



FTC#240 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2023-135 Rotokauri Greenway and Minor Arterial Project

Date submitted:	22 May 2023	Tracking #: BRF-3150	
Security level	In-Confidence	MfE priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decisions on recommendations	To be advised

Actions for Minister's Office staff	<p>Return the signed briefing to MfE.</p> <p>Send the attached notice of decisions letter (if signed).</p>
Number of appendices: 7	<p>Appendices:</p> <ol style="list-style-type: none"> 1. Rotokauri Greenway and Minor Arterial application and further information received (Databox link) 2. Stage 1 Briefing Note and decisions (Databox link) 3. Statutory framework for making decisions (Databox link) 4. Draft Notice of Decisions letter to Hounsell Holdings Limited and Hamilton City Council 5. Section 17 Report (Databox link) 6. Comments received from Ministers, local authorities, Waikato District Council and Waka Kotahi New Zealand Transport Agency (Databox link) 7. Further information received post-consultation (Databox link).

Ministry for the Environment contacts

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FTC#240: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions

Key messages

1. This briefing seeks your final decisions on the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from Hounsell Holdings Limited (HHL) and Hamilton City Council (HCC) to refer the Rotokauri Greenway and Minor Arterial Project (project) to an expert consenting panel (panel). A copy of the application is in Appendix 1.
2. This is the second briefing on this application. The first (Stage 1) briefing (BRF-2936) with your initial decisions annotated is in Appendix 2.
3. The project is to construct certain aspects of a 4.7-kilometre stormwater management corridor ('Rotokauri Greenway') between Lake Waiwhakareke and Lake Rotokauri, and a 3.8-kilometre transport corridor ('Minor Arterial') between Te Wetini Drive and 153 Te Kowhai Road, Rotokauri, Hamilton. The project includes constructing artificial wetlands, landscaping and planting, upgrading the Rotokauri Drain and culvert below Exelby Road, and constructing three-waters infrastructure including a watermain, wastewater pipeline and pump station.
4. The proposed Rotokauri Greenway is already designated for the purpose of stormwater management (Designation A114 in the Hamilton City District Plan (HCDP), administered by Hamilton City Council (HCC) as the Requiring Authority). Some activities associated with establishment of the stormwater management corridor and construction of shared pedestrian and cycle paths alongside the corridor that are enabled by the designation will be undertaken concurrently with the project.
5. The project will involve activities such as:
 - a. removing vegetation
 - b. carrying out earthworks (including disturbing potentially contaminated soil)
 - c. constructing artificial wetlands
 - d. constructing and upgrading roads
 - e. constructing infrastructure for three-waters services
 - f. taking, diverting and discharging groundwater to land and water
 - g. diverting and discharging surface water to land and water
 - h. installing culverts in a watercourse
 - i. landscaping and planting, including in the riparian margin
 - j. any other activities that are:
 - i. associated with the activities in a to i
 - ii. within the scope of the project as described in paragraph 3.
6. The project requires land use consents under the HCDP for a pump station associated with the Rotokauri Greenway and for construction of the Minor Arterial, and water and discharge permits are needed under the Waikato Regional Plan for both the Rotokauri Greenway and Minor Arterial. The project will also require resource consents under the Resource Management (National Environmental Standard for Freshwater) Regulations 2020 (NES-F) and the Resource Management (National Environmental Standards for Assessing and Managing Contaminants to Soil to Protect Human Health) Regulations 2011 (NES-CS). The

proposed activities have overall non-complying activity status due to a proposed temporary take of surface water at a rate or volume which exceeds limits in the Waikato Regional Plan.

7. Key issues for the project are the potential for adverse effects including on ecological values; the potential for the Minor Arterial component of the project to be considered concurrently with a notice of requirement (NOR) for the wider transport corridor; and whether the project is consistent with the National Policy Statement on Highly Productive Land 2022 (NPS-HPL). A panel can appropriately consider and decide on all these matters as part of a merit assessment under FTCA process, and we consider there are no significant reasons for you to decline to refer the project.
8. We recommend you accept the referral application under section 24 of the FTCA and refer the project to a panel for fast-track consenting. We seek your decision on this recommendation and on recommendations for directions to the applicants and a panel, and notification of your decisions.

Assessment against statutory framework

9. The statutory framework for your decision-making is set out in Appendix 3. You must apply this framework when you are deciding whether or not to accept the application and when deciding on any further requirements or directions associated with project referral.
10. Before accepting the application, you must consider the application and any further information provided by the applicant (in Appendix 1), the Section 17 Report (in Appendix 5) and comments from local authorities, Ministers and other invited parties (in Appendix 6). Following that, you may accept the application if you are satisfied that it meets the referral criteria in section 18 of the FTCA. We provide our advice on these matters below.
11. We have also considered if there are any reasons for declining the project, including the criteria in section 23(5) of the FTCA, and provide our advice on these matters to assist your decision-making.

Further information provided by applicants

12. In response to your request under section 22 of the FTCA the applicants provided further information on land access arrangements and job creation. We have taken this information into account in our analysis and advice.

Section 17 report

13. The Section 17 Report indicates that there are two iwi authorities, three Treaty settlements and three Treaty settlement entities relevant to the project area. The report also identifies two other parties representing relevant hapū which may have an interest in the project.
14. The project site is subject to the co-governance and co-management arrangements applying to waterways, lakes and wetlands in the Waikato River catchment under the Waikato River Treaty settlement. These requirements have the potential to influence the composition of a hearings panel for certain resource consent applications under standard Resource Management Act 1991 (RMA) process. This means that should you decide to refer the project, the EPA will need to carefully assess any applications for water or discharge permits in the context of these arrangements before a panel is appointed and advise the Panel Convener accordingly.

Comments received

15. Comments were received from s 9(2)(f)(ii), s 9(2)(g)(i), HCC, Waikato Regional Council (WRC), Waikato District Council (WDC) and Waka Kotahi New Zealand Transport Agency (Waka Kotahi). The key points of relevance to your decision are summarised in Table A.
16. s 9(2)(f)(ii), s 9(2)(g)(i)
17. s 9(2)(f)(ii), s 9(2)(g)(i)
18. HCC provided comments as a regulatory authority, noting that the arm of the council responsible for capital projects development is a joint applicant for the project. HCC supported project referral and considered the project will facilitate urbanisation and growth in the Rotokauri Greenfield area which has been zoned for urban development for a number of years. HCC noted it intends to lodge a notice of requirement (NOR) for a designation for an area that includes the Minor Arterial component of the project, which they expect to be notified in August 2023. HCC advised that the project will still require regional consents even if the Minor Arterial component were to be designated.
19. WRC opposed project referral, primarily on the basis that the points it raised in opposing the Rotokauri Greenway NOR have not been addressed and these relate most significantly to adverse ecological and freshwater effects. WRC also noted the portion of the project site in the Waikato District may be highly productive land under the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) and the applicant will need to address this in any resource consent application to a panel. WRC also identified HCC has a history of environmental regulatory non-compliance (including prosecutions), primarily related to the operation of three-waters services.
20. WDC did not oppose project referral and noted the applicants will need to provide an Outline Plan of Works for the component of the project which will occur in the Waikato District. WDC noted matters the applicants will need to address with their resource consent application including effects on stream channels, effects on ecological values and loss of highly productive land.
21. Waka Kotahi did not oppose project referral but requested if the project is referred you require a panel to invite comment from Waka Kotahi because it considers it is a key stakeholder for the project due to the Minor Arterial component of the project.

Section 18 referral criteria

22. You may accept the application for project referral if you are satisfied that the project does not include ineligible activities (section 18(3)) and will help to achieve the purpose of the FTCA (section 18(2)).
23. The project does not include any ineligible activities, as explained in Table A.
24. The matters that you may consider when deciding if a project will help achieve the purpose of the FTCA are in Section 19 of the FTCA. Our assessment of these matters is summarised in Table A. We consider the project will help achieve the purpose of the FTCA, and thus meet the requirements of section 18(2), as it has the potential to:
 - a. generate employment by creating approximately 273 full-time equivalent (FTE) jobs associated with the Rotokauri Greenway component of the project, and 194 FTE jobs associated with the Minor Arterial component

- b. provide infrastructure to improve economic, employment and environmental outcomes, including for freshwater quality
 - c. strengthen environmental resilience and manage risk from natural hazards including flooding
 - d. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.
25. The applicants do not own all of the land within the project site, which may impact their ability to deliver the project. The applicants state consultation is underway with all of the relevant landowners, several of whom have provided letters supporting the project in principle, and the applicants do not anticipate that access to the land in the project site will be a barrier to project delivery. The applicant notes that even if formal agreements with all of the relevant landowners are not in place before a resource consent is lodged with a panel, section 181 of the Local Government Act 2002 allows for HCC to access land to undertake land drainage work (which the Rotokauri Greenway is). On this basis we conclude that there appears to be a viable pathway for timely project delivery, and thus we consider this is not an issue that would significantly detract from the project's ability to help meet the purpose of the FTCA.
26. We consider any actual and potential effects arising from the project, together with any measures to avoid, remedy, mitigate, offset or compensate for adverse effects, could be tested by a panel against Part 2 of the RMA and the purpose of the FTCA.

Issues and risks

27. Even if the project meets the referral criteria in section 18 of the FTCA, section 23(2) of the FTCA permits you to decline to refer the project for any other reason.

Section 23 FTCA matters

28. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and our analysis of these matters is summarised in Table A. Note that you may accept an application even if one or more of those reasons apply.
29. We have considered whether it would be more appropriate for the project to go through a standard resource consent process under the RMA as provided for by section 23(5)(b) of the FTCA because:
- a. the project may result in significant adverse effects on ecological and freshwater values that may require more time to resolve, or more extensive consultation, than may be provided for under FTCA process
 - b. the resource consent applications for the Minor Arterial component of the project may be before an expert consenting panel concurrently with a NOR process under the RMA which affects this component of the project.
30. WRC considered the project could result in significant adverse effects on ecological and freshwater values, particularly due to the inundation of natural wetlands, and these effects may need to be addressed through offsetting and compensation. Offsetting and compensation requires engagement with a number of interested parties, which could take more time to resolve than would be available under the statutory timeframes prescribed by the FTCA, once consideration of an application for resource consent by a panel has commenced. We consider effects on ecological values and measures to address those effects are matters which a panel can consider as part of a merits-based assessment with the benefit of a full resource consent application. However, to address the issue of limited timeframes we recommend you require the applicant to provide information on any proposed offsetting and compensation, including consultation undertaken and any agreements reached, with their resource consent applications. This will encourage consideration of these

matters ahead of their consideration by a panel, thus enabling a panel to focus on any outstanding issues that have not been resolved.

31. We note that in June 2023 HCC intends to lodge a NOR to designate a transport corridor which includes the Minor Arterial component of the project. The timing of the NOR will likely affect which consents under the HCDP the applicant chooses to seek under FTCA process at the time they make an application to a panel. HCC anticipates the NOR will be notified in August 2023. If you decide to refer the project, it is possible a panel may have resource consent applications for the project before it while the NOR process is live. If this situation were to arise, it would be an issue that a panel would need to consider and there is a risk that it could lead to a delay in the processing or determination of some project consents. Despite this HCC (as a regulator) supports the proposed approach and the use of FTCA process for the project.
32. We have considered whether it may be more appropriate to refer the Rotokauri Greenway component of the project but decline the Minor Arterial component of the project on the basis it would be more appropriate to go through a standard consenting process once the NOR over the wider corridor is included in the HCDP. HCC advises that the NOR would cover a much wider area than the section of the Minor Arterial included in the project scope, and several regional resource consents from WRC would be required for the Minor Arterial to be delivered even if the designation were in place. A decision to delay obtaining these consents until after the NOR process was complete would delay the delivery of the Minor Arterial and the associated benefits (including completion of infrastructure that will enable urban growth in the Rotokauri Greenfield area) that could otherwise be progressed under FTCA process.
33. We note that there is no guarantee that a NOR process would be underway while a panel considered resource consent applications for the project, and even if it were, a panel could still consider any such consent applications under FTCA process. A panel can invite comment from any parties it considers relevant under clause 17(8) of Schedule 6 of the FTCA, and if a NOR process were to be underway when the applicant lodges resource consent applications with a panel, the panel could choose to invite relevant submitters if it considered this to be necessary. Therefore, we do not consider you should decline the project in whole or in part on the basis that it would be more appropriate to go through a standard RMA consenting process under section 23(5)(b) of the FTCA.
34. Section 23(5)(c) of the FTCA enables you to decline to refer a project if it the project is inconsistent with a national policy statement. In relation to WRC's comments that some of the project site is likely to be considered highly productive land under the NPS-HPL, we note the project is likely to be considered 'specified infrastructure' under the definition in the NPS-HPL and may therefore be exempt from restrictions on the use of highly productive land. We cannot provide you with conclusive advice on this matter at this stage but note that this is a matter which can be considered further by a panel. Therefore, we do not consider you should decline the project under section 23(5)(c) (the project is inconsistent with a national policy statement).
35. Section 23(5)(f) enables you to decline to refer a project if the applicant has a poor history of environmental regulatory compliance. WRC identified HCC has a history of environmental regulatory non-compliance, including previous prosecutions in relation to three waters services (which it operates across the district). WRC has not identified any ongoing or current non-compliance issues, and we do not consider the project should be declined on this basis under section 23(5)(f).
36. At this stage we consider there is sufficient time before 8 July 2023 for you to progress an Order in Council through Cabinet and for it to be authorised by the Executive Council, should you decide to refer the project. Therefore, we consider you should not decline to refer the project on the basis that there is insufficient time for the project to be referred and considered before the FTCA is repealed (section 23(5)(g)).

Other matters

37. The project has non-complying activity status under the Waikato Regional Plan and as such it must pass at least one of the two limbs of the 'gateway test' in section 104D of the Resource Management Act 1991 (RMA) if it is to be determined under the FTCA consenting process. The applicant has provided information confirming it will not be contrary to the relevant objectives and policies of the Waikato Regional Plan, and therefore is able to satisfy the requirements of Section 104D of the RMA.

Conclusions

38. We do not consider that you should decline to refer the project in whole or in part on the basis of the risks and issues identified above, provided that you also specify the applicant provides the information we recommend must be submitted with consent applications to a panel. You could accept the application under section 24 of the FTCA and refer all of the project to a panel.
39. If you decide to refer the project, we consider you should specify under section 24(2)(d) of the FTCA (as requested in comments) that the applicant must submit the following information to a panel with their consent applications, in addition to the requirements of clause 9 of Schedule 6 of the FTCA:
 - a. details of proposed offsetting and compensation to address adverse ecological effects, including details of consultation undertaken and any agreements reached.
40. If you decide to refer the project, we consider you should specify under section 24(2)(e) of the FTCA that a panel must invite comments on consent applications for the project from the following parties:
 - a. WDC
 - b. Waka Kotahi
 - c. Te Haa o te whenua o Kirikiriroa
 - d. Ngaa Puna o Wairere.

Next steps

41. If you decide to refer the project, you must give notice of your decisions on the referral application, and the reasons for them, to the applicants, anyone invited to comment under section 21, and the persons, entities and groups listed in section 25(2) of the FTCA. We consider you should also give the notice of decisions together with a copy of the application to Te Haa o te whenua o Kirikiriroa and Ngaa Puna o Wairere.
42. If you decide to decline project referral, you must give the notice of your decisions, and the reasons for them, to the applicants and anyone invited to comment under section 21.
43. We have attached a notice of decisions letter to the applicants based on our recommendations (refer Appendix 4). If you decide to refer the project only in part we will provide you with an amended letter if required. Once you have signed the letter we will assist your office to copy it to all relevant parties.
44. To refer the project, you must recommend that a referral order be made by way of an Order in Council (OIC). Cabinet has agreed that you can issue drafting instructions to the Parliamentary Counsel Office without the need for a policy decision to be taken by Cabinet

in the first instance.¹

45. As required by section 25(3) of the FTCA, you must ensure that your decisions on the referral application, the reasons and the Section 17 report are published on the Ministry for the Environment's website. We will undertake this task on your behalf in accordance with your direction.
46. Our recommendations for your decisions follow.

¹ Following the first OIC, the Minister for the Environment (and Minister of Conservation for projects in the Coastal Marine Area) can issue drafting instructions directly to the Parliamentary Counsel Office. Cabinet has also agreed that a Regulatory Impact Assessment is not required for an OIC relating to projects to be referred to a panel [ENV-20-MIN-0033 and CAB-20-MIN-0353 refer].

Recommendations

1. We recommend that you:

- a. **Note** section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline the referral application from Hounsell Holdings Limited and Hamilton City Council unless you are satisfied that the Rotokauri Greenway and Minor Arterial Project (project) meets the referral criteria in section 18 of the FTCA including that it would help to achieve the FTCA's purpose.
- b. **Note** when assessing whether the project would achieve the FTCA's purpose, you may consider a number of matters under section 19, including the project's economic benefits and costs, and effects on social or cultural well-being; whether it may result in a public benefit (such as generating employment or increasing housing supply); and whether it could have significant adverse effects.
- c. **Note** before deciding to accept the application for project referral under section 24(1) of the FTCA you must consider:
 - i. the application
 - ii. the report obtained under section 17 of the FTCA
 - iii. any comments and further information sought and provided within the required timeframe.
- d. **Note** if you are satisfied that all or part of the project meets the referral criteria in section 18 of the FTCA you may:
 - i. refer all or part of the project to an expert consenting panel (panel)
 - ii. refer the initial stages of the project to a panel while deferring decisions about the project's remaining stages
 - iii. still decline the referral application for any reason under section 23(2) of the FTCA.
- e. **Note** if you do refer all or part of the project you may:
 - i. specify restrictions that apply to the project
 - ii. specify the information that must be submitted to a panel
 - iii. specify the persons or groups from whom a panel must invite comments
 - iv. set specific timeframes for a panel to complete their process.
- f. **Agree** the project meets the referral criteria in section 18(3) of the FTCA.

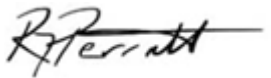
Yes/No
- g. **Agree** the project will help achieve the purpose of the FTCA (and therefore meets the referral criteria in section 18(2) of the FTCA) as it has the potential to:
 - i. generate employment by creating approximately 273 full-time equivalent (FTE) jobs associated with the Rotokauri Greenway component of the project, and 194 FTE jobs associated with the Minor Arterial component
 - ii. provide infrastructure to improve economic, employment and environmental outcomes, including for freshwater quality
 - iii. strengthen environmental resilience and manage risk from natural hazards including flooding

- iv. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.
- Yes/No
- h. **Agree** to refer all of the project to a panel.
- Yes/No
- i. **Agree** to specify under section 24(2)(d) of the FTCA the following additional information that the applicant[s] must submit with any resource consent application lodged with the Environmental Protection Authority, as more fully detailed in Table A:
- i. details of proposed offsetting and compensation measures to address adverse effects on ecological and freshwater values, including details of any discussions held and/or agreements made between the applicant and any relevant parties regarding ecological offsetting and compensation.
- Yes/No
- j. **Agree** to specify under section 24(2)(e) of the FTCA that a panel must invite comments from the following persons or groups in addition to those specified in clause 17 of Schedule 6 of the FTCA:
- i. Waikato District Council
- ii. Waka Kotahi New Zealand Transport Agency
- iii. Te Haa o te whenua o Kirikiriroa
- iv. Ngaa Puna o Wairere.
- Yes/No
- k. **Agree** to copy the application and notice of decisions to Te Haa o te whenua o Kirikiriroa and Ngaa Puna o Wairere in addition to those specified in section 25 of the FTCA.
- Yes/No
- l. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer the project to a panel in accordance with your decisions recorded herein.
- Yes/No
- m. **Sign** the notice of decisions letter to the applicants (attached in Appendix 4).
- Yes/No

- n. **Require** the Ministry for the Environment to publish your decisions, reasons and the Section 17 report on the Ministry for the Environment's website.

Yes/No

Signatures



Rebecca Perrett
Acting Manager – Fast-track Consenting

Hon David Parker
Minister for the Environment

Date:

Table A: Stage 2 - Project summary and section 24 FTCA assessment for projects where the Minister for the Environment is the sole decision maker

Project details	Project description	Does all or part of the project meet the referral criteria in section 18?		Summary of comments received <i>(Note: for analysis and/or recommended responses to these comments refer to column 7)</i>	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(2) - does the project help achieve the purpose of the FTCA (as per section 19)?			
<p>Name</p> <p>Rotokauri Greenway and Minor Arterial Project</p> <p>Applicant</p> <p>Hounsell Holdings Limited and Hamilton City Council</p> <p>Location</p> <p>Between Lake Waiwhakareke and Lake Rotokauri, and between Te Wetini Drive and 153 Te Kowhai Road, Rotokauri, Hamilton</p> <p>Lot 3 Deposited Plan 468484</p> <p>Lot 53 Deposited Plan 471831</p> <p>LOT PT 1 DP 30552</p> <p>Lot 2000 Deposited Plan 519305</p> <p>Lot 2 Deposited Plan 540282</p> <p>Lot 3 Deposited Plan South Auckland 62700</p> <p>Lot 1 Deposited Plan 535335</p> <p>Lot 3 DP 468484</p> <p>Lot 53 DP 471831</p>	<p>To construct certain aspects of a 4.7-kilometre stormwater management corridor ('Rotokauri Greenway') between Lake Waiwhakareke and Lake Rotokauri, and a 3.8-kilometre transport corridor ('Minor Arterial') between Te Wetini Drive and 153 Te Kowhai Road, Rotokauri, Hamilton. The project includes constructing artificial wetlands, landscaping and planting, upgrading the Rotokauri Drain and culvert below Exelby Road, and constructing three-waters infrastructure including a watermain, wastewater pipeline and pump station.</p> <p>The project will involve activities such as:</p> <p>a. removing vegetation</p> <p>b. carrying out earthworks (including disturbing potentially contaminated soil)</p> <p>c. constructing artificial wetlands</p> <p>d. constructing and upgrading roads</p> <p>e. constructing infrastructure for three-waters services</p> <p>f. taking, diverting and discharging groundwater to land and water</p> <p>g. diverting and discharging surface water to land and water</p>	<p>The project is eligible for referral under section 18(3)(a)–(d) as:</p> <ul style="list-style-type: none"> it does not include any prohibited activities it does not include activities on land returned under a Treaty settlement it does not include activities in a customary marine title area or a protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011 that has not been agreed. 	<p>Economic benefits for people or industries affected by COVID-19 (19(a))</p> <p>Based on the information provided by the applicants we consider the project may result in the following public benefits:</p> <ul style="list-style-type: none"> generating approximately 467 direct full-time equivalent (FTE) jobs over a 5-year design and construction period contribute approximately \$100 million to local business activity. <p>Economic costs for people or industries affected by COVID-19 (19(a))</p> <ul style="list-style-type: none"> N/A <p>Effect on the social and cultural well-being of current and future generations (19(b))</p> <p>We consider the project will have positive effects on the social wellbeing of current and future generations by:</p> <ul style="list-style-type: none"> contributing to job creation and flow-on economic benefits providing opportunities for recreation and social connection through construction of shared paths. <p>Potential effects on cultural wellbeing are unknown. The applicants acknowledge that if the project is referred, any consent application must be accompanied by a cultural impact assessment from relevant iwi authorities.</p> <p>Is the project likely to progress faster by using this Act? (19(c))</p> <p>The applicants consider the project is likely to progress approximately 21 months faster under the FTCA process than would be the case if the project were considered under a standard Resource Management Act 1991 (RMA) resource consent or notice of requirement process, due to the likelihood of notification and</p>	<p>Ministers</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities</p> <p>Hamilton City Council (HCC) provided comments as the regulatory authority, noting that the arm of the council responsible for capital projects development is a joint applicant for the project. HCC supported project referral as it presents an efficient process to consider the multiple resource consents required. The project will also be of benefit to Hamilton by unlocking several complex infrastructure-related issues so that urbanisation and growth can progress in the Rotokauri Greenfield area which has been zoned for urban development for a number of years.</p> <p>HCC noted it is planning on submitting a notice of requirement (NOR) for a proposed transport corridor; however, this will cover a much larger area of transport corridor than just the portion that is proposed to be applied for under this project. This NOR process will involve multiple landowners and will potentially be a protracted process. The discrete portion of the transport corridor included in the project is needed for development opportunities for this area, by extending the existing major and minor arterial transport corridors. As such, to enable continued development within this area whilst the NOR process is being undertaken, HCC considered it appropriate for the proposal to be undertaken through the FCTA process.</p> <p>HCC are intending to lodge the NOR application for the Minor Arterial transport corridor towards the end of June 2023. HCC's City Planning Unit who will manage the NOR process, has advised that notification would likely be around early August 2023 (subject to addressing any s92 requirements), with hearings from the proposal unlikely to occur before the end of 2023/early 2024.</p> <p>WRC opposed project referral and noted the following concerns:</p>	<p>Section 23(5) matters:</p> <p>Insufficient information (23(5)(a))</p> <p>The applicant has provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA.</p> <p>More appropriate to go through standard RMA process (23(5)(b))</p> <p>Potential reasons for the project to go through a standard resource consent process under the RMA in preference to FTCA process are:</p> <ul style="list-style-type: none"> the project may result in significant adverse effects on ecological and freshwater values that may require more time to resolve, or more extensive consultation, than may be provided for under FTCA process the resource consent applications for the Minor Arterial component of the project may be before an expert consenting panel concurrently with a NOR process under the RMA which affects this component of the project. <p>WRC considered the project could result in significant adverse effects on ecological and freshwater values, particularly due to the inundation of natural wetlands, and these effects may need to be addressed through offsetting and compensation. Offsetting and compensation requires engagement with a number of interested parties, which could take more time to resolve than would be available under the statutory timeframes prescribed by the FTCA, once consideration of an application for resource consent by a panel has commenced. We consider effects on ecological values and measures to address those effects are matters which a panel can consider as part of a merits-based assessment with the benefit of a full resource consent application. However, to address the issue of limited timeframes we recommend you require the applicant to provide information on any proposed offsetting and compensation, including consultation undertaken and any agreements reached, with their resource consent applications. This will encourage consideration of these matters ahead of</p>	<p>In response to key comments:</p> <ul style="list-style-type: none"> in relation to WRC's comments that the project may have significant adverse effects on ecological values, we consider this is a matter which can be addressed by a panel, and we recommend you require the applicant to provide details of ecological offsetting and compensation (including consultation) with their resource consent applications to a panel we consider you should agree to WDC's request that you require a panel invite comments from them on a resource consent application for the project we consider you should agree to Waka Kotahi's request that you require a panel invite comments from them on a resource consent application for the project. <p>Although our assessment has noted potential effects on ecological values and potential issues with the project being considered concurrently with an NOR you could accept the application under section 24 of the FTCA and refer all of the project to a panel for the following reasons:</p> <ul style="list-style-type: none"> the project will employment by creating approximately 273 full-time equivalent (FTE) jobs associated with the Rotokauri Greenway component of the project, and 194 FTE jobs associated with the Minor Arterial component the project will provide infrastructure to improve economic, employment and environmental outcomes, including for freshwater quality the project will strengthen environmental resilience and manage risk from natural hazards including flooding the project will progress faster than would otherwise be the case under standard Resource Management Act 1991 process.

Project details	Project description	Does all or part of the project meet the referral criteria in section 18?		Summary of comments received <i>(Note: for analysis and/or recommended responses to these comments refer to column 7)</i>	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(2) - does the project help achieve the purpose of the FTCA (as per section 19)?			
Section 12 Survey Office Plan 464504	<p>h. installing culverts in a watercourse</p> <p>i. landscaping and planting, including in the riparian margin</p> <p>j. any other activities that are:</p> <p>i. associated with the activities in a. to i.</p> <p>ii. within the scope of the project</p>		<p>appeals under the latter. We do not disagree with this assessment.</p> <p>Will the project result in a public benefit? (19(d))</p> <p>Based on the information provided by the applicants we consider the project is likely to result in the following public benefits:</p> <ul style="list-style-type: none"> • generating employment • providing infrastructure to improve economic, environmental and employment outcomes • improving environmental outcomes for freshwater quality • strengthening environmental resilience and managing the risks from natural hazards. <p>Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e))</p> <p>While the project has the potential to result in some adverse environmental effects, including relating to earthworks effects and traffic, the applicants do not expect these effects to be significant. Waikato Regional Council (WRC) disagrees and considers the effects on ecological values may be significant.</p> <p>We consider the appropriateness of ecological offsetting and compensation can be adequately considered by a panel with the benefit of a full resource consent application and additional appropriate information.</p> <p>Other relevant matters (19(f))</p> <ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • the application references the national objectives for sector emissions reductions, however, there is no estimate for the relative reduction in emissions that this development will provide to support a reduction in greenhouse gas emissions from the design, location and intended use of transport infrastructure • the project includes Significant Natural Area (SNA) sites and under-represented ecosystem types within and adjacent to the project area. WRC considers should parts of these indigenous habitat types be permanently lost due to construction impact, either within or in close proximity to the project area, that any potential hydrology change as a result be carefully considered as well as consideration of an offset under representative habitat extending beyond the project boundary as a means to address the ecological integrity of the area • WRC opposed the greenway NOR process in 2019 and the matters outlined in the submission have not yet been resolved. The main reasons for concerns related to an increase in water volume entering Lake Rotokauri and the associated effects on WRC's drainage obligations • by diverting water (due to stormwater and increased run-off) that would once have spread across the landscape and filtered into the ground, and then channelising it (noted drain/channel is already existing) via artificial wetlands and subsequently to the lake, will likely be a disservice to the lake. It is considered that the lake environments are currently at capacity for dealing with stormwater run-off and modifying the catchment will create added stress, therefore an alternative avoidance or mitigation factor is strongly recommended • the increase in water levels in Lake Rotokauri will have negative effects on existing plant communities, on mudfish and their habitat • the applicant will need to give consideration to policy 6 of the National Policy Statement for Freshwater Management 2020 (NPS-FM), particularly as the project will result in the loss of extent of natural wetlands. <p>Other parties</p> <p>Waikato District Council (WDC) did not oppose project referral but noted the applicant may be required to provide an Outline Plan of Work for the aspects of the project which will occur in the Waikato District. WDC also noted the following issues which will need to be addressed:</p> <ul style="list-style-type: none"> • potential loss of highly productive land • effects on ecological values • effects on stream channels. <p>Waka Kotahi New Zealand Transport Agency (Waka Kotahi) did not oppose project referral but requested if the project is referred you require a panel to invite comments from Waka Kotahi.</p>	<p>their consideration by a panel, thus enabling a panel to focus on any outstanding issues that have not been resolved.</p> <p>We note that in June 2023 HCC intends to lodge a NOR to designate a transport corridor which includes the Minor Arterial component of the project. HCC anticipates the NOR will be notified in August 2023. If you decide to refer the project, it is likely a panel may have resource consent applications for the project before it while the NOR process is live. If this situation were to arise, it would be an issue that a panel would need to consider and there is a risk that it could lead to a delay in the processing or determination of some project consents. Despite this HCC (as a regulator) supports the proposed approach and the use of FTCA process for the project.</p> <p>We have considered whether it may be more appropriate to refer the Rotokauri Greenway component of the project and decline the Minor Arterial component of the project on the basis it would be more appropriate to go through a standard consenting process once the NOR over the wider corridor is included in the HCDP. HCC advises that the NOR would cover a much wider area than the section of the Minor Arterial included in the project scope, and several regional resource consents from WRC would be required for the Minor Arterial to be delivered even if the designation were in place. A decision to delay obtaining these consents until after the NOR process was complete would delay the delivery of the Minor Arterial and the associated benefits (including completion of infrastructure that will enable urban growth in the Rotokauri Greenfield area) that could otherwise be progressed under FTCA process.</p> <p>We note that there is no guarantee that a NOR process would be underway while a panel considered resource consent applications for the project, and even if it were, a panel could still consider any such consent applications under FTCA process. A panel can invite comment from any parties it considers relevant under clause 17(8) of Schedule 6 of the FTCA, and if a NOR process were to be underway when the applicant lodges resource consent applications with a panel, the panel could choose to invite</p>	<p>We recommend you require the applicant to provide the following information with their resource consent application to a panel:</p> <ul style="list-style-type: none"> • details of proposed offsetting and compensation measures to address adverse effects on ecological and freshwater values, including details of any discussions held and/or agreements made between the applicant and relevant parties regarding ecological offsetting and compensation. <p>We recommend you require the panel to invite comments from:</p> <ul style="list-style-type: none"> • Waikato District Council • Waka Kotahi New Zealand Transport Agency • Te Haa o te whenua o Kirikiriroa • Ngaa Puna o Wairere. <p>We recommend you provide a copy of the application and the notice of decision to the following parties in addition to those specified in section 25 of the FTCA:</p> <ul style="list-style-type: none"> • Te Haa o te whenua o Kirikiriroa • Ngaa Puna o Wairere.

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				All responses received by parties invited to comment are attached in Appendix 6 .	<p>relevant submitters if it considered this to be necessary. Therefore, we do not consider you should decline the project in whole or in part on the basis that it would be more appropriate to go through a standard RMA consenting process under section 23(5)(b) of the FTCA.</p> <p>Inconsistency with a national policy statement (23(5)(c))</p> <p>WRC considered that some of the project site is likely to be considered highly productive land under the NPS-HPL, we note the project is likely to be considered 'specified infrastructure' under the definition in the NPS-HP and may therefore be exempt from restrictions on the use of highly productive land. We cannot provide you with conclusive advice on this matter at this stage but note that this is a matter which can be considered further by a panel. Therefore, we do not consider you should decline the project under section 23(5)(c) (the project is inconsistent with a national policy statement).</p> <p>WRC also noted the applicant will need to consider policy 6 of the NPS-FM, which requires that there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted. This is particularly relevant because the project will result in the loss of approximately 7 hectares of natural wetlands (and the offsetting of this through the creation of new wetlands and the enhancement of new wetlands). We note the NPS-FM includes exemptions for the operation, maintenance and construction of specified infrastructure, so we consider this is a matter which can be considered further by a panel. Therefore, we do not consider you should decline the project under section 23(5)(c) (the project is inconsistent with a national policy statement).</p> <p>Inconsistent with a Treaty settlement (23(5)(d))</p> <p>The project includes works which will affect waterways in the catchment of the Waikato River. We consider the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 will therefore be relevant to the project. Sections 27 to 31 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 place requirements on decision-makers</p>	

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					<p>under the RMA, and under clause 31(10) of Schedule 6 of the FTCA, a panel considering resource consent applications for this project will be bound by these obligations.</p> <p>Involves land needed for Treaty settlements (23(5)(e))</p> <p>The project is located on privately owned land which is not available for Treaty settlement purposes.</p> <p>Applicant has poor regulatory compliance (23(5)(f))</p> <p>WRC identified HCC has a history of environmental regulatory compliance, including previous prosecution. While it is a serious matter, WRC has not identified any ongoing or current non-compliance issues, and we do not consider the project should be declined on this basis.</p> <p>Insufficient time for the project to be referred and considered before FTCA is repealed (23(5)(g))</p> <p>The FTCA will be repealed on 8 July 2023, meaning that a referral order must exist for the project by this date if the project's resource consent applications are to be considered by a panel under FTCA process. The timeframe for completing a referral order following a decision to refer the project is dependent on certain statutory obligations, process steps and the capacity and resourcing of officials. This is becoming increasingly time-pressured as the 8 July deadline approaches.</p> <p>At this stage we consider there is still sufficient time for an Order in Council to be considered by Cabinet and (if approved) authorised by the Executive Council, should you decide to refer the project.</p> <p>Other issues and risks:</p> <p>The project has non-complying activity status under the Waikato Regional Plan and as such it must pass at least one of the two limbs of the 'gateway test' in section 104D of the Resource Management Act 1991 (RMA) if it is to be determined under the FTCA consenting process. The applicant has provided information confirming it will not be contrary to the relevant objectivities and policies of the Waikato Regional Plan, and therefore is able to satisfy the</p>	

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		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(2) - does the project help achieve the purpose of the FTCA (as per section 19)?			
					<p>requirements of Section 104D of the RMA.</p> <p>The applicants do not own all of the land within the project site, which may impact their ability to deliver the project. The applicants state consultation is underway with all of the relevant landowners, several of whom have provided letters supporting the project in principle, and the applicants do not anticipate that access to the land in the project site will be a barrier to project delivery. The applicant notes that even if formal agreements with all of the relevant landowners are not in place before a resource consent is lodged with a panel, section 181 of the Local Government Act 2002 allows for HCC to access land to undertake land drainage work (which the Rotokauri Greenway is). On this basis we conclude that there appears to be a viable pathway for timely project delivery, and thus we consider this is not an issue that would significantly detract from the project's ability to help meet the purpose of the FTCA.</p>	