



29 March 2023

Ministry for the Environment
Environment House
23 Kate Sheppard Place, Pipitea
Wellington 6011

For: Max Gander-Cooper
Senior Policy Analyst | Kaitātari Kaupapa Here Matua
Fast-track Consenting Team

Kia ora Max

PROPOSED FAST-TRACK CONSENT – ROTOKAURI INFRASTRUCTURE SERVICING

1. INTRODUCTION

1.1 Thank you for your email on 1 March 2023 seeking:

- (a) confirmation in writing from Hamilton City Council that they are an applicant for the project, as they are the requiring authority for the designation; and
- (b) a description of the applicant(s)' legal interest (if any) in the land on which the project will occur, including a statement of how that affects the applicant's ability to undertake the work, in order to satisfy section 20(3)(k) of the FTCA. At the moment it is not clear that the applicant(s) have any legal interest in the land, or will be able to obtain a legal interest in order to implement a resource consent in a timely manner.

1.2 The purpose of this letter is to address those queries.

2. HAMILTON CITY AS JOINT APPLICANT

2.1 I can confirm that Hamilton City Council ("HCC") is a joint applicant for this project. Please see letter from HCC attached as **Annexure 1**.

3. INTEREST IN LAND

3.1 As you will appreciate there are multiple facets to this project and on reflection the application should have more clearly identified by:

- (a) the different components of the project;

- (b) how those components inter-relate;
- (c) who owns the land subject to those components; and
- (d) when those components will be delivered and who is expected to deliver them.

3.2 We address those matters in the headings below. There are four basic components of the project:

- (a) The Greenway Channel (Section 4);
- (b) Arterial road and associated wetlands (Section 5);
- (c) Collector road and associated wetlands (Section 6); and
- (d) Ancillary wetlands (Section 7);
- (e) Future Connections (Section 8);
- (f) Project benefits (Section 9);
- (g) Conclusions (Section 10).

3.3 The works and land ownership of each is addressed below.

4. **GREENWAY CHANNEL**

4.1 The Greenway Channel and the wetlands which sit within the designation footprint are shown on the plan contained in **Annexure 2** (Greenway channel designation overlaid on landowner map). This channel is designated within both HHCC's territory and Waikato District Council's ("WDC's") territory. We address each sub-component, the HCC section and the WDC section, separately below.

4.2 The Greenway Channel is intended to provide:

- (a) capacity for stormwater discharges from future wetlands that will need to be constructed to service development within the sub-catchment;
- (b) other social infrastructure, such as a cycleway; and
- (c) earth to assist with the construction of the arterial (cut / fill balance to minimise earthwork infill or export and cost).

Greenway channel within Hamilton City

4.3 The Greenway Channel is the full extent of the Notice of Requirement ("NoR") and includes a few key wetlands within its footprint as listed below.

4.4 The purpose of the Greenway Channel is to provide capacity to convey the full flow of stormwater from development within the sub-catchment from normal to very large (100 ARI) storm events.

- 4.5 As explained in more detail below, stormwater treatment / water quality is intended to be provided in a more localised way with each of the sub-catchments needing their own wetland. These local wetlands also have to be designed to assist in attenuating the 100ARI to ensure that the capacity of the Greenway Channel and will be built in conjunction with development within the relevant neighbourhood.
- 4.6 The following wetlands are included within the Greenway Channel:
- (a) Wetland 1;
 - (b) Wetland 2 (existing);
 - (c) Wetland 10; and
 - (d) SWWMP 019/2B and raingardens G1and G2.
- 4.7 The persons who are listed as having property affected by the Greenway Channel are as follows (please refer to **Annexure 2** in the Application filed):
- (a) Hamilton City Council (joint-applicant);
 - (b) HHL (joint applicant);
 - (c) SN and MR Gower. While the Gowers are the present owner of this land they have entered into a sale and purchase agreement with Nan Su. Please see attached letter from Nan Su (Annexure 3) in this respect:
 - (i) A copy of the sale and purchase agreement from Nan Su (This is included as Annexure 2 to the Nan Su Letter (**Annexure 3**);
 - (ii) A letter from Tomkins Wake confirming that the deposit has been paid (**Annexure 4**)/
 - (d) WM and MJ Clarke;
 - (e) Rotokauri Farming No. 1 Limited;
 - (f) Rotokauri Farming No. 3 Limited;¹
 - (g) JJ and K Patterson;
 - (h) TP Tan and OH Lee;
 - (i) RN and PK Ruske; and

¹ This relates to the 55.62ha property identified as '1' and recorded as being owned by HHL in the 'Landowners Map' (Drawing C132-1, Rev A, prepared by Maven Associates) provided at page 1 of Attachment 2 to the referral application. The Record of Title for this property is actually in the name of Rotokauri Farming No. 3 Limited, hence the reference to that company in this letter. However, as outlined in paragraph 4.8, both HHL and Rotokauri Farming No. 3 Limited have the same (sole) director and 100% shareholding. This is why the land was shown as being owned by HHL in the 'Landowners Map'.

- (j) S and SA Nuich.
- 4.8 HHL has a common shareholding with Rotokauri Farming No. 1 Limited and Rotokauri Farming No. 3 Limited. All have the same (sole) director (Nicsha Farac) and 100% shareholding (Blacklock Securities Limited). Thus, HHL's owners have a direct interest in land owned by Rotokauri Farming No. 1 Limited and Rotokauri Farming No. 3 Limited. In addition, HHL is a 100% shareholder of Hamilton JV (N3). The Companies Office extracts for those companies are attached as follows:
- (a) Hounsell Holdings Limited ("HHL"), **Annexure 5**;
 - (b) Rotokauri Farming No. 1 Limited, **Annexure 6**;
 - (c) Rotokauri Farming No. 3 Limited, **Annexure 7**; and
 - (d) Hamilton JV (N3), **Annexure 8**.
- 4.9 All of the other parties listed in paragraph 4.7 above have provided their written approval to the Rotokauri Greenway corridor other than TP Tan/OH Lee. These letters in support were included in **Attachment 2** to the referral application and confirm that each of the owners would be willing to:
- (a) Sell that part of their land that has been designated in the HCDP, in order to enable the Rotokauri Greenway to proceed (subject to appropriate compensation under the Public Works Act 1981); and
 - (b) Allow access in advance of determining compensation if that would assist to accelerate the project.
- 4.10 TP Tan and OH Lee have not provided written approval to the Rotokauri Greenway corridor. However, as can be seen from the Landowners Map, (**Appendix 2**) their property is small (at 0.32ha) and only a very narrow (approximately 6m wide strip) along the southern boundary of their property is required for the Rotokauri Greenway. I note that:
- (a) The property boundary lines are a little difficult to see, they are yellow on a green background. I have overlaid the property boundary with a red line.
 - (b) The designation boundary is black and a blue circle has been drawn around the area.
 - (c) The subject area has been marked in pink shading.
 - (d) The area required is at the opposite end of the property to their dwelling.



- 4.11 Obviously, landowner support is not a ‘right’ in the land, but it is clear that having an actual right is not a mandatory requirement for fast tracking. KiwiRail Holdings Limited’s application FTC#67 / Application 2021-046 for Drury Central and Paerata Stations required the acquisition of private land.² Paragraphs 7 – 9 of the stage 2 assessment dated 8 July 2021 (Tracking # BRF-229) noted:
- (a) That the need to acquire land had the potential to delay the project.
 - (b) Despite that risk, granting the NoR’s through the FTCA will likely provide certainty for the project investment in a more timely way than could be achieved under the standard process.
 - (c) On balance there was a recommendation to proceed.
- 4.12 We also note that other listed projects, such as LP15 (Papakura to Drury South State Highway 1 Improvements) by Waka Kotahi / New Zealand Transport Agency also required the acquisition of private land.
- 4.13 The land acquisition risks associated with this project compare favourably with both KiwiRail and Waka Kotahi’s projects because the relevant landowners have been contacted and, except for one owner, have provided a letter of support for the project.
- 4.14 In relation to the single owner who has not provided a letter of support, specific acquisition of land is not necessarily needed (unlike the case for KiwiRail or Waka Kotahi). As the works required involve drainage works, Hamilton City Council has relevant powers under s181 of the Local Government Act 2002 which would not necessarily require the acquisition of land and in our experience the s181 process is typically faster than outright acquisition (and still protect the owners’ rights under the Public Works Act 1981).

² The author of this letter acted for one of the relevant landowners and so is aware of the specific background of the project and the landowners strong unhappiness at having their land acquired.

- 4.15 On the basis of the above, we consider that MfE can be satisfied that the Applicants have sufficient legal interest in all the land required for the Rotokauri Greenway corridor, in order to implement the resource consents being applied for in a timely manner.

Greenway channel within Waikato District

- 4.16 The Greenway land within Waikato District is subject to both the HCC Designation and an easement in favour of WDC. For some reason the designation over the Waikato District land does not presently show on their planning maps. However, please find attached as **Annexure 9** a copy of the Commissioner’s decision which recommended at paragraph 11.2 that:

*“Acting under delegated authority from the **Waikato District Council** and pursuant to Sections 168 and 171 of the Resource Management Act 1991, the Panel **recommends** to the **Hamilton City Council as Requiring Authority** that the Notice of Requirement for a new designation for the Rotokauri Greenway be confirmed SUBJECT to the Designation Conditions applying as set out in **Schedule 1** to this Decision and Recommendation Report.”*

- 4.17 A copy of the title to that land is attached as **Annexure 10** and a copy of the Gazette notice for drainage is attached as **Annexure 11**.

- 4.18 Notably the Gazette Notice states that the rights and powers implied in and attaching to a right of way as set out in the Seventh Schedule of the Land Transfer Act 1952, under the heading “Right to Drain Water” as if the same were fully set out herein. Schedule 7 provided the following power in this respect:

“3 Right to Drain Water

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times to drain and discharge water (whether rain, tempest, spring, soakage, or seepage water) in any quantities along the stipulated course (where a course is stipulated) across the land over which the easement is granted or created, together with the additional rights incidental thereto set out in clause 5 of this Schedule (or, where open drains are provided for, similar rights in regard to those drains, with the necessary modifications as are provided for in respect of pipe lines in the additional rights so set out).

...

5 Additional Rights Attaching to Easements of Right to Convey Water and of Right to Drain Water and of Right to Drain Sewage

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) for the purposes of the easement concerned—

- (a) *To use any line of pipes already laid on the stipulated course or any pipe or pipes in replacement or in substitution for all or any of those pipes:*

- (b) *Where no such line of pipes exists, to lay, place, and maintain, or to have laid, placed, and maintained, a line of pipes of a sufficient internal diameter and of suitable material for the purpose under or over the surface (as the parties decide) of the land over which the easement is granted or created and along the line defined for the purpose where such a line has been so defined:*
- (c) *In order to construct or maintain the efficiency of any such pipe line, the full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee, his tenants, servants, agents, and workmen, with any tools, implements, machinery, vehicles, or equipment of whatsoever nature necessary for the purpose, to enter upon the land over which the easement is granted or created (or, where only the position of the pipe line is defined in the easement, upon such part of the land of the grantor and by such route as is reasonable in the circumstances) and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining and renewing the pipe line or any part thereof and of opening up the soil of that land to such extent as may be necessary and reasonable in that regard, subject to the condition that as little disturbance as possible is caused to the surface of the land of the grantor and that the surface is restored as nearly as possible to its original condition and any other damage done by reason of the aforesaid operations is repaired.]]”*

4.19 While the work within WDC’s land will trigger regional resource consent, Maven have advised that the work anticipated to be undertaken within the easement area is weed control, regrading of side slopes, installation of check dams and installation of a maintenance track. The works can be undertaken in accordance within the easement area and in accordance with those rights – subject to WDC’s approval.

5. ARTERIAL AND ASSOCIATED WETLANDS

5.1 This component includes the Arterial footprint and 2 associated wetlands needed to treat the runoff from the road (wetlands 4A, 4B, 6 and 7A). The arterial and associated wetlands are shown on **Annexure 12 (marked orange)**.

5.2 These wetlands are also sized and located so that they also serve residential development in the local area, optimised for the topography of the land and the drainage strategy for the Greenway Channel.

5.3 In respect of the Minor Arterial, the referral application (as filed) refers to both the arterial and the collector, and states as follows:

“constructing a 3.8km length Minor Arterial transport corridor from Te Wetini Drive to the northern boundary of Hounsell Holdings land, including the collector road to the Chalmers Road underpass and to the north to the underpass that links to Te Kowhai East Road.”

5.4 There is now a minor correction to that description, in that the words “and to the north to the underpass that links to Te Kowhai East Road” should be **deleted**. To make it clear the area of this land is separately shown in **yellow** in **Annexure 12**. With that correction (and noting that we deal with the collector in section 6 of this letter), the land proposed

to be used for the Minor Arterial (in accordance with the referral application) is as shown in the plan attached as **Annexure 12**.

5.5 It is the Arterial which (along with the Greenway Channel) does the heavy lifting in unlocking the development potential of Rotokauri. Within the footprint of the corridor's key infrastructure services (3 waters and other services) will be laid to enable development. Also, local roads serving the development area will connect to the Arterial and provide connectivity to Hamilton. For example, Barker Associates have advised that based on the Masterplans they have been involved with for developing HHL's land and Rotokauri Development Limited's land the following yields:

- (a) Hounsell Holdings – 2,100 residential dwellings;
- (b) Rotokauri Development Limited's 1,000 residential dwellings.

5.6 The Arterial and associated wetlands have not been designated. The persons who are listed as having property affected by the Arterial and wetlands are:

Landowner Map Ref	Landowner Name	Legal description	Title Reference	Letter Support in
1	Hounsell Holdings Limited Hounsell Holdings Limited Rotokauri Farming No 3 Limited	Lot 3 Deposited Plan 468484 Lot 53 Deposited Plan 471831 LOT PT 1 DP 30552	628813 694425 SA5D/1082	*Applicant
2	Rotokauri Development Limited ("RDL")	Lot 2000 Deposited Plan 519305	81794	Yes, see Annexure 13
3	S Nuich & S A Nuich & Others	Lot 2 Deposited Plan 540282	905541	Yes, see Annexure 14 [to be provided separately]
4	WM Clarke & M J Clarke	Lot 3 Deposited Plan South Auckland 62700	SA50C/276	Yes, see Annexure 15 [to be provided separately]
12	Hamilton JV (N3) Limited	Lot 1 DP 535335	885159	*Applicant

5.7 HHL is an applicant and RDL has provided a letter of support, attached as **Annexure 13**. Again, we note that this is not a guarantee of access, but it does reduce the risk of delays and/or issues associated with land acquisition under the PWA. Ultimately the landowners know that without this infrastructure their land (which is presently live zoned)

cannot be intensively developed. So, there is a strong incentive to support this part of the project.

5.8 As noted in the application (and shown in Annexure13, the Minor Arterial only goes through the land of two landowners – being HHL and RDL. There are no common directors or shareholders between HHL and RDL. However, the parties have entered into a separate commercial agreement to deliver the section of the Minor Arterial covered by the referral application.

5.9 On the basis of the above, we consider that MfE can be satisfied that HHL has sufficient interest in the land required for the Minor Arterial, in order to implement the resource consents being applied for in a timely manner.

6. COLLECTOR AND ASSOCIATED WETLANDS

6.1 This component includes the Collector footprint and 1 associated raingarden needed to treat the runoff from the road (raingarden G2). The Collector and associated raingardens are shown on **Annexure 12**. This area is shown in **green**. These wetlands are also sized and located so that they also serve residential development in the local area, optimised for the topography of the land and the drainage strategy for the Greenway Channel. The Collector is important to cater for the long-term traffic flows in Rotokauri (2028+) and it also provides road connectivity through the land that it passes.

6.2 The Collector and associated wetlands have not been designated. However, the persons who are listed as having property affected by the Collector and associated wetlands are:

Landowner Map Ref	Landowner Name	Legal description	Title Reference	Letter in Support
1	Hounsell Holdings Limited	Lot 3 DP 468484 Lot 53 DP 471831	628813 694425	*Applicant
6	SN Gower & MR Gower	Section 12 Survey Office Plan 464504	647038	Yes – via purchaser Nan Su, see Annexure 3

6.3 HHL is a joint Applicant. In terms of the Gower property, that land has been sold to Nan Su and as set out at paragraph 4.7(a) above.

6.4 Again, we note that this is not a guarantee of access, but it does reduce the risk of delays and/or issues associated with land acquisition under the PWA. Ultimately the landowners know that without this infrastructure their land (which is presently live zoned) cannot be intensively developed. So, there is a strong incentive to support this part of the project.

- 6.5 We acknowledge that the collector will link under land controlled by Waka Kotahi – New Zealand Transport Agency and consultation in this respect has begun. State Highway 1C has been constructed to allow for a collector road underneath – see Google Maps screenshot below.



7. ANCILLARY WETLANDS

- 7.1 The remaining wetlands (8A, 8B, 9, 22, and 12) are a series of wetlands that are intended to address the specific needs of the remaining sub-catchments of Rotokauri which are not serviced by the other wetlands above. In relation to these wetlands:
- (a) The purpose of the project is to identify a suitable location, sizing and design of the wetlands (and obtain consent for them).
 - (b) The reason for doing so is to ensure that Rotokauri has an integrated stormwater solution that has been fully designed and can be implemented.
 - (c) However, it is not anticipated that these wetlands will be constructed as part of the work to build the Greenway Channel, Arterial or Collector. Instead, they will be delivered by the relevant landowners as and when they see fit to develop their own

land. This avoids the cost of establishing infrastructure too far ahead of the growth that needs it. This approach also allows the relevant landowners to vary the consent for the relevant wetland if they wish to change its design or location but ensures that there is a clear performance benchmark for alterations to be assessed against (making it easier to obtain consent for good changes).

- (d) It is acknowledged that the applicants do not have the legal interest in this land to undertake the works necessary to construct these wetlands. However, these wetlands do not need to be constructed to achieve the primary benefits of the project – those benefits are achieved through the Greenway channel and the Arterial, and to a lesser extent the Collector.

7.2 The proposed location of ancillary wetlands is shown in **Annexure 16**.

7.3 This approach was signalled as part of the NoR for the Greenway. Paragraph 7.5 of the Commissioner’s recommendation notes that Mr Muldowney – counsel for the applicant stated:

“The distinction between effects arising from the works which are to be designated, and other effects, arising from associated activities, is necessary in the present case because the NORs are not accompanied by any related stormwater discharge consent applications to the Waikato Regional Council. There is a good resource management reason for this. The ultimate nature and characteristics of the stormwater discharges will be determined incrementally as development proceeds within the catchment. Each development will be required to contribute to the overall capture, detention, and conveyance of stormwater. Understanding the nature of these developments will be important in finalising the detailed design of the works ahead of the submission of the outline plan of works under s 176A of the RMA.”

8. FUTURE CONNECTIONS

8.1 In the initial application an Arterial connection going further north, past HHL’s land and through the greenway was shown.

8.2 The PDA between HCC and HHL requires a “concept design” for this part of the Arterial to ensure that the road design connects through to other planned road. As a result this part of the Arterial is part of the design work and was shown on the design plans.

8.3 However the applicants are not seeking resource consent as for this part of the project and so those future connections are excluded from the proposed fast-track project.

8.4 As a result, as noted at paragraph 5.4 above, the words “and to the north to the underpass that links to Te Kowhai East Road” should be **deleted** from the application. As noted above, for completeness this is shown in **yellow** in **Annexure 12**.

9. PROJECT BENEFITS

9.1 For completeness, we do not see that the above clarification in relation to the timing and delivery of ancillary wetlands changes the overall merits of the fast-track proposal. The ‘core’ projects which are intended to be delivered promptly are infrastructure for the

purpose of s19(d)(iv) of the COVID-19 Recovery (Fast-track Consenting) Act 2020, the works involved still involve extensive physical work which will create direct employment – as will the facilitation of growth in the local area. The extent and timing of earthworks would still likely trigger a notified resource consent and so fast-tracking this project will still allow it to be delivered earlier than through the conventional consenting pathway. Further detail / analysis can be provided if necessary.

10. CONCLUSION

10.1 We trust the above is clear and sufficient for present purposes. We are happy to discuss any aspect of this advice further if that would assist.

Nga mihi / kind regards



Andrew Braggins

Director

The Environmental Lawyers

s 9(2)(a)



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Table of Annexures

Annexure Number	Document
1	Letter from Hamilton City Council confirming status as joint applicant
2	Greenway channel designation overlaid on landowner map
3	Letter from Nan Su, including a copy of the sale and purchase agreement from Nan Su as Annexure 2
4	A letter from Tomkins Wake confirming that the deposit has been paid
5	Company Office Extract for Hounsell Holdings Limited
6	Company Office Extract for Rotokauri Farming No. 1 Limited
7	Company Office Extract for Rotokauri Farming No. 3 Limited
8	Company Office Extract for Hamilton JV (N3)
9	Commissioner's decision on Hamilton City Council notice of requirement for Greenway over land within Hamilton City and Waikato District
10	Title to land within Waikato District subject to the HCC Designation
11	Gazette notice for drainage rights to land title.
12	Arterial and associated wetlands (and Collector and associated wetlands) overlaid on landowner map
13	Rotokauri Development Limited letter of support
14	S Nuich & S A Nuich & Others letter of support [to be provided later]
15	WM Clarke & M J Clarke letter of support [to be provided later]
16	Ancillary wetlands overlaid on landowner map