



Submission of Aotearoa Water Action
Natural and Built Environment Bill

Submitter: Aotearoa Water Action

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AWA **does not support** the Bill as drafted.

AWA **would like to speak** to this submission.

1. Aotearoa Water Action (AWA) would like to thank the Environment Select Committee for the opportunity to submit on the Natural and Built Environment Bill. We'd also like to thank the Committee for granting an extension. Despite the extension we regret that we've not been able to read every page and we apologise if we've missed something relevant to our submission.
2. AWA is a not-for-profit organization that was incorporated to challenge water bottling consents granted by Environment Canterbury.
3. AWA's Charter emphasizes the importance of democratic processes in protecting our wai. It supports constitutional transformation in Aotearoa that entrenches te Tiriti o Waitangi and the protection of environmental values and human rights. And it 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 of people.
4. We want to start with the RMA. Much criticism has been levelled at it for failing to enable development in a timely way and at the same time protect our environment. We'd like to make a couple of observations about that before we address the detail of the Bill - because if the NBEA is to succeed we need to address all the reasons the RMA didn't.
5. Our first observation is that, through no fault of its own, the RMA usually comes late to the party. By the time a proposal faces the consenting process under the RMA it may have been

driven or encouraged by Government agencies (like MBIE and NZTE), Regional Development agencies, and even Councils. It might also have received taxpayer funding through the International Growth Fund and even been approved by the Overseas Investment Office, subject to conditions including resource consent. The consequence is that the pressure of reputational damage (to NZ Inc), and the need to meet other conditions, can impact RM decisions.

6. What follows is beyond the scope of this Committee's consideration, but we believe what's needed, if we are to succeed in protecting our environment, is strong overarching environmental law to constrain and guide and the work of these growth-focussed agencies.
7. Our second observation relates to the elephant in the room - the invalid assumption. The Interim Regulatory Impact statement (RIS) (15 June 2021) said this:

*“Aotearoa New Zealand’s resource management (RM) system is not enabling development of the scale, type and location that we need to provide for wellbeing of communities while **simultaneously** failing to adequately protect the natural environment, respond to climate change and provide an effective role for Māori.*

*The **underlying causes** of these problems include a focus on effects instead of positive outcomes, suboptimal resource allocation, inadequate integration and strategic planning, regulatory complexity, and poor implementation of the current system.”*

8. There is an expectation and an assumption in these statements is that it is *possible* to *simultaneously* protect the natural environment, grow, develop infrastructure to meet increasingly stringent regulations to meet our wellbeing ‘needs’, *and* enable private development. But what if it's not? The RIS didn't question that assumption and unfortunately it seems to also underpin the draft legislation...
9. The Bill speaks to positive system outcomes, but it doesn't address the conflicts between them. It doesn't address the negative outcomes we should avoid; it doesn't address growth; and it doesn't speak to how we might address the opportunity costs of development proposals in a resource-constrained world. It doesn't really contemplate that we can't have our cake and eat it. But we have to contemplate that.
10. There are aspects of the Bill that AWA strongly supports, including the inclusion of Te Oranga o te Taiao within the purpose clause, the setting of environmental limits, the inclusion of positive outcomes, the setting of mandatory targets for improving and restoring the environment, and the stated intention to allocate fresh water in a way that benefits communities. However, our over-riding concern is that the Bill, read as a whole, admits a strong reluctance to commit to these things – through confusing conjunctions, conflicting outcomes, undefined terms, interim limits, and significant Ministerial discretion.
11. The Explanatory Note on the purpose of the Bill says we should “encourage and facilitate more environmentally responsible behaviours and choices”. We think we are at the point where we must *require* them. And we think that should be reflected in the legislation. Currently, it's not.

Submissions AWA supports:

12. Submission of the Environmental Defence Society:

We'd like to thank the Environmental Defence Society for its work on RM Reform and for its comprehensive submission on the Bill. It was a relief to read the work the EDS has done on the drafting (it is first rate) and we support the detailed relief they have requested.

13. Submission of the Chief Ombudsman:

We also support the submission of the Chief Ombudsman, Peter Boshier. The changes requested by the Ombudsman are critical to ensure transparency and accountability and a level of trust in the system.

General comments:

14. General concerns with the approach:

- a. We are concerned that alternative options set out in the Interim Regulatory Impact Statement were not assessed and that the case for reform was not considered compelling in the QA Report.
- b. We do not support shifting the cost from the private sector to the public sector. The Interim regulatory report states that: "Central government and local government costs would increase under the proposed system, with the largest absolute increase in cost falling on local government. These costs would be borne by tax and ratepayers respectively." The report also signals large costs for Maori. We do not support this outcome.
- c. We do not support the shift away from the 'Randerson' purpose statement towards enabling development.
- d. We do not support regionalization. We anticipate reduced interest in local democracy and environmental protection as local councils lose their place-making roles. And we foresee a lack of capacity and rigour at the RPC level - these will be big plans and there's a significant risk that the Committees will struggle to do good governance.
- e. We are concerned that so much has been left to secondary legislation and that so much of the content of the NPF is directed with 'may' rather than 'must'. It's reminiscent of the long absence of National Policy Statements.
- f. We do not support the retention of a fast-track process.
- g. We oppose the market-based system for resource allocation.

15. We support the significantly stronger approach to enforcement. We hope that will not be watered down through this process. Well done!

16. General comments with respect to water (with a focus on aquifers and allocation):

- a. AWA supports the shift away from the 'first in first served' approach to resource allocation and the decision to not use a market-based approach for water allocation.

- b. AWA strongly supports the resource allocation principles as they were defined in the Randerson Report and requests that they be defined (in that way) in the Act rather than left for the Minister to define through the NPF at some time in the future. We suggest they can be amended (later) for freshwater allocation if the allocation statement requires that, but it's important to have those principles defined from the outset. Efficiency in particular can mean different things and most Plans and the NPSFM define it far more narrowly – which drives very different outcomes for water.
- c. We request that the allocation principles be given more weight and suggest that 'have regard to' should be replaced with 'recognise and provide for' in ss87 and 126.
- d. AWA also requests that the legislation addresses the protection of aquifers. It is somewhat shocking that the word 'aquifer' appears just twice in the Bill. While lakes and rivers have been given protection, aquifers appear to have been forgotten. This needs to be remedied in the Act – aquifers are critical sources of drinking water in many parts of the country and their protection (of both water quality and structural integrity) should be a matter of national importance.
- e. We also request that 'offsetting' and 'compensation' are specifically excluded as methods of mitigation with respect to adverse effects on water quality and water quantity.

17. And finally, we request that plastics, including microplastics, are addressed in the legislation. Once plastic is created it is here to stay. Some plastics will be down-cycled and reused until they no longer can be, others degrade in landfills, others are washed in our laundries - sending microplastics wastewater systems and into the soil and the air. We breathe these particles, and we consume them; they have been found in our blood and in our lungs. Others congregate in our oceans – strangling and staving animals. They are a significant contaminant. Being able to manage plastic production through RM processes, as well as through other regulations, would be a significant step forward.

18. The table below is our attempt at some drafting changes. Underlined wording is requested to be included in the legislation; wording that is struck out is requested to be removed. N.B. I am not a drafter so please focus on the *intent* of the changes requested in light of the comments provided.

Provision	Relief sought	Comment
s3 Purpose	We support the relief requested by the EDS	We do not support the shift away from the 'Randerson' purpose statement towards enabling development
s4 Tiriti o Waitangi	Clearly define the principles as they will apply under the Act.	
s5 System Outcomes Introductory wording	Changes sought by the EDS and Amend: 5 System outcomes To assist in achieving the purpose of this Act, the national planning framework and all plans	Describing the outcomes sought as "system outcomes" could be interpreted as requiring the outcomes to be progressed 'overall' or on regional scale so that the outcomes sought are not always achieved or

<p>s5(a)</p>	<p>must provide for the following system outcomes <u>at the most local level:</u></p> <p>5(a) the protection or, if degraded, restoration, of—</p> <p>(i) the quality, ecological integrity, <u>structural integrity</u>, mana, and mauri <u>(as relevant)</u> of—</p> <p>(A) air, water, and soils; and</p> <p>(B) the coastal environment, wetlands, estuaries, <u>aquifers</u>, and lakes and rivers and their margins; and</p> <p>(C) indigenous biodiversity:</p>	<p>experienced locally at the community or relevant ecosystem level.</p> <p>This clarification is particularly important in light of the ability to ‘offset’ adverse effects by improving the environment elsewhere.</p> <p>Structural integrity is relevant to most categories in this provision and is <i>critical</i> to the protection of soil and aquifers, and to the flow and storage of water.</p> <p>Aquifers must be explicitly protected. Aquifers provide natural storage and protection for some of our best potable water. Their protection is vital for the wellbeing of current and future generations. Aquifers are mentioned only twice in the Bill and have not been protected.</p>
<p>s5(b)(i) and (ii)</p>	<p>5(b) in relation to climate change and natural hazards, achieving—</p> <p>(i) the reduction of greenhouse gas emissions <u>in line with the Emissions Reduction Plan:</u></p> <p>(ii) the removal of greenhouse gases from the atmosphere <u>in line with the Emissions Reduction Plan:</u></p>	<p>Outcomes for emissions targets should align with the Emissions Reduction Plan.</p>
<p>S6 Decision-making principles</p>	<p>Amend</p> <p>Changes sought by the EDS and</p> <p>We also suggest there need to be principles that address:</p> <ul style="list-style-type: none"> managing growth within environmental limits 	<p>Growth is not addressed in the Act other than through promoting the ample supply of land for development and promoting its use for a variety of activities (outcomes)</p> <p>The words ‘Grow’ and ‘growing’ are collectively mentioned only 3 times in the Bill and each time only in relation to crops. The same applies to the RMA.</p>

	<p><i>Sustainability:</i> <i>this includes providing for the needs of present and future generations and consistency with the purpose and principles of the Natural and Built Environments Act.</i></p> <p><i>Efficiency:</i> <i>resources should be used efficiently to improve the overall wellbeing of people and communities. This includes enabling re-allocation of resources. All the benefits and costs of resource use should be considered, including their use and non-use value.</i></p> <p><i>Equity:</i> <i>the balance struck between recognising the investment of existing users and providing for new opportunities should improve the overall wellbeing of people and communities. Allocation systems should meet obligations under Te Tiriti. Users should pay a fair return for their use of scarce public resources.</i></p>	<p>than through the NPF) as they will undoubtedly define the approach to resource allocation.</p> <p>We note that The Randerson Panel’s definition of efficiency is quite different from, and a vast improvement on, the definition in the NPS-FM which focuses on limiting waste rather than allocation to improve the overall wellbeing of communities.</p> <p>Definity Equity in the Act is equally important. The ‘Randerson’ definition would bring into the legislation the concept of opportunity costs.</p> <p>Please do not leave these definitions to the discretion of the Minister of the Day.</p>
<p>s81 Specific matters that national planning framework may prescribe.</p>	<p>Add</p> <p>The national planning framework may—</p> <p><u>[Add:] Prescribe different categories of water based on water quality and prescribe restrictions that limit the types of activities for which different categories of water may be taken or used.</u></p>	<p>Water is scarce and clean water even more so. Schedule 9 recognises different classes of water but this concept needs to be carried through to allocation methods.</p> <p>The suggested addition would empower the minister or the RPCs to protect high quality water for community or private potable supply rather than allowing it to be used by industry. This could be done on a case-by-case basis taking into account local circumstances.</p> <p>We are happy for the intent of the suggested provision to be met by amending another part of the Bill. The point is that, like different types of land, the qualities of different water bodies are suited to different uses and, to ensure community wellbeing, the cleanest water that is closest to</p>

		<p>communities should be kept for drinking water supply (to reduce treatment costs and to support human health).</p>
<p>s87 Directions on allocation method</p>	<p>Remove</p> <p>87 Directions on allocation method (1) The national planning framework may give directions that—</p> <p>(a) provide further detail on the meaning of the resource allocation principles;</p> <p>(2) The Minister must, when developing a direction under any of subsection (1)(b) to (i), have regard to recognise and provide for the resource allocation principles.</p>	<p>The allocation principles should be clearly defined in the Bill (and as they are defined in the Randerson Report’).</p> <p>The Bill as drafted creates significant uncertainty as we don’t know how the principles will be defined or even <i>if</i> they will be defined.</p> <p>We understand that the reluctance to define the principles may be due to the need to consult with iwi on freshwater rights. However, these principles are so vital to the Act as a whole (everything requires water) and are such a vast improvement on the status quo that they must be included in the principal legislation.</p> <p>‘Have regard to’ is not sufficiently strong and gives the Minister the opportunity to depart from the allocation principles.</p>
<p>s88 Use of market based allocation method to determine right to apply for resource consent for certain activities</p>	<p>We generally oppose s88 but support subsection 4 (as follows):</p> <p>(4) A market based allocation method must not be used to determine the allocation of a right to apply for a resource consent for an activity relating to—</p> <p>(a) a resource that is not described in subsection (1); or</p>	<p>Resources are scarce and should be allocated to activities that deliver the greatest value to communities.</p> <p>We need to start picking winners and losers. We oppose market-based allocation because the market ‘picks’ those with the most money – often foreign investors rather than locally owned businesses. We don’t oppose charging for public resources, just the assumption that a market-based approach will deliver the greatest value. The exclusion of fresh water from this approach is supported.</p>

	(b) the taking, diverting, or use of freshwater.	
s106 Te Oranga o te Taiao statement	<p>Support</p> <p>106 Te Oranga o te Taiao statement</p> <p>(1) An iwi or hapū may, at any time, provide a statement on te Oranga o te Taiao to the relevant regional planning committee.</p> <p>(2) A statement by an iwi or hapu on te Oranga o te Taiao may relate to allocation matters.</p>	
s126 Allocation methods	<p>Amend</p> <p>(2) A regional planning committee must, when developing rules under subsection (1),—</p> <p>(a) ensure that the rules are consistent with any direction or definition in the national planning framework; and</p> <p>(b) have regard to recognise and provide for the resource allocation principles and any directions on their application set out in the national planning framework.</p> <p>(5) If a regional planning committee develops rules under subsection (3) that provide an alternative allocation method for a resource, the committee must—</p> <p>(a) ensure that the rules are consistent with any direction or definition in the national planning framework; and</p> <p>(b) have regard to recognise and provide for the resource allocation principles and any directions on their application set</p>	<p>As previously stated in response to s87 drafting, the words ‘have regard to’ undermine the importance and implementation of the allocation principles as defined in the Randerson Report. Recognise and provide for is a well understood term from s6 RMA</p>

	out in the national planning framework.	
s128 How a Plan may require or permit use of market-based allocation method	Oppose this section in full	
s154 How to decide which activity category applies	<p>Support</p> <p>4) An activity is a prohibited activity if—</p> <p>(a) it would breach a limit specified in the national planning framework or a plan (either taken in isolation or, if allowed to be carried out in addition to consented activities that have existing use rights or are permitted); or</p> <p>(b) it would not contribute to the relevant outcomes.</p>	We support the ‘or’ between clauses (a) and (b). The ability to prohibit certain activities is important and this section appears to provide that ability.
161 Right to apply may be transferred	<p>Amend/Oppose</p> <p>(1) A right to apply may not be transferred by its holder to any other person</p> <p>(2) A transfer of a right to apply does not take effect until written notice of it has been given to and received by the appropriate regional council or unitary authority</p>	The ability to transfer rights will create a secondary market i.e. people will hold and on sell their rights. If the holder of a right to apply does not want to apply for consent, the right should be returned to the ‘pot’.
256 Resource consents for water related activities does not convey property right in water	<p>Support</p> <p>A resource consent for an activity relating to water does not convey any property rights in the water.</p>	
s555	<p>Amend/Add</p> <p>place of national importance means any of the following:</p> <p>(a) an area of the coastal environment, or a wetland, or</p>	Aquifers are of critical importance as sources of potable water. Their structure and water quality are important to protect for future generations.

	lake, or aquifer or river or its margins that has outstanding natural character or qualities : (b) an outstanding natural feature or outstanding natural landscape: (c) specified cultural heritage: (d) a significant biodiversity area: (e) an area that provides public access to the coastal environment, or to a wetland, lake, or river or its margins.	
719 Environment Court may revoke or suspend resource consent.	Support section in full	
766 Insurance against fines unlawful	Support section in full	
Subpart 7 – Freshwater Working Group s689-s693	Support with changes See comments.	<p>The provisions in the Act, while well-intentioned, seem to underestimate the community interest in and strategic importance of this piece of work.</p> <p>The Working Group concept is a positive step, but its work will be controversial. We understand and respect iwi interests in and rights to freshwater but if the process is to succeed, the whole country will need to be brought on the journey - beginning with the development of the TOR for the Group.</p> <p>Transparency will be critical, so we support the recommendations of the Ombudsman.</p> <p>We also support the work being underpinned by the allocation principles, as they are defined in the Randerson Report.</p>
Schedule 7 ss31-36 Notification of Proposed plans and Primary and	Make amendments to support the participation of lay people and NGOs in plan-making. This might include: 1. extending submission timeframes to support the provision of quality evidence;	When the size of the Plan, the short timeframes for submitting (ss32(3) and 35(3)), and the requirement to produce all evidence at the outset (ss 34(3)(c) and 36(2)(c)), are considered together, it seems unlikely that lay people and NGOs will be able

<p>secondary submissions</p>	<p>2. adding provisions requiring more extensive use of public notices and media in the first week of Plan Notification;</p> <p>3. Amending s 35(5) to <u>require</u> a planning committee to produce a summary of submissions (rather than giving it an option)</p>	<p>to participate effectively in plan development.</p> <p>Good plans depend on quality evidence and that can take some time to procure. While there are benefits to requiring evidence upfront, it will disadvantage NGOs and community members and it will remove the benefit of evidence that has been refined over time.</p>
<p>Schedule 9 Water Quality Classes</p>	<p>Clarify</p> <p>It's not immediately clear how the classes of water in Schedule 9 and their 'standards' apply to decision-making under the proposed legislation.</p>	