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AOTEAROA WATER ACTION submission on the exposure draft of the Natural and Built Environments Bill (and accompanying parliamentary paper)

Aotearoa Water Action (AWA) wishes to thank Government's Environment Select Committee for the opportunity to submit on the Government's exposure draft of the Natural and Built Environments Bill (NBEB).

1. Background

Aotearoa Water Action was incorporated in 2018 to challenge water permits, granted by Environment Canterbury, which repurposed water taken under old industrial permits to enable water bottling and export. The case is currently before the Court of Appeal. It raises questions about the allocation and reallocation of water and about the consideration of the end use effects of taking and using water.

AWA's Charter (attached to this submission) emphasizes the importance of democratic processes in protecting our wai. It makes clear our position that the views and wishes of affected local communities must be given priority consideration when making decisions that relate to the use control and management of water.

AWA's Charter supports constitutional transformation in Aotearoa that entrenches te Tiriti o Waitangi, and the protection of environmental values and human rights.

It also supports the allocation of water amongst competing activities in a way that best ensures the health of the environment, the health of people, and the cultural, social and economic wellbeing people in line with the hierarchy of principles set out by Te Mana o te Wai in the National Policy Statement for Freshwater Management (NPS-FM).

2. Summary of AWA's key points:

Overall, AWA cannot yet comprehend how the draft legislation can achieve the purpose of the reforms, which we understand to be improved integrated management and protection of our environment (including water), and which we support.

Water Allocation not addressed

Firstly, the draft is virtually silent on the matter of water quantity and particularly the direction and principles that will underpin water allocation. This 'can' cannot continue to be kicked down the road any longer.

At the moment we are left with Clause 3.28 of the NPS-FM to provide direction. This clause focuses on maximizing the 'efficiency' of water use, which "*includes economic, technical, and dynamic efficiency*" without defining those terms.

To achieve positive outcomes for the environment, including people and communities, we must start to allocate water in a more nuanced and considered way.

Local democracy undermined

Secondly, whilst the premise of the reforms is improved environmental protection, the only certain outcome is centralisation and weakened local democracy - achieved via the 'binning' of individual district plans and the absence of any alternative mechanisms to enable adequate local control of local outcomes. This unfortunately follows the theme of the Government's 3 Waters Reform Programme. AWA supports the intention to improve resource management in this country, but strongly rejects the undermining of local democracy.

Notable gaps in the draft relating to water

Thirdly, there are significant gaps in the drafting that must be addressed including:

1. How communities will participate in the management of freshwater within their catchments;
2. How the internationally-recognized human right to safe, clean, accessible and affordable drinking water will be protected;
3. How the hierarchy of obligations that Te Mana o te Wai prioritises (which are not set out in the exposure draft) will be addressed in the National Planning Framework;
4. How water quality and quantity will be prioritized amongst other 's8' Environmental Outcomes;
5. The high-level approach to water allocation – whether preferential allocation, 'first in first served', a market approach or some combination of the three.

Support for the new approach to Te Tiriti

AWA supports the new approach to 'give effect to' the Principles of Te Titiriti but suggests, as others have, that those principles be defined in partnership with mana whenua and codified in the Act.

AWA's submission is supportive of the Environmental Defence Society's (EDS) submission including its drafting recommendations, and we seek that the relief sought by the EDS is granted. We also make the following submissions in relation to specific Clauses in the draft:

3. Part 1 Preliminary Provisions

CI 3 Interpretation

‘Mitigate’:

AWA seeks that ‘offsetting’ and ‘compensation’ are specifically excluded as methods of mitigation with respect to adverse effects on water quality and water quantity.

‘Effect’:

AWA seeks an interpretation of ‘effect’ as per the Resource Management Act and National Planning Standards.

‘Well functioning’ with respect to urban areas (CI 8) is not defined.

AWA seeks a definition for a ‘well-functioning’ urban environment that includes reference to water availability for domestic and community supply

Additional terms relating to water allocation, including ‘Efficient’:

The Draft legislation does not address water allocation. AWA believes it should and that this would likely require additional definitions within the Act. Those might include ‘efficient’ (use of water) or ‘use’ (of water).

AWA seeks additional definitions to address water allocation.

AWA seeks that *if* the term ‘**efficient**’ is required (in relation to water use) that it be defined more broadly and more meaningfully than “economic, technical, and dynamic efficiency” (as it is defined in Clause 3.8 of the NPS-FM).

The efficient use of water in current circumstances must require consideration of the water quality of different water bodies in a catchment and an understanding of the best uses of different waters to deliver environmental, social, cultural and economic wellbeing to local communities. Efficient use of water in the face of scarcity and Climate Change and global demand requires an understanding of the opportunity costs of using water for a specific purpose.

4. Part 2 Purpose and Related Provisions

CI 5 Purpose

Achieving the purpose of the Act will depend on getting all environmental limits ‘right’ for a given ecosystem. Te Oranga o Te Taiao is a worthy purpose but the provisions in cl 5(2) cannot achieve the purpose without a very substantial investment to understand the things that Te Oranga o Te Taiao incorporates (cl 5(3)). The Government must identify the sources of funding for the studies that will allow people and communities to understand local ecosystems and the interconnectedness of the components of ecosystems.

AWA seeks That the Ministry/Government identify how the new framework will be funded.

CI 6 Te Tiriti o Waitangi

AWA supports the requirement that the principles of te Tiriti o Waitangi must be given effect to. However, the principles are not identified in clause 3 nor anywhere else in the draft. It is not clear whether the principles are Western/European concepts or not and whether they are supported/endorsed by iwi/mana whenua. A source states that the principles are of partnership, participation, and protection. There is no guidance or indication as to how 'partnership' is intended to occur, and the source of resources for iwi/mana whenua participation is a significant issue.

AWA seeks clarification on the principles of te Tiriti o Waitangi and sources of funding to enable iwi/mana whenua participation.

CI 7 Environmental Limits

7(1) Clause 8(g) requires that the mana and the mauri of the environment must be protected and restored but these concepts have not been included.

AWA seeks that protecting the mana and mauri of the environment are included as purposes of environmental limits in cl 7(1)

7(3) Two options are provided for formulation of environmental limits. However, as the Purpose of the Act is to enable Te Oranga o Te Taiao to be upheld, it seems essential that limits are also formulated in terms of Te Pūtaiao Māori or mātauranga Māori.

AWA seeks the inclusion of an additional option enabling the formulation of environmental limits in terms of Te Pūtaiao Māori or mātauranga Māori.

7(4) Air, water, soil, etc. are 'domains', not 'matters'.

AWA strongly supports s.17 of EDS's submission on the need for limits within the domains of the natural environment. Contaminants such as plastics, for example, impact on the ecological integrity of all the domains listed.

There is a growing awareness of the impacts of waste, especially microplastics, on the ecosystems of ocean waters. While the NBEB recognises the need to manage GHG emissions (e.g. cl 8(j)) in order to mitigate global climate change, it does not recognise the need to manage the global impact of plastics on ecosystems beyond the outer limits of this country's territorial sea (coastal marine area/coastal waters).

AWA seeks the inclusion of the domain of 'international waters' or similar for the purpose of specifying limits on discharges that have the potential to impact on the ecological integrity of those waters.

7(4)(a) The connection between the Land Transport Management Act (LTMA) (to be included under the Strategic Planning Act)¹ and the domain of 'air' needs to be recognised in cl 7(4)(a).

Note that the LTMA is included in the diagram Overview of the Proposed Resource Management System in Part A(2) of the Updated Natural and Built Environments Bill Parliamentary paper on the exposure draft but no further reference to or mention of it (LTMA) is made in the paper.

AWA seeks an amendment to cl 7(4)(a) to recognise both issues of human health associated with emissions, and greenhouse gas (GHG) emissions associated with road transport (Aotearoa New Zealand is one of the five highest emitters per capita of CO₂ from road transport in the OECD).

7(4)(e) Groundwater has not had environmental limits prescribed in the NPS-FM. Limits are needed because of issues associated with potential water shortages associated with climate change, for example. Groundwater has the potential to be 'invisible' if it is not explicitly referred to.

AWA seeks an amendment to cl 7(4)(e) to read: "freshwater (including surface water and groundwater)".

CI 8 Environmental Outcomes

AWA supports the EDS submission and Drafting Recommendations with the following exception(s)/observations:

Comment: While AWA recognises that the Environmental Outcomes will be developed in the National Planning Framework (NPF) they should be stronger in the Act and set the direction for integrated management by making the connections between the various desired environmental outcomes, e.g. the connection between Urban areas and Greenhouse gas emissions or Urban areas and Natural hazards. A list of siloed outcomes, even if prioritised, will not lead to integrated management and the achievement of the purpose of the Act

8 It is assumed that cl 8 is intended to partially replicate s6 Matters of national importance in the RMA. The use of the word 'promote' in the preamble to CI 8 is significantly weaker than the term 'recognise and provide for' in s6 Matters of national importance in the RMA.

AWA seeks the replacement of the word '**promote**' by the phrase '**recognise and provide for**' in the preamble to CI 8.

CI 8 of the Draft makes no reference to fresh water quantity.

AWA seeks that a sub-clause be included to ensure that fresh water quantity (surface and ground) is protected

CI 8 of the Draft makes no reference to aquifers

¹ P.14 of Natural and Built Environments Bill Parliamentary paper on the exposure draft UPDATED (undated)
https://www.parliament.nz/resource/en-NZ/PAP_112017/9dc086f746eacef36a4b75ab6602f67f2ffe1e2e

AWA seeks that a subclause be included to ensure that the ecological and structural integrity of aquifers be protected.

Cl 8 of the Draft makes no reference to the protection of geothermal water. Geothermal water may experience greater competing demands in the future, particularly with respect to anticipated electricity needs in the process of reducing greenhouse gas (GHG) emissions.

AWA seeks that a sub-clause/s be included to ensure that geothermal water quantity/quality is protected.

8(j) AWA supports the reduction and removal of GHG emissions outcome. However, it needs to be stated that GHG emissions will be reduced in line with specific and appropriate targets (as they trend down). It should not be left to the National Planning Framework to set targets for GHG emission reductions that the Government has committed to in its Nationally Determined Contributions (NDCs) under the United Nations Paris Agreement.

AWA seeks that cl 8(j) be amended to reflect the Government's NDC commitment.

8(k) Recognition of potential climate change mitigation and adaptation constraints (it is noted that the latter is generically referred to in 8(p)(ii) on the outcomes proposed in cl 8(k)(i) and cl 8(k)(ii)) is required.

AWA seeks that an additional sub-clause be added to cl 8(k), for example, 8(k)(iii) - "while ensuring that GHG emissions reduction targets are able to be met".

8(l)(i) While AWA recognises that people need housing choice, cl 8(l)(i) is too enabling. The size of homes affects loading on the electricity grid, embodied carbon, and the volume of waste. 'Consumer choice' also sounds like a real estate company statement, not environmental legislative intent.

AWA seeks that the phrase 'provide choice to consumers' is amended to recognise negative impacts the phrase might enable.

8(m)(i) Paragraph 23 of EDS's submission refers to a lack of hierarchy in the outcomes expressed in cl 8. Economic activities in rural areas have the potential to affect the quality (cl 8(a)) and quantity of freshwater through the application of synthetic fertiliser and the bottling of freshwater for export respectively, for example.

AWA seeks that cl 8 Environmental Outcomes includes a hierarchy similar to that in s 1.3(5) of the National Policy Statement for Freshwater Management 2020 (NPSFM)²

8(o) The Draft does not give any guidance to Part 3 National planning framework on water allocation, including re-allocation.

AWA seeks a new sub-clause to be included in cl 8(o) as follows:

² (5) There is a hierarchy of obligations in Te Mana o te Wai that prioritises: (a) first, the health and well-being of water bodies and freshwater ecosystems (b) second, the health needs of people (such as drinking water) (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

- (o) the ongoing provision of infrastructure services to support the well-being of people and communities, including by supporting—
- (i) the use of land for economic, social, and cultural activities:
 - (ii) an increase in the generation, storage, transmission, and use of renewable energy:
 - (iii) the use of water (within limits) for domestic and community water supply.**

8(o)(i) The provision of infrastructure services is needed to support the well-being of people and communities. However, Aotearoa New Zealand's very high per capita contribution to CO₂ emissions from road transport (see comments re cl 7(4)(a) above) needs to be recognised in the provision of transport services. Climate change mitigation proactively contributes towards lessening the need for climate change adaptation/response.

AWA seeks that cl 8(o)(i) includes climate change mitigation provisions to reduce emissions from road transport in the use of land.

5. Part 3 National Planning Framework

AWA supports the comments of and drafting recommendations of EDS's submission with the following exception(s)/additions:

CI 10 Purpose of national planning framework

10(a) Matters of national significance and Matters for which national consistency is desirable do not appear to have been identified in the Draft. Such matters need to be stated at the highest level of this legislation, i.e. they should be included in the NBEB in order to provide overall national guidance.

AWA seeks that the NBEB identifies Matters of National Significance and Matters for which national consistency is desirable.

CI 13 Topics that national planning framework must include

13(1) Water is scarce. At any point in time there is only a certain amount to allocate, and many catchments are over allocated. Clean water that is low in nitrates is even scarcer and our population is growing. Therefore, competition for water is growing and competition for *clean* water is growing. There is competition between community suppliers and industrial use and (importantly) between local and overseas investors. This competition needs to be addressed in the NBEB.

Therefore, the planning framework should be *required* to decide the best uses of water taking into account not only allocation limits but also the quality of the water and the values/needs of local communities including mana whenua.

AWA seeks that Water Allocation is added to cl 13 (possibly as a 'cl 13(4)') as a topic that must be included in the National Planning Framework.

AWA seeks that the National Planning Framework creates an allocation framework that requires that water is allocated or reallocated amongst competing activities in a way that recognises:

- (a) the water quality of different water bodies,
 - (b) the mana and the mauri of the water,
 - (c) the need to increase the generation of renewable energy
- and meets:
- (d) the unique values and needs of mana whenua
 - (e) the unique values and needs of local communities.

CI 18 Implementation principles

18(c) An understanding of the local environment is critical to implementation of matters of issue and communities should understand when they can expect to be consulted.

AWA seeks that the words in bold in the following be included in cl 18(c): “ensure appropriate public participation in processes undertaken under this Act, to the extent that is important to **understanding the local environment**, good governance and proportionate to the significance of the matters at issue.”

AWA seeks some guidance around the term ‘significance’ i.e. how the level of significance will be determined.

6. Part 4 Natural and built environment plans

The fact that there are numerous placeholders in this part of the NBEB makes it difficult to make useful submissions or comments.

CI 23 Planning Committees

AWA seeks that Schedule 2 require Planning Committees to consult with local councils who in turn be required to consult with local communities.

CI 24 Considerations relevant to planning committee decisions

24(2) CI 24(2) requires a planning committee ‘to have regard to’ four considerations (sub-clauses (a) – (d)). The requirement ‘to have regard to’ is too weak for such important environmental considerations, particularly those in sub-clauses (a) and (c).

AWA seeks that cl 24(2) be amended as follows ‘to have **particular** regard ...’.

24(2)(b) To require a planning committee to have regard to evidence and advice that the committee considers 'appropriate' has the potential to set a dangerous precedent. The word 'appropriate' is subjective, and 'appropriateness' has the potential to depend on the geographical and/or political composition of the committee.

AWA seeks that the words 'that the committee considers appropriate' be deleted.

7. Schedules

Schedule 1
Preparation of national planning framework

Schedule 2
Preparation of natural and built environment plans

Schedule 3
Planning committees

Schedules 1, 2, and 3 are key to this legislation and they are required now in order to understand

- (a) how the Act will work to incorporate local knowledge
- (b) how plans are to be implemented, and
- (c) who pays for what with respect to Local Government funding of the secretariat.

8. AWA's Charter



CHARTER

"Ko te puna ora, he wai."
(Water is the wellspring of life)

We, Aotearoa Water Action Incorporated, declare and affirm the following:

Water protection

1. It is self-evident that thriving natural habitats are essential for humanity's survival and wellbeing. Therefore, the natural environment must be actively protected, regenerated and maintained in the highest interest of all humanity. The environment's welfare is our own.
2. Healthy freshwater, in all its forms, being critical to ecosystem functionality and wellbeing, must likewise be actively protected, restored and maintained, as a priority. This includes protection of water quality (e.g. from sewerage, industrial waste, toxins and other contaminants) and quantity (in terms of the volume of water or rate of flow in our aquifers, lakes, rivers and wetlands).

Democracy

3. The views and wishes of affected local communities, obtained through meaningful 'participatory democracy' processes, must be given priority consideration when making water access, use, control and management decisions that affect the catchment within which the community is located.
4. Citizens must be actively encouraged and enabled to participate in democratic processes regarding the management of their water, including the creation of any governance structures for the purpose of managing water catchments and 3 waters infrastructure and services.
5. We support the development of school civics programmes to nurture and normalise lifelong citizen engagement in the management of the water commons. We also support constitutional transformation in Aotearoa that entrenches te Tiriti o Waitangi, and the protection of environmental values and human rights.

Human rights and obligations

6. We recognize te Tiriti o Waitangi, in particular as concerns tangata whenua rights and Crown obligations regarding the protection of wai Māori / water as a taonga (a thing of high value). We call on the New Zealand Government to fully respect and meet its Tiriti obligations, ensuring the principle of free, prior and informed consent is upheld.
7. The internationally-recognized human right to safe, clean, accessible and affordable drinking water and sanitation¹ (the human right to water) is indispensable for the happy, free and dignified social, cultural, spiritual, economic and political life of all. Water sovereignty of, by and for the people must be recognized and upheld. A corresponding obligation is therefore imposed on those who (whether elected or appointed) hold relevant decision-making offices - including central and local Government, corporations, business and industry² - to implement meaningful, outcome-oriented action to advocate respect for, realise and enforce this right.
8. We believe that declaring fluoride not to be a medicine (for the purposes of the Medicines Act) is wrong,³ and should be overturned. On principle therefore, the human right to refuse to undergo any medical treatment⁴ via fluoridated public water supplies should be respected and upheld.
9. Te Tiriti and the human right to water also call on every citizen, both individually and collectively, to exercise a duty of care regarding access to, use, control and management of all water. Such duty may extend, at times, to the legitimate need to take forceful, yet peaceful action to hold Government, corporate or other water rights violators to account.

Water access, use, control and management – the precautionary principle

10. We join numerous experts, organisations and civil society groups in expressing profound alarm at the perilously vulnerable state of the World's freshwater quality and quantity – particularly in this time of climate crisis and uncertainty. With the real risk of unprecedented and increasing water insecurity, we therefore demand of any and all holding a duty or obligation concerning the human right to water (whether in the public, corporate or civil society sectors) to advocate and exercise the precautionary principle, particularly as concerns resource management decision-making.
11. The Resource Management regime, in particular the principal RMA legislation, must be reviewed with all due haste to provide for the highest standards of environmental and human rights protection. This must include integrated regenerative management of the take and use of water which, at an absolute minimum, must prioritise water allocation for sustainable purposes, but ideally regenerative purposes. This is vital to achieve community wellbeing.
12. We consider that the issue of 'who owns the water' must be resolved urgently to ensure our regulations governing water allocation can be properly reviewed. We believe, however, that the issue should be more constructively framed. For example, better quality questions may relate to equitable access, use, control and management rights, and safeguards for water as a vital resource of, by and for the sovereign people of Aotearoa and 'the commons', rather than legal 'ownership' within the context of a capitalistic economic operating system per se. Meanwhile, we condemn as at best ignorant and at worst insidious any argument that 'no-one owns the water' equates to the

right to exploit the resource to the detriment of nature, human rights (including indigenous rights) or community aspirations.

Failed economics

13. Similarly, we note with deep concern the harmful effects of systemic, neo liberal, capitalistic economic violence on our natural world and society. This includes the relentless, delusional drive for infinite economic growth on a finite planet, and corporate impunity for externalization of production costs onto our environment and society. We remain deeply

concerned at how industrial activities such as water bottling (rapidly fuelled by the degradation of municipal supplies on a global scale), horticulture and agriculture, are rapidly worsening water insecurity. Unfortunately, this high and increasing demand for our country's purest accessible aquifer water coincides with an overly-permissive, inequitable resource management regime. This includes overseas investment regulations that do not require consent for the purchase of land with associated permits to take large volumes of water, and which suppress sufficient consideration of environmental costs. This also includes inadequate laws governing the take and use of water, water allocation, permit variations and permit transfer.⁵ The result is a water management system that produces, or risks producing, unacceptable net costs including the degradation of water quality and supply and reduced access for Aotearoa's citizens and communities.

14. Radical transformation is therefore urgently needed to create an economic system aligned with environmental and human rights values and priorities. Water commodification and other market mechanisms – whether imposed on the industry specifically, or on water 'takes' in general, or whether created as a consequence of inadequate allocation regulations - are part of an unethical extractive business model which we condemn as fundamentally incompatible with the urgent, full realisation of environmental protection and human rights.
15. For these reasons, and because of the industry's horrendous contribution to the plastic pollution crisis, we call for a moratorium on all new industrial water bottling activities in New Zealand. This prohibition should remain in place at least until regulations are implemented requiring preferential water allocation to activities that safeguard our ecosystems, Tiriti rights and the human right to water as determined by tangata whenua and local communities via statutory consultative processes.
16. We note demands for an urgent independent review of councils' inability to charge for the privilege of water extraction for industrial water bottling. We acknowledge the premise that, in the interests of fairness, equitable benefit-sharing with the affected community should be imposed. However, a royalty scheme would perpetuate the dangerous ideas that industrial water bottling for private profit (unfettered by community values and aspirations) is acceptable, and that monetary value is paramount. Royalties could never compensate for the loss and prejudice suffered should flawed resource management decision-making lead to irrevocable aquifer depletion, or even reduced access to water for activities (community or otherwise) that would produce real, non-monetary value for affected communities. Therefore, because it will fail to mitigate the root cause of water insecurity (i.e. excessive industrial water extraction in a time of water crisis), we deem water royalties to be at best optimising a failed space, and at worst a dangerous distraction from the meaningful policies and regulations that urgently need to be implemented.

(Dated: 19 March 2019)

1 Ref "The human right to water and sanitation" website at http://www.un.org/waterforlifedecade/human_right_to_water.shtml; and references in the United Nations Declaration on the Rights of Indigenous Peoples (2007), https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, and the UN Sustainable Development Goals website, <https://www.un.org/sustainabledevelopment/water-and-sanitation/>. See also the New Zealand Human Rights Commission's "Human Rights and Water – Tika Tangata me te Wai" (2012), 4 Please recycle <https://thehub.sia.govt.nz/assets/documents/HRC-12-Human%20Rights%20and%20Water%20Tika%20Tangata%20me%20te%20Wai.pdf>.

2 See the United Nations "Guiding Principles on Business and Human Rights" (2011) at https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf, and the UN Intergovernmental Working Group which is developing an international legally binding instrument to regulate transnational corporations and other business enterprises' activities, at <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx>.

3 E.g. see "Fluoridation is mass medication, NZ Supreme Court rules" (28 June 2018), <http://www.scoop.co.nz/stories/PO1806/S00336/fluoridation-is-mass-medication-nz-supreme-court-rules.htm>.

4 E.g. see "Medical Consent: What Do Human Rights Have To Do With It?", <https://rightsinfo.org/medical-consenthuman-rights/>; and "Patients' rights", <https://www.who.int/genomics/public/patientrights/en/>.

5 In Canterbury this regulatory environment has allowed for the creation of a market for water where water permits are, for all intents and purposes, bought by bottling companies via the purchase of land at grossly inflated prices.