16 August 2018

National Planning Standards
Ministry for the Environment
PO Box 10362
Wellington 6143

RE: Submission on the draft first set of National Planning Standards

Dear Sir/Madam,

Please find attached a submission for the National Planning Standards form Brookby Quarries Limited. This submission is in respect of the proposed definitions of “Cleanfill” and “Quarry”.

Submitters Details:

- Name: Brookby Quarries Limited
- Address: [Redacted]
- Phone: [Redacted]
- Email: [Redacted]
- Submitter type: Business/Industry

Brookby would welcome the opportunity to discuss this submission further with the Ministry staff.

Yours sincerely

Steve Riddell
Managing Director
1. This submission is in respect of the proposed definitions of “Cleanfill” and “Quarry”.

*Cleanfill*

2. “Cleanfill” is proposed to be defined as:

   ... an area used for the disposal of exclusively inert, non-decomposing material.

3. The ability to dispose of cleanfill effectively and efficiently is an essential part of enabling development, particularly much needed housing and infrastructure. The submitter (Brookby) is concerned that the proposed definition is too narrow and, strictly applied, there would be very little material that could qualify as “cleanfill” and therefore very few sites that could be classified or established as cleanfills.

4. The proposed definition is very similar to a previous definition of cleanfill that was used by the Auckland Regional Plan: Air Land & Water. That definition, which was the subject of specific comment by the Environment Court in *Envirowaste Services Ltd v Auckland Council* [2011] NZEnvC 130 (*Envirowaste decision*), was:

   Cleanfill
   A cleanfill is any land that only accepts cleanfill material.
   Cleanfill material means material that when buried will have no adverse effect on people or the environment and includes virgin materials such as clay, soil and rock, and other inert materials such as concrete or brick that are free of:
   - Combustible, putrescible, degradable or leachable components
   - Hazardous substances
   - Products or materials derive from hazardous waste treatment, hazardous waste stabilisation or hazardous waste disposal practices
   - Materials that may present a risk to human health
   - Liquid waste

5. Examining the elements of the definition now proposed in the National Planning Standards highlights significant flaws, and are almost certain to give rise to the same issues that were raised by the Environment Court in the *Envirowaste decision*:

   a. The material must be *exclusively inert* and *exclusively non-decomposing*.

   b. “Inert” is defined as being “without active chemical or physiological properties; unreactive” (Shorter Oxford Dictionary, 6th Ed, Vol 1).

   c. Virtually all cleanfill will contain some material that is not “inert”. This could include naturally occurring elements of volcanic origin, as well as small quantities of anthropocentric - or manufactured - material (eg, pesticides, herbicides, or petroleum products). While there might be some restriction on anthropocentric elements, requiring all cleanfill to be “inert” is a practically impossible standard to meet because of naturally occurring elements, or because some elements, such as concrete, will leach small amounts of contaminants and accordingly are not inert. (Again, these issues were discussed extensively in the *Envirowaste decision.*)
d. The difficulty with the definition is highlighted by the second requirement – ie, the material must be exclusively non-decomposing. This would prevent any cleanfill with any greenwaste whatsoever from being accepted, because all greenwaste “decomposes”. It is impracticable to collect cleanfill without some organic material remaining within that material (ie, tree and shrub roots, some small percentages of grasses, and other debris within the soil profile).

6. The Auckland Unitary Plan adopts the following definition of cleanfill:

**Cleanfill material**

Means natural material such as clay, gravel, sand, soil and rock which has been excavated or quarried from areas that are not contaminated with manufactured chemicals or chemical residues as a result of industrial, commercial, mining or agricultural activities.

Excludes:

- hazardous substances and material (such as municipal solid waste) likely to create leachate by means of biological breakdown;
- product and materials derived from hazardous waste treatment, stabilisation and disposal practices;
- materials such as medical and veterinary waste, asbestos, and radioactive substances;
- soil and fill material which contain any trace element specified in Table E30.6.1.4.2 at a concentration greater than the background concentration in Auckland soils specified;
- sulfidic ores and soils;
- combustible components;
- more than 5% by volume of inert manufactured materials (e.g. concrete, brick, tiles); and
- more than 2% by volume of attached biodegradable material (e.g. vegetation).

7. Brookby requests that the same definition of “cleanfill” be adopted in the National Planning Standards.

8. The only amendment that might need to be made to allow this to be a generic definition applicable throughout New Zealand is to replace the reference in the 4th bullet point to “soil and fill material which contain any trace element at a concentration greater than the background concentration of the soils within [insert district or region]”.

9. **Quarry**

This part of the submission relates to the proposed definition of “Quarry” which is:

... an area of land where the excavation, with or without the processing, of minerals and other solid natural substances occurs.

10. The definition is noted as falling within the “Land use category”, however Brookby is concerned that the definition fails to correctly identify the full range of land use (or other) activities that comprise a quarry activity. This is likely to lead to unrealistic expectations as to the nature of activities, and therefore effects that are likely to result from such land uses. The proposed definition does not therefore meet the purpose of CM-1(A)(1) as being “To provide mandatory definitions ... to improve plan consistency and enable greater certainty around the meaning of terms across the country.”
11. Brookby requests that the proposed definition of “quarry” be amended so as to more accurately reflect the range of activities comprising a quarry land use. These other activities are an essential element of the quarry land use; for example, all quarries need to manage stormwater, many quarries will need to manage groundwater, all quarries will need to remove and dispose of overburden, and most quarries will require the removal of some vegetation.

12. Some of these other activities, such as the deposition of overburden, can be reasonably land-intensive, and there are substantial benefits (environmental and economic) for this deposition to occur in close proximity to where the overburden was extracted. Other associated activities, eg the storage and treatment of stormwater, can also be land intensive, and would not necessarily be thought of by some Council planning policy staff as an essential part of a quarry land use.

13. Accordingly, unless all these other activities are recognized in the definition of “quarry” there is a real risk that any subsequent zoning decisions or decisions about the scope of any quarry-related objectives, policies and rules, will fail to provide for these other activities. For example, in some district plans, the extent of the quarry zone is limited to the known area of rock resource. Because it is undesirable to sterilize a future rock resource by placing overburden on top of it, this inevitably means that some quarry-related activities need to occur outside the quarry zone and that they will need resource consents to do so. This will inevitably lead to submissions from neighbours opposing those activities and instead requesting that all quarry activities are contained within the quarry zone.

14. As noted in the section of the submission above on the “cleanfill” definition, many infrastructure and housing developments require the disposal of cleanfill offsite. Because these developments also require significant volumes of aggregate resources, being able to “backload” cleanfill from the development sites and dispose of the cleanfill at the quarries supplying the aggregate represents a very efficient method of disposal. (In other words, rather than the trucks returning to the quarry empty, the trucks would contain cleanfill which can then be disposed of at the quarry, and the trucks can return to the development site with another load of aggregate and so on.) Other than the significant economic savings, this method reduces vehicle numbers and associated emission of greenhouse gases. In addition, because quarries are essentially large, integrated, earthworks sites, the deposition of cleanfill can be done in a manner than ensure all environmental effects are appropriately addressed. This is preferable to other, ad hoc, cleanfill sites that might otherwise be established in a pepper-pot manner throughout the rural areas.

15. The proposed amendments sought by Brookby are shown below in mark up:

means an area of land where the excavation, with or without the processing, of minerals and other solid natural substances occurs, and where other associated activities take place including blasting, removal of vegetation, removal and deposition of overburden, deposition of cleanfill, and the collection, storage and treatment of stormwater and groundwater.

16. This proposed relief is based upon a number of elements of “mineral extraction activities” as defined in the Auckland Unitary Plan. A copy of that definition is set out below. As can be seen, these activities specifically include “cleanfill” and also “managed fills”.

Mineral extraction activities
Activities carried out at a quarry. Includes:

- blasting;
- excavating minerals;
- processing minerals by crushing, screening, washing, or blending;
• storing, distributing and selling mineral products;
• accessory earthworks;
• removing and depositing overburden;
• treating stormwater and waste water;
• landscaping and rehabilitation of quarries;
• cleanfill and managed fills;
• recycling or reusing aggregate from demolition waste such as concrete, masonry, or asphalt;
• accessory activities and accessory buildings and structures such as laboratories; and
• workers accommodation.

Excludes:
• common marine and coastal area mineral extraction.

Alternative relief in respect of the definitions of “Quarry” and “Cleanfill”

17. In the event that Brookby’s request above is not accepted by the Ministry, Brookby requests that the proposed definition of “quarry” be deleted altogether. This is because while a standard definition may assist, including an incomplete definition is likely to cause far more confusion that it would remedy. Likewise, unless the definition of cleanfill is amended, Brookby’s preference is that the proposed definition of cleanfill be deleted altogether.

Further information

18. Brookby would welcome the opportunity to discuss this submission further with the Ministry staff.

[Signature]
B J Matheson
On behalf of Brookby Quarries Ltd