

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

the Wellington City Proposed District
Plan, Hearing Stream 2, Residential
Zones (submitter number 240)

**LEGAL SUBMISSIONS ON BEHALF OF
ARA POUTAMA AOTEAROA THE DEPARTMENT OF CORRECTIONS
FOR HEARING STREAM 2**

Dated 24 March 2023

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MAY IT PLEASE THE PANEL

1 INTRODUCTION

1.1 Ara Poutama Aotearoa, the Department of Corrections (**Ara Poutama** or **Corrections**) lodged a submission on the Wellington City Proposed District Plan (**PDP**) on 12 September 2022.¹ Of particular relevance to this Hearing Stream 2 (**HS2**), that submission sought:

(a) The removal of references to *supported residential care* activities in the High and Medium Density Residential zones (**HDRZ** and **MDRZ**) on the basis that those activities are already accounted for in the PDP definition of *residential activity*. Alternatively, Ara Poutama sought the retention of those activities (and their supporting provisions) as notified.²

(together, the **Supported Residential Care Relief**).

(b) The continued protection of Arohata Prison's operations and interface with its surrounds through retention of the notified zoning and associated permitted heights of buildings along the southern side of Sunrise Boulevard, Tawa, which immediately adjoins the Prison.³

(the **Arohata/Sunrise Boulevard Relief**)

1.2 In further response to the issues identified in its submission regarding Arohata Prison and its urban interface, Ara Poutama has developed a "precinct" and accompanying provisions which enable consideration of those issues in a consenting context.

1.3 That precinct is attached to, and discussed in, the detailed brief of planning evidence provided by Mr Grace, which carefully examines the relief sought by Ara Poutama in terms of the requirements of section 32 of the RMA. Based on his assessment and for reasons I will shortly outline, it is my submission that both aspects of Corrections' HS2 relief provide the most appropriate way of achieving the purpose of the RMA

¹ Submitter # 240.

² Submission points, 240.16, 240.20, 240.11 and 240.15.

³ Submission points 240.1 and 240.2.

and the relevant provisions of the higher-order documents, including the National Policy Statement on Urban Development 2020 (**NPS-UD**).

2 SUPPORTED RESIDENTIAL CARE RELIEF

- 2.1 As Mr Grace notes in his HS2 evidence, this aspect of Corrections' submission was addressed in some detail as part of Hearing Stream 1 (**HS1**).⁴
- 2.2 At that Hearing, it was Ara Poutama's position, supported by Mr Grace, that a separate definition of *supported residential care activity* with supporting provisions was not required on the basis that:
- (a) Residential accommodation where people are receiving a level of support can and should fall within the proposed definition of *residential activity*.⁵
 - (b) There is no meaningful "effects-basis" for distinguishing residential accommodation where residents receive support vs accommodation where residents do not. The "support" element, in other words, does not generate effects which can be distinguished from other *residential activity*, and which would therefore warrant different treatment under the PDP.⁶
 - (c) Including separate definitions (and separate provisions) for different kinds of residential activities such as supported residential care has the potential to result in unintended interpretation and administration issues, which in turn create uncertainty and may unnecessarily increase the requirement for resource consents.⁷
- 2.3 The Council's Reporting Planner in HS1 took a different position to Mr Grace, preferring retention of the *supported residential care* provisions. The HS2 Reporting Planner has adopted that same view.
- 2.4 I commend Mr Grace's careful analysis of this matter to you. In my submission, the relief sought by Ara Poutama has strong resonance

⁴ For ease of reference, Sean Grace's HS1 Evidence-in-Chief has been included as Attachment 1 to Mr Grace's HS2 EIC.

⁵ Grace, HS1 EIC, at [7.4].

⁶ Grace, HS1 EIC at [7.10] and [7.14].

⁷ Grace, HS1 EIC at [7.7].

with Environment Court authority on the relevance or otherwise of supported care to the question of whether an activity is, or is not, *residential*.

- 2.5 In *Sunset Community Residents Association v McGeorge*, the Court found that the presence of staff supervisors in a home for children with conduct disorders had no bearing on whether that home met the definition of *household unit*.⁸ Similarly, in *Valley Views Road Residents' Group Inc v MASH TRUST*, the Court was tasked with determining whether support provided to intellectually disabled men in their living accommodation would prevent that activity from being a *dwelling*.⁹ It determined that the "gloss on the proposed activity: that these men require a high level of assistance in their day-to-day living does not affect the position [that the home is a *dwelling*]."¹⁰ Finally, in *Housing New Zealand Corporation v Hastings District Council*, the Court agreed that accommodation for men receiving day-to-day household support and supervision "falls plainly within the definition of *residential activity*...", being, in that case, *the use of land and buildings by people for the purpose of permanent living accommodation*...¹¹
- 2.6 While each of these cases turn on their own facts (including the relevant Plan definitions), in my submission, they support the proposition that the provision of assistance to residents in a household does not and should not detract from its inherent nature, which is *residential*.
- 2.7 As described in its submission and in the evidence of Mr Grace, Corrections' Supported Residential Care Relief is fundamentally premised on recognising the existence of, and enabling, a diversity of households with varying needs to live within our communities. The evidence of Mr Grace is that that is best achieved not by separating those households into different definitions, but by affirming the inclusion of those households within the expansive definition of *residential activity*. In my submission, that aligns with the Court's

⁸ A137/97. In that case, a *household unit* meant a building...intended to be used as an independent residence and includes any apartment, townhouse, dwelling house, flat or home unit.

⁹ W070/2006. In that case, *dwelling* meant the self-contained home and includes buildings where board and lodging is provided for up to and including five people.

¹⁰ *Ibid.* at [20].

¹¹ W051/2008 at [17].

approach in these cases, and with the NPS-UD concept of “*well-functioning urban environments that enable all people and communities to provide for their well-being...*”.¹²

3 AROHATA/SUNRISE BOULEVARD RELIEF

- 3.1 The evidence of Mr Grace and the accompanying letter from Mr Beales provide an overview of Arohata Prison, including relevant details regarding its operations, the site and planning context in which it is located.¹³
- 3.2 That information is not repeated in these submissions. It is suffice to say that the importance of the Prison in terms of its role in the justice system, and its ability to function effectively in that role, warrants careful consideration in the context of the Panel’s decision.
- 3.3 In its submission on the PDP, Ara Poutama described the key operational issues and risks regarding the interface between Arohata Prison and its urban boundary, particularly in the context of any proposed increase in permitted building heights. Those issues are concerned with the impacts on the health, safety and well-being of those within the Prison, and the effective functioning of Prison operations now and in the future. They are also concerned with the health, safety and well-being of those outside of the Prison, and the potential for reverse sensitivity.
- 3.4 In light of those issues/risks, Ara Poutama, through its submission:
- (a) supported the notified zoning along the Sunrise Boulevard properties adjoining its boundary, which comprises:
 - (i) Predominantly Medium Density Residential zoning, enabling permitted building heights of up to 11m.
 - (ii) A small area of High Density Residential zoning, enabling permitted building heights of up to 21m.
- (refer **Figure 1** below, reproduced from Ara Poutama’s submission)

¹² Objective 1, NPS-UD

¹³ See Grace, EIC at 7.1 – 7.5.A. See also Attachment 2 to Mr Grace’s EIC.

- (b) Opposed any increase in permitted building heights beyond what is proposed through the notified zoning.

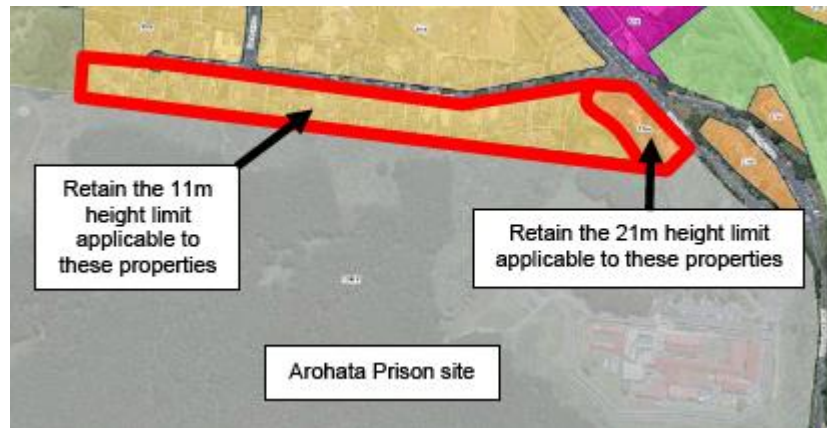


Figure 1

- 3.5 That relief was opposed by Kāinga Ora – Homes and Communities through its further submission (**Kāinga Ora**).¹⁴
- 3.6 In the section 42A report for this matter, the Council’s Reporting Officer:
- (a) accepted Corrections’ submission, recommending no change to the notified PDP zoning; and
- (b) rejected Kāinga Ora’s further submission.¹⁵

The Sunrise Boulevard Precinct

- 3.7 Since lodging its submission and following receipt of Kāinga Ora’s further submission, Ara Poutama has given further thought to the issues raised in its submission concerning the interface between Arohata Prison and its urban boundary, and how those issues might most appropriately be addressed through the PDP.
- 3.8 To that end, Mr Grace, with support from Mr Beales’ letter and a social impact assessment from Ms Healy, recommended:
- (a) retention of the underlying Medium and High Density zoning along the Sunrise Boulevard boundary properties, as notified; and

¹⁴ FS89.2 and FS89.3.

¹⁵ See HS2 s42A report, Part 3 (MDRZ), Appendix B, pages 117 and 118.

(b) preparation of a "precinct" to sit alongside that zoning, which provides a mechanism (i.e. specific objective, policy and assessment criteria) through which Ara Poutama's concerns can be appropriately accounted for in a consenting context.

- 3.9 Mr Grace has prepared the draft precinct and the suite of accompanying provisions which are included in Attachment 4 of his evidence.
- 3.10 The proposed location of the precinct is shown as part of Attachment 4 to Mr Grace's evidence, and is identical to the mapped area included in Corrections' submission (refer Figure 1 above).
- 3.11 The purpose of that precinct is to "*... provide for the management of security of the Arohata Prison, and to manage social and amenity effects on residents of the properties on Sunrise Boulevard adjacent to Arohata Prison*".¹⁶ That purpose is reflected in the proposed objective and supporting policy, and the proposed assessment criteria which would need to be addressed as part of any restricted discretionary consent application.
- 3.12 For clarity, the precinct does not propose to amend or introduce new permitted activity standards (including building heights) in either the notified, underlying Medium or High Density Residential zones. The precinct provisions would only be engaged in the event of non-compliance with those standards, i.e. to introduce additional matters of assessment in the event consent is required. In that sense, imposition of the precinct along the Sunrise Boulevard boundary does not make those zones any less enabling of development than what would be provided for under the medium density residential standards (**MDRS**) or under policy 3 of the NPS-UD.
- 3.13 In her review of the draft precinct, Ms Healy, who is a social impact specialist, concluded that:

"...the precinct will provide for continued compatibility of the functions of both the residential neighbours and the Prison as they develop in the future. It does not prohibit future intensification of the area nor the

¹⁶ See Attachment 4 to Mr Grace's EIC.

ability of Ara Poutama Aotearoa the Department of Corrections to provide corrections services for future populations.”¹⁷

- 3.14 Drawing on that advice, Mr Grace undertook a detailed section 32 analysis of the precinct, which is included in Attachment 5 of his evidence. Consistent with the requirements of that section, Mr Grace’s analysis examines the efficiency and effectiveness of the precinct and its provisions by “*identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation.*”¹⁸ From that examination, he concludes that the precinct offers a more tailored planning framework, which will give effect to, and be consistent with, the relevant planning documents including the Regional Policy Statement. He therefore concludes that the objective of the precinct and its supporting provisions will most appropriately achieve the purpose of the RMA.¹⁹
- 3.15 In my submission, Mr Grace’s careful analysis of this matter, with support from Ms Healy and Mr Beales, is robust and should be relied upon to include the precinct in the PDP.

Kāinga Ora engagement

- 3.16 As Mr Grace notes in his evidence, Ara Poutama has engaged with Kāinga Ora on its further submission and, in particular, the interface between Arohata Prison and the adjoining Sunrise Boulevard properties. The precinct attached to Mr Grace’s evidence has been provided to Kāinga Ora for comment.
- 3.17 Following the discussion in HS1, Ara Poutama anticipates that Kāinga Ora will continue to support the extension of the High Density Residential zoning along those Sunrise Boulevard properties. We understand the basis for that position to be Kāinga Ora’s assessment of what constitutes the “walkable catchment” around Takapu Road train station.
- 3.18 I address the issue of “walkable catchments” briefly below, but wish to emphasize at this point that, for the reasons discussed in the evidence

¹⁷ See Page 3 of Attachment 3 to Mr Grace’s EIC.

¹⁸ *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51 at [59].

¹⁹ Grace, EIC, [7.28], and Attachment 5 at [6].

of Mr Grace, Ara Poutama remains firmly opposed to extension of HDRZ along the boundary of the Prison.

4 WALKABLE CATCHMENTS

Notified PDP

- 4.1 As described above, the Arohata/Sunrise Boulevard Relief seeks the retention of the notified zoning along the boundary of the Prison (shown on **Figure 1**).
- 4.2 As detailed in the relevant supporting documents for the PDP, that zoning pattern reflected Council's response (at least at that notification stage) to the intensification requirements in the RMA (included via the Enabling Act) and the NPS-UD.²⁰ Of particular relevance to the issue of "walkable catchments" is, of course, Policy 3 of the NPS-UD which requires district plans to enable building heights of at least 6 storeys within at least a walkable catchment of an existing rapid transit stop.
- 4.3 In the PDP Residential context, those Policy 3 building heights are enabled through the HDRZ. In the notified PDP, that zone only extends over a small part of the area adjoining Arohata Prison. The balance of that adjoining area is MDRZ, which reflects Council's position (at least at notification stage) that this area is not within the walkable catchment of an existing rapid transit stop. Zoning of that area as HDRZ is therefore not required to give effect to Policy 3 of the NPS-UD.
- 4.4 Had Council determined that the balance area was within the walkable catchment of Takapu Road station, it would have been obliged to:
 - (a) notify it as HDRZ; or
 - (b) undertake a qualifying matters assessment in accordance with section 77I of the RMA to justify the less enabling zoning framework provided through the MDRZ.

²⁰ See Section 32 – Part 1 – Context to Evaluation and Strategic Objectives at pages 34, and 42 – 44, Map identifying changes between 10 minute and 5 minute walkable catchment (adopted) for Policy 3 of the NPS-UD along the Kapiti Line, and Section 32 – Part 2 – High Density and Medium Density Residential Zones at pages 20 – 21 and 44.

HS1/HS2

- 4.5 As noted, the Council’s HS2 Reporting Planner has recommended that Ara Poutama’s Arohata/Sunrise Boulevard Relief is accepted and that Kāinga Ora’s further submission (requesting the extension of the HDRZ over that balance area) is rejected.
- 4.6 Put another way, the Reporting Planner has, in effect, recommended retention of the zoning framework as notified.
- 4.7 It has nevertheless come to Ara Poutama’s attention that, in the HS1 section 42A report, the Council’s HS1 Reporting Planner introduced a revised opinion on what constitutes a “walkable catchment” for Takapu Station.²¹ Of particular concern to Ara Poutama, that revision, if accepted, would have the effect of extending the HDRZ along the Sunrise Boulevard properties adjoining Arohata Prison. That effect is illustrated in Figure 2 below, which has been reproduced from that HS1 section 42A report:

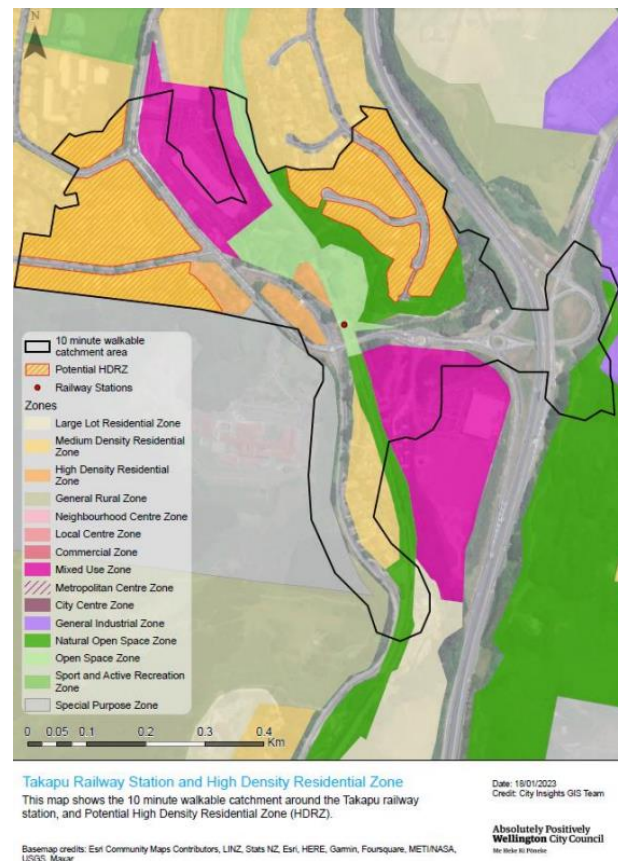


Figure 2

²¹ See HS1 s42A report at pages 74 and 75.

- 4.8 As already discussed, the zoning outcome illustrated on that Figure is firmly opposed by Ara Poutama for the reasons discussed in Mr Grace's evidence.
- 4.9 Importantly, there is no suggestion in the HS1 section 42A report that any consideration was given to the potential effects of this proposal on Arohata Prison or on the relief sought by Ara Poutama. There is also no indication that that revision was considered by, or had any influence on, the HS2 Reporting Planner in their assessment of Ara Poutama's submission or Kāinga Ora's further submission.
- 4.10 However, on the basis that that HS2 report proceeds the HS1 report and recommends no changes to the notified PDP, it can only be concluded that Council's position regarding the zoning of those adjoining properties and how they give effect to the NPS-UD remains the same as it was at notification.
- 4.11 If, however, the Council has revised its position such that it now considers that the HDRZ is more appropriate along that boundary to give effect to the NPS-UD, then:
- (a) that must be made explicit by the Council; and
 - (b) in the interests of natural justice, Ara Poutama must be given fair opportunity to address that further in evidence.
- 4.12 Alternatively, if Council is minded to accept the MDRZ along the Sunrise Boulevard/Arohata Prison boundary as an appropriate, "less enabling" outcome, then, in my submission, responsibility for undertaking the necessary qualifying matters assessment under section 77L of the RMA to facilitate that outcome lies with the Council.

5 CONCLUSION

- 5.1 Based on Mr Grace's considered planning evaluation, I submit that the purpose of the RMA and the outcomes sought in the relevant planning documents (including the NPS-UD and the Regional Policy Statement) are most appropriately achieved through:
- (a) Removing the *supported residential activity* provisions, as sought by Ara Poutama.

- (b) Retaining the notified zoning of the properties along Sunrise Boulevard, adjoining Arohata Prison.
- (c) Including the precinct and supporting provisions, described in, and attached to, the evidence of Mr Grace.

5.2 Ara Poutama wishes to thank the Panel for the opportunity to speak further to its submission.

DATED this 24th day of March 2023

A handwritten signature in black ink, appearing to be 'R Murdoch', with a stylized, cursive script.

R Murdoch
Counsel for Ara Poutama Aotearoa, the Department of Corrections