

BEFORE THE WAIKATO DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the submission points made by Ara
Poutama Aotearoa (the Department of
Corrections) on the Business Zone and
Business Town Centre Zone provisions
of the Proposed Waikato District Plan
(Submitter No. 496 and Further
Submitter No. 1210) – **Hearing 9**

STATEMENT OF EVIDENCE OF MATTHEW CRAIG ALLOTT

PLANNER

**ON BEHALF OF ARA POUTAMA AOTEAROA (THE DEPARTMENT OF
CORRECTIONS)**

9 January 2020

1.0 QUALIFICATIONS AND EXPERTISE

- 1.1 My name is Matthew Craig Allott and I am a Principal and Planner at Boffa Miskell Limited, a national firm of consulting planners, ecologists and landscape architects.
- 1.2 I hold the qualifications of Bachelor of Resource and Environmental Planning (Hons) from Massey University. I am a Full Member of the New Zealand Planning Institute.
- 1.3 I have been a planner in local government or as a planning consultant based in Tauranga, Rotorua, Auckland and Queenstown, and have 20 years' experience.
- 1.4 I have been involved in a range of resource consent and policy development matters from both a regulatory and consultancy viewpoint.
- 1.5 In this matter, I was engaged by the Ara Poutama Aotearoa (the Department of Corrections ("the Department")).

2.0 CODE OF CONDUCT

- 2.1 I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

3.0 SCOPE OF EVIDENCE

- 3.1 The scope of my evidence relates to the primary submission points (points numbered 496.6 and 496.7) that the Department made on the Business Zone and Business Town Centre Zone sections of the Proposed Waikato District Plan ("PWDP"). My colleague, Sean Grace (Planner, Boffa Miskell) prepared the submission on behalf of

the Department. Mr Grace has briefed me on the submission, and I am familiar with the content. The relevant submission points were made seeking permitted activity status for “community corrections activities” in the Business and Business Town Centre Zones.

- 3.2 I outline the submission points further later in my statement, in the context of the Council Planner’s recommendation.

4.0 BACKGROUND

4.1 Community Corrections Sites

- 4.2 The Department is responsible under the Corrections Act 2004 for enforcing sentences and orders of the criminal court and the New Zealand parole board. In meeting this responsibility, the Department establishes and operates custodial (i.e. prisons) and non-custodial corrections facilities.

- 4.3 Non-custodial community corrections sites include service centres and community work facilities, and are essential social infrastructure. Non-custodial services and their associated infrastructure play a valuable role in reducing reoffending. Community work helps offenders learn vital skills and give back to their community, and in return the community benefits from improved facilities. The Department considers that its services enable people and communities to provide for their social and cultural well-being and for their health and safety, and therefore those activities and services contribute to the sustainable management purpose of the RMA.

- 4.4 The service centres provide for probation, rehabilitation and reintegration services. Offenders report to probation officers as required by the courts or as conditions of parole. Department staff also 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. 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.

- 4.5 In addition to these service centres, the Department operates community work facilities. 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 subsequently travel to their community work project under the supervision of a Community Work Supervisor. Service centres and community work facilities may also be co-located on the same site.
- 4.6 Community corrections sites support offenders living in that community. The Department therefore looks to locate its sites in areas accessible to offenders, and near other supporting government agencies. 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.
- 4.7 In the Waikato District, the Department currently operates three non-custodial community corrections sites:
- *Huntly Service Centre*, 2 Glasgow Street, Huntly
 - *Ngaruawahia Reporting Centre*, within the Ngaruawahia Community House, 13 Galileo Street, Ngaruawahia
 - *Raglan Reporting Centre*, within the Raglan Community House, 45 Bow Street, Raglan
- 4.8 All three sites are located within the proposed Business Zone in the PWDP. Community corrections facilities are appropriately suited to such business areas on the basis that they are easily accessible to the communities they serve.
- 4.9 Definition of “Community Corrections Activity” – Hearing 5**
- 4.10 The Department made a primary submission point on the Definitions section of the PWDP, requesting the addition of a

definition of “community corrections activity” to the District Plan (point number 496.1). The definition sought is consistent with that contained in the National Planning Standards.

4.11 The definition sought was as follows:

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.

4.12 Adopting this approach means that community corrections activities can be considered explicitly where necessary throughout the District Plan. It also brings the terminology up to date with current justice sector usage and the National Planning Standards. Given the unique nature of community corrections sites, it is necessary to refer to them independently, particularly in terms of their activity status, within various zones.

4.13 The Section 42A Report for Hearing 5: Chapter 13 Definitions¹ recommended accepting the relief sought by the Department, which involves the inclusion of a definition for “community corrections activity” within the definitions Chapter 13.

4.14 Mr Grace tabled a letter dated 19 November 2019 on behalf of the Department, in lieu of attending Hearing 5, supporting the Section 42A report’s recommendation with regards to the “community corrections activity” definition. This letter identified that an explicit reference to “community corrections activities” within the Business and Business Town Centre Zone chapters would be necessary to achieve the relief sought by the Department in its submission on the Business and Business Town Centre Zones.

¹ Report prepared by Anita Copplestone and Megan Yardley, dated 5 November 2019

- 4.15 I have attached the 19 November 2019 letter as Appendix A to my evidence, as this provides pertinent background information in terms of the way in which community corrections activities should be referenced throughout the District Plan. I have highlighted the relevant sections of that letter for the benefit of the Panel.
- 4.16 The key point made in the 19 November 2019 letter, in the context of this hearing, is that community corrections activities are not clearly sub-categorised under the recommended definitions of a community activity or a community facility, therefore specific references to community corrections activities are necessary in the Business and Business Town Centre Zone rules.

5.0 THE DEPARTMENT'S SUBMISSION POINTS AND COUNCIL PLANNER'S RECOMMENDATIONS

- 5.1 The Department's primary submission points requested permitted activity status for community corrections activities within the Business and Business Town Centre Zones (points numbered 496.6 and 496.7).
- 5.2 The primary submission points assumed that community corrections activities would be sub-categorised under the community activity definition. As such, the retention of the permitted status for community activities in the Business and Business Town Centre Zones was sought to be retained as per the notified provisions, as follows:

- **Business Zone, Permitted Activities (Rule 17.1.2):**

Activity		Activity-specific conditions
...
P3	Community activity	Excluding a cemetery

- **Business Town Centre Zone, Permitted Activities (Rule 18.1.2):**

Activity	Activity-specific conditions
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...
P6	Community activity	Excluding a cemetery

5.3 The Section 42A report for Hearing 9 supports the permitted status of community corrections activities in the two subject zones, through the retention of the permitted status for community activities (as above), outlining the following:

- In relation to the Business Zone (sub point 496.6)²:

“The submission is seeking community correction activities be a subset of community activities. This would result in community correction activities being permitted in the Business Zone. This activity is compatible and appropriate exemplified by the existing facilities that are located in the Business Zone within Huntly, Ngaruawahia and Raglan. Such facilities are appropriately suited to these areas on the basis that they are easily accessible to the communities they serve. Locating community corrections facilities in Business Zones mean that they have good accessibility to other social government agencies, such as the courts, Police and Work and Income. It would provide for community corrections activities therefore it is supported.”

- In relation to the Business Town Centre Zone (sub point 496.7)³:

“The submission is seeking community correction activities be a subset of community activities. This would result in community correction activities being permitted in the Business Town Centre Zone. This activity is compatible and appropriate in this zone. Such facilities are appropriately suited to these areas on the basis that they are easily accessible to the communities they serve. Locating community corrections facilities in Business Zones mean that they have good accessibility to other social government agencies, such as the courts, Police and Work and

² Hearing 9 Section 42A Report, Appendix 1: H9 – Business Zones -Table of submission and further submission points, page 15

³ Hearing 9 Section 42A Report, Appendix 1: H9 – Business Zones -Table of submission and further submission points, pages 15-16

Income. It would provide for community corrections activities therefore it is supported.”

5.4 Notwithstanding these recommendations made in the Section 42A report, and as outlined in my earlier commentary around how community corrections activities are no longer sub-categorised under the definition of community activities following the recommended outcomes for Hearing 5 (Definitions), it is now necessary to provide specific references to community corrections activities as permitted in the two subject zones.

5.5 This would be achieved by the insertion of a new permitted activity rule under the Business and Business Town Centre Zones, to provide an explicit reference to community corrections activities in the zones as permitted activities, as follows (insert under Business Zone Rule 17.1.2 *and* Business Town Centre Zone Rule 18.1.2):

Activity		Activity-specific conditions
...
<u>P[X]</u>	<u>Community corrections activity</u>	<u>Nil</u>

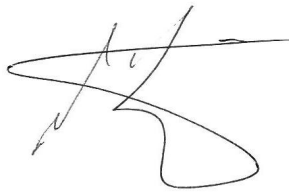
5.6 Adopting this approach will ensure that interpretation issues in relation to the activity status of community corrections activities in the subject zones are avoided.

6.0 CONCLUSION

6.1 The Department seeks the insertion of new permitted activity rules under Business Zone Rule 17.1.2 *and* Business Town Centre Zone Rule 18.1.2, to allow for community corrections activities in the zones as permitted activities, as follows:

Activity		Activity-specific conditions
...
<u>P[X]</u>	<u>Community corrections activity</u>	<u>Nil</u>

- 6.2 The relief sought will ensure that the District Plan appropriately references and provides for the Department's activities and services in the Business and Business Town Centre Zones of the Waikato District. The amendments sought are minor, but will result in avoiding any interpretation issues arising around community corrections activities in the subject zones in the future.

A handwritten signature in black ink, consisting of a stylized 'M' and 'A' followed by a horizontal line and a large loop.

Matthew Craig Allott

Principal / Planner

Boffa Miskell Limited

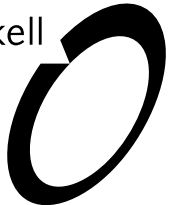
9 January 2020

APPENDIX A: LETTER TABLED AT HEARING 5: CHAPTER 13 DEFINITIONS

19 November 2019

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

Boffa Miskell



Attention: Sandra Kelly

Email: districtplan@waidc.govt.nz

Dear Sandra

**ARA POUTAMA AOTEAROA (THE DEPARTMENT OF CORRECTIONS): PROPOSED
WAIKATO DISTRICT PLAN – LETTER TO BE TABLED AT HEARING 5: CHAPTER 13
DEFINITIONS**

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 5 on Chapter 13 Definitions, and requests that in lieu of attendance this letter be tabled for the Hearing Panel’s consideration.

The Section 42A Hearings Report for Chapter 13 Definitions (“the report”), prepared by Anita Copplestone and Megan Yardley dated 5 November 2019, has been received and reviewed. The report is correct in its summary of the relevant submission and further submission points made by the Department (points 496.1-4, 496.11-12 and FS1210.3-4). The Department’s responses to the report’s recommendations on these submission points are set out below.

The definition of “community corrections activity” (submission point 496.1)

The report has recommended accepting the relief sought by the Department¹, which involves the inclusion of a definition for “community corrections activity” within the definitions Chapter 13. This definition is consistent with that from the National Planning Standards. **The recommendation set out under paragraph 950 of the Section 42A Report is therefore supported by the Department; i.e. that the following definition be included:**

¹ Section 42A Report: para 946, pg 256

<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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The definitions of “community activity” and “community facility” (submission point 496.2)

The 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 zones²;
- Excluding community corrections activities specifically from being permitted activities in the Residential and Village zones (where community activities are otherwise permitted)³; and
- Providing for community corrections activities specifically as being permitted activities in the Industrial Zone (where community activities are otherwise non-complying)⁴.

The report has recommended the removal of the “community activity” definition, and the insertion of a “community facility” definition consistent with the National 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 report has stated⁵:

“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

² As per the relief sought in the Department’s submission points 496.6-7

³ As per the relief sought in the Department’s submission point 496.5

⁴ As per the relief sought in the Department’s submission point 496.8

⁵ Section 42A Report: para 913, pg 248

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 activity⁶. Despite several pre-application meetings, Council were not able to decide on whether the classification of a community corrections facility would be applicable under that definition or not. 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.
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 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:

⁶ 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"*

- **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 definition of “correctional facility” (submission point 496.3)

The report has recommended accepting the relief sought by the Department⁷, which involves the retention of the definition for “correctional facility” within the definitions Chapter 13 as notified. **The recommendation set out under paragraph 957 of the Section 42A Report is therefore supported by the Department;** i.e. that the following definition be retained:

<i>correctional facility</i>	<i>Means a facility where people are detained in the justice system. It includes a prison, detention centre, youth detention centre and secure unit.</i>
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The definitions of “residential activity”, “residential unit”, “living accommodation” and “household” (submission points 496.4 & 496.11-12)

The report has recommended amending the definitions for “residential activity” and “residential unit” within the definitions Chapter 13⁸. The definitions proposed are consistent with those from the National Planning Standards. Whilst these definitions differ to those sought by the Department in its primary submission, the Department supports these use of these terms as per the National Planning Standards.

The report has rejected the relief sought by the Department in terms of the inclusion of a definition for “household” within the definitions Chapter 13⁹. It has however recommended the inclusion of a new definition of “living accommodation”¹⁰, which as noted in the report¹¹ achieves the same outcome as per the relief originally sought by the Department with regards to the inclusion of “household”.

As such, **the recommendations set out under paragraphs 375 and 398 of the Section 42A Report are supported by the Department;** i.e. that the following definitions be included:

<u><i>residential activity</i></u>	<u><i>means the use of land and building(s) for people’s living accommodation</i></u>
<u><i>residential unit</i></u>	<u><i>means a building(s) or part of a building that is used for residential activity exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities.</i></u>
<u><i>living accommodation</i></u>	<u><i>For the purposes of a residential activity, includes one or more residential units for:</i></u> <u><i>(a) emergency and refuge accommodation,</i></u> <u><i>(b) accommodation for supervision staff and residents, where residents are subject to care or supervision (e.g. homes for people with disabilities),</i></u> <u><i>(c) home detention (as defined in the Criminal Justice Act 1985), but not</i></u>

⁷ Section 42A Report: para 956, pg 257

⁸ Section 42A Report: para 372, pg 96 and para 396, pg 101

⁹ Section 42A Report: para 409, pg 103

¹⁰ Section 42A Report: para 372, pg 96

¹¹ Section 42A Report: para 371, pg 95

<u>prisons or other places where residents are subject to detention.</u> <u>(d) workers accommodation.</u>

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



Sean Grace
Principal / Planner

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Email: sean.grace@boffamiskell.co.nz

cc: Andrea Millar – Manager Land Management and Resource Management, Ara
Poutama Aotearoa (the Department of Corrections)
Email: andrea.millar@corrections.govt.nz