

19 November 2019

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



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 Coplestone 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:

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

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

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

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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