

FTA#314: Application for listed project under the Fast-track Approvals Bill – Rotowaro Mine Continuation Project for Schedule 2A

Date submitted to secretariat:	12 June 2024
Security level:	In-Confidence
To:	David TAPSELL, Chair – Fast-track Projects Advisory Group

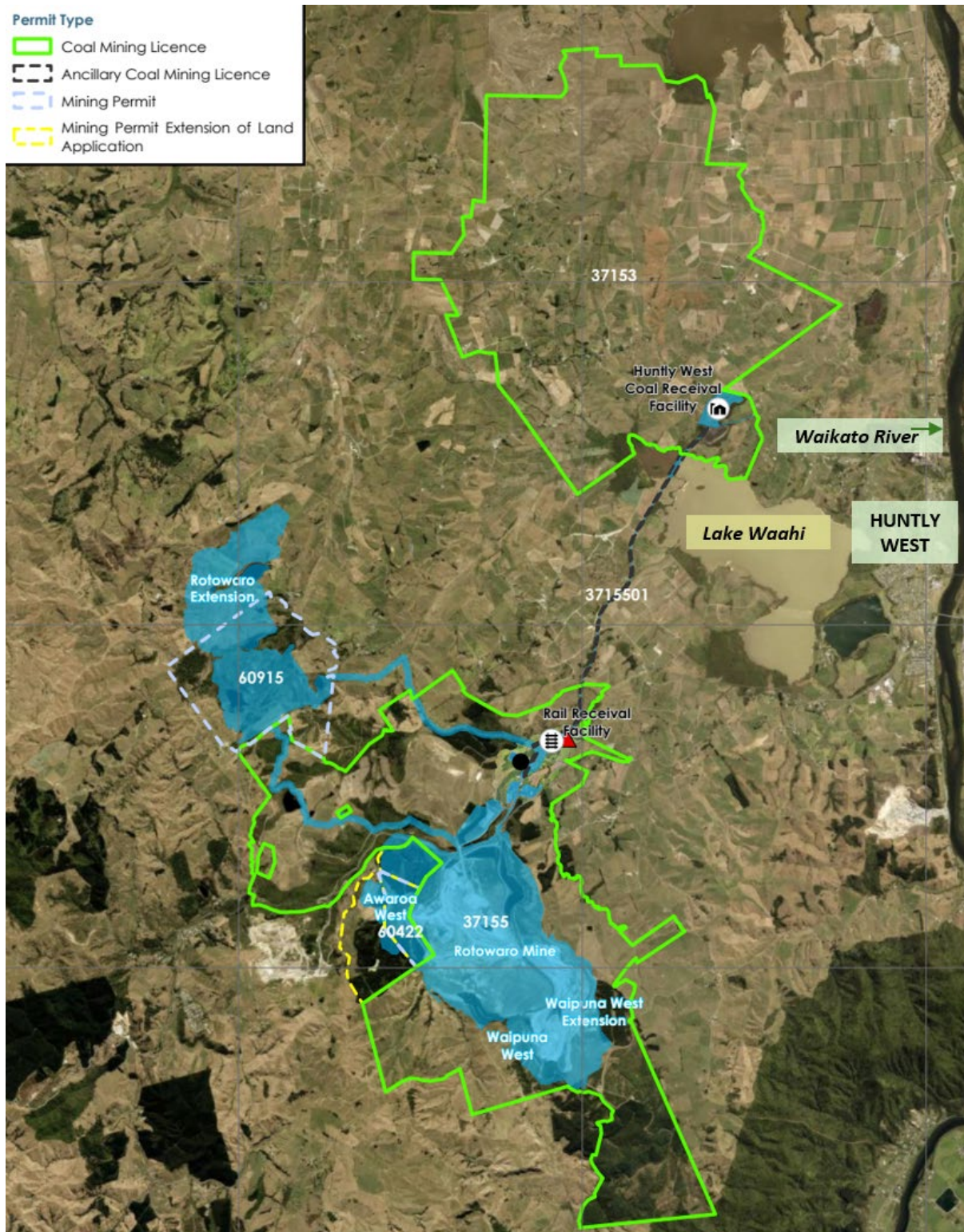
Number of attachments: #	Attachments: 1. Application documents for the Rotowaro Mine Continuation Project 2. Feedback from Ministry for Primary Industries
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Applicant	Sector	Region	Identified in a priority/strategy?
BT Mining Limited	Mining	Waikato	No

Ministry for the Environment contacts

Position	Name	Mobile	1 st contact
Principal Authors	Karen Sannazzaro, Anna Galvin		
Manager	Stephanie Frame	s 9(2)(a)	
Director	Ilana Miller	s 9(2)(a)	✓

Project location



Key messages

1. The Rotowaro Coal Mine is NZ's second largest open-cast coal mine, producing high quality sub-bituminous coal primarily used in steelmaking at Glenbrook. The applicant is operating in areas defined as Waipuna, Waipuna West and Huntly West, with

authorisations to continue until March 2027. The Rotowaro Mine Continuation Project seeks to complete mining at current locations and to extend mining operations into surrounding areas enabling the extraction of an additional 6.64M tonnes of coal over at least 19 years.

2. The project includes:
 - a. Open-cast pits
 - b. Haul roads
 - c. Infrastructure facility areas – offices, workshops, fuel storage, parking
 - d. Vegetation clearance and topsoil and overburden stripping
 - e. Coal handling and transport
 - f. Overburden engineered landforms and backfills
 - g. Surface water management, treatment and discharge
 - h. Land rehabilitation
3. The project will require resource consents under the Resource Management Act 1991 (RMA); and approvals under the Heritage New Zealand Pouhere Taonga Act 2014, Wildlife Act 1953, Freshwater Fisheries Regulations 1983 and Crown Minerals Act 1991.
4. The current operation occurs on land owned or leased by the applicant, or through easements and encumbrances. For exploration of the extension area, the applicant has secured rights from LINZ and private landowners, and negotiations are underway to secure access for mining.
5. We have undertaken an initial (Stage 1) analysis of the application, and this is provided in Table A.
6. We consider the applicant **has** provided sufficient information to consider the project for inclusion on Schedule 2A (although we note it could still be included on Schedule 2B based on the information provided).
7. The project does not trigger the ineligibility criteria in clause 18 of the Fast-track Approvals Bill (the Bill), noting the applicant confirms the project site is on land returned under a Treaty settlement or Māori land and they have landowner consent, although evidence of that consent has not been provided.
8. Advice on PSGE development priorities and Māori development is provided in Table A. Table A also includes the relevant PSGEs or Māori groups and the settlement mechanisms, that will/may be impacted by the project and whether the project is low, medium or high impact on Treaty settlement/s and other relevant arrangements. Appendix 1 provides further detail on how this advice should be considered and our approach to analysis.

Signature



Ray Salter
Principal Analyst – Listed Projects

Table A: Stage 1 initial assessment of project eligibility and Treaty settlement assessment and advice¹

Project details	Project description	Approvals sought	Consultation undertaken	Does the project trigger the ineligibility criteria [clause 18]?				Discretionary ground to decline [clause 21(2)]	Eligibility [clause 17]	
				Treaty settlement land, Māori customary land, customary marine title, customary rights, aquaculture settlement area, or prevented by RMA clauses [clauses 18(a-e, g)]	Access arrangement under CMA where a permit can't be granted, or is listed in items 1-11, 14 [clauses 18(f,h)]	Activity on a national reserve under Reserves Act which requires approval under that Act [clause 18(i)]	Prohibited activity under EEZA or regulations under that Act, decommissioning-related activities, offshore renewable energy progressing ahead of permitting legislation [clause 18(j-l)]		Is the project eligible [clause 17(2)]	Would the project have significant regional or national benefits [clause 17(3)]
High level summary			Y	N	N	N	N			
<p>Schedule requested 2A</p> <p>Project Name Rotowaro Mine Continuation Project</p> <p>Applicant BT Mining Limited</p> <p>Company director/s Michael John McCliskie Russell Lee Scott Middleton Richard John Tacon Milan Daniel Talijancich Pier Westerhuis</p> <p>Location Rotowaro, Waikato (West of Huntly)</p> <p>Land Status The current operation occurs on land owned or leased by the applicant, or through easements and encumbrances.</p> <p>For the extension area, the applicant holds an access arrangement for exploration granted by LINZ in respect of Crown land and</p>	<p>The Rotowaro Coal Mine is NZ's second largest open-cast coal mine, producing high quality sub-bituminous coal primarily used in steelmaking at Glenbrook. They are presently operating in areas defined as Waipuna, Waipuna West and Huntly West, with authorisations to continue until March 2027. The Rotowaro Mine Continuation Project seeks to complete mining at current locations and to extend mining operations into surrounding areas enabling the extraction of an additional 6.64M tonnes of coal over at least 19 years. The project includes:</p> <ul style="list-style-type: none"> • Open-cast pits • Haul roads • Infrastructure facility areas – offices, workshops, fuel storage, parking 	<p>The applicant seeks approval under the:</p> <ul style="list-style-type: none"> • Resource Management Act 1991 • Heritage New Zealand Pouhere Taonga Act 2014 • Wildlife Act 1953 • Freshwater Fisheries Regulations 1983 • Crown Minerals Act 1991 	<p>The applicant identifies the following parties as affected:</p> <ul style="list-style-type: none"> • s 9(2)(b)(ii) <p>The applicant has long-term relationships with local iwi as kaitiakitanga and landowners, and they have a programme of regular engagement with the Waahi Whaanui Trust, representing six hapu/marae. Engagement has also occurred with Ngāti Naho who have an ancestral link to the locality. Since 2017, the majority of the land at the mine is owned by the Waikato Raupatu Lands Trust and also Te Whakakitenga O Waikato Incorporated as a trustee. These entities are owned by Waikato-Tainui. TGH Farms and Forestry Ltd is also a landowner the applicant engages with regarding land access.</p>	<p>No – the applicant confirms the project site is on land returned under a Treaty settlement or Māori land, but that they have landowner consent (thereby not triggering the ineligibility criteria). However, they did not provide this written consent, so it would need to be clarified through the Advisory Group process.</p>	No.	No.	No.	<p>The project, or any part of it, is inconsistent with a relevant Treaty settlement, the NHNP Act, the Marine and Coastal Area (Takutai Moana) Act 2011, a Mana Whakahono ā Rohe, or a joint management agreement.</p> <p>No.</p> <p>It is more appropriate to deal with the application under another Act.</p> <p>No.</p> <p>The project may have significant adverse effects on the environment.</p> <p>No – while the scale of the operation as the potential to have significant adverse effects, they may be avoided, remedied or mitigated, including through offsets or compensation as appropriate.</p> <p>The applicant notes the comprehensive monitoring programme currently in place, and rehabilitation programme. They identify potential effects relating to</p> <p>Terrestrial and aquatic ecology, wetlands, surface water and groundwater, landscape, archaeology, cultural impacts, recreation, construction effects including noise, vibration, dust and light.</p> <p>The application was referred to the Department of Conservation for comment, who noted the following public conservation land is present near the project area:</p>	<p>Whether access to the fast-track process will enable the project to be processed in a more timely and cost-efficient way than under normal processes.</p> <p>Yes – multiagency approvals are required.</p> <p>The impact referring this project will have on the efficient operation of the fast-track process.</p> <p>Yes.</p> <p>Whether the application contains sufficient information to inform the referral decision.</p> <p>Yes.</p>	<p>The project has been identified as a priority project in a central government, local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy) or central government infrastructure priority list.</p> <p>No.</p> <p>The project will deliver regionally or nationally significant infrastructure.</p> <p>No – the project itself is not 'infrastructure' as defined by the RMA or Treasury, however they highlight the contribution their use of rail makes to the economic viability of that infrastructure.</p> <p>The project will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment.</p> <p>No – although the applicant notes the workforce lives in the region.</p> <p>The project will deliver significant economic benefits.</p> <p>Yes – mine operation currently contributes \$60M to the economy and is expected to contribute \$1.15B over the life of the project. It will have flow on effects at the Glenbrook Steel Mill.</p>

¹ **Disclaimer:** Given time and scope constraints, the initial assessment is solely based on information provided by applicants. There may be additional relevant information which has not been provided to MfE.

<p>is currently negotiating an access arrangement for mining within the same area.</p> <p>The balance of the extension land is owned by a local farming family and there is an access arrangement for exploration, with negotiations underway to secure access for mining.</p> <p>The coal itself is both Crown owned and privately owned. The Mining Permit grants rights in respect of Crown coal. The applicant is in the final stages of concluding an agreement with the coal owners for the rights to extract and sell the coal.</p> <p>For the Rotowaro Extension Haul Road, the applicant is in negotiations to gain access over private land.</p>	<ul style="list-style-type: none"> • Vegetation clearance and topsoil and overburden stripping • Coal handling and transport • Overburden engineered landforms and backfills • Surface water management, treatment and discharge • Land rehabilitation 		<p>The applicant has commenced consultation on the fast-track aspect, including establishing a process for ongoing dialogue and information sharing and a process for commissioning a Cultural Impact Assessment.</p> <p>Engagement with local land and mineral owners has been undertaken one on one to obtain access. Wider community consultation has commenced and the project has been discussed with the Waikato District Council and Waikato Regional Council.</p>					<ul style="list-style-type: none"> • Rotowaro Wildlife Management Reserve – Adjoining the existing Huntly West coal receivalfacility • Leechs Bush Scenic Reserve – East of Rotowaro Mine • Bush Tramway Rotowaro Conservation Area – West of Awaroa West extension project • Bush Tramway Recreation Reserve – West of Awaroa West extension project • Lake Waahi Recreation Reserve • Three unnamed watercourses within the proposed extension area form a minor tributary of Lake Whangape (Lake Whangape Wildlife Management Reserve) <p>For issues affecting wildlife, DoC advised more detailed assessments of remnant native vegetation and wetland areas in the project areas should be considered, as well as bat monitoring.</p> <p>The application was referred to the Ministry of Culture and Heritage, but no response was provided.</p> <p>The applicant has a poor compliance history under the relevant legislation.</p> <p>No.</p> <p>The project involves an activity that would occur on land that the Minister for Treaty of Waitangi Negotiations considers necessary for Treaty settlement purposes.</p> <p>No.</p> <p>The project includes an activity that is a prohibited activity under the RMA.</p> <p>No – while the NPS-FM and NES-F impose certain restrictions on coal mining in relation to wetlands, they provide for operation and extension of existing coal mines.</p>		<p>The project will support primary industries, including aquaculture.</p> <p>Yes – the National Planning Standard includes mining and quarrying activities in its definition of 'primary production'.</p> <p>The project will support development of natural resources, including minerals and petroleum.</p> <p>Yes.</p> <p>The project will support climate change mitigation, including the reduction or removal of greenhouse gas emissions.</p> <p>No – although the applicant notes the quality of their coal in optimising steel production and therefore minimising emissions. They note the avoided costs of importing Indonesian coal.</p> <p>The project will support adaptation, resilience, and recovery from natural hazards.</p> <p>No.</p> <p>The project will address significant environmental issues.</p> <p>No – although the applicant notes rehabilitation of the existing legacy environmental issues is better carried out as part of an existing operation, lowering costs to government and improving efficiency.</p> <p>The project is consistent with local or regional planning documents, including spatial strategies.</p> <p>Yes – on the basis that the potential adverse effects of the project on the surrounding environment are able to be appropriately managed, the project will be consistent with the local and regional planning documents.</p>
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PSGE Settlement Priorities and Māori Development assessment –

This table provides an overview. In the time available, it has not been possible to undertake a detailed review of all Treaty settlement and related matters, or to engage with the relevant PSGE, iwi or Māori groups in relation to the potential impacts of the project. If the project does progress through the fast-track process, it will be important this more detailed and comprehensive analysis and engagement is undertaken (there are some mechanisms in the proposed legislation, such as the clause 13 report (which will apply to Schedule 2 Part B (but not Part A) applications) and the requirements to invite comment from these groups, which are intended to address these matters).

Advice on Māori development and PSGE settlement priorities includes information relating to:

- where projects align explicitly with PSGE or iwi strategic objectives/vision/other strategic documents.
- where projects contribute towards addressing historical or systemic inequities faced by Māori. This would be undertaken through an equity assessment; and/or are being led by or in partnership with a Māori entity or business;

to relevant provisions in Treaty settlements, Joint Management Agreements outside of settlement; Mana Whakahono ā Rohe; Iwi Environment Management plans; implications for groups yet to settle their historical Treaty of Waitangi claims; and implications arising under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

<p>Ineligible projects - based on the considerations at cl18(a–e) of the Fast Track Approvals Bill (version as at introduction)</p>	<p>The applicant has stated that the project is not ineligible, however we note that the applicant confirms the project site is on land returned under a Treaty settlement or Māori land. The applicant confirms it has landowner consent; however, has not provided any written confirmation of this and therefore this would need to be clarified through the process.</p>
<p>Affected Māori group/s</p>	<p>The applicant has identified the following groups with interests in the project area:</p> <ul style="list-style-type: none"> • Waikato-Tainui • Ngāti Naho <p><u>Waikato-Tainui</u></p> <p>Waikato-Tainui is an iwi whose area of interest includes the proposed project site, based on the Area of Interest agreed between Waikato-Tainui and the Crown in the Deed of Settlement signed 22 May 1995.² In addition, the Waikato River settlement arrangements also are either adjacent to or include the proposed project site, based on the SO Plan agreed between Waikato-Tainui and the Crown in the Deed of Settlement signed 17 December 2009.³</p> <p><u>Ngāti Naho</u></p> <p>Ngāti Naho are a hapū are part of the collective group of the Waikato-Tainui Remaining Claims mandate.⁴ Waikato-Tainui are yet to settle their remaining historical Treaty of Waitangi claims and so the area of interest is not confirmed. There is a proposed area of interest included in the Terms of Negotiation signed 14 December 2020 and the proposed project location is within this area. Note this area of interest may be refined and confirmed throughout the course of Treaty settlement negotiations.</p> <p><u>Waahi Whaanui Trust</u></p> <p>This Trust forms is part of the wider Waikato-Tainui group.</p> <p>We have not identified any additional groups beyond those identified by the applicant.</p>
<p>Has the applicant consulted with those Māori groups?</p>	<p>The applicant states that it engages with Waikato-Tainui and Waahi Whaanui Trust regularly, including in respect to its existing operations at Rotowaro Mine which are on lands owned by Waikato Raupatu Lands Trust and Te Whakakitenga o Waikato (Waikato-Tainui). The applicant states that it has had recent iwi engagement with Waikato-Tainui, Waahi Whaanui Trust and Ngāti Naho in November 2023 in regard to the project, and has established a process for ongoing dialogue, information sharing and commissioning of a cultural impact assessment.</p>
<p>Impact/s of the project on Māori development and PSGE settlement priorities and related matters</p>	<p>Please note: For impacts on Māori Commercial Aquaculture Claims Settlement Act 2004, Fisheries Act 1996, Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and other matters such as customary fishing, taiāpure or mātaītai (legislation and functions that the Ministry for Primary Industries (MPI) administers) please refer to attached MPI advice.</p> <p><u>Impacts on PSGE settlement priorities and Māori development</u></p> <p>There is no information in the application to suggest that this application is made by or on behalf of a Māori organisation, or that the project will have a direct benefit in terms of Māori development.</p> <p>In the time available, we have identified the following relevant plans and documents:</p> <ul style="list-style-type: none"> • Waikato-Tainui Environmental Management Plan • Vision and Strategy for the Waikato River (addressed under relevant Treaty settlement arrangements below) <p>It is not possible to confirm from those documents that the project does or does not align with the strategic priorities of those iwi or Māori groups.</p> <p>A full analysis of the plan would need to be undertaken in conjunction with the relevant iwi before any firm conclusions can be reached. That is a matter to be considered in more detail in subsequent stages if this progresses through the fast-track processes</p> <p><u>Impact on Treaty settlements and other relevant arrangements</u></p> <p>Waikato Raupatu Claims Settlement Act 1995</p>

² Waikato-Tainui Deed of Settlement 22 May 1995 (tearawhiti.govt.nz)

³ Waikato-Tainui Deed of Settlement in relation to the Waikato River Schedule 17 Dec 2009 (tearawhiti.govt.nz)

⁴ Waikato-Tainui-Remaining-Claims-Mandate-Strategy-19-Mar-2019 (tearawhiti.govt.nz)

There are no statutory acknowledgements in the Waikato Raupatu Claims Settlement Act 1995, which the applicant has identified. There are no other mechanisms in the Act that appear to be directly impacted by the project.

Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

The application identifies the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 as applying to the project as it is located within the Waikato River catchment. The catchment area is provided for in the SO plan agreed between Waikato-Tainui and the Crown in the Deed of Settlement signed 17 December 2009.⁷ This includes the proposed project site.

The Waikato-River arrangements are detailed with a number of powerful and complex interactions with the legislation including the RMA, conservation and heritage legislation.

The Waikato-Tainui river arrangements are recorded in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. The overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations.

There are two underlying principles in the settlement:

Te Mana o te Awa

To Waikato-Tainui, the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. Respect for te mana o te awa (the spiritual authority, protective power and prestige of the Waikato River) is at the heart of the relationship between the tribe and their ancestral river:

Mana Whakahaere

Mana whakahaere embodies the authority that Waikato-Tainui and other River tribes have established in respect of the Waikato River over many generations, to exercise control, access to and management of the Waikato River and its resources in accordance with tikanga (values, ethics and norms of conduct). For Waikato-Tainui, mana whakahaere has long been exercised under the mana of the Kiingitanga:

The key elements provided for in the legislation include:

- A statement of significance of the river to Waikato-Tainui
- The Waikato River Authority (co-governance entity with five iwi and five Crown appointed members)
- Te Ture Whaimana (vision and strategy) – the primary direction setting strategic document for the Waikato River
- The Clean-Up Trust (with the Waikato River Authority as the trustee)
- The Waikato River Authority appointing half of the hearing commissions for resource consent applications relating to the river
- Arrangements to reflect the mana whakahaere of Waikato-Tainui including:
 - joint management agreements under the RMA
 - recognition of the exercise of customary activities on the river
 - recognition of the Waikato-Tainui Iwi environmental plan
 - an integrated river management plan.

The interactions between the Waikato River arrangements and the RMA, conservation and heritage legislation include the following:

- Te Ture Whaimana (the vision and strategy) is a powerful planning document and is stated in the legislation to be the 'primary direction setting' document for the river:
 - It is incorporated directly and without amendment into the RMA regional policy statement
 - It overrides any direction in an RMA national policy statement
 - RMA regional and district plans must give effect to Te Ture Whaimana
 - It has the status of 'general policy' under the conservation legislation
 - A number of decision-makers must 'have particular regard' to Te Ture Whaimana (including under the RMA, conservation and heritage legislation)

The joint management agreements (JMAs) between the river Iwi and each local authority are expressly provided for and required under the legislation. Those JMAs have been negotiated and agreed, and include:

- A range of RMA mechanisms (including a committee structure for RMA planning processes with Waikato-Tainui as part of the decision-making structure, and provisions for RMA consenting and monitoring/enforcement). There are detailed provisions to provide for Waikato-Tainui involvement in decision-making and processes under the RMA
- A range of customary activities can be exercised on the river and are exempt from having to comply with the RMA
- A decision-maker on a resource consent and under conservation legislation must have regard to the Waikato-Tainui environmental plan.

The Waikato River arrangements have a significant influence over statutory processes including complex interactions with the RMA, conservation, wildlife and heritage legislation. Any change to the statutory processes for these authorisations (for example, through the fast-track process) could have a significant impact on the operation and integrity of the arrangements.

Crown Minerals Act 1991

The Settlement Act or deed addressed above may include obligations in relation to the Crown Minerals Act 1991. This application seeks Crown Minerals Act 1991 approvals and which may be relevant to those settlement obligations (depending on the detail of the application made). There may also be settlement implications in relation to any Crown Minerals Act 1991 access or other statutory decisions made by the Minister or Director-General of Conservation (which may have been agreed through conservation relationship or other redress).

Iwi Environment Management plans

Note the comments above in relation to iwi management plans.

Implications for groups yet to settle their historical Treaty of Waitangi claims

There are groups still working through their Treaty settlement processes. For example, the remaining Waikato-Tainui claims. It will be important that these interests are considered in more detail if the project progresses through the fast-track process, but in the time available there are no further impacts noted.

Other matters

	There have been no joint management agreements, mana whakahono ā rohe or Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 considerations identified. In the time available, officials have not identified any other relevant matters.
Is the project considered low, medium or high impact (based on assessment criteria above)	From the information available we consider this project is likely to be of high impact. This is due to the nature and range of interests present in the project area. An impact of listing this project under Schedule 2 Part A is that the Ministers will not have to exercise their 'referral discretion' including considering the Treaty settlement impacts through that process, nor will they have the benefit of the clause 13 report. For Part A projects, there is a requirement on the expert panel to invite comment from the PSGE on the application.
Has the Ministry for the Environment undertaken engagement?	Officials consider engagement would be beneficial given the nature and range of interests present in the project area but were unable to undertake this in the time available.
Additional comments/context	See the attached advice from MPI on potential impacts on aquaculture and fisheries settlement considerations.

Appendix One: Approach and considerations for Treaty settlement advice on listed project applications advice in Table A

1. Ministers have advised the Advisory Group should receive advice from officials on “Māori development and PSGE settlement priorities” relevant to each application. Note this differs from section 13 requirements of the current Fast Track Consenting Bill that ‘Ministers must consider Treaty settlements and other obligations report’ as these reports will not be in existence at the time, although matters identified in section 13 (2)(a)-(j) will be considered as part of official's analysis.
2. We have interpreted “Māori development” and “PSGE priorities” to mean primarily projects that:
 - a. align explicitly with PSGE or iwi strategic objectives/vision/other strategic documents; and/or
 - b. contribute towards addressing historical or systemic inequities faced by Māori. This would be undertaken through an equity assessment; and/or
 - c. the project is being led by or in partnership with a Māori entity or business.
3. Given the time constraints and limited engagement this advice cannot be considered as comprehensive and does not intend to reflect their views and should not be read as such.
4. Engagement with PSGEs and other relevant groups has been considered based on potential high-risk factors including, but not limited to, if:
 - a. a project will take place on or effect any taonga or areas of significance that are protected by Treaty settlement arrangements.
 - b. a project will have a substantive and/or ongoing environment impact on any taonga or areas of significance.
 - c. a project will include a consenting arrangement that will require a significant take, or be ongoing for an extended period, in relation to a taonga or area of significance, or in regions where PSGEs have specific planning mechanisms in place.
 - d. PSGEs or other Māori entities have previously strongly contested the project or a similar type of project, particularly where court action has been taken.
 - e. The project is clearly in conflict with or undermines PSGE priorities.
 - f. Engagement would be required to maintain and uphold the Te Tiriti Crown relationship.
5. In limited circumstances where engagement occurs, it has been brief. Where engagement has been undertaken it is reflected in our analysis but should not be taken to mean that our Treaty Partners endorse our advice.