



28 April 2023

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

For: Rebecca Perrett
Acting Manager, Fast-track Consenting Team

Dear Rebecca

RE: PROPOSED FAST-TRACK CONSENT – RESPONSE TO REQUEST FOR FURTHER INFORMATION

1. INTRODUCTION

- 1.1 We refer to your letter to Mr McNutt dated 13 April.
- 1.2 The Ministry for the Environment’s Fast-track Consenting Team has requested further information regarding the application to refer the Rotokauri Greenway and Minor Arterial Project to an expert consenting panel for consideration under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (“FTCA”).
- 1.3 This letter addresses the second question from MfE, which was *“when do you expect agreements to be in place which will allow you access to all of the land within the project site?”*
- 1.4 Firstly, and these points cannot be overstated:
- (a) The fast-track applicants have been working diligently with landowners within the Rotokauri Growth Cell to reach agreement. This is demonstrated in part by the array of letters in support, though there has been a lot of other work behind the scenes as well.
 - (b) Hamilton City Council has advised that such statutory processes are only used last resort and have previously highlighted to us that they act as a reasonable and responsible public authority who works carefully with their community.
 - (c) Hamilton City Council has not made any decisions about activating a s181 process, consistent with the view that this is a last resort and we are not even close to needing to use such powers.

1.5 Nevertheless, we understand that the Minister needs some insight into what processes are available and what the timeframes of those processes **if** agreement cannot be reached. Again, the need to do so again seems reasonably unlikely. The following is only an outline of how the statutory and practical timeframes could apply if they were used as the relevant decisions have not been made.

2. OVERVIEW

2.1 Section 181 of the Local Government Act 2002 provides an express power for local authorities to construct land drainage and river clearance work on private land. This power can only be exercised through agreement with the owner, or following Schedule 12 of the LGA 2002. Notably the landowners rights in terms of the Public Works Act 1981 are protected by this section, but determination of compensation can follow after works have commenced. This is important because the land is not being 'taken' and so access can be achieved in advance of determining what compensation should be paid and it is often the more complicated assessment of compensation / valuation which delays access in situations where land is being taken.

2.2 The requirements of Schedule 12 are self-explanatory, but in essence a description of the proposal must be given to the owner and the owner has 1 month to lodge an objection. If there is an objection, a council hearing needs to be followed. Following a council decision there is a right of appeal to the District Court, but this is seldom followed.

2.3 Hamilton City Council has not made any decisions about activating a s181 process and so the following commentary in terms of timeframes is a general commentary only based on the authors experience with many other similar projects.

2.4 Firstly, local authorities endeavour to reach agreement with the owner and a s181 process is usually seen as either a last resort or a necessary backstop plan to ensure that project timeframes are met. Typically, the s181 process is commenced with all relevant landowners at once to ensure that all owners are being treated fairly and consistently.

3. TYPICAL TIMEFRAMES FOR THE S181 PROCESS

3.1 In terms of typical timeframes:

(a) **Up to 3 months** to complete the detailed design so that owners can be clearly shown what is proposed. Maven have confirmed that these designs will be completed well before 1 October 2023. There are already preliminary designs suitable for engagement with owners, but some further investigation is being undertaken to ascertain whether the project can be moved away from some landowners.

(b) **3-6 months** is usually allocated for consultation and engagement. The amount of time allocated to this process can depend on whether the project has previously been signalled to the community previously as often water supply or wastewater pipelines are not shown on designations. Here, given the greenway designation and engagement that HHL has taken it is possible that consultation and engagement would be toward the lower end of this timeframe.

(c) **One month** for objections.

3.2 Depending on the number of objectors, the nature of objections and progress in negotiations there is also a wide variety of timeframes for the Council hearings process and the hearing for each objection does not need to be heard together. Assuming that there is an owner who has not agreed in principle to enable the work (i.e. there is a substantive question about whether the work should be undertaken on their land) the hearing process is likely to advance promptly but with appropriate regard to natural justice. I would typically allow **5 months** for such a process, which allows time for:

(a) Discussions with the objector to clarify / address their concerns;

(b) Evidence for the applicant;

(c) Evidence from the owner in response to the applicant;

(d) A hearing (typically one day); and

(e) Time for a decision to be made.

3.3 So, all up, it would be appropriate to allocate 12 months for access. The s181 process does not have to wait for the resource consents to be granted, particularly as the Greenway has been designated. It may well commence in tandem with the resource consent application process.

4. **EXISTING WORK ON LAND ACQUISITION STRATEGIES**

4.1 Separately to this letter, HCC has already commissioned a detailed (60+ pages long) land acquisition strategy for the Rotokauri Growth cell. That strategy has been prepared by well known property advisory consultants The Property Group. It is in the order of 60 pages long.

4.2 That report is obviously confidential and commercially-sensitive and it would not be appropriate to disclose it as part of this process, but hopefully the knowledge that this report exists will assist to provide some confidence to the Minister that the need for land acquisition to deliver the project is well understood .

5. **GREENWAY CHANNEL (SECTION 4 TEL LETTER ON LAND INTERESTS)**

5.1 The above timeframes show that access to the Greenway Channel can be achieved within the planned construction timeframes set out in the Barker & Associates letter of 27 April 2023 ("Barkers letter"). More specifically:

(a) The first works are intended to commence by 1 October 2024.

(b) The designs for this area will be complete in the next 3 – 4 months and well before 1 October 2023. That allows more time than is seen as needed for a s 181 process (if that was needed)

- (c) Most of the land needed for the first set of works is under the control of the applicant or are supported by the relevant landowner. The one (current) exception is Tan and the applicant is expediting further discussions with him and also looking at design options to assist in this regard, see page 4 of the Barker's letter in this regard.

6. ARTERIAL AND ASSOCIATED WETLANDS (SECTION 5 TEL LETTER ON LAND INTERESTS)

- 6.1 The arterial (roadway) only goes through the land of two owners, HHL and Rotokauri Development Limited. These owners already have a close working relationship and are both active property developers. We anticipate agreement being reached between these parties within 6 months from now, i.e. before the end of 2023.
- 6.2 The wetlands associated with the roadway impact other landowners; Nuich and Clake are supported by the relevant landowners. As noted previously Hamilton JV (N3) Limited lands are also impacted (by wetland 4A&B) has the same director and shareholder as Hounsell.¹ That work is planned to commence in the following earthworks season (1 October 2025) which will allow plenty of time for a s 181 LGA 02 process, if that was needed (and we are reasonably confident that it will not be needed).

7. COLLECTOR AND ASSOCIATED WETLANDS (SECTION 6 TEL LETTER ON LAND INTERESTS)

- 7.1 The collector (roadway) only goes through the land of two owners, HHL and SN / MR Gower (this land is being acquired by Nan Su and we have provided a copy of the sale and purchase agreement in this respect).
- 7.2 We are advised that Nan Su has already applied for resource consent to develop their land and that application is close to being granted. We have seen emails demonstrating that the design team for the project has been working closely with the consultants for Nan Su (such as Commute) and have been sharing designs to ensure that the project integrates with Nan Su's development. On that basis:
 - (a) The project team are highly confident of reaching an agreement with Nan Su before the end of 2023.
 - (b) Even if agreement is not reached, the footprint of the collector only skirts Nan Su's land and the project team consider that the carriageway for the collector could be formed outside of that land if necessary.

¹ TEL letter dated 29 March 2023, paragraph [4.5].

8. **ANCILLARY WETLANDS (SECTION 7 TEL LETTER ON LAND INTERESTS)**

8.1 The above timeframes seem appropriate for the ancillary wetlands, however we note that it is intended that ancillary wetlands be constructed by the relevant owners and so a s181 process is not envisaged.

Nga mihi / kind regards



Andrew Braggins

Director

The Environmental Lawyers

s 9(2)(a)



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