

BEFORE THE HEARINGS PANEL

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Variation 3 to the Proposed Waikato
District Plan

**PRIMARY EVIDENCE OF SEAN GRACE (PLANNING) ON BEHALF OF
ARA POUTAMA AOTEAROA THE DEPARTMENT OF CORRECTIONS**

(Submitter 30)

Dated: 4 July 2023

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1 EXECUTIVE SUMMARY

- 1.1 Ara Poutama has sought a definition of "household", to complement the definitions of "residential activity" and "residential unit" already included in the Proposed Waikato District Plan – Appeals Version (**PDP**). A definition of "household" is needed to make clear the full scope of residential activities that are enabled in the Waikato District and to ensure that the intensification enabled by Variation 3 to the Proposed Waikato District Plan (**Variation 3**) will provide for, and meet the needs of, a variety of different households (including those managed by Ara Poutama Aotearoa, the Department of Corrections (**Ara Poutama**)).
- 1.2 In my view, it is essential that the intensification enabled by Variation 3 is clear about the residential activities that it applies to, and what it does not. As such, Ara Poutama has also sought a minor amendment to the definition of "supported residential accommodation" to ensure that there is no confusion between the type of residential accommodation intended to be provided within the Corrections Zone and residential activities that may involve an element of support which are to be enabled in the residential zones through Variation 3 and the PDP.
- 1.3 The relief sought by Ara Poutama in relation to the definitions of "household" and "supported residential accommodation" gives effect to the relevant objectives and policies of Variation 3, the PDP and the National Policy Statement on Urban Development (**NPS-UD**).
- 1.4 **Appendix 1** to my evidence outlines the specific relief sought by Ara Poutama.

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 worked 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 provided advice to 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 given evidence on behalf of Ara Poutama and also attended mediation on its behalf for the 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 and Variations, including Intensification Planning Instruments and given evidence in respect of the same.

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 Note 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:
- (a) Provides background to Ara Poutama's submission on Variation 3;

- (b) Describes the relief sought by Ara Poutama on Variation 3, being the addition of a definition of “household” and amendment to the definition of “supported residential accommodation”;
- (c) Addresses the s42A Report¹ on Variation 3 as it relates to that relief; and
- (d) Provides a s32AA analysis in relation to the relief sought by Ara Poutama and that of the relevant further submissions.

5 BACKGROUND TO ARA POUTAMA’S SUBMISSION ON VARIATION 3

Ara Poutama – Residential Housing in the Community

- 5.1 Throughout Aotearoa, Ara Poutama provides and manages residential housing in the community to assist people within its care with their rehabilitation, transition and/or reintegration into the community where they have been on custodial sentences, and to assist people with proactively participating in society where they are on community-based sentences. These homes accommodate people following their release from prison, those on bail and/or those serving community-based sentences (such as home detention).
- 5.2 In instances where more than one person resides at these homes, residents live 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 varying levels of support and/or supervision from on-site providers, such as help with domestic duties and responsibilities (e.g. navigating daily household chores or getting a drivers licence), rehabilitation, and/or reintegrative support (e.g. assistance with finding employment).
- 5.3 Significant demand for Ara Poutama housing exists nationally. This is in part driven by the provisions of the Sentencing Act 2002, which requires that sentencing judges give consideration to community-based sentences before considering custodial sentences.

¹ “SECTION 42A REPORT, Report on submissions and further submissions – Variation 3 to the Proposed Waikato District Plan, Enabling Housing Supply”, prepared by Fiona Hill, Karin Lepoutre and Bessie Clarke, dated 15 June 2023, Version 2.

- 5.4 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 District Plan definitions. To that end, Ara Poutama has sought (in Variation 3 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”.

Spring Hill Corrections Facility

- 5.5 Within the Waikato District, Ara Poutama operates the Spring Hill Corrections Facility, which is located off Hampton Downs Road, Hampton Downs. The facility is located in the Corrections Zone in the PDP and is also subject to designation MCOR-1.
- 5.6 In the PDP, “supported residential accommodation” undertaken within the Corrections Zone is specifically identified as a permitted activity.

Relief Sought by Ara Poutama – Variation 3

- 5.7 The Ara Poutama submission seeks:
- (a) Inclusion of a definition of “household” to make it clear that residential accommodation activities (with support), such as that provided by Ara Poutama in the community, are captured within the definition of “residential unit”.² This relief was opposed by Kāinga Ora through its further submission³ and supported in part by Pareoranga Te Kata through their further submission⁴.
 - (b) Amendment to the definition of “supported residential accommodation” to expressly provide for that activity in the Corrections Zone only and avoid its potential misapplication to other residential activities undertaken by Ara Poutama (and/or its service providers) in other zones.⁵ This relief was supported in part by Pareoranga Te Kata through their further submission⁶.

² Submission point 30.3.

³ FS 217.16.

⁴ FS 225.8.

⁵ Submission point 30.4.

⁶ FS 225.9.

5.8 The Council's summary of submissions refers to two additional submission points – points 30.1 and 30.2. However, these points summarise introductory text included within Ara Poutama's submission, and do not relate to any specific relief sought. Given this, I have not assessed these any further in my evidence.

6 DEFINITION OF "HOUSEHOLD"

6.1 The definitions of "residential activity" and "residential unit" in the National Planning Standards are as follows:

Residential activity

Means the use of land and building(s) for people's living accommodation.

Residential unit

Means 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.

6.2 The "residential activity" definition applies to residential housing (with support), such as that provided for by Ara Poutama. Specifically, residential accommodation activities (with support) 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").

6.3 Both definitions are already incorporated in the PDP. To provide clarity of interpretation, Ara Poutama's submission on Variation 3 sought the inclusion of a definition of "household" (via submission point 30.3). The definition of "residential unit" in the PDP contains a reference to household, but does not further define it.

6.4 Ara Poutama sought inclusion of a definition of "household" which explicitly references the existence of support elements to avoid any misinterpretation. The proposed definition is set out below, and has been updated to include minor corrections in wording:

Household

Means 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 (whether or not they are paid) provides, receives day to day care, support and/or supervision to any other member(s) of the group (whether or not that care, support and/or supervision is provided by someone paid to do so).~~*

- 6.5 Inclusion of this definition was sought to ensure that the District Plan clearly provides for, and meets the needs of, a variety of different households including those housed by Ara Poutama and/or its service providers within the community.
- 6.6 In my opinion, there is no legitimate effects basis for distinguishing residential activities which include varying degrees of support, such as those provided by Ara Poutama, from any other residential activity.
- 6.7 If resource consent for housing provided by Ara Poutama is required, in my experience, those applications tend to be strongly opposed by surrounding residents because of perceived safety and amenity concerns associated with those in Ara Poutama's care.
- 6.8 However, any perceived amenity concerns with housing provided by Ara Poutama are not well founded. The decision that persons in the care of Ara Poutama should reside within the community has already been made by the Courts or the Parole Board through sentencing or release decisions. District Plans should not be a barrier to the implementation of decisions made under the Sentencing Act, Parole Act and Corrections Act. Imposing unnecessary consenting requirements on those activities, particularly when there is no material effects-based differential, risks undermining the operation of the justice system and Ara Poutama's ability to fulfil its statutory obligations.
- 6.9 I have experienced first-hand the difficulties that can arise when Plan definitions are unclear. In the Waikato District, Ara Poutama sought a Certificate of Compliance for the temporary accommodation of men in residential housing for the purposes of a rehabilitative and reintegration

programme on a Pa zoned⁷ site north of Huntly.⁸ The Certificate of Compliance was sought on the basis of the proposal being a “residential activity” under the Operative Waikato District Plan (**ODP**), and compliance being confirmed with all relevant standards of the ODP.

6.10 The Council subsequently refused to issue the Certificate, taking the position that the proposal in their view was a “commercial activity” (due to that particular definition including a reference to “*government ... activities*”), thereby requiring resource consent in the Pa Zone. Further, the Council advised at that time that other Crown agencies that provide or manage housing in the Waikato District were not being required to seek resource consents for “commercial activities” in the residential zones, despite being a “government activity”.

6.11 I refer to this example to highlight the difficulties that Ara Poutama can face when District Plan definitions are not clear, leading to unnecessary resource consent processes which are not justified on the basis of resource management effects. I am also aware of examples in other districts.

Reporting Planners’ recommendations

6.12 The Council’s s42A Report has made the following assessment in relation to the inclusion of a definition of “household”:⁹

“In relation to the definition for residential unit, Ara Poutama Aotearoa state that the definition refers to a ‘household’ which is not defined and that it should be clarified that households are not necessarily limited to a family unit or flatting arrangement. The submission point is supported by Pareoranga Te Kata (further submitter #225) and is opposed by Kāinga Ora (further submitter #217).

In my view, the definition of residential unit does not imply that it is limited for use by a family unit or a flatting arrangement. While I agree with Ara Poutama that a household can constitute different makeups, I do not consider it necessary for the district plan definition to outline such specific intricacies. For these reasons I recommend that this submission point (#30.3) be rejected.”

6.13 As I have outlined earlier in my statement, misinterpretation of Plan definitions is not an uncommon occurrence in relation to residential

⁷ Under the Operative Waikato District Plan.

⁸ Certificate of Compliance application lodged on 7 May 2021, Council reference LUC0501/21.

⁹ At paragraphs 351 and 352.

activities undertaken by Ara Poutama, including in the Waikato District. It is therefore critical in my view that the Plan does indeed cater for “specific intricacies” in terms of enabling the full scope of residential activities to occur within the District, by avoiding the potential for resource consents being required for residential activities that some may consider as atypical.

Section 32AA analysis

6.14 I consider that implementation of Ara Poutama’s household definition will enable Variation 3 and the PDP to achieve its objectives, which include:

SD – Strategic directions

*“A variety of housing types are available to meet the community’s housing needs”;*¹⁰

*“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 into the future”;*¹¹

GRZ – General residential zone

*“Residential activities remain the dominant activity in the zone”;*¹²

MRZ2 – Medium density residential zone

*“Provide for a variety of housing types and sizes that respond to ... Housing needs and demand”;*¹³

*“An appropriate mix of complementary and compatible activities is enabled to support residential growth”.*¹⁴

6.15 The inclusion of the “household” definition as sought by Ara Poutama will ensure that intensification enabled by Variation 3 will provide for, and meet the needs of, a variety of different households, including those housed by Ara Poutama and/or its service providers within the community.

6.16 In my opinion, this relief will better ensure that Variation 3 gives effect to the relevant higher-order objectives and policies of NPS-UD, which include:

¹⁰ PDP Objective SD-O4.

¹¹ PDP Objective SD-O14 (as recommended in Appendix 2 of the s42A Report).

¹² PDP Objective GRZ-O5.

¹³ PDP Objective MRZ2-O1(a) (as recommended in Appendix 2 of the s42A Report).

¹⁴ PDP Objective MRZ2-O4.

Objective 1

"New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future";

Objective 4

"New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations"; and

Policy 1(a)(i)

"Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum ... have or enable a variety of homes that ... meet the needs, in terms of type, price, and location, of different households".

(my emphasis underlined)

- 6.17 In particular, Policy 1(a)(i) confirms the intent of enabling housing that caters for "different households". In my view, having a definition that provides clarity as to what actually constitutes a "household" is an appropriate response at the District Plan level to the policy intent of the NPS-UD.
- 6.18 Kāinga Ora's further submission¹⁵ opposed the insertion of the "household" definition, and sought "*clarity as to how this definition relates to other defined activities within the District Plan e.g. rehabilitation facilities, boarding houses etc.*" In this respect I note that neither "boarding houses" nor "rehabilitation facilities" are terms defined in the PDP. "Non-custodial rehabilitation activities" are defined, but are clearly not a residential-related activity as there is no reference to any kind of residential or accommodation element within the definition.¹⁶ A boarding house, depending on its configuration and the nature of its operation, could be interpreted as a "residential activity" or "visitor accommodation". In my view however the inclusion of the proposed "household" definition is of no consequence for how a boarding house activity might be interpreted under the PDP.

¹⁵ FS 217.16.

¹⁶ "*Non-custodial rehabilitation activity - Means the use of land and buildings for the provision of training, education and reintegration activities and programmes undertaken by, or on behalf of, Ara Poutama Aotearoa – The Department of Corrections.*"

6.19 As a final point, I note that the recently released decisions on the Proposed New Plymouth District Plan has included a definition of “household”.¹⁷ This definition was implemented in response to Ara Poutama’s submissions on that Plan, and the wording is very similar to that sought by Ara Poutama in relation to Variation 3.

7 AMENDMENT TO THE DEFINITION OF “SUPPORTED RESIDENTIAL ACCOMMODATION”

Background

7.1 “Supported residential accommodation” is a term defined in the PDP as follows:

Supported residential accommodation

Means the use of a residential unit(s) by a person or persons who reside within such unit(s) on a short or long term basis and receives supervision, assistance, care and/or support from, or on behalf of, Ara Poutama Aotearoa – The Department of Corrections. It includes the provision of non-custodial rehabilitation activities.

7.2 The intent of including this definition in the PDP was to capture non-custodial residential activities undertaken within the Spring Hill Corrections Facility site (which is within the Corrections Zone) only, including the associated rehabilitation activities associated with such. This is apparent in that the only zone within the PDP within which there is a reference to “supported residential accommodation” is in the Corrections Zone chapter (as a permitted activity under Rule CORZ-R4).

7.3 The following sets out the genesis of how “supported residential accommodation” came to be defined in the PDP:

(a) The application of a special purpose “Corrections Zone” (together with tailored zone provisions) for the Spring Hill Corrections Facility site was proposed by Ara Poutama in its further submission to the PDP process¹⁸, in line with the National Planning Standards which

¹⁷ Refer to the assessment of submission point number 510.7, page 12 in <https://proposeddistrictplan.npdc.govt.nz/media/ingpmd1a/appendix-2d-def-table-of-recommendation-on-subm-points.pdf>.

¹⁸ FS 1210. N.B. a further submission was used as the National Planning Standards introduced the concept of using special purpose zones to apply to prison facilities; with the gazettal of the National Planning Standards occurring in the period that followed the notification of the PDP and the primary submission process, but before the further submission process.

had recently been released. The further submission did not propose a definition of “supported residential accommodation”.

- (b) PDP Hearing 25 dealt with rezoning submissions, including the Corrections Zone proposal by Ara Poutama. My primary evidence on behalf of Ara Poutama for Hearing 25 included a description of supported residential accommodation in the context of its future potential implementation at the Spring Hill Corrections Facility site.¹⁹ My primary evidence did not propose a specific definition of “supported residential accommodation” however.²⁰
- (c) During presentations for Hearing 25, there were discussions between myself, the hearing Commissioners and the Council Planner regarding the potential to define a number of the terms proposed within the provisions for the Corrections Zone. The Council Planner in her closing reply statement for Hearing 25 confirmed that including a definition for “*supported residential accommodation ... would add certainty to the permitted activity rules*” for the Corrections Zone.²¹ The Commissioner agreed with the Council Planner. The Decision Report states:²²

“[W]e have amended the zoning of the Spring Hill Corrections Facility site to the Special Purpose Corrections Zone and included the provisions and definitions recommended by Mr Grace in the PDP subject to minor amendments.”

- (d) Those definitions included “supported residential accommodation”, and that definition was subsequently inserted by Council into the PDP.²³

¹⁹ See paragraphs 5.17 to 5.22 in https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearing-25/mercer-and-meremere/submitter-evidence/sub-496-fs1210---department-of-corrections---planning-evidence.pdf?sfvrsn=173b8fc9_2

²⁰ Ibid, Appendix 1.

²¹ See paragraph 33 in https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearing-25/mercer-and-meremere/council-s24a-report/hearing-25---mercer-and-meremere---closing-statement.pdf?sfvrsn=8c4992c9_2

²² See paragraph 5.40 in https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/decisions/proposed-waikato-district-plan/decision-report-28n-zoning---mercer-and-meremere/decision-report-28n-zoning---mercer-and-meremere.pdf?sfvrsn=60fb9ac9_2

²³ See page 80 in https://www.waikatodistrict.govt.nz/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/decisions/proposed-waikato-district-plan/decision-report-30-definitions/decision-report-30-definitions.pdf?sfvrsn=d9f99ac9_2

Amendment sought

- 7.4 Ara Poutama's submission on Variation 3 sought to amend the "supported residential accommodation" definition (via submission point 30.4) as follows:

Supported residential accommodation

Means, in the Corrections Zone, the use of a residential unit(s) by a person or persons who reside within such unit(s) on a short or long term basis and receives supervision, assistance, care and/or support from, or on behalf of, Ara Poutama Aotearoa – The Department of Corrections. It includes the provision of non-custodial rehabilitation activities.

- 7.5 As set out in paragraph 7.3 of my evidence, there was never an intent by Council (or Ara Poutama) that "supported residential accommodation" would be a term applied outside of the Corrections Zone. The intent of including that definition in the PDP was to capture non-custodial residential activities undertaken within the Spring Hill Corrections Facility site (which is within the Corrections Zone), including the associated rehabilitation activities. This is clear from the PDP decision and also apparent in that the Corrections Zone is the only zone within the PDP within which there is a reference to "supported residential accommodation".²⁴
- 7.6 The relief sought by Ara Poutama in relation to Variation 3 will ensure that there is no confusion between residential activities within the Spring Hill Corrections Facility site and other residential activities undertaken by Ara Poutama in other zones outside of the Corrections Zone within the PDP, in particular within the zones where residential activities are provided for as a permitted activity (i.e. under both the operative PDP rules and the rules proposed under Variation 3).

Reporting Planners' recommendations

- 7.7 The Council's s42A Report has made the following assessment in relation to amendment of the definition of "supported residential accommodation":²⁵

"Supported residential accommodation is not proposed to be specifically provided for within the Medium density residential zone

²⁴ As a permitted activity under Rule CORZ-R4.

²⁵ At paragraphs 355 and 356.

2 and would therefore be a discretionary activity. The requested amendment would provide greater opportunities for community corrections facilities to establish as a permitted activity (as a residential activity) with no applicable alternative definition.

In my view, the requested amendment is not consequential on the MDRS or policies 3,4 and 5 of the NPS-UD and therefore do not consider that the requested provisions are 'related provisions' under section 80E of the RMA. For this reason I do not consider the IPI process to be an appropriate mechanism for the requested amendments. It is also my view that the submissions do not meet the Clearwater tests to be within scope. I therefore recommend that the point (#30.4) in relation to amending the definition for supported residential accommodation be rejected."

- 7.8 The s42A Report appears to have confused "community corrections activities" with residential activities undertaken by Ara Poutama. "Community corrections activities" are defined in the PDP and have no residential element to them.²⁶ Community corrections activities are provided for as permitted activities only within the commercial zones, the General Industrial Zone and the Corrections Zone in the PDP.
- 7.9 The household definition sought by Ara Poutama (in conjunction with the residential activity and residential unit definitions) is the "applicable alternative definition" referred to in the s42A Report.²⁷
- 7.10 As I have outlined earlier in my evidence, misinterpretation of Plan definitions is not an uncommon occurrence in relation to residential activities undertaken by Ara Poutama, including in the Waikato District. Hence, it is important that these are clarified through Variation 3. The reporting officers' comments further demonstrate the issues with interpretation of Plan definitions in relation to residential housing provided by Ara Poutama.
- 7.11 In relation to the matter of scope, this will be the subject of legal submissions presented on behalf of Ara Poutama.

Sean Grace

4 July 2023

²⁶ "Community corrections activity 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."

²⁷ At paragraph 355.

APPENDIX 1 – RELIEF SOUGHT

Insertions shown in underline.

Household

Means 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).

Supported residential accommodation

Means, in the Corrections Zone, the use of a residential unit(s) by a person or persons who reside within such unit(s) on a short or long term basis and receives supervision, assistance, care and/or support from, or on behalf of, Ara Poutama Aotearoa – The Department of Corrections. It includes the provision of non-custodial rehabilitation activities.