

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

**Fourth Memorandum of Counsel on behalf of the Department of
Corrections – response to questions asked at the project briefing**

Date: 8 July 2026



Solicitor on the record
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Introduction

- 1 This memorandum is filed on behalf of the Department of Corrections (**Corrections**). It provides a response to questions asked by the Expert Panel at the project briefing on 25 June 2026. Specifically, this memorandum provides a response to the following questions:
 - 1.1 is there a consented stormwater discharge from the Prison Village?
 - 1.2 would the Expert Panel be falling into error if it was to place weight or reliance on the Alternatives Assessment provided with the application under the Fast-track Approvals Act 2024 (**FTAA**)?
 - 1.3 is there any risk to the Expert Panel's decision making given the previous government commitments on not increasing capacity at Auckland Prison?
 - 1.4 what are the obligations for certification of the Construction Traffic Management Plan under the new legislation?
 - 1.5 are any of the conditions proposed by Corrections "Augier" conditions, and what does that mean for the Expert Panel should it wish to amend those?
- 2 In addition, the Expert Panel sought a map showing the topography/contours overlaid over the proposed Landscape Mitigation and Ecology Enhancement Plan (**LMEEP**). The map has been provided as **Appendix 1** to this memorandum.
- 3 The Expert Panel also sought to better understand how the three sub areas on the Maximum Heights

Plan were defined and whether any further mitigation could be provided for the step between those different levels. Corrections is working on a response to those specific matters and will provide that information through a subsequent memorandum.

Stormwater discharges from the Prison Village

- 4 The Prison Village was established in the late 1960s/early 1970s by the Ministry of Justice at the time. The stormwater system for the Prison Village involves catchpits/sumps/manholes which collect stormwater from the roads, connecting to pipes, swales and channels before discharging to the creek to the north of the Prison Village.
- 5 A review of the property file for the Prison Village land and Corrections' historic records has returned no results of existing or historic stormwater discharge consents obtained by the Ministry of Justice at the time of development.
- 6 We note that Auckland Unitary Plan (Chapter E8) permits the diversion and discharge of stormwater runoff from lawfully established impervious areas that existed at 30 September 2013. Based on the findings from the search of historical records it is submitted that it is a reasonable assumption that the stormwater network and impervious areas were lawfully established, as a permitted activity, at the time of development.

Provided that the impervious area is lawfully established (E8.6.2.1(1)).
- 7 Corrections has requested additional information from Auckland Council on any additional historical records which may be available (eg hard copies), although understandably given the timeframes this information has not yet been made available. If

additional relevant information is supplied by Auckland Council on these matters, it will be made available to the Expert Panel.

- 8 Notwithstanding the above, it is submitted that the proposal to remove the spatial extent of the existing designation from the Prison Village land as part of the designation alteration, is separate to regional consenting matters pursuant to sections 9(2), 14 and 15 of the Resource Management Act 1991 (**RMA**).

Alternatives Assessment

- 9 As set out in the legal submissions accompanying the substantive application, clause 12(1)(h), Schedule 5, of the FTAA required Corrections to provide information as to any consideration of alternative sites, routes, or methods of undertaking the project or work. As Corrections had undertaken an alternatives assessment, it was provided as part of the substantive application, as it was legally required to do under the FTAA.
- 10 Alternatives assessments have historically been part of the decision-making considerations on a notice of requirement. Following legislative change in August 2025, section 171(1) of the RMA no longer contains a decision-making requirement to consider the adequacy of the alternatives assessment for this project.
- 11 Accordingly, the Expert Panel is not required under clause 24(1)(a)(ii) of Schedule 5 of the FTAA to take into account the adequacy of the alternatives assessment as part of its decision on the
- Substantive application, Volume 2, Appendix 2C.
- The alternatives assessment work had commenced prior to this change.

substantive application or make any finding on the assessment of alternatives.

- 12 However, the Expert Panel is required under section 81(2)(a) of the FTAA to consider the alternatives assessment, as it was provided as part of the substantive application. The material within the alternatives assessment could also more generally be considered under section 171(d) of the RMA, and clause 24(1)(a)(ii) of Schedule 5 of the FTAA.
- 13 It is submitted that the information contained in the alternatives assessment is relevant to the Expert Panel's decision making. It contains information relevant to matters such as the benefits of the project and provides further demonstration of the robustness of the assessment undertaken by Corrections for this project.
- 14 It is submitted that the Expert Panel would not fall into error by considering or placing weight or reliance on the alternatives assessment on the basis set out above.

Previous decision making

- 15 As recorded in the Consultation Summary Booklet, through the pre-lodgement consultation process concerns were raised by some members of the local community who recall that previous Government Ministers committed to not increasing capacity at Auckland Prison.
- 16 As recorded in response, Corrections' position is that statements made by past governments reflect the operational needs, knowledge and intentions of the government of the day, and the then

Appendix 3 to the Consultation Report (Substantive Application, Volume 1, Appendix 1G).

Department of Justice. Historic statements do not bind the policy of future governments. They do not provide an enduring constraint on all future proposals and do not prevent Corrections from applying for an alteration to the designation to increase capacity at Auckland Prison.

- 17 The current government makes decisions based on current and future demand, including key documents such as the Long-term Network Configuration Plan, endorsed by Cabinet in 2024. The prison population is increasing. This needs a response to meet this demand and to ensure the safety of communities.
- 18 The availability of sufficient 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.
- 19 Corrections considers that the previous statements do not constrain or impose a jurisdiction limit on the Expert Panel in making its decision.

Construction Traffic Management Plan

- 20 Under the Auckland Transport reforms enacted through the Local Government (Auckland Council) (Transport Governance) Amendment Act 2026, it is understood that the relevant road controlling authority will be Auckland Council, not Auckland Transport from November 2026.

- 21 Corrections considers that it is appropriate that the proposed designation condition (DES33) continues to refer to "Auckland Council" with respect to certification of the Construction Traffic Management Plan (**CTMP**), as is proposed.

Conditions

- 22 Section 83 of the FTAA provides that the Expert Panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of the FTAA that confers the discretion. Section 84A of the FTAA then provides that the Expert Panel may set conditions to ensure that the infrastructure in the project area or other infrastructure the project will rely on is, or can be made, adequate to support the project or stage of the project.
- 23 In respect of the designation, clause 25 of Schedule 5 to the FTAA states that, when setting conditions on the designation, the provisions of Part 8 of the RMA relevant to setting conditions apply to the Expert Panel. Relevantly, section 171(2)(c) of the RMA provides the ability to impose conditions on a notice of requirement.
- 24 Case law has confirmed that the *Newbury* principles, as clarified by the Supreme Court in *Estate Homes*, apply to designation conditions.
- 25 In respect of the Watercourse Works Consents, clause 18 of Schedule 5 of the FTAA provides that when setting conditions, the provisions of Parts 6, 9 and 10 of the RMA are relevant to setting conditions by the Expert Panel. Relevantly, section 108 of the RMA provides that resource consents may be granted subject to any condition that the

Handley v South Taranaki District Council [2018] NZEnvC 97, at [40].

Parts 9 and 10 of the RMA are not relevant to the project.

consent authority considers appropriate. This discretion is then limited by section 108AA of the RMA to conditions where the applicant agrees, or to conditions where there is a direct connection to one of the listed matters (which include an adverse effect on the environment) or administrative matters.

- 26 Corrections considers that some of the conditions proposed by it on the designation are *Augier* conditions, as opposed to conditions that could be imposed by the Expert Panel under section 83 or 84A of the FTAA without Corrections' agreement. Conditions in that category will be identified in a revised condition set to be filed following receipt of written comments on the project.
- 27 Should the Expert Panel have any specific concerns with any of the conditions proposed, Corrections is willing to engage with the Expert Panel on specific conditions.

Conclusion

- 28 Corrections is happy to provide further material or explanation as required on these matters, or any other questions the Expert Panel has.

Date: 8 July 2026



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

**Appendix 1: Landscape Mitigation and Ecology Enhancement Plan with
topography/contours overlayed**

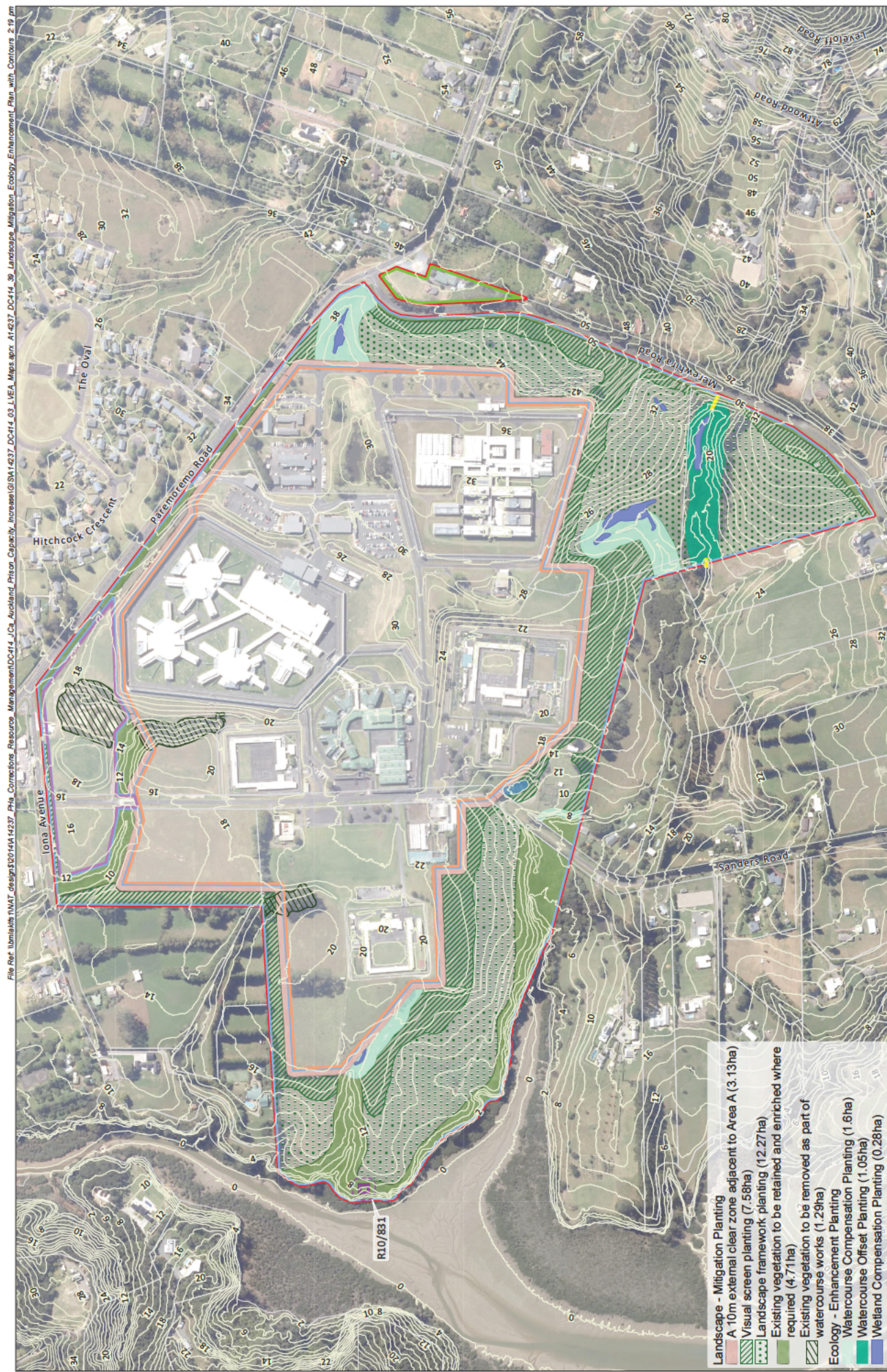


Figure C

AUCKLAND PRISON CAPACITY INCREASE Landscape Mitigation and Ecology Enhancement Plan (LMEEP)

Date: 30 June 2026 | Revision: D

Prepared by Boffa Miskell Limited

Drawn: S.Ga | Checked: J.Ga

Project Manager

LEGEND

- Amended Designation 3900 Boundary
- Proposed improvements to existing culverts
- Archaeological Feature
- Archaeological Feature (10m buffer)
- Contours (2m interval)
- Area A
- Area B
- Area C
- Area D
- Land Parcels

0 100 200 m
1:5,000 @ A3

Data Source: NIWA (Aerials 2014), Auckland Council (Contours), LINZ (Cadastre, Roads), NZAA Sites, BNL

Selection: NZGD 2020 New Zealand Transverse Mercator

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