Submission on the Natural and Built Environment 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) The Bill is complex, and it is difficult to see how resource consenting and decision-making will be any easier. Protection of the environment appears to trump anything else, irrespective of the economic implications. The situation is likely to be further exacerbated by the inclusion of certain new terms which may make decision-making increasingly uncertain.

2) 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.

3) Use of the effects management framework is critical to providing a consenting pathway for locationally constrained activities such as quarries. Contradictory clauses within the Bill need to be addressed so there is clarity for the applicant and consenting authority on the use of the effects management framework and how it will apply in practice.

4) 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.

5) It is important that designations clearly extend to recognising the construction supply chain, in particular quarrying activities which are critical to the development of infrastructure. In the event that the development of eligible and/or significant infrastructure is fast-tracked, construction materials such as aggregate must be safeguarded so that it is available in quantities, and at proximate locations, to complete the works.

We make the following submission in relation to the Natural and Built Environment Bill.

Clause 5 – System outcomes

We are pleased to see that system outcomes include "c. well-functioning urban and rural areas that are responsive to the diverse and changing needs of people and communities in a way that promotes:

(i) the use and development of land for a variety of activities, including for housing, business use, and primary production;"

The Government's 2019 National Planning Standards define primary production as:

Primary Production means:

a) any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and

b) includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a).

c) includes any land and buildings used for the production of the commodities from and used for the initial processing of the commodities in b); but

d) excludes further processing of those commodities into a different product.

In order to retain consistent definitions across planning documents, and avoid confusion and potential conflict, the 2019 National Planning Standards (NPS) definition of primary production should be used in the Natural and Built Environment Bill.

While the Bill includes a list of objectives (system outcomes, including protecting the environment, providing for infrastructure etc), there is no hierarchy, tending to suggest the environment will be protected at the expense of economic development. There appears to be little ability to make cost/benefit decisions in terms of trade-offs between potentially competing, or in some cases conflicting, system outcomes.

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, the system outcomes include "the protection or, if degraded, restoration, of—

(i) the ecological integrity, mana, and mauri of—

(A) air, water, and soils; and

(B) the coastal environment, wetlands, estuaries, and lakes and rivers and their margins; and

(C) indigenous biodiversity:

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 7 – Definitions

Cultural heritage

We support the principle of seeking positive outcomes for cultural heritage, however, are concerned with the definition of cultural heritage, in particular part (b)(iv) of the 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.

Indigenous biodiversity

The definition of indigenous biodiversity is inconsistent with the most recent draft of the National Policy Statement – Indigenous Biodiversity (NPS-IB), and will therefore create confusion, and lead to protracted legal proceedings for the courts to interpret what was intended, particularly around the setting of environmental limits and targets.

We believe the definition contained in the 2021 Draft of the NPS-IB should be adopted as follows:

> "In this National Policy Statement, biodiversity has the same meaning as "biological diversity" in the Act: "the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems".
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> "Indigenous biodiversity is biodiversity that is naturally occurring anywhere in New Zealand. It includes all New Zealand's ecosystems, indigenous vegetation, indigenous fauna and the habitats of indigenous vegetation and fauna."

Infrastructure

While infrastructure is adequately defined, "work" associated with eligible infrastructure is not defined, despite being used throughout the Bill. Part 8 contains a definition related to designations however it is not clear that this definition includes the provision of construction

materials needed for eligible infrastructure. A definition of "work" needs to be included that refers to quarrying activities as defined in the NPS.

Production land

The definition of "production land" is inconsistent with the NPS definition of primary production in that it excludes "land or auxiliary buildings used or associated with prospecting, exploration, or mining for minerals". The Crown Minerals Act definition of minerals is used which includes aggregates and other quarried materials. This is inconsistent with the intent of the Bill to streamline consenting processes for activities required for the delivery of nationally and regionally significant infrastructure, including quarrying activities.

It is also inconsistent with the provisions of the NPS Highly Productive Land (HPL) where there is a pathway for mineral and aggregate extraction on HPL under Clause 3.9(2)(j) where these meet certain tests (operational and functional need to be on HPL or provide significant public benefits).

Part 2, subpart 5 – Effects management framework

Clause 14 (1) (b) states that "every person has a duty to avoid, minimise, remedy, offset, or take steps to provide redress for any adverse effect on the environment arising from an activity carried on by or on behalf of the person, whether or not the activity is carried on in accordance with any applicable limits or targets".

We support use of the Effects management framework as the appropriate way to ensure the no net loss principles underpinning the Bill are achieved on a case-by-case basis.

Clause 223 (11) (a) (i) however appears to contradict this principle in that the consenting authority must not grant a resource consent if it is contrary to an environmental limit or target. While the term "contrary" is not defined in the Bill there needs to be clarity for the applicant and consenting authority on the use of the effects management framework and how it will apply in practice.

Clause 62 is also in conflict to clause 14 in that it puts constraints on use of the effects management framework.

Use of the Effects management framework is important as it enables locationally constrained industries such as quarrying to respond quickly to changes in demand for aggregates and sand. This is becoming increasingly important as we respond to the impacts of climate change with aggregates being essential for protection and adaption such as seawalls and levy banks.

Existing use rights

The Bill contradicts commitments made by government on a number of occasions that existing rights to continue production or exploration activities will be protected. This commitment was also captured by Principle 10 of the resource strategy, Responsibly Delivering Value – A Minerals and Petroleum Resource Strategy for Aotearoa New Zealand: 2019–2029, in November 2019.

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 in 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.

Under Clause 27 existing use rights may be lost if an operation is discontinued for a continuous period of six months. This is unreasonable for those seasonal operations, including quarries, that only operate during dry weather months or to supply certain materials at certain times of the year. Often weather and other circumstance mean that those operations may be temporarily discontinued for more than 6 months on occasions. Clause 27 should be amended to provide that existing use may be lost if an operation is discontinued for a continuous period of 12 months.

Clause 275 – Duration of consents

A fundamental principle of these reforms is to improve system efficiency and effectiveness and reduce complexity.

Limiting certain resource consents to 10 years, when supplementary consents for extraction may be 35 years is both unnecessary and adds complexity and administrative burden to applicants and consenting authorities for no improvement in environmental outcomes. Consents for activities associated with a development such as quarrying, should have the same duration as the quarrying development consent.

Clause 316 – Activities eligible for specified housing and infrastructure fast-track consenting

Construction materials are generally defined as everything used to build roads, bridges, houses and commercial structures, apart from timber and metals. They include aggregates, sand, limestone, cement, concrete, plasterboard, bricks, roof tiles and asphalt.

The historical failure to recognise the importance of, and provide for construction materials at a national level, together with capacity and capability constraints within local government to understand the importance of these materials has resulted in sub optimal outcomes.

Clause 316. includes communication and energy networks, roads, airports, schools, hospitals, housing developments that support certain outcomes, and 'ancillary activities'. 'Ancillary activities' is not defined. If a list of eligible activities is to be included, that list needs to be wider (or a definition of 'ancillary activities' included) so that it includes activities such as aggregate extraction and processing, given it is impossible to deliver the eligible activities identified in clause 316 without such resource.

Part 8, subpart 1 - Designations

National direction has an important role in ensuring consistent implementation of the Natural and Built Environment Bill across jurisdictions. It is important however that such direction allows flexibility for regional variations in community expectations, environment, and development needs. Greater direction through the National Planning Framework (NPF) will increase clarity and certainty, and reduce compliance activity, including the number of hearings required.

While regional plans will be required (under Clause 102) to "identify any natural resource in the region for which protection, or a particular use or development, is a priority" it is important that designation provisions are available to quarries required for the supply of aggregate and sand for infrastructure, housing and climate change mitigation.

It is not clear that designations extend to quarrying activities which are critical to the infrastructure supply chain. In the event that the development of significant infrastructure is fast-tracked, construction materials such as aggregate must be available in quantities to complete the works.

The definitions of "work" and "project" are unclear in Part 8. The definition of "work" needs to be extended to include quarrying activities (as defined in the National Planning Standards).

Adaptive management plans

Although provided for in Clause 233, we believe greater use should be made of adaptive management plans as a means of ensuring positive environmental outcomes are achieved.

Embedding management plans within permitted activities, and consents for controlled and discretionary activities will enable the consenting authority and consent holder to ensure outcomes are achieved by providing a more agile approach when thresholds of effects on the receiving environment need to be adjusted.

Regular review of these plans will ensure that consequences on the environment that were not anticipated during the consenting process can be addressed quickly rather than relying on a protracted process for the review of consent conditions by the consenting authority proposed in Clause 277.

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.

We consider it imperative that local authorities are directed to protect key resource areas and enable their development in order to both protect existing quarries from encroachment of non-compatible land uses such as housing, reduce reverse sensitivity potential, and to enable the expansion of these resources and development of new greenfield resources.

We support an outcomes-focused system, and through the National Planning Framework (NPF) central government direction, that sets priorities for the integrated management of the environment and development to address conflicts across competing outcomes. Accessing construction materials (such as aggregates) has the potential to generate conflict such as amenity-related concerns. Reconciliation of such conflicts is principally left to the consenting process at present. The NPF should provide national direction as to how and whether high-quality aggregate resources should be protected from being sterilised through other development.

Greater input should be provided for business interests (such as quarrying companies) by allowing for business representation both in the development of the NPF and possibly on the Regional Planning Committees (RPC). This is particularly necessary given the wide powers the Bill bestows on both the NPF and the RPC to affect natural resource use, including aggregate, with the current strictly limited appeal rights for affected parties.

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