

IN THE MATTER

of the Local Government
Act 2002 (**Act**)

AND

IN THE MATTER

of a development
contribution objection
under Section 199C of the
Act

BETWEEN

Ryman Healthcare Limited

Objector

AND

Auckland Council

Respondent

A DECISION BY DEVELOPMENT CONTRIBUTIONS COMMISSIONERS

Helen Atkins (Chair)
Greg Shaw
Darrell Statham

All development contributions commissioners appointed under s199F of the Local Government Act 2002.

HELD at: Auckland

On: 21, 22 & 23 May 2018

DECISION ON OBJECTION

Decision issued: 10 August 2018

APPOINTMENTS

The Development Contribution Commissioners appointed to hear this objection have been duly appointed by the Minister of Local Government under s199F of the Local Government Act 2002 (**LGA**).

INTRODUCTION

1. Ryman Healthcare Limited (**Ryman**) are the owners and operators of the Possum Bourne Retirement Village (**Village**) at 75 Valley Road, Pukekohe. The Village has been fully operational for over a year. On 25 May 2016 Ryman's were issued with a Development Contribution Notice (**DC Notice**) from the Auckland Council (**Council**) which was assessed in relation to Ryman's application for a land use consent to construct, operate and maintain the Village¹.
2. Ryman requested a reconsideration of the DC Notice on 14 July 2016². The Council issued a letter on 23 June 2016 setting out its reconsideration of the DC Notice³. The Council did not change its original assessment. Ryman gave notice of its objection to the DC Notice on 14 July 2016 (**Objection**)⁴. The objection gave three specific statutory grounds namely, that Council:
 - (a) failed to properly take into account characteristics of a "comprehensive care retirement village" and its occupants that, on their own or cumulatively with those of other developments, would substantially reduce the impacts of the development on requirements for infrastructure and community facilities in the Council's district or parts of that district (section 199D(a) LGA); and/or
 - (b) has required development contributions for infrastructure and community facilities not required by, or related to, a comprehensive care retirement village, whether on its own or cumulatively with other developments (section 199D(b) LGA);
 - (c) has required a development contribution in breach of section 200 of the LGA (section 199D(c) LGA);
 - (d) has incorrectly applied its Development Contribution Policy (**DCP**) to the development (section 199D(d) LGA).

¹ LUC/2014/47421

² Felipe Panteli EIC Annexure D

³ Felipe Panteli EIC Annexure E

⁴ Felipe Panteli EIC Annexure A – note the date is the same as the reconsideration because Ryman's lodged the Objection to meet statutory timeframes

3. In summary in relation to each ground the following arguments, supported by evidence, were made:

Ground (a) – Substantially reduced demand

4. The Opening (and Closing) Submissions for Ryman conclude⁵ that in relation to this ground the Village has a number of unique features that mean the Village creates substantially reduced demand for community facilities (which in this context means all those activities for which contribution has been sought except transport) compared to the DCP demand assumptions. As a result, it is argued, the requirements for community facilities are similarly reduced. The evidence in support of this argument is from Mr Mitchell, Mr Akehurst and Mr Davidson. The differences in the demand (in household unit equivalent (**HUE**)) is set out in the tables below in paragraphs [10] and [11].

Grounds (b) – No causal connection

5. Ryman argues that there is no causal connection between the demand created by the Village and the requirement for community facilities. This argument is in two parts, namely:

(a) The Village's demand is significantly smaller than the demand assumed in the DCP (that is the same argument as for ground (a)); and/or

(b) It is not possible to identify any new assets, additional assets, assets of increased capacity, or any programme of works⁶ (**projects**) in Schedule 7 of the DCP that are required by or related to the Village. Further, they argue that it is not possible for Council to demonstrate this requirement.

6. The Opening Submissions⁷ and evidence (Mr Davidson and Mr Akehurst) argues that, on average, Retirement Unit residents in all of Ryman's villages use Council facilities far less than the average Aucklanders (between 4 and 8% of the demand). Ryman, therefore, argue that Council facilities are not required by, or related to those residents. In addition, Ryman argues that even if demand were to be determined to be that assumed in the DCP there is no causal link between that demand and the projects listed in Schedule 7.

Ground (c) – double dipping

7. This ground specifically relates to the provision of a local recreation reserve provided by Ryman at no cost as part of the subdivision process. Council has

⁵ Opening Legal Submissions, paragraph [104]

⁶ See s201A LGA

⁷ Ibid, paragraph [105]

not offset the value of the reserve in setting the development contributions for the development⁸.

Ground (d) – incorrect application of the DCP

8. This ground is made if the Council incorrectly applied its DCP. Ryman submits that this ground is made out due to the lack of a causal connection (ie the same issue raised in ground (b)).

Summary of key differences in contribution amounts

9. The Objection relates to development contributions for open space, stormwater, and community facilities (broken down into community service facilities, local recreation facilities, and regional recreation facilities). The Objection in relation to transport and public transport was not pursued⁹.
10. The Council required the following development contributions¹⁰:

Development contribution	Area of funding	Additional Household Unit Equivalents (HUEs)	Contribution payable excl. GST
Open Space Land Acquisition	Auckland Wide	126.50000	\$867,537.00
Stormwater	Urban Auckland	167.39962	\$679,307.66
Transport	Mainland (includes Auckland wide)	116.30000	\$409,376.00
Public Transport	Auckland wide	116.30000	\$168,518.70
Community Service Facilities	South (includes Auckland wide)	207.30000	\$102,406.20
Local Recreation Facilities	South	126.50000	\$120,048.50
Regional Recreation Facilities	Auckland Wide	126.50000	\$15,939.00
TOTAL			\$2,363,133.06

⁸ Ibid, paragraph [111]

⁹ Ibid, paragraph [57]

¹⁰ Felipe Panteli EIC, Annexure C

11. Ryman sought the following changes in its relief¹¹:

Activity	Area	HUEs	\$/HUE	D.C. Amount
Open Space Land Acquisition	Auckland Wide	3.2	\$6,858	\$21,686.36
Stormwater	Urban Auckland	0	\$4,058	0
Transport	Mainland	116.3	\$2,109	\$243,167.70
Transport	Auckland Wide	116.3	\$1,411	\$162,688.30
Public	Auckland Wide	116.3	\$1,449	\$167,069.70
Community Service Facilities	South	4.3	\$273	\$1,164.04
Community Service Facilities	Auckland Wide	5.3	\$221	\$942.32.80
Local Recreation Facilities	South	4.3	\$949	\$4,046.43.70
Regional Recreation	Auckland Wide	4.3	\$126	\$537.25
TOTAL Development Contributions			\$17,454	\$601,302.10

PRELIMINARY MATTERS

12. While there was a considerable amount of time leading up to the hearing, and there were numerous directions issued, by the time of the hearing there were no substantive preliminary matters raised that the Commissioners needed to determine prior to the hearing commencing. However, a preliminary issue arose in relation to a request from the Commissioners for additional information from the Council at the adjournment of the hearing.
13. The Commissioners had agreed at an early stage to allow for cross examination. During the course of the hearing, largely during cross examination of Council witnesses by Counsel for Ryman, a number of questions were asked. We were informed that the purpose of this line of questioning was to demonstrate that there were no projects (particularly in the stormwater area) listed in Schedule 7 of the DCP that the development contributions sought would be used for. In response Council witnesses referred to a number of documents and projects that were not, on their face, directly referred to in evidence. As a result of this the Commissioners directed the following:

The Council is to provide information of the growth related stormwater projects within the catchment that they will be using the Ryman's

¹¹ Ryman's Closing Submissions Appendix 1

development contribution towards. Mr Iszard referred to the 3 channel projects listed in Table 15 of the CMP, for example. Are these projects growth related in part or whole and are there any other projects. In addition we need to understand:

- the proportional allocation for each project of the growth component versus the existing capacity component;
- the contribution that Ryman's will be making as a proportion of the overall cost of the project.

Mr Hinchey also asked if the same information could be provided in relation to the local reserves that the development contribution will be contributing to. The Commissioners agreed to add this to the information request.¹²

14. The directions also gave leave to Ryman to call further evidence in response should it wish to do so. Ryman took the opportunity to do so and provided a supplementary statement of evidence from Ms Paice.
15. In the hearing and in Closing Submissions Ryman objected to this request on the basis that the Council had '*ample opportunity to provide that information over the course of the two year period since the objection notice was lodged*' and had failed to do so. In addition, Ryman submits that the information that was provided in accordance with the direction, which took the form of statements from Ms Parkinson and Mr Iszard¹³, was not limited to fact finding but rather included opinion evidence and additional stormwater modelling evidence.
16. We discuss the evidence of the parties in more detail below, but suffice to say here that, we agree with Ryman in that the Council did have ample opportunity to provide the information in advance of the hearing. The reason we requested it was because we were having difficulty following the supposed linkages between the DCP and aspects of the Council evidence presented during the hearing and especially during cross examination.
17. The Commissioners determine that for the reasons set out in this decision that we do not need to decline to consider the further statements and there is no procedural unfairness to Ryman's who were provided with, and took up, the opportunity to respond to the additional statements¹⁴.

PROCEDURAL DIRECTIONS AND PROCESS

18. Timetabling and procedural directions were issued by the Commissioners and adhered to by the parties. As noted we allowed cross examination of the parties. The request to cross examination was made by Ryman's and Council

¹² Minute to the parties via email dated 30 May 2018

¹³ See footer 10

¹⁴ See Dale Paice's supplementary statement and the Closing submissions for Ryman's

did not object on the basis that it was given the same opportunity. We required advance notice of the cross examination questions and the parties provided this in accordance with this direction.

19. The Commissioners undertook a detailed site visit of the Village and surrounds on Sunday 20 May 2018.
20. The hearing was held on 21, 22, and 23 May 2018 at the Auckland Town Hall. The hearing was adjourned on 23 May with the further information (referred to above) in the form of evidence from Council being received on 31 May¹⁵. Further evidence in response to the Council evidence was received from Ryman's on 12 June¹⁶ and Ryman's closing (reply) legal submissions were received on 19 June 2018. The Commissioners took some time to consider the evidence and submissions. On being satisfied no further information was required the hearing was closed on 3 July 2018.
21. Due to the extensive evidence received and the multiple issues under consideration the Commissioners regret that they have not been able to issue the decision in the 15 working day period.

ISSUES IN CONTENTION

22. Despite the extensive evidence produced, in conclusion we agree with the Counsel for Ryman that the case is 'relatively simple':

Ryman's Pukekohe Village has several features that either lead to no impact of substantially reduced impact on requirements for Reserves and for stormwater. It has also provided some community facilities, in particular stormwater infrastructure and a local recreation reserve. Ryman considers it should therefore have DCs for the entire Pukekohe Village assessed based on its actual net demand for Reserves and stormwater to ensure it is charged fairly, equitably and proportionately¹⁷.

23. Council appears to agree in that what it calls the 'core of the issue' is straight forward. Its submission is that:

The specific grounds of the objection are broadly based on the alleged failure of the Council to properly distinguish the Objector's development as a "comprehensive care retirement village" from what it terms a "lifestyle retirement village".¹⁸

24. The Council goes onto say that the DCP does not distinguish between "comprehensive care" and "lifestyle" retirement villages providing instead for

¹⁵ Bobbi Parkinson and Mark Iszard - Response to Commissioner Questions evidence

¹⁶ Dale Paice supplementary evidence

¹⁷ Ryman Opening Submissions paragraph [3]

¹⁸ Council Opening Submissions paragraph [10]

development contributions payable on a “retirement unit” or an “aged care room” basis. In short, the Council submit that if we were to consider the Village as a new category of development we are, in effect, allowing a challenge to the DCP which is contrary to the statutory framework set out in the LGA.

SUMMARY OF EVIDENCE

25. Evidence was pre-circulated in accordance with our timetabling orders and pre-read by the parties and by us. The hearing of the evidence focused on evidence summaries and updates and cross examination of the witnesses and questions from us.

26. The parties were represented by Counsel:

For the Objector:

- Luke Hinchey and Nicola de Witt;

For the Council:

- Melinda Dickey and Linda O'Reilly.

27. By way of summary we received evidence from the following witnesses:

For the Objector:

- Andrew Mitchell, (evidence in chief, rebuttal and a summary statement). Mr Mitchell is the Group Development Manager for Ryman;
- Greg Akehurst (evidence in chief, rebuttal and a summary statement). Mr Akehurst is a Director of Market Economics Ltd an independent research consultancy;
- Dale Paice (evidence in chief, rebuttal, a summary statement and supplementary statement). Ms Paice is a Technical Director in Civil Engineering at Beca Ltd;
- Carl Davidson (rebuttal and a summary statement). Mr Davidson is a Director and Shareholder of Research First Ltd, a research and insights company;
- Phil Mitchell (rebuttal and a summary statement). Dr Mitchell is a Director of Mitchell Daysh Ltd, an environmental consultancy.

For the Council:

- Bobbi Parkinson (evidence in chief, rebuttal, a summary statement and a response to questions statement). Ms Parkinson is a Principal Policy Advisor, Financial Policy at Council;
- Felipe Panteli (evidence in chief, rebuttal and a summary statement). Mr Pantelli is a Senior Policy Advisor in the Financial Policy Team at Council;

- Mark Iszard (evidence in chief, rebuttal, a summary statement and a response to questions statement). Mr Iszard is a stormwater engineer holding the position of Manager for Asset Management and Development for the Healthy Waters Department at Council.
28. In addition, for Council, we heard from Opus (Mr Scott Wilkinson and Ms Hansol Lee). The Opus team had been commissioned by Council to undertake stormwater modelling. Prior to the hearing the Commissioners had asked questions about Opus' involvement and these were addressed in a memorandum on behalf of Council dated 17 May 2018. The Opus team members came to the hearing to answer questions from Ryman and from us.
29. All of the material presented by the parties is held on file by the Council and was electronically recorded. The Commissioners took notes of the verbal presentations and any answers to our questions. For the sake of brevity we do not repeat that material in this decision. We do however refer to relevant matters raised in the material in subsequent parts of this decision where these matters go directly to the issues we have to determine.

THE COUNCIL'S DEVELOPMENT CONTRIBUTIONS POLICY

30. The DCP which is the subject of the Objection is the 2014 Policy. Since 2014 the Policy was amended in 2015 (primarily to take into account amendments to the LGA in 2014). We were informed that a new DCP would take effect from 1 July 2018.
31. Ryman was openly critical of the DCP but acknowledged that the Policy cannot be challenged in the objection process¹⁹. Ryman has categorised its objection as:
- Because of the highly unique features of Ryman's comprehensive care retirement villages, recognising the further exceptions for Retirement Units would have little effect on the DC Policy more generally. It would not create a precedent or undermine the DC Policy general application.²⁰
32. Council's position was that, to the extent Ryman was asking to be assessed on a different basis than that set out in the DCP (ie comprehensive care) then this is a challenge to the DCP and is not permitted by the statutory regime²¹.
33. We discuss the scope of our enquiry in the next section of this decision. We also discuss our recommendations in relation to the DCP near the end of this decision.

¹⁹ Ryman Opening Submissions paragraph [11.1]

²⁰ Ibid paragraph [123]

²¹ Council Opening Submissions paragraphs [11] and [89]

SCOPE OF OUR ENQUIRY

34. In closing Ryman summarises its case as follows:
- 5 ... the case for Ryman remains relatively simple. Ryman's Pukekohe Village has several features that either lead to:
 - 5.1 No requirement for; or
 - 5.2 Substantially reduced impact on:
 - requirements for Reserves and for stormwater.
 - 6 Ryman has also provided, at its cost, substantial community facilities, in particular stormwater infrastructure and a local recreation reserve.
 - 7 Ryman therefore considers the DCs for the Pukekohe Village should be assessed based on its actual net demand for Reserves and stormwater. Appropriate reductions should then be provided for the public assets it has vested. This process will ensure Ryman is charged fairly, equitably and proportionately.²²
35. As noted above to the extent that Ryman is seeking to be treated differently from other retirement villages the Council was concerned that this is a challenge to the DCP and as such is not permitted through the objection process.
36. We interpreted Council's concern to be that Ryman is asking us to use an alternative category to calculate development contributions, namely a comprehensive care category rather than the categories in the DCP, which allow for an assessment based on how many retirement units and how many aged care units a retirement village has. The DCP provides for a lower occupancy rate of retirement units and aged care rooms as compared to standard residential dwellings. The DCP does not account for the demographic characteristics of retirement unit and aged care room residents nor does it account for on-site facilities provided by retirement village operators. Ryman considers that these additional matters are critical in determining why the Village is an exception to the DCP.
37. The scope of our enquiry into this Objection is dictated to us in the legislation. Section 199D provides that an objection under section 199C may be made only on the ground that a territorial authority has:
- (a) failed to properly take into account features of the objector's development that, on their own or cumulatively with those of other developments, would substantially reduce the impact of the

²² Closing submissions paragraphs [5] - [7]

development on requirements for community facilities in the territorial authority's district or parts of that district; or

- (b) required a development contribution for community facilities not required by, or related to, the objector's development, whether on its own or cumulatively with other developments; or
 - (c) required a development contribution in breach of section 200; or
 - (d) incorrectly applied its development contributions policy to the objector's development.
38. The Objection cites all four grounds and Counsel for Ryman noted that this was a deliberate 'belt and braces' approach. The grounds are disjunctive and we discuss this further below.
39. Section 199C(3) is clear that the right of objection does not apply to challenges to the content of a development contributions policy prepared in accordance with section 102. In essence the right of challenge to a Policy is via the High Court in judicial review.
40. Section 199J relates to our consideration and provides:
- When considering a development contribution objection and any evidence provided in relation to that objection, development contributions commissioners must give due consideration to the following:
 - (a) the grounds on which the development contribution objection was made:
 - (b) the purpose and principles of development contributions under sections 197AA and 197AB:
 - (c) the provisions of the development contributions policy under which the development contribution that is the subject of the objection was, or is, required:
 - (d) the cumulative effects of the objector's development in combination with the other developments in a district or parts of a district, on the requirement to provide the community facilities that the development contribution is to be used for or toward:
 - (e) any other relevant factor associated with the relationship between the objector's development and the development contribution to which the objection relates.
41. At face value s199J appears to impart significant scope on our enquiry and considerations. However, this is tempered by the caveat in s199C(3) that we cannot allow challenges to the content of the DCP.
42. In this regard, the case for Council is that Ryman is using its Objection to challenge the DCP because Ryman is asking the Commissioners to impose a different unit of demand for its retirement units from the units of demand for

retirement villages in the DCP. In addition, Council are concerned that Ryman is also challenging the content of Schedule 7 in that it says that Schedule is deficient in terms of the detail and nature of the projects listed.

43. The DCP sets out the following Unit of demand factors for Retirement Units (as defined) and Aged Care Units (as defined)²³:

Development type	Activities	Units of Demand
Retirement unit	Transport and Public Transport.	0.3 HUE per unit
	Stormwater	1.0 HUE per unit 292m2 ISA
	All others	0.5 HUE per unit
Aged care room	Community service facilities	0.4 HUE
	Transport and Public Transport.	0.2 HUE per unit
	Stormwater	1.0 HUE per 292m2 IDSA
	All others	0.0 HUE per unit

44. Ryman's case is that the units for demand for both its Retirement Units and Aged Care Rooms is significantly less than that set out in the DCP because of the nature of the on-site facilities provided and the nature of the residents that reside in the Village. Ryman's case is that the features of its Village are such that it has a much lower demand on community facilities and infrastructure when compared to what the DC Policy has assumed²⁴. Council in response says *"the question is ultimately whether a substantial new development of 455 new residential units creates so little demand for community facilities that it ought to pay next to nothing by way of development contributions."*²⁵ Council goes on to add that the principal matters at issue in this regard are, is there a fundamental difference in the demand factors as between Ryman's evidence and the DCP and, if there is, what recognition can the Commissioners give to that in the context of s199C(3). In short, is giving recognition to the different demand factors allowing a challenge to the content of the DCP?
45. In relation to Schedule 7 Ryman is saying that there is no causal link between the demand created by the Village and projects that are needed to address that demand as set out in Schedule 7. In simple terms what Ryman is actually saying is that there is no causal link because there are no identifiable projects in Schedule 7 that clearly relate to the Village. In response Ms Parkinson's Responses to Commissioners' provides evidence that attempts to link the Schedule 7 information to the development contributions Ryman has been assessed to pay. We discuss this evidence further below.

²³ DCP, Schedule 2 and Ryman's Opening Submissions paragraph [55]

²⁴ Ryman Opening Submissions, paragraph [74]

²⁵ Council Opening Submissions (updated) paragraph [11]

Findings on the scope of our inquiry

46. We find that the Objection does not challenge the DCP such that it falls foul of the caveat in s199C(3). This is because the crux of the issues between the parties is a factually based consideration.
47. First, in relation to demand difference the question we have been asked is are we entitled to consider the specific features of the Village that substantially reduce the demand or impact the Village has on requirements for community facilities. In our view this is exactly the enquiry we are expected to make in terms of s199D(a). We therefore agree with the statements of Ryman's Counsel, that if we have no jurisdiction to consider the Village's demand differences from those assumed in the DCP then it is difficult to see that any objection citing s199D(a) being valid. This cannot have been the intention of Parliament when it passed the amendments to the legislation introducing the objection regime.²⁶
48. Secondly, in relation to Schedule 7 again the question is firmly set in terms of the statutory grounds of objection in that we are being asked to determine, whether Council has required development contributions for community facilities not required by, or related to, the Village. This is a factual analysis involving two distinct considerations, namely, the demand features of the Village and a review of Schedule 7.
49. For completeness, we do not read the Council's case as alleging that grounds (c) and (d) involve a challenge to the DCP, given they are based on the facts of the particular circumstances of the Village Development.
50. We have concluded that our analysis of the Objection is a factual one involving the following enquiry:
- (a) Does the Village have features that substantially reduce the demand for community facilities and infrastructure?
 - (b) Is the demand (if any) created by the Village that directly relates to community facilities (which for these purposes includes infrastructure) such that Council has indicated it needs to fund from development contributions?
 - (c) Has the Council double dipped in relation to the local reserve and stormwater infrastructure?
51. We note for completeness that it is our view that the fact that Ryman could have challenged the DCP (and do not do so formally) is not in itself an argument that this Objection is a challenge to the DCP. This Objection is limited to one of the many villages that Ryman operates in the Auckland

²⁶ Ryman Closing Submissions, paragraph [287]

region. If Ryman considers that the same approach needs to be taken in relation to other villages then it will need to argue these either on a case-by-case basis or seek to challenge the DCP by way of judicial review.

52. Before we consider the Objection grounds and evidence in more detail we refer further to the broader statutory framework.

STATUTORY FRAMEWORK AND RELATED LEGAL CONSIDERATIONS

53. While we have addressed the scope of our enquiry in the preceding section there is further comment required regarding the broader statutory framework and its relevance to our enquiry.

54. Both parties provided extensive legal submissions on the statutory framework. The crux of the argument over the relevance of the broader statutory framework, as set out in s199J, is set out in Council's Opening Submissions (Updated) which state:

Whereas section 199J introduces quite wide-ranging considerations when hearing or considering an objection, the objection itself remains subject to the limitation in section 199C that precludes a challenge to the content of a development contribution policy.²⁷

55. This does somewhat beg the question as to what is the relevance of the matters set out in s199J. Section 199J essentially references back to other parts of the development contributions framework in the LGA. Ryman's position is that the seven development contribution principles in s197AB, together with the purpose of development contributions in s197AA are:

...important when interpreting all of the provisions relating to DCs, including the objection grounds. The principles must be given due consideration in this objection. The principles also inform the application of the facts in this case."²⁸

56. In furtherance of their argument Ryman's refer to a number of key themes (this was done in the Opening and Closing Submissions) as follows²⁹:

- (a) The need for a **causal connection** between the development demand (including cumulative effects) and the need for new assets or assets of increased capacity which the Council will need to fund;
- (b) That a development contribution regime can only be used to **recover costs** of specific growth projects – it cannot be used as a general pool of public money;

²⁷ Council's Opening Submissions (Updated), paragraph [36]

²⁸ Ryman's Closing Submissions, paragraph [32]

²⁹ Ibid, paragraphs [34] – [49]

- (c) That while the regime **allows for grouping** of certain developments by geographic area or categories of land use (s197AB(g)) this must be done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity;
 - (d) That the DCP should be **clear, transparent and predictable** – principle set out in s197AB(e));
 - (e) That development contributions can only be used if the effects of developments is to **require new or additional assets or assets of increased capacity** (s199AB(a));
 - (f) A development contribution cannot be required if it has already been required via a different mechanism (such as under the Resource Management Act 1991 or the Building Act 2004). This is the so called **principle against ‘double dipping’**;
 - (g) That development contributions **can only be used for the assets listed in the schedule of assets** (s198(2) and s201A(1)).
57. To the extent relevant, case law was referred to by both parties³⁰. In addition, Ryman referred to the seven DC Objection cases issued to date, noting appropriately that none have similar facts but do provide some comparisons³¹.
58. In terms of whether Council agreed to the relevance of these themes Council does not couch its response in relation to each specific theme raised. Rather Council looked at matters in the round and argued as follows:
- (a) Council does not deny a causal connection must be established³². Rather Council states that this does not mean every development must be tested to determine whether it generates a need for every asset or project comprised in the activity or group of activities for which contributions are required.³³
 - (b) Activities and assets can be grouped. Development contributions for individual developments need not be directly linked to every separate new asset, additional asset, asset of increased capacity, or programme of works for which development contributions are to be used.³⁴ To the extent that the groupings provided in the DCP are too

³⁰ Beaumont Trading Company Limited v Auckland Council [2016] NZCA 223 (Council Opening Submissions at paragraph [19]; Ryman Opening Submissions at paragraph [28]); NEIL Construction Limited v North Shore City Council [2008] NZRMA 275 (Ryman Opening Submissions, paragraph [48]; Council Opening Submissions, paragraph [61])

³¹ Ryman Opening Submissions, paragraph [47]

³² Council Opening Submissions (Updated), paragraph [69]

³³ Ibid, paragraph [62]

³⁴ Ibid, paragraphs [63] – [69]

broad the proper challenge is to the DCP “*except in situations where the demand factor is so clearly erroneous that it would be inconsistent with considerations of fairness and equity*” which is not the case here.³⁵

- (c) It is for the Objector to establish a genuine exception not for the Council to prove the validity of the DCP. In this regard, the crux of the Council case is that Ryman's independent living units prima facie:

...come within the definition of a 'retirement unit' set out in Schedule 2 of the DCP and discussed in paragraph 23 of Mr Panteli's EIC. The provisions of the DCP are outside the scope of this Objection. This argument to the effect that the DCP is lacking because it does not in the DCP take into account unique demand factors of a retirement unit is precluded by section 199C(3) of the Act.³⁶

59. We detail our findings on the facts and evidence in relation to these matters under the specific ground headings in the next section of this decision. Suffice to say here that there is no dispute between the parties that the matters raised by Ryman, and referred to as themes, correctly summarise the principles applying to the development contributions regime. We have interpreted Council's response as stating that the Commissioners cannot utilise any perceived or real shortcoming in the DCP as justification for upholding the Objection. Council, states it is for the Objector to establish that the grounds of the Objection are made out and it is not for the Council to determine the validity of the DCP.³⁷

Summary of findings on scope

60. As we have noted, in the scope section above, we accept the submission of Ryman that this Objection is not a challenge to the DCP. Rather, the Objection and the supporting material constitutes Ryman's case that its Village is a genuine exception to the DCP. We now turn to consider each of the grounds with reference to the evidence of the parties.

GROUNDINGS OF OBJECTION

61. The Objection grounds refer to reserves (meaning everything except stormwater) and stormwater infrastructure. Ground (a), (c) and (d) are primarily focussed on the contributions for reserves whereas ground (b) is primarily relevant to the stormwater contribution.

³⁵ Ibid, paragraph [76]

³⁶ Ibid, paragraph [69]

³⁷ Ibid, paragraph [37]

62. As noted above, when we use the term 'Council facilities' we are referring to all the activities that trigger development contributions that are subject to the Objection. In this case those activities are referred to in the DC Notice as Open Space Land Acquisition, Stormwater, Community Service Facilities (South an Auckland Wide), Local Recreation Facilities and Regional Recreation Facilities.
63. In terms of difference between the contributions imposed by Council and those sought by Ryman's the tables are set out in paragraphs [10] and [11] above. The specific details that undermine the Ryman's table are set out in Appendix 1 of Mr Akehurst's rebuttal, which is replicated as Attachment A to this decision.
64. For ease of reference we break the consideration down into the same activity components that the Objector uses, namely, reserves and stormwater.

Reserves : Objection under s199D(a)

65. For ease of reference the objection ground under s199D(a) is repeated here as follows:

Council failed to properly take into account characteristics of a "comprehensive care retirement village" and its occupants that, on their own or cumulatively with those of other developments, would substantially reduce the impacts of the development on requirements for infrastructure and community facilities in the Council's district or parts of that district.

The correct comparison – other retirement villages or the average Auckland household?

66. Prior to considering the detail of this ground we need to comment on the debate between the parties as to whether Ryman needs to show that the Village was significantly different to other existing retirement villages.
67. Ryman's evidence³⁸ compares the average Aucklanders' use of reserves compared to the Village residents' use. Ryman has done this because, it says, the DCP assumes (albeit implicitly) that elderly residents living in retirement units create the same demand for reserves as the average Auckland household (on a per capita basis)³⁹. Ryman accepts that the DCP takes into account the lower occupancy rate of retirement units compared to standard residential dwellings (of about half). However, Ryman argues that the DCP does not take into account other features of the Village which it, Ryman argue, establish their case in terms of s199D(a).

³⁸ Greg Akehurst EIC

³⁹ Ryman Closing Submissions, paragraph [108]

68. Council was critical of the comparison that Ryman was making. Instead Council considered that Ryman ought to compare the Village with other retirement villages. The essence of the Council argument is that if Ryman had made this comparison then it would be obvious that Ryman is not unique such that the features listed do not demonstrate a case for a reduction⁴⁰.
69. We agree with Ryman that Council's comparison is correct because the correct comparison is with the DCP which looks at the average Auckland household. In any event Ryman does provide evidence (Mr Mitchell) on how its villages and this Village differ from those provided by other operators. In addition, Council's witness, Mr Panteli, accepted in cross examination that he is not a retirement village industry expert and he is not familiar with any of Ryman's retirement villages. Therefore, we have no expert evidence before us that responds to the evidence of Ryman that its retirement villages in general, and specifically, this Village, are different from those offered by other retirement village providers/operators.
70. In summary, the Commissioners agree that the correct comparison is between the Village and the average Auckland household not between the Village and other retirement villages. We note that Council was critical of the survey information provided by Ryman and we discuss the results and paucity of the survey information below.

The features of the Village

71. We agree with Ryman that identifying the features of the development is a factual enquiry. It is these features that will provide the reasons why the Village has a different demand on reserves than what is provided for in the DCP. Ryman has identified 4 key features of the Village relevant to the development contribution sought as: stable occupancy rate and use; demographics and frailty of residents; on-site amenities and activity programmes; and the recreation reserve.
72. With regard to the stable occupancy rate Mr Mitchell told us that this is about 1.3 as compared to 2.6 for a standard dwelling.⁴¹ Council did not dispute this. Council raised a concern with the potential for the use to change from a retirement village to some other use. Notwithstanding the evidence from Ryman that change of use while they owned the Village will never occur⁴², throughout the hearing Council accepted (both during cross examination and confirmation from Counsel) that any change of use would trigger a change to the resource consent which would then trigger a reassessment of the development contributions.

⁴⁰ Pantelli EIC, paragraph [46]

⁴¹ Andrew Mitchell Rebuttal, paragraph [20]

⁴² Andrew Mitchell, EIC and Summary Statement

73. In terms of the demographics and fragility of the residents of the Village we heard that the average age of residents of the retirement units is 82.1 years and the aged care units 86.7 years. We also heard that Ryman provides approximately 50:50 as between retirement units and aged care units. Ryman focuses on residents who have specific needs such as deteriorating health, mobility, memory issues and companionship needs.
74. With regard to on-site amenities and programmes we only have evidence from Ryman that sets out what these amenities and programmes are. Ryman accepted that it does not attempt to directly replicate Council facilities and therefore it accepted that some use of Council facilities will take place. The case for Ryman was that due to the amenities and programmes on site there is a very low demand on reserves and this is established by the survey information referred to in the evidence of Mr Akehurst and Mr Davidson.

The survey

75. Turning to consider the survey information. The Council's evidence (Mr Panteli), legal submissions and cross examination questions of Ryman's experts (Mr Mitchell, Mr Akehurst and Mr Davidson) was critical of the survey methodology. The experts for Ryman, in particular, Mr Davidson, were adamant that the survey methodology was robust and represented industry best practice.
76. We agree with the observation of Counsel for Ryman in Closing Submissions⁴³ that during the course of the hearing Mr Panteli focused more on how the survey data was used rather than on criticisms of the methodology. In any event, in the absence of expert evidence to contradict the evidence of Mr Davidson regarding the survey methodology, we are not in any position to conclude that the methodology was anything but robust and in accordance with industry best practice.
77. With regards to the way in which the survey information was interpreted and used, Council was concerned that Ryman's interpretation under estimated the use of Council facilities by Village residents. Further, Council argued that even if the use was as low as the survey suggested then the frequency of use by the residents is irrelevant because it does not mean Council is not required to provide those facilities to the community as a whole⁴⁴.
78. As we have stated previously, in the absence of any alternative expert opinion or survey we are left to determine the Objection based on the information before us. We accept that the survey results (together with the evidence of Mr Mitchell) supports the case for Ryman's that those residents who occupy the retirement units at the Village are more similar to aged care

⁴³ Paragraph [150]

⁴⁴ Council Opening Submissions, paragraph [55]

room residents than the general population and most likely in other retirement villages. We also accept that the survey results show that Ryman's residents are much less active and mobile than the average Aucklanders. We also accept that, as compared to the average Aucklanders, the demand placed on reserves by the Village residents will be far less. Finally, we accept that the survey information establishes that the Village residents demand on reserves is far less than that assumed in the DCP. In the DCP Council has accepted that the demand on reserves by aged care rooms is zero.

79. We therefore find that, in terms of the DCP and this Objection ground, we are not only entitled, but must, determine whether the frequency of use of reserves by Village residents has met the threshold of establishing substantially reduced demand.

Indirect benefits

80. In relation to indirect benefits Council is concerned that Ryman's case understates the indirect benefits that Village residents derive from reserves. Such indirect benefits occur by the mere existence of facilities in the absence of actual use by Village residents.
81. A few examples were discussed such as residents visiting a park or beach without actually getting out to walk there, or the mere knowledge of there being parks or beaches that can be visited by them, their relatives, friends and the wider community.
82. The parties did not disagree that indirect benefit is an important consideration and that development contributions for an indirect benefit are valid. The case for Ryman is that such indirect benefits are relatively small and proportionate to direct usage⁴⁵. Mr Akehurst's evidence is that the indirect benefit has been accounted for in his calculations in exactly the same way it is accounted for in the DCP. Mr Panteli appeared to agree with Mr Akehurst during questioning and we are not in any position to take the matter of indirect benefit any further.

Do the Village features substantially reduce demand?

83. The question we now need to turn to and answer is: are there features of the Village that, on their own, or cumulatively with those of other developments, substantially reduce the impact of the Village on requirements for reserves? The key consideration here is what does substantial reduction mean?
84. We find that Ryman has made the case that there are features of the Village, in particular the demographic (age and stage) characteristics of the residents that reduces the demand on reserves. This reduction in demand is supported by the survey information provided by Ryman. Whether this reduction in

⁴⁵ Ryman Closing Submissions, paragraph [158]

demand occurs due to the provision of on-site facilities is difficult to establish but it seems at least, in part, likely to be a factor. The question for us is – is the reduction in demand 'substantial'?

85. Ryman submits that a 50% threshold is appropriate for demonstrating a 'substantial reduction'⁴⁶. In submitting this Ryman refers to the Urbanism Plus report⁴⁷, which is a Council commissioned report prepared for the 2012 DCP process. In that report it states a 50% variation is 'extremely significant' in terms of 'equitably attributing demand' between development types⁴⁸. This 50% reduction is translated into policy in the DCP, including the differentiation between retirement units and aged care rooms. In addition, as Ryman correctly points out, during cross examination, both Mr Panteli and Ms Parkinson accepted that a 50% difference is substantial.
86. We find that a variation of 50% or more would meet the statutory requirement of 'substantial'.
87. We accept the evidence of Ryman that the Village creates demand for reserves that is well below 10%. We therefore find that this clearly meets the threshold of 'substantial reduction'. The question therefore is, how does this reduction translate in terms of the calculation of the development contribution owed?

Revised development contribution for Reserves

88. In his evidence in chief Mr Akehurst analyses the survey results and provides us with his opinion on how the results translate into demand (or HUE's) in terms of the DCP⁴⁹. Mr Akehurst then updates his assessment in his rebuttal evidence as a result of the additional survey undertaken by Research First⁵⁰ which was completed after the evidence in chief timetable. Mr Akehurst uses the survey results to calculate the total amount of HUE's for the Village and his calculations are provided in Attachment A. The calculations are, that:
- (a) the HUE for open space acquisition is 4.2;
 - (b) the HUE for community service facilities and local and regional recreation facilities is 5.3; and
 - (c) the stormwater HUE is zero (referred to further below).

⁴⁶ Ryman Closing Submissions, paragraph [160]

⁴⁷ Bobbi Parkinson EIC, Annexure A

⁴⁸ Ibid section 3.1.15

⁴⁹ EIC, paragraph [131]

⁵⁰ Note when Mr Akehurst produced his EIC the only survey information available was that undertaken by Gravitas

89. At the hearing Council indicated that as a result of a miscalculation there is a historical credit that needs to be applied which would bring the Ryman's HUE's down to 3.2 and 4.3 respectively.
90. We therefore find that ground (a) has been established and the total contribution for open space acquisition, community service facilities and local and regional recreation facilities should be reduced in accordance with the relief sought by Ryman. We note that in reviewing the calculations in the table in paragraph [11] above that there appears to be a few minor errors presumably related to the way the dollar amounts have been rounded. We set out our calculation of the DC amount below under the heading "Decision".
91. As noted by Ryman (and accepted by Council) the Objection grounds are disjunctive⁵¹. Having made a case for the reserves activities under ground (a) means that Ryman does not need to establish a case under all the grounds cited. For completeness, however, the Commissioners consider it important to set out its findings in relation to the other three grounds.

Reserves : Objection under s199D(b)

92. We agree with the Objector that this ground applies if the Council has required a development contribution for reserves that are not required by or related to the Village – on its own or cumulatively⁵².
93. Ryman noted that whether reserves will not be required by or related to the Village is a factual consideration requiring us to determine whether:
- (a) The projects (as defined above, paragraph 5(b)) are listed in Schedule 7 of the DCP; or
 - (b) If the projects are listed in Schedule 7 whether there is a causal connection between the Village and those matters.
94. Ryman's evidence is that for over two years they have been seeking information from Council about how any of the projects listed in Schedule 7 are required by, or related to, the Village. Likewise, the Commissioners had extreme difficulty in linking the facilities or projects in Schedule 7 identified by the Council as being related to the Village. In fact the Commissioners could not make this linkage. For this reason the Commissioners sought clarification from the Council post the hearing. Unfortunately the information provided did not provide the clarity the Commissioners were hoping for. We make recommendations in relation to the DCP in that section below.

⁵¹ Ryman Closing Submissions, paragraph [62]

⁵² Ibid, paragraph [86]

95. The projects listed in Schedule 7 and hi-lighted by Ms Parkinson in Response to Commissioner Questions⁵³ are extremely broadly worded. For example, an item listed under the head Community Service Facilities simply says, "Halls access". Likewise in the Stormwater activity there are items such as, "Stormwater asset renewals holding account" and "Stormwater flood alleviation". We accept that there are a few more specific items listed such as Local Recreation Facilities – Playground (Loughbourne Pukekohe) and under Stormwater PC14 "Waiarohia Ponds". However, in general, we find that it is extremely difficult, at best, to identify any projects listed in Schedule 7 that clearly relate to, or are required by, the Village. In the absence of these being clearly identity it is equally difficult to establish a causal connection.
96. In its relief Ryman is not maintaining that if ground (b) is established then no contribution is payable, although that is one logical conclusion. Instead what Ryman submits is, "*were any such works identified, its residents would create very little demand for them.*" We therefore conclude that as there are some projects that are specified and arguably may relate to, and/or be required as a result of, the Village that the relief Ryman is seeking is appropriate and ought to be granted on the basis that ground (a) has been clearly established.

Reserves : Objection under s199D(c)

97. Ground (c) is the double dipping ground. In this case has Council double dipped in relation to requiring the vesting of the local reserve under the resource consent process and also required local reserve development contributions.
98. The subdivision consent for the development required the vesting of nearly 5,000m² (4,994 m²) of land for recreation reserve. Council raised a technical argument that because the reserve was required by the subdivision consent and the DC Objection relates to the land use consent then we have no jurisdiction to consider this. We do not agree because the objection ground refers to s200 LGA which in turn states:
- (1) A territorial authority must not require a development contribution for a reserve, network infrastructure, or community infrastructure if, and to the extent that—
- (a) it has, under section 108(2)(a) of the Resource Management Act 1991, imposed a condition on a resource consent in relation to the same development for the same purpose; or
99. Thus, to the extent the Council is seeking a contribution for the same reserve that has already been provided as a result of a condition on the resource consent then the ground is established. We do not consider that the condition

⁵³ Appendix A

has to be on the same resource consent that triggered the DCN. As long as there is a resource consent condition requiring the reserve that is sufficient.

100. The Commissioners are in some difficulty when considering this ground as it applies to the reserve. The DCP is unclear about the status of this reserve and it does not appear to be listed in the items in Schedule 7. It is therefore difficult to say that the vesting of the reserve for free represents double dipping in terms of the development contributions sought.

101. Council's argument is that:

... even if the provision of the subdivision lot could be said to address the need for neighbourhood reserve land in relation to the development, it does not appreciably address the need for neighbourhood reserve land on a wider scale."⁵⁴

102. As noted we are having difficulty with making a determination on this ground given the limitation of information about the reserves requirements in the DCP. In any event, as we have found that ground (a) has been established then we are of the view that providing an ultimate finding on this ground is not necessary. We say this because ground (a) states that the Village residents do not use reserves at the same level as the average Aucklanders. Therefore, if we accept the Council's argument of no double dipping that does not mean a reduction in the DC's for reserves is inappropriate. On the contrary we have found that a reduction is appropriate.

Reserves : Objection under s199D(d)

103. This ground relates to the way in which the Council has applied its DCP. We have no evidence to suggest that Council has incorrectly applied its DCP to the development. In fact the criticism of Ryman's is Council did apply the DCP when it should have considered the particular features of the Village that would have resulted in a special case being made for a departure from the policy.

104. We therefore find that this objection ground has not been established.

Stormwater – general findings

105. We note in relation to stormwater that there was extensive evidence on a range of matters. In our view the issue in the context of a DC objection is relatively simple. Therefore, before turning to consider the grounds as they

⁵⁴ Council Opening Submissions (Updated), paragraph [66]

apply to stormwater there are some factual determinations we need to make in relation to the following:

- (a) What did the resource consent condition require in terms of stormwater mitigation?
- (b) Was the on-site stormwater system built in accordance with the resource consent conditions?
- (c) What is the relevance of the post consent modelling undertaken by Opus for the Council?
- (d) What stormwater projects are listed in Schedule 7 and how are they required by or related to the Village?

Resource consent requirements and compliance

106. Dr Mitchell provided evidence about what was required in relation to stormwater mitigation. In short, Council required hydraulic neutrality by maintaining similar or lower peak discharge flow rates from post-development at the site, when compared to pre-development flows⁵⁵. The conclusion in the decision report for the subdivision consent is that the proposed stormwater system would achieve hydraulic neutrality. This was then followed through into conditions of consent⁵⁶.
107. There were variations made to the subdivision consent that marginally reduced the maximum impervious area and resulted in changes to the condition relating to the stormwater infrastructure⁵⁷. Nothing changed in relation to the requirement for the development to achieve hydraulic neutrality.
108. After some discussion we received confirmation that engineering design approval had been issued for the stormwater works and those works have now vested in Council⁵⁸.
109. We find, therefore, that the stormwater condition of consent required hydraulic neutrality and in issuing engineering approval and allowing the ponds to vest Council has explicitly accepted that the conditions of consent have been complied with. Further, we find that as a result the on-site stormwater system is deemed to achieve hydraulic neutrality. We comment on the relationship and communication between the resource consenting arm of Council and the development contribution assessment arm in our section on "Recommendations" below.

⁵⁵ Rebuttal evidence, paragraph [47]

⁵⁶ Ibid, paragraph [48]

⁵⁷ Ibid, paragraph [53] and [54]

⁵⁸ Certificate of Title information provided during the course of the hearing

Relevance of modelling

110. Ryman's is highly critical of the modelling commissioned by Council on the basis that its findings cannot be applied retrospectively. Additionally, it says, in any event the modelling does not support the proposition that the on-site stormwater system does not achieve hydraulic neutrality.
111. We agree that using the modelling to now say the on-site stormwater system does not achieve hydraulic neutrality is extremely fraught. We say this because there is absolutely nothing Ryman can do retrospectively given the system is built, approved, and is no longer owned by them. We find that the modelling is not relevant to our consideration. In any event we agree with Ryman's that the modelling does not show that hydraulic neutrality is not achieved. As noted by Ms Paice the "*Opus 2017 Study does not show that the infrastructure constructed by Ryman is inadequate to match pre-development flows.*"⁵⁹
112. We find that the modelling is not relevant to our consideration and further even if it were relevant it is not conclusive evidence of the fact that hydraulic neutrality has not been achieved.
113. We now consider if there are any stormwater projects that are required by or related to the Village. To do this we must consider Schedule 7.

Schedule 7

114. Ryman have raised the same issue in relation to Schedule 7 for stormwater as they did for the other activities. In relation to stormwater the lack of projects was particularly problematic because even if we were to find that the Village generated some demand for off-site stormwater projects (in the sense that the stormwater on site does actually leave the site and enter the wider stormwater network) we were unable to find what projects within the catchment of the wider network the development contributions for stormwater were going to fund.
115. We agree with Ryman that Schedule 7 must list each new asset, additional asset, asset of increased capacity or programme of works for which the DC are intended to be used for. We note that in other parts of the region the DCP does provide specific information but such specifics are lacking for this part of the region and particularly in relation to the catchment in which the Village sits. During the presentation of his evidence Mr Iszard referred us to projects in the Catchment Management Plan (**CMP**). Our difficulty with this is that these projects are neither listed nor referenced in Schedule 7. The costs of these projects noted in the CMP are not broken down such that there is an existing

⁵⁹ Dale Paice Rebuttal, paragraph [16]

level of service component and a growth component. As such, we have no way of attributing these projects to this development.

116. We do not consider that these omissions in Schedule 7 are a challenge to the DCP. Rather, we consider, in the context of this Objection, all those omissions do is establish the case for Ryman, namely, that Council cannot convincingly point to any stormwater projects in Schedule 7 that are required by or related to the Village. Therefore, the DCP simply does not have projects in this catchment that it can convincingly point to where the development contributions Ryman are being asked to pay will be used to fund.

Stormwater – findings on specific grounds of objection

117. In relation to s199D(a) the argument is that the provisions of an on-site stormwater system that is hydraulic neutral is a feature that substantially reduces demand on the Council's infrastructure. On face value and in the absence of any cogent evidence to the contrary (ie there being no projects etc in Schedule 7) we find that this ground is established for the reasons outlined above.
118. In relation to s199D(b) this is the most relevant ground for the stormwater works. Council was unable to convincingly point to any projects that were required as a direct result of the Village. Therefore it cannot be said that there are any stormwater projects that are required by or related to the Village.
119. In relation to s199D(c), as noted by Ryman's in Closing:
252. In a hypothetical world, Council would have completed the CMP, identified the land on which strategic infrastructure would be located, and designated and obtained those pieces of land. It would have then built the infrastructure and charged DCs to recoup the costs. That has not happened in this catchment.
253. What has happened is that Ryman provided a stormwater system at the Pukekohe Village designed to achieve "*hydraulic neutrality*" in accordance with the CMP and other relevant planning documents. The stormwater system put in place by Ryman has meant that Council has not been required to undertake or fund those works itself. The wetlands have now vested in Council and are a community asset. Accordingly, Ryman has provided the same assets that DCs would otherwise need to provide for. Council has double dipped by failing to provide a discount or payment for the stormwater system provided by Ryman.
120. We agree with Ryman's assessment and conclude that on the face of it Council appears to be double dipping with regards to the stormwater infrastructure.
121. In relation to the incorrect application of the DCP (s199D(d)) for the reasons set out above we do not find that Council incorrectly applied its policy.

RECOMMENDATIONS

122. Ryman's have encouraged us to make observations about the DCP⁶⁰. We consider it appropriate that we do so.

Observations about the DCP

123. We accept that the 2014 DCP like its predecessor was still grappling with the administrative difficulties of amalgamating the various Auckland local authorities. However, as time moves on from the date of amalgamation in 2009 it can reasonably be expected that the DCP will be improved. This is to ensure that the linkages between the demand created by a development and the projects (in that term's widest sense) that a development contribution is taken and ultimately used for are clear.
124. In the context of this particular development we had extreme difficulties locating the projects (particularly in relation to stormwater) that the development contribution that Ryman was being asked to pay would be used for.
125. In the context of a regime where transparency is key and the principles of equity and fairness are prevalent this is troubling. In addition, the requirement to refund contributions that are not used⁶¹ means Council must clearly identify what contributions have been collected for what community facilities.
126. The Commissioners recommend that the Council reviews Schedule 7 to ensure that it clearly identifies, with sufficient detail, all the community facilities that development contributions are contributing to.
127. In relation to the grouping of activities and whether the Council needs to consider amending the DCP to specifically provide for Ryman we do not recommend this. This is because such a provision would have to be specific to Ryman and this would be inappropriate in the context of a widely applying policy. Rather, we consider the better way of addressing the Ryman context is for the parties to enter into a development agreement that explicitly recognises the different demand profile of Ryman's villages.

Council communication and consistency

128. Ryman were highly critical of Council's lack of engagement on this issue. We do not consider that we need to comment on this matter suffice to say that this type of situation is exactly why Parliament included the development agreement provision in the regime.

⁶⁰ Ryman Closing Submissions, paragraph [280]

⁶¹ s209 LGA

129. In terms of Council consistency as between the resource consent regime and the development contributions regime we consider that in this case some communication between the relevant teams would have been helpful.
130. In accepting the stormwater infrastructure for vesting Council did so on the basis that the CMP requirements (which in turn are the broader regional consenting requirements) were met. This, coupled with the lack of any other stormwater projects in the catchment that the Ryman development contribution would fund, means the Commissioners had no choice but to uphold the Objection. A conversation between the teams may have alerted Council to the issues such that, at least, the stormwater development contribution may have been resolved earlier in the process.

DECISION

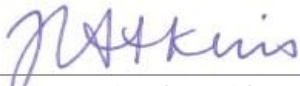
131. It is the decision of the Commissioners that:
- (a) In relation to the objection ground under s199D(a) this is established.
 - (b) In relation to the objection ground under s199D(b) this is established.
 - (c) In relation to the objection ground under s199D(c) no finding is made.
 - (d) In relation to the objection ground under s199D(d) this is not established.
132. In relation to the relief as noted above in paragraph [90] our calculations are slightly different from those set out in the Closing Submissions. We have calculated the amounts by multiplying the HUE's by the dollar amount per HUE. To the extent it is necessary leave is given to the parties to respond on this point if there is a concern with regard to our calculations that may require the issuing of an erratum to this decision.

Activity	Area	HUEs	\$/HUE	D.C. Amount
Open Space Land Acquisition	Auckland Wide	3.2	\$6,858	\$21,945.60
Stormwater	Urban Auckland	0	\$4,058	0
Transport	Mainland	116.3	\$2,109	\$245,276.70
Transport	Auckland Wide	116.3	\$1,411	\$164,099.30

Public transport	Auckland Wide	116.3	\$1,449	\$168,518.70
Community Service Facilities	South	4.3	\$273	\$1,173.90
Community Service Facilities	Auckland Wide	5.3	\$221	\$1,171.30
Local Recreation Facilities	South	4.3	\$949	\$4,080.70
Regional Recreation Facilities	Auckland Wide	4.3	\$126	\$541.80
TOTAL Development Contributions			\$17,454	\$606,808.00

133. We thank the parties for their attendance and contributions.

DATED this 10th day of August 2018



Helen Atkins (Chair)



Greg Shaw



Darrell Statham

**APPENDIX 1 – REVISED ANALYSIS TABLES, BASED ON RESEARCH
FIRST SURVEYS**

Pukekohe Village HUEs for Reserves recalculated

Independent Residents	Council Assumptions / HUE	Ryman Independent Units	Ryman % of Council HUE
Population	2.6	1.3	50.0%
Reserve use per person - survey based	5.0	0.17	3.3%
Total Reserve use per HUE (or Unit per week)	13.1	0.2	1.6%
Pukekohe Village Population (Independent Units)	Rate/Ratio or Charge		
No. of Independent Units	253		
Residents per Unit	1.3		
Total Independent Population	329		
Reserve Use per week per person (Survey)	0.17		
Total Reserve Uses/week for Village	54.6		
Council Reserve visits per HUE	13.1		
Implied Independent HUEs for Pukekohe Village	4.2		

Pukekohe Village HUEs for Community Facilities recalculated

Independent Residents	Council Assumptions / HUE	Ryman Independent Units	Ryman % of Council HUE
Population	2.6	1.30	50.0%
Community Facility use per person - survey based	4.5	0.19	4.2%
Total Facility use per HUE (or Unit per week)	11.6	0.24	2.1%
Pukekohe Village Population (Independent Units)	Rate/Ratio or Charge		
No. of Independent Units	253		
Residents per Unit	1.3		
Total Independent Population	329		
Facility Use per week per person (Survey)	0.19		
Total Com. Facility Uses/week for Village	61.0		
Council Com. Facility visits per HUE	11.6		
Implied Independent HUEs for Pukekohe Village	5.3		