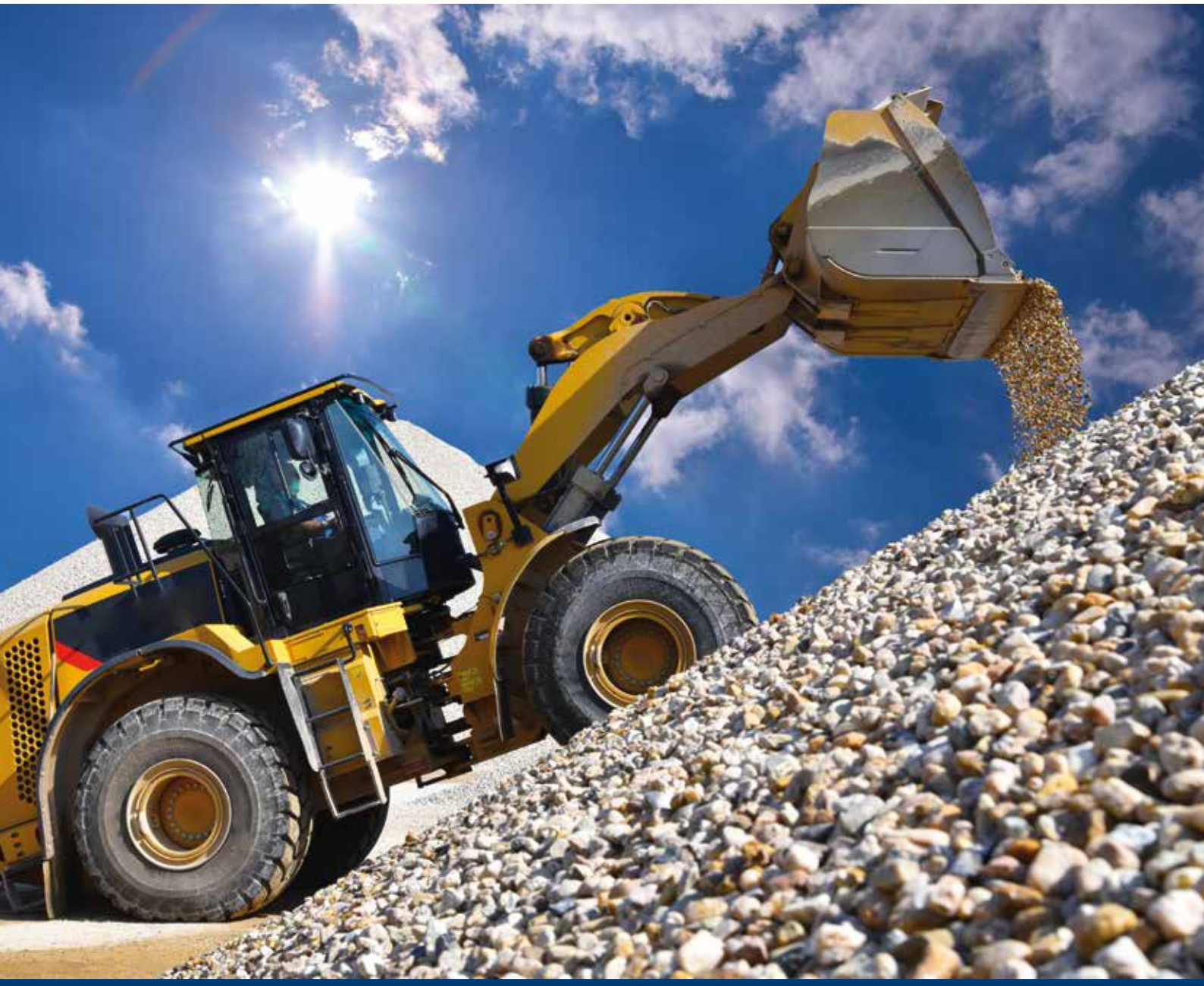
mpa
essential materials
sustainable solutions



Smart Regulation in the Mineral Products Sector

April 2023

Mineral Products Association

Executive Summary

The mineral products industry is an essential enabling sector in our economy. Producing 400 million tonnes of aggregates, cement, concrete, lime, asphalt, dimension stone, and industrial sands and clays every year, the sector is the largest element of the construction supply chain, and the single largest supplier to the domestic construction sector which is worth £172 billion.

Non-construction markets are also important, and mineral products are used in a range of key sectors, including iron and steel, ceramics, paper, glass, agriculture and horticulture, and food and pharmaceuticals.

While the mineral products sector supports 3.5 million jobs and multiple multi-billion pound industries through its supply chain, the sector also directly employs 81,000 people in the UK, and generated over £5.8 billion in gross value added in 2018.

Like all responsible industries, the mineral products sector welcomes good regulation. The health and safety regulatory framework, for example, has worked well and is highly valued by the industry. However, in many other areas, regulatory reform has the power to reduce unnecessary costs and bureaucracy, increase certainty, support innovation and investment, and support economic growth.

This report produced by the Mineral Products Association (MPA) outlines some of the most significant and persistent regulatory challenges that increase costs and uncertainty in the industry, and proposes how the Government can act to reduce these barriers. In particular, the report highlights that:

- **Uncertainty, delay, and cost in the mineral planning and permitting system deters investment in mineral extraction applications and leads to permitted reserves dwindling as aggregates demand increases. Regulatory reform will help ensure a secure and affordable long-term supply of aggregates for both the public and private sectors.**
- **The mineral planning system is under-resourced and poorly structured, with expertise spread too thinly, and wide variations in performance between local authorities. This makes outcomes less certain and leads to more time-consuming and costly appeals.**
- **Statutory consultees should be subject to stricter rules on when to respond to planning or permitting consultations or request additional information, in order to ensure they comply with their statutory duty without adding unnecessary delay, bureaucracy, and cost for applicants.**
- **Regulatory duplication, overlap, and lack of co-ordination, particularly in planning and permitting, is costly for businesses and public bodies alike. A renewed drive to eliminate this inefficiency would lead to a less burdensome, better value-for-money regulatory framework.**
- **Regulator performance is inconsistent, and oversight from Government is patchy in practice. Better scrutiny across the board will be necessary to improve consistency, transparency, and efficiency; and thereby improve certainty for businesses.**

Introduction

While successive governments have at times worked to reduce some of the regulatory duplication and burdens on the mineral products sector, progress has all too often been piecemeal and often not followed through. This has left significant sources of additional uncertainty, delays, and costs for businesses in the sector. Promising measures on paper, such as the Growth Duty introduced under the Deregulation Act 2015, have often had relatively little effect in practice.

Sometimes, common-sense changes only happen after a legal challenge. This was the case for issues around what the Environment Agency considers 'waste disposal' activity as opposed to 'recovery' activity – a problem which had affected the ability to backfill as part of the restoration of quarry sites to nature.

In order to create an environment where the sector can reach its full potential to drive economic growth, the Government must look beyond piecemeal changes, and grasp the nettle of well-considered meaningful reform of domestic regulation to create an environment that is truly efficient, consistent, and smart. Especially against the current economic backdrop, piecemeal or cosmetic changes, or rewriting regulation for the sake of it, will only serve to redirect resources towards inward-looking processes, both among public bodies and businesses.

However, done right, regulatory reform for the mineral products sector will help to reverse the decline in permitted reserves, secure an affordable and sustainable long-term supply of aggregates, enable innovation including in areas such as decarbonisation and the circular economy, and increase the sector's contribution to the economy.

Reform can deliver better value for money for the public purse by reducing inefficiencies among regulators and local authorities, increasing economic growth, and ensuring mineral products are affordable and accessible for consumers well into the future. This includes the public sector, which is the biggest client for the resources and products that the sector produces.

This means tackling the way existing regulation is implemented, as much as rethinking the regulations themselves. Smart regulation must be applied appropriately and consistently in practice, by organised, co-operative, adequately resourced, and genuinely accountable regulators and planners.

In particular, mineral planning applicants should be able to expect value for money for the ever-increasing fees that they are charged by planners and regulators – delivering a timely, consistent and accountable service. Fees should be ringfenced, meaning applicants pay for the service they receive and help contribute to a properly resourced system, rather than being used as captive customers to subsidise other functions or casework in local government where there may be a budget deficit. Where cross-subsidy is seen as a revenue stream, it lacks accountability as a service.

The mineral planning and permitting system should be streamlined, rationalised, and backed up with better evidence, reflecting the importance of a secure long-term supply of mineral products to the future of British construction, manufacturing, and infrastructure, as well as the need for industry to have long term-confidence in the planning and permitting regimes to support investment decisions.

Moreover, the constructive reforms in the Levelling Up and Regeneration Bill should be diligently followed through once the Bill becomes law. Measures such as national development management policies, digitising the planning system, and helping mineral planning authorities to accelerate their local plan-making process will help streamline the planning system for the industry.

1. Planning and Permitting for Minerals Security

Structural changes to planning and regulation, as well as better and ringfenced resourcing, will improve the way that existing planning and permitting regulations are implemented. However, the regulations themselves, and the evidence base available to those implementing them, also contribute to the delay and uncertainty in the system.

This delay and uncertainty makes for a challenging environment for private investment. The lack of a consistent and strategic approach to assessing future mineral needs, reflected in the mineral planning and permitting system, combined with patchy delivery of national and local government ambitions for infrastructure, and broader economic and political uncertainty, discourages long-term investment in the sector, which will impact on jobs and the local economy.

Permitted reserves for essential minerals like sand, gravel, and crushed rock are declining, with the amount of land-won aggregates that are consumed outstripping the new reserves that are being permitted, even though these minerals are more than abundant in Britain. 63% of sand and gravel reserves, and only 52% of crushed rock reserves, were replenished between 2011 and 2020[1]. This means that for every 100 tonnes of sand and gravel sold during that period, the industry only gained permission to extract another 63 tonnes of sand and gravel.

Demand for primary aggregates is also expected to increase in the coming decades. Total aggregates demand is projected to increase by as much as 70 million tonnes per annum by 2035[2] – growing from 253 million tonnes in 2021 to 323 million tonnes in 2035. As over 90% of hard construction and demolition waste is already recycled, and the availability of recycled aggregates depends on demolition activity, there is very little scope to increase the supply of recycled aggregates to cover this growth in demand.

Therefore, reform is necessary to enable mineral reserves to transition back to a long-term sustainable footing. Improving the evidence base for mineral planning, and streamlining and rationalising the planning and permitting system for mineral extraction, will help secure the reliable long-term aggregates supply needed for the construction and infrastructure projects that will propel future prosperity.

Ministers can take seven steps to deliver this crucial reform:

- **Apply lessons from Project Speed to mineral planning and permitting.** The Project Speed initiative, aimed at cutting delays and costs associated with delivering major projects, must inform efforts to cut delays and costs in the mineral planning and permitting process. The adoption of a stratified planning and consenting regime, where the lessons from Project Speed are only applied in the Nationally Significant Infrastructure Project (NSIP) process itself, would not improve delivery of major projects. It would instead simply transfer delays to other parts of the supply chain on which these projects rely. A holistic approach is therefore essential.

- **Improve transparency of supply requirements for new developments.** Delivering Government ambitions on housebuilding and major infrastructure projects will require access to sufficient supplies of mineral resources and associated products. Consequently, these projects have considerable implications for the future supply of mineral products, and the mineral planning and permitting regimes that underpin their delivery. To ensure the transparency of these requirements, all major projects should be required to produce construction material resource assessments and supply audits. As the UN Environment Programme has noted with regard to sand, better knowledge and understanding of mineral supply issues at all levels, from planners and regulators to Government itself, is essential for delivering the most sustainable and cost-effective solutions to support Government ambitions for construction[3].

- **Ensure an appropriate amount of land bank is maintained for aggregate reserves.** Ministers should ensure local authorities stop insisting on maintaining no more than the minimum amount of land bank for aggregate reserves. The minimum is just that, a bare minimum, not a proxy for need; and maintaining that bare minimum and nothing more is not in accord with the National Planning Policy Framework. To help address this, Government should enforce the existing duty on all planning authorities to hold an up-to-date, relevant, and adequate evidence base to support plan-making; update national and sub-national guidance for aggregates provision; and continue efforts to ensure the Managed Aggregate Supply System (MASS) and National Aggregates Coordinating Group have more influence over outcomes, especially in the wake of the end of the Annual Mineral Raised Inquiry (AMRI) in 2014, which reduced the available evidence base in this area.

- **Align the requirements for planning and permitting to stop duplication.** While planning and permitting are two separate processes with separate purposes, care must be taken to eliminate and prevent unnecessary duplication of work, both for industry and for planners and regulators. This includes the requirement for applicants to repeatedly submit the same information during the planning and permitting application processes (and while preparing those applications). It should be possible to use a single Environmental Impact Assessment for planning and permitting applications (or reviews). In order to further curb delays, ministers should also review the sequential nature of permitting processes, and consider making it more practical to twin-track planning and permitting – currently the proof required for the environmental permit for quarry restoration is the planning permission itself, which is a barrier to twin-tracking.

- **Review the planning appeals process.** Appeals against refusal should be limited to the grounds initially cited for refusal, rather than searching for new and different grounds for refusal, which were not identified as such in the original decision. There should also be a review into the consistency of Planning Inspectorate decisions. This will reduce the time and money wasted re-examining aspects of a refused application that have already been found to be sound, improve consistency in Planning Inspectorate decision-making, and help avoid wasted investment in sites which are not acceptable in planning terms.

  Where decisions made against the recommendation of an officer are subsequently successfully appealed, the default position should be for costs to be awarded against the planning authority rather than this being the exception. At present there are limited consequences to local planning authorities for making such decisions, even though these actions can significantly increase costs for both the applicant and the authority itself, as well as introducing additional delays into the decision-making process.

- **Review the removal of permitted development rights on mineral sites.** A significant number of planning authorities attach planning conditions to permissions which have the effect of withdrawing permitted development rights for minor and ancillary activities. This either results in a costly appeal against the conditions, or further costly and time-consuming planning applications for what would normally be classed as permitted development. Government should investigate this practice and take action against it where appropriate.

- **Arrest the abuse of Section 106 agreements.** Most conditions that need to be satisfied for development to be granted planning permission can be satisfied by a normal planning condition. Section 106 agreements should not be used where normal planning conditions would suffice – this would reduce the additional delays, costs, and legal complexities associated with Section 106 agreements.

2. Value for Money in Planning and Permitting

Many of the problems associated with the function of regulators and planning authorities are, at least in part, the product of under-resourcing, which contributes to a lack of experienced staff, slow response times, unnecessary requests for information, and incorrect decisions that prompt appeals or resubmissions. This adds unnecessary bureaucracy for industry, and also for regulators and planning authorities themselves, contributing to a spiral of inefficiency.

The extension of pre- and post-application consultation fees charged by planners and Government agencies has not reversed this trend, but rather further increased costs for industry. The problem will not be addressed by simply increasing these fees even further still. Structural changes, including as to how these fees are handled, will be necessary to reduce inefficiency and ensure better value for money for applicants.

Ministers can take two steps to address this problem:

- **Stop the increase and spread of fees.** Regulators and planners need to move away from the failed practice of increasing or introducing pre- and post-application consultation fees as a response to improve performance. In the majority of cases, this approach has resulted in no noticeable improvement in service or delivery, compounded by the lack of accountability for their performance. A moratorium against new fees or above-inflation increases in fees, unless they are clearly and accountably linked to improvements in service delivery, would allow time and space for a smarter, more fruitful approach to develop.

- **Ringfence fees to prevent cross-project subsidisation.** As is already the case for fees associated with Building Control, planning and permitting fees should be directly related to the services being delivered, rather than potentially being used to subsidise other functions or casework. Planning and permitting applicants should not be treated as captive customers.

3. Holding Regulators to Account

The way that regulation is implemented and delivered and the performance of major regulators, such as the Environment Agency (EA), has been a long-standing source of frustration for the mineral products industry.

It is clear that the EA, and other regulators, often lack the resource capacity and experience to ensure regulatory processes function in a reasonable, consistent, and efficient manner. In many cases, the problem is more about the capacity available to deliver regulation efficiently or regulation being misinterpreted in practice, rather than the letter of the regulation itself.

Working to eliminate unnecessary duplication, protecting against over-zealous implementation, improving regulators' resources, consistent and transparent enforcement, and increasing oversight and accountability of regulators would not only reduce the bureaucratic burden on the mineral products sector, it would improve the quality of regulation across the economy. Moreover, when regulations are implemented correctly, it becomes easier to identify issues requiring amendment.

Ministers can take five simple actions to improve the application of regulation:

- **Consider measures to improve the accountability of regulator performance.** While all regulators are ultimately accountable to Government, departmental intervention has historically been piecemeal, and there is minimal consistent monitoring of the performance of major regulators. One option the Government could consider is creating a dedicated independent body to 'regulate the regulators' on a day-to-day basis, and to act as a point of contact between Departments and the many regulatory bodies for which they bear ultimate responsibility.

  This is not an entirely new idea. The 2010 Penfold review, for example, called for the introduction of a body to oversee the planning and non-planning consent landscape. Public bodies, and especially arms-length bodies which are not directly democratically accountable, can benefit from a dedicated body to hold them to account.

  However the Government chooses to achieve this, it is essential that scrutiny is applied to regulators' performance in terms of the consistency, transparency, value and effectiveness of the processes they deliver. Instances of overlap and duplication should be investigated, and the cumulative effect of regulation monitored in order to ensure that the UK remains competitive in international markets. At present there is no means for planning and permitting applicants to challenge the performance of regulatory processes (as distinct from the outcomes), which provides little incentive for regulators to implement changes in order to improve delivery.

Last year, the Government launched a Public Bodies Review Programme, aimed at increasing accountability, efficiency, and transparency among arms-length bodies. This would be an opportune moment, therefore, to consider the establishment of an independent body, or formulate alternative proposals for improving consistent oversight of regulator performance.

- **Enforce the Growth Duty.** Regulators have a duty under the Deregulation Act 2015 to have regard to the desirability of promoting economic growth. Government already has the power under the Enterprise Act 2016 to require regulators to formally and annually report on how the Growth Duty affects how they carry out their functions, and the effect this has on businesses; and it should bring this obligation into force. This would make compliance with the Growth Duty a more tangible consideration in regulators' work and help drive necessary improvements in the customs, practice and culture of their delivery.

  Ministers can use secondary legislation to specify which regulatory functions are covered by the Growth Duty. They should consider using this power to make the Duty apply to local planning authorities.

- **Require statutory consultees to respond on time.** The process of determining a planning application is often delayed because statutory consultees fail to respond to consultations on time, contributing to the average mineral planning application taking around 35 months to determine. Statutory consultees for planning and permitting applications should have a statutory duty to respond on time to statutory consultation periods; backed up in a similar way to the duty on public authorities to respond to an FOI request in 20 days. An independent watchdog could enforce this in a similar way to the ICO's role in enforcing that duty.

- **Ensure better co-ordination of site monitoring visits.** Regulators and planners conduct routine site visits to monitor compliance with planning and permit conditions. In order to reduce disruption and associated costs for businesses, each regulator should be required to eliminate duplication of visits within itself, so that one regular visit covers all the permits at that site; and regulators should also combine their visits with each other where possible. This could be achieved either by guidance or a statutory duty, and backed up by requiring regulators and planners to report on progress in synchronising visits. If regulators and planners are prohibited from bringing forward a visit to align with the other's visit, such prohibitions should be lifted in order to align them.

- **Curb inappropriate requests for more data and evidence.** Statutory consultees often 'buy time' for their responses to planning and permitting operations by demanding additional information, even if that information is outside the bounds specified during pre-application discussions or in a statutory Scoping Opinion. Statutory consultees should only be able to request additional information outside the bounds of their own pre-application advice in exceptional circumstances, and each instance should be justified in writing.

4. Clear, Innovation-Friendly Regulation

While many of the regulatory barriers to growth in the mineral products sector are associated with planning and permitting, the size and diversity of the sector mean that it is affected by many areas of regulation and Government policy, each with an impact on the speed with which industry can operate and innovate, and the cost and bureaucracy it faces.

Government should be vigilant across the board to ensure its regulatory approach supports the health of the mineral products sector, its drive to innovate for the future, and the continued reliable supply of mineral products for the construction sector.

Ministers can start this process with four additional measures:

- **Implement proposals for innovation-friendly environmental regulation.** The Future Regulation Sector Group, consisting of MPA, the Chemical Industry Association (CIA), and the Food and Drink Federation (FDF), have drawn up proposals to reform the environmental regulatory regime to improve flexibility and responsiveness, encourage investment and innovation, and support efforts towards decarbonisation and a circular economy.[4]

  The Government should implement their proposals in full, including an environmental 'regulatory sandbox', aligning the legislation underpinning environmental regulations to Government targets, allowing regulation to respond quicker to new technologies, developing a clear strategic approach to the future of environmental regulations, and improving engagement on the part of Departments. This will help facilitate trials of new technologies and ensure the regulatory framework can adapt as they develop, and help energy-intensive domestic industries such as cement and lime remain competitive as the world transitions to a net zero future.

- **Streamline SECR, ESOS, and GHG reporting.** Many mineral products companies have obligations under Streamlined Energy and Carbon Reporting (SECR), the Energy Savings Opportunity Scheme (ESOS), and greenhouse gas (GHG) reporting. The overlap between these schemes and their reporting requirements adds unnecessary cumulative costs to the industry, when that spending could be better put towards substantive action to reduce emissions. Government, or a dedicated watchdog for regulators, should review these overlaps, and take action to eliminate duplication of work on the part of industry to abide by these requirements.

- **Help industry navigate devolution divergence.** The integrity of the UK internal market is essential to allowing the mineral products sector to trade with confidence across all parts of the United Kingdom. Divergence can increase complexity and require greater resources to navigate, whether it be a result of devolution or English localism. Government should work with the devolved administrations in particular, but also with combined authorities and metro mayors, to maintain regulatory alignment where appropriate, and ensure that any divergence is well and clearly publicised to business.
- **Review mineral-related business rates.** Government has repeatedly consulted on reviews of business rates, but the rating system remains overly complex, often punishing industry for investing in new infrastructure to improve environmental and safety standards. Business rates should be reformed to simplify the system, make ratings assessments quicker and easier, and incentivise investment in best practice.

Conclusion

Regulation of industry is a complex business, balancing essential protections for local communities, taxpayers' value for money, and the natural environment, with the importance of enabling businesses to flourish and grow in a market economy.

While there may never be a perfect regulatory environment, progress towards better and smarter regulatory delivery is an ongoing process. Government can best encourage that progress, and reduce inefficiency and duplication without compromising on the protection regulation provides, by being open to ideas for reform.

The eighteen steps set out in this document would go a long way towards the reasonable, proportionate, consistent, and competently implemented regulation the mineral products sector requires. They would make our regulatory framework smarter and more growth-oriented, and also benefit other industries – directly in the case of industries that are also affected by the rules and regulations mentioned, and indirectly through the key industries and projects that the mineral products sector supplies.

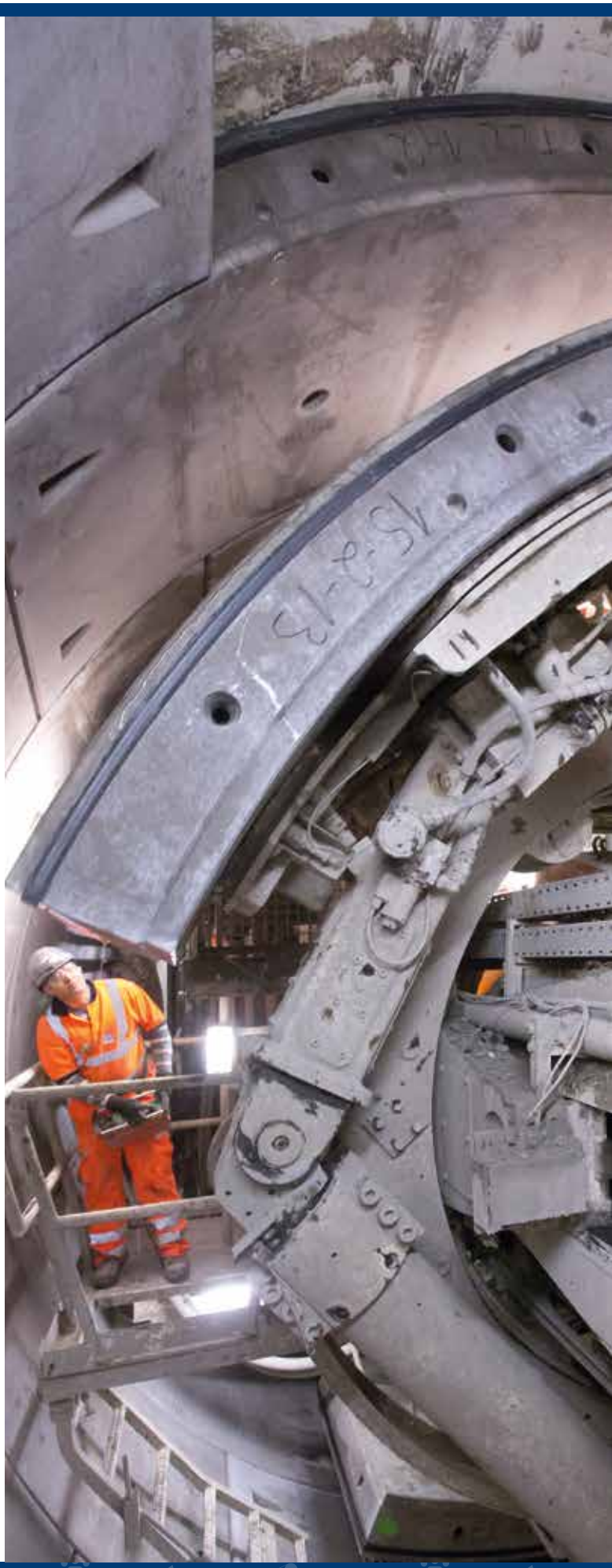
The mineral products sector will be at the heart of the Government's ambitions for construction, housebuilding, infrastructure, and decarbonisation in the coming decades. A better regulated mineral products sector, from regulator performance, to planning and permitting, to tax and devolution, will be in a better position to help those ambitions get delivered in the most sustainable and cost-effective way.

1: *MPA; Annual Mineral Planning Survey 2023 (Forthcoming)*

2: *MPA; Aggregates Demand and Supply in Great Britain: Scenarios for 2035, p. 13*

3: *UNEP; Sand and Sustainability: 10 Strategic Recommendations to Avert a Crisis, p. 10*

4: *MPA, CIA, FDF; Future Regulation Sector Group*



Mineral products in construction

QUARRY RESTORATION
- Biodiversity Net Gain
- Nature Reserves
- Country Parks
- Agriculture

RECOVERY, REUSE & RECYCLING
- Construction waste
- Excavation waste
- Commercial waste
- Industrial by-products

QUARRYING, MINING & PRODUCTION

2,400 UK sites
- Aggregates
- Cement
- Concrete
- Mortar
- Asphalt
- Dimension Stone
- Silica Sand
- Industrial Clay & Lime

81,000 jobs

400 million tonnes produced in UK each year

£5.8 billion contribution to UK economy

Homes
Schools & Hospitals
Business & Commerce
Factories & Depots
Power, Water & Communication Systems
Roads, Railways & Bridges
Sea & Flood Defences
Ports & Airports

Mineral products in manufacturing

Steel
Glass
Water
Food
Fertiliser
Medicine
Ceramics
Paper

Mineral Products Industry at a Glance

400mt
GB production of aggregates and manufactured mineral products (GB)

4 times
The volume of energy minerals produced in the UK including oil, gas and coal

£16bn
Annual turnover for the minerals and mineral products industry (UK)

£5.8bn
Gross value added generated by the industry (UK)

£597bn
Annual turnover of the industries we supply (UK)

£172bn
Value of construction, output, our main customer (UK)

81,000
People employed in the industry (UK)

3.5m
Jobs supported through our supply chain (UK)

The Mineral Products Association is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries.

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