Evolving resource **consenting implications** for aggregate

Consenting is now constraints led. This article covers regulatory changes and importance of understanding site constraints (particularly ecological constraints) and the value of early consultation. By **Boffa Miskell planners Geoff England** and **Jaimee Cannon**.

Gone are the days of filling out a one-page form in exchange for resource consent from council.

Obtaining resource consents for anything other than a very basic quarry operation is widely considered to be complex and challenging. It requires careful design and redesign in response to technical assessments, eventually getting to a point where the environmental effects are acceptable, providing consent authorities with confidence to grant a consent.

For applications where the effects are considered minor, or more than minor, there is a good chance of ending up in a time-consuming and costly notification process. Applications are assessed against a complex regulatory regime that is ever-changing in a dynamic political context.

For any new quarry, quarry expansion, or renewal of existing resource consents, it will likely require a comprehensive resource consent application supported by various technical assessments (such as air quality, noise, ecology, stormwater and hydrogeology).

An application must provide sufficient detail to get through the 's.88 test' – that is: providing sufficient information to satisfy councils that they can begin processing an application. It is not uncommon for a consent application to be 300 pages, including the range of specialist reports.

Looking back at old resource consents and associated applications, the proposals were engineering-led with minimal assessment. There was little or no iwi or stakeholder consultation, councils would review the drawings and, typically, undertake their own assessment of effects followed by a decision document. Ultimately, a consent was granted within 20 working days, with very few conditions.

These days, for a simple quarry-overburden consent, it is not uncommon for the process to take six to 12 months, with variability depending on the council assessing the application. For a complex quarry development – one that is notified and heard in front of a hearings panel – an average timeframe can be two years for a decision, which can then be subject to Environment Court appeals adding additional time and cost.

We must also add that the fast-track process is looking attractive for projects that meet the eligibility criteria. More on that later.

Complex political and regulatory environment

Fast forward 33 years, the political context and legislative environment has become increasingly complex, with over eight National Policy Statements (and one proposed NPS-Natural Hazard Decision-Making).

The National Policy Statement and Environmental Standards for Freshwater (NPS-FW and NES-FW), the National Policy Statement for Indigenous Biodiversity (NPS-IB), and the National Policy Statement for Highly Productive Land have an increased focus on preservation and improvement of fresh water and wetlands, significant natural areas (SNAs) and highly productive land.

Currently, although these are under review, if a quarry is seeking resource consent within wetland areas (as defined in the NPS-FW), a patch of vegetation mapped as SNA, or within Class One, Two or Three soils, it will be required to demonstrate the functional need for that location, while working through the "effects hierarchy" likely coupled with mitigation and offsetting.

To complicate matters even further, consenting pathways under the national policy statements are often for extraction activities only, missing other activities like overburden placement. This creates challenges determining (and agreeing with councils) on the consenting pathway for those ancillary activities.

Politically, the RMA is used as a football, criticised for stalling development and adding significant cost.

It regularly features as an election issue to be 'fixed', without any significant reform making its way through consecutive election cycles. The recent election cycle is no different.

The previous Government was on the way to replacing the RMA with the Natural and Built Environment Act; however, with the incoming coalition Government, this has been repealed with a promise to retain the RMA in the short term while they work towards an alternative RMA replacement.

The shape and form of this replacement legislation is currently unknown. Additionally, the Government has signalled significant changes to the NPS-FW, NPS-IB and NP-HPL with a view to strengthening "property rights".

We have yet to see what this means, or where this ends up.

Increased recognition of cultural values

In addition, cultural effects are woven into the higher order policy direction, ensuring that iwi [Crown-recognised Maori tribes] values are understood and addressed during the consenting process.

As a result of Treaty settlements, these days iwi interest is better resourced and equipped to participate in resource consent processes. Not involving iwi at pre-application stages of a project can result in their opposition that can heighten project risk, increase costs and the timeframes for resource consent processing.

The increasingly complex legislative and political environment has influenced the way in which councils develop their RMA plans and interpret and apply the RMA processes, and made the consenting environment much more challenging.

In general, timeframes for processing are lengthy. Some Councils are experiencing a six-month backlog to pick up applications for processing, in part due to a lack of staffing and an overwhelming volume of applications to process. Times have changed.

As a result, what we are hearing from quarry operators is a lack of certainty of a positive outcome from the consenting process. It is time consuming and very expensive to obtain the required resource consents to stay in business and develop sites, while ultimately dampening the enthusiasm to invest and develop quarry operations.

Significantly, on 8 March, the Government announced details of its own version of the fast-track process that will provide a 'one-stop shop' for a range of approvals under various legislation (e.g. resource consents under RMA, approvals under the Conservation Act 1987). This legislation will contain a list of eligible projects, while other projects can apply to become eligible as referred projects.

Eligibility criteria includes projects that deliver significant economic benefits, and/or regionally or nationally significant infrastructure. Decisions on eligibility will be made by the joint Ministers of Infrastructure, Regional Development, and Transport. Once a project is referred into the fast-track process, it will be considered by an expert panel who send applications to relevant parties for comment and make recommendations to the joint Ministers to grant or decline consent.

The Ministers will then make the final decision, which has to be made within six months. The purpose of the bill is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. It has a focus on making decisions on RMA approvals, rather than about the 'purpose' and 'principals' of the RMA.

Mitigating consenting risk

Consenting now requires a strategic approach with an identified consenting pathway. We recommend the following steps are followed to mitigate project risks:

- Identify the project objectives, at the outset. What does your organisation want to achieve? Clearly communicate these project objectives to your project team.
- Invest time into a feasibility and consenting pathway assessment for more complex applications, so that you understand the key constraints, timeframes and risks at the start of the project before investing in pit design. This could involve GIS mapping of constraints, such as wetland, streams and rivers, native vegetation stands and mapped SNAs, Class One, Two or Three soils, proximity to neighbouring properties and the road network. In understanding these constraints, likely effects and the level of public interest, it is possible to determine the most appropriate consenting pathway, likelihood of applications being notified, and determine likely timeframes and costs. These risks and constraints may influence the nature of your proposal.
- Early engagement with community interests such as that of local iwi is important. When required, an engagement plan can be developed to build a positive relationship with the surrounding neighbours and avoid unnecessary community angst. Significantly, early iwi engagement has become a critical element of a well-run application process. Having a good relationship with the local iwi will significantly help the process and avoid potential conflict.

Importantly, the next six months will also provide greater clarity beyond the Government's stated intention of a changing legislative environment.

For your industry, moving forward, it is increasingly important that you remain a party to the proposed legislation.

Where the rubber hits the road is at plan-making phase, when central government prepares or amends existing national policy statements; and then as councils develop their District and Regional Plans to "give effect" to these higher-order policy directions. This is where operators can make submissions and ensure that their operations are provided for with appropriate 'checks and balances' within the planning framework.

In summary, there are no short cuts. Taking good advice from experienced practitioners will help map out a consenting pathway through an understanding of the site constraints and risks. This will ultimately save you time and cost through the resource consent process and increase the likelihood of successfully obtaining resource consents. Q&M