

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Proposed Waimakariri District Plan,
including Variations 1 and 2 –
Hearing Streams 1 and 2

**PRIMARY EVIDENCE OF MAURICE DALE
ON BEHALF OF
ARA POUTAMA AOTEAROA THE DEPARTMENT OF CORRECTIONS
(SUBMITTER # 52 (PROPOSED PLAN), and 56 (VARIATION 1))**

Planning

Dated 1 May 2023

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1 EXECUTIVE SUMMARY

- 1.1 Ara Poutama Aotearoa the Department of Corrections (**Ara Poutama**) made submissions on the definitions, objectives, polices, and rules of the Proposed Waimakariri District Plan (**PWDP**), including Variation 1 (**PWDP-V1**) as they relate to providing for “residential activities” and “community corrections activity” in various residential, commercial, and industrial zones.
- 1.2 Specifically, for Hearing Streams 1 and 2 (**HS1**) (**HS2**), Ara Poutama sought the following relief:
- (a) Amendment to Strategic Direction objective SD-O3 to ensure urban development *enables the community to provide for their wellbeing*.
 - (b) The addition a new Urban Form and Development policy to provide for *a range of residential activities* in residential zones including those provided by Ara Poutama that include an element of support and supervision.
- 1.3 The HS1 and HS2 s42A reports (**s42A Reports**) have recommended rejection of those changes on the basis they are otherwise provided for through other proposed provisions in the PWDP. I agree with the s42A reports that the new strategic direction objective SD-02 introduced through Variation 1, and other proposed strategic and residential objectives appropriately addresses the relief sought by Ara Poutama. I therefore agree that the change to Strategic Direction objective SD-O3 and additional Urban From and Development policy are not required.
- 1.4 Nevertheless, the s42A reports appear to mischaracterise Ara Poutama’s housing as a “community facility” (and more specifically, a “care facility”) and/or “community corrections activity”. I do not consider that this is accurate or appropriate for the following reasons:
- (a) Housing provided by Ara Poutama is not a rest home, and the fact residents may receive supervision and/or support, does not mean they have “special needs”. Accordingly, I consider housing provided by Ara Poutama is not a “care facility”.

(b) The definition of “community corrections activity” was developed specifically by Ara Poutama for inclusion in the National Planning Standards. While community corrections activity includes elements of rehabilitation and reintegration services, it does not include residential accommodation. Accordingly, I consider housing provided by Ara Poutama is not a “community corrections activity”.

1.5 The appropriate activity definition for encompassing housing provided by Ara Poutama and other service providers in the PWDP will be further addressed in its evidence in later hearing streams.

2 QUALIFICATIONS AND EXPERTISE

2.1 My name is Maurice Dale. 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 Resource and Environmental Planning from Massey University (1998), and have completed the Ministry for the Environment Making Good Decisions programme. I am also a full member of the New Zealand Planning Institute (NZPI). I have 24 years' experience in planning and resource management, gained at local authorities and consultancies in Aotearoa New Zealand and the United Kingdom.

2.2 As a consultant planner, I act for a wide range of clients around New Zealand, including central and local government authorities, land developers, and those in the social and electricity infrastructure sectors. My experience as a consultant includes planning policy preparation and advice, preparing Notices of Requirement for designations, resource consenting and non-statutory planning work, and providing expert evidence at Council hearings and the Environment Court. As a local government planner, my experience was in both policy preparation and resource consent processing.

2.3 I have assisted Ara Poutama as a planning consultant since 2015. I have reviewed and prepared submissions, and appeared at hearings on behalf of Ara Poutama for numerous Proposed District Plans and Plan Changes across New Zealand, including others in the Canterbury Region.

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 an overview of Ara Poutama’s submissions on the PWDP and PWDP-V1, including as they relate specifically to HS1 and HS2;
- (b) discusses the responses in the HS1 and HS2 s42A Reports on the relief sought by Ara Poutama to amend Strategic Direction objective SD-O2, and include an additional Urban Form and Development policy. The Reports recommend the rejection of this relief on the basis that that relief is otherwise provided for through new provisions proposed through PWDP-V1.

5 ARA POUTAMA’S SUBMISSIONS

Overview

- 5.1 Ara Poutama lodged a submission on the PWDP dated 26 November 2021 (submitter number 52), and a submission on PWDP-V1 dated 9 September 2022 (submitter number 56).
- 5.2 In addition to expressing support for various provisions in the PWDP and the PWDP-V1, those submissions requested a number of changes to ensure that the PWDP appropriately enables activities carried out and/or managed by Ara Poutama within the community.
- 5.3 As noted in Ara Poutama’s submissions and as described further below, those activities include the provision of homes in the community for those within Ara Poutama’s care, and establishment and operation of community corrections activities. It is Ara Poutama’s position that

provision for these activities within district plans is necessary to support the effective functioning of the justice system, and to contribute to well-functioning urban environments that enable all people and communities to provide for their wellbeing.

Residential activities provided by Ara Poutama

- 5.4 Throughout Aotearoa, Ara Poutama 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 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).
- 5.5 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 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).
- 5.6 Significant demand for Ara Poutama housing exists nationally. 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.
- 5.7 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, and enabled within appropriate zones.
- 5.8 In my opinion, there is no meaningful effects basis for distinguishing residential activities which include varying degrees of support, such as those provided by Ara Poutama, from any other residential activity. Where consents for Ara Poutama's activities are required in a residential

context, 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.

- 5.9 However, the decision to accommodate those persons within the community has already been made by the Courts or the Parole Board through sentencing or release decisions. A district plan should not afford Council Officers the opportunity to frustrate the statutory requirements 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.
- 5.10 To that end and among other relief, Ara Poutama has sought, in the PWDP 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".
- 5.11 The definition of "residential activity" entirely captures residential accommodation activities (with support), 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, 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").
- 5.12 As it has done for the PWDP, Ara Poutama has also sought to ensure that relevant objectives and policies of district plans seek to enable the delivery of housing that meets the needs of a variety of people and communities.

Community Corrections Activities

- 5.13 Community corrections activities are a vital part of Ara Poutama's justice system role in safely managing people serving Court or Parole Board ordered sentences/release orders within the community.

5.14 Such activities include non-custodial service centres and community work facilities. Service centres and community work facilities may be located separately or may be co-located on the same site. By way of further detail:

- (a) Service centres provide for probation, rehabilitation, and reintegration services. Offenders report to probation officers as required by the courts or as conditions of parole. Ara Poutama's staff use service centres to undertake assessments and compile reports for the courts, police and probation officers. Service centres may also be used as administrative bases for staff involved in community-based activities or used as a place for therapeutic services (e.g. psychological assessments). The overall activity is effectively one of an office where the generic activities involved are meetings and workshop type sessions, activities which are common in other office environments.
- (b) Community work facilities are facilities that enable community work programmes to be implemented by Ara Poutama. Community work is a sentence where offenders are required to undertake unpaid work for non-profit organisations and community projects. Offenders will report to a community work facility where they may undertake jobs training or subsequently travel to their community work project under the supervision of a Community Work Supervisor. The community work facilities can be large sites with yard-based activities and large equipment and/or vehicle storage.

5.15 The establishment and operation of community corrections activities within, and their accessibility to, communities is important to their successful operation, and to the wider functioning of our urban environments. They are essential social infrastructure and play a valuable role in reducing reoffending. They enable people and communities to provide for their social and cultural well-being and for their health and safety, and therefore the activities and services they provide contribute to the sustainable management purpose of the Resource Management Act 1991.

5.16 As communities grow and change, community corrections activities need to be provided for within affected areas to ensure that accessibility to

those services is secured. Ara Poutama looks to locate community corrections activities in areas accessible to offenders, and near other supporting agencies where possible. Commonly, sites are therefore located in commercial or business areas, but may also be located in industrial areas, where large lots and accessibility suit the yard-based nature of some operations, and in particular community work components which may involve job training, and large equipment and/or vehicle storage.

- 5.17 For that reason, Ara Poutama has generally sought the introduction and/or retention of the definition of “community corrections activity” as defined in the National Planning Standards, as well as a permitted activity status for those activities in relevant commercial and industrial zones. For the PWDP those zones are the Mixed Use (**MUZ**), Town Centre (**TCZ**), Light Industrial (**LIZ**), and General Industrial (**GIZ**) zones.

Specific relief

- 5.18 In that context, to support the provision of these activities in the PWDP, Ara Poutama’s submissions requested:
- (a) **Retention of the definitions of “residential activity” and “community corrections activity”**, consistent with the National Planning Standards.
 - (b) **Retention of Residential rules GRZ-R4 and MRZ-R3** which provide for “residential activities” as a permitted activity in the General Residential (GRZ) and Medium Density (MRZ) zones.
 - (c) **Retention or amendment of Residential objectives RESZ-O1, RESZ-O5, and policy RESZ-P8** to provide for *a range of residential activities* in residential zones including those that include an element of support and supervision.
 - (d) **Amendment of Commercial and Mixed Use policy MUZ-P1, and addition of a rule** to provide for “community corrections activity” as a permitted activity in the Mixed Use (MUZ) zone.
 - (e) **Retention of Commercial and Mixed Use policy TCZ-P1 and the addition of a rule** to provide for “community corrections activity” as a permitted activity in the Town Centre (TCZ) zone.

- (f) **Retention of Industrial policy INZ-P1 and rules LIZ-R7 and GIZ-R7** which provide for “community corrections activity” as a permitted activity in the Light Industrial (LIZ), and General Industrial (GIZ) zones.

5.19 Of specific relevance to HS1 and HS2, Ara Poutama’s submissions requested:

- (a) **The following amendment to Strategic Direction objective SD-03:**

Urban development and infrastructure that:...

11. Enables the community to provide for their wellbeing.

- (b) **The addition of the following new Urban Form and Development policy** to provide for a range of residential activities in residential zones including those that include an element of support and supervision:

Support a range of residential activities to meet the needs of the community.

5.20 As noted, the s42A Reports have recommended rejection of those changes on the basis that they are otherwise provided for through other proposed provisions in the PWDP. Those recommendations are addressed below.

6 HS1 AND HS2 – RESPONSE TO OFFICER’S REPORT

Amendment to SD-03

6.1 In response to Ara Poutama’s requested amendment to SD-03, the s42A Reports stated:¹

“The inclusion of the wording is not required to enable Council to meet the purpose of the RMA or give effect to the NPSUD, as this is achieved through the objectives and policies within the rest of the District Plan.”

¹ Paragraph 58, Proposed Waimakariri District Plan, Officer’s Report: Rautaki ahunga – Strategic Directions.

- 6.2 The Reports further noted that objective SD-O3 has been supplemented by the addition of a new objective SD-O2 under Variation 1, which reads (emphasis added):

SD-O2 – Waimakariri District contains 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.

- 6.3 The Reports considered that proposed objective SD-O2 suitably addresses the relief sought by Ara Poutama.

Response

- 6.4 The inclusion of the new objective SD-O2 is mandated by Schedule 3A, clause 6(1)(a) of the RMA introduced by the Resource Management (Enabling Housing Supply and other Matters) Amendment Act 2021.
- 6.5 I agree that the new objective appropriately addresses the relief sought in Ara Poutama’s submission. I therefore agree with the s42A Reports that Ara Poutama’s requested amendment to objective SD-O3 is no longer required.

New Urban Form and Development Policy

- 6.6 The s42A Reports reject Ara Poutama’s proposed new Urban Form and Development policy on the basis that:²

"Objective UFD-O1 provides for a residential activities [sic]. Objective RESZ-O4 and Policy RESZ-P6(3) provide for a range of community facilities within the residential zones.

These link back directly into the permitted rules for care facilities, while corrections facilities are provided as a permitted activity within the industrial zones. The identification of where community facilities are located is more appropriately addressed in the Residential, Industrial and Commercial chapters than in Urban Form and Development."

- 6.7 The Reports further noted that Objective SD-O2 in Variation 1 and RESZ-O1 support sustainable residential growth that is responsive to the communities and district’s needs.

² Paragraph’s 69 – 70, Proposed Waimakariri District Plan, Officer’s Report: Āhuatanga auaha ā tāone – Urban Form and Development.

Response

6.8 The statement quoted above from the s42A Reports appears to mischaracterise Ara Poutama’s housing activity as a “community facility” (and more specifically, a “care facility”) and/or a “community corrections activity”. I do not consider that this is accurate or appropriate.

6.9 A “care facility” is defined in the PWDP as:

*“**care facility** means a facility including land and buildings, providing rest home care within the meaning of the Health and Disability Services (Safety) Act 2001, or a home for the residential care of people with special needs, or any land or buildings used for the care during the day of elderly persons or people with special needs.”*

6.10 Housing provided by Ara Poutama or its service providers is not a rest home. The fact that residents may be within the care of Ara Poutama while in the community, and may receive supervision and/or support, does not mean they have “special needs”. On that basis, I do not consider that residential accommodation provided by Ara Poutama would fall within this definition.

6.11 I also do not consider that Ara Poutama’s housing would fall within the definition of “community corrections activity”, which is:

*“**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 (National Planning Standard definition).”*

6.12 This definition was developed specifically by Ara Poutama for inclusion in the National Planning Standards to ensure a nationally consistent approach to its service centres and community work facilities. While community corrections activity includes elements of rehabilitation and reintegration services, it does not include residential accommodation. In my experience no other territorial authorities nationally have considered residential activities provided by Ara Poutama to be captured by this National Planning Standard definition.

- 6.13 The s42A Reports note that “community corrections activity” is provided for as a permitted activity in the industrial zones. While I agree, I note that inclusion of its residential activities in industrial zones is not sought by Ara Poutama. Furthermore, an industrial zone is not a suitable location for residential activities provided by Ara Poutama, as it would not be compatible with the predominantly industrial environment, and could result in reverse sensitivity effects.
- 6.14 As set out above, the provision of homes for people within Ara Poutama’s care in the community is considered to fall entirely within the proposed definition of “residential activity”. In my opinion, separate definitions and rules that provide for Ara Poutama’s residential activities are unnecessary, and create the potential for different treatment under district plans, notwithstanding that there is no meaningful effects basis for distinguishing between residential activities provided by Ara Poutama from any other residential activity.
- 6.15 Returning to Ara Poutama’s request to seek a new policy to provide for a *range of residential activities*, I note that objective SD-O3 (as per Variation 1) recognises the need to “*provide a range of housing opportunities*”, which is further supported by objective RESZ-O1 which recognises the need for “*sustainable residential growth that provides for housing that is responsive to community and district needs*”. In my opinion, these objectives appropriately accommodate the provision of a range of residential activities, which includes housing provided by Ara Poutama. I therefore no longer consider that the new Urban Form and Development policy proposed by Ara Poutama is necessary.

Consequential Amendments to RESZ General Objectives and Policies

- 6.16 I note that Ara Poutama’s submission seeks more specific changes to the RESZ General Objectives and Policies for all Residential Zones to provide for a range of residential activities to give effect to objective SD-O3 and RESZ-O1. These will be addressed in its evidence in later hearing streams.

Maurice Dale

1 May 2023