

BEFORE THE OTAGO REGIONAL COUNCIL

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

of the hearing of submissions on the
Proposed Otago Regional Policy
Statement

**STATEMENT OF EVIDENCE OF MAURICE RICHARD DALE
ON BEHALF OF ARA POUTAMA AOTEAROA, THE DEPARTMENT OF
CORRECTIONS (Submitter # DPR-00102)**

Planning

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1 INTRODUCTION

- 1.1 My name is Maurice Richard Dale. I hold the position of Senior Principal and Planner with the environmental consultancy firm Boffa Miskell Limited, based in the firm's Christchurch office. I have been employed by Boffa Miskell since 2010.
- 1.2 I hold a Bachelor of Resource and Environmental Planning from Massey University (1998), and have completed the Ministry for the Environment's Making Good Decisions programme. I am also a full member of the New Zealand Planning Institute (NZPI). I have 24 years' experience in planning and resource management, gained at local authorities and consultancies in New Zealand and the United Kingdom.
- 1.3 As a consultant, I have acted on a broad range of resource management issues and developments for local and central government, and private clients, a number involving presenting evidence before Councils and the Environment Court. I have extensive experience in the preparation of district plans and other planning documents under the Resource Management Act 1991 (**RMA**).
- 1.4 In this matter, I was engaged by Ara Poutama Aotearoa, the Department of Corrections (**Ara Poutama** or **the Department**). As a consultant, I have assisted the Department since 2015. During that time, I have provided advice on resource management matters, obtained resource consents and outline plan of works for prison and community corrections developments, and submitted on resource management plans throughout the South Island.
- 1.5 I prepared Ara Poutama's submission on the Proposed Otago Regional Policy Statement (**Proposed RPS**). The Department did not make any further submissions.

2 CODE OF CONDUCT

- 2.1 I have read and am familiar with the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Note 2014 (**the Code**). 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 **SUMMARY**

- 3.1 Ara Poutama made a submission on the Proposed RPS seeking the inclusion of Otago Corrections Facility and community corrections activities in the definition of *regionally significant infrastructure*.
- 3.2 In my view, the Proposed RPS definition of *regionally significant infrastructure* is not constrained by the limited focus on connective or network infrastructure in the RMA definition of *infrastructure*, nor the National Planning Standards – Definition Standard.
- 3.3 The RMA definition of *infrastructure* has been commonly applied in much broader terms through the inclusion of additional defined terms in a range of national and regional planning documents. This includes by recognising social infrastructure such as schools, hospitals, and prisons in regional policy statement definitions of *regionally significant infrastructure* or equivalent definitions.
- 3.4 In my opinion, it is appropriate for the Proposed RPS definition of *regionally significant infrastructure* to capture a broader range of social infrastructure where these provide significant regional benefits. In my view, doing otherwise would be at odds with the RMA's purpose to manage resources in a way which enables people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety.
- 3.5 OCF and community corrections activities support societal functions at a regional level. They provide facilities and services which deliver critical social and cultural benefits for people and communities. Those benefits are significant and comparable to other similar facilities that are referenced in the proposed definition of *regionally significant infrastructure*, including defence facilities.
- 3.6 Identifying the prison and community corrections activities as *regionally significant infrastructure*, together with enabling provisions for their operation, development, upgrading, and maintenance, would better support their protection and development to meet future corrections

needs, while requiring the environmental effects of any development enabled to be appropriately managed.

- 3.7 In my view, defining OCF and community corrections activity as *regionally significant infrastructure*, would give effect to the objectives EIT-INF-O4 and O5 of the Proposed RPS. This change would be a more efficient, effective, and appropriate way to achieve the relevant Proposed RPS objectives under s32(1)(b) of the RMA.

4 **SCOPE OF EVIDENCE**

- 4.1 I have been asked by Ara Poutama to provide planning evidence on submission point DPR-00102-001 made by Ara Poutama on the EIT – Energy, Infrastructure, and Transport provisions of the Proposed RPS. The relevant submission point sought the inclusion of the Otago Corrections Facility and community corrections activities in the definition of *regionally significant infrastructure*.¹
- 4.2 I note that Ara Poutama made other submission points supporting the retention of various other EIT – Energy, Infrastructure, and Transport provisions. My evidence does not address these points, however I note that I am generally comfortable with the recommendations made in respect to changes to these provisions as outlined in the s42A report.

5 **ROLE OF ARA POUTAMA**

- 5.1 Ara Poutama 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, Ara Poutama establishes and operates custodial and non-custodial community corrections sites, monitors people in the care of Ara Poutama serving their sentences in the community, and provides residential accommodation to assist the rehabilitation and/or reintegration of people back into the community.
- 5.2 Custodial corrections facilities include prisons as defined in the Corrections Act 2004 and detention facilities, and may include non-custodial accommodation for people with complex needs who have completed a prison sentence or are on community-based sentences and are being supported with rehabilitation and/or reintegration services.

¹ DPR-00102-001.

- 5.3 Within the Otago Region, the Department operates the Otago Corrections Facility (**OCF**), which is located at 62 Narrowdale Road, Milton. OCF opened in 2007 and has a maximum capacity of up to 600 people, accommodated within six units, and five self-care units. The remainder of the 187-hectare site comprises a dairy farming operation providing offender training and employment opportunities. OCF is subject to designation D32A under the Clutha District Plan, with the Minister of Corrections being the Requiring Authority. The designation is subject to various conditions, which have the effect of limiting development outside of the existing secure perimeter.
- 5.4 Non-custodial community corrections sites (**CCS**) include service centres and community work facilities which provide support for people on community sentences, and which are essential social infrastructure. Non-custodial services and their associated infrastructure play a valuable role in reducing reoffending. Community work helps people learn vital skills and give back to their community, and in return the community benefits from improved amenities.
- 5.5 Service centres provide for probation, rehabilitation, and reintegration services. Offenders report to probation officers as required by the courts or as conditions of parole. Ara Poutama's staff 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, or used as a place for therapeutic services (e.g. psychological assessments).
- 5.6 In addition to these service centres, Ara Poutama 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. Community work facilities can be large sites with yard-based activities and large equipment and/or vehicle storage.
- 5.7 CCS support offenders living in that community. Ara Poutama 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.

- 5.8 Within the Otago Region, Ara Poutama operates CCS in Dunedin, Oamaru, Balclutha, Gore, Alexandra, and Queenstown.

6 **DEFINITION OF REGIONALLY SIGNIFICANT INFRASTRUCTURE**

- 6.1 Ara Poutama made a submission on Part 1 – Introduction and General Provisions / Interpretation / Definitions of the Proposed RPS, seeking the inclusion of OCF and community corrections activities in the definition of *regionally significant infrastructure*.²

- 6.2 The proposed definition as notified is as follows:

Regionally Significant Infrastructure

means:

1. *roads classified as being of regional importance in accordance with the One Network Road Classification,*
2. *electricity sub-transmission infrastructure,*
3. *renewable electricity generation facilities that connect with the local distribution network but not including renewable electricity generation facilities designed and operated principally for supplying a single premise or facility,*
4. *telecommunication and radiocommunication facilities,*
5. *facilities for public transport, including terminals and stations,*
6. *the following airports: Dunedin, Queenstown, Wanaka, Alexandra, Balclutha, Cromwell, Oamaru, Taieri,*
7. *navigation infrastructure associated with airports and commercial ports which are nationally or regionally significant,*
8. *defence facilities,*
9. *community drinking water abstraction, supply treatment and distribution infrastructure that provides no fewer than 25 households with drinking water for not less than 90 days each calendar year,*

² DPR-00102-001.

and community water supply abstraction, treatment and distribution infrastructure (excluding delivery systems or infrastructure primarily deployed for the delivery of water for irrigation of land or rural agricultural drinking-water supplies),

10. *community stormwater infrastructure,*
11. *wastewater and sewage collection, treatment and disposal infrastructure serving no fewer than 25 households, and*
12. *Otago Regional Council's hazard mitigation works including flood protection infrastructure and drainage schemes.*

6.3 The s42A report recommends Ara Poutama's submission be rejected.³ While the reporting planner acknowledges that such infrastructure is "socially important", he considers OCF and community corrections activities do not constitute or qualify as *regionally significant infrastructure*. Rather, he considers that regionally significant infrastructure:⁴

"...supports, at the regional level, economic and societal functions and, most importantly, interconnectivity (with respect to transport, electricity generation and transmission, communications, three waters, hazard management)."

6.4 In my opinion whether OCF and community corrections activities constitute or qualify as *regionally significant infrastructure* requires a more detailed consideration of:

- (a) The definition of *infrastructure* under the RMA.
- (b) The requirements of the National Planning Standards - Definitions Standard.
- (c) Other national precedents for inclusion of social infrastructure in definitions of *regionally significant infrastructure*, or equivalent definitions in national and regional policy statements.
- (d) The proposed definition of *infrastructure* under Natural and Built and Environment Bill (**NBE Bill**).
- (e) Why it is important that OCF and community corrections activities are defined as *regionally significant infrastructure*.

³ Paragraph 541, s42A Report 11: EIT – Energy, Infrastructure and Transport.

⁴ Paragraph 533, s42A Report 11: EIT – Energy, Infrastructure and Transport.

- (e) Whether OCF and community corrections activities provide significant regional benefits, such that they should be defined as *regionally significant infrastructure*.

6.5 I address these matters in my evidence that follows.

The Definition of Infrastructure under the RMA

6.6 The definition of *infrastructure* in section 2 of the RMA is as follows:

- (a) *pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy:*
- (b) *a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001:*
- (c) *a network for the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989:*
- (d) *facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person—*
 - (i) *uses them in connection with the generation of electricity for the person's use; and*
 - (ii) *does not use them to generate any electricity for supply to any other person:*
- (e) *a water supply distribution system, including a system for irrigation:*
- (f) *a drainage or sewerage system:*
- (g) *structures for transport on land by cycleways, rail, roads, walkways, or any other means:*
- (h) *facilities for the loading or unloading of cargo or passengers transported on land by any means:*
- (i) *an airport as defined in section 2 of the Airport Authorities Act 1966:*
- (j) *a navigation installation as defined in section 2 of the Civil Aviation Act 1990:*
- (k) *facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988:*
- (l) *anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166*

- 6.7 The definition largely has a focus on connective or network infrastructure. It is limited to activities primarily focused on generation of electricity; networks for distribution/transmission of electricity, fuels, telecommunications, water, and sewerage; land drainage; and transport and navigation facilities/structures. Notably, social infrastructure (including prisons and community corrections activities) is not included. Defence facilities, natural hazard mitigation infrastructure, and bulk fuel storage which are, or are recommended to be in the Proposed RPS definition of *regionally significant infrastructure*, are also not included.
- 6.8 As I discuss in my evidence below, I consider that the Proposed RPS is not constrained by the definition of *infrastructure* in the RMA.

The National Planning Standards – Definitions Standard

- 6.9 The National Planning Standards – Definition Standard requires that terms defined in the Standard which are then used in a policy statement use the same wording as the Standard (with limited exceptions). The RMA definition of *infrastructure*, or a definition of *regionally significant infrastructure* is not listed in the Standard. Consequently, the Standard does not constrain what may be defined as *regionally significant infrastructure* in a regional policy statement.

Inclusion of Social Infrastructure in definitions of Regionally Significant Infrastructure, or Equivalent Definitions

- 6.10 While the scope of the RMA definition of *infrastructure* is limited, it has been commonly applied in much broader terms through the inclusion of additional defined terms in a range of national and regional planning documents. These include definitions of:
- (a) *Specified infrastructure* in the National Policy Statement for Freshwater Management (**NPS-FW**) and National Policy Statement for Highly Productive Land (**NPS-HPL**).
 - (b) *Additional infrastructure* in the National Policy Statement on Urban Development (**NPS-UD**).
 - (c) *Regionally significant infrastructure* or equivalent definitions of *strategic infrastructure*, *strategic facilities* or *critical infrastructure* in regional policy statements.

6.11 **Appendix A** to my evidence sets out the relevant infrastructure definitions included in the national and regional policy statements throughout Aotearoa New Zealand. I note the following from those definitions:

- (a) The definition of *specified infrastructure* in the NPS-FW and NPS-HPL also captures infrastructure operated by a lifeline utility; infrastructure recognised as regionally or nationally significant in a national policy statement, New Zealand Coastal Policy Statement, regional policy statement, or regional plan; and flood control and flood protection works.
- (b) The definition of *additional infrastructure* in the NPS-UD also captures public open space, community infrastructure defined in the Local Government Act 2002,⁵ and social infrastructure such as schools and healthcare.
- (c) Only the Waikato Regional Policy Statement, Gisborne Tairāwhiti Resource Management Plan, Horizons One Plan, and Wellington Regional Policy Statement strictly limit their infrastructure definitions to the types of activities/facilities captured in the RMA definition of *infrastructure*.⁶
- (d) Other activities/facilities are commonly captured in the definitions of *regionally significant infrastructure* (or equivalent) in other regional policy statements. This includes social and community facilities (hospitals, education, emergency service facilities, prisons, regional parks), hazard mitigation (flood protection schemes, seawalls, erosion protection), oil refineries, bulk petroleum storage, landfills and waste facilities, defence facilities, marinas, quarries, and meteorological facilities.
- (e) Separate definitions of *social infrastructure* are also included in the Northland Regional Policy Statement, and Hawkes Bay Regional Resource Management Plan⁷ which capture community

⁵ Under section 197 of the Local Government Act 2002, this includes land or development assets on land owned or controlled by the territorial authority for the purposes of providing public amenities.

⁶ The Taranaki Regional Policy Statement 2010 and Tasman Regional Policy Statement 2001 have no definition of "Infrastructure" and thus the RMA definition also applies.

⁷ The Hawkes Bay Regional Resource Management Plan is a combined plan which incorporates the regional policy statement.

infrastructure such as schools, universities, hospitals, justice facilities, state housing, sports and community facilities, and parks and recreational spaces.

- 6.12 From my review I have also noted that the Northland Regional Corrections Facility at Ngāwhā is the only prison nationally that has been specifically listed as *regionally significant infrastructure* in a regional policy statement. Consequently, it has also been defined as such in the Proposed Far North District Plan. In addition, both the Hawkes Bay Resource Management Plan and Canterbury Regional Policy Statement provide scope for inclusion of prisons in their regions⁸ as *regionally significant infrastructure*, by virtue of being *strategic infrastructure*.
- 6.13 I also note that community corrections activities are not specifically captured by any regional policy statement definition of *regionally significant infrastructure* or equivalent definitions, but I consider are captured by the definitions of *social infrastructure* in the Northland Regional Policy Statement and Hawkes Bay Regional Resource Management Plan.
- 6.14 It is my understanding that the absence of other prisons or community corrections activities being specifically listed in regional policy statement definitions of *regionally significant infrastructure* is more reflective of Ara Poutama’s lack of engagement in regional planning processes historically, rather than a particular reluctance from regional councils to include them. Only recently has Ara Poutama sought to have its facilities identified as *regionally significant infrastructure* or similar in planning documents.
- 6.15 Based on the above analysis, it can be seen that national and regional policy infrastructure definitions are commonly more expansive than the RMA definition of *infrastructure*. This includes by recognising social infrastructure such as schools, hospitals, prisons, and the like in regional policy statement definitions of *regionally significant infrastructure* or equivalent definitions.
- 6.16 In that regard, I consider the recognition of a broader range of infrastructure in definitions of *regionally significant infrastructure*

⁸ These include Hawkes Bay Regional Prison, Christchurch Men’s and Women’s Prisons, and Rolleston Prison.

nationally likely reflects the narrow and outdated notion of what is *infrastructure* under the RMA, as recognised in the more contemporary definitions in the NPS-FW, NPS-HPL, and NPS-UD, and also the recently released NBE Bill.

Infrastructure under the NBE Bill

6.17 The proposed definition of *infrastructure* in section 7 of the NBE Bill has largely moved away from the approach of listing specific types of activities/facilities, and instead cross refers to infrastructure listed under other legislation. In my view, this will support a more integrated approach for the provision of infrastructure. Importantly, the proposed definition includes infrastructure provided by a requiring authority.⁹

6.18 While no statutory weight can be given to the NBE Bill at this time, in light of its proposed definition and on the basis of current RMA planning practice, my view is that it is appropriate for the Proposed RPS definition of *regionally significant infrastructure* to capture a broader range of social infrastructure where these provide significant regional benefits. In my view, doing otherwise would be at odds with the RMA's purpose to manage resources in a way which enables people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety.

Why it is important that OCF and community corrections activities are defined as regionally significant infrastructure

6.19 Ara Poutama's driver for identification of its prisons in particular as *regionally significant infrastructure* stems in part from difficulties it has experienced at some of its sites with avoiding encroachment from urban development and incompatible activities when faced with an imperfect or outdated regional and district planning framework.

6.20 For example, I have recently assisted Ara Poutama in its opposition of the establishment of wood biomass processing and stockpiling operation adjacent to OCF, primarily due to potential noise effects on the prison and the people in its care. The activity however was anticipated in the rural resource area under the Clutha District Plan, only requiring resource consent for a limited range of matters relating to storage of

⁹ The Minister of Corrections is a requiring authority under both the RMA and NBE Bill.

materials. There was a limited ability to consider all effects on OCF as the district planning framework did not recognise the benefits of social infrastructure, and the importance of its protection from incompatible activities.¹⁰

6.21 In my opinion, identification of OCF as *regionally significant infrastructure* in the Proposed RPS together with the objectives and policies protecting such infrastructure from incompatible activities would provide a greater safeguard for Ara Poutama for the management of activities surrounding OCF. Such recognition would also need to be given effect to when the Clutha District Plan is reviewed (or more likely encapsulated in a future regional plan to be developed under the NBE Bill).

6.22 The other driver for identification of prisons and CCS as *regionally significant infrastructure* is to apply the more enabling objective and policy framework that such recognition provides. My experience working with Ara Poutama is that locating corrections facilities can be highly challenging even in appropriate locations, due to adverse community perceptions of such facilities. This is despite them providing an essential service.

6.23 Defining these activities as *regionally significant infrastructure*, would result in the relevant objectives and policies in Part 3 – Domains and Topics / Topics / EIT – Energy, Infrastructure, and Transport applying. Those objectives and policies are enabling and protective of such infrastructure, while at the same time requiring that it minimise adverse effects on the environment. In my view, the policy framework (as notified) is appropriate to apply to these activities given their significance and benefits. In particular, it is appropriate in relation to OCF and community corrections activities that:

- (a) Operation and maintenance avoid, as the first priority, significant adverse effects on the environment, and otherwise, minimise adverse effects as sought by policy EIT-INF-P11.
- (b) Upgrades and development ensure infrastructure maintains functionality during and after natural hazard events; is as far as

¹⁰ A decision on the application is currently pending.

practicable coordinated with long-term land use planning; and is efficient as sought by policy EIT-P12.

- (c) New infrastructure avoids, as the first priority, locating in various outstanding or high value environments, and if avoidance is not possible, manage adverse effects, as sought by policy EIT-INF-P13.
- (d) Alternative sites, methods, and designs are considered if adverse effects are potentially significant or irreversible, as sought by policy EIT-INF-P14.
- (e) Establishment of activities that may result in reverse sensitivity effects or compromise functional or operational needs are avoided, as sought by policy EIT-INF-P15.

Whether OCF and community corrections activities provide significant regional benefits, such that they should be defined as regionally significant infrastructure.

- 6.24 In contrast to the opinion of the reporting planner in the s42A report, the fact that OCF and community corrections activities do not support interconnectivity is in my view irrelevant in determining whether they should be defined as *regionally significant infrastructure*. The definition in the Proposed RPS as well as other definitions nationally are broader than connective infrastructure, as described earlier.
- 6.25 Regardless, my understanding is that Ara Poutama's facilities are essentially operated as a connected network with decisions often having flow on effects; for example, people may be moved between prisons based on a number of considerations including demand, security classification, and custodial arrangements and/or may be moved between custodial and non-custodial Ara Poutama facilities based on their status within the justice and sentencing system.
- 6.26 In my view, OCF and community corrections activities support societal functions at a regional level. As noted earlier in my evidence, custodial and non-custodial corrections sites provide facilities and services which deliver critical social and cultural benefits for people and communities. I consider those benefits are significant and comparable to other similar

facilities that are referenced in the proposed definition of *regionally significant infrastructure*, including defence facilities.

- 6.27 Identifying the prison and community corrections activity as *regionally significant infrastructure* together with enabling provisions for their operation, development, upgrading, and maintenance would better support their protection and development to meet future corrections needs, while still requiring the environmental effects of any development enabled to be appropriately managed.

7 CONCLUSION

- 7.1 In my view, defining OCF and community corrections activity as *regionally significant infrastructure*, would give effect to the objectives:

- (a) EIT-INF-O4 of the Proposed RPS, which (as notified) seeks effective, efficient, and resilient infrastructure enables the people and community of Otago to provide for their social and cultural well-being, their health and safety, and supports sustainable economic development and growth within the region within environmental limits.
- (b) EIT-INF-O5 the Proposed RPS which (as notified) seeks that development of *nationally* and *regionally significant infrastructure*, as well as land use change, occurs in a co-ordinated manner to minimise adverse effects on the environment and increase efficiency in the delivery, operation and use of the infrastructure.

- 7.2 For the purposes of the further evaluation required under s32AA of the RMA, I consider the change will be a more efficient, effective, and appropriate way to achieve the relevant Proposed RPS objectives under s32(1)(b) of the RMA. I consider there is sufficient information to support this change given the good understanding of the environment, economic, social, and cultural effects of corrections activities, for the purposes of s32(2) of the RMA.

Maurice Richard Dale
23 November 2022