SUBMISSION ON THE REVIEW OF THE CROWN MINERALS ACT 1991 DISCUSSION DOCUMENT

January 2020

Introduction

The Aggregate and Quarry Association (AQA) is the industry body representing Construction Material companies which produce an estimated 45 million tonnes of aggregate and quarried materials consumed in New Zealand each year.

Funded by its members, the AQA has a mandate to increase understanding of the need for aggregates to New Zealanders, improve our industry and users' technical knowledge of aggregates, and assist in developing a highly skilled workforce within a safe and sustainable work environment.

Background

In 2018, the New Zealand aggregate and quarrying sector produced 45 million tonnes of aggregates, including limestone and other products, with an economic contribution to New Zealand estimated at $3 billion. This included a wide range of industrial minerals including clay, limestone, perlite, halloysite, bentonite, zeolite, silica, dolomite and serpentine.

It is therefore vital that local aggregate resources throughout the country are identified, understood and effectively managed.

We make the following submission in relation to the discussion document Review of the Crown Minerals Act 1991(CMA).

Reasons for reviewing the Crown Minerals Act 1991

The CMA needs to be viewed in the context of the whole regulatory system. These Acts help manage the adverse effects of the sector / resources activities and if there are environmental or social issues (and outcomes) that need to be addressed, it is those Acts that should be amended and not the CMA.

The Crown holds significant reserves of minerals and the CMA plays an active role in meeting the Government's goals through promoting, encouraging and enabling mineral use, clearly with appropriate caveats. The Government recently released its Resource Strategy for the next ten years. It included a clear statement that;

"***Projections indicate that the population of New Zealand could grow as high as between 5.3 and 7.9 million by 2068. To meet the needs of this growing population we will require more housing, more energy, and expanded infrastructure. The minerals and petroleum sector has a critical role to play in building this future.***

We need to make sure we have the aggregate (crushed rock and stone) required, or alternative replacement material, to build the foundations of our houses and roads."

We are therefore disappointed with the status given in the discussion document to the No New Mines on Conservation Land proposal. While unclear how this policy will apply to quarries, recent work by GNS has identified that 32% of future hard rock reserves are situated on DOC land. Any sterilisation of available quarry resources will impact heavily on iwi and regional communities in terms of jobs, availability and cost of aggregates and sand.

Currently extraction of aggregates on DOC land is essential for flood mitigation, river restoration, and the construction and maintenance of tracks, carparks and structures in National Parks and on other DOC land. An example is the extraction of rock and gravel from conservation land adjoining the Waiho River near Franz Josef Glacier to help protect its walking tracks. This sensible and pragmatic decision saved DOC a fourfold amount – and considerable carbon emissions – from the alternative of trucking material a long distance.

Existing Rights

Commitments have already been made by government on a number of occasions that existing rights of permit holders to continue production or exploration activities will be protected. This commitment was also captured by Principle 10 of the Minerals and Resource Strategy. It is essential that any changes to the purpose statement (or any other part of the Act) do not affect those rights.

This must also include the rights of entities to subsequent permits. That is, it needs to consider the natural extension of permit areas should aggregate deposits be expanded through mining works, and the ability to extend the duration of these existing permits.

Chapter 1: Role and purpose statement

Minerals such as aggregates are key to the functioning of our economy and critical minerals, such as cobalt, vanadium and rare earth elements will likely be essential in a low emissions economy. It is critical that the CMA retains its emphasis on promoting efficient mineral use in order to ensure that the Government's goals are achieved.

The use of the word 'promote' in the purpose statement is a standard feature of a number of New Zealand Acts of parliament, governing a range of sectors and activities. Just a handful of these relevant to our sector include the Conservation Act, the Resource Management Act, the Energy Efficiency and Conservation Act, the Exclusive Economic Zone and Continental Shelf Act.

The definition of **"promote"** is to support or actively encourage (a cause, venture, etc.); further the progress of (Oxford Dictionary). Aggregate is critical to building our economy. It forms the foundation of buildings and makes up 75–90% of the material in roads and infrastructure. The Government has stated that it "wants to build a stronger understanding of the potential demand and supply of aggregate in NZ to assist in the planning for aggregate to support a more productive, sustainable and inclusive economy". This surely means that the CMA must support, actively encourage or further the progress of aggregates and other minerals in order to support the Government's Resource Strategy.

The purpose statement within the CMA must retain the word **promote.**

Provided that the CMA continues promoting, encouraging and enabling mineral use, we support the consideration of non-economic aspects of wellbeing, provided that care is taken to ensure that this does not conflict with decision-making that occurs in other parts of the wider regulatory system for Crown minerals.

For consistency, the "Living Standards Framework" developed by Treasury to create a more holistic perspective to evaluating the wellbeing of the country, would seem appropriate to replace the current focus on economic wellbeing.

Discussion of the CMA needs to be viewed in the context of the whole regulatory system. These Acts help manage the adverse effects of the sector / resources activities and if there are environmental or social issues (and outcomes) that need to be addressed, it is those Acts that should be amended and not the CMA.

Chapter 2: Balancing the rights, interests and activities of marine users

While there are currently limited offshore or ocean floor quarrying activities in New Zealand, there are such activities in other parts of the world and may be a viable alternative to onshore quarrying in the future. We therefore strongly support retaining the current non-interference zone (NIZ) provisions which ensure offshore petroleum and minerals operations can be conducted safely without additional or unnecessary risk to people (those involved in the operation or otherwise) and the environment.

Chapter 4: Community participation

Currently the emphasis placed on public participation in the effects-based part of our regulatory regime is adequate to ensure community participation appropriately occurs.

Public involvement at a number of levels in the Resource Management Act (RMA) system are putting unnecessary constraints on the supply of aggregates through a consenting process that is too expensive and taking far too long. Adding further complexity and time to decision-making processes through public involvement in the

CMA processes, would add to the current complexity through unnecessary duplication.

Public consultation is not currently available for other transfer of rights from the Crown to private interests, e.g. radio frequency spectrum, Treaty settlements, most access to conservation land under concessions, and therefore for consistency should not apply to the granting of Crown Mineral permits.

Public concerns over extraction activities are typically related to local surface impacts that directly affect the community. As such consultation under the RMA is the most appropriate way to deal with public interest in resource management issues.

Chapter 5: Māori engagement and involvement in Crown minerals

The Crown is retaining exclusive decision-making rights over the use of minerals, considering jobs, export revenue and the transition to a carbon neutral economy. It is therefore unclear what value would be gained through additional consultation with iwi and the public during the permit application phase.

Māori have significant interests in the resource sector and in retaining access for historical, cultural and economic reasons.

We currently enjoy constructive relationships with iwi and hapū, both in relation to private land and Crown mineral interests. Māori work, and have business interests in the aggregates sector. The percentage of Māori employed in mining and quarrying is much higher - almost twice as high as the equivalent figure for the population as a whole.

Engagement is adequately covered by the RMA processes and this is the most appropriate regulation to deal with iwi and hapū involvement in the decision-making process.

Chapter 6: Compliance and enforcement

We support and promote industry compliance. We also support enforcement action where operators fail to comply with the requirements of their licences and permits. It is important that the use of the VADE model continues and is supported by clear and concise information that is easy to access and understand.

Compliance notices

We support the use of compliance notices provided the actions and the timeframes set are reasonable and take into account the date the notice is likely to be received by the permit/licence holder. It is also important to ensure that the permit/licence holder is afforded adequate time to complete the actions identified in the notice.

Enforceable undertakings

We support the use of enforceable undertakings provided the purpose and objectives of the CMA are met and the interests of the Crown and the permit/licence holder are preserved in a manner that is acceptable to both parties but does not result in costly court action for either party.

Infringement fees

We do not support the use of infringement fees or on-the-spot fines. The introduction of compliance notices, and penalties for non-compliance, should be a sufficient deterrent for those failing to meet the requirements of their permit or licence.

In Australia, on-the-spot fines have been used in relation to Health and Safety in two jurisdictions, New South Wales and the Northern Territory. Their experience has been that the impact of on-the-spot fines on corporate behaviour has been primarily short term in nature. This has been due to the lack of consistency in applying fines, the inadequacy of administrative processes around issuing of the fines, and a high incidence of non-payment of fines which are administratively difficult and expensive to enforce. There is also a risk that if on-the-spot fines are not integrated with other enforcement policies, that they become either a substitute for more serious enforcement action in serious or repeat cases or serve to trivialise offences through misuse.

There are a number of reasons leading to late filing of returns, including illness, business disruption or administrative errors, some of which are outside the control of the permit/licence holder. There have been situations where permit holders have lodged on time but due to administrative issues within MBIE, the return has been considered late. Should such errors lead to instant fines, there would need to be legal recourse for the permit holder. The use of infringement fees will not enhance a co-operative and supportive relationship between the Crown and the permit/licence holder.

General record keeping

Record keeping requirements need to be clear and easily understood in relation to the tiers and resource they apply to. We recognise that different detail is needed for higher value resources. For lower value high volume resources like aggregates, however the requirements should be simple and align with industry standard production and accounting practices to avoid unnecessary burden on operators.

Chapter 8: Technical amendments

We support the proposal to include service of documentation requirements within the CMA, based on similar settings in other regimes.

In relation to the proposal to mandate electronic submission of the Annual Summary Report, we are not opposed to this provided a simplified, user friendly system is

implemented. A number of operators currently struggle with the RealMe login and do not find the system easy to use. We are happy to work with officials to improve the system and increase participation.