

**BEFORE AN INDEPENDENT HEARINGS PANEL  
OF THE WAIKATO DISTRICT COUNCIL**

**IN THE MATTER OF**

the Resource Management Act 1991  
(the **Act**)

**AND**

**IN THE MATTER OF**

the proposed Waikato District Plan  
(Stage 1) Hearing 25 – Zone Extents  
(Rezoning Requests excluding the  
Ohinewai Area)

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**OUTLINE OF LEGAL SUBMISSIONS ON BEHALF OF ARA POUTAMA  
AOTEAROA - THE DEPARTMENT OF CORRECTIONS**

Dated: 12 May 2021

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## **MAY IT PLEASE THE COMMISSIONERS:**

### **1 Introduction**

- 1.1 Ara Poutama Aotearoa – Department of Corrections (the **Department** or **Ara Poutama**) requests that the Corrections Zone in the National Planning Standards (the **Standards**) is included in the proposed Waikato District Plan (**PWDP**) and is imposed in respect of the Department’s Spring Hill Corrections Facility (**SHCF**) located on the 212ha property at Hampton Downs Road and Hall Road (the **Site**).
- 1.2 SHCF already holds the benefit of a designation authorising a range of correctional activities within the Site. This provides for traditional detention facilities such as the prison itself and rehabilitation and reintegration facilities including non-custodial rehabilitation activities, self-care units, adult and youth residential accommodation and associated communal buildings and activities.
- 1.3 As outlined in the evidence of Mr Sean Grace, there is little difference between the activities authorised under the designation and those enabled under the Corrections Zone, with the later simply being somewhat more explicit about providing for “*new and changing approaches to prisoner reintegration and rehabilitation*”.<sup>1</sup>
- 1.4 That said, the Department shares the Panel’s view that the PWDP “*should aim even if only aspirationally to achieve...full implementation of the NPS to the extent this is practically achievable and within...scope*”.<sup>2</sup>
- 1.5 It is my submission that both of those conditions are met with respect to this request. It is both practically achievable to include the Corrections Zone for the Site and is within scope to do so.
- 1.6 Moreover, and importantly, consistent with the evidence of Mr Sean Grace, inclusion of the Corrections Zone better meets the purpose and principles of the Act when compared with retention of the proposed Rural zoning.

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<sup>1</sup> National Planning Standards 2019.

<sup>2</sup> Minute and Directions from Hearing Commissioners (20 February 2020) at [9].

## **Evidence to be presented**

- 1.7 Mr Sean Grace, a Principal and Planner at Boffa Miskell, is advising the Department in respect of its request. Mr Grace's evidence-in-chief was lodged on 17 February 2021. His response to the Council Officer's section 42A report was lodged as rebuttal evidence on 3 May 2021.
- 1.8 Following these submissions, he will present a summary of his evidence on this matter, and will be available to answer any questions from the Panel.

## **2 SPRING HILL CORRECTIONS FACILITY ZONING**

### **SHCF**

- 2.1 SHCF was established on the Site in 2007 and primarily provides custodial (prison) accommodation for men under low to high security classifications, with parts of the facility also utilised for non-custodial rehabilitation activities.
- 2.2 The Facility itself occupies 22.8ha of the 212ha Site and is held by the Crown for Justice purposes. The balance of the Site is used for/occupied by activities associated with the Facility (for example, skills training and employment, car parking, self-care units) and plantation forest.
- 2.3 The construction, maintenance, operation and upgrade of SHCF is authorised by a designation under the Operative Waikato District Plan, which was initially confirmed by the Environment Court in June 2004. The Minister of Corrections is the requiring authority. As Mr Grace describes in his evidence, that designation has recently been rolled over into the PWDP (as a notice of requirement (**NOR**)), with some modifications to the conditions. Those modifications generally remove or alter construction and establishment-phase conditions which were redundant by virtue of having been given effect to.
- 2.4 The underlying operative zoning for the Site is Rural which, prior to the establishment of SHCF, reflected its predominantly rural character and use. The notified PWDP proposed to retain that

zoning. For her part, the Council Officer has recommended that you accept that notified zoning.

- 2.5 In my submission there is no “magic” to that rural zoning. It simply reflects the status quo prior to the designation, rather than being a zone particularly suited to the provision of correctional facilities. Although such activities are identified as a discretionary activity within the Rural Zone they gain little support from the objectives and policies which seek primarily to protect versatile soils and maintain rural amenity. While these matters are not necessarily compromised by SHCF, neither are they particularly advanced and as such it is difficult to see how the Rural Zone could be considered preferable to the bespoke Corrections Zone provided by virtue of the National Planning Standards.
- 2.6 As set out in Mr Grace’s evidence, that an alternative Corrections Zone for the SHCF Site was not sought by the Department in its original submission is a simple case of (unfortunate) timing. The Standards which established the Zone and the supporting rationale for its inclusion in district plans came into force in April 2019, some six months after the Department’s original submission on the PWDP was lodged.<sup>3</sup>
- 2.7 Without that direction and with the designation for SHCF in place, the Department principally focussed its original submission on enabling community-based corrections activities in other zones. Once the Standards took effect, the Department used its further submission to seek the inclusion of the Corrections Zone.
- 2.8 For the reasons I will come to, I do not consider however that this (perhaps) unorthodox approach precludes you from granting the relief requested by the Department.

### **Requested Relief: Corrections Zone**

- 2.9 Given the PWDP was notified before the Standards came into force, the Waikato District Council (**Council**) has until April 2024 to implement the mandatory directions within the Standards. As discussed below, they do however remain a relevant consideration

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<sup>3</sup> Department of Corrections original submission (number 496) (1 October 2018).

for you in making your decisions on the PWDP. Importantly with respect to the matter before you, the inclusion of special purpose zones such as the Corrections Zone must only occur where *“the proposed land use activities or anticipated outcomes of the ...zone meet all of the following criteria:*

- (a) *are significant to the district, region or country;*
- (b) *are impractical to be managed through another zone;*
- (c) *are impractical to be managed through a combination of spatial layers.”<sup>4</sup>*

2.10 In such cases, the Standards direct that the Corrections Zone is to be applied to:

*Areas used predominantly for the efficient operation and development of prisons and associated facilities and activities and the security requirements of prisons. The zone may also be used for new and changing approaches to prisoner reintegration and rehabilitation.*

2.11 It continues to be the assessment of Mr Grace and the Department that the inclusion criteria are satisfied with respect to the imposition of the Corrections Zone on the SHCF Site. It is further the opinion of Mr Grace that this outcome will better achieve the purpose and principles of the Act compared to the retention of the notified Rural zoning. I say this for the following reasons.

2.12 First, SHCF is clearly an example of social infrastructure with district, regional and national importance which, consistent with the Standards, would warrant a special purpose zone. Secondly, as set out in the evidence of Mr Grace, the Department’s activities at SHCF *“are highly specific, and by their nature, sit outside the framework of the underlying Rural zoning”<sup>5</sup>*. In that sense and particularly given the extent of the established Corrections’ activities/built form on the Site, the current and notified zoning can be considered “impractical” in terms of the Standards’ criteria.

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<sup>4</sup> National Planning Standards 2019, Zone Framework Standard, mandatory direction 3.  
<sup>5</sup> Evidence of Sean Grace (17 February 2021) at [5.2].

2.13 Operationally speaking, this disconnect has been largely addressed for SHCF through the Department's designation (although there remains ambiguity in respect of some Corrections activities). As such, the key reasons for seeking the imposition of the Corrections Zone (and the accompanying provisions recommended by Mr Grace) are to provide a more nuanced, rationalised planning framework which:

- (a) accurately reflects the character of the Site and the activities carried out there as compared with the Rural Zone which is for areas used predominantly for primary production activities;
- (b) would authorise appropriate activities which are not explicitly provided for in the designation (namely, non-custodial rehabilitation activities, community corrections activities and supported residential accommodation);
- (c) would manage the effects of those activities appropriately to ensure compatibility with the surrounding rural environment (and Rural Zone); and
- (d) will deliver a more suitable policy basis for assessing the appropriateness of any future alterations to the designation.

2.14 For these reasons, the Department through its further submission sought the imposition of a Corrections Zone under the PWDP for the SHCF Site. The proposed provisions of that Zone and an accompanying section 32 analysis are attached to Mr Grace's primary statement of evidence. As Mr Grace will explain, they largely adopt and cross-refer to the proposed Rural Zone provisions, albeit with three additional key activities which may be undertaken by the Department and which are explicitly provided for in the Zone. The structure of these provisions reflect existing and likely activities carried out on Site and the character of the existing and surrounding environment.

#### **Response to the Section 42A Report**

2.15 For her part, the Council Officer has not provided any specific assessment of the proposed Corrections Zone provisions themselves.

She instead raised concerns with scope/natural justice (which I will address shortly) and has recommended that the Department's request be declined on the basis that "*the NOR provides for Corrections purposes, and that the proposed rural zone is appropriate for managing the activities that require consent because they are not included in the NOR*".<sup>6</sup>

2.16 In his rebuttal Mr Grace has provided a substantive response to comments made by the Officer regarding the appropriateness of the Corrections Zone as compared to the Rural Zone. He has also explained why the NOR was not extended to include the activities which are not explicitly captured in the existing designation and which would be authorised under the Corrections Zone.<sup>7</sup> Quoting from that statement, Mr Grace notes that:

*[t]here is a high degree of overlap between the designation and the proposed Corrections Zone, and the difference in potential effects between the proposed permitted Corrections Zone activities and those explicitly provided for (and/or included in the "catch all" provisions) under the designation are minimal. However, the Corrections Zone provisions provide a modern, targeted and nuanced planning framework for managing the effects of the three subject permitted activities, **which I consider is an appropriate mechanism. (emphasis added)***

2.17 The last part of that sentence highlights an important distinction in the analysis undertaken by Mr Grace and the Council Officer, and one which, in my submission, must influence your decision in respect of the Department's request. In the further submission and, to a greater degree, Mr Grace's statement of evidence (including his section 32 evaluation), the assessment has focussed on the extent to which a Corrections Zone would be the most appropriate way to achieve the purpose of the Act compared to the proposed Rural Zone. In her report, the Council Officer primarily answers that issue by reference to the existence and operation of the Department's

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<sup>6</sup> Section 42A report for Hearing 25: Zone Extends Mercer and Meremere (12 April 2021), at [351].

<sup>7</sup> These include non-custodial rehabilitation activities, community corrections activities and supported residential accommodation.

existing designation and notice of requirement. With respect, that is not the correct legal test.

2.18 The correct approach in this instance is to determine whether the Rural Zone or the Corrections Zone is the most appropriate way to achieve the purpose of the Act. While the existence of a designation or notice of requirement may be a relevant consideration in that assessment (as an alternative for achieving the relevant objectives), it does not obviate the need to consider the Corrections Zone in its own right and particularly against the proposed Rural Zone. Mr Grace has done precisely that and has determined that the Corrections Zone presents the most appropriate planning outcome in terms of the Act, taking into account the designation and notice of requirement and the proposed Rural Zoning. In other words, his is the only relevant section 32 evaluation on this matter before you and on which you may base your decision.

2.19 For that reason, and subject to your findings on scope (addressed below), in my submission, Mr Grace's evidence (including his evaluation) on this matter is to be preferred.

### **3 SCOPE AND NATURAL JUSTICE**

3.1 It is noted that the Council Officer has concerns about the scope of the further submission, and as such, the available jurisdiction to impose the Corrections Zone. As you will be aware, assessing the scope for a further submission is not however limited to an appraisal of that same party's original submission. The appropriate approach in terms of clause 8(2) is to determine whether scope for the further submission exists across all relevant original submissions.

3.2 In this case, scope to consider the Department's further submission is provided by the original submissions lodged by Pokeno Village Holdings<sup>8</sup>, Spark New Zealand Trading Limited<sup>9</sup>, Chorus New Zealand Limited<sup>10</sup>, Vodafone New Zealand Limited<sup>11</sup>, Anton Marais<sup>12</sup> and

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<sup>8</sup> Submission number 386.

<sup>9</sup> Submission number 644.

<sup>10</sup> Submission number 648.

<sup>11</sup> Submission number 646.

<sup>12</sup> Submission number 249.



Heritage New Zealand Pouhere Taonga,<sup>13</sup> all of which seek implementation of the Standards in the PWDP.

### 3.3 Specifically:

(a) Pokeno Village Holdings submitted that “[s]hould the National Planning Standards be gazetted in April 2019 as currently scheduled, then the PWDP would need to be updated to reflect the final, agreed version of the National Planning Standards.”<sup>14</sup>

The submission specifically sought to include additional zone types consistent with those proposed in the draft Standards.

(b) Spark New Zealand Trading Limited, Chorus New Zealand Limited and Vodafone New Zealand Limited all sought that the format of the PWDP be aligned with the format and requirements of the Standards, should they come into effect before the decisions on the PWDP were made. Notably, all three original submissions expressly state the purpose of their submissions is to provide scope to change the notified content of the PWDP to meet the obligations of the approved Standards.

(c) Heritage New Zealand Pouhere Taonga lodged a similar submission to the telecommunications companies, seeking that the PWDP format reflect the directions in the Standards once they were approved.

(d) In his original submission, Anton Marais too requested that the opportunities be sought through the process to align the PWDP with the Standards.

3.4 In this context, the Department’s further submission does not introduce new or additional matters for consideration. As set out above the imposition of the Corrections Zone over the SHCF Site would meet the applicable direction within the Standards<sup>15</sup> and would result in better alignment between those Standards and the PWDP. Those same core outcomes are clearly sought by the original submissions listed above. In my submission, it is therefore open for

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<sup>13</sup> Submission number 559.

<sup>14</sup> Pokeno Village Holdings submission 386, at page 3.

<sup>15</sup> National Planning Standards 2019, Zone Framework Standard, mandatory direction 3.

you to find that as a matter of fact the Department's further submission constitutes a matter which supports those relevant submissions made under Schedule 1, clause 6.

- 3.5 In determining questions of scope, the extent to which a finding would prejudice any other party or otherwise undermine the legislative intent behind the consultation process is also clearly an important consideration. In this case, the further submissions process provided the opportunity for the public to support or oppose the implementation of the Standards as requested by the original submissions listed above.
- 3.6 Put another way, through these original submissions and the Standards themselves (which were accessible at the time) the public arguably received "*full and widespread knowledge*" of the proposal to implement the Standards through the PWDP, and received the formal opportunity to comment on it.
- 3.7 For these reasons, you are, in my submission, entitled to find that the Department's further submission complies with the requirements of Schedule 1, clause 8(2) and is therefore a matter that you must consider in reaching your decision.

## **4 LEGAL FRAMEWORK**

### **Standards**

- 4.1 Alongside the Council's functions, the findings of the section 32 evaluation report and the Officer's Report, the Act specifically requires district plans to be prepared and changed in accordance with the provisions of Part 2 and the various national directions.<sup>16</sup> Most relevantly here, this includes the Standards.
- 4.2 As noted above, the Council has until April 2024 to implement the mandatory directions within the Standards. Under section 74 of the Act however the Standards (and in particular the outcomes they seek) still have legal weight in your decision. Those outcomes focus on improving the efficiency and effectiveness of the planning system

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<sup>16</sup> Resource Management Act 1991, section 74.

through the use of planning tools (the Standards) that have been confirmed as an appropriate national direction.

- 4.3 In my submission, the effect of the legal weight afforded to the Standards in this instance is simply to encourage decisions which would realise a legitimate opportunity to achieve those outcomes through implementation of the Standards. That is, I envisage, why the Panel indicated its attraction to applying the Standards where it is "*practically achievable and within the scope of the submissions received*".<sup>17</sup> For the reasons I have described, I consider that is the case with respect to the Department's further submission.

## **Part 2**

- 4.4 The evidence of Mr Grace before you finds that the imposition of the proposed Corrections Zone to the SHCF Site is the most appropriate way to achieve the purpose of the Act. Mr Grace's section 32 evaluation also confirms that the provisions of the proposed Corrections Zone (which draw heavily on the proposed Rural Zone provisions) are the most appropriate way to achieve the continued operation and development of SHCF as a critical piece of social infrastructure.
- 4.5 Based on this evidence and taking into account the outcomes sought by the Standards, it is my submission that granting the relief requested by the Department in its further submission would represent the best outcome in terms of the purpose of the Act.

**DATED** this 12th day of May 2021



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L J Semple

Counsel for Ara Poutama Aotearoa - Department of Corrections

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<sup>17</sup> Minute and Directions from Hearing Commissioners (20 February 2020) at [9].