

Your Comment on the Auckland Prison Capacity Increase project application

Please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email at substantive@fastrack.govt.nz

1. Contact Details

Please ensure that you have authority to comment on the application on behalf of those named on this form.

Organisation name (if relevant)	Department of Conservation		
First name	Loren		
Last name	Brown		
Postal address	PO Box 10420, Wellington 6140		
Mobile phone		Work phone	
Email	fast-track@doc.govt.nz and		

2. We will email you draft conditions of consent for your comment

☒	I can receive emails and my email address is correct	☐	I cannot receive emails and my postal address is correct
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3. Please provide your comments on this application

Please find comments attached

Note: All comments will be made available to the public and the applicant when the Ministry for the Environment proactively releases advice provided to the Minister for the Environment.



Linda Kirk

Acting Fast-Track Applications Manager

Acting pursuant to delegated authority on behalf of the Director-General of Conservation.

Date: 28/07/2026

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

Comments on a fast-track consenting application

Fast-track Approvals Act 2024 section 53

To: The Expert Panel

From: Department of Conservation

Regarding fast-track project: Auckland Prison Capacity Increase

Fast track Reference: FTAA-2603-1179

1 Background

- 1.1 Department of Corrections - Ara Poutama Aotearoa (the Applicant) seeks to obtain approvals under the Fast Track Approvals Act 2024 (FTAA) to enable capacity at Auckland Prison (Pāremoremo). The approvals sought include an alteration to Designation, resource consents, a Standard Freshwater Fisheries activity, Outline Plan waiver, Wildlife Act Approval, and an Archaeological Authority. The Site is within the jurisdiction of Auckland Council.
- 1.2 The Applicant proposes to increase the prison capacity from the current designation limit of 681 prisoners to 1,220 prisoners, including proposed watercourse works to pipe two watercourses to allow for the development of the land above for prisoner accommodation and associated facilities (the Proposal).
- 1.3 The Site is located on crown owned land administered by the Applicant through the Prison designation. The project does not involve any public conservation land. The site is characterised by dispersed prison buildings set across generally rolling pastureland. Within the site, vegetation is generally confined to edges, riparian margins and some shelterbelts consisting of native and exotic species. The site also contains a mix of permanent and intermittent streams and wetlands.
- 1.4 Approvals are sought in relation to the Resource Management Act 1991 (RMA), Freshwater Fisheries Regulations 1983 (FFR), Heritage New Zealand Pouhere Taonga Act 2014, and the Wildlife Act 1953.
- 1.5 In accordance with sections 53(2)(k), 53(2)(m)(i), and 53(2)(m)(iv) of the FTAA, the Director-General of Conservation (D-G) has been invited to comment on the substantive application. Statutory delegations are in place for officers of the Department of Conservation (DOC/the Department) to provide commentary on behalf of the D-G.

2 Department of Conservation advice

- 2.1 The following advice is based on the application documents provided to the EPA on 2 April 2026 and the further information provided to DOC on 5 April 2026 **Appendix A**.
- 2.2 The assessment in this report is informed by expert advice from DOC technical advisors. The Department has relied on the advice of the technical expertise of Amber McEwan (Freshwater Ecology) contained at **Appendix B**.
- 2.3 Overall, the Department has some concerns in relation to effects on freshwater matters relating to streams and wetlands. Concerns relating to lizards have largely been addressed in the section 51 report and are not repeated here.
- 2.4 The Department's advice to the Panel is as follows.

3 Assessment

- 3.1 This assessment focuses on the actual and potential ecological effects of the Proposal. The Department has generally not commented on its consistency with the wider statutory framework.
- 3.2 Comments on draft conditions are provided as part of this assessment.

Complex Freshwater Fisheries Approval

- 3.3 The Department notes that the Applicant has applied for a Standard Freshwater Fisheries activity. The Applicant and the Department have discussed this matter at length during pre and post lodgement discussions. The Department considers that the Proposal constitutes a complex freshwater fisheries activity. This matter was outlined in the Department's, 13 April 2026 response to the Environmental Protection Agency's request for comments on completeness. Summarised simply, the Department interprets the piping of approximately 124 metres of stream (watercourse 1) as a permanent diversion and thus falling within the definition of a Complex Freshwater Fisheries activity under the FTAA.
- 3.4 The Applicant is aware of this interpretation and has determined not to apply for this activity using the FTAA process.
- 3.5 There are other elements of the Proposal, including provision of culvert which may block fish passage, which also may constitute a 'Complex' status of the activity. But without a Complex Freshwater Fisheries application to consider, DOC does not see the merit in further discussion on these points in relation to an approval, that has not been sought and will instead focus on the impacts of the Proposal as made. But notes that in future, the Applicant may need to apply for a Complex Freshwater Fisheries activity approval through the Department's 'business as usual' process.

Aquatic ecology

- 3.6 As detailed in Appendix B to these comments, the Department considers that the information gathering and values assessment undertaken by the Applicant in relation to streams and

wetlands is appropriate. However, one exception to this is the threat classification used to assigned native fish value to the streams, which has recently been superseded. The current threat status of redfin bullies and banded kokopu has worsened. Particularly for the fish community in watercourse 6 (WC6), this may necessitate the reworking of the Stream Ecological Valuation (SEV) which informs the ecological compensation ratios.

- 3.7 Appendix B also contains comments on fish passage following a review of the fish passage investigation information provided. The information provided suggests that unless the pipe infrastructure on watercourse 1 is 10-15 years old, due to the apparent age of the eels present, the pipe network appears to currently impede the passage of shortfin eels upstream and likely blocks the upstream passage of other native fishes that are present in nearby streams. Regardless of the age of the pipe infrastructure, the results indicate the pipe network currently blocks downstream passage of the shortfin eels that are trapped in pond 2 and unable to migrate to complete their lifestyle. The Department recommends that the fish trapped in pond 2 are rescued and suitably relocated, and, if the pipe network is more than 10-15 years old, the downstream outlet of the new piping on watercourse 1 is designed and installed in a manner that will block upstream fish passage to prevent entrapment in pond 2.
- 3.8 Within the Applicant's AEE¹, the Applicant offers its position on the remediation of the culvert on WC6. The Applicant considers that the remediation of this culvert forms an important element of the compensation package offered as part of the Proposal and is therefore a 'gain'. The Applicant does not believe that section 42 of the FFR applies. The Applicant puts forward that section 42 of the FFR does not apply because the culverts were installed prior to 1982, and accordingly it does not create a responsibility on the Applicant to provide fish passage through the culverts.
- 3.9 DOC does not accept this interpretation of the FFR and instead believes that the Applicant does have an existing responsibility under section 42 to remediate their culvert². Therefore, the ecological gain associated with the culvert remediation should have occurred as a matter of course and accordingly should not form part of the proposed compensation package. It is the Department's view that the proposed compensation fails the additionality test and that alternative compensations should have been identified. Such measures could have included off-site stream restoration or research that benefits native fish. Such benefits would compensate for the loss of stream extent, stream value and riparian vegetation associated with the piping of watercourses 1 and 2. The Applicant should investigate compensation options (off-site or research) and incorporate an appropriate resource consent condition prior to section 70 stage.
- 3.10 DOC does acknowledge that the culvert remediation work would benefit native fish.

¹ Pg 30, Appendix 3B

² The New Zealand Fish Passage Guidelines (Section 2.1) state: "*However, regulation 42(2) (i.e., the requirement for culverts and fords to be maintained to prevent the development of fish passage barriers) applies to all culverts or fords built before and after 1984.*"

- 3.11 Another matter that is not considered in the Proposal, is the risk of *Gambusia* spreading into the upstream catchment as a result of culvert remediation. *Gambusia* is classified as an unwanted organism under the Biosecurity Act 1993 and the spread of this pest fish species would have a negative effect on existing biodiversity in WC6 and may reduce the predicted value of the watercourse. The NPS-FM Section 3.26 directs councils to ensure that “The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.” The Applicant should consider this risk.

4 Conditions

- 4.1 The Panel is required, under the Act, to provide draft conditions and invite comments on them before they grant an approval. The Department notes that additional conditions or amendments to proposed conditions may be required in order to address the comments and recommendations made above and reserves its right to provide specific comments on conditions under section 70 of the FTAA.
- 4.2 The Department notes that condition LUC13 relating to Lizard Management, has some overlap with the Department's comments at section 51 stage, particularly in relation to LUC13 which states “(3) The LMP may be amended at any time by a suitably qualified and experienced ecologist/herpetologist in accordance with Condition WAA02 of the Wildlife Approval”. The Department has sought changes to WAA02, which, if incorporated, may impact on this proposed condition.

5 Conclusion

- 5.1 Overall, the Department considers effects of the Proposal could be appropriately managed subject to:
- the Applicant addressing the concerns relating to management of effects on aquatic ecology and wetlands;
 - appropriate consent conditions being imposed; and
 - appropriate amendments being made to draft management plans.
- 5.2 Thank you for the opportunity to comment.

Appendices

Appendix A: Applicant's memorandum

Appendix B: Technical advisor comments – Dr Amber McEwan

Appendix A

Appendix B

TO: Loren Brown, Department of Conservation
FROM: Amber McEwan, Riverscapes Freshwater Ecology Limited
CC: None
DATE: 05.07.2026
Re: Auckland prison capacity increase: S53 Freshwater technical advice



1. Introduction

My full name is Dr Amber McEwan.

I am providing expert advice on behalf of DOC on the abovementioned Fast-track application.

Qualification and Experience

I hold three relevant degrees from New Zealand universities: BSc (ecology), MSc (conservation biology), and PhD (ecology). All of my postgraduate and professional work has been focussed exclusively on freshwater ecology.

I have been working as a freshwater ecologist in New Zealand for over 20 years, primarily as a consultant out of Riverscapes Freshwater Ecology Limited. I have published seven peer reviewed journal articles as first author (including three on the physical habitat requirements of New Zealand native fishes) and am a member of the New Zealand Freshwater Sciences Society.

Code of conduct

Whilst it is acknowledged this is not an Environment Court Proceeding, I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2023. I have complied with the Code of Conduct in the preparation of this advice. Unless I state otherwise, this assessment is within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Sources

To prepare the following advice, I referred to the following documents (there were multiple versions of documents that had the same title and date, but several content-related differences, and the 2I AEE version referred to the 3B version at one point (and the versions were different sizes) – so I read both based on the assumption that they were substantially different:

- **Vol2 Appendix 2I Ecological Assessment Final**, 26 March 2026 (18 MB).
- **Vol3 Appendix 3B Ecological Assessment Final**, 26 March 2026 (10 MB).

- **Vol3 Appendix 3B Ecological Assessment Final Redacted**, 26 March 2026 (21 MB).
- **Vol2 Appendix 2O Ecological Management Plan Final**, 26 March 2026 (34 MB).
- **Vol2 Appendix 3K Ecological Management Plan Final**, 26 March 2026 (34 MB).
- **The memo from the applicant** (dated 05.05.26) describing the pond 2 fish passage investigation results.

2. Outline of freshwater considerations

The Department of Corrections (the applicant) is proposing to increase the capacity of Auckland Prison, which will involve piping 2 stream reaches (238 m combined), with associated riparian clearance. The applicant proposes effects management which includes riparian planting, fish salvage, and barrier remediation.

The reaches proposed for piping are short and very close to the coast, with little (watercourse 1 [WC1]) or no (watercourse 2 [WC2]) available aquatic habitat upstream. The streams contain some native fish and have the potential to be restored. Works will avoid effects on wetlands. The applicant describes the ecological value of WC1 as 'Low' and WC2 as 'Very Low'.

The applicant provides additional information regarding two other watercourses on their land that could be used for offsetting/compensation. Watercourse 3 (WC3) is a 150 m long intermittent stream plus a natural inland wetland of combined 'Very Low' ecological value to the east of the proposed extension area. Watercourse 6 (WC6) is a larger, permanently flowing stream containing four native fishes: redfin bully (*Gobimorphus huttoni*; At Risk – Naturally Uncommon), banded kōkopu (*Galaxias fasciatus*; At Risk – Naturally Uncommon), shortfin eel (*Anguilla australis*; Not Threatened), longfin eel (*Anguilla dieffenbachii*; At Risk - Declining) and the pest fish species gambusia (*Gambusia affinis*).

WC6 includes a perched culvert which is likely to prevent upstream passage for redfin bullies, banded kōkopu, and gambusia but may provide some passage for juvenile eels during elevated flow conditions. There is another culvert on WC6 that likely impedes upstream passage for some species during low flows. The applicant considers the overall ecological value of watercourse 6 as 'Low-Moderate'.

3. Comments on values scoping and description

In relation to both the streams and the wetlands, I consider that the information gathering methods employed by the applicant are appropriate to the scale and ecological complexity of the project, and that the values assessment methods are appropriate to accurately identify and evaluate ecological effects.

There is one exception to the above – the threat classification edition used to assign native fish value to the streams has recently been superseded³, and the worsened threat status of redfin bullies and banded kōkopu, means that the fish community in WC6 contains three (out of four) At Risk species instead of one. This change may necessitate the reworking of the SEV for WC6 to feed into Ecological Compensation Ratios.

4. Comments on fish passage

The reaches proposed for piping are of overall low ecological value, although do contain native shortfin eels (*Anguilla australis*). WC1 has a stormwater pond (pond 2) containing eels upstream of the existing pipe network, and a short reach further upstream of more piping. WC2 has no habitat upstream of the reach proposed for piping.

Fish surveying and fish passage investigations carried out by the applicant indicate that pond 2 contains a reasonable number of shortfin eels of varying sizes. The smallest was 300 mm long, which corresponds with an age of 10-15 years. Unless the pipe infrastructure on WC1 is less than 10-15 years old (i.e. the eels could have been in pond 2 before the downstream pipe network was constructed), then presumably the eels in pond 2 were able to access the pond via the downstream pipe network⁴. This would mean that the pipe network currently **impedes the upstream passage of shortfin eels** and likely **blocks the upstream passage of other native fishes** that are present in nearby streams⁵.

The investigation results also indicate that, regardless of the age of the pipe infrastructure (i.e. regardless of how the eels ended up in pond 2) it is unlikely that they will be able to access the downstream pipe network through the scruffy dome, or successfully negotiate the downstream pipe network if they did make it through the scruffy dome. This would mean that the pipe network currently **blocks downstream passage of the shortfin eels** that are trapped in pond 2.

To summarise, the results of the investigation indicate that, (if the infrastructure is older than 10-15 years) in some conditions (e.g. high tides), upstream-migrating eels can access the downstream pipe outlet on WC1, move upstream through the pipe network, and access pond 2. It seems unlikely that they can successfully do this in the other direction, meaning that they are trapped in pond 2 and unable to migrate downstream to complete their life cycle.

³ Dunn, Nicholas & Closs, Gerard & Crow, Shannan & David, Bruno & Goodman, Jane & Griffiths, Marc & Hicks, Andrew & Hickford, Mike & Jack, Daniel & Kitson, Jane & Ling, Nicholas & Waters, Jon & Wylie, Matthew & Hitchmough, Rod & Makan, Troy. (2025). Conservation status of New Zealand freshwater fishes, 2023.

⁴ The only other explanation I can think of to explain the presence of eels in pond 2 is if they were already there when the pipe infrastructure was built.

⁵ Pending eDNA survey results from the applicant's sampling in pond 2

Given the above, I consider it important that:

- (If the pipe network is **less** than 10-15 years old) the fish trapped in pond 2 are rescued and suitably relocated, OR
- (If the pipe network is **more** than 10-15 years old) the eels trapped in pond 2 are rescued and suitably relocated, AND

The downstream outlet of the new piping on WC1 is designed and installed in a way that will block (not just impede) upstream passage of all fish species, to prevent them from also becoming trapped in pond 2.

Much discussion has been had with the applicant regarding how to define fish passage-related activities under FTAA legislation. To summarise, DOC considers that 1) the piping used in the reclamations of WC1 and WC2 are structures that will permanently divert the stream reaches⁶, and 2) in order to protect further native fish being trapped upstream by the pipe infrastructure, the outlet of the new piping on WC1 should be designed to permanently block fish passage. A fish facility can enable or prevent fish passage, and I suggest that an appropriate fish facility in this case could be establishing and maintaining a perch and vertical drop sufficient that the downstream water level will remain lower than the outlet invert in all possible environmental conditions. Aside from technical definitions, I consider that the effect of these activities on fish passage in WC1 and WC2 is minor due to the very limited upstream habitat. However, I consider (if the pipe infrastructure is more than 15 years old i.e. the eels in pond 2 must have arrived there via the pipe network) that *not* blocking fish passage into the WC1 pipe network has a level of effect that warrants avoidance as far as is practicable, given that—if it only impeded fish passage—the pipe infrastructure could otherwise continue trapping native fish for the foreseeable future.

5. Comments on effects management

I consider that effects management measures proposed for potentially affected wetlands are adequate. Works locations will avoid loss and degradation of wetlands, and potential hydrological effects on wetlands will be avoided by measures that ensure stormwater will continue to supply potentially affected wetlands.

⁶ FTAA 2024 Part 4(1): “**complex freshwater fisheries activity** means an activity that includes construction of any of the following: (b) a permanent dam or diversion structure”

FTAA 2024 Part 4(1): “**diversion structure** has the meaning given in regulation 2(1) of the Freshwater Fisheries Regulations 1983”

FFR 1983 Regulation 2(1): “**diversion structure** means any structure designed to **divert or abstract** natural water from its natural **channel or bed** whether permanent or temporary”

My concerns relating to the proposed effects management measures for affected streams remain unaddressed. Specifically, the proposed culvert remediation works on WC6 with respect to 1) additionality and 2) biosecurity risk.

Page 30 of the Appendix 3B version of the AEE describes the applicant's position that the proposed culvert remediation on WC6 does meet the additionality test—i.e. that the resulting ecological gain associated with culvert remediation would not occur without the proposed compensation package. This is based on their opinion that Section 42 of the Freshwater Fisheries Regulations⁷ 1983 (FFR) does not apply because the culverts were installed prior to 1983, and that consequently the applicant has no existing responsibility or intention to provide fish passage through their culverts. DOC has a different opinion—that the applicant does have an existing responsibility under S42 of the FFR to remediate their culverts⁸. In other words, that the ecological gain associated with culvert remediation *should* occur without the proposed compensation package, and if the applicant was adhering to the regulations, then that ecological gain *would* occur without the proposed compensation package. Therefore, the proposed compensation fails the additionality test and the applicant will need to identify alternative compensation (e.g. offsite stream restoration or research that benefits native fish) for the effects of the loss of stream extent, stream value, and riparian vegetation associated with the piping of WC1 and WC2.

Aside from the question of existing responsibility, I agree with the applicant that culvert remediation work per se would have some benefits for native fish. However, the risks associated with gambusia spreading into the upstream catchment as a result of culvert remediation⁹ have not been considered in the application material. Gambusia spread would have a negative effect on existing biodiversity in WC6 and may also reduce the predicted value of WC6.

⁷ FFR 1983 Regulation 42(2): *"The occupier of any land shall maintain any culvert or ford in any natural river, stream, or water (including the bed of any such natural river, stream, or water in the vicinity of the culvert or ford) in such a way as to allow the free passage of fish"*

⁸ The New Zealand Fish Passage Guidelines (Section 2.1) state: *"However, regulation 42(2) (i.e., the requirement for culverts and fords to be maintained to prevent the development of fish passage barriers) applies to all culverts or fords built before and after 1984."*

⁹ *Gambusia affinis* is an Unwanted Organism under the Biosecurity Act 1993. The NPS-FM Section 3.26 directs councils to ensure that *"The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats."*



Memorandum

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Attention: Loren Brown

Company: Department of Conservation (DOC)

Date: 5 May 2026

From: Jaimee Cannon, Planner and Ian Boothroyd, Ecologist – Boffa Miskell on behalf of Department of Corrections

Message Ref: Pond 2 Fish Survey outcomes and recommendations

Introduction

Recent correspondence with Department of Conservation (DOC) and Department of Corrections (Corrections) and the meeting held on Friday 24 April suggested that eDNA testing, fish survey and inspection of existing stormwater system at Pond 2 is to be undertaken to inform the assessment of the freshwater fisheries application at Auckland Prison. Further correspondence has indicated that DOC's preference is for fish passage to be permanently blocked should it be found that there is fish passage in the existing pipe network and that fish are becoming trapped in Pond 2.¹ This memo summarises the outcomes of those ecological survey works, undertaken on 27-28 April and recommended next steps.

Corrections requests that DOC:

1. *Considers the information and clarification provided in this memorandum;*
2. *Confirms in writing that it agrees with the recommendations (retaining existing pipe and outlet design to impede effective fish passage);*
3. *Confirms in writing that the ecological outcomes of the proposed activity are supported (i.e. Not providing fish passage is considered a better ecological outcome given the existing 490 m pipe and chamber already effectively prevents upstream and downstream fish passage and there is limited suitable upstream habitat)*
4. *Confirms in writing that the proposed pipe extensions are a "standard freshwater fisheries activity" as defined in the Fast Track Approvals Act 2024 (FTAA), for reasons outlined in this memorandum, or otherwise can be sought outside of the FTAA process;*
5. *Provides a clear rationale for its position on the above matters, in a format that can be provided onto the Expert Panel for the Auckland Prison Capacity Increase proposal.*

Methods and findings

Fish Survey

The Pond 2 (1,762 m²) had steep littoral slopes and was estimated to be >2 m deep. The pond margins comprised a maintained lawn, raupō fringes, shrub (including willow and pampas), and floating beds of

¹ Memorandum on Completeness and Scope dated 24 April 2026. [Memo-on-assessment-of-compliance-with-requirements-of-FTAA.pdf](#)

Mercer grass. A combination of capture methods was used to maximise catch efficiency within the stormwater pond. Two fyke nets and ten Gee minnow traps were deployed overnight (**Photo 1**) and cleared the following morning. A backpack electric fishing machine (EFM300) was then used to fish the pond margins. The depth of water in the pond, and the fringing raupo severely limited the setting of additional nets.



Photo 1: Example of placement of fykes and Gee Minnows within Pond 2.

A total of two shortfin eels (*Anguilla australis*) were captured in the fyke nets. No fish were captured in the Gee minnow traps. The shortfin eels were of moderate size (400–550 mm). An additional three unidentified eels were observed during electric fishing, all of moderate size (300–500 mm). No recruitment-sized eels/ elvers were captured or observed throughout the surveys.

To confirm that no At Risk fish species reside within the stormwater pond, a six-replicate eDNA sample was collected with each replicate taken from different locations around the pond margins and including the outlet. (results pending).

Fish Passage

Pond 2 drains via a scruffy dome located at the western end of the pond (Photo 2). The 300-mm diameter outlet pipe within the scruffy dome was not flowing at the time of inspection and appeared to be blocked by debris and accumulated material. As a result, water was overtopping the scruffy dome grates, approximately 0.5 m above the invert of the outlet pipe. There was an estimated 1.5 m vertical drop from the overflowing water surface to the base of the scruffy dome chamber outlet.

Fish passage into the pond via the scruffy dome is considered unlikely due to the vertical drop. However, overhanging vegetation may provide limited refuge or climbing substrate for climbing fish species as long as the chamber walls remain wet (e.g., juvenile eels/ elvers).

The scruffy dome discharges to a culvert pipe approximately 490 m in length. Downstream passage was assessed using a qualitative float-tracking method. Two oranges were sequentially released into the scruffy dome at two-minute intervals, and the culvert outlet was monitored for evidence of passage. The outlet was observed continuously for a 20-minute period following each release; however, no oranges were observed exiting the culvert.

The downstream passage assessment was then repeated using lightweight, buoyant objects (ping-pong balls) to account for potential buoyancy effects. As with the initial test, the culvert outlet was monitored for 20 minutes following release, and no ping-pong balls were observed exiting the structure. These results indicate an absence of effective downstream conveyance through the existing culvert during the assessment period.



Photo 2: *Scruffy dome draining Pond 2.*

Additionally, as per section 3.5.1 of the Engineering Design Report, prepared by Aurecon, dated 26 March 2026 (the 'Engineering Design Report'), the gradient and high velocities of the existing pipe network already substantially exceed the recommended velocities for elver swimming.

In summary, the downstream passage testing and the hydraulic constraints identified within the pipe network indicate that eel passage from Pond 2 is prevented and that resident eels are unlikely to be able to safely or reliably migrate downstream under current conditions. Given the limited availability of suitable upstream habitat and the absence of evidence that provision of upstream access would provide meaningful ecological benefit, maintaining the existing impediment to fish passage is considered appropriate.

Recommendations

Based on the above findings, and a 'best for fish' approach, it is recommended that:

1. The pipe design for watercourse 1 remains as per the current design (mimicking the existing scenario shown in Figure 1) to impede fish passage including:
 - a. Pipe outlet set 150 mm above the headwall concrete apron to mimic existing scenario (and approximately 0.5 metres above water levels).
 - b. Outfall headwall structure containing a concrete apron with shallow flow to impede fish passage
 - c. Water depth and velocities (7 times the documented mean maximum sustained swimming speed of 0.22 m/s for longfin elvers) (hydraulic exclusion)
2. Design changes (e.g. an additional screen at the culvert outlet to block fish passage) are not considered necessary because there is no evidence to suggest that fish are accessing the existing pipe network, and getting trapped in Pond 2.



Figure 1 Existing Watercourse 1 outfall from existing 900mm pipe

3. Not providing fish passage is considered a better ecological outcome given the existing 490 m pipe and chamber already effectively prevents upstream and downstream fish passage and there is limited suitable upstream habitat. Providing for fish passage would risk fish becoming trapped in the pipe network.
4. Eels (and any other native fish) that are present in Pond 2 are salvaged and relocated downstream, if it is deemed beneficial to do so (as per section 3.2.2 of the existing Native Fish Capture and Relocation Plan²). If DOC has a clear preference to leave existing eels and fish in the pond, then they can remain in the pond.

Standard vs Complex Freshwater Fisheries Activity

The Fast Track Approvals Act 2024 (FTAA) defines 'standard freshwater fisheries activity' and 'complex freshwater fisheries activity' differently, as follows:

complex freshwater fisheries activity means an activity that includes construction of any of the following:

- (a) a culvert or ford that permanently blocks fish passage:
- (b) a permanent dam or diversion structure:
- (c) works—
 - (i) that require disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that persists for more than 3 months; or
 - (ii) that require disturbance of any duration during the whitebaiting season to a water body within 500 m of the coast; or
 - (iii) that require disturbance of any duration during the relevant spawning season to a water body that is known for the spawning of trout, salmon, or native fish; or
 - (iv) that require repeated disturbance to a water body and are temporary works for which there is a period of 6 months or less between each period of work

Standard freshwater fisheries activity means an activity that includes construction of any of the following:

- (a) a culvert or ford that could impede but not permanently block fish passage:
- (b) weirs that comply with the conditions of [regulation 72](#) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020:
- (c) works—
 - (i) that require active disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that does not persist for more than 3 months; or
 - (ii) that require disturbance of any duration outside the whitebaiting season to a water body within 500 m of the coast; or

² Submitted with the FTAA application.

- (iii) that require disturbance of any duration outside the relevant spawning season to a water body that is known for the spawning of trout, salmon, or native fish; or*
- (iv) that require repeated disturbance to a water body and are temporary works for which there is a period of more than 6 months between each period of work*

DOC considers that reclamation constitutes disturbance of a waterbody for more than 3 months, and piping a watercourse is a 'diversion' and the proposed pipe extensions are therefore a 'complex freshwater fisheries activity'. An outline of the different interpretations between DOC and Corrections based on ongoing correspondence, is provided in **Table 1, Attachment 1** to this memorandum.

In summary, Corrections applicant team disagrees with this interpretation because:

- the Freshwater Fisheries Regulations defines 'diversion structure' as *any structure designed to divert or abstract natural water from its natural channel or bed whether permanent or temporary*
- the proposed pipe extensions will be placed in the stream bed and do not abstract or 'divert' the watercourses (i.e. do not change the direction or quantity of flow).
- DOC's interpretation would mean every permanent culvert / pipe would need a complex fisheries approval because it represents 'diversion', even if it provides fish passage which does not appear to be the intent. This interpretation also contradicts Regulation 42 of the Freshwater Fisheries Regulations 1983 which only requires approval where fish passage is not freely provided for.

Corrections has considered the interpretation put forward by DOC. Corrections maintain its position that the proposed pipe extensions and perched culvert outlets are a standard freshwater fisheries activity for reasons set out in Attachment 1 and in Volume 3 of the substantive application³ (at paragraphs 11 and 140). We also note that the scope of the application is limited to the proposed new pipe extensions rather than the existing stormwater pipe network which already prevents fish passage to and from Pond 2. Corrections interpretation is consistent with the findings of the Expert Panel in the Maitahi Decision⁴ (at paragraphs 658 to 661).

In addition, we note that clause 19(3) of Schedule 5 of the FTAA is clear that regulation 42 (among others) of the Freshwater Fisheries Regulations 1983 does not apply to Corrections, should it hold a resource consent issued under the FTAA that covers that standard freshwater fisheries activity, and Corrections complies with the relevant conditions imposed on that activity under clause 19. As part of the Fast Track application, Corrections has applied for a resource consent to pipe two watercourses and prevent fish passage at the culvert outlets. Accordingly, the application includes the freshwater fisheries activity. Should that consent and standard freshwater fisheries activity be approved by the Panel under the FTAA, no separate approval will be required from DoC under the Freshwater Fisheries Regulations. Clause 19(3) of the FTAA overrides the Freshwater Fisheries Regulations 1983.

If the Expert Panel does not approve the resource consent (and associated standard freshwater fisheries activity) and confirms that a complex freshwater fisheries activity is indeed necessary, Corrections can apply for a freshwater fisheries dispensation under Clause 42 of the Freshwater Fisheries Regulations 1983 for the pipe extensions and outlets (which prevent effective fish passage), separate to the Fast Track Application.

³ [Auckland Prison Capacity Increase](#)

⁴ [FTAA-2502-1009 Amended Decision Report and Conditions of Consent 18 September 2025](#)

Attachment 1 Freshwater Fisheries Interpretation Summary Table

Table 1 Summary of DOC and Corrections interpretation differences for Standard vs Complex Freshwater Fisheries Activity under the FTAA 2024

Defined term	Department of DOC interpretation	Department of Corrections interpretation
Complex freshwater fisheries activity		
Complex freshwater fisheries activity means an activity that includes construction of any of the following:		
(a) a culvert or ford that permanently blocks fish passage:	The perched culvert outlet design and the existing and proposed pipe network permanently blocks fish passage. DOC's preference is for fish passage to be permanently blocked should it be found that there is fish passage in the existing pipe network and that fish are becoming trapped in Pond 2	The scope of the application is limited to the proposed new pipe extensions (124 and 114 metres of new pipe and proposed outlets at Watercourses 1 and 2 respectively). It does not apply to the existing stormwater pipe network which already prevents effective downstream fish passage to and from Pond 2 by scruffy dome chamber outlet, hydraulic exclusion and existing downstream perched culvert outlet to Watercourse 1. Fish passage is impeded by the proposed pipe and outlet design which at Watercourse 1 is a perched pipe outlet set 150 mm above the headwall concrete apron to mimic existing scenario (and pipe is approximately 0.5 metres perched above water levels). This design proposes to permanently impede fish passage (rather than 'permanently block' fish passage). Fish passage is not permanently blocked by the new perched outlets, because the culvert is slightly perched (at 0.5m above water level), meaning fish could potentially access the pipe at times of high flows (although the evidence in this memorandum suggests that this is not currently occurring i.e. fish are not accessing the existing network and becoming trapped in pond 2). For reasons outlined in this memorandum, there is no evidence to suggest that the pipe outlet design needs to be amended to permanently block fish passage.
(b) a permanent dam or diversion structure:	Piping a watercourse is a 'diversion' and the proposed pipe extensions are therefore considered a 'permanent diversion structure'.	Piping a watercourse in the same alignment as the existing stream channel is not a 'diversion' because: The Freshwater Fisheries Regulations 1983 defines 'diversion structure' as:

		<i>any structure designed to divert or abstract natural water from its natural channel or bed whether permanent or temporary</i> - the proposed pipe extensions will be placed in the stream bed and do not abstract or 'divert' the watercourses (i.e. do not change the direction or quantity of flow). - DOC's interpretation would mean every permanent culvert / pipe would need a complex fisheries approval because it represents 'diversion', even if it provides fish passage which does not appear to be the intent. This interpretation also contradicts Regulation 42 of the Freshwater Fisheries Regulations 1983 which only requires approval where fish passage is not freely provided for.
(c) works— <i>(i) that require disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that persists for more than 3 months; or</i> <i>(ii) that require disturbance of any duration during the whitebaiting season to a water body within 500 m of the coast; or</i> <i>(iii) that require disturbance of any duration during the relevant spawning season to a water body that is known for the spawning of trout, salmon, or native fish; or</i>	With reference to (i), reclamation of a watercourse constitutes disturbance of a waterbody for more than 3 months. Clause (c) (ii) to (iv) do not apply to the proposal.	With reference to (i), temporary stream diversion required for the installation of the pipes and are envisaged to last for no more than 3 months (refer to Section 4.4 of Volume 3). Any permanent reclamation of any watercourse cannot reasonably be considered 'disturbance of waterbody that lasts longer than 3 months' because, similarly to the above, DOC's interpretation would mean every permanent reclamation would need a complex fisheries approval because it represents 'distance for more than 3 months'. The term 'disturbance' is temporal, reinforced by the reference to the temporary activities ('<i>diversions, in-stream operations, and removal of gravel</i>') within the definition, and the corresponding reference in the definition of Standard Freshwater Fisheries activity to '<i>active disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that does not persist for more than 3 months</i>' Clause (c) (ii) to (iv) do not apply to the proposal.

<i>(iv) that require repeated disturbance to a water body and are temporary works for which there is a period of 6 months or less between each period of work</i>		
<i>Standard freshwater fisheries activity</i>		
<i>Standard freshwater fisheries activity means an activity that includes construction of any of the following:</i>		
<i>(a) a culvert or ford that could impede but not permanently block fish passage:</i>	The culvert permanently blocks fish passage.	Fish passage is impeded by the proposed pipe and outlet design which at Watercourse 1 is a perched pipe outlet set 150 mm above the headwall concrete apron to mimic existing scenario (and pipe is approximately 0.5 metres perched above water levels). This design proposes to permanently impede fish passage (rather than 'permanently block' fish passage). In addition, the predicted average velocities of water in the pipe extensions are greater than swimming speeds of longfin eel.
<i>(b) weirs that comply with the conditions of regulation 72 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020:</i>	The proposal does not involve any weirs.	The proposal does not involve any weirs.
<i>(c) works—</i> <i>(i) that require active disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that does not persist for more than 3 months; or</i> <i>(ii) that require disturbance of any duration outside the whitebaiting season to a</i>	No specific comments provided by DOC.	Clause (c)(i): The proposed works involve temporary stream diversion during construction, as well as groundwater dewatering and instream operations to lay the pipe and are anticipated to last 2-3 months (will not persist for more than 3 months). Clause (c)(ii): The Watercourses are within 500m of the coast and there are no whitebait present within the Watercourses and works will be undertaken outside whitebaiting season as per proposed consent condition LUS10 (see Volume 6 of the Substantive Application). Clause (c)(iii): The area is not known to be used for trout, salmon or native fish spawning;

<i>water body within 500 m of the coast; or (iii) that require disturbance of any duration outside the relevant spawning season to a water body that is known for the spawning of trout, salmon, or native fish; or (iv) that require repeated disturbance to a water body and are temporary works for which there is a period of more than 6 months between each period of work</i>		Clause (c)(iv): The proposed works are not repeated works, they will occur over approximately a 2-3 month period in accordance with the construction methodology set out above to minimise disturbance.
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