

**BEFORE THE HEARINGS PANEL**

**IN THE MATTER OF**

the Resource Management Act 1991

**AND**

**IN THE MATTER OF**

Plan Change 92 to the Western Bay  
of Plenty District Plan

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**PRIMARY EVIDENCE OF ANDREA MILLAR ON BEHALF OF  
ARA POUTAMA AOTEAROA, THE DEPARTMENT OF CORRECTIONS**

(Submitter 24)

Dated: 25 August 2023

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## 1 INTRODUCTION

1.1 My name is Andrea Millar. I am the Manager Resource Management, Land Management and Statutory Compliance at Ara Poutama Aotearoa, the Department of Corrections (**Ara Poutama** or **the Department**). I have been with the Department in my current role for over 5 years. I hold a Bachelor of Regional Planning and have previously held a range of management roles within various Council consenting and compliance teams.

1.2 My responsibilities as Manager Resource Management, Land Management and Statutory Compliance include:

- (a) Overseeing the department's activities as it relates to resource management advocacy and approvals.
- (b) Providing strategic land management and resource management advice to the department.
- (c) Overseeing Treaty of Waitangi treaty settlement processes and transactions.
- (d) Oversight of the Department's land management transactions, including leases, Public Works Act requirements, gazettals and easements.
- (e) Ensuring statutory compliance obligations are met with regard to Building Warrants of Fitness, Fire, Hazardous substances, the Resource Management Act and asbestos.

1.3 My evidence is in support of Ara Poutama's submission on Plan Change 92 (**PC92**) to the Western Bay of Plenty District Plan (**WBOPDP** or Plan).

## 2 SCOPE OF EVIDENCE

2.1 The purpose of my evidence is to provide some context to Ara Poutama's submission by further detailing its activities, and its experience in establishing and providing residential housing and undertaking community corrections activities throughout New Zealand.

2.2 The primary focus of this evidence is to describe the residential housing provided by Ara Poutama, why that housing is needed and some of the challenges Ara Poutama faces when providing such housing in communities.

### 3 **STATUTORY RESPONSIBILITIES OF ARA POUTAMA**

3.1 The Department is responsible for:

- (a) providing information and administrative services to the Courts and New Zealand Parole Board (**NZPB**);
- (b) maintaining the integrity of the justice system by upholding the sentences and orders imposed by the Courts and NZPB;
- (c) the safe management of people serving sentences imposed by the Courts and NZPB, whether those people are on remand, serving sentences in prisons, or serving sentences or orders in the community; and
- (d) providing a range of rehabilitation programmes, reintegration services and other interventions aimed at giving people the skills they need to address the causes of their offending, develop life and living skills, address their health needs (including addictions, in conjunction with health partner services), re/connect with their culture and whānau. This might include things such as access to education, qualifications, training and employment.

3.2 Overall, it is focused on keeping communities and those in the corrections system safe by securely accommodating the prison population, effectively monitoring and supporting those serving a sentence in the community or reintegrating back into the community, and reducing reoffending.

3.3 I note that Section 5 of Mr Grace's evidence provides an overview of Ara Poutama's responsibilities, and I agree with his description.

#### 4 **OPERATION OF THE CORRECTIONS SYSTEM**

4.1 The Department has prisons and community based facilities across the North and South Island that are utilised to manage and meet the differing needs of the men and women in our care who may be:

- (a) Remanded in custody or remanded on bail.
- (b) Sentenced and serving custodial or non-custodial sentences.
- (c) Released from prison into the community on conditions.
- (d) Being supported to transition from prison back into the community.

4.2 The separate components of the network do not operate in isolation of one another, and a person's journey through the corrections system is likely to touch a number of different parts of the organisation for the duration of their sentence and interaction with the Department.

4.3 As part of reintegration into the community, the Department will support a person's transition via a local community corrections site for reporting, as well as coordination of support services for that person (which may include parole officers, psychiatrists, housing, etc) - often in advance of their release and reintegration.

4.4 Residential housing with associated reintegration and/or rehabilitation services may also be encouraged or required to support a person's transition.

#### 5 **CORRECTIONS ACTIVITIES IN THE COMMUNITY**

5.1 At the time of writing, the Department manages around 27,000 people in the community. 7000 of those people are on a community work sentence. The remainder range from those who have been paroled; released from prison on conditions; are on home detention or on some other sentence. A range of service and support requirements are provided to these people by way of;

- (a) **Service centres** which provide for probation, rehabilitation and reintegration services. The Department has 124 of these facilities across the country (one of which is in the Western Bay

of Plenty District) where offenders report to probation officers as required by the courts or as conditions of parole. The Department's 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.

- (b) **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. The community work facilities can be large sites with yard-based activities and large equipment and/or vehicle storage. Service centres and community work facilities may also be co-located on the same site.
- (c) **Contracted housing and support services,** which are further detailed below.

## 6 **RESIDENTIAL HOUSING ACTIVITIES (WITH SUPPORT)**

- 6.1 Ara Poutama's residential activities are to assist the rehabilitation, transition and integration back into the community for some people in the Department's care.
- 6.2 Following a wider shift in the approach to sentencing in favour of community placements, in recent years the Department has been tasked with providing homes for a larger number of people who have been convicted of, or are awaiting trial in relation to alleged criminal offending, within the community (as opposed to custodial/prison arrangements). This includes:
- People on bail (i.e. who have not been convicted) living within the same household with other people serving community sentences or awaiting sentencing, who may be receiving support from external/visiting staff.

- People serving community sentences (including home detention) within the same household, who may be receiving external/visiting support from Ara Poutama or probation officers and rehabilitation/reintegration staff.
- People serving community sentences (including home detention or extended supervision orders) within the same household, who may be receiving 24/7 support from staff.
- People returned to NZ under the “501” scheme who require reintegrative support and assistance.

6.3 Importantly, the Courts and the NZPB have decided that these people should be living in the community. In reaching a decision on that matter, both bodies are required to consider a raft of different matters, including the risk that that person poses to the community as well as the desirability of keeping people within the community safe. It is then the Department’s role to administer those sentences.

6.4 The majority of the community based population live in independent housing which they either source themselves; reside in and/or retain as part of a community sentence (ie. they are never imprisoned); or which they return to upon release. Those living in housing provided by Ara Poutama (or its service providers) include both individuals who are sentenced and managed in the community, as well as individuals who have served a term of imprisonment who are then supported in the community on their release.

6.5 There is a wide range of rehabilitation, reintegration and support provided in these facilities (depending on the needs of the residents) however nearly all are supported to live independently over time.

### **Support provided**

6.6 The level of support provided to residents varies widely both in terms of type and frequency. Many of the residents receive intensive initial assistance to set up bank accounts, purchase clothing and other necessities. However after the first week, they are often only visited once or twice a week and are assisted with a number of personal tasks such as:

- (a) checking budgets;
  - (b) making sure that the person has enough groceries;
  - (c) checking that shared areas (eg. lounges and bathrooms) are clean and tidy; and
  - (d) ensuring that residents are reaching out to other service agencies for support to secure employment/unemployment benefits and the like.
- 6.7 While these houses may have “house rules” (eg. no alcohol or drugs to be consumed on site) most residents are free to come and go (depending on their sentences) and they live very independent lives. Many residents secure jobs fairly quickly and are not present in the house during the day. The length of time they reside in the house varies depending on their ongoing support needs. Over time, they are supported to find their own accommodation by receiving the necessary mentoring in relation to (for example) budgeting, public transport usage, and daily management of a household.
- 6.8 Other residents require more support. This is often due to mental health issues (over 70% of New Zealand’s prison population have mild to moderate mental health issue). Much like with other health providers in the community, these residents might need support to ensure they are following good routines around getting out of bed in the morning, cooking/eating at certain times of the day, ensuring they follow good personal hygiene practices, etc. Once again, the goal for many of these people is to support them to live independent lives.
- 6.9 There is another, far smaller, group of people who are supervised as well as supported. This support and supervision is often accompanied by a sentence, order or probation requirement which limits movement to and from the property. For these people there is likely to be an element of rehabilitation as well as reintegration support provided.

## 7 **DIFFICULTIES ESTABLISHING RESIDENTIAL ACTIVITIES**

- 7.1 As mentioned above, at the time of writing this evidence, approximately 27,000 people with current offence history are living in our communities. 7,000 of those people are currently serving a sentence of community

work, and the remaining 20,000 have a range of community sentences. This context is an important consideration as it gives some sense of the number of people with current offence histories living in our communities – whether they receive support or not.

- 7.2 Some territorial authorities take the view that the accommodation of people within Ara Poutama’s care is not a residential activity. This issue typically arises when council officers decide that such housing does not fall within the relevant district plan definitions of residential activity (or other definitions such as dwelling) based on an erroneous understanding of the support offered or perceived risk that residents pose to the community. Such an interpretation means that resource consent is required for that activity where it would otherwise not. The need for consent can result in a public, contested process, often based on misconceived concerns about safety and amenity.
- 7.3 In that context, on a number of occasions in the past three years, Ara Poutama has sought confirmation from numerous territorial authorities that housing of those within its care in the community constitutes a residential activity (or equivalent) under the relevant district plan. The Department’s position is that:
- (a) The essential components of accommodating those in its care are fundamentally the same as any other residential activity. Residents living in housing provided by the Department carry out all of the usual domestic activities undertaken in residential accommodation – cooking, cleaning, sleeping and domestic recreation activities. The residents living in the house comprise a household.
  - (b) The fact that some of the residents in a house, in some cases, are subject to sentences which limit their freedom in certain ways does not make their activity on the site less “residential”, nor does the fact that they may receive support (even on a 24/7 basis). There are many different examples of people within the community who receive that form of support at home (such as a family with a live-in nanny or someone with a disability who requires a carer) and who are still considered to engage in residential activity within the relevant district plan definitions.



- (c) There is no environmental effects-basis for excluding the accommodation of people within the Department's care from the definition of residential activity. This is discussed further in Mr Grace's evidence.<sup>1</sup>
- (d) There are significant issues with determining that a single person on a sentence of home detention in a residential home is "permitted" as a residential activity but that people on that same sentence living in a house provided by Ara Poutama (and perhaps with support from Ara Poutama or third party providers) is inherently different.
- (e) Seeking to classify accommodation of those within Ara Poutama's care as something other than a standard residential activity perpetuates the idea that those people are not part of our communities – which is incorrect – and it poses a risk to effective implementation of our justice system.

7.4 Ara Poutama has been in ongoing discussion with the Crown Law Office regarding concerns that the resource management system is being used to frustrate the Corrections Act and Sentencing Act. Specifically, the concerns raised are:

- (a) **Variability** - There is significant variability across the country as to how our residential activities are viewed by Councils. Many Councils agree that our housing is a residential activity and, provided it meets relevant performance standards, our housing can easily establish as a permitted activity. Other Councils take a different approach. For example, Christchurch City in their recent s42A response to Ara Poutama's IPI submission stated that the submission is out of scope because Corrections housing is non-residential.<sup>2</sup> Similarly, Sean Grace has referred to an experience we had in the Waikato District where our residential activity was considered to be a commercial activity, solely because we are a Crown activity (even though other similar

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<sup>1</sup> At 6.7 – 6.12.

<sup>2</sup> Plan change 14 Housing and Business Choice, Planning Officer's Report of Ike Kleynbos under Section 42A of the Resource Management Act on the Residential Chapter at 10.1.415 – 10.1.416.

activities undertaken by the Crown were not considered by the Council to be commercial).

- (b) **Inconsistency** - Within a district, we can face variability regarding interpretation and regulation by individual Council officers. For certainty, the Department generally lodges Certificate of Compliance applications for its activities and there are a number of examples where Council officers have rejected or accepted those applications depending on whether (in their personal view) they consider those activities are a residential or non-residential activity. Many times, decisions that those activities are non-residential have been based solely on the background of the occupants.
- (c) **Fluid interpretation of District Plan rules and definitions**  
 - Ara Poutama has encountered numerous incidences of Councils "filling the gaps" and supplementing rules and definitions with content that is not reflected in the plan provisions themselves. For example, when seeking advice during a pre-application meeting with a large metro Council, Ara Poutama was advised that what distinguishes its housing activities from a dwelling is a combination of support services provided, staff "residing" on site and the necessary oversight of Ara Poutama (or other agencies) of any residents who are subject to parole. These matters were not reflected in the definitions or plan provisions. The plan did not distinguish between residents who are receiving support or oversight, nor did the provisions specify that these characteristics made an activity non-residential. To avoid this 'fluid' interpretation, terms such as "household" need to be defined in the plan so there can be no misinterpretation or inconsistent interpretation between individual planners or jurisdictions.

## 8 CONCLUSION

- 8.1 The challenge which arises for Ara Poutama is that if there is a lack of clarity in a District Plan about whether use of its housing is a permitted activity we are unable to act promptly if a good lease or purchase opportunity for its housing is identified. As outlined above, the

Department's residential and community corrections activities serve an important social function which is necessary for effective functioning of the justice system, and the health, safety and well-being of ALL New Zealanders. Without further clarity confirming residential classification of Ara Poutama's housing, there is a risk that district plans undermine these outcomes.

**Andrea Millar**  
**25 August 2023**