

PC56 – Hutt City
Ara Poutama, Department of Corrections
Legal submissions – key points, as read at the hearing (13 April)

Summary of AP’s submission/AP activities

Ara Poutama’s submission outlines in some detail the activities that it undertakes within communities as part of its essential role within the justice system. Of particular relevance to PC56, they include the provision of homes for people within its care who are serving sentences in our communities.

That provision of accommodation is often accompanied by a level of rehabilitation and reintegration support provided by Ara Poutama staff or service providers that Ara Poutama work alongside.

The Department’s activities also include community corrections facilities, which provide services and support to those within the justice system who are also carrying out their sentences within our communities. Those services include probation or parole officer engagement and meetings, training and education programmes and the like.

Both of these activities – accommodation and community corrections activities - are not only an essential part of Ara Poutama’s mandate; they also have an essential role in the effective functioning of our justice system.

As our urban environments evolve through intensification, achieving the aspirations of the NPS-UD necessitates that these activities are clearly provided for within those environments if they are to be “well-functioning” in the NPS-UD sense, as well as enabling of all people and communities to provide for their well-being.

In that context, Ara Poutama’s submission is that through its proposed definition of *household* and *residential activity*, intensification enabled under this plan change will provide for, and meet the needs of, a variety of different households, including those managed by Ara Poutama.

Ara Poutama’s submission also seeks to ensure that by permitting *community corrections activities* in those activity areas subject to intensification, PC 56 will better enable good accessibility between those services and those intensified areas.

Mr Dale has provided a comprehensive planning assessment of Ara Poutama’s relief in his evidence. It is his conclusion that that relief will appropriately achieve the objectives of the district plan, and give effect to the relevant higher-order RMA documents, including the NPS-UD.

Summary of legal submissions

The focus of my legal submissions is on the issue of scope, which is identified by the Council’s Reporting officer as the primary constraint on you recommending as part of PC56:

- inclusion of Ara Poutama’s proposed definition of *household* and *community corrections activity*, and
- the provision a more permissive pathway for those *activities* in areas subject to intensification.

Section 2 of my legal submissions set outs the orthodox approach to scope established through *Clearwater* and *Motor Machinists*.

Two limbs to that orthodox approach:

- is the submission on – or within the ambit of – the plan change?
- The natural justice considerations – would potentially affected persons be denied the opportunity to provide response to that submission, if allowed.

For the reasons set out in that section, it is my submission that these tests have to be read in light of specific IPI process.

In particular:

- The fact that the ambit of an IPI is set by section 80E, which includes mandatory elements (the MDRS including the objectives and policies, giving effect to policy 3 and 5), and the discretionary elements including those related provisions which support or are consequential on those mandatory elements.
- The fact that the Panel has the ability to make recommendations on the content of an IPI (i.e. section 80E) which go beyond the scope of submissions, provided they are raised at a hearing.

2.9 – 2.12 of the legal submissions.

In that context, it is Ara Poutama's submission that its proposed definitions of *household* and *community corrections activity* fall within the ambit of PC56, as they constitute related provisions which support or are consequential on the MDRS and policy 3 and 5.

In my submission, when considering what provisions may support or be consequential on the MDRS and those policies, it is necessary to consider the broader statutory and policy context. Consistent with the principles of statutory interpretation, and resonant with comments in *Bluehaven Management* (2.3(c) of the legal submissions).

While it is clear that the focus of the Enabling Act/IPIs is on intensification and enabling more people to live and operate in appropriate areas, achieving that outcome cannot be – and is not – divorced from the other objectives of the NPS-UD. Put another way, the NPS-UD and the RMA (as amended by the Enabling Act) do not contemplate intensification in isolation from realising "well-functioning urban environments". One must support the other.

My legal submissions identify ways in which this connection is acknowledged – including through the mandatory objectives (see 3.5 – 3.9 of the legal submissions).

I have also included a quote from the Select Committee report on the Enabling Act which identifies the "related provisions" component of section 80E as the intended vehicle for ensuring that that integrated approach can be provided for through IPIs.

To that end, it is Corrections' submission that there is scope for including its definitions and community corrections relief as provisions which support or are consequential on the MDRS and policies 3 and 5. In particular:

- *Household* definition provides clarity to proposed definition of *residential unit*, and ensures that intensification enabled under the MDRS will provide for needs of different households, as envisaged by the NPS-UD and the mandatory objectives.

- *Community corrections activity* relief increases the opportunity for those activities in intensified zones, and in doing so, ensuring access to those services are commensurate with the increased level of activity enabled through policies 3 and 5.

In my submission, the further submissions process provided reasonable opportunity for potentially affected parties to respond to this relief, thereby avoiding the natural justice concerns inherent in the second limb of the *Motor Machinists* test.

For those reasons, I do not consider that Corrections' relief is precluded by the issue of scope – that relief falls within the ambit of an IPI for Hutt City. Based on the careful analysis of Mr Dale, consider that it is appropriate for you to grant that relief.