

**BEFORE THE HEARINGS PANEL**

**IN THE MATTER OF**

the Resource Management Act 1991

**AND**

**IN THE MATTER OF**

of Variation 3 to the Proposed  
Waikato District Plan

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**OUTLINE OF LEGAL SUBMISSIONS ON BEHALF OF  
ARA POUTAMA AOTEAROA, DEPARTMENT OF CORRECTIONS  
(Submitter 30)**

Dated: 21 July 2023

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## **MAY IT PLEASE THE PANEL**

### **1 INTRODUCTION**

- 1.1 These legal submissions are made on behalf of Ara Poutama Aotearoa, the Department of Corrections (**Ara Poutama**), and should be read in conjunction with the planning evidence of Mr Sean Grace.
- 1.2 My colleague Rachel Murdoch has previously provided legal submissions on behalf of Ara Poutama in response to the invitation from the Panel to address the potential implications of the High Court decision in *Southern Cross Healthcare Limited v Eden Epsom Residential Protection Society Inc*<sup>1</sup> for the Intensification Planning Instruments (**IPIs**) for district councils in the Waikato region, particularly with respect to the proper relationship (and weighting) of policies 3 and 4 with the body of the [National Policy Statement on Urban Development 2020] (**NPS-UD**)<sup>2</sup>.

### **2 VARIATION 3**

- 2.1 Variation 3 is Waikato District Council's response to its statutory obligations under the Resource Management Act 1991 (**RMA**), as amended by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Enabling Act**). The purpose of the amendments made by the Enabling Act is to strengthen implementation of the **NPS-UD**.<sup>3</sup>

### **3 OVERALL OUTCOMES SOUGHT BY ARA POUTAMA THROUGH VARIATION 3**

- 3.1 Ara Poutama's submission and the planning evidence of Mr Grace describe the different types of activities that Ara Poutama undertakes as part of its essential role within the justice system. Broadly, these include:
- (a) Provision of residential housing in communities, with varying levels of support;

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<sup>1</sup> [2023] NZHC 948.

<sup>2</sup> Dated 9 June 2023.

<sup>3</sup> As amended in 2022.

- (b) Community corrections activities<sup>4</sup>, which provide (non-residential) services and support to those within the justice system who are carrying out their sentences within the community and/or meeting parole requirements. Those services include probation or parole officer engagement and meetings, training and education programmes and the like;
- (c) Custodial facilities (which in Waikato is the Spring Hill Corrections Facility); and
- (d) Non-custodial transitional accommodation and/or non-custodial rehabilitation services co-located with custodial facilities (as is the case at the Spring Hill Corrections Facility).

3.2 These activities are a necessary part of Ara Poutama’s statutory mandate,<sup>5</sup> and play an essential role in the functioning of the justice system. The effective and efficient functioning of that system relies on clear provision for those aspects of Ara Poutama’s activities, which occur within the community, in all district plans. As Aotearoa’s urban environments evolve through intensification, implementing the objectives of the NPS-UD necessitates that such activities are clearly provided for if those environments are to be “well-functioning” in the NPS-UD sense<sup>6</sup>, as well as enabling all people and communities to provide for their well-being.

3.3 Within that context and as noted by Mr Grace, Ara Poutama’s submission on Variation 3 (and on other IPIs throughout New Zealand) seeks to ensure (inter alia) that the intensification proposed under Variation 3 will provide for (and meet the needs of) a variety of different types of household, including those supported by Ara Poutama and/or its service providers within the community.

#### 4 **RELIEF SOUGHT – VARIATION 3**

4.1 To that end, Ara Poutama has sought the following specific and narrow relief on Variation 3:

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<sup>4</sup> “*Community corrections activity*” is defined in the National Planning Standards, and means the use of land and buildings for non-custodial services for safety, welfare and community purposes, including probation rehabilitation and reintegration services, assessments, reporting, workshops and programmes, administration and a meeting point for community works groups.

<sup>5</sup> As set out in s5 of the Corrections Act 2004.

<sup>6</sup> Objective 1 and Policy 2 NPS-UD.

- (a) Addition of a definition of “household” (being a term used in the existing proposed Waikato District Plan (**pWDP**) definition of “residential unit” and also in the definition of “residential unit” which was included in s2 of the RMA by virtue of the amendments made by the Enabling Act) to ensure that the intensification enabled under Variation 3 will provide for and meet the needs of a variety of different households (referred to in these legal submissions as **the Household Definition Relief**). For clarity, the definition of “residential unit” as notified in Variation 3 is supported by Ara Poutama and is not sought to be amended.<sup>7</sup>
- (b) A consequential amendment to the definition of “supported residential accommodation” to make it clear that that definition only applies to activities in the Corrections Zone, and not to residential units used by persons receiving support from Ara Poutama in Residential zones (referred to in these legal submissions as **the Supported Residential Accommodation Definition Relief**).

4.2 Whilst the Ara Poutama submission refers to the need to enable further Community Corrections Facilities to establish in appropriate locations, should they be required in the future, that matter is not being pursued through any relief on Variation 3. Hence submission point 30.1 (listed in the table on page 119 of the s42A report) can be disregarded.

## 5 **SECTION 42A REPORT – HOUSEHOLD DEFINITION RELIEF**

5.1 As described in the evidence of Mr Grace, Ara Poutama’s provision of residential housing for people within its care (who are not in custody) is often accompanied by rehabilitation and reintegration support (provided either by Ara Poutama staff or service providers that Ara Poutama works alongside). However those activities are still residential in nature and residents living in those houses operate as a household. The households of people managed and supported by Ara Poutama are no different (in terms of effects) to any other type of household.

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<sup>7</sup> The statement at [350] of the s42A report that Ara Poutama seeks to amend the definition of “residential unit” is incorrect.

- 5.2 The s42A report recommends that Ara Poutama’s Household Definition Relief is declined on the basis that it is not necessary to “outline such specific intricacies”<sup>8</sup> in the Plan. The evidence of Mr Grace gives an example of why such intricacies **must** be addressed in the Plan<sup>9</sup>. If a definition of “household” is not included in the Plan, Ara Poutama will face ongoing debates with Council planners in the future about whether or not the houses which it provides for people within its care are “residential units” and a residential activity, or some other type of activity.
- 5.3 Ara Poutama’s submission seeking that “household” be defined is directly related to (and will enhance the clarity of) the existing “residential unit” definition in the pWDP. It will ensure that the intensification to be enabled by Variation 3 will provide for (and meet the needs of) a variety of different households, including those managed by Ara Poutama, and will give effect to the following Objectives (which under s77G(5)(a) of the Enabling Act, the Council is required to include in the pWDP through Variation 3):

*Objective 1*

- (a) *a well-functioning urban environment that enables all people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, now and in the future.*

*Objective 2*

- (b) *a relevant residential zone provides for a variety of housing types and sizes that respond to:*
- i. *housing needs and demand; and*
  - ii. *the neighbourhood’s planned urban built character, including 3-storey buildings*<sup>10</sup>.

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<sup>8</sup> Section 42A report at [352].

<sup>9</sup> At [6.9].

<sup>10</sup> Evidence of Sean Grace at [6.14] – [6.17].

5.4 Therefore the Residential Definitions Relief is squarely within the scope of s80E of the Act, and the s42A report does not raise any issues in that regard.

**6 SECTION 42A REPORT - SUPPORTED RESIDENTIAL ACCOMMODATION DEFINITION RELIEF**

6.1 In the Waikato district, Ara Poutama operates the Spring Hill Corrections Facility which is located within the Corrections Zone under the pWDP and is subject to designation MCO-1. Non-custodial transitional accommodation and/or non-custodial rehabilitation services for those with high or complex needs, to support their reintegration and transition back into the community, are co-located on the Corrections facility site.

6.2 For the reasons described by Mr Grace, the Supported Residential Accommodation Definition Relief is clearly necessary to avoid confusion between the non-custodial activities undertaken by Ara Poutama within the Corrections Zone at Spring Hill, and residential units used by persons receiving support from Ara Poutama living in the community in Residential zones. If the Supported Residential Accommodation Definition Relief is not granted, residential units used by persons receiving support from Ara Poutama in Residential zones may be considered by Council to be a discretionary activity in the Medium Density Residential 2 zone<sup>11</sup>.

6.3 The s42A Officer has recommended that the Supported Residential Accommodation Definition Relief be rejected on the basis that the officer considers that it:

(a) would "provide greater opportunities for community corrections activities to establish as a permitted activity (as a residential activity) with no applicable alternative definition"<sup>12</sup>; and

(b) is outside the scope of Variation 3<sup>13</sup>.

6.4 To be clear, the relief sought by Ara Poutama in relation to the definition of Supported Residential Accommodation is not in any way related to

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<sup>11</sup> Section 42A Report at [355].

<sup>12</sup> Section 42A Report at [355].

<sup>13</sup> Section 42A Report at [356].

community corrections activities (which are do not have any residential element)<sup>14</sup>, and therefore would not provide greater opportunities for community corrections activities to establish as a permitted activity.

- 6.5 In respect of scope, the Supported Residential Accommodation Relief is arguably within the scope of s80E because the purpose of Variation 3 is to enable residential intensification in relevant residential zones and to provide housing choice in line with the NPS-UD. If the Household Definitions Relief and the Supported Residential Accommodation Relief is not granted, Variation 3 will not provide for (or meet the needs of) a variety of different households, including those supported by Ara Poutama.
- 6.6 An alternative (which does not raise any issue as to scope) would be to make it clear (in the definition of "Household" sought by Ara Poutama) that in the Residential zones only, "Household" includes groups of people where one of more of those people receives care, support and/or supervision including from or on behalf of Ara Poutama. Suitable wording would be as follows:

*Household*

*Means, in Medium Density Residential Zone 1 and Medium Density Residential Zone 2, a person or group of people who live together as a unit whether or not:*

- (a) *any or all of them are members of the same family; or*
- (b) *one or more members of the group receives care, support and/or supervision (whether or not that care, support and/or supervision is provided by someone paid to do so and includes care, support and/or supervision provided by or behalf of Ara Poutama Aotearoa – The Department of Corrections).*

- 6.7 Whilst the Supported Residential Accommodation Relief is preferred, the wording set out in paragraph 6.6 would achieve the same outcome sought by Ara Poutama, which is to ensure that there is no confusion between supported residential accommodation within the Spring Hill site

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<sup>14</sup> Evidence of Sean Grace at [7.8].

and residential activities undertaken by Ara Poutama in residential zones, in particular in zones where (through Variation 3) residential activities will be provided for as a permitted activity.

7 **CONCLUSION**

7.1 For the reasons set out above, there is scope under the RMA for the Panel to consider the merits of Ara Poutama's submission, and to recommend that the relief sought therein be granted.



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**Monique Thomas**

Counsel for Ara Poutama Aotearoa, the Department of Corrections

21 July 2023