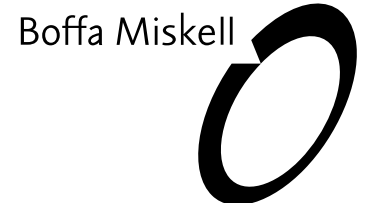


22 November 2019

The District Plan Hearings Administrator  
Waikato District Council  
Private Bag 544  
Ngaruawahia 3742



**Attention: Sandra Kelly**

Email: [districtplan@waidc.govt.nz](mailto:districtplan@waidc.govt.nz)

Dear Sandra

**ARA POUTAMA AOTEAROA (THE DEPARTMENT OF CORRECTIONS): PROPOSED  
WAIKATO DISTRICT PLAN – LETTER TO BE TABLED AT HEARING 6: VILLAGE ZONE  
PART A LAND USE**

Ara Poutama Aotearoa (the Department of Corrections (“the Department”)) lodged a submission and further submission on the Proposed Waikato District Plan (“Proposed Plan”), being submitter number 496 and further submitter number FS1210.

The Department has opted not to attend Proposed Plan Hearing 6 on the Village Zone, and requests that in lieu of attendance this letter be tabled for the Hearing Panel’s consideration.

The Section 42A Hearings Report for Village Zone Part A – Land use (“the Village Zone S42A report”), prepared by Kelly Cattermole dated 11 November 2019, has been received and reviewed. The report is correct in its summary of the relevant submission point made by the Department on the Village Zone (point 496.9). The Department’s responses to the report’s recommendations on this submission point is set out in this letter.

Of relevance to the outcomes sought by the Department for the Village Zone are the definitions of “community corrections activity” and “community facility”, as assessed in the Section 42A Hearings Report for Chapter 13 Definitions (“the Definitions S42A report”), dated 5 November 2019. The Department has tabled a letter, dated 19 November 2019, setting out its position in relation to these definitions. For the sake of clarity, I have repeated the position outlined in that letter below by way of background; refer to the two sections labelled “Background A” and “Background B”.

## Background A: The definition of “community corrections activity” (submission point 496.1)

The Definitions S42A report has recommended accepting the relief sought by the Department<sup>1</sup>, which involves the inclusion of a definition for “community corrections activity” within the definitions Chapter. This definition is consistent with that from the National Planning Standards and thus its use represents best practice in line with national planning guidance. **The recommendation set out under paragraph 950 of the Definitions S42A report is therefore supported by the Department**; i.e. that the following definition be included:

<u>community corrections activity</u>	<u>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.</u>
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## Background B: The definitions of “community activity” and “community facility” (submission point 496.2)

The Definitions S42A report has effectively rejected the relief sought by the Department, which was to retain the definition for “community activity” as notified, but with the inclusion of a reference to “community corrections activities” within that definition.

The Department’s rationale for including this reference in the “community activity” definition (as well as including a standalone definition for “community corrections activity”, as per submission point 496.1), is to allow community corrections activities to become a subset of community activities. This approach means that community corrections activities can be considered together with community activities throughout the Proposed Plan where this is appropriate, whilst also allowing for reference to them specifically where this is necessary.

Examples include:

- Providing for community activities (including community corrections activities) collectively as permitted activities in the Business and Business Town Centre zones<sup>2</sup>;
- Excluding community corrections activities specifically from being permitted activities in the Residential and Village zones (where community activities are otherwise permitted)<sup>3</sup>; and
- Providing for community corrections activities specifically as being permitted activities in the Industrial Zone (where community activities are otherwise non-complying)<sup>4</sup>.

The Definitions S42A report has recommended the removal of the “community activity” definition, and the insertion of a “community facility” definition consistent with the National

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<sup>1</sup> Definitions S42A Report: para 946, pg 256

<sup>2</sup> As per the relief sought in the Department's submission points 496.6-7

<sup>3</sup> As per the relief sought in the Department's submission point 496.5

<sup>4</sup> As per the relief sought in the Department's submission point 496.8

Planning Standards. This approach is supported in principle. The recommended definition is as follows:

<u>community facility</u>	<u>means land and buildings used by members of the community for recreational, sporting, cultural, safety, health, welfare, or worship purposes. It includes provision for any ancillary activity that assists with the operation of the community facility.</u>
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With regard to the relief sought by the Department, the Definitions S42A report has stated<sup>5</sup>:

*“The Department of Corrections [496.2] seeks an amendment to the definition of ‘community activity’ to result in ‘community corrections activities’ becoming a subset of this definition, alongside a new definition for ‘community corrections activities’. I consider that the Definitions Standard definition of ‘community facility’ would encompass this activity as a subset, which would have implications for the rules in the Proposed Plan. The request for a definition of ‘community corrections activities’ is supported, subject to adopting amendments to rules in the Residential Zone, and is dealt with further in section 3.69 of this report.”*

I agree with this assessment insofar as there is scope to consider that community corrections activities *could* be encompassed as a subset under the recommended definition of “community facility”, through the reference to “*land and buildings used by members of the community for ... welfare ... purposes*”. I note however that it is not plainly apparent that this could be interpreted as applying to community corrections activities, and that this lack of an explicit reference could lead to interpretation issues.

I have been party to a recent resource consent scoping process with the Tauranga City Council for the proposed development of a new community corrections facility for the Department, whereby the definition of “community facility” was identified by the applicant’s planner as being the most applicable to the proposed activity<sup>6</sup>. The Department was not able to obtain clarification as to whether the classification of a community corrections facility would be applicable under that definition or not. This meant the consenting pathway was far higher risk to the Department than if community corrections activities were clearly anticipated under the definition of community facility, given the lack of certainty around the definition. I raise this example to identify the difficulties that can arise where explicit definitions and sub-classification definitions relating to community corrections activities are not provided for in a District Plan. This leads to uncertainty for the Department, Council staff and the community.

To rectify this potential interpretation issue, several options are available:

1. Specific references to “community corrections activities” are made within the relevant zones, to identify the applicable activity status and development standards.
2. Add a note to the definition of “community facility”, as follows:  
*Note: A community corrections activity is a subset of a community facility.*

<sup>5</sup> Definitions S42A Report: para 913, pg 248

<sup>6</sup> Tauranga City Plan, Chapter 3 Definitions, “community facilities” includes references to “*land, buildings and structures ... utilised for activities such as community use ... undertaken for purposes other than principally for commercial gain*” and includes “*community services ... and community support centres*”

3. Add a note to the definition of “community corrections activity”, as follows:  
*Note: A community corrections activity is a subset of a community facility.*
4. Create a ‘nesting table’ at the start of Chapter 13 that identifies community corrections activities are nested as a subset of community facilities.

All of these options would achieve the objective of avoiding the potential for interpretation issues to occur. It is recognised however that options 2 to 4 would not be consistent with the recommended drafting of the Definitions chapter, as set out in Appendix 2 to the Definitions S42A report.

As such, **it is sought that Council and the Hearing Panel consider the insertion of explicit references to “community corrections activities” within the Business, Business Town Centre, Industrial, Residential and Village zone chapters, to ensure the activity statuses sought under submission points 496.5-8 are provided for, namely:**

- **Permitted status for community corrections activities in the Business, Business Town Centre and Industrial zones, and**
- **An exclusion from permitted activity status for community corrections activities in the Residential and Village zones.**

### **The activity status of a “community corrections activity” in the Village Zone (submission point 496.9)**

The Village Zone S42A report has recommended accepting the relief sought by the Department<sup>7</sup>, which is to explicitly exclude “community corrections activities” from being a permitted activity in the Village Zone by virtue of them being considered as a subset of “community activities”.

However, there is a potential interpretation with the way the relevant definitions have been recommended in the Definitions S42A report, as identified in “Background B” section above. As the recommended definition of “community facility” does not make it apparent that a “community corrections activity” is a subset of this, explicit references to community corrections activities are necessary within each relevant zone, including the Village Zone.

To give effect to the intent of the relief sought by the Department, which is to ensure that it is clear that community corrections activities are not a permitted activity in the zone, **the following drafting is recommended (as opposed to that set out under paragraph 273 of the Village Zone S42A report)<sup>8</sup>:**

#### **24.1.3 Discretionary Activities**

*(1) The activities listed below are discretionary activities.*

<i>D1</i>	<i>Any permitted activity that does not comply with one or more of the “Activity-Specific Condition”</i>
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<sup>7</sup> Village Zone S42A Report: para 271, pg 94

<sup>8</sup> Note: Drafting is based on the recommended drafting set out in Appendix 5 (“Recommended amendments Chapter 24\_final”) to the Village Zone S42A report

	<i>in Rule 24.1.1 or 24.1.2.</i>	
	<b>Activity</b>	<b>Activity-specific Conditions</b>
<i>D2</i>	<i>Emergency service facilities</i>	<i>Nil</i>
<i>D3</i>	<i>Community corrections activities</i>	<i>Nil</i>

The Department appreciates the opportunity to be involved in the Proposed Plan process. Should there be any queries raised in relation to the matters set out in this letter, please contact me via the details provided below.

Yours faithfully

**BOFFA MISKELL LTD**



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Principal / Planner

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