

**IN THE MATTER OF**

the Resource Management Act 1991

**AND**

**IN THE MATTER OF**

the Wellington City Proposed District Plan, Hearing Stream 1, Part 1, plan wide matters and strategic direction (submitter number 240)

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**PRIMARY EVIDENCE OF SEAN GRACE  
ON BEHALF OF  
ARA POUTAMA AOTEAROA THE DEPARTMENT OF CORRECTIONS  
FOR HEARING STREAM 1**

**Planning**

Dated 7 February 2023

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**GREENWOOD ROCHE**  
LAWYERS  
CHRISTCHURCH  
Solicitor: Rachel Murdoch  
([rmurdoch@greenwoodroche.com](mailto:rmurdoch@greenwoodroche.com))

Submitter's Solicitor  
Kettlewell House  
Level 3, 680 Colombo Street  
P O Box 139  
Christchurch  
Phone: 03 353 0574

## **1 EXECUTIVE SUMMARY**

1.1 Ara Poutama Aotearoa the Department of Corrections (**Ara Poutama**) made submission points in relation to definitions and provisions relevant to Hearing Stream 1 for the Wellington City Proposed District Plan (**PDP**). These include:

- (a) Retention of Strategic Objective UFD-O6;
- (b) Retention of the definition of “community corrections activity”;
- (c) Retention of the definition of “residential activity”; and
- (d) Removal of the definition of “supported residential care activity”.

1.2 The “Hearing Stream 1 – Part 1, plan wide matters and strategic direction” section 42A report, authored by Adam McCutcheon and Andrew Wharton, dated 20 January 2023 (the **HS1 S42A report**) recommends implementing the relief sought by Ara Poutama in relation to points (a) to (c) above, which I support.

1.3 In relation to point (d), the HS1 S42A report recommends retaining the definition of “supported residential care activity”. In my view, having this definition and the associated provisions in the PDP is unnecessary as the definition of “residential activity” otherwise entirely captures these activities, including supported accommodation provided for by Ara Poutama (i.e. people living in a residential situation, who are subject to support and/or supervision by Ara Poutama). Further, there is no meaningful effects basis for distinguishing residential activities provided by Ara Poutama from any other residential activity and there are no unintended consequences of implementing this relief in the PDP. Should the Panel be minded to retain a definition of “supported residential care activity” (and the associated provisions and references to such in the PDP), then I would support the amended wording of this definition as recommended by the Reporting Planners.

## **2 QUALIFICATIONS AND EXPERTISE**

2.1 My name is Sean Grace. I am a Senior Principal and Planner at Boffa Miskell Limited, a national firm of consulting planners, ecologists and landscape architects. I hold the qualifications of Bachelor of Science

(Physical Geography). I am a Full Member of the New Zealand Planning Institute. I have been a planner in local government or as a planning consultant based in Tauranga, Auckland and Wellington for over 18 years.

- 2.2 As a consultant planner, I have provided consultancy services for a wide range of clients around New Zealand, including central and local government authorities, land developers, and those in the social and network utility infrastructure sectors. My experience as a consultant includes planning policy preparation and advice, providing expert evidence at Council hearings, attending Environment Court mediation, preparing Notices of Requirement for designations, resource consenting and non-statutory planning work. As a local government planner, my experience was in resource consent processing and planning monitoring and enforcement.
- 2.3 I have worked for Ara Poutama as a planning consultant over the course of the past 14 years.
- 2.4 I have extensive experience in District Plan policy work, and have appeared on behalf of Ara Poutama in hearings and at mediation for the Proposed Waikato District Plan, Proposed Auckland Unitary Plan, Proposed Invercargill District Plan, Proposed Ōpōtiki District Plan and several other Plan Change processes. I have reviewed and prepared submissions on behalf of Ara Poutama for numerous Proposed District Plans and Plan Changes.

### **3 CODE OF CONDUCT**

- 3.1 I confirm that I have read the Code of Conduct for Expert Witnesses set out in the of the Environment Court Practice Notes 2014 and 2023. I have complied with the Code of Conduct in preparing this evidence and will continue to comply with it while giving oral evidence. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

#### 4 SCOPE OF EVIDENCE

4.1 This evidence addresses matters raised in the HS1 S42A report. To that end, my evidence:

- (a) briefly summarises the relief sought by Ara Poutama relevant to Hearing Stream 1 (Section 5);
- (b) confirms Ara Poutama's support for several definitions and a Strategic Objective as recommended by the HS1 S42A report (Section 6); and
- (c) discusses the definition of "supported residential care activity", as proposed in the HS1 S42A report (Section 7).

#### 5 RELIEF SOUGHT

5.1 Ara Poutama lodged a submission on the PDP dated 12 September 2022, and is identified as submitter number 240. The HS1 S42A report addresses the following points that were made in that submission:

- (a) **The definition of "community corrections activity"**, whereby Ara Poutama sought that the definition be retained as notified (submission point 240.3).
- (b) **The definition of "residential activity"**, whereby Ara Poutama sought that the definition be retained as notified (submission point 240.6).
- (c) **The definition of "supported residential care activity"**, whereby Ara Poutama sought that the definition, and associated provisions applying to such throughout the PDP, be deleted (submission point 240.7).
- (d) **Alternative relief regarding the definition of "supported residential care activity"**, whereby Ara Poutama sought that, if Council were to retain the definition and the associated PDP provisions, the definition be retained as notified (submission point 240.8).
- (e) **Strategic Objective UFD-06**, whereby Ara Poutama sought that the reference to "supported residential care" be removed from this

objective (a consequential amendment if the relief in point (c) above were granted) (submission point 240.9).

- (f) **Alternative relief regarding Strategic Objective UFD-06**, whereby Ara Poutama sought that, if Council were to retain the definition of “supported residential care activity” (as per point (d) above), the objective be retained as notified (submission point 240.10).

## **6 SUPPORT FOR REPORTING PLANNERS’ RECOMMENDATIONS**

- 6.1 The HS1 S42A report recommends retaining the definition of “community corrections activity” as notified,<sup>1</sup> which is consistent with the relief sought by Ara Poutama. I support this recommendation, as the definition proposed is the same as the definition for “community corrections activity” included in the National Planning Standards.
- 6.2 The HS1 S42A report has recommended that the definition of “residential activity” be retained as notified,<sup>2</sup> which is consistent with the relief sought by Ara Poutama. I support this recommendation, as the proposed definition is also the same as the definition for “residential activity” included in the National Planning Standards.
- 6.3 The HS1 S42A report has recommended retaining Strategic Objective UFD-06 as notified,<sup>3</sup> which is consistent with the alternative relief sought by Ara Poutama in relation to this objective. I support this recommendation, insofar as the reference to “supported residential care” within the objective is considered appropriate by the Panel. I discuss this matter further below.

## **7 “SUPPORTED RESIDENTIAL CARE ACTIVITY”**

### **Background**

- 7.1 Within Wellington City, and throughout Aotearoa, Ara Poutama establishes, delivers and manages residential housing in the community to assist people within its care with their transition and/or reintegration into the community where they have been on custodial sentences, and

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<sup>1</sup> HS1 S42A report, paragraph 545.

<sup>2</sup> HS1 S42A report, paragraph 643.

<sup>3</sup> HS1 S42A report, paragraph 1199.

to assist people with proactively participating in society where they are on community sentences. These homes accommodate people following their release from prison, those on bail and/or those serving community-based sentences (such as home detention). In instances where more than one person resides at these homes, the group operates as a household participating in typical domestic activities, using the homes for sleeping, eating, cleaning, bathing and studying and the like. Depending on the needs of the residents, they receive a varying level of support and/or supervision from on-site providers, such as help with domestic duties and responsibilities (e.g. getting a drivers licence), rehabilitation, and/or reintegrative support (e.g. assistance with finding employment).

- 7.2 Significant demand for Ara Poutama housing exists nationally, including within Wellington City. This is in part driven by the provisions of the Sentencing Act 2002, requiring sentencing judges give consideration to community-based sentences before considering custodial sentences.
- 7.3 In order to support this statutory requirement and for Ara Poutama to fulfil its own statutory mandate, it is imperative that such residential activities are clearly provided for within the relevant plan definitions. To that end, Ara Poutama has sought, in the PDP and in other District Plans nationally, the consistent implementation of the National Planning Standards definitions and associated plan provisions for “residential activity” and “residential unit” (both of which are included in the PDP, and thus supported).
- 7.4 The definition of “residential activity” entirely captures supported accommodation activities, such as those provided for by Ara Poutama (i.e. people living in a residential situation, who are subject to support and/or supervision by Ara Poutama). Specifically, supported accommodation activities use “*land and building(s) for people’s living accommodation*” (as per the definition of “residential activity”) and these activities occur within “*a building(s) or part of a building that is used for a residential activity exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities*” (as per the definition of “residential unit”).

- 7.5 In addition to the above, the notified version of the PDP also includes a definition of “supported residential care activity”, which is worded as:

***SUPPORTED RESIDENTIAL CARE ACTIVITY***

*means land and buildings in which residential accommodation, supervision, assistance, care and/or support by another person or agency for residents. [sic]*

- 7.6 The corresponding PDP residential zone provisions, as notified, then provide a permitted status for these activities, but with an activity standard restricting occupancy to 10 residents. As an aside, I note that there is no restriction on occupant numbers for a “residential activity” in the residential zones.
- 7.7 In my view, having a separate definition and plan provisions for “supported residential care activities” has the potential to create interpretation issues, which may unnecessarily trigger the need for resource consent. To explain, I provide two examples in the context of the notified PDP provisions:
- (a) A household of 11 people relies on a nanny or housekeeper for *supervision, assistance* and *care* of those living in the house. This technically could fall within the scope of a “supported residential care activity” and require resource consent under the PDP provisions for the residential zones, despite the effects being no different to a residential activity (which has no restriction on occupancy) where a nanny is not present.
  - (b) A household of 11 people includes one person subject to home detention who receives *supervision* and *support* from Ara Poutama. This technically again could require resource consent under the PDP provisions for the residential zones as a “supported residential care activity”. However, the home detention of that single occupant creates effects that are no different to a residential activity (which has no restriction on occupancy) where none of the 11 occupants are subject to home detention.
- 7.8 Putting the occupancy rate aside, in my view the effects of supported accommodation activities and general residential activities are very similar, if not the same. Supported accommodation is predominantly a residential activity, with the only potential difference being the presence of support people on-site, and the associated vehicle trip generation. In

some instances visits by staff may only occur once a week, and in others the visits may be more frequent (e.g. daily). However, this may be comparable to, say, a family with several teenagers who each have their own vehicles and come and go throughout the day. All other effects, such as noise, light emission, residential character (i.e. building bulk and location) etc, are the same and are managed through achieving compliance with District Plan standards.

- 7.9 It is my understanding is that it would be highly irregular to have 10 or more residents in a supported accommodation unit managed by Ara Poutama. As such, any potential effects associated with having a relatively high number of people residing within a unit would be equally highly irregular.
- 7.10 Put simply, there is, in my opinion, no meaningful effects basis for distinguishing residential activities provided by Ara Poutama from any other residential activity. Where consents for Ara Poutama's activities are required, in my experience, they tend to be strongly opposed by surrounding residents because of perceived safety and amenity concerns associated with those in Ara Poutama's care. However, the decision to accommodate those persons within the community has already been made through the Court via sentencing. Imposing unnecessary consenting requirements on those activities – particularly where they might be contested – risks undermining the operation of the Sentencing Act.
- 7.11 For the reasons above, the primary relief sought in Ara Poutama's submission was to delete the definition of "supported residential care activity" (and the associated provisions and references to such) in the PDP, given that the "residential activity" definition can otherwise be relied upon.
- 7.12 The alternative relief in Ara Poutama's submission was that if Council were to retain the definition of "supported residential care activity" (and the associated provisions and references to such) in the PDP, the definition should be retained as notified. While having the definition in the PDP appears unnecessary and creates additional hurdles for Ara Poutama, it is nonetheless workable in its notified form.



## Reporting Planners' Recommendation

7.13 The HS1 S42A report has made the following assessment in relation to the "supported residential care activity" definition:<sup>4</sup>

*"The plan approach to providing for supported residential care in residential zones is to allow for up to 10 residents in a supported care facility as a permitted activity (eg MRZ-R4, HRZR4 refers]. This activity is specifically defined and controlled to distinguish from general residential activities. Where there are proposed to be more than 10 residents in supported residential care the activity is assessed as a restricted discretionary activity. The matters of discretion under MRZ-R4 2. are:*

*"The extent to which the intensity and scale of the activity adversely impacts on the amenity values of nearby residential properties and the surrounding neighbourhood."*

*In my opinion this is an appropriate way of managing supported residential care activities. The submissions by Dpt of Corrections [240.7 and 240.8], and Oranga Tamariki [83.2] are not supported as they are both seeking changes which would set no limit on the number of residents in supported care and as a consequence would be permitted activities."*

7.14 As set out earlier in my statement, it is my opinion that there is no need, from an effects point of view, to control or distinguish supported accommodation activities from general residential activities. Whilst I do not disagree that the level of effects associated with a household of more than 10 people is likely to be greater than a household of fewer people than this (i.e. in terms of the potential for increased noise, traffic generation, etc.), my point is that the effects are apparent whether a residential unit is used for supported residential care purposes or not.

7.15 There is also uncertainty created by having the definition and provisions regarding "supported residential care activities", particularly in instances where a residential unit is used for such purposes in conjunction with other general residential activities.

7.16 On this basis, I support the primary relief sought by Ara Poutama, which is the deletion of the definition of "supported residential care activity", and the associated provisions and references to such, in the PDP. In my view, such relief and consequential amendment would not lead to unintended consequences. That is, the removal of the provisions can be done without compromising the regulation of any other activities in the

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<sup>4</sup> HS1 S42A report, paragraphs 681-682.

PDP, with reliance instead being on the relevant provisions for residential activities.

7.17 Should the Panel be minded to retain a definition of “supported residential care activity” (and the associated provisions and references to such in the PDP), then I would support the amended wording of this definition as recommended by the Reporting Planners. The amendments recommended tidy up a minor discrepancy apparent in the notified version of the definition, and provide an appropriate exclusion for “retirement villages”. The recommended amended definition reads: <sup>5</sup>

***SUPPORTED RESIDENTIAL CARE ACTIVITY***

*means land and buildings in which residential accommodation, supervision, assistance, care and/or support is provided by another person or agency for residents, excluding retirement villages.*

**Sean Grace**

7 February 2023

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<sup>5</sup> HS1 S42A report, paragraph 685.