

Before the Expert Panel

FTAA-2603-1179

Under the Fast-track Approvals Act 2024

In the matter of the substantive application by the Department of
Corrections for approvals for the Auckland Prison
Capacity Increase listed project

**Sixth Memorandum on behalf of the Department of Corrections
in support of the section 55 response to written comments
and the section 51 reports**

Date: 4 August 2026



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Introduction

- 1 The purpose of this memorandum is to outline the key matters arising from the Department of Corrections' (**Corrections**) section 55 response to the section 53 written comments received on the Auckland Prison Capacity Increase listed project (**Proposal**) and the section 51 reports provided by Heritage New Zealand Pouhere Taonga (**HNZPT**) (on the Archaeological Authority) and the Department of Conservation (**DoC**) (on the Wildlife Approval).
- 2 At the outset, Corrections would like to thank all those who took the time and chose to provide written comments on the Proposal. Each of the 17 comments have been carefully considered by Corrections and responded to in either this memorandum, the Section 55 Report from Boffa Miskell Limited (**Section 55 Report**), or both. Corrections has reviewed all comments received and made a genuine attempt to ensure all key matters have been addressed.
- 3 Where written comments raise matters already addressed in the Substantive Application, cross references have been provided to that material for ease of reference (rather than simply restating or summarising existing material). Substantive responses are provided where new matters have been raised, or where a previously outlined position has changed after lodgement of the Substantive Application.
- 4 Attached to this memorandum as **Appendix 1** is the Section 55 Report. It provides the substantive

response to each of the written comments received under section 53. The Section 55 Report also:

- 4.1 provides a response to the section 51 reports provided by HNZPT and DoC; and
 - 4.2 outlines refinements to the Landscape Mitigation and Ecology Enhancement Plan (**LMEEP**) and condition DES44, as explained in Appendix 7 to the Section 55 Report.
- 5 This memorandum addresses the following matters on a topic-by-topic basis:
- 5.1 Summary of written comments received;
 - 5.2 Inherent nature of a designation;
 - 5.3 Iwi interests in the site;
 - 5.4 Operation of the Prison Village;
 - 5.5 Issues raised in the Pāremoremo Ratepayers and Residents Association (**PRRA**) comments:
 - (a) Weight of survey evidence;
 - (b) Previous statements from Ministers;
 - (c) Construction Management Plans
 - 5.6 Culvert requirements;
 - 5.7 Wastewater system upgrade; and
 - 5.8 *Augier* conditions.

Summary of written comments received

- 6 Before addressing the matters raised in the comments, Corrections wishes to record that the majority of the parties invited to comment, have not

Refer to section 3.1 and Appendix 1 of the Section 55 Report.

done so. This reflects the comprehensive application material and pre and post lodgement consultation and engagement undertaken by Corrections. Several of the written comments broadly support the Proposal.

- 7 Notably the Proposal is not opposed by the administering agencies or local authority. Their comments effectively seek only minor amendments to the proposed conditions.
- 8 None of the responses received from residents have included material from legal, planning or technical expert witnesses. Instead, the comments set out the genuinely held beliefs or concerns of those residents.
- 9 In summary, most of the matters raised, have already been addressed through the application material, expert assessment and the proposed conditions. It is submitted (although perhaps understandable given the volume of material and time available) that much of the material has not been fully read or understood by some of those providing written comments. The Section 55 Report accordingly provides a link back to the application material where concerns have already been addressed. This is to highlight the response for those providing written comments, to assist with a better understanding of the Proposal.
- 10 Corrections also considers that, for those who oppose the application outright, many of the topics have been raised in a manner that takes no account of the detail and content of the effects assessment, including how identified effects have been avoided, remedied or mitigated through the

proposed conditions on the designation or other approvals.

- 11 Issues raised with the use of the process under the Fast-track Approvals Act 2024 (**FTAA**) are not relevant to the Expert Panel's decision. It is for Corrections to choose which process to utilise. As a listed project, the FTAA process is an available one for this application.

Written Comment #11 [REDACTED], Written Comment #13 (Upper Harbour Local Board).

Inherent nature of a designation

- 12 The primary approval sought through this process is the Notice of Requirement to amend the existing designation in place at Auckland Prison (**Designation alteration**). That is the key purpose of this approvals process. The other approvals support that Designation alteration. As a Designation alteration, what is proposed through conditions is inherently flexible, to enable future expansion when it is required.
- 13 While many providing written comments have queried matters of detail in terms of design and timeframes for development, which again is understandable, that detail is not yet known. This approach aligns with the primary purpose of a designation, which is to future proof a designated area for a public work where no detail or design information is currently available.
- 14 The timing of construction of new prison facilities at Auckland Prison is subject to future central government funding decisions, and accordingly no design information is available for the new prison infrastructure. The outer scope of potential effects has instead been assessed on the basis of a "parameters approach", with conditions proposed

as appropriate to ensure any adverse effects are avoided, remedied or mitigated to an appropriate level.

- 15 The parameters approach is an established and well tested approach. The parameters approach taken to assessment, and the conditions proposed, provide sufficient limits and protections to achieve the necessary level of certainty as to actual and potential effects.
- 16 While Written Comment #6 considers that there has been a procedural failure as a before and after comparison has not been provided for the Proposal, Corrections considers there is no such failure. The relevant information has been provided, as set out in section 5.8.2 of the Section 55 Report.
- 17 All expert and planning assessments have been undertaken by assessing the actual and potential effects of the Proposal against the existing environment. This is effectively a before and after comparison, and is standard and accepted practice for resource management processes.
- 18 Further, as set out above, the parameters approach taken by Corrections is an appropriate way to assess the "after" in the absence of the design information.

See also the Substantive Application, Volume 2, section 3.2.

Iwi interests in the site

- 19 The Minister for Māori Crown Relations: Te Arawhiti has noted in his written comments, that Te Kawerau ā Maki and Ngāti Whātua ki Kaipara have Treaty Settlement commercial redress interests connected to the prison site. The Minister states

Written Comment #5.

that these interests should be taken into account when considering any comments received from the relevant Māori rōpū.

- 20 Comments have also been made through written comments received from Te Kawerau Iwi Tiaki Trust on behalf of Te Kawerau ā Maki (**Te Kawerau ā Maki**) and Ngā Maunga Whakahii o Kaipara Development Trust on behalf of Ngāti Whātua o Kaipara Iwi (**Ngāti Whātua o Kaipara**) as to mana whenua status and definition.
- 21 Corrections considers that it is appropriate to deal with the topics and concerns raised by Te Kawerau ā Maki and Ngāti Whātua o Kaipara on their merits, without the need to define the status of a particular group. Corrections does not have a role or mandate to determine who holds mana whenua status or is tangata whenua in relation to the designated site, nor does it consider it necessary to determine mana whenua status through designation conditions.
- 22 Corrections consulted with twenty relevant iwi authorities, hapū, and Treaty settlement entities and other relevant groups required under section 11 of the FTAA, based on advice and guidance provided by its consultants and the Ministry for the Environment at the time. This is considered to be procedurally appropriate.
- 23 Ngāti Whātua o Kaipara has raised concerns with the consultation process undertaken by Corrections. Corrections maintains that the process followed was appropriate, and that it has attempted to meaningfully engage with Ngāti Whātua o Kaipara prior to lodgement of the

As explained in the Substantive Application, Volume 1, Appendix 1F, paragraph 63.

Substantive Application. Ngāti Whātua o Kaipara were involved in pre-lodgement consultation from July 2025. Both the Ngā Maunga Whakahii o Kaipara Development Trust and the Ngā Maunga Whakahii o Kaipara Whenua Hoko Holdings Limited were engaged.

See the Substantive Application, Volume 1, Appendix 1F and Appendix 9, Table 8 of the Section 55 Report.

- 24 Ngāti Whātua o Kaipara has now provided thorough and comprehensive comments on the application. It has not engaged with the conditions proposed by Corrections, and instead makes a series of recommendations on a more general basis. The written comments also record that the primary issue of concern is the watercourse piping and reclamation works, as opposed to the Designation alteration itself.

Written Comment #14, section 6.0.

Written Comment #14, section 6.0, page 27.

- 25 The expert evidence and resulting conditions have already addressed many of the issues and matters raised through these comments (other than the definition of tangata whenua addressed above). This includes the functional need for the watercourse works and the level of mitigation and offsetting proposed in response.

See Appendix 9, Table 8 of the Section 55 Report.

- 26 The written comments from Te Kawerau ā Maki record that the mitigation and offsetting are beneficial outcomes from the Proposal.

Written Comment #16, section 17.0, page 34 and Conclusions on page 36.

Operation of the Prison Village

- 27 Several residents, the Upper Harbour Local Board, and the PRRA, have raised concerns as to the uplift of the designation from the Prison Village. In response, it is clear that the Prison Village is no longer needed by Corrections for "Corrections

Written Comment #4 (), Written Comment #17 (), Written Comment #12 (PRRA) and Written Comment #13 (UHLB).

Purposes" and it accordingly cannot continue to be designated for that purpose.

28 The real concern appears to be with the future land disposal process, and what it may mean for the Village residents once it is no longer within Corrections' control. Issues raised as to Village residents' association to the Prison and continuation of Ministry of Justice checks during the tenancy application process have nothing to do with the Prison or its operation. These are not designation matters. Once the designation is lifted, there will be no impact on the current operation of the Village, and current processes will remain as they are.

29 Those are clearly issues that are outside scope of this Designation alteration process.

30 One resident from within the Village has raised concerns as to what it means for their tenancy within the Village should the Designation alteration be approved. As Corrections has previously stated, removing the Designation from the Village will have no impact on the Village or how it is currently tenanted. Existing tenancies will not be impacted. Corrections initially confirmed this to all residents of the Village through letter drop, and intends to do a further letter drop in the coming months to reiterate this.

Written Comment
#17 [REDACTED]

See Appendix 4 to the Consultation Report, Substantive Application, Volume 1, Appendix 1G and section 5.12 of the Section 55 Report.

PRRA written comments

31 The section 55 report addresses the matters raised by the PRRA. There are three key legal issues it raises that are appropriately addressed in this memorandum.

Written Comment
#12.

Weight of survey evidence

- 32 As part of its written comments, the PRRA provides and seeks to rely on the results of a survey that it conducted. This survey has already been addressed in the Consultation Report. However, for the reasons set out in the Section 55 Report, Corrections considers that caution should be exercised by the Expert Panel before it gives weight to the survey evidence.
- Substantive Application, Volume 1, Appendix 1G.
- Section 55 Report, section 3.2.
- Refer *Shirley Primary School v Christchurch City Council* [1998] ELRNZ 472, at [138]-[139] and *Kemp v Queenstown Lakes District Council* [1999] ELRNZ 537, at [31]-[32].

Previous statements from Ministers

- 33 The second legal issue is the reference to previous statements made by Ministers. Two letters of 31 October 1988 and 12 December 1996 are attached, as well as a document that appears to be general meeting minutes prepared by the PRRA.
- This was also raised in Written Comment #4 (██████████) and Written Comment #13 (UHLB).
- 34 The relevance of previous statements as to capacity constraints at Auckland Prison made 28 years ago (by the former Chief Executive), and 38 years ago (by the former Minister of Justice) were addressed in our Memorandum of 8 July 2026. In summary, those historical political statements do not constrain future development. They are not relevant to this FTAA approvals process, and provide no legal constraint on the Panel.
- Fourth Memorandum of the Applicant, 8 July 2026, paragraphs 15-19.

Management Plan conditions

- 35 The PRRA through its written comments has raised a concern with the use of management plans not being an appropriate response where important effects remain uncertain, and has requested Corrections provide enough detail upfront for the
- Written Comment #12.

effects and effectiveness of mitigation to be understood.

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| 36 | As set out at paragraph 88 of the legal submissions forming part of the Substantive Application, relying on management plans is accepted practice in the RMA context, especially where, like for the Proposal, specific design and construction information is yet to come. They provide the required flexibility to the designation without compromising on ensuring appropriate effects outcomes. The effects outcomes are set out in conditions, with management plans to provide the specific details on how compliance is achieved with stated requirements at a later date. | Substantive Application, Volume 1, Appendix 1E. |
| 37 | Management Plans have been provided upfront where the information is known (eg, the Ecological Management Plan and Landscape and Ecology Implementation and Management Plan) with others to be provided at a later date when specific design and construction information is available. | Substantive Application, Volume 6, section 3.3.2.3. |
| 38 | This approach aligns with case law on management plans and reflects the use of designations as a planning tool to enable public work where design information is not yet known. The use of management plans as proposed by Corrections through the conditions is entirely appropriate. | It is also consistent with section 21 of the Panel Conveners' Practice and Procedure Guidance, 22 July 2025. |

Culvert requirements

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| 39 | In its written comments, DoC has raised concerns as to the reliance by Corrections on remediation of the culvert on Watercourse 6 as part of the compensation package offered. DoC considers that Corrections has an existing obligation under | Written Comment #10, at [3.8] and [3.9]. |
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Regulation 42 of the Freshwater Fisheries Regulations 1983 to remediate the culvert. Corrections disagrees with the position for the reasons that follow.

- 40 Regulation 42(2) of the Freshwater Fisheries Regulations 1983 requires occupiers of land to *maintain* culverts or fords in such a way to allow the free passage of fish. This obligation applies regardless of when the culvert was constructed. However, Regulation 42(2) does not require culverts that were installed prior to 1983 that were previously constructed in a position that does not allow the free passage of fish, to be upgraded or improved to require that free passage of fish. While this may differ to what is stated in the Fish Passage Guidelines, the Guidelines are guidelines only do not change the legislative requirements.
- 41 The culvert in this case was, prior to 1983, constructed/located in such a way that it does not allow the free passage of fish. Accordingly, there is no obligation under Regulation 42(2) of the Freshwater Fisheries Regulations 1983 to maintain free passage as there is nothing to "maintain" in that respect. This lack of fish passage through the existing culvert is not due to a lack of maintenance of the culvert.
- 42 The culvert upgrade and improvements proposed as part of the Proposal involve a replacement culvert that is positioned lower in the stream (to the west), and new structures at the outlet to the east (under Merewhira Road) to provide fish passage. This is not action that Corrections is required to

take under Regulation 42(2). It therefore meets the additionality requirement.

Wastewater system upgrade

- 43 In response to comments on wastewater capacity and proposed infrastructure constraints, post lodgement of the Substantive Application, discussions have been ongoing between Corrections, Auckland Council and Watercare which has resulted in a proposed change to DES24.
- 44 As agreement was unable to be reached on the proposed Stage 1 wastewater upgrade component of the condition, it has been removed. Instead amended Designation condition DES24 provides that a new or upgraded pump station and diversion of wastewater to the Albany catchment will be required and must be operational before prison capacity can increase beyond the current limit of 681 prisoners.
- 45 This means that the wastewater upgrades will need to occur prior to any increase in capacity at Auckland Prison, whereas the Dairy Flat/The Avenue intersection upgrade condition enables an increase in capacity to 921 before those works occur. This capacity "trigger" of 921 for the intersection works is based on the technical advice and remains to be appropriate, supported by Auckland Transport and certain, as opposed to needing to also be brought forward to align with the timeframe for the wastewater infrastructure works.

Previously, it was proposed that this was required before prisoner capacity could increase beyond 921.

***Augier* conditions**

46 At the briefing held on 25 June 2026, the Expert Panel requested that the applicant identify if any of the proposed conditions included within the Substantive Application are *Augier* conditions. The discussion was in the context of "*Augier*" being reference to a voluntary condition offered by Corrections, rather than one that the Expert Panel could necessarily impose under section 83 of the FTAA.

It is based on the *Augier* principle, which originated in English planning law and has been adopted in New Zealand.

47 The following conditions associated with the proposal are offered on an *Augier* basis:

- 47.1 Upgrade of existing lighting (proposed in response to matters raised in comments) (DES14A);
- 47.2 Closure of Iona Avenue access (DES19);
- 47.3 Stormwater management (as these matters are typically dealt with in regional council processes, and not imposed on designations) (DES23);
- 47.4 Community liaison group (DES46 and DES47);
- 47.5 Environmental Compliance Officer (DES49A);
- 47.6 Iwi forum (DES50 and DES51);
- 47.7 The proposed 12 hectares of "landscape framework planting" that is part of the LMEEP (components of DES44 and DES45). The purpose of this planting is to integrate the visual screen planting and ecological planting across the site (making

the balance of land between the two areas a combined planting area of 28 hectares). The 12ha area is not directly required in response to effects, and is not being relied on for ecological offsetting or compensation.

- 48 The proposed conditions for the Dairy Flat Highway/The Avenue intersection upgrades (DES20), and wastewater upgrades (DES24) are not considered *Augier* because those conditions are directly in response to mitigation of effects on existing capacity constraints within the roading and wastewater networks. However, the level of commitment made by Corrections through those conditions goes beyond what is required to mitigate effects of the Proposal. They accordingly have an *Augier* component to them, offered by Corrections.

Conclusion

- 49 Corrections reiterates its gratitude to those who have taken the time to provide written comments on the Proposal. Corrections' section 55 response is provided though the comments in this memorandum and in Attachment 1 to this memorandum.

Date: 4 August 2026



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Counsel for the Department of Corrections

Appendix 1: Response to Comments Section 55 Report