

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

the Wellington City Proposed District Plan, Hearing Stream 6, Corrections Zone and Special Purpose Zones (submitter number 240)

**PRIMARY EVIDENCE OF SEAN GRACE
ON BEHALF OF
ARA POUTAMA AOTEAROA THE DEPARTMENT OF CORRECTIONS
FOR HEARING STREAM 6**

Planning

Dated 2 February 2024

1 QUALIFICATIONS AND EXPERTISE

- 1.1 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 19 years.
- 1.2 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 Plan Changes, 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.
- 1.3 I have worked for Ara Poutama as a planning consultant over the course of the past 15 years.
- 1.4 I have extensive experience in District Plan policy work, and have appeared on behalf of Ara Poutama in hearings and at mediation for the Wellington City Proposed District Plan (**PDP**)¹, Proposed Waikato District Plan, Proposed Auckland Unitary Plan, Proposed Invercargill District Plan, Proposed Ōpōtiki District Plan and several Plan Change processes. I have reviewed and prepared submissions on behalf of Ara Poutama for numerous other Proposed District Plans and Plan Changes.

2 CODE OF CONDUCT

- 2.1 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

¹ Hearing Streams 1, 2 and 4.

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.

3 SCOPE OF EVIDENCE

3.1 This evidence addresses matters raised in the “Hearing Stream 6 – Corrections Zone and Special Purpose Zones” Section 42A report, authored by Joe Jeffries, dated 19 January 2024 (the **HS6 S42A report**) by:

- (a) briefly summarising the relief sought by Ara Poutama relevant to Hearing Stream 6 and the associated recommendations of the reporting planner (Section 4); and
- (b) addressing the references to “supported residential care accommodation” in the Corrections Zone (Section 5).

4 SUMMARY OF RELIEF SOUGHT AND REPORTING PLANNER’S RECOMMENDATIONS

4.1 Ara Poutama lodged a submission on the PDP dated 12 September 2022. Ara Poutama is identified as submitter number 240. The HS6 S42A report addresses the following points that were made in that submission that relate to the Corrections Zone, which applies to the Arohata Prison site in Tawa:

- (a) **The definition of “community corrections activities”**, whereby Ara Poutama sought that the definition be retained as notified (submission point 240.3). References to community corrections activities are included throughout the Corrections Zone chapter.
- (b) **The definition of “custodial corrections facilities”**, whereby Ara Poutama sought that the definition be retained as notified (submission point 240.4). References to custodial corrections facilities are included throughout the Corrections Zone chapter.
- (c) **The definition of “supported residential care activity”**, whereby Ara Poutama’s primary position sought that the definition,

and associated provisions applying to such throughout the PDP, including within the Corrections Zone, 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, including those within the Corrections Zone, the definition be retained as notified (submission point 240.8).
- (e) **References to “supported residential care accommodation” in the Corrections Zone**, whereby Ara Poutama sought that if the definition of supported residential care activity were to be retained in the PDP, then this should replace the incorrect references to “supported residential care accommodation” (submission points 240.68, 240.69, 240.70, 240.72 and 240.73). Noting that these references should refer to “activities” instead of “accommodation” to be consistent with the definition.

4.2 Overall, the reporting planner has recommended to retain the Corrections Zone provisions as they were notified in the PDP; that is, no changes are proposed to the chapter. I support this recommendation, insofar as the retention of the references to “supported residential care accommodation” within the zone are considered by the Panel, as I outline further in Section 5 of this statement.

5 SUPPORTED RESIDENTIAL CARE ACCOMODATION IN THE CORRECTIONS ZONE

Background

5.1 The notified version of the PDP 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]

5.2 The primary relief sought in Ara Poutama’s submission was to delete this definition (and the associated provisions and references to such)

throughout the PDP, given that the “residential activity” definition can otherwise be relied upon.

- 5.3 This was a matter covered through deliberations on Hearing Stream 1. The reporting planner for that hearing, Adam McCutcheon, recommended in his right of reply that the definition be deleted. Mr McCutcheon noted the following in relation to Ara Poutama’s submission and associated evidence on this matter:

“After hearing the presentation of Ara Poutama I am of the view that the definition of supported residential care activities can be removed from the plan and the ‘higher order’ definition of residential activity relied upon instead. That is to say that I now agree that the effects of supported residential care activities are not dissimilar from residential activities more generally.”²

- 5.4 The Hearings Panel have agreed with this position, outlining the following in the recommendations report for Hearing Stream 1 in relation to Mr McCutcheon’s recommendation (N.B. this also refers to the recommended removal of the definition of “boarding house”):

“The Hearing Panel supports this recommendation. We consider that if separate provision for these activities cannot be justified on an effects basis, it is difficult to retain them, and in their absence, the need for the defined terms falls away.”³

Assessment of HS6 Reporting Planner’s recommendations

- 5.5 The HS6 S42A report concurs with the reasoning of Mr McCutcheon, and supports the deletion of the “supported residential care activity” definition within the PDP. However, in relation to the references to “supported residential care accommodation” in the Corrections Zone, the HS6 S42A report simply states that it is unnecessary to amend the provisions to address the issue raised by Ara Poutama.⁴ No further assessment or context is provided, other than this is seen to be

² Paragraph 99, [Stream 1 Reporting Officer Right of Reply of Adam McCutcheon and Andrew Wharton on behalf of Wellington City Council, dated 14 April 2023](#).

³ Paragraph 468, [Report and Recommendations of Independent Commissioners, Hearing Stream 1, Report 1A, dated 26 January 2024](#). See also page 40, [IHP Report 1A Appendix 1.8 Definitions](#).

⁴ Paragraphs 57 and 65, [Hearing Stream 6 – Corrections Zone and Special Purpose Zones Section 42A of the Resource Management Act 1991, dated 19 January 2024](#).

consistent with the recommendations of the officer's right of reply for Hearing Stream 1.

- 5.6 The implication of this is that the Corrections Zone would include references to an activity which is not defined in the PDP. This is inconsistent with the original intent of the Corrections Zone, as notified, which included references to a defined term (albeit with the incorrect reference to "supported residential care accommodation" instead of "supported residential care activity", which I took to be a minor drafting error in the Corrections Zone, and hence the submission points made on this matter). This raises the potential for plan interpretation issues to occur in the future.
- 5.7 The intent of including such references in the Corrections Zone is to clearly enable limited non-custodial residential activities to occur as a permitted activity within the Corrections Zone. This is an activity that, amongst other activities proposed to be permitted in the zone, was assessed in the Section 32 Evaluation for the Corrections Zone as being "*compatible with the principal use of the site*".⁵ Having a term included in the Corrections Zone which is undefined in the PDP raises the risk of the activity not being able to be given effect to as a permitted activity, thus requiring resource consent/s unnecessarily.

Amendments sought

- 5.8 The solution to this issue is simple. As above, the assessment of Mr McCutcheon for Hearing Stream 1 identified that "*the definition of supported residential care activities can be removed from the plan and the 'higher order' definition of residential activity relied upon instead*". As such, references to "supported residential care accommodation" in the Corrections Zone should be amended to instead refer to "residential activities".
- 5.9 I have outlined how this should occur within an amended Corrections Zone chapter in **Attachment 1** to this statement.
- 5.10 As outlined in **Attachment 1**, CORZ-R4.1(b) currently specifies that "*No more than five supported residential care accommodation buildings are to be located within the Corrections Zone.*" Given that supported

⁵ Section 6.1, [Section 32 Evaluation Report Part 2: Special Purpose Corrections Zone](#).

residential care accommodation buildings are in fact “residential units” as defined in the PDP, an amendment has been proposed to reflect this.

- 5.11 Further, to avoid the potential for confusion of CORZ-R4 (the “residential activities” rule) applying to custodial-related activities, an advice note has been proposed to be added to the rule outlining that “*this rule does not apply to custodial corrections facilities*”; recognising that “custodial corrections facilities” are defined in the PDP.

Sean Grace

2 February 2024

Attachment 1: Amended Corrections Zone Chapter

Proposed amendments to the Corrections Zone, as sought by Ara Poutama via evidence presented on Hearing Stream 6 (prepared 2 February 2024). All text proposed to be amended is identified in red, with deletions ~~struck-through~~ and new text underlined.

He Rohe o Ara Poutama Aotearoa

Corrections Zone

CORZ	Corrections Zone
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Introduction

Ara Poutama Aotearoa, the Department of Corrections operates a custodial prison facility for women located at 13 Main Road, Tawa, known as Arohata Prison. Ara Poutama Aotearoa, the Department of Corrections is responsible for the operational management of the prison. The site is designated by the Minister of Corrections for the purpose of “Arohata Prison”.

Arohata Prison is an important part of the corrections facility network which provides for the safety and security of all New Zealand communities and is of national significance. It is one of just three women’s prison facilities in the country and the only women’s prison in the Greater Wellington area, and therefore has significance in a regional and district context. The facility plays a vital role in the region in allowing Ara Poutama Aotearoa, the Department of Corrections to meet its responsibilities under the Corrections Act 2004 for enforcing sentences and orders of the criminal courts and the New Zealand parole board.

In accordance with Section 176 of the RMA, the provisions of the District Plan shall apply in relation to the land that is subject to the designation only to the extent that the land is used for a purpose other than the designated purpose.

While custodial corrections facilities and ancillary activities are enabled under the designation, additional non-custodial justice sector activities are enabled under the Corrections Zone provided that they are appropriate for the site and their effects on the surrounding environment are managed. This includes non-custodial reintegration activities, community corrections activities and ~~supported residential~~ activities care accommodation. The Corrections Zone also adopts some of the provisions of the adjacent General Rural Zone.

Other relevant District Plan provisions

There may be a number of provisions that apply to an activity, building, structure or site. Resource consent may therefore be required under rules in this chapter as well as other chapters. Unless specifically stated in a rule, resource consent is required under each relevant rule. The steps to determine the status of an activity are set out in the General Approach chapter.

Objectives	
CORZ-01	Corrections Zone The Corrections Zone provides for:

	<ol style="list-style-type: none"> 1. The continued operation and development of Arohata Prison; 2. The ongoing maintenance, upgrading, and expansion of Arohata Prison; and 3. Activities with operational needs and functional needs to be located within the Corrections Zone without being constrained or compromised by incompatible activities.
CORZ-O2	<p>Managing effects</p> <p>Adverse effects of activities and development in the Corrections Zone are managed effectively within the Zone and at interfaces with adjoining zones, scheduled sites, public spaces and key movement streets.</p>
CORZ-O3	<p>National importance</p> <p>Arohata Prison is recognised as a nationally important facility which contributes to the economic and social well-being, and health and safety of the region and district.</p>
Policies	
CORZ-P1	<p>Operation and development</p> <p>Enable the ongoing operation and development of custodial corrections facilities and associated activities.</p>
CORZ-P2	<p>Compatible activities</p> <p>Provide for activities that are compatible with the purpose and function of the Corrections Zone, including:</p> <ol style="list-style-type: none"> 1. The following activities provided for as permitted activities in the General Rural Zone: <ol style="list-style-type: none"> a. Rural activities; b. Cleanfill areas; and c. Conservation activities. 2. Non-custodial rehabilitation activities; 3. Community corrections activities; and 4. Supported residential <u>activities care accommodation</u>.
CORZ-P3	<p>Other activities</p> <p>Manage the effects of other activities which are otherwise compatible with the function and predominant character of the General Rural Zone.</p>
CORZ-P4	<p>Amenity values</p> <p>Manage activities within the Corrections Zone so that they do not unduly detract from the rural and residential amenity values of properties beyond the Corrections Zone.</p>
Rules: Land use activities	
CORZ-R1	Custodial corrections facilities
	1. Activity status: Permitted
CORZ-R2	Non-custodial reintegration activities
	<p>1. Activity status: Permitted</p> <p>Where:</p>

- a. The loading and unloading of vehicles, or the receiving of deliveries, will only occur between the hours of 7:00am and 7:00pm on any day; and
- b. The operation of machinery only occurs between the hours of 7:30am and 7:00pm on any day.

2. Activity status: **Restricted Discretionary**

Where:

- a. Compliance with the requirements of CORZ-R2.1 cannot be achieved.
Matters of discretion are:

- 1. 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.

Notification status: An application for resource consent made in respect of rule CORZ-R2.2.a is precluded from being publicly notified.

CORZ-R3 Community corrections activities

1. Activity status: **Permitted**

Where:

- a. The hours of operation are between the hours of 7:00am and 7:00pm on any day.

2. Activity status: **Restricted Discretionary**

Where:

- a. Compliance with the requirements of CORZ-R3.1.a cannot be achieved.

Matters of discretion are:

- 1. 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.

Notification status: An application for resource consent made in respect of rule CORZ-R3.2.a is precluded from being publicly notified.

CORZ-R4 ~~Supported residential activities care accommodation~~

1. Activity status: **Permitted**

Where:

- a. The maximum number of residents to be accommodated at any one time is 30; and
- b. No more than five ~~supported residential units care accommodation buildings~~ are to be located within the Corrections Zone.

~~Note: this rule does not apply to custodial corrections facilities.~~

<p>2. Activity status: Restricted Discretionary</p> <p>Where:</p> <p>a. Compliance with the requirements of CORZ-R4.1 cannot be achieved.</p> <p>Matters of discretion are:</p> <p>1. 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.</p> <p>Notification status: An application for resource consent made in respect of rule GRZ-R4.2.a is precluded from being publicly notified.</p>	
CORZ-R5	Rural activities
<p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. The activity does not include the keeping of goats.</p>	
CORZ-R6	Cleanfill areas
<p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. The volume of material is less than 100m³ per title, per year.</p>	
<p>2. Activity status: Discretionary</p> <p>Where:</p> <p>a. Compliance with the requirements of GRZ-R6.1.a cannot be achieved.</p> <p>Notification status: An application for resource consent made in respect of rule GRZ-R6.2.a is precluded from being publicly notified.</p>	
CORZ-R7	Conservation activity
<p>1. Activity status: Permitted</p>	
CORZ-R8	Rural Industry
<p>1. Activity status: Discretionary</p>	
CORZ-R9	Intensive indoor primary production
<p>1. Activity status: Discretionary</p>	
CORZ-R10	Quarrying or mining activities
<p>1. Activity status: Discretionary</p>	
CORZ-R11	Any activity not otherwise listed in this table
<p>1. Activity status: Non-complying</p>	
Rules: Building and structure activities	

CORZ-R12	Maintenance and repair of buildings and structures	
	1. Activity status: Permitted	
CORZ-R13	Demolition or removal of buildings and structures	
	1. Activity status: Permitted	
CORZ-R14	Construction, addition or alteration of buildings and structures including accessory buildings, relating to non-custodial reintegration, community corrections or supported residential care-accommodation activities	
	1. Activity status: Permitted Where: a. Compliance is achieved with CORZ-S1 and CORZ-S2.	
	2. Activity status: Restricted Discretionary Where: a. Compliance with the requirements of CORZ-R14.1.a cannot be achieved. Matters of discretion are: 1. The extent and effect of non-compliance with any relevant standard as specified in the associated assessment criteria for the infringed standard; and 2. The matters in CORZ-P4. Notification status: An application for resource consent made in respect of rule CORZ-R14.2.a is precluded from being publicly notified.	
Standards		
CORZ-S1	Maximum height	
	1. Buildings and structures must not exceed a maximum height of 8m above ground level. This standard does not apply to buildings, accessory buildings and structures associated with custodial corrections facilities.	Assessment criteria where the standard is infringed: 1. Dominance, privacy and shading effects on adjoining properties; 2. The ability to mitigate adverse effects through screening, planting and landscaping; 3. Whether topographical or other site constraints make compliance with the standard impractical; and 4. Whether the form and scale of the building is compatible with other buildings in the immediate vicinity of the site.
CORZ-S2	Minimum boundary setbacks for buildings	
	1. No building or structure may be located within 6m of any boundary. This standard does not apply to fences or standalone walls.	Assessment criteria where the standard is infringed: 1. Dominance, privacy and shading effects on adjoining properties.