1,400

   The villa / apartment units originally costing $200,000 / $400,000 now have value of around $450,000 / $1 MILLION. There is no capital gain to the resident in the increased value unless they paid an additional fee at the time of purchase of the licence to occupy (this fee was generally around $10,000 not many did…perhaps could afford to do this).

   Today these residents are not just losing the generally current usual 30% DMF, but 20 % plus the 1, 2, 3, charges outlined above. Their exit charge is now approaching 60% and increasing as property values and building cost continue to rise.

   These now older residents realise that they signed their pre 2006 contracts freely and usually with legal advice, but in such circumstances then that as could not have been seen as they are today, with inflating property values and increasing refurbishment costs.
   The operation of such contracts has now become harsh, oppressive and unfair when compared to the generally standard 70/30 contract of today. [redacted] still uses the 80/20 contract, but the 20% is capped and further charges do not accrue.

Affected residents consider that with the goodwill of the operator, their contracts should be amended and the standard 30% DMF could be applied. There have been individual instances of where this has been done.

It may be that when industry changes occurred in 2006, that in some villages residents were offered a switch to the 70/30 contract, but we do not know if this was widely so and it was not in this village.

This matter is submitted as an example of where a n earlier rule of retirement village living has become difficult for residents. Their capital allowed the retirement village model to prosper. Residents' capital supports the model and generally remains locked in until further capital is introduced on the resale of the licence to occupy. They do not have an ownership, or a share of capital gain (this was understood), but there was an expectation that on leaving the village, there would be some reasonable capital return on their equity in investing in lifestyle retirement village living. Now they find that they could conceivably come out with nothing as the inflating charges erode their position: this at a time and during a period of rampant increase in property values. A question also arises as to what extent, what style, and at what cost, they should be fairly charged for refurbishment. The amount spent on refurbishment by the operator has a significant impact on the charge to the residents when they exit.

**Online submission [redacted] & [redacted]**

Q1 Yes

Q2 No

Q3 Yes

Q5 Refer email sent separately to consultation@cffc.govt.nz

**Addendum to submission**

**White Paper on Retirement Villages** **February 23, 2021**

**Email in support of submission-Comments in response to invitation with submission questions**

As chartered accountants and financial planners for many decades (being several of the first people in the country on the Financial Advisers Registry) we were very involved in advising clients on preparing for their retirement and guiding them through their retirement years. We encouraged many clients to make the move to retirement villages, advocating that a loss of capital through the DMF was the cost of security and freedom from worry for family members, especially important where children are in a different town or country from their parents or who might move to such a situation.

**Part 1 Legislative framework:**

As identified in the White Paper older and intending residents have difficulty understanding the legal framework. The legal framework and documentation need to be redrafted. There should be standard forms where possible- such as for the ORA, similar to the standard form for a Sale and Purchase Agreement of Real Estate. This would make it easier for advisers to become well versed in the legal issues, thus providing better advice for clients. The form should be developed with input from both Residents' and Operators' representatives. The Disclosure Statements and Code of Residents' Rights should also be standardised for similar reasons. Any changes to a standard form would be obvious, as occurs with Real Estate Sales and Purchase agreements and the legislation should make clear what changes, if any, can be made to any of these documents. Meaningful and relevant compulsory education should be provided to practitioners operating in this area.

**Part 4 Complaints and Disputes**

There should be a separate Ombudsman or single Ministry taking a lead role so there can be an efficient and effective system for dealing with the many issues, including complaints, that will arise in a developing industry, thus recognising the need to protect an increasingly vulnerable retirement community.

**Part 6 and 7: Consumer Issues**

**Resale and Buyback Times.**

There is continual criticism in the community that Operators give priority for sale to new units rather than existing units. If this happens, we do not understand the logic. It is well recognised that property development is often a long-term game where a profit might be realised only with the last sales in a development and while the DMF can be recognised as income it is not cash until the ORA is resold.

It is noted in the White Paper that many Operators are dependent on revaluations to support their balance sheets and this is recognised as an industry risk into the future especially if there is any oversupply and reducing values at some stage. The financial statements of many Operators show that little profit if any is made from the original sale of an ORA for a residential house/unit – given all the costs associated with a development. The White Paper recognises that many Operators do not generate enough operating revenue to cover operating costs. With resale the DMF and where applicable the capital gain, is available in cash to the Operator, with all costs known and the Operator is then usually able to set a new weekly fee at a higher rate. So why would an Operator be reluctant to resell as soon as possible.?

The White Paper suggests that the capital gain and DMF are effectively interest free loans to the Operator, which wealth transfer increases the longer the "loan" is retained. If this is the case, then why are Operators criticised for increasing the entry age so that a better churn is available?

It is suggested that it is unfair that the estate must wait until an ORA is on sold before the estate receives the funds from an ORA and that there should be a guaranteed timeframe for buyback. We do not understand why the estate should not have to wait just as it would if the deceased had owned a residential house. The Operator has as much incentive to maximise the profit on sale of an ORA as an estate owning a house and also has to be realistic in setting a price to match the market just as happens with the house owned by an estate. If property prices go down the Operator has to bear the extra cost- similarly if property prices go up the Operator would yield the benefit – (but you can be sure there would be a cry of "Unfair" on behalf of residents in this circumstance).

**Continuation of Monthly Fees**

Similarly, it is suggested that the Operator should be required to stop the weekly charge after X months. However, if the estate owned a residential home the estate would be required to continue to pay rates etc and maintain the property for resale. We are unable to see why an unfair advantage to the estate should be introduced with an ORA.

1) Where there is a capital gain to be shared between the resident and the Operator the resident holds an interest similar to direct ownership and with the responsibilities of direct ownership. Since the resident will share in any capital gain it is appropriate that the resident keeps paying the weekly fees, including maintenance, rates, utilities etc. The financial statements of villages show that operators do not make any profit from weekly fees so there is every incentive for the Operator to sell the property and yield their only profit and release of cash. The DMF, while able to be recognised during the first two/three years, is not the all-important cash until the ORA is resold.

2) Where there is no sharing of any capital gain with residents the relationship might be seen as more like a tenant/landlord but it is rather more like a long-term tenancy/lease where there is a value attached to the lease. A long-term lessee will be liable for continuing rent until the lease is sold. The rent covers the landlord's costs of maintenance, rates, insurance, etc. just like the weekly fee in a village. The lessee receives the proceeds of the sale of the lease when the freehold is sold (or the lease sold).

**Transfers**

The ORAs should provide that, on transfer to another residence, every effort is made to protect the resident, who is often somewhat more aged and vulnerable than on entering the village. While it is difficult to justify the view that the Operator should not be compensated for the costs that must be incurred in a transfer, (depending on who is responsible for the costs of refurbishment) it seems punitive on a resident that he/she should be subject to the usual full DMF. At the least Operators should be required to provide loans which are then deducted from the estate's portion on final pay-out.

Emphasis needs to be on protecting the residents rather than on what happens to their estate on terminating the ORA. It is more important that care is taken to protect residents while in a village than to be concerned with what happens to the estate. Fixed fees give certainty to a resident into the future which is important in removing a source of worry for aging residents. Fixed fees are more important for a resident’s peace of mind than sharing in a capital gain.

Look after the existing residents at this stage of their life rather than providing benefit to the estate which might risk crippling the industry,

# FEEDBACK ON CFFC WHITE PAPER.

## RETIREMENT VILLAGES LEGISLATIVE FRAMEWORK.

**<u>Online submission ([redacted])</u>**
Q1: Yes
Q2: Yes
1. A standard glossary of terms is needed in ORA's, Disclosure Statements & the Act. At present when checking 12 different Villages with 12 different owners I found that the DMF had 8 different names and the Village Outgoing Payments also 8 different names.

Q5: An over haul of the 2003 RV Act is well over due!

## <u>Addendum</u>
## Introduction:

We are pleased to provide feedback on the issues raised in the White Paper.

My wife and I have been residents at [redacted] Village in [redacted] for the last five years. Our re ationship with [redacted] management can be termed "fraught" in that we have instigated several complaints, two formal disputes and currently are involved in District Court proceedings against S[redacted].

This all started because the Disclosure Statement provided to us in late 2015 did not disclose that there were leaky buildings within the Village. The deck above our patio leaks and has still not been fixed after five years. There are, or have been, internal leaks to several buildings in the Village.

The most recent RV Dispute was instigated by us as [redacted] had served a [redacted]. The Panellist's ruling was in our favour and we continue on with our residency and our court proceedings.

The causes of action we currently have proceeding in the District Court are:

- A claim that the Disclosure Statement was misleading and deceptive in that it did not disclose there were "leaky buildings' within the Village. Claims are made of breach of contract under the RV Act and the FairTrading Act.
- Breach of contract in relation to the Village Contribution (other villages term this the DMF), in that it is being misappropriated, contrary to the terms of our ORA.
- Breach of contract by not carrying out repairs required to the deck above us for, now, over five years.

So, you can see our relationship with management is fraught and they were clearly trying hard to terminate us.

So, given all that has gone on we are in a good position to respond to many issues, as we understand the legislation and the pitfalls we have encountered.

We wish to make it clear that we like living in the Village but the difficulties we have encountered with management are unfair, unreasonable and need to be rectified through change.

**Issue 1: Terminology.**

There is no uniformity between Villages within ORA's, Disclosure Statements and the legislation, of terms that should be common.

I viewed the ORA's and Disclosure Statements of 12 different Villages under ownership of 12 different owners including the largest 5 and found that:

- There were 8 different names given for the regular monthly payment
- There were 12 different definitions for the regular monthly payment.
- There were 8 different names given to the Village Contribution (or DMF),
- There were 12 different definitions of the Village contribution.

Likewise, there are other terms that vary significantly between villages or are just not defined. e.g. in our Village there is no definition of "common area"; there is more than one definition for "unit" - habitable dwelling or apartment; etc.

Given that there is a requirement for ORA's to be reviewed by a lawyer to advise a prospective resident, it is essential that the legal profession can rely on standard terms or the meaning of terms.

**Item 2: Prescribed Detail not provided in Disclosure Statements.**

We have found that the prescribed detail required under s 20 of the Retirement Villages (General) Regulations are not being provided in the Disclosure Statements.

A good example is s 20(2) (c) that requires the Disclosure Statement to provide details as under:

*"whether there are periodical charges payable by a resident to the operator and, if there are, —*

*(i) what the amount of each charge is and what it covers; and*

*(ii) the extent to which the charges paid are kept by the operator for services provided and the extent to which the operator pays them to a related party; and*

*(iii) whether any new or changed charges are anticipated and, if they are, what they will be or how they will be worked out; and*

*(iv) whether a resident of a residential unit must continue to pay the charges after vacating the unit and, if the resident must, for what period."*

These details are not provided in our Disclosure Statement nor in those of some otherVillages.
Also details of our Village Contribution are not provided as per s 20(2) (f).

It is essential that residents know what charges are for and how they are worked out so that they are aware that the charges are fair and reasonable.

**Item 3: Disclosure Statements Required to be Accurate and Not Misleading.**

Our disclosure statement did not reveal that:

- there are leaky buildings within the Village.
- That there was an issue with reverse piling to carpets in common areas,
- That slopes had not been installed to bathroom floor causing unsafe ponding of water from showers.

There needs to be a much simpler way of having these sorts of issues resolved. It took 9 months into the RV disputes process, with a panellist, for us to terminate the dispute because, at that stage, the panellist was permitting a jurisdiction challenge by the operators' lawyers; we transferred our dispute to the Disputes Tribunal with a win on the shower issue, an agreement for the carpet to be replaced, but with a transfer to the District Court as the deck repair cost was to be outside of the DT's jurisdiction at $36,000 – this process took 10 months; we are now in the District Court and have been for some 30 months and is ongoing.
It is interesting to note that in [redacted] own submissions to the RV Disputes Dispute panellist this month, they have spent, *"over $400,000 on issues raised by the* [redacted]*."*
This is an horrendous amount considering the initial dispute issue – the leaking deck above our patio – only needs some $36,000 to fix, according to [redacted] own consultants.

**Item 4: Financial Imbalance if ORA Terminated**

What happens if a resident is forced to Terminate after five years of residency? Here is a real-life example based on our own experience**. [Note: this will happen to a resident who can no longer live independently, or, a resident is terminated by the operator for some misdeed].**

In these instances (based on our own experience and on our financial situation in our ORA the following occurs:

**Resident's ORA Terminated after 5 Years:**

What do they receive? And what do they lose?

(i) They have their initial licence fee returned $849,000 **Less** (in our case 27% being the Village Contribution (25%) plus Administration Fee (2%)}............................................................ $619,770

(ii) Less improvements paid for on entry…………………..$ -15,000

**(iii)** The cost of moving and legal fees to re-purchase … $ - 15,000

Total Received **$589,770**

The resident now, after five years, has a reduced capital from $849,000 to **$589,770** to purchase a new home that is likely to have increased in value over the 5 years by $ 470,000 to **$1,319,000** (based on residential units in [redacted] doubling in value every 9 years).

The resident will therefore have lost in equity $1,319,000 - $590,000 = **$729,000.**

Also, to purchase a new retirement unit the resident will loose another 30% of the new Licence Fee i.e.30% $1.319M = **$396,000**

Therefore, the total loss to Resident **is $1.125M**

**What Does the Operator Gain over the same 5 year Period?**

(i) Use of the Licence Fee payment for 5 years $849,000 compounded at 5% p.a. = ............................ $235,000

(ii) Monthly payments from resident over period For running costs and maintenance ............................ $ 40,000

(iii) A capital gain for the unit (9/5 X $849,000)..................$472,000

Total gathered by Operator/Owner **$747,000**

This represents an income to the operator of **$2,873 / week.**

A two-bedroom rental of equivalent condition would not have cost the resident more than $650 per week over that same period. The resident is therefore being exploited to the tune of the difference between what he could have paid as a rental and the value the operator/owner has acquired, = $747,000 – 5 X 52 X $650 = **$578,000**
So, the operator/owners **gain** an incredible net sum of **$578,000** from the termination while the resident **looses** to the tune of **$1,125M.**
This formula is so totally unfair and is an exploitation in favour of operators/owners under the current legislation that **must** be altered.

We note that this imbalance applies if a resident is judged unable to live independently. **How unfair is this?**

**Item 5: Revaluation of Villages.**

We challenge the statement at the bottom of page 12 of the White Paper, whereby the statement is made, with respect to revaluations, that, *"… many [operators} would make a loss without revaluing their property holdings."*
This claim is unsubstantiated and not borne out by the facts. A financial analysist could easily show how this statement is not correct.
In any event it can be shown that over at least the last 45 years that housing has, on average, doubled every 9 years. It is not credible that such a trend will not continue albeit at a possibly longer or shorter timeframe. The CFFC will have the experts that will surely be able to assess the likely forecast to revaluation trends. Even with zero revaluation over a nine-year period the profits based on the current ORA models are substantial.
We request that such a statement be examined as we consider it may be misleading given the income streams referred to on page 12.

**Item 6: Statutory Supervisors**

It is our experience that the Statutory Supervisor act for the operator/owners rather than as a "safeguard" for residents.
We have approached the Statutory Supervisor on several occasions to no avail. This has included:

(i) Help to address leaky buildings within the Village. No action taken.

(ii) Seeking an opinion that the operator renting a unit following termination would be detrimental to marketing the unit. Non-comital.

(iii) No assistance in seeking documents on evacuation procedures being withheld from us by the operator.

(iv) Request for the Statutory Supervisor to provide the documents. We don't hold them as an answer.

(v) Intervention in a complaint-proceedings where we claimed management had incited a resident to abuse a resident. The Statutory Supervisor did not investigate or comment on the role that management played. Hardly an impartial act by the Statutory Supervisor.

(vi) A breach of the Deed of Supervision with respect to use of an "Associated Person" was fobbed off.

It appears that where the Statutory Supervisor is asked to criticise the operator, he is unwilling to do so. This is a result of their roles whereby the operator is paying their fees.

A much more transparent and fairer system is required.

**Item 7: Complaints Process**

The complaints process is inherently unfair to elderly residents who do not like to complain and usually do not have the financial resources to employ legal counsel.

An example is our initial RV Dispute that took [redacted] months before we pulled the plug and transferred to the Disputes Tribunal.

The Panellist held [redacted] pre hearing meetings attended by the [redacted] and his [redacted] lawyers, issued some [redacted] rulings and after [redacted] months was permitting a challenge to jurisdiction by the operator.

We started off using a lawyer but after spending $10,000 we decided to continue on our own because of the expense.

In the Disputes Tribunal the operator submitted a claim for costs backed up by a spread sheet that showed that they had spent $136,000 during the RV Dispute on Lawyers $105,000; Panellist $20,000, Consultants $ 15,000.

This dispute related to fixing a leaking deck at a cost determined by the operators' consultant at $36,000.

This dispute has continued through the Disputes Tribunal and then subsequently at the operators request to the District Court.

As noted in Item 3 above the operator has stated that they now have spent more than $400,000.

This compares with our own costs to date of about $60,000 including $18,000 to dispute the Termination Notice as we felt that required legal representation because the loss we faced is terminated was too great not to be represented (1.125M as per Item 4).

We have sought legal advice throughout to advise on due process and have engaged expert building surveyors to act as witnesses.

And why has the operator so rigorously tried to defend and string out the procedure? Sixty new units came onto the market at the same time we were complaining of leaks. It is our contention that the operators firstly have not disclosed the "leaky buildings' within the Village and have continued to deny the issue over at least five years for fear of the Village getting a leaky Village monika.. A modified Disclosure Statement of October 2020 now hints at a problem with deck waterproofing but does not indicate internal leaks have occurred.

So, there is this great imbalance between the operator's resources and a residents' resources.

Also, there is the issue of the panellist being paid by the operator thus independence is not transparent.

We would advocate an independent government funded process with no legal representatives involved similar to a Disputes Tribunal. If necessary the "tribunal" would send complicated issued to the district court or alternatively have a further process where legal representation is available for cases where, say $100,000 or more is in dispute.

**Item 8: Business Efficacy.**

Within the White Paper there are several references to operators suggesting that some changes will affect the sustainability of their business. This is very difficult to believe based on the current income streams each operator has and the draconian conditions of the ORA's.

An assessment of the business efficacy of the current common financial model for a retirement village is:

Assumptions:

- Unit cost $1M
- Average ORA held for 9 years
- Interest rate on monies 5%
- Unit values double every 9 years in line with the house price index.
- The monthly outgoings payment covers the running and maintenance costs of the village.
- The village is complete and all units occupied.
- Refurbishment costs at end of 9 years $200,000
- This analysis is over a nine-year period

On this basis:

| | | |
|---|---|---|
| (i) | Unit Value $1.0M | |
| (ii) | Operator makes a margin on initial development cost of unit ………….. | Not included. |
| (iii) | Receipt of Licence Fee | $1,000,000 |
| (iv) | Use of capital payment of $1m over 9 years compounded at 5% …. | $ 630,000 |
| (v) | Running and maintenance costs. Paid by resident | Nil. |
| (vi) | Repayment of Licence Fee less 30% DMF ………………….. | - $700,000 |
| (vii) | Refurbishment cost to Unit for resale | -$200,000 |
| (viii) | Increase in property revaluation after 9 years ………………. | + $1,000,000 |
| (ix) | Unit now worth 2.0M | |

Total gained over 9 years **$ 1.73 M**

Average increase in capital Value per year = **$192, 200**

If property revaluation is only, say 50%, of the average over the last 45 years, the gain is $1.23M or $136,000 ave. per year.

For our Village with 246 units the gross profit after nine years is $1.73M x 246 = $424.6 M or $47M per year.

There are some sales costs at the end of the [redacted] years and tax on profit but there is no way that this business model is not profitable.

**Item 9: Consultation on Material Changes.**

Our experience is that the definition of "material change" is too loose in that the operator has not consulted on some important issues that are a "material change" to a resident but not regarded so, or used as an excuse, so they do not consult.

**Item 10: On Going Care**

One instance where residents of a Retirement Village are vulnerable and the current legislation does not provide protection, without the need to claim exploitation through the courts, is where a village does not have care facilities and can have the resident moved on. The financial implications of this are set out in Item 4 above. This is an untenable situation and urgent action is needed to address this imbalance.

**Item 11: Queries raised with Operator due to White Paper discussions with other Residents.**

We include below a series of questions raised with our operator that have come up during discussions between residents when discussing the White Paper.

"We are seeking clarification from [redacted] on several issues relating to the financial implications of our ORA and request a response on the following:

(i) At what stage are occupied units refurbished due to fair wear and tear? E.g. the unit repainted; carpets replaced, and fixtures such as cupboards and draws upgraded. There is no timeline given on this in our ORA or the Disclosure Statement. We would expect this to be a similar time as set out in the Long-Term Maintenance Plan with refurbishment on a similar timeframe to that allocated for repainting of common areas and replacement of carpets in common areas.

(ii) Our ORA (Section 12.8) states that if the unit remains unsold after termination that the operator can rent out the unit. Does the estate receive the rental income?

(iii) If a unit is rented, is the renting following refurbishment or before refurbishment? If it is following then marketing of the unit would be compromised as someone was occupying what should be a pristine refurbishment. If before, then the unit is not being marketed to its potential. [redacted] comments please.

(iv) If chattels are damaged by accident, are they covered by [redacted] insurance?

If they are, is there an excess on the insurance policy that a resident must pay?

What is the amount of that excess, if there is one?

(v) If a catastrophe occurred (fire or earthquake) what provisions are in place for rehousing residents if their unit(s) are uninhabitable?
We understand that the situation has changed from that stated in our ORA and we wish to know how the change applies to us.

Do [redacted] have insurance to cover such rehousing costs?

Are residents rehoused totally at the owners cost?

If rehoused for what time period? Is there a limit?

Will the VOP still be payable if facilities within the Village are not available where the rehousing is located?

*(vi)* The ORA clearly states in the VOP definition in the Glossary (Section 27) that, *"the Village Contribution is also intended to cover or recover all costs incurred by* [redacted] *in respect of all aspects of running the Village …"*
There have been no monies applied towards the running costs of the Village from the Village Contributions over the last five years since we have been residents. Can [redacted] please explain why this has not occurred?
What in fact is the Village Contribution for other than towards the costs of running the Village?

The questions asked above are in response to confusion within our ORA/Disclosure Statements; are not detailed in our ORA; not clearly spelt out in the ORA; or changes have been made that post-date our ORA and we are unsure of the implications."

## Conclusion:

We are pleased to see the proactive way the CFFC are approaching the issues relating to the predicament many retirees are finding themselves in relating to the Retirement Villages Act and the need for improvements to and clarity of the documentation that residents are required to negotiate when purchasing into a Village.

We fully support a full review of the legislation which is 18 years old and prepared without the knowledge now gleaned from operation of the Act and the many instances that favour the operators over the residents.

It is only after residents sign up to an ORA that they find issues they have not considered come up and are not adequately covered in the ORA or the legislation.

It is our hope that this outdated legislation is given priority to enable change.

We note that Government is pushing through changes to later legislation, the 2010 Units Title Act, to address similar issues experienced with apartment living.

The 45,000 retirees in Retirement Villages deserve the same degree of urgency given the Act they are living with is considerably earlier.

We trust that these comments assist in the decision making to effect changes to the Retirement Villages Legislation.

**Signed:**

[redacted] [redacted]

[redacted] [redacted]

**Date:** [redacted]

[redacted] & [redacted]

[redacted],

[redacted],

[redacted]

**Online submission:** [redacted]
Q1 Yes
Q2 No
Q3 Yes
Q5 I have a small PDF which list sand explains in a formal manner a review of a typical (our) ORA. I will send it by eMail SUBJECT: Retirement Village..:Assessment....: ORA Submission SwS

**Addendum**

# 1 Intro

**This document lists some generic concerns relating to Retirement Village ORAs.**
In some places ORAs may appear to be contrary to the Fair Trading Act... at least in principle.
Some commentators have suggested ORAs can result in financial-entrapment or elder-abuse. This view is believable given some of the associated clauses. The notes below give an understanding of these concerns
**Syntax herein:**

**RV**=Retirement Village(s). **Owner** = Retirement Village Owner. **Resident** = person who has an ORA
**ORA**=Occupational Right Agreement. **ACT**=Retirement Villages Act. **COP=RV** Code of Practice
**tbc** indicates a presumption that needs "to be confirmed"
**Footnotes** are "for office use" as Reference to an actual ORA
(*Note: some comments herein may be subject to: review, legal advice, &/or different interpretation, BUT; the general conclusions are deemed to be appropriate for concept discussion & consideration)*

# 2 Capital

The Resident does not receive any Capital gains and **yet** has to

1. Also fund Capital losses[1]
2. Also pay Real Estate commission on FULL resale price
3. Also pay Owner legal costs & expenses
4. Wait 9months[2] before a dispute notice can be given by the Resident

*Comment: this seems one-sided, and also, upper limits should be defined for #2 & #3. #4 specifies a long* wait before a formal process can START

# 3 Membership fee aka deferred maintenance aka refurbishment

Once Resold, c. 30% is deducted from original purchase (ORA) price before any refund is made, yet residentmust:

1. Also pay for commercial cleaning[3]
2. Wait until new ORA cooling-off period has expired.

*Comment: #1 could appear to be double dipping. #2 is not a requirement of COP (tbc)*

# 4 Termination

On Termination, the Resident

1 has to vacate (within 14 days, or 5 if terminated by Owner[4])
*2* Yet has to continue to pay the weekly fee for up to 6months then 50% thereafter (until resold)

*Comment: Thus; resident must continue to pay for services which are NOT received AND continue to provide capital for premises that cannot be used.*

# 5 Optional additions

Optional additions (eg better/safer paving, extra heating/cooling) have to be paid for by the Resident yet areNOT included in the Capital cost.
*Comment: Such items are therefor, essentially a **gift to the Owner** --- especially so for items recommended by* Owner at the time of purchase. This process would seem to be unfair.

# 6 Destruction or Damage

1. If the Unit is destroyed or damaged decisions re rebuilding alternatives etc are essentially at Ownerdiscretion.
2. Expenditure does not have to be any more than insurance moneys received[5] by the owner

[1] 4.1
[2] Sch4 - 13
[3] 4.2.2.2
[4] 11
[5] 13.3

3. Suspension of Service Charges (aka Weekly Fee) is conditional on damage or destruction not beingdue to <u>any</u> fault of the Resident[6]
4. If ORA terminated by Owner then Full Capital is refunded[7] (ie no Membership fee deduction) (*no timing*) but fee IS deducted if alternative offer is not accepted (see next sentence)
5. If Unit destroyed & the offer (of any) alternative Unit (including one that represent 'upscaling' & requires additional Capital Payments) is not accepted, then ORA is terminated <u>and</u> MembershipFee <u>is</u>deducted[8]
6. If the Unit is destroyed and Resident is transferred to another Unit, the <u>costs incurred[9] by the Village Owner</u> will be <u>borne by</u> the Resident <u>including</u> the reasonable legal costs incurred in documenting the transaction
7. If Unit is being repaired & no vacant Unit is available; Resident is responsible for the temporaryaccommodation

*Comments. Generally, this section could have a large detrimental financial and emotional burden on the* Resident. The Resident could be left with NO accommodation, Huge financial GAPS, & NO recourse… for along period.

*<u>Corresponding</u> (ie same numbering) specific coments include:*

1. *Some recourse (eg Arbitrator) would be desirable given the large Resident impact, of Owner decisions*
2. *If Owner has underinsured (but not been negligent) the <u>Resident</u> bears the consequences (lower standard & difficult resale later)*
3. *Clause is very draconian… it would be easy, (Owner discretion), for Owner to state "that the Resident is at fault in <u>some</u> way" (eg NOT calling 111 quickly enough, not setting the alarm properly, not noticing damaged electrical cord)*
4. *Refund Timing needs to be defined… else Resident could be forced to wait a long time,*
5. *<u>Standard</u> of Alternative Unit should be defined (eg "which is of similar standard and at least 80% as big in floor area, including garage"). This especially important given that rejection of the 'offered' Unit triggers Termination <u>and</u> loss of eg 30% capital ( membership fee).*
   *Furthermore, if Resident transfers instead to an available Unit that <u>is</u> of similar standard, but was <u>not</u>* "offered"[10], then the difference in Capital cost will have to be found by the Resident
   *(Difference=New CapitalGained cost of available Unit - orig capital cost - membership fee* of Destroyed Unit, eg if Old Unit cost $600,000 and destruction occurred after 3 yrs then Refund might be approx. 420,000 but a similar Unit will have inflated, historically typically at least 12%pa, to around 840,000. **SO a massive funding gap of $400,000 after <u>only</u> 3yrs) ie have only 50% of funds needed** [420/840]. [* Membership fee deducted… altho is not also payable under the new ORA (ie not "double dipped"…however this still imposes a cash-flow problem for, & opportunity-cost on, the Resident ]*
   *There is thus a <u>significant financial incentive for the Owner to offer a very poor unit</u> (& either; get it* occupied, or 'force' a transfer to a new unit: deduct the membership fee, & realize the capital gains.)
6. *Seems unfair & open-ended*
7. *This leaves Resident 'out in the cold' with only the suspended service fee amount to fund a motel etel.*

- *Might be better if this whole situation was covered by insurance but this should be mandatory and arranged by the Owner .. and maybe on-charged as part of the weekly service fee. But at the very least the situation & consequences should be made transparent.*

# 7 Permission to be away

1. Resident cannot leave the Unit vacant for more than six months in total in any consecutive 12 monthperiod unless the Resident obtains the prior written <u>consent</u> of the Village Owner;
2. *Comment: should be notification NOT a consent. 12 month rolling period is hard to administer & track*

[6] 13.2
[7] 13.6.1
[8] 13.6.1
[9] 13.6.2
[10] 13.6.1

## 8 DS

"**Disclosure Statement** means the disclosure statement dated xyz as may be required to be amended from timeto time to reflect any change Of Circumstances"[11]

*Comment. Throughout ORA, reference is made to The Disclosure Statement so there should be something* protecting the Resident from detrimental future changes. Eg "Disclosure Statement dated xyz *and* subsequential amendments shall apply with this Occupation Right Agreement (ORA) but, where such amendments are in conflict with the original dated xyz *l, or where there is a discrepancy, or where said* amendments reduce the benefits to the Resident, then the interpretation or version that is more favourable tothe Resident shall prevail"

## 9 Costs – legal etc

Resident has to pay all Owner costs and expenses

1. on Termination of the ORA[12]
2. & the exercise or attempted exercise of any right, power, privilege, authority, or remedy of the VillageOwner under or by virtue of this Occupation Right Agreement[13]

*Comments,*

1. *Very penalising especially given that all ORAs are eventually Terminated and also because Termination may be a decision of the owner*
2. *Very harsh consequent and could make the Resident "terrified" of doing anything (eg A Complaint)that may trigger the Owner exercising a power or even attempting to exercise a power.*

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[11] 1.1
[12] 21.2.5
[13] 21.2.3

# Transitions from Independent Units. v1.2

## Summary

Retirement Villagesoften have, or promise, CareFacilities. However; details are often very sketchy & little, if any, tra nsition information is provided. This note provides some examples.
There is also the notion, often promoted, of being able to downsizE (eg from a unit with internal stairs to a Serviced Apa1tment) in the same village, as health deteriorates. This note examines this aspect as well

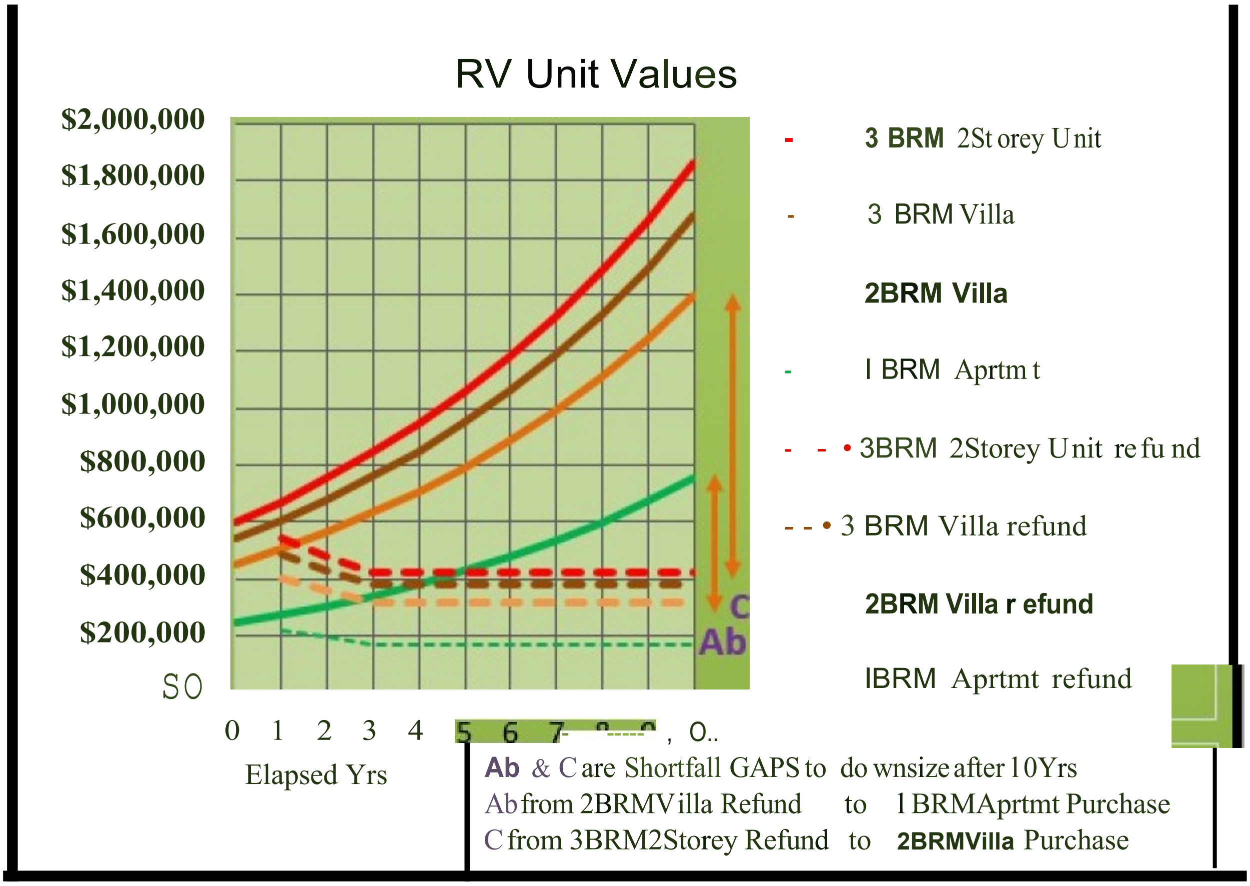
The basicconclusions are:

A. Residents **cannot downsjze** (to a smaller unit, eg without stairs, or even into a ORA/Capital based Care Facility) wjthout payjng at least Uiesame amount oxeraga;n

B. For a couple, if one partnem oves jnto Carn rwhere costs are covered by a daily fee], and the other stays in the independent unit then around $80000 of exn·a funds are needed per year. [assuming assets are such that Govt 'subsidy/funding' doesn't apply]

Data used in calculations is listed in the Appendix.
Transition/movingfees/expensesare NOT included ... so the real situation is likely to be WORSE than illustrated here

The following figure illustrates someScenarios. The vertical lines "Ab & C" illustrate the "SHORTFALLS" for Unit transfers after 1Oyrs to bridge the gap from the sunken refunds to the climbing purchase prices.



## A. Downsize to 1BrmServiced Apartment after 10yrs[1]

If original Unit was 'purchased' in 2016 then after say 10 yrs (ie 2026) the indicative numbers [rounded] might be;

### Aa From a $540,000 3BRM Villa or similar purchased in 2016

Will need $755,000 (2026 values) to Purchase the Apartment ORA in 2026
Avail $378,000 (from Refund of Villa ORA), So;
**Shortfall = $377,000 (ie only have 50% of funds needed)**

### Ab From a $450,000 2Brm Villa purchased in 2016

Need $755,000 to Purchase the Apartment ORA in 2026
Avail $315,000 (from Refund of Villa ORA), So;
**Shortfall = $440,000 (ie only have 42% of funds needed)**

**Thus cannot downsize without considerable EXTRA funds …** the extra may well be at least equal to the original purchase price (ie have to pay over-again)

Other similar scenarios of downsizing; eg to a safer unit with better wheelchair access, or from a unit with stairs to one on a single level, would in principle, be similar.

## B. Move into Care

If the CareFacility is ORA/Capital-based and requires complimentary capital payments then the situation will not be much different than described in the section above. However for the currently more common, daily-fee based ARC unit (Aged Residential Care), the follow example applies.

### B.a if 1 person moves into CARE

(and doesn't qualify for subsidy, ie still have assets in excess of means-test)
Need c. $80,000 pa (Premium room)
Avail $0,000 (there will be grocery bill reduction but these are assumed to be 'consumed' by extra personal expenses for Care, unsubsidised medications etc.)
**So GAP= $80,000 pa (ie from savings)**

[1] NOTE for any 10yr span, if relativity (between the *from* and *to* prices ) stays the same then the Shortfall ratios will also stay the same regardless of starting years.

# Appendix

## Data

[rounded]

**Capital gains assumed** 12%pa compounded for 2016 to 2026

**CPI** long term indicative rate = 1.7% pa[2]

Assuming; No share of capital gains available to Resident on ORA termination (ie Unit Sale)

***Examples:***

***egVilla3* (**3 Brm): 'purchased' for $**540,000 in 2016**. Membership fee etel deduction 30%[3] after >=3 yrs, Thus refund $378,000

***egVilla2*** (2 Brm) **$450,000 in 2016**. Refund $315,000

***egApartment* (Serviced 1 BRM): $243,000[4] in 2016** values (thus less than. ½ the price of egVilla3)

With CapGains will be $**755,000 in 2026**

egCareRm-standard $180[5] /day ie $66,000 pa

**egCareRm-Premium** $226 /day ie $82,000 pa ie $16,000 pa for the "additional services"

## Ref & Footnotes

[a] Office use: o…. SUPPORT CALCs.xlsx !5

Numbers are indicative only & subject to review and checking.

[2] https://www.stats.govt nz/ as at Feb 2021 shows long term avg CPI increase c. 1.7% pa

[3] Actual fee may be less BUT often Real-estate and other fees on the RESALE price (not on original purchase price), plus legal and documentation fees (incl those incurred by Village Owner but payable by Resident as per ORA) can easily make the total much greater than the basic 27% in the ORA.

[4] Based on indicative information from OELV Management 2019: 'Stillwater $245,000 in 2018 plus 20% allowance for superior standard OELV apartment = 294,000.' Thus 2016 value at historic 10%pa = $243,000 (294000/1.1)/1.1 .

[5] Src: kn Indicative 2019 prices for Standard and Premium rates. standard $159/day Premium $200 /day. Thus in 2026 just using CPI of 1.7% pa, 159x1.017^7=159x1.13=180/day stnd And 200 for premium become 226/day

Online submission ([redacted])
Q1 Yes
Q2 No
Q3 Yes
Q4 Yes
Q5: The village industry is like a financial trap. Once you are caught into it there is no way out without paying right up until the village has ensnared someone to take your place. Two weeks after that resident is installed your fees stop and you get your capital returned less a hefty delayed management fee. There is no time limit on how long this whole process can drag on. When the new resident departs the whole process is repeated again. Why are operators being allowed to run their village(s) on residents finance when a villa/apartment becomes vacant.

Addendum to online submission:
First email:
The release of the review paper on Retirement Villages is a relief to myself; friends and contacts in various villages. Many village residents have a resentment with the cold and distant attitude of many operators. There is feeling you are treated as another name on the books that will eventually be another cash turnover with a good dollar percentage taken in the process. Until that time the bare minimum is done in property care and to keep the village appealing. Above all the biggest frustration is the continuing charge of fees when you vacate your villa and the open time frame the operators have for finding a new resident to take your place so you will eventually be paid the capital you are due. It is well and truly realised that the retirement village industry is operating on turning over seniors money. This is just not right and is creating huge stress for individuals; families and estates. It is the most major thing that hangs over your village experience. If this was satisfactorily sorted then a whole lot of other issues would disappear.
Like any business in the commercial world it is well overdue time that operators worked on their own working capital. There is no other business that waits for a sale to a new customer before they pay a refund to a past customer.

Second email:
One of the big frustrations in our village is that apart from arriving for the annual AGM the directors will have nothing to do with the residents in the form of a general meeting. In January we suggested to them that being the start of a new year it would be a good time to have a general meeting for all parties to chat; look at the year ahead; exchange ideas and generally look at enhancing the village for the benefit and pleasure of everyone.
This is the second time in the last six months an invitation has been made. Once again it was very strongly refused. This is completely against the Retirement Villages Code of Compliance 2008 (Pg 28). As per the code we are now having to start on getting 10% of residents' names to present on another meeting request which we understand the operators' directors cannot refuse.
This is stressful and not good enough. It is another example of just being treated as a source of income and the requirements of the CoC being ignored.
Hopefully this is another aspect of the retirement village industry the commissioners review will rectify.

Online submission ([redacted])

Q1 Yes

Q2 Yes

A responsibility to foster physical safety of Residents within their aprtment/unit. See accompanying submission.

Q3 Yes

Q5: See letter mail. Thank you for the opportunity tp comment.

Addendum to submission:

The White Paper (2020/21)

I am grateful to all those for the preparation of the Paper and for making support Summaries available to member Residents. You are to be congratulated for your commitment and insights.

I am also pleased to have opportunity to comment. I admit to being a Resident for just over 1 year; I anticipate some years of occupance ahead of me. I am involved.

I regret not apparently having access to a local discussion group to analyse and react in a thoughtful and more informed manner. But I will make comment here and take advice about an appropriate recipient. I will not be in Auckland 2-4 March, 2021.

At the outset, I am reminded that a retirement village is a business, in which the welfare of its Residents as a central purpose. It must be economically viable; it must be fiscally responsible and be an attractive vehicle for investors (corporate or personal). Its Residents must be protected against inefficient and inappropriate (secretive, rascally, insensitive or exploitive) management. Finding the right balance needs vigilance and likely restatement. Such is the current task.

The SUMMARY of PROPPSED AMENDMENTS

1. .. defining purposes… clarification for Residents would enhance understanding. Yet Village Management needs not have its finances subject to public scrutiny, even though responding to relevant, specific query should increase the value of communication with management.

2. .. describing maintenance… the problem could be inappropriate use/abuse of village property, from which a Resident should be unable to escape some censure, advice and possible financial commitment. But in the main, maintenance and servicing of village items ought be a village responsibility. And, such items (like bench top water filters , heat pumps each should have a Maintenance record/ file, so that repair, replacement or regular servicing can be forecast and attended to in a orderly manner.

3. (not 4) If maintaining any chattels, recognising fair wear and tear ought be included in cost/benefit analysis to justify any expenditure. Already I know of minor replacements being installed at over-inflated cost to the Resident. While Village management has the right to a degree of standardisation of Village equipment (saving costs) and should well wish to oversee installation, over-priced installations are at Resident cost – that is exploitation. Rival quotes?

4. (not 3) … a mandated committee for Resident appeal… ought be instituted first at local (Village) level; then at Regional level, with ultimate reference to a Nation structure. Anything less will clutter procedures, delay resolution and reduce credence in the system.

5. ..periodic upgrading…. I query whether upgrading ( carpets, interior repainting) can only await termination of a tenure. Some Residents here have been here for 10 years – fair wear and tear is apparent, yet can only be at individual cost, with the advantage accruing to the operator. I concede that subjective decisions are fodder for the resident gossip machine, but long-time residents could be disadvantaged.

   On an unnoted issue: Food quality … should there be some requirement (admitting of elderly and maybe decreasing appetites, but still having the need for a highly nutritious food intake, could it be proposed that some dietetic scrutiny be established in café /restaurants – at the very least seasonally. Some elders would not be wisely attentive to their private food selection, but corporately a Village should, in terms of what it offers.

6. `.. cessation of weekly Village Fees…. An obvious need, in terms of justice for the individual

7. ..prolonged accrual of the DMF … the same comment as for Item 6.

8. ..capital refund on termination…What is magic about 6 months? A refurbishment contract, even including some internal reconstruction need not give tolerance to a 6 month completion. Perhaps 3 or4 maximum? The return of capital (after the DMF deduction) is a major factor when rehousing is required (such as moving into full-time hospital care). Current delays create a feeling of being trapped, uncared for, embarrassed (with a frozen asset) particularly when a couple is split by the ill health of one partner. The Village company is currently retaining an interest free loan well after any benefit to its donor. Any meaningful remedy would constitute a major benefit to ageing or ailing Residents and be a recommendation to buy into a fair minded Village/company.

   At the same time, an operator should be able to standardise the charges incurred when a Resident wishes to move from say a 2/3 bedroom apartment to a single bedroom unit. An 'individual basis' as a formula for charging is naïve and potentially unfair to Residents.

9 … exploitation…… "socially, financially or medically" could well be factored in.

10… Mediation and Disputes Tribunal.. see No. 4 above. This could easily be the National face of for resolution of disputes. Necessary not merely desirable.

11. Finally, the recommended legal advice when buying in, must be specified as including a survey of future charges (say, optional nurse or 'care' services)… This an obligation of the selling Village, for the tendency of a processing lawyer is simply to ensure compliance with the Sale and Purchase regulations. At that time, many a potential Resident is under emotional, maybe financial and/or medical stress… as one's long- loved property may be under sale.. and the prospective costs involved, currently or subsequently, ought to be surveyed and clarified. At a late stage in life,,,,, becoming a Resident is a Major!

12. Any incoming Resident ought to be required to state the names and details of external persons of reference/ support should the need arise.

I hope some of this may be useful.

Online submission ([redacted])
Q1 Yes
Q2 Yes
Detailed comments forwarded under separate cover
Q3: Yes
Q5: Comments on white paper and RVRANZ paper sent under separate cover

Addendum to submission:
CFFC WHITE PAPER – KEY STATEMENTS

Disclaimer:

The notes below are drawn from statements made in the CFFC

White Paper. They do not aim to represent the views of any

organisation other than those of the original author(s).

EXECUTIVE SUMMARY

 There are indications that the capital-based resident-funded business model supported by

the existing framework will need to change in the future.

Comment --Agree

 There are issues at the margin including regulatory structure that need attention.

Comment --Agree

**RVRANZ seeks urgent amendments to the Code of Practice and other relevant regulations for *inter alia* the following reasons:**

1. The CoP having been created pursuant to the Retirement Villages Act means that it should be consistent with and give effect to the purpose of the Act.

Comment --Agree

2. The purpose of the Retirement Villages Act should be looked at and the first and the **most important purpose stated is to protect the interests of residents** and intending residents of retirement villages.

Comment –Agree but there must be equity for all

Anything that indicates an unusual or contrived application of a provision in the CoP is also likely to indicate that the provision was not used in the way Parliament contemplated at the time the CoP was approved.

Comment –Agree - action needed. Should be reference to an independent and accessible referee

RVRANZ therefore appeals to the Government and all other relevant authorities to strongly consider the CoP changes proposed by the Association in this document.

Comment –Agree but change is required as the legislation has failed to keep pace with societal values and the way the legislation has been interpreted. The Residents generally do not have the resource to challenge disadvantageous managerial decisions and these accumulate and become the "norm" and accepted industry practice. There are also regional differences where local managers limit their focus into areas where they have specific expertise and the remaining responsibilities take a back seat which in turn disadvantages the residents.

The CoP is a legal document and sets out the minimum rules for all Villages and over-rides less favourable ORA provisions. The CoP is non- prescriptive to the point that wide interpretations of clauses are possible and usually not in favour of the resident.

Comment --Agree

Appeals to the Statutory Supervisors are ineffectual in many cases because the terms laid out in the CoP are so broad that many interpretations are possible and their recommendations are non-binding, allowing outcomes, which are perceived by residents as unfair, albeit in accordance with the black letter of the Act and CoP.

Comment –Agree - The Statutory Supervisor seems to appear once a year at the AGM so it is unrealistic to expect him/her to be aware of conditions in any particular village.

7. New Zealand has a myriad of legislation protecting consumers and while an expectation exists that the Act and CoP are aimed at protecting residents of Retirement Villages, most residents discover soon after entering a Village that in practice their protection is very limited.

Comment –Agree- It seems that the demand for services fluctuate for no apparent reason. Residents can be exposed to selective ignor and when complaints are made and the time taken to have remedies effected can be extremely extended (eg 13 months to have a tempering valve replaced on a hot water line). These events amount to bullying or elder abuse. It is not intended to state this is wide spread but it does happen and there is little recourse and less response from corporate managers.

8. Factors that influence legal advice provided before entering into an Occupation Right Agreement are:
a. Solicitors' lack of practical knowledge as to how operators interpret and how Operators apply specific ORA and/or CoP clauses in practice in order to gain undue advantage **contrary to the general spirit** and purpose of consumer protection legislation.
b. Residents of Resident funded villages', also referred to as 'cost recovery villages' are extremely vulnerable.
Intending residents can shop around before entering into an ORA but they are in effect faced with a 'Hobson's Choice' when it comes to deciding which Village to choose.

Comment –Agree- The comparisons usually come down to cost. What the prospective resident can afford. The meeting of the mind concept behind the contract philosophy does not really apply because there will be aspects of the contract that are forced upon a prospective resident in order to come to a village. In my opinion every ORA has a "duress" component and that has to be accepted by the prospective resident or refrain from entering the Retirement Village sector. Getting the contract changed to avoid this type of "Duress" is next to impossible although the Operators will deny it. Getting an appropriate solicitor is another challenge for the prospective resident.

9. ORA exit clauses, in particular, of most Retirement Villages are heavily slanted in favour of Operators and can result in extremely unfair situations and outcomes on termination of an ORA.

Comment --Agree

10. The mentioned CoP exit clauses, viewed in substance, result in outcomes not consistent with the Parliamentary contemplation 'indicator' applied in recent landmark cases.

Comment --Agree

11. **Not-for- profit Operators:** We acknowledge that there are a number of villages operated by not-for-profit institutions and understand that some flexibility should be allowed for those Operators when CoP clauses are amended.

Disagree , the law should be the same for everyone. Whether the operator is not for profit and perhaps a charitable institution will not change the in-house operation to arrive at the end of the year in the black. Therefore, the legislation should be drafted so that it is fair and equitable for all and that a reasonable profit is an expectation of any service driven enterprise.

## Summary of proposed amendments discussed in full later in this document

1. Better defining the purpose of the facilities fee, village contribution, or deferred management fee.

Comment –Agree- and add that any increase in village fee needs to be justifiable whether it is tied to a maximum cap comparable to any increase in National Superannuation or not.

2. Better describing maintenance which should not include replacement or upgrading of facilities and retirement village property.

Add the proviso that the ORA constitutes a Landlord / Tennant relationship and the Landlord is responsible for the wear and tear on the occupancy as it is the Landlord's property. The weekly fees provide the buffer for the Landlord to maintain the tenancy except in the case of wilful damage. Consumables are just a part of the overhead eg, light bulbs, worn out stoves, threadbare carpet etc.

3. Providing for a committee formed by the residents of a retirement village if properly mandated, to act on behalf of one or more residents in any dispute, negotiation, complaint or dispute process provided for in the legislation.

Comment –Agree – There needs to an independent referee available to decide issues where in house agreement cannot be reached. The Statutory Supervisor should stand aside from this function.

4. If residents are required to maintain chattels, fixtures and fittings or when the need arises replace any such item inside a residence, the cost of such repairs or replacement should factor in the fair wear and tear already undergone by such item.

Comment –Agree as comments above

5. The cost of any periodic upgrading and/or betterment of village property should be for the sole account of the Operator.

Comment –Agree – Village betterment/upgrading or building intensification must remain a matter considered within the Code of Residents rights with appeal provisions available to be heard independently as discussed above in item 3

6. The charges for outgoings (weekly fees) shall cease not later than the date of vacation.

Comment --Agree

7. Fixed deductions (DMF) must not accrue past the date of termination.

Comment –Agree and vacation of the Unit

8. The Operator should pay all sums due under a terminated ORA to the former resident within 6 months after the former occupant vacated the premises.

Comment –Agree but suggest 3 months as a more realistic time frame so as to encourage the Operator to bring the relationship to a termination point without undue delay.

9. The 'Right not to be exploited' should be better defined to include financial exploitation.

Comment - Residents can be exposed to selective ignor and when complaints are made the time taken to have remedies effected can be extremely extended (eg 13 months to have a tempering valve replaced on a hot water line). These events amount to bullying or elder abuse. It is not intended to state this is wide spread but it does happen. There is little recourse one can take and even less response from corporate managers. The writer ha experience these conditions on more than one occassion.

10. A National Retirement Village Mediation and Disputes Tribunal should be formed to deal with mediation and adjudicating disputes that is easily accessible to lay persons with the power to interpret law and ORA provisions.

Comment --Agree

 Some statutory rights for residents are not supported by agency functions.

Comment --Agree

Weekly fees

 One option is to reduce them by 50 per cent after three months and stop them at six

months.

 There is a need to improve and standardise information regarding transferring into higher

levels of care.

Comment –Agree – This is a serious issue and even more so for couples entering a retirement village. It is impossible to anticipate the future health profile of the individual. The ability to factor separation of couples due to failing health can create extreme anguish. Particularly if one partner has to go to another village/care facility due to say dementia.

Code of Practice compliance

 Requires a policy review to establish best practice and to balance operator control and

residents' rights.
Comment --Agree

A voice for residents

 A policy review should consider whether changes are required to better support retirement

village resident welfare.
Comment –Agree – There is no specific monitoring of residents general wellbeing within the group labelled" independent living". This group, in our village are left to their own devices to do as they will. While this is desirable for those of us enjoying good health. Not so good for those alone and lacking in self-confidence or not socially inclined.

Emerging consumer issues

 Investigate whether different models should be considered.
Comment –Agree even if the outcome retains the status quo

The legal framework

 Recommends a policy review of disclosure statements with a view to producing simplified

and accessible documentation – including on-line resources.
Comment –Agree but not simple exercise as we are all seeking different outcomes from a retirement village environment

Interface of care and residence

 Explore whether the definition of a retirement village needs modifying to include a wider

range of lifestyle developments.

Comment –Agree – There are multiple stages in the aging process and so one size does not fit all. The aging process and the wants and needs of residents fluctuate accordingly. Those stages need to be recognised within the legislative structure and included within the Code of Residents Rights.

LEGLISLATIVE FRAMEWORK

ORA's

 The effects of some terms created in ORA's can create financial hardship for some residents

or their families.

Comment –Agree particularly if a couple have to be separated when one partner suffers deteriorating health conditions.

DMF

111 Is designed to reflect the benefit the resident received from their use of the facilities in the village during their time there.

Comment -Agree - The resident should not be exploited financially due to the exit penalty

2. OCCUPATION AND OPERATION

111 The RVA opines that villa turnover should be 4,000 toS,000 units a year to retain financial viability. In 2019, unit building was at the rate of 37 a week.

Aged population growth suggests by 2028 an increase of 18,000 units (achievable at the 37 units figu

Interest free use of capital payments create a wealth transfer like a loan that increases the longer the 'loan' is retained.

Is there equity in this belief and is the opinion correct?

3. REGULATION- ROLES AND RESPONSIBILITIES

No single agency has a 'lead' role. This sometimes exposes residents to exploitation through harsh treatment or unfair terms.

Statutory supervisors

rn Represent interests of a village collectively rather than for individuals.

lii Must do everything in their power to direct the operator to supply information to residents.

rn Their responsibilities include dealing with complaints that cannot be resolved by the operator.

111 A supervisor can direct an operator to run a village in a specified way.

Are they really available to the individual or do they have an interest/ bias towards the Operator simply because of the fees they charge?

4. COMPLAINTSAND DISPUTES

lii There is a lack of a clear pathway for complaint handling.

Operator complaint data

111 Around 440 complaints are placed every six months.

rn Minor - 50%

lii Serious 13%

111 Very serious 6%

• Severe 0.2%

There is an apathy in management within our village to actually do something about complaints although there is lip service to the policy. The nature of a complaint can and is able to be hidden within the administration system. Corporate management seem to sit on its hands when these matters are drawn to its attention. There has to be an avenue for accountability to ensure complaints are dealt with in a professional and timely manner.

CFFC role

• It is important to understand that the Retirement Commissioner's office is not set up to handle complaints neither physically nor legally. They are affectively a government watchdog but RVRANZ ensure they are updated with major transgressions to aid their reporting system.

Review of Complaints

• The process is onerous, lengthy, stressful, and unsuitable for retired people who are seeking a life of peace and harmony.

• The ideal option would be one that is less stressful for residents than the current arrangements, while being effective and being accepted by all parties.

Comment – Agree

See end of paper for conclusion please.

5. CODE OF PRACTICE

Legal significance

• Prevails over and less favourable provision in the ORA.

• Is subordinate to the Act and can be amended by the Minister alone.

• In exceptional circumstances an operator can apply to be exempt from any CoP provisions for up to two years.

Code variations

• Only two changes since 2006.

• The Act does not provide for CoP variations so non-urgent but desirable change can be time-consuming.

6. CONSUMER ISSUES IDENTIFIED

Resale and buyback

1. There is a tendency for operators to give priority to other units' sales, whether new or refurbished that offer better returns.

2. It is possible that there may be action under the FairTrading Act or the Consumer Guarantees Act.

3. The Family Law Journal opines that financial objectives of the operator delays settlement of unit ORAs.

4. Potential responses to the current situation include guarantee buyback (at an agreed time), alternatively interest could accrue and be paid from an agreed date.

5. Smaller or not-for-profit villages may not have funds sufficient to buy back the unit if it remains unsold.

Options to improve this situation include guarantee but-back periods, interest payable, share of capital gain. All this can be achieved by an amendment to CoP Clause 53

Weekly fees continuing after termination

- Up to two thirds (across a small analysis) of operators cease weekly fees when the resident departs from the unit.
- Some operators claim that continuance of the weekly fee post departure is essential to the financial well-being of their business.
- Residents caught in this continuance trap gain no benefit from the on-going payment.

One option to is reduce the payment by 50% after three months and cease altogether at six months. Such a step can be achieved by amending clause 54(2) but would need cost benefit analysis of the operator's capability.

- Transfers from independent units to care facilities.
- The safety provisions of the ORA and Code of resident Rights change once entering a care facility.
- Care should be taken to understand the role of the District Health Board and Disability Services Consumers' Rights
- Clauses 24 and 25 of the CoP set out transfer information terms that operators must include in ORAs.
- Long term residents may have an affordability problem when leaving their unit and transferring to a care facility.

- Resident affordability depends on the ORA (set by CoP minimum requirements) and the operator's financial assistance policies.
- There is no standard 'transfer' arrangement for financial safety across the industry.

Code compliance

- The Family Law Journal suggested that the CoP should be amended so ORAs contain better protection of residents financial interests

There is a need to review the CoP, including ORA provisions, with a view to establishing best practise and to balance operator control and residents' rights.

Lack of a simple complaints system

- The current 4-tier system is ponderous, costly and stressful partly due to the lack of a single complaints authority (like the Tenancy Tribunal with regard to rental housing).

A voice for residents

- There is a misnomer that the Retirement Commissioner is empowered to look after residents' complaints. This is not the case.
- Many residents (and their families) are hesitant to be seen as complainers as they do not want to threaten their living relationships.

The White paper recommends a policy review in this area to ascertain the capability of better supporting residents' welfare.

7. EMERGING CONSUMER ISSUES

Affordability for entering a village to take up residence.

- The rapidly increasing length of mortgage repayments aligned with a growing sector of rental only residents generally in the country is leading to an affordability barrier for village entry.
- This may lead to some villages allocating a percentage of their units for rental opportunities.

Potential mismatch of supply for future demand

- Changing demographics in New Zealand may lead to ethnically cantered village being [provided, e.g., Asian residents only.
- Such a move will bring fresh demands on operators where these 'new' potential residents

may not like the current business model.

Equity release may not be enough for village residents

There is a dichotomy between the ‘cost’ of entering a village and the resident having sufficient remaining equity for service and day to day living costs in a village.

Business model viability

- Property revaluations are vital to the financial wellbeing of operators.
- And new ORA’s numerically outstripping those that are terminated will have a similar effect.
- A sizeable proportion of village operator profits are aligned to increasing valuations.
- The question has been asked (by Jardens) as to the effect on operator balance sheets should there be a down-turn in market values or new residential demand.
- Given that 18,000 new units are estimated to be need this will not be a short-term problem.

Development v Rentals – and alternative models

- The 2019 RVA conference anticipated that within five years there would be a rental demand to appeal to be yet-to-retire people.
- Some Australian operators are already moving towards pricing structures without DMF’s – including offering alternatives.
- ANZ Bank suggests that the current NZ model favours faster repayment of bank debt.

The CFFC is recommending a policy review to consider if sufficient consumer protection is in place. And whether this model can adapt to change

8. UNDERTSANDING THE LEGAL FRAMEWORK

Structural and drafting anomalies.

- No resident (or potential resident) can be sure of all their rights without a knowledge of the inter-dependence of the Act, CoP and both Codes. It is highly doubtful that more than a small handful of residents have this skill / knowledge.
- The complexity suggest that the documents should be reviewed with an eye for simplification.

The report recommends a policy review of the disclosure statements with a view of simplification and increased opportunities for consumers to access information electronically.

Statutory Supervisors

 Doubt and confusion still abound at village level as to the role of the SS.

 The 2018 CFFC monitoring review of Statutory Supervisors opined that residents' interests were adequately protected and that there was no evidence of any conflict of interest in the relationship between supervisors and operators.

 Independence of SS is, in part, seen by many residents that they are being paid by residents' money.

 Operators who decline to employ a SS reduce the options for residents and takes away consumer assurance.

The interface of care and residence

 Many consumers confuse retirement villages with rest homes (this was especially notable during the COVID lockdown).

 Some residents are not aware of the differing framework (within a village) between ORA driven residential arrangements and the degree to which outside (mainly health) agencies relate to care centres.

 The Act is absent in not providing specific obligations about residential care under the ORA. CFFC believe a framework review should explore the extent to which the presence of care changes the nature of a village. CFFC also desires that they should explore whether the definition of a retirement village needs modifying to include a wider range of lifestyle developments.

OPTIONS OPEN TO CFFC AS A RESULT OF THIS WHITE PAPER

CFFC perceives four different options as a result of this white paper. Three of them have been discarded viz:

 Maintain the status quo.

 Approve a Code variation to add some consumer protections.

 Conduct a regulatory systems assessment.

None of these recommendations will be pursued.

Rather a fourth recommendation will be adopted viz:

 Conduct a policy framework review.

- As the Act has not been reviewed since its inception in 2003 it is recommended by CFFC that MHUD and CFFC jointly review the full policy framework. It should examine, inter alia:
- Whether the current regulatory framework –
- Is consistent and sustainable.
- Enables operators to respond to changing demographic trends.
- Sufficiently protects the business interests of operators.
- Contains sufficient consumer protections, including a cost effect complaints system.
- Limits the sector's development through provisions relating to the payment of capital.
- Enables best practice CP review processes.

There is a special footnote suggesting that a policy review could also include a comparison of Australian retirement village frameworks.

## Final Comment

It is timely for this review and this is borne out by The Consumer's Institute. Consumer reported appropriately but the white paper and its assessors have to delve more deeply into the experiences of the residents. Retirement Villages offer a way of life that ensures a measure of security and well-being. The legislation has to be updated to ensure that is what is provided. Residents have to be protected from elder abuse and the subtle bullying that is dished out by a few staff to the detriment of the majority who are trying to do a good job. Those sincere staff need to be supported by legislation that that advocates accountability and transparency. Senior managers have to be held accountable for inaction when it should be taking the leadership role and setting appropriate example for subordinate staff.

Nothing in the document recognises the army of volunteers within each village that constitute an unpaid workforce. These volunteers add to the Operators bottom line and although there is no intention to change the practice it should be recognised that it exists. The benefits are applicable to the community and the Management but it does plug an staffing level shortfall on a fairly permanent basis. It is an invisible contribution by residents that is not recognised.

The End

[redacted]

4th February 2021

# Submission to CFFC on White Paper
# "Retirement Villages Legislative Framework- Assessment and Options for Change 2020"

## Q1- Has this White Paper canvassed the issues fairly and accurately?

Yes generally. However, the wording in the White Paper expresses the large capital payments on entry and exit in the Real Estate language of buying and selling property. In fact, the physical property always remains owned by the operators, with consequent entitlement to any change in capital value. The alternative language of the landlord/tenant legal relationship, with the capital payment being treated as a tenancy bond, would provide a more appropriate framework for an Occupational Rights Agreement.

There is a misleading statement on page 22, column 2 para 2. The CFFC text says

*Clause 53 of the Code* ***requires*** *operators to buy back a unit upon termination of a resident's ORA "at any time before entering a new ORA with a new resident".*

Clause 53 of the Code is headed -

*Operator* ***may*** *buy residential unit.*

Under the present Code there is no requirement for the operator to make the exit payment to the departing resident until a capital payment has been received by the operator from the new resident. A key feature of any changes to the Act and/or the Code must be to **require** the exit payment (i.e. "buy-back" of the residential unit) to be paid in a timely way. From the resident's perspective that payment should ideally be made immediately on vacating the unit, regardless of whether or not the unit is to be on-sold.

## Q2 Are there any important points that are missing

Specific additional points that should be explicitly addressed: -

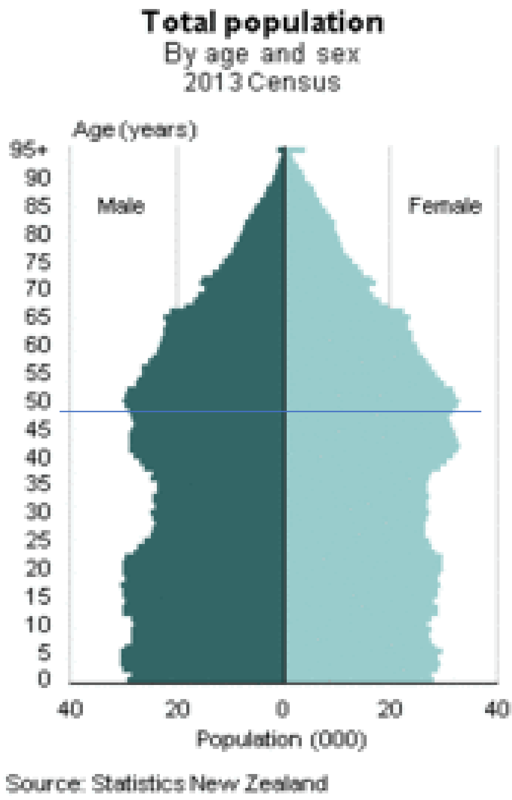
- Limiting increases in the weekly fee to increases in the state pension.
- Stopping accrual of the Deferred Management Fee on the date of vacation.
- Operators to be liable for maintaining the chattels provided for the resident's use.

## Q3 Do you agree that a full review of the retirement villages framework should be undertaken?

Yes. The framework is structured around operator's business models that rely on a seller's market, i.e., the assumption that the demand for retirement village units will continue to exceed supply indefinitely. This is not a valid basis for long term planning.

The NZ retirement village industry is currently expanding rapidly to meet the demand created by Baby-Boomers, (i.e., people who are currently 57 to 75 years old). In years to come, when the present village construction programmes are completed and the boom in demand has abated, the retirement village industry may become a buyer's market with supply exceeding demand and some units remaining empty indefinitely.

This chart showing the age distribution of the NZ population in 2013 illustrates the possibility of a future reduction in demand for retirement village units.




In that scenario, it would be unacceptable for former residents, or their executors, to have substantial capital locked up indefinitely under the terms of an ORA that has terminated.

If a surplus of retirement village units eventuates, it is essential that village operators should be responsible for planning the long-term utilisation, repurposing or redevelopment of residential units that are surplus to the needs of the New Zealand retirees.

**Q4 Not applicable**

**Q5 Is there anything else that you would like to say?**

Yes. We have the following suggestion for addressing the matter of timing the exit payment.

## Unit buy-back dilemma and a compromise suggestion

When there is a change of circumstances for a resident in a retirement village, an Occupational Rights Agreement (ORA) may need to end. There is then a disparity between the immediate needs of the resident, or their estate, and the financial flexibility of the village operator concerning the timing of the large ORA exit payment.

From the village operator's perspective, the liability to make an ORA exit payment in full, in response to the unplanned changes of circumstances of a resident, presents a significant financial liability. Any financial risk is avoided under current legislation, which does not require the ORA exit payment liability to be settled until the vacated unit is on-sold.

From the resident's perspective, the change in circumstances may involve costs of moving to nursing care, or funeral costs and the need of their executors to pay debts or settle legacies. Therefore, prompt access to the exit payment capital, or part of it, would be highly desirable. The amount of the exit payment due is typically known at the time of the ending of the ORA.

If the village has a waiting list, then resale of a vacated unit can occur quickly so that the ORA exit payment can be made within a few weeks of the departing resident's change of circumstances. However, if on-selling of the unit is slow then settling the ORA exit payment may be delayed, causing hardship for some departing residents, or their estates. Expediting the sale of a vacated unit is typically just in the hands of the village operator, who would always have an economic incentive to sell new units in preference to re-selling used units.

The proposal in the White Paper to require operators to buy back the unit (i.e. make the ORA exit payment) within two years after the unit is vacated is unsatisfactory because it does not address the departing resident's potential need for capital at the time of leaving the retirement village. Also, it still exposes the operators to significant new unplanned financial liability.

## Compromise suggestion

A minimum schedule for making the ORA exit payment in stages is defined as follows: -

A significant portion (e.g. 20%) of the ORA exit payment is paid when the unit is vacated.

Further instalments (e.g. 20%) of the ORA exit payment are paid regularly, (e.g. quarterly).

The balance of the ORA exit payment is paid when the unit is re-occupied.

## Features of this compromise suggestion.

- The initial additional financial liability for village operators is reduced.
- Capital requirements can be planned by the operator.
- If minimum standards are set in the code of practice, villages can offer more attractive terms as part of their marketing strategy.
- Immediate resident's (or executor's) costs resulting from their change of circumstances can be met.
- If the resident has on-going costs for nursing care, the drip-feeding of capital, pending sale of the unit, would meet that cost until their life saving decline to the point where their further care costs default to the state care arrangements.
- In the worst case of a unit remaining unsold, the operator would have one year to buy-out that asset in instalments.
- The operators would be incentivised to expedite the sale of the vacated unit.

**Online submission: (111083851)**

Q1 = Yes

Q2 No

Q3 Yes

Q4 Yes

Transfer issues to the Care Centre. Vulnerable elderly residents having to negotiate conditions and financial surcharges.

Q5: I think the whole legal framework needs reviewing and streamlining. At present it favours the operator. The ORAs are complex and difficult to fully understand

Addendum to submission:

**[redacted] AT [redacted] RESIDENTS' COMMITTEE SUBMISSION IN RESPONSE TO CFFC WHITE PAPER**

The village opened in late 2014 with 23 villas. Over the past six and a half years it has grown to more than 300 residents in a combination of independent villas, apartments and serviced apartments. There is also a Care Centre/hospital. During this time some residents have transferred to other villas and apartments as they became available, and some to serviced apartments and some to the Care Centre. So there has been quite a wide range of experiences amongst our residents.

**LEGAL FRAMEWORK**

We endorse the recommendations by CFFC that the present legal framework governing retirement villages needs to be reviewed. It consists of an Act, 2 Codes and Regulations, and these have not been reviewed or only minimally changed in almost two decades. It also comes under four different ministries. It needs to be reviewed and streamlined. During that time the retirement village industry has grown exponentially with the addition of serviced apartments and care centres. It has grown from just housing to include the involvement of DHBs and the health and welfare of the elderly. The CFFC White Paper raises the probability that with changing demographics and economic developments senior citizens of the future may still be paying a mortgage or renting when they are 65 years old. Legislation may need to provide for various types of ORAS.

**APPROPRIATE HOUSING**

One of the stated purposes of the CFFC White Paper is that retirement housing should be appropriate: At present the Building Code, which is administered by MBIE, has a "one size fits all" process which gives approval based on the sq.m. of a dwelling, not the purpose for which it will be used. This needs to be changed to reflect the requirements/restrictions and safe escape options required by the demographic who will occupy retirement villages. Para.3.8 of our Village's ORA states that any alteration to the dwelling required for residents with disabilities will need to be paid for by the resident. This should have been built in at the construction stage. Residents usually move in for the rest of their life, and will only ever get older and frailer.

1 Review of NZ Building Code to reflect the requirements for the occupation of Retirement Villages by elderly residents with sight, hearing and mobility problems.

2 Update of NZS 4121:2001 “Design for Access and Mobility: Buildings and Associated Facilities” - again to reflect the requirements of elderly retirement village residents.

3 Provision should be made for ramps with gradients between 1:12 and 1:20 with flat rest areas at 50% of the adjacent floor height, wide enough for an electric motorised wheel chair, accessible toilets, doors which are easy to open with door handles at a suitable height particularly for emergency exits.

4 Emergency lighting, clear sight lines and signage with braille for door openings at lift doors to indicate floor number, colour signage to indicate floor number, talking lifts.

5 Provision in dementia units where locked doors cannot be opened without assistance.

6 Stairways should be avoided except in emergency exits to multi-storied apartments unless ramps or lifts are provided as an alternative access.

7 Territorial Authorities and Village designers to be encouraged to use the updated NZ Building Code or an updated NZS 4121 without variations to encourage consistent designs in all villages.

8. In our opinion residents should not have to pay for upgrades to their residences because they are not suitable for them as they grow older or are looking after a partner with a disability.

**COMPLAINTS AND DISPUTES RESOLUTION**

We are concerned to learn that the Retirement Commissioner does not have the same wide powers as other organisations. At present a resident with an unresolved complaint or dispute may have to go through a long process with the possibility of expenses which they cannot afford and which may cause them great stress. This is unfair. We support the CFFC proposal that the RC is given the same powers as other Public Service Commissioners.

We would endorse the appointment of an advocate or ombudsman type agency at no cost to the resident when a complaint or dispute has not been resolved after an appropriate time.

**CONSUMER ISSUES**

**We endorse the CFFC recommendation that a full review is required of the whole buyback and resale procedure which at present favours the operator and is unfair to the resident.**

*<u>Repayment of Capital.</u> The operator has no obligation to repay the capital sum under present law until the unit is resold and a new ORA signed. The operator may have use of this capital sum, and use of the vacant unit, without paying interest or rent. The resident or estate is deprived of use of this capital sometimes for weeks or months or even longer.

<u>*Weekly Fee</u>.There should be a reasonable and fixed end date for paying the weekly fee to the operator. Once the ORA is terminated the resident is no longer using village services and

facilities. We recommend a review of the practice of continuing the weekly fee after a resident vacates a unit.

*Deferred Management Fee.

When a resident moves to a different unit the DMF should be apportioned between the old and new residence as it is unfair to have to pay the whole DMF on what is most likely a more expensive new residence.

The calculation of the DMF when a transfer occurs is not clear and a resident may not appreciate the full financial impact until they are faced with having to transfer. Residents come into a village with higher levels of care believing they will be able to transfer when they need to do so, unaware of the financial cost. This is unfair.

Ideally the initial DMF should only become repayable at the end of the whole time that a resident lives in a village under the ORA system. They should not lose any part of their initial capital investment should they transfer to another unit within the village.

*Transfer fees.

A transfer from an independent unit to another unit should not be a percentage of the capital value but should be a set administration fee. Transfer fees should be a set administrative fee, not based on the value of the residence you are going to be moving into.

*Buyback and Resale System

We recommend a review of the whole buyback and resale process. There should be a guaranteed timeframe for buyback with interest payable during the vacant period, to encourage operators not to prioritise selling new units ahead of existing units . Consideration should be given to the introduction of a sharing of capital gains.

Because of inflation a resident who has paid a capital sum for an ORA to an independent unit may find after a few years when they need to move to a serviced apartment that the price of the serviced apartment has inflated to more than their equity and they now have to find more capital for a smaller unit of less quality. This is not fair.

***Transfer to Care Centre**

Care Centres associated with retirement villages should be required to keep a bed in reserve for emergency use for a resident.

Every Care Centre should have a brochure stating the current cost of care, who pays what amount as a subsidy, and where to apply for extra help with finances and what your final costs are.

Surcharges on rooms in Care Centres should be abolished. Everyone needs access to a bathroom as this is a necessity of life and for elderly people in the last weeks or months of their lives to have to share a bathroom could be unbearable. A resident faced with having to put his/her partner into care is under great stress and often faced with difficult financial decisions. The resident may not have family advice or assistance and finds it too difficult to negotiate better financial terms. We have been told of a surcharge for a private bathroom being as much as $65 a day which equates to over $23000 a year. We consider such charges to be exorbitant and punitive. Elderly residents who are at their most vulnerable should not have to negotiate for the necessities of life.

Some residents told us that standards of care varied from shift to shift depending on who was allocated to look after the patient. The time taken to both answer call bells and then do the job required was too long, especially if the patient required two carers to move the patient. We are told of patients being moved so that they cannot reach their call bell or other necessities. Carers should be required to complete certain courses before applying for jobs where they care for elderly people, rather than coming in inexperienced and learning on the job as the latter may result in too many mistakes being made with a patient.

**PART 9 CFFC WHITE PAPER – LOOKING AHEAD- OPTIONS**

We endorse CFFC's recommended option which is Option 4 in Part 9 of the CFFC WHITE PAPER, that is for a complete review of the Retirement Village legal and policy framework. We suggest that, as a complete review may be a long process, as an interim measure some more urgent changes could be put in place through the Codes, as suggested in Option 2.

In conclusion, we consider that retirement villages in New Zealand play a very important role in providing a safe, secure environment for elderly residents. The majority of residents in our village are happy that they made the move. Our observations and recommendations are directed at the Retirement Village industry and the legal framework in general and not at our own village or [redacted] in particular. We are, however, entitled to feel confident that we are protected legally and fairly. We consider that the present legal framework favours the operators and not the residents, especially from the financial aspect. A review of the whole legal framework is overdue.

[redacted]

February 2021

Online submission (98120101)

Q1 Yes
Q2 No
Q3 Yes
Q5:
I am aged 74 and would like to consider moving to a retirement village, but find the financial costs and conditions very frightening, while feeling very concerned at the extortionistic Capital gains and DMF fees made by most operators, without the requirement to share with the occupier/estate. I truely feel disillusioned with the prospect under the present Act.

Addendum to submission:
On 15 December I made an online submission in support of the Commissioners recommendations.

I would like to elaborate further my greater concerns in respect to the operators Deferred Management Fee and the resale price of a unit undertaken, in most Retirement Villages, with full retention of the sale price by the operator.

My wife and I have been considering moving into a retirement village, in view of our age and physical short comings, and have made a number of enquiries with various retirement villages both within our own district and further afield. While the concept greatly appeals to us, our biggest concern relates to the percentage of the DMF claimed at the end of the term, either death or moving elsewhere, and the retention of ALL capital gains by the operator following resale of the unit.

I am assured you are aware of the figures involved but I would still like to quote some recent figures I am aware of from existing residents, based on a hypothetical situation.

The figures are based on a retirement village who have a 30% DMF effective over 4 years:

**Scenario**
5 Years ago, say 2015:

| | |
|---|---|
| Resident purchases a 3brm dwelling under ORA | $400K paid to operator. |
| | |
| 5 years later resident moves on (death/moved out) | |
| DMF @ 30% retained by operator | $120K* |
| **Net return to resident** | $280K |

**2020**
Under todays exponential rise in house prices;

| | |
|---|---|
| Unit is resold at | $700K |
| Returning to operator | $300K on 2015 price |
| + DMF @30% (above) | $120K* |
| | $420K |
| - Less Renovation costs, say | $ 50K |
| Profit/return after 5 Years | $370K |

Representing a return of 92.5% in 5 years with no sharing of capital gain with the resident or his estate.

In the event of the resident moving out of the retirement village for any reason, he only has $280K with which to purchase another small unit likely to cost anywhere from $500-$700K on todays prices.

**Today**
Most 3brm units in retirement villages are selling at anywhere between $800-$900K
meaning residents are then faced with a DMF of between $240-$270K

Further more, most Villages have a minimum entry age ranging between 70-75 years of age. Given the average age of men and women the turnover of units is now far higher than ever before.

And so the cycle is ever increasing with no benefit to the resident or their estate.

**Another issue** that comes to mind, which I forgot to raise in my submission, was a case where the village sales person I dealt with was very unhelpful and not at all forth coming with information. Small details, such as not being forthcoming with which villas were two or three bedroom units, how many people were ahead of us on the wait list, or even letting us have a look at some of the empty units in order to get an idea of what the layout was or if such layout was what we would be looking for.

Maybe the operators need clearer guidlines for their sale managers to operate under.

**Online submission: (112687851)**

Q1 Yes
Q2 No
Q3 Yes
Q5
The loan of residents capital to the villages for long periods without acknowledgement, capital gain, shares etc when returned, is grossly unfair, almost dishonest in my view. As regards delays in returning funds to departing residents, these village operators are businesses, so should behave like businesses. Time limit should be fixed firmly by law.

**Addendum to submission:**

**RETIREMENT VILLAGE TERMS**
**Re Herald article of 3 February 2021**

On reading the Herald article of Feb 3 last on the proposed review of these terms, I would like to make a few remarks , because I think it is high time these terms were reviewed and changes made.

I joined a retirement village 8 years ago, just before Christmas 2012.

Finance
I came in on the 70% and 30% arrangement. I paid down $680,000 of which 70% would come back to me, and 30% would go into the village coffers permanently.
The conditions said that my $450,000 would be given back to me AT FACE VALUE when I leave, with nothing added.
If I had invested this money in managed funds for the 8 years it would have yielded a further 25%, making it approximately $562,000 in value.
After 8 years of use by the village of my finance, I find this UNFAIR, UNBUSINLESSLIKE and INSULTING, and should be investigated. I should at least receive some acknowledgement for the loan of this finance.

(The fact that the villas are now being advertised at about 1 million dollars each is of no interest to me. I don't own the villa, but am merely a tenant.)

Of the 30% permanently lodged in the village, this also would now have increased in value from about $230,000 to almost $300,000. These were the terms laid out in the contract, so I wont quibble about this, and consider this adequate covering for any expenses incurred by me. I think it is a bit greedy though.

Payment by village
I have heard several stories of instances where some villages have taken many months to pay out to the departing resident, eighteen months in one case, on another no money until the resident was actually dead !
I think a time- limit for payout should be agreed and stipulated BY LAW.( 3-6 months? )

Elderly people should not have to wait long periods of time for their money.. Some of them may not have much finance behind them at the end of their lives, so this is worriesome and causes unnecessary stress.

If at the present time the village owners are looking to the new resident to provide the money to pay the departing resident out, then the village owners should think again, and look to getting finance to bridge the gap. I see that it is a competitive market nowadays, and there may be delays in getting new residents, but the departing resident should not be affected by the arrangements between the village and the new resident. It is not the departing residents responsibility in my view. The village is a business and should behave like one.

I have also heard of departing residents having to pay for redecoration and revamp of their villas before they leave, the money to come out of the sum they hope to get back from the village at the end. IS THIS FAIR ?

Monthly Village Fee

In addition to the finance when I first came into the village, I have been paying a monthly fee for village expenses and activities all the time I have been here. This covers rates, water, gardening, insurance on buildings, security and so on, plus the costs of the village community facilities. In my case this fee has now been capped at $647 per month. When I vacate my villa, and move all my possessions out, this payment will automatically cease. I am happy with this.
(note - I am in a villa and in addition to the village fee, I pay for my own power, telephone and contents insurance. Of course I am keen to keep my villa clean and maintained, just as any good tenant would.)

Chattels/Fixtures and Fittings

This village has been very good with repairing and replacing fixtures and fittings. During my time here they have replaced free of charge my burst hot water cylinder, and put to rights the great mess, also repaired the ranch-slider door in which the wheels at the bottom had been worn square by long use.
I believe some villages expect the resident to look after these things, even though they are fixed and hardly likely to be removed when the resident leaves……….

Decoration and carpets etc

It seems to vary between villages who is responsible for these things.
In our village our villas were redecorated and newly carpeted when we moved in. But some of our residents have been here since the opening of the village, 30 years ago. I presume they are coping with 30 year old paintwork and carpets. I wonder how their 30 year old shower-boxes are looking after all this long time ! I have not heard of any provision for updating in these cases.

The Contracts

I agree that the contracts are complicated and hard to read – positively scary for some elderly people, no doubt. No wonder a lawyer is recommended.
When looking at my contract 8 years ago, I felt at that time that the difficult terms, especial financial, presented by the village owners made me the choice of the “devil or the deep blue sea” – stay in my own home with difficulty, or come into a village with tough financial terms. Neither being very favourable. However I had to sign on

the dotted line according to the terms of the village operator, or stay away..     I had to choose in fact which was the lesser of the two evils.
(Perhaps some of the “happy” residents canvassed in the article have chosen over time to forget their dismay, knowing that they can do nothing about their situation now......... )
In practical terms life in a village is good, (and it frees up housing for the younger generation which is a consideration.), but I think the terms should be looked at. After all it is merely a tenancy “with frills”, so maybe tenancy laws should be compared where applicable.

However after 30 – 40 years of retirement villages isn’t it about time conditions and regulations were standardised and simplified ?

(I also note several of the retirement village operators are now listed on the Stock Exchange, so it is big business now, and they must be doing very nicely.)

Online submission: (110270651)
Q1: Yes
Q2: No
Q3: Yes
Q5:
PERSONAL DATA

My name is [redacted]. I am 96 years of age. I live in Apartment [redacted]

My late wife and I moved from our own home in [redacted] to [redacted] in July 2003 so I have had over 17 years experience of life in a retirement village. During these years I have had occasion to deal with not only village management but also Head Office in [redacted] and also with the Statutory Supervisor based in [redacted]

GENERAL
The majority of retirement village residents may appear content with their choice of living arrangements but this is because they have a short-term view of life and the majority of retirement villages appear to satisfy their day-to-day requirements. At their advanced age, they don't want to 'cause a fuss' and they are attracted to the apparent benefits of group security, care facilities, freedom from maintenance requirements, group activities, etc.

They are easily lulled into acceptance of a 'licence to occupy' basis in lieu of the traditional ownership or rental models. The operators in the field of Retirement Villages are quick to use expressions such as 'This is your home' when it is not our home at all - it is simply where we live.

It is questionable how effective the office of the Statutory Supervisor is. Based on [redacted] experience, little use appears to be made by Residents of this service. I have had personal experience with only one case of referral to this authority and it was disappointing to see how little effort was made by the Supervisor to investigate the matter. However, a current issue appears to be receiving much better attention.

The relevant documentation which accompanies a move into [redacted] consists of hundreds of pages. It includes the following:

Application Form

Retirement Villages Act 2003

Occupation Rights Agreement (ORA)

Prospectus

Investment Statement

Retirement Villages Code of Practice 2008

Retirement Villages (General) Regulations 2006

One could well ask "Could not some of these documents be combined in order to reduce repetition and surplus information?"

On the one hand you have an experienced operator with a strong commercial motif while on the other hand you have an elderly couple or individual probably trying to handle both the sale of the family home and the acquisition of a new-fangled 'licence to occupy' retirement village apartment.

It is all very well to say that prospective residents should study these documents before deciding whether or not to proceed but, when it comes to understanding their provisions in the time generally available for this purpose, it is unlikely that this will be achieved. In most cases, family lawyers would be consulted but with mixed results. A short term view is often taken by people who are generally in their seventies and eighties. Little wonder that issues arise. However, because of their advanced age, many residents are reluctant to take the necessary action.

With so many operators in the field these days each with their own particular terms and conditions, it suggests the use of an industry standard document to cover the majority of items together with a further document to cover any other items of a special nature.

So, yes, I agree that a full policy review of the retirement village framework (the Act, Codes and Regulations) should be undertaken.

I note that the paper recommends a policy review considers options to improve the resale and buy-back process including allocation of any capital gain on sale between the resident (or their estate) and the operator. To be fair, should not any capital loss also be dealt with?

An area which is likely to need greater clarity is that of maintenance, particularly internal maintenance. It should be a matter of what is fair and reasonable. The current practice at [redacted] appears to support a regime where the Independent Residents are liable for internal maintenance of their units while [redacted] is liable for external maintenance of the units. In the majority of cases, internal maintenance finishes up as part of an overall refurbishment after a resident departs from his or her apartment. In a rising market such as that of recent years the cost to [redacted] of refurbishment is likely to be well and truly recovered by the onward sale price of the unit. The question arises as to when and who should rightly pay for the replacement of items such as internal painting, carpets, curtains, stoves, microwaves, heaters, hot water cylinders, light fittings, etc bearing in mind the need for fairness on the part of both parties. [redacted] maintain that it is the resident's responsibility. However, I maintain the relevant clause in the O.R.A. that I signed in 2003 places the responsibility on [redacted]. Everything has a life and

I think it is fair to say that the greatest cause of dissatisfaction felt by independent and serviced apartment residents at [redacted] is the time it takes for work to be carried out. Whether it is a small matter of maintenance or a large project such as building works it seems to take an extraordinary length of time from initial reporting of the matter to final execution. There are often several levels of authority involved from village maintenance staff to village management to area management to head office. It doesn't seem to matter whether village staff or outside contractors are involved the planning and performance time is frequently excessive. The whole process needs to be reviewed and managed more efficiently.

In our case, we entered the [redacted] in 2003. The clause in our ORA dealing with maintenance consists of 175 words in one sentence! It is difficult to understand and has been the cause of considerable argument between [redacted], the Statutory Supervisor, and myself. I agree with the recommendation in the White Paper that a policy review should include a review of the disclosure statements with a view to producing simplified and accessible documentation. This could include online resources'.

The first few months in a Retirement Village can be trying for new residents. They are faced with 'learning the ropes', forming new friendships, choosing new activities etc. I believe there should be a requirement for Retirement Village operators to appoint specific staff trained to support new residents as they become familiar with village life during their settling in period.

There are a number of scenarios facing Residents who end their tenancy in an Independent Apartment:

1. They may die.

2. They may move to another location.

3. They may transfer from an Independent Apartment to a Serviced Apartment.

4. They may transfer from an Independent Apartment to Care Facilities within the Village.

There should be clear and concise documents readily available from the Operator and adequate time allotted to the Resident in which to study these documents. I agree with the recommendation in the White Paper that a 'policy review considers how to improve and standardise information about transferring into higher levels of care'.

I am surprised that the White Paper does not appear to devote much attention to the question of internal maintenance of Independent Apartments. This is not to be confused with the subject of refurbishment such as occurs after a resident vacates an apartment and it is prepared for occupation by new residents. I am talking about maintenance of such items as carpets, floor coverings, fixtures, fittings and apparatus provided by the Owner. Everything has a life and with the generally longer lives being lived by people theses days it is entirely possible for someone to enter a Retirement Village at say 65 or 70 and occupy an Independent Apartment until aged 100. In my own case, I was 78 when my wife and I entered [redacted] and I am now 96. To be fair, I believe interior maintenance should be the responsibility of [redacted]. After all, they reap the benefit of any capital gain which has normally been the case when it comes to the onward sale of the Licence to Occupy. It is surely not in [redacted] best interests to have family and friends of Independent Residents visiting 'tatty' apartments. I maintain that the O.R.A. that we signed in 2003 calls on [redacted] to meet the cost involved whereas [redacted] does not agree. It is interesting that [redacted] O.R.A.'s dated later than 2003 make it clear that responsibility rests with the Resident.

I agree with the recommendation in the White Paper that a 'policy review includes a review of the Code, including the ORA provisions, with a view to establishing best practice and to balance operator control and residents' rights'.

I also agree with the recommendation in the White Paper that a 'policy review considers whether changes are required to better support retirement village resident welfare'.

I also agree with the recommendation in the White Paper that a 'policy review includes a review of the complaints function to simplify and formalise a clear and simple process'.

I also agree with the recommendation in the White Paper that a 'policy review 'considers whether changes are required to better support retirement village resident welfare'.

Although unlikely to become an issue in my time, I agree that a policy review should analyse future trends, consider if consumer protections are strong enough to adapt to change, and investigate whether different models should be encouraged.

I agree that a framework review should explore the extent to which the presence of care changes the nature of a retirement village from a housing proposition to a health proposition. It should also explore whether the definition of a retirement village needs modifying to include a wider range of lifestyle developments (including those arrangements that do not include an ORA as noted above)

In summary, I strongly believe that 'changes are required to better support retirement village resident welfare'.

Addendum to submission:

This is an Addendum to the submissions I made on 15 February 2021. It deals with a matter that is of growing importance viz. interior maintenance of retirement village apartments. I have no idea how wide-spread the issue is but I doubt that it only applys to [redacted] villages.

In my particular case, my wife and I signed up to an independent apartment at [redacted] at [redacted] on 4 July 2003. One of the documents we signed was an Occupation Agreement and we have looked upon this document as the appropriate one when it comes to setting out the respective responsibilities of the parties involved. Our particular O.A. contains an extraordinary clause containing 154 words in one paragraph in one sentence. It is supposed to cover the question of interior maintenance.

I suggest that the average citizen entering a retirement village is mainly interested in getting possession of his or her apartment as quickly as possible and with the least fuss possible. Interior maintenance i.e. an event unlikely to arise for years, would be one of the last things on their mind. I have now occupied my apartment for over 17 years and I have sought to find out where I stand with this issue. I maintain that my O.A., in the clause to which I have referred places the responsibility for interior maintenance on [redacted], on the other hand, maintains that it is on me.

Without going into the ramifications of this issue, I simply wish to emphasise the growing importance of this subject bearing in mind that theoretically, someone can enter a retirement village these days at say 70 years of age and live to 100 so maintenance can become an important issue. Painting, carpeting, fixtures, fittings, apparatus all have 'lives'. There is an obvious inclination on the part of [redacted] to 'turn a blind eye' to the question of interior maintenance until the resident dies or moves out of the apartment. This is when 'refurbishment' is carried out with the cost involved being recovered from the capital profit inevitably earned by [redacted] in the resale of the apartment.

In my opinion, [redacted] present attitude is clearly unfair. I hope that any review that takes place as a result of the White Paper highlights the need for fairness in the dealings that take place within the Retirement Village industry.

# **Submission** to CFFC re Retirement Villages – Whitepaper

## Submissions of [redacted][1]

Firstly I refer to the: **feedback on five key questions**
Inserting my initial replies using the form supplied, and add additional submissions:

**Q 1** Has this White Paper canvassed the issues fairly and accurately? ~~Yes~~ / **No**

**Q 1.1** If you replied No, please say why.

**Whilst complimenting the Commission on a very full and comprehensive summary of the current retirement village (RV) industry in NZ** – It fails to address the underlying and fundamental financial problems due to the RV business model[2] and how the operators interpret their responsibilities – specifically their financial reporting.

As detailed hereunder they fail to comply with their obligations to report on their income, assets, profits and liabilities in accordance with the NZ IFRS 13 and NZ IAS 40 reporting Standards. They interpret the residents' **loans** as **their assets**, adding their undiscounted carrying (entry payment) $ values to their externally valued operator's interest in their ORAs, in their **Investment properties (IPs)**. This leads to treating the *annual increases* in these *residents' loans* as (unrealised) **"capital gains"** which is fallacious and computing these **as income** through the profit and loss to flow through to their retained earnings, out of which they pay dividends.

Consequent upon this fallacy, the reported valuation methodology assumptions used by the external valuers of the company's managers' [operator's] net interest in their ORAs, adopts this fallacy.

A major part of their valuation is the discounted present value (PV) of future cash inflows from new "residents' loans" being residents' refundable deposits (RRDs) on "resales", actually re-leasing or reissuing new ORAs. These are reduced by the forecast future cash outflows in repaying exiting residents and cost of refurbishing their units and associated selling costs. The discounted present value (PV) of these future net cash inflows is the major part of the operators' interest. This component of their valuation is based on the future increases in loans and is not income but erroneously treated as "capital gains" income from the increased value of their IPs. This results in over-valuation of the operators' interest by approximately 50%-70% of the valuation (depending on the underlying assumptions and variance in inputs); whereas the valuation should only contain the PV of the future net cash flow income in advance from the deferred management fees (DMFs).

Greater explanatory detail and analysis on this critical matter is contained in the attached copy of the *Research Opinion on the RV business model Rort* paper, particularly the resulting "double whammy" effect in false exponential increases shown in reported IPs, resulting total asset values, NZ IFRS pre and after-tax profits and increased retained equity after paying dividends.

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[1] [redacted] *
BCA, PGDipProp, DipUV, FNZIV(Life), LPINZ.
Former Associater Professor. in Property Studies [redacted] Investor and RV stakeholder resident, Member RVRANZ; Retired Registered Valuer & Property Consultant;
* Retired university associate professor in property studies, a retired registered valuer, retired property consultant, Life Member and Past-President of the NZIV, Life Member past Vice-President and Founder of NZPMI (now) PINZ; editor and author of the NZIV standard valuation texts (1977, 1990/1991) including the only published Text chapter on Private health care establishments (incl. retirement villages) and the NZIV CPD Monograph (1995) Discounted cash flow (DCF) valuation techniques & spreadsheet applications.
Still publishing real value property investment papers – on the web: [redacted]
Professional career spanned 1960-2010, being in and out of University lecturing and private practice as a registered valuer and property consultant.
Member of the 1977 - 1987 Supreme Court appointed Committee of Inspection into the liquidation and collapse of the Securitibank and Merbank merchant bankers and financiers; 1974 – 1998. Founder and Director of an unlisted public property investment company; employed by a number of New Zealand public bodies, NZ Government, investment and pension funds, companies, corporations and the public for valuations/property consultancy assignments. I have been an expert witness in land valuation cases before learned Umpires in arbitrations, the Land Valuation Tribunal, High Court and Supreme Court. [My complete CV is available].
[2] Referred to fifteen times in the Whitepaper, but not fundamentally addressed – that needs reformation.

[redacted] - Submission to CFFC re White Paper 26Feb21

**Q 2** Are there any important Points that are missing? **Yes** / ~~No~~

**Q 2.1** If you replied Yes, please describe the missing Points.

The missing Points in relation to the topics covered are inserted after the "quotes" from the whitepaper in red text hereunder:

**Re the Executive Summary:**

1. There are "issues at the core of the RV business model" that needs urgent review that relate to ethics and legitimacy of compliance, especially with treatment of RVs investment properties' accounting and financial reporting.
2. "The scope of what the Code can do is restricted by the Act and Regulations, regulatory controls are ineffective, even in formal complaints. Some statutory rights for residents are not supported by agency functions or powers that protect their interests, either as individual consumers or as an older consumer group": This is the major and fundamental injustice that is increasing, as above, in that FMA, MBIE (now HHUD) and CFFC are ineffective, lacking the knowledge and skills required and dis-empowered as to responsibility to monitor, investigate, and require compliance with the RV Act and the Financial Reporting Act as to correctly applying the NZ IFRS and NZ IAS financial reporting standards.
3. "Proposes a timely, effective, and efficient policy review of the framework (the Act, two Codes and Regulations), to be undertaken by the Ministry for Housing and Urban Development (MHUD)". Though MHUD may be the legal entity currently with the required authority, the powers needed are more in the area of a Royal Commission with power to enforce change at the highest levels (Government, Legal system, Human (elderly) Rights).
A limited "policy review" will not solve the underlying causal problem – that needs a complete rethink and new "business model" that at the very least strictly complies with the existing relevant legislations. Alternatively a complete reformation of the "model" under a new set of legislative frameworks that is simpler, and bespoke to the RV industry's objective of providing <u>either</u> a retirement village only; or a stapled aged care facility <u>plus</u> individual living or care suite units occupied under ORAs or a different form of shared ownership title, that is truly just and fair to the investment of its residents' capital funding, requiring an *equitable interest* in the ownership of the aged care business. See also Points 22, & 23.
    4. "To improve the resale and buy-back process. Options include introducing a guaranteed timeframe for buy-backs, interest payable during vacant period, and allocation of any capital gain on sale between the resident (or their estate) and the operator." This raises associated issues, as under the RVs' existing *business model*, their so called "capital gains" are illusory, and are <u>only</u> increases in residents' loans, with <u>new</u> higher ones <u>replacing lower</u> old ones. These do not create operators' assets (belonging to the operator), but only increased liabilities (residents' assets) at each reoccurring termination requiring recycling cash flows resulting from their future ORAs' repayments and new loans receipts.
    Interest should be paid on all residents' unamortised loans (DMFs) and refundable deposits' loans (RRDs). These loans that are the resident's assets, should be held by the Statutory Supervisor as trust funds from the time they receive them, instead of paying them out in full to the operator after settlement on occupation. They should earn interest (which could from first mortgage loans lent to the operator, investments as shares and/or bonds to their RV's companies), or in other approved trustee investments. These interest and dividend income can be paid out from time to time to subsidise the operating costs of the villages, in offsetting any weekly fees paid by residents. This would ensure fair resident self-funding available to developing RVs while securing asset backing for the residents' loans, instead of the *Ponzi-like business model* currently operating where operators take all the loan funds up front in cash to do whatever they want with them. The accumulated unamortised DMFs and the RRDs held on behalf of residents' with their share of any accumulated interest should be paid out to the resident on exit by the Statutory Supervisor. There would be no need to delay payment as the funds would be held by the Statutory Supervisor, not the operator. The retirement villages' operator's income (earnings) should <u>only</u> come from the amortisation of the DMFs paid to the operator on a monthly basis. See also later Point 17.
5. Re "allocation of any capital gain on sale between the resident (or their estate) and the operator".
This suggestion is fraught with difficulty as in fact operators only make "capital gains" from the increases in their valuations of their operators' interest in the residents' ORAS that produce DMF income (earnings). No capital gain is made from recycling residents' refundable deposits (loans) RRDs.
Operators do not account properly for these loans and the external valuers do not properly value the RVs' operators' interests' in the ORAs, as they erroneously include increases in RRDs as income (earnings) in their DCF valuation models and thereby over-value their assessments – causing a "double-whammy" over-valuation

of operator's IPs when added together with the undiscounted carrying $ value of residents' loans reported as their investment properties (IPs).
Operators stopped offering such "capital gains" post 2004, after the introduction of the RV Act, as it incurs additional loans from new residents to cover the cash flow outgoings paid to exiting residents. They will strongly object to this recommendation, and will not agree to change their standard ORAs' terms in this regard, as it will greatly increase their loan liabilities. See Annexure B – *Research Opinion on the RV business model Rort* paper.
See Point 4 above – under the "self-funding" model proposed, the problem disappears! As no "capital gain" is made by operators in increasing their loans from residents, their only capital gain is in their value of their investment properties – when properly valued as for other investment property companies, trusts and residential accommodation providers – based on capitalised income from rents (which DFMs are claimed to be in operators' accounts).

6. Retirement village occupation and operation — Operators' income comes from four sources:

Development margin:

There will generally be a margin between the cost to develop the unit and amount for which the ORA is sold. This is income to the operator where they are also the developer. The margin is only the difference between the added value of the (properly valued) operator's interest, and the cost. It is not "income" but only a realised increase in the loan liabilities included in the investment properties' assets account, treated accounting wise the same as a "capital gain" in the operator's interest. It results in an increase in the cash flow at the date of issuing the new ORAs, in the same way as the reissuing of a new ORA to a new residents on "resale" after termination, both incurring an increase in the residents' loans. In most cases the "development margin" is greater than the new DMF% of the new entry payment - but not always.

Property revaluations:

Since the underlying land and buildings are rarely sold, revaluations of retirement villages are based on current expected cash flow from new residents' capital payments, or occupancy advances. Income from these unrealised revaluations is not treated as taxable income under normal income tax rules.
This statement is erroneous as these acknowledged "valuations based on current expected cash flow from new residents' capital payments, or occupancy advances. Income from these unrealised revaluations..." are fallacious as are based on erroneous valuation methodology as used by valuers of villages' operators' interests that leads to *double-whammy* valuation of error in the *grossing up* of the investment properties.
The matter raised here is quite technical and follows from the erroneous interpretation of "capital gains" as discussed in Points 4 & 5 above. The matter is returned to in Point 19 under the topic of "Business model viability and resident security depend strongly on revaluations" and specifically under Point 20 under property revaluations.

Interest-free use of capital payments and deferred management fees:

These advances are, in effect, interest-free loans to the operator and act as a wealth transfer that increases the longer the "loan" is retained. When payments are returned to the resident or resident's estate, the operator subtracts a deferred management fee (sometimes called a fixed deduction) – a further source of revenue.
This statement is misleading as these "increases" are only *new or additional loans* of which the residents pay up front as the DMF portion and it is not true that the DMFs are deducted from the cash refund returned to residents at termination. It is only the unamortised portion of the DMF (if any, e.g. before the contractual tenure period has expired) is returned to the residents in addition to the RRDs. However the accounting is different for tax purposes so that the operators can spread the DMF income over a longer periods of tenue and receive deferred tax credits.
As pointed out above, capital payments or occupancy advances (RRDs) consist of interest free loans that are not the operators' assets but loan liabilities and should not form part of the operator's interests or investment properties. In simplicity, they are not assets they can sell, but loans that must get repaid and are replaced by larger new loans. It is a fallacy to include these as assets, or their increases as capital gains and therefore do not really qualify for deferred taxable incomes. Assessing deferred tax benefits is based also on the fallacy that they are capital gains and therefore taxable, but is also fallacious, but the IRD has recognised these tax dodges as valid.

Services to residents:

Residents make ongoing payments, usually monthly, for the services they enjoy while living in the retirement village. These payments help fund village operating expenses such as power, the village van, garden maintenance and so on. Some operators fix the outgoings charge payable over the occupancy of a resident,

meaning an operator generally subsidises the resident from increased operating costs of the village over time. These may be accounted for as revenue but are subject to expenses, and the net additional income/loss contributes to the business's P&L account.
Weekly fee are a separate source of net income or loss, calculated to offset operating expenses as set out in the annual budget presented to the residents' AGMs as required by Regulation 9, and only some of the operators' trading (development and management expenses) are not recovered and written off to the operators' P&L account the balance being recovered from residents, that are supposed to match the actual village operating expenses.
In the bulk of older ORAs the village weekly fees include a contribution to a sinking fund as a long-term maintenance fund (LTMF) for major replacements of common.
With the longstanding issues of complaints from residents about the increases on weekly fee a number of the larger, and some individual private operators, have responded by granting fixed-fees-for life from entry, some linking increases to a maximum of CPI increase, and this has resulted in possible net income or net loss to operators' from these weekly fees. Some operators' accumulate these losses or profits and offset these against the next year's budget as a deferred catch-up; while other operators will write-off to their P&L and resulting losses and not carry them forward. Other service fees will provide revenue income less associated expenses and similarly result in income profit. There is no standard operational methodology for setting and charging weekly fees, and this adds to the confusion of residents and in making comparisons to other villages, particularly when operator do this in justifying high weekly fee increases. See Points 4 & 23, where these fees should be covered by the interest/other income earned by the resident's loans' funding of their villages.

7. "Consideration could be given to restricting any changes to larger, for-profit operators." NO, it must be a one-size-fits all regime, as smaller not-for-profit operator groups, and one village owner/operators are just as culpable, as the attached case study illustrates, perhaps even more of a scam "ripping off" their residents.

8. "Weekly fees continuing after termination: Recommends options to restrict the charging of weekly fees after a resident vacates a unit. One option is to reduce weekly fees by 50 per cent after three months and to stop them entirely after six months": Would be only a minor improvement as most existing RV's ORAs have a 50% reduction after 6 months, and stop after 9 months. WHY continuing any more than a month during in which residents do not use the facilities, otherwise the operator profits from the delay used for partial refurbishment or major conversion to higher profitable use?
In effect operators' use their existing residents funding exiting to finance any delays and expenses in upgrading and marketing of new ORAs to new replacement residents, until the cash flow comes in from the new increased loans on settlement. Otherwise operators would have to use their own money to settle with exiting residents and use their own money for the upgrading and reselling expenses as well, until the new loans refunded this expenditure.
Weekly fees after exit should be the liability of the operator from the date of their possession of the unit as they are the ones who profit from the future new DMFs not the exiting residents.

9. "To improve and standardise information about transferring into higher levels of care." Currently some transfer fees are very punitive and obligatory, probably unethical, even amoral! The operators gain increased income from new and/or higher DMFs and incur minimal transfer costs.

10. "Lack of a simple complaints system or authorised advocate. This paper recommends that a policy review includes a review of the complaints function to streamline and formalise a clear and simple process." For many, like the submitter, who has been the subject of complaints, or lodged unsuccessful complaints, the current policy, though an improvement on the original one, is still unfair and weighted against residents, particularly in resident-to resident complaints. Residents who are complained about may want to proceed to mediation are denied from doing so, as it is the complainant who controls this) or want to appeal are forced by the prospect of heavy unrecoverable costs to withdraw while under personal stress and facing financial losses. They feel cheated and abused by the operator's heavy and unethical pressure to drop the complaint and /or accept the unfair treatment doled out to them. Resident complainants who are dissatisfied with outcome are faced with huge fees for legal and mediation /appeal costs that force withdrawal of complaints and/or not pursuing justice on appeals. Operators have big pockets and employ expensive lawyers and who write threatening letters and operators pick on residents as "troublemakers" who they challenge and "abuse" by discourteous threats of termination for being annoying and causing the operator or other residents of "Harm or Distress" when they have only been pursuing their occupation rights under their ORAs!

11. "The interface of care and residence. Should also explore the extent to which the presence of care changes the nature of a retirement village from a housing proposition to a health proposition and whether the definition of a retirement village needs modifying to include a wider range of lifestyle developments." The recent advent of *care suites* (CSs) in aged care facilities in requiring ORAs for premium suites, produces *mixed business models* –

partly RVs and partly aged care homes. These come under different legislation and supervisory and regulatory regimes.
Financially they become even more of a complex a form of "stapled businesses" where by there is a cross-subsidisation within the business model's segments. The "care" business revenue (income) includes the DMFs and cash flow loans RRDs from their CSs' ORAs. The latter is an "investment property" business but does not appear to be accounted for as such. It is not transparent how these mixed business models' RVs account for these CSs' "revenues from DMF income" and their cash flow from new RRDs "loan liabilities" as "investment property" and account for capital gains.
Also, some stand-alone aged care facilities, without independent living village units, issue ORAs for premium CSs are not registered under the RV Act.
Additionally, for example, what role does the Statutory Trustee play, say in the case of a complaint against the operator from a care suite resident/patient – e.g. as to a matter related to the rights conferred under the ORA v. those under their care services contract?

12. "Care suites" (CSs) (Table on p.12) and as referred to above and hereunder. These should come under the same regulatory and financial reporting regimes, as these CSs' income and revenue is offset against care income and is not transparent in reporting. It is stated that "16-17% in care have an ORA" where "RV as owner (sometimes through a related entity)"and that "Residential Care Subsidy may be provided Income and means testing applies". From an examination of some of the FMCs financial reports there is different and confusing terminology and allocation of the "income" from these – where they have DMFs (e.g. Ryman call their cares suites' ORAs' "Refundable accommodation deposits" (RADs)[3] and their RRDs as "occupancy advances" and their DMFs as "management fees". These "incomes"may be recorded in their investment properties or in their aged care business segments – or even partly in one and the other. Where these residents obtain a Residential Care Subsidy it is most unclear where that subsidy is allocated – and if the DMF income and the financial reporting of the RRDs is subsidising the profits of the operators and contributing to their capital gains (which it appears is the case!) It is unclear if the Government subsidies are in effect passed through their profit and loss accounts to end up as their retained earnings.

13. 1.1 Legislative framework: The Registrar of Retirement Villages and the Retirement Commissioner's powers and duties" Experience shows that the Registrar does not adequately either monitor or regulate RV operators' financial reporting compliance, nor does the FMA of the large group of FMC listed RV companies (in fact their web site expressly says they don't). See https://www.fma.govt.nz/compliance/financial-reporting/ "Who needs to comply" ... "It does not include - brokers, QFEs, financial advisers, licensed auditors and audit firms, licensed independent trustees, retirement village operators or certain closely-held equity issuers." The result is an effectively unmonitored non-compliant and ubiquitous erroneous interpretation of the required application of the NZ IFRS 13 and NZ IAS 40 Reporting Standards as practised in New Zealand (and Australia) by the major listed RV companies as well as across the RVs' industry.

14. "The Act creates consumer protections. Creating a two-tier complaints and disputes resolution process." Experience demonstrates that Statutory Supervisors take the stand of operators in disputes against them; failing to apply natural justice in equally listening to complainants and respondents and in their obligatory initial referrals' reporting, failing to advice to *both* parties in inter-resident complaints. The expense of mediation and appeals, if residents can actually get to that stage without intimidation either direct by operators or indirect from that process's complexity and expense (especially if unsuccessful) is a huge disincentive to obtaining justice. The very small numbers achieving resolutions, and not giving up – is proof of that.

15. "Code of Residents' Rights (CoRR) [No 4, 5 & 6] …Right to complain and have a speedy process for resolving disputes, involve a support person, be treated with courtesy, not be exploited by the operator or staff, involve a support person, be treated with courtesy, not be exploited by the operator or staff." Experience shows that operators fail to do this, and no effective recourse to sanctions applies when they fail to do so.

[3] [redacted]'s COE, announcing their $44m HY Interim dividend in a Herald NZ 20 Nov 20 interview with Property Editor, [redacted], said "Refundable accommodation deposits [RAD] were being offered to [redacted] residents in a new concept only launched a fortnight ago", he said. "The scheme was different from a licence to occupy, which is the main method retirement villages use to "sell" properties to residents. It's a choice for the consumer. It is only for beds in the aged-care facilities. In some cases, the deposits will be hundreds of thousands of dollars" he said. "People will be able to decide whether to pay money on an ongoing basis or monetise that capital sum upfront which is then fully refundable to them. We are trialling it in Auckland first with the intention of other centres afterwards." If a resident wishes, they can pay a lump sum upfront for their care suite accommodation premium, instead of paying their accommodation on a weekly basis.

16. "The CoRR says residents have the right not to be exploited by the operator, people who work at the village or people who provide services at the village." The ORA structure lends itself to exploitation by the operators' business model being a **quasi-Ponzi scheme** – the way they take up-front residents' entry payments in cash, as interest-free money to invest in other villages, land purchases etc. and paying out dividends from the up-front loan receipts. This saves paying interest, compared to raising retail bonds that obligate paying interest and on other loans, overdrafts etc. while residents receive with no compensation for their loss of purchasing power of the terminating refund of the RRD portion, the money used for the latter payments comes not from the operators' cash assets but used concurrently from other new residents' loans on termination and reissuing of replacement ORAs. (See also Points 6, 18 & 19).

17. "1.2 The framework in action. Almost all residents pay a lump sum for a licence to occupy without receiving any interest in their unit or the land it sits on.
The money an incoming resident pays becomes fully available to the operator…"…"…It is repayable after the licence ends, once the vacated unit is relicensed, and the incoming resident's cooling off period has expired…."
But only the RRD loan portion, as below. See Point 16 above.
The above statement is erroneous and deceptive and common in the RV's operators Disclosure Statements, most ORAs and their promotional material and reports.
The reality is that DMF portion of the "lump sum" entry payments is rental (fee) income paid up-front in advance, as a refundable interest-free loan repayable as reduced by the amortisation period in the ORAs. In reality it never gets paid in full, and not often even in part[4], as most actual tenures exceed the contractual amortisation period in the ORAs. This is demonstrated by the operators' accounting transfers of loans to the income (revenue) account being spread over a longer period based on longer tenure assumptions, principally for income tax deferment purposes.
In respect of the balance of the RRDs interest-free loan portion of the "lump sum" entry payments, it is repayable as described above.
So why do operators not *consistently* also add the nominal cost of their bonds, when issued to their investment properties asset values? This would be demonstrably *wrong*, and not practiced under GAAP. So, surely, as the only difference between the bonds and residents' loans is that the loans are interest-free and payable on demand, so why not *also* follow that loan reporting and accounting practice for their residents' loans?
The inconsistency is germane to their contradictory practice of adding their RRDs to their investment properties asset values.

18. "… ORAs allow an operator to keep between 20 per cent and 30 per cent of that entry value lump sum originally paid, after termination of the licence (typically when the resident dies), usually without the vacating resident or resident's estate receiving a share of any increased value of the unit.
Operators call this deduction a deferred management fee (DMF) or fixed deduction, designed to reflect the benefit the resident received from their use of the facilities in the village during their time there. The fee includes a margin to help cover capital costs of supplying and upgrading the village and facilities for future residents."
Not universally, as most RVs operators charge an annual Long Term Maintenance Fund (LTMF) contribution as part of their weekly fees and many increase this annually supposedly to help pay for the upgrading and escalating replacement costs of common facilities.
However, the Operator recovers much of these maintenance and capital costs through tax-deductible expenses and non-cash depreciation allowances on their physical other separately recorded assets resulting in tax savings, which is a "rort". It is a ruse that residents pay for these operator's financial benefits in their weekly fees for their LTMF contributions. The benefit of this expenditure is to the enhancement of the operators' IPs when reissuing new ORAs rather than the lesser benefit of maintaining or improving their common use by existing residents.
Some operators no longer have a LTMF (as provided for under the Code of Practice) but they are generally where they have moved to *fixed fees for life* where the initial entry fee charged (added margin) reflects the increased present value of the operators' commitment to maintain the buildings and facilities.

19. Business model viability and resident security depend strongly on revaluations.
Residents' security for the repayment of their RRD loans is dependent on the validity of valuations of the IPs. Their assets (loans) will be at financial risk that the available cash flow received from new residents is lower than the full repayment due, if operators are solely reliant on that source of new residents' replacement loans. This risk of capital loss to existing residents occurs if those valuations reduce to below the carrying $ value of their loans if the replacement "resales" RRD portion of the entry payments from new replacement residents

[4] As a result of residents leaving under their early dissatisfaction with the village provisions, or death or transfer to aged care or assisted living units before their fixed tenure for amortisation ends.

reduce to below their existing RRDs. Then repayment is dependent on the existing cash resources of the operators, and if insufficient, then their ability to raise other loans, realise other assets, or to contribute more equity.
This will depend on future residential market trends and makes the latest new residents more at risk of capital loss than older ones.
Many ORAs provide that any loss on resale is deducted from their RRDs repayment on termination, especially where capital gain sharing is absent, which is an *unfair terms* in their contracts. Further, it is not clear how these "capital gains or losses" are determined, but in context, most ORAs indicate that it is the gross reduction in the 'new' resales price compared to the 'old' entry price. However, if so, that is clearly unfair and should be only the RRDs' % of the new entry price less the existing RRD, as the operator received the DMFs' % of the old entry price up-front, and have reinvested this in their businesses.
Some recent ORAs don't recover any capital losses. If there is such a "loss" it should be entirely at the operators' risk, and not the exiting residents'. The latter provision should be universally imposed by way of a CoP change that applies to all existing ORAs across the industry.
In the event of residential market "busts" – that have happened historically in a cyclical fashion in NZ, there will be a substantial reduction in the value of operator's interest and in the value of their IPs, also increasing the tenures adding to the <u>fair value</u> reductions, e.g. as happened in the last major NZ wide house (and investment) property market bust in and after 2007-9, when the housing market values fell by up to 40% to 50% in some North Island major urban areas, though the RBNZ national housing price index fell by approximately –10%.
If this happens again, this would have dire consequences for more recent residents with the rapid exponential rises in the house price indices that many economists and property market commentators are warning about.
The only reason RV companies have not collapsed is that the reported offsetting total residents' liabilities above of currently approx. $21bn (as at 31 December 2020) across the NZ industry is not required to be repaid until individual residents' termination events occur and they only have to pay the exiting residents when they get the new greater loans from reissuing new ORAs and receiving new residents' larger loan's cash. Hence the *Ponzi-like business model*. Hence the *Ponzi-like business model* in replacing "old" residents' investment loans with "new" greater ones, increasing their indebtedness to investors.

20. Property revaluations: [Part2: p.13.] This expands on the "fallacious valuation methodology used by valuers of villages' operators' interests in" Points 5 & 6 under <u>property revaluations</u> and the *double-whammy* effect on overvaluation of investment properties.
The issue here is fully covered in the Annexed *Research Opinion on the RV business model 'Rort' paper*.
The following précises the methodological error in the valuers' DCF model used, the $ value size of the errors and their resulting effect on the RV industry's IPs' valuations, reported profits and retained equity.

 The ubiquitous accounting practice of treating increases in residents' loans as capital profits is adopted by the external valuers erroneously as future revenue income (earnings) in valuing the operator's in their discounted cash flow (DCF) calculations. The present value (PV) of the RRDs component is added to the PVs of the future DMF cash flow income.
 Extensive research into and reconstructing how these operators' interests' valuations are carried out shows that between 49% to 51% of these valuations represent the PVs of the forecast new future DMFs and between 50% to 51% represent the PVs of the forecast increases in new future RRDs. This reflects the most common DMF/RRD 30%/70% entry payments sp it adopted [redacted]). However, this varies where other RVs have different DMF/RRD splits. [redacted]'s 25%/75% split indicates a higher value of RRDs of ±60%); while RYM's 20%/80% indicates an even higher value of RRDs of ±70%, which is logical given that the higher RRD% split the higher the PV of future RRDs would follow. Across the total RV industry in NZ the $DMF/$RRD valuation split is approximately 40%/60%.
 However, RVs should account for their IPs based on the capitalisation of <u>only</u> their forecast DMFs' income or revenue net profits that creates current asset value. Future loans and thus their increases are just that – liabilities, not assets.
 Thus a *double-whammy* false incorporation of the unrealised future RRDs' loan increases is discounted into the value of operator's interests, over-valuing them, on average, by approx. 60%.
 By *grossing up* the IPs by including the PVs of residents' RRDs forms a substantial part of the reported total over-valuation of their IPs. The *myth* of increased loans being "capital gains", as income adopted from the accounting practice of including the PV of the unrealised future residents' loan increases as income, turns their DCF methodology into a *mythology*. Thus the combined over-stated annual "capital gains" in the IPs are then transferred to the profit and loss account, ending up in falsely over-stating the retained earnings.

The financial extent of these ubiquitous erroneous financial reporting practices is shown in the Annexure 3 of the attached paper.
It analyses the six FMC RV listed companies latest HY & FY 2020 financial reports.

Their accumulated over-valuation of IPs due to including residents' loans amounting to $7.849bn for their 148 villages with 16,414 Units or $478K/ORA. This shows that just these over-valuations to be 98% of the analysed average entry prices of $490K/ORA which demonstrably shows the valuations are wrong! In addition, when the double-whammy over-valuations by including the PVs of the future RRDs of $3.414bn or $208K/ORA is also included, the resulting total over-valuations of the six FMC RVs amounts to $11.763bn or $717K/ORA.
If the latter combined fallacious over-valuations are deducted from the six FMC RVs total net assets excluding their residents loans (incorrectly included), then their total *real fair values* of their total enterprise values (Net Assets = Total Equity) of $6.768bn, less the over-valuations above of $11.763bn leaves a *negative* real *fair value* of their combined equity totalling –$4.995bn[5] across these six leading FMC RVs in the industry.
This is a result of the fundamental accounting errors and is a very serious measure of the effect of the fallacious application of the NZ GAAP financial reporting as practiced by RV companies in New Zealand.
When extrapolated on the average $K/ORA figures above over the current estimated 36,300 units RV units in NZ[6] affecting approximately 47,000 residents, the over-valuation represents approx. $26bn and the resulting a *negative real fair value* of their equity totals approx. –$11bn.
The above metrics give the measure of the massive total RVs' industry's financial rort.

21. Responsibility for monitoring how the RV industry interprets their reporting requirement.
This falls on those charged with monitoring RV operators and licencing their auditors; the RVs Statutory Supervisors (who annually review the annual reports and also certify them to residents' at their Residents' AGMs); the oversight of the FMA (for RV FMCs); the RV Registrar inspecting the accounts of all separately registered villages' annual reports when placed on the register's web page; and the oversight watchdog the role of the CFFC.

22. Reformation of the RVs' industry's current quasi-Ponzi scheme business model is overdue.
Reformation of how the RV industry interprets their reporting requirements under the Financial Reporting Act 2013 to correctly interpret and follow the Financial Reporting Standards is urgent. The security of their approx. 47,000 resident stakeholders' occupancy loans relies entirely on the validity of their valuations and are at financial risk, should the industry's business model collapse.

23. A new RV business model
As indicated under Point 4, there is a simple "fully resident funded" valid *fair RV business model* that would need little if any legislative or minor code or regulatory changes to require proper compliance with the IFRS *fair value* reporting standards and could be implemented independently of the other important matters recommended for review in the Whitepaper.
Basically, the RVs ORAs format is sustainable if the residents' entry payments are paid to the Statutory Supervisors and held as trustee securities and invested to earn interest or investment income by way of first mortgage loans back to their RVs, or alternatively by investing in their shares if FMC companies, or in their RVs bonds, which may require a statutory or regulatory change. Otherwise the Statutory Supervisors would be limited to investing in first mortgage securities, and other approved trustee investments. A proportion would need to be held in cash or cash equivalent funds to cover forecast repayments on residents terminations though this would be minimal as new entry payments would normally be expected to exceed repayments (as is the current model).
A larger proportion, but smaller total sum, of the DMF cash receipts would need to be also held in cash or cash equivalent funds to cover forecast payments to the RVs operators to cover the weekly fees (budgeted operating costs as currently provided for under the RV Regulation 9.
Little would change operationally, within the villages, except for new authorities and arrangements to reimburse the operator for management fees, and (if not already charged) for the development, refurbishment, of units (actually issuing and reissuing of ORAs to new residents). Refurbishing and selling/reissuing ORAs costs would be recoverable by operators from their new DMFs. There would be increases in the Statutory Supervisors' fees recovered from the increased DMFs 'income', at no cost to residents.
The accounting for each villages' and/their groups' residents' loan funds passing through the Statutory Supervisors trust account would need to be transparently regularly reported to residents.
Transition arrangements from the current business models to the new fair RVS business model would need to be prescribed by RV Regulations and Code of Compliance changes with the required minimum standards of IFRS reporting compliance and specified format of the RVs companies' financial statements' reporting issued.
Progressive refunding of residents existing RRDs could be expedited by replacing the residents' loans to the RVs

[5] Individually [redacted] –$0.379bn, [redacted] –$0.087bn, [redacted] –0.00022bn (listed in December), [redacted] –$2.453bn, [redacted] –$0.828bn and [redacted] – 1.248bn (delisted in October), Totalling =–$4.995bn.
[6] Being the JLL database @ June 2020 increased by the growth over the previous year of 4.8% p.a.

with offsetting transfers of loans from external lenders (banks, bond holders, share transfers and raising new mortgages) to the Statutory Trustees against the RVs investment properties (primarily the RVs operators interests and other assets –properly revalued) excluding the erroneous current GAAP inclusion of the residents' RRDs (as previously explained).

The ubiquitous erroneous current DCF valuation *mythology* and the current GAAP misinterpretation *myth* that residents' loans are the operator's assets and their increases treated as income earnings "capital gains" under IFRS and IAS reporting standards — requires changing. RVs need to properly financially report the real *fair values* of their operator's and the residents' interests in their ORAs. It is not the reporting standards that need changing but only the proper interpretation of and compliance with them

**Q 3** Do you agree that a full review of the retirement villages' framework should be undertaken? **Yes** / ~~No~~

**Q 4** If you replied No to Q3, are there any issues that still need attention? Yes / No **NA**

**Q 4.1** If Yes, please briefly describe the issue(s). **NA** (covered above)

**Q 5** Is there anything else you would like to say?

There is an urgent need to standardise the terminology use by all RVs in their occupational rights agreements, disclosure statements, correspondence and reporting to residents, the code of practice and regulations, and in their financial reporting. A standard template for their ORAs, in which their various terms and conditions of entry payment, DMF/RRD split can be entered, and universally used, with provision for specific necessary individual village bespoke conditions.

Currently residents referring to their old ORAs and since circa 2004 to their older LTOs – that have been amended by past changes in the COP and legislation (i.e. insurance), etc. – do not reflect their actual rights and obligations.

All villages should provide all residents with an up-dated *pro forma* copy of their updated ORA that uses the appropriate standardised terminology that matches their financial terms and conditions. This would be read alongside their existing ORAs (LTOs where still existing) reflecting the updated interpretation of their contracts' rights and obligations of both residents and operators.

There would be no need to reissue their agreements (or licences) as the legal costs would be preventative.

**Attachments**:

My additional detailed submissions relating to the referenced Q2 sections above are illustrated and expanded upon in the attached copy of a *Research Opinion on the RV business model Rort* paper and demonstrated in its Annexure 1 *RV Case Study* and its Annexure 2. *Q&As of FMCs CFOs re valuation of IPs* supported by the copy of the spreadsheet analyses in Annexure 3 *Summary of relevant components of the six latest FMCs RVs financial reports FY & HY to Dec 2020*.

The phantom Retirement Villages' investment property created out of the residents' loans are neither real nor provide asset backing for the very loans they are falsely presented as providing security for. This ruse is sanctioned by the auditors who created the deceptive accounting and financial reporting that is materially false, misleading and certainly not "financial statements that are free from material misstatement, whether due to fraud or error" as they certify – but is a lie.

**RESEARCH OPINION:— Debunking the retirement village industry's *business model* Rort**

By © [redacted], BCA, PGDipProp, DipUV, FNZIV (Life), LPINZ.

Investor and RV stakeholder resident, Member RVRANZ; Retired Registered Valuer & Property Consultant; Former Associate Professor in Property Studies ([redacted])

**The retirement village industry's rort**

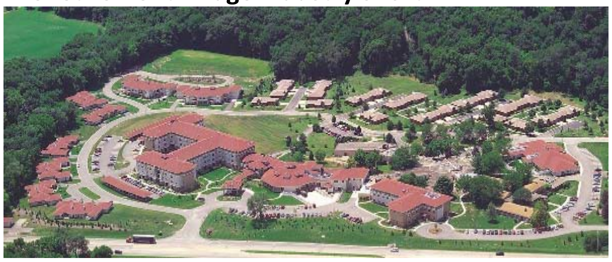

Image: Sharepointonline

The retirement village (RV) industry in New Zealand (NZ) and Australia (Aus) *business model* is a rort[1], by enticing the well-off aged to part with their equity (or a substantial part of it) from the sale of their freehold home in exchange for an occupational right agreement (ORA) and downsizing into a village's independent living unit, apartment or care suite.

**The RV quasi-Ponzi scheme like business model exposed**

In exchange for a cash-up-front *entry payment*[2] the residents obtain a superior lifestyle using the village's facilities they wouldn't otherwise be able to afford but few fully use. Typically 20%-30% of this payment is a prepayment fee (or rental) for this privilege accruing as a *deferred management fee* (DMF)[3] an amortisable interest-free loan accounted for as income over a defined period of the resident's occupancy (2 to 5 years).

Typically 70%-80% of the entry payment is a *residents' refundable deposit* (RRD)[4], also an interest-free loan, giving residents the right to occupy their living unit until they die or otherwise terminate their occupancy.

The operator uses these interest-free loans' up-front cash flows to pay for any village operational expenses, such as costs of sale, the cost of development (if a new unit), or on reissuing ORAs to new residents to repay the terminating loans, or buying land for future development of their villages, repaying bank or other loans or other unrecovered expenditure. Any excess cash flow in is held in the bank account as a current asset and also used to pay out the declared dividends.[5] The refundable loan amounts are not held in trust on behalf of the resident's potential loan repayments.

> The financial scam uses offsetting book entries to both add the new increases in residents' loans as debits added into their investment properties asset account, and add these increases in assets being *false* counterpart *capital gain* credits as income through the profit & loss account thus increasing the retained equity of the operator. This fraudulent financial deception balances the books, not offsetting the DMF and RRD liability that remains at initial "carrying" $ values in the balance sheet. [6]

Both the DMFs and RRDs are interest-free loans to the operator, until amortised or repaid on termination. This is the primary way operators fund their business, hence the term "resident funded villages".

*This source of debt is described* as "cash flow generated from the sale of ORAs" and "capital recycling".[7] This quasi-Ponzi like scheme business model is both misleading and fallacious as it is simply recycling debt liabilities by increasing loans from new entrants to repay exiting residents, meanwhile fleecing them by not

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[1] *Dict*.– Lexico: Australian, New Zealand *informal:* A fraudulent or dishonest act or practice, work (a system) to obtain the greatest benefit while remaining within the letter of the law; Collins: dishonest scheme, take an unfair advantage.
[2] Variously described as up-front payments, ingoing contributions (Victoria), loan-and-lease (or licence) arrangements.
[3] Or as deferred village contribution (DVC), unamortised deferred village contribution liability, departure fee/exit fee/deferred management fee (Australia) deducted at termination from the full entry payment (www.acsa.asn.au).
[4] Or refundable accommodation deposit, or refundable occupancy advance.
[5] Demonstrated in the Annexure 1 Retirement Village Case Study.
[6] Commonly defined in Statements of Accounting Policies as —"The residents' deposits comprise financial liabilities with a demand feature, and therefore, their fair value may not be less than the amount repayable on demand, which is the face value at date of occupation." The *fair value* would be to discount these as required for financial liabilities.
[7] See Ryman's *Retail Bond Presentation*, 26 November 2020, reproduced on page 3

paying interest as they would if borrowing loans from banks or by issuing bonds or having to pay dividends on raising new capital, along with its contingent IPO costs. It is “free” new loan money freely spent!

New village investment property assets are only created when the new money is actually invested in new physical property subject to the offsetting liabilities of issuing new ORAs and their associated residents’ loans. The resulting excess of the increased operators’ interest in new ORAs, when issued for new units, over the capitalised cost of these new developments is accounted for as a “development margin” treated as an unrealised “capital gain” accounted for as income through the profit and loss account.

*The RRDs plus any unamortised DMFs are typically refunded on terminations* due to the residents’ death, transfer to another unit or aged care facility, or other exit reason. The repayment typically makes no allowance for the depreciated purchasing power of the resident’s loan money over the actual period of occupancy. Where existing ORAs provide for a sharing of “capital gains” the amount is carried as an accumulating liability and paid out at termination, increasing the amount of the residual new increased loans held by the operator. These are usually only found in older ORAs that were based on a lower DMF %, compared to the replacement ORAs, but paid out less defined refurbishment costs; while effectively offset by higher RRD% loans due to the increase in the resale price.[8]

*In addition*, *the resident pays a weekly fee* [9] typically based on a budget and annually adjusted, (though some are now ‘fixed for life’,[10] or limited to CPI increases) – that usually includes a long term maintenance (LTM) fee being an allowance towards the cost of replacing the common facilities, buildings, plant, machinery and infrastructure via an annually increasing contribution to a sinking fund held and used by the operator for that purpose. This is also a rort as residents have already contributed their cost of the common facilities in their up-front payment of their DMFs (DVCs).

*But that’s not all! – Residents’ covenants under their ORAs include abiding by a set of village rules* restricting behaviour and conduct, and other obligations. This ubiquitously obligates them to pay weekly fees even after physically vacating their unit until a replacement residents’ new up-front entry payment is used to repay the exiting residents’ loans. [11]

**An underlying fallacy – whose assets are the residents’ loans?**

*The operators financially account for and report the residents’ RRDs* as <u>their</u> assets by *adding* their undiscounted entry or “carrying” $ values to the externally valued operator’s interests in their ORAs referred to as *grossing up* the value of their investment properties (IPs). Both sides of the balance sheet are grossed up, with the offsetting debits (to IPs) and as income credits (to P&L), as explained above.

This practice was first established in Australia[12] and then adopted in NZ.

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[8] Some legacy *licences to occupy* (LTOs) under Securities Act legislation prior to the enactment of the RV Act legislation retain a provision, on termination, for resident’s to share in the “capital gain” the operator enjoys on “resale”. This was discontinued as operators’ realised that the net increase in RRD loans from new residents were effectively a loss they would bear, as these proportionately increased their replacement new repayable loan liabilities.

[9] Or operating costs, recurrent charges/maintenance fees/service fee (Australia, https://www.acsa.asn.au/ ).

[10] A more recent marketing attraction – that is financially based on an offsetting higher entry price. Nothing is free!

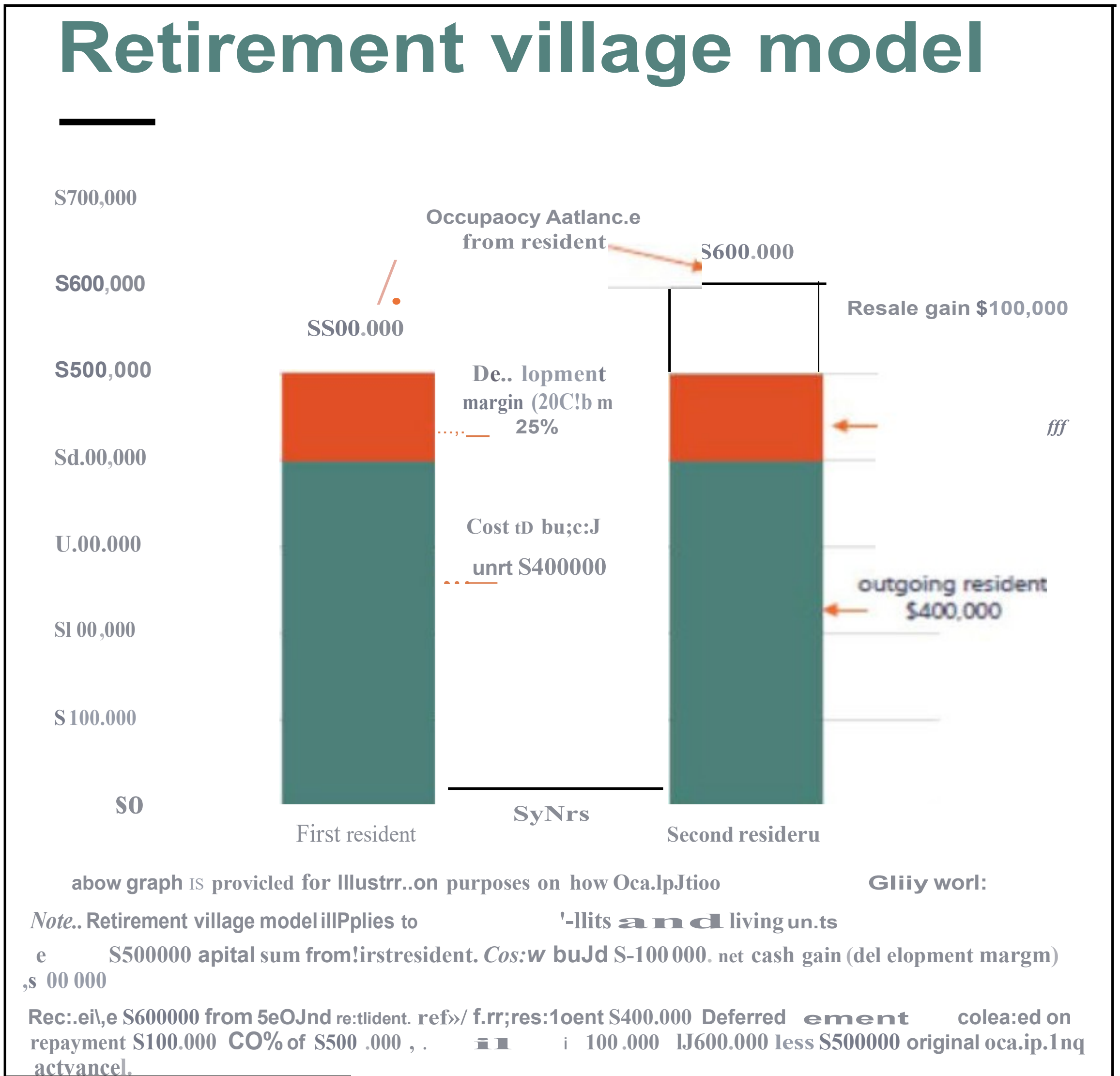
[11] This period and amount varies, being a contentious issue, raised in the CFFCs Whitepaper *RVs Legislative Framework – Assessment and Options for Change* 3Dec 2020 p.24

[12] The balance sheet term “gross up” originated in Australia, See Stockland - *Retirement Living Presentation* 6thJune 2007 and *Retirement Living Accounting Workshop*, 2 Dec 2009:

“The underlying substance of retirement village transactions, consists of two parts:

1. Development profits from producing and selling retirement village units; and
2. Gaining the right to annuity-style deferred management fee (DMF) income.
   •However, AIFRS additionally requires an amount equal to the value of retirement village units sold to residents, to be added to both sides of the balance sheet: [and results in the]
3. Creation of an asset - Investment in retirement village units
4. Creation of a liability - Obligation to residents
   •The effect is that both sides of the balance sheet are grossed up - All Stockland’s debt providers have agreed to exclude this gross up for the purpose of covenant ratio calculation”(June 2007, p.16)

A diagrammatic illustrat ion of the RV businessmodel, with an example is shown in the following Chart.




From [redacted] RBO presentation, 26 November 2020 p.43

The expla nat ion given is that it {fallacious ly) "avoids doub le-counting" but is just that. It is an accounting device[13] used to enable operato rs to {fallac iously) account fo r increasesin resident' loans as their capit al profi t s as if they were their assets. This also makes the ir balance sheets look bett er and show the resulting exponential gro wth charts in t heir IFRS re port ed pro fi ts, IPs and tot al (gross) assets and overst at ing their reta ined earnings in their published annual reports.

RV ope r ato rs erroneous ly account as revenue inco me the *annual increases* in t he IPs as *capital gains,* but these *include* the increasesin the loans and are thus fallaciously incorporat ed in their transfer to th e profit

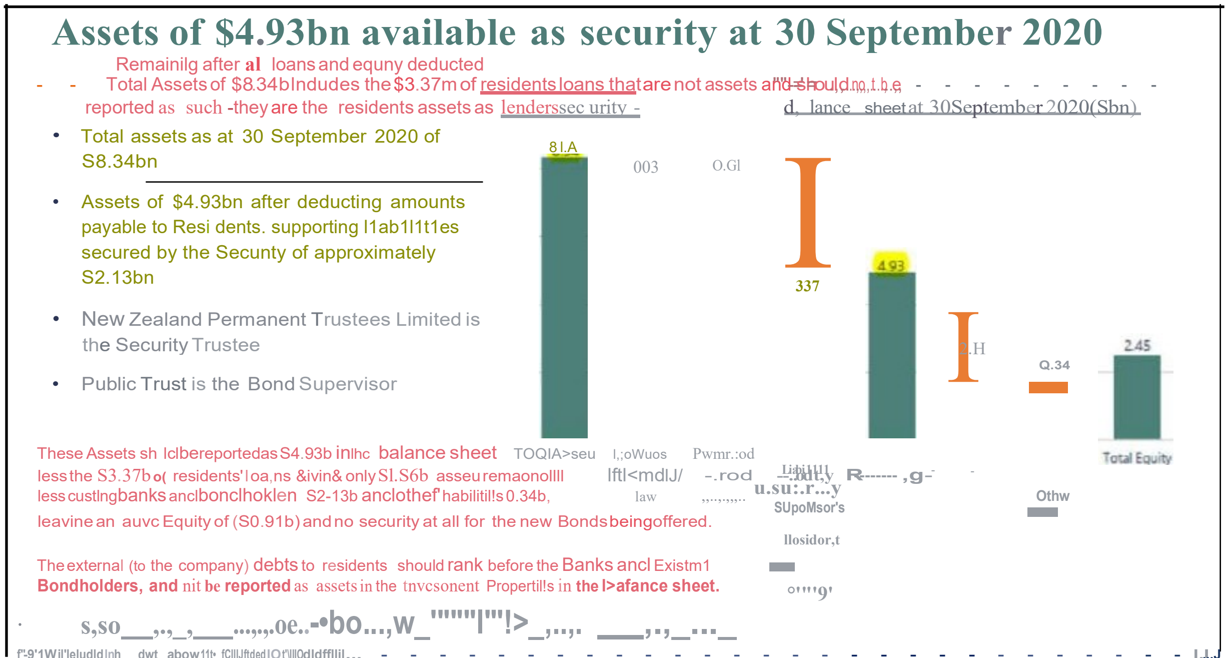
[13] This was adopted in NZ and iscurrent NZ GAAP financial reporting practice, i.e.- state they "gross up" the IPs in the inset text box explanation below from their 2020 FY AR at p.52: *Why do we adjust for the liability to residents?*

> In the CBRE Limi ted valuation the fair value of investment property includesan allowance for the amount that is payable by the Group to residents already in occupati on wit hin t he pr opert y. However, this liability to existing residents is recognised in the Group's Consolidated Balance Sheet (referred to as refundable occupation right agreements- refer to note 3.3). Accordingly, the Group adds this net liability to residents to the CBRE Limited valuation to "gross up" t he fair value of investment property and avoid double counting the liabil ity to residents.

and lossaccount. Consequently these are effectively carried forward to their retained earnings out of which dividends are paid.[14]

There are no capital gains in increasing the residents' loans as they are not the operators' assets (but the residents') and in any case they are *unearned* and thus create phoney profits as RVs apply the generally accepted accounting practice (GAAP) in both Australia and New Zealand.[15]

Charts are used to erroneously show the security provided by the total assets against debt as follows:




[redacted] *RBO presentation,* 26 November 2020 p.24, highlighting & comments added.

This misleading type of presentation was used to bolster - 's Retail Bond Offer (RBO) to raise $1S0M of bonds graphically fallaciously showing their total asset backing to cover the proposed debt,[16] in fact there was no net assets to cover this (subsequently fully subscribed) debt. Simi larly inIII 's BDO Presentat ion p.24, 28 January 2021 and - ' s Bond Offer Presentation p.19, 7 September 2020.

The author's seminal awareness that there was something specious in the RVs business model came in a seminar presentation by the RVA's hen in question time he was asked: Why the RV companies had changed their ORAs ng residents a share of capital gains on termination and resale of their ORAS? In repl .y, explained it was because operators *do not really make capital gains* but only create bigger loans, typically 70% of the resale price out of which they repay the exiting residents RRDs. In fact, he said, when they paid out a share of a "capital gain" they incur a loss of that amount - reflected in the increasedloan liability suffered!

[14] The NZ FMC RVs companiesrecognise the falsit y of reporting their NZ IFRS profits under GAAP in calculating, declaring and paying dividends that need cash available to do so. They variouslybasetheir dividend policy on a non-NZGAAP measure of *underlying* profit, limiting it to approx. 50% of an adjusted pre-tax NZ IFRS profi t that primarily excludes "unearned profit" - primarily the "capital gains" in future ORAs res ales' RRDs and other resulting tax adjustments.However this includesas "real ised" fair value movement the earned "profi ts" from "development margins' from salesof new retirement-village units, while including gains in the unrealised operator's interests. This under lyingprofit calculation isclaimed to be "because these items do not reflect the tradingperformance" (Ryman). Dividendsare then paid in cash primar ily from the net cash flows from new residents' loans.
[15] Known as New Zealand Generally Accepted Accounting Standards (NZGAAP) and Australian Generally Accepted Accounting Standards (AGAAP).
[16] The added comments show that no security at all existed for the new bonds being offered. This Chart's comments is further subject to the over-valuation of the operator's interest (est. @ $1.539bn) as discussedin the following topics.
[17] [redacted]

What is most relevant now is the basis for and content of the valuations used to establish the *fair value* of RVs IPs as the asset backing for their liabilities (residents' loans, bank overdrafts, bonds and other debt). *The issue* is whether the IPs should include the residents' loans as ubiquitously applied by the RV industry under current GAAP. This is trumpeted as showing the strength of the RVs' assets to cover their liabilities.[18]

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|---|
| *Grossing-up* the IPs is demonstrably erroneous accounting, as the operators' interests include both the net PV values of the forecast future respective RRDs' being *negative* and *positive* future cash flows, repaying existing by receipts of new residents' loans. Adding the non-discounted RRDs' carrying $ loan balances is neither of these opposing PV values, grossly over-valuing the IPs. |

**Fair value is misunderstood and misinterpreted under GAAP**

The International Financial Reporting Standards (IFRS) that RVs are bound to apply under legislation[19] to follow in their reporting define how assets are to be valued when applying IFRS 13 *Fair Value Measurement* and IAS 40 *Investment Properties*.

The definitions require assets (properties and the interests therein, subject to their residents' ORAs) to be valued on the basis of:

> "*fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date*"; and
> "*Investment property is property (land or a building—or part of a building—or both) held (by the owner or by the lessee as a right-of-use asset) to earn rentals or for capital appreciation or both*".

The ORAs create right-of-use assets interests held by residents; the counterpart of which is the operators' interests that are their assets. Only the latter interests are required to be valued to form the major part of their investment properties (IPs), along with property under construction, completed but unsold stock of units and vacant land held for future development. The added value of infrastructure (including common facilities), plant and machinery are all reflected in the value of the IPs – but GAAP accounting records a separate value for these on the balance sheet. This is another issue, to the extent they exceed the added value already in the value of the operators' interests they cause another *double-up* in over-valuation of the assets. Invariably these are separately included, on a depreciated cost basis, their added value is already reflected in, and the book value of these supporting assets should be deducted from the operator's interest in the ORAs, to avoid the double-up in asset value.

The *fair value* of RVs investment property is measured under IFRS 13 by what the village owners can sell their operators' interests, created by issuing ORAs, to other operators. These can be valued based on evidence of market sales of comparable villages and where evidence is limited (as is the practical case) on the basis of capitalisation of their net future income (revenue).

Where comparable sales evidence is limited or not available, valuers use discounted cash flow (DCF) methodology, which is well established and sanctioned by IFRS 13, under Section 41 (C) (i).[20]

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[18] This is illustrated in the reply the external accountant gave to a resident in the Annexe 1 Case Study's 2019 AGM in response to why the residents' loans were shown as assets in the financial report:
"**Resident 3**: In the amounts refundable to residents of $70,000,000. What is this and is it in an account that is interest bearing or is it just paper money and if it is money could the interest be used for some change in weekly fees?
**Ext Accountant**: I think the owners would like that to be sitting in a bank account. It is a total of all the money received as licences and has been used to pay for the villas and the land and the Lodge. No, the money isn't in cash. It would be nice if it was: What it shows is that there are actual tangible assets of $125,000,000 but actual liabilities owing back to Residents of·$70,000,000 so there is a lot in reserve." This is false - as the $125M includes the $70M loans, the balance of $55M is insufficient in reserve to cover their loans!
[19] In NZ the RV Act 2003 requires compliance with the NZ IFRS standards under the under the Financial Reporting Act 2013 and the Financial Markets Conduct Act 2013.
[20] This provides for a DCF approach: "an income approach (e.g. a present value technique that takes into account the future cash flows that a market participant would expect to receive from holding the liability or equity instrument as an asset)." In a property asset valuation a pre-tax income approach is used where incoming cash flow *income* is from rentals and offset by outgoing expenses, to provide net income discounted (capitalised) into present asset value.

This is, however, applicable only to "Liabilities and equity instruments held by other parties as assets", e.g. residents' ORAs as their assets, when applying DCF valuation techniques to their value as liabilities, i.e. in a transfer to another party to determine their (*negative*) value.

However, NZ IFRS 13 defines an income approach as a: "*Valuation techniques that convert future amounts (e.g. cash flows or income and expenses) to a single current (i.e. discounted) amount. The fair value measurement is determined on the basis of the value indicated by current market expectations about those future amounts.*"

When sales of RVs have taken place, e.g. three of [redacted]'s villages to [redacted], the market price paid was based on the assessed operators' interest plus other property assets not adding in their loans to residents, which were taken over as liabilities, not as additional assets, as implicit in the operators' interests as <u>currently valued</u>. The same exclusion should apply to the value of RVs' IPs in their financial reporting.

Where there are additional (non-investment property) assets transferred they are <u>separately valued and added</u> to the operator's interests (e.g. aged care businesses classed as property, plant and equipment; investment property under development; and land held for future development). These other assets are valued on a normal business going-concern or replacement cost basis, as provided under IFRS 13, and any annual *fair value* movement (increase or reduction) is credited (debited) to the <u>asset revaluation reserve</u> as part of the firms' equity.

**Valuation of operators' interests in their ORAs**

The operators' interests requires a *fair value* present value (PV) measurement on a discounted cash flow basis of the *positive* forecast <u>net</u> income (revenue) after reselling costs, from future DMFs on the recycling "churn" of new-for-old ORAs on termination of existing ORAs.

However as <u>currently valued</u> the operators' interests in their ORAs' consist of two PVs of DMFs and RRDs components:

1. **PVs of DMFs**
   The *positive net present discounted value* of the operator's cash flow <u>revenue up-front</u> (income) from future forecast (largely unknown[21]) gross DMFs <u>less</u> their selling and refurbishing costs.
   **PLUS**
2. **PVs of RRDs**
   A. The *positive** discounted future forecast (unknown) <u>receipts</u> of new RRDs from resales of ORAs;
   <u>LESS</u>
   B. The *negative* discounted future (largely unknown) <u>repayments</u> of old RRDs liabilities to exiting residents,
   <u>EQUALS</u>.
   C. The positive* *net present discounted value* of the operator's interest in their current RRDs.
3. The sum of the above steps, the PVS of DMFs and RRDs
   <u>**EQUALS**</u>
   The *net present value* of the **operators' interest in their ORAs**

*This ubiquitously assumes that the entry prices of ORAs will grow in line with the inflation of house prices in the villages' local real estate market that creates the above *capital gain* in the currently assessed operator's interests' methodology. Uncertainty is acknowledged by the valuers, and operators' financial reports provide restricted disclosure of the basis of their assumed discount rates and forecast growth rates and provide indications of the variation in value that would result from small variations in these assumed inputs.

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In the context of valuing RVs' IPs <u>only</u> the cash inflow from future DMFs is income reduced by resale expenses and "capital gain" from increased loan cash flows is <u>not</u> income but increased liabilities that should be excluded.

[21] Only the existing carrying DMFs' unamortised $ values are known which will require repayment if still not amortised on their exit, and should be valued on a DCF basis as for financial liabilities. This is only a small component of the future cash outflow offsetting the churn of recycling future new DMFs' cash inflows and their terminal value as capitalised and discounted to their PVs in the external valuers DCFs methodology.

However, they do not provide other essential data to check their valuations, such as the current ORAs prices assumed, nor any break-up of the PVs of the DMF/RRD components.

The addition of Step 2 above is disputed as both unnecessary and phoney as argued earlier in that increases in RRDS are not income nor revenue. Their future net receipts as cash inflows does not produce assets but increased liabilities and the above methodology is both faulty and misleading, leading to serious and complex errors.

Operators refuse to disclose how their valuers assess their operators' interest in their ORAs (and other relevant) information nor release copies of their villages' valuations, claiming that their valuers' contracts have non-disclosure covenants that prevent this transparency. See the casuistic responses of the CFOs of the five 2019 FMC RVs[22] to requests for even extracts of the valuations, and their replies to four fundamental questions about their financial reporting.

Both of the gross DMF and RRD components are accounted for as residents' loans, the DMF income portion is amortised nominally over the contracted deferment period (as taxable income), but for accounting as revenue is deferred over the operator's estimate of likely tenure – that spreads out income tax liabilities and creates deferred tax credits as reported in the IFRS net profit. This is despite that the DMF cash flow revenue is all received up-front and used immediately, along with the increased RRDs loans by the operator for their business operating purposes, and in calculating initial development profits, and profits on resale of ORAs.

There is no requirement (or need) to value the residents' *fair value* of their right-of-use assets' interests and their RRDs and DMFs. These are recorded in the operator's account under GAAP at their undiscounted and un-amortised (for DMFs) *nominal* (or carrying) original ingoing prices. It is these *nominal* $ values that are recorded *as liabilities* in the operators accounts and reported as such in their financial reports, despite them being financial liabilities as previously noted.

These *nominal* RRDs (and in some operators' accounts also the unamortised DMFs) values are used to add to the reported fair values of the operators' interest to record their IPs as *fair values* (which is fallacious, as demonstrated).

After transition to IFRS standards from prior GAAP to post 2003 current GAAP accounting, most (if not all) operators initially included both these RRD and DMF as their assets, however including the latter (DMFs) is in breach of specific requirements of NZ IAS 40 Para. 50 (c) that precludes adding back the DMFs as they are "prepaid or accrued operating lease income". Currently in NZ, [redacted] (of the large RVs groups) continue this erroneous practice, as well as many of the non-FMC RV companies.

All RV operators ubiquitously add the residents' RRDs to their operators' interest' to arrive at their IPs, however the example in IAS 40 Para. 50 (d) is intended to illustrate this Section's use where an operator leases premises (as a lessee) which are in effect subleased out under ORAs. In these cases the value of their *leasehold* right-of-use asset under their financial liabilities IFRS 16 now requires recognising and offsetting of all their leasehold assets and leasehold liabilities to effectively value their net leasehold interests as part of their IPs and other plant and machinery facilities' assets. In NZ, FMC RVs [redacted] and some other RV groups have a significant number of leased facilities where NZ IFRS 16 is now being applied.

The principle must therefore apply equally to residents' RRDs interest-free loans under their ORAs which are a form of licences to occupy (LTOs) or leases where the IAS 40 Para. 50 (c) prerequisites apply in that [Comments re criteria and interpretation added]:

> "… the fair value of investment property held by a lessee as a right-of-use asset [i.e. licensees' ORAs] reflects expected cash flows (including variable lease payments that are expected to become payable)" [is not met, as loans are not lease payments – as are DMFs dealt with above]; ….

[22] See Annexure 2 for copies of Four Fundamental Questions to the five 2019 FMC RVs groups' CFOs and their answers regarding these (and other) financial reporting matters, where in response to Qs. III & IV access to these valuation or extracted data were rejected on the grounds of confidentiality.

> "… Accordingly, if a valuation obtained for a property is net of (i.e. does not include) all payments [cash outflows] expected to be made, it will …" [as the DCF present value calculation of the operators' interest in the ORAs includes both forecast discounted future cash inflows (new replacement loan receipt payments) offset by discounted future cash outflows (contractual loan repayments), result in the operators' interest being inclusive of the present value of the net increases in the "fair values" of the refundable residents' deposits, then it will not] "… be necessary to add back any recognised lease liability, to arrive at the carrying amount of the investment property using the fair value model."

Whilst some of the FMC RVs groups state that their ORAs are leases, they do not value them as lessor's interest under the application of NZ IFRS 16. Therefore, the GAAP accounting for IPs under NZ IFRS 13 should exclude the offsetting double-counting of residents' RRDs as their assets, and only include their residents' *fair value* of their RRDs' as liabilities properly valued under NZ IFRS 16.

The resulting reduction in the IPs' asset values should be debited against the accumulated increases to date in their retained earnings with offsetting deferred tax adjustments. See following topics and the later **Reformation of RVs' industry financial reporting overdue.**

**Fair value of RRDs**

*Only one* of the six NZ listed FMC RV groups' companies in 2010 reports the *true fair value* of their existing RRDs financial liabilities to residents (only part of 1. B. above), showing the present discounted value of these forecast known future loan repayments amounts, (being only part of the *negative* component of the external valuer's operator's net interest above). However the timing of their repayments is unknown and thus is based on the future timings in the external valuer's valuation forecasts. Summerset shows this as a discount of 30%.[23] This is unable to be analysed or checked from the limited disclosure of the assumptions needed to calculate this. Only access to the valuation reports or additional disclosure of the necessary data to do so would enable the verification of the operators' true interests and the composition of the IPs reported fair values.

This disclosure is only the PV of these existing liabilities to residents, over their forecast term to repayment, compared to their carrying $ values (original, undiscounted) entry RRDs values recorded in their liabilities. It is quite different to the PV of future new RRDs from new replacement residents after expiry which is based on future growth in new entry payments and their future capitalised terminal values at the end of the valuers' forecast term of their DCFs (CBRE 20 years and JLL 25 years), as their operators' interests.

It is the latter PVs that the valuers include in their operators' interests valuations as a *positive* value that is offset by the *negative* PVs of known existing RRDs and unknown future RRDs repayments – being the net operators' interest in the RRDs. Implicit in this methodology is the assumption that existing RRDs have an inherent requirement to be replaced by new residents' loans – whereas this is in fact only a real option exercisable by the operators not to reissue the ORA. They can and often do not exercise this. Recent examples include buying back the RRDs loans at exiting or earlier by negotiation to refurbish, remediate damage, or convert the properties into more superior units. As argued below, these are PVs of RRDs "capital gains" being increases in loan liabilities and should not be included at all as future revenue income.

*However,* as expressed above, the operators' financial interests in their ORAs consist of only the first DMF component 1. of the above discounted future net income from forecast future new DMFs, after selling and other non-recoverable costs[24] that represents the *fair value* of the operator's interests. As also previously described, under NZ IFRS 13 and NZ IAS 40 *only the increase in the operators' interest* can be regarded as

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[23] [redacted]'s FY report at 31 Dec 2020 p.67 (and prior annual reports) disclose under their *Financial Liabilities* Notes, the *negative* carrying value of residents' loan liabilities of $ 1,520,298,000 and a *fair value* of $ 1,082,943,000. This is a 0.712323 PV factor, a discount of 30% based on the external valuer's operators' interest value component as "The fair value of residents' loans is based on the present value of projected cash flows. Future cash flows are based on the assumption that the average tenure periods are those disclosed above and have been discounted at 14% (2019: 14%)." The PV factor reflects the forecast timing of the negative cash flows to repay existing ORAs loans.

[24] Such as refurbishing and upgrading the unit to a re-saleable standard that enhances its value.

capital appreciation or capital gain (CG), that results from the discounted future DMFs income not from the discounted increase in the future loan liabilities RRDs repayable to future resident's.

Though five of the six NZ RVs FMC companies report their externally valued operators net interest in their ORAs, none show the composition of the operators' interest; and one ([redacted]) doesn't even disclose their external valuation of their operators' interest, only their total IPs described as valued by their CBRE valuer.

**Fallacious double-whammy also adopted by valuers of villages' operators' interests**

*Consequently that's still not all! – The ubiquitous accounting practice of treating increases in residents' loans* as *capital profits* is adopted by the external valuers erroneously as future revenue income (earnings) in valuing the operator's interests (as in 2. C. above) in their discounted cash flow (DCF) calculations. The present value of this RRDs component is added to the present value of the future DMF cash flow income, as in Step 2. above.

This methodology is known in Australia as the DMF/CG valuation methodology.[25]

However, RVs should account for their IPs based on the capitalisation of <u>only</u> their forecast income or revenue net profits.

Extensive research into and reconstructing how these operators' interests' valuations are carried out shows that between 49% to 51% of these valuations represent the PVs of the forecast new future DMFs and between 50% to 51% represent the PVs of the forecast increases in new future RRDs. This reflects the most common DMF/RRD 30%/70% entry payments spl it adopted [redacted]). However, this varies where other RVs have different DMF/RRD splits. [redacted]'s 25%/75% split indicates a higher value of RRDs of ±60%); while [redacted]'s 20%/80% indicates an even higher value of RRDs of ±70%, which is logical given that the higher RRD% split the higher the PV of future RRDs would follow. Across the total RV industry in NZ the $DMF/$RRD valuation split is approximately 40%/60%.[26]

Notwithstanding, the above is not really an issue in view of the fundamental accounting principle that RVs should account for their IPs based on the capitalisation of <u>only</u> their forecast DMFs' income or net revenue profits that creates current asset value. Future loans and their increases are just that – liabilities, not assets.

The issue if that a double-whammy false incorporation of the unrealised future RRDs' loan increases is discounted into the value of operator's interests, over-valuing them, on average, by approx. 60%.

This *double-whammy* <u>together</u> with the *grossing up* of the residents' loans forms a substantial part of the reported total over-valuation of their IPs.

In respect of their capital gains or asset's *fair value* movement, that requires the inclusion of <u>only the</u> *fair value* increase in the IPs as only the capital gain increase in the operator's interests in their future DMFs income.

The *myth* of increased loans being income earnings as *capital gains* adopted from the accountants in the valuers' practice of including the PV of the unrealised future residents' loan increases in their DCF income property calculations as in Step 2.PVs of RRDs above, turns the DCF methodology into a *mythology*. As previously referred to, NZ IFRS defines an income approach as "that convert future amounts (eg cash flows

[25] Also valued by the directors or management (as allowed), and when financial consultants assessing the RV's enterprise values for determining the RVs' share price in takeovers in NZ, e.g. [redacted] in the MET Notice of Meeting and Scheme Booklet 3Sept20, Annexure [redacted] Partners Independent Adviser's Report Aug20; and in Aus., e.g. in the RV [redacted] Group's takeover bid by [redacted]) valued by KPMG Financial Advisory Services (Australia) Pty Ltd, in their Independent Expert Report and Financial Services Guide 27 September 2019, p.64. in [redacted]'s Group's Scheme Booklet p.125, in valuing their retirement villages' as:

> "…the value of Established Business on the basis of a Discounted Cash Flow (DCF) methodology. The cash flows include DMF/CG income with respect to units leased or sold, as well as the cash proceeds from the sale of existing buyback stock and subsequent DMF/CG income on that stock once it is sold or leased"

[26] See case study where these different calculations and DMF/RRD splits are set out in a table with the range indicted for different ORA terms.

or income and expenses) to a single current (ie discounted) amount." Capital gains result from valuations, and cannot be themselves measured and discounted into capital value – that circularity is erroneous.

The fallacy of including the capitalised value of the increase in the net present discounted value of the operator's interest in their current RRDs and the increase in the non-discounted carrying value of existing residents' RRDs causes a double-whammy erroneous increase in RVs' unrealised and unrealisable profits.

Thus the combined over-stated annual "capital gains" in the IPs that are then transferred to the profit and loss account, ends up in falsely over-stating the retained earnings.

This creates exponential increases in reported values of IPs and thus their profits, enterprise values and their stock market capitalisation leading to market pricing of their shares being grossly over-valued.

In RVs having no aged care facilities, these combined false components of the value of the IPs create the substantial *phoney* profits from their over-valuations, as the other property is only a minor portion (if any) of total assets. This is demonstrably shown in Annexure 1 *RV Case study*, and in the financial consequences as follows.

**The financial extent of these erroneous ubiquitous financial reporting practices**

*The **six** FMC RV listed companies on the NZSX latest financial reporting* during 2020 shown in Annexure 3[27], analyses their accumulated over-valuation of IPs due to including residents' loans amounting to $7.849bn for their 148 villages with 16,414 Units or $478K/ORA. This shows that just these over-valuations to be 98% of the analysed average entry prices of $490K/ORA which demonstrably shows the valuations are wrong!

In addition, when the double-whammy over-valuations by including the PVs of the future RRDs of $3.414bn or $208K/ORA is also included, the resulting total over-valuations of the six FMC RVs amounts to $11.763bn or $717K/ORA.

If the latter combined fallacious over-valuations are deducted from the six FMC RVs total net assets excluding their residents loans (incorrectly included), then their total *real fair values* of their total enterprise values (Net Assets = Total Equity) of $6.768bn, less the over-valuations above of $11.763bn leaves a *negative* real *fair value* of their combined equity totalling –$4.995bn[28] across these six leading FMC RVs in the industry.

This is a result of the fundamental accounting errors and is a very serious measure of the effect of the fallacious application of the NZ GAAP financial reporting as practiced by RV companies in New Zealand.

When extrapolated on the average $K/ORA figures above over the current estimated 36,300 units RV units in NZ[29] affecting approximately 47,000 residents, the over-valuation represents approx. $26bn and the resulting a *negative real fair value* of their equity totals approx. –$11bn.

The above metrics give the measure of the massive total RVs' industry's financial rort.

**Auditors created this fallacy in advising RV companies at transition from the previous GAAP practice**

*Auditors continue certifying as true and fair* these accounts and that *"the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error"* as complying with NZ GAAP and in compliance with the Reporting Standards as ubiquitously but erroneously practiced on both sides of the Tasman. They failed initially in their advice to RV companies to correctly interpret and apply the required NZ IFRS 13 and NZ IAS 40 in respect of the accounting for residents' loans.

They advised the initial creation of the new IPs accounts from apportioning the existing revaluation reserves from conventional property valuations between the aged care business facilities and the retirement village business in their schedules prepared for their clients' initial adoption of the new

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[27] Annexure 3 is a pdf of a summary of the relevant components of the six latest FMCs financial reports for the FY & HY up to Dec. 2020 extracted from an Excel spreadsheet analysis.

[28] Individually: [redacted] –$0.379bn, [redacted] –$0.087bn, [redacted] –0.00022bn (listed in December), [redacted] –$2.453bn, [redacted] –$0.828bn and [redacted] –$1.248bn (delisted in October), Totalling =–$4.995bn.

[29] Being the JLL database @ June 2020 increased by the growth over the previous year of 4.8% p.a.

standards. Theyrecalculated of the *fair value* of existing IPs assets by adding to the prior retirement village investment property book values their existing unreal ised capital gains transferring these from the revaluat ion reserves; but also added the undiscounted(carrying value) of the residents' RRDs and in many cases also the unamortised DMFs. Clear evidenceof this is found in the annual reports as at transit ion to IFRS standards, for NZ examp les,the two listedRVs' groups - and- annual reports.[30]

> The phantom Retirement Villages' investmentproperty created out of the residents' loans are neither real nor provide asset backing for the very loans they are falsely presented as prov iding security for. This ruse is sanctio ned by the auditors who createdthe decept ive accounting and financial reporting that is materially false, misleading and certainly not "financial statementsthat are free from material misstatement, whether due to fraud or error" as they certify - but is a lie.

Other non-listed RVs followed suit, and when new mergers were created to list new FMC RV groups the variousprior adjustments were incorporated. Where new villages and their group were created post 2004, they followed the establishedNZ GAAP in their accounting and financial reporting.

**Reformation of RVs' industry financial reporting overdue**

*Reformation of how the RV industry interprets their reporting requirements* und er th e Fin an cial Repo rt i ng Act 2013 to correctly interpret and follow the Finan cial Report ing Standards is urgent. The security of their approx. 47,000 resident stakeholders ' occupancy loans relies entirely on the valid ity of their valuations and are at financial risk, should the industry's business model collapse[31].

The only reason RV companies have not collapsed is that the reported total residents' liabilities of approx. $21bn (as at 31 December 2020) is not requi red to be repaid until after individual residents' termination events occur, when (and if} reissuing new ORAs. Henc e the *Ponzi-like business model* in replacing "old" residents' investment loans with "new" greater ones, to pay out exiting residents, by increasing their indebtedness to resident investors in fundingthe operators' businesses.

*The responsibility for mo nitoring and reformation of how the RV industry interprets their reporting requirements falls on those charged with monitoring and licencing* the RV opera t ors and their auditors,[32] the RVs Statutory Supervisors(who annually review the annual reports and also certify them to residents' at their Residents' AGMs); the oversight of the FM A (for FM Cs RVs}; the RV Registrar inspecting the accounts of all separat ely registered villages' annual reports when placed on the register's web page; and the oversight watchdog the role of the CFFC.

**Fundamentaldouble-entry accountingprinciplesmust apply**

*The fundamental accounting and valuation issue raised in this research opinion* is that the current NZ GAAP applied by the RV indu stry is demonstrably fallacious:

As indicated before, the RVs' fin ancial reporting should solely show the residents' RRDs as liab ilit ies,while the IPs should solely contain the properly valued operators' interests in their ORAs as discounted futu re DMFs, plus other propertiesunder construction, unsold stock on hand at cost and land held for future use.

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[30].. 's FY 2008 NZ IFRSTransit ion Note 27 pp. 44-49; and- FY 2008 NZ IFRSTransition Notes 3,9,18,33.

[31] This issue is raised in the CFFC's Whitepaper (supra) p.29, under *Business model viability and resident securit y depend strongly on revaluation,s*i.e. if valuationsof t he IPs reduce to below the carrying value of their loans due to the "resales" to new replacement residents producing new RRDs belo w their existing RRDs. Even more so, as many ORAs pro vid e that any capit al loss on resale isdeducted from their RRD refunds on termination (some recent ORAs don't recover any capital losses). This will depend on future residenital market trends and makes the latest new residents more at riskof capital loss than older ones.
In the event of residential market "busts" - that have happenedhistorically in a cyclical fashion in NZ, there will be a substantial reduction in the value of operato r's interests and in the value of t heir IPs, also as a result of increasing the effective tenures adding to the fair value reductions, i.e. as happe ned in the last major NZ wide house (and investment) property market bust in and after 2008-9.

[32] As already noted, auditors set up the RVs' fi nancial reporting accepted practice during the change from prior to the 2004 NZGAAP transition to NZ IFRS and NZ IASstandards.

The resulting accumulated false profits and deferred tax benefits need readjusting and the over-statement of accumulated "capital gains" in the IPs reversed out of their retained earnings.

This reformation of the RV industry's quasi-Ponzi like business model is overdue to make it legitimate and sustainable.

Fundamental double-entry accounting principles must apply – loan liabilities (credits) are opposite to assets (debits) on the balance sheet; and capital gains arise from increases in property assets (IPs) resulting from valuations capitalising forecast trading (operating) net income from (DMFs), not created out of increases in new loans (RRDs) that simply produce new cash inflows with offsetting liabilities.

*This accounting treatment reform will cause consternation amongst directors, shareholders and their investors* who will face the reality of the reduced (or even absence of) true *fair value* asset backing to their shares, loans and bonds.

Those RVs that are "stapled" together with their aged care business segments will probably fare better, due to their separate but segmented going-concern assets' profits and increasing valuations of their other property assets reflected in their revaluation reserves.

These other business segments also requires separate scrutiny of the proper interpretation of the standards applying to their valuation methodologies employed, and in particular their accounting for and financial reporting for their care suites' ORAs.

Strong resistance would therefore be anticipated from those *investment stakeholders* in the RV industry to applying such *correct*, *honest*, *true and fair* accounting practice in accordance with the overriding IFRS and IAS reporting standards.

**Reformation of the RVs' industry's business model**

*Reformation of the RVs' industry's current quasi-Ponzi scheme business model is overdue*. One way would be to require the operators pay a reasonable interest rate on the residents' loans (both DMFs and RRDs) comparable to interest rates paid to operators' bond holders. Treated like trust funds with the residents' loans held by the Statutory Supervisor[33] this interest income should be used to pay for the residents' operating costs of the village by offsetting the weekly fees charged. Then the model would be a fairer "resident funded" villages model. The interest charged and credited to the residents' trust fund would be taxable deductible in the accounts of the operator. This could be achieved by a Code of Practice amendment, and/or Regulation changes.

The ubiquitous erroneous current DCF valuation *mythology* and the current NZ GAAP misinterpretation *myth* that residents' loans are the operator's assets and their increases treated as income earnings "capital gains" under NZ IFRS and NZ IAS reporting standards requires changing. The financially reporting needs to show the respective real *fair values* of the operator's and the residents' interests in their ORAs. It is not the reporting standards that need changing but only the proper interpretation of and compliance with them.

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[33] Each NZ the village operator's company provides a first ranking mortgage to the Statutory Supervisor over all land and buildings owned containing units and the land on which a care centre of any NZ Village Company is located. Each Australian operator's company provides each resident with the benefit of a Statutory Charge over the village's land to secure that company's obligation to repay the resident's loan paid. This charge ranks ahead of the security interest held by the Security Trustee over the assets of the village Company.

## Annexure 1.

## RV Case Study

The following case study is highly relevant to the issues raised in this paper in that it is typical of many completed retirement villages consisting of only independent living units, and no other aged care business income/assets.

Thus it is concerned with and highlights the practical and financial issues raised in the foregoing research opinion. It is not complicated by the often larger and dominating aged care business segment on its revenue, expenses, staffing, care of dependent residents and their management.

The case study village is independently owned and operated by a "look through" private company for tax purposes, the shareholders being a private holding company ultimately owned by various family trusts.

It is in a NZ North Island provincial location, consisting of approximately 200 independent living units, consisting of mainly villas (75%); apartments (18%), and a small number of serviced apartments (7%).

There is an adjoining aged care hospital separately leased by the holding company to a national aged care provider, into which residents have limited priority access. It was commenced in 2003 and completed in 2016, promoted as a lifestyle village, with superior common facilities.

It clearly illustrates the RV business model as it relates to only the RV business, and highlights the false and highly misleading effects of the current adherence to the NZ GAAP accounting as practiced both in New Zealand and in Australia. As it is fully completed and all costs of development recovered from past DMF and RRD cash flows, it results, in this case study, to the operator now "ripping off" the new net cash flows from reissuing ORAs' entry payments as dividends being paid out from the accumulating false profits transferred to retained equity.

No surplus cash assets are retained other than required for working capital, and to pay for necessary capital works from time to time, when the long term maintenance sinking fund is insufficient to maintain and replace worn out common property and infrastructure, requiring the operator to inject the cash required from new residents' loan cash inflows.

### Analysis and reconstruction of the current external valuers' RVs operators' interests

Extensive research into and reconstructing how these operators' interests' valuations are currently done by the RVs' operators' external valuers has been carried out, using both DCF methodology and the author's ARRY real value investment valuation models.[34] This has confirmed that these different models give very similar present values (PVs) of the split between the DMFs/RRDs component of the entry payments.

Sensitivity analysis of the case study village check valuations as at 31 March 2020 also confirms that the PVs of the DMFs/RRDs split of the total operators' interests' value is close under the alternative valuation methodologies. The split does not change due to changes in the discount rate used, and in not materially affected by changes in the growth rates, forecast tenures or resale expense assumptions.

A summary of the results is shown in the table below setting out the different ranges in the current operators' interests value methodology due to the different entry payments DMFs/RRDs % split on the PVs of the future $DMFs/$RRDs split of the total valuation.

This has been used in the analysis of the RVs industry's financial reports in Annexure 3.

| DMFs/RRDs split | 20/80 | 25/75 | 30/70 |
|---|---|---|---|
| PVs of $DMFs | 32%-34% | 41%-43% | 49%-51% |
| PVs of $RRDs | 66%-68% | 57%-59% | 50%-51% |

The case study follows, and is self-explanatory.

[34] Still publishing real value property investment papers – on the web: [redacted]

[redacted]

# Annual Report

# for the year ended 31 March 2020

**Contents** **Page**

[redacted]

**Directory as at 31 March 2020**

| | |
|---|---|
| **Nature of Business** | Property Developers, Owners, Managers of Retirement Village |
| **Incorporation Date** | 28 November 2000 |
| **Registered Office** | [redacted] |
| **Directors** | |
| **Auditors** | |
| **Accountants** | |
| **Bankers** | |
| **Solicitors** | |
| **Statutory Supervisor** | |

[redacted]

**Annual Report for the year ended 31 March 2020**

## Directors declaration

In the opinion of the directors of the financial statements and notes, on pages 3 to 13:

- comply with New Zealand generally.accepted accounting practice, and fairly present the financial position of the Company as at 31 March 2020 and the results of Its operations and cash flows for the year ended on that date;
- have been prepared using appropriate accountihg policies, which have been consistently applied and supported by reasonable judgments and estimates.

The directors believe that proper accounting records have been kept whlch enable, with reasonable accuracy, the determination of the financial position of the Company and facilitate compliance of the financial statements with the Financial Reporting Act 2013.

The directors consider that they have taken adequate steps to safeguard the assets of the Company, and to prevent and detect fraud and other irregularities. Internal control procedures are also considered to be sufficient to provide a reasonable assurance as to the Integrity and reliability of the financial statements.

The directors are pleased to present the financial statements of [redacted] for the year ended 31 March 2020.

## Activities

The business of the Company Is that of property development, ownership and management Includlng the issue of occupation licences/occupation right agreements. The nature of the Company's business has not changed during the period under review.

## Directors' Interests

The parent company has advanced funds from the company al 31 March 2020 as detailed in Note 12(b).

## Use of Company Information

The Board received no notices during the period from directors requesting to use Company Information received in their capacity as directors which would not have been otherwise available to them.

## Share Dealing

There have been no share dealings this financial year.

## Remuneration and other benefits

The directors received no remuneration during the period.
The following amount of employeesreceived in excess of $100,000 remuneration, shownIn $10,000 bands.
**$130,000- $140,000, 1, $190,000- $200,000, 1 (2019: $130,000 - $140,000, 1, $160,000 - $170,000, 1)**

## Company donations

Donatio ns to the value of $115,000 were made during this financial year, (2019: $100,000)

For and on behalf of the Board of Directors:

[redacted]

[redacted]

[redacted]

## Statement of Comprehensive Income for the year ended 31 March 2020

| | Note | 2020 $ | 2019 $ |
|---|---|---|---|
| Revenue from rendering servfces | 5 | 5,092,689 | 4,602,925 |
| **Total Income** | | **5,092,689** | **4,602,925** |
| **Expenses** | | | |
| Vliiage operations | 6 | (1,569,770) | (1,687,139) |
| Village administration | 6 | (1,363,563) | (1,147,205) |
| **Operating profit (loss) before financing costs and fair value changes** | | **2,159,356** | **1,768,581** |
| Interest income | | 23,964 | 32,688 |
| Interest paid | | | |
| **Net financing costs** | | **23,964** | **32,688** |
| Increase in fair value of tnvestment property | 8 | 101,633 | 624,631 |
| **Net profit** | | **2,284,953** | **2,425,900** |
| Other comprehensive income | | | |
| **Total comprehensive income** | | **2,284,953** | **2,425,900** |

*The notes are an integral part of these financial statements.*

[redacted]

[redacted]

## Statement of Changes in Equity for the year ended 31 March 2020

| | Share Capital | Retained earnings | Total equity |
|---|---|---|---|
| | $ | $ | $ |
| Balance at 1 April 2018 | 5,553,278 | 46,807,968 | 52,361,246 |
| Net profft for the year and total comprehensive income | | 2,425,900 | 2,425,900 |
| Dividend to Shareholders | | | |
| **Balance at 31 March 2019** | **5,553,278** | **49,233,868** | **54,787,146** |
| Balance at 1 April 2019 | 5,553,278 | 49,233,868 | 54,787,146 |
| Net profit for the year and total comprehensive income | | 2,284,953 | 2,284,953 |
| Dividend to Shareholders | | (8,200,000) | (8,200,000) |
| **Balance at 31 March 2020** | **515531278** | **43,3181821** | **48,8721099** |

*The notes are an integral part of ihese fincmcia / s tat e m ents.*

[redacted]

[redacted]

## Statement of Financial Position as at 31 March 2020

| | Note | 2020 | 2019 |
|---|---|---|---|
| | | $ | $ |
| **ASSETS** | | | |
| Cash and cash equivalents | | 2,020,330 | 2,293,218 |
| Other receivables | | 1,427 | 1,562 |
| Plant and equipment | 7 | 56,047 | 68,711 |
| Investment property | 8 | 123,987,773 | 123,590,436 |
| **Total assets** | | **126,065,577** | **125,953,927** |
| **EQUITY** | | | |
| Share capital | 9 | 5,553,278 | 5,553,278 |
| Retained earnin s | | 43,318,821 | 49,233,868 |
| **Total equity** | | **48,872,099** | **54,787,146** |
| **LIABILITIES** | | | |
| Trade payables | | 181,402 | 101,060 |
| Accruals | | 84,303 | 80,284 |
| Unamortised village contribution fee | 10 | 10,687,793 | 10,739,043 |
| Residents' deposits | 10 | 61,649,980 | 59,866,394 |
| Related Partt patable | 12 | 4,590,000 | 380,000 |
| **Total liabilities** | | **77,193,478** | **71 166,781** |
| **Total equity and liabilities** | | **126,065,577** | **125,953,927** |

The statement of financial position Is presehted oh a lTquidit y basis.

*The notes are an integral parr of these financial scatemenls.*

[redacted]

[redacted]

Statement of cash flows for the year ended 31 March 2020

| | Note | 2020 | 2019 |
|---|---|---|---|
| | | $ | $ |
| **Cash flows from operating activities** | | | |
| Receipts from residents | | 5,371,046 | 4,689,031 |
| Interest received | | 23,964 | 32,687 |
| GST refunded (paid) | | (6,108) | (186) |
| Payments to suppliers and employees | | (2,526,252) | (2,567,983) |
| Pa}:'.ments to terminatin residents | | (329.474) | (35,564) |
| **Net cash inflow from operating activities** | | **2.533.176** | **2,117,985** |
| **Cash flows from Investing activities** | | | |
| Acquisition of investment properties | | (596,711) | (502,683) |
| Term Deposits | | 0 | 1,000,000 |
| Purchase of Plant & Eguipment | | (2,939} | {1,908} |
| **Net cash outflow from investing activities** | | **(599.650)** | **495,4.09** |
| **Cash flow s from financing activities** | | | |
| Dividends Paid | | (3,990,000) | (4,850,000) |
| Residents Deposits received | | 7,681,100 | 6,326,600 |
| Residents Deeosits repaid from resales | | {5,897,514) | {3,006,800} |
| **Net cash inflow from financing activities** | | **(2.206.414)** | **(1.530.200)** |
| Net increase in cash and cash equivalents | | (272,888) | 1,083,194 |
| Cash and cash equivalents at beginning of the year | | 2,293,218 | 1,210,024 |
| **Cash and cash egulvalents at end of the }'.ear** | | **2,020 ,330** | **2,293,218** |

*The notes are (ll r in teg r al part of these}tnancial sfate111e11ts.*

[redacted]

[redacted]



1 -- rt'n gnn ("the Company") is a company incorpora(ed and domiciled in New Zealand and is a ror-profil enlily, The c statements have been prepared In accordance with the Companies Act 1993 and the requirements of lhe Flnanclal Reporting Act 2013 and the Rellrement Villages Act 2003,

The Company operates a retirement vllla,ge llased lr [redacted]

2 **Basis of Preparation**

**Ca) Statementof compliance**

The flnancla'l statements have been prepared In accordance with generally accepted accounting practice In New Zealand (NZ GAAP) and the requirements of the Companies Act 1993 and the Financial Reporting Act 2013.

For the purpose of complying witti NZ GAAP, the Company is ellglble to apply Tier 2 For-Profit Accounting Standards (New Zealand Equivalents to International Financial Reportlng Standards• Reduced Oisclosure Regime (NZ IFRSRDR)) on the basis U1af it does not have public accountabiUty and is not a large for-profil public sector entl()'. The Company has elected to report In accordance with NZ iFRS RDR and has applied alldisclosure concessions.

These financial statements were authorised ror Issue by the directors on 9th July 2020.

(b) **Basts of measurement**

The financial statements have been prepared under the hlstorical cost convention, as modified by the revaluation of certain assets and liabilities as identified In specific accounting pdleiesbelow.

(c) Functional and presentation currency

The financial statements are presented in New Zealand dollars ($), which is the Company's functional currency,rounded to the nearest dollar.

(d) Use of estimates and Jud gments

The preparation of financial statements In oonformity with NZ IFRS (RDR) requires management to make judgments, estimates and assumptions that affect the application or policres and reported amounts of assets and llab11ili es, income and expans es. Actual results may differ from these esfimates.

The eslimates and underlying assumptions are reviewed on an ongolng basis. Revisions to accounting estimates are recognised in the period in which the estimate ls revised ir the revision affects only that period, or in the period of the revision and future pe1lodsif the rev1sionaffects both current and future periods.

In particular, Information about significant areas of estimation, uncertainty and crlUcat judgments in applying accounting policies that have the most signlficant effect on the amount reoogntsed In the financial statements are describedIn the followln,g notes:

- Noles 4(a) - Investmentproperty valuation
- Note 3(e) • oererred village c.ontributlon revenue

3 Statement of Accounting Policies

The accounting policiesset out below have been applied consistentlyto all periods presented in these financial statements, other than IFRS 16adopted as per Note 3(i).

(a) Investment Property

Investment properties which are heJd to earn rent.iiihcol)le and for capltal appreciation comprfseland and b1,1ildlngs- intended lo be held for the long term, relating lo independent living units and common facilities in the retirement village. Investment property is measured at fair value with any change therein recognlsect *in* proftt or toss,

Land acqtured with the intention of constructing an investment property on II, is olasslfied as in11eslmenl property from the date of purchase

Property under constructionls classified as irwestment property from the dale construction commence.s

Income from Investment property, being the deferred village contribution, is accounted for as described In accounting policy 3(.d)

Depreciation ls not charged on Investment properties.

(b) Plant and equipment

(l) *Deprecf;1tlon*

Depreciation Is charged to promor loss on a diminishing value basis over the estimated useful,lives of each Item ofplant and equipment Major depreciation rates are as follows:

| | |
|---|---|
| • Plant and equipment | 9.5% • 60% DV |
| · Motor vehicles | 13% -40% DY |

Depreciation methods, useful lives and residual values are reassessed at the reporting dale,

[redacted]

3 Statement of Accounllna PoUcles (contin ued)

(c) Occupation licences/Occupation right agreements

Each resident has a cunlractuel relalionshipwith lhe Company. These are referred to as an occ:upallon licence or oceupaUon right agreement (ORA) and confer 8 right or occupancy to a dwelling. Consideration recelVed on Ille grant of *an* occupation Hcence/occopation right agreement l&splllbetween the residents' deposit and deferred village contribution (OVC), o.arrenlly 70% and 30%.

The licenseedoes not obtain 31'\Y vol in g righ ts In the Company and Is not entiUed to any surplus onwinding up, The llcensee does not have any enlillernent to any dlstnbutlon from retained earnings that may be made by the Company

*Deferred Vliiage conttlbutlon*

The DVC, whlcil entitles residents to accommodation and the use of the community facilities wiltUn llieVliiage, is recognised over the period *of* s rvice, being lhagreater of the expected period of tenure or the contractval right t.o r ev Ejnue ,

The expected periods of 1en11re, be1ng based on historicalvillage averages and managementjudgment are assumed to be 8 years. If U,e average expected period or tenure lncreases/decreasessignlficantty, this would result In revenue being recognised over a tonger/shorter period of llma,

The ORA's are considered teasesunder NZ IFRS 16 and are excluded from the scope of NZ IFRS15. NZ IFRS 16 came Into effect lor periods beginning on/after 1 January 2019 and there is no change In recognition ormeosurement of DVC revenue DCV revenue continues to be recognised on a straight-line basis over the greater or the term speclneu In a residents ORA and the average expecled oocupancy for the relevant accommodation.
Refer Nole 11 ror additional Information on lease commllments.

(d) Flnanclal Instruments

*Non-derivative financial Instruments*

A financial lnslrument ls recognised if lhe Company becomes a party to the conlractual prov1s1onsof the Instrument Flnanclal assets are derecognlSGd lf the Company's contractual rights \o the cash flows from the financial ass&ts expire *M* {f lhe Company transfers the financial asset lo another porty without retaining control or substanllally all the tlsks and rewards of the asset. Flnancial liabilities are derer.oglnsedIl the Company'sobHgaUons speclned In lhe contract &Mplre *o r* are discharged or are cancelled,

*Financlal assets*

The Company dasslfies its fin1mc1a assets in lhe rollowing categories: financial a-s-sets at fair value throughprofit orloss and amor1ised cosl, The classlflcatJon depends onboth the entity's business model for managing a nnanc:ial a sset and lhe Investments contractual coshflowcharade1istlcs. Managementdetermines the ctasslficallon ol Its Investments al Initial recognition and re-evaluates this deslgnalion al every reporting date,

*Ffnancfal Assets at amortised cost*

Ttie Cornpeny's financial assels at amo11isetl costcomprise receivables and cash and cash equivalents

*Cash and cash equ/Velen/s*

C. ;ish and cash eciulvale11ts compIrses cash balances and short term deposits with an oliglnal r11a tu rilyof threemol'lll1s or less. Bank overdrafts that are repayable on demand and form an integral part of the Company's cash management are lncluded as a componentof caiih and cash equivalents for lhe purpose of the statement of cash nows, and are classlned as llabllillas on the face of the Statement or FlnancialPosition.

*Other receivables*

Loans and receivables are non-derivativefinancial assets wlth fl)(ed or determinable payments that are not quoted In an active market They arise when the Company provides money, goods *or* servlces directly to a debtor withno lntentionof selllng the receivable.

*Expected credit lossos for Flnanclal l\ssets* el *amortised* oosl

The allowance for expected credit loss ls established based upon objective evidenca that ttte Company will nol be able to cotlecl allamounts due acourdir'lg to the original terms or the receivables. Significantftnancfal dlffCt1ltles or the debtor, probablllty that lha deb tor Will enter bankn1ptay or tinanciaJ reorganisation, and default or delinquency in payments (more than30 days overdue) are considered obfecUve evidence ol credit loss.

The amount of the ctedit loss allowaoc:e ls the dilTerenC!! be tween the asset's carrylog amount and the present vatue or estimated ruture cash Oows, discounted at lheoriginal effectiveinterestrate. The amount or Hie credll loss allowance Is reoognised In the profit or loss.
Al eachrepor11ng dal e, the Company wlll assess whether lhe credit risk on each financial instrument, other than trade receivables, has lncreasedsignillcantl)'ornot since initial recognlfion.
*It* there has been a sfgnlll r-.anthc,rease ln credit risk the Company shall measure the loss allowance for a financial lnstrumentat anamounl equal lo the llfellme expectedcredil losses.
If there has been no significant Increase in credit risk the Company shall measure the loss allowance for a financial Instrumental an amount equal to 12•month expected credit losses.
As lhe company experiences minima! impalrment of receivables the company applies the NZ IFRS 9 slmpllfled approachto measuring expectedcredt losseswhlch uses a lifetime e:xpected creditloss allowance for all trade receivables,

[redacted]

3 Statement of Accounllns:i Pollcle is (continuec;j)

(d) Financial Instrumenl e (continued)

*Rnancial lfablIltlu*

The Company classlnes Its financial lIal)lllles as amortised c.osl.

*Residents' deposits*

Residentsdeposit& are non lnterest bearing and are payable When both a Lermlna1lng evenl has occvrrad (I.e. receiptby the Manager of an acknowledgement of terminationsigned by the Resident or the Resident's attorney or the personal representatives of a deceasedResident), and therehas been a subsequenl resale of the 1/cence. and the selUement proceeds From lhe resale have been received by the Company, In the majority of cases this occurs after more than 12months - experience has shown that reslde11ts generally reside in the village for anaverage of 8 years. However, resident loans are classified as current, as the Companydoes not have an unconditional right to defer setllemenlof the llabllIty for **at** least 12 months after the reporting **date.** The residents' deposits are recorded at face value, being the original payment received or amount oavable on demanc:l.

*Unamortised deferred vii/age contrlbUl/on llab/J/ly*

The deferred village contribution (DVC) Is payable by residents in consideralIonfor the supply or acc.ommodatlon and the right to share In the use Or the communityfacilities.

The Company Is c.ontraotually entilled to lhe *DVC* over a period ol 2-4 years depending on the licence enterecj Into. After the term expires the Company Is entilled lo U1e full OVC If the resident terminates the occupation licence prior to this, the Company is obliged to repay the portion of!he *DVC* lo which they are nol entitled.

The unamortised portion of the *DVC* llablllty Is non lnterestbearing and Is repayable If a termlnallng event has occurred (I.e. receipt by the Manager of anacknowledgement or termtnaUon signed by the Resident or the Resident's attomayor the personal representatives of a deceased Resident) prior lo the end of the contractual period, and there has been a subsequent resale of the licence. and thesettlement procee(js from the resale have been received by lhe Company. In the majority of cases this occurs aft.er more than 12 months. Tl)e average expected period of tenure forlhe village 8 years as at 31 March 2020. (2019: 8 years)

*DVC inadV8f)OO*

Revenue In adllance are those amounls by which the amortisation of the DVC over lhe c.onlraclual period Is less than the amortlsaUon or the DVC bas!Ul on esUmated tsnure. The Company recognises revenue In adVaoce on the earlier *cl* lerm1nation of a licence or lhe unwind of the revenue through tenure. tf the average period of tenure changes slgnlncanlly. this could require \he Company to reoogniserevenue over a shorter period which would reduce revenue tnadvance (II the tenure reduced significantly), *or* over a longer period Whlch would result In an increase In revenue \n advance (If the tenure Increased significantly).

*Trade and o/he r payables*

These amounts represe11t un securedllabllilies for goods and services provided to the Companyplior lo the end or the nnanclal year, Which are unpaid. Trade and other payables are recognised i niUallyat fair value and subsequently measured at amortised cost using the effective Interest method. As trade and other payables ere usually paid within 30 days, lhey are earned al faC'.e value.

*Related Party Loans*

Related party loans are repayable as cash flows allow. Any loans made by the Company lo any director or shareholder of the Company must charge Interest un the a dvances at the prevailing rate specified by Inland Revenue Department for Fringe Benefit Tax purposes.

(e) **Revenue**

***Services***

When the outcome ol a cortract to provideservices can t,e estimated reliably revenue Is recognised by reference to the percenls9e of the services performed, specifically:

*Residents maintenance* fees

Residents maintenanoe fees *ate* recognised *on* a monthly basis, being the period over which the servicels tendered. The weekly fee per dwellng as al 3I Maroh 2020 IS$ 170.50 (2019: $159.94). This covers the day-to-<J3y management of the complex, security, ground maintenance and ancUlary services.



[redacted]

3 Statomont of Accountlnn Policies (continUod)

(el Revenue (conti nued)

*Other revenue*

The Company also earns revenue fromrefurbishmentfees ana administration charges on sales of ttcences, Revenue rs recognised when the resaleor *any* 20% amortisation exiting licence occurs. There ls no rarurbishrnent rees or administration revenue earned when the resale of *any* 30% amortisation exiting licences ooours

(f) Nol Flna11ce Costs

*Int eres t income*

Interestincome Is recognised on a tim-e proportion basts using the effective interest rate rnetl1tld. This Is a nlelhod or calculating lha amortised Gost of a financial asset and allocating the Interestincome over lfierelevant period using the effecUve interest rate, whlah Is the rate that exactly discounts estimated Mure cash receipts through the expected Ille of the nnanclalasset to the net carrying amount of lha financial asset.

***Interest expense***

Interestexpense comprisesInterest payable on borrowlngs and IS-calculated using the effective Interest rate method.

(g) Income tax

As a look thr01,1gh company (I.TC) the Company has no llabillty for Income tax. Any resident wllhholdlno tax (RWT) credits received by the company ere allocated to lhe shareholders and the Interest is recognised In the Statement of Comprehensive Income net or RWr Any Income lax llabillly will be mel by the shareholders personally LTCs do not maintain en lrnputalion credit account.

(h) GST

These flnanclal statements are prepared on a GST exclusive basis, except for amounts rer,elvable and payable which are subject to GST. Some retirement village aotlvlttes are determined by the IRD to be an exempt activity

(l) Adoption of Now and Re\ljsod Standards

The C mpany has adopted !he below new standards and interpretations now in effect

*NZ IFRS 16* - Leases

This standard is applfcable for annual periods beginnlng on or alter 1 January 2019. NZ IFRS16 replaces NZ IAS 17 *t.sases* and NZ IFRIC 4 *Determining wha(her an Armngement contains a Lease*.

(a) Transition

The adoption of NZ IFRS16 has not resulted In any change to the financtal stalernents of the Company

(b) As a lessee

The company does no! hold any leases as a lessee.

(c) As a lessor

The company Is not required lo me1ke any adjustments on transition to NZIFRS16 for leases In whichlt ants as a lessor. The accounting policies applicable to the company as a lessorin the comparallve period were not different from NZ IFRS 16. The company accoLln ted for Its leases In accordance wilh NZ IFRS16 from lhe dale orlnilial application.

4 Determination of fair values

A number of the Company's ar.counllng policies *and* disclosures require the determination or fair value, for both nnanclal and non-finandal assets and llabllltles. Fair values have been determined for measurement and disclosurepurposes based on the following melhods, Wt,ere applicable, further informationabout the assumptions made In determining fair values Is disclosedln the notes specific to lhalasset or llablllty.

(a) Investment **Property**

Fair value ofl nvestmentproperty ls determined annuetryby external valuers The fair value of lha Investman1 property 1s categorised Into a fair value hierarchy based on the lnputs used in the valuation technique Refer to Note 8 for this technique

(b) Resi dents Deposits

The residents• deposits co,nprise financialliabilities witha demand feature, and therefore, their fair value ma,y not be less than theamount repayable on demand, Whioll is the face value at date of occupation

**S Revenu e**

| | Nore | 2020 | 2019 |
|---|---|---|---|
| Rendering of services | | $ | S |
| Amortised deferredvillage contrtbulions | 10(b) | 2,997,071 | 2,632,214 |
| Maintenane roes | | 1,799,515 | 1,697,584 |
| Other | | 296103 | 273127 |
| Total service revenue | | 5 092689 | 4 602 925 |

[redacted]

## 6 Expenses

| | 2020 | 2019 |
|---|---|---|
| Expa11s as Include the following; | $ | $ |
| Repairs antl maintenance | 534,368 | 529,170 |
| Wages& salaries | 767,214 | 771,3.28 |
| Slalulory Supervisor | 12,906 | 12,216 |
| Legal • Compliance Costs | 7,031 | 3,948 |
| Sales and marketing | 117,740 | 93,203 |
| Disposal of Investment P per1y | 300 ,807 | 223, 826 |
| AccounUng fees and consultarits | 7,412 | 10.814 |
| - • Audll | 17.535 | 17,228 |
| - • Trustee reporting | 1,000 | 1,000 |

## 7 Plant and equipment

| | Motor vehicles | Plant and equipment | Total |
|---|---|---|---|
| | $ | $ | $ |
| *Cost* | | | |
| Balance at1 Aprll 2018 | 236,821 | 81.400 | 317,221 |
| Λcquslllons | | 1,707 | 1,707 |
| Dlseosals | | {1,949} | {1,949l |
| Balance at31March 2019 | 235,821 | 81 158 | 316 979 |
| ACIlUfsllJons | | 3,139 | 3,139 |
| OJseo sals | | {3.364) | {3,364l |
| Balance at 31 March 2020 | 2351821 | 80,933 | 316,754 |
| ***Depreciation** and Impairment* | | | |
| Balance at1 Apnl 201a | (163,831) | (66,892) | (230,723) |
| Depreciation charge for lhe year | (14,911) | (4,584) | (19,495) |
| Accumulated Deerectationon Diseosals | | 1,949 | 1,949 |
| Balarice al 31 March 2019 | (178,742) | (69.527) | (248 269) |
| Dapredatlon r.harpe for the year | (11,676) | (4,126) | (16,802) |
| Accumulatsd Deereciationon Diseosals | | 3,364 | 3,364 |
| Bala,1ce al 31 March 2020 | {190,418) | (70,289) | (260,707) |
| ***Caa:x.In9. amounts*** | | | |
| 1 Aerll 2018 | 71,990 | 14,508 | 86,498 |
| 31 Marnh 2019 | 57079 | 11,631 | 68 710 |
| 31 Morch 2020 | 45 403 | 10 844 | 56047 |

## 8 Invostmonl Proport.Y

| | 20 2 0 | 2019 |
|---|---|---|
| | $ | $ |
| *Reconc1l/sll onor Fair Value* | | |
| Balance al beginning of period | 123,590,436 | 122.691,008 |
| Additions | 690,933 | 498,623 |
| Disposals | (300,808) | (223,826) |
| Inveslmenl Properties Under Construction | 5,579 | |
| Fair value adjustment | 101,633 | 624.831 |
| Total in vcslment ero11e | 12 3,987,773 | 123,590,4 36 |
| Investment propert i es are made up of; | | |
| Residents· deposits | 61,649,980 | 59,866,394 |
| Unamortised licencefee | 10,687,793 | 10,739,042 |
| Valualton or manager's net interest | 51,660,000 | 52,985,000 |
| | 123,987,773 | 123,590,436 |

*Security*

The Investment property is subjeel lo a llrst chargeEncumbrance over the village properly in favour of the Statutory Supervisorto secure !he Company's obligations to the occupationllcenoe holders. The Bani< or New Zealand has a second reg1stered mortgage over Jhe Comp an y's assets.

*Vall.la//Orl Method*

The Invsslment property has beenmeasured at fair value to providean mdlcatlon as toU,e prtce that would be received If \he assol was sold In an order1y tra nsactionbelWeen markelparticipants.al 31 Maroh 2020. This was determined by external, Independent property valuers, having appropriaterecognised professional qualllcallons and recent expertence In the locatton and calegory of the property being valued.

[redacted]

6 InvestmentProperty (continues)

The latest revaluation of Investment pfoperly Is summarised as follows:

| | |
|---|---|
| Purpose | financial Reporting |
| Reporting dale of Valualion | 31 March 2020 |
| Amount of ValuaUon: | $51,650 ,()00 |
| Name and QuallficaUon of Vah1er: | [redacted] |
| Basis of Valuatlon: | The 100% Interest In the underlying freehold eKpressed as the Operalor's Interesl in the retlrementl village as a going concern subject to the terms of ocou,lallun belween the Operator and residents. |
| Assessmenl Approach: | OceupaUon Right Agreements • Dlscounted Cash Plow (OCF) |
| DCF Key Inpuls: | |
| Unit Growth Assumptions | 0.0 - 3.5% over a 5 year period (average 1.7 - 3.1% corni,oundetl from year 1 lo 5 based on sales in the village and surrounding resIdenUal real estate) |
| Assumed recycle frequonoy (In years) | Studio Apartments 4.17. Independent Living Units 6.38. Apartments 7.66 years, |
| Discount Rate applied | 14.25% |

It has been noted lhal the reporting date or 31 March re11 within New Zealand's COVID-19 Alert Level 4 lo0l<downperiod and severe restrictionswere In place within the domestic economy whlch meant that the real estate markot was effectively frozen during this period, as lhe Governmont signallod that it did not consider the real estate market fell into the "essential' category. Accordingly these circumstances contradcl the definition of market value which Is predcated on wlllng market participants and proper marketing, elements which did not exist al 31 March 2020. The measures at Alert level 4 were considered to be temporary and expected lo be lllted In a relalively short period or time. In order 10 form a µragrllatic view at 31 March, by necessity the Level l\ status was set aside as a short term aberral/on, In order to form a Market Value, however It has also been noted that 1t was clear that market sentiment was turning rapidly rrom March 2020 when the COVI0 -19 pandemic was declared, The valuer has noted that these (actors have been reOected within U,e valuation. However it has also been 1101.ed that comparable transaelions andmarket evidence sfnce the 01.11break is llmlled and given the heightened uncertainty, a higher degree of caution should be exercised when relying on lha valuation.

9 S hare capital

| | 2020 Number | $ | 2019 Number | $ |
|---|---|---|---|---|
| Fully paio ordinaryshares | 5,553,278 | 5,553,270 | 5,553,278 | 5,553,278 |

All ordinary shares have no par value, have equal voting nghls end share equally In dividends and surplus on winding up. No -shares were l ssued or re1,1urchased during ltie year ended 31 March 2020 (2019: NIL).

10 Residents' llablllUos

| | Note | 2020 $ | 2019 $ |
|---|---|---|---|
| Residents' deposlls | 10a | 61,649,980 | 59,866,394 |
| DVC unamortised | 10b | 10,687,793 | 10,739,042 |
| Total residents• liablll li es | | **72,337,773** | **70,605.436** |

| **a) Residents' deposits** | Number of licences 2020 # | 2019 # | 2020 $ | 2019 $ |
|---|---|---|---|---|
| Balani;;e at beginning ol period | 209 | 206 | **59,886,394** | 56,546,594 |
| Less: amounts **repaid on** terrninalion | (24) | **(13)** | **(5,897,614)** | (3,006,800) |
| **Add:** amounts **recel11ed** onnew Rcence$ **issued** | 23 | 17 | 7,681,100 | 6,326,600 |
| **Total residents• deposits** | **208** | **209** | **61,649,980** | **59,886,394** |

Residen$' **deposl s are** Clesslfred **as** current, as the Company does not **have an** unoondllional right to **defer** setllernant. **However, settlement occurs \vhen both a** terminating **event** has occurred and there **has been a subsequent resale of lha** llc.ence. In **mosl cases U,ls isgreaiert han 12** months.

**The Companyls unable to esllmale** the valueof totalresidents' **deposits expecied tobe repaid within Ule next 12monlhs**. **A** terminating **residents'**Ueb(llly **Is u suallyrepaid once** the licencehasbeen assigned **to an Incomingresidenl To date, U1e** new resldenls' **deposits rsceived lla11e always exceeded** the repaid residents' **deposits and has represented e** poslllve **cash flow** to the **Company**

There **Is no requirement for the Company lo provide cash** to repay occupational right **agreements**, **Cost of** sale and **costs of** re furbishment **may be deducted** from the settlement of a occupational right **agreemenl.**

The key Judg ements **and estimates** applled In calculatingthe residents loansare descnbed In acoountJng pollcy **3(d)**,

[redacted]

b) Unamortised deferred vlllano contrlbuUon li ability

| | Noto | 2020 | 2019 |
|---|---|---|---|
| | | $ | $ |
| Balance at beginning ot P')rtod | | 1 0,739,042 | 10,706,052 |
| Amounts repaid on lermlnalion of licences | | (329, 472) | (35,544) |
| Amountsreceived onIssueof new llcences | | 3,275.2911 | 2,700,748 |
| Revenue for the year | 5 | (2 ,997 ,071) | (2,632,214) |
| Total unamort ised dofor r od vlllago contribu tion | | 1 0,687,793 | 1 0,739,042 |

Tt1e DVC ts classllle<l as current, as lhe Companydoes not have an unconditional right to uefer selUamenl, Howeve, rselUemenl occurs when both a terminatingevent has occurred, and tt,erehas been a subsoquent resale of the licence Tills may occur after more than 12 months.

The Company Is u11able to esllrnate the value of total DVC expected to be repaidwithin the next 12 months,

**11** Commitments ondcontingencies

Operating leaso commitments • Company as lessor
The occupation llcences are considered leases un(ler NZ IFRS 16. The leasesare cancellableby nature, as the residenl can choose lo lermfnale lha licence by nollce or the licence terminates through dealh. When a now occupation 11oence has been Issued with respect lo tho vacated dwelllng, or the manager has presented lhe outgoing resident w1th a notice lo the effect lhat lhe manager does ,,ot Wish lo Issue a new occupation licence at that Ume with respect lo the vacated dwelling, the outgoing residehreosives a refund of lhe resident loan and any balance owing in respect of the unamortised defer,ed village contribution.

Capital commilmenl s
The Company has a no capilal oommltmenls as al 31 March 2020 (2019! NII).

Contingent liabilities
There are no known material contingentllablllties al 31 March 2020 (2019: NIL)

1 Related parties
al *Nature of related rlY relat fonsllips*

[redacted] Is 100% owned by [redacted] lsrelated due lo commM ownership.

[redacted] re related due lo the faclthe directors have an Inlerest In them

bl *Transactions with dlreotors, shareholders and related companies:*
Amounts owing to the directors. shareholders and related companles at the reporting dale are as roUows:

| | 2020 | 2019 |
|---|---|---|
| | $ | $ |
| | 4,590,000 | 380,000 |
| Total shareholders' payable (rocolvablel | 4,590,000 | 380,000 |

The Company has relaled party loans wflh \he parent company.

The advances are repayable on demand subject to approval of both the bank and statutory suporvlsor

The directorsdid not receive any other considerationor benefit, monetary or otherwise,

No relaled party debts have been written offor forgiven during the year.

c) ***Key management personnel***
The directors and shareholders are considered lo belhe key management personnel and no remuneraUon **was paid**

**13 Subsequent Events**
In Mar<lh 2020 the COVI0-19 pandemtc tias led to the New Zealand government pulli measures In place lo contain the spread of thelliI\IS. Managomenhtas reviewed the potential Impact or COVID-19 tolt's future operations and considered tre potenllal impact on cashflows and tlie appropnatenessof thegoing concern assumption.

Management do not expect revenue and cash flow to be signfllca1"1llYimpa cted, as service lees and rental revenue continue, and do not foresee any Impact on the ablllty to continue as a going concern as there are sufficient cash reserves In place.

There have been no other material events subsequentto balance date,

[redacted]

[redacted]

# Independent Auditor's Report

To the shareholders of [redacted]

**Report on the audit of the financial statements**

## Opinion

In our opinion. the accompanying financial statements of
(the ·company') on pages 3 to 13:

i. present fairly in all material respects the company's financial position as at 31 March 2020 and its financial performance and cash flows for the year ended on that date; and

ii. comply with New Zealand Equivalents to International Financial Reporting Standards Reduced Disclosure Regime

We have audited the accompanying financial statements which comprise:

- the statement of financial position as at 31 March 2020;
- the statements of comprehensive income, changes in equity and cash flows for the year then ended; and
- notes, including a summary of significant accounting policies and other explanatory information

## Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (New Zealand) ('ISAs (NZ)') We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

We are independent of the company in accordance with Professional and Ethical Standard 1 (Revised) Code of Ethics for Assurance Practitioners issued by the New Zealand Auditing and Assurance Standards Board and the International Ethics Standards Board for Accountants' Code of Ethics for Professional Accountants ('IESBA Code'), and we have fulfilled our other ethical responsibilities in accordance with these requirements and the IESBA Code.

Our responsibilities under ISAs (NZ) are further described in the auditor's responsibilities for the audit of the financial statements section of our report.

Other than in our capacity as auditor we have no relationship with. or interests in. the company.

## Emphasis of matter

We draw attention to Note 8 to the financial statements which describes the heightened valuation uncertainty as it relates to the estimation of the valuation of the company's investment property due to the impacts of COVID-19. The valuer has reported a heightened valuation uncertainty in their valuations and consequently there is less certainty and a higher degree of caution attached to the valuation than would normally be the case. Our opinion is not modified in respect of this matter.

## Other information

The Directors, on behalf of the company, are responsible for the other information included in the entity's Annual Report. Our opinion on the financial statements does not cover any other information and we do not express any form of assurance conclusion thereon.

[redacted]

In connection w ith our audit of the financial statem ents our responsibility is to read the other information and. in doing so. consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherw ise appears materially misstated. If. based on the work we have performed, we conclude that there is a material misstatement of this other information. we are required to report that fact. We have nothing to report in this regard.

## .fil Use of this independent auditor's report

This independent auditor's report is made solely to the shareholders as a body. Our audit work has been undertaken so that we might state to the shareholders those matters we are required to state to them in the independent auditor's report and for no other purpose. To the fullest extent permitted by law. we do not accept or assume responsibility to anyone other than the shareholders as a body for our audit work, this independent auditor's report. or any of the opinions we have formed .

## A Responsibilities of the Directors for the financial statements

The Directors. on behalf of the company, are responsible for:

the preparation and fair presentation of the financial statements in accordance with generally accepted accounting practice in New Zealand (being New Zealand Equivalents to International Financial Reporting Standards Reduced Disclosure Regime);

implementing necessary internal control to enable the preparation of a set of financial statements that is fairly presented and free from material misstatement. whether due to fraud or error; and

assessing the ability to continue as a going concern. This includes disclosing, as applicable. matters related to going concern and using the going concern basis of accounting unless they either intend to liquidate or to cease operations. or have no realistic alternative but to do so.

## x/I.... Auditor's responsibilities for the audit of the financial statements

Our objective is:

- to obtain reasonable assurance about whether the financial stateme nts as a whole are free from material misstatement, whether due to fraud or error; and

to issue an independent auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance. but is not a guarantee that an audit conducted in accordance with ISAs NZ will always detect a material misstatement when it exists.

M isstatements can arise from fraud or error. They are considered material if. individually or in the aggregate. they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of these financial statements is located at the External Reporting Board (XRB) webs ite at:

http://w ww .xrb.govt.nz/standards-for-assurance-practitioners/auditors-responsibilities/audit-report-8/

This description forms part of our independent auditor's report.

[redacted]

9 July 2020

[redacted]

**OPERATOR'S FINANCIAL STATEMENTS and AUDITORS REPORT**
A summary has been circulated.
The motion is that the Operators statements be received: Moved: second ..

[redacted]: This is a s the financial position as at 31 March 2020. A full set of audited accounts is available fro These financial accounts are highly scrutinised. They are seen by the Accountant, the Independent Auditor, Covenant Trustee Services in house accountants and the Registrar of the Companies Office for review and comment. Retirement Village financial statements are highly scrutinised and rightly so but one of the key steps is so you, the residents have full visibility of the financial statements and the op ortunity to ask questions.
[redacted]: I am from . We are the external accountants for the village. The accounts are prepared under the International Financial Reporting Standard. Retirement Village accounts across the world are reported on a similar basis. They are prepared by - then me then audited by then on to Covenant Trustee Services then the Companies Office. They are available to everyone and are listed on public web sites such as the Companies Office, as are all retirement village accounts.
The highlights for me is that there were 23 resales during the 2020 year. The village gets revalue:.... every year by an independent valuer to ensure that your deposits for your licences are secure. There was a small increase in the 2020 valuation.
The owner's equity still stands at $48.9m and the company carries no external debt. The company hold significant cashflow reserves to meet refurbishment etc costs as they come up.
A highlight is the Company has $126m in intangible assets and this basically secures the $72m owing back to residents.
[redacted]
**Resident:** If the company is in such a secure situation, owning this outright with quite adequate reserves why the hell can't they pay for the lift and be done with it.
[redacted]: - · you had a question for me regarding the depreciation in the full set of accounts under the fixed assets on page 11
The weekly fee tends to run, if we get it perfect as a zero account with no profit or loss, but as part of that account, there is a transfer to what we call a maintenance reserve. The village operator doesn't get to deduct taxes on that transfer to reserve, as it hasn't been spent, so the village operator actually returns tax on that income difference and the difference in their own books is an offsetting feature on that and it's only a partial offset. They do claim depreciation on the likes of the vehicles

and items like that but the operator isn't advantaged because basically the reserve, they effectively pay tax on the difference between the income and the expenses less that reserve so there is no tax advantage on the way it operates.

[redacted] I have a question on page 13 of the summary of the financial statements relating to the summary of the financial statements can you confirm that the investment properties shown as $123,000,000 includes the $72,430,000 under that as the amounts refundable to the residents My understanding from page 12 that the valuation of the operators interest in the investment property is $51,650,000 so you are showing an asset value in these accounts of $123,000,000 as your investment property when in fact your operators interest in the company is $51,650,000 and therefore the balance of what you show as investment properties is the interest free loan the liabilities to residents further down that's money we funded. Is this correct that you are adding in as assets of the company to the investment properties the amount of the interest free loans that we pay when we purchase an ORA and the increase in that contributes to the profit which is a second

- - - - - - - - IIIIIIIIYou will be aware as you understand how a valuation works many years ago as part of the International Financial Reporting Standards we used to actually net those two figures off effectively $124,000,000 and $72,000,000 going back to International Reporting Standards which are now produced the same way no matter where you are in the world that was updated because they wanted the balance sheets to show the true reflection of the total asset value nd to actually have written in them the total amount owing back to residents so that $124,000,000 a total gross value of the village rather than a net value of the village. The second question was - does that contribute to the income, and I think you understand it shows on here the increase/ decrease fair value of the investment property that is booked every year this is not a cash income/decreasejust as in the community and your house goes up in value doesn't mean you get the cash its gone up by. The village is valued every year so the likes of Covenant Trustee services to say there is good asset backing. If we had the o where there was $80,000,000 owing to residents and $70,000,000 of assets, I would think - and the Companies Office would have a problem with us but that is not the case.

[redacted]: Are you confirming every year when the investment properties go up the total investment properties go up as shown in the accounts in this case they only went up a bit because the valuation went down compared with the previous year and the increase is treated as a capital gain is transferred to the profit and loss account and together with any other profit and loss ends up in the retained earnings account? Correct?

[redacted]: Yes, it definitely goes through the reserves just like any profit and goes back to the owners equity but obviously that's not a cash amount

[redacted] So from the time that you transfer from the old accounting system to the -'--,temational Accounting Standard you are supposed to value the assets on their market value are ;ou telling me if you sold this village to the likes of - you would sell it for $123,000,000 or only the $51,650,000 that the valuer says the village is worth

[redacted]: This might not be an appropriate question for th , but it is definitely not sold at $124,000,000 having been involved in 5 sales last year to--

[redacted] So the asset value of this village is the $51,650,000 that they could sell the shares in this village.

[redacted]: This conversation is no longer appropriate for this meeting

- These accounts overstate the asset value of this village that you say is u only have an asset value of $56,650,000 plus a little bit of cash on hand etc. and therefore the accounts are fallacious!

[redacted]: Sorry - - I will finish. These accounts are produced to the Inte-rn tion I Financial Reporting Standards. They are audited by one of the big 4 accounting companies they are valued by a registered valuer under guidelines provided by the International Reporting Standards

[redacted] I move the motion that the Summary of the Operators Financial statements be received.

Carried with - against.

Extract re financial reporting from case study:

# [redacted] Village Ltd (The Operator)
# Minutes of Annual General Meeting for Residents
# Monday 23rd September 2019 at 10.30am in the [redacted]

Extract from page 3 re presentation of financial report:

Identifying names of the village have been redacted.
The following names have been changed:
The Statutory Supervisor shown as Stat. Supervisor;
the nominees and seconders for the motions as Resident 1 and 2;
Other residents in order of recording as Resident 3, 4
the Financial Controller as Fin. Cont.;
The external accountant as Ext Accountant
The auditor as Auditor

**OPERATOR'S FINANCIAL STATEMENTS and AUDITORS REPORT**
A summary has been circulated.
The motion is that the Operator's statements be received: Moved: Resident 1; Seconded: Resident 2·
**Stat. Supervisor:** This is a snapshot of the financial position as at 31 March 2019. A full set of audited accounts is available on application to Fin. Cont. These financial accounts are highly scrutinised. They are seen by the Accountant, the Independent Auditor, Stat. Supervisor's in house accountants and the Registrar of the Companies Office for review and comment. Retirement Village financial statements are highly scrutinised and rightly so but one of the key steps is so you, the residents have full visibility of the financial statements and the opportunity to ask questions.
**Ext Accountant:** We are the external accountants for the village. The accounts are prepared under the International Financial Reporting Standard. Retirement Village accounts across the world are reported on a similar basis. They are prepared by the Fin. Cont., then me, then audited by the Auditor, then on to the Stat. Supervisor, then the Companies Office. They are available to everyone and are listed on public web sites such as the Companies Office, as are all retirement village accounts. The highlights of the accounts for this year were again the revaluation in the investment properties. Most important for you is that the company has no . debt and does not owe any money to the bank - in fact there ismoney in the bank. The full set of accounts has a lot more detail in it. The big highlight for me is that the company has maintained its equity and has no external debt. There are 209 licences issued as at 31 March compared to 205 licences the year before and that is because of the sell down of the [redacted] Apartments.· .There is now no new construction going on inthese accounts this year. There was a smaller increase in the investment valuation. As part of these accounts and the requirements they are produced under, the village must have a valuation done each year to ensure that the valuation each year stacks up against the value of the licences issued. They are a complex set of accounts.
**Resident 3:** In the amounts refundable to residents of $70,000,000. What is this and is it in an account that is interest bearing or is it just paper money and if it is money could the interest be used for some change in weekly fees?
**Ext Accountant**: I think the owners would like that to be sitting in a bank account. It is a total of all the money received as licences and has been used to pay for the villas and the land and the [redacted]. No, the money isn't in cash. It would be nice if it was: What it shows is that there are actual tangible assets of $125,000,000 but actual liabilities owing back to Residents of· $70,000,000 so there is a lot in reserve.
**Resident 4:** Cash flow from operating activities there is an entry Payments to Terminating Residents of $35,564 and in Cash Flows from Financing Activities we have Residents Deposits paid .from resales of $3,000,000 odd. Can you explain that?

**Ext Accountant:** The repayments to Residents of $3,006,800 is the refund of their licence in Cash Flow from Financing Activities but I'm not sure what the·$35,564 is.
**Supplementary Answer:** Cash Flow from Financing Activities $3,006,800 is residents deposits repaid from resales. This is the 70% refunded to residents at surrender of licences. Cash Flow from operating activities $35,564 is payments to terminating residents –·this is the share of the 30% DMF that has .not yet been amortised and needs to be refunded to residents at surrender as they have not yet been in the village for 4 years when we may amortise this figure completely.
**Resident 4:** Next is in note 6 of the accounts under expenses. It shows an amount of disposal of investment property of $223,000 odd. What is this?
**Ext Accountant:** When the unit is built everything is entered into a depreciation schedule such as a stove, range hood, carpet, curtains so when we refurbish, we must write off the old item at the depreciated value then we put in new carpet etc. This is all paid by the owners.
**Resident 4:** Note 8 Investment Property. It has a balance at the beginning of the period then it has additions and disposals. Is that the same sort of thing?
**Ext Accountant.** Yes. It is the cost of new carpet, drapes etc. less the write-off of the old.
Moved the motion that the operators financial statement and the Auditors Report be received - Agreed.

**STATUTORY SUPERVISORS 'REPORT:**
The Statutory Supervisors Report has been circulated and was taken as read.
The motion is that the Statutory Supervisors Report be received: Moved: Resident 1, Seconded Resident 2. ·
**Stat. Supervisor**: I have been coming to your meetings for the past 6 years now. The Statutory Supervisor is independent from retirement village operators and managers. We are licenced by the Financial Markets Authority to supervise retirement villages. The FMA licences us because you made an investment at some point and we are empowered by the Retirement Villages Act to represent you as residents, your interests and investment. That is a broad overview. I have a pamphlet I will leave at reception which goes into detail about the Statutory Supervisor service and our role on your behalf. Our report shows the work we do with the village operator and management. We do have controls. If the village is to be sold or if the village wishes to raise debt, we must be consulted, and we also have security. The Report states we have no concerns to report and we are satisfied with the village's performance.
**Questions:** There were no questions.
Moved the motion that the Statutory Supervisors Report be received – Agreed.

---

[redacted]

## SUMMARY OF FINANCIAL STATEMENTS
FOR THE **YEAR ENDING 31 MARCH 2019**

**STATEMENT OF FINANCIAL PERFORMANCE**

| | 2019<br>$ | 2018<br>$ |
|---|---|---|
| Total Operating Revenues | 4,602,926 | 3,612,299 |
| Total Operations Expenses | (1,687,139) | (1,459,164) |
| Total Administration Expenses | (1,147,205) | (1,296,049) |
| Increase/(Decrease)in fair value of investment property | 624 631 | 5 939 396 |
| **Net surplus(deficit) before tax** | **2,393,213** | **6,796,482** |
| Interest Income | 32,688 | 11,547 |
| Interest Paid | - | (988) |
| **Net financing costs** | **32,688** | **10,559** |
| **Profit before tax** | **2,425,901** | **6,807,041** |
| **Tax paid surplus (deficit)** | **2,425,901** | **6,807,041** |
| Total change in equity | 2,425,901 | 6,807,041 |
| Dividend to Shareholders | - | (8,000,000 } |
| **Equity at start of period** | **52,361,246** | **53,554,205** |
| **TOTAL SHAREHOLDERS FUNDS** | **54,787,147** | **52,361,246** |

| **STATEMENT OF FINANCIAL POSITION<br>AS AT 31 MARCH 2019** | **2019**<br>$ | **2018**<br>$ |
|---|---|---|
| **Total assets** | | |
| Current assets | 2,294,780 | 1,229,139 |
| Term Deposits | - | 1,000,000 |
| Investment properties | 123,590,436 | 122,691,008 |
| Other assets | 68,711 | 86,498 |
| **Total tangible assets** | **125,953,927** | **125,006,645** |
| **Funded by** | | |
| Amounts refundable to residents | 70,605,437 | 67,252,646 |
| Other liabilities | 181,343 | 162,753 |
| Related Party payable | 380,000 | 5,230,000 |
| **Total liabilities** | **71,166,780** | **72,645,399** |
| Shareholders equity | 54,787,147 | 52,361,246 |
| **Total funds employed** | **125,953,927** | **125,006,645** |

*(All above figures are extractedfrom Audited Financial Statements and should be read in conjunction with the Audited FinancialStatements and Audit Report)*

A full copy of the financial statements are available to residents upon request to the Financial Controller.

## Annexure 2.

## Q&As of FMCs CFOs re valuation of IPs

* **NZSX** Codes: [redacted] — compiled as at 13 April 2020, updated 13 July 2020✸

| No. | Fundamental questions ❖ | FMC* | Response (extracts from email correspondence) |
|---|---|---|---|
| I. | What is the reason for adding the operator's liabilities of the residents' refundable interest-free loans (refundable residents' deposits), deferred management fees (DMFs), and any residents' share of capital gains in the ORAs resale prices onto the external valuations of the operators' "market value of the Group's interest" in the ORAs, and thus into the villages' property assets to arrive at the total IPs assets' value? | [redacted] | DMF is added on and included as Net revenue in advance / (accrued income).<br>To understand this query, it can be helpful looking from a hypothetical perspective if [redacted] did not 'gross up' the value of Investment Property.<br>In this hypothetical example, no liability (Resident Loan) would exist as an amount owed to residents on termination, and the value of investment property would be equally understated. |
| | | [redacted] | The external valuer effectively takes into account the repayment of these loans in their DCF (in NPV terms) but we are still required to recognise the dollar value of legal liabilities relating to ORAs in existence at the reporting date. As a consequence, without some form of adjustment, current liabilities to residents would get accounted for twice; firstly, as a projected future cash outflow in the DCF when that ORA is assumed to end; and secondly, in the "Refundable occupation right agreements" figure.<br>Recognising that the liability to existing residents has effectively been "double counted", the assets side of the balance sheet is adjusted upward to address this issue. This adjustment is referred to industry-wide as the "gross up". ).° See Footnote |
| | | [redacted] | [redacted] is accounting for our investment properties in a manner consistent with the other retirement village operators (listed and non-listed).◆ See Footnote. |
| | | [redacted] | As your research into us would have noted, equity analysts who cover [redacted] perform a valuation based on a group discounted cashflow model. This valuation looks at both our existing portfolio of villages and our development pipeline of new villages.<br>Market valuation consensus across 5 equity analysts [redacted]) is $13.89 per share. This equates to a market capitalisation of approx. $7bn. This external market valuation is significantly above our current net assets of $2.3bn. You would know from your detailed interest in the investment market that our current share prices is not linked to our net assets.<br>The main difference between the our net assets and the market consensus is due to the future development pipeline, which is not included in the CBRE valuation, and the fact the WACC applied by the analysts is significantly lower than the discount rates applied by CBRE as disclosed in our annual report. There are also a number of other differences around house price assumptions etc.■ See footnote |
| | | [redacted] | [redacted]'s retirement village assets meet the definition of investment property in NZ IAS 40 Investment property because they are held to earn rentals and for capital appreciation. |

| | | | |
|---|---|---|---|
| | | | [redacted] has chosen to fair value its investment property [NZ IAS 40.30]. This is consistent with all other listed retirement village operators in New Zealand….[#] (See footnote for additional response.) … The future cash flows the investment property will generate do not include cash flows already received by [redacted], i.e. the residents loan payment received up-front. However, the investment property has generated this cash flow. NZ IAS 40 is clear that the carrying amount of investment property must not double count assets and liabilities that are already recognised as separate assets or liabilities [NZ IAS 40.50]. Therefore, the residents loan liability and revenue in advance must be added back to the discounted cash flows calculated by the valuer in order to determine the full fair value of the investment property. |
| II. | How can the annual increases (changes) in the residents' loans liabilities "Group's obligations to the occupation right agreement holders" portion of the total IPs assets' value increase be regarded as income (capital gains) and be transferred to the P&L? | [redacted] | The short answer is, the change in the value of resident loans are not directly recorded in the P&L. It is important to highlight the difference between the 'accounting' and 'valuation' processes. For the purposes of accounting to prepare a Balance Sheet at a point in time, the value of the 'Resident Loans' is as at the end of the reporting period. This is the value of amounts owed to residents at a snapshot in time. As per above, the change in the value of resident loans are not directly recorded in the P&L. They are a separate component of the cash flows for the purposes of valuing the Investment Property What is being valued is the 'Investment Property' of which changes in the fair value go through the P&L. |
| | | [redacted] | As per the explanation above, this is the product of manner in which outstanding loans to residents are required to be dealt with on the balance sheet. |
| | | [redacted] | No response. |
| | | | No response. |
| | | | In order to determine the fair value of its investment property, [redacted] engage an independent valuer. The valuer has developed a discounted cash flow model to determine fair value with all cash flows included in the model discounted to their present value. Changes in the determination of cash flows from year to year will be reflected in the change in value of the investment property. |
| III. | What are the DCF present value components of the valuer's forecast assessments of the operators' future positive and negative cash flows, which offset to calculate the present value of the operators' interests? | [redacted] | Unfortunately we are unable to provide an extract of the independent valuer's reports due to non-distribution clauses. However, the material key judgments and estimates are disclosed in the Annual Reports |
| | | [redacted] | The external IP valuation is based on a DCF analysis of all projected cash flows associated with the return of units and relicensing of ORAs across the portfolio. The DCF analysis makes assumptions about when a unit is expected to be returned and relicensed, how many times this is expected to occur over the projection period (20+ years), the prices at which those transactions are expected to take place, the revenue expected to be received from residents over that period less the costs of (a) operating the village, (b) maintaining the assets in good order and (c) refurbishing the interior of each unit when |

| | | | |
|---|---|---|---|
| | | | returned and relicensed. In many cases a single unit changes hands multiple times over the course of the projection period and this is all captured in the DCF. |
| | | [redacted] | No response. |
| | | [redacted] | We are unable to provide an extract of the independent valuers report due to the non-distribution clauses. However the key judgements are assumptions are disclosed in our annual reports. |
| | | [redacted] | We unfortunately do not publicly disclose these aspects associated with our investment property valuation, and if we were to provide you with further information associated with this question, we may need to disclose this on the NZX so that all other investors have the same level of disclosure. We apologise for this limitation. |
| IV. | What contracted cash outflows and forecast new cash inflows in the Valuer's cash flow model are discounted from the forecast terminations of ORAs to calculate the DCF present values of future net gains in the refundable occupation licence payments? | [redacted] | See above |
| | | [redacted] | I'm not sure that I quite understand the question but the DCF valuation effectively captures the projected quantum and timing of all future receipts/payments from/to existing and future residents together with the anticipated costs of maintaining the asset(s) over time. The IP valuation - that makes up the vast majority of assets - effectively represents CBRE's assessment of the value of each village in the portfolio on a stand-alone basis. It excludes corporate head office costs associated with (a) owning and operating a large portfolio of villages (b) meeting listed company compliance requirements and (c) costs incurred in working up future developments (the expected future value of which is also excluded). In an arm's length transaction, a third party purchaser would undertake a DCF valuation that takes all of the above factors into account (as do equity research analysts that cover the company and the sector). |
| | | [redacted] | No response. |
| | | [redacted] | As above. |
| | | [redacted] | All cash flows in the valuer's model are discounted.<br>[Reply to a follow up request]: We are limited by our obligation to provide a consistent level of information to all investors and prospective investors and therefore we are unable to share information with you that the rest of the market is not privy to. |

✹ As suggested[redacted], Business Information Librarian, CAANZ in February 2019 advice was sought from the leading "big" audit firms in NZ in February/March 2019 for by information on their involvement in the transition from NZGAAP to NZ IFRS as given to RVs operators reflected in the on-going treatment of RVs investment properties and calculation of profits since that time. All ignored or refused my request except [redacted], [redacted] NZ National Leader, Assurance and Advisory of "approaching individual retirement village operators to discuss their accounting policies in this area". Following extensive researching the FMC's reports over the period since transition (and before) to NZ IFRS standards, requests were sent in December 2019 to all the five FMC's CFOs, Audit Committee Chairs, and their Auditors. Only three CFOs replied and continued email correspondence, others were dismissive or their staff replied to the:

❖ Four fundamental queries above for their reasons and explanations to allay the concerns raised as to their financial reporting and compliance.

○ [redacted]onse occurred after entering into a Scheme Implementation Agreement on 30 December 2019 with [redacted] [redacted]) to acquire 100% of[redacted] shares. This was one of the fullest response but still did not adequately answer the questions. On-going communications sought further explanations on 9 Mar 20 after perusing the[redacted]9 Report and Results Presentation 25Feb20, with no further response from the CFO to date. It is presumed that the Covid-19 pandemic lockdown and the SIA

have taken precedence at this time. On 8 Apr 20 MET posted a NZSX media release that [redacted] notified an intention to terminate its SIA due to COVID-19 being a specified event triggering the "Material Adverse Change" in the agreement, which MET are challenging.
Since then due to [redacted]'s proposed legal challenge to this a new SIA was entered into as advised to the market on 10 July 2020.
This has triggered the update of this table of the issues and responses, as it is an example of the underlying valuation issues affecting stakeholders in the company and wide implications for all RVs in New Zealand, due to the unsatisfactory (and potentially) misleading valuations and reporting of the RVs industry's investment properties, affecting their reported profits, retained earnings and total assets.
[redacted]'s response was sought a number of times as they were in the middle of preparing their HY 30-Nov-19 interim report, subsequently released on 24 Jan 2020. However, the CFO resigned during this period and was working on a response (on 11 Mar 2020) promising a reply before he left the next week but the Covid-19 pandemic and level 3 lockdown occurred and (unfortunately) no response was forth coming.
[redacted]' response was a general one not specifically related to the query posed and avoiding the relevant issues. Additional responses follow:

> "Due to the complexities of IFRS accounting for our sector, we have consistently produced a non-GAAP measure called underlying profit since 2007. This measure ignores the valuation uplift and instead only includes the care earnings, deferred management fees, resales earnings (the difference between the previous occupancy advance and the latest occupancy advance) and development earnings (the difference between the cost of building the unit and the occupancy advance for the unit). We also include a strong emphasis on our operating cashflows.
>
> These measures along with a number of additional disclosures we provide in our results presentation and annual reports allow equity analysts to perform the group valuation using their DCF model. This valuation would not be possible without these additional disclosures."

#[redacted]'s response to this query was wide ranging, the omitted (….) comments reflect the confusing view that the up-front payment for the ORA repayable on termination represents a future income, along with the then accounting for the DMF liability? These follow:

> … "Occupational right agreements (ORA's) are sold to residents. The ORA grants the resident the right to occupy the villa / apartment. This fee is required to be repaid when the resident ceases to occupy the room. Because the upfront fee is repayable it is accounted for as a financial liability (resident's loan) of [redacted] as it represents a contractual obligation to pay cash [NZ IAS 32.11]. There is no interest charged on this amount and it is repayable when the ORA is terminated and there has been settlement of a new ORA for the same villa/apartment.
>
> The ORA also commits the resident to pay a management fee for the use of the residence, community facilities and other services. The management fee is determined as a percentage of the ORA. Importantly, [redacted] has the contractual right to set-off the deferred management fees (DMF) receivable from the resident's loan on termination of the ORA. Thus, when the resident's loans are added back to the valuation this is the net amount of resident's loans less the deferred management fee receivable.
>
> The net residents loan position (net of deferred management fee receivable) is the appropriate figure [Annual Report 2018 Note 15 page 96] to add back to the investment property valuation as it shows the cash the investment property will earn, excluding those that relate to services provided (DMF receivable).
>
> Revenue from the management fee is recognised over the greater of the period the resident is expected to remain in the villa / apartment or the contractual period (based on the ORA). The contractual period may, for example, be 4 years, however the average expected tenure of residents may be 7 – 8 years for villas. Because the receivable is calculated based on the greater of the contractual period and the expected tenure there is also an amount of DMF is received in advance (a 'revenue in advance' liability).
>
> The DMF liability ('revenue in advance') is also added back [Annual Report 2018 Note 11 page 92] to the valuers discounted cash flow model to arrive at the total investment property valuation. This amount represents amounts recognised on the balance sheet that relate to the investment property and thus should be added back to avoid double counting the liability because the valuer's cash flows will not include the cash relating to the settlement of this obligation."

**Annexure 3**

**Summary of relevant components of the six latest FMCs RVs financial reports FY & HY to Dec 2020**

Updated following [redacted] FY Dec 2020 results issued on 23rd February 2021

See following pages for print outs from the author's Excel Spreadsheet analysis

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**ALL BLACK figures are sourced from FY & HY financial reports — RED and Blue figures are calculated**

All care has been taken in transcribing figures (Revenue and expenditure figures required adjustment where based on HY reports to YTD figures).

All **RED figures** calculations have been made by the Author and all care taken in checking their formulations, accuracy and relevancy.

**BLUE figures** are considered most relevant to the **key** issues and expressed on an average $/ORA basis and used to estimate the industry wide figures shown

Otherwise the analysis is presented E&OE

---

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 5 FMC RVs +M[redacted] + B[redacted] Financial Reports analysis at 22Jan21 | [redacted] | | | | | | | | | |
| Groups: [redacted] & [redacted] incl. Australian villages (in $NZ) | | | | | | | | | | |
| NZX listing Code: | | | | | | | | | | |
| An FMC Reporting Entity & NZX listed ? | | | | | | | | | | |
| Full Year FY or Half-year HY reporting date @ | HY 30-S,ep,-20 | HY SO-Sep-20 | HY.30-Nov-20 | Vf131-Dec-20 | UY 30-Sep-20 | 31" ohllbiges | ,Vf130-Jun-.20 | 31-[?]ec-19 | 45%olvilllc,es | 37 ol>A&a., |
| Transition Date to NZ IFRS: | 1-Apt-07 | 21 Feb-69 | 1-Jun-06 | 1-JM-OS | Variola.• IlO I7/ II/ U | f9"ofunits | I"I""") | 3l 30 46 | ""of units | 47"ofunits |
| !! S | ••• | | 25 | ,,• | II | m | 25 | II | III | 148 |
| " ! | ,S 451 " | 76 | 1.)10 | 3,661 | ,,,•• | 12.3411 | 4,066 | 1,S52 | 17 966 | 16,414 |
| i.. (SAsJ&/« careapartments (CAsJor a,resuites(CSs) | 2.231" | | m | m | ••• | + | SOS | 15 | ••••• | 4... 7 |
| 0 | 7,689 " | 76 | | 4,442 | 2,521 | 16,110 | 4,S71 | 1,567 | | 21,311 |
| Ave number of ORAs per village: | m | 38 | 2,012 | 153 | 93 | 137 | 11] | 47 | 22,MI | 111 |
| DFM / RRD % split of entry price | 20% / 8" | 30%/78" | 30%/70% | 2S" f 7S" | J0%{10% | | 30%/7°" | 21-30"-/72-70% | ˆ ˆ | |
| Aged-care residential bedshd SAs&CSs above | 3,951" | ,1 714 | 1,130 | us | 1,6'0 | J0100 | 427 | NotS ed | 10527 | 10,S27 |
| ,c Unde,tyll'IC mo ntt pro1ltbefotefatertt • $m111on• | $227.376 | $0.754 | $41.480 | $91.300 | $41.161 | $416.771 | $93.100 | Hot reported | | $S10.ffl |
| t! Ittα«IN ln'b ir1811ue' iffiltiment property$m Ilon | $16S.502 | so.m | $16.292 | $221.142 | $24.S90 | $427.781 | -$74.7'1 | Not tet,orted | | $351.990 |
| J Income tu benefit aedlt (expens.e) Smi 5on• | $100.904 | ·$0.176 | $11.396 | $9.041 | -$1t.761 | $108.397 | $26.170 | , $3.130 | $13L437 | $135..267 |
| omprehensiw MO inc:ocn«/·$IOSSlfltStaa;,aid $ffll lon • | $211.130 | $0.76S | ·$3.710 | $230.100 | $so.sn | $S'7.262 | ·$Il .672 | $S2.S64 | | $S3J.S90 |
| o.tTedtallliabllty - $mil klon{ asset -benel t $ml lion | $23.12S | $0.003 | $4A16 | ·$2.IJO | ·$15.227 | $10.207 | $0.000 | ·$3.761 | $516-154 | $10.207 |
| linwstMent Properties fl Bal Date$billon | $6.277 | $0Jm19 | $1..013 | $3.639 | $1.73S | $12.694 | $Un | $0.950 | $17.bb6 | $16.16S |
| I lrlWSt.Prop..NZlfRSTrans.JCOmm. $bll ion | $0.Jtl | $0.000 | so.on | $0 .241 | $0.lll | $0.929 | $1.000 | $0.204 | $2.1J.3 | $1.929 |
| alueOpffatot'sint.•Tf"llM./Comm. $billion• | $0.523 | $0.000 | so.on | $0.110 | $0.110 | $0.115 | $4613 | $0.d | $1.447 | $1A28 |
| U alueOpffatot's lnL.&al Date$bil io.,• | $2.254 | $0.D0617 | $0.349 | $1.143 | $0.653 | $«15 | $ IAl 6 | $0.SH | $6,400 | |
| } Iner.Operauw's Int. sinceTrans. {Comm.. $bl llioft | $1.741 | $0.D0617 | $0.177 | $1.033 | $0.544 | $3.601 | $0.103 | $05S0 | $4.954 | $S131 |
| Iner . Inlnwst.Prop.sinceTrtitl4JCOffim.$billion | $S.179 | $0.DI939 | $0.Ml | $3.398 | $1517 | $11.76S | $2..472 | $0.747 | $14.983 | $14.237 |
| f: Rti ldent's refund. deps.• TrwasJCOmm. $bll lon | $0.339 | $0.000 | $0.049 | $0.117 | $0.101 | $0.613 | $0.573 | $0.115 | $U70 | $1.115 |
| ti blebl.MM.• Trns£cwnm. $billion | $0.034 | $0.000 | $0.005 | $0.014 | $0.000 | $0.053 | $0.077 | | $0.130 | $0.130 |
| otalresidents'deposits• Trans.$billion | $0.373 | $0.000 | $0.054 | $0.131 | $0.101 | $0.665 | $0.650 | $0.115 | $1.SOO | $U15 |
| =-- Residen ts' Oeps.Inhwest.Prop..TrM.S.$bi llion | $0.339 | $0.000 | $0.049 | $0.117 | $0.101 | $0.613 | $0.6SO | $0.11S | $1M1 | $1.262 |
| Rti lden ts' Ref. Deposlts{ca,p piM.hi.Date$bllion | $3.361 | $0.019390 | ••••••••• | $1 .531 | $0.102 | $6.275 | $1.573 | $0.311 | $1.230 | $7.149 |
| " :! .sableoaup. Advs.DMfs • &al.Date$billlo., | $0.470 | $0.000231 | $0J>110163 | $0.3S2 | $0.112 | $1.11S | $0AS7 | $0.011 | $1.670 | $1.Sn |
| otal.. I Residents' Uabilltit:s. Bal Date$bil lon | $3.137 | $0.019611 | $0.6464ll | $1.173 | $1.0'14 | $7.390 | $2.030 | $0A1t | | $9A21 |
| "!: !net. InRRDt to date$ llion) | $3.029 | $0.01939 | $0.S17 | $1.404 | $0.694 | $S.663 | $U>01 | $0.294 | $9,00 | •••••• |
| RROsind . in lrlYHt. Prop. $billion | $3.361 | $0.0'1939 | $0.566 | $1.520 | $0.102 | $6.275 | $1573 | $0.311 | $1.230 | $7,149 |
| Total Liabil | $5.113 | $0.250634 | $1.022 | $2.538 | $1.274 | $10.... | $2.031 | $0.ASI | $0 .464 | $13.006 |
| otalassets/Equity& Uablitiff $billion | $1.337 | $0.273149 | $1..574 | $3.193 | $2.0,S | $16.102 | $3.Sn | $0.964 | $20.737 | $19.n 3 |
| Retaill'ledelll'ninlS(de.fkft.) $billo n | $2.219 | $0.012441 | ·$0.UI | $1.037 | $0.174 | $3.304 | $UU | $0.15S | $4.671 | $4.SlI |
| ! !StiledSMteholdtd /Contributed capital$bil lon | $0.333 | $0.004736 | $0.S9S | $0.303 | $0.551 | $1.781 | $0.307 | $0.350 | $2.445 | $2.0IS |
| 01\ltdends paid1ftfYTD year to • bowdate: $billion | $0.121 | $0.000 | $0.02.3 | $0.031 | $0.030 | $0.205 | $4.015 | $0.000 | $0.221 | $0.221 |
| !!! otalf«pty$billion | | $0.022185 | $0.652 | $1.JSS | $0.751 | $S.23S | $1.533 | $0.SOS | $7.273 | $6.768 |
| ! obi As.sett Less Res. re.f\ftl,Oeps/Ctt p ins $billion | $2.454 | $0.253859 | $1.108 | $2.373 | $1.011 | $9.715 | $1.991 | $0.512 | $12.295 | $11.712 |
| Net Assets$bll lo., l Total Equity llbowJ | $2.454 | $0.022615 | $0.652 | $1.JSS | $0.751 | $S.234 | $1.533 | $0.SOS | $7.273 | $6.768 |
| loot valucOther plant. etc $bll ion | $L4n | $0.031664 | $0.540 | $0.111 | $0.114 | $2.413 | $0.D60 | $0.AS4 | $2.917 | sun |
| Other Property, etc. per care beds $billion | $37,371 | $1,847 | $29,521 | $U,7'2 | $10,161 | $-U,896 | $14,052 | NA | $17,IIM | $37,947 |

5 FMC RVs +M[redacted] + E[redacted] Financial Reports analys s at 22Jan2.1
Groups: [redacted] & [redacted] incl. Australian villages (in $NZ)

[redacted]

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| NTA | $4.525 | MA | 0 | 0 | 0 | | $7Jl0 | |
| No shares on issue• lalence date | 500.000.000 | 12..S00.000 | 611.056.11 | 227.073 0.00 | 542.481.00 | | 2U J04 7ll | |
| rossotvYield• lbc,1/ef'ri 2S-.f'eb-20 | lA72" | NA | 4.1111% | 1.681% | 3.602% | | 1..592" | |
| Statutory Trustee | Anchorage | Covenant | Trustees Executors | Public Trust | Covenant | | Covenant | Covenant |
| Valuers (Current) | CBRE | CBRE | CBRE | DTZ/Darroch CBRE ex 2011 | CBRE & JLL | | CBRE | Company's |
| Auditor | Deloitte | Bakertilly Staples Rodway | PWC | Ernst & Young | Ernst & Young (Gr.)/ PKF Goldsmith (RVs) | | PWC | KPMG/ now Deloitte?? |

Consultants

Notes: • Whimotlisdo J.edcalculated hfdeciJdjon; Generalylndud,cslandheld fof deYelopll'lflll:;'4lageU'M5undirr corutruc:tion;a:lded -.olue acquired byac:quisli o!II;QPital additionsflldupgrades; nonr cd remediation w«b &dspc,Als ap ltalisird inter irst. See commen ts

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Totals (6 fMC lllVGro..,ps)

## Unit ana Is/ORA:

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$/Unit Analys

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|---|---|---|---|---|---|---|---|---|---|---|
| Resldenl'S refundabledtpo,sits, RIU>s$ / OU. | $438,012 | $255 112 | $271,643 | $342,ISS | $311.,ISI | $373,317 | $344,215 | $143,216 | $3SI,636 | $367,09S |
| Grossing up RRDs to orig entry price by 100%/RRD% | 1.25 | 1.43 | 1.43 | 1.33 | 1.43 | 1.31 | lAl | | | u, |
| Grossed up orig entry price $/ORA | $547,515 | $364,474 | $388,061 | $456,340 | $... 10 | $488,919 | $491.735 | | | S4S9.Sll |
| Value of Investment properties IPs $/ORAs | $816,370 | $386,711 | $486,657 | $819,172 | $2S 9, lS5 | $755,126 | $7S9 .507 | | | $7S6.A)6J |
| Value of Operator's Interests' $/ORA | $294,394 | $90,395 | $167,593 | $257,277 | $42 9 17S | $262,671 | SJ()t779 | | | $2 742 |
| Excess value of IPs over Operators' Interest $/unit: | $521,976 | $296,316 | $319,064 | $561,894 | SU 0,917 | $492,455 | $409728 | | | $4SUII |
| Excess value of IPs over RRDs $/ORA | $83,964 | $41,184 | $47,422 | $219,639 | | $119,139 | $105SU | | | $116,226 |
| Grossed up total orig entry prices $billion | $4.210 Sb | $0.028 $b | $0.808 $b | $2.027 $b | $1.146Sb | $8.219$ | $2.2 Sb | S0.522$ | | 510466$ |
| Operator's Net Interest as % of Res. Advances | | 35" | 67% | 75% | | | | | | 36300units |

Totals for 5 FMC RVs

All S FMCs All 6 FMCs lAI Vllaces

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| O\lw-valuation of IPs due to Ind. residents'loans | 3.368$0 | O.ot94$b | ,0 566$b | 1.S20Sb | 0.802$b | | 1.573 Sb | 7.M9 $ b | $C78,181/ORA | 17.3SI$b |
| Operator's H erests ind. PVSof fUIDs. % | | | | | | | | | | S&.17 |
| rMOl"s intertstf.ind.M ofRRDsO % | 1.539 | 0.003 | o.n, b | 0.663 b | 0.321 b | 2.706 | 0.708 b | 3.41' | $207.913 / 0U | 7.550 |
| Total owr-valuation of Al RVsunits | .a.907$b | O.Oll$b | o.n os b | 2.183$ b | 1.129Sb | | 2.781$ b | 11.763$ b | $716636 OM. | S |
| Net Assets$ blllkwl TotalE | 2AS4$b | 0.023Sb | 06S8b | 1..35S$b | 0.751Sb | UMS6 | 1.S33Sb | 6..768$b | 1 O.. | S |
| RMC Assets LMS Totllovervaluations lb\le | 2.4S3$ b | 0.000$b | 40.1.?$b | 0.12 S$b | 0.379Sb | | 1.2CISb | .995$ b | $!04.» S/OU. | Sb |

AllNZ Units to All NZ Esl tun"ent units

ind uded in InvestmentProperties (IPs):l- 4:.ss Df value of kwertment ProperiK ;-::=t::ty ies

QIIT'entRetainedbminp sts sincel ransJ C ,3 304S b 3.601 S b U .663$ b 20A' 2 " 37 "

Total Assets/[quity & Ulbilitles \ilal..,.ofbwestment Properties valu. of Operator's Interests current lifetimd bml ngs

Excess I

Indicates the scale of the issue

| | | |
|---|---|---|
| Total IPs values extrapolated to all NZ's RV units: | 37.316 $ b | |
| 5 FMC RVs RVs Total Assets values extrapolated to all NZ's RV units: | 47.830 $ b | Includes all IPs + Aged Care & Plant & Machinery & Misc assets |
| Over-valuation of operators' IPs due to including residents' loans : | 6.300 $ b | |
| of Net Operators' interests due to including PVs of residents' loans : | 2.600 $ b | |
| Total over-valuation of 5 FMC's RV's Largest Operator's IPs : | 8.900 $ b | |
| Over-valuation of RVs IPs due to incl. residents' loans extrapolated to All NZ's RV units : | 18.400 $ b | |
| Over-valuation of OP's Ints' by incl. PVs of RRD loans - extrapolated to All NZ's RV units : | 7.600 $ b | |
| Total over-valuation of All NZ's RV units : | 26.000 $ b | |

MARY 5 FMCs

| Key Items: Group | [redacted] | | | | | Total of 5 FMC Groups | [redacted] | Total of 6 FMC Groups |
|---|---|---|---|---|---|---|---|---|
| or's int. since Trans /Comrtt.Sbill | $1.741 | $0.007 | $0.277 | $1.033 | $0.544 | $3.601 | $0.803 | $4.404 |
| Iner. Il'l t. Prop. since Tran: Comm. ·1110l'I | $5.879 | $0.029 | $0.941 | $3.398 | $1.517 | $11.765 | $2.472 | $14.237 |
| eps. in Invest. Prop s.Sblll | $0.339 | $0.000 | $0.049 | $0.117 | $0.108 | $0.613 | $0.650 | $1.262 |
| Iner. to date $(billion) | $3.029 | $0.019 | $0.517 | $1.404 | $0.694 | $5.663 | $1.001 | $6.664 |
| [redacted] l.nd. in Invest. Prop. $billion | $3.368 | $0.019 | $0.566 | $1.520 | $0.802 | $6.275 | $1.573 | $7.849 |