

Submission on Publicly Notified Notice of Requirement
Minister of Corrections – Waikeria Prison Expansion Project
Section 96 of the Resource Management Act 1991

To (hard copy or post):

Otorohanga District Council

c/- Rice Resources Limited, PO Box 431, Waikato Mail Centre. Hamilton 3240 Attn: Steve Rice

Or email this submission to Council at: info@riceres.co.nz

Or fax this submission to Council at: (07) 846 5269



Submissions close at 5pm on 25 May 2017

Name of submitter: Duncan Allan

Select one:

I ~~am~~ am not a trade competitor for the purposes of section 308B of the Resource Management Act 1991.

Select one:

I ~~am~~am not direct affected by an effect of the subject matter of the submission that-

- (a) Adversely affects the environment; and
- (b) Does not relate to trade competition or the effects of trade competition.

My submission is:

Support parts or all of **Oppose** parts or all of **are neutral** parts or all of

Include –

③ **Reasons for my submission are:**

Please see attached document for submissions

I seek the following recommendation from the Council on the Notice of Requirement: *(give precise details, including the parts of the application you wish to have amended and the general nature of any conditions sought)*

I seek that the Territorial Authority recommend to the Applicant that the notice be withdrawn. Alternatively I seek that the Territorial Authority recommend conditions be imposed that provide for significant increases in rehabilitation and reintegration programmes, training programmes, access to healthcare, access to whanau, and other improvements that ensure the adverse effects of imprisonment on all Māori prisoners are adequately avoided, remedied, or mitigated.
The reasons for this recommendation are set out in my submissions attached.

Have you attached additional pages? YES NO (circle correct response)
If Yes (above) how many pages 21

Hearing:

- I do wish to be heard in support of my submission
(this means that you will speak at the hearing)
- If others make a similar submission I will consider presenting a joint case with them at the hearing.
- I do not wish to be heard in support of my submission
(this means that you will not be advised of the date of the hearing and will not speak at the hearing)

You must tick one of the boxes above, otherwise it will be deemed that you do not wish to be heard and we will **not** advise you of the date of the hearing.

- I have served a copy of my submission on the applicant.
(this is required by section 96(6) (b) of the Resource Management Act 1991)

Signature:

Signature of submitter: _____  _____ Date 25/05/17
(or the person authorised to sign)

Notes to submitter:

- You must serve a copy of your submission on the Minister of Corrections as soon as reasonably practicable after you have served your submission on the consent authority. The address for service is Boffa Miskell Ltd, P O Box 91250, Auckland 1142 – Attention: Sharon Dines (Email: Sharon.dines@boffamiskell.co.nz)
- If you make your submission by electronic means, a signature is not required.
- For more information on making a submission please refer to the website: www.mfe.govt.nz
- Note that your submission is public information and will be subject to release under the Local Government Official Information and Meetings Act 1987.

The above information you have provided on this form is required so that your submission can be processed under the Resource Management Act 1991. The information will be stored on a public register and held by the Councils, and may also be made available to the public on the Council's website. In addition, any on-going communications between you and the Councils will be held at Council's offices and may also be accessed upon request by a third party. Access to this information is administered in accordance with the Local Government Official Information and Meetings Act 1987 and the Privacy Act 1993. If you have any concerns about this, please discuss with a Council Planner prior to lodging your submission. If you would like to request access to, or correction of your details, please contact the relevant Council.

Please ensure following submitter details are completed.

Submitter details required for administrative purposes *(this page must be completed):*

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25 May 2017

Otorohanga District Council

C/- Rice Resources Limited

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Submitted by email

**Submission on Publicly Notified Notice of Requirement
Minister of Corrections – Waikeria Prison Expansion Project**

1. My name is Duncan Allan. I have been active in the criminal justice sector for the past 6 years and have an interest in prison reform including:
 - (a) Previously running the Restorative Justice Services Wellington Trust for two and a half years (now merged with Community Law Wellington and Hutt Valley).
 - (b) Previously employed by Community Law Wellington and Hutt Valley on a fixed-term contract to write “Lag Law”, a legal guide for prisoners.
 - (c) Previously assisting Te Runanganui o Taranaki Whanui to set up and run an Iwi Justice Panel for first offenders given pre-charge warnings.
2. I oppose all of the Application.

Summary of position

3. The purpose of the Resource Management Act 1991 (RMA) is the sustainable management of natural and physical resources. The use and development of these resources must be done in a way that enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety, while avoiding, remedying, or mitigating any adverse effects of activities on the environment.¹
4. The definition of environment includes ecosystems and their constituent parts, including people and communities, as well as the social, economic, aesthetic, and cultural conditions which affect people and communities.²

¹ Section 5.

² Section 2.

5. Māori prisoners and their whanau are disproportionately affected by imprisonment.
6. Māori prisoners and their whanau are a part of the environment under the RMA definition. This is supported by a holistic Māori worldview and by ss 6-8 of the RMA, which provide for the relationship of Māori and their culture and traditions and other taonga,³ kaitiakitanga,⁴ and the principles of the Treaty of Waitangi.⁵
7. The Department of Corrections (Corrections) has failed to give adequate consideration under s 171(1)(b) of the RMA by failing to consult with prisoners and their whanau and by not giving adequate weighting to the effects on prisoners and their whanau.
8. The designation is not reasonably necessary under s 171(1)(c) for achieving objectives 4, 6 and 7 of Corrections specific objectives for the Waikeria Prison expansion.
9. Considerations under s 171(1) are subject to Part 2 of the RMA. Overall, a notice of requirement must meet the purpose of promoting the sustainable management of natural and physical resources.⁶ A prison constructed under a 'business as usual' approach cannot meet the sustainable management requirements under Part 2 of the RMA, due to the adverse effects on Māori prisoners and their whanau.
10. I oppose the Application and seek that the Territorial Authority recommend to the requiring authority that the Application be:
 - (a) Withdrawn; or
 - (b) If the Territorial Authority is not prepared to recommend withdrawal, recommend conditions be imposed that provide for significant increases in rehabilitation and reintegration programmes, training programmes, access to healthcare, access to whanau, and other improvements that ensure the adverse effects on all Māori prisoners are sufficiently mitigated.

³ Section 6.

⁴ Section 7.

⁵ Section 8.

⁶ *Final Report and Decision of the Board of Inquiry into the Proposed Men's Correctional Facility at Wiri* EPA 0056, September 2011, at [19].

Māori as a part of the environment

11. The definition of environment in the RMA⁷ includes “ecosystems and their constituent parts, including people and communities” and “the social, economic, aesthetic, and cultural conditions which affect” people and communities.
12. Section 5 of the Interpretation Act 1999 provides that the meaning of an enactment must be ascertained from its text and in light of its purpose.
13. The text of s 2 of the RMA clearly states that people are part of the definition of environment, but isn’t particularly helpful in defining to what degree the effect on people should be taken into account as a part of the environment.
14. The purpose of the RMA is to promote the sustainable management of natural and physical resources.⁸ While natural and physical resources do not specifically include people, the issue is whether those natural and physical resources can be managed in a way that avoids, remedy’s or mitigate’s adverse effects on the *environment*.
15. This implies that the use and development of resources must enable people and communities to provide for their social, economic and cultural wellbeing, *while also* avoiding, remedying, or mitigating adverse effects on people and communities.
16. In *Zdrahal v Wellington City Council*,⁹ the High Court held that people must be taken into account when assessing adverse effects on the environment. The Court stated:¹⁰

The environment in this sense is more than the physical surroundings, the objects and substances which are in the vicinity. With its emphasis on people and communities, which must be the people in the communities, the resource management legislation intends that the environment includes the people, and must give them in this particular context predominant significance. Environment, in its definition in the Act, includes people and the social, economic, aesthetic and cultural conditions which affect people.

⁷ Section 2.

⁸ Section 5.

⁹ *Zdrahal v Wellington City Council* [1994] HC, 2 HRNZ 196.

¹⁰ At 206.

17. *Zdrahal* was dealing with a section 17 application and gave a wide definition of when section 17 might apply.¹¹ While further case law has narrowed the application of section 17 to matters contained in Part 2 of the RMA, the definition of environment is not affected by that narrowing and remains unchallenged.
18. *Cook Island Community Centre v Hastings District Council*¹² concerned an application to establish a funeral home close to a Cook Islands community centre and the effect it would have on the deeply held beliefs of the Cook Island community regarding reverence for the dead. The Planning Tribunal discussed the definition of ‘effect’ and ‘people and communities’. Regarding the ‘effect’, the Tribunal held:¹³

We have no difficulty in holding that there is an effect within the meaning of the Act. It is not an effect caused by hypersensitivity on the part of the Cook Islands community but is one which can be readily understood in relation to any culture which holds reverence for the dead.

19. The Tribunal then stated that there was clearly an effect on the ‘environment’:¹⁴

We find however that the word “*ecosystem*” which is inclusive of peoples and communities by definition is intended to encompass activities such as those carried on by the Cook Island communities. The definition of environment then goes on in subs.(d) to include within the broader eco-system definition the social, economic, aesthetic and cultural conditions ...

... We thus hold that the effect of the funeral parlour upon the activities of the Cook Island community is an effect upon an environment as contemplated by the provisions of the Act.

20. The Māori worldview is consistent with the idea that people are a part of, and not separate from, the environment. When looking at the Act through a Māori viewpoint, there is nothing in the light of the text and purpose of the Act that goes against the notion that a new prison (the physical resource) must be built in a way that avoids, remedy’s or mitigates the adverse effect on prisoners.
21. The notion of seeing people as distinct from the environment is a predominantly Pākehā, or ‘western’ view. People can have positive and negative effects on the environment, but are not a part of the environment themselves.

¹¹ At 205.

¹² *Cook Islands Community Centre Inc v Hastings District Council* [1994] NZPT 19/94.

¹³ At 5.

¹⁴ At 6.

22. For Māori, however, Papatuanuku (Earth mother) is a living organism which links the physical world through a symbiotic relationship. All life is interwoven and each species contributes to the welfare of each other, in turn sustaining Papatuanuku.¹⁵ People have a kaitiaki role with their environment, but this is more than just being 'caretakers'. Instead, Māori identify as part of the environment itself.¹⁶ Carwyn Jones explains the implications of this worldview:¹⁷

Within such a framework it is the basic balance in the spiritual, emotional, physical or social well-being of the individual or whanau that needs to be maintained, with reference to fundamental values such as whanaungatanga, mana, utu, tapu and noa. Tikanga directs that the way to maintain this balance is through acknowledging the links between all forces and all conduct in a community.

23. Under a Māori worldview, people clearly form part of the environment as defined in the RMA. The Act and subsequent case law, recognise that a Māori worldview can be taken into account. The importance of acknowledging a Māori worldview is directly addressed under sections 6 to 8 of the RMA. It has been noted by the Courts that "these are strong directions, to be borne in mind at every stage of the planning process."¹⁸
24. Under section 6(e) the use, development, and protection of natural and physical resources must recognise and provide for "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga." 'Other taonga' has been held to include matters that have spiritual or intrinsic value beyond their physical properties.¹⁹
25. Under section 7, particular regard must be given to kaitiakitanga, which is defined as "the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship". Kaitiakitanga is far broader than mere stewardship. It is an obligation carried out according to tikanga, which itself arises out of the accumulated knowledge of

¹⁵ Nin Thomas "Māori Concepts of Rangatiratanga, Kaitiakitanga, the Environment, and Property Rights" in D Grinlinton and P Taylor (eds.) *Property rights and sustainability: the evolution of property rights to meet ecological challenges* (Martinus Nijhoff Publishers, Boston, 2011) at 224.

¹⁶ Carwyn Jones "Tino rangatiratanga and sustainable development: principles for developing a just and effective system of environmental law in Aotearoa" 6 VUWLRP 7/2016 at 62.

¹⁷ At 62.

¹⁸ *McGuire v Hastings District Council* [2001] PC 43/2000 at [21].

¹⁹ *Beadle v Minister of Corrections* NZEnvC A074/2002, 8 April 2002, at [665].

generations of Māori.²⁰ The background of tikanga includes the religious beliefs of Māori as well as their world view and includes the history of the people and knowledge of the environment.²¹ The concepts of whanaungatanga, manaakitanga, mana, tapu and noa are all components of the values associated with tikanga.

26. In *Tautari v Northland Regional Council*²² evidence described ‘kaitiakitanga’ as “to care for something of great value and substance for the survival of the tribe.”²³ In defining kaitiakitanga, Jones notes that:²⁴

Kaitiakitanga is not simply about identifying ourselves as having close connections with the natural environment, but identifying as part of the natural environment. Decisions about environmental matters are therefore decisions about the entire community. Consequences of environmental decisions are consequences that directly affect the community (the people and all other parts of the natural world).

According to Māori, the natural and spiritual worlds are both inherently connected to the world of humankind and to each other. At the very centre of Māori identity is the concept of the relationship to the land and the Earth-mother, Papatuanuku.

27. Section 8 states that the principles of the Treaty of Waitangi shall be taken into account. The Supreme Court held in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*²⁵ that section 8 is a “different type of provision” than sections 6 and 7.²⁶ Treaty principles may have an additional relevance to decision-makers and the wider scope of section 8 reflects the importance of the matters discussed in sections 6(e) and 7(a).²⁷

28. *Bleakley v Environmental Risk Management Authority*²⁸ discussed the Treaty principle of active protection. The Court noted that Waitangi Tribunal reports are not binding on the Court, but are highly persuasive.²⁹ The Court also held that references to ‘taonga’ include intangible cultural and spiritual aspects³⁰ and that in the context of the RMA, to ignore

²⁰ Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (Huia Publishers, Wellington, 2003), at 13.

²¹ At 18.

²² *Tautari v Northland Regional Council* [1996] NZPT A 55/96.

²³ At 18-19

²⁴ Jones, above n 16, at 62.

²⁵ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 167.

²⁶ At [27].

²⁷ At [27].

²⁸ *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213.

²⁹ At [58].

³⁰ At [59].

relationships with intangible taonga would be inconsistent with the Treaty.³¹ It was also accepted that taonga incorporated whakapapa and mauri, that these required active protection and that the most sacred taonga is “man”.³²

29. If the RMA is to be applied in line with its purpose and principles, then it must be recognised that people are part of the environment and the adverse effects on Māori must be taken into account in promoting the sustainable management of natural and physical resources.

Waikeria Prison and the Sustainability Requirements of the RMA

30. The Application is opposed on three grounds:

- (a) Corrections has failed to give adequate consideration under s 171(1)(b) of the RMA by failing to consult with prisoners and their whanau and by not giving adequate weighting to the effects on prisoners and their whanau.
- (b) The designation is not reasonably necessary for achieving objectives 4, 6 and 7 of Corrections specific objectives for the Waikeria Prison expansion.
- (c) Considerations under s 171(1) are subject to Part 2 of the RMA. A prison constructed under a ‘business as usual’ approach cannot meet the sustainable management requirements of the RMA due to the adverse effects on Māori prisoners and their whanau.

(a) Inadequate consideration under s 171(1)(b)

31. At no stage in the assessment process has Corrections consulted with prisoners and their whanau, even though they will be the most adversely affected group from the proposed prison expansion. Māori prisoners in particular, due to their disproportionate imprisonment, suffer greater adverse effects than any other group.
32. The effect of imprisonment on Māori, and the lack of measures to mitigate those effects, is discussed in detail under section (c) (paragraphs 59-96).
33. From the initial stage of the alternative site assessment, Corrections considered the development of a 1,000 prisoner place facility and the

³¹ At [63].

³² At [26], [27], [58], [70], [76],

development of a 1,680 prisoner place facility, but did not consider alternatives to the current model of imprisonment.³³ The current model of imprisonment does not adequately avoid, remedy, or mitigate adverse effects on prisoners.

34. In March 2017 a new assessment was undertaken for the development of a 2,000 prisoner place facility at Waikeria. No alternatives to the current model of imprisonment were undertaken and no prisoner's or their whanau were consulted.³⁴
35. A scale from -2 to +2 was used to assess anticipated effects of the proposed development at each site. The scale is shown in Figure 1 below.

Figure 1³⁵

-2	Major adverse environmental effect
-1	Moderate adverse environmental effect
0	No adverse or positive environmental effect
+1	Moderate positive environmental effect
+2	Major positive environmental effect

36. The initial Social Effects Assessment did not consider the adverse effects of the prison on prisoners and their whanau. Even without that analysis, Waikeria prison had the worst adverse social effects score of three proposed prisons, scoring -1 (moderate adverse environmental effect).³⁶
37. The later detailed Social Effects Assessment did not identify prisoners and their whanau as a potentially effected group.³⁷ No consultation with prisoners and their whanau was undertaken.³⁸
38. Corrections did not undertake any consultation with mana whenua in its initial Cultural Effects Assessment, dues to the project being confidential.³⁹ There was also no consultation with Māori prisoners and their whanau.

³³ Boffa Miskell Limited 2017 *Waikeria Prison Capacity Increase: Notice of Requirement and Assessment of Environmental Effects*. Report prepared by Boffa Miskell Limited for Minister of Corrections, at 5.2.1.

³⁴ At 5.3.

³⁵ Boffa Miskell Limited 2016 *Prison Alternative Site Assessment*. Report prepared by Boffa Miskell Limited for Department of Corrections, at 5.1.2.

³⁶ At 5.4.1.

³⁷ Quigley and Watts Ltd 2017 *Assessment of Social Effects of the Proposed Waikeria Prison Expansion*, Report prepared by Quigley and Watts Ltd for Department of Corrections, at 2.4.

³⁸ At 2.5.

³⁹ At 5.4.2.

Because of the lack of consultation, the anticipated effects were given a neutral score of zero (no adverse or positive environmental effects).⁴⁰

39. The later detailed Cultural Impact Assessment had very little analysis of rehabilitation and reintegration other than two short paragraphs explaining that programmes and training facilities have yet to be developed, that Corrections is committed to providing a range of programmes and will provide physical spaces to meet rehabilitation needs.⁴¹
40. No consultation with Māori prisoners and their whanau was undertaken. The assessment did not identify Māori as taonga⁴² and there was no mention of active protection under the Treaty of Waitangi.⁴³
41. The decision to undertake a prison expansion at Waikeria and, therefore, rule out other alternatives, without consulting with directly affected Māori, is a breach of the principles of the Treaty of Waitangi which require consultation.
42. The weighting system used by Corrections places greater weight on social, cultural, heritage, ecological and landscape effects. See Figure 2 below.

Figure 2.⁴⁴



Social effects	3
Māori cultural effects	3
Ecological effects	3
Landscape and visual effects	3
Economic effects	3
Heritage/archaeological effects	1
Lighting and glare effects	1
Traffic effects	1
Noise effects	1
Water and wastewater effects	1

⁴⁰ At 5.4.2.

⁴¹ Antoine Coffin *Cultural Impact Assessment of the Proposed Waikeria Prison Expansion* (2016), at 5.7

⁴² At 6.4.

⁴³ At 6.7.

⁴⁴ At 5.6.

43. This weighting moved Waikeria’s Social Effects Assessment to -3, twice the adverse effect of the other two proposed prisons.⁴⁵
44. If Corrections had undertaken an analysis of the adverse effect on Māori prisoners and had consulted with Māori prisoners and their whanau, the weighted scores for the Social Effects Assessment and Cultural Effects Assessment would have both been in the highest range (-6 major adverse effects). Instead, Corrections concluded that the anticipated adverse effects for Waikeria prison were moderate.⁴⁶

(b) Not reasonably necessary for achieving objectives 4, 6 and 7

45. The specific objectives for the Waikeria Prison expansion are:⁴⁷
1. The long term (up to ten years) demand requirement is met by 2025;
 2. The required prisoner places are delivered at the lowest whole of life cost;
 3. Operational efficiencies are achieved;
 4. An optimal fit for purpose solution is provided to rehabilitate and reintegrate prisoners whereby prisoner places are provided close to prisoner demand and therefore close to prisoner’s family and friends;
 5. The prison facility is located sufficiently close to communities large enough to attract and sustain sufficient staff to support a safe and secure custodial operation;
 6. The prison facility is located sufficiently close to communities large enough to attract and sustain service providers to rehabilitate and reintegrate prisoners; and
 7. Significant adverse environmental effects of the development are appropriately avoided, remedied, or mitigated.

46. In respect of objectives 4 and 6, Corrections states that:⁴⁸

It is important that the development occurs in the area of highest demand and close to sufficiently large communities to support the Department’s objectives regarding rehabilitating and reintegrating prisoners. Rehabilitation and reintegration has the highest chance of success when prisoners are located ‘close to home’ and the Department is able to provide programmes and interventions, or source sufficient community support services to support the rehabilitation and reintegration of prisoners. Waikeria prison is located in the

⁴⁵ At 5.7.

⁴⁶ At 5.8.1.

⁴⁷ Boffa Miskell limited, above n 33, at 4.2.

⁴⁸ Boffa Miskell limited, above n 33, at 4.2.

upper north island where the greatest demand for prisoner places is generated.

47. While Waikeria prison is situated in the upper north island, it is geographically isolated. The proposed prison is situated 170km from Auckland, the largest city and where the majority of the nation's prisoners come from.
48. The effects of dislocation are greater for Māori, for whom whanau is of primary importance. The Māori worldview is looked at holistically, with primary importance being placed on whakapapa, through acknowledgment of spiritual ancestors, whanau and whenua. Taonga incorporates whakapapa and mauri and these concepts require active protection.
49. The importance of whanau and ties to the land cannot be overstated. Removal of offenders from the community, to a prison hundreds of kilometres away, is emotionally destructive for Māori.
50. This was recognised as far back as 1844, when the Native Exemption Act restricted the situations where Māori could be imprisoned, instead demanding a fine in place of imprisonment.⁴⁹
51. Considering the primary importance for Māori in staying connected with whanau, this removal to an isolated location will have a significantly adverse effect. One of the key findings in *Wiri* was that locating that prison in South Auckland would facilitate access to whanau and community.⁵⁰ The Board noted that it was Corrections aspiration that:⁵¹

all prisoners should be held within a reasonable distance of their home and family in order to maximise the benefits of family contact and because keeping prisoners closer to home can assist in reducing reoffending.

52. The does not apply to Waikeria prison. The prison is not in an easily accessible area of the country and there is no direct public transport route that goes anywhere near the prison. The closest stop is Te Awamutu and the bus journey from Auckland takes nearly three hours.⁵² Not only will whanau have to travel 170km to visit prisoners, but visitation will be restricted mostly to whanau who have cars. The Prisoners Aid and Rehabilitation Service (PARS) runs a free bus service for visitors, but its

⁴⁹ Native Exemption Act 1844 (7 Victoriae 1844 No 18), section 9.

⁵⁰ *Wiri*, above n 6, at [208].

⁵¹ At [351].

⁵² Intercity timetable IC6407 Auckland to Palmerston North <intercity.co.nz>.

availability is limited. Corrections own assessment notes the difficulty for whanau in visiting Waikeria:⁵³

This was believed to exacerbate the loss of connection with the prisoner's family/whanau, who are valued for their rehabilitation influence and role in reintegration following prisoner release.

53. Corrections also notes the pressure on service providers in the area:⁵⁴

All provider interviewees described how the increase in prisoner numbers arising from the proposed expansion needed a commensurate increase in resources to run the prisoner programmes and courses. Simply, with the expansion of Waikeria Prison leading to an uplift of an additional 2000 prisoner places – this number would overwhelm existing programmes, both the budgets and staffing.

54. Providers noted that Waikeria prison had a poor Case Management system (where prisoner's needs are identified and plans put in place for rehabilitation) with staff not having the assessment, reintegration/rehabilitation understanding and/or plan development writing skills.⁵⁵

55. The Waikato DHB notes that:

(a) There is currently greater demand for services within Waikeria prison than can be serviced by the DHB.⁵⁶

(b) There is a lack of support for prisoners leaving prison and many prisoners miss out on a continuation of treatment services.⁵⁷

(c) Demand for acute beds at the forensic psychiatric facility outstrip supply, 60% of the beds are used by prisoners and there is a waitlist.⁵⁸

56. Corrections is seeking an increase in funding, but this is only for its four most successful programmes and it is unclear whether the increase in funding will be approved.⁵⁹

⁵³ Quigley and Watts Ltd, above n 37, at 9.3.

⁵⁴ At 8.3.

⁵⁵ Quigley and Watts Ltd, above n 37, at 8.3.

⁵⁶ At 11.1.3.

⁵⁷ At 11.1.4.

⁵⁸ At 11.1.5.

⁵⁹ At 8.3. Note: The increase in funding is part of a budget bid. The budget is being released on 25 May 2017, the day these submissions are due.

57. This increase in funding is necessary to simply keep the current level of programmes running, which is woefully inadequate and does not come close to meeting the needs of the majority of prisoners. The lack of programmes currently available to prisoners is discussed in detail below (paragraphs 82-92).
58. Currently Waikeria prison does not meet objectives 4 and 6. The expansion of the prison will also fail to meet these objectives.
59. In respect of objective 7, Corrections states that “the environmental effects assessments undertaken for this NoR indicate that objective 7 can be achieved.”⁶⁰
60. Corrections did not undertake an assessment of the adverse effects on Māori prisoners as a part of the environment. This assessment shows that objective 7 cannot be met under the current proposal.
61. The analysis of adverse effects on Māori prisoners is discussed below in the assessment of Part 2 of the RMA (paragraphs 62-99)

(c) Considerations subject to Part 2

62. Section 171(1) of the RMA is subject to Part 2. An analysis of the environment as it applies to Māori prisoners requires assessment of sections 5-8 of the RMA. As the concepts of the environment under a Māori worldview, including taonga (s 6) and kaitiakitanga (s 7), are interrelated, I have taken a holistic approach to the analysis,⁶¹ rather than analysing the concepts under sections 5-8 separately. This also avoids the repetition of recurring and overlapping arguments that are applicable to all the concepts outlined in those sections.
63. The first part of the analysis is to look at whether the use and development will be managed in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety. The second step is to see if the sustainable management of the new prison can be achieved while avoiding, remedying, or mitigating any adverse effects on the environment (Māori prisoners and their whanau).

⁶⁰ Boffa Miskell Ltd, above n 33, at 4.2.

⁶¹ It has been recognised that Māori have a holistic view of the environment, see for example *Friends and Community of Ngawha Inc v Minister of Corrections* [2002] HC [2002] NZRMA 401, at [58]-[60] and *Beadle*, above n 19, at [487].

64. Under the Corrections Act, prisons have a primary purpose of improving public safety.⁶² This is achieved by ensuring that sentences are administered in a safe, secure, humane, and effective manner and that assistance will be given to the rehabilitation and reintegration of prisoners. The government has stated that if a new facility is not built it will create “unacceptable safety risks for staff, prisoners and the public, and be less effective at rehabilitating prisoners.”⁶³
65. It is accepted that the general public is safer from an individual offender while that offender is in prison. In the *Wiri* decision it was accepted that the benefits of the proposed prison included meeting society’s demands for security, justice, and the reduction in numbers of high end offenders on the streets.⁶⁴
66. This, however, doesn’t take into account that nearly 90% of prisoners serve sentences of less than two years and 52% of released prisoners will be convicted of a new offence and re-imprisoned within 5 years, with the majority reoffending in the first 12 months of release.⁶⁵ Additionally, 36% of prisoners have been imprisoned for a non-violent offence, meaning that it is less likely that they are a danger to the public.⁶⁶
67. The economic effects of imprisonment are hard to quantify. While there have been studies showing that rehabilitation programmes and education are at least cost neutral in terms of future social costs, there is little evidence regarding the cost of imprisonment compared with the social cost if offenders were not imprisoned. What is clear though, is that imprisonment is by far the most expensive sentencing option and the prison system is a large financial burden on the state, with nearly \$97,000 being spent on average, per prisoner annually.⁶⁷ Comparatively, the cost of home detention, per prisoner annually, is approximately \$21,000. The building costs for the governments Prison Capacity Programme is \$1 billion,⁶⁸ with most of that cost going to the Waikeria prison build. This is a substantial economic burden on the general community.
68. Without adequate rehabilitation and reintegration programmes, which reduce recidivism, it is difficult to say that public safety is achieved by

⁶² Section 5.

⁶³ “Government approves plans for increased prison capacity” <beehive.govt.nz>.

⁶⁴ *Wiri*, above n 6, at [403].

⁶⁵ JustSpeak “Unlocking Prisons: How we can improve New Zealand’s Prison System” (2014), at 55.

⁶⁶ At 52.

⁶⁷ At 7.

⁶⁸ “Government Approves Plans for Increased Prison Capacity” <beehive.govt.nz>.

imprisonment or that prisons are used in a way that provide for the social, economic and cultural well-being of the community.

69. The evidence is that there are currently not enough rehabilitation and training programmes to be considered effective. However, based on the *Wiri* decision, it may be that a Court would find that the use and development of the prison is being managed in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety.
70. In *Wiri*, despite the evidence of the lack of rehabilitation programmes, the Board was content that current programmes, though limited, demonstrated “some degree of success” and the proposed prison would afford “some reasonable degree of access to the services and resources” necessary for rehabilitation. Ultimately, the Board held that the benefit of meeting society’s demands for security, justice, and the reduction in numbers of high end offenders on the streets, outweighed the negative social impacts, which could be mitigated through conditions imposed on the designation.
71. A critical analysis should be applied to the outcome of the *Wiri* decision, particularly the low threshold set for Corrections rehabilitation programmes and the acceptance of Corrections evidence, which appeared to receive no critical examination. However, for the purposes of this submission I will assume that a Court would hold that the positive effects on communities outweigh the adverse effects. The next step is to see if the sustainable management of the new prison can be achieved while avoiding, remedying, or mitigating any adverse effects on the environment (Māori prisoners and their whanau).
72. The effect of imprisonment on Māori prisoners is stark. Only 37% of prisoners are able to complete everyday literacy tasks.⁶⁹ 80% of all offending occurred while under the influence of drugs or alcohol and 70% of prisoners with addictions also have mental health problems.⁷⁰ The suicide rate amongst prisoners is eleven times higher than that of the general public.⁷¹

⁶⁹ Stuff “Two-thirds of prisoners can't do everyday literacy tasks” <stuff.co.nz>.

⁷⁰ *Wiri*, above n 6, at [204].

⁷¹ JustSpeak, above n 65, at 64.

73. The rate of incarceration of Māori has increased significantly throughout the twentieth century. In 1930 Māori comprised 10% of prisoners. By 1950 Māori comprised 23% of prisoners and the rate is now 50%.⁷²
74. Māori are four to five times more likely to be apprehended, prosecuted and convicted than non-Māori and seven and a half times more likely to be given a custodial sentence.⁷³ Māori are eleven times more likely to be remanded in custody awaiting trial.
75. Many prisoners are unable to gain employment upon leaving prison and the reconviction rate for Māori is the highest of all ethnicities, at 77% within 5 years of release (58% reimprisoned).⁷⁴
76. Māori face greater economic and social disadvantage⁷⁵ than non-Māori and imprisonment only enhances this disadvantage.
77. The effects of dislocation are also greater for Māori, for whom whanau is of primary importance. The Māori worldview is looked at holistically, with primary importance being placed on whakapapa, through acknowledgment of spiritual ancestors, whanau and whenua. Taonga incorporates whakapapa and mauri and these concepts require active protection.
78. The importance of whanau and ties to the land cannot be overstated. Removal of offenders from the community, to a prison hundreds of kilometres away, is emotionally destructive for Māori.
79. This was recognised as far back as 1844, when the Native Exemption Act restricted the situations where Māori could be imprisoned, instead demanding a fine in place of imprisonment.⁷⁶
80. Through the process of imprisonment it is not only Māori prisoners themselves who are adversely affected. Imprisonment can lead to debt issues if the prisoner was the primary earner. Children of prisoners are stigmatised and many exhibit symptoms of post traumatic stress disorder, attention deficit disorder and attachment disorders.⁷⁷

⁷² Robert Webb "Incarceration" in T McIntosh and M Mulholland (eds.) *Māori and Social Issues* (Huia Publishers, Wellington, 2011), at 249.

⁷³ At 251.

⁷⁴ JustSpeak, above n 65, at 55.

⁷⁵ Department of Corrections "Over-representation of Maori in the criminal justice system" <corrections.govt.nz> at 4.0.

⁷⁶ Native Exemption Act 1844 (7 Victoriae 1844 No 18), section 9.

⁷⁷ Liz Gordon "Invisible Children: First year research report 'a study of the children of prisoners'" (2009), at 45.

81. If we accept that Māori themselves are the most sacred taonga, as the Court appears to have done in *Bleakley*,⁷⁸ then it is difficult to see how imprisonment is anything but harmful to Māori.
82. These adverse effects are not being adequately avoided, remedied, or mitigated. Over-representation of Māori in the criminal justice system was studied extensively in 2007 by Corrections, with a published report⁷⁹ stating many of the statistics quoted above. Very little has been implemented since 2007 to improve the situation for Māori prisoners.
83. Expert evidence given in *Wiri*, by opponents of the proposed prison, stated that Corrections was not able to provide proper rehabilitation programmes for inmates and has had little success in reducing reoffending.⁸⁰
84. In 2012 an Ombudsman’s investigation found a number of issues with prison healthcare, including that mental healthcare is inadequate.⁸¹
85. A 2008 Auditor-General report found that 17% of prisoners have to wait more than 100 days before receiving mental health treatment and limited service receptiveness to Māori.⁸²
86. A 2010 National Health Committee report found that imprisonment contributes significantly to poor health outcomes and that the more time a person spends in prison, the poorer those outcomes will be.⁸³
87. The report found that prisoner’s disproportionately experienced poor health and their health needs are not adequately addressed in prison. It also noted alternatives to the current system:⁸⁴

A custodial approach that prioritises behavioural risk management over clinical need is an ineffective response to prisoners’ health problems. The experiences of other countries show that it is possible to protect and promote prisoners’ health without compromising public safety.

⁷⁸ *Bleakley*, above n 28, at 27.

⁷⁹ Department of Corrections, above n 75.

⁸⁰ *Wiri*, above n 6, at [200] and [202].

⁸¹ JustSpeak, above n 65, at 65.

⁸² At 65-66.

⁸³ National Health Committee. 2010. *Health in Justice: Kia Piki te Ora, Kia Tika! – Improving the health of prisoners and their families and whānau: He whakapiki i te ora ngā mauhere me ō rātou whānau*. Wellington: Ministry of Health, at 1.

⁸⁴ At 2.

88. Corrections operate only five 60-bed Māori Focus Units⁸⁵ across the entire national prison network of nearly 10,000 prisoners (approximately 5,000 of whom are Māori).
89. Corrections Drug Treatment Units only cater for 940 prisoners nationally,⁸⁶ despite there being a far higher need: 89% of prisoner's have a lifetime prevalence of substance abuse.⁸⁷ There is a waiting list to get in to treatment programmes, with some treatment centres having a waiting time of more than 12 months.⁸⁸ Meanwhile the 2012 Ombudsman report found that training courses for nurses administering methadone treatment had been cancelled.⁸⁹ This is despite studies showing that the average cost of a prisoner who undertakes methadone treatment is lower than the general cost per prisoner.⁹⁰
90. Corrections Social Effects Assessment lays out the lack of access to programmes. It is clear from Corrections own analysis, that the current provision of programmes cannot come close to being able to avoid, remedy, or mitigate the adverse effects on the majority of prisoners, if the majority of prisoners are not able to access the limited programmes, keeping in mind that the Waikeria prison population could expand to 3,000 prisoners and that half of those prisoners will be Māori. The Assessment states:⁹¹
- (a) The tikanga programme is delivered up to seven times a year for up to 20 prisoners at a time.
 - (b) The Skills for Life programme has 15 prisoners per programme and is run on a needs/cost basis.
 - (c) The Māori Focus Unit has 60 prisoners and runs programmes four times a year with ten prisoners per programme.
 - (d) The Drug Treatment Unit has only 33 beds.
 - (e) The Release to Work programme has declined nationally from 250 prisoners to 70 prisoners and there is limited opportunity at Waikeria due to it's isolated rural setting.

⁸⁵ Human Rights Commission "Māori Focus Units" <hrc.co.nz>.

⁸⁶ JustSpeak "Drug Treatment Units in New Zealand Prisons: Are they Enough?" <justspeak.org.nz>.

⁸⁷ National Health Committee, above n 78, at 3.

⁸⁸ JustSpeak "Drug Treatment Units in New Zealand Prisons: Are they Enough?" <justspeak.org.nz>.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ Quigley and Watts Ltd, above n 37, at 8.2.1 and 8.2.2.

91. Corrections also claim that they provide work and training programmes to prisoners which lead to employment outside prison. However, that training is limited. For example, the current site at Waikeria prison has the capacity to hold 1,250 prisoners, yet only has the capacity to provide training or employment to 269 prisoners.⁹² Nationally, only 52% of prisoners who undertake employment are gaining qualifications while they are employed and there is no requirement for prisoners to achieve qualifications while undertaking employment.⁹³
92. The decision in *Wiri* placed weight on Corrections contention that limited education and work are addressed through training opportunities and employment.⁹⁴ However, this does not appear to be at an adequate level to remedy the fact that 52% of prisoners have no formal qualifications and only 45% were in paid work before going to prison.⁹⁵
93. The proposed prison is situated 170km from Auckland. Considering the primary importance for Māori in staying connected with whanau, this removal to an isolated location will have a significantly adverse effect. One of the key findings in *Wiri* was that locating that prison in South Auckland would facilitate access to whanau and community.⁹⁶ The Board noted that it was Corrections aspiration that:⁹⁷
- all prisoners should be held within a reasonable distance of their home and family in order to maximise the benefits of family contact and because keeping prisoners closer to home can assist in reducing reoffending.
94. The does not apply to Waikeria prison. The prison is not in an easily accessible area of the country and there is no direct public transport route that goes anywhere near the prison. The closest stop is Te Awamutu and the bus journey from Auckland takes nearly three hours.⁹⁸ Not only will whanau have to travel 170km to visit prisoners, but visitation will be restricted mostly to whanau who have cars. PARS run a free bus service for visitors, but its availability is limited. Corrections own assessment notes the difficulty for whanau in visiting Waikeria:⁹⁹

⁹² Department of Corrections “Waikeria Prison” <corrections.govt.nz>.

⁹³ Department of Corrections, Letter in response to Official Information Act request, dated 16 September 2016, on file with the author.

⁹⁴ *Wiri*, above n 6, at [204]-[205].

⁹⁵ At [204].

⁹⁶ At [208].

⁹⁷ At [351].

⁹⁸ Intercity timetable IC6407 Auckland to Palmerston North <intercity.co.nz>.

⁹⁹ Quigley and Watts Ltd, above n 37, at 9.3.

This was believed to exacerbate the loss of connection with the prisoner's family/whanau, who are valued for their rehabilitation influence and role in reintegration following prisoner release.

95. The lack of reintegration and rehabilitation programmes, poor healthcare, and lack of training provided to Māori prisoners as well as the limited capacity of Māori Focus Units, means that the proposed prison is unlikely to meet the Treaty principle of active protection.
96. In *Friends and Community of Ngawha v Minister of Corrections*,¹⁰⁰ Ngawha prison was opposed by local iwi. The High Court (later affirmed by the Court of Appeal) citing the Privy Council in *McGuire*, held that while the RMA does not require absolute protection, if there was a reasonably acceptable alternative that did not significantly impact Māori, that alternative should be preferred.¹⁰¹
97. There are many alternatives available to Corrections rather than building the proposed prison in the usual manner. Some alternatives include: smaller local prisons and open prisons; full access for every prisoner to Māori Focus Units, Drug Treatment Units and other rehabilitative measures. Corrections merely explored an expansion of three current prisons, to be run in the same way, without additional mitigation and without giving consideration to the adverse effects on prisoners. A 'business as usual prison' cannot meet the requirements of sustainable development under the RMA and therefore Corrections must find alternatives.
98. The RMA contains strong directions that sustainable development should take account of the Māori concepts of kaitiakitanga, taonga and Māori culture and traditions. The principles of the Treaty of Waitangi, including active protection, must also be taken into account. The emphasis on these concepts aligns with the definition of environment as including people and communities and the social, economic and cultural conditions which affect those communities and supports the Māori worldview that people are a part of the environment.
99. The use and development of a new prison must be done in a way which avoids, remedies, or mitigates any adverse effect on the environment. It would appear that Corrections is not doing enough to avoid, remedy, or mitigate the adverse effects on Māori prisoners and their whanau. Where steps are taken, the resources are limited and cannot meet the needs of

¹⁰⁰ *Friends of Ngawha*, above n 60.

¹⁰¹ At [55].

most prisoners. This means that there is no situation under a 'business as usual' prison, where the majority of prisoners will even have the adverse effects of their imprisonment mitigated. Corrections needs to provide substantive changes to the 'business as usual' model of imprisonment if it is to meet the purpose of the RMA.