

Submission to the Primary Production Committee on the Resource Management (Freshwater and Other Matters) Amendment Bill

June 2024

Introduction

The Aggregate and Quarry Association (AQA) is the industry body representing construction material companies which produce an estimated 48 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

- We support removal of the requirement for resource consent applicants to include an assessment against clause 1.3(5) or 2.1 of the National Policy Statement on Freshwater Management 2020 (NPSFM 2020) in relation to the concept of Te Mana o te Wai.
- Delete Schedule 1, Part 7, clause 41, which specifies that the NPSFM 2020 amendments only apply to an application for resource consent that is lodged after commencement of the Amendment Act. If the intention is to reduce the burden on applicants and consenting authorities, then the Bill should apply to all resource consent applications in the system regardless of when they were lodged.
- The Bill does not go far enough in aligning the resource consent pathway for mineral extraction activities under the National Policy Statement on Indigenous Biodiversity 2023 (NPSIB 2023), National Policy Statement on Highly Productive Land 2022 (NPSHPL 2022), NPSFM 2020, and National Environment Standard for Freshwater (NES-F).
- We support proposed amendments to speed up the process to prepare or amend national direction.

We make the following submission in relation to Resource Management (Freshwater and Other Matters) Amendment Bill.

The NPSFM 2020 concept of Te Mana o te Wai

The NPSFM 2020 includes the concept of Te Mana o te Wai, which refers to the fundamental importance of freshwater and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. We believe it is appropriate for regional councils to give effect to the NPSFM 2020 (including the hierarchy of obligations) through their policy statements and plans, however the current requirement for applicants to consider Te Mana o te Wai in the resource management application process is onerous, costly and time consuming, further delaying resource consenting processes that already take too long.

We support removal of the requirement for resource consent applicants to include an assessment against clause 1.3(5) or 2.1 of the National Policy Statement on Freshwater Management 2020 (NPSFM 2020) in relation to the concept of Te Mana o te Wai.

There is no need for transition arrangements that mean the provisions within this Bill won't apply to resource consent applications lodged prior to commencement of this Bill. Amendments in this Bill should apply to all current applications that are before a consent authority, which has been the same approach applied to all iterations of the NPSFM and other National Policy Statements.

The decision of *Te Rūnanga o Ngāti Whātua v Auckland Council* [2023] NZEnvC 277 at [162] confirms that the Environment Court has been applying the NPSFM as it has been amended over time, and it is therefore only fair that this amendment equally applies as and from commencement, irrespective of the stage that an application is at.

Schedule 1, Part 7, clause 41, of the Bill which specifies that the NPSFM 2020 amendments only apply to an application for resource consent that is lodged after commencement of the Amendment Act should be deleted.

Consenting pathway for Quarrying

While the Bill provides for measures to align the resource consent pathway for coal mining with other mineral extraction activities under the NPSIB 2023, NPSFM 2020, and NES-F, it does not address other inconsistencies across instruments of national direction relating to inconsistencies in the consenting pathways for mineral extraction.

Current national planning instruments contain conflicting definitions, with some referring to aggregate extraction and others to quarrying activities. They also contain different gateway tests for that development that needs to occur in certain areas. Most problematic are the NPS-HPL 2022 and the NPS-IB 2023.

Poor drafting of the NPS-FM 2020 and NES-F led to unintended consequences which severely impacted the quarrying sector. Following significant work with MfE we were able to get the definition of a wetland altered and the wording of the gateway test adjusted to provide a consenting pathway for quarries. The adjusted wording in relation to wetlands is:

“The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:

(d) the regional council is satisfied that:

(i) the activity is necessary for the purpose of quarrying activities; and

(ii) the extraction of the aggregate will provide significant national or regional benefits; and

(iii) there is a functional need for the activity to be done in that location; and

(iv) the effects of the activity will be managed through applying the effects management hierarchy”

The important changes here are the use of the term “quarrying activities”, which is defined in the National Planning Standards and therefore can be interpreted consistently. Also, the gateway test is clear and concise removing undefined words that require interpretation.

Amendments to Resource Management Act 1991

We support proposed amendments to the Resource Management Act 1991 in the Bill to:

- remove the now redundant board of inquiry process to provide a clear default process for preparing a national direction;
- make simple updates to national direction;
- remove unnecessary prescription from the process to make or amend a national direction;
- amend evaluation report requirements as they relate to a national direction to make them more flexible and less onerous.

We saw unintended consequences and errors made in the drafting of the NPS-FM 2020 and NES-F that took 2 ½ years to amend due to an unwieldy process. There needs to be a quick process for amending National Direction where there are unintended consequences and/or drafting errors that don't reflect the intent of such National Direction.

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