TE ARA AHUNGA ORA
Retirement Commission

Operator Submissions

Contents

Contact ID	Operator/Owner	Q1	Q1.1	Q2	Q2.2	Q3	Q4	Q4.1	Q5
19451	Tamahere	No	1. Residents case studies, no balance as it only reflect the negative experiences and not a range of experiences. Therefore biased towards a specific outcome. 2. No differentiation between Operators that share and those that do not share capital gain. 3. Residential care providers with villages do not all provide ORA residential care options. What % of the total is this. You are mixing up services provided under MOH specific contracts with ORA in a confusing approach which appears that all providers are doing it. 4. Many providers developed retirement	Yes	1. Capital gain sharing is the biggest issue which leads to dissatisfaction with families/whanau when resale takes place. In our case the residents receives the major portion of the capital gain. This is not reflected adequately in your white paper. See comparison between our ORA conditions re capital gain as below: Commercial Tamahere Operator Market Value 510,000.00 510,000.00	No	Yes	The majority of the Code of Practice is fine but the issues that need review are: 1. A Capital Gain Sharing section 2. Outgoing Fee section on actual cost versus fixed cost	Re do the white paper and differentiate between the two different models where capital gain is shared and where it is not shared as this is the major issue with the rest being side issues. Interview villages that have favorable conditions (usually smaller operators) in comparison to the major players in the market.

			villages to gain income to pay for residential care that is under-funded by government. Therefore villages are subsidizing the government for residential care and village residents purchase in the village with care as there is a future prospect of needing care. 5. There is a lack of data, to mention a few: 5.1 Comparison of resale conditions and outcomes under different options available in the market place 5.2 % of complaints vs number of RVA Units 5.3 Resales: a. Length of time from when a unit is		Original Price 340,000.00 340,000.00 Fee Rate 7.50% 4.00% Period in years 4 5 Management Fee 102,000.00 102,000.00 Renovation cost 13,055.86 13,055.86 Total Deduction 115,055.86 115,055.86 Payment to resident 224,944.14 394,944.14 Payment to village operator				

			vacant and available for renovation to settlement date (Average and median) b. Impact of market conditions on resales as intending purchasers generally need to sell their existing property in order to pay for the RV unit c. Impact of cancelled sales on settlements for existing units for sale d. Average and median time period for units to be vacated by residents/families e. Average and median selling times during good property market conditions in comparison to down turn in market conditions 5.4 In our case we		- Management Fee 102,000.00 102,000.00 - Capital gain 170,000.00 - 272,000.00 102,000.00 2. Outgoing fees differ from village to village. Some calculate actual cost annually and base fees on this. Others have a fixed fee for life and make profit from this. Outgoings should be actual cost based. 3. Entry age. In our case it is 55 years and the partner can be of any age with no additional cost. Many for profit/non capital sharing operators have 70 to 75 in order to have a quicker turnover and also				

			have an average selling period from unit available for renovation to settlement of 77 days. 5.5 We sell to intending residents from our waiting list which always range between 50 to 60, and do not use estate agents. The main reasons for the waiting list is our Christian Faith base and purchase conditions which includes capital gain. 5.6 ORA/LTO village also have capital gain to residents not just other title options. 5.7 Impact of enforced buy back will result in smaller operators to be closed and you will only have for profit operators with no capital gain left in the market		charge for a partner that is under the entry age. 4. We do renovations in consultation and agreement with the outgoing resident & family. Valuations are done on the basis of the renovated state of the villa. The available unit for sale is offered at this valuation and generally accepted by incoming and outgoing residents. If an offer is made at a price other than the valuation then the outgoing resident have the option of accepting or rejecting.				

			5.8 A warning should be issued to the NZX of the possible impact of a change in the RVA Act and Code of Practice as existing and future investors need to be informed. Listed company share price and returns/dividends will be at major risk as well as their liquidity.						
110859151	Duffus Memorial Trust	Yes		Yes	See the text submitted under question 5	No	Yes	In formulating your options for change, you MUST cater for charitable trusts such as the Duffus Memorial Trust that seeks to provide affordable housing to aged people in need. Instead you should seek to help such entities. Please see question 5 for details on the very sad plight of the Duffus Memorial Trust that is striving (against the odds) to help Russell's aged	Retirement Villages Discussion Paper Feedback from the Duffus Memorial Trust in Russell, Northland I am the [redacted] of the board of trustees that runs the Duffus Memorial Trust (DMT) in Russell, Northland to provide low-cost pensioner housing for Russell's elderly. We are a charitable trust, established in 1986 to salvage the remnant assets of a highly generous bequest of

								residents who have been so regrettably "shortchanged" for more than a century!	land (~300 acres in and around Russell) made in 1905, followed by funds (£34,000) in 1929 to cater for Russell residents in their old age by providing a convalescent home and hospital in Russell. These bequests were placed under the stewardship of the local council that was then also the health board. But the bequests were grossly mismanaged by councils and health boards alike over many decades, with very little done to help the elderly residents of Russell. The DMT was formed in 1986 to ensure that the few assets that remained from the bequests were finally used to benefit Russell residents in some way. This led to building 4 pensioner cottages

									that the council let to needy pensioners but they failed to maintain them adequately. So the DMT bought the Duffus Estate from the FNDC in 2011. Since then the DMT has refurbished the interior of each cottage, installed a robust water storage system, including a bore and put in 2 new houses on the Estate in 2019. See: www.dmt.org.nz. We have looked over your discussion paper and are concerned that it is highly geared to protect RV residents from large business entities who run villages for commercial gain. We see no consideration whatsoever being given to address the needs of not-for-profit charities such as the DMT that seeks to

									provide much-needed, low-cost pensioner dwellings. The DMT holds the remnant 7 acres of land that is dedicated to pensioner housing on which there are now 6 dwellings with room for some 20 more in future. But our trust have no net funds, but some ~$150,000 of debt instead. Our rental income ranges from $134/week for a 35 year old cottage to $227/week for a new 2-bedroom dwelling and is well below the market rate. Three quarters of the trust's rental income is currently used to cover debt repayments and council rates. We derive no income other than pensioner rents and do not charge weekly service fees. This rises to ~95%

									when mandatory audit and insurance costs are included. The DMT makes no charges to its tenants for repairs and upkeep of the dwellings, maintenance and repairs to Trust owned equipment inside the dwellings such as stoves and heat pumps or for general upkeep of the Estate. We exist primarily to help Russell residents who are in financial need in their old age. QUITE SIMPLY, OUR TRUST IS NOT A COMMERCIAL ENTITY! Instead, we are now urgently seeking substantial fresh funding from a variety of sources to provide yet more affordable living options for Russell residents in need. Without this, we will fail to progress and

									nothing more will be done to redress so many decades of historic neglect and mismanagement. We are now looking to sell some ORA's to raise some funds for more low-cost homes on the DMT Estate. We therefore ask that: 1. Provision be made in your revisions to enure that not-for profit charitable trusts, such as the DMT, are excluded from the tighter regulatory net that you seek to cast for commercial RV operators regarding ORA's. 2. That you do not add yet more "red-tape" to increase the many problems and challenges that we face as an empoverished charitable trust, run by volunteers seeking to provide more low-cost

									pensioner housing that New Zealand urgently needs. We trust you will consider this matter carefully and ameliorate your regulations accordingly [redacted] Duffus Memorial Trust 17th February 2021

Karaka Pines Villages

White Paper Response

Retirement Villages Legislative Framework: Assessment and Options for Change 2020

This response is submitted by [redacted] on behalf of Karaka Pines Villages (KPV).

A. About KPV Villages

KPV designs, builds and manages "Next Generation" retirement villages throughout New Zealand, and currently has four villages under construction: Auckland, Hamilton, Rotoura and Christchurch. KPV is also the compliance manager for two "Own your Own" retirement villages, (one in Hamilton and one in Tauranga), whereby the residents own the village and operate it via a Residents' Committee and a Board of Directors. All six villages, (both "Next Generation" and "Own you Own"), operate the following model:

- The resident retains the capital gain.
- The resident controls the re-sale process; setting the re-saleprice and deciding when and how to sell.
- The resident pays their weekly fees based on the services provided to them.

Our ethos is one of fairness; that fundamentally we treat residents in a way that reflects the fact that the residents have paid market value for their unit and have a greater ownership interest of it than the operator. This reflects our value of a greater level of human understanding. Our residents are the true winners as through our model they keep enough of the value of their units that no matter what their circumstances may be, they always have the ability to choose to leave and are not impoverished through the sacrifice of capital gain. This is in direct opposition to the traditional model whereby the operator's profit comes from the resident's lifetime of building wealth; trapping the resident in a village where in the fullness of time they may not want, or be able to stay, but no longer have the equity to be able to move.

B. Our Responses

Question 1: Has this White Paper canvassed the Issues fairly and accurately? Yes I No

No - so far as our capital gain model is not proportionally considered or represented.

The White Paper has focused its primary criticisms and proposals for change on operators that retain a resident's capital gain. Our model is only referred to as "potentially" existing in New Zealand (paragraph 1.2).

We are not aware that the CFFC endeavoured to canvass the views of residents or operators of alternative structures such as ours, prior to publication. The danger is that a blanket adoption of the White Paper proposals will, by default, include all villages that fall within the legislative framework regardless of their structure. A "one size" fits all approach is neither fair nor accurate.

Patently there is also a high degree of demand and acceptance of the primary "no capital gain" model with the majority of villages in New Zealand being managed and operated on that basis by businesses such as Ryman Healthcare, Metlifecare, Summerset, Arvida, Bupa and Oceania. In addition, a recent RVA survey concluded that 86% of residents are satisfied with the village they reside in.

There is a need to incentivise the provision of senior housing, which has different requirements to normal housing. Retirement units have proven to be what seniors are looking for and it is imperative that the legislative framework is not upset to such an extent that that housing is either removed from their needs or the pool of choice is drastically curtailed.

Question 2: Are there any important points that are missing? Yes I No

Yes - see our response to question 4 below.

Question 3: Do you agree that a full review of the retirement villages framework should be undertaken? Yes/ No

We subscribe to the general contention that the current legislative framework is robust and provides for multiple checks and balances to protect the financial, and welfare interests of residents. Indeed, this is the view reported by the CFFC as recently as 2018 confirming; *"the overall feedback was that the Retirement Villages Act (2003) works very well and that New Zealand has a very good system to protect residents, particularly compared to some countries such as Australia, the UK and the US. The general view expressed was that people have confidence in New Zealand's system".* ("The Effectiveness of a Statutory Supervisor" - CFFC 2018 Paper, paragraph 1.3.5).

It is surprising to note the CFFC's intimation that over the last 24 months that confidence has deteriorated to such an extent that the CFFC are proposing a full review of the legislative framework . Equally it is difficult to reconcile that intimation with the increase in the number of people choosing to move into aretirement village over the last 24 months where demand looks likely to exceed supply.

We choose in our villages to encourage residents to retain a Statutory Supervisor and encompass the Code of Practice, as we accept those features generally do provide protection for individuals living in a collective environment and are stronger than the protection afforded for Unit Title properties. However, we do subscribe to the philosophy that our residents should have all of the benefits of retirement and living in a collective environment with none of the burden. The current legislative framework is onerous and does not protect residents in our type of villages where we choose to be fair to residents.

By way of response to specific proposals set out in the White Paper;

- Continuation of weekly fees after termination.
  We made an application some time ago requesting an exemption to this provision for our "Own You Own" villages as we considered it to be an unacceptable financial burden on the remaining residents in our villages who must continue to pay for the operating costs of the village without the full contribution of the outgoing resident. This is particularly apparent in our models, as the outgoing resident (and not the operator), is in full control of the re-sale process and the resident may set their selling price too high and/or be obstructive, prolonging the process. The proposal for the weekly fees to be halved after three months and ceased entirely after six months will have a detrimental impact on our models. Our previous application for exemption from the discounted fee was refused with the view expressed that

our model of village was not considered to be viable; we have proven that view wrong, and yet our residents still bear the burden of that Code of Practice provision. Regardless of their level of control over the re-sale process, any operator surely has a vested interest in securing a buyer for a re-sale unit. The reputation of the village is likely to be negatively impacted if re-sale units "hang around" for too long. Whispers of what's wrong with the unit and/or the village will begin to circulate; operators will wish to avoid this at all costs particularly if they have further development taking place.

- Resale and buy back times

  The proposal to introduce a guaranteed timeframe for buy backs by operators is, in our view, structuring the industry for potential jeopardy, both for larger for-profit operators and for small independent, not for profit operator.s Whilst the proposal offers protection and certainty for the out going resident it has the potential to destroy the village, with operators at risk of insolvency.

  In addition, the balance should be that villages such as ours should not be caught in this net, as it is the resident that has the control over the selling mechanism.

- Documentation / Complaints System / Authorised Advocate

  We support a review of the disclosure statement with a view to producing simplified and accessible documentation. We also support a proposed streamlining of the complaints processand the appointment of a mediator similar to the process found in an Employment Tribunal.

Question 4:I/ youreplied No to Q3, are there any issues that still need attention? Yes I No

Yes - as follows:

- Insurance Cover - Payment after damage or destruction of the residential unit beyond repair and replacement

  The Code of Practice confirms that if a resident's occupation right agreement is terminated in these circumstances then the repayment to the resident must be an amount at least equal to the capital sum paid by the resident (Clause 47.2.e) . This fails to take into consideration models such as ours, where the resident benefits from the capital gain of their unit.

  The issue arises where a recently arrived resident has a capital sum equal to the market value of the unit. The residents in our villages are significantly disadvantaged as we have been consistently unable to identify and secure any insurance policy that will insure the market value of a unit in these circumstances.

  This creates inequity in the villages in that a resident who has purchased a unit immediately prior to the event will recover the market value but a resident who has lived in the village for some years prior to the event will lose any capital gain they may have accumulated over that period of time and willonly receive their original "buy in" sum.

  We have not been able to identify and secure any insurance product that will bridge the gap and provide the fairness to residents we seek to deliver.

- <u>Termination of the Occupation Right Agreement by the Operator on Medical Grounds</u>

  The Code of Practice confirms that if the operator terminates a resident's occupation agreement the operator must, within five working days of the date on which the termination takes effect, pay all sum due to the resident (Clause 49.4).

  This provision assumes that the resident willonly be entitled to a small portion of the market value (the original Capital sum), whereas in our villages, the resident will be entitled to the full Market value and there are no funds available to meet this requirement.

  Whilst we note that Clause 53 of the Code of Practice provides for an agreement between the operator and the resident to buy back the resident's interest in the unit and pay the sum due to the resident within 20 working days from the date of the agreement, this is predicated on the basis that either the operator has the sufficient available capital to fund the buy back or has secured a new resident for the unit. In addition, it assumes that the on-goingresident, their family and/or appointed Power of Attorney are cooperative and in agreement with the process. This may well not be the case; many residents and their family members fail to acknowledge the need for the resident to move on from the village. We appreciate termination by the operator is a draconian step and it is imperative safeguards exist to protect the resident. However, the current framework impedes and discourages an operator, (particularly in small independent and not for profit villages with no access to on-site or adjacent care services andfacilities), to take active steps to terminate where there is a genuine concern, supported by a medical assessment, that the resident's deteriorating health and increased needs are no longer able to be met by the village structure. This potentially becomes a health and safety issue for the resident and for the other residents of the village.

Question 5: Isthere anything else you would like to say?

Our view that the current legislation is targeted to control the operators of standard villages and in doing so penalises villages which are not so rapacious. This creates a disincentive to develop villages of our nature due to the legislative imposed risks. We would support a legislative framework which starts from the assumption that a fair model is used (such as ours) and where this is not the case the more draconian rules apply. This adaption to the framework would enable it to act permissively, rather than one that relies heavily on making applications for exemptions (which are difficult to obtain).

We are not advocating that the industry should adopt our model, but that our model should not be disadvantaged by either the current legislative framework or an overhaul of it . Many of the provisions of the framework should only apply where the resident is not in control of the selling process and receives the capital value of the sale.

[redacted] personal submission on CFFC White Paper

Disclaimer

I have been on the Executive of the Retirement Villages Association of New Zealand Inc continuously since 1997 and have held the position of President for the past four years. However, this submission represents my own personal view. I own Generus Living Group, which operates five retirement villages in New Zealand with a sixth village under construction.

Introduction

Recently, there has been significant commentary around retirement villages, but little of it has properly considered the value proposition that has seen the industry thrive, creating satisfaction levels the envy of virtually every other New Zealand business, and operating in a globally recognised regulatory industry framework.

The retirement product is about offering safety and security, peace of mind, companionship and underlying all those features, certainty for residents. It is not about residents investing, risk taking, seeking financial gain or involving themselves in management or complications. Seniors do not want any surprise financial burdens and the current model ensures this.

In a simple analysis, the model involves offering senior New Zealanders an attractive price of entry into a village with a known eventual repayment sum, fixed and inexpensive accommodation costs with a level of amenity [usually including quality aged care if required] and a level of certainty that cannot be achieved elsewhere.

Operators invest significant capital in firstly the development of the village, and thereafter underwriting the operating cost to ensure residents have certainty and modest ongoing living costs. In return, many years later, operators receive a return.

This is the retirement village model. It is not a broken model. It has successfully and consistently delivered certainty and comfort to tens of thousands of residents and their families, as well as enabled improvement and choice for seniors around how they live their lives.

It is understandable that anyone who has not experienced any of the age or acuity issues that residents do, may not fully appreciate the offering and attractiveness of retirement villages. It is imperative that all aspects are fully understood including the negative implications legislative change can bring.

The retirement village product has evolved markedly in the past 20 years leading to a raft of changes such as:

- Removal of refurbishment charges, removing a source of disagreement but also resulting in an increase in deferred management fees to offset the cost
- Removal of resident exposure to any drop in real estate prices
- Fixed weekly fees for the lifetime of tenure

- Cessation of any charges post the Occupation Right Agreement (ORA) termination, substantial care facilities forming part of almost all new village offerings
- Compensation for an excessive period before resale
- Other industry innovations such as offering families an immediate cash sum for funeral costs on exiting.

All of these beneficial incremental improvements to the retirement model have been advanced by operators seeking competitive advantage and offering more options and choice in the market.

As such, New Zealand's retirement village model is highly successful and the envy of many countries around world.

Whilst the White Paper serves a worthwhile purpose as a discussion document, highlighting some aspects where adjustments could result in beneficial industry wide improvements, it fails to understand the primary motivations of retirement village residents.

The current focus is a superficial view of the commercial terms of the village model; it is not a considered view of the entire model itself. Consideration of any one item in isolation ignores the holistic nature of the product and the wants and needs it satisfies, and how it does that. A mandatory change to one item of the model will simply see a compensating effect on another. It is no different as to how the mandated change to refurbishment charges saw deferred management fees increase.

The market determines the offering, not legislators and as with many other industries, it makes no sense for a regulator to interfere with a model that is already working. In my opinion the regulators role is to have a deeper understanding of how retirement villages are satisfying the needs to residents, and to facilitate better practise where it's required.

As in any business, dictating commercial terms will limit competition, reduce choice and lead to poor outcomes. Residents can and do, vote with their feet. Our market may be elderly New Zealanders but they are in the main, both educated and discerning.

Almost every product that has seen rapid growth has one common feature; it meets or exceeds the expectation of the market in which it operates. All credible surveys of residents have demonstrated how satisfied village residents are. These surveys also show why residents move to villages; and it is not for financial consideration other than guaranteeing certainty of their future costs. It is for an uncompromising sense of certainty, security, companionship, and overall wellbeing.

However, despite these high satisfaction levels, it is inevitable that some residents, albeit a very small minority based on the complaint evidence, may have experienced inappropriate behaviour by an operator.

Any changes to the Code of Practise which might assist in this area would be welcome and some suggestions are listed below.

Common myths

During my 28 years in the industry, the most common myth is the "bad" village. Various chairpersons of resident committees within our five villages have attended forums organised by resident groups seeking to change [usually retrospectively after accepting the terms] some commercial terms in their ORA's, or agitate on some issue. On returning to their village, these chairpersons advise our residents how lucky they are, as they have none of the problems that were given as examples at these sessions. It is reminiscent of the 1990's Renshaw-Edwards solicitor debacle where it became known that "all solicitors were crooks but fortunately I have a good one".

Myths around complaints are also too common and are rarely backed by evidence. There are usually two sides to a story.

It is unfortunate that the myth of "capital gain" has excited many. This is likely due to early ORA's seeking to take the upside on ORA resales but concurrently seeking to leave any risk of real estate price reduction with the resident. This situation is virtually unheard of today, and as outlined earlier, the model enables a senior to purchase an ORA and receive an agreed net sum [being the agreed ORA price less the deferred management fee] on exit with no further charges.

If it is intended to legislate to account for any increase in the value of ORA's, then it would be necessary to also legislate around deferred management fees and in other areas otherwise, just like the change to refurbishment costs, it will simply move the charges elsewhere.

Moreover, wherever the "capital gain" aspect is involved in resident agreements, more arguments arise about the adequacy of the sales price and often consequently around the length of time to relicense the unit.

Lastly, changing the current model will mean operators may need to increase operating costs to residents or even withdraw the "fixed fees for life" model to counter unforeseen maintenance expenses such as leaky buildings or large rate increases as proposed in Wellington. Therefore, the certainty the model provides residents is lost.

It is sometimes suggested that there is an imbalance of power between residents and operator. That myth is understandable given residents are elderly, and in some cases may be unable to represent themselves as competently as they could have in earlier years.

However, there is a range of options available usually starting with very protective and competent children, resident committees, industry organisations, and the Commission for Financial Capability (CFFC). But perhaps most importantly, operators understand that their reputation is the single greatest asset they have in attracting future residents and independent satisfaction surveys do not suggest any such imbalance.

Some retirement village observations

- New Zealand residents repeatedly report unparalleled satisfaction with their choice in retirement villages

- The retirement village sector globally sees New Zealand as operating a world leading regulatory framework
- There is miniscule serious complaint; there may be some instances and they need to be thoroughly reviewed with action taken to eliminate these occurrences
- There has already been strong industry self-regulation; overlaid by statute, Statutory Supervisors and a desire to obtain higher penetration rates within the market
- The product is competitive and continues to evolve offering significant choice
- The industry is a key part in freeing up thousands of family homes for those who need them and assisting in offsetting the shortage of housing stock supply

Issues identified by the CFFC

1. **Re-sale and buy-back times, and weekly fees continuing after termination**

   These issues are intertwined. For most operators, all charges including weekly fees or deferred management fees cease on the unit being vacated, and as such the motivations of the operator and the estate are aligned. However not all villages practise this. In my view it should be mandated to ensure perfect alignment. In addition to this enhancement, more full public disclosure than presently occurs of resale and buy-back times would demonstrate this alignment.

   Seeking to impose a mandatory buyback will result in additional risk. Slower selling villages could even spiral into insolvency during a period of a real estate downturn.

   Lastly, the area of “capital gain” is explored in the White Paper. As explained, this is an inaccurate characterisation based on previous historic ORA’s who sought to take value increases by the village but leave potential losses with the resident. The capital gain/loss is not the issue and residents are fully aware of the model when they purchase. Distributing a survey to existing residents and asking them now if they would like some of the “capital gain” is like asking them if they would like to win lotto.

   Finally, any compulsory changes to mandate sharing “capital gain” will presumably not be retrospective based on previous legislative changes, as if they were it would drastically affect the current value of village enterprises and create insolvency issues. For any change moving forward, it would simply result in an increase by villages in the deferred management fee to compensate for the lower revenue if the current low level of subsided tariff and certainty is to be retained.

2. **Transfers from independent units to serviced care or care facilities: information requirements and treatment of fixed deductions**

   Almost all villages allow a credit of any deferred management fees when transferring between units, or from independent to serviced care. However, as care facilities are expensive to develop and operate and are only able to charge fees based on mandated government policy, a second deferred management fee is often appropriate. Generally, a minority of village residents move to a care facility.

3. **Code of Practice 2008 compliance**

   There can be no excuse for any serious or intended breach of the Code of Practise.

4. **Lack of a simple complaints system or authorised advocate**

   There is also a lack of serious complaint.

5. **A voice for residents**

   Having some form of "ombudsman" would be largely welcomed by operators as it would assist in dealing with frivolous and rare complaints made by difficult residents.

6. **Emerging consumer issues**

   The industry will adapt and change as it has to date within a regulatory framework which is fair and successful, and it is not a regulators role to interfere with a model that is already working.

7. **Structural and drafting anomalies evident in the legal framework**

   Any anomalies should be removed. The devil is in the detail.

Specific response to White Paper questions

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

   As a discussion document, the paper serves a worthwhile purpose, but fails to properly consider the motivations of retirement village residents and the excellent regulatory framework that currently exists in New Zealand. It is also inaccurate in some areas, e.g. including the unfortunate examples of alleged inappropriate behaviour viewed partially and published by the Retirement Village Residents Association of New Zealand without robust scrutiny.

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

   A more holistic understanding on the motivations and satisfaction of residents would potentially have led to other and more informed conclusions.

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

   Based on the satisfaction levels of residents, the low level of serious complaints and the history of gradual improvement it is difficult to see how a full review is warranted. However, any movement towards improvement and codification of better practises can only be encouraged.

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

   There are areas where some operators have been slow to adopt more progressive policies and exploring how to accelerate these via the Code of Practise is entirely appropriate. We would welcome further discussion around this to ensure positive change within the retirement sector continues.

[redacted]

Submission on White Paper "Retirement Villages Legislative Framework: Assessment and options for change 2020"

Please find detailed below the submission for St Andrew's Village to the questions asked in the white paper.

Background information about St Andrew's Village

- St Andrew's is an independent charitable trust based in Glendowie, Auckland which was first established in 1957
- St Andrew's is a large integrated site consisting of both retirement village and residential care operations set on a 14.1 hectare site.
- Our retirement village operations currently comprise of 188 units, apartments and villas, plus we also operate 13 rental cottages to enable residents to move into our site and enjoy all of our amenities even if they cannot afford the traditional ORA model of entry.
- Our residential care operations currently comprise of 173 beds (made up of 20 rest home, 10 swing beds, 42 secure dementia beds, 98 hospital beds, plus a dedicated 3 bed palliative wing which we run in conjunction with the local hospice).
- At any given time, approximately 25% of residents in our residential care wings, have transferred from within our retirement village.
- The average age on entry into the retirement village is 79
- The weekly fees are fixed on entry into the retirement village and do not change for the entire duration of occupancy.
- All village levies cease at the end of the 3 month notice period, within which time we expect families to have cleared the unit and given us the keys back so that we can commence a refurbishment program.
- Where one resident (from a couple) transfers into care, we have always offered the option for them to accrue the care fees and arrange for this to be deducted from their final ORA exit payment, when the partner eventually moves out of their independent unit. This is offered in instances where paying the care fees on top of the standard village weekly levy would cause financial hardship.
- In my 9 years as CEO of St Andrew's, there has never been a formal complaint which needed to be escalated to either the statutory supervisor or independent mediator for them to assist with a resolution. All issues have been resolved amicably within the village.
- Our resident satisfaction surveys are run by 'Insync', who benchmark the same questions across approximately 300 villages across both New Zealand and Australia. This always results in St Andrew's placing in the top handful of villages across both countries in terms of resident satisfaction.

- St Andrew's made the decision several years ago, to pay for an annual block membership to the RVRANZ which covers all of our independent residents. However, there is little interest from any of our residents in attending those meetings, and only 1 or 2 typically attend, just to understand some of the issues that have arisen in other villages.

- St Andrew's Village is a long-time member of the RVA and supports the submissions they have made regarding the white paper.

- In terms of 'why' our residents chose to move into St Andrew's Village, the prime reasons we are given are as follows:

  - To downsize and release the equity from their former home in order to enjoy during their retirement.

  - To avoid ongoing maintenance and gardening issues and associated costs.

  - The 'peace of mind' that comes with having an established and well respected full continuum of care on our site, where people can transition through as required.

  - The certainty of future outgoings with fixed fees for life.

  - The ability to remain connected to the local wider community, who are also welcome to enjoy our facilities such as an a la carte restaurant, bar and 53 seat tiered cinema. We also have social membership arrangements in place with the local golf and bowling clubs, which are for the benefit of all residents, should they wish to access them.

  - The charitable nature of St Andrew's whereby all profits are re-invested back into the village to provide additional amenities, services and care options for residents.

Responses to questions raised in the White Paper.

<u>Question 1 – Has the White Paper canvassed the issues fairly and accurately?</u>

Unfortunately, I have to give a resounding "NO" to this question.

In the opening remarks within the executive summary it clearly states that

> "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.
>
> However, there are issues at the margins, including of regulatory structure, that need attention."

However, the recommendations being made within the White Paper are not at the margins whatsoever, and instead are trying to fundamentally change the very fabric of the ORA entry model, which is not only widely accepted and successful in New Zealand, but is gradually being adopted elsewhere around the world as being a fair and sustainable model, both for operators and residents.

In particular, the proposals around the introduction of mandatory buy-backs and sharing of capital gains have the potential to adversely affect the financial viability of villages, (particularly smaller independent villages) which in turn will lead to poorer services and amenities for existing residents of the village, and possibly result in some villages being forced to close.

A comparable contrast would be the mandatory introduction in 2017 of the pay equity agreement within aged care, which was never fully funded. These changes so adversely affected the sector that over 35 operators around the country have subsequently had to close their doors as they could no longer make ends meet. Primarily, the operators that were forced to close were single site, independent villages, which has invariably reduced choice within the sector, much to the detriment of the residents who required those types of services.

Given the increasing number of operators who are offering fixed weekly fees for life, the amount of income that is being generated by those fees are nowhere near enough to cover the related expenditure, and so operators are routinely cross-subsidising those costs from their DMF. In addition, the funds received from the capital gain are routinely used to fund the long term maintenance of the village infrastructure and communal facilities which are for the benefit of all residents.

Question 2 – Are there any important points that are missing?

Yes – The White Paper has missed the point that if a person chooses to remain living independently in the community, then the capital gain within their home is effectively locked and can't be released.

This is in addition to having to cover the cost of all the routine home ownership liabilities, such as rates, insurance, maintenance and gardening etc.

When a resident chooses to move to a retirement village, the villa/apartment that they move to is typically priced at around 80% of an equivalent freehold home in the community. This is because what they are purchasing under an ORA is simply an entitlement to occupy/live in the home, as opposed to any freehold rights to the home or land.

Given that residents who move into a retirement village are only purchasing a licence to occupy their home, as opposed to any freehold rights, then no capital gain should apply.

Therefore, by making the choice to move to a retirement village, residents are typically able to release equity in the home that they are selling in the community (which they would not otherwise have been able to do), so support their ongoing retirement, and so they have already received the benefit of a capital gain upon entry into the village.

The other element which the paper missed is around the importance of freeing up 'typically larger' homes in the community, which are then available for growing families. The ongoing influx of residents into retirement villages is helping to address the shortfalls of housing in the wider communities.

Question 3 – Do you agree that a full review of the Retirement Villages Framework should be undertaken?

Yes and No.

I agree that there is always room for improvement and that there are some issues around the margins which could be addressed such as better informing residents of the potential care options that are available within the village should they need them in the future, or to ensure that all documents are written in plain English and that unnecessarily confusing terms are removed.

However, I do not agree with the type of full review that is being recommended (i.e. mandatory buy-backs and capital gain shares etc.)

These elements are not 'at the margins' and drive to the very core of the ORA model. In my opinion, they are not warranted at all.

The current model is well understood and well accepted. It isn't broken and it doesn't need fixing.

Question 4 – Are there any issues that still need attention?

Yes – as stated above, there are some issues at the margin such as plain English documentation and better descriptions of the types of care services which are available in the future, should a resident need to access them.

Question 5 – Is there anything else you would like to say?

Overall tone of the White Paper

Both ourselves as an operator, and our residents who have read the white paper have found the overall tone to be extremely negative and not at all reflective of the true realities and benefits of living within a Retirement Village.

In addition, the suggestion that these residents are in some way 'vulnerable people' who were not really sure of what they were signing up for before moving in, is offensive to all parties, both operators and residents alike.

At St Andrew's, many of our residents come from senior professional and business backgrounds, and were certainly fully aware of what they were purchasing before they moved in. In fact, the biggest advocates for encouraging new people to move into our village are from the existing residents who already live here, and recommend us to their friends.

In addition, since 2006, all prospective residents need to ensure they have received independent legal advice before moving into a village. The fact that the entry model is so well understood by all, means that their solicitors are also now able to fully understand and explain what is being signed and advise accordingly.

Incentive to sell

Given that St Andrew's ceases all village levies at the end of the termination notice period, there is no incentive for us to delay refurbishment and seeking to secure a resale, as we are not receiving any income for the unit whilst it remains empty.

In instances where a resale is likely to be delayed, through no fault of the outgoing resident , due to issues such as COVID lockdowns, then St Andrew's has always taken a voluntary approach to pay out the outgoing resident early, so that they are not adversely impacted. This does not need to be legislated.

Case studies

The inclusion of the casestudies do not seem to have been researched and simply taken as 'accurate' from certain members of the RVRANZ.

In each of those instances, there should have been an independent view of the situation expressed by the statutory supervisor for the village(s) in question. The case studies as written are merely conjectured comments with no independent validation or rebuttal whatsoever. Therefore, those case studies should not have been included.

Similarly, there is absolutely no balance to either the White Paper or the case studies giving examples of where operators have gone out of their way to support and assist their residents.

Capital Gains

As stated previously, incoming residents to Retirement Villages have already benefitted from a capital gain when selling their home in the community that they would never have received had they chosen to remain in the community.

This is due to them buying a licence to live in a property within a retirement village which is priced at around 80% of an equivalent freehold home in the community.

In terms of what the operator does with the capital gain it receives on resale of a villa or apartment, it typically uses the money to return the property back to an 'asnew' condition, as well asmaintaining the overall infrastructure and communal areas within the village.

It isvitally important that the entire villageis maintained to the highest levels to ensure that the village remains an attractive and viable option for potential residents wishing to move into the village in the future.

[redacted]

STANDREW'$ VILLAGE

Excellence in Aged Care and Retirement Living

[redacted]

P +64 9 972 1180
E info@arvida.co.nz

Unit F, Level 1,
39 Market Place,
Auckland 1010,
PO Box 90217
Victoria Street West
Auckland 1142
New Zealand

www.**arvida**.co.nz

2 March 2021

RESPONSE TO CFFC RETIREMENT VILLAGES LEGISLATIVE FRAMEWORK: ASSESSMENT AND OPTIONS FOR CHANGE 2020

Q 1 Has the White Paper addressed the issues fairly and accurately? *No*

Q 1.1 Why?

When the model is reviewed in its component parts, as the White Paper has done, the fundamentals of how and why it has evolved into its current form are lost. A more holistic understanding of the model structure in its entirety is required to appreciate ***accurately*** how the model works in practice and why it has become an attractive living option for 14% of New Zealand's older population. It is important to remember that retirement village living is one of several options for the older population. Electing to remain in their own home, rental accommodation or with whanau are other choices available to them. With each alternative, there are different financial implications. The key to supporting the choices of our older population is to have options that are easily understood and provide the right level of protections.

Looking at a sector which has Net Promoter Scores amongst the highest of any business in New Zealand, with very few complaints relative to customer numbers, and year on year growth in penetration rate, the whitepaper's recommendation for a 'fundamental framework review' does not seem balanced or ***fair***. Understanding what is driving the overwhelming customer satisfaction and positive outcomes should also be taken into account to gain a balanced perspective from an external viewpoint.

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

Q2.1 Please describe the missing points.

Explanation of the model working in practice showing actual operational realities including:

- subsidisation of fixed village weekly fees;
- the difference between the village entry price and the price to acquire the same house (with access shared communal facilities) on a freehold basis;
- absorption of ongoing material operating cost increases through fixed village weekly fees,
- ongoing investment in upkeep and renewal of facilities outside the immediate living unit;
- the provision of care services in an integrated setting;
- provision of facilities and amenity to residents considerably below the cost of access outside the retirement village setting.

The view of the model as a whole presents very differently than a view of its parts in isolation. The components are inter-related and collectively address meeting market product and service requirements, as well as a required return on capital to invest in the sector.

Q 3 Do you agree that a full review of the retirement village framework should be undertaken? *No*

The framework has successfully evolved through multiple regulatory amendments to meet industry demand and requirements of residents. This has occurred under an existing regulatory framework that has been refreshed in a number of critical areas to improve resident outcomes and clarify each parties' obligations. The industry has also successfully self-regulated through the representative body to further improve the governing framework so that its members (which represent 96% of the sector) deliver services to a consistently high standard.

However, we do see some opportunities to codify best practice and improve regulation in areas where demand and practices have changed over time.

Q 4 If you replied No to Q3, are there any issues that still need attention? *Yes*

Q 4.1 Please briefly describe the issues.

These issues have been identified by both the industry and the CFFC for review and discussion:

- Cessation of fees at resident exit incorporating an exemption mechanism for small operators where this may not be financially viable.
- Clearer complaints path potentially including an ombudsman type role to ensure fairness and transparency
- Incorporation of transition protocols into Code for more uniform practice
- Simplification of chattel repair/replacement responsibilities through Code evolution.

Q 5 Is there anything else you would like to say

Over recent months new inroads have been made to formalise interactions with resident representative bodies (RVRNZ) and the RVA. Interaction to date is highlighted by largely unified views on key issues such as cessation of fees at exit and a focus on efficiency of resale timing. There is also unity of thought on the fundamentals of the model and why it has been so successful for residents to date, reflected in independent resident surveys.

The industry's ability to voluntarily self-regulate and to meaningfully communicate with residents and regulators on emerging industry issues is clearly evident. Seeking new ways to govern and operate in the best interest of the resident has been a function of the industry from its inception. It is now considerably driven by competition creating both innovation and pricing pressure.

It would seem out of step to undertake a policy framework review of a strong industry, providing much needed affordable housing, with very favourable customer satisfaction levels.

Submission on White Paper on Retirement Villages Legislative Framework: Assessment and options for change 2021

Before commenting on the feedback requested on the five questions below, is a brief description of Acacia Cove Village.

- Independently owned village
- 232 dwellings on an 11-hectare site
- 318 residents aged between 60 and 94
- Average age at entry is 72
- The Village is 22 years old with the final 5 dwellings being completed last year
- Average sale time between dwellings, being emptied and reoccupied is 91 days
- Levies cease 30 days after dwelling is cleared
- No formal complaints received for the last 3 years, and never any complaints that have escalated beyond being resolved in the village, usually within 24 hours
- Only one resident belongs to the Retirement Villages Residents Association of NZ
- We have no care facility, but our residents have priority access to a Bupa Care facility situated across the road. 24 of our residents have transitioned to this facility over the last 3 years.
- Our latest resident satisfaction survey showed that 99.3% of residents rated the village as very good or excellent
- All staff are well qualified for their roles and regularly undertake training to upskill.

Acacia Cove Village is a member of the Retirement Villages Association and supports its submissions.

- Residents that have shifted into our Village have done so for the lifestyle it offers, security, companionship, to avoid maintenance problems and in many cases to release equity.
- Our Village has the following facilities:
  - Restaurant and bar
  - Lounge
  - Billiard and Pool tables
  - 2 meeting rooms
  - Library
  - Indoor heated pool
  - Spa bath
  - Nurse's station and Doctors Room
  - Motel Unit
  - Gym
  - Craft room
  - Hairdressing Salon
  - Bowling Green
  - Village Green
  - Petanque Court
  - Mini Bus for shopping
  - Garden Shed
  - Allotment areas

In addition to this an associated Company owns the 9 hole golf course opposite the Village and our residents get discounted membership fees.

Response to Questions:

Question 1 – Has the Whitepaper canvased the issues fairly and accurately?

- **<u>NO</u>** – In the executive summary, it says that "there are issues at the margin's including regulatory structure that need attention". We would not describe any of the recommendations as being at the margins, but at the very core of the ORA model.

  Currently, most operators rely on capital gain (in many markets this hasn't been much) and facilities fees to fund long term maintenance, refurbish dwellings for resale, meet financing obligations and eventually make a profit.

  Any significant change to this model could restrict new parties entering the market, increase resale time as operators would have less cash to undertake LTM and refurbishments. It could also reduce value of existing villages.

  Most significantly, the introduction of compulsory buy-backs and sharing of capital gains could affect the financial stability of otherwise successful and stable villages which in turn could impact residents who may at best see the quality of the assets and services provided diminish and at worst, see their village fail.

Question 2 – Are there any important point that are missing?

- **<u>YES</u>** – The paper fails to recognise that residents moving into villages, free up houses in the community for families. Over the last 5 years residents shifting into this Village have freed up 75 homes mainly in South Auckland. Retirement Villages have played a key role in assisting with the shortage of housing in the community.

  Our dwellings sell for approximately 78-80% of the sales price of comparably sized properties within a 7 km radius so most residents are releasing equity when they shift to the Village.

Question 3 – Do you agree that a full review of the Retirement Villages Framework should be undertaken?

- **<u>NO</u>** – "If it isn't broken why try to fix it"? I think it is very good to review things, but the current framework provides residents with a very high level of security. However, I do agree with the need to change to Plain English documents and we have already recently done so with our ORA and disclosure statements.

Question 4 – Are there any issues that still need attention?

- **NO**

Question 5 – Is there anything else you would like to say?

- **Capital Gains** – In our first 6 years of operation, we offered incoming residents the chance to invest a further $10,000 to share in 50% of capital gains. Only the occupants of 19 dwellings which is 13% of those offered it ever took it up. The net cost to incoming residents of this $10,000 investment was really only $2,000 because $8,000 was refunded at termination. Residents told me then and continue to say today that they preferred to have that $10,000 cash in hand at their start of life in the Village rather than in their estate when its of no use to them. The reality is, we need the capital gains and facilities fee to fund long term maintenance, provide additional facilities and to pay for our extensive refurbishment costs which currently run between $60,000 to $120,000 per dwelling.

  As the Village ages we are needing to spend more and more money refurbishing our dwellings in order to meet buyer expectations. The figures quoted for dwelling refurbishment depend on how long/since it was last refurbished and its size. Those aged over 12 years are being totally gutted and being refurbished to an 'as new standard' including double glazing and installing LED lights. We are also looking at adding more 'green' features.

  Our refurbishment times have increased from 8 to 12 weeks because of the difficulty of sourcing materials such as carpet and whiteware. This obviously has impacted on our resale time.

  Vulnerability of older people - *Some of our residents who have read the report are offended by the suggestion that they are regarded as vulnerable. Many of them have run successful businesses and had relatively senior positions during their working careers. Several also commented that they found the document to be very negative.*

  They definitely knew what they were signing up to when they decided to move here. Because of our relatively low entry age, many of them did not want to include their children in the sales process (especially with second marriages) and the problems that sometimes occurs at termination are because their children's expectations are out of line with the contracted terms.

  Residents that have shifted into villages since 2006, have already had the extra protection of having a solicitor sign a declaration that they have had the terms and conditions in the ORA explained.

  Further Comments

  - The paper fails to understand that it is to the operator's advantage to resell the dwelling as soon as possible, so that the facilities fee can start amortizing.

- The inclusion of the case studies appended to the paper are very extreme and probably not been fully researched and should not have been included in this publication. The membership of the Retirement Villages Residents Association of NZ is a relatively small % of residents living in villages, and the views are not necessarily in line with those in many villages.
  Several of our residents have attended CFFC stakeholder forums and have been dismayed at the confrontational nature of representatives of the NZ Residents Association of NZ.
  It is not the main purpose of a retirement village to provide social housing, although the composition of NZ's aging population has already provided opportunities for them to provide different models.
  There are already many choices for intending residents to consider when looking at villages.
  For example:
  Some villages have an offer where outgoing residents keep the capital gain, there are very few communal facilities, no nurse on site, they are responsible for external maintenance during their stay and refurbishment and marketing costs at termination. However, many residents enter a village to not have the responsibility for maintenance and to be able to access community facilities and services.
  Other villages offer fixed levies for life which can be attractive to people because they have a level of certainty over their outgoings. However, this option is dependent at the age of entry. Here we take people 60+ so it is not a viable option especially given that likely length of stay for that younger demographic. However, it is great that people have that choice.
  Sales prospects also have the choice between Villages that offer a continuance of care and differing amortisation rates.

....

[redacted]

Vintage Harvest Holdings Ltd

By email: consultation@cffc.govt.nz

Metlifecare Limited

Submission on the Commission for Financial Capability White Paper - Retirement Villages Legislative Framework: Assessment and Options for Change 2020

March 2021

Submission

Introduction

Metlifecare Limited (**Metlifecare**) wishes to make a submission in relation to the Retirement Villages Legislative Framework: Assessment and Options for Change 2020 White Paper issued by the Te Ara Ahunga Ora (Commission for Financial Capability) (**White Paper**).

Metlifecare has had input into the response to the White Paper prepared by the Retirement Village Association (**RVA**), and supports the submissions raised in that response.

While we are comfortable that that the key issues relating to the recommendations made in the White Paper have been well covered the RVA's response, given the significant consequences to the retirement village industry, including its residents, which could result should a number of the options put forward in the White Paper be introduced, we wish to make a short submission on a number of key points.

Metlifecare

Metlifecare is a leading New Zealand owner and operator of retirement villages. Since 1984, we have been a leader in New Zealand in the development and management of vibrant social communities for older people. The care, comfort, happiness and wellbeing of our residents is at the heart of what we do and why we do it.

We currently own and operate a portfolio of 25 villages (with more under development), located predominantly in the upper North Island. We have more than 5000 residents in our villages and employ approximately 1200 staff members across our operations.

Our views on the key issues raised by the White Paper are set out below.

Question One: Has the White Paper canvassedthe issues fairly and accurately?

Metlifecare is supportive of ongoing review and discussion to ensure that our framework and industry remains world leading, and we agree that a number of issues identified in the White Paper should be subject to further review (as identified in Question Three below).

However, given the high rates of satisfaction of residents within the industry and the significant safeguards already present and provided for in the existing framework, we consider that any review should be limited to addressing matters which are truly problematic, and in a manner which will continue to allow the industry to continue to innovate and be financially viable, both from an operator and resident perspective.

A number of the options proposed in the White Paper would necessitate a major change to the existing revenue and funding model for retirement villages. We submit that certain of the changes, such as guaranteed timeframes for buybacks or allocation of capital gains, could not be introduced without consequent changes resulting, which would potentially include increases in entry prices, introduction of resident responsibility for capital expenditure or capital loss, and diversion of operators' funds from maintenance and development purposes. Those consequent changes would be to the detriment of the industry as a whole, including both existing and prospective residents.

Accordingly, there are a number of instances where we consider the issues raised in the White Paper are problematic.

Resale and Buy-back times

The White Paper recommends a policy review to consider options to improve the resale and buy-back process, and puts forward options of introducing a guaranteed timeframe for buy-backs, interest payable during vacant period, and allocation of any capital gain on sale between the resident and the operator.

We note the following:

(a) Operators are incentivised under the current model to complete sales as quickly as possible, and the existing framework includes provisions around reporting and disputes in the event sales do not eventuate in a timely manner. The industry is cognisant of the issues around any delay in sales of units and on the whole operators work hard to ensure proper processes and communication are undertaken, and delays are minimised.

(b) There is increasingly intense competition amongst operators with a number of differentiated offerings in the market including guaranteed buy backs, sharing of capital gains, fixed weekly fees, and cessation of weekly fees on exit. However, each operator will tailor its full financial and village profile (including the age of residents it targets, level of amenities and services (including continuum of care) it provides, the price it charges on entry, and the DMF) to ensure it can offer those benefits in a financially viable and sustainable manner. To require all operators to offer guaranteed buy backs or a share of capital gains will likely result in increased costs in other areas (i.e. entry price or DMF will go up) and a decrease the variety of offerings (i.e. if operators must provide for guaranteed buy backs or share of capital gain they are less likely to be in a position to offer other benefits).

(c) In return for foregoing a share of capital gain, residents are sheltered from the financial burden of freehold ownership of their units, for example in respect of any capital expenditure required or risk of market down turn and loss of value of their units. It is the operator that meets those costs and manages these risks – and it is one of the key attractions for older persons entering a village that they have the certainty and security associated with the removal of those risks. However, if residents are to share in capital gain, some operators may see fit, or financially be in a position, to require residents to also further contribute to the cost of maintenance, upkeep and capital expenditure for the unit, and share the risk of capital loss in the event of market downturn.

Case Study: Metlifecare Remediation

Many New Zealanders have suffered financial distress as a result of the leaky building crisis. At five of its villages which have weathertightness issues, Metlifecare is undertaking a remediation programme which is scheduled to be substantially completed in 2023. The investment in this remediation programme is costing tens of millions of dollars*. The current Metlifecare group model protected affected residents from financial exposure to this adverse event.

**As referred to in the notes to Metlifecare Limited's Interim Group Financial Statements for the half year ended 31 December 2020.*

(d) Operators rely on capital gains to fund villages, including to subsidise or meet shortfalls in operating expenses not met by weekly fees, to meet long term capital expenditure and maintenance, and also to fund further development. If capital gain is allocated to residents, the likely potential consequences include (1) villages which are less well maintained (to the detriment of all residents both current and prospective), and (2) less development of retirement village units, which is undesirable in a country such as New Zealand with an ageing population and housing shortage.

(e) Similar to point (d) above, operators base their financial models on the requirement to pay exiting residents upon the resale of the relevant unit (i.e. once they are in funds to do so). Introducing guaranteed buy backs would cause operators to have to fundamentally change those models, requiring funds to be held to meet buybacks which would need to be diverted from the purposes they were intended for (for example, upkeep of villages).

(f) Metlifecare currently pays interest to exited residents after nine months has accrued. However, introduction of a requirement to pay interest to exited residents from an earlier date, or for some operators the introduction of any requirement to pay interest until resale, would also divert funds away from operators' other expenses and operations, and potentially result in operators seeking to recover such funds through other means.

(g) Smaller operators, including not for profits, may experience liquidity issues if the proposed options are introduced, which could see them exit the market (and in the worst case scenario, exit as a result of insolvency). This will result in fewer operators, less choice and less competition (particularly outside of the main centres).

(h) We note the White Paper states that consideration could be given to restricting the introduction of such options to larger, for-profit operators. We see a number of issues with this approach, including market distortion and unfairness and the potential for operators to structure villages and business so they are not categorised as 'large'. For example, new entrant operators may develop smaller villages or have a smaller presence in the market, which again is undesirable where there is an existing housing shortage and ageing population.

Metlifecare considers that further education of both residents and their families (being the likely recipients of residents' estates) regarding the rationale for, and benefits of, the current ORA model would benefit the industry. It is unhelpful when the issues of capital gain and buy backs are raised without the explanation of the rationale behind the existing model and the benefits it currently provides to residents (and which it may not be able to continue to do so if such options were introduced).

At the time of entry, information and further emphasis could be placed on exit payments and timing of the same, including increased disclosure on resale times.

Metlifecare disagrees with the statement in the White Paper that provisions around guaranteed buy backs and sharing of capital gains could be introduced by amending clause 53 of the Code of Practice. As noted above, such requirements would fundamentally change the existing regime, which operators have relied upon in developing their business models and investment decisions.

Weekly fees continuing after termination

Metlifecare does not continue to charge residents weekly fees after they vacate their unit.

Transfers from independent units to serviced care or care facilities: information requirements and treatment of fixed deductions

The White Paper recommends that a policy review considers how to improve the standard of information about transferring into higher levels of care.

Metlifecare notes that the majority of operators in New Zealand (being those accredited with the RVA) are already required to comply with the *Best Practice Guidelines for Disclosure of Right to Transfer to Care in a Retirement Village*. These guidelines were developed by the RVA in order to address issues identified in disclosure of information to residents in this area.

Metlifecare is supportive of the introduction of a requirement for all retirement village operators to comply with the Best Practice Guidelines.

Code Compliance

The White Paper recommends 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.

Metlifecare does not consider a full review of the Code is required, and nor does the White Paper appear to include arguments to support this as the issues identified largely relate to compliance with the existing Code.

If compliance with the Code remains an existing concern, the CFFC may wish to do a further monitoring report to confirm whether any issues exist (noting the last monitoring report on this matter was 2009-10, and did not identify any significant issues with compliance).

Lack of a simple complaints system or authorised advocate

The White Paper recommends a policy review includes a review of the complaints function to simplify and formalise a clear and simple process.

Metlifecare is supportive of such a review but submits that operator's interests must be balanced alongside residents in any review, and that such a review is undertaken with a full understanding of the frequency, nature and seriousness of complaints which arise in retirement villages. While residents should have a complaints system available to them which they feel comfortable and confident to access and use, operators must have some protections available to them to appropriately manage frivolous complaints and abuse of the complaints process, in the rare instances that occurs.

A voice for residents

The White Paper recommends a policy review considers whether changes are required to better support retirement village resident welfare.

Metlifecare supports resident led communities through an annual Resident Chairperson Conference. The two-day conference includes time for chairpersons of resident committees from all villages to get together without management to discuss key ideas and concerns. Feedback is then presented to senior management, including the CEO, and the group collectively discuss ways to implement improvements or deal with any issues. Our resident chairs advocate and articulate very clearly any issues on behalf of our residents, and the feedback they provide is incredibly valuable, especially on new initiatives or ideas.

We consider this type of informal or participation based "voice for residents" works very well in practice. The introduction of any further regulator or 'voice for residents' would need to clearly define the scope of the role and how it fits alongside other regulator roles (i.e. Registrar, Statutory Supervisor, complaints and disputes process).

Emerging Consumer Issues

The White Paper recommends 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 used.

Metlifecare does not consider such review is required or desirable. The current regime provides significant consumer protection and the industry and model has effectively and organically evolved to respond to consumer needs and demand to date. We submit it should be allowed the freedom to continue to do so without overly prescriptive requirements.

The Legal Framework

The White Paper recommends a review of disclosure statements be undertaken with a view to producing simplified and accessible documentation (including online resources).

Metlifecare is supportive of simplified disclosure statements and notes the following:

(a) the majority of operators in New Zealand (being those accredited with the RVA) are already required to provide incoming residents with a "Key Terms Summary" which includes a clear summary of the key terms of an ORA allowing residents to easily compare the products offered by different operators. Metlifecare would support introduction of a statutory requirement for retirement village operators to provide a "Key Terms Summary" or similar document to prospective residents;

(b) further prescription of the contents or form of disclosure statements is unlikely to result in simplified or more accessible documentation;

(c) the existing legislation prescribes a large amount of information that must be included in disclosure statements or otherwise provided to residents, so consideration could be given to updating and streamlining information requirements (particularly to reduce the amount of repetition between Disclosure Statements and ORAs); and

(d) online resources may be of limited use for the current generation of intending residents, who often are not confident or frequent users of the internet (though we appreciate this is quickly changing).

The interface of care and residence

The White Paper recommends the exploration of the extent to which the presence of care changes the nature of a RV 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 (including those arrangements that do not need an ORA). Metlifecare does not believe that the presence of care in a retirement village changes the nature of the village to a health proposition. Both retirement villages and care are effectively regulated under separate regimes, and any issues regarding the transition from village to care are best dealt with through education and disclosure as noted in our response above.

Question Two: Are there any important points that are missing?

As noted in our response to Question One, we consider the White Paper fails to appreciate the impact on the model and industry that would result from the introduction of changes to commercial terms such as guaranteed buy-backs and capital gains.

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

No. Metlifecare does not consider that a full review of the retirement village framework is either warranted or needed.

Overall, we consider the regulatory framework works well and effectively balances the interests of operators with fulsome protections for residents. The willingness of industry participants to respond to issues and ‘self-regulate’ within that framework has, since the introduction of the Retirement Villages Act 2003, been proven to be effective.

However, as noted throughout in our submissions above, certain aspects of the existing regime could be improved, and we summarise those in our response to Question Four below.

Question Four: If not, are there any issues that still need attention?

Metlifecare Limited supports a targeted review of the following issues within the current framework:

(a) Review of Disclosure Statements and the information provided to residents, to include consideration of:

   a. improving residents’ (and other stakeholders’) understanding of the existing regime, including the costs and benefits;

b. streamlining the information provided to residents, with the potential for key terms to be provided up front and other prescribed information to be provided separately (including potentially online should residents support this). Reference should be had to the existing "Key Terms Summary" currently used by RVA members. Care should be taken when considering the introduction of further information requirements (given the already substantial amount of information required to be provided to residents);

c. best practice disclosure requirements regarding resale of units following exit to promote resident (and other stakeholder understanding of the same);

d. best practice disclosure requirements regarding transfer to care, using the RVA's "*Best Practice Guidelines for Disclosure of Right to Transfer to Care in a Retirement Village*" as a starting point;

(b) Review of the complaints function to simplify and formalise a clear and simple process, with the submission that operator's interests must be balanced alongside residents, and that such a review is undertaken with a full understanding of the frequency, nature and seriousness of complaints which arise in retirement villages. Further, any amendments should be to replace or streamline the existing process, not add additional layers to it.

(c) Consideration of a voice for residents, noting that:

a. this could be covered and provided for in the review of the complaints function:

b. there are a number of existing 'voices for residents' including the Residents Association of New Zealand, Statutory Supervisors, Resident Committees and, for Metlifecare at least, further processes in place to ensure residents voices are heard (i.e the annual Resident Chairperson Conference);

c. whether there is in fact a need for an additional regulator or ombudsman type role should be considered in light of the existing voices for residents (noted above) and the high levels of resident satisfaction and low levels of complaints (in particular, serious complaints);

d. the scope of any additional regulator or ombudsman type role would need to be very clear, including how it fits alongside other regulator roles (i.e. Registrar, Statutory Supervisor, complaints and disputes process), to avoid confusion and overlap.

Question Five: Is there anything else you would like to say?

No, our views and key concerns are covered in our responses above.

Cotntnentary on the CFFC White Pa e

[redacted]

Introduction

This commentary relates to the November 2020 white paper from the Commission for Financial Capability (CFFC), with particular reference to the following statement:

> *This paper recommends a policy review and considers options to improve the resale and buy-back process. Options include introducing a guaranteed timeframe for buy-backs, interest payable during vacant periods, and allocation of any capital gain on sale between the resident (or their estate) and the operator.*

The commentary will focus on guaranteed "buybacks" (more appropriately loan paybacks) and the allocation of (unrealised) capital gains.

This paper refers to the typical characteristics of New Zealand retirement villages and (for simplicity) does not deal with exceptions.

The writer is happy to speak to this paper.

Background

[redacted] has a Master of Commerce degree (with honours in accounting), is a fellow of the New Zealand Institute of Accountants and is a qualified cost and management accountant. He was the joint founder and joint CEO (for 18 years) of listed aged care operator Ryman Healthcare, is currently the Executive Chair of aged care operator Qestral Corporation, is the Chair of listed company New Zealand King Salmon and is Chair of leading private equity fund manager Direct Capital, and is to be inducted into the New Zealand Business Hall of Fame in March 2021.

He is the author of "Global Investing - A Guide for New Zealanders".

[redacted] has been involved in the New Zealand aged care industry since 1984 and has participated in the development of 16 retirement villages.

Guaranteed Paybacks

The Real Estate Industry

The real estate market ebbs and flows, generally following a boom–slump–recovery cycle with varying durations.

For instance, the 1970–73 New Zealand property boom ended with a crash after the 1973–74 oil shock, and did not recover for 10 years.

The 1980s boom ended after the 1987 share market collapse, and did not improve for about a decade.

The boom after 2000 slumped during the Global Financial Crisis, but recovered after the recession ended.

Over five completed cycles between 1974 and 2009, the New Zealand property market fell on average for 13.2 quarters (40 months) by an average amount of 15.53%, and rose on average for 15 quarters

(45 months), for an average amount of 38.78%. These figures are very similar to the global average. Property markets are volatile.

The New Zealand residential real estate market is currently undergoing a substantial boom, with prices at all-time highs. House prices in New Zealand have become the most unaffordable in 17 years.

As a result, the New Zealand government has said they will introduce new measures, in order to discourage price increases.

The Minister of Finance (Grant Robertson) said (09/02/21):

> *Anyone who tries to tell you that there is a single silver bullet for addressing the housing crisis is not facing reality (or is speaking from the safety of Opposition).*
>
> *What we do know is that it is now the time for bold action. The market has moved quickly and rapidly in a way that is not sustainable. We have to confront some tough decisions, and we will do that.*

When property market reversals occur the usual response by owners of houses is to remain in situ, and withdraw their properties from the market. Because there is often no need to change residences they can ride out the slump, until the market improves.

The CFFC, with the recommendation of compulsory paybacks for retirement village operators, is effectively saying that they should be made (by legislation) to have "forced sales" at any price, in order to repay guaranteed advances. I.e. irrespective of the timing.

It is a recipe destined to create serious financial disruptions - to both residents and the village operators.

Mortgage Rates

The main reason for the current boom is that global interest rates are at their lowest levels for the last 300 years. Central banks have arbitrarily forced down interest rates to close to zero (the Reserve Bank of New Zealand's Official Cash Rate is 0.25%), in order to stimulate their economies, bringing mortgage rates down below 2% for the first time in New Zealand history. This is known as an "aggressive monetary policy".

It has boosted the real estate market.

However, interest rates are changing.

The most important (and most watched) benchmark determinant of interest rates in the world is the yield on the US 10-year Treasury note. Because of increasing inflation expectations it is rising sharply – as shown in the adjacent chart.

It is expected that when major developed nations, such as the US and in Europe, exit their pandemic lockdowns and central banks withdraw their monetary stimulus, interest rates will rise further - causing mortgage rates to increase.

Who is encouraged to have mortgages?

In any developed society the people who have the collateral to raise mortgages are those who have lived the longest and have the most accumulated assets, and those who are investors. They also tend to have higher incomes than young people.

However, well-meaning governments are concerned that first home buyers (i.e. people without collateral and on low incomes) have difficulty raising mortgages to buy houses, as they cannot afford the deposit. They therefore encourage central banks to bias their macro-prudential policies (loan to value ratios) towards those who have no money (typically the young). These people are therefore encouraged to raise mortgages at record low interest rates, at a time when interest rates can only rise.

Because "affordability" (the ability to make mortgage payments) is at a 17-year low the ability of these "encouraged" buyers to afford increases in mortgage rates is limited.

There is the strong possibility that in a few years' time, after mortgage rates have risen by 100 to 200 basis points (1 to 2%), there will be a property crash (as there tends to be every decade) and these first home buyers will find they have been left with houses that have negative equity… and they also won't be able to afford to pay the new increased interest rates. It is a generational problem.

According to Interest.co.nz (5/03/21):

> *A 1% rise in mortgage rates would chew up about 5% of Aucklanders' and 3% of other New Zealanders' disposable incomes, warns ANZ NZ Chief Economist Sharon Zollner.*

However, as usual, most long-term residential property owners will withdraw their properties from the market, until the situation recovers.

A guaranteed payback situation for retirement village operators, as recommended by the Commission, would not allow village owners to participate in the normal ebb and flow of the real estate market, and will put the aged care industry (and their residents) at serious risk of crashing.

It would be a momentous event. Operators would bankrupted. Residents with a financial interest in villages would be highly compromised.

Occupation Loans and Bank Debt

The writer has looked at the last reported financial accounts of five aged care operators, listed on the New Zealand's Stock Exchange - Ryman Healthcare, Summerset, Metlifecare, Oceania and Arvida. They own and operate around 60% of the villas in the New Zealand market.

At last count, their occupation loan and bank debt levels were as follows:

Bank debt	$3.1 billion
Occupation Loans owing to residents	$8.1 billion
Total	$11.2 billion

Extrapolating out to include the balance of 40% of the operators, would result in an estimated bank debt for the sector of around $4.3 billion and occupation loans of around $11.3 billion, for a total estimated combined overall debt of $15.6 billion.

Under the Retirement Villages Act, 2003, occupation loans owing to residents have priority over any other debt, including loans by banks.

Under International accounting definitions a current liability includes "those for which the entity does not have an unconditional right to defer payment beyond 12 months".

Under the proposed change, with guaranteed repayments, all of the occupation loans (i.e. $8.1 billion) would be effectively on six months call and should be classified as "current liabilities".

This has repercussions with banks, as they have to consider whether they would be prepared to remain second in line to residents, all of whom (in total) could demand repayment within six months. Will they insist on each village operator having "massive reserves", as a repayment contingency?

It has the potential to financially destabilise the aged care industry (and at least stop future development).

Leverage

A village operator should operate and control a village in an orderly and responsible manner.

However, a situation could occur when (say) 20 village residents go to management and insist that if a new swimming pool is not constructed then they will leave - and demand a compulsory repayment of occupation loans within six months. If their average occupation loan is $650,000, this would amount to $13 million.

The point being made is that guaranteed "paybacks" give residents unreasonable collective leverage which could be financially destabilising.

In the Global Financial Crisis that began in America in 2008 (because of issues with the sub-prime property market) US residential property market prices collapsed on average by 33%. As usual, properties were withheld from the market, which has now recovered.

If compulsory repayments were mandatory in the New Zealand retirement villages market then there would be a significant incentive for residents to demand the occupation loan to be compulsory repaid, and enter into new property arrangements elsewhere at a much lower price… a situation that other property owners, in a collapsed market, would not be able to undertake. i.e. they could demand above market repayments.

This leverage would destabilise the aged care sector, as it would create massive losses for operators.

Capital Gains

Common Characteristics of a Retirement Village

The typical retirement village developer creates (in 66% of the instances) an integrated complex - consisting of villas, apartments, resthome, hospital, sometimes a dementia centre, and a community centre (often featuring facilities like a restaurant, movie theatre, indoor swimming pool, hairdressing salon, gymnasium, bar, café etc).

The operator is involved in (or controls) the design of the site, the construction of the houses and facilities, the marketing of the complex, the customer relationships to attract new residents, the maintenance of the site and buildings, provision of meals in the care facility, the delivery of 24/7 health care in the care complex, and the provision of services to monitor the healthcare of village residents. This is a serious exercise. Unlike nearly any other business, people can die on the premises. There are high standards to be maintained.

In the integrated facility, residents are attracted by the ability to move from one part of the village (such as a villa), to another (such as an apartment), to another (such as a resthome), to another (such as a hospital). People age… and their health tends to only go in one direction.

There can be 100 or more staff on the premises: a village manager, registered nurses, caregivers, activities staff, catering staff - as well as visiting consultants: doctors, podiatrists, physiotherapists etc. Education of care staff is compulsory.

To this end it is a business.

A survey by the Retirement Villages Association (January 2021) found that:

> *The three most important factors when residents are deciding if they will move into a retirement village are "Security and safety" (88% important), "Peace of mind" (87% important) and "Hassle-free lifestyle" (86% important).*

It is not just an accommodation hub.

Contractual Arrangements

Villages do not sell real estate. The operator owns all of the facilities in the village and retains ownership. There can be an unrealised capital gain or capital loss over time, as there is for every owner of real estate in New Zealand. Individual houses or apartments would be difficult to sell by themselves as they generally do not exist on separate titles and it is not usual to consider them as transactional assets. Who would continue to run the village if villas were sold off individually?

Villa accommodation is an integral part of the business, but only a cog in the wheel.

Village residents usually enter into what is known as an Occupational Right Agreement (or ORA), which is an agreement between the operator and the tenant that allows the tenant, for a consideration, to use the wide ranging facilities and receive services during tenure. This is a business arrangement, used by 95% of the village operators in New Zealand.

Operators do not sell ORAs. They are similar to a lease agreement in a commercial building, where the tenant has rights for the period of tenure, but the lease is terminated on exit.

As part of the arrangement, the operator receives an advance (or occupation loan) from the resident to help fund the range of buildings and facilities within the village – on a temporary basis. This is not a sale. Under international accounting standards (IFFRS) the amount is treated as a loan in the operator's balance sheet and the loan is recognised and accepted by the New Zealand Inland Revenue Department as non-revenue. The loan is paid back to the resident after departure and after the arrangement of another occupational loan.

Many village operators, including those listed on the New Zealand Stock exchange, recalculate their financial figures to report "underlying earnings" - a theoretical report, calculated as if the villas were sold (which they are not). Neither the auditors, nor the international accounting standards (IFFRS), recognise "underlying earnings" as valid calculations… and generally ignore them.

If a resident is to participate in the "capital gain" of a villa then the operator would have to pay this resident from the next loan, arranged with the next occupant. With the previous advance being repaid there is no realisation of cash from this transaction (loan in, loan out), apart from the accumulated deferred management fees for services provided.

The loan (or ORA) is not stamped and resold at a higher price. Instead the loan is repaid in full (after deduction of deferred fees), and is cancelled. There is no gain to the operator on the ORA.

A new ORA is then issued for a new transaction, and like any lease the loan amount is based on current market conditions (such as supply and demand).

The Village as a Business

The description above illustrates that the retirement village operator develops and operates a complicated business. Accommodation is part of it, but the provision of a wide range of ongoing facilities and services is also integral to the operations.

The main reason that residents enter a village is for physical health security and the ability for the village to cater for the person's (usually) deteriorating physical needs in a progressive manner (being able to transfer within the site to other facilities as dependency levels change). They are connected.

The next major reason for tenure is loneliness. The collective and integrated nature of the village provides company and social alliances to the tenant. It is the operator's task to create the collegiality, culture and collective environment - which enhances the value of the village. It is not the same as a stand-alone property in a suburban real estate subdivision.

The village operation therefore could be described as providing a basket of services, for the lifestyle and health security of elderly people. Associated complexes such as resthome's, hospitals, dementia units, and community centres can cost tens of millions of dollars, and are a part of the service (and linked to the villas). They share staff.

The adhesive and focal element in this exercise is the village operator, controlling the operations and ensuring there is ongoing continuity in the provision of accommodation and services - from tenant to tenant, in a serial manner, over time. Residents come and go, but the operator generally remains a fixture.

Calculation

The probable way of calculating the unrealised capital gain would be to apportion the difference between the first occupation loan (being repaid to the previous tenant) and the occupation loan provided by the incoming tenant (which will be repaid in due course).

One would expect that the parties sharing the unrealised gain (the operator and the exiting tenant) would also share the responsibility for providing the assets and services that the new tenant is expecting and using to assess value in entering the village - such as common facilities, accommodation, management, health security and staff services (including nurses on the site).

However, the exiting resident does not provide any of these services for the new tenant, as he or she leaves. i.e. unlike the operator they exit without obligation for the future.

Furthermore, the full amount of the new loan will be repaid in the future by the operator (alone).

Comparisons

A retirement village is more of a business than a hotel (which only provides short-term accommodation and optional services).

A retirement village is more of a business than a commercial building, where an owner provides a lease (similar to an ORA) for a fixed term (often up to 10 years, with rights of renewal) for supplying accommodation and then provides no additional services (there are usually no management staff on the premises). The tenant pays an ongoing lease fee and OPEX (for rates, insurance and maintenance etc).

At the end of the term the commercial building tenant, often having to pay a higher rental on the lease of the next building, does not say "I require a percentage of your unrealised capital gain", just on the basis that they have been in accommodation.

In a retirement village the tenant makes an interest-free advance (to help fund the fixed facilities), pays an OPEX or service fee (for rates, insurance cleaning and maintenance etc), but has a major advantage over the commercial building tenant in that the ORA rental is delayed (often called a Deferred Management Fee) until the end of the tenancy.

This deferral of the main fee, for an average of 8 to 9 years, could be considered as quid pro quo for the loan. However, the interest that the operator saves on the resident advance (compared to a bank loan) would pay only a small proportion of the services that are provided at no extra charge.

The interest-free nature of the loan is part payment for the services (i.e. they are offset). It would not be difficult to gross up the arrangement, by increasing payment for the services and making payment of interest to the resident. However, this would be taxable to the resident, with the additional fee not being tax-deductible (a distinct disadvantage).

The Concept of Value

New Zealanders live in a free market society. There are sensible rules, but a minimum of restrictions as a way of doing business. It is a world where businesses seek capital, provide services and look to attract customers. It is important to forewarn customers of any long-term arrangements they enter into - a situation in the aged care sector covered by the Retirement Villages Act 2003, where ORA tenants are legally required to have professional legal advice.

If this is not sufficient protection, then the warning process should be strengthened. However, this does not mean that the structure of a voluntary free-market arrangement should be dictated to by the state.

Value is usually a combination of price and the characteristics of the product being offered. In a free market society any major industry where the value offered is low typically attracts new competitors who believe they can capture market share by offering better value.

The occupation loan and deferred management fee model is just the usual financial arrangement, and not obligatory. Operators can structure the commercial transaction with the tenant in any legal way that the parties agree upon.

If there was a profitable business model, where a village operator could offer a share of the unrealised capital gain, and also build the facilities, provide deferred management fees for eight or nine years (the average length of tenure) and take sole responsibility for continuing to operate the village for an unlimited amount of time into the future - then the very the nature of capitalism would attract such operators… as they would capture the market.

It's the typical world of unfettered competition. There are no restrictions. It is how the business world works.

The fact that operators of this kind are not emerging in New Zealand indicates, as previously suggested, that it would be an untenable model.

Health Services for the Elderly

There are a number of levels in New Zealand where the elderly can access a range of healthcare services, depending on their dependency levels. These are voluntary… they have choices.

- Home care - where the government pays for services delivered to the home of the elderly person. This is known as "ageing in place".

- Residency in an independent retirement village villa - where the resident has occupation within the village, and receives the comprehensive umbrella services provided by village management and staff (such as healthcare monitoring, activities and a wide range of facilities) and has priority access to a resthome and hospital.

  There are an estimated 44,970 residents, in 34,592 units, in 403 retirement village villas in New Zealand (2019 statistics).

  The government makes no financial contribution to this service.

- Resthome or hospital care - which may be subsidised by the government, and may be subject to private additional charges for services over and above what the government stipulates should be provided.

  There are approximately 42,000 residents in registered residential care facilities in New Zealand.

- Public hospital beds. There are approximately 12,600 public hospital beds in New Zealand.

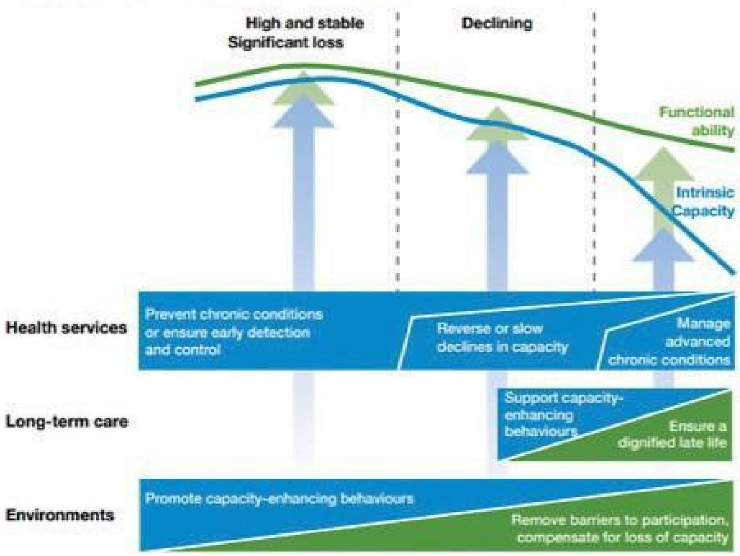
The chart below, from the World Health Organisation, shows how health services, long term care and the environment interact for the elderly. They are all important.

As described above, there are over 85,000 elderly New Zealanders in retirement villages and/or registered private residential care facilities in New Zealand, but under 13,000 public hospital beds.

According to the current Ministry of Health website:

Over the last 10 years, DHB spending on services for older people has increased twice as fast as their overall expenses and 5 times as fast as the consumer price index (CPI).

Figure 1: A life-course framework for healthy ageing



There is a danger that a state-motivated alteration to the financial model of retirement villages (without reasonable appreciation of how the model works) that affects the supply of villas, resthome's and hospitals in New Zealand, could result in a cascading of elderly people into public hospital beds... which would soon be overwhelmed.

The system works. It is attractive to elderly people.

Government Regulations

It is usual in a democratic society for governments to take responsibility for the general well-being and safety of its citizens, provide common infrastructure and also levy and redistribute taxes. To this end, its regulations usually attempt to be fair and equal to all sectors of society, and not select one sector for different treatment than the rest, unless it is under-privileged.

It also has a specific right to set regulations in areas where the state contributes to the income received by a business operator (as in resthome or hospital subsidies).

However, it is unusual for the government to attempt to re-structure a voluntary, legal, free-market, non-subsidised industry - as long as the person making payment for the transaction is aware of his or her rights (as is the case with the mandatory legal advice specified under the Retirement Villages Act).

Financial Stability

The retirement village industry is a remarkably stable sector, as appreciated by the banks.

With over 30 years of association with the industry (and as a chartered accountant), the writer has seen very few financial failures of retirement villages. Financial stability is an essential element in the industry and contributes to its nearly 14% acceptance (the penetration rate) by people over 75 years of age in New Zealand.

There are dangers in attempting to disrupt this model.

Capital Changes

The Commission cannot logically or fairly recommend that the residents just share in the unrealised capital gains. They instead would need to share in the unrealised capital changes – i.e. upwards or downwards.

This would mean that residents would be hitching their wagons to the fluctuating fortunes of the village operator.

It also means that the operator would be reluctant to 100% fund (as is always the case) any new facility or additional development (such as a community centre) that would flow through to the value of the villas - as the operator would have to part with a share of the unrealised capital gain (without the existing residents contributing). I.e. developments would increase loan liabilities.

It would also mean that the operator would be less concerned about a deteriorating village, as any fall in value of the villas would result in a write-down of the amount owing on the occupational loans. i.e. the village residents would be subsidising the fall in values.

Many residents would prefer certainty (and are used to certainty).

RVA Survey

The Retirement Villages Association has carried out a residents' survey (January 2021) asking questions about the following:

- Satisfaction with retirement villages. Approximately 96% were very satisfied, satisfied or neutral.

- Satisfaction with quality of legal advice. Approximately 83% were satisfied with the quality of the legal advice they received before moving into the retirement village.

- "Capital gains". Only 30% were comfortable with the arrangement for "allocation of capital gains on sale". This should have been described as "unrealised capital gains on exit and repayment of loan", as there is no sale of real estate, or sale of an ORA. To this end, it was a misleading question. However, the response was remarkable.

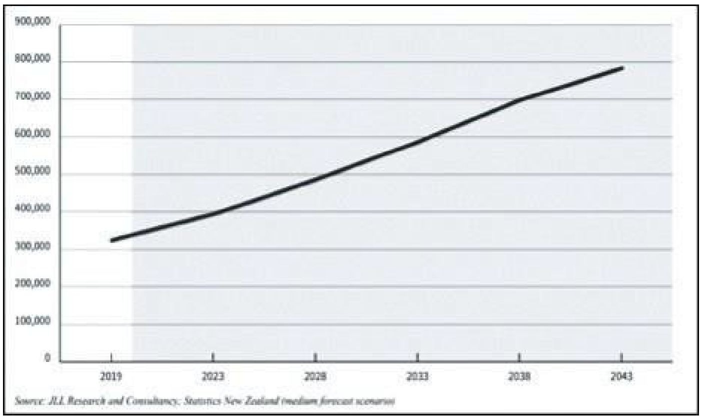
  Imagine a questionnaire to tenants in a commercial building asking whether they would like to receive an allocation of the unrealised capital gain of the building on termination of the lease, to be compulsorily arranged by the state. Why would any tenant not be interested in receiving this expropriation of unrealised gains from the landlord?

  The 30% acceptance figure of the existing arrangements for retirement villages, under these circumstances, therefore represents a high degree of financial satisfaction.

Other contributions by the Retirement Village Sector

Retirement village developers are significantly large contributors to the housing stock of New Zealand, at a time when housing appears to be in crisis (with escalating price increases, reflecting supply and demand and low mortgage rates). In 2018, Ryman Healthcare was named the largest residential builder in New Zealand, ahead of Fletcher Construction.

A July 2020 report by JLL estimated that 18,000 new retirement units for the elderly are needed in New Zealand within 10 years - representing a 50% increase in the existing stock.



The key market for retirement villages - elderly people aged over 75 - is set to expand in New Zealand from 460,000 to 784,000, from 2019 to 2043 - an increase of 70% (as shown in the adjoining chart).

Any disruption to the financial model, or to the flow of new units by the industry, would be detrimental to house prices.

A Windfall

There is a danger that discussion along these lines, directed at the large number of elderly people in retirement villages in New Zealand, lures them into believing that the government can deliver a windfall, unprecedented in the real estate industry, with regard to receiving a state appropriated unrealised capital gain, which they did not expect or sign up to upon entry into a village.

It can (naturally) lead to excitement and support from village residents, but also to a complete rethinking by retirement village operators as to whether the industry under an extenuated government offering (when the state is not contributing to the building or operating of villas), is still tenable.

Operators may change their models, to really selling villas (realising cash - in which case they would receive all of the gains at the start of the tenancy) and move on (like a real estate subdivision) - because it is not viable to share unrealised gains and be left with the sole responsibility for ongoing obligations.

Villages in this manner would become similar to body corporates.

Alternatively, they could sell villas (realising cash) and lease the common facilities and services (for a fee) like a resthome or hospital. Like all businesses, they would restructure to suit the market and conditions.

Residents would then need to resell their own villas.

The CFFC Recommendations

It would be an unusual situation, if a person could enter a retirement village and reside in a villa for eight or nine years (the average length of time), paying absolutely no ongoing month-to-month cash rental (apart from rates, insurance and maintenance - or OPEX) - as is currently the case with fee deferrals - and then insist they have the right to a selected proportion of the unrealised capital gains, without any obligations to the new tenant.

It would be an untenable business model... akin to cutting a limb off the business (the accommodation part).

> The CFFC recommendations on "capital gains" are seeking to cherry pick an aspect of the integrated business (the accommodation) when there is a wide range of services. The report misinterprets the transaction as if it was a "sale' when there is no realised sale of a villa, or an ORA (there is just tenure).
>
> It ignores all the associated facilities and village services and the ability of the tenant to rotate within the business; ignores the comprehensive staffing arrangements; ignores the owner's responsibility to continue services for the next tenant ; ascribes a value to an unrealised capital gain... and recommends apportioning part of this to a tenant, as if it was a realised cash transaction from a sale.

Because it is not a realised sale transaction (the loan is repaid and ORA cancelled), the proposed share of the unrealised capital gain would need to be paid to the exiting tenant out of the advance from a new tenant, as there is no other source of funds - unless from alternative borrowings or reserves.

This process would weaken the financial position of the business.

[redacted]

RVA response to CFFC Whitepaper

RETIREMENT VILLAGES' LEGISLATIVE FRAMEWORK: ASSESSMENT AND OPTIONS FOR CHANGE 2020

26 March 2021

RVA
NEW ZEALAND
Retirement Villages Association

Contents

Glossary

AHC	Abbeyfield Housing Company Umited
ARCO	Associated Retirement Community Operators (UK)
CFFC	Comm ission for Financial Capability
CRESA	Centre for Research Evaluationand Social Assessment
DMF	Deferred Management Fee
GDP	Gross Domestic Product
ILC	Internat io n al Lo n ge vity Centre
ILU	Independen t livingunit
KTS	Key termssummary
LTO	Ucence to Occupy
LVR	Loan to value ratio
MOU	Memorandum of understanding
ORA	Occupation Right Agreement
RV	RetirementVillage
AVA	RetirementVillages Association
RVRANZ	RetirementVillage Residents Association of New Zealand

1 Executive summary

1.1 About this document

This document sets out the Retirement Villages Association of New Zealand (RVA) response to the Commission for Financial Capability White Paper *Retirement villages legislative framework assessment and options for change 2020.*

In this document we:

- Respond to the five key questions asked in the White Paper
- Provide context and background including our recent response to a Consumer NZ report on retirement villages
- Discuss in more detail issues raised and individual recommendations made in the White Paper.

Photo credrt: Generus Groep

1.2 Executive summary

The Retirement Villages Association of New Zealand (RVA) welcomes the opportunity to join the conversation, begun in the White Paper released by the Commission for Financial Capability (CFFC), about the statutory and operating framework for retirement villages.

The White Paper is ultimately not just about retirement villages (RVs), it is actually about improving the quality and wellbeing of older New Zealanders, and the significant role RVs play in contributing to that.

Around 96% of residents in retirement villages are satisfied with their decision to move in, and score their villages highly for security and safety, peace of mind and a hassle-free lifestyle.[1] This contrasts sharply with the Consumer survey and feedback from RVRANZ.

Research shows that 94% of residents are also satisfied with the quality of legal advice received on the financial model and commercial terms prior to moving into a retirement village.[1]

We consider that the current statutory and operating framework - the Retirement Villages Act 2003, its Regulations, and the Retirement Villages Code of Practice 2008 - is fit for purpose.

This framework provides a comprehensive and effective resident-focused consumer protection regime. Minimum standards are set out in the Code of Practice, which is regularly reviewed by the CFFC and amended as required to keep it current. One example was the changes made followingthe Canterbury earthquakes, when residents would be repaid 100% of the original capital sum if a unit or village is not rebuilt following a disaster.

Within the current framework, our members have flexibility to differentiate their commercial offerings and give customers considerable choice. Increased prescription of the commercial terms permitted under the Act, such as weekly fees, deferred management fees or re-licensing gain sharing would reduce choice, which we consider is not in the best interests of older New Zealanders. However, we do see several areas where we can work with the CFFC to develop and deliver best practice in our operations.

Our members pride themselves on the care and approach they take to engaging with their customers and on their record of proactive self-regulation and pioneering of the current model, and this approach will continue.

1 UMR Research 2021

Evidence that we are delivering what New Zealanders want within the current framework is shown in our increasing market share (proportion of 75+ population living in RVs).

We acknowledge the White Paper's reference to a shortage of affordable and social housing for older New Zealanders. Retirement villages make a substantial, national contribution to providing age-appropriate homes and care, but our sector is neither responsible for, nor capab le of resolving all housing supply issues for older New Zealanders. Social housing requires Crown funding support.

We welcome the opportunity to work with the Retirement Commissioner and the Government to review the following areas:

- **re-licensing and buybac k process and timing** - to ensure it is better understood, supported and reported, and achieves better alignment of interests between residents and operators
- **status of weekly fees after the resident leaves** - to consider the best practice around the treatment of weekly fees when the resident vacates the unit
- **transition to care arrangements** - agree best practice disclosure guidelines, using the RVA's be st pract ice gu ide for members as a starting point, and incorpo rating the same into the Code to ensure consistency between operators
- **complaints system / voice for residents** - advancing a joint review of the memorandum of understanding (MOU) between the RVA and the Retirement Village Residents Associat ion of New Zealand (RVRANZ) to forma lly adopt a best practice framework, and cons ider appo intment of an ombudsman -style role if it is shown to be value for money, given the very small number of unresolved comp laints
- **operator chattels repairs and replacements** - to advance best practice that repair and replacement costs of operator chattels are met by operators, but with reasonable protection for operators against unreasonable chattel damage/depreciation.

These proposals are supported by the vast majority of RVA members who represent 96% of the sector (by unit numbers). However, we acknowledge that some members, for example operators of small-scale, older complexes and some not-for-profit operators, face particular circumstances that may require a drfferent app roach to some or all of the above matters to ensure sustainability.

We welcome discussion on shared concerns with the CFFC, the RVRANZ, and other key stakeholders to progress these issues, and make targeted changes to the Code of Practice where necessary.

2 Feedback on the CFFC's five key questions

2.1 Has this White Paper canvassed the issues fairly and accurately?

In the main, yes. However, in the RVA's opinion:

- while the White Paper has facilitated a timely and useful discussion on the sector, it fails to distinguish between the legislative issues that all operators must comply with, and the elementsof the competitive model that allow operators flexibility and the ability to differentiate themselves from their competitors. Prescribingthe latter will reduce genuine choice for intendingresidents
- the White Paper places undue weight on feedback and complaints from a small minority, when rt is clear that the level of customer/resident satisfaction is overwhelmingly strong.

2.2 Are there any important points that are missing?

As noted above, there are a number of important characteristics of the sector which cannot be viewed in isolation and must be considered in the context of the wider RV model.

The RVA characterises the model as a 'balloon'. It is not possible to take some air out without affecting the whole balloon. In the same way that reviewing or adjusting elements of the model in isolation will have unintended consequences across the whole sector and for both existing and intendingresidents.

In this document, we set out the various components of the model and how it has evolved to provide a holistic package of services balanced with a market accepted financial model.

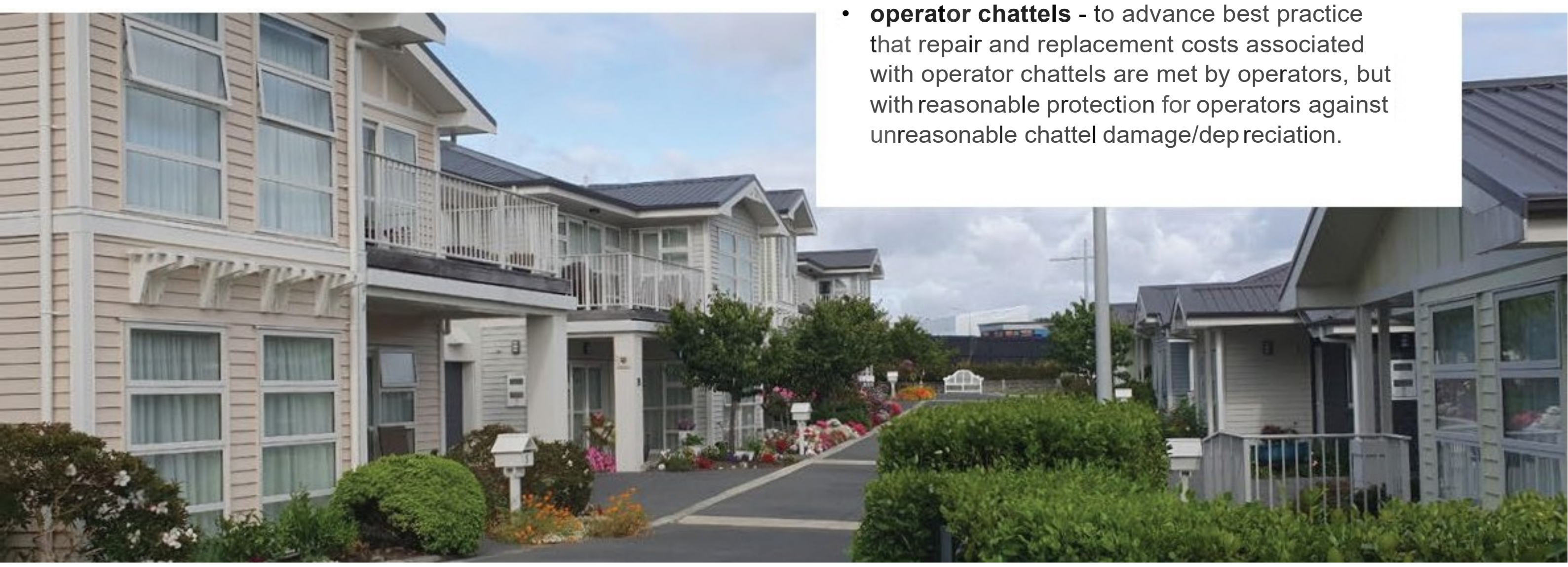
2.3 Do you agree that a full review of the retirement villages framework should be undertaken?

A full review is not warranted but we concede there are aspects that would benefit from a mutual re-examination. As set out in the document, we consider the framework remains fit for purpose. We see room for improvement in some operational practices, which can be achieved through self-regulation and targeted amendments to the Code of Practice.

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

Yes. The RVA recommends a partial, targeted, review of the following items:

- re-licensing and buyback process and timing - to ensure it is better understood at the time of entry into a village, supported and reported, and achieves better alignment of interests between residents and operators
- **status of weekly fees after the resident departs** - to further advance best practice around stopping weekly fees once the unit is vacated
- **transition to care arrangements** - agree best practice disclosure guidelines, using the RVA's best practice guide for members as a starting point, and incorporating the same into the Code to ensure consistency between operators
- **complaints system / voice for residents** - advancing a joint review of the MOU between the RVAand RVRANZ to formally adopt a best practice framework, and consider appointment of an ombudsman rf there is value for money, given the very small number of unresolved complaints
- **operator chattels** - to advance best practice that repair and replacement costs associated with operator chattels are met by operators, but with reasonable protection for operators against unreasonable chattel damage/depreciation.



2.5 Is there anything else you would like to say?

The RV legislation is highly flexible and this has facilitated the diversity of business models and the competitive offerings that older New Zealanders have access to today. There is genuine consumer choice. Increasing demand and market share shows we are delivering what New Zealanders want.

Increased prescription of commercial terms would reduce choice, and reduce the ability for the sector to respond to customer demand, which we consider is not in the best interests of older New Zealanders.

The substantial majority of residents in RVs are satisfied with their decision to move in, and score their villages highly for security and safety, peace of mind and a hassle-free lifestyle.[2] This contrasts sharply with the Consumer survey and feedback from the RVRANZ.

We are ready to engage on reasonable points of drfference, but we caution against giving too much weight to a small number of complaints.

We propose to work with the CFFC to undertake further diligence of both current and any future complaints to fully understand the underlying basis of these complaints and where necessary to identify changes to best practice for operators.

2 UMR Research 2021

ing the scene

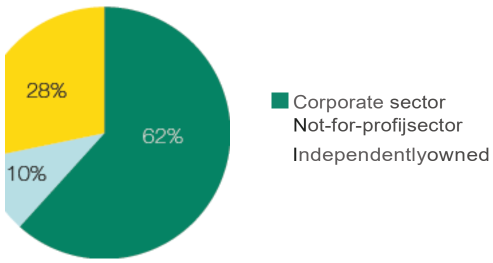
3.1 Overview

The RV industry today is part of New Zealand's mainstream housing options for older people. As at 01 2021, there were 417 villages registered with the Registrar of Retirement Villages, with around 36,CXX) units that are home to an estimated 46,80) older New Zealanders,3 approx ima tely 14% of the population aged over 75.

Today's villagesare characterised by a variety of offerings.

- 62% of all units are owned by the corporate sector (including publicly-listed companies such as Ryman Healthcare, Oceania, Arvida, and Summe rset Group)
- 10% are in the not-for-profit sector (for examp le, Selwyn Foundation, Mason ic village trusts, church and welfare organisations)
- 28% are independently owned.

Fig.1 RV characterisation



The median village size is 61 units, demonstrating the extent to which the sector is skewed towards smaller villages.

95% of units are occupied as 'Licences to Occupy' (LTO)and the remaining 5% are mostly held as a unit title.

The terms of the LTO vary between operators, and in many cases reflect the result of indMdual negotiations between the operator and resident at the time of entry into a village with the support of independent advice.

Around 66% of villages have a care facility on -site offering residents a continuum of care from independent living through to potentially hospital and specialised dementia care. Almost all new villages now offer or expect to offer a continuum of care, responding to demand from residents as their needs change.

Given the diversified nature of the sector, any regulatory change willneed to consider the impact on different groups, particularly the smaller and not-for-profit operators. A 'one size fits all' approach is unlikely to be suitable.

3 JLL research, preliminary NZRVD2021

3.2 A short history of the retirement village sector

The first RV- Selwyn Village in Auckland - was established by the Selwyn Foundation (a not-for-profit organisation) in 1964and up untiltheearly 1980s, the industry remained largelyin the hands of the not-for-profit sector.

The sector experienced rapid expansion in the mid-1980s , fuelled by an increasingly ageing demographic. The RVA was established in 1989 with members from 19 operating villages.

Following its inception, the RVA qu ickly established a pattern of being actively self-regulating and taking responsibility for standards within the industry. This has continued throughout its existence, always with the intent 'to promote and protect the resident-funded housing industry in New Zealand'. This cooperative and supportive approach allowed the industry to grow and its pro-active stance contributed to the association's growing credibility with legislators and officials.

By December 1989, the first indus try Code of Practice was established and this has continuouslybeen revised and updated over the years to remain current. The RVA's Code of Practice formed the basis for the first legislated Code, which, with modifications as a result of the CFFC's monitoring programme, remains in place today.

In 1993 , the Assoc iation submitted a report to the Securities Commission supporting the concept of separate legislation for RVs. The Retirement Villages Act was formalised on 30 October 2003.

3.2.1 The role of the statutory supervisor

An important element of NZ's regulatory regime is the independent statutory and contractual role of the statutorysupervisor. That role includes protec ting the financial interests of residents, providing an independen t stakeholder facility for residents' deposits, reporting annually to residents and the Registrar of Retirements Villages on the performance of duties and the exercise of powers, being satisfied with the villageinsurance cover and being involved in the comp laints process where an operator has been unable to resolve complaints.

The median village size is 61 units demonstrating the extent to which the sector is skewed towards smaller villages

In addition, statutory supervisors generally hold a first ranking security over the village land (on behalf of residents)and operators need statutory supervisor consent to borrow money and develop the village. Statutory supervisors can apply to the courts for orders rf the supervisor believes that the financial pos rtion o f the retirement village, the security of the interests of the residents, or the management of the retirement village is inadequate.

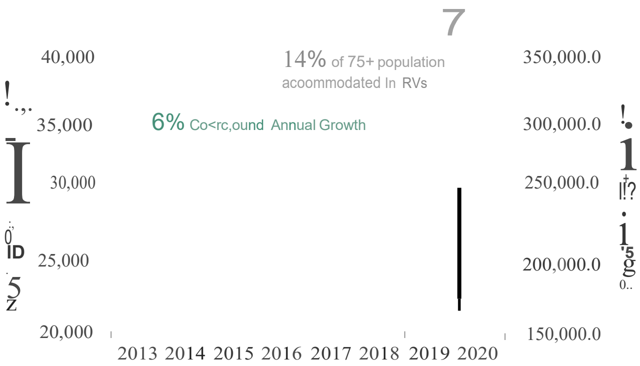
3.2.2 Historical supply development

Over the last 30 years or so the popularity of RV living has grown dramatically. In 1998 there were approximately 10,000 villas and apartments; by 2000 this had grown to 12,800 unrts (up 27%).[4]

Since 2014, the number of villages has increased by 19% to 417, resulting in a staggering 43% increase in unrt numbers .[5] Today, RVA membe rs provide circa 36,000 completed villasand apartments which are home to around 46,800 older New Zealanders[5]

As at March 2021, 14% of the 75+ year old popu lation live in RVs, up from 9.4% in 2012.[5]

Fig. 2 Growth in number of RV units/ dwellings from 2013-2020



Given the diversified nature of the sector, any regulatory change will need to consider the impact on different groups, particularly the smaller and not-for-profit operators. A 'one size fits all' approach is unlikely to be suitable.

3.3 Setting the scene

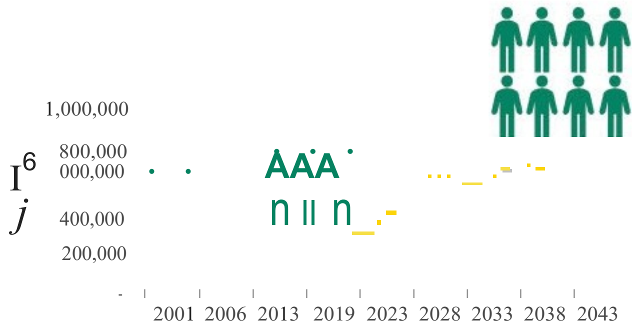
3.3.1 Demand for RV product continuing to grow

Demand for RV accommodation reflects a combination of the increasing 75+ aging cohort and the success and attractiveness of the RV offering.

3.3.1.1 1 Response to New Zealand's growing aging cohort

The rapid growth in unit numbers is a direct reflection of our growing ageing popu lation, particularly amongst those aged 75+ years. Between 2020 and 2043, the number of people aged 75+ is projected to increase by almost 460,000, or 142%. Consistentlyrising penetration rates also point to a growing market share and increased awareness of the benefits of RV living.

Fig.3. Historical and forecasted growth of ageing population (75+)



Even if penetration remains at 14%, by 2028 therewill be demand for an addrtional 17,800 units. This is an almost 50% increase on the current number of units in just seven or eight years.

3.3.1.2 The attractiveness of the RV model

The principal drivers for the attractiveness of the RV model have been a combination of:

- product enhancements by operators
- residents' desire for greater personal security, and
- the attractivenessof equity release, particularly where a cont inuum of care is offered.

A 2016 study by the Centre for Research Evaluation and Social Assessment (CRESA)indicated that the equity release from down-sizing to an RV is often greater than the equity extracted from down -sizing to a smaller own -your-own unrt.

More New Zealanders than ever are choosing to live in a RV, with the most common reasons including security, companionsh ip and a vibrant, act ive community of like-minded people.[6]

4 RVA
5 JLL research, preliminary NZRVD 2021
6 UMR research

The sector has carried out regular independent surveys of its residents since the early 2000 s; all surveys show an extremely high level of resident satisfaction, typically around 96%. This includes those responding as very satisfied, satisfied or neutral. Villages also consistently score between 80 and 90% satisfaction against the top three most important factors which are all centred around the wellbeing of residents - security and safety, peace of mind and a hassle-free lifestyle.

3.3.2 Wider context of the existing operating model

3.3.2.1 The New Zealand perspective

Underlying the New Zealandmodel is the understanding that, in the majority of cases, residents do not own the bricks and mortar of the RV units. Instead, residents have a contractual right to live in a village and enjoy the village amenities and services for as long as they want or until they are unable to live independently, at which point they would either depart the village or (if availab le) move into a care unit.

In the simplest terms, the model is one where the residents forward-fund their occupation, and the operator absorbs any market and operating risk. At rts heart the model provides peace of mind for residents during the latter stages of their life.

The RVA believes that the regulatory regime underpinning this model is 'world-leading', a claim that is reinforced by a report produced by the International LongevityCentre (ILC) - UK, an independent non-partisan research organisation looking at longevity, ageing and population change. This report states

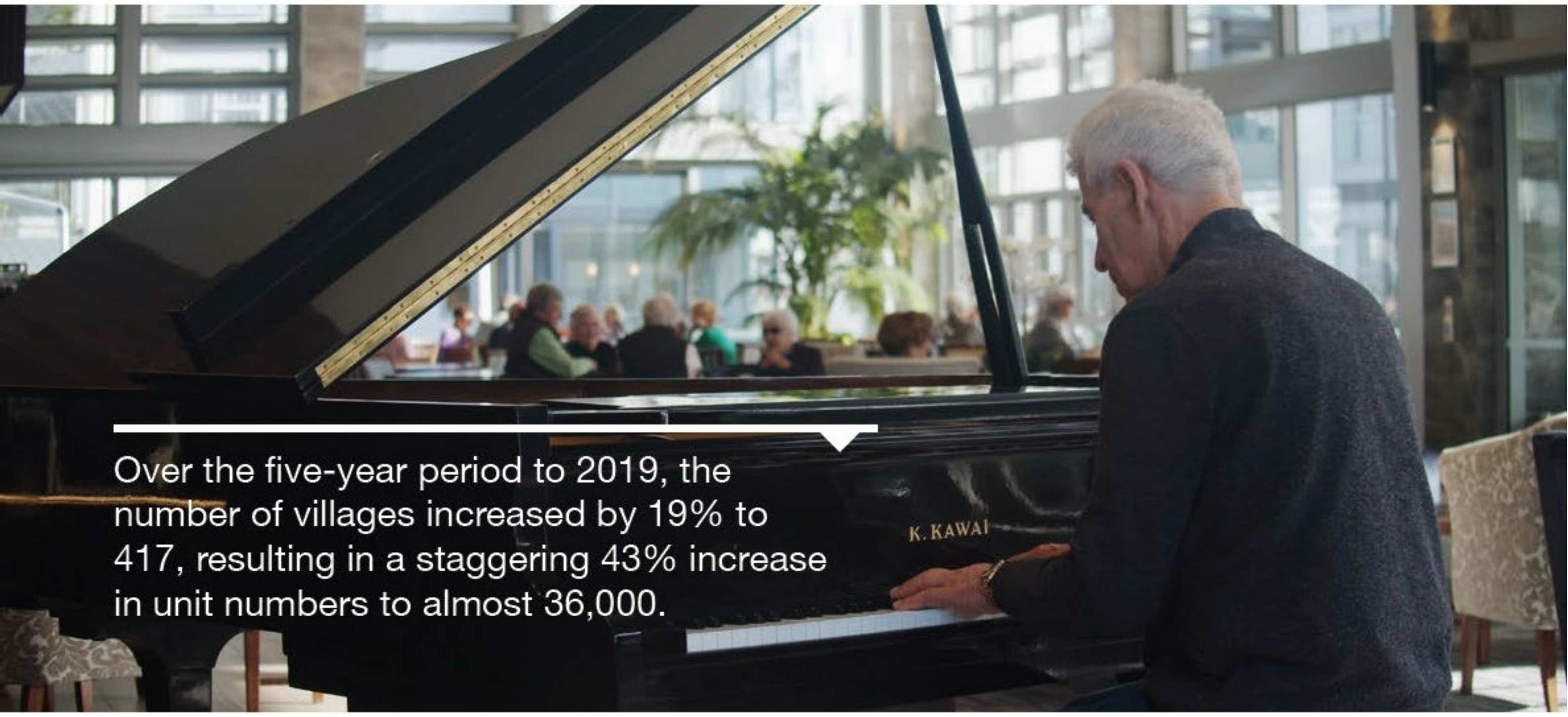
> The report noted "The NZ model incorporates a range of innovative elements that outline the requirements for operators and offer extensive consumer protection."

Perhapsthe strongest example of legislation specific to this sector [RVs] comes from New Zealand, where the Act was passed in 2003 . The report noted The NZ model incorporates a range of innovative elements that outline the requiremen ts for operators and offer extensive consumer protection.

3.3.2.2 2 Independent Living

Until the 1990s, the industry was still operating with a range of ownership models. This created considerable challenges at times. A notable example occurred in 1994, when the prior owners of Peninsula Club, Whangaparaoa, a cross -lease village outside the coverage of the Securities Act, became insolvent due to a compulsory buy-back agreement and abandoned the partially-developed village, forcing residents to take over the day-to-day management. Government intervention included the appointment of Statutory Managers, and negotiations with new commercial interests led to the safeguarding of resident tenure and the eventual winding down of the cross lease structure and its replacementwith a LTO model.

Today, there are two main types of Occupation Right Agreements (ORA) - the LTO and a unit title, with the split broadlybeing 95:5.



T T model requiresa capital sum to be paid, which is usually less than the value of the average freehold home in the location of the village, and when the resident leavesthe village, the operato r re-licence s the unit to a new resident and refunds between 7rn6 and 80% of the original capital sum to the leaving resident (or their estate).

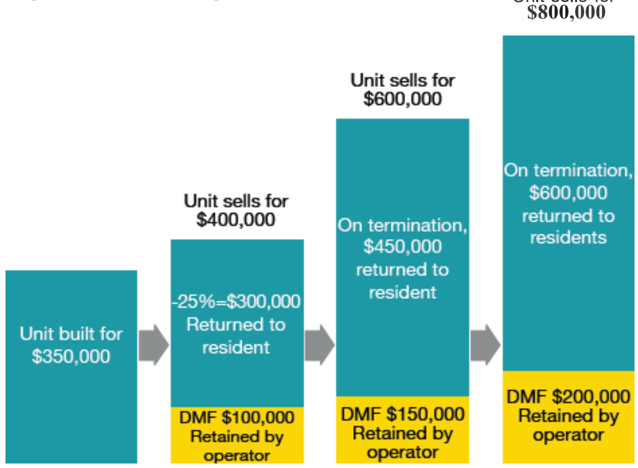
The 20% to 3rn6 the operator retainsis called the Deferred Management Fee (DMF) which is usually accrued in tranches over the first three to five years of a resident's occupation. The DMF is used to refurbish the unit, reinvestin the business, and provide (in part) the operator's return on capital.

The price paid by the new resident for the LTO is typically higher than the leaving resident originally paid, which gives rise to a gain on re-licensing of the LTO. This capital sum received by the operator for the re-licensing of a unit is not the outgoing resident's concern.

Residents also pay a village levy, which may be fixed during the period of their occupancy. This levy, referred to as a weekly fee, is insufficient to fund capital expenditure and all operating costs. It is often significantly subsidised and around 60% of operators also offer a fixed weekly fee so as not to expose residents to the very real and significant inflation risk. For example, residents on a fixed weekly fee would not be exposed to the proposed 17% increase in Wellington City's 202 1-22 rates.

The following example illustrates the most prevalent LTO funding model.

Fig. 4 LTO funding model



Under the unit title structure which represents around 5% of the market. the terms can vary greatly from village to village. The use of a unit title structure does not automaitcallymean that residents are entitled to all capital gain, control the sales process and do not pay a DMF. 'Miere a residentisentitled to capital gain the responsibility for internal maintenance will also lie with the resid ent.

All surveys show an extremely high level of resident satisfaction, typically in excess of 97%.

.. .residents forward fund their occupation, and the operator absorbs any market and operating risk. At its heart the model provides peace of mind for residents during the latter stages of their life.

A common unit title structure will result in a resident receiving the sale price less 10-20% as a DMF, and the resident meeting all refurbishment and sale c osts . The incoming resident will need to be approved and meet the entry criteria set by the operator, and the registration of a caveat or encumbrance over the resident's unit title will stop the resident from transferring the title without the operator's consent. In addition, the operator will usually have a first right of refusal to buy back the unit title and the resident's estate has to offer the unit for sale on the death of the resident.

In all cases residents will be liable to pay a village levy in the form of body corporate fees and in most cases these will not be fixed or subsidised by the operator. The operator will usually own the community facilities under a body corpo rate structu re, and the resident has access to them under their ORA.

In addition to LTO and unit title offerings, 62 RVA member villages offer 67 4 rental units as part of their village stock. Approximately one quarter of RVA m embe rs note that they have seen demand for a rental mod el in their area. Almost half of members acknowledge that there could be a need for 'a new proposition to appeal to the new retiree', while one third agree that 'falling home ownership' could resultin a lower demand for units and potentially drive new village options. RV operators are conscious of this, and the sector has consistently shown that it can adapt to market demand. However, it is important to bear in mind that the RV Act is designed to regulate and protect a RV offering where the resident makes a capital payment. New propositions to appeal to new retirees which do not include a capital payment should not be governed by the RV Act.

Retirement villages have significant long -term capital expenditu re requirements. Every ten to fifteen years, major sums of capital are reinvestedin the grounds, shared facilities and residential buildings to ensure a continued quality living environment for residents. There are also cases of incidental capital expenditure.

For example, in 2017 Metlifecareexperienced a number of leaky building issues resulting in repair costs of tens of millions across five villages. Metlifecare, which runs a LTO model, fully funded this cost andresidents were no worse off as a result of these material capital repair costs.

Photo credrt: ArvidaGroup

Under a LTO model, DMF revenuesand the villagelevy are insufficient to cover these very real and long-tenn capital expenses.

The net proceeds generated from the re-licensing of a LTO to a new resident are required by the operator to fund these wider village services and long -tenn maintenance capital expenses. The price paid for the LTO is effectively inflation indexed as the value for the LTO is linked to local freehold property values. This structure ensures future funding certainty for these costs, and that those costs are apportioned to new residents.

In a unit title village (and in some Australian models), residents are fully exposed to capital expenditure, including in cases where there is significant unforeseen expendrture .

The New ZealandLTO model provides peace of mind for residents who also have a high level of certainty on what their overall occupancy costs will be from the day they enter the village until the day they leave.

In 2018, Ryman Healthcare , the country's largest village operator was also named the biggest residential builder with a total project value of circa $900 million across 39 projects, ahead of Fletcher Construction at $867 million.

3.3.2.3 3 Aged care

As a result of resident demand for future-proofed care needs, most contemporaryRV developments focus on providing residents with an 'integrated' village offering that offers a continuum of care. This means most operators combine independent IMng unrts (ILUs) with care beds across rest home, hospital and in some cases dementia level care to cover the varying needs of residents at different stages of their lives.

Generally, the provision of aged care relies on government funding and typically, 40+ beds are required to establish the necessary economies of scale to cover the cost of day-to-day operations. In response to industry challenges including limrted growth of government funding in a high inflation environment (particularly staff costs) and falling aged care approvals, operators have introduced additional levies, such as premium accommodation charges, reflecting differentiated levels of care and typically higher quality accommodation , and for ad hoc health services in order to sustain their care operation.

In most villages, proceeds generated from the independent living segment of the business are used to cross subsidise aged care. If the model changes and the margin from ILU development reduces through increased regulation, this would likelyresult in a decrease in the provisionof aged care by RV operators and, therefore either place a greater burden on the health system or increase costs for care residents.

An example of the latteris the shift (which is gaining momentum) from weekly charges to an LTO model for care units (similarto that used for ILUs) as a result of the continuing pressure on the aged care operating model.

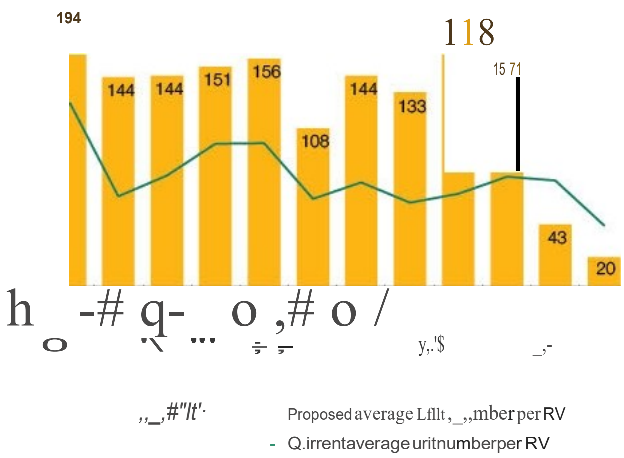
3.3.3 RVs contributing critical housing supply

The industry is poised for future growth with some 21.400 units in the pipeline as at the end of 2020.[7] Between2014 and 2019, approximately six to seven percent of all new building consents issued in New Zealandwere RV units. In 2018, Ryman Healthcare, the country's largest village operator was also named the biggest residential builder with a total project value of circa $900 million across 39 projects, ahead of Fletcher Construction at $867 million. Summerset, Metlifecare, Oceania and Arvida were all ranked in the top 15. In 2019, the sector built 1,935 units (a rate of 37 per week) and, based on a 10% re-licensing rate, around 100 new residents move to a villageeach week.

It is clear that the sector is playinga pivotal role in addressing this country's housing needs by allowing older New Zealandersto releaseand use the equity from their homes and relocate to more affordable, comfortableand purpose-built homes, noting that LTOs are generally priced below the average house price of a region.

In 2019 this transiiton released 5,000 family homes into the market, thereby increasing housing supply for the wider population. The substantial and rapid build rate of RV unrts is providing housing options for older people and creating new supply of general housing at a faster rate than the wider housing market. This is partly attributable to RV operators' ability to make better use of land through higher housing density options. Figure 5 demonsrtates the growing average size of villages to meet the signrncant future demand for RV housing.

Fig. 5: Regional breakdown of current vs proposed average number of units per RV



The construction of new RVs is assisting with the housing supply shortages in regions where the shortfall is greatest. Over the last nine years RV stock in Auckland, Canterbury, the Bay of Plenty and the Waikato has grown between 51% and 60%, while RV stock in thecountry as a whole grew nearly 60% since 2008, over a 12 year period.

Increased regulation of the RV sector thatwould force operators to hold greater caprtal reserves such as mandatorybuy-backs for a given period of time, will run the risk of slowing the supply pipeline of larger operators and cause liquidrty / financial viabilrty issues for smaller villages. This increasedfundirg cost would also likely be passed on to the residentin order for the operator to continue to achieve rts requiredreturn on capital.Smaller villages are commonly located in regional, more affordable, parts of New Zealand and are critical in catering to those regions and providing a lower priced alternative to major crties.

This would have a negative impacton housing supply, and also have a knock-on effect on employment and GDP. A PvvC review of the sector from March 2018 highlighted the sector's $1.1 billion con tribuitonto GDP in 2017 (circa 0.4% of national GDP), similar to the value-add from department stores or themotor vehicle retailing industry in 2016. At the time of thereview, the sector employed roughly 19,000 people with a further 9,500 new jobs projectedto be provided through the construction of new villages over a seven to eight-yearhorizon.

7 J ll research, **preliminary** NZRVD 2021

3.3.4 The RV sector's role in wider housing issues, and competitive nature of its market

While the sector's contribution has grown significantly and is both substantialand nationally focussed, it is not capable of resolving all housing supply issues for older New Zealanders. There is clearly an acute shortage of social and affordable housing in New Zealand and it is clear that deliveryof homes in this sector is highly challenged; soc ial housing is generally provided (or substantially supported) by the Crown and affordable housing in large parts is supported by not-for-profit housing providers. Indeed, Kainga Ora was established to address these issues.

The RV sector cannot be expected to solve these deep seated issues; while there are some not-for-profit entities that operate RVs, the sector is overwhelmingly characterised by for-profit entrties, and these entities play a critical role in providing housing for a segment of the older population.

Social housing from retirement village operators

While most of the sector's not-for-profit operators have a missional purpose to provide affordable rental housing, three in particular have been very active in this field.

Wellington's Masonic Villages Trust, Enliven (Presbyterian Support Central) and the Selwyn Foundation recognised the need for social housing for older people and their retirement village ope rations provide support for that purpose. Originallyeach organisation received outside support - the Housing Corporation, the Presbyterian Church, or philanthropic donors from the community, and their move into retirement villages allows that mission to continue today.

Enliven now has 40+ rental properties as part of its care facilities and during the 1990s they added retirement villages to their suite of options for older people. As Pat Waite, the former CEO notes, we have to develop income streams to fund our charitable work, and retirement living options help achieve this for us. Our purpose is still to provide for the needy, plus retirement village IMng is a conduit to care.

Enliven is currently focused on building new developments in areas where there is already high demand for housing options and is open to a variety of partnership options. It is considering the possibility of multi-generationalhousing developments.

The Masonic Trust finds that it is critical to have sufficient reliable cash flow to allow borrowing to replace and upgrade older residential and care facilrties, and the ir strong village profile basically allows that to happen.

Photocredrt: The Masonic Villages Trust

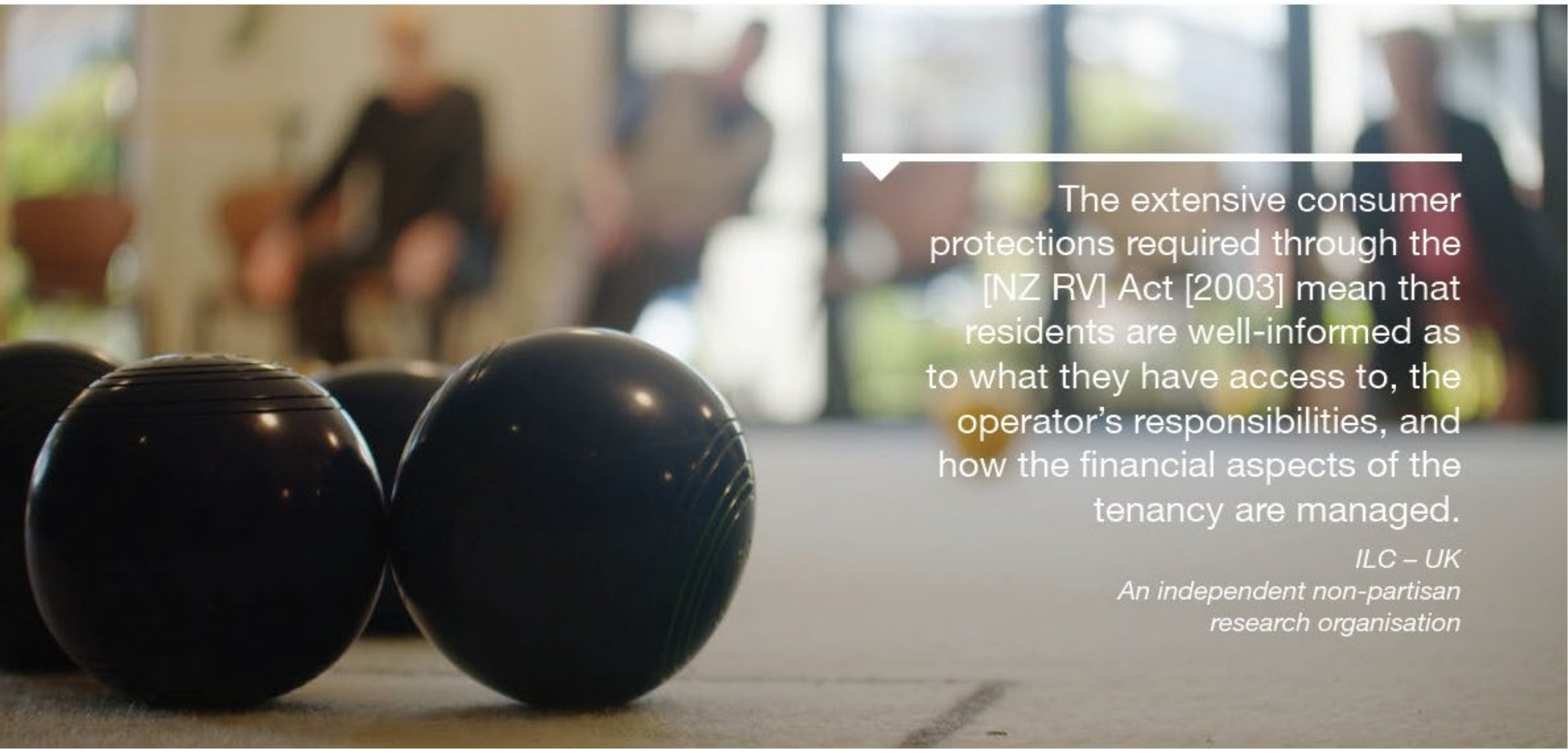
Photo credit: The Masonic Villages Trust

The Trust is building a new retirement villagein Wainuiomata that has 5% of the units as affordable rentals for older people in the area.

The Selwyn Foundation has 21 affordable rental units as part of their Selwyn Village complex and a further 70 rental units pepper -potted across all their sites. However, if the Foundation were to charge full market rent for these units, residents would pay some $10,000 annually or more. The rents are subsidised largely from their retirementvillage returns.

In July 20 17 the Foundation entered into a joint venture with the Auckland Council to manage the Council's rental portfolio, Haumaru Housing. Over time, as residents have moved out, unrts have been relet to people on the social housing register. There is a considerable amount of crossover support from the Selwyn Foundation, including back office functions and executive support, such as fT, HR, payroll and property expertise, but also wraparound support for Haumaru residents. These services include van trips and outings, resilience/ wellbeing checks by a qualified nurse for tenants returning from hospital, attendance at Selwyn Centres, as well as providing tenants with access to Selwyn Strength and Wellness Studios located in Selwyn retirement villages.

The RVA stresses that these innovative approaches are possible because the regulatory regime is sufficiently flexible to allow cross-subsidisation yet ensure residents' tenure in a village is secure. Altering the commercial terms as the White Paper proposes will put this type of innovation at risk.



3.3.5 Competitive nature of the sector, and significant incentives to continue to strive for a quality customer experience

The RV sector provides a diverse range of offerings and residents have considerable choice enabled by the highly flexible RV legislation and driven by the compet itive nature of this market.

The sector has always responded to customer demand and like any successful business it is focused on sustainability, and consequently, on providing strong customer experiences and satisfaction. The sector is highly incentivised to offer residents a high level of satisfaction; rt the sector cannot achieve this the sustainability of RVs would be undermined.

Over the last ten years, there have been numerous examples of how the sector has adapted its financial model in response to customer expectations. These include fixing weekly fees, stopping weekly fees on exit, no exit fees other than the DMF (no refurbishment, sales and marketing or administration fees which were historically charged on exit), 90-day money back guarantees when first moving in, and no loss on LTO re-licensing for residents.

New operating models are emerging which demonstrate the sector's ongoing ability to respond to the changing needs of its customer base. A range of quality and drfferent tenure options have been key characteristics and this continues to mature.

A good example is Freedom Villages, based in Tauranga and the Waikato, which has effectively adopted a low-cost, flexible Irfestyle village model, offering residents the opportunity to share in re-licensing proceeds and also more scope for the resident to sell and market their interests in the village unit independently rather than be bound to having to sell to the operator. While the mode l still focuses on the cornerstone offering of RVs such as security and a sense of community, it caters to the more affordable end of the market.

Other RV operators are also considering diversifying into offering in-home-care options, to leverage their skills and platform for providing quality care for older New Zealanders.

The industry has continued to focus unambiguously on what residents want and need, and, so long as the regime remains substantiallyunchanged, will continue to adapt in the face of new and continuing challenges.

The key challenges identified by the RVA include:

- Scarcity of land in heavily populated areas or places where people want to live in retirement
- The industry's vulnerability to residen tial market downturns
- Pressures on funding for aged care, cost pressures such as wage increases and the impact of more intensive in-home care support which has reduced the number of older people being approved for aged care and resulted in a number of stand-alone aged care facilities closing

- Provision of care for the increasing proportion of RV residents who may have higher levels of dependency in the future
- Pressures on providing retirement living needs to an increasinglydiverseand multi-cultural society
- The demands of the baby boomer generation
- Providing affordable housing and low -cost villages, with pub lic/private partnerships, is an opportunity in this area to deliver a diversrty of models, scale, style, and cost options.

.. .the significant and rapid build rate of RV units is providing housing options for older people (and creating new supply of general housing) at a faster rate than the wider housing market.

3.3.6 Comparison with overseas models

The New ZealandRV regulatory regime has been highly praised and referred to as a best practice model by overseas jurisdictions with similar approaches to RV living such as Australia and the UK.

The Austrailan model is most comparable to New Zealand as it also includes an upfront capital sum, ongoing service fees and then a deferred management fee; however, a 2017, Governmen-tcommissioned inquiry into the fairness and transparency of business practices of the RV industry in New South Wales found that it does not provide the same degree of financial certainty as New Zealand with regard to exit fees and ongoing maintenance levies which are shared between resident and operator and can form a material part of recurring charges.

By comparison, the NZ model largely restricts exit fees to the DMF and passes on the maintenance and capital expenditure risk to the operator. This is possible as the majority of operators apply net re-licensing proceeds against these costs, whereas, under the Australian model, proceeds are shared with the resident to the extent that a lesser level of service and certainty is offered.

There is no statutory supervision in Australia, an important component of the consumer protection regime in NZ.

The UK model is still emerging. However, the main difference is that residents purchase a leasehold interest in the specific unit they own, rather than a contractual right to occupy. This can result in a whole host of challenges for the resident. the principal ones being the responsibility for maintenance, service charges and capital expenditure.

A 2021 review by the Associationof Retirement Community Operators (ARCO), the RVA's UK counterpart, identified LTO s as a more suitable contractual arrangement than leasehold as it is considered to strengthen consumer protection and allow for risks to be transferred from resident to operator. It suggests the key benefits of the model are:

- Enables expansion of the market, leading to more consumer choice
- Able to offer properties at lower price points based on a long-term business model
- Able to be tailored to customer needs
- Transfers risk of long-term repairs and maintenance from resident to operator
- Transfers risk of service charge increases from resident to operator
- Reduces liabilities of ongoing charges after residents' occupation ends.

ARCO concluded that the New Zealand LTO model. in its current form, has helped to make New Zealand the world's leading country in the provision of housing and care services for older people.

The sector is highly incentivised to offer residents a high level of satisfaction; if the sector cannot achieve this the sustainability of RVs would be undermined.

4 Issues and recommendations identified by the CFFC

The CFFC has identified several issues with the current Framework Each issue is addressed in tum; we focus on our observations as a representative body for operators active in the sector and set out, where relevant, suggested next steps.

4.1 Re-licensing and buy-back times

The re-licensing and buy-back of LTOs is often perceived to be an area of disadvantage to the resident. The RVAaccepts that a long re-licensing term could be a cause of concern for residents and their families. Extended re-licensing times are not necessarily the fault of the operator - in 2020, several lockdowns have stopped re-licensingand caused supply chain disruption that extended refurbishment times.

The sector consistently strives to be highly respons ive to perceived disadvantages for residents. Ultimately, residents' and operators' interests are aligned as operators are rationallykeen to re-licenseLTOs as soon as possible.

The CFFC's White Paper highlighted a range of aspects in relation to re-licensing and buy-back, broadly associated with:

1. The re-licensing and buy-back process and timing
2. The treatment of gains on re-licensing, if any.

It is important to note that RV operators have varying balance sheet strengths. Listed companies are more likelyto have balance sheet and working capital capacity to settle a number of departing residents, whereas other smaller operators and those in the not-for-profit sector are less able to do so.

However, a large village with 60 units vacant, perhaps following an outbreak of a disease, is as adversely affected financially as a small village with 10 units vacant.

The two main operating models - LTO and unit title - also offer different terms around the re-licensing / re-sale approach; rather than regulating a one-size-fits-all approach, the market is in our opinion best placed to respond effectively and fairly to this issue. Indeed, the industry is already responding, as we discuss in the following section.

Notwithstanding this, we consider that a number of steps could be implementedthrough industry best practice to improve the re-licensing and buy-back process for residents across the entire sector.

4.1.1 CFFC recommendations

The CFFC has recommended the following options for consideration to improve the re-licensing and buy-back process:

- Guaranteed timeframe for buy-backs
- The requirement for interest to be payable during vacant periods
- Allocation of any gain on re-licensing between resident (or their estate) and the operator
- Considering certainty to residents alongside operators' business models
- Consideration of restricting any changes to larger, for-profit operators.

Photocredrt: The SelwynFocndation

The re-licensing structure creates a financial buffer which allows _operators to offer fixed fees and absorb many market, operating and capital expenditure risks that arise over time.

4.1.2 Observations

4.1.2.1 Re-licensingand buy-back process and times

The re-licensing of LTOs can be a stressful time for residents and their families. The RVA encourages its members to work with residents in the most supportive manner to ensure this process is handled as swiftly and smoothly as poss ible.

The approach to re-licensingand buy-back structures has been evolving and a few larger operators such as Ryman Healthcare have responded with voluntary provisions that apply after six months that include a potential purchase. Others offer interest on the sum due to a resident if a re-licensing takes longer than an agreed period of time.

Introducing guaranteed buy-backs will create cash flow uncertainty for operators, particularly smaller ope rators and villages in provincial areas where the depth of the market is less and liquidity lower. The CFFC should not underestimate the financial challenges this might create for small or not-for-profit operators.

For example, Abbeyfield Whangarei House failed as a result of guaranteed buy-back arrangements it could not finance.

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

Case study: Settlers Lifestyle Group Pty Ltd

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

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

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

Case study: Abbeyfield Housing Company

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

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

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

The operation of the village was uneconomic without it being fully occupied and this placed financial strain on AHC. After more than a year it was acknowledged that the village was unlikely to attract sufficient new residents to enable it to continue. After consultation with the statutory supervisor and the residents, it was agreed that the village would have to be wound up, the property sold and the residents repaid from the sale proceeds. The sale proceeds available for distribution were inadequate to reimburse residents their full entry payment and all residents, apart from the residents who benefitted from the repurchase pool account. suffered a considerable financial loss and the loss of their home.

AHC worked with the remaining residents to ensure that they were rehomed.

Villages in markets with lower levels of liquidity would, all else equal, need to increase the DMF (for example) to fund the cost of offering the buy back. Lenders will become more cautious in respect of the level of development or business funding they are able to provide, and in tum slow the operator's development pipeline due to a higher capital requirement / balance sheet strength. Notably in provincial areas building new villages may become an unattractive investment, reducing the range of village affordability options. Guaranteed buy -backs will place a particular strain on villages in the not-for-profit sector, which, in general, do not have additional sources of capital to draw from.

Villages run by a committee of residents which usually allow retaining of some (rf not all) capital gain would be required to have large liquidity facilities / capital amongst those residents to meet buy-back obligations. This would make it unlikely that this type of village could exist.

In any event, the introduction of guaranteed buy-backs would require all operators to reserve additional capital and this cost would likely, at least in part, need to be met by the resident especially in circumstances where the operator's business would become unsustainable due to the increased liquidity requirement.

In summary, it is expected that guaranteed buybacks would result in higher costs to the resident. fewer new market entrants, less competition and, ultimately, less choice for the consumer.

4.1.2.2 Sharing of gains on re-licensing

Gains / losses on re-licensing have attracted a reasonable amount of debate and operators have worked to eliminate disadvantages to the consumer. During the early years of the sector the structure was asymmetrical, with operators having access to gains on re-licensing to support the service model and residents bearing the cost in the event of a loss on re-licensing. This structure has essentially been removed from contracts; the RVA is actively encouraging the very small number of operators that still include the loss on re-licensing clause to exclude it from their contracts when gains are not shared.

It is important that the structures for sharing of gains on re-licensing be considered in the context of the wider LTO operating and funding model. There are three core revenue streams associated with the contemporary LTO model.

1. Weekly service fees
2. DMF
3. Re-licensing gains.

Most villagesset the vVeekly fee at a subsidised levelto cover the operator's day-to -day overheads of operating the RV such as insurance,rates, utilities,water, energy and labour.Around f:[J% of operators offer residents a fixed weekly fee that applies during their entire life in their unit. The operator absorbs inflationary increases in relation to these overheads, which can be substantial. FD<ed weekly fees are a response to resident demand fa- certainty.

Example of subsidy provided to residents for three villages in the year ending March 2020

	Village A	Village B	Village C
Receipts for village tariff and related services	$1,758 ,0CO	$2,276,000	$2,443,000
Costs for village tariff and related services	$2,782,0CO	$4,787,000	$4,805,000
Subsidy provided by village	$1,024,0CO	$2,511,000	$2,362,000

The information is sourced from the 2020 Annual Accounts for two villages in Auckland and one in Christchurch. The names of the villages have been withheld for confidentiality but further detail and disclosure is available as required.

DMF charges and re-licensing gains are required to offset any shortfall in weekly fee revenue, ensure that villages provide an attractive and quality environment for all current and future residents by covering maintenance and capital investment over the long-term, and provide a reasonable return on investment for operators.

Through the ORA, residents acquire a life-time licence to live in a village, with unlimited access to communal services and facilities. Although there are instances of DMF accruals continuing until an ORA is resold (where a resident vacates a unit prematurely,prior to amortisation of the full DMF), most operators terminate DMF accruals as soon as a resident exits a village.

The gains accrued by villages over time have a number of functions.

Re-licensing gains:

- allow operators to maintain a replacement reserve to cover signmcant long -term capital expenditure and major modernisation requirements, noting that every ten to fifteen years, significant capital expenditure is required to upgrade common facilities, the units and apartments. and aged care facilities. In somecases, this involvesreconfiguring the existing accommodation to meet changing market demand or updated building code requirements. An example is Arena Living's Mayfair Village where a block of one-bed apartments was entirely recon figured to two -bed apartments and the common facility almost fully rebuilt to meet current demand preferences. A further recent example is Selwyn Oaks village where the operator replaced the care facility and built new common amenities, increasing the market value of their ILUs. It would seem unfair that under a capital gain sharing model residents would benefit from such operator funded improvements to communal village facilities
- allow operators to manage the capital requirements associated with lengthof stay risk, noting that if residents live in the village longer than usual, the operator must cover the greater working capital costs

Photo credrt: The SelwynFocndation

- are used to insulatedown cycles and ensure the sustainabilrty of a village. While New Zealand has enjoyed unprecedented capital growth in residential property prices for some years, there is nonetheless a downside risk that property prices will fall. During the early years of the RV industry, the residential property market dropped significantly after the 1987 stock market crash. This situation also occurred post the Global Financial Crisis in 2008 where house prices flattened, but more importantly 'days to sell' increased significantly. These events placed RV operators under signmcant financial stress as prospective residents struggled to sell their homes to finance retirement living
- allow the operator to insulate residents against unexpected levies, extraordinary cos ts, capital expend iture and the risk of market downturns. The re-licensing gain structure creates a financial buffer which allows operators to guarantee fixed fees and absorb any market, operating and capital expenditure risks that arise over time, such as Metlifecare's leaky home remediation that did not cost residents a cent. A further example relates to extraordinary co sts incurred by villages in response to the Covid-19 pandemic, including the high costs to ensure the safety and well-being of residents
- allow operators to invest in future development and ensure their development pipeline keeps up wrth the growth in demand.

There are examples in Australia where the DMF is calculated on the re-licensing value of the LTO and the remaining amount returned to the resident. In these instances, residents are exposed to increases in the weekly fees, due to inflation to fully cover the cost of operating the village, and responsible for caprtal expendrture. tf a leaky building issue arises, this model would see the cost levied against the resident. It caused significant financial and emo tional distress to affected residen ts.

The New Zealand LTO mode l avoids such issues and provides financial security to the resident by guaranteeing the capital sum to be returned on exit while, in many cases, providing fixed fees. The RVA strongly argues against any significant changes to the regulatory regime that might undermine this level of consumer protection and comfort.

The RVA also conside rs it critical to enable operators to maintain the momentum of their current development pipelines to provide consumers with a continued choice of housing options and provide a valuable source of housing.

4.1.3 3 RVA view and suggested next steps We suggest taking the following steps.

4.1.3.1 Re-licensing and buy-back process

The RVA considers that options for improvingclarity in relation to re-licensing and buy-back requirements include:

- implemen ting manda tory filing of disclosure of re -licensing times, valuation and market reports (in accordance with current requirements) to ensure transparency in relation to re-licensing prices and that this form part of the RVA's aud it process
- improving clarity in relation to timing and requirements of the valuation.

4.1.3.2 Buy-back times

The RVAis of the opinion that

- a guaranteed buy-back would cause cash-flow uncertainty for less well-capitalised operators, such as smaller and medium-sized operators and many

  not-for-profit operators
- the industry should work collaborativelyto provide better disclosure of re-licensing times and ensure that all operators disclose re-licensing times in their public documents
- an annual operator survey on re-licensing times would ensure full transparency and encourage operators to reduce re-licensing times and
- develop industry best practice guidelines that could include a strong recommendation to buy back if the unit has not been re-licensed after an agreed period.

Photo credit: TheSelwyn Fouidotion

4.1.3.3 3 Gains on re-licensing

The RVA co ns iders that the RV Act should not be amended to provide that it is mandatory for residents to receive a share of relicensing proceeds, and notes that:

- 14% of operators already offer sharing of re-licensing proceeds and the resident has the choice to choose such a village
- Some of the gains on re-licensing are currently retained by the resident under a unit title model, which represents around 5% of the market. In tum, however, unit title residents are responsible for unit maintenance and through body corporate levies are exposed to risk of unforeseen capital expenditure and market risk
- If gains on re -licensing were to be shared under a LTO model, this would reduce the amount of capital available to operators to futfil the funct ions set out in clause 4.1.2.2 above, including reducing available cap ital for operators to operate the village long term. Any change would result in a change to the standard LTO model to find an alternative way of returning sufficie nt capita l to the ope rator to ensure the stable long term operation of the village, and in many cases adversely affect the continued cross subsidisation of aged care and provision of capital for further developments. This might mean a higher DMF, higher weekly fees, ad-hoc levies or major capital expenditure being passed on to the resident, as shown by the Australian model. Changes to ORA pricing structures may also impact the re-licensing value of units and the assessment basis for the calculation of capital gains, where these are shared, resulting in a disconnect between current and future residents on transferof a unit.

Photocre<Jij: Arvida Groop

4.2 Weekly fees continuing after termination

The RVA gene rally agrees wrth the CFFC's obseNations on this issue, although 179 villages already terminate all weekly fees after a resident vacates a unit.

4.2.1 CFFC recommendations

The CFFC has suggested the following for consideration:

- restrict the charging of weekly fees after a resident vacates a unrt
- reduce weekly fees by 50% after three months and cease charging fees entirely after six months.

The CFFC acknowledges that a cost-benefit analysis should be undertaken to determine the impact of options (such as those above) on different types of RVs, particularly small independent and not-for-profit villages.

4.2.2 Observations

As indicated above, weekly fees are in most LTO structures insufficient to cover the operator's day-to - day overheads - a fixed fee structure means that the income significantly underfunds the real cost of the operation over the long-term,givencontinuous rises in cost inflation. Other revenue streams (DMF and LTO re-licensing proceeds} cross subsidise the real cost of running a village.

Every week a LTO remains unsold and a unrt vacant means a material comm ercial loss for an operator, in terms of forgone LTO re-licensingrevenueand accrued DMF.

Over time, this is likely to create cash flow constraints for operators wrth a low working cap rtal base, notably smaller and not -for-profit villages, with a snowball effect on the village amenity and seNice provided to residents. As a consequence, there is a strong commercial incentive for operators to re-licence LTOs.

Larger operators in particular have demonstrated flexibilrty and have adapted their terms to meet customer demand; the majorrty of operators stop both DMF accruals and weekly fees when a resident leaves the village.

Where residents control the disposal of their interest in their ORA the operator should be entitled to continue to charge weekly fees in full until the unrt is re-licensed . This will mainly apply to unit title villages.

4.2.3 RVA view and suggested next steps

The RVA recommends establishing an industry best practice standard:

- to encourage the cessation of any charges (including both DMF accrual and weekly fees) after a resident vacates their unit so that the operator's and the resident's interests are aligned, and to continue to provide certainty to the resident in relation to fees and caprtal payments
- This best practice standard should be sufficiently flexible to meet indMdual operators' needs, but encourage market differentiation if this is important for intending residents.

4.3 Transfers from independent units to serviced care or care facilities: information requirements and treatment of fixed deductions

The CFFC's monitoring report (2018/2019) into the transition to care found that operators' documents could be clearerin relation to the specific level of care provided in the village and options to access such care.

4.3.1 CFFC recommendations

The CFFC has suggested that the RV sector:

- consider how to improve and standardise information about transferringinto higher levels of care
- consider whether a separate regulatory Framework for higher care settings and single fixed deductions is desirable.

4.3.2 Observations

Aged care offerings have been adapting to changing customer demand and the model of providing a continuum of care has been driven by demand from residents seeking to future-proof their care needs, and ideally have the opportunity for a seamless transition from independent living to higher care options.

'Traditional' aged care facilities are stillcommon and are substantially government funded. Care is provided in modest surroundings.

The industry has responded to a demand for better quality care units by offering serviced apartments or care suites, which essentiallyprovide an up-marketcare room. These apartments cost more to develop and operate, so accordingly the cost of occupation is higher compared to traditional aged residential care rooms, and, if they want to access these units, the resident can either purchase an LTO or pay a daily premium charge.

In the majority of cases, a resident's equrty on leaving their village unit is sufficient to fund their transition into a serviced apartment or care suite in the care facility. Where this is not the case, operators work wrth residents to structure a payment option to facilrtate the move.

The RVA acknowledges that in some cases the transition can be confusing for residents, and consequently, it developed best practice guidelines for its members relating to what should be specified in the ORA and Disclosure Statements for the transition to care. Members are audited on their compliance with these guidelines. However, RV operators find that most new residents are not focused on the potential transition from the village to a care facility, other than wanting reassurance generally that a continuum of care is available.

RVA view and suggested next steps

The serviced apartmenVcare suite offering is a relatively recent product and is evolving in response to consumer demand. Customers have considerable choice and control over the particular model they select.

The RVA considers it essential that ORA and Disclosure Statements are clear on transitioning arrangements and that there is consistency in the approach across the sector.

The RVA suggests working collaborativelywith the CFFC to:

- agree best practice disclosure guidelines, using the RVA's best practice guide for members as a starting point
- ultimatelyincorporate these guidelines into the Code to ensure consistency between operators.

4.4 Code of Practice 2008 compliance

The CFFC's monitoringreport in 2010 found that the majority of operators are complying with the regulations and provisions set out in the Act. rts regulations and the Code.

Smaller operators and some charitable not-for-profit operators understandably find some of the regulations and provisions more challenging to comply with; the CFFC concluded that further investigation was required to ascertain the extent to which their viabilrty as RV operators has been impeded by an increased compliance burden and the implications this may have on the diversrty of the sector.

The RVA offers a comprehensive surte of template policies and procedures to assist new or smaller operators without a back office support system.

4.4.1 CFFC recommendations

The CFFC has recommended:

- a review of the Code, including the ORA provisions, with a view to establishing best practice and to balance operator control and residents' rights.

4.4.2 Observations

The RVA considers that the mandatory three-year compliance audrt that is a term of membership of the RVA ensures that operators are complying wrth the Act, regulations and the Codes of Practice and Residents' Rights, and no further intervention is necessary. The audits are undertaken by the same accredited auditing agencies that audit aged residential care facilities' compliance with the relevant rest home regulations, so are professional and independent.

4.4.3 AVA view and suggested next steps

The RVA suggests that rt continues to work collaboratively with the CFFC to develop comprehensive best practice guidelinesto balance operators' responsibilities and residents'rights, and ensure they are subject to a compliance audit.

4.5 Lack of a simple complaints system or authorised advocate

The RVA has extensively consulted with members on any proposed changes to the Code of Practice in relation to the legislative disputes process and will continue to do so to ensure the system is as efficient and effective as possible.

4.5.1 CFFC recommendations

The CFFC recommends that:

- a review of the complaints function be undertaken to simplify and formalise a clear and simple complaints procedure.

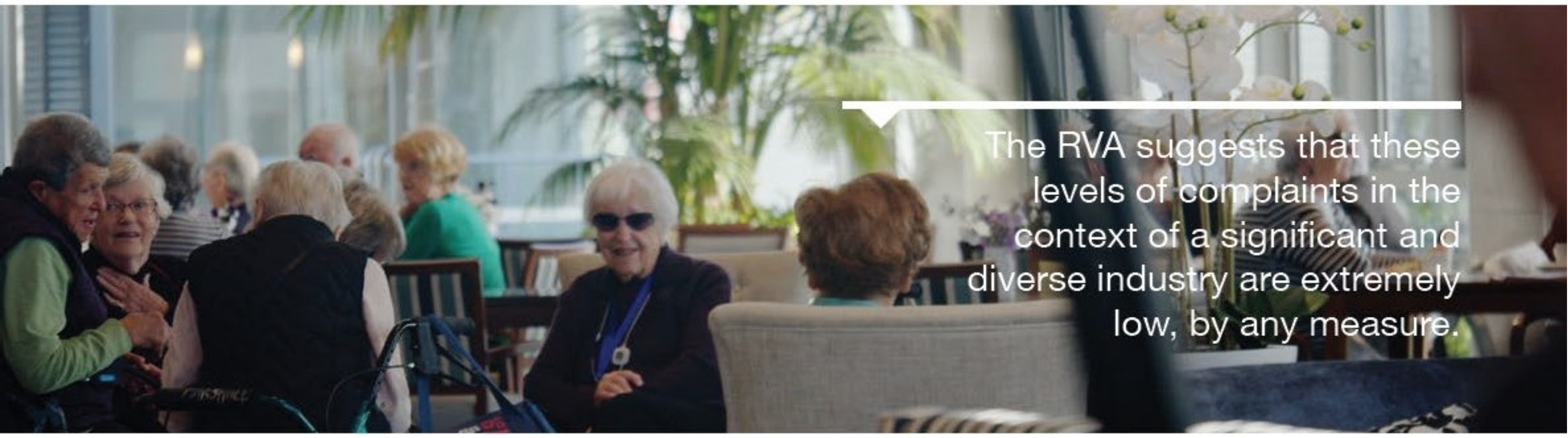
4.5.2 Observations

The CFFC's 2017/2018 review of the effectiveness of the statutory supervisor function found that the existing regulatory regime is ensuring that intending residents' and residents' interests are adequately protected through 'external oversight of the condrtions of entry into and continuing operations of RVs. The CFFC report agreed that the Act gives sufficient powers to statutory supervisors where an operator may be non-compliant and there is evidence to suggest that statutory supervisors use their powers when required.

Older people can be vulnerable and can be deterred from raising complaints because of a fear of reprisal or the prospect of legal expenses. Understandably, the complaints system must manage these challenges. It does, however, need to balance the cost andinconvenience of dealing with frivolousand unmeritorious complaints.

The RVA agrees that the complaints process must be simple and not intimidating for older people, and their ongoing well-being must be protected.

Late in 2020, the RVA and RVRANZ signed a MOU (see Appendix 1) wherein the parties agreed to establish a more robust approach to dealing wrth complaints, including comprehensive reporting and greater transparency. The MOU commenced on 14 December 2020 and the parties have agreed to a review in 12 months.



Highlights from the MOU include:

- the establishment of a Residents' Advisory Group
- encouraging operator best practices to help residents form and run a resident committee when they wish to
- bespoke village manage r training requirements to ensure emotionally intelligent and skilled handling of older people, including regular resident satisfaction suNeys to identify further staff training requirements.

The RVA may consider the introduction of an RV ombudsman which could provide support and lend greater confidence to the complaints process. The provision and cost of such a seNice, however, would in the RVA's opinion need to be assessed against its benefits, and rt is noted that complaints registered in the CFFC's six-monthly monitoringregime from October 2017 to June 2020 show that the number of unresolved complaints is very low.

Out of a total of 1,157 complaints over this period, 19.5% (214) remained unresolved at the end of the relevant six month reporting period, and many of these complaints related to 'incidences' rather than 'model' relatedissues. In almost all cases these complaints were resolved after that six month period. Out of the 685 total complaints analysed over the same period, 6% (41) were considered 'severe' and 0.2% (2) 'very severe' (i.e. where residents' lives and welfare are compromised). Relativeto the current RV population of circa 46,8CD, 214 unresolved cases (0.5%) and 43 'severe or very severe' comp laints (0.1%) in approx imate ly 2.75 years represent a fraction of all residents.

The CFFC advised some examples of severe and very severe complaints (as summarised below):

- Concern that an ambulance was not able to get into the village when one was called for her mother when she was experiencing pain in her chest.
- Cleaning product had been left in resident's apartment. Resident has impaired vision so was not able to see this was a cleaningproduct and she had poured this on her cereal.
- Resident had collapsed with a suspected heart attack. The facility has a defibrillator unit. However, at the time of the incident the Registered Nurses in the facility were unable to access the unit. Unit now kept in Nurses Station instead of Clinical Manager's office.
- Resident had lit fires on the stove wrth the newspaper to light his cigarettes, but the fire alarm did not go off.

The responsibilrty for meeting the costs of appointing a mediator and the appointment and holding of a dispute panel primarily rest with the operator even rf the operato r is not party to the dispute. The panel member does have the power to award costs in favour of the applicant or any other person, however, the panel member must have regard to various factors including the conduc t of the parties. There have been 25 reported panel decisions since 2007 and only five cases have resulted in a resident having costs awarded against them. A review of those five cases shows that the residents acted unreasonably and in some situations had even been advised by the panel member that the resident's claim would not succeed or they should seek legal advice, but the resident proceeded wrth the dispute.

It would, therefore, seem that costs would only be awarded against a resident where there is a clear unreasonableness in the resident's position or behaviour and it may be appropriate to ensure that residents are made aware that the disputes process will not expose them to cost, unless the complaint/daim is not genuine or is vexatious.

The RVA sugges ts tha t these levels of complain ts in the context of a significant and diverse industry are extremely low, by any measure.

We stress that the RVRANZ's residents' stories that were included in the CFFC's White Paper have not been verified and therefore should be treated with caution.

AVA view and suggested next steps

The RVA recommends:

- completing the review of the MOU after 12 months to establish which best practice items could be formally adopted
- that the CFFC test the concept of establishing a RV ombudsman.

4.6 A voice for residents

4.6.1 CFFC recommendations

The CFFC recommends that:

- it is considered whether changes are required to better support RV resident welfare.

4.6.2 Observations

The MOU between the RVA and RVRANZ including the Residents Advisory Group will provide residents wrth a voice in relation to sector governance. The RVA fully supports advancing the MOU, formailsing the relationship between residents and operators and respecting residents' rights to express their views on, and be heard by, the sector.

4.6.3 AVA view and suggested next steps

The RVA recommend the completion of a joint review of the MOU between the RVA. RVRANZ and CFFC to establish which best practice items could be formally adopted. This forum would be expected to work through potential improvements we have identified.

4.7 Emerging consumer issues

4.7.1 CFFC identified issues

The CFFC has identmed the following potential issues for the sector:

- future affordabilrty challenges for RV accommodation
- a potential mismatch of supply for future demand
- the prospect of residents requiring financial assistance increasing
- the sustainability and viability of the current RV model where resident securrty is significantly dependent on ILU revaluations
- the RV model favours profitable development over more affordable rental offerings and other models.

4.7.2 CFFC recommendations

The CFFC has recommended:

- that analysis of future trends be undertaken to ascertain whether consumer protections are strong enough to adapt to change and investigate whether different models should be encouraged.

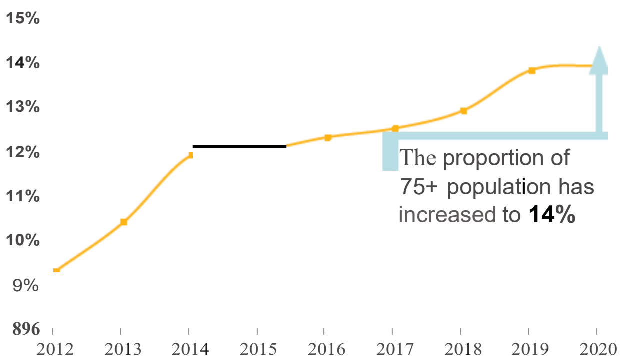
4.7.3 Observations

The RV industry's success has been entirely demand driven. Delivering high levels of customer satisfaction (and therefore demand for RV product) together wrth the rapidly ageing demog raphic underpin the sector's growth.

The RV operating model and product offering has evolved in direct response to customers' changing needs with the well-being and security of residents at its core.

Since 2012, the sector's market share (percentage of 75+ year olds in RVs) has grown by circa 4.5% (absolute) and now supplies housing for approximately 14 % of the over 75 year old population.[8] One in every seven 75+ year olds lives in a RV. If the sector's market share continues to rise, even at a lower rate, the current pipeline of RV unrts **will** be insufficient to meet demand.

Fig. 6: Penetration rate for 75+ cohort from 2012 to 2020



As outlined earlier in this reponse, the contemporary RV model is dynamic and multi-faceted, balancing resident charges (DMF. weekly fees, and re-licensing gains) wrth providing safe and secure accommodation and cost certainty without the potentially material risks associated wrth real estate ownership.

Innovation is ongoing in the sector, with new affordable village models such as Freedom Villagesemerging as a result of changing demand. It is anticipated that the market will continue to adapt to provide greater segmentation of product through differing quality and price offerings.

8 JLL research, preliminary NZRVD2021

While some operators such as those in the affordable rental segment will always have a place in the market, it is unlikely that this segment will become a mainstream RV product unless the funding model changes. It is no surprise that social housing, including for older New Zealanders, is either local or central government funded or provided via philanthropic entities. The RV sector is largely a for-profit offering, and this enables the sector to continue to expand, offer genuine choice, create great places to live, and ensure that outgoing residents will have their caprtal sums refunded quickly because new residents will want to buy in.

4.7.4 RVA view and suggested next steps

The RVA conside rs that:

- the sector will continue to evolve while new challenges and opportunities will arise
- the RV sector in New Zealand is internationally held as a succ essful and effective model for providing private sector aged care
- the sector in New Zealand has shown time and time again that rt is nimble and able to react and anticipate customer needs, and deliver product that meets these needs
- the sector is well positioned to continue to respond and adapt to accommodate the needs of a changing customer base.

The RVA does not. therefore, support the CFFC's recommendat ion to review future trends to ascertain whether RV consumer protections are strong enough to adapt to change and investigate whether drfferent mode ls shou ld be encouraged.

4.8 Structural and drafting anomalies evident in the legal framework

The RVA acknowledges that documentation can be complex for intending residents and their support networks. The nature of the Disclosure Statements and ORAs is such that some of the key information relating to payments. fees, returns, access to care, and related important matters can be 'lost in the fine print'.

4.8.1 CFFC recommendations

The CFFC recommends that:

- a review of the disclosure statement content and format be undertaken wrth a view to producing simplified and accessib le documenta tion (includ ing online resources).

4.8.2 Observations

In 2019 the RVA deve loped a key terms summary (KTS) sheet in a 'plain English' template form (see Appendix 2), summarising important information for intending residents, with the objective of allowing intending residents to easily compare one village wrth another.

The KTS is a mandatory requirement of RVA membersh ip and is part of the compliance audit regime. Before the KTS summary was finalised it was reviewed and approved by the CFFC.

4.8.3 RVA view and suggested next steps

The RVA recommends a review on a collaborative basis with the CFFC to assist with further simplifying documentation and ensure consistency in the format of disclosure statements and ORAs across operators.

4.9 The interface of care and residence

4.9.1 CFFC recommendations

The CFFC recommends:

- exploring the extent to which the presence of care changes the nature of a RV from a housing proposition to a health proposition
- exploring whether the definition of a RV needs modifying to include a wider range of lifestyle developments (including those arrangements that do not need an ORA).

4.9.2 Observations

It is important to acknowledge that there are two sets of regulation that cover the provision of aged care in RVs:

Age-related residential care is already comprehensively regulated through the regime administered by the Ministry of Health and the Health and Disability Co mmissioner. Providers are required to comply with the Health and Disabilrty Services (Safety) Ac t 2001 and the related NZS Health and Disabilrty Service Standards (for which compliance is audited as part of the accreditation regime), the Age Related Residential Care Services Agreements between operators and District Health Boards.

The RV Act in principle covers the delivery and funding of accommodation and provides protection for the capital payment made by residents.

Healthcare is highly regulated and it is not appropriate that the Retirement Villages Act should deal with this, except to the extent of the underlying accommodat ion interest granted to residents under an LTO.

The RVA notes that other operators are currently considering offerings with little or no care, and instead offer an in-home care service. This will offer further diversity and, indeed, if the market accepts this, existing RV operators will also need to change their offering to meet the market.

The RV Act does not and was never envisaged as preventing other offerings targeted at acco mmodat ing older people where there is no capital payment made. It is important to remember that the RV Act was introduced for the purpose of protecting older people who pay a capital sum for accommodation and receive associated services or facilities. The model of paying capital existed before the introduction of the RV Act so it is not the Act that is driving the capital payment model. Other non-capital payment models have the freedom to operate outside the scope of the RV Act and this is appropriate because there is not the associated need for protection of capital.

In short, the RV Act does not need amendment so new options may emerge.

Ultimately,the RVA considers that the interfacebetween care and residences should be clearly disclosed to intending residents so that they are fully informed as to the level of accommodation, care, amenity etc that they can expect from the village they buy into. Again, this could be incorporatedinto the Code.

4.9.3 RVA view and suggested next steps

The RVA recommends:

- A review of disclosures in relation to the interface between care and residences, and incorporationin the Code.

5 Conclusions

As we noted at the start of this response, the White Paper is ultimately not just about RVs, it is actually about improving the quality and wellbeing of older New Zealanders, and the significant role RVs play in contributing to that.

The RVA welcomes the oppo rtunity to comment on the CFFC's White Paper proposing a review of the regulatory regime under which registered RVs operate.

In this paper we have stressed the drfference between the extensive consumer protection provided for in the RV Act - registration, a memorial on the village's title, the appointment of a statutory supervisor, mandatory legal advice, the format and contents of key documents, and so on - and the commercial terms that allow operators to distinguish their village from their competitors.

The commercial terms are highly responsive to market demands. For example, we appreciate that residents are comfortable with the capital sum and DMF model but are concerned that the weekly fee might escalate out of their control. The proposed 17% increase in Wellington City rates is a good example of escalating costs that concern people on fixed incomes. Operators have responded by offering fixed weekly fees to insulate residents against these costs.

However,operators face a range of property ownership risks, such as leaky buildings, earthquake and storm damage, and the need to regenerate older villages so they remain attractive to new residents (and exiting residents can get their money back promptly from a re-licence sale). Any gains made on the re-licensing of units is used to off-set these risks and necessary expendrture, and the balance is that the resident, with no ownership stake in the village, is not liable for any unexpected property costs. It is important for residents to realise they can't have one without the other - either they share the risk of ownership and the unexpected costs, or they forgo capital appreciation in the securrty of knowing they do not face these costs.

The success of our model shows that older people relish the possibilities village life offers and 100 people move in every week. They receive their mandatory legal advice, understand the terms of the ORAs, hopefully have told their children about the reasons for their move, and our research shows that 96% are either satisfied, very satisfied or are neutral about that decision. It is, therefore, equally important that a tiny minority should not be a reason to upend a successful and popular housing model for older people.

The sector is highly competitive and offers a wide range of options to meet individual residents' expectations and needs. Attempting to standardise the commercial terms or impose restrictions on them only weakens the options and the value residents receive from their decision.

The RVA accepts that there are details of the commercial model that could be refined. We believe that the most appropriate way is through industry best practice and allowing the market to create new opportunities to meet changing residents' needs. For example, we know that the imminent baby boomer generation is likely to have very different expectations from their parents, and it is essential that the sector retains the flexibility the current regime offers to be able to respond to the changing market.

The RVA will continue to lead the sector with best practice, reinforced with our mandatory three-year compliance audit.

We welcome the opportunity to discuss this submission with interested parties.

[redacted]

APPENDIX 1

Memorandum of Understanding

RVA NEW ZEALAND Retirement Villages Association

RVA NEW ZEALAND
Retirement Villages Association

RVA NEW ZEALAND
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I t tirtmtnt Village Residents
Au ociotion of NZ (In,)

Memorandum of Understanding

Between

The Retirement Villages Association of New Zealand (RVA) and the Retirement Village Residents Association of NZ (RVRANZ)

Dated

10 December 2020

Introduction

The RVA is a voluntary industry association that represents the interests of the owners, developers and managers of most of the registered retirement villages across New Zealand. The RVRANZ is a voluntary organisation that represents the interests of many residents of retirement villagesacross NZ.

Purpose

The purposes of this Memorandum of Understanding are to:

- acknowledge the agreement between the partiesmade in their facilitated meeting at Ranfurly Retirement Village on 2nd December 2020,
- record some principles underpinning the ongoing relationship between the parties;and
- describe, in general terms, how the parties will work together over the next year

Understandings

Each of the parties agrees to:

- Work with the other in good faith to support the provision of a quality living environment for village residents;
- Ensure that concerns and issuesraised by either party are responded to promptly and courteously and as described in this Memorandum of Understanding (MoU);
- Ensure that the imageof the sector and the residents are portrayed fairly and accurately and, without limiting their respective freedoms of speech, to adopt a no surprises approach to dealing with media;
- That where we can agree to public policy changes we work together to effect those and where we disagree, we note the points of disagreement and proceed in a respectful manner.

Resident Advisory Group (RAG)

The parties acknowledge residents are a key stakeholder in the industry and the 'resident experience' is a valuable lens for operators looking to improve their business. The parties also want more evidence-based, transparent communications between them on diverse issues and on specific cases within villages.

To facilitate this, the parties agree to work together and develop a structure and process for a RAG which will regularly, at least three times a year, meet with the RVA executive.

Media

The parties acknowledge that the primary media spokespersons handling any approaches from media to their respecitve organisations are the Presidents from time to time of the two Associations, currently (RVA) and- RVRANZ).

The parties agree they will practice a 'no surprises' approach to dealing with media during the term of this MoU. This means either party will not proactively approach media seeking exposure on an issue or case without first either:

- raising the issue or case at a RAG meeting or
- if that is impracticable, talking to the other party first about their intention to approach the media.

Resident Committees

The parties acknowledge resident committees can be a useful resource for addressing resident concerns in a village and that not all villages have resident committees.

The RVA agrees to remind its members of the Code of Practice clause 30 through its newsletters and forums and generally encourage operator best practices to help residents form and conduct a resident committee when they wish to.

The RVRANZ agrees to work with CFFC to finalise a short Resident Handbook for forming and conducting a resident committee.

Village Manager training

The parties acknowledge village management that is emotionally intelligent and skilled in handling older customers is a vital quality for the industry and for residents.

The parties also acknowledge individual operators need to retain bespoke training requirements. They acknowledge it is unreasonable to compel a company to undertake generic training, and that the RVA facilitates a range of training choices for members and reviews the extent of staff training when conducting its independent membership audits.

The RVA agrees to continue developing training modules on providing care and emotionally intelligent managing of older people and promote that to its members. Content of such modules will beadvised also to the RVRANZ.

The RVA agrees to review its independent membership audit requirements to ensure there is adequate assessment of village manager training.

The RVA agrees to encourage its members to regularly canvas residents' satisfaction levels and identify dissatisfaction which may or may not prompt further staff training requirements.

Term

This Memorandum is effective from 14 December 2020 for a period of 12 months. Following this the parties will meet to discuss the value of a continued relationship and the possible details of that relationship.

For the avoidance of doubt, the relationship of the parties under this Memorandum is not one of legal partnership, joint venture or agency.

Consent and Privacy

In order to facilitate an exchange of information, both agencies need to have the consent of the member or subject of the information before this information can be exchanged, unless there are over-riding safety issues when confidentiality will bebreached.

Sharing information is encouraged to promote the most effective service to members of both organisations. Neither of the parties is to disclose, directly or indirectly any confidential information received from the other party to any third party without written consent.

Member Complaints

Nothing in this MoU precludes either party or its members from usinga range of other complaint or dispute resolution options provided under the Retirement Villages framework.

The parties agree RVA or RVRANZ Member complaints should generally be directed to the organisation where the complaint is sourced.

This agreement is signed by the following on behalf of their respective organisations.

RVA
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RVRAN
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[redacted]

APPENDIX 2

Key Terms Summary

RVA
NEW ZEALAND
Retirement Villages Association

SUMMARY OF KEY TERMS

Village: ____

Accommodation Type: ____

Correct as at _ /_ /_

KEY TERMS	DETAILS FOR RESIDENT/UNIT

Fees payable by resident

Maximum Deferred Management Fee (DMF) (or equivalent fees) payable by resident for unit	Maximum total as a percentage of capital sum: ___ % Method of calculation: On entry % Per annum: Year 1 % Year 2__ % Year 3_ % Year 4 % Year s %
Weekly fees payable by resident - How much? • Can these be increased by the operator? • If yes, how often?	$____________ per week 7 Yes ! No Annually _ Any time Other
Are there any other regular fees payable by the resident to the operator and can these be increased? [For example, service fees.]	
Does the resident contribute to long term maintenance through a contribution to a specific village sinking or maintenance account?	_j Yes _j No
Fees payable on termination (excluding DMF) [For example, admin, marketing fees.]	

Capital gains/losses

Does the resident share in any capital gain on the sale of the unit? • If yes, what share? [Specify]	_j Yes _j No
Is the resident exposed to any capital loss on the sale of the unit? • If yes, what is the exposure? [Specify]	- Yes - No

Leaving the unit

Once the resident has left their unit when do they stop paying weekly fees?	7 On leaving the unit _J Other - specify

KEY TERMS	DETAILS FOR RESIDENT/UNIT
When does the resident or their estate receive the capital refund (Less DMF and other fees/ charges)?	_J When the unit is re-licensed _J At the end of the cooling-off period _J Some other formula
Do you offer any compensation if a unit is not resold within a specific period?	Yes L No
When leaving the unit is the resident required to contribute to the refurbishment of the unit, and if so, what amount or formula will be used?	Yes No

Transferring between units within the village*

Does the resident have priority over non-residents to transfer to another unit at the village?	n ves n No
For the resident's new unit, is there a credit for any DMF (or equivalent fees) paid by the resident for their earlier unit (s) at the village?	O ves ☐ No

Current aged care options at the village

Is there an aged care facility currently available at the village?	_J ves n No
If so how many rooms are currently available in each care category?	Rest home Hospital D Dementia care D Other - specify
Does your facility currently contain any standard aged care rooms, i.e. where there is no requirement to pay premium room charges or purchase an ORA?"	! Yes No
Does the resident have priority over non-residents to transfer to the care options outlined above?	Ives j No N/A

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

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

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

APPENDIX 3

Feedback on Consumer New Zealand report

THE RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND INC.
PO 13ox 25 022, Panama Street, WELLINGTON 6146
Phone 04 499 7090 Fax 04 499 4240

15 February 2021

Hon Poto Williams
Minister for Building and Construction
Parliament Buildings
Wellington 6160
New Zealand

Dear Minister

Recently Consumer New Zealand published an article alleging "unfair" terms in retirement village contracts that received some media attention.

Although the Retirement Villages Association (RVA) discussed the issues with Consumer NZ on several occasions, we disagree with many of their assertions and would like to provide a more complete perspective.

In isolation, the issues identified by Consumer are important, but they do not reflect what we are hearing directly from our 45,000 village residents, a number which is growing at the rate of over 100 every week. This is unsurprising, given research by UMR in early 2021 showed approximately 87% of all residents are satisfied or very satisfied with their decision to move to a village. 3% are dissatisfied and the balance are neutral.

The Act, regulations and Code of Practice provide a comprehensive and effective resident-focused consumer protection regime that is the envy of the world. The New Zealand model is often referred in other jurisdictions as "world leading" and I am often asked to speak and offer advice in numerous countries.

The decision to move to a retirement village is made with a full understanding of what's involved based on transparent disclosure. While the contract between the resident and the operator (referred to as an Occupation Right Agreement, or ORA) is a legal document that requires proper scrutiny, the Retirement Villages Act requires all intending residents to receive independent legal advice before signing an ORA.

Regardless of these safeguards, our sector is committed to continuous improvement to ensure New Zealand remains a world leader and that our industry grows by delivering on promises to our customers.

While individual operators are encouraged to develop their own policies and market positioning, the RVA does not support the inclusio n of any unfair conditions.

The RVA is committed to ensuring residents enjoy retirement village living and any promises made are met, but it is disappointing when comments are made without evidence, foundation or with a limited understanding of how the sector operates as a whole.

The model

Re t irement village operators have income from three sources - the initia l capital sum paid by t he incom ing resident (of which 70-80% is repaid when the unit is re-license d after the resident lea ves), weekly fees, and the Deferred Management Fee (DMF) which is the 20-30% of the original capital sum retained by the o perator.

Operators aim to sell village units at a discount to the average local freehold home. This allows many residents to release the pent-up equity in their home and add the difference to their retirement savings, allowing them to realise lo ng-he ld dreamsof travel, etc.

We know that most residents are comfortable with the capital sum and the DMF model, but are concerned tha t the weekly fees could inc rease beyond t heir cont rol. For that reason most operators fix the weekly fee for the life of the resident in t he village - th is can be ten years or more. With a fixed weekly fee the resident is protected from increases in rates, insurance, and unexpected village maintenance which offers peace of mind and financial stability.

This means it is rela tively cheap to move in and live in a village, but there is a fee to pay at t he end - usually when the resident dies or moves to care. It is, simply put, a 'enjoy now, pay later' system.

Questioning any one aspect of our model without consideration to the holistic position is unfair and mislead ing. The reality is that if t he changes advocated by Consumer were made to the model, operators will be forced to increase other charges to compensate. This was clea rly demonstrated in 2008 when ref urbis hme nt of units was changed to become an operator expense, and concurrently the deferred management charges were increased by the entire industry.

We would like to specifically address some of t he points raised in the article.

Non-sharing of capital gains

With the increases in property values in t he last ten years or so, Consumer fee ls th at a business model to allow capital gain sharing should be encouraged.

We discussed this matter in detail with Consumer. As mentioned above, under the law, prospective residents must seek independent legal advice before moving in and our members stress that with them and their families. Monitoring reports by the CFFC shows a good quality of legal advice is provided.

The development of a retirement village requires significant capital and it is many years until a return on that capital is possible. The substantial investment provides residents with a sustainable village future and protects their capital investment. Most importantly, without some form of return to the operator, the facilities, services and concessionary weekly fees would not be possible.

It is important to remember that as the Occupational Rights Agreement (ORA} signed by a resident and a village operator entails an obligation to repay the resident, any "capital gain" made is temporary. It is correct that the operator has the use of the money while the resident lives in the village and is able to put it towards village maintenance and the like, but ultimately most of it is repaid.

Moreover, any 'gains' retirement village operators report in their financial statements are property valuation increases (or losses) on the land and buildings owned by the operator - not cash surpluses.

Some retirement village operators choose to share capital gains, so if this is important to a prospective resident, we encourage them to move to a village with such a policy. Operators that share capital gain may lack the ability to recover their investment, the range of facilities and services can be limited, and prospective residents may find the village less appealing as a result.

The repair and replacement obligations on operator-owned consumer goods

The RVA stresses the importance of having very clear boundaries where the responsibilities fall. In most cases, our members are responsible for repairing or replacing any operator chattels. Villages *ohen* give residents some chattels on taking occupation and expect residents to maintain those. Operators cannot contract out of the Consumer Guarantees Act or Fair Trading Act, and operators have no desire to circumvent the spirit or letter of the law.

Operators refusing to allow complaints about dust, noise, etc for developments in the village

Our members ensure any prospective residents know about future development work in the village and are required to work within resource consents which spell out restrictions on hours of work, noise, dust, or vibration from construction work. The resource consent conditions are also monitored by the local council. The restriction is aimed at stopping residents complaining at the resource consent stage.

However, residents can and do complain about dust, noise, etc and operators work hard to mitigate the problem.

Summary

In conclusion, the sector continues to grow and evolve, particularly with the increasing focus on care, and thanks to the legislation that allows for a wide variety of business models, there is genuine competition. Kiwis have more choice than ever before. While village living is not for everyone, it will continue to play an important role in meeting the needs of New Zealand's ageing population.

The sector also plays an increasingly important part in freeing up thousands of homes ever year for younger Kiwis.

The RVA is engaged with industry stakeholders and is active in communicating and debating all issues to increase satisfaction.

We will also shortly be lodging our submission to the Commission for Financial Capability's White Paper and we look forward to sharing this with you in due course.

I would welcome the opportunity to discuss this letter with you.

Yours sincerely

[redacted]

APPENDIX 4

Summary of regulatory regime

RETIREMENT VILLAGES ASSOCIATION
NEW ZEALAND'S RETIREMENT VILLAGE REGULATORY REGIME

1. Occupancy rights

The RV Act[1] requires residents to have an ORA which sets out the terms and conditions of their residence in the village. There are three broad types of occupancy rights in a village - a LTO, unit titles, or rent/leases.

LTOs make up approximately 95% of all occupancy right agreements. The licence is a contractual right to occupy. It does not give rise to any interest in the land and is personal to the licensee.

In unit title villages residents will own the stratum fee simple estate. In a cross-lease village, a resident will usually own the cross -lease title. Approx ima tely 5% of the RVA's membe rship comprise of unit title villages.

Some villages offer rental units in which the residents pay a rent which includes the right to live in the unit and have access to any community facilities. The Residential Tenancies Act excludes tenants with an ORA from the provisions of that Act (and includes them in the RV Act).

Financial structure

A resident pays a capital sum for the right to live in the village and have use of the facilities for as long as they want to live there or are able to live there independently. At the end of their occupancy a percentage of the initial capital sum (usually between 70 - 80%) is repaid to the resident. In some cases the village will share any capital gain on the re-licensing of the unit. The retained amount (20-30%), usually referred to as the facilities fee or deferred management fee (DMF) , includes the cost of the resident's access to and use of the community facilities and it is charged at the end of the resident's stay in the village rather than at the start.

An important point to note is that (in most cases) the exiting resident (or their estate) is refunded the capital sum less any deduc tions as set out in the ORA only when their unit has been resold and the operator has received the incoming resident's capital payment in full. This is an entirely drfferent situation to other investments which fall due on spedfic dates and the risk to the exiting resident is accordingly minimised.

Operators can also agree to pay the exiting resident earlier if they wish. ORAs that are terminatedby the operator must be paid within five working days.

All repayments are covered by contract.

2. The retirement village regulatory regime

The retirement village industry is regulated by the Retirement Villages Act 2003 (the Act) and associated regulations. The regime provides comprehensive consumer protection and is designed expressly for residents and intending residents.

Registration

The Act provides for a registry of retirement villages in a manner similar to the Companies Registry and all villageswhich fit the definition provided in the Act must be registered or face substantial penalties. Registration provides the residents with a degree of security of occupancy in that their interests are protected ahead of any lenders via a memorial over the village's title.

The effect of the memorial on the village title stops the receiver or liquidatorof a village from disposing of the village other than as a going concern, or evicting or excluding any resident from using the village'sfacilities which s/he is entitled to use.[2]

The importance of the memorial was demonstrated in the Crossdale Courts episode in February 2008 when a group of elderly residents were faced with eviction from their homes because the owner had failed to register the village. The Minister of Building and Housing declared Crossdale to be a retirement village pursuant to S. 103 of the Act, but after considerablecourt action, the order was found to be invalid because it couldn't be issued after the village operator was found to be bankrupt. Sadly, the remaining residents were evicted.

To register a village, the operato r must deposit with the Registrar of Retirement Villages the following documents:

- the deed of supervision from the statutory supervisor and the statutory supervisor's consent to act
- theORA
- a disclosure statement setting out the village's financial situation, ownership etc
- the legal description of the property.

In certain circumstances, operators must ensure that any amendments to the documents are lodged with the Registraror that s/he is notmed of certain changes.

The Registrar may suspend or cancel a village's registration under certain circumstances.[3]

1 Retirement **Vilages** Act 2003, Section 27 and schedule 3.
2 RV Act,s. 22
3 RV Act,ss. 18 - 19

statements

The requirements to make a disclosurestatement available to intending and actual residents is set out in the Retirement Villages (General) Regu lations 2006 . The disclosure statement must set out:

- Village own ership structure and occupancy rights
- The resident's interests in the residential unit
- Management arrangements for the village, includ ing insurance
- The role of the statutory supervisor
- Legal details about the village title, size, number of dwellings, etc
- Services and facilities provided
- Charges
- Maintenance and development
- Financial statements
- Terms of entering into and exiting ORAs, and moving to higher levels of care.

Occupation Right Agreements[4]

ORAs are required to include provisions dealing with the following topics:

- The village name and address
- The nature of the right of occupy (i.e. Licence to Occupy, unit title, etc)
- Rights of both parties around the unit itself, such as selling, security interests, borrowing against the unit, etc)
- Arrangements for managing the village
- Services and facilities available
- Charges relating to the village
- Provisions requiring the operator to use reasonable care and skill in managing the village
- Keeping the village in good condition and order
- Making and adhering to a long-term maintenance plan
- Insuring the village for full replacement to the satisfaction of the statutory supervisor
- Using reasonable care and skill in the exercise of the operator's powers, functions and duties.

Operators are also required to provide the village's financial statements on request to residents, call and manage residents' meetings, and if the operator is responsible for fining a new resident for a vacant unit, s/he must make all reasonable efforts to do so and not give preference for unoccupied units over previously-occupied units.

Statutory supervisor5

Unless exempted, [6] each villagemust appoint a statutory supervisor to oversee the village's financial affairs, liaise with the manager, operator and residen ts, and generally ensure the village is meeting its statutory obligations. If a supervisor believes the financial po sition of a village is inadequate, s/he may direct the operator to supply specific information to residents, operate the village in a spec ific manner, or apply to the Court under S. 49 of the Securities Act 1978.

Village operators' and statutory supervisors' duties and responsibilities are set out in the village'sdeed of supervision, which is available to intending residents.

A Deed of Supervision mus t contain all information and other matters that are required to be included in it by Regulation 45 of the Retirement Village (General) Regulations 2006. These include the name and address of the operator, a description of the village and its facilities, its degree of completeness, liabilities, ownership structure, rights to occupy the units, a description of the residents' liabilities(if any) resulting from the village's winding -up, details of meetings, and the supervisor's rights and duties, and their costs.

Statutory supervisors are licensed and regulated though the Financial Markets Authority, a Governmen t agency established to supervise the working of the financial markets.

Code of Practice (CoP)

A legislated CoP came into effect in October 2009.

The Code must be complied with by all registered retirement villages in their day -to-day activities and covers the following matters:

- Staffing of retirement village
- Safety and personal security of residents
- Fire protection and emergency management
- Transfer of residents within retirement village
- Meetings of residents with operator and resident involvement

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4 RV(GeneraO regu la tions 2006, clauses 6 - 11
5 StaMory supervisors' powers andduties are set out in the Retirement Villages Act 200(3, sections 42-43
6 RV kt, Section 41

- facirty pla

- Accoun ts
- Maintenance
- The process to terminate an occupation right agreement
- Communication with residents.

Followingthe Canterbury earthquakes the Code was amended to require operators to refund 100% of a resident'soriginal capital sum if a village or unit were destroyed and not rebuilt. This change, led by the RVA. ove rcame an unfairness when a resident only received the amount in their ORA if their village or unit was not rebuilt in these circumstances. This version came into effect on 14 October 2013.

All RVA members are audited for their compliance with the Code of Practice every three years. The audit is undertaken by a qualified independent organisation. Villages which pass the audit are accredited; those which fail must improve the areas of weakness and be audited again.

The RVA's Cons titution has been revised so that persistent failure to meet the standards set out in the CoP exposes the member to the risk of disciplinary action. The RVA's Disc iplinary Authority is a retired High Court Judge, the Hon Dr John Priestley, QC. The Authority'ssanctions range from requiring a matter to be remedied through to fines and expulsion from the Association.

Accred ited villages receive a certificate to tha t effect and may use the RVA's logo in their advertisements. Prospective residents and their families are encouraged to ask to see the Certrncate of Accreditation and it is an importan t marketing tool to distinguish comp liant villages from others.

Code of Residents' Rights[7]

The Act sets out a list of residents' rights, which include the right to:

- Services and benefits promised in the ORA
- Information relating to any matters affecting or likely to affect the terms and conditions of the residency
- Be consulted on any proposed changes in the services and benefits provided or charges paid that may have a material impact on the residency
- Complain and receive a response
- A speedy and efficient disputes process
- Have a support person when dealing with the operator or other residents
- Be treated with courtesy and have rights respected
- Not be exploited while IMng at the village.

Residentsare obliged to treat others in the village with respect and courtesy.

Complaints and disputes

Each village must have a complaints and disputes process which residentsmust use should they wish to lodge a complaint about any aspect of village life. If this system fails to resolve the complaint, residents can take it to the next step, the Retirement Villages Disputes process. This process is set out in detail in the Retirement Villages Act part 4. Managed by the Retirement Commissioner (RC), one or more experienced mediators are selected from a pool appointed by the RC hear the dispute and adjudicate the outcome. Disputes can be brought about alleged breaches of the CoP, the resident's ORA and the Code of Residents' Rights.

The CoP includes a mediation step between the village comp laints system and the formaldisputes process. Operators must offer residents the opportunity to mediate unresolved disputes. The cost of mediationis met by the operator, although the costs can be shared between the parties if it is a resident v resident matter. The RC maintains a list of approved mediators who have undergone training in elder law and the challenges around mediating disputes invoMng older people.

To date, the formal disputes process has been used 21 times. Most decisions have been in the operator's favour. The costs of mediation and the disputes panel are borne by the operator.

The RVA also operates an informal dispute resolution service for members and residents.

Advertising retirement village units

The RV Act8 sets out the requirements for advertising units for sale. Only registered villages can advertise themselves as retirement villages and offer ORAs. Advertisements must not be misleadingor deceptive, and there must be no statement that entering into an ORA is safe or free from risk. Neither can there be any reference to prospective financial information unless the advertisement refers to the village's disclosure statement and if a reference is made to a right to occupy , the advertisementmust state if the right is secured or unsecured and if secured, the nature and ranking of the securrty.

If resident safety and personal security promises are made as a promotional feature in advertising, the operator is required to ensure that the elements of that security are indeed provided.

7 RV kt 2003,schedule 4
8 RV kt 2003,s. 25·26

village operator breaches the provisions of the RV Act, the penalties are substantial:

- The Registrar can suspend registration
- Fine up to $50,000
- Injunction
- Other orders
- Adverse publicity.

The provisions of the Fair Trading Act also apply to retirement village advertising.

3. Specific protection for new residents

Intending retirement village residents are encouraged to visit as many villages as they can, talk to other residents and operators, and find out as much as possible about each village, its ambience and quality of amenities.

Intending residents must [9] be given copies of the ORA and the disclosure statement, the Code of Residents' Rights and the Code of Practice then in force. The deed of supervision and the village's financial statements must be provided on request.

In addition, intending residents must receive independent legal advice [10] about the details of the ORA and the resident's signature on the ORA must be witnessed by a lawyer. The same lawyer must also certify that before the intending resident signed the ORA. s/he explained to that person the general effect of the ORA and its implications. The RV Act requires that the explanation must be given in a manner and in a language that is appropriate to the age and understanding of the intending resident.

All ORA must include a provision allowing a resident to cancel the ORA within 15 days after it is signed without having to give any reason (the cooling-off period).[11]

All deposits and other payments paid by the resident for an ORA must be held for the resident's benefit in an interest-bearing account held by an independent person to the operator until settlement or the ORA is cancelled pursuant to the cooling-off period. After the 15 day cooling-off period, and provided the ORA has not been cancelled, the money is then paid to the operator.

The ORA is voidable by the resident[12] if the village's registration has been suspended (s. 18 (3)), the advertising is misleading (s. 25 (1)), the ORA contravenes the requirements set out in the RV Act and regulations (s. 27), or the required information has not been provided (s. 30). If this occurs the resident is entitled to receive a refund of all capital sums paid, interest and costs.

The RV Act (s. 34) sets out the details of additional information a resident is entitled to have if it will have a material impact on the ORA or the charges to be levied as part of the ORA, and lists a range of other specific matters on which residents have the right to be notified. These include issues such as changes in secured liabilities over the village, the Registrar's decision to exempt the operator from any provisions of the retirementvillage legislation, suspension, actual or threatened action by a creditor, an insurer's decision to refuse to insure the village or any part of it, and any actual or threatened legal provisions against the operator that may affect the residents' interests.

4. Summary

The Association stresses that the retirement village regime was established to provide comprehensive consumer protection for residents. Intending residents also have a far-ranging set of protections including a requirement to have legal advice and sign-off as well as the protections in the RV Act, regulations and Codes. Residentslive in the village and have access to the operator, his/her staff, a statutory supervisor and the Registrar of Retirement Villages. Their tenure in the village is protected by a memorial on the village title which guarantees them that the village can only be sold as a going concern and their access to the village amenities.

It's been claimed that the NZ retirement village regulatory regime is world-leading . The International Longevity Centre in the UK described the NZ retirement village regime as perhaps the strongest example of legislation specific to this sector .[13] This view was reflected by Kathryn Griner in her Report on the Enquiry into the NSW RetirementVillage sector.

As further evidence of this, we are regularly invited to consult with overseas jurisdictions that are starting out on the retirement village journey and who see the NZ mode l is a good way to provide affordable, safe, and age-appropriate housing to their seniors. These include Australia, the UK, Malaysia, Singapore, India, among others.

The Association strongly supports the consumer protection regime contained in the RV Act and regulations and works with relevant Government agencies and stakeholder groups to review it from time to time to ensure it remains relevant for residents.

9 RV kt 2003, s. 30 (1)
10 RV Act 2003, s. 27
11 RV Act 2003, s. 28
12 RV Act 2003, s. 31
13 P. 12 https://ilcuk org.uk/wp-content/uploads/2018lO/Stronger-FoLS1dations-lnternational-Lessons-lor-the-Houoog-with-Care.pdf

APPENDIX 5

UMR resident research

Foreword on methodology

UMR's methodology was designed to take bias selection out of the equation. The following instructions were sent to village managers advising on how they were required to select participants.

Instruction for villages with less than 40 units

Please invite all your ORA unit holders to participate in this survey by forwarding the survey link in this email on to them. If the unit is occupied by a couple, we only need one resident to participate from that unit.

Instruction for villages with more than 40 units

We would like you to randomly select (by selecting for example every 2nd, 3rd, 4th, 5th, 6th and so on number on your list of unit holders). The number you choose will depend on how many unit holders you have. Keep selecting until you have around 40-unit holders taking part.

For example:

- If you have 45 ORA holders, you just select the first 40 or the last 40 on your list
- If you have 80 ORA holders, select every 2nd ORA holder for a total of 40 participants
- If you have 100 ORA holders, select every 3rd ORA holder. This gives you 33 ORAs, so then randomly select a few others to reach 40
- Finally, if you have 300 or more ORA holders, select every 8th ORA holder to get around 37 holders. Then just randomly select a few others to reach 40 ORA holders.

Residents who wanted to take part and could not do so via email were given the option of taking part via telephone.

Contents

Methodology

Results in this report are based on questions asked in an online survey distributed to 100 Retirement Villages across New Zealand. Of the 100 villages invited, over half (56) had at least one resident take part. The total number of residents that took part was 1,000•.

Fieldwork was conducted from the 22nd of December 2020 to the 31 January 2021.

The margin of error for sample size of 1,000 for a 50% figure at the 95% confidence level is ± 3.1%.

UMR designed a representative sample of retirement villages based on village size (number of units), location and type (company-group, company-individual and not for profit).

Note on rounding:

All numbers are shown rounded to zero decimal places. Hence specified totols ore not always exactly equal to the sum of the specified sub-totals. The differences are seldom more than 196.

For example: 25.7 + 31.5 = 57.2 would appear: 26 + 32 = 57

• **A total of 69 Retirement Village restdents took part in the research vja telephone as they did not have access to email.**

Residents mostly satisfied across several aspects of village life

Overall strong satisfaction with retirement villages

- Most residents (86%) are satisfied with the village they reside in, 10% were neutral and only 4% said they were not satisfied. This meant of those that had an opinion, 97% were either very satisfied, satisfied or neutral.

  Overall residents gave their retirement village a favourable net promoter score (NPS) of +43. When using the NPS anything above 'O' is considered good, above '20' considered favourable and above 'SO' is usually defined as excellent.

Most residents were satisfied with their villages response to COVID-19

The vast majority of residents (87%) were satisfied with how the management and staff of their village managed their safety during COVID-19. Only 2% reported feeling not satisfied with how they were looked after in their village during the height of the pandemic.

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

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

Retirement villages are seen to be performing well on what matters most to residents

Residents declare strongconfidence that thetop three factors they feel aremost important when deciding to move into avillage are beingdelivered on by their villages

The three most important factors when residents are deciding if they willmove intoa retirement village are 'Security and safety' (88% importa nt), 'Peaceof mind' (87% important) and 'Hasslefree lifestyle' (86% important).

- The lowest level of importance across the aspects tested was recorded for, 'Equity release on the sale of my home' (53% important).

Residents were asked how confident they were that their village was or would deliver on a range of importa nt factors. The three factors above that residents declared as most important also received the highest levels of confidence that they were being delivered on.

Highest level of confidence was 89% confident for 'Security and safety' being provided, 86% confident for' Hassle-free lifestyle' beingprovided and 83% confident for 'peace of mind' being delivered on as well.

- The lowest level of confidence was recorded for, 'Equity releaseon the sale of my ho me' {49% confident). However, this factor also received lowest level of importance when residents were decidingif they were going to move intoa retirement village.

UMR

Residents mostly comfortable with weekly fees, but more mixed on length of resale process and allocation of capital gain

Mostly comfortable withweekly fee arrangement

Three-quarters of residents (75%) were comfortable withtheir weekly fee arrangement, while 8% were not comfortable.

Those who wereuncomfortablewiththe weekly fee arrangement were asked to provide reasons for feelinguncomfortable. The most common reasons provided were that the fees are increasing too often and should be fixed (4% of totalsample gavethis as a reason), and thatthefees are too expensive (2% of the total sample said this).

Under half were comfortable with resale process of their unit

Two-fifths of residents (43%} were comfortable with the resale process once they no longer needed their unit, while 24% werenot comfortable.

Reasons for beinguncomfortable withthe resale process was mainly due to the length of time it takes to sell and settle the property (11% of totalsample gave this as a reason), and the loss of capital gain (10% of the totalsamples said this). Followed by, *'Still must pay weekly/monthly fees when unit isvacated'* (7% of totalsample) and *'Delay in payment of estate'* {6% of total sample).

Lessthana thirdcomfortable with treatment of capital gain on their unit

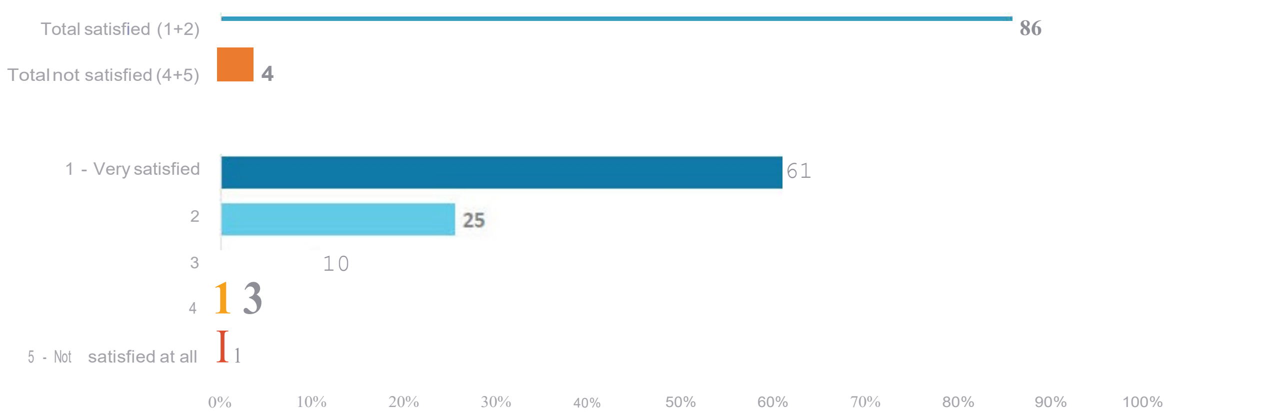
Onlythirty percent were comfortable with, *'Theallocation of capital gain onsalebetween a resident or theirestateand theretirement village;* and 35% werenot comfortable.

The main reason for being uncomfortable withtheallocation of capital gain was because they receive no capital gain on their property and that they are losing too much on the sale {21% of the totalsample gave this as a reason). The following reasons featured at lower levels, *'Think it is unfair forretirement village to keep capital gains'* (11% of totalsample} and, *'Arrangement is mainly beneficial forretirement villages'* (10% of total sample).

UMR

Most residents are satisfied with living in their retirement village

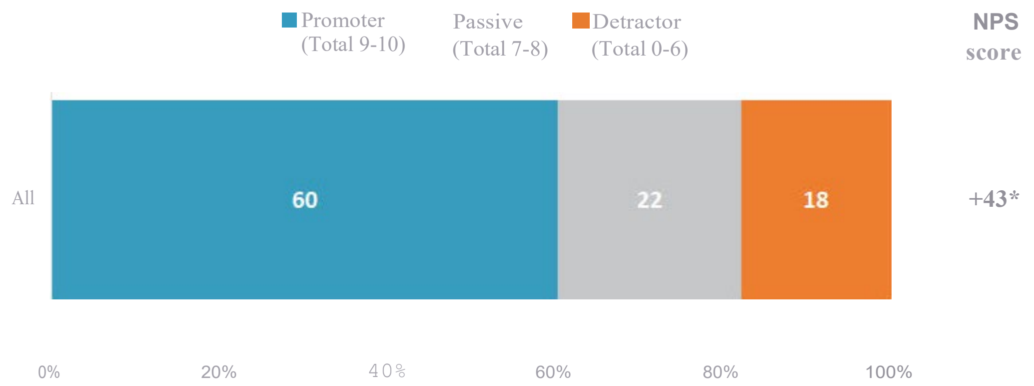
- *Overall how satisfied are you with your experience of living at this retirement village?*



Base: All respondents (n=1,000)

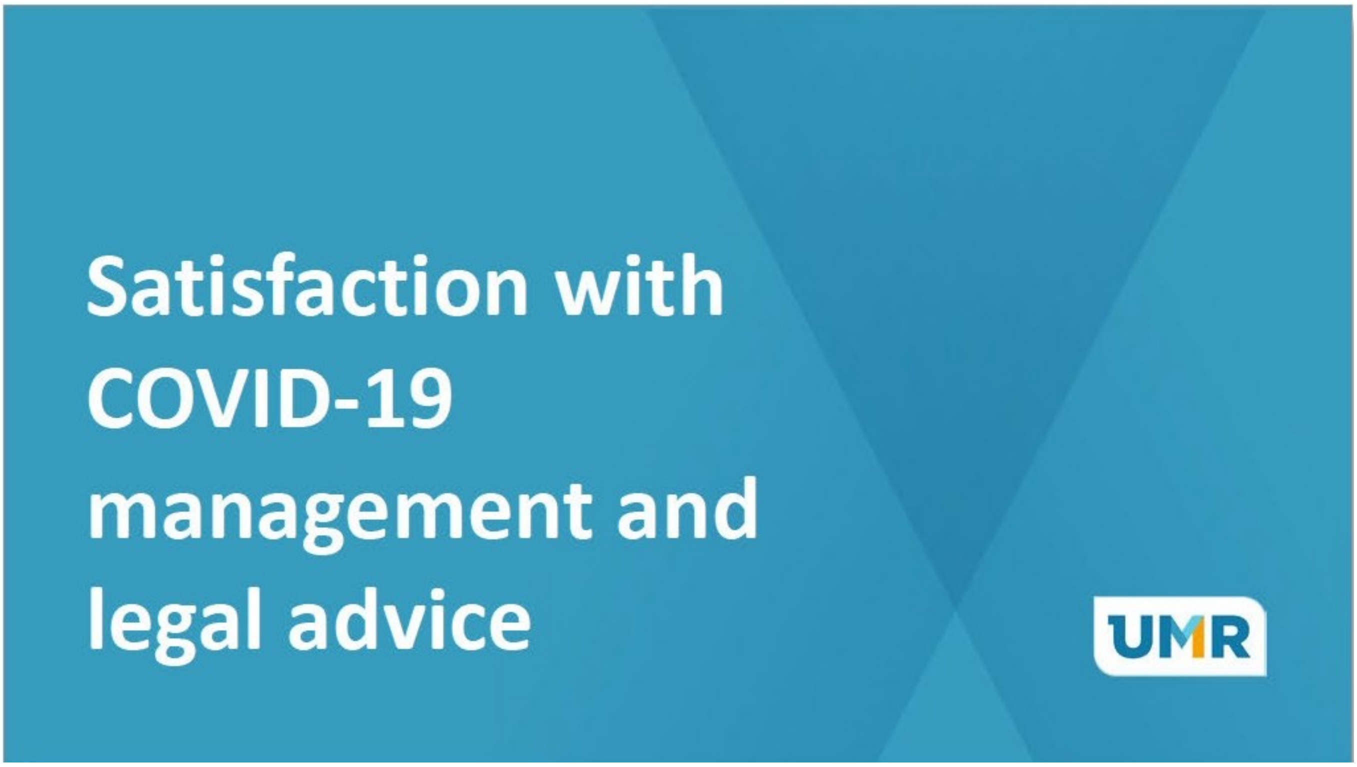
Retirement villages overall receive a favourable net promoter score

How likely is it that you would recommend this retirement village ta a friend or family member?
{Please note the scale for this question is:0 - Not likely at all and 10 - Very likely}



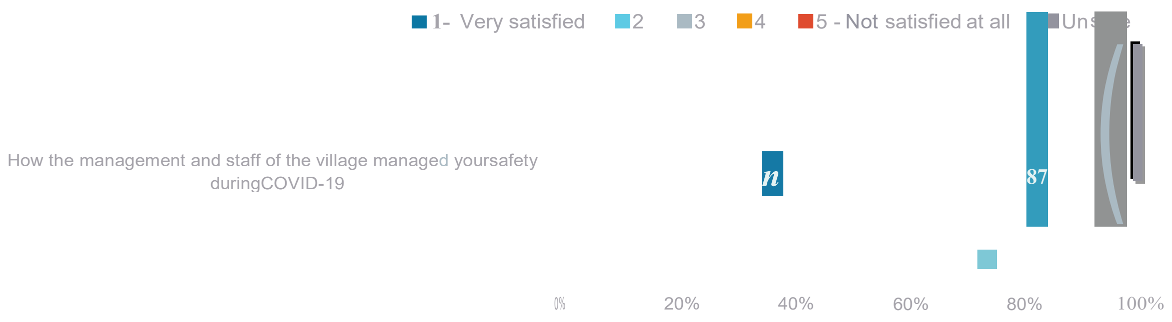
'Rounded to 1 dedmal place: NPS= Promoters 60.4 minus Detractors17.7=42.7

Bose: Alf respondents(n=I,000)



Strong levels of satisfied with village management during COVID-19

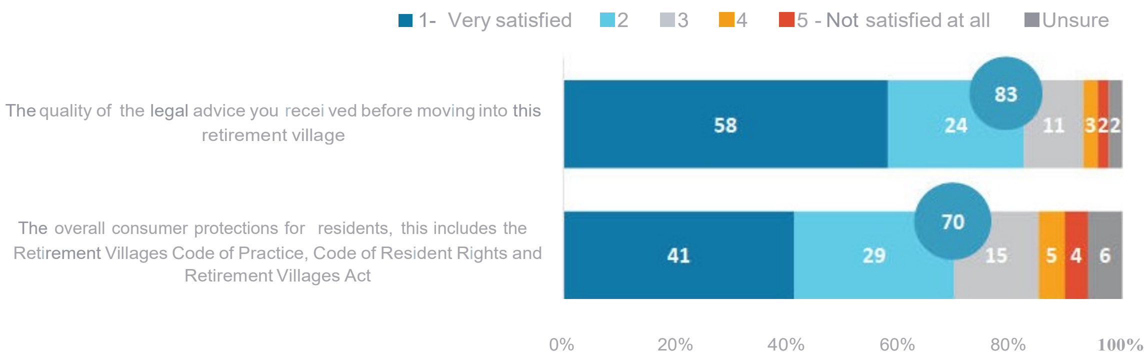
How satisfied are you with?



Base: All respondents (n=l 000)

Majority of residents are satisfied with quality of their legal advice and consumer protections they receive

How satisfied are you with each of the following?



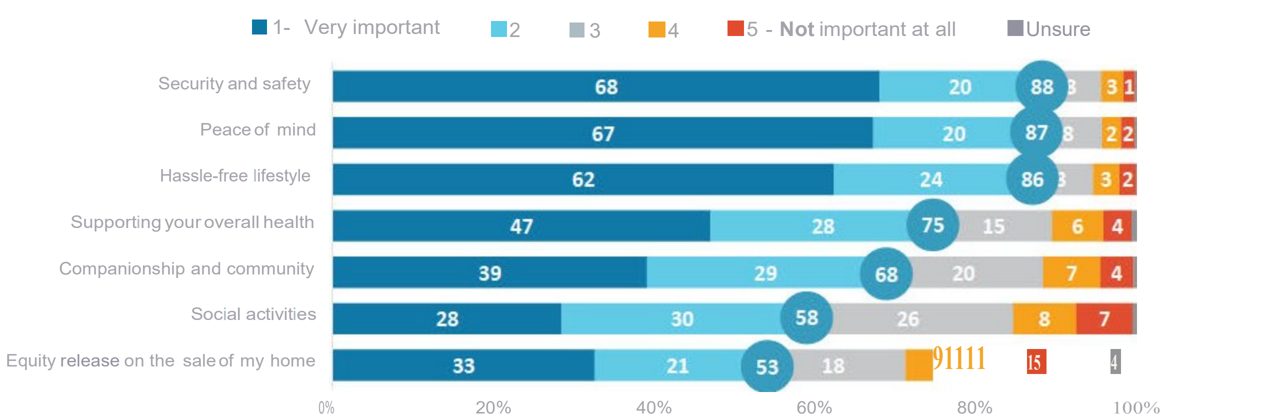
Base: All respondents (n=l,000)

Retirement village performance

UMR

When deciding to move into a retirement village, 'security and safety', 'peace of mind' and 'hassle-free lifestyle' are the most important factors

- *Thinking about when you were deciding to move into a retirement vi/loge. How important were each of the following when making your decision?*

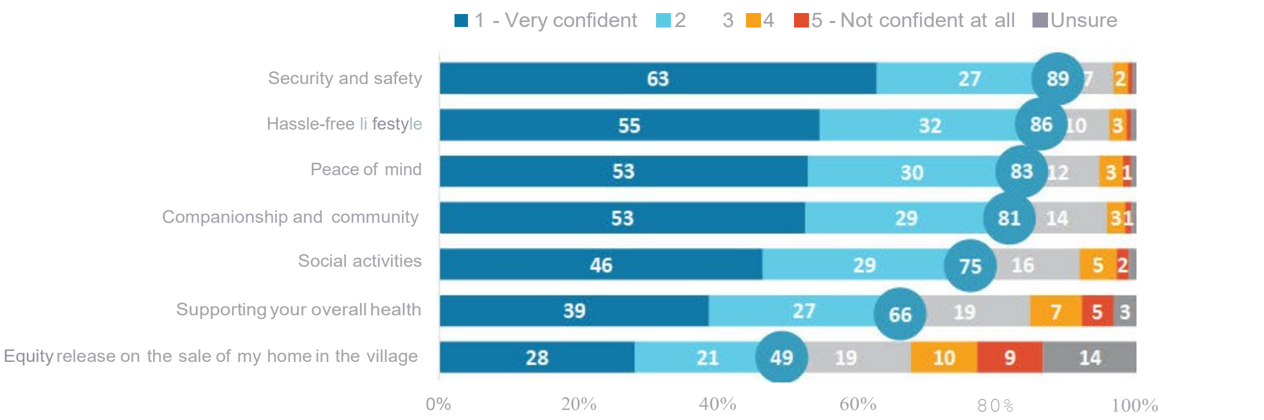


Base: All respondents(n=l,000)

UMR

High confidence that retirement villages deliver on most important factors that residents nominated for deciding to moving in

Now thot you are living in this retirement vi/loge, how confident ore you that the village is currently providing (or ***will*** *be oble to provide) each of the following:*



Base: All respondents (n=l,000)

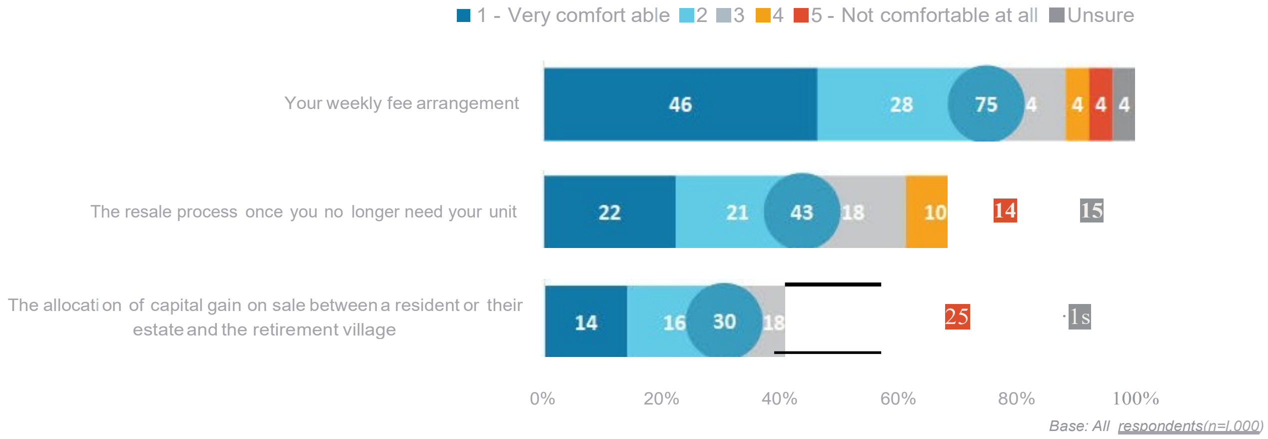
UMR

Views on fees, resale process and capital gain allocation

UMR

Majority are comfortable with the weekly fee arrangement, while less than half are comfortable with resale and allocation of capital gain

How comfortable are you with each of the following?

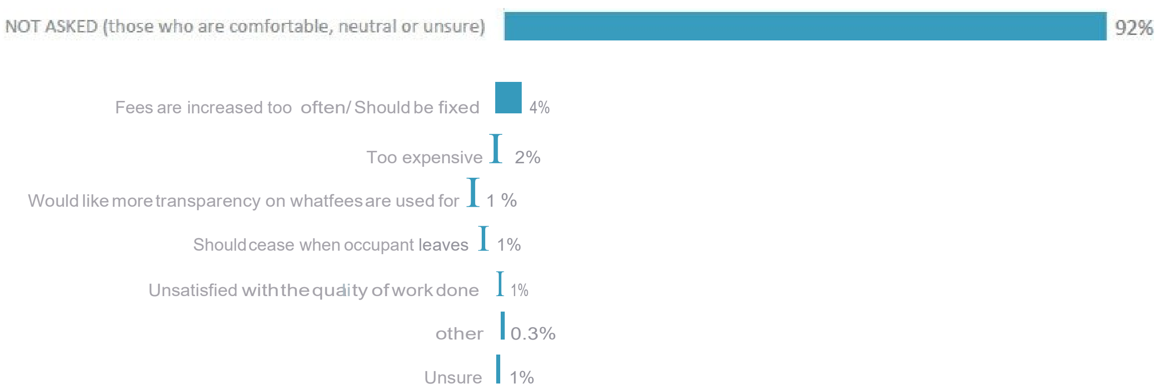


Base: All respondents(n=l,000)

'Fee increases' was citied as main reason for being uncomfortable with weekly fee arrangement

- *What are your main reasons for feeling uncomfortable with your weekly fee arrangement?*

Only 8% of the residents in this survey were uncomfortable with their weekly fee arrangement

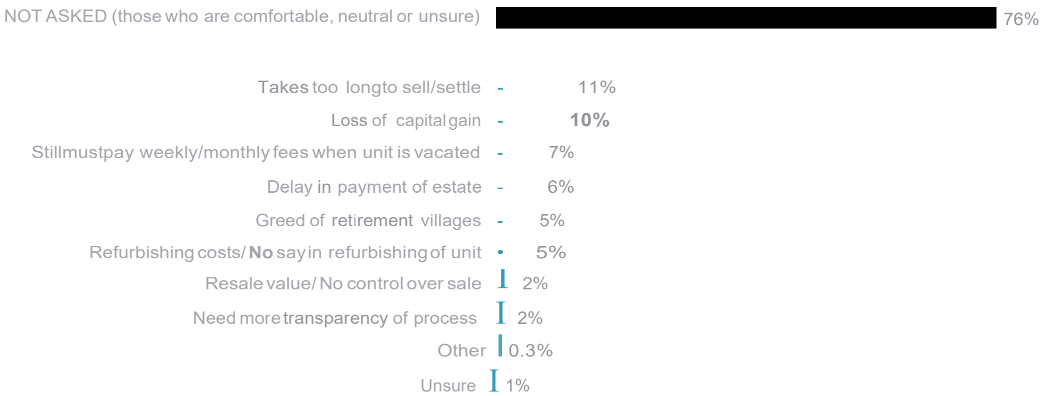


Base: All respondents (n=l,000). Note: Multiple response question.

'Time taken to settle' and 'Loss of capital gain' were the main reasons cited for being uncomfortable with the resale process

What are your main reasons for feeling uncomfortable with the resale process once you no longer need your unit?

Only 24% of the residents in this survey were uncomfortable with the resale process

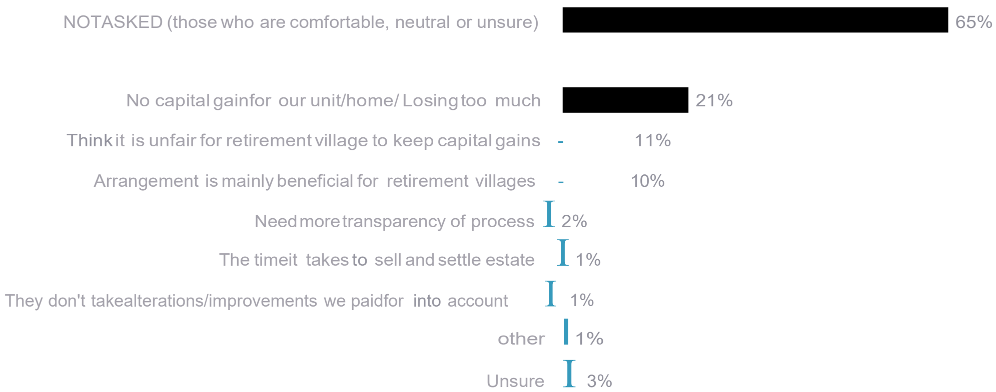


Base: All respondents (n=l, 000). Note: Multiple response question.

'No capital gain'/ 'Losing too much' were the main reasons cited for being uncomfortable with how the allocation of capital gain is carried out

- *What are your main reasons for feeling uncomfortable with how the a/location of capital gain is carried outonce your unit hasbeen sold?*

Only 35% of the residents in this survey were uncomfortable with the allocation of capital gain

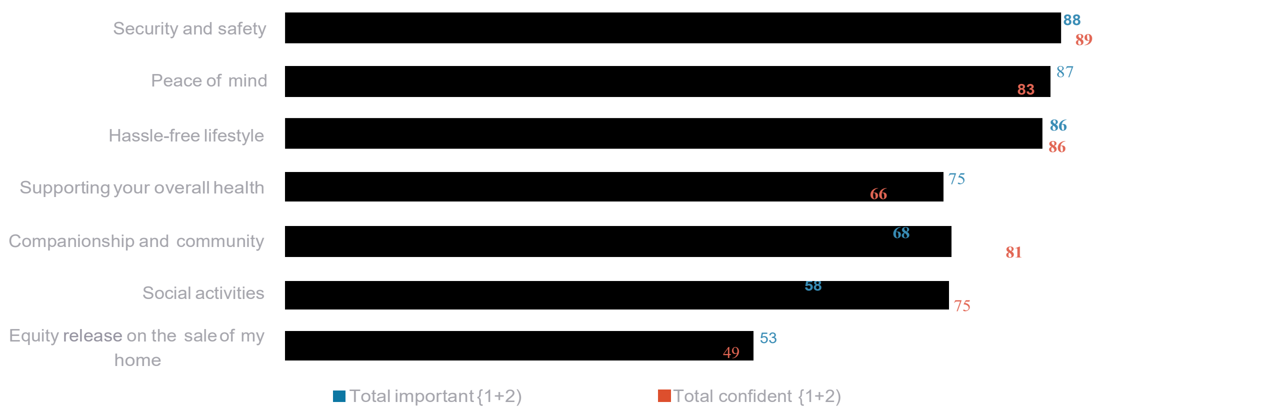


Base: All respondents (n=l, 000). Note: Multiple response question.

Appendix

Importance versus confidence

- ***Importance:*** *Thinking about when you were deciding to move into a retirement village. How important were each of the following when making your decision?*
  Confidence: *Now that you are living in this retirement village, haw confident are you that the village is currently providing (or will be able to provide) each af the fol/awing:*



Base: All respondents (n=I 000)

RVA response to CFFC Whitepaper

RVA
NEW ZEALAND
Retirement Villages Association

Summerset Group Holdings Limited
Level 27, Majestic Centre, 100 Willis St, Wellington
PO Box 5187, Wellington 6140
Phone: 04 894 7320 | **Fax:** 04 894 7319
Website: www.summerset.co.nz

30 March 2021

Commission for Financial Capability
Level 15, 19 Victoria Street West
AUCKLAND 1010

By email: consultation@cffc.govt.nz

SUBMISSION ON THE CFFC RETIREMENT VILLAGES DISCUSSION PAPER

This submission to the Commission for Financial Capability ("**CFFC**") is made by Summerset Group Holdings Limited ("**Summerset**") in respect of the changes to the retirement villages legislative framework proposed by the CFFC's discussion paper: *Retirement Villages Legislative Framework: Assessment and Options for Change 2020* ("**White Paper**").

Summerset is an NZX20 company, with a market capitalisation of over $2.8 billion. Summerset has grown to a total of 29 registered villages across New Zealand (either completed or in development) and owns a further 11 New Zealand sites for future villages, together with 3 sites in Australia. On average, Summerset builds around 500 new homes per year and is ranked in the top 10 residential builders in New Zealand. As at 31 December 2020, Summerset held a land bank of 5,433 retirement units and 179 care beds, across 21 different locations throughout New Zealand. Summerset also employs over 1,700 staff members across New Zealand.

Summerset has built its business and reputation on putting residents at the heart of everything it does. Resident satisfaction is regularly surveyed and independently audited, and staff remuneration (from Village Managers through to the CEO) is linked to resident satisfaction. Resident complaints are tabled and discussed at Board level, and key operational and management personnel (including the CEO) attend a regular schedule of village visits, to ensure they are available to residents and able to address issues quickly and effectively. The success of this approach is evidenced in our resident satisfaction survey results, which average 96%.

Overall, Summerset considers that:

- The existing operating model is recognised as a world-leading private sector model[1] that provides a framework for the provision of fit-for-purpose housing and

[1] This is supported by the Greiner review in NSW (see page 9 of the 'Inquiry into the NSW Retirement Village Sector Report' released by the New South Wales Government in December 2017) and a report published by the International Longevity Centre (ILC) – UK, an independent non-partisan research organisation looking at longevity, ageing and population change.

care to elderly New Zealanders. This is supported by high levels of customer satisfaction at Summerset villages and across the industry as a whole. As a result, while Summerset is supportive of changes to the regulatory terms that sit behind the model, Summerset does not consider that changes to the financial operating model are necessary or desirable.

- Summerset agrees that certain aspects of the regime would benefit from improvement. Summerset submits that significant improvements could be made to the regime by:

    1. ensuring residents and their families, and the lawyers advising them, understand the regime and product offering through improved education and disclosure requirements; and

    2. completing a targeted review of key aspects of the regime, as discussed within our submission.

However, the White Paper raises issues that go to the heart of the financial model, such as weekly fees, DMF structure and capital gain sharing. Summerset considers that the financial model does not require review and that changes to the financial model would have unintended consequences for consumers.

We also note that the existing regime provides flexibility that has enabled the sector to evolve in response to consumer demand, with operators voluntarily improving their offering as a result of market competition. For example, under the current regime Summerset voluntarily offers a 90 day “love it or get your money back guarantee”, weekly fees that stop when the resident vacates the unit, no exit fees other than the DMF, no capital loss to residents and a market leading disaster policy.

Summerset submits that any changes to the regime should strike the right balance between protection of residents’ rights and the freedom for operators to employ different financial models, in order to encourage new entrants to the market and construction of new villages, which will ultimately increase competitive tension and benefit consumers.

1. HAS THE WHITE PAPER CANVASSED THE ISSUES FAIRLY AND ACCURATELY? IF NO, PLEASE SAY WHY.

1.1 For the reasons set out below, Summerset submits that, while the White Paper provides a useful overview of topical issues affecting the sector, it does not fully canvass the issues in the context of the sector’s operating model, service offering and history of voluntary improvement driven by market forces.

1.2 Overall, Summerset's view is that:

(a) the White Paper is too heavily focused on short term outcomes without considering the longer-term negative impact that the proposed changes to the regime would have on the industry and on consumers; and

(b) the White Paper places too great an emphasis on a small number of selected resident experiences, without considering the high level of resident satisfaction across the industry as a whole (discussed at paragraph 5.17).

1.3 The CFFC has identified several issues which it has proposed to address by reviewing and altering some fundamental structural aspects of the retirement village regime, which could significantly alter the financial model underpinning the retirement village industry.

1.4 As discussed at section 8 below, Summerset submits that the issues identified by the CFFC could instead be addressed through:

(a) enhancing understanding by residents and their families, and the lawyers advising them, through improved education and disclosure requirements; and

(b) completing a targeted review of the following aspects of the regime:

- **resale and buy-back process and timing** - to ensure it is better understood, supported and reported, and achieves better alignment of interests between residents and operators;
- **status of weekly fees post resident departures** – to further advance the sector's dominant approach and best practice of the cessation of weekly fees post departure;
- **transition to care arrangements** - agree best practice disclosure guidelines, using the RVA's best practice guide for members as a starting point;
- **complaints system** - to streamline the complaints process for residents. This could include the appointment of an Ombudsman-style role if considered appropriate;
- **chattels –** to advance best practice that repair costs associated with chattels are met by operators, but with reasonable protection for operators against unreasonable chattel damage/depreciation.

This would avoid any significant changes to the financial model of the industry, which would have unintended consequences for residents and risk losing many of the benefits the current regime provides to residents and the wider community and economy.

2. ARE THERE ANY IMPORTANT POINTS MISSING? IF YES, PLEASE DESCRIBE THE MISSING POINTS.

2.1 The White Paper does not fully consider the consequences that the proposed changes could have on residents. There are several outcomes that could arise if the options suggested in the White Paper were to be implemented (particularly those set out in Part 6 of the White Paper). For example, introducing guaranteed buy-backs of units could result in price increases or increases to the deferred management fee ("**DMF**"), reduce the number of new village units being developed, lead to financial instability of smaller operators or otherwise affect the standard of resident care in a village.

2.2 The White Paper also does not take into account:

(a) the contribution that retirement villages make to New Zealand's economy and the role that they play in addressing the housing crisis (discussed at section 6 below); and

(b) the contribution that retirement village operators make to reducing the strain on the public health system through the provision of residential aged care facilities that are offered as part of many retirement villages (discussed at paragraphs 5.14(d) and 6.7),

both of which are facilitated by the current operating model. The White Paper does not consider the impact that the proposed changes to the operating model would have on operators' ability to continue to contribute in this way.

2.3 In our view, the White Paper also fails to fully consider alternative ways to address the issues identified, such as focussing on improving the education and dispute resolution aspects of the regime.

3. DO YOU AGREE THAT A FULL REVIEW OF THE RETIREMENT VILLAGES FRAMEWORK SHOULD BE UNDERTAKEN? IF YES, BRIEFLY DESCRIBE ANY ISSUES THAT STILL NEED ATTENTION (IF ANY).

3.1 No, Summerset does not agree that a full review of the framework is required. However, we agree that there are aspects of the framework that could be improved, as discussed at paragraph 1.4 above, and section 8.

4. IS THERE ANYTHING ELSE YOU WOULD LIKE TO SAY?

4.1 While Summerset supports regime changes which enhance the voice of residents, improve the complaints and disputes procedures and encourage operators' compliance with the Retirement Villages Code of Practice 2008 ("**Code**"), we do not agree that a full-scale review of the retirement village regime and its underlying financial model is required. Under the current regime, the New Zealand retirement village industry has proven itself a credible, high quality industry, which has protected residents in an impressive manner through the COVID-19 pandemic, particularly compared to the experiences in other countries around the world.

4.2 The options proposed in the White Paper would amount to a major overhaul of the existing revenue model of the retirement village sector. Such changes could inadvertently lead to poor resident outcomes and make compliance by operators practically very difficult, resulting in some operators withdrawing from the market (and deterring others from entering), increasing costs to residents and reducing the availability of residential aged care. Ultimately, such changes could make retirement village options unaffordable and less accessible to the elderly population. Where this is the case, Summerset has proposed alternate solutions to deal with the issues raised by the CFFC.

4.3 Instead of providing chronological submissions relating to each section of the White Paper, Summerset's submissions are grouped thematically below.

5. INAPPROPRIATE CHANGES TO THE FINANCIAL MODEL

Price regulation

5.1 The current financial model underpinning the retirement village regime is comprehensive and allows operators and financiers to develop villages with confidence, while earning a fair return on their investment.

5.2 Additionally, the retirement village sector is a highly competitive market with relatively low barriers to entry and a large number of well capitalised operators, which drives competition. Villages compete for business based on their pricing, facilities and quality of service, and resident satisfaction is therefore a key consideration for operators.

5.3 Any significant change to the financial model (such as the changes proposed in the White Paper) risks undermining confidence in the market, jeopardising the financial viability of operators and the affordability of units for residents, and reducing competition.

5.4 As discussed at paragraph 6 below, the retirement village industry plays an important part in tackling the housing crisis and makes a significant contribution to employment and GDP. This is made possible by the current financial model. Regulated changes to the financial model risk making it impractical for operators to continue providing that same level of investment in New Zealand.

5.5 One of the key issues identified in the White Paper is concern around potential delays in the resale and buy-back of units following termination of occupation right agreements ("**ORAs**"). To address this issue, the White Paper recommends a policy review that considers options to improve the resale and buy-back process, for example:

(a) introducing a guaranteed timeframe for buy-backs;

(b) requiring the payment of interest to residents by the operator during any vacant period; and

(c) requiring sharing of any capital gain on a sale between the resident (or their estate) and the operator.

5.6 We appreciate that long resale timeframes are a cause of concern for residents and their families. However, all of the options proposed by the CFFC significantly and adversely interfere with the way in which retirement villages set their prices to achieve fair returns (i.e., price regulation). Price regulation of the retirement village market is unjustified, and risks leading to unintended consequences for the following reasons:

(a) Prices should not be regulated (this includes restricting the ability to charge fees, as well as compulsory sharing of capital gains) unless there is clear evidence of market failure, such as operators earning excessive profits and/or consumers as a whole suffering long-term detriment (see for example the purposes of Part 4 of the Commerce Act 1986, the Telecommunications Act 2001 and the Electricity Industry Act 2010). There is no evidence to suggest that market failure exists within the retirement village sector. Markets are not subject to price regulation simply because some consumers (e.g., retirement village residents) experience short term outcomes that are perceived to be contrary to their long term individual interests. The individual case studies cited by the CFFC in the White Paper are not adequate evidence of market failure to warrant price regulation of the market, nor is Summerset aware of any such market failure (either as a whole, or demonstrated by any of its individual peers).

(b) The retirement village market is a competitive market with relatively low barriers to entry, and pricing models have been established so that operators can earn a fair return on their investment over time (through a combination of lump sum and service fees), and in return for the risk that they take in both developing new facilities and operating existing facilities. In the absence of widespread and serious detriment to retirement village residents, it is inappropriate to introduce price regulation into this market.

(c) If the proposed changes to the current regime are implemented, whilst some individual residents may benefit in the short-term, it is unlikely that all consumers will benefit in the long term. Operators would need to consider other price adjustments to ORAs or weekly service fees in order to recover their costs and obtain a fair return, as well as provide the necessary capital required to fund ongoing development of existing and new facilities. Accordingly, implementation of the proposed changes is unlikely to have the effect envisaged by the CFFC.

(d) The introduction of a compulsory guaranteed buy-back of units, the requirement for operators to pay interest to residents during vacant periods and compulsory allocation of capital gain between residents and operators (among other policy changes) could lead to unintended consequences, such as smaller and non-profit operators exiting or deterring potential new operators from entering the market or expanding their footprint. As identified in the White Paper, there are also liquidity issues that could arise, particularly for smaller or non-profit villages (noting that single owner operators make up over 50% of the market). It is possible that smaller or non-profit operators may not have access to funds to buy-back the unit, leading to financial instability. For larger operators, it could result in those operators having to maintain a cash balance or a line of credit to acquire units, diverting those funds from other uses (such as development of new stock). This would lead to less choice for residents, reduced competition (through the elimination of smaller operators, who may not survive a material change to the financial model) and less supply in the market. Ultimately, this would have negative effects on residents as a whole (e.g., increased fees and reduced diversity of options available in the market).

5.7 In light of these outcomes, we think it would be preferable for both operators and residents to focus on promoting informed consumer choice in a competitive market, by reviewing the education and disclosure aspects of the regime (including disclosure by operators of what (if any) buy-back timeframe or capital gains sharing is offered, disclosure of buy-back timeframes, and improving transparency and disclosure throughout the resale process). This would ensure that residents have a clearer understanding of their rights and obligations at the outset and of what they are actually purchasing and would result in better long term outcomes. For instance, residents are likely to feel less aggrieved by extended periods between termination and re-sale if they are aware of this risk prior to signing. This is discussed in further detail in section 8 below.

Market distortion

5.8 The CFFC recognises that smaller or non-profit operators may have greater difficulty complying with the proposed changes to the resale and buy-back process compared to larger operators (such as Summerset). As such, the CFFC contemplates that certain changes only apply to large corporate operators (and not independent or non-profit operators).

5.9 Imposing differing requirements on operators would effectively amount to market distortion, by preventing free and open competition.

Guaranteed buy-backs

5.10 Requiring an operator to provide a guarantee that a unit will be bought back after a certain period is also inappropriate for several reasons:

(a) retirement village operators, including Summerset, base their financial model on only needing to refund an outgoing resident upon resale of the unit. Operators' long-term plans and budgets have been prepared, and shareholders have invested, on this basis. Accordingly, introducing this requirement would change a fundamental aspect of the financial model on which operators have commenced their business (and made long term financial decisions) and shareholders have invested. A change to this requirement would require operators to significantly alter their financial models, likely resulting in increases to unit prices or the amount of deferred management fee ("**DMF**") charged;

(b) providing this guarantee would require significant funding, which may result in free cash being held and/or facilities being set aside to fund buy-backs, causing liquidity issues for some operators. Along with the issues identified in paragraph 5.6(d), this would also divert operators' funds away from more productive uses (such as building new units and care facilities to cater for a growing population of older people, as further discussed in section 6 below); and

(c) operators are already sufficiently incentivised to resell vacated units as soon as possible, in order to recommence charging weekly fees (which most large operators cease charging when a unit is vacated) and the DMF.

Capital gains sharing inappropriate

5.11 The CFFC has proposed that a policy review consider requiring the sharing of capital gains between the resident (or their estate) and the operator. We note that, in the context of the licence to occupy model, while there may be 'resale gains' where a licence to occupy is resold for a higher licence price, there is technically no capital gain as the operator is required to repay that licence price (at the higher amount) to the new resident when they leave the village (less the DMF). We have nevertheless used the term "capital gain" within this submission for consistency with the terminology used in the White Paper.

5.12 The advantage for residents of the operator having access to capital gains is twofold:

(i) it provides the funding necessary for operators to provide the village's communal facilities (which include facilities like pools, bowling greens, gyms, movie theatres, cafes and bars) as well as the aged care facility, both at an affordable cost to residents. Without access to capital gains, retirement village operators would either be unable to offer these facilities or would need to significantly increase their pricing; and

(ii) operators are able to insulate residents against unexpected levies, capital expenditure and the risk of market down turns. The capital gain structure creates a financial buffer which allows operators to guarantee fixed fees, absorb inflationary increases, and fund operating and capital expenditure over time without passing these costs onto residents, ultimately providing cost certainty to residents.

5.13 Villages that currently offer some form of capital gains sharing generally do not offer a full continuum of care and generally cater to younger residents who will leave the village at some point and move to a facility with a higher level of care (so the extent of funds received upon exit is more important to those residents as they will need liquidity to buy into their next unit). These villages also typically place some or all risks associated with operating cost inflation and capital costs (e.g. remedial work) onto the resident.

5.14 Summerset does not support the recommendation that a review should consider requiring allocation of capital gains on the sale of a unit between the resident (or their estate) and the operator. The reasons for this are as follows:

(a) A resident's entry into an ORA for a retirement village unit is not intended, and should not be perceived to be, an investment generating financial return for residents. Instead, it is a means by which incoming residents can utilise equity from their existing homes to access quality care in an accessible home, while enjoying the activities and facilities available in a retirement village (including, in some cases, the ability to access higher levels of care, if required). Retirement village units are typically priced below the average house price for an equivalent home in the same region. This allows residents to free up capital and makes retirement living more accessible for the average New Zealander. For example, the average price for a serviced apartment at Summerset's Ellerslie village is $520,000, whereas the median house price in the same area is around $1.53 million. This pricing is only possible because the cost to the resident is effectively deferred through the DMF and by the resident's informed decision to forego any capital gains made on that unit upon resale. Essentially, the model allows residents to "enjoy now, pay later". Without this, operators would be forced to significantly increase the upfront cost of buying into a village, making living in a retirement village prohibitively expensive for many New Zealanders.

(b) A party is entitled to the capital gain on the value of a property by virtue of their ownership interest in that property. In the vast majority of cases (circa 95%), retirement village residents do not have an ownership interest in the underlying property – they simply have a licence to occupy. There is no logical reason why a resident's occupation of a unit should entitle them to a share in the capital gain on the value of the underlying property, particularly where the resident is not taking any risk in terms of capital loss (should that ever occur).

(c) Retirement village operators rely on the capital gains made on a unit to fund the cost of refurbishing the unit and to fund the development and maintenance of the village's communal facilities. The DMF and weekly fee revenue alone would be insufficient to fund a village's long term capital expenditure requirements. Capital gains are also used to fund future developments, which is critically important in order to adequately cater to the growing population of older people in New Zealand and plays a major role in tackling the housing crisis (as discussed further in section 6 below).

(d) Retirement village operators also rely on capital gains to fund the associated care facility. There has historically been a shortage of quality residential aged care facilities in New Zealand, and the care facilities offered by retirement village operators contribute significantly to the availability of care beds. Imposing compulsory capital gains sharing would risk making the continued operation, and further development, of care facilities by retirement village operators financially impractical, which would significantly increase the strain on the public health system.

(e) As noted at paragraph 5.2, the low barriers to entry make the retirement village market a competitive market, with pricing and commercial terms ultimately driven by competitive forces. This is evidenced by the fact that some operators do, already, offer capital gains sharing. Any changes to operators' commercial terms (including any adoption of capital gains sharing) should be determined by market forces rather than by regulation.

In our view, price regulation of the retirement village industry is not appropriate, for the reasons discussed at paragraphs 5.1 to 5.7.

(f) The current regime requires residents to receive independent legal advice on the terms of the ORA prior to signing. Residents should therefore have been made well aware of what (if any) capital gains sharing they will receive before the ORA is signed and are under no obligation to proceed with the purchase if they are unhappy with the terms.

Existing variety of options for residents

5.15 The current regulatory regime has created a high level of competition in the retirement villages sector. This has led to:

(a) many operators voluntarily enhancing their offerings to residents over time. Over the last ten years, a number of features have emerged as common in the market without any regulatory reform driving those changes: weekly fees ceasing immediately on exit; weekly fees being fixed without increase; no exit fees other than the DMF (i.e., no refurbishment costs, administration fees or sales and marketing fees); no capital loss to residents; and 90 day money back guarantees (at the start of their occupation); and

(b) a greater range of diversity of villages and choice for consumers. In the market, there is already a full spectrum of different financial models used by operators. For example, some villages offer capital gains sharing and guaranteed buy-backs; others (generally church or non-profit operators) offer a rental model; others pay interest to residents if the unit is not resold after 6 months; others start reversing the DMF after 6 months.

5.16 These 'enhanced' features mentioned at 5.15 have been entirely market driven, without the need for regulation. In other words, if there is consumer demand for change, or a desire by operators to differentiate themselves or to compete more aggressively, then operators will offer those different features. Accordingly, Summerset considers that it is not necessary, nor is it appropriate, for the CFFC to propose changes to the retirement village regime based on perceived or potential future trends, as there is clear evidence that the market already drives such changes as and when there is a need.

5.17 We note that Summerset’s independently audited resident satisfaction rates average 96%, which suggests a high level of satisfaction with our current offering under the existing regulatory regime. This is mirrored by satisfaction rates across the industry as a whole. Research by UMR in early 2021 showed approximately 87% of all residents are satisfied or very satisfied with their decision to move to a village. Only 3% are dissatisfied and the balance are neutral.

5.18 The offering of 'enhanced' features is also not appropriate for all villages and may not be what all residents want or need. Smaller villages have been able to thrive through lack of market intervention, and these villages would often not be viable if they were required to offer these kinds of 'enhanced' features. However, there are many people who prefer such villages (e.g., those who prefer smaller family run villages, despite these offering less facilities). The existing regulatory regime allows these operators to flourish. Restricting the ways in which operators generate funds to maintain villages and invest in future development will inevitably lead to less diversity of villages and less choice for consumers. Therefore, it is clearly beneficial to limit regulation in this area, as this facilitates a greater range of options to suit the various needs of elderly people.

5.19 Summerset submits that the focus of any review of the regulatory regime should be on preserving this level of choice for residents and, importantly, ensuring the incoming residents understand which option they are choosing and what the impact of that is. This will enable smaller operators to continue operating using alternative financial models, therefore guaranteeing residents a complete range of available retirement housing options.

Requiring the payment of interest to the resident by the operator during any vacant period

5.20 Requiring operators to pay interest to an outgoing resident for the duration that a unit remains empty is also inappropriate and inequitable. This would amount to imposing a financial penalty on operators for something that is entirely out of their control (i.e., this could be entirely dependent on economic conditions). Further to paragraph 5.6, Summerset submits that introducing mandatory interest payments during any vacant period would have unintended consequences for residents, and could result in operators recovering these funds through other avenues.

Weekly fees continuing after vacation of the unit

5.21 Summerset does not continue to charge residents weekly fees after they permanently vacate a Summerset village and we are supportive of reform in this area. However, the position of smaller operators should be taken into account in any reform.

5.22 Ensuring that outgoings continue to be charged until a unit is relicensed is an important feature of some smaller retirement village operators' financial models, which allows them to earn a fair return on their investment and cover overheads while a unit remains vacant. If those operators cannot charge residents who have left the village, this amount will either need to be absorbed by increasing fees paid by existing residents (which is unfair to those residents) or the operator may risk going out of business. These smaller and non-profit operators tend to be located in regional parts of New Zealand and provide lower cost accommodation, which is important for both elderly New Zealanders with a lower level of retirement savings and elderly New Zealanders living and choosing to remain in the regions.

5.23 In some cases, it may also be in the outgoing resident's (or their family's) interests to continue to pay weekly fees after they permanently vacate. For example, weekly fees may be used to cover insurance and/or maintenance costs for a unit (even after the unit is vacated). The outgoing resident (or their estate) has an interest in maintaining insurance in respect of the unit for the period between vacating the unit and re-sale. Diverting funds from village maintenance could also negatively impact outgoing residents by increasing the time it takes to resell a unit (i.e., if the village becomes less desirable to prospective residents).

6. RETIREMENT VILLAGE CONTRIBUTION TO HOUSING, EMPLOYMENT, AGED CARE AND GDP IN NEW ZEALAND

6.1 The retirement village industry is a significant contributor to New Zealand's economy and plays an important role in tackling the housing crisis. PwC estimated that, in 2017, the sector added around $1.1 billion to New Zealand's GDP (equivalent to 0.4% of New Zealand's overall GDP). At the time of the review, the sector employed roughly 19,000 people with a further 9,500 new jobs projected to be provided through the construction of new villages over a seven to eight-year horizon. There is also an increasing ageing population in New Zealand, which is driving demand for the development of affordable retirement village living.

6.2 We are concerned that the CFFC may have overlooked the positive contribution that retirement village operators make to New Zealand society and may not have considered how a significant change to the regime and the underlying financial model of the industry might affect this, or the ability of industry participants to continue to contribute in such ways.

Housing supply

6.3 The development of retirement villages reduces pressure on housing demand in New Zealand (especially in Auckland). This is achieved by:

(a) **Increasing housing supply:** the development of new villages increases the overall housing stock in New Zealand. The retirement village industry as a whole also assists with housing supply shortages in regions where the shortfall is greatest. Over the last nine years retirement village stock in Auckland, Canterbury, the Bay of Plenty and the Waikato has grown between 51% and 60%, while retirement village stock in the country as a whole grew 53% since 2008, over a 12 year period. Each year Summerset spends around NZ$300 million building new villages, resulting in around 500 new retirement units and 80 care beds. Summerset has significant development underway or planned across many regions.

(b) **Higher housing density:** retirement villages tend to make better use of land and build higher density housing than other types of housing developments. However, this is not to the detriment of incoming residents, who are typically looking to downsize their houses and/or properties.

(c) **Better utilising existing housing / land:** residents often sell or move out of larger houses (e.g., 3 – 4 bedroom houses) to move into a village. This increases the number of family homes available for rent or purchase (or redevelopment) in the community and, in turn, eases demand for housing.

By way of example, if 400 residents moved into an Auckland Summerset retirement village, Summerset estimates there would be a net land saving of around 8ha, or an additional 250 people housed in Auckland.

(d) **Affordability:** retirement villages generally provide a high level of affordable housing, priced below the average house price in the region. For example, the average price of Summerset's serviced apartments is less than $400,000, with most Summerset villages offering at least 25% of their serviced apartment stock at or below this price point.

6.4 Any perceived benefit to individual residents arising from increased regulation of the retirement village sector risks slowing the current rate of retirement village development and exacerbating housing shortages in New Zealand. For instance, mandatory capital gains sharing would result in operators having less funding for future development and mandatory buy-backs could result in liquidity issues.

Village and aged care

6.5 There is a growing population of older people in New Zealand. To date, the rate of retirement village and aged care facility development has (for the most part) kept up with demand. However, Summerset is concerned that changing the retirement village revenue model could hinder operators' ability to meet the growing demand.

6.6 JLL forecast that the number of retirement village residents will increase by over 23,000 by 2028, requiring an additional 17,788 retirement units to be developed. This equates to around 2,000 retirement units per annum.

6.7 Aged care facilities are not profitable to run and there has historically been a shortage of care beds available across the country. The market is therefore heavily reliant on retirement village operators like Summerset to build and operate retirement villages that include an aged care facility (which are typically more expensive to build and operate). In order to continue developing these facilities, operators are reliant on the flexibility to generate funds through different avenues (e.g., by retaining capital gains made on the resale of a unit). As such, the implication of any of the changes proposed in Part 6 of the White Paper could limit large operators' ability to invest in aged care facilities – increasing the burden on the healthcare system.

Employment impacts

6.8 Retirement villages provide significant employment opportunities across New Zealand in both urban and regional areas. Job opportunities within retirement villages are varied, and include nurses, caregivers, kitchen staff, office managers, gardeners, sales specialists, construction managers, designers and quantity surveyors. The White Paper does not appear to consider:

(a) how the proposed changes could affect operators' ability to continue providing this level of employment; and

(b) that, by altering the fundamentals of the industry through an overhaul of the regime and the financial model (as discussed throughout this submission), the financial viability of operators could be jeopardised, resulting in existing jobs being at risk.

6.9 In 2017, the sector employed approximately 19,000 people in New Zealand (similar to the number of people estimated to be employed in the residential real estate and rental sector). Further, in a report prepared by PwC for the Retirement Villages Association in March 2018 ("**PwC Report**"), it was estimated that between 2018 – 2025, the development of new villages would result in the creation of a further 9,500 new jobs. By way of example, each new Summerset village typically employs around 40 – 60 people to carry out its day-to-day operations.

6.10 The development of retirement villages also creates jobs in the construction industry. The PwC Report estimated that approximately 5,700 FTEs are supported (directly and indirectly through multiplier impacts) through construction of new villages.

6.11 Changes to the financial model of the sector risk slowing the rate of development and jeopardise the viability of smaller villages, which would result in less jobs associated with both construction and the day-to-day village operation or loss of jobs. Summerset urges the CFFC to consider impacts to employment when considering further steps in reviewing the regime.

7. INTERFACE OF CARE AND RESIDENCE

7.1 The White Paper proposes to explore the extent to which the presence of care changes the nature of a retirement village from a housing proposition to a health proposition. Summerset does not support this: the mere presence of care in a retirement village should not change the nature of a retirement village to a health proposition. The involvement of retirement villages in residential care is an effective use of resources and provides residents with the ability to transition to residential care, whether that be through ORAs or periodic payments (where the resident is unable to make a capital contribution). Further, the existing regime already works well, whereby:

(a) retirement village independent living is regulated under the retirement village regime (whether or not there are different kinds of care available at the village);

(b) ORA residential care is regulated by both the retirement village regime and health sector care legislation and regulation (discussed below);

(c) retirement village residential care (under a periodic, non-occupation right instrument) is regulated by health sector care and regulation; and

(d) facilities that provide both retirement living and residential aged care (and "hybrids" of those) allow for residents to "age in place" through a continuum of care, which is critical to both resident welfare as well as fulfilling an important role in the broader healthcare system.

7.2 Due to the increasing number of retirement villages delivering residential care, the White Paper also recommends reviewing whether the definition of a retirement village needs modifying to include a wider range of lifestyle developments. This could mean that retirement village residential care provided under a periodic / non-occupation right instrument is caught by the retirement village regime. Summerset considers this to be unnecessary for the following reasons:

(a) The purpose of the Retirement Villages Act 2003 is to protect the financial and occupation rights of residents who have invested capital in the retirement village to acquire a home. The distinguishing factor as to whether a residential care unit should be covered by the retirement village regime is whether the resident has made a capital contribution to obtain a right to reside in the unit. Accordingly, there is no reason why a resident living in a residential or hospital care facility in a retirement village, but under a periodic care fee system / non-occupation right instrument, should come within the Retirement Villages Act framework. This is because that resident has no financial investment in the unit and their right to receive appropriate care services is protected under the separate residential care legislation. The mere fact that a residential care facility sits within a retirement village does not mean it should be regulated through the Retirement Villages Act framework.

(b) The provision of age related residential care is already sufficiently regulated through the regime administered by the Ministry of Health and the Health and Disability Commissioner. Providers are already required to comply with: the Health and Disability Services (Safety) Act 2001 and the related NZS Health and Disability Service Standards (for which compliance is audited as part of the accreditation regime); the Age Related Residential Care Services Agreements between operators and District Health Boards; and the Code of Health and Disability Services Consumers' Rights. In our view, it is therefore unnecessary for the retirement villages legislative regime to extend to the provision of residential care under a periodic care fee system / non-occupation right instrument.

(c) The issues raised around the complexity of the interface between retirement villages and residential care would better be dealt with by improving education of the regime and disclosure by operators, as discussed throughout this submission.

8. AREAS FOR IMPROVEMENT

8.1 Summerset agrees that the existing regime could be improved through:

(a) ensuring residents and their families, and the lawyers advising them, understand the regime and product offering through improved education and disclosure requirements; and

(b) completing a targeted review of key aspects of the regime, as discussed below.

Improved education and disclosure requirements

8.2 As noted throughout this submission, Summerset considers that many of the issues identified throughout the White Paper would be better dealt with by improving general understanding of the regime and the product being purchased by residents, their families and, occasionally, solicitors. For example, ensuring residents understand the implications of an ORA prior to signing will likely reduce the perceived unfairness regarding lack of capital gains sharing. Summerset understands that many of the perceived consumer issues arise because residents do not fully understand the key features of an ORA and are subsequently surprised when the financial outcome differs from what they had expected, or had explained to them, at the time they signed an ORA. Another key issue appears to be the lack of understanding of residents' families (particularly in situations where the resident has passed away), especially if they are not present when the resident received legal advice prior to entering a village.

Disclosure requirements

8.3 In principle, Summerset is supportive of a review that is focussed on identifying ways that the disclosure process could be made simpler and more accessible (i.e., as raised at Part 8 of the White Paper). Increased disclosure requirements, which require simpler and clearer disclosures, will increase the understanding of incoming residents and work to mitigate other issues identified by the CFFC in the White Paper. We also support any change that will assist residents to better understand their rights and obligations at the time they enter an ORA.

8.4 Operators accredited with the Retirement Villages Association of New Zealand ("**RVANZ**") (such as Summerset) are already required to provide incoming residents with a summary of key terms ("**Key Terms Summary**") and comply with the *Best Practice Guidelines for Disclosure of Right to Transfer to Care in a Retirement Village* ("**Best Practice Guidelines**"). The Key Terms Summary requires a clear summary of the key terms of an ORA to be set out for prospective residents, allowing them to easily compare the products offered by different RVANZ operators. From Summerset's experience, standardising and simplifying information provided to incoming residents has been beneficial to residents. Accordingly, Summerset is supportive of a statutory requirement for all retirement village operators (and not just RVANZ members) to provide a Key Terms Summary to prospective residents (as well as comply with the Best

Practice Guidelines). This is a simple way to standardise information provided to incoming residents, facilitating their ability to make an informed decision as to what village they wish to enter. This will reduce instances of residents feeling as though they have been unfairly treated.

8.5 While supportive of improving disclosure requirements generally, Summerset is not supportive of prescribed form disclosure documents. From its experience in Australia, it has found that prescribed form disclosure documents are generally more complex and are less favoured by residents.

Solicitor understanding

8.6 Solicitors play an important role in educating residents and their families about the retirement village regime and the product being purchased by the resident under an ORA (as the CFFC will be aware, a prospective resident must receive legal advice prior to signing an ORA and the advising lawyer must certify that such advice has been given). However, if lawyers who provide this advice to prospective residents have a limited understanding of how the regime works, then this has a flow-on effect to residents' understanding. Accordingly, it makes sense that any review of the regime should consider options to improve professionals' understanding of the regime. To achieve this, the CFFC could:

(a) hold lawyer education sessions (e.g., webinars which could be counted towards a solicitor's continuous professional development); and

(b) publish materials on its website to assist lawyers in advising their clients.

8.7 The CFFC could also consider requiring residents to obtain an increased standard of legal advice prior to entering an ORA. This could be achieved by introducing an accreditation/certification system within the legal profession, such that only lawyers who have participated in a certain course or received certain training, and who have been accredited as capable of providing this advice, could provide legal advice to prospective residents about the terms and impact of an ORA. This would deal with the issue of residents receiving inadequate advice due to using lawyers who are not elder law specialists and who may have a limited understanding of the regime.

Targeted review

8.8 Summerset submits that the issues identified by the CFFC could be addressed through a targeted review of the items set out below.

Re-sale and buy-back process

8.9 Summerset supports improvements to the re-sale and buy-back process in the form of:

- extending the RVA's three-yearly compliance audit to all operators to ensure operators follow the requirements of the Code;
- implementing mandatory filing of valuation and market reports to ensure transparency in relation to re-sale prices;

- improving clarity in relation to timing and requirements of the valuation;
- improving transparency and disclosure of re-sale timeframes, to ensure residents are made aware of this at the time of entry to the village.

Weekly fees

8.10 Summerset agrees that there is a need for greater certainty and consistency relating to the charging of weekly fees post resident departure (noting that Summerset does not charge weekly fees post departure). Summerset would be supportive of reform in this area, noting that any reform would need to take into account the position of smaller operators.

Transition to care arrangements

8.11 As noted above, Summerset is supportive of improving resident understanding of these arrangements through enhanced disclosure requirements. Summerset submits that the RVA's Best Practice Guidelines could be used as a starting point for this enhanced disclosure.

Complaints and disputes function

8.12 Summerset agrees that the complaints process should be simple and protect the interests of elderly residents who may be vulnerable and fear reprisal. Summerset is supportive of a review of the complaints process and would be open to the establishment of an ombudsman style service (though the need for this service should be evaluated in light of the costs and number of unresolved complaints). Summerset notes, however, that the complaints function also needs to balance the cost and time associated with dealing with frivolous complaints.

Chattel repairs and replacements

8.13 Summerset agrees that operators should be responsible for repairing or replacing any operator chattels (noting that Summerset already takes responsibility for this). Any reform in this area should provide reasonable protection for operators against unreasonable chattel damage.

9. CONCLUDING REMARKS

9.1 Overall, Summersets supports the recommendations in the White Paper which focus on enhancing the voice of residents and improving the disclosure, complaints and disputes features of the existing regime. However, we do not agree that a full-scale review of the retirement village regime and the underlying financial model is required. We are also concerned that the implementation of significant changes to the financial model are unlikely to benefit consumers in the long-term and, further, would amount to price regulation (which we consider is unjustified).

9.2 Instead, Summerset submits that the CFFC should focus on improving education and understanding of the regime, and complete a targeted review of the key non-commercial features of the regime.

9.3 Summerset's focus continues to be on ensuring its compliance under the Act and the Code. In order to do so, it is essential that operators be given time to implement changes and to put processes in place to respond to new obligations. Accordingly, Summerset submits that operators be given an appropriate length of time between the time that any changes to the regime are proposed and brought into force.

[redacted]

OCEANIA
HEALTHCARE

31 March 2021

Commission for Financial Capability
By email only: consultation@cffc.govt.nz

FEEDBACK ON CFFC WHITE PAPER – RETIREMENT VILLAGES LEGISLATIVE FRAMEWORK: ASSESSMENT AND OPTIONS FOR CHANGE 2020

Oceania Healthcare Limited ("**Oceania**") is one of New Zealand's largest residential aged care providers and retirement village owner and operators. We provide accommodation to approximately 3,700 residents across our 44 sites and employ approximately 2,800 staff.

We welcome the opportunity to provide feedback on the Commission for Financial Capability ("**CFFC**") White Paper *Retirement Villages Legislative Framework: Assessment and Options for Change 2020* ("**White Paper**").

Oceania is a member of the Retirement Villages Association ("**RVA**"). We have reviewed the draft feedback prepared by the RVA on the White Paper and endorse the feedback provided by the RVA. We set out our additional comments on certain aspects of the White Paper below.

FEEDBACK ON THE CFFC'S FIVE KEY QUESTIONS

Our responses to the CFFC's five key questions are as follows:

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

On the whole, we consider that the White Paper has canvassed the issues accurately. The White Paper does appear to place undue weight on the feedback and complaints of a small minority of village residents and these experiences are not consistent with feedback we have received from residents of Oceania's retirement villages. The vast majority of residents in Oceania's retirement villages are satisfied with their decision to move in to one of Oceania's retirement villages. In a recent survey, 96% of our residents said that they enjoy living in our Villages.

Q2 Are there any important points that are missing?

Oceania considers that there are three important points that are missing from the White Paper.

(a) We agree that, as noted by the RVA in its feedback, the White Paper has not considered the retirement village model in its entirety. The retirement villages model has evolved to cater for a diverse range of residents and their preferences and the financial model is well understood by the market. One component of the model (such as, for example, operators retaining capital gains) cannot be viewed in isolation from the other components of the model (such as operators bearing the cost of refurbishing the units, maintaining common areas and the other significant long term capital expenditure requirements of the village). The model must be considered in its entirety and if any changes are made to one component of the model then consequential changes will need to be made to other components of the model.

One of the key features of the current retirement villages legislative model in New Zealand is that it provides a high degree of certainty to residents. When residents enter into an occupation right agreement for a unit, they know precisely what the amount of the refund will be, because occupation right agreements provide for a specific deferred management fee, dependent only on the amount of time the resident stays in the unit. Residents are not responsible for any capital loss. In addition, many large operators also offer fixed weekly fees, so residents know how much they will be required to pay each week for the full duration of their occupancy. This is despite the amount of New Zealand superannuation received by residents increasing each year. Any changes to the model will erode this certainty for residents because operators will need to make changes to some of the other structural features of the model to ensure that their businesses remain financially viable. This could include operators charging residents for any capital loss from the unit.

If the model was changed to require operators to share capital gains with residents, other changes would also need to be made to the model. One of these changes could be the reintroduction of residents being responsible for the cost of refurbishing the unit following termination of the resident's occupation right agreement. Oceania has experience with this form of contract as many pre-2006 occupation right agreements entered into by Oceania's predecessors provided that the resident is responsible for the costs of refurbishment following termination on the occupation right agreement. Based on our past experience, this form of agreement is not in the best interests of residents. There were prolonged negotiations between residents and operators regarding the extent of refurbishment required to achieve a sale, the cost of that refurbishment and the setting of the selling price of the unit following refurbishment. These discussions added considerable stress to residents and their families at a time of change and also resulted in the operator taking significantly longer to re-licence the unit (and pay the refund to the resident or their family). Having residents be responsible for the cost of refurbishment could also see an increase in the number and severity of disputes as well as stock shortages.

Alternatively, if the model was changed to require operators to share capital gains with residents, operators may need to increase weekly fees or increase the percentage of deferred management fees. At present, retirement villages often have operating costs that are higher than the weekly fees charged by operators. This shortfall is effectively subsidised by the model as it is offset by the operator retaining any capital gains. If the model was changed, it is likely that weekly fees would also need to increase.

(b) The White Paper also fails to recognise that moving into a retirement village is a lifestyle choice. Many retirement village residents make the choice to move into a retirement village because of the benefits that retirement village living bring, including stronger communities, security and peace of mind. These factors have become particularly evident during the recent COVID-19 lockdowns.

(c) In addition, retirement village units are priced below the price of a corresponding freehold property. If the model was changed to require operators to share capital gains with residents, operators would be forced to significantly increase the upfront cost of buying into a village. This would make the cost of living in a retirement village prohibitively expensive for some New Zealanders.

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

No, we do not consider that a full review of the retirement villages framework should be undertaken.

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

Oceania agrees with the RVA's feedback that a partial, targeted review of certain areas should be undertaken, including resale and buyback process and timing, status of weekly fees after the resident leaves the village, transition to care arrangements, complaints system and a voice for residents.

Q5 Is there anything else you would like to say?

We set out some additional comments below.

OVERALL LEGISLATIVE FRAMEWORK

We agree with the RVA's submission that the current statutory and operating framework (consisting of the Retirement Villages Act 2003 ("**Act**"), its Regulations and the Retirement Villages Code of Practice 2008) is fit for purpose. The framework provides a comprehensive and effective resident-focused consumer protection regime. The Code of Practice sets out minimum standards and it is reviewed by the CFFC from time to time to ensure it remains current.

The current framework provides sufficient flexibility for operators to differentiate their commercial offerings and to provide residents with a range of options to suit their individual needs. The competitive nature of the retirement village market is reflected in the percentage of deferred management fee charged by operators and the amount of the weekly fees. We agree with the RVA's submission that there is no need to further prescribe the commercial terms of the occupation right agreement, such as weekly fees, deferred management fees or capital gain sharing. We consider that increased prescription would lead to less choice for residents and reduced competition due to fewer operators in the market, which we do not think is in the interests of residents, nor is it what the White Paper is seeking to achieve.

Notwithstanding this, we acknowledge that there are some areas where changes could be made to improve the overall retirement village model, including weekly fees after the resident leaves the unit, clarity around transition to care and complaints system/voice for residents.

ISSUES AND RECOMMENDATIONS IDENTIFIED BY THE CFFC

The CFFC has identified a number of issues with the current legislative framework. Oceania agrees with the feedback provided by the RVA and we set out our additional comments below.

Resale and buy-back times

Oceania agrees with the comments made by the RVA in relation to resale and buy-back times. In particular, we note that introducing guaranteed buy-backs within a specified time is likely to create cashflow uncertainty for smaller operators. As noted by the CFFC, in extreme cases residents may not receive their exit payment if operators have insufficient capital on hand to make the exit repayment. This will in turn impact the remaining residents in the village and their enjoyment of village life. The CFFC also suggested that consideration could be given to restricting any changes to larger, for-profit operators. This would create an uneven playing field for operators and would unfairly disadvantage larger operators.

In addition, we consider it would be problematic to prescribe a time period within which an operator must buy back a unit and repay the capital to the outgoing resident. Such a time period would need to be a reasonable period of time and this would, in large part, depend on the market circumstances at the time (including factors such as the availability of tradespeople and labour to refurbish the unit and current residential property market conditions), which makes it difficult to prescribe.

We also note that, in many cases, Oceania is ready and willing to pay the refund to the outgoing resident but we are waiting for the outgoing resident or their family to provide probate or for the executors of the resident's estate to sign documentation to approve the payment. In one recent case, we waited 23 months from the date that the resident died for documents to be signed and returned, so that the Statutory Supervisor could pay the refund.

Oceania also agrees with the comments made by the RVA in relation to gains on resale. As noted above, any change to the Act, Regulations or Code of Practice that requires residents to receive a share of relicensing proceeds would result in a change to the standard retirement villages model to find an alternative way of returning sufficient capital to the operator to ensure the stable long term operation of the village.

Status of weekly fees after the resident leaves the village

Oceania supports the RVA's suggestions in relation to the charging of weekly fees after a resident leaves the unit. Oceania stops charging both its weekly fee and DMF as soon as the resident leaves the unit. This provides a high degree of certainty to residents in relation to fees and capital payments and reflects the fact that it is in both the resident's and the operator's best interest to relicence the unit as quickly as possible. In addition, Oceania provides additional certainty to its residents by offering fixed weekly fees for life for residents of its independent living villas and apartments.

Transfers from independent units to serviced care or care facilities: information requirements and treatment of fixed deductions

In response to market demand for better quality rest home and hospital level care, Oceania pioneered the care suite model in New Zealand, by offering residents a licence to occupy a rest home or hospital room, rather than paying a premium accommodation charge for that room. Oceania provides clear disclosure in its occupation right agreements and disclosure statements setting out the process and the costs of moving from an independent living villa or apartment to a care suite. This disclosure complies with the RVA's best practice guidelines for members. We also send lawyers an explanatory document every time a resident applies for an occupation right agreement for a care suite. This document explains what a care suite is, how care is funded in New Zealand and how the care suite occupation right agreement operates.

Oceania supports the RVA's suggestion that industry-wide best practice guidelines be agreed to ensure consistency of disclosure between operators for residents who move from independent units to care facilities.

Code of Practice 2008 compliance

Oceania does not support an overall policy review of the Code of Practice. These issues could be more adequately dealt with by improving the complaints mechanism to deal with instances where operators are not complying with their obligations. This would mean that operators that are already complying with their obligations under the Code are not unduly punished.

Oceania supports the RVA's suggestion that comprehensive best practice guidelines be developed to balance operators' responsibilities and residents' rights, and to ensure that these are subject to a compliance audit.

Complaints system or authorised advocate

Oceania would welcome a policy review of the complaints function to simplify and formalise a clear and simple complaints process and would hope that the outcome of any such review would avoid many of the vexatious complaints made by residents at present.

Any review of the complaints system should maintain a fair balance between the interests of residents and operators. It is important that the residents' interest in having a clear and simple complaints process is balanced with the operators' interest in restricting complaints to genuine issues and concerns.

Oceania has recently undertaken a comprehensive review of its complaints framework, policy and processes and would welcome further regulatory changes in this area.

A voice for residents

Oceania would welcome the consideration of a policy review as to whether changes are required to better support retirement village resident welfare.

Emerging consumer issues

Oceania agrees with the RVA and does not support the CFFC's recommendation to review future trends to ascertain whether retirement village consumer protections are strong enough to adapt to change and investigate whether different models should be encouraged. Rather than a regulatory response, the market will dictate what changes need to be made to the retirement village model in the future.

Understanding the legal framework

Oceania is generally supportive of making documentation simpler and easier to understand. We often receive feedback from lawyers complimenting us on how clear our documents are and how easy they are to understand.

Oceania provides a copy of the RVA's Key Terms Summary (in its prescribed PDF form) to all applicants when the applicant submits an application for an occupation right agreement. We support the continued use of the Key Terms Summary by all retirement village operators in New Zealand.

We do not consider it necessary to introduce prescribed form disclosure statements.

Oceania would be supportive of additional focus on the education aspects of the regime. In our experience, it appears that many lawyers have a very limited knowledge of the requirements of the Act, the Regulations and the Code of Practice. We receive queries from lawyers from time to time asking about basic retirement village law concepts such as the statutory 15 working day cooling off period and when the refund is due to be paid to their clients. We would encourage additional lawyer education on aspects of the Act, Regulations and Code of Practice as we think this would lead to better resident outcomes and informed consumer choice.

The interface of care and residence

Oceania supports the RVA's comments regarding the different legislative regimes that cover the provision of aged care in New Zealand. As noted by the RVA, the healthcare sector is already highly regulated and it is not appropriate that the Act also deals with this.

We suggest that a review of disclosures in relation to the interface between care and residences be undertaken and that best practice guidelines be developed and incorporated in the Code of Practice.

Retirement village operators are constantly innovating to stay current with resident needs and preferences. The target market for retirement village operators is people who are seeking greater choice and control as age related events impact their lifestyle. The retirement village sector provides enhanced choice and control (relative to traditional housing options) by integrating residential and care options and services. The sector is neither a housing nor a health care proposition and should not be categorised as solely one or the other. The regulatory framework should be sufficiently flexible to allow for continued innovation by the sector so that the sector maintains people at the centre of its business model.

CONCLUSION

As noted by the RVA, New Zealand's retirement village regulatory framework is highly regarded and referred to as a best practice model by many overseas jurisdictions, including the United Kingdom and Australia. The Act, Regulations and Code of Practice currently provide very good levels of protection for retirement village residents in New Zealand. All residents receive independent legal advice before moving in to a unit and solicitors must certify that they have explained the terms and conditions of the occupation right agreement to the resident in a manner that can be understood by the resident. In addition, the existing 15 working day cooling off period means that residents can change their minds about moving into a village. In practice, if a resident changes his or her mind any time before moving in, Oceania would agree to terminate the occupation right agreement because it is not in the best interests of the operator or other residents in the village to have a reluctant buyer. In addition, in some villages, Oceania has a 90 day guarantee which allows residents three months after they have moved in to their unit to change their mind. If a resident exercises their right to cancel the occupation right agreement in these circumstances, the resident receives a full refund of the capital sum, with no deferred management fee deduction.

The process is very transparent and operators take care to ensure that incoming residents are fully informed. Residents are fully aware of the retirement village model when they sign an occupation right agreement for a unit in a retirement village.

In our view, the retirement villages model has evolved to cater for a diverse range of residents and their preferences. The financial model is also well understood by the market. It is important that the model is considered in its entirety and if any changes are made to one component of the model then consequential changes will need to be made to other components of the model.

Thank you for the opportunity to provide our feedback on the White Paper.

Yours sincerely

[redacted]

Health & Care

Bupa New Zealand
Level 2, Bupa House
109 Carlton Gore Road

PO Box 113054
Newmarket
Auckland, 1023

T 0800 60 80 99
info@bupa.co.nz
www.bupa.co.nz

31 March 2021

Commission for Financial Capability
Level 15, 19 Victoria Street West,
Auckland 101O

By Email: consultation@cffc.govt.nz

Review of CFFC White Paper and Bupa Response
This document sets out the Bupa Care Services NZ Limited 's **(Bupa)** response to the Commission for Financia l Capability **(CFFC)** White Paper Retirement villages legislative framework: assessment and options for change 2020.

1. About Bupa

1.1 Bupa is a diverse health and care group, which has been committed to a purpose of longer, healthier, happier lives for more than 70 years. In New Zea land, Bupa supports thousands of residents through a range of health and care services including aged care and independent living in retirement villages. Bupa operates 49 care homes and 36 retirement villages. Bupa has significant development activities around New Zealand. Bupa employs more than 4,000 people in New Zealand, we believe that we can make a real difference to the lives of New Zealanders through our values, purpose and the way that we deliver personalised care.

12 For more information visit bupa.co.nz

2. Executive Summary

21 We consider that the current statutory and operating framework - the Retirement Villages Act 2003, its Regulations, and the Retirement Villages Code of Practice 2008 - is fit for purpose.

22 We also note that the Retirement Villages industry is very competitive. It has a broad range of competitors, from large listed entities, not for profit operators to small single site operators. This requires Bupa to continually to review its offering to make sure it is competitive with other operators as well as being sustainable. As part of the competitive pressure, Bupa reviewed its offering in 2020 and changed some of the features of our commercial offering . This was done by looking at the total offering and trading off some aspects to compensate for being more competitive in other areas. If there were any new mandated aspects of the offering we were required to provide in the future, it would require us to look at other aspects of our offering and adjust them so that we had a sustainable and viable offering.

23 We believe that the vast majority of our residents are satisfied with their decision to live in one of Bupa's retirement villages. The Village Manager has regular contact with residents and proactively addresses any concerns they have. We encourage resident committees at all of our villages and actively engage with them, listening and responding in a timely manner . We also survey our resident's annually and hold annual general meetings where residents can raise issues with us and the statutory supervisor. Following each resident survey, we call any resident who has indicated they wish us to contact them. This provides us with a regular opportunity to obtain direct feedback from our residents and address any concerns they have. Residents feedback is precious, valued and where appropriate acted on swiftly by Bupa. We consider we have robust systems in place to ensure that the voice of our residents is clearly heard, and any issues are addressed.

24 The key aspects of our offer are[1]:

(a) Fixed Village weekly fees for the entire period of the ORA. This provides financial certainty for our residents.
(b) The fixed weekly fees stop when the resident leaves the village.
{c) We are responsible for maintenance of the grounds, communal facilities and buildings. This includes any capital improvements, which can be significant and costly.
(d) We pay interest on the exit payment if they had not been paid their capital within six months.
(e) We do not offer any capital gain and residents are not subject to any risk of a capital loss.
(f) Residents do not contribute to any refurbishment costs except for any unreasonable damage they may have caused.
(g) Residents are not responsible for any of the charges relating to the marketing and sale of the unit. We consult with residents on the marketing and keep them informed of the sales process in accordance with the Code requirement. It is in both our and the resident's: interest to seek a timely sale.

3. Feedback on the CFFC's five key questions

31 Has this White Paper canvassed the Issues fairly and accurately?

In some respects, yes and in others no. In Bupa's opinion:

{a) Some of the concerns that the vVhite Paper has raised are not relevant to Bupa as our offering protects residents from some of the concerns that have been raised. However, other operators may be impacted by any changes that have been proposed.
(b) Bupa does not consider that the Retirement Village industry should be regulated as a Health Care Service. Retirement Villages provide independent living. To the extent that any health care services are provided, they are regulated. This is the same with any such services that are provided to a person living independently in the community. It is not clear why the CFFC is pushing for Retirement Villages to have any additional regulation as a health care service. Care home services are currently regulated.
{c) The White Paper seems to suggest that the Retirement Village Industry should be responsible for addressing social housing issues. This is not the role of industry, it is the role of government.

32 Are there any Important points that are missing?

When considering the retirement village model, it is important to consider **all** aspects of that model. The offering that operators provide are a balance between different commercial aspects of what residents pay for and receive. Any mandated requirements of the offering would require operators to consider their **total** offering and rebalance them. This could result in residents having to take on more risk for cost increases (i.e. for weekly fees. refurbishments, capital improvements or capital losses if there was a market downturn)..

Bupa, like most other large operators, also operates care homes. There is a close relationship between the retirement village industry and the aged care industry. There are approximately 11,000 DHB beds and 40;000 aged care beds[2]. The aged care industry is therefore a critical part of the health care system. Any negative impact on the aged care industry will have a significant impact on the overall health care system. Many operators, Bupa included, have been forced to balance their overall business sustainability by using profits from their retirem nt village arm to subsidize their care home operations. This, quite simply, is not sustainable. ARRC ••1:.1-St-be-aele-t0 I:>e-viaele iA-its-GwA-rigRt-as-a-b1:1si r-1ess-mooel-aAd-tl-11S-is-depeAdeA-t-O A-tl:te-Go>/em m er-it-

[1] We do have a few unit title properties where residents own their own unit, which have different commercial terms.
[2] See NZ Aged Care Association Industry Profile Report 2019-2020, https://nzaca org nzfwo:contenUuploads2/ 020/08/ARC-Industry-Profile-2019-20-Final.pdf

adequately funding the ARRC sector. If this imbalance is not addressed by the Government we predict the ARRC sector will be severely threatened with corresponding financial and operational impacts on the DHBs. Until the ARRC sector under funding is solved, any additional financial pressure on retirement village providers will put even more put pressure on their care home side of the business. This could have significant impacts on the ability of retirement village operators to be able to provide the level of aged care that they currently do. Any shortfall in aged care bed capacity will need to be met by the DHBs.

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

No. As set out in the document, we consider the framework remains fit for purpose. We see room for improvement in some operational practices, which can be achieved through self-regulation and targeted amendments to the Code of Practice.

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

Yes. Bupa recommends a partial, targeted, review of:

(a) complaints system/ voice for residents - Bupa considers that it has robust processes in place for addressing resident complaints and ensuring we hear the voice of the customer. Anything that could be done to reduce the costs of any complaints process and ensure that interests of both the operator and the resident are promoted, in the context of the contractual arrangement they have entered into, would be welcomed. Care would need to be taken that any complaints body does not have the power to re-write the contractual and commercial aspects of the offering. We note that residents receive independent legal advice on their contracts. This provides an additional layer of protection for residents when considering the commercial terms of the offer. We also note that complaints are relatively low and a generally resolved very quickly. Bupa would question the need to implement any system that is expensive and overbearing in these circumstances.

35 Is there anything else you would like to say?

This document addresses the issues we consider relevant to the White Paper.

4. Issues and recommendations identified by the CFFC

41 1 Re-sale and buy-back times

The CFFC has recommended the following options for consideration to improve the re-sale and buy-back process:

(a) Guaranteed timeframe for buy-backs
(b) The requirement for interest to be payable during vacant periods
(c) Allocation of any gain on resale between resident (or their estate} and the operator
(d) Considering certainty to residents alongside operators' business models
(e) Consideration of restricting any changes to larger, for-profit operators

Guaranteed Buy backs

Bupa does not support guaranteed buy backs. Operators would also need to be able to access significant capital if there were a significant number of buy backs in a short period. This was an initial concern when COVID-19 hit. For example, every 1O units with a buy back of $500k requires access to $5m in funding. If there was a spike of say 100 units, it would cause significant capital requirements and cost. The funding cost for paying out residents and holding repurchased stock would need to be.met by changing other aspects of the offering to ensure that Bupa had a sustainable model. If capital is tied up in re-purchased stock it would result in less capital being available for operators to invest in new developments and to be able to add to the housing supply as the industry currently does.

Interest payable

As noted above, Bupa pays interest after six months on the capital due to the resident Bupa notes that this proposed change may have a negative impact for·sm aller operators.

Capital Gains

Bupa would not support a mandatory sharing of capital gains. If this was introduced, Bupa would need to review its offering and may need to adjust not only the commercial aspects but also the long-term risks of residents effectively taking an equity position in their unit. Currently residents do not contribute to refurbishment costs nor any capital upgrades for the broader village that support an increase in the capital value of the unit when it is sold. The capital gain supports other aspects of Bupa's commercial offering, such as fixed weekly fees, fees stopping when the resident leaves the village, etc. If sharing of capital gains was introduced, we would need to review the other aspects of our offering to ensure that our business remained sustainable. The impacts of any such changes need to be carefully considered.

Certainty to residents alongside operators' business models

Bupa considers that residents do have certainty as the ORA and disclosure statement make it very clear what costs are the residents responsibilities and what are the operators. Operators need certainty and sustainability. Any changes to any aspects of the commercial arrangements could have significant impacts for operators and the offering they provide to residents.

42 Weekly fees continuing after termination

The CFFC has suggested the following for consideration:

(a) restrict the charging of weekly fees after a resident vacates a unit
(b) reduce weekly fees by 50% after three months and cease charging fees entirely after six months.

While this is not an issue for Bupa as they cease when a resident leaves the village, it may be an issue for other operators. Any mandating of the commercial offering may require operators to adjust other aspects of their offer, with corresponding unintended consequences for residents.

43 Transfers from independent units to serviced care or care facilities: information requirements and treatment of fixed deductions

The CFFC has suggested that the RV sector:

(a) consider how to improve and standardise information about transferring into higher levels of care.
(b) consider whether a separate regulatory Framework for higher care settings and single fixed deductions is desirable.

The transition to care is largely driven by the DHBs. The DHBs determine:

(a) When are resident can go into care and the level of that care by their- needs assessment.
+t-ie-A9e-R-ela ted-Reside Atia LCa r.e..Agc eernen I (ARR.C) _se1s.Jbe..f _p_ the care and the scope of the services provided. The ARRC provides that the same amount is payable by everyone who resides in a standard room. The level and scope of the care is not affected by the type of room a resident has.

The type of care and cost of care is the same for everyone and is determined by the DHBs. This is capped at the maximum contribution.

The choice that residents have is whether they want to have a standard room (as determined by the DHBs) or what it known as a premium room. This is the only area that materially affects what a resident pays[3] Currently, for any premium accommodation, there is a mix of:

(a) what is know as premium room charges, which are a daily rate and not covered by the Retirement Village Act **(Act).** Under the ARRC residents have the right to terminate a premium room and move to a standard room by giving notice; and
(b) an occupation right agreement offering, such as care suites or refutable deposits, which are covered by the Act. This generally involves an upfront capital payment.

Bupa considers that any information relating to transferring to an ORA in a care home is covered in the disclosure statement. To the extent care ORAs are available, the ORA documents would also be registered and available to review.

In relation to information on the costs of care (i.e. the maximum contribution) and the care provided, this is prescribed by the Government and is the same for everyone. It should primarily be the responsibility of the Government to provide information on aged residential care, given they determine the costs and scope of that care. This can and is supported by the industry.

2. Code of Practice 2008 compliance
The CFFC has recommended:

(a) a review of the Code, including the ORA provisions, with a view to establishing best practice and to balance operator control and residents' rights

Bupa has robust processes in place to comply with the Act, its regulations and the Code. For every new registration of a village, the statutory supervisor has an external independent lawyer review our documentation to confirm compliance. Bupa is audited by the RVA for compliance. Bupa considers compliance is adequately covered.

In terms of the Code itself, Bupa considers it is largely fit for purpose. Any attempt to use the Code as a mechanism for prescribing the commercial offering that operators are required to provide needs to be consi.dered very care fully. Any change to one aspect of the offering will require an adjustment of other aspects of an operator's offering.

3. A voice for residents
The CFFC recommends that:

(a) Consider whether changes are required to better support RV resident welfare.

It should be remembered that Retirement Villages are independent living arrangements. To the extent that any resident welfare requirements are necessary, these are issues that apply to any aged person regardless of

[3] Additional Servicesare also available, such are haircuts, some outings which may have a cost (such as the cinema), personal toiletries, etc.

whether they live in the community or a Retirement Village. If older persons welfare issues need to be address, these should be implemented for all older persons irrespective of whether they live in a retirement village or in the community.

As noted above, Bupa has numerous mechanisms for hearing the voice of the resident. These include:

(a) Resident Committees.
(b) Annual general meetings with residents and the statutory supervisor.
(c) Annual resident surveys.

4. Emerging consumer issues

The CFFC has identified the following potential issues for the sector:

(a) future affordability challenges for RV accommodation
(b) a potential mismatch of supply for future demand
(c) the prospect of residents' requiring financial assistance increasing
(d) the sustainability and viability of the current RV model where resident security is significantly dependent on ILU revaluations
(e) the RV model favours profitable development over more affordable rental offerings and other models.

Bupa reviews and adjusts its offering in response to market demands and competitive pressure. It takes a long-term view of the market given the significant cost of development and long-term nature of our offering for residents. However, the industry cannot be responsible for solving social issues that are the responsibility of the Government. Bupa does not provide an offering that is suitable for **all** retired people. We operate in one segment of the housing options available for retired persons. We competitively service that segment conscious of future trends and developments.

5. Structural and drafting anomalies evident in the legal framework

The CFFC recommends that:

(a) a review of the disclosure statement content and format be undertaken with a view to producing simplified and accessible documentation (including online resources).

Bupa has recently undertaken a significant review of its documentation. Following that review, Bupa simplified its documents, drafting them in plain English. However, the content of the documents is largely driven by information that operators are required to provide under the Act, Regulations and the Code.

6. The interface of care and residence

Th e CFFC recommend that it:

(b) Explores the extent to which the presence of care changes the nature of a RV from a housing proposition to a health proposition.
(c) Ex lores whether the definition of a RV needs modifying to include a wider range of lifestyle developments (including those arrangements t at do not neea an OR .

Bupa considers that the extent to which the RV offering include health services is adequately regulated by the existing health care regulation and does not require any further regulation by the CFFC. It should be remembered that home care is provided to aged persons in the community as well as in retirement villages. This is part of the DHBs Healthy Aging Strategy[4]. Bupa submits that any regulation of care services into an older person's home should be neutral in terms of where the person lives. Therefore, any care regulation in a retirement village should be the same as any care provided in the community. Bupa would not support any bespoke regulation of care in a retirement village.

[redacted]

Bupa Villages and Aged Care NZ

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4 See ttps://www.health.govt.nz/our-wor1(flife-stages/health-older-people/healthy-ageing-strategy-update#:~:text=The%20vision%20for%20the%20Strategy,life%20in%20age%2Dfriendly%20communities.&text=The%20Healthy%20Agei

Online submission: 92092101

Q1: No
The paper was lacked objectivity. CFFC should be embarrassed to publish such a poorly constructed discussion paper. feedback is limited to this forum indicating little actual interest in obtaining meaningful comments. The paper fails to describe the environment or discuss the core issues in a balanced way. The paper makes sweeping unsubstantiated statements and has clearly bee written only to support CFFC's preferred option.

Q2: Yes
There are too many to write in this forum which is unsuitable.

Q3: No

Q5: Again the site is appalling if you expect a meaningful response.

Addendum to submission (see next page)

NORTHBRIDGE LIFECARE TRust

45 Akoranga Drive, Northcote, Auckland 0627

Northbridge

Telephones: | | Faxes:
9-488-3080 Administration 9-488-3086
9-488-3083 Rest Home 9-488-3092
9-488-3082 Hospital 9-488-3090

e-mail: admin@northbridge.co.nz

3 March 2021

Jane Wrightson
Commission for Financial Capability
PO Box 106-056,
Auckland City 1143

Re; CFFC's Retirement Village White Paper Submission

I have written submission as the online option was an inadequate and unsuitable forum for this purpose.

My experience in the village is varied. I have worked in the industry for 25 years in the public, private and now charitable trust sector. I started in the industry with Metlifecare, responsible for 14 retirement villages and associated attached care facilities. I then moved to Maygrove Village in Orewa being involved in the design development and management of the facility. Then moved to Setters village Albany for the same purpose and have now been with Northbridge Lifecare Trust for the past eight years.

I have served on the retirement village Association executive for two years and my parents have lived in a retirement village.

The White Paper demonstrates either a lack of understanding or unwillingness to recognise some core issues for the industry. However, before commenting on this I will run through the issues with Northbridge which as a long-standing charitable trust in the industry will be different from the newer public company entities.

Northbridge as a charitable trust was registered in 1972. We are situated on a single site in Northcote Auckland. The trust has a philosophy of providing affordable housing. In doing so we sell our ORA's below other market operators. We have a range of apartments size and pricing options ranging from $380,000 to $800,000

Income:
income is generated by reselling existing ORO agreements. The only time we make a cash profit from a village resident is the day they settle the ORA payment. Thereafter no profit will be made from that resident or apartment until they leave. We have many residents who have been in the village over 20 years and some over 30.

Service fees that are paid monthly are on a cost recovery basis only. Most villages including Northbridge subsidise the service fee not recover the actual full cost. This shortfall comes from ORA resell revenue.

Resale income is therefore the most important ongoing financial component.

Northbridge Polices that May Align with the White Paper:

1. At Northbridge service fees stop when the keys to an apartment are handed back after it has been vacated. The service fee then becomes a cost of sale. This means there is a benefit to family members in emptying an apartment soon after it is vacated.

   COVID has provided a complication due to limiting village access at times. In one case the only family member was based in Canada and could not travel to NZ for over 7 months. They were happy to pay for ongoing service fee as she did not want the apartment touched. Any proposed changes should not limit the ability to make rational day-to-day decisions.

2. Northbridge has a stated policy of paying refunds no later than 90 days after the day keys are handed back which is also at our discretion. We have used that discretion during the past year due to the negative effect on our cash flows from the COVID pandemic. In the eight years I've been with Northbridge the past year is the only time we have not completed refunds within the 90-day policy.

   Having this policy has meant that in many cases we have been completing refunds prior to receiving the resale settlement funds from a third-party. The discretion option has been an important mechanism to protect our cash flows during the pandemic or the effects of a declining economic environment.

   CFFC needs to understand that there is not a single housing market in New Zealand and that different regions and even areas in Auckland have different average timeframes to resell homes. This can vary considerably depending on the economy at any one time. I have been through a number of economic cycles in the industry and although the main centres are somewhat insulated smaller population centres would struggle with a nominated payback period.

   Pandemics also pose considerable risk. If 10 or 20% of a villages population died from a pandemic outbreak most villages would have considerable financial risk if all refunds were required to be completed within a specified period.

3. Transfers within the village or to serviced apartments are completed at no cost regardless of the refund value of an apartment unless the resident is moving to an apartment with a lower value, in which case a partial refund is made. As an example, if a resident has been with us for a considerable time and moves to a service department and their refund on the original apartment is less than the cost of the service department the transfer is completed at no additional cost.

4. All refurbishment costs are paid by Northbridge. We will replace carpets, repaint an apartment, replace a kitchen or bathroom while resident is in the village if they have been living here for a considerable length of time at no

cost to the resident. All maintenance is covered by the trust other than chattels provided by the resident such as the washing machine and fridge.

5. If a resident requests to transfer from one apartment to another in the village this is done at no cost to the resident even if both apartments are being refurbished to complete the move.

Sharing the Capital Gain:
I am concerned about the White Paper's comments in this area. The reality is that the money to operate a village must come from somewhere. At Northbridge we spend around $2 million a year on property maintenance community improvements and capital purchases and replacing all infrastructure. This would be typical for older villages or as villages age.

If a capital gains share option is imposed, we will need to increase our prices and therefore the DMF percentage received will increase as well. Most older villages like us are in the same situation as we need to carefully manage your finances.

Purchase affordability will then decline. Again, Auckland will be somewhat insulated from this, but the regions will not. In other words, the industry will just adjust in order to maintain existing cash flows. To suggest that the capital gain portion of any sale is not important to the industry is nothing short of bizarre and displays a clear lack of industry understanding.

The White Paper seems to think that a one size fits all option will fix the perceived described issues. The unintended consequences of any change to the existing legislation or code of practice needs to be carefully thought through before any change is proposed or implemented.

Most villages do not recover the actual cost of the monthly service fee from residents in order to keep the fees low which directly affect their disposable income. The shortfall comes from resale income.

The government recognises and has accepted that there is cross subsidisation from village revenue to support rest home and hospital operations when the services are supplied. Cross subsidisation revenue comes from resale income.

At Northbridge we provide care services to the village and a range of professional tutors for recreational activities at no cost to residents. The cost is over $50,000 per year with the funds coming from apartment resales.

The importance of apartment resale income cannot be understated for trusts and private operators.

The white paper assumed that all new development sales make a profit. We do not make a profit on new apartment sales. Our objective is to recover the cost of construction only which enables us to offer you accommodation at an affordable price.

Other Comments:
The White Paper seemed to confuse or display a lack of understanding between village, service department and care facility services and terminology. The document also quoted an Australian village example which is in fact used in care facilities and not villages.

To take this a step further. At Northbridge we are intending to replace our 42-year-old care facility in the next two years. The cost will be around $40 million and with the current Ministry of Health funding model will be unaffordable if we were not able to sell some of the rooms to recover a portion of the capital cost. This is an area where CFFC could be helpful in its analysis and where the Australian model alluded to in the White Paper has value.

The ORA document is a cumbersome unsuitable document for use in selling ORA care beds. The Australian model of selling via a refundable deposit structure is worth pursuing.

I dispute the comments in the White Paper that residents coming into village are unclear on the key financial considerations. Every person that comes into a village and their family/advisors will understand the cost of the apartment, what is retained by the village operator and what the refund will be. They also fully understand that the capital gain is retained by the operator. There is no confusion here.

However, I do accept that they do not understand the details of the document. I also don't believe they are that interest. We are handing out to these people over 100 pages of documents which includes the ORA agreement, the disclosure agreement, the retirement villages code of practice, the complaints procedure, the code of residence rights plus some other minor documents relating to each village. Anyone regardless of their age would refer these documents for a legal assessment. My experience is that residents lawyers do an excellent job in providing credible advice.

It is only reasonable to expect that residents and family forget about these documents and in particular the detail until an issue arises or an apartment becomes available for resale.

The White Paper also makes a comment that elderly people are vulnerable. This is clearly age discrimination. I do not experience vulnerable residents on a day-to-day basis. I see people who are as capable as you and I are in making decisions. As people age they often rely more on family members or advisers to assist with decisions. To say they are vulnerable in a village situation is highly speculative.

The paper seems to conclude that when an initial village concept is constructed the development is complete. I'm not sure a village is ever complete. The initial Northbridge development was completed over a 15-year period and there has continued to be adjustments or changes to facilities and buildings over the remaining 30 years. If I could buy an apartment in central Auckland with views, I take the risk that another apartment building will not be built that may affect my outlook.

The issue isn't about a village not changing it's about how it continues to change, how it consults with residents takes into account their views and balances that against market and environment changes. CFFC can't resolve this and nor can a village stand still. Northbridge is an example of this as we are completing the last stage of an apartment redevelopment where we have demolished the original 34 apartments and community centre, building 107 new apartments and additional community centre.

I believe the white papers view of future village structures is quite narrow as the Australian village model is not recognised as being superior to New Zealand. Demand increase will follow the baby boomer population curve and then decrease once the peak has passed. The significant industry issue will be how to restructure. Village design today must start to take that into account. CFFC cannot resolve this nor is it the role of CFFC to do so.

In page 5 you make the statement under the purpose of the document to "deliver retirement housing that is appropriate for the changing composition of NZ's ageing population" I have to say this appears to be delusional as this is clearly not the role of your organisation. I don't believe you have provided any housing.

You also seem to believe that you (CFFC) know the strengths and weaknesses in the framework of the business model that has developed out of providing housing you have not provided. The White Paper actually demonstrates you don't know this.

You also make the comment that it is your (CFFC) role to deliver services contracts and financial transactions that are fair and understandable for intending residents and residents. The existing system works well but in some areas is overregulated and therefore complicated.

Perhaps the best advice is the comment in the paper that CFFC and other agencies identify their abilities to ensure the current framework works.

Finally, the case studies in the White Paper are selective lack balance and quite frankly whoever wrote the paper should be embarrassed to conclude the document in this way. My perception is that the document was only written to support the CFFC review recommendation.

[redacted]