

RETIREMENT VILLAGES ASSOCIATION (RVA) and NEW ZEALAND AGED CARE ASSOCIATION (NZACA)

COMMENTS ON THE FENZ FUNDING REVIEW PAPER

1. Background / overview

- 1.1 The Retirement Villages Association (RVA) and the New Zealand Aged Care Association (NZACA) represent owners, developers and managers of retirement villages and aged residential care facilities (ARC) across New Zealand. Retirement villages are aimed at older New Zealanders who can live independently, while aged care facilities (perhaps better known as “rest homes”) provide varying levels of care and support for those who have been assessed as needing a higher level of assistance.
- 1.2 Around 73% of retirement villages have some care facilities in their campus compared to less than 50% of care facilities that have a retirement village attached. Village operators with care generally offer existing residents “first call” on a bed in their facility should that be needed, and the existence of a continuum of care is a significant driver for residents to choose one village over another.
- 1.3 The RVA’s members’ villages have around 32,200 villas, apartments and serviced apartments that are home to some 43,000 older Kiwis. This is around 96% of the industry by unit number. The NZACA’s membership represents more than 90% of the 39,000 rest home beds in the ARC sector.
- 1.4 Both organisations have had extensive discussions with officials from the Department of Internal Affairs, as well as the respective insurance advisers. The discussions were prompted by changes to the FENZ legislation, and in particular, making a fair and reasonable distinction between “residential” and “non-residential” property in both sectors, and how any prospective changes in the FENZ levy regime then or in the future might affect operators (and ultimately, residents in a village or District Health Boards in care facilities).

These comments follow the general direction we submitted in the discussion a year ago on the proposed FENZ levies and refers to the FENZ Funding consultation paper released in late 2019. We appreciate that the Funding consultation paper is looking for new ideas for funding rather than reply on the current insurance-based regime.

2. Our key comments

- 2.1 The Fire and Emergency New Zealand Act 2017 (the **FENZ Act**) provides a high degree of flexibility for different FENZ levy rates, maximum levies or exemptions to be set for any type or class of property under regulations (s 141).
- 2.2 There are several reasons why it is appropriate for FENZ levies on retirement villages and aged care centres to be set in line with residential FENZ levies as well as having regard to the unique features of these places and those who call them home. In particular:

- 2.2.1 Buildings that solely or predominantly comprise residents' apartments or rooms are fundamentally a home, and should be treated in the same way as a standalone residential dwelling. They are not akin to commercial buildings such as office buildings or factories.
- 2.2.2 To date retirement villages and aged care centres have been treated as residential for the purposes of setting FENZ levies. Nothing has changed to justify a substantive reclassification, particularly when insurance costs (and therefore FENZ levies under the current regime) are paid by the residents of retirement villages and aged care centres. Many of these residents rely on government superannuation as their sole source of income. An increase in their expenses is not justified when their home has not changed in nature.
- 2.2.3 Retirement villages and aged care centres are considered residential in nature in a range of contexts under New Zealand law. These include:
 - (a) the clear residential nature of retirement village units and occupation rights as acknowledged in the Retirement Villages Act (see section 4 below) and the treatment of the provision of aged care as 'long term residential care' under the Residential Care and Disability Support Services Act 2018; and
 - (b) the treatment of both retirement village units and aged care rooms as residential for GST purposes.

2.3 In addition, residents living in retirement villages and aged care centres are likely to be much lower users of FENZ services than occupants of other buildings. These residents typically do not travel or venture from home as often as other groups of New Zealanders and buildings in retirement villages and aged care centres generally present a much lower fire risk. They often incorporate sprinkler and emergency alarm systems and fire-fighting equipment.

2.4 Any differentiation in FENZ levies must have regard to the purpose of the FENZ levy set out in s 80 of the FENZ Act, which requires the levy to be equitable so that levies are set at a level commensurate with the use/benefit of FENZ's services and the relevant associated risks. Residents of retirement villages and aged care centres will derive much lower use and benefit from FENZ services (both fire and non-fire related), and their homes can be expected to have a lower associated risk, than other buildings.

2.5 Together these factors justify FENZ setting an appropriate levy for retirement villages and aged care centres that accounts for the distinct nature and features of this type of home.

3. Retirement village regulatory arrangements

3.1 The Retirement Villages Act 2003 ("RV Act"), the associated regulations and Codes of Practice and Residents' Rights are at the heart of retirement village governance. This legislation has evolved over time, especially in relation to outside influences. For example, the Code of Practice's insurance requirements were strengthened following the Christchurch earthquakes so

that all villages are now required to have full replacement insurance to the satisfaction of the Statutory Supervisor.¹

- 3.2 Villages that meet the definition in S. 6 of the RV Act must register with the Registrar of Retirement Villages. The RV Act is very clear that the village includes “common areas and facilities” as part of the resident’s home.²

Aged care regulatory arrangements

- 3.3 Aged care facilities are largely governed by the Health and Disability Sector Standards. ARC facilities must meet obligations set out in the Aged Related Residential Care Agreement which is negotiated annually between the NZACA on behalf of its members and District Health Boards.

4. The residential nature of retirement villages and aged care centres

- 4.1 Retirement villages are made up of a combination of villas and/or apartments and communal facilities. The communal facilities can include a café, cinema, library, bowling green, swimming pool, craft room, lounge, etc. Residents pay a capital sum to move into the village and have unrestricted access to the communal facilities as they do their own dwelling. The capital sum paid reflects the average freehold property value in the neighbourhood of the village, and when the resident leaves the village, between 70% and 80% of the original capital sum is refunded. The portion the operator retains – between 20% and 30% of the original capital sum - is called the Deferred Management Fee and is applied to the cost of providing the communal facilities the resident has enjoyed during their life in the village.

- 4.2 The tenure is unique to retirement villages and is protected under the RV Act.

- 4.3 All retirement villages that meet the definition in S. 6 of the RV Act are required to be registered with the Registrar of Retirement Villages. A memorial is placed on the land title that advises everyone that the land in question is a registered retirement village, can only be operated as a retirement village in the future, and that the residents’ financial interests are protected ahead of all other village creditors. This important provision stops any policy creep into other developments that might claim to be “retirement villages” but in fact are just conventional residential developments.

- 4.4 The RV Act defines a retirement village as including *“the part of any property, building, or other premises that contains two or more residential units that provide residential accommodation together with services or facilities, or both, predominantly ...”*

- 4.5 S. 6 (2) continues, *“A retirement village includes any common areas and facilities to which residents of the retirement village have access under their occupation right agreements”*. An “Occupation Right Agreement”, or ORA, is the contract signed between the resident and the operator that grants the right to live in the village and enjoy its facilities.

¹ RV Code of Practice, clause 22

² RV Act S. 6 (2)

- 4.6 The definition is extended to the care facilities where a resident has an ORA on a care room and includes the common areas within the rest home to which the resident has access by reason of their ORAs.
- 4.7 The RV Act specifically excludes tenancy units, boarding houses, guest house, hostels, and halls of residence associated with educational facilities from being considered “retirement villages”.
- 4.8 Retirement village units are also almost universally smaller than the majority of new build conventional domestic stock. Around 91% of all retirement village dwellings are 2 bedrooms or less. They are between 75 m² and 120 m² (some bed-sit serviced apartments are slightly smaller). This compares favourably with the conventional dwelling size, of which 75.6% are three bedrooms or more, and with a floor area of around 200 m².³
- 4.9 Other facilities within a village that are not units or common areas are almost always directly connected to the residential aspects of the village. Examples of this include a hair dressing salon or medical examination rooms used by residents of the village. These facilities make up a very small portion of the total village, perhaps a few dozen square metres out of several thousand square metres.
- 4.10 We asked our members whether they have a general guideline about the communal space in relation to the number of residents. We understand that the ratio is around 2m² to every resident. Thus a village with 400 residents will have some 800m² of communal space. This is a modest percentage of a total village area that could cover several hectares.
- 4.11 We stress that a village and its common facilities are our residents’ homes and are places where they live, usually for the rest of their lives. Villages can be easily distinguished from temporary accommodation (such as hostels) and are essentially “residential”.
- 4.12 Aged residential care facilities are also homes for their elderly residents – in almost every case, their last home. The rest home is their home, and the communal facilities – the dining room, lounge, library, TV room, as well as the necessary ancillary amenities such as the kitchen and laundry – are as much part of that as the same amenities in their own homes are.

5. The definitions

- 5.1 For the purposes of setting an appropriate levy for retirement villages, we submit that the definition of “retirement village” should follow the definition in the Retirement Villages Act, viz:

“... the part of any property, building, or other premises that contains 2 or more residential units that provide, or are intended to provide, residential accommodation together with services or facilities, or both, predominantly for persons in their retirement, or persons in their retirement and their spouses or partners, or both, and for which the residents pay, or agree to pay, a capital sum as consideration and regardless of *[various factors relating to the type of right of occupation, consideration, etc]*...

³ Saville-Smith, K and Fraser R, *Resilient Communities – RV Housing Resilience Survey*, CRESA, June 2014, p.10

5.2 This definition aligns with the definition of “retirement village” in the EQC Act. We strongly recommend that this definition of “retirement Village” is retained.

6. Matters of importance when considering a new regime

Rationale for ensuring villages and aged care remain “residential”

6.1 Whatever regime is chosen to replace the current insurance-based system is likely to distinguish between “residential” – houses, apartment blocks and the like - and “non-residential” – factories, office blocks, and supermarkets (for example). As noted above, we believe there is a strong argument for retirement villages and aged care facilities to be treated as “residential” because, ultimately, they are our residents’ homes.

Levies based on risk

6.2 Legislation and the building code requires both aged care facilities and retirement villages to comply with a high standard of fire protection, including, but not limited to smoke alarms, fire extinguishers, sprinklers and fire emergency evacuation procedures. As such, they pose a low fire risk.

6.3 We submit that the funding regime include a factor that encourages operators to reduce the risk of fire through a discount on the premium. An experience rating system exists for the ACC where accredited employers enjoy a reduced ACC levy.

Separate supply agreements

6.4 We note the requirement for the funding to be equitable. We understand that some retirement village operators split perils in that they have a commercial agreement with their insurers that see a premium paid on a sample of their properties across the country on the basis that the entire portfolio of several dozen villages are unlikely to be destroyed in a single (or multiple related) activity. A similar argument can be advanced for the FENZ levy and we suggest that large property owners can enter into their private arrangements with FENZ at a national level to manage their levies.

Public good funding by the Government

6.5 We note the current government funding is around \$10 million of the total income for FENZ based on their public good activities. We submit that this is the bare minimum that should be funded from general taxation and what is required is a more rigorous analysis of the types of services provided by FENZ and aligning them with the charges on the beneficiaries of each service. Included in this category is the (welcome) support for the Australian bushfires by NZ fire officers. Clearly this is a public good activity and should be funded by general taxation.

Property-based v insurance-based funding

- 6.6 We note the paper's catalogue of deficiencies with insured value funding. As noted above, all registered retirement villages are required to have full replacement insurance under our consumer protection legislation, so the system is "universal", with the caveat outlined in paragraph 6.4 above so far as villages are concerned. Insured value also fails to adequately account for a lower risk profile (see paragraphs 6.2 and 6.3 above).
- 6.7 However, we also note that property values in TLA databases are also inconsistent across the country. A low value provincial property will pay less to FENZ than a higher value urban property yet the cost of fighting the fire is effectively the same. By the same token, a multi-million dollar valued property in a desirable suburb will be over-levied than a similar home in a less desirable location, but the cost of attendance for FENZ is similar. It then becomes important to balance different market values with a system that is fair and responsible, and reflects the owner's ability to reduce risk (or the opposite).
- 6.8 The RVA and ACA have no strong view on whether a new regime should be property based or insurance based, but hope the comments above are of use.



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