

# **RMA/2011/13 - Marlin Waters Retirement Village**

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**TO** Judicial Committee

**FROM** Michael Eastwood - Policy Analyst - Development Contributions

**DATE** 15 October 2015

**SUBJECT** **RMA/2011/13 - Marlin Waters Retirement Village**

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## **1 Purpose of Report**

To determine whether or not RMA2011/13 and subsequent variations to that consent still qualify for the 0.5 unit of demand reduction of development contributions per residential unit for retirement villages as determined in the Judicial Committee decision dated 29 March 2012.

## **2 Background**

This report is being brought to the Judicial Committee under their delegated authority, section 1(g) - Requests for review or objections to delegated decisions by the Committee and/or delegated officers

The Marlin Waters Retirement Village, 20 Vanita Drive, Whitianga, sits within the Whitianga Waterways development currently under construction by Whitianga Waterways Limited beneath the umbrella of Hopper Developments Limited.

Marlin Waters is one of two retirement villages proposed by the developer within the development and is the smaller of the two designed for 62 retirement units. The other, being the much larger Whitianga Retirement Village.

On the 25 September 2007, Whitianga Waterways Limited applied for RMA/2007/344 Land Use Consent for the Whitianga Retirement Village with the Consent being granted for this retirement village on the 20 November 2008. Development contributions were calculated on that Consent under the applicable policy and at the applicable rate. At the time, the policy had no reduction for retirement villages so all of the units within that development were levied at 1 Unit of demand (UOD).

On 10 February 2010, Whitianga Waterways successfully applied to the Judicial Committee for a reduction of the Development Contributions levy for RMA/2007/344 to 0.5 UOD per residential unit. The basis for this decision was around information supplied by the applicant, including:

- an average resident study performed by the Retirement Villages Association which gave the average number of persons per unit in a retirement village, regardless of size, at 1.3 persons; and
- discussion on the considerable recreational facilities which were restricted to be used by the residents only which reduced the number of vehicle trips per day; and
- the relative age of the occupants which "*tend to be in the late 70's to mid 80's so their recreational pursuits tend to be a staid one and residents prefer to use the in house facilities in the company of fellow residents who they know*" according to an e-mail from Howard Jury of Hopper Developments Limited.

On the 29 September 2010 the Development Contributions Deed between TCDC and Whitianga Waterways for the purchase of the land for the Whitianga Sports Ground was signed off. Section 3.4 of that deed was related to Retirement Village credits whereby Whitianga Waterways would be given 75 full development Contributions Credits for the 2 hectares imbalance between the amount of land sold by Whitianga Waterways Limited for reserve credits and the amount of reserve land calculated to be required to be paid for via reserve contributions for the development. Additionally the developer was to be given 110 reserve contribution credits.

Section 1 (of the Deed) - Interpretation - stated that Retirement Village, for the purposes of the deed,

"means the proposed retirement complex in respect of which the developer has obtained Resource Consent for the Council with reference number RMA/2007/344"

On the 9 February 2011 Whitianga Waterways Limited applied for Land Use Consent for Marlin Waters (Attachment A) a 62, two and three bedroom unit Retirement Village, this application was granted on 24 June 2011 and was designated RMA/2011/13.

On the 5 July 2011, a development contribution calculation was made using the Development Contributions Policy set out in the 2009-19 Long Term Plan, which assessed 2 to 3 bedroom units at 1 UOD per unit. This was then queried by Howard Jury of Hoppers Developments Limited citing the Judicial Committee decision to grant Whitianga Retirement Village Ltd a reduction to 0.5 UOD. This was countered by staff who explained that there were material differences between the two villages and that although the development contributions policy now acknowledged Retirement Villages, that the 0.5 UOD was only available to units of 1 bedroom or less.

On the 29 July 2011, a further e-mail was received from Howard Jury stating that the "loading" between the two retirement villages would be the same regardless on the number of bedrooms. He further stated that *"From a legal perspective the units in the latest (Marlin Waters) approval will be occupied under an Occupation Right Agreement (ORA), a form of agreement covered by the Retirement Villages Act and will be specific, at best to a couple. When a spouse dies or goes into care then the ORA automatically reverts to the survivors name only. There is no right for other persons to occupy the unit, other than short stay guest of the licence holder..... irrespective of the number of rooms the maximum number of residents will be 2 people, the industry stated surveys show a total occupation of a village to average 1.3 persons per dwelling"*.

On 22 of July staff suggested to Howard Jury that he make a request for a special assessment and requested that he send them data to back up the claims. On the 13 October 2011 Howard Jury sent some baseline traffic and parking figures prepared by TDG (a transportation planning company) for the Retirement Villages Association and later supplied survey data from the association (taken from its members) which confirmed the average of 1.3 persons per unit.

On the 10 January 2012 staff prepared a draft report and sent it "without prejudice" to Howard Jury as requested by him. On the 18 January 2012 Howard Jury forwarded this report to John Collyns of the Retirement Villages Association (RVA) for review and stated that given the recommendation (the report recommended a 0.5 unit of demand reduction of development contributions), there was no need for the association to attend the Judicial Committee meeting, but that if he (Howard Jury) considered the Council "were going off on a tangent" that he would ask for a deferral until someone from the RVA could address the Council. Mr Collyns agreed to this but importantly stated in response;

*"One important note is that any reduction in the development contribution for retirement village developments should be available ONLY to "Registered Retirement Villages pursuant to the Retirement Villages Act 2003". This way the benefit is available only to bona fide villages rather than the sort of gated community which is springing up around the place under the guise of a retirement village but are really commercial residential developments. I'm sure you can think of the best way to put this and make sure villages which comply with the law are advantaged."*

Howard Jury then forwarded John Collyns email (Attachment B) to staff with the comment *"The point raised by John Collyns from the RVA is one you may want to include as part of your recommendation"* which staff duly did. It should be noted that this special assessment to the Judicial Committee was combined with a similar Special Assessment request from Bupa Care Services in Tararu which also requested a reduction to 0.5 UOD for an extension to its Tararu Retirement Village. The Bupa site is registered as a retirement village under the Retirement Villages Act 2003.

On the 23 February 2012 the Judicial Committee meeting was held and the following decision was made;

***That the Judicial Committee:***

1. ***Received the report.***
2. ***Determined that the unit of demand factor for two or more bedroom retirement village units registered under the Retirement Villages Act 2003 will be reduced to 0.5 units of demand per retirement unit with a further***

**reduction of the District Transportation to 0.3 units of demand per retirement unit.**

3. **Noted that this approach is inconsistent with the assessment of units of demand for the retirement units in Table 1 of the Development Contributions Policy and agrees that this inconsistency is not significant in terms of Section 80 of the Local Government Act 2002.**
4. **Noted that a submission will be made to the draft development contributions policy suggesting that Table 1 is amended and a definition of retirement units is included in the reviewed Development Contributions Policy.**

Following the decision, the expanded definition of Retirement Village and condition of registration under the Retirement Villages Act 2003 was included in the Development Contributions policy signed off as part of the 2012-22 Long Term Plan and again in the 2015-25 Long Term Plan.

Then on the 17 June 2014 Council received a S127 Variation to Consent Conditions (Attachment C) request and an application for unit title subdivision, thereby moving away from the Occupation Right Agreement (ORA) to unit titling. As part of the background to the section 127 application, the applicant, through their agent Planners Plus Limited then applied for the following variations;

<b>Condition 3</b>	To allow flexibility in staging the consent as desired by the applicant.
<b>Condition 8</b>	To remove the requirement to register the site as a retirement village under the provisions of the Retirement Villages Act 2003 and replace it with a new condition requiring a legal mechanism to be imposed to ensure a spouse is required to be 55 years or older to occupy any of the residential units within the site
<b>Condition 9</b>	Removing the requirement to build the pedestrian bridge until the larger retirement village has been constructed.
<b>Conditions 30, 31 &amp; 33</b>	Request that all the internal infrastructure, water, wastewater and stormwater be vested in Council rather owned and maintained by the developer.

On the 7 April 2015 a decision report was released granting all the changes to the condition application. The granting of the variation to the consent conditions was made purely on the grounds of environmental factors, as required by the Resource Management Act 1991 and therefore no consideration of how these changes may affect development contributions, which is a held under the Local Government Act 2002, were considered outside of ensuring no additional lots or units of demand were created by the variation. In most circumstances, there is usually no need for more extensive checks than this.

During the months of May and June, the developer started work on stage 1 of the consent and applied for 224c and associated Water and Wastewater connections.

On the 6 August 2015 the Chief Financial Officer and development contributions staff became aware that there had been a variation made to the consent and that this may result in a potential conflict with the Judicial Committee decision.

Since this initial variation to consent, the applicant has notified Council officers that they intend to reduce the age barrier further from 55 years and above to 50 years or above (Attachment D) and relaxed the rules around who outside the primary owner or occupier may live in the unit. The applicant has provided a draft copy of the proposed Body Corporate Rules (Attachment E) for Marlin Waters. The applicant acknowledges that they will need to request a further S127 Variation to Consent to further alter Condition 8 to change the age from 55 to 50 and to relax the occupancy rules.

The draft Body Corporate Rules further clarifies the applicant's age restriction as follows;

- 2.1 **A Unit Owner or Occupier may not allow a Unit to be occupied by any person unless that person is;**
  - (a) **over the age of 50 years; or**
  - (b) **the spouse, relationship partner, child, step-child or similar near relative of an Owner or Occupier who is over the age of 50 years; or**

- (c) **the former spouse or former relationship partner, the child, step-child or similar near relative of a person who was an Owner or Occupier aged over 50 years but no longer occupies the Unit because of death, divorce, separation, ill health or other cause.**

It should be noted that in advertising literature, the development is referred to as a "Lifestyle Village" and markets itself to the early or active retiree. Current pricing of the villas is between \$375,000 and \$395,000 for two bedroom, one bathroom units. Future units will also consist of two and three bedroom, two bathroom villas.

### 3 Issue

On the 23 February 2012, the Judicial Committee made a decision on RMA/2011/13 that recognised the development as being a Retirement Village registered under the Retirement Villages Act 2003 and resolved that the development be levied 0.5 units of demand per retirement village unit regardless of size as opposed to the one unit of demand that each unit would ordinarily attract. The applicant through a variation to their consent has altered their consent conditions, including removing the provision that would require the development to be registered under the Retirement Villages Act 2003. The result being the consent no longer meets the conditions set out in the Judicial Committee decision for reduced development contributions.

### 4 Discussion

To determine whether or not the variations to the consent have materially changed the development from a qualifying Retirement Village to one that no longer qualifies, we need to look at several pieces of information;

- the original land use consent application and consent;
- the Retirement Villages Act 2003;
- the Judicial Committee decision on RMA/2011/13;
- data that was provided by the Retirement Villages Association;
- the accompanying documentation that made up the Judicial Committee decision, including;
  - the report prepared for that committee; and,
  - the development contributions policy both preceding and post the Judicial Committee decision (to show Councils intent).
- And finally the request for variation to consent and updated land use consent RMA/2014/161 and subsequent changes.

#### 4.1 Land Use Consent Application

The initial application for Marlin Waters Retirement Village was prepared by Planners Plus on the 9 February 2011. The application was lodged on behalf of Whitianga Waterways Limited seeking land use consent to construct a retirement village development on proposed Lot 2 of the subdivision of Lot 1 DP 416390 at Vanita Drive, Whitianga. The proposal was to construct 62 retirement village units on site and listed a number of 2 and 3 bedroom unit types that are planned to be built on the site. All the units were to be single level, bar one Unit type L (of which only one was proposed) which would be two storey and was proposed to be a common facility within the village, eventually becoming unit 48 called "the boat shed".

The retirement village had been designed to accommodate 158 car park spaces including 21 visitor car parking spaces, an internal private driveway which is 6 metres wide and provides for two way access and allow rubbish trucks to safely manoeuvre within the site. A private boat ramp is to be constructed for the use of the property owners and a private beach will be established.

The proposal acknowledges the Retirement Villages Act 2003 and states "*The Retirement Villages Act 2003 imposes fairly rigid provisions about how a retirement village must operate.*" It then goes on to describe some of the provisions that the Retirement Villages Act 2003 requires of a retirement village including the necessity to have a statutory supervisor who will act on behalf of the residents. The application then states "*To provide assurance to the Council the applicant would accept a condition of consent requiring the retirement village to comply with and be registered under the Retirement Villages Act 2003 prior to construction of the retirement units*". Later in the application,

the proposal discusses the average occupancy of a retirement village being 1.3 persons and therefore quiet, well maintained, clean and result in less traffic movements than conventional residential developments. Further in a section on Outdoor Living Court Dispensation, the application discusses how a retirement does not site comfortably with the "comprehensive development" rules within the district plan on minimum outdoor living areas, it goes on to say "A retirement village has therefore incompatible requirements in terms of open space for the elderly where no families with young children will be within the village (obviously this excludes visitors and grandchildren staying)" From this, we can be certain that the developers intention was to build a bona fide retirement village for the elderly. As such, and as the application addressed all other environmental aspects of the development, the Land Use Consent was granted on 24 June 2011.

## 4.2 Retirement Villages Act 2003

As mentioned above, the Retirement Villages Act 2003 is fairly prescriptive. The purpose of the act is set out in s3 as below;

### 3 Purpose

*The purpose of this Act is—*

- (a) *to protect the interests of residents and intending residents of retirement villages:*
- (b) *to enable the development of retirement villages under a legal framework readily understandable by residents, intending residents, and operators:*
- (c) *for the purposes in paragraphs (a) and (b),—*
  - (i) *to promote understanding of the financial and occupancy interests of residents and intending residents of retirement villages:*
  - (ii) *to provide an industry-focused regulatory and monitoring regime for retirement villages in which compliance costs are minimised:*
  - (iii) *to provide external oversight of the conditions of entry into, and the continuing operations of, retirement villages:*
  - (iv) *to introduce requirements and procedures necessary to give effect to the regulatory and monitoring regime referred to in subparagraph (ii):*
  - (v) *to provide an environment of security and protection of rights for residents of retirement villages:*
  - (vi) *to confer on the Registrar of Retirement Villages and the Retirement Commissioner powers, functions, and duties relating to this Act.*

**s10** of the Act sets out that retirement villages must be registered and describes all the information that must be provided to enable that registration, **s6** sets out the **meaning of retirement village** but as importantly sets out what is **not** a retirement village, this is set out in s6(4) below:

- (4) *For the avoidance of doubt, the following are not retirement villages for the purposes of this Act:*
  - (a) *owner-occupied residential units registered under the Unit Titles Act 2010 or owner-occupied cross-lease residential units that in either case do not provide services or facilities to their occupants beyond those commonly provided by—*
    - (i) *similar residential units that are not intended to provide accommodation predominantly for retired people and their spouses or partners; or*
    - (ii) *residential units occupied under tenancies to which the Residential Tenancies Act 1986 applies:*
  - (b) *boarding houses, guest houses, or hostels:*
  - (c) *halls of residence associated with educational institutions.*

The Retirement Villages Act 2003 was enacted to protect the rights of the residents and to provide a statutory framework for operators to work to.

## 4.3 Special Assessment of Development Contributions

At the time consent for RMA/2011/13 was granted, the development contributions policy had a reduction available only to Retirement Villages whose units were 1 bedroom or less, therefore the

applicant was levied development contributions of 61 Units of demand (1 UOD was paid on the original subdivision). The developer, who had successfully argued to the Judicial Committee for a reduction to 0.5 UOD per unit on the Retirement Village across the road from this development RMA2007/344 queried this and requested the reduction be applied to the new retirement village. This was declined by staff on the basis that the two Retirement Villages were vastly different in design and suggested that the applicant request a Special Assessment of development contributions for the Retirement Village, which the applicant duly did.

The applicant (whose parent company Hopper Developments Limited operate the Maygrove Retirement Village in Auckland) relied (as they had done for the previous Judicial Committee meeting for RMA/2007/344) on evidence supplied by the Retirement Villages Association which provided data on vehicle trips per day and average number of persons per unit based on a survey that they had taken of their members. It should be noted that to be a member of the Retirement Villages Association you must be a registered Retirement Village under the Retirement Villages Act 2003, so all the data and information provided to the committee was from registered retirement villages complying with all the terms and conditions of the Retirement Villages Act 2003.

As in the previous Judicial Committee decision on RMA/2007/344, the committee agreed with the applicant and provided the following decision;

***That the Judicial Committee:***

1. ***Received the report.***
2. ***Determined that the unit of demand factor for two or more bedroom retirement village units registered under the Retirement Villages Act 2003 will be reduced to 0.5 units of demand per retirement unit with a further reduction of the District Transportation to 0.3 units of demand per retirement unit.***
3. ***Noted that this approach is inconsistent with the assessment of units of demand for the retirement units in Table 1 of the Development Contributions Policy and agrees that this inconsistency is not significant in terms of Section 80 of the Local Government Act 2002.***
4. ***Noted that a submission will be made to the draft development contributions policy suggesting that Table 1 is amended and a definition of retirement units is included in the reviewed Development Contributions Policy.***

#### **4.4 Data Provided by Retirement Villages Association**

The second point of that decision was added at the recommendation of both the applicant and the Executive Director (John Collins) of the Retirement Villages Association so that "*This way the benefit is available only to bona fide villages rather than the sort of gated community which is springing up around the place under the guise of a retirement village but are really commercial residential developments.*"

While the applicant relied on data that was collected from members of the Retirement Villages Association as evidence for their Special Assessment of development contribution, it should be noted that in its current configuration, Marlin Water Retirement Village would be excluded from being a member of the Retirement Villages Association on the basis that it does not want to register under the Retirement Villages Act 2003. Given that they would not have to comply with the rigid provisions under the Act, the information supplied by the Retirement Villages Associations members may no longer be applicable to this development.

#### **4.5 Consideration of Effect of S127 Application for Variation of Resource Consent**

The applicant has replaced the requirement for the village to be registered under the Retirement Villages Act 2003 with a requirement for a spouse occupying the unit to be 55 years of age or older. They are now intending to reduce this further to 50 years. Meaning that only one person within the household needs to be aged 50 or above to qualify for purchasing or renting at the village. They further state in paragraph 3.4 of their Section 127 Application for Variation of Resource Consent that "The age restriction ensures that the proposed development is consistent with age restrictions associated with the Retirement Villages Act." However, having examined the act reasonably thoroughly we can find no age restrictions within the act at all, there is certainly no mention of age being any qualifier or disqualifier for being regarded as a retirement village, the act only discusses persons who are retired.

The applicant has put forward for argument that while they are not intending to register the development under the Retirement Villages Act 2003, they still intend to operate, for all intents and purposes, as a retirement village. To determine what a Retirement Village is, we again look to s6 of the Retirement Villages Act 2003, which states;

## **6 Meaning of retirement village**

- (1) *In this Act, but subject to subsections (2) to (6), **retirement village** means 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 whether—*
  - (a) *a resident's **right of occupation** of any residential **unit is provided by way of freehold** or leasehold title, cross lease title, unit title, lease, licence to occupy, residential tenancy, or other form of assurance, for life or any other term; or*
  - (b) *the form of the consideration for that right is a lump sum payment or deduction, or a contribution or a payment in kind of any form, a periodic payment or deduction, or any combination of such payments or deductions, whether made before, during, or after occupancy; or*
  - (c) *the consideration is actually paid or agreed to be paid by a particular resident or particular residents or on behalf of that resident or those residents, or by another person for the benefit of that resident or those residents; or*
  - (d) *the resident makes an additional payment or periodical payment (for example, a service fee) for any services or facilities or access to such services or facilities; or*
  - (e) *the services or facilities, or both, are provided by the owner of the property, building, or other premises, or by any other person under an arrangement with the operator of the village.*
- (2) *A retirement village includes any common areas and facilities to which residents of the retirement village have access under their occupation right agreements.*
- (3) ***Despite subsections (1) and (2), if 1 or more of the residential units referred to in subsection (1) are located in a rest home or hospital care institution, the only parts of that rest home or hospital care institution that comprise, or are included in, the retirement village are—***
  - (a) *the residential unit or units themselves; and*
  - (b) *the common areas and facilities within the rest home or hospital care institution (if any) to which the resident or residents of the unit or units have access only by reason of their occupation right agreement.*
- (4) ***For the avoidance of doubt, the following are not retirement villages for the purposes of this Act:***
  - (a) ***owner-occupied residential units registered under the [Unit Titles Act 2010](#) or owner-occupied cross-lease residential units that in either case do not provide services or facilities to their occupants beyond those commonly provided by—***
    - (i) ***similar residential units that are not intended to provide accommodation predominantly for retired people and their spouses or partners; or***
    - (ii) ***residential units occupied under tenancies to which the [Residential Tenancies Act 1986](#) applies:***
      - (b) *boarding houses, guest houses, or hostels:*
      - (c) *halls of residence associated with educational institutions.*
- (5) *Whether or not a property or building is, or any other premises are, a retirement village must be determined according to the nature, substance, and economic effect of the operation of the property, building, or premises and other facts, and independently of its or their form or description in any document.*
- (6) *For the avoidance of doubt,—*
  - (a) *a property, building, or other premises does not cease to be a retirement village by reason only that persons in their retirement cease to predominate amongst residents of the village:*
  - (b) *a retirement village does not include any land or building that is under development as a retirement village, or as part of a retirement village, that is not occupied by any resident.*
- (7) *This section must be read in conjunction with [section 103](#) (which authorises the making of regulations declaring specified property, buildings, or other premises, or property, buildings, or other premises of a specified class, to be or not to be a retirement village for the purposes of this Act).*

Accordingly, we need to consider whether the applicants decision not to register Marlin Waters as a retirement village under the Retirement Villages Act 2003, is enough to void the Judicial Committee decision for this consent. If the act of registering the development under that Act were disregarded, would this development qualify as a retirement village? Specifically, would the development have

qualified as a retirement village under the act save only for the fact that the developer no longer wishes to register?

Under the act, switching from ORA (occupation right agreement) to unit title would not stop the village from being registered under the act as this is allowed for under s6(1)(a).

Setting an age limit would not stop the village from registering as the act does not contain age limits, rather it described a retirement village as "*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*"

The village also may satisfy this requirement of the act by inclusion in the village of the "boat shed" which is actually a communal facility more akin to a recreation centre rather than a boat storage area.

#### 4.6 Broadening of Occupancy Limitations

However, the applicant has indicated that they intend to make further changes which may move them outside of the meaning of retirement village and outside of the Act. Their draft body corporate rules allow the children, step-children and other near relatives of owner of occupier in addition to the spouse of the owner or occupant to occupy the residential unit. This would go against the intention of S6(1) of the Retirement Villages Act which describes occupiers of a retirement village as "persons in their retirement or persons in their retirement and their spouses or partners, or both".

The result of clause 2.1 is that, so long as the primary owner or leasee is over 50 years of age at the time of purchase or taking the lease, that anyone of any age may reside in the residential units. This is backed up by advertising material which states that the minimum entry criteria for Marlin Waters being one resident partner must be 50 years plus. Additionally, that primary owner or leasee need not reside in the unit after the initial transaction. Further consideration needs to be given to the advertising material produced by Marlin Waters which describes the village are a lifestyle village and markets itself to the early or pre-retiree.

On this basis, it may be difficult to demonstrate that the village is predominantly to cater for those in their retirement and their spouse or partner.

#### 4.7 What is not considered to be a Retirement Village.

In order to determine whether or not the village would be considered a retirement village under the act, we need to consider section 6(4) which sets out what is not a retirement village under the act.

S6(4) states,

*For the avoidance of doubt, the following are not retirement villages for the purposes of this Act:*

- (a) *owner-occupied residential units registered under the [Unit Titles Act 2010](#) or owner-occupied cross-lease residential units that in either case do not provide services or facilities to their occupants beyond those commonly provided by—*
  - (i) *similar residential units that are not intended to provide accommodation predominantly for retired people and their spouses or partners; or*
  - (ii) *residential units occupied under tenancies to which the [Residential Tenancies Act 1986](#) applies:*

If we disregard the issue surrounding s2.1 of the draft body corporate rules and examine the development as it stands, does the development provide services or facilities to their occupants beyond those that are commonly provided by similar residential units that are not provided for persons in their retirement?

In this case it would appear not to be clear cut. Given that there has been no evidence of any services over and above a manager on duty and the only facilities are a boat ramp, beach – both of which are common on most of the Whitianga Waterways development - and the communal facility called "the boat shed" it would appear to offer no greater facilities or services than those offered in many gated communities or residential apartment blocks around the country.

Given this, it is unlikely, without core changes to its body corporate rules and advertising, that this development would qualify as a Retirement Village under the Retirement Villages Act 2003.

#### **4.7 Why does Council offer a reduction of development contributions on Retirement Village units?**

The primary reasons that retirement villages qualify for a reduction in development contributions is that on average, they create less impact on council facilities and infrastructure. This is due to a number of reasons;

- the average age of the residents;
- the level of facilities and services the village provides; and,
- how the combination of the two mean the residents do not travel as often as a standard residential household as they prefer to use on-site facilities (which at the majority of the retirement villages is considerable). Many retirement villages offer hair dressers, meal and laundry facilities on site and this further reduces the residents need to travel.

Documentation supplied by the applicant for their Application for Variation to Consent Conditions stated the average age of a retirement village resident as being 78 years old. This agrees with data provided for the original Whitianga Retirement Village and as information supplied for the Judicial Committee decision on the Marlin Waters development, which made reference to the average age of Retirement Village Residents being in their late 70's or early 80's. This is considerably different to 55 year age limit stated in the consent and the 50 year age limit now being proposed and advertised.

#### **4.8 Conclusion**

In the background information to the s127 Application for Variation to Consent, the agent for the applicant made several points about the varied development. In paragraph 1.4 they state that "The 55 to 78 year olds are considering alternative accommodation options as well as registered retirement villages. There are a number of people in the 55 year old plus age group, which are after the security, but not yet ready for the retirement village concept". Further in paragraph 1.5 the agent describes the proposed development as "a stepping stone to retirement villages with healthcare facilities, which the applicant intends to develop in the future on the northern side of Joan Gaskill Drive". There is no argument that the development on the northern side under its current consent conditions would be considered a retirement village, as it boasts many on-site facilities and services even without considering its healthcare facilities. However, we can see from the above that Marlin Waters is now no longer being considered a traditional retirement village, but more a staging point for those who are not yet of an age where a retirement village is desirable.

The result of the variation to consent in terms of the operation of the retirement village was more than minor. The village started out as a registered retirement village using an Occupation Right Agreement to operate the village with all the administration requirements that this entails. This would include the requirement to appoint a statutory supervisor who holds a licence under the Financial Markets Supervisors Act 2011. This has changed to a unit title with a 50 year plus age limit requirement with a manager appointed by the body corporate (which is standard in most larger scale body corporate run developments) whereby following construction the applicant may decide at any time to walk away from the development as you would with any other standard residential development.

The rationale for Council offering a reduction of development contributions for retirement villages is not to contribute to lower selling prices or any other reason but an expected reduction in demand for Council infrastructure. This lower demand for infrastructure (which has been recognised by most Council's throughout New Zealand) is based on the following observations;

- The Retirement Village must be registered under the Retirement Villages Act 2003 which states that the village must provide facilities and services over and above that which could be expected in a standard residential development.
- By registering a retirement village under the Retirement Villages Act, the occupiers / licence holders are afforded certain rights and the village itself must adhere to certain regulations.
- The average age of occupant is late 70's to early 80's, as such they prefer to use the provided facilities which creates reduced demand on Council infrastructure, particularly roading and community infrastructure.
- Regardless of the size of the units, the maximum number of occupants in retirement units is two, with an average of 1.3 persons across Retirement Village Association sites.

- The villages tend to operate under a licence to occupy or occupation right agreements rather than unit title. This ensures that the village must be managed and the needs of the occupiers/licence holders are protected.

In this case, the age limit for entry of one person within the residence will be 50 years meaning that the residents are likely to be very mobile and will use Council infrastructure at the same level as any normal development. The occupiers may indeed be families of potentially four or more persons rather than retiree's and the Body Corporate Rules allow for this to happen. The rules further allow that should personal circumstances change, that none of the persons within the dwelling need to be 50 years or older so long as on taking of the lease or purchase of the property, one person in the dwelling was 50 years or older.

Considering that the only factor that differentiates this development with any other similar residential development would be the age limit to entry of one member of the residence, would this developments impact on infrastructure be any lower than a block of flats or other high density housing project?

## 5 Suggested Resolution(s)

That the Judicial Committee:

1. Receives the 'RMA/2011/13 - Marlin Waters Retirement Village - Impact of S127 variation of Resource Consent on Judicial Committee Decision dated 29 March 2012' report, dated 15 October 2015.
2. Confirms that to qualify for a reduction to 0.5 units of demand for two or more bedroom retirement units, that the retirement village must be registered under the Retirement Villages Act 2003.
3. Determined that due to the variations to RMA/2011/13, the development does not qualify as a retirement village for the purposes of the development contributions policy and as such each unit will be levied at one unit of demand.

## References-Tabled/Agenda Attachments

- Attachment A** *Application for Consent Marlin Waters Retirement Village*  
**Attachment B** *E-mail from John Collyns to Howard Jury*  
**Attachment C** *Application for Variation to Consent Conditions*  
**Attachment D** *Letter from Dave Lamason to Steve Baker*  
**Attachment E** *Draft Body Corporate Rules for Marlin Waters Village*

**[Appendix A - Application for consent RMA20110013.PDF](#)**

***Attachment B***

**[Appendix B - John Collyns Email Retirement Villages Association.PDF](#)**

**Attachment C**

**[Appendix C - S127 Variation to Consent Conditions.PDF](#)**

**Attachment D**

[Appendix D - letter to TCDC Steve Baker - DC's Marlin Waters 09-10-201...](#)

[Appendix E - Draft BC Rules - Marlin Waters.PDF](#)

