

Before the Expert Panel

FTAA-2026-1179

Under the Fast-track Approvals Act 2024

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

**Memorandum on behalf of the Department of Corrections providing
further information as to freshwater fisheries activities and Cultural
Values Assessment**

Date: 15 June 2026



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Introduction

- 1 The purpose of this memorandum is to provide further information to the Expert Panel that supplements the information and assessment already submitted with the application. This information has become available since the application was filed. It is provided ahead of the scheduled site visit and project briefing (occurring on 25 June 2026).

Freshwater Fisheries

- 2 There are differing positions between the Department of Corrections (**Corrections**) and the Department of Conservation (**DoC**) as to freshwater fisheries activity classification. This was raised in the DoC memorandum filed prior to the Convenor's conference.
- 3 Attached to this memorandum as **Appendix 1** is a freshwater fisheries memorandum prepared by Boffa Miskell. It provides an explanation as to the differences between Corrections' position and the DoC's position on freshwater fisheries matters. The memorandum also includes the details of ecological survey works undertaken after the application was lodged with the EPA.
FTAA, section 4.
- 4 Corrections maintains that the activity it is proposing is a "standard" freshwater fisheries activity able to be approved by the Panel as part of its decision on the Watercourse Works resource consents (as opposed to a "complex" activity requiring a separate application).
FTAA, Schedule 2, clause 9 and clause 19.
FTAA, Schedule 9.

Cultural Values Assessment

- 5 As set out in in the Māori Consultation and Cultural Values Assessment submitted with the substantive
Substantive application, volume 1,

application, at the time of lodgement the Te Rūnanga o Ngāti Whātua Cultural Values Assessment report had yet to be finalised. Corrections is continuing to work with Te Rūnanga o Ngāti Whātua regarding the matters raised in the draft Cultural Values Assessment and possible designation conditions to address those matters. The updated information including a copy of the final CVA and any amendments to designation conditions will be supplied to the Expert Panel when available.

Conclusion

- 6 Any matters arising can be addressed with the Expert Panel at the project briefing and site visit on 25 June 2026.

Date: 15 June 2026



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S F Quinn / E L Manohar
Counsel for the Department of Corrections

Appendix 1 – Boffa Miskell Freshwater Fisheries Memorandum



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
<i>Complex freshwater fisheries activity</i>		
<i>Complex freshwater fisheries activity means an activity that includes construction of any of the following:</i>		
<i>(a) a culvert or ford that permanently blocks fish passage:</i>	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.
<i>(b) a permanent dam or diversion structure:</i>	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) 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	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) 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</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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