

Aggregates: Between a rock and a hard place

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Abstract

It is easy to demonstrate the importance of aggregates in any conversation about infrastructure and other engineering artefacts.

Peoples around the world have made use of stone to enrich and enhance their lives since the earliest days of civilisation. In New Zealand, Maori used hard durable rocks for weapons, tools, and basic structures. European settlement accelerated the use of quarried materials and formed the basis for development of our society as we see it today.

Logic might suggest that the quarrying sector would be recognised positively for, and encouraged to continue to contribute to, this underpinning of the way we are. The reality is “Not In Most Back Yards”. Why? The rock is where it’s always been (often overlooked) and our “social” environment is today’s hard place.

For a resource-based business in New Zealand, that environment is principally the Resource Management Act, with the widespread power it has distributed to anyone prepared to invest their time. This coupled with a lack of leadership and direction in the implementation of the Act has created a climate that stifles development and diverts energy and resources to “playing the game” rather than “lifting the game”. Perhaps the real costs of this are not yet widely recognised.

The paper will draw mainly on the experience of endeavouring to consent a “greenfield” quarry in the Waikato region. This is supported by commentary based on nearly 10 years of “living” with the RMA at sites across much of New Zealand.

RMA Scorecard Summary:

Effects based? Rarely. Level playing field? No. Maori Consultation? Could do better. Efficient use of resources? No. Timely? No. Is it working for other sectors? Certainly not the quarrying industry’s customers and end users.

Introduction

It is well documented and self evident that stone and rock are or have been used across the ages for tools and weaponry and for building structures ranging from small and simple to massive and complex.

Superficially aggregate supply is simply one of the many diverse elements which collectively are the construction industry. Aggregates are used by engineers, builders, developers and the general public in the construction of infrastructure and landscape features.

However it is suggested that there are two characteristics which differentiate the aggregates sector from other members of the construction community and its providers.

The first is that aggregates are an essential component of all and any infrastructural development. As such in relatively mature economies, for example in New Zealand, Australia and the U.K, aggregate consumption reflects the general state or ‘health’ of the economy over time.

The data charted in Figure 1 at Appendix A demonstrates the linkage that exists between aggregate consumption and cycles of growth on a regional/national basis. This chart shows annual sales from Winstone Aggregates Lunn Avenue – Mt Wellington quarry between 1936 when the quarry commenced production and 1999.

Unfortunately this quarry’s days as an indicator are over. It is scheduled to close at the end of 2002, and has been in “wind down” mode since 1997.

The second factor differentiating quarrying and aggregate supply is their physical presence within the community. Whilst they can only be sourced where they occur (often overlooked) and generally require transient or temporary land use, their effects real or perceived, make them unwelcome neighbours.

Perception is reality

The consumption of aggregate in countries like England, Australia and New Zealand, ranges from about 5 to 7 tonnes per annum per capita. In New Zealand the “base” figure is of the order of 6 to 6.5 tonnes. Particularly large projects and periods of sustained development will increase this to around 7.5 to 8 tonnes.

Therefore the “average” New Zealand family requires about 30 tonnes of processed sand and stone annually to develop and maintain the infrastructure on which society depends. Experience also suggests that the “average” family will probably not know or have thought about this fact. Therefore a conclusion could be that the environmental impact of the modern quarry is negligible, since they operate in urban and rural environments across the country more or less continuously. Whilst there is factual evidence of this from compliance monitoring, and even unwitting comments which also support¹ this view, more typically neighbours both urban and rural, adjacent to existing or proposed quarries or sand operations, are opposed to them simply because they are or will be there.

Clearly the industry has allowed perceptions of its negative impacts or costs to outweigh the positive benefits which flow from its activities. It is also likely that an attitude of “Well, we were here first” and/or “Well look we’re essential, so you’ll have to put up with us” has created a mind set in a significant proportion of existing neighbours. Sixty to 100 years is not transient or temporary land use in the frame of reference of an individual human being.

That this is the situation in broadly equivalent societies (England, Australia, New Zealand) can be established from the literature. In an article “Quarrying: It’s tougher elsewhere” the then international president of the IOQ, Mr Graeme Shove, and IOQ representatives from Australia, Hong Kong and South Africa, had their addresses to the 1997 annual conference of the New Zealand branch reported. Mr Shove is quoted:

“The public’s perception of quarrying is no better in the UK than in New Zealand. Few people recognise the industry’s value or believe it responsible”.

¹ At a public meeting called to oppose an existing urban quarry’s proposed development, a speaker said: “I have lived in this neighbourhood for several months now. Whilst I wondered what was behind the (planted landscaped) embankment at the roadside, it was only a few weeks ago that I climbed the adjoining mountain, and found I was looking in on a quarry!”

Therefore it is not surprising that industry organisations and collectives like the New Zealand Minerals Industry Association and Aggregates and Quarry Association of New Zealand and their counterparts overseas have embarked on educational programmes to provide “rational” information to balance historically based perceptions and promote the positive contributions made.

However even this strategy is not without risk. In a paper “Influencing Future Decision Makers” by Dr Sharon Beder, this Australian academic points out:

“In most cases the so-called educational materials give students a distorted picture of environmental issues and other problems, social choices and trade-offs. They present a corporate view as ‘fact’ and report the results of corporate funded studies without saying who financed them.”

Reinforcing this view, Dr Beder reports that the International Organisation of Consumers Unions says:

“The corporate sector is using education to:

- *Counter perceived anti-business culture (particularly in response to political pressure groups)*
- *Privatise public education systems by stealth*
- *Promote free-market ideology*
- *Use schools as a market for their commercial activities and propaganda”*

Dr Beder’s comments present one side of this particular coin. It can be and has been argued that “Green” organisations are not averse to promoting their views as ‘fact’ or that the classrooms of the world are able to be used to promote particular business/market, religious or social views.

“Trust me/us. I/we know what’s best”

One or two generations ago, there appears to have been an acceptance within democratic societies of a “natural” order of trust in those elected to govern, those in authority (e.g. the police), and to the extent they were “controlled” by the elected representatives, the corporations employing people and creating wealth. Most would accept that times have changed, and attitudes as well as values with the times.

In the mining and quarrying industry, the change and pace of change has been acknowledged by numerous commentators. As CEO and Managing director of Pioneer International Ltd Dr John Schubert observed:

“Perhaps more importantly, social and economic changes in Australia have altered irrevocably the ways we do business as local communities demand more from us, corporate standards become more rigorous and global pressures increase.”

Dr Schubert also refers to electronic technology over the previous three to four years having “burst into the industry”. It can of course be noted the technology is available to many whether they be “green”, anarchist, fundamentalist and so on. Impressive networks of like minded information or mis-information is readily available through almost any “search engine”.

Ms Ros Kelly, a former (1991-1994) Minister for the Environment in Australia, and now a consultant with URS Woodward Clyde, addressed the 2000 Annual Conference of the Resource Management Law Association “nz@the edge.rmla” earlier this month. Ms Kelly noted that the transparency created by the speed of information transfer, required corporates and developers to “have their house in order”, not just on show days, but every day. That is there had been a shift from “do not ask me to trust you, show me I can trust you.”

At the same conference, delegates were also challenged to consider environmental and broader issues by speakers such as: Mr Roger Kerr, Executive Director of the New Zealand Business Round Table; Mr Kevin Roberts, CEO Worldwide of Saatchi & Saatchi Ltd; Dr Robert Cervero, Professor of City and Regional Planning, UC Berkeley; and the Hon Phillida Bunkle, Associate Minister for the Environment. Some further and selective comment on points raised at this conference will be discussed later in this paper.

Who to trust?

The answer to this question, requires the edge of the coin as well as both sides.

On one side is the view expressed by Ms Kelly, which is that self generated and imposed Codes of Practice, will enrol stakeholders and reduce the potential for regulatory intervention. An example is the Minerals Council of Australia’s “Minerals Industry Code for Environmental Management (1999)”. In her view this will reduce the risk of being “overgoverned.”

Within New Zealand’s legislative framework, the process of applying for consents allows developers to assess the existing environment and the effects of their proposed development. For quarrying and mining activities, this translates into the opportunity to define by a Management Plan how the various effects will be controlled and managed. The alternative is to define the effects and have the regulators impose their understanding of best or appropriate practice, as conditions of consent.

On the other side Dr Beder has this to say:

“One corporate strategy for dealing with the threat of increased environmental regulation has been to cast doubt By challenging and confusing the public and the politicians about the environmental impact of their activities, they hope to maintain good public relations and convince governments that tougher laws are unnecessary.”

To stand the coin upright on its edge, thus exposing both faces in balance requires an evenhanded regulatory environment if long term stability is the objective. Our changing times are analogous to a spinning coin which more times than not will fall over when it stops turning. Here reside the politicians and regulators/bureaucrats. The former doomed to “short termism” by elections, the latter constrained by the policy frameworks created for or by the political/social will of the day. Both share a corporate objective to endure/survive.

It seems reasonable to postulate that in a democratic political system, we are prepared to accept the majority view. That is “we get what we asked for” or perhaps “deserve what we get”.

In New Zealand there is the Resource Management Act as the legislative framework for managing the environmental impact of human activity. In principle the concept of performance based (effects) versus prescriptive based (planning zones and rules) appeals to free/rational thinking. However conflict with two other conceptual dimensions of individual or collective human thought, values and feelings, is inevitable. So not only is the miner or aggregate producer (corporate) caught between the rock and the hard place, so is the planner (corporate) who in theory is a servant of the public. Experience would suggest that the planner in this context is as mistrusted as the developer and politician.

Dancing with the devil or the RMA in action (on a proposed “greenfield” quarry site)

A fundamental of quarrying is that extraction and processing is a relatively low cost operation (over time – initial investment in land, planning, and plant is significant), while getting it to the end user can be far more expensive. The Auckland region’s aggregate need has for more than sixty years been substantially serviced by the fifty million tonne or so of basalt aggregate extracted from the Mt Wellington quarry. There have been other quarries on the Auckland basalt field (estimated at more than 1 billion tonnes) but Mt Wellington has been the largest and most influential. Not only in output but also as a benchmark for material properties and performance. This reflects not only the astuteness of the Winstone brothers who first established the quarry, but also the pragmatism of early engineers and designers who recognised that the most efficient solutions were satisfactory performance at the least cost. That thinking still prevails today, i.e. source the low-cost-to-produce aggregates as close as possible to the end user to minimise transport cost.

The challenge to this paradigm is expressed by Roger Kerr’s “BANANA” (extension of “NIMBY”) republic. This anagram: “build absolutely nothing anywhere near anyone”, may be foreseeing the fate of quarries and mines in New Zealand because there is evidence that neither urban nor rural communities are prepared to accept them.

The case put forward for discussion in this paper (to be resolved it seems at the Environment Court), follows the

process of endeavouring to establish the Auckland region's next basalt quarry, and has been designed as a partial replacement to Lunn Avenue. It represents a "living" example of the coin analogy discussed above. The site is near Pokeno, a small village about 55 km south of Auckland adjacent to State Highway 1.

On one side the application relied on detailed design and an extensive assessment of potential effects to produce a "Quarry Concept Plan" where proposed activity areas and methodologies for managing the potential effects to comply with relevant controls were identified. The outcome was a suite of proposed conditions of consent mainly agreed with officers and expert advisors of the regulatory authorities.

On the flip side was a significant proportion of the local community. They were already a cohesive group formed to represent interests and concerns to the roading authority, Transit New Zealand over the bypassing of the village by the State Highway. This group metamorphosed into the Pokeno Protection Association Inc. (PPA), which had "prevent the quarry" as its principal objective.

Supporting the sides, on the coin's edge, is the RMA and associated planning processes.

Appendix B is a chronology to date, of significant milestones in the process. It is not a complete road map, because there are essential or required elements of the journey which cannot be quantified as point events. For example the extent of consultation undertaken generally and with tangata whenua in particular. A further example is the difficult to describe "atmosphere" created by the planning and regulatory framework in which consultation and negotiation with the community was carried out.

"Atmospheric" conditions

It clearly came as a surprise to many in the community that the process of creation a District Plan i.e. draft, notification, submissions, further submissions etc, had resulted in an "Aggregate Extraction and Processing Zone" arriving in the neighbourhood.

Similar sentiments were expressed by community members adjoining re-zoned land at the Mt Wellington quarry and there are other examples. One is the so-called "Montgomery Spur" case in Christchurch. This was reported on by the Parliamentary Commissioner for the Environment in late 1998. As a consequence the Ministry for the Environment commissioned consultants to review this and similar cases.

An outline of the identified issue and outcome of the review is reported by McSweeney and Yarrow in their article "Making the Process Transparent". This notes:

"..... that landowners and local residents are often unaware of the plan process.....When, or if they do become aware, they have often missed the opportunity to lodge a submission....." and further "..... that legislative changes to

the RMA would not ensure more effective participation in the submission and decision making process."

However "bad luck, you missed the bus" does nothing to calm angry neighbours and is instead perceived as betrayal of trust, not only by the developer but also by the community's de facto employees and elected representatives. Accusations of collusion and corruption can result. Consultation is off to a less than satisfactory start.

Plans and leadership

The Resource Management Act 1991 (RMA) is a complex and relatively "young" legislative framework. Not surprisingly it has produced a variety of outcomes in terms of "quality" when assessed by criteria such as timeliness, consistency and efficiency.

In an informal address made at the 1999 RMLA Conference in Christchurch, the Hon Simon Upton, then Minister for the Environment, commented that the RMA was a "Rolls Royce" piece of legislation and asked whether in the context of New Zealand's demographics (small and generally low population density) could it ever be cost effective, particularly if the benefit of the outcomes were viewed on a global scale. He continued with some observations about the difficulties of implementation. These highlighted the possibility that New Zealand society is overgoverned and that it will be difficult to adequately staff all levels of government (national, regional and territorial) with appropriately skilled politicians and advisory and regulatory officers. One comment was to the effect that in 1998 during his (extensive) country wide travel, he would take every opportunity to review local newspapers and promotional material of candidates for office in pending regional/territorial body elections. From this admittedly informal review he reported that not one candidate mentioned or recognised they would have duties to perform in relation to the RMA.

The Minister's view was perhaps put more succinctly and in a completely generalised fashion by another well-known commentator Mr Owen McShane. At a public seminar "The Growth Conflict" in Auckland in November 1998, Mr McShane was reported to have said:

"The RMA was crafted by two of the sharpest minds in Parliament and is now interpreted by millions of stupid people."

At the same seminar the General Manager of Winstone Aggregates, Mr Scott Paterson, made a plea for clear leadership to establish a more consistent operating environment for companies like Winstone (around 30 sites nationally and producing about 8 M tonnes of processed sand and crushed and/or screened aggregates.)

The leadership sought by Mr Paterson has been slow to emerge. At best there, have been conflicting signals. As an example of NIMBYism at the highest level Mr Matt Robson, the Alliance MP, prepared a report in March 1998, "Quarrying

in Residential Areas. Auckland as a case study”, which made recommendations to central and local government presumably in line with Alliance policy. That is, a goal to:

“Prevent further quarrying and phase out current quarrying in residential areas.”

The report’s conclusions to use its own terminology are so completely at odds with the RMA’s effects-based philosophy, e.g.

“.....quarrying, either existing or proposed is so obviously at odds with residential use that this noxious activity should not be allowed by law or in district schemes to compromise the use and enjoyment of residential areas.”

that it warrants no further discussion. It is however of concern that this represents the view of a senior member of the current administration.

There are some encouraging signs. For example, McSweeney and Yarrow report the Ministry for the Environment have published guidelines to assist decision makers at territorial Council level.

These guidelines would have been useful 10 years ago. Since the RMA was enacted Winstone has found it necessary to consider more than 86 documents created as a consequence. There have been at least 12 national documents (Policy Statements, Bills, Guidelines, etc); 38 regional documents in eight regions (Policy Statements, Coastal Plans, Growth Strategies etc); 36 district documents in 17 districts (Plans, Changes, Variations, Structure Plans etc).

Not surprisingly, the lack of appropriate leadership has resulted in considerable variability in outcomes, which in the absence of any co-ordination between the planning activities of the three tiers of government, and inevitably the Environment Court, creates a strain on resources for any business operating in multiple jurisdictions.

There is a study in progress on district plan quality in New Zealand. “Planning Under a Co-operative Mandate” is a publicly funded research programme. Philip Berke et al. report on the results of Phase 1 of the programme in “Plan Quality in District Councils”. This first phase:

“focused on organisational factors influencing plan preparation and thereby the quality of plans in New Zealand local government.”

The results for 31 of 34 district plans evaluated are tabulated in the report. Each has been categorised along the dimensions of “Plan Quality” and “Council Capability” as either “High”, “Medium”, or “Low”. It is unlikely Mr Paterson of Winstone will be surprised to find that Papakura District is one of four residing in Low/Low. The Winstone “reverse sensitivity” case² is due to return before the Environment Court in November. However to practitioners generally it will probably

be of more concern that only seven plans, that is less than 25% of the sample, are considered of “High Quality”.

Phase 2 of the study programme, due for completion in 2002, is focussing on plan implementation. Given the lack of leadership and guidance available when the RMA was introduced, there seems no reason to expect the outcome of this phase of the study to demonstrate improved consistency. In the absence of “crystal ball” technology, some observations and comments on aspects of implementation from developers perspective follow. These will be grouped under consultation and notification and consistency of process and decisions.

Consultation and notification

Consultation is common sense. To be an accepted part of and as a contributor to a community or society requires dialogue and open communication of intentions and expectancies. In the case of mines and quarries the nature of their activities and their presence in the community requires this involvement from the outset. Over time it can be expected to become the norm. For now the industry has to play “catch-up” at it’s existing (and often less than visually appealing) sites to overcome the mistrust and suspicion discussed earlier.

The Pokeno (Appendix B) example demonstrates that early and full consultation is no ticket to an easy ride. To the extent that there is a genuine need to establish and maintain a community relationship it is to be expected that there are costs to meet this aspect of doing business. Difficulties and unreasonable costs arise from the seeming inability of almost all parts of the process to define and fairly distribute or limit the extent of public participation.

This aspect will be considered further later in the paper.

The consultation/notification dilemma for officers and political decision makers has already been discussed in the context of the planning framework (McSweeney and Yarrow, 2000). In the consent application process the developer can be just as frustrated by what seem arbitrary requirements to consult or decisions to notify, just as the public clearly are when plans “happen”.

An example is the recent and well publicised case of the granting of consent for a downtown Auckland waterfront multi-storey building. It has been permitted to exceed the district plan’s sight line/height plane by up to five storeys.

This project had consent granted on a non-notified basis, with sign-off from a hand-full of neighbors, presumably “directly affected”. In this discussion it is irrelevant whether some or all of these neighbours may have been the developer of the new site or not. Simply consider that the location of this proposed “over height” building is daily going to be visible to (and impact on) however many people cross the Auckland Harbour Bridge, enter the CBD from the east along the

² Environment Court Decision No. A96/98.

waterfront drive, or commute to work from elsewhere and have a sightline to the Waitemata Harbour.

Compare this with recent and current consent and planning applications for extended activities at two longstanding (78 and 64 years) urban quarries within the same jurisdiction. Notified applications, with a requirement to establish a database of land and homeowners within an area 500 m to 1 km beyond the boundary of the existing sites. Effects by type, scale and intensity unchanged but notified to thousands.

A discussion about consultation would be incomplete without including the special status afforded tangata whenua through the RMA and consequently many planning documents (e.g. Waahi tapu scheduling of land). Doubtless the experiences of developers and consent applicants will be as variable as the attitudes of the individuals involved, and cannot be generalised. However, it is suggested that the point is not about consulting Maori to elicit their values and concerns (surely just another interest group in the broad definition of consultation?) rather about who “is” Maori, and who should be consulting.

It is further suggested that while experience and thought might conclude that one on one, or face to face consultation will permit the critical element of trust and understanding to develop between tangata whenua and an applicant for consent, is it strictly the applicant’s role? Practically yes, but arguably in a legislative sense, no.

For those conservatively inclined, a recent editorial “Treaty of Waitangi Mystics foment phoney revolution” (27 September 2000) by Warren Berryman of The Independent Business Weekly, will reinforce conservative views. However one of Berryman’s observations, appears beyond challenge - “...*The Treaty was concluded in 1840 by the Crown and some, but not all, Maori tribes*”. Surely on that basis the Crown, or its delegated regional and territorial authorities, should be more proactive in addressing the issue of tangata whenua consultation? Once again the “L” word, leadership, comes to mind. Whilst it is accepted that the parties to consultation have to be the principal players, what is required is a facilitating and scoping capability to ensure all “genuine” interests are accommodated. The present situation where individuals may stand or “appear from nowhere” as representatives of tangata whenua is unsatisfactory.

Consistency of process and decision making

The observations and comments made with respect to plans and leadership come to the “crunch” for developers when an application for consent is made within the framework of the relevant plans and statutory requirements. The “level playing field” is found to be not so level at both micro and macro levels.

One not so obvious source of inequity results from New Zealand’s “communities” being relatively small, including

those of the professions, specialist advisors and experts. As a consequence it is sometimes unnecessary to wait for a commercial competitor to try to frustrate an application or influence conditions (that comes later), as selective assessment and reporting to a regulatory authority’s decision makers by consultants is a distinct possibility.

There are examples in the Auckland region where specialists have been engaged as advisors to regulatory bodies to assess aspects of quarry consent applications, yet have acted as consultants for competitor aggregate producers in equivalent applications. The outcomes are, not unexpectedly, variable and inconsistent.

At a macro level, until there is an outcome from the review of the RMA and its proposed amendments, it remains to be seen which side prevails in the debate over elected politicians versus appointed “independent” Commissioners as decision makers. This paper suggests that it probably doesn’t matter, and that direct access to the Environment Court is more an issue.

The basis for asserting this are the experiences which have seen consents granted by Councillors both against and in accordance with their officers’ recommendations. Then there is the Pokeno example where the proposed quarry’s territorial consents were declined by the Commissioners despite recommendations to grant consent subject to condition from Council’s Officers and expert advisors, and despite the fact the proposed plan zoned the site for aggregate extraction and processing.

At the time, and more so with the benefit of two years hindsight, the Commissioner’s decision was a “good” case for direct access to the Environment Court. In essence the Commissioner’s declined consent on the basis of the effects of heavy road transport to distribute aggregates on the amenity values of the Pokeno village. This was despite the fact that the quarry could function by a proposed alternative transport mode, rail, by addition of a siding off the existing main trunk line, or even by having road traffic enter and exit the site to the south, thus avoiding the village.

After land to produce an alternative road access to avoid some residents was acquired, the Council Officer’s report recommended declining the application for the alternative, by extending the “thinking” behind the earlier decision, as downstream the effects on the village were potentially the same. To an outsider it might seem ironic that the Council “ignored” the officer’s report and granted consent. However, by then and after an exhaustive mediation, it was the decision supported by the PPA.

The subsequent Pokeno “experience” paints a picture of how the public participatory process can get out of hand, and given the outcome, demonstrates how direct access to the Environment Court would not have compromised “public” scrutiny.

Reference to the process milestones at Appendix B will show that the extensive mediation revisited all technical and non-

technical issues of concern to its appointed representatives of the community. Despite this, an individual, originally a member of the PPA, now exercised his “rights” in opposition to the applicant, appellants to the original decisions, and a majority of the community. Further comment will be made during a discussion on costs.

Returning to the general issue of decision making, the Hon Simon Upton’s remarks about political capabilities made informally to the RMLA 1999 conference as noted earlier, are again relevant here. In particular, if candidates are unaware of the commitments to administer the RMA that will result if they are elected, it is unlikely without expert guidance they will be aware of, or know how to manage, their judicial responsibilities. That is, when confronted with the need to make a decision on a development proposal, it should be made on the basis of effects within the RMA framework.

For those familiar with construction contracts, the analogous situation is the Engineer to the Contract under Conditions of Contract requiring the Engineer to exercise the dual function of agent for the Principal, and also when necessary as independent certifier. The Engineer’s inability to make this distinction has created a raft of arbitration and court actions.

With respect to consistency of some decision making, it can be noted that the Ministry for the Environment has recently published a report “Resource consent durations and reviews” based on a study of regional council practice. While this only tells part of the story by tabling the duration of consent granted (rather than the term applied for) it appears to show that activities of like effects are treated quite differently by the various councils, for example Stormwater Discharges. Apparently Northland typically grants five year durations, Auckland and Canterbury 35 years. Six others range from seven to 20 years and one grants permitted status. Two other Councils, either do not grant them (what happens when it rains?) or have too few to give meaningful data (in a region?).

The report concludes with a section on “Practice improvements” and examples for establishing consent durations and review conditions. It is encouraging that the Ministry is collecting and analysing data, with a view to improving the quality/consistency of decisions.

The bottom line

Factual data on the overall and “true” costs of implementation of the RMA is difficult to obtain. Part of the difficulty resides in the distinction between transaction and compliance costs, and another in the allocation of direct and indirect costs to the community of the associated bureaucratic processes (planning, assessments, hearings, Environment Court, etc).

In his paper, “Is The Resource Management Act Sustainable?”, presented to the New Zealand Planning Institute’s 1998 annual conference, Brian Easton, an economics academic, author, and practitioner makes some useful observations and interesting comments.

Mr Easton examines the relationship between public and private planning and the allocation of property rights. Of relevance here is his observation:

“Reducing compliance costs (of the RMA) may not be the same as reducing transaction costs, some of the costs which appear to be compliance costs – notably developers’ planning and design costs – would have happened anyway. The RMA simply exposes them to the public gaze.”

Clearly this is the case. For example it can be reported that the cost of procuring consents for the proposed Pokeno quarry will be of the order of \$2 M. (This excludes land purchase and company staff costs.) Without doubt a significant proportion of this cost is for technical assessment and design. However where, for example, do peer review costs lie? At Pokeno, not only did the Council engage consultants to review details of the application, but also there were independent expert reviews of important (to the community) technical issues funded by Winstone Aggregates (the applicant) as a result of community consultation.

So the latter cost may be a transaction cost, or is it a compliance cost? What about costs of consultation in general? Are they a compliance cost, because consultation is required by the RMA, or are they a transaction cost of establishing a relationship with the community? In the end it probably does not matter if the distinction cannot be made. They are both a cost of doing business, and subject to the pressures and tensions of any business cost. This would be acceptable provided certainty of process and consistency in its administration were givens.

Mr Easton raises another point, which builds on earlier discussion in this paper.

“A particular problem is that there are considerable differences, among councils, between best practice and worst practice. Not only is this inefficient in the case of each inferior practice, but it creates an uncertainty in the consent process which is inefficient in itself.”

If one accepts conclusions reached by Mr Easton that:

“The principles of the RMA, for all the defects of practice, are likely to be retained as far as public policy can foresee.”;
and

“There is a need to articulate those principles so that a vast, complicated and sometimes opaque law can be broadly understood by the public.”

Therefore for overall costs to be minimised, the focus has to shift to addressing process inefficiencies, to deliver consistency and more certainty, as then the transaction/compliance costs could be taken as a business cost.

Apart from the example of Pokeno outlined in Appendix B, examples of process inefficiencies abound. Often the costs

are (unfairly?) inferred as being transaction/compliance costs of the RMA.

An ACT press release on 13 September this year is reproduced at Appendix C. In it the RMA stands accused of creating delays and consequently enormous costs. The Minister of Transport's response to parliamentary questions is given as acknowledging that major roading projects are being delayed by at least six years.

However the reason given for the delays stem from process, and the roading situation demonstrates that improving process efficiency should deliver considerable economic benefit.

It can also be inferred from the press release that the RMA is not particularly well understood by either, the Minister of Transport or ACT's Transport spokesman or perhaps both. Whilst it might seem to many that "environmental court proceedings" are indeed "compulsory under the RMA" it is not the case.

For major roading projects, "inevitable" might be the appropriate replacement for "compulsory". At this year's annual conference of the New Zealand Contractors Federation, Mr Rick van Barneveld, Transit New Zealand's National Highway Manager, spoke informally on the matter. He made the observation that since the introduction of the RMA not one major Transit project had been consented without having been heard by the Environment Court. Further, that in Transit's submission to the proposed RMA Amendments, three key improvements were being sought. Firstly, to include a mechanism to identify genuine submissions in opposition. Secondly, a mechanism to be able to eliminate frivolous and/or vexatious appeals to the Environment Court. Thirdly, resource the Court appropriately to remove the considerable delays there.

On the basis of experience at Pokeno, all three of these improvements (to process) are supported.

Expanding on the last matter of Environment Court delay, it can be noted from the Pokeno "milestones" (Appendix B) that priority status was granted by the Court in early August. A fixture date is to be set, but advice is that it is unlikely to be before February or March next year, possibly as late as June.

If priority means 6 to 9 months, it begs the question of how long the other two thousand nine hundred and ninety nine or so others in the queue might have to wait.

Clearly on that statistic, RMA process delays must be costing the country dearly.

The figure of 3000 or so cases in the queue was quoted by one or more of the speakers at this year's RMLA conference. Unfortunately it seems that the Ministry for the Environment and territorial and regional councils have concluded the process overall is working satisfactorily. In her oral address, the Associate Minister for the Environment indicated that only about 5% of resource consent applications were notified and

approximately 1% finished before the Environment Court, which on the face of it, indicated satisfactory performance.

Someone (Churchill?) said: "*There are lies, damned lies and statistics.*" The data on whether implementation of the RMA is satisfactory with respect to resource consents requires rather more information. It is self evident that a six year delay to the ALPURT roading project is of somewhat more significance to the nation than the immediate processing and non-notification of an application for consent to say exceed ground area coverage rules for a residential extension.

Hopefully the Ministry for the Environment will extend the scope of the RMA process reviews to include such factors or dimensions as scale and purpose of development proposals. Without these being considered a meaningful analysis of the costs which could be avoided by streamlining and improving the process will not be as easily identified.

Conclusions

In essence there is a lack of trust between all parties to development proposals. For aggregates the term development includes maintaining the right to operate existing quarries, particularly in urban settings, as well as in establishing "greenfield" sites.

The trust and respect of the community is key, and can only be expected to be developed over time through the industry demonstrating day by day that it can be trusted. Concurrently there is a need to make the regulatory process, particularly in the creation of district plans, more transparent as this too has created mistrust between councils and their constituents.

To achieve this requires understanding and leadership from politicians at each of New Zealand's three regulatory tiers. Improved quality, that is consistency of decision making, is also required from the community's elected representatives.

The RMA is being criticised for adding significant costs to development activity. It is rather inefficient management of the processes involved in implementation of the Act which are seen to be the cause of unnecessary and avoidable costs. While this could be applied to all process steps, those involving the Environment Court are likely to produce the most immediate benefits.

In the absence of sufficiently robust data, it is concluded intuitively that there is a strong case for managing access to the Environment Court differently. Available evidence and case studies suggest that the costs of playing the game under the present rules are unacceptably high. Lifting the game by improving process to deliver benefits sooner must be preferable.

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Author

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Appendix A

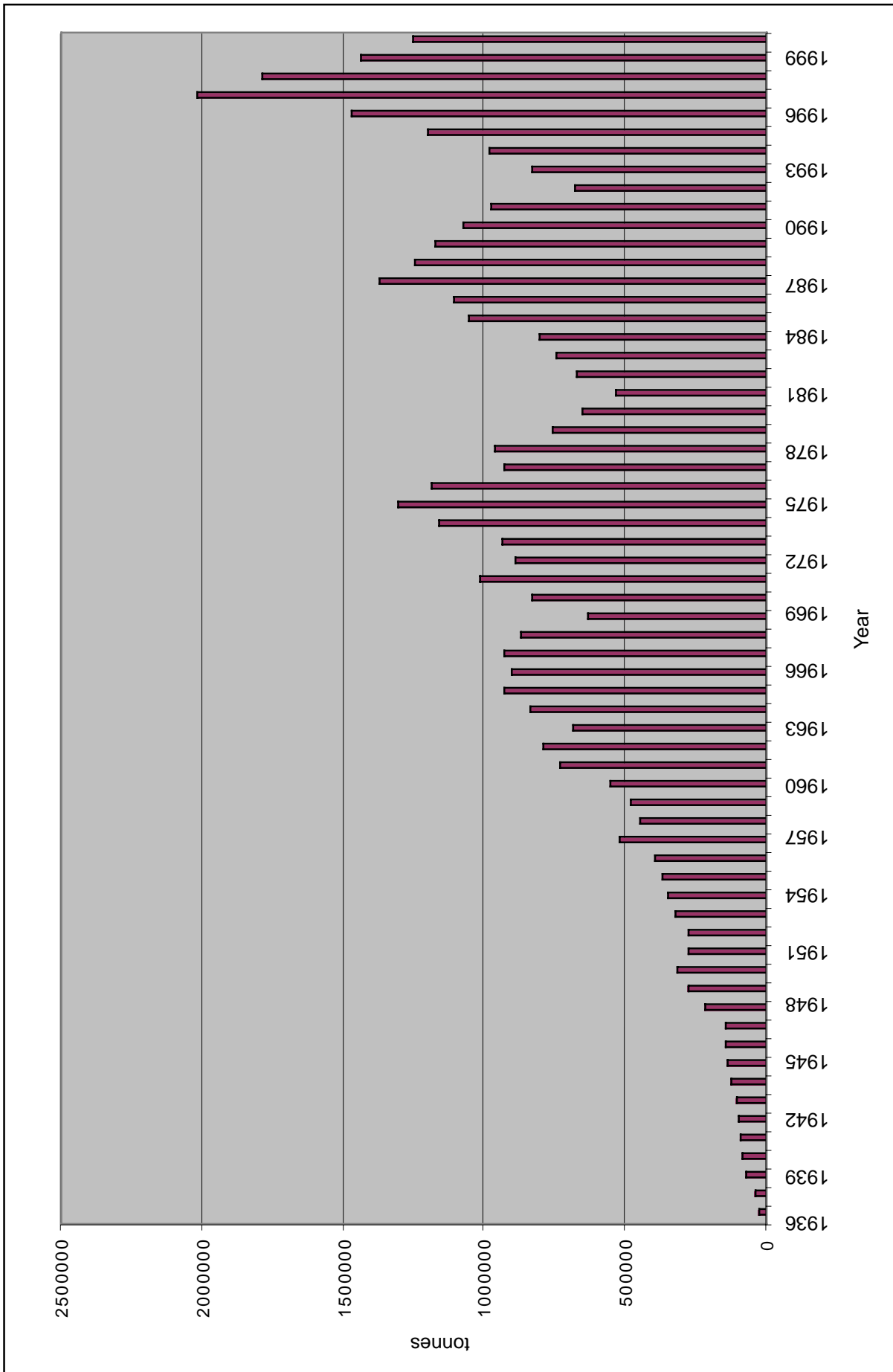


Figure 1. Output by annual sales. Lunn Avenue/Mt Wellington Quarry.

Appendix B

Proposed Pokeno Quarry Milestones

Date	Event
1988	Purchase of “core” properties
October 1988	Public meeting with Pokeno Ratepayers Association
1988	First drilling programme
1988	Prospecting Licence application
July 1989	Correspondence between Winstone Aggregates and Ratepayers Association
August 1990	Prospecting Licence granted
October 1990	Public meeting with Pokeno Ratepayers Association
1992	Second drilling programme
1996	Purchase additional property
September 1996	First consultation mailout
October 1996	First of 6+1 Quarry Workshops. (Last one held April 1998)
July 1997	Third drilling programme
April 1998	Purchase additional property
April 1998	Received mining license
April 1998	Purchase 2 neighbouring properties
May 1998	File quarry consent applications
September 1998	Pre Hearing meeting
November 1998	Council hearing at Pokeno
December 1998	Franklin District Council (FDC) refuses consent Waikato Regional Council (EW) grants consent
January 1999	Appeals lodged <ul style="list-style-type: none">• Winstone against FDC and EW• PPA against EW• 5 individuals also members of PPA, wrt air, water and vegetation against EW
April 1999	Meeting at FDC with members of PPA to discuss possible solutions to appeals
July 1999	Purchase Leathem property for alternative access
September 1999	Meet with PPA planner to discuss potential for mediation
October 1999	File consent application with FDC for new Leathem Access. EW does not require consent.
Oct–Dec 1999	Series of meetings with PPA representatives and experts and FDC to try to negotiate solution for trucking issue including further analysis of two more access options.
January 2000	Agree with PPA and FDC to engage an independent mediator to attempt to mediate a solution for the entire project. Mediator appointed
January 2000	Winstone engages Consultants to carry out a “social” study of the Pokeno community focussing mainly on its attributes and aspirations.
3 February 2000	Pre mediation meeting with appellants to quarry application, Pokeno Protection Association, FDC and WAL.
7, 9, 16, 17, 22, 23, 25, 28, 29 February and 1 March 2000	Ten mediation sessions covering: <ul style="list-style-type: none">• Transport• Water• Dust

Date	Event
	<ul style="list-style-type: none"> • Vibration • Noise • End Use • Rehabilitation • Monitoring and Enforcement • Community Liaison • Iwi issues • Property Values • Refinements to the original application • Lapsing Date of Consents • Future Mediation and arbitration
Wed 8 March 2000	Winstone presents evidence to FDC hearing on the Leathem access.
Tues 11 April 2000	Submitters to Leathem access present evidence to FDC hearing.
Tues 18 April 2000	FDC grants Leathem access consent
Wed 19 April 2000	Heads of Agreement between Winstone, PPA and Appellants signed at Pukekohe
10 May 2000	Two appeals against Leathem decision.
9 th June 2000	EC Call over, one appellant no show
20 July 2000	EC Call over. WA call for strike out of appellants, security for costs and priority.
14 August 2000	EC Decision granting priority, security for costs to \$20,000, and particularisation of issues.
5 September 2000	Appellants attempt to particularise.

Appendix C

Press Release: ACT New Zealand

13/09/00 13:42:00

Delays and enormous costs caused by the Resource Management Act are slowing down the construction of roading networks, said ACT Transport spokesman, Penny Webster.

In answer to parliamentary written questions the Minister of Transport, Mark Gosche, has admitted that major roading projects are held up by at least 6 years while investigation, consultation and environmental court proceedings take place. These steps are compulsory under the Resource Management Act (RMA).

“The cost of these hold ups to project development can be 10-12 per cent of the project’s entire cost.

“If you look at the proposed ALPUT development from Orewa to Puhoi at an indicative total cost of \$88.8 million or Wellington’s Transmission Gully route at \$245 million, one has to question how much of that expense is RMA costs and how much is construction?

“Traffic congestion caused by incomplete roading networks are placing a high burden on New Zealand, both economically and environmentally. It is estimated that traffic congestion costs Auckland over \$800 million per year.

“The environmental costs of traffic congestion due to insufficient roadways are also unacceptably high. The Auckland Regional Council recently stated that vehicles ‘perform poorly and pollute more when they are idling in long queues.’

“Sue Kedgley’s calls for regular emission testing does not address this issue. Testing will impose huge compliance costs on vehicles throughout New Zealand when it is only selected urban areas facing pollution. Sue Kedgley should advocate an RMA review and road network completion to minimise the environmental impacts of exhaust emissions.

“It would be a huge shame if the completion of the Auckland roading network, and other roads such as Transmission Gully, were stalled due to unnecessary bureaucracy cost,” said Penny Webster.