

Submission on the Spatial Planning Bill

February 2023

Introduction

The Aggregate and Quarry Association (AQA) is the industry body representing construction material companies which produce an estimated 50 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.

Key points of our submission

- 1) Property rights are a fundamental cornerstone of New Zealand's legislative design and need to be central to any changes in legislation. It is not clear in the Bill how existing use rights will be protected, including rights to resource use for the duration of any existing resource consent.
- 2) There needs to be more clarity around definitions. Poorly defined terms will inevitably lead to protracted legal proceedings for the courts to interpret what was intended. Such litigation would take time and be very costly, a highlighted weakness in the current resource management system.
- 3) It is important that this Bill requires regional spatial committees to undertake resource scans as part of spatial planning processes and protect sites suitable for aggregate extraction, in accordance with recommendations in the Infrastructure Strategy 2022.

We make the following submission in relation to the [Spatial Planning Bill](#).

Use of Māori terms

We support the inclusion of the concept of giving effect to the principles of Te Tiriti o Waitangi and providing greater recognition of te ao Māori, including mātauranga Māori.

We do have concerns however about the uncertainty that could emerge from inclusion of some traditional Māori terms and concepts in the Bill as many of these terms have multiple meanings and would be open to interpretation. As an example, Clause 7 states: "To assist in achieving the purpose of the Act, all persons exercising powers and performing duties and functions under it must recognise and provide for the responsibility and mana of each iwi and hapū to protect and sustain the health and well-being of te taiao in accordance with the kawa, tikanga (including kaitiakitanga), and mātauranga in their area of interest".

The presence of undefined terms will inevitably lead to protracted legal proceedings for the courts to interpret what was intended. Such litigation would take time and be very costly, a highlighted weakness in the current Resource Management system.

Clause 8 – Interpretation

Cultural heritage

We support the principle of seeking positive outcomes for cultural heritage, however, are concerned with the definition of cultural heritage which is taken from the Natural and Built Environment Bill definition, in particular part (b)(iv) of that definition:

(b) includes -

- (i) historic sites, structures, places, and areas; and
- (ii) archaeological sites; and
- (iii) sites of significance to Māori, including wāhi tapu; and
- (iv) surroundings associated with those sites referred to in subparagraphs (i) to (iii);
and
- (v) cultural landscapes.

Sub-clause (iv) above should be removed as the wording is too broad and unable to be quantified or easily understood. The unintended consequence of this would be to capture and potentially sterilise large parcels of land that are not associated with enhancing cultural heritage outcomes as a result of their proximity to such culturally significant sites.

Natural resources

There is no definition of natural resources despite the term being used throughout the Bill. There is also no definition of natural resources in the National Planning Standards, for consistency we suggest the use of the definition for natural and physical resources contained in the Natural and Built Environment Bill.

Existing use rights

The impact on existing rights to use resources such as aggregates could be eroded over time given that regional planning committees (RPCs), made up only of members from local government, iwi and hapū, could overturn existing land use rights, with obvious impacts on investment certainty and supply of aggregate and sand for infrastructure, housing and climate change mitigation.

Provision needs to be made in the Bill for:

- recognising the importance of upholding property rights to encourage efficient investment and clear determination of how existing use rights will be treated,
- grandparenting current rights to resource use for the duration of the existing resource consent,
- a compensation regime to compensate consent holders for the impacts caused by the revocation or altering of consents. This will encourage better decision-making from regulators when affecting private property in the public interest,
- merit based appeals/review rights where regulatory decisions impact on existing property rights.

General comments

New Zealand needs a secure supply of quarry materials to provide affordable housing and infrastructure now and for future generations. In order to do this, it is critical that planning is streamlined, quarry resources are protected so they can supply vital construction materials and quarry land is returned as an asset to the community once extraction is complete.

In accordance with recommendations made by the Infrastructure Commission in their 2022 Infrastructure Strategy, there is a need to ensure the security of supply of essential materials, goods, and services to build, operate and maintain infrastructure. Section 6.4. Strengthening resilience to shocks and stresses, contains the following recommendation which was accepted by the Government:

To increase the resilience of supply of essential materials, steps should be taken to:

- a) Incorporate into all risk-management planning for critical infrastructure a consideration of the security of supply of materials and goods required for the construction, operation and maintenance of infrastructure (including aggregate, bitumen, cement, concrete, steel and processed timber) and other essential goods and services.
- b) Require that regional councils, in conjunction with territorial authorities, undertake resource scans as part of their long-term planning processes and protect sites suitable for aggregate extraction, including through zoning.

The importance of securing a reliable supply of local aggregates was recently highlighted by the Ōpōtiki Harbour Development Project. The following text is from the Infrastructure Commission's Infrastructure Resources Study, November 2021:

Box 3: Ōpōtiki Harbour Development

Ōpōtiki in the Eastern Bay of Plenty has a comparative advantage in the fast-growing aquaculture industry but lacks the supporting infrastructure, most notably a harbour and wharf.

The mouth of the Waiohāi river has degraded to the point that only small vessels in the right conditions can navigate it. Building up the riverbanks would improve the flow of the river and, along with natural tidal forces, flush sediment out of the river mouth thus making the harbour usable and further protecting the town from flooding and inundation.

Between 2017 -2019, the plans for the project were re-designed and costs significantly lowered. Sourcing local aggregate was central to lowering the costs as the original business case assumed that suitable rock was only available from more than 100km away. Subsequently, the Ōpōtiki District Council, GNS Science and AQA were able to source suitable rock locally as part of the new and accepted business case.

Source: <https://www.growregions.govt.nz/assets/content/public-information/applications/Opotiki-harbour-business-case.pdf>

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