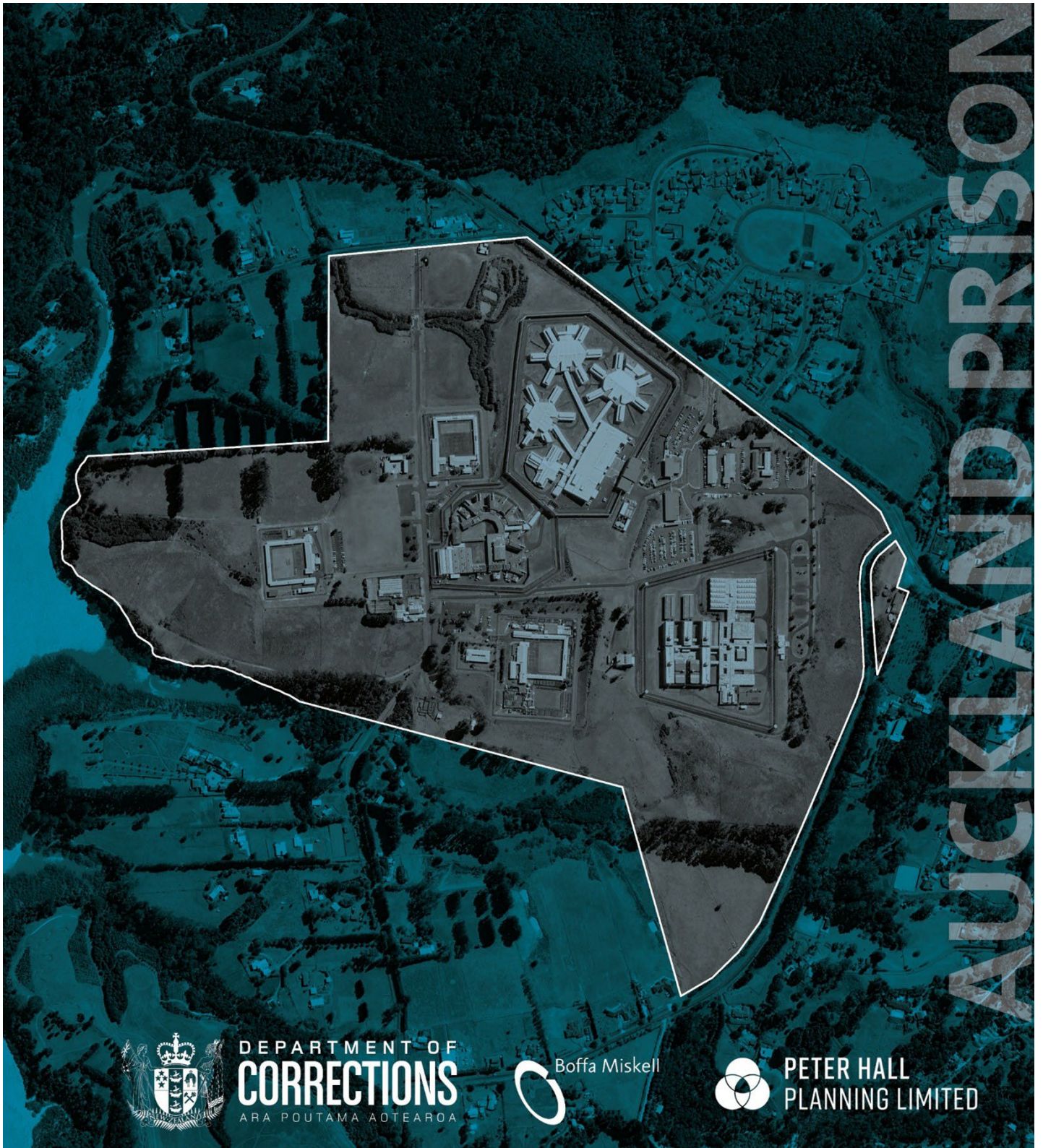


# Auckland Prison Capacity Increase

Volume 1 – Appendix 1E  
Legal Submissions



DEPARTMENT OF  
**CORRECTIONS**  
ARA POUTAMA AOTEAROA



Boffa Miskell



PETER HALL  
PLANNING LIMITED

**Before the Expert Panel**

**Under** 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

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**Legal submissions in support of substantive application**

**Date: 31 March 2026**

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## SUMMARY

- 1 The Department of Corrections (**Corrections**) has lodged a substantive application with the Environmental Protection Authority (**EPA**) for a listed project under the Fast-track Approvals Act 2024 (**FTAA**). That listed project is the Auckland Prison Capacity Increase (**Proposal**). The Proposal relates to the existing operational Auckland Prison, authorised by an existing designation, located in Pāremoremo.
  
- 2 It seeks to enable an increase in the maximum prisoner number able to be accommodated at Auckland Prison. The designation conditions currently limit the number of prisoners accommodated on site to 681. A new limit of 1,220 prisoners is sought. This increase in capacity is required in order to enable Corrections (and the Minister) to meet its statutory obligations. Ensuring sufficient capacity is available is fundamental to delivering on those obligations.
  
- 3 A range of approvals are sought under the FTAA for approvals under the Resource Management Act 1991 (**RMA**),<sup>1</sup> Wildlife Act 1953 (**Wildlife Act**), and Heritage New Zealand Pouhere Taonga Act 2014. Further regional resource consents to authorise works once design information is known will be sought through a separate RMA process.
  
- 4 A significant amount of time and resource has been invested by Corrections and its consultants into preparing the substantive application. The substantive application complies with the

Refer to the statement of Mr Lightfoot, Volume 1, Appendix 1D.

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<sup>1</sup> Including resource consents and an outline plan waiver and to enable activities that would otherwise need approval, dispensation, or authorisation under the Freshwater Fisheries Regulations 1983.

information and substantive requirements of the FTAA.

- 5 Consultation on the Proposal with administering agencies, the local community, iwi/mana whenua and other stakeholders as been comprehensive and effective. Consultation spanned an eight-month period and demonstrated that Corrections has actively sought to understand stakeholder perspectives, provide transparency about the Proposal, and respond constructively to issues raised.
- 6 The substantive application and supporting material enables the EPA to accept the application as complete and within scope under section 46 of the FTAA. It also enables the Convener to progress the application and establish an Expert Panel, and the Expert Panel to grant the approvals sought under section 81 of the FTAA.
- 7 Filing legal submissions with the initial application at lodgement is unusual in RMA practice, but it is becoming common under the FTAA process. These submissions do not seek to pre-emptively address matters that may arise through the section 51 report process, section 53 request for comment or consideration process of the Panel.
- 8 Instead, these submissions are made in support of the substantive application and address key matters of context, considered useful to the EPA, the Panel Convener and ultimately the Expert Panel. They are structured in three parts and address the following matters:
  - 7.1 Part 1: Overview and Scope:
    - (a) Overview of the Proposal
    - (b) Approvals sought;

- (c) Scope of the approvals sought;
- 7.2 Part 2: The statutory framework:
- (a) Decision making under the FTAA generally;
  - (b) Decision making under the FTAA for each of the approvals sought, being:
    - (i) the Notice of Requirement;
    - (ii) the Watercourse Works Resource Consents (including a standard freshwater fisheries activity)
    - (iii) the Wildlife Approval; and
    - (iv) the Archaeological Authority;
  - (c) Provisions of the RMA applying to notices of requirement (as they have recently been amended);
- 7.3 Part 3: Additional relevant matters:
- (a) The approach taken to:
    - (i) consultation (in light of the recent changes to the FTAA);
    - (ii) assessment of environmental effects; and
    - (iii) assessment of the functional need for the Watercourse Works Consents; and
    - (iv) conditions and management plans; and
- 7.4 Conclusions.

## **PART 1: Introduction and Overview**

### **Overview of the Proposal**

9 Corrections is seeking approvals under the FTAA to enable capacity at Auckland Prison at 530 Pāremoremo Road, Pāremoremo, Auckland (**Site**) to be increased from the current designation limit of 681 prisoners to 1,220 prisoners. This increase in capacity from 681 to 1,220 prisoner places at Auckland Prison is required to address the current shortfall in custodial accommodation in the

The Ministry of Justice produce a 10-year Justice Sector Projection (**JSP**) which is refreshed every year. The 2025 JSP indicates a 36% increase in the prison population in the next ten years.

Auckland Region, to respond to projected growing prison population and enable appropriate operational resilience of the prison network.

- 10 Corrections has a core responsibility to ensure it has sufficient appropriate capacity to meet demand to meet its primary responsibilities. The availability of prison capacity is fundamental to Corrections' obligation to deliver safe, secure, humane and effective custodial sentences. It is also central to Corrections statutory obligations under the Corrections Act 2004 and accompanying Corrections Regulations 2005 to deliver and maintain a Corrections system that improves public safety, and contributes to the maintenance of a just society. The increase in capacity at Auckland Prison is required to meet the responsibilities, functions and duties of the Minister of Corrections under the Corrections Act.
- 11 Corrections is seeking to amend its existing designation to enable a capacity increase to address the current shortfall in custodial accommodation in the Auckland Region. 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.
- 12 The parameters approach is an established and well tested approach. It was utilised for the Auckland South Corrections Facility approved by a

Designation  
3900 –  
Auckland  
Prison.

Final Report  
and Decision of  
the Board of  
Inquiry into the  
Proposed Men's  
Correctional  
Facility at Wiri  
(final report and

Board of Inquiry in 2011 and Waikeria Prison approved by the Environment Court via a direct referral in 2018. 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.

decision produced under section 149R of the Resource Management Act), September 2011 and *Minister of Corrections v Otorohanga District Council* [2018] NZEnvC 25.

### Approvals sought

- |      |   |  |
|------|---|--|
| 13   | Specifically, as part of the substantive application Corrections is seeking:  |  |
| 13.1 | a designation alternation to the existing Auckland Prison designation under section 42(4)(d) of the FTAA ( <b>Designation Alteration</b> );   | Volume 2 of the Substantive application.           |
| 13.2 | resource consent for watercourse works under section 42(4)(a) of the FTAA ( <b>Watercourse Works Consent</b> ) and an associated freshwater fisheries activity and outline plan of works waiver;  | Volume 3 of the substantive application.           |
| 13.3 | a Wildlife Approval for the salvage and relocation of native lizards (if present) under section 42(4)(h) of the FTAA ( <b>Wildlife Approval</b> ); and  | Volume 4 of the substantive application.           |
| 13.4 | an Archaeological Authority as a precaution under section 42(4)(i) of the FTAA ( <b>Archaeological Authority</b> ).   | Volume 5 of the substantive application.           |
| 14   | While it is the Minister who holds the current designation in place at Auckland Prison and who is entitled to give Auckland Council notice of a requirement to alter that designation under the RMA, it is Corrections who is making this application under the FTAA as the "authorised person". Corrections does so on the delegated authority of the Minister in respect of the notice of | RMA, section 166 and 181.<br><br>FTAA, section 42. |

requirement, and in its own right in respect of the other approvals sought.

- 15 It is acknowledged that resource consents under the RMA, beyond what is sought in the substantive application, are likely required to enable the capacity increase to occur. Specifically, while the Watercourse Works Consents are being sought as part of this substantive application, further regional consents will be required in future (likely for regional earthworks, stormwater discharge and diversion and related activities). Those consents cannot be sought now, and will be sought when design information for future facilities enabled by the alteration to the designation is available and through a separate resource management process. The watercourse works addressed through the Watercourse Works Consents are required regardless of design of the future facilities. They can accordingly be sought and implemented now, regardless of the future design or staging of development on Site.
- 16 Section 43(2)(a) of the FTAA (via section 13(f)(i) of the FTAA) requires that a substantive application includes a statement as to whether the project is planned to proceed in stages, and if so, an outline of the nature and timing of the stages. Section 43(2)(b) also requires that information, as well as a statement of whether a separate substantive application is to be lodged for each of the stages; and an explanation of how each stage meets the criteria in section 22 of the FTAA.
- 17 The Proposal does not represent a staged development in the standard sense, as the designation alteration sought as part of the substantive application seeks to enable the full

Refer Volume 2. Section 6.3 for a description of likely future resource consent requirements.

increase in capacity sought by the Proposal. Corrections does acknowledge that new facilities authorised by the alteration to the designation may be (but not necessarily will be) built in stages, over approximately a 10-year period. This is to respond to the core demand growth in the prisoner population. However, the timing and staging of construction of new prison facilities at Auckland Prison is subject to future central government funding decisions, and is accordingly currently unknown.

- 18 Information as to the likely key steps of any construction programme are set out in Volume 2 of the substantive application, in order to meet this information requirement regarding staging. The approach is consistent with the purpose of a designation. This approach is also consistent with the provisions of the FTAA that enable staged developments to occur via this process.
- 19 Further, where the increase in capacity has a direct implication on public infrastructure, proposed designation conditions provide trigger points before which certain works are required to be completed to ensure that the transport and wastewater network can service the expansion. Specifically, the conditions proposed limit the number of prisoners on site to:
  - 19.1 681 prisoners before certain wastewater upgrades are undertaken; and
  - 19.2 921 prisoners until the "Stage 2" wastewater infrastructure upgrades (detailed in the conditions) are completed, and the Dairy Flat Highway / The Avenue

DES20 and  
DES24.

intersection signalisation (or other such upgrade or form of control) is complete.

- 20 The conditions are consistent with section 84A of the FTAA. Section 84A of the FTAA enables the Expert Panel to set conditions to ensure that the infrastructure that the project will rely on is, or can be, made adequate to support the project, or stages of the project. Consistent with what Corrections has proposed, a condition made under Section 84A of the FTAA can only impose an obligation on the applicant.

**Scope of approvals sought**

- 21 Section 43(2)(c) of the FTAA requires that Corrections provide the information that it provided to the Minister when applying to have the project listed as a listed project, and an explanation of how the substantive application is within the scope of the listed project. The information provided to the Minister is contained at Appendix 1B of Volume 1 of the substantive application. The following paragraphs provide an explanation of scope.
- 22 "Auckland Prison Capacity Increase" is the "Project name" assigned in Schedule 2 of the FTAA. The project description in the Schedule is as follows "Alter the designation conditions and undertake works to enable the increase in prisoner number to approximately 1,200". The Schedule references "530 Paremoremo Road, Paremoremo, Auckland" as the Approximate Geographical location.
- 23 There are two points of minor difference between the Schedule 2 description and the substantive application now lodged. There is also a minor difference between the material lodged seeking the Proposal be included as a listed project and the

substantive application now lodged. Despite these minor differences, the project squarely falls within the scope of the project as listed.

24 First, the substantive application seeks to increase prisoner number up to a maximum of 1,220 prisoners. Given the reference in the listing is to *approximately 1,200*, an increase to 1,220 is considered to be consistent with that description and presents no jurisdictional issue.

Being a less than 2% variation.

25 Second, the spatial extent of the existing designation is not limited to 530 Pāremoremo Road, Auckland (that is simply its physical address). As set out in the map provided in volume 1, Appendix 1C, Figure 2, the designation extent already covers the Prison Village area to the north of Pāremoremo Road, and 505 Pāremoremo Road (where the community hall is located). Again, the listing refers to the *approximate geographical location* and the project extending to all parts of the current designation extent is consistent with that. It is noted that the Proposal is to actually reduce the current geographical extent of the designation by removing the designation from the Prison Village area. This does not present any jurisdictional issues.

26 Finally, the substantive application as lodged seeks a range of approvals, including under the Wildlife Act. The Wildlife Approval is to enable the salvage and relocation of native lizards (if present). It is acknowledged that the material provided to the Ministry for the Environment ahead of the decision to list the application did not refer to a Wildlife Act approval being required (it simply referenced the designation alteration, resource consents and archaeological authority).

- 27 Corrections is able to apply for a Wildlife Approval as part of the substantive fast track application, as the listing in the FTAA is a broad description of the proposed activity, rather than a list of all of the consents or approvals that may be required for that activity.
- 28 That is consistent with the description for all listed activities in Schedule 2 of the FTAA. Section 42 of the FTAA clearly states that a substantive application for a listed project may seek one or more of the approvals listed in section 42(4) of the FTAA, which here includes a resource consent, an alteration to an existing designation, an archaeological approval and a wildlife approval.
- 29 The FTAA does not provide any qualification that limits an application to those approvals outlined in the initial listing application. The only qualification is that the consents or approvals sought are for a "Listed project", which is defined as a project listed in Schedule 2 of the FTAA.
- 30 Given the Wildlife Approval is required to "undertake works" to enable the increase in prisoner numbers, it is within scope of what can be sought through the FTAA process (similar to the regional consent for Watercourse Works or the Archaeological Approval).
- 31 These "scope" related matters were all canvassed with the EPA as part of pre-lodgement engagement. The EPA supported the interpretation and approach taken by Corrections that these matters are within scope of the project listing. Scope in this context is largely a matter for the EPA to determine when assessing the application under
- Refer to the stakeholder interaction record in Volume 1, Appendix 1G, Appendix 2.

section 46 of the FTAA, as opposed to a substantive matter for the Panel.

## **PART 2: The statutory framework**

### **The statutory framework generally**

- 32 The applicable statutory framework is that in place at the date of lodgement of this application. That includes all amendments made to the FTAA via the Fast-track Approvals Amendment Act 2025, and recent amendments to the RMA and national direction.
- 33 Should further amendments be made to relevant national direction prior to a decision being made on this application, Corrections will need to provide an update to the Panel as to the effect of those changes.

### **Decision making under the Fast-track Approvals Act 2024**

- 34 Under section 81 of the FTAA, the Panel must decide, in respect of each approval sought, whether to grant the approval and set any conditions imposed on the approval or decline the approval. For the purpose of making that decision, as relevant to this substantive application:
- FTAA, section 81(1).
- FTAA, section 81.
- (2) For the purpose of making the decision, the panel:
    - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:
    - (b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):
    - (c) must comply with section 82, if applicable:

- (d) must comply with section 83 in setting conditions:
  - (e) may impose conditions under section 84:
  - (ea) may impose conditions under section 84A:
  - (f) may decline the approval only in accordance with section 85.
- (3) For the purposes of subsection (2)(b), the clauses are as follows:
- (a) for an approval described in section 42(4)(a) (resource consent), clauses 17 to 22 of Schedule 5:  
...
  - (e) for an approval described in section 42(4)(d) (designation), clauses 24 and 25 of Schedule 5:  
...
  - (i) for an approval described in section 42(4)(h) (wildlife approval), clauses 5 and 6 of Schedule 7:
  - (j) for an approval described in section 42(4)(i) (archaeological authority), clauses 4 and 5 of Schedule 8  
...
- (4) When taking the purpose of this Act into account under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits.
- (5) For the purposes of subsection (4), if the substantive application was made under section 42(1)(aa) or (b), the panel—
- (a) must treat the stage of the project to which the application relates as constituting the project; but
  - (b) may consider the regional or national benefits of the whole project, having regard to the likelihood that any later stages of the project will be completed.
- (6) Despite subsection (2)(a), the panel—
- (a) is not required to consider any advice, report, comment, or other information it receives under section 51, 53, 55, 67, 69, 70, or 72 after the applicable time frame; but

- (b) may, in its discretion, consider the information as long as the panel has not made its decision under this section on the approval.
- (7) To avoid doubt, nothing in this section or section 82 or 85 limits section 7.

35 Regarding section 81(2)(b) above, the relevant clauses set out in section 81(3) of the FTAA for each approval sought are set out in the following paragraphs. Before that detail is provided, these submissions address sections 82, 83, 84, 84A and 85 of the FTAA.

36 Section 82 of the FTAA applies to the substantive application. The relevant documents which the Panel must consider under section 82 are set out in the Māori Consultation and Cultural Values Assessment report. Further, the Panel must consider whether granting the approvals would comply with section 7 of the FTAA. Section 7 requires all persons performing and exercising functions, powers and duties under the FTAA to act in a manner that is consistent with (as relevant here) the obligations arising under existing Treaty Settlements. Granting the approvals as sought is not limited by this section, for the reasons set out in the substantive application.

FTAA, section 82(1).

Volume 1, Appendix 1F.

FTAA, section 82(3).

FTAA, section 7(1)(a).

37 Regarding conditions, and the need to consider sections 83 to 85 of the FTAA, the substantive application provides a proposed condition set. These conditions are considered to be appropriate under the FTAA. Section 84A of the FTAA provides express support for the conditions proposed around future offsite infrastructure works in respect of both the transport network and wastewater network serving the Site.

DES20 and DES24.

- 38 None of the reasons in section 85(1) or 85(2) of the FTAA apply to the Proposal. The Panel is accordingly not required to decline any of the approvals sought.
- 39 Further for the reasons set out in the substantive application, section 85(3) of the FTAA is not triggered by the Proposal given the level of anticipated adverse effects is considered to be appropriate and not at a level that are sufficiently significant to be out of proportion with the project's regional or national benefits.
- 40 As summarised in section 7.2 of Volume 1 of the substantive application:
- 40.1 the effects of the Proposal will be significantly positive in respect to public safety by enabling the provision of modern fit for purpose prison facilities in the region of highest demand, with additional significant economic benefits from capital and operational expenditure, including employment generation, benefits for businesses and the economy. Natural character and ecological benefits will also result from the proposed planting across a large area of the site which will be secured by conditions.
- 40.2 adverse effects can either be avoided, or where they occur are able to be mitigated through the designation conditions proposed. Any residual effects remaining are low in the context of the large existing prison site, its existing uses and its surrounding community.

41 In preparing the conditions, the project team undertook a rigorous and iterative process involving collaboration with technical specialists, consultation with Council and relevant administering agencies, and independent peer review.

42 Accordingly, the approvals should be granted by the Panel. The focus is accordingly on the appropriate conditions.

43 Before getting into the specific requirements for decision-making on each of the approvals sought, the purpose of the FTAA is addressed. This is because it is relevant to each approval sought. The purpose of the FTAA is to:

...facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

FTAA, section 3.

44 Granting the approvals will facilitate the delivery of infrastructure and development necessary to accommodate the increase in capacity at Auckland Prison. The regional and national benefits of the Proposal are set out in the substantive application, as summarised above. Granting the approvals will achieve the purpose of the FTAA.

The National Policy Statement for Infrastructure 2025 is clear that corrections facilities operated by Corrections are "infrastructure".

45 As set out below, when making its determination on each of the approvals sought, the Panel must give the most weight to the purpose of the FTAA. This provides further support for the granting of the approvals sought.

### **Decision making framework for the notice of requirement**

46 In respect of the notice of requirement to alter the existing designation, clause 24 of Schedule 5 of the FTAA states:

FTAA, section 81(3)(e).

- (1) For the purposes of section 81, when considering a notice of requirement,

including conditions in accordance with clause 25, the panel must, giving the greatest weight to paragraph (a)(i),—

- (a) take into account—
    - (i) the purpose of this Act; and
    - (ii) the provisions of Part 8 of the Resource Management Act 1991 that direct decision making on an application for a designation (except section 170); and
    - (iii) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991; and
  - (b) consider any Mana Whakahono ā Rohe or joint management agreement that is relevant to the approval.
- (2) For the purpose of applying any provisions in subclause (1),—
- (a) a reference in the Resource Management Act 1991 to Part 2 of that Act must be read as a reference to sections 5, 6, and 7 of that Act; and
  - (b) if the notice of requirement relates to an activity that is the subject of a determination under section 23 of this Act, the panel must treat the effects of the activity on the relevant land and on the rights or interests of Māori as a relevant matter under section 6(e) of the Resource Management Act 1991.
- (3) For the purposes of subclause (1), the provisions referred to in that subclause must be read with all necessary modifications, including (where appropriate) that a reference to a consent authority must be read as a reference to a panel.

47 These matters have all been addressed in Volume 2 of the substantive application. The requirements of the RMA that apply are discussed further below, noting that there have been recent amendments which are relevant to the assessment of the Designation Alteration.

- 48 For the reasons set out in the substantive application, the Expert Panel should approve the Designation Alteration as sought.
- 49 Where the Panel approves the Designation Alteration, it can, under clause 29, Schedule 5 of the FTAA waive the requirement for an outline plan. A waiver for the works associated with the Watercourse Works consents has been sought as set out in Volume 3 of the substantive application. Other works will be subject to the standard outline plan of works process.

**Decision making framework for the regional resource consents (including standard freshwater fisheries activity)**

- 50 In respect of the regional resource consents sought, clause 17, Schedule 5 of the FTAA states:

FTAA, section 81(3)(a).

- (1) For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a),—
  - (a) the purpose of this Act; and
  - (b) the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and
  - (c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.
- (2) For the purpose of applying any provisions in subclause (1),—
  - (a) a reference in the Resource Management Act 1991 to Part 2 of that Act must be read as a reference to sections 5, 6, and 7 of that Act; and
  - (b) if the consent application relates to an activity that is the subject of a determination under section 23 of this Act, the panel must treat the effects of the activity on the

relevant land and on the rights or interests of Māori as a relevant matter under section 6(e) of the Resource Management Act 1991; and

- (c) to avoid doubt, for the purposes of subclause (1)(b), when taking into account section 104(1)(c) of the Resource Management Act 1991, any Mana Whakahono ā Rohe or joint management agreement that is relevant to the approval is a relevant matter.
- (3) Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.
- (4) For the purposes of subclause (1), the panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the application the panel is considering.
- (5) In the case of an application for a coastal permit for aquaculture activities, if the panel makes a reservation under clause 20 in relation to recreational fishing or customary fishing or commercial fishing in relation to stocks or species not subject to the quota management system, the panel must not grant the coastal permit in respect of the areas covered by the reservation.
- (6) For the purposes of subclause (1), the provisions referred to in that subclause must be read with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel.
- (7) Sections 123 and 123A of the Resource Management Act 1991 apply to a decision of the panel on the consent.

51 These matters have all been addressed in Volume 3 of the substantive application.

52 Clause 19, Schedule 5 of the FTAA provides that a Panel may set conditions on a consent in respect of

a standard freshwater fisheries activity for which approval, dispensation, or authorisation is required, or for which a requirement may be imposed under specified provisions of the Freshwater Fisheries Regulations 1983. But for clause 19(3), Schedule 5 of the FTAA, a freshwater fisheries approval would be required under Regulation 42 of the Freshwater Fisheries Regulations 1983, as the proposed watercourse works are to impede fish passage (rather than block passage) and in-stream operations and temporary stream diversion for the installation of the pipes are required by envisaged to last for no more than 3 months. The activity is a standard freshwater fishery activity as defined in section 4 of the FTAA.

- 53 Provided Corrections complies with conditions imposed under clause 19(1), Schedule 5 of the FTAA, such approval is not required. Under clause 19(1) of Schedule 5, the Panel can impose conditions necessary to manage the effects of the activity on freshwater fish species, taking into account best practice standard and NZ Fish Passage Guidelines. Accordingly, Corrections has proposed conditions on the Watercourse Works Consents to address these matters.
- 54 These matters have all been addressed in Volume 3 of the substantive application.
- 55 For the reasons set out in the substantive application, the Expert Panel should approve the resource consents, outline plan waiver and standard freshwater fisheries activity as sought.

#### **Decision making framework for the Wildlife Approval**

- 56 A Wildlife Approval has been sought for the salvage and relocation of native lizards (if present).

FTAA, section 81(3)(i).

In respect of the Wildlife Approval clause 5, Schedule 7 of the FTAA sets out the criteria for assessment:

For the purposes of section 81, when considering an application for a wildlife approval, including conditions under clause 6, the panel must take into account, giving the greatest weight to paragraph (a),—

- (a) the purpose of this Act; and
- (b) the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and
- (c) information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).

57 These matters have all been addressed in Volume 4 of the substantive application.

58 For the reasons set out in the substantive application, the Expert Panel should approve the Wildlife Approval as sought.

### **Decision making framework for the Archaeological Authority**

59 An Archaeological Authority has been sought as a precaution should sensitive material be exposed once works are underway. In respect of the Archaeological Authority, clause 4, Schedule 8 of the FTAA sets out the criteria for assessment:

FTAA, section 81(3)(i).

- (1) For the purposes of section 81, when considering an application for an archaeological authority, including conditions in accordance with clause 5, the panel must take into account, giving the greatest weight to paragraph (a),—
  - (a) the purpose of this Act; and
  - (b) the matters set out in section 59(1)(a) of the HNZPT Act; and

- (c) the matters set out in section 47(1)(a)(ii) and (5) of the HNZPT Act; and
  - (d) a relevant statement of general policy confirmed or adopted under the HNZPT Act.
- (2) For the purposes of subclause (1), the provisions of the HNZPT Act referred to in that subclause must be read with all necessary modifications, including that a reference to Heritage New Zealand Pouhere Taonga must be read as a reference to the panel.

60 These matters have all been addressed in Volume 5 of the substantive application.

61 For the reasons set out in the substantive application, the Expert Panel should approve the Archaeological Authority as sought.

**Application of the Notice of Requirement provisions under the RMA**

62 Through clause 24(1)(a)(ii), Schedule 5 of the FTAA, Part 8 of the RMA applies to the Panel's decision making on the Designation Alteration. The provisions of Part 8 are matters that the Panel must take into account when considering the Designation Alteration. A significant change made to the RMA via the Resource Management (Consenting and Other System Changes) Amendment Act 2025 relates to the statutory assessment under section 171 of the RMA, and in particular the need to assess alternatives (which is within Part 8).

63 Section 171(1)(b) of the RMA was replaced on 21 August 2025. It now requires:

if the requiring authority does not have an interest in the land sufficient for undertaking the work:

- (i) whether adequate consideration has been given to any alternative sites, routes, or methods of undertaking the work; and

- (ii) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought...

- 64 In this case, the proposed works are confined to the existing designation extent (which is proposed to be reduced by the Proposal). The entire designated area is owned by the Crown and gazetted for prison purposes. Given this, the Minister has an interest in the land sufficient for undertaking the work. Accordingly, section 171(1)(b) of the RMA (by virtue of cross-reference from clause 24(1)(a)(ii), Schedule 5 of the FTAA) does not apply to assessment of this substantive application.
- 65 There is no requirement under section 171 of the RMA to consider whether adequate consideration has been given to alternatives or whether the works and designation amendments proposed are reasonably necessary for achieving the objectives of the Minister for this substantive application.
- 66 Accordingly, under section 171 of the RMA, all the Panel is required to consider are the effects of allowing the requirement on the environment, having particular regard to the relevant national, regional and district plan provisions.
- 67 However, clause 12(1)(h), Schedule 5, of the FTAA requires that as part of the substantive application, Corrections provides information to as to any consideration of alternative sites, routes, or methods of undertaking the project or work.
- 68 This is simply an information requirement under the FTAA. It does not require Corrections to undertake an alternatives assessment, but, where Corrections

has given consideration to alternatives, information as to that consideration must be provided.

- 69 Further, Clause 12(1)(g) of Schedule 5 requires Corrections to provide information as to an assessment of whether the project or work and the designation sought are reasonably necessary for achieving the objectives of the requiring authority. Again, this is an information requirement only.
- 70 Irrespective of the necessity for it, a comprehensive assessment of alternatives has been undertaken by Corrections. Further assessment against the objectives of the Minister has also been undertaken to demonstrate the reasonable necessity of the works and amendment. The provision of this material complies with the information requirements of the FTAA and provides assistance to understanding why the Proposal to increase the capacity at Auckland Prison is necessary and appropriate.
- 71 For the reasons set out above, and in the substantive application, the Expert Panel should approve the Designation Alteration as sought.

Refer Volume 2, Appendix 2C and Volume 2 section 5.0.

Volume 2, section 4.0.

### **PART 3: Additional relevant matters**

- 72 This part of the submissions addresses a range of matters that are relevant to the Proposal as a whole, and outline the approach taken by Corrections to key elements of the process.

#### **Approach taken to consultation**

- 73 One of the changes to the FTAA that came into effect on 31 March 2026 was to section 11. The change was to shift the obligation on an application from a consultation obligation to a notification obligation in respect of a specified range of parties

listed in that section. While section 11 relates to pre-lodgement consultation for a referral application, the changes are relevant to this project due to the corresponding changes to section 29 of the FTAA.

- 74 Given these changes, Corrections was only required to consult with:
- 74.1 any relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011; and
- 74.2 ngā hapū o Ngāti Porou, if the project area is within or adjacent to, or the project would directly affect, ngā rohe moana o ngā hapū o Ngāti Porou (which it does not).
- 75 Corrections was then only required to notify the other parties listed in section 11 (unless it had already consulted with them). Despite these changes, Corrections has undertaken a comprehensive consultation process that has exceeded the legal obligations imposed under the FTAA as they were before, or after the 31 March amendments. Consultation with iwi/mana whenua is set out in the Māori Consultation and Cultural Values Assessment report (in respect of consultation with the relevant iwi authorities, hapū, Treaty Settlement entities, applicant groups and applicant groups under the Marine and Coastal Area (Takutai Moana) Act 2011) and the Consultation Report (which records how the relevant local authorities and administering agencies have been involved through ongoing consultation since mid 2025).
- FTAA, clause 8, Schedule 1, FTAA section 29(1)(a).
- FTAA, clause 11, Schedule 1, FTAA section 29(1)(aa).
- Volume 1, Appendix 1F.
- Volume 1, Appendix 1G.

76 The application can be accepted as complete by the EPA in respect of the pre-lodgement consultation requirements.

**Approach taken to assessing environmental effects**

77 When assessing the environmental effects of the Proposal, the potential (or perceived) impact on property values has not been taken into account by the relevant independent experts.

78 It is well established through case law that decision-makers cannot take account of a perceived impact from a project on private property values because:

See for example *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137; *City Rail Link Ltd v Auckland Council* [2017] NZEnvC 204; and *Re Meridian Energy Ltd* [2013] NZEnvC 59.

78.1 it is simply a measure of adverse effects on amenity, and the decision-maker focuses on the direct expert evidence of those amenity effects rather than double counting them by considering property values. The focus is accordingly on matters such as the visual effects, and not a property value speculation on the impact of those visual effects; and

78.2 property value assertions are speculative and often just based on arguable perception.

79 While this case law relates to decision making under the RMA, given the enabling purpose of the FTAA and as it imports the relevant decision-making criteria from the RMA, the same approach should be adopted here by the Panel. This approach has recently been endorsed in the FTAA process by the Expert Panel in the decision on the Kings Quarry Expansion – Stage 2 dated 17 December 2025, at paragraph [74(l)], and the

Expert Panel on the Waihi North project dated 18 December 2025 at paragraph [689].

**Approach taken to the assessment of "functional need"**

80 Given the substantive application includes the Watercourse Works Consents application, consideration by the Panel of the functional need for the watercourse works is required. That is because the Watercourse Works Consents seek to authorise the reduction in stream extent of Watercourse 1 and Watercourse 2 and the FTAA requires consideration the National Policy Statement for Freshwater Management (**NPS-FM**) and the Auckland Unitary Plan (**AUP**).

81 Functional need is relevant under clause 3.24 of the NPS-FM, and Policy E3.3(18) of the AUP. Specifically, the policy direction requires the loss of river extent and values is to be avoided, unless the Council (here the Panel) is satisfied that there is a functional need for the activity in that location and the effects have been managed by applying the effects management hierarchy.

82 "Functional need" is defined in the NPS-FM and AUP as:

NPS-FM, clause 3.21; AUP Chapter J1.

The need for a proposal or activity to traverse, locate or operate in a particular environment because it can only occur in that environment

83 As recently set out by the High Court in *Te Rūnanga o Ngāti Whātua v Auckland Council*, assessment of functional need requires an analysis of whether the activity is "demonstrably needed" applied in a "common sense way", based on a "realistic appraisal" of the need and alternatives (emphasis added):

*Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794 at [285] and [286].

Furthermore, and linking back to the concern expressed by Mr Matheson that the effect of the NPS-FM policies and exceptions standards are prohibitive insofar as it requires an assessment of functional need and alternative sites and methods, these requirements must be applied in a common sense way. That requires a realistic appraisal of need and the available alternatives having regard to in this case the proposed scale of the activity and the corresponding function performed by it. Plainly scale is relevant to the assessment of whether the activity is contrary to the NPS-FM “avoid” policies, and the scale of its effects may mean it is unable to satisfy the second step in the exceptions pathway. But need and availability of alternative sites must be assessed in terms of the proposed activity, not based on theoretical need and availability of site for that type of activity generally. A landfill provides a useful illustration. Given that even a small landfill will in most if not all cases need to be located in an environment where the presence of small streams are highly likely, it would accord with common sense to construe ‘functional’ need in a way that would accord with this reality. To hold otherwise and effectively prohibit all but the smallest of landfills, would be an altogether perverse outcome having regard to the fact the NPS-FM envisages landfills in wetlands (many wetlands either contain, are fed by, or are almost wholly composed of areas of moving water i.e. streams) without the requirement to show ‘functional’ need.

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| 84 | Further, other case law authority has confirmed that while "functional need" is a relatively high threshold, the proposed location for a development does not need to be the only possible location. | See for example, the discussion at paragraphs [51] to [59] of <i>Poutama Kaitiaki Charitable Trust v Taranaki Regional Council</i> [2022] NZHC 629. |
| 85 | As set out in Volume 3 of the substantive application, there is a functional need for the watercourse works as:  | Volume 3, section 6.3.4.2.  |
|    | 85.1 there are no other practicable alternatives to provide the required prisoner places elsewhere within the Auckland region;   |   |

- 85.2 there are no other practicable alternative options for locating Area A or secure facilities on other parts of the Auckland Prison site; and
- 85.3 there is a functional need for watercourse reclamation in the locations proposed because open watercourses cannot be reasonably accommodated within secure areas of prisons nor below secure perimeters.
- 86 In respect of effects, as set out in Volume 3, the effects of the loss of extent of the watercourses will be managed by applying the effects management hierarchy as required by the NPS-FM and AUP.

#### **Approach to conditions and management plans**

- 87 As part of the substantive application, Corrections has proposed a range of conditions in respect of management plans. Specifically, Corrections is requesting the Panel approve the Ecological Management Plan, the Landscape and Ecology Implementation and Management Plan, the Lizard Management Plan, the Archaeological Management Plan, and the Earthworks and Contamination Management Plan that have been provided as part of the substantive application. The management plans in respect of construction effects are to be certified by Auckland Council at a later date. In accordance with the guidance in the Panel Convener's Practice and Procedure Guidance Note, sufficient information as to the purpose, structure, content and drafting process for the management plans has been provided. DES32-DES37. DES38, DES39, DES41 and DES42.
- 88 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. 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.

- 89 It is acknowledged that Corrections has proposed a deemed certification mechanism in its conditions. Whilst previous Environment Court authority has considered and dismissed the appropriateness of such a deemed certification condition, this approach is considered appropriate here. It only provides deemed certification for construction works undertaken where *no* response is received. In that sense, it is not putting undue pressure on Auckland Council to provide a determination in the 20-day period. Should Auckland Council respond in the 20-day period, regardless of the response, that response would prevent deemed certification from occurring under the condition.
- 90 Further, the management plans, which have the proposed deemed certification component for the first version of the management plan all relate to effects during the construction period. All have proposed designation conditions that include clear specified effects limitations and outcomes on construction effects. Corrections must comply with those outcomes and limits regardless of the content of the management plans. The management plans are more relevant to logistics and operational
- Conditions DES33 to DES37.
- See for example, *Re New Zealand Transport Agency Waka Kotahi* [2024] NZEnvC 133; and *Meridian Energy Ltd v Wellington City Council* [2011] NZEnvC 232 at [402].
- Noting all management plans, even those to be approved by the Panel, involve a deemed certification component for amendments.

matters, so having a deemed certification mechanism in a complete absence of response situation is not considered to increase environmental risk.

- 91 Further any regional consents for works triggering resource consent for construction works would need to be sought ahead of the works commencing and be complied with as well as the Designation Alteration conditions.

**Conclusion**

- 92 For the reasons set out above, and in the substantive application, Corrections request that the EPA accept the substantive application, the Panel Convener appoints an Expert Panel and the Panel grants the approvals as sought.

Date: 31 March 2026



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