

**BEFORE THE WAIKATO DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the submission point made by Ara Poutama Aotearoa (the Department of Corrections) regarding a rezoning request under the Proposed Waikato District Plan (Submitter No. 496 and Further Submitter No. 1210) – **Hearing 25: Rezoning (Mercer & Meremere)**

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**REBUTTAL STATEMENT OF EVIDENCE OF SEAN MORELL GRACE**

**PLANNER**

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

3 May 2021

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## **1.0 INTRODUCTION**

- 1.1 My name is Sean Grace and I am a Principal and Planner at Boffa Miskell Limited.
- 1.2 I have outlined my qualifications and experience in previous evidence on the Proposed Waikato District Plan before the Hearing Panel. This includes my Evidence in Chief on behalf of Ara Poutama Aotearoa (the Department of Corrections (“the Department”)) for Hearing 25.<sup>1</sup>
- 1.3 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 rebuttal 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 rebuttal evidence.

## **2.0 SCOPE OF REBUTTAL EVIDENCE**

- 2.1 I have read the Council Planner’s Section 42A Report for the Mercer and Meremere rezoning topic<sup>2</sup> (“the S42A Report”). My rebuttal evidence relates to the S42A Report’s recommendations regarding the Department’s proposed rezoning of the Spring Hill Corrections Facility (“SHCF”) site from ‘Rural Zone’ to ‘Corrections Zone’ under the Proposed Waikato District Plan (“PWDP”), as set out in Section 8 of the S42A Report.
- 2.2 More specifically, my rebuttal evidence relates to the S42A Report’s position recommending the retention of the Rural Zone over the SHCF site, as opposed to the imposition of the Corrections Zone sought by the Department. This position is set out in paragraphs

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<sup>1</sup> Hearing 25, “Statement of Evidence of Sean Morell Grace, Planner, on behalf of Ara Poutama Aotearoa (The Department Of Corrections)”, dated 17 February 2021

<sup>2</sup> “Hearing 25: Zone Extents Mercer & Meremere”, report prepared by Yvonne Legarth, dated 12 April 2021

339 and 340 of the S42A Report. Paragraph 351 provides a summary of the Planner's position on the relief sought:

*"I consider that the NOR [Notice of Requirement] 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."*

2.3 My rebuttal evidence does not relate to the Planner's position regarding the submission scope and natural justice issue, which is otherwise the major focus of the S42A Report in relation to the relief sought by the Department. Instead, legal submissions will be presented by legal counsel for the Department on that issue.

### **3.0 NOTICE OF REQUIREMENT FOR SHCF & HEARING 15**

3.1 The Department sought the modification of the existing designation for the SHCF site through a Notice of Requirement submitted as part of the PWDP notification process. The modifications sought to the designation were simple, insofar as they solely sought deletion or modification of initial construction and establishment phase-related conditions that were redundant by virtue of them having been given effect to when the facility was originally built and became operational.

3.2 In preparing that Notice of Requirement, which I authored, consideration was given by the Department to including further modifications, such as making it explicit that the activities currently sought under the Corrections Zone would be encompassed by the designation. Ultimately, the decision was made to keep the Notice of Requirement simple by deleting or amending redundant conditions only, and to not complicate or risk stymieing the process by introducing additional matters (notwithstanding that some or all of these could otherwise be considered to be within scope of the designation, as I set out further in my statement below).

3.3 The S42A Report at paragraph 329 has referenced the Section 42A report for Hearing 15: Designations, and directs the reader to the

paragraphs within that report relating to the recommendations on the Department’s Notice of Requirement (under footnote 96). The Hearing 15 Section 42A report’s recommendations did not accept the majority of the changes to the designation sought by the Department.

3.4 The reference to this report in isolation is, in my opinion, misleading. This overlooks the subsequent outcomes of Hearing 15 in relation to the Department’s submissions,<sup>3</sup> whereby the Council Planner was directed by the Hearing Panel to reconsider her position and work proactively with the Department (myself included) to agree on a set of amended designation conditions for SHCF. This process was followed, and agreement reached between both parties on a comprehensive set of amended conditions via a Joint Memorandum filed 4 May 2020.<sup>4</sup> This conditions package was entirely satisfactory to the Department in terms of the agreed conditions reflecting the original intent of the Notice of Requirement.

#### **4.0 THE CORRECTIONS ZONE AND OVERLAP / DIFFERENTIATION WITH THE SHCF DESIGNATION**

4.1 Subsequent to the aforementioned Notice of Requirement being submitted to Council as part of the notification of the PWDP, the National Planning Standards were gazetted. The Corrections Zone provided for in the National Planning Standards recognise the changing nature of rehabilitation programmes in the New Zealand prison system, whereby the zone description states (emphasis added in **bold**):

*“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***

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<sup>3</sup> Relevant Hearing 15 sessions held via video conference on 20 and 24 April 2020

<sup>4</sup> [https://wdcsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearing-15/council-rebuttal/spring-hill-corrections-facility-conditions-memo-to-panel-4-may-2020a827e93e36f361b3b84dff0000681c44.pdf?sfvrsn=61d488c9\\_2](https://wdcsitefinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/hearings/hearing-15/council-rebuttal/spring-hill-corrections-facility-conditions-memo-to-panel-4-may-2020a827e93e36f361b3b84dff0000681c44.pdf?sfvrsn=61d488c9_2)

***be used for new and changing approaches to prisoner reintegration and rehabilitation.”***

- 4.2 Given the introduction of this national direction, the Department re-evaluated the matters it had chosen not to include in its Notice of Requirement, and took the opportunity to make a further submission point requesting the imposition of the Corrections Zone on the SHCF site.
- 4.3 A key reason for requesting the imposition of the Corrections Zone was that having this zone apply would provide clarity that the more modern approaches to prisoner reintegration and rehabilitation that are undertaken by the Department, but which aren't explicitly provided for in the designation (which was originally confirmed in 2004), are provided for, as recognised within the zone description in the National Planning Standards. In short, given the Corrections Zone 'tool' was being made available through national direction to assist with better planning for modern prisons in NZ, the Department sought the opportunity to implement it.
- 4.4 This said, the nature of activities able to be undertaken under the designation (and the associated effects) compared against the three succinct activities proposed to be allowed as permitted activities under the Corrections Zone, are highly similar. These three activities are set out in my Evidence in Chief and include:
- **Non-custodial rehabilitation activities:** which are programmes generally undertaken outside of the secure perimeter of the prison, and can involve work-skills or cultural programmes.
  - **Community corrections activities:** which are service centres that provide for probation, rehabilitation and reintegration services.
  - **Supported residential accommodation:** which includes housing and other support for people in the Department's care following their release, to assist with their transition and integration back into the community.

4.5 Notwithstanding that these three activities could be considered as being captured by the “catch all” clause in the designation description of works (i.e. “*All other associated or ancillary land use activities and structures and facilities associated with a Corrections Facility*”), I also note the following similarities with other activities explicitly provided for under the designation:

- **Non-custodial rehabilitation activities:** cultural and work-skills programmes may or may not utilise buildings, but those that do would use “*workshop*” and “*iwi services*” buildings, both of which are provided for under the designation. Any such activities and associated buildings proposed to be undertaken outside of the secure prison perimeter would be subject to all of the same activity conditions for the Rural Zone, plus additional conditions relating to restriction of hours for vehicle use and operation of machinery.
- **Community corrections activities:** these involve administrative-type activities within “*administration*” buildings, which are provided for under the designation. Any such activities would be subject to all of the same activity conditions for the Rural Zone, plus an additional condition relating to restriction of hours of operation. The key difference in potential effects would be associated with increased traffic generation. It is noted however that the access road to the prison is private from Hampton Downs Road, and is located over 150m from the nearest dwelling on the neighbouring property.
- **Supported residential accommodation:** includes dwellings, which are highly-similar in nature to “*self-care accommodation (internal and external)*”, which are provided for under the designation, in an area to the west of the secure facility. Any such activities would be subject to the same activity conditions for the Rural Zone with the exception of “number of dwellings within a lot” and “minor dwellings” (this recognises the specific nature of the activity

in relation to the Rural Zone) plus additional conditions relating to:

- restriction of supported residents to 30,
- restriction of units to five, and
- restricting the location of the units to the same location of the external self-care units as per the confirmed designation plans.

Again, a key difference in potential effects would be associated with increased traffic generation. Any perception of effects with respect to public safety are mitigated by virtue of the provision of appropriate levels of supervision by the Department, and in reality, the risk is no different to that associated with the self-care units.

4.6 As such, there 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. I note that the S42A Report has not provided any assessment of the proposed Corrections Zone provisions themselves.

4.7 The imposition of the Corrections Zone is in essence making use of the administrative planning tool that was acknowledged by the Ministry for the Environment as being appropriate for implementation nationally via the National Planning Standards. The National Planning Standards recognised that the Corrections Zone would complement site designations in a number of instances. The same is applicable to other Special Purpose Zones provided for under the National Planning Standards, namely:

- **The Airport Zone:** whereby airport authorities are a Requiring Authority under the RMA, and hold designations over airport land. For example, under the PWDP, the Hamilton Airport is designated to Waikato Regional Airport Limited.
- **The Hospital Zone:** whereby health authorities are a Requiring Authority and hold designations over hospital land. For example, under the Tauranga City Plan, the Tauranga Hospital is designated to the Ministry of Health.

4.8 The other significant benefit that the Corrections Zone offers, above and beyond the designation, is a policy basis for assessing the appropriateness, or otherwise, of any future alteration(s) proposed to the designation (and the same equally applies for other Special Zone examples, such as those given above). The S42A Report has not provided any assessment of this benefit.

## 5.0 CONCLUSION

5.1 After having reviewed the S42A Report, I have concluded that there is nothing within it that changes my position, with regard to the imposition of the Corrections Zone over the SHCF land best meeting the purpose and principles of the RMA.



Sean Morell Grace  
Principal / Planner, Boffa Miskell Limited  
3 May 2021