BEFORE INDEPENDENT COMMISSIONERS APPOINTED
BY THE CHRISTCHURCH CITY COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an application by Kāinga Ora on behalf of the Department of Corrections for a resource consent to use an existing property at 14 Bristol Street, St Albans, Christchurch to provide residential accommodation for men as part of a rehabilitative and reintegrative programme (RMA/2020/173)

STATEMENT OF EVIDENCE OF BRETT JAMES GIDDENS ON BEHALF OF THE BRISTOL STREET COMMUNITY NETWORK INCORPORATED

Dated: 10 September 2021

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1. INTRODUCTION

Introduction and Qualifications

1.1 My name is Brett James Giddens. I am a Senior Planner and a Director of Town Planning Group (NZ) Limited, a resource management and planning consultancy that provides planning and resource development advice to private clients, local authorities and government agencies New Zealand-wide.

1.2 I hold a Bachelor of Science in Geology from the University of Canterbury, a Master of Applied Science in Environmental Management from Lincoln University, and have partially completed a Master of Resource & Environmental Planning from Massey University. I am an Associate of the New Zealand Planning Institute, a member of the New Zealand Resource Management Law Association, and a member of the Urban Design Forum of New Zealand.

Experience

1.3 I have 19 years' experience as a practicing planner in New Zealand, with a focus on statutory planning, environment assessment, policy development and analysis, and consenting. I am regularly engaged as an expert planning witness before Council hearings and the Courts.

1.4 I have a working knowledge of the Christchurch District Plan, having worked with it since around 2004 and been involved in more recent years through the Independent Hearing Panel (**IHP**) process which resulted in the formulation of the current version of the Plan, and I am currently involved in both Plan Change 4 and 5.

1.5 I have provided planning assistance to a number of clients in Christchurch relating to community activities and facilities, including health care facilities, spiritual facilities and day care centres.

1.6 In the local setting, I provided planning assistance in obtaining a resource consent for the establishment of a local shopping complex on the corner of Papanui Road and Merivale Lane (121 Merivale Lane). I was also involved with rezoning this property during the Replacement District Plan process before the IHP. This involved changing the zone from Residential Medium Density to Commercial Local.[1]

1.7 I have also provided planning assistance to the owner of "The Carlton" building and site on the corner of Papanui Road and Bealey Avenue (1 Papanui Road), including

[1] A zone that the District Plan described as comprising "small standalone groups of primary convenience shops and community facilities that serve the immediate area".

successfully having that site and building recognised as non-residential and rezoned Commercial Core under the IHP process.[2]

1.8 My company provides strategic planning advice to the Ministry of Education throughout New Zealand, which has included me undertaking a significant amount of site evaluation and designation work throughout the Canterbury region and Christchurch District since 2011. A key feature of this work includes evaluating catchments for the siting of new schools and associated community facilities, and undertaking site evaluation assessments that include consideration of the national, regional and district planning frameworks, site and surrounds analysis (including the identification and evaluation of incompatible activities), through to the designating of sites for education purposes.

1.9 I also have significant local and New Zealand wide experience under the Sale and Supply of Alcohol Act 2021 (and its former Sale of Liquor Act 1989). A function of this Act is a consideration of a the "amenity and good order" of the environment as it relates to alcohol-related harm, and the development of Local Alcohol Policies. This work has included engagements for national companies, such as Lion Breweries, Foodstuffs, Henry's, Liquor King, Super Liquor and includes licencing off premises in residential and semi-residential areas, as well as engagements with community groups and landowners supporting circumstances where I have considered the good order and amenity of a location would be affected by a more than minor degree through the grant of additional licences.

Involvement

1.10 I have been asked by the Bristol Street Community Network Incorporated (**BSCN**) to provide planning evidence with respect to the application by Ara Poutama Aotearoa / Department of Corrections (**Corrections** or **Applicant**). My evidence is limited to matters within my expertise in resource management planning.

1.11 I am familiar with the area and neighbourhood surrounding 14 Bristol Street. I have been to the site and immediate surrounds a number of times prior to the preparation of this evidence.

1.12 I have read the application and further information response, the notification decision, the summary of submissions with issues raised by the local community (both in support and in opposition), the submission of the BSCN, the section 42A report (including accompanying reports), and the Applicant's evidence. I have also reviewed the relevant

[2] This zone "provides for a range of convenience and comparison shopping as well as community and employment activities… and can be found in all District and Neighbourhood centres …".

local, regional and national planning instruments in the context of evaluating the subject matter.

Code of Conduct

1.13 I have read the Environment Court's Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I agree to comply with it. My qualifications as an expert are set out above. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2. SCOPE OF EVIDENCE

2.1 In my evidence I address:

(a) what the activity is and whether it is appropriate to unbundle the activity as suggested;

(b) the relevant rules and activity status of the proposal;

(c) the key objectives and policies;

(d) the existing environment and permitted baseline;

(e) the effects on the environment; and

(f) the evaluation of the activity against the relevant statutory planning instruments.

2.2 As a preamble to the key issues, I acknowledge the differing and diverse views and opinions of the parties involved. In my experience, non-residential activities in residential areas can often be highly sensitive within the communities they are located, particularly where there is the question of incompatibility with community expectations and values.

2.3 What strikes me about the evidence put forward by the Applicant is that we are dealing with high uncertainty on the adverse and beneficial effects. Conclusions are based on very limited empirical data (namely a programme in another location / environment that has been in operation for a short period of time) and assumptions arising from that data.

2.4 I accept that programmes that seek to reduce recidivism are commendable in objective and where "successful", can be a useful contribution to society. However, after reading the reports/evidence produced by the Applicant, it occurs to me that:

(a) the stated positive effects of the programme could equally be experienced at any number of locations around the District. For example, much of the land zoned for commercial and industrial use would provide the *necessary* integration opportunities that are set out in the evidence for the Applicant.[3]

(b) the evidence cannot quantify or qualitatively explain the benefits and one of the witnesses takes the position that objective data of recidivism rates is not an indicator of success.[4]

2.5 With respect to matter (b), I am not qualified to provide evidence on this. However, to the extent there is some unquantified benefit, none of the evidence persuades me these benefits would only (or mostly) accrue at the Bristol Street location as opposed to any other number of sites and zones around the City.

3. SITE & SURROUNDS

3.1 I generally agree with Ms Chapman's description of the site and surrounding environment[5]. The site and surrounds are residential in nature and character, reflecting its underlying residential zoning.

3.2 My observations are that this area generally has a higher residential density of development than areas further afield in Merivale, St Albans, and Papanui for example. This is reflective of its underlying zoning and – based on my observations – that this area has infilled successfully over time and that the same zoning to the north and east of the site is still undergoing that transition to higher density residential living.

3.3 The Residential Medium Density Zone (**RMDZ**) directs community facilities (such as schools, preschools, health care facilities and churches) to sites with frontages to a minor arterial road or collector road, as opposed to local roads.[6] Local roads are more typically, in my experience, located in the heart of suburban areas. Minor arterial roads and collector roads are busier, more directive roads, to get people in and out of an area.

3.4 Bristol Street is a local road and is within an environment that is dominated by residential activity.

[3] I develop this further when I discuss the "strategic and operational need" for the activity to be located at 14 Bristol Street.
[4] See from [8.5] of evidence of Dr Polascek
[5] See [10] to [15] of section 42A report
[6] See Rule 14.5.1.1 (P7 to P11)

4. THE ACTIVITY

What is the activity?

4.1 From my perspective, this is a fundamental question with the end determination having a direct bearing on which objectives, policies and rules apply. In turn, this affects how and what effects should be assessed, and which policies need to be evaluated when considering grant or decline of consent.

4.2 The proposal was applied for and notified as being three land use activities[7]:

(a) Residential Activity;

(b) Community Corrections Facility; and

(c) Community Welfare Facility.

4.3 I accept the Applicant's proposal has some characteristics of each of those separate activities. However, it is not (by definition) any one of them. I differ in approach from Ms Chapman and Mr Gimblett because I view this as a singular activity. I do not agree with unbundling the proposal into separate activities for the purposes of rule, effects and policy assessment.

4.4 In summary, it is my opinion that:

(a) the proposed activity is best described as a "Detention Facility"; and

(b) it specifically falls to be considered as an "activity not provided for as a permitted, controlled, restricted discretionary or non-complying activity" under Rule 14.4.1.4 (D1); and

(c) it must be considered as an "other non-Residential Activity" in the policy framework.[8]

4.5 My reasons are expanded on below.

One activity or three?

4.6 In my opinion, the various strands of activity are unavoidably integrated, which is consistent with my view they combine to form a single activity, because:

[7] See [4.32] of Mr Gimblett's evidence and [18] of section 42A report
[8] The Plan provides for two types of non-residential activity, "non-residential" and "other non-residential". I return to this later.

(a) all components of the activity are essential in contributing to and creating, one overall activity;

(b) all parts of the activity operate as one facility – for example, the building is not segregated into three separate uses; and

(c) all components are directed toward one purpose – being the delivery of the Tai Aroha programme.

4.7 In my experience, it is not uncommon for development proposals have some degree of 'this and that', but such proposals are not dissected in this manner other than where effects are isolated for the purposes of evaluating a permitted baseline. I return to the permitted baseline later in my evidence.

Defining the activity

4.8 With respect to the pertinent definitions in the District Plan, in my opinion:

(a) the activity is not a **Residential Activity**[9] because the use of the land and buildings are for, at least, "supervised living accommodation" where the occupants are "detained on site". This is traversed at [20] to [25] of Ms Chapman's report and I agree with her in this regard. The offenders are sentenced and are not allowed to leave without permission. I understand it is a criminal offence to leave without permission. In addition, the evidence from the Applicant outlining the measures to control the offenders within the facility, satisfies me they are detained and there is an explicit aim to control them and ensure very limited – if any – off site interaction. In addition, I have no hesitation describing the accommodation as "supervised". Whereas I understand a person serving their sentence at home will have an element of "supervision" by virtue of the conditions on their sentence, they will not (for example) be managed by House Rules – relating to matters such as noise, use of outdoor areas, use of cell phones – and people monitoring compliance with them, 24/7.

[9] **Residential activity**
means the use of land and/or buildings for the purpose of living accommodation. It includes:
a. a residential unit, boarding house, student hostel or a family flat (including accessory buildings);
b. emergency and refuge accommodation; and
c. sheltered housing; but
excludes:
d. guest accommodation;
e. the use of land and/or buildings for custodial and/or supervised living accommodation where the residents are detained on the site; and
f. accommodation associated with a fire station.
(Proposed Plan Change 4)

(b) the activity is not a **Community Corrections Facility**[10]. It may offer some of the services the offenders could otherwise access at an established Community Correction Facility, but the activity itself is not like any of the six existing Community Corrections Facilities in Greater Christchurch. The fact it involves offenders sleeping on-site and, consequently, "operates" beyond 7pm is not the only reason the activity does not fit this definition. However, it does demonstrate this is a fundamentally different activity.

(c) the activity is not a **Community Welfare Facility**[11] . It provides some of the same services (again) but only to a very small proportion of the population that meet the criteria and are accepted into the programme. It involves detainment all day and night. A Community Welfare Facility is an activity of a different character and nature. In respect of both a Community Corrections Facility and Community Welfare Facility, I discuss my understanding of the definitions later in my evidence. In my opinion, the fact the offenders are detained is a key factor in separating the proposed activity from these two activities, as well as factors such as the concentration of a particular type of offender and the intensity (and pressure) of the programme.

(d) the activity is not a **Community Activity**[12] because the use of the land/buildings is not "principally by members of the community" for "recreation, entertainment, health care, safety and welfare, spiritual, cultural or deliberation purposes". The phrase "members of the community" indicates to me that to be a Community Activity, there needs to be a connection between the activity and the members of the community engaged with it, like there is for a doctor's clinic, church or school, for example. A Community Welfare Facility and Community Corrections Facility are listed as examples in the definition of Community Facility, meaning that it is the "members of the community" that are to use those facilities, as opposed to the general public. I discuss what this phrase means by *community* (which is not defined), further below.

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[10] **Community corrections facility**
means buildings used for non-custodial community corrections purposes. This includes probation, rehabilitation and reintegration services, assessments, reporting, workshops and programmes. Community corrections facilities may be used for the administration of, and a meeting point for, community work groups.

[11] **Community welfare facility**
means the use of land and/or buildings or providing information, counselling and material welfare of a personal nature. This includes personal and family counselling, citizens advice bureaux, legal aid and the offices of charitable organisations where the facility is operated by a non-profit making organisation.

[12] **Community activity**
means the use of any land and/or buildings principally by members of the community for recreation, entertainment, health care, safety and welfare, spiritual, cultural or deliberation purposes.

(e) it follows the activity is not a **Community Facility**[13], because the activity is not a Community Activity (as discussed above) and certainly not an Education Activity. A Community Corrections Facility and Community Welfare Facility are noted as being Community Facilities, which supports my interpretation the proposed activity is not either of those, because they cannot be Community Facilities without first being Community Activities.

What is community?

4.9 There is inconsistency in how the Applicant's evidence about the term *community*. "Community" itself is not defined in the District Plan.

4.10 The evidence is not clear about what "community" is being referred to in this sense either – for example, St Albans West, Christchurch City, Canterbury Region or the South Island.

4.11 There are also a number of statements in the evidence about the facility and offenders being "part of the community" while staying there. I assume this refers to the local St Albans West community, but I cannot find any evidence that expressly confirms this. Aside from saying there is a contribution, the evidence does not explain what contribution is actually made to the "community" during the 16-22 weeks the offenders are there.

4.12 The participants of the programme are said to come from Canterbury[14] and others from the South Island[15]. In this sense, the facility catchment is much greater than the local community, suburb, District or even Region in some cases. In my opinion, this is of some importance because the definition of Community Activity encompasses an activity which is accessed by "members of the community".

4.13 Dr Kilgour at his [3.5] refers to community in the context that people at the facility are within "their own community", emulating community living through adherence to the house code of conduct[16]. The terms "Tai Aroha community" and "therapeutic

[13] **Community facility**
means any land and/or buildings used for community activities or education activities. Community facilities include reserves, recreation facilities, libraries, community infrastructure such as community halls, health care facilities, care facilities, emergency service facilities, community corrections facilities, community welfare facilities and facilities used for entertainment activities or spiritual activities. Community facilities exclude privately (as opposed to publicly) owned recreation facilities, entertainment activities and restaurants.

In relation to the open space zones of Chapter 18 Open Space, community corrections facilities and community welfare facilities are excluded from this definition.

[14] [41] of Dr Cording; [5.2] of Mr Gimblett
[15] [5.2] of Mr Gimblett
[16] [5.6 (c)] of Mr Gimblett

community" are specifically used to describe the community of offenders internal to the facility.[17]

4.14 In addition, the Applicant's evidence describes the programme as (my emphasis):

(a) being "designed to enable participants to return to the community"[18]

(b) "an important aspect of the programme involves the provision of support to reintegrate residents back into the post-treatment living environment"[19]

(c) "developing and implementing a comprehensive reintegration needs assessment and planning framework to improve Tai Aroha's ability to prepare for each resident's transition to the community".[20]

4.15 From the evidence I consider it clear the facility and programme are intended to assist with the reintegration of the occupants back into *a* community, rather than *the* community within which the Detention Facility sits. While offenders are at the facility they are deliberately and necessarily isolated from interaction with the people around them, which is not "independent community living".[21] The facet of reintegration is discussed at lengths in the evidence of Dr Polascek, noting that reintegration occurs "days and weeks after the programme ends".[22] I understand the activities of rehabilitation and reintegration already take place at various locations around the District, including existing Community Corrections Facilities.

4.16 From Part 6[23] of her evidence, I understand what Dr Polascek is saying is that the resident offenders are part of *their own* Tai Aroha community while attending the programme and will engage, learn and interact within *their community*. In my opinion, this is the best descriptor of what the term "community residential programme" means when it is used in the Applicant's evidence.

4.17 Mr Gimblett and I take different approaches to determining what the relevant "community" is in terms of the phrase "members of the community", as it is used in the definition of Community Activity. In responding to assertions by submitters that "… because the proposed users would not be principally (or at all) members of the "Bristol Street community" it does not meet the definition of a "community activity" which

[17] [5.7] of Mr Gimblett
[18] [1.6] of Mr Gimblett
[19] [6.1] of Dr Kilgour
[20] [3.11 (b)] of Dr Kilgour
[21] [6.1] of Dr Polascek
[22] [6.1] of Dr Polascek
[23] Titled "from rehabilitation to reintegration"

references “community activities” ...”[24], Mr Gimblett says a broader approach is needed.

4.18 Mr Gimblett discusses the term “community” at his [4.58] (my emphasis)

> *“…The term “community” is not defined by the Plan. In the context of a Community Facility (which is defined) and when considered in light of the various other activities also identified to be community facilities under the definition, including the likes of libraries, health care facilities, reserves, and spiritual activities, I do not consider it correct to interpret who might be legitimate users of these facilities in such a narrow fashion.”*

4.19 In terms what the word “community” means in this particular definition, the examples specified in it are in fact all related to the people that live in close proximity. For example, people refer to their “local library” or the “local park”. In my view the specified examples support a more localised approach to the definition, as opposed to the broad approach favoured by Mr Gimblett.

4.20 Another way of ascertaining the extent of a community for the purposes of the Community Activity and Facilities definitions, is to consider the area covered by a community group or residents association (if there is one). School zonings can also indicate community areas. In the District Plan context, Chapter 15 (Commercial) is useful because it sets out at Table 15.1 the role of the various commercial centres in the Christchurch District (including the catchment they provide for, the activities anticipated within them, the population they serve, distance to the facilities, and the size of the centre).

4.21 In my opinion and in the planning sense, a *community* can be broader or smaller depending on the activity, but not so broad to encompass an entire district, region or island. There is always some judgement to be applied depending on what the actual activity is, but in the case of the Community Activity definition, it seems clear to me the types of activities captured in it will have a geographical link to the people who access them.

4.22 In my opinion it is a long bow to draw to suggest that *any* member of the public can be considered as a member of a community for a site-specific resource consent – if the definition of Community Activity was intended to be so broad as to cover the general public, the words “principally by members of the community…” would not have been included in the definition. The planning evidence from Corrections to the IHP[25] sought

[24] [4.55] of Mr Gimlett
[25] Paragraph 9.4 of Planning Evidence of Yvonne Legarth to the IHP (20 March 2015)

to specifically remove these words from the definition of Community Facility. The fact that those words were retained further satisfies me that they are intended to carry meaning in the context of the definition.

4.23 From my assessment of the proposal and consideration of the evidence, the Detention Facility is sought to be located *within* a community. I do not consider this is the same as being *part of it*, which would ordinarily involve being active within that community or contributing to it. Rather, the offenders are not intended to engage with or be part of the community, which seems necessary and appropriate to me given they are serving sentences of Home Detention. The facility is to be controlled 24/7 to detain and keep the intended occupants separate from the community.

4.24 I do not share Mr Gimblett's opinion[26] that because a person may live in a facility in an area, that this makes them part of a community. I consider this is especially so when they are only passing through, as they are here; this transiency that is engrained in the nature of the activity and facility can lead to adverse effects on residential coherence and character[27], when compared to a residential activity typical in this setting.

4.25 From my reading of the evidence:

(a) the offenders will be at the Detention Facility for *their* individual purposes;[28]

(b) the aim being to help *them* return to *a* community in which *they* will live at the end of their sentence; and

(c) the St Albans West community is *used* by each individual offender, for a 16-22 week period, to help *them* achieve *their* aims.

4.26 Mr Gimblett says "the *Community Activity* definition is not relied upon by the Applicant"[29], because it is relying on the more specified definitions of Community Corrections Facilities and Community Welfare Facilities. I note, however, that for these facilities to be a Community Facility, the activities in the facilities still need to meet the definition of a Community Activity first. This returns me to the requirement that the use of land and/or buildings needs to be principally by members of the community for recreation, entertainment, health care, safety and welfare, spiritual cultural or deliberation purposes.

[26] [4.58] of Mr Gimblett
[27] See Policy 14.2.6.4
[28] See [10.23] of Dr Polascek - "With specific reference to the concerns of submitters, we also asked men if the neighbours of Tai Aroha would have anything to fear from living near to the house. Most men said: "*No, because we are not there for them, we are there for ourselves*".
[29] [4.55] of Mr Gimblett

4.27 In my opinion, the definitions of Community Corrections Facilities and Community Welfare Facilities cannot be read in isolation from the Community Facility and Community Activity definitions; they are related.

4.28 Further, the proposal does not come within the terms any of those definitions, including the two for which resource consent has been applied.

Unbundling of activities

4.29 It is unclear from the evidence what the proposal actually is and how it is likely to evolve, given there is no requirement for the programme which underpins it, to remain the same.[30] Dr Kilgour confirms at his [3.10] that "the Tai Aroha programme operates a continuous improvement model" and that there is currently a third evaluation of the programme underway. I am unable to tell what parameters are "fixed" and/or what parameter changes might automatically trigger a review of the resource consent. I consider this relevant because the Applicant's Social Impact evidence emphasises its reliance on the activity being the same as the one presently delivered at Tai Aroha in Hamilton.

4.30 Not every activity needs to be or will be defined. The District Plan specifically contemplates such cases by having a catch-all rule for non-specified activities, and having a policy framework for "other non-residential activities".

4.31 The District Plan is generally not structured in a way which directs the unbundling of activities.

4.32 The only time I would look to evaluate the component activities proposed to be undertaken on a site would be when assessing a mixed-use development (for example, a mixed-use building with commercial activity downstairs and residential apartments on the upper levels, or an industrial building encompassing storage, a workshop and perhaps some ancillary retail activity). Mixed use developments are typically clearly separated into distinct activities within a site and/or building (i.e. storage in the storage rooms, service activities in the workshop, retailing from the publicly accessible display area, office activity from the offices, Residential Activity from the residential unit, etc.). However, this scenario is very different from the Detention Facility proposed.

4.33 In my opinion, the most fitting description of the proposal in the District Plan context is that of an **other non-residential activity**. In reaching this view I have relied on:

[30] See [9.2] of Dr Polascek: "Tai Aroha has been formally evaluated on a number of occasions and a series of refinements made to its programme as a result. The current programme is the result of continuous improvement efforts since the first prototype opened in 1987 and therefore differs in a number of ways from that first programme…"

(a) the definitions that I consider relevant in the District Plan, none of which are met; and

(b) guidance from the objectives and policies for the Zone, which specifically direct that non-specified activities are "other non-residential activities".

4.34 A non-residential activity is not defined in the District Plan but quite simply, if it is not "residential", it is non-residential. By defining residential, the District Plan in effect defines non-residential (a common approach that most District Plans take in my experience). This is important in this situation because:

(a) the proposed activity is located within a residential zone that provides principally for low to medium density residential housing[31];

(b) the objectives and policies of the Zone refer throughout to a range of activities and facilities that are generally endorsed within the Zone, none of which align with the proposed activity;

(c) the activity is not residential, or a specified or defined non-residential activity (Policy 14.2.6.1), such as a Community Activity (Policy 14.2.6.2), or an existing non-residential activity (Policy 14.2.6.3), or a retail activity (Policy 14.2.6.5);

(d) therefore, the pertinent non-residential objective is 14.2.6 (non-residential activities) and Policy 14.2.6.4 relating to "other non residential activities".

4.35 Mr Gimblett describes the activity at his [4.170] emphasising his reliance on unbundling of the activity into components:

> *"While the activity itself is perhaps unusual or unfamiliar, its components are in many respects consistent with uses of the site that the District Plan anticipates. That comparison is, in my opinion, very important."*

4.36 This highlights the essential difference in approach that I have taken to assessing this application. I am not comfortable with separating, then assessing, the component parts of the activity rather than the holistic activity itself. In my opinion, to isolate components of the activity in this manner results in the essence of the activity being lost. For example, it is residential when the offenders are sleeping and when the detained component of the activity is set aside; it is a Community Welfare Activity when an offender is receiving counselling, setting aside the fact offenders on-site are both detained and living there around the clock, and so on. In my view, it is none of those

[31] [16] of section 42A report

things. It is a single activity – a Detention Facility that involves 24/7 supervisions and detention for 16-22 weeks of an offenders Home Detention sentence.

5. RULES & ACTIVITY STATUS

5.1 Ms Chapman identifies the rules she considers relevant at [29] of her report. I agree with her findings, with the exception of the Rule 14.4.1.3 (RD17). As set out above, the activity does not meet the definitions of "community corrections facilities" and "community welfare facilities" and therefore Rules 14.4.1.1 (P22 and P23) are not applicable. As expanded on in my further assessment below, I consider the activity is non-complying. However, at the least it is fully discretionary under Rule 14.4.1.4 (D1):

> *"Any activity not provided for as a permitted, controlled, restricted discretionary, or non-complying activity"*

5.2 At her [30] to [33], Ms Chapman considers whether Rule 14.4.1.5 (NC4) is breached. This rule is relevant to "activities and buildings" and is reproduced below:

NC4	Activities and buildings that do not meet Rule 14.4.2.4 where the site coverage exceeds 40% (except as provided for in Rule 14.4.1.5 NC5)

5.3 Ms Chapman states at her [32]:

> *"Existing site coverage for 14 Bristol Street is 46.6%. If new buildings with 46% site coverage were proposed on an RSDT site, these would be assessed as a non-complying activity due to site coverage in excess of 40%. However buildings on the application site are lawfully established and no alterations to the site coverage are proposed."*

5.4 Physically altering site coverage is not the only consideration under Rule 14.4.2.4. In my opinion the trigger of equivalent importance is (and is intended, by the District Plan, to be) the *activity* undertaken within a building.

5.5 In effect, permissible site coverage in the zone is determined as much by the *activity* undertaken as the building itself – i.e. different activities attract different site coverage restrictions. Many other district plans take a different approach whereby site coverage is simply referenced to any building on site (e.g. buildings on site shall not exceed a certain percentage of the site area). Rule 14.4.2.4 is reproduced in full below.

14.4.2.4 Site coverage

a. The maximum percentage of the net site area covered by buildings shall be as follows:

	Zone/activity	Standard
i.	All activities unless specified below.	35%
ii.	Multi-unit residential complexes, social housing complexes, and groups of older person's housing units where all the buildings are single storey. The percentage coverage by buildings shall be calculated over the net site area of the entire complex or group, rather than over the net area of any part of the complex or group	40%
iii.	Market gardens.	55%
iv.	Retirement villages.	45%

b. For the purposes of this rule this excludes:

i. fences, walls and retaining walls;

ii. eaves and roof overhangs up to 600mm in width and guttering up to 200mm in width from the wall of a building;

iii. uncovered swimming pools up to 800mm in height above ground level; and

iv. decks, terraces, balconies, porches, verandahs, bay or box windows (supported or cantilevered) which:

A. are no more than 800mm above ground level and are uncovered or unroofed; or

B. where greater than 800mm above ground level and/or covered or roofed, are in total no more than 6m² in area for any one site.

5.6 When the building at 14 Bristol Street was consented, it was proposed to be used for a care facility (which is a defined activity). In contrast, the proposal is for a non-residential Detention Facility. The activity is different in form and character. Rule 14.4.2.4 has a specific limb for "(i) all other activities", and this is what the proposal falls into.

5.7 Furthermore, NC4 needs to be read alongside NC5, which provides further support to the interpretation that a change in *activity* can trigger the rule even if there is no change in built-form site coverage. NC5 identifies three specific types of development and activities that will trigger non complying status where the site coverage exceeds 45% (as opposed to the 40% threshold in NC4).

NC4	Activities and buildings that do not meet Rule 14.4.2.4 where the site coverage exceeds 40% (except as provided for in Rule 14.4.1.5 NC5)
NC5	Multi-unit residential complexes, social housing complexes and older person's housing units that do not meet Rule 14.4.2.4, where the site coverage exceeds 45% (calculated over the net site area of the site of the entire complex or group of units)

5.8 Mr Gimblett considers[32] that "… when read in context and in the light of the environmental effects sought to be managed, it is clearly apparent the rule is concerned with building coverage, not activities". But then he immediately says that "activities are only relevant in determining what particular site coverage limitation

[32] [4.59] of Mr Gimblett

applies to buildings on a given site". I agree permissible site coverage is related to the activity upon establishment. However, I cannot see why it would be a "one-off" consideration only, from an effects-perspective and I cannot see where the District Plan would indicate this is the case,

5.9 If the activity was not sought to be changed, then I would agree with Ms Chapman and Mr Gimblett that this rule had not been breached due to the previous resource consent approval allowing 46.6% site coverage. This is not the case and in my opinion, this rule needs to be applied because the activity is proposed to change.

5.10 In my opinion the activity overall is non-complying.

6. KEY DISTRICT PLAN OBJECTIVES & POLICIES[33] [34]

6.1 Objective 14.2.6 is at the core of this application. The objective is developed further through its policies.

> **14.2.6 Objective - Non-residential activities**
>
> (a) Residential activities remain the dominant activity in residential zones, whilst also recognising the need to:
>
> i. provide for community facilities and home occupations which by their nature and character typically need to be located in residential zones; and
>
> ii. restrict other non-residential activities, unless the activity has a strategic or operational need to locate within a residential zone or is existing guest accommodation on defined sites.

6.2 The objective directs that residential activities remain the "dominant" activity in residential zones. This is to be achieved while recognising the need to provide for Communities Facilities and restricting "other non-residential activities" to the degree set out in the other two limbs of the objective. The Objective establishes two types of non-residential activity – "non-residential" activities referred to in (i) and "other non-residential" activities referred to in (ii).

6.3 The proposal is not a community facility or a home occupation. As such, it is an "other non-residential activity" that is to be "restricted", unless it has a "strategic or operational need to locate within a residential zone". I understand restrict to mean *to limit*.[35]

6.4 Policy 14.2.6.1 implements Objective 14.2.6:

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[33] Note that Plan Change 4 has notified changes to the objectives and policies that pertain to this application, however I do not consider that any of the proposed changes matter/affect the objectives and policy assessment for this activity.

[34] I note that Policy 14.2.6.5 (Retailing in residential zones), Policy 14.2.6.6 (Memorial Ave and Fendalton Road), Policy 14.2.6.7 (Guest accommodation) and Policy 14.2.6.8 (Non residential activities in Central City residential areas) are not relevant.

[35] See *Fright* decision

> ***14.2.6.1 Policy - Residential coherence character and amenity***
>
> *Ensure that non-residential activities do not have significant adverse effects on residential coherence, character, and amenity.*

6.5 In my opinion, this policy relates to Community Activities / Facilities, which are non-residential activities of the type addressed in (i) of the Objective. This policy allows for a higher threshold of adverse effect in recognition of the need to provide for Community Activities / Facilities, as set out in Objective 14.2.6.

6.6 Policy 14.2.6.1 also implements Objective 14.2.4 – High quality residential environments.[36]

6.7 Turning to Policy 14.2.6.2:

> ***14.2.6.2 Policy - Community activities and community facilities***
>
> *(a) Enable community activities and community facilities within residential areas to meet community needs and encourage co-location and shared use of community facilities where practicable.*
>
> *(b) Enable larger scale community activities and community facilities within defined arterial locations that:*
>
> *i. are within walking distance of the Central City and suburban commercial centres;*
>
> *ii. front onto core public transport routes; and*
>
> *iii. are not dominated by residential development.*

6.8 The proposal is not for a Community Activity or Community Facility, and therefore the outcomes in this policy will not be enabled by the proposal. This policy also implements Objective 14.2.4.

6.9 Turning to Policy 14.2.6.3:

> ***14.2.6.3 Policy - Existing non-residential activities***
>
> *(a) Enable existing non-residential activities to continue and support their redevelopment and expansion provided they do not:*
>
> *i. have a significant adverse effect on the character and amenity of residential zones; or*
>
> *ii. undermine the potential for residential development consistent with the zone descriptions in Table 14.2.1.1a.*

6.10 I understand that the building and site are currently unoccupied. I further understand that there is an existing resource consent in place that allows the use of the building and site as a care facility; this activity is not to continue (or be redeveloped or

[36] 14.2.4 Objective – High quality residential environments – High quality, sustainable, residential neighbourhoods which are well designed, have a high level of amenity, enhance local character and reflect the Ngāi Tahu heritage of Ōtautahi.

expanded) and therefore this policy is not relevant. This policy also implements Objective 14.2.4.

6.11 Turning to Policy 14.2.6.4:

> ***14.2.6.4 Policy - Other non-residential activities***
>
> *(a) Restrict the establishment of other non-residential activities, especially those of a commercial or industrial nature, unless the activity has a strategic or operational need to locate within a residential zone, and the effects of such activities on the character and amenity of residential zones are insignificant.*

6.12 Policy 14.2.6.4 is the key policy in my opinion and provides further direction to limb (ii) of the Objective by introducing a requirement for the effects of "other non-residential activities" on the character and amenity of residential zones to be "insignificant".[37]

6.13 It is important to note Policy 14.2.6.1 refers to "non-residential activities" and Policy 14.2.6.4 refers to "other non-residential activities". This is entirely consistent with the parent Objective, which also refers to two different categories of non-residential activities.

6.14 The difference in the policy threshold for acceptable effects between a specified non-residential activity (such as a Community Facility) and an "other non-residential activity", also implements Strategic Objective 3.3.14 (Incompatible activities) and gives effect to the higher order policies in the Canterbury Regional Policy Statement (**CRPS**) relating to "incompatible activities", which I will discuss further in my evidence.

6.15 Policy 14.2.6.4 directs the Applicant to explain:

(a) how an "other non-residential activity" has a strategic or operational need to locate within a residential zone; and

(b) how the effects of such activities on the character and amenity of residential zones are insignificant.

6.16 If (a) and (b) are not satisfied, then the activity is to be "restricted".

7. WHAT IS THE EXISTING ENVIRONMENT & PERMITTED BASELINE?

Existing environment

7.1 The existing environment includes not only activities undertaken or consented on the site, but also those activities in the wider receiving environment.

[37] Among other matters set out in the policy.

7.2 I agree with Mr Gimblett that the existing environment[38] includes the current buildings on site when they are used for a care facility (the same or similar to that previously run by the Cerebral Palsy Society).

7.3 I also agree with Ms Chapman[39] that the most likely use of the existing building is the care facility which is consented. Other than the built form component, and possibly traffic movements, I do not consider this a comparable activity to the Applicant's proposal.

Permitted baseline

7.4 I agree with Mr Gimblett[40] that the permitted baseline includes a range of singular and multi-unit residential development configurations. Under any of these permitted scenarios, however, the *use* would be residential. This makes these scenarios irrelevant to any comparison of effects against any non-residential activity, with the comparison generally limited to the built form. It also means the effects of the activities (whatever the built-form is) are fundamentally different in nature and character.

7.5 In my opinion:

(a) the site is in a residential zone and therefore it could conceivably be used for any Residential Activity that complied with the density and built-form standards. This would require the demolition of the existing buildings on site.

(b) further to (a), the existing buildings could be used for residential living but in order for those activities to be truly permitted, part of the built form would need to be demolished to bring the site coverage down from 46.6% to 35% or resource consent would need to be obtained.

(c) I agree with Ms Chapman that in order to enable the building to be used for the likes of a retirement village, hostel, or spiritual activity, the existing building configuration would also necessitate demolition of all or part of the buildings on site, which I agree is unlikely.[41]

(d) similarly, for a Community Welfare Facility or Community Corrections Facility to be permitted on the site, the buildings would need to be demolished to meet the permitted site coverage and minimum car parking requirements. While technically

[38] [4.1a] of Mr Gimblett
[39] [56] of section 42A report
[40] [4.1b] of Mr Gimblett
[41] [55] of section 42A report

possible, I do not consider this to be a probable outcome for the site for reasons I have previously mentioned.

7.6 From my reading of the evidence, permitted baseline comparisons have been drawn with:

(a) a person serving a home detention sentence in a private residence; and

(b) a group of persons serving a home detention sentence in a private residence; and

(c) a Community Corrections Facility.

7.7 I turn to evaluate each of these matters.

Is home detention a comparable activity?

7.8 In my opinion, the short answer is no. Comparisons have been made by Mr Gimblett to a person or persons on home detention as presenting the same level of risk as an occupant in the proposed facility.[42] From the Applicant's evidence, I cannot see support for this beyond assertion.

7.9 Firstly, and most obviously, the proposal is not for the detainment of a single occupant, rather it is for a group of up to 12. From my reading of the evidence, this conglomeration of offenders is a key factor in elevating the risk. Aside from Mr Gimblett's evidence, no other witness suggests there is likely to be more than one offender sentenced to the same address.

7.10 I understand it is extremely rare to have two detainees in a residence, let alone a number of detainees unknown to each other. In my opinion, this is an important distinction that I understand removes any comparability between the "normal" situation and the proposed Detention Facility, in addition the presence of staff at the Detention Facility.

7.11 I understand a person on "normal" home detention is often living within the community they end up going back into after their sentence. As such, they would have an ongoing relationship with the facilities they are allowed to access during their sentence (such as shops, employment, healthcare, rehabilitation and reintegration services). They are not under the same pressure of being constantly supervised while also being removed from their family and familiar surrounds. These factors are in my opinion, significant

[42] [4.10] of Mr Gimblett

and confirm my understanding that home detention is not a comparable activity to the proposal.

7.12 I note Ms Chapman that there is a clear distinction between the proposal and the situation of a person serving a sentence of home detention in a private residence because there would be "no staff supervising them on the site". This appears to me a critical distinction. Dr Cording concludes that because of the concentrated nature of the programme, the level of risk posed to the residents in the vicinity is likely to be higher as a result of the introduction of the facility.[43] This is a matter several submitters have raised.

Comparisons to a Community Corrections Facility

7.13 A Community Corrections Facility is permitted (subject to controls on hours of operation and car parking) and, at face value, could form part of a permitted baseline. However, I am not persuaded a Community Corrections Facility (as defined in the Plan) is similar to or an appropriate comparator for, the proposed Detention Facility. The evidence for the Applicant does not describe a Community Corrections Facility in any detail – including who might go there, what they will go for and what happens there on a daily basis.

7.14 My understanding is that:

(a) a Community Corrections Facility is essentially a "drop-in" facility where activities such as assessments, periodic reporting to probation officers and workshops can be undertaken;

(b) the people who attend while they are on Home Detention are required to do so in order to comply with their sentence and are specifically granted permission to do so;

(c) people on Home Detention can get special leave to attend the facilities and access the rehabilitative and reintegrative services provided;

(d) predominantly, offenders go to their nearest Community Correction Facility. In this sense, they have a geographic catchment and a relationship with a "community". They are then used principally by people in that community. This brings them within the "parent" definition[44] of Community Activity/Facility and

[43] [41] of section 42A report

[44] Advice note 3, Chapter 2 of Christchurch District Plan: Where a general activity (such as retail activity) is listed in an activity status table, it includes all of the more specific activities included therein (such as food and beverage outlets and second-hand goods outlets) unless otherwise specified in the activity status table for that zone.

illustrates how these facilities fit within the family of “Community Facility” definitions, whereas the proposed Detention Facility does not.

7.15 The catchment-based location of Community Correction Facilities also gives them a strategic and operational need for their location. They need to be positioned so that the users of them (being offenders who are not in prison) can access them. The offenders who access these facilities live in the community served by them; they benefit from them.

7.16 In contrast, the evidence for the Applicant indicates to me the location of the proposed Detention Facility has more to do with the physical buildings on site than any operational or strategic need for this particular location. Witnesses say a “residential area” is needed, but that could mean any number of things. Even residential zones have different characteristics, and a “residential area” could be different again from a “residential zone”.

7.17 The community affected by the proposed Detention Facility does not provide the offenders who will use it. The proposed Detention Facility has no geographic or other link to the immediate or even wider community.

7.18 In my view these are quite significant differences and serve to make the proposal very different from anything that could come within the broader umbrella term of Community Activity. The number and content of the many submissions in opposition show community unease with the proposal. This in itself may not be remarkable, until it is compared to a facility that has “community” at its heart.

7.19 In my opinion and based on my understanding of a Community Corrections Facility, the proposed Detention Facility has some high-level commonalities with a Community Corrections Facility (e.g. people on home detention may go to both to access rehabilitative and reintegrative services). However, it seems to me the two types of facilities are more dissimilar than similar and therefore I do not consider a Community Corrections Facility provides an appropriate permitted baseline for the effects of the proposal (assuming there was a credible baseline scenario to begin with).

7.20 Mr Gimblett[45] compares the risk associated with the proposal to his assumed operation of a Community Corrections Facility permitted under the District Plan. He considers that “such a facility could operate throughout the day and might normally provide the likes of probation services, treatment, rehabilitation and other support to people with diverse offending backgrounds”. He refers to both Ms Chapman and Dr Cording having

[45] [4.110] of Mr Gimblett

undertaken that comparative assessment, concluding that level of risk to be similar to, or potentially less than, a permitted corrections facility.[46] To the extent his evidence (and the reports he has relied upon) proceed on the basis a Community Corrections Facility is a day-time version of what is proposed for Bristol Street, I understand that is an incorrect and unrealistic assumption.

7.21 The baseline is further considered from [95] of Ms Chapman's report. She notes that Dr Cording assumes that without the facility, offenders will live "in the community" and the effects will likely be higher. However, there is a lack of clarity as to what community or environment will experience these effects. Again, I doubt the comparability. I also struggle to find clear evidence from the Applicant's witnesses. Overall, it does not appear to me that any of the baseline comparisons drawn actually compare "like with like" which suggests to me there is no useful or valid baseline to be drawn.

7.22 In summary, the proposed activity has in my opinion departed too far from anything permitted for a meaningful comparison to be made. In addition, even if there were a comparable activity, there is a lack of evidence around how similar any effects are on residential coherence, character and amenity.

8. EFFECTS ON THE ENVIRONMENT

8.1 I am in general agreement with Ms Chapman and Mr Gimblett that the following effects of the activity are minor:

(a) traffic and car parking – while this could be a potential frustration to nearby residents, comparable effects could be generated from permitted residential activities if the site was redeveloped.

(b) built form – this is existing and while the changes are acting to enclose the facility to its surrounds to meet the needs of the Detention Facility and will alter its character comparatively to other residential properties in the area, I understand that these built form changes do not require resource consent.

(c) noise – this can be managed through controls on the activity and consent conditions.

(d) lighting – this also can be managed through consent conditions.

8.2 I have some reservations about the privacy effects on the adjoining properties. While design changes have been included to further screen and contain activities and views from within the site, the nature and character of the activity is that it will have up to12

[46] [97] and [98] of section 42A report

offenders on site and staff, all day every day, potentially 365 days per year. This is a very intense presence of occupation next to a residential household and not comparable to the less intense and more dynamic use of a household throughout a day/week/month or year. This level of occupation is distinct from what I would consider a "normal" residential use of a property. While arguably a similar level of occupation could arise from the care facility, the nature of the Facility and its occupants are distinguishable attributes of the activity. I can understand why the neighbours who can see this activity from bedroom windows, would be concerned. This adverse effect falls under my consideration of health, safety and wellbeing.

8.3 In my opinion, the primary effects of the activity that are of contention relate to:

(a) Health, safety and wellbeing; and

(b) Residential character, cohesion and amenity.

8.4 I address these matters in turn.

Health, safety and wellbeing

8.5 I surmise the Applicant's evidence on the health, safety and wellbeing effects of the proposal as essentially:

(a) the fear and anxiety levels of the community will give rise to more than minor adverse effects; but

(b) the effects are expected to reduce over time to be minor as the community accepts the facility in their environment.

8.6 It is unclear to me whether (b) is dependent on there being no "incidents" occurring.

8.7 Mr Gimblett discusses this issue at his [4.113] and [4.114]:

> *"The Proposal is for a facility that many will not be familiar with… The real presence of anticipatory fear and anxiety of the possibility of harm caused by residents in the programme is very evident in the public submissions. This has particular relevance to community welfare, health and wellbeing, as well as the way people may go about daily life, and may also impact on their sense of community and community cohesion.*
>
> *Both SIA's address these social effects in some detail. A key conclusion of those assessments is levels of concern for some in the community will reduce over time as the facility demonstrates the effectiveness of the programme's management,*

and trust and understanding with the community develops. I however accept for some, as long as any perception of risk exists, that will not be so."

8.8 I have previously discussed 'risk' in the context of the permitted baseline where the proposed activity was compared against other permitted activities (such as a Community Corrections Facility). As I explained, I do not consider the activity is comparable to a Community Corrections Facility, and on that basis, the risk comparisons between the activities are not useful in the evaluation of this application.

8.9 From my reading of the evidence, I do not consider that persons dispersed around the community or wider Christchurch present a considerable and equivalent level of risk in and around the community that the application site is located. There has been no evidence I have seen that demonstrates this. While I agree[47] with Mr Gimblett that "the District Plan does not preclude individuals on home detention from residing individually or collectively in residential areas…", the District Plan does not deal with this issue, and nor does it need to; I understand that this is a matter controlled under the Sentencing Act 2002.

8.10 Based on the evidence and proposal as put forward, I do not share the views of the Applicant's experts that the Detention Facility provides for the community in which it is located. To the contrary, the Applicant's evidence notes offenders may be sourced from anywhere in the South Island.

8.11 At [4.137] Mr Gimblett states that:

"… although they [the occupants] may not necessarily originate from the St Albans neighbourhood, the participants join the resident community for what could be several months while they are active in the programme. The facility is proposed in response to an identified need for a residential programme in the South Island, and as described by Mr Clark[48], Christchurch has been identified as having a cohort of people who will benefit from a residential rehabilitation programme of this type to help improve overall safety in the city.

8.12 Unless Mr Gimblett is referring to the "resident community" being the group of offenders internal to the facility, like Dr Kilgour describes in his evidence, I disagree that the offenders will join the community while at the facility. I have seen very limited evidence in that regard other than references to some supervised outings and the possibility towards the end of the programme that some occupants may be allowed to undertake an outing without supervision. I have not seen any evidence that

[47] [4.121] of Mr Gimblett
[48] [4.1] of Mr Clark

demonstrates positive community interaction with the facility or likewise, rather the content of submissions identifies that the presence of the facility is of significant concern to the community. I am not suggesting there should be interaction either, so the issue cannot be resolved that way. This leads me to the view the uses are incompatible.

8.13 The evidence that has been relied on to assess the social effects is largely based on 5 years of data from the Tai Aroha programme in Hamilton, the only facility in New Zealand operating this programme. I believe it is reasonable to conclude that information available to form conclusions on the success of the programme is very limited.

8.14 Reduction in recidivism is cited as the ultimate benefit and why communities will end up being safer. The social experts are looking primarily at the success of the programme and looking at any reduction in convictions as constituting a positive trend.

8.15 In information provided by Corrections on 4 June 2021 under the Official Information Act 1982[49], the conviction rates of Tai Aroha graduates from 2010/11 to 2019/20 have been provided, replicated in full below.

Financial year of graduation	Tai Aroha graduates	People convicted of any offence after graduating	People convicted of a violent offence after graduating
2010/11	3	3	3
2011/12	14	13	12
2012/13	16	15	11
2013/14	19	19	17
2014/15	16	15	12
2015/16	16	16	11
2016/17	15	15	7
2017/18	17	15	10
2018/19	14	12	8
2019/20	21	15	3

8.16 What this table shows is from the 151 graduates from the programme over the last 10 years, 138 (91%) have been convicted of an offence after graduating and 94 (62%) have been convicted of a violent offence after graduating.

8.17 Dr Polascek considers that “success” may not equal reduced recidivism necessarily, it can be just a positive step on a path to desistance. However, there is no data supporting this that I can find in the evidence. We are not told what the “success rate” would be for the same kind of offenders serving home detention “normally”. it appears to me that the community does not see the success of the programme as justifying the

[49] See **Annexure A** to my evidence

degree of burden placed upon them and the evidence does not offer any more substance to a claim of benefit.

8.18 Many statements around the success relate back to how well the programme is working and the positive effects it is having on the persons engaged in the programme. I can appreciate that from the recidivism rates the community has seen, a lay person would not consider the programme a success at all. Whether the programme has positive outcomes for the occupants seems uncertain and my reading of the evidence is that the Applicant is not able to demonstrate what positive effects will arise from the activity on the local community, either.

8.19 The fact the proposal does not have positive effects on the local community leads me in part to the conclusion that the proposal is not appropriately located in a residential zone, within an active and engaged community that has an awareness of the Detention Facility and the type of offenders it will house.

8.20 I have seen no evidence that demonstrates how the more than minor effects of the activity will reduce over time. I am not comfortable with relying on a truncated 5-year period of analysis of the only other facility in New Zealand that operates the Tai Aroha programme as justification for the lessening of effects over time.

8.21 Overall, the evidence available leads me to the conclusion that this activity is incompatible in this zone and community setting, and its effects could not be considered minor or insignificant.

Residential coherence, character and amenity

8.22 Policy 14.2.6.1 seeks to “ensure that non-residential activities do not have significant adverse effects on residential coherence, character, and amenity” and Policy 14.2.6.4 directs “other non-residential activities” to have effects on character and amenity of residential zones that are “insignificant”.

8.23 In my opinion, the principal effect arises from the inherent nature of the activity itself and that activity requires consideration in terms of its effect on residential character and coherence.

8.24 Residential coherence or character are not defined terms in the District Plan. With respect to *what is* residential coherence and character, often the best explanation comes from persons living in the subject environment who are familiar with the intricacies of the social setting and those attributes they value (or do not value).

8.25 I consider that character and amenity considerations are much more than just the hours of operation[50] and I agree with Mr Gimblett that the assessment matters in 14.15.5 of the District Plan that he refers to at [4.133] are useful for guidance. This criterion is clear that the environment against which the Proposal and its effects are assessed for compatibility, is:

(a) "the surrounding area"

(b) "the locality"

(c) "nearby residents"

(d) "surrounding neighbourhood and residential character"

(e) the "needs of residents principally in the surrounding living environment".

8.26 Typical community activities and facilities provide for these attributes, which is why I expect that Policy 14.2.6.1 provides for a greater level of adverse effect from Community Facilities in residential zones.

8.27 In my opinion this assessment criteria refers to a *community context at a local scale*.

8.28 Other attributes in the assessment matters include:

(a) the opportunity the activity provides to support an existing nearby commercial centre; and

(b) the opportunity the activity provides to support and complement any existing health-related activities and/or community activities in the surrounding area.

8.29 In my opinion, none of this criterion is served by the proposal because by the very nature of the activity, it does not meet the needs of residents in the surrounding living environment or locality or surrounding area (it extends as far as being South Island wide and regional its smallest scale). It is an activity that is effectively isolated from the community it sits within.

8.30 The activity is transitory in nature, and in this regard, no evidence has been provided by the Applicant as to how this activity affects the residential coherence, character and amenity of the receiving environment. If, for example, the application was for another "other non-residential activity" from the existing building, such as a travellers accommodation facility, the transitory nature of the activity would be paramount to the assessment of effects. I have had considerable involvement dealing with such

[50] [4.130] of Mr Gimblett

applications (such as ‘air bnb’ short term accommodation in residential zones) over a number of districts and the relevant key issues that arise in my experience include:

(a) a lack of community network, particularly where informal contact between residents who know each other is high; and

(b) the stability from knowing who your neighbour is and the high level of awareness when there is a flow of strangers into a property.

8.31 In my opinion, these matters are traits inherent in the proposal and contribute adversely to reducing residential coherence. Given the nature of the Detention Facility and its occupants, I would expect the adverse effect in this somewhat unusual situation would be even more significant compared to a traveller’s accommodation facility; this is certainty what I have taken from my reading of submissions.

8.32 As I mentioned above, I have concerns that the nature of the facility and activity creates heightened adverse effects with respect to privacy on surrounding residential properties. I struggle to see how the effects on directly adjoining properties would reduce from more than minor to minor over a short period of time when the facility is a 24/7 detention of serious offenders within a residential community and I have not seen any evidence that satisfies me of this.

8.33 The activity is an “other non residential activity” in the context of Policy 14.2.6.4 and is an activity that I consider does not have insignificant adverse effects on residential coherence, character and amenity.

Positive Effects

8.34 I do not consider there is any evidence of positive effects for the environment or local community arising from the proposal. The positive effects are limited to:

(a) the Applicant, in utilising an existing building; and

(b) perhaps the offenders involved in the programme, although there is very little evidence on this and not enough for me to identify it as a certain benefit.

8.35 Given that the offenders will have no to very little interaction with the residential community and make no contribution to it through involvement in community activities, I do not consider that the activity will produce positive effects to the community, certainly none that could be considered to compensate or offset adverse effects.[51]

[51] See section 104 (1) (AB) of the RMA

8.36 Even if I assumed there were positive effects in reducing reoffending, it is my opinion those positive effects are not a direct consequence of the specific location of the Detention Facility at 14 Bristol Street; the positives of the programme could be recognised at any locations. There are other areas and zones in the District which do not have the same policy resistance to a proposal like this, are not isolated and are well connected to public transport (such as those outlined in Table 15.1 under Chapter 15 of the District Plan).

9. STATUTORY EVALUATION

9.1 Section 104 (1) of the RMA requires that, the consent authority must, subject to Part 2, have regard to:

> *"(a) any actual and potential effects on the environment of allowing the activity; and*
>
> *(ab) any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
>
> *(b) any relevant provisions of - …(iii) a national policy statement; … (v) a regional policy statement or proposed regional policy statement; (vi) a plan or proposed plan; and*
>
> *(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

9.2 Section 104 (2) requires that "when forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect".

9.3 Being a non-complying activity, section 104D requires consideration.

National Policy Statement for Urban Development (2020)

9.4 I agree with Mr Gimblett's identification of the relevant policy at his [4.65] but have reached different conclusions, primarily based around how we have both considered the activity.

9.5 Taking into account the views of the submitters, and the evidence of both the Council and Applicant that the effects will be more than minor (for at least a period of time), I

consider that the proposal has tension with **Objective 1**[52] whereby it does not contribute to the provision of a "well-functioning urban environment(s) that enable(s) all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future".

9.6 There are different views between myself and the Applicant's experts (planning and social) as to the extent of:

(a) the community adversely affected; and

(b) the community positively affected.

9.7 It is clear to me that many submitters do not see this Detention Facility in this location as being able to contribute anything to the community, including a well-functioning environment which enables them to provide for their social wellbeing, and their health and safety now and into the future. The evidence I have read does not persuade me otherwise.

9.8 Due to the limited, if any, involvement the offenders will have with the community in which the Facility is located, I do not consider that the Detention Facility will, or could be designed to, achieve the policies relating to community-based outcomes.

9.9 For completeness I note:

(a) a planning decision to approve the application will not improve housing affordability (**Objective 2**)[53]; the proposal also removes housing supply rather than adds to it; and

(b) while urban environments, including amenity values, will develop and change over time in response to the diverse and changing needs of people, communities, and future generations (**Objective 4**)[54], the proposal in my opinion goes further than this objective anticipates by placing a non-residential activity into a residential zone, which it has insurmountable compatibility issues with.

[52] Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.
[53] Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets
[54] Objective 4: New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.

Canterbury Regional Policy Statement 2016

9.10 With regard to Objective 5.2.1 (Location, Design and Function of Development), the development will not be located and designed so that it functions in a way that: (emphasis added)

> "…*2. enables people and communities, including future generations, to provide for their economic, social and cultural well-being and health and safety, and which … b. provides sufficient housing choice to meet the region's housing needs … and (i) avoids conflicts between incompatible activities."*

9.11 Specifically, conflicts between the non-residential activity and residential activity in this environment cannot been avoided. In an attempt to mitigate them, the Applicant has put forward a number of measures including procedures for identifying suitable candidates and "rules" that will apply while they are there. But the evidence I have seen (mainly based on only the last 5 years of Tai Aroha Hamilton) demonstrates that none of that is enough to stop people breaching the terms of their sentence and leaving without permission. Further, the mitigation proposed cannot overcome the reality this is a non-residential activity which does not contribute to the surrounding community – because it is not intended to do so and cannot do so because the offenders are deliberately isolated by their sentences.

9.12 The proposal does not represent a housing choice. The occupants do not buy into it or pay to live in it. They are not there for a long time, rather they are transitory. As such, it is not housing, rather it is a facility that is removing housing capacity.

9.13 Policy 5.3.1 (Regional growth) seeks: (emphasis added)

> *"To provide, as the primary focus for meeting the wider region's growth needs, sustainable development patterns that:*
>
> *1. ensure that any*
>
> *a. urban growth; and*
>
> *b. limited rural residential development*
>
> *occur in a form that concentrates, or is attached to, existing urban areas and promotes a coordinated pattern of development;*
>
> *2. encourage within urban areas, housing choice, recreation and community facilities, and business opportunities of a character and form that supports urban consolidation; …*
>
> *4. maintain and enhance the sense of identity and character of the region's urban areas; and*

5. encourage high quality urban design, including the maintenance and enhancement of amenity values."

9.14 The activity is not a Community Facility, nor does it encourage housing choice. The proposal does not promote a coordinated pattern of development in the urban zone in which it is sought to be located. It is an outlier activity that is disjoint from the community in which it is located.

9.15 Anticipated environment results (5.4) include "10. Potential land use, subdivision and/or development conflicts are avoided." This outcome cannot been achieved.

Christchurch District Plan

9.16 I have previously identified and discussed the key non-residential objectives and policies earlier in my evidence.

9.17 I agree with Ms Chapman's assessment of the objectives and policies under Chapter 7 (Transport)[55] and her conclusion that the proposal is consistent with them. The primary disagreement between Ms Chapman, Mr Gimblett and myself relates to the non-residential objectives and policies under Chapter 14 (Residential).

9.18 As mentioned earlier in my evidence, many of the non-residential policies also implement Objective 14.2.4, set out below.

> **Objective 14.2.4** – High quality residential environments – High quality, sustainable, residential neighbourhoods which are well designed, have a high level of amenity, enhance local character and reflect the Ngāi Tahu heritage of Ōtautahi

9.19 Importantly, this objective directs high quality residential environments that, among other matters, have a high level of amenity and enhance local character. While the built form may not impact adversely on these traits, I do not consider that the activity will achieve these outcomes.

9.20 Many of the associated policies are built form related (14.2.4.1, 14.2.4.2, 14.2.4.3 and 14.2.4.4) and the proposal is not at odds with these policies. These policies are, however, directive towards *residential development* – which the proposal is not. In this regard, I consider the proposal is inconsistent, perhaps at best neutral with these built form policies insofar that the proposal is a non-residential activity that does not contribute towards a high-quality residential environment by introducing an activity that is at odds with local character.

[55] [207] to [210] of section 42A report

9.21 The parent non-residential objective[56] makes it a key consideration as to whether the activity has a strategic or operational need to locate within a residential zone, the first limb of Policy 14.2.6.3 reiterates this.

9.22 From my reading of the Applicant's evidence, and also in consideration of the Councils section 42A report, I do not agree that either a strategic or operational need for the Detention Facility to be located in a residential zone has been shown.

9.23 My take on the evidence[57] is that:

(a) the programme is ideally located in a "residential area", but what this means is not developed further and seems to be predicated (to some degree) on the offenders being part of that community, which is not and cannot be the case;

(b) the programme benefits from being in an accessible location near public transport to primarily provide access on weekends for visitors to occupants of the facility; and

(c) it is suited to a location well served by a range of facilities (doctors, pharmacies, public transport and the like).

9.24 With regard to matter (c), I could not see any link between the programme needing to be located close to these types of facilities and the occupants getting any use from them given the nature of the detainment, the establishment of a gym on site and the regular practitioners coming to the site most days. I can appreciate that being near public transport might be a benefit to persons visiting the offenders on Saturdays.

9.25 I have not encountered any other justifications for the need for this activity to be located in the middle of a highly developed and relatively dense residential zone and area. The only benefit I can see from the evidence in this site is that the existing building appears relatively well suited for the activity, which is only a benefit that is enjoyed by the Applicant in cost savings compared to constructing a new facility elsewhere. A number of experts noted the benefit in that the Bristol Street property requires minimal development; while being of benefit to the Applicant, that has no bearing on the evaluation of the activity against Policy 14.2.6.3. This appears to be the principal driver in the activity being located on this site.

9.26 A benefit of the Bristol Street site is noted in evidence as being located in a well-established residential area.[58] Given the detained nature of the facility and the controls

[56] Objective 14.2.6
[57] [4.8] of Mr Gimblett
[58] [4.8] of Mr Gimblett

on the occupants to prevent them from interacting with the community, I do not see this is a benefit in the practical sense, or in the context of Policy 14.2.6.3.

9.27 Mr Kilgour's evidence cites difficulties with the Tai Aroha programme at Hukanui a Muri marae – being in a rural area – as having challenges, but those challenges are not explained in the evidence and neither how any such challenges relate to the current location[59]. I understand that this issue relates to accessibility to public transport and distance for staff to drive.

9.28 The evidence does not demonstrate a strategic or operational need for the activity to be located in a residential zone. In my opinion, Policy 14.2.6.3 directs that this type of activity is to be restricted, which means "to limit".

9.29 The policy path makes it clear that some "other non-residential activities" will not work in a residential zone and cannot be granted consent to do so.

9.30 In considering limiting the type of activity within residential zones, I consider this needs to be viewed in the context of the objective and its other relevant policies. I find the activity is an activity that is inconsistent with the outcomes anticipated for this residential zone and is at direct odds with the expectations of the community in which the activity is sought to be located and the District Plan.

9.31 In evaluating whether this activity should be restricted, I take guidance from the assessment of its effects noting the high degree of uncertainty as to those effects and the inability to accurately predict the extent of adverse effect. Because the activity will – at least for a period of time – give rise to more than minor adverse effects, leads me to question its compatibility with the site and zone. Strategic Objective 3.3.14 (Incompatible activities) provides guidance in that:

(a) zoning is identified as a method to minimise conflicts between incompatible activities; and

(b) where there *may* be significant adverse effects on the health, safety and amenity of people and communities, conflicts between incompatible activities are to be avoided.

9.32 From my reading of the evidence and in particular noting the heavy reliance on a limited 5 year period of the Tai Aroha Hamilton facility, I consider that there *may* be significant adverse effects on the health, safety and amenity of people and communities. In addition, there are features of the proposal that simply cannot be

[59] [4.7] of Mr Gimblett

reduced or overcome by conditions – such as its lack of contribution to and interaction with the community. In my opinion, the fact this activity cannot made to "fit" is a sign of its inherent incompatibility with the surrounding environment.

9.33 Seeking further guidance from Objective 5.2.1 of the CRPS, development is to be located, designed and function to "avoid conflicts between incompatible activities" with this also being an anticipated environmental result. From my reading of the evidence and submissions, I do not consider that this outcome is achieved.

9.34 On the evidence, I consider the activity could be just as well served in many other zones and locations. While this may remove the economic benefits to the Applicant of having an existing building that can be modified for the purpose, this is a positive effect that has no relationship to the community in which the facility is located within or for any other party than the Applicant. As I have set out above, any positive effects arising from the programme generally could be realised if it were located in another environment or zone that the programme is operated from, and not dependent on being in Bristol Street.

9.35 The Applicant's evidence is that there is a need for "many more" of these facilities that operate the Tai Aroha programme in Christchurch, and this has relevance to the policy requirement to "restrict" other non residential activities. I discuss this further below under the heading of precedence.

9.36 On the whole, I consider that the proposal is contrary to Objective 14.2.6 and Policy 14.2.6.4.

Precedent and Plan Integrity[60]

9.37 In my opinion, precedent and plan integrity are an essential consideration for three main reasons:

(a) approval of this application would be endorsing the "unbundling" approach which, in my view, is not an appropriate approach in this particular case or in the large majority of situations under the District Plan;

(b) the permitted baseline has been incorrectly defined and applied, and is not transparent. It does not address the inherent nature of the activity which is the main source of potential adverse effects;

[60] Section 104(1) (c)

(c) the evidence is that there will be future applications for similar facilities operating the Tai Aroha programme.[61]

9.38 As I have discussed earlier in my evidence, the "unbundling" approach runs counter to usual RMA practice. From a policy perspective, the unbundling assists the proposal through the policy requirements of the residential zone. Without the unbundling, this proposed activity struggles and – in my assessment – is contrary to the key objective and policy for other non residential activities.

9.39 In forming this view, I have also taken into account the feedback raised in submissions and the focus of the Social Impact Assessment (and its review) more towards the benefits of the programme for offenders, rather than the adverse effects of placing a concentration of high-risk offenders in one location in high density residential environment. Aside from helping the application, I see no reason to depart from the usual and holistic approach to assessing activities.

9.40 Secondly, if the Panel accepts this is the same kind of activity that would otherwise be permitted under the Community Corrections Facility definition (if it did not involve people sleeping there), it is difficult to see how any corrections proposal would need resource consent, meaning it could not be limited in the way expected under Objective 14.2.6 and Policy 14.2.6.4. In my view the definition needs closer analysis and consideration than the Applicant or Council has given it. A finding that a 7am to 7pm activity of the same nature could establish without resource consent would have significant implications for residential zones throughout the District. I am of the view this would represent a significant departure from what the IHP was told by Corrections and what was intended to be included in the definition of Community Corrections Facility in the District Plan.

Resource Management Act 1991

9.41 The purpose of the RMA at section 5 (2) is clear that sustainable management includes the enablement of people and communities to provide for their social, economic, and cultural well-being, and for their health and safety.

9.42 For the reasons I outline above, I have reservations in concluding that the social effects of the proposal will not remain more than minor (longer than the 6 month period suggested in the Applicant's evidence). However, applying that logic suggests also that the occurrence of a single event in the community would increase stress, fear and anxiety all over again meaning the social effects would not be temporary in nature.

[61] [5.18] of Dr Gilbert; and [11.7] of Dr Polascek

9.43 I consider that the Applicant has not demonstrated a strategic or operational need for the activity to be located in a residential zone. As set out above, I consider the proposal is at direct odds with the key objective and policies relating to other non-residential activity in the residential zones. In the context of section 104D, I consider the proposal is contrary to the key objective and policy.

9.44 For completeness, I note that if the proposal was located in one of the commercial zones in the district, or perhaps a site in a residential zone that is clearly influenced / dominated by other non residential uses, I might have a different view. I note that Ms Chapman observes that other similar activities (which I understand her to be meaning Community Corrections Facilities) are typically located in commercial and industrial zones.

Brett Giddens
10 September 2021

Annexure A

DEPARTMENT OF CORRECTIONS
ARA POUTAMA AOTEAROA

04 June 2021

C131613

[redacted]

Tēnā koe [redacted]

Thank you for your email of 9 February 2021, requesting information about participants in the Tai Aroha Programme. Your request has been considered under the Official Information Act 1982 (OIA).

Again, Corrections apologises for the delay in responding to your request. Providing a response to your request required consultation with a number of parties, which took longer than anticipated. We thank you for your patience.

As you are aware, Corrections is proposing to establish a residential violence-prevention programme at 14 Bristol St, which will provide supported accommodation for up to sixteen men. These men will take part in the programme as a condition of a sentence of home detention. The programme will provide intensive wraparound rehabilitative and reintegrative support and residents will be supported by specialised reintegration staff and a probation officer to successfully return to the community in the reintegration phase of the programme. They will work with experienced psychologists, programme facilitators, other support staff, local Community Corrections staff and each other to address the causes of their offending and build pathways to a crime-free life.

The programme will be modelled on Tai Aroha, a well-established residential programme that has been operating in Hamilton for ten years. It will be targeted towards men with long-standing personal links to the South Island, particularly Canterbury. If they meet the referral criteria and are assessed as suitable, they may be eligible to participate in the programme.

More information about the Bristol Street programme, including two evaluations of the Tai Aroha programme on which it is modelled, is available on Corrections' website at:
https://www.corrections.govt.nz/news/bristol_street_programme

The 2015 and 2012 evaluations into Tai Aroha can be accessed directly at the following links:
https://www.corrections.govt.nz/resources/research/tai_aroha_evaluation_2015

https://www.corrections.govt.nz/resources/research/tai_aroha_2012

NATIONAL OFFICE, WELLINGTON
Freyberg Building, 20, Aitken Street, Thorndon, Wellington 6011 Private Box 1206, Wellington 6140 *Phone* +64 4 460 3000
www.corrections.govt.nz

You may be aware that other relevant Corrections documents are also now available on the Christchurch City Council's website, at: https://www.ccc.govt.nz/the-council/consultations-and-submissions/haveyoursay/show/382

You requested:

> *Could you please provide me with the information held about post-release recidivism rates for Tai Aroha detainees*

Tai Aroha is a residential programme and staff do not have any legal authority to restrain or detain residents. However, we have interpreted your question as referring to the recidivism rates for Tai Aroha graduates who have been convicted of offences after they have graduated from the programme.

Corrections uses the Rehabilitation Quotient (RQ) to gauge the extent to which reoffending is reduced among those who have received a rehabilitative intervention, such as being a resident at Tai Aroha. In order to calculate the RQ, we require a minimum number of participants to support statistical analysis. With regard to Tai Aroha, the number of participants is still too small to calculate the RQ.

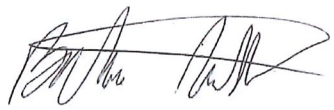
However, if it is of interest to you, information about RQ results for various other interventions in the community for the 2019/20 period are available in on pages 169-171 of Corrections' Annual report, available at: https://www.corrections.govt.nz/__data/assets/pdf_file/0018/42273/Annual_Report_2019_2020.pdf

Although the Tai Aroha participant group is too small to calculate RQ results as part of Corrections' standard annual measure of reoffending rates for participants in programmes and interventions, Corrections has undertaken analysis of the records of Tai Aroha participants to respond to your request. Please see the following table, which provides the numbers of Tai Aroha graduates who had been convicted of any offence after graduating and those who had been convicted of a violent offence after graduating, as at 31 December 2020.

Financial year of graduation	Tai Aroha graduates	People convicted of any offence after graduating	People convicted of a violent offence after graduating
2010/11	3	3	3
2011/12	14	13	12
2012/13	16	15	11
2013/14	19	19	17
2014/15	16	15	12
2015/16	16	16	11
2016/17	15	15	7
2017/18	17	15	10
2018/19	14	12	8
2019/20	21	15	3

I trust the information provided is of assistance. Should you have any concerns with this response, I would encourage you to raise them with Corrections. Alternatively, you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Ngā mihi



Brydie Raethel
Principal Adviser Ministerial Services
People and Capability