

Aotearoa Water Action feedback on the draft Land and Water Plan



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1. Thank you for the opportunity to submit on the draft Otago Regional Land and Water Plan. It's great to see so much early engagement with the community ahead of notification.
2. Aotearoa Water Action (AWA) was incorporated in 2018 to challenge water bottling permits granted by Environment Canterbury. We have also assisted Sustainable Otakiri in its appeal against Cresswell NZ Ltd. Over 6 years of appeals we have worked with two sets of Regional and District Plans, gaining a solid understanding of how their objectives, policies, and rules work together to regulate water allocation. In the absence of rules to preferentially allocate water, both Regional Councils use the 'first (application received) in first served' approach.
3. In the Canterbury the 'first in first served' approach combines with fully or over allocated catchments. In the case we appealed, permits for a wool scour and freezing works were 'sold' via the sale of land (well above the land's value) to the water bottling company. Because the catchment was fully allocated this was the only way to obtain water. The Council played its part in the 'sale' of the water by advising that existing permits could be used for bottling, and then (after acknowledging scope issues) granting new 'use only' permits for water bottling. These were then 'amalgamated' with the existing 'take and use' permits.
4. This approach to consenting has shaped water allocation in Canterbury. There has been no water going back into the 'pot' because there is a market for freshwater via Hydrotrader and land sales. That (unregulated) market has been able to develop because the catchment is fully allocated and because water is easily traded between properties and between 'uses'.
5. The number of water bottling 'uses' that have been added to existing water permits (usually irrigation permits) is significant; over 30 million cubic metres per year has now been consented for water bottling in Canterbury - much of that consent volume is attached to 'mixed use' permits. We even observed consent holders applying for (and being granted) water bottling 'use' consents to add value to their land prior to putting it on the market. The bottling 'use' has generally been added to permits without any consideration for the specific potential effects of that use – including significant plastic production and heavy traffic generation.
6. In the Whakatane District, another water bottling case highlighted the risk of relying on District Plans to determine the activities that would be able to apply for and use the limited water below the region's highly productive soils. The Regional Plan didn't turn its mind to what activities water should be used for in different parts of the Region - so if a land use was consented, it could apply for water. The Regional Plan didn't require the consenting authority to consider the effects of the 'use' of water, only the effects of the 'take'. The

effects of *land use on water* were considered but not the effects of *water use on land use* and productivity.

7. Otago is a growing region, facing climatic changes, and with limited water to allocate. Given this context, letting the market (an international market) decide what uses of water are best would be a huge risk. Therefore, AWA believes the ORC should show leadership by approaching water allocation in a very different way than it has in the past. We have asked the same of ECan.
8. AWA suggests that planners and councillors consider applying the following principles when developing plan changes for water allocation:
 - a. **Differentiate between water with different qualities:** We zone land based on what it should be used for (given its location or soil quality or gradient, or hazard profile); we believe the use of water should be dealt with in a similar way. The ORC should recognise that different waters have different qualities and that those qualities should play a part in determining which types of activities the water can be allocated to. For example, the cleanest potable water (often deep aquifer water) should be protected for community and domestic drinking water supply - to protect human health and reduce future infrastructure (treatment) costs.
 - b. **Ensure consents planners must consider the effects of the specific 'use(s)' of water as well as the effects of 'take'.** Where there is scarcity and concerns about water quality, what water is used for deserves greater scrutiny and consideration. There will be activities that it shouldn't be used for – activities that don't contribute to environmental, social, or cultural wellbeing.
 - c. **Use the allocation framework to drive positive social and environmental outcomes:** The ORC should develop an approach to water allocation that gives effect to Te Mana o te Wai and that incentivises 'other' activities that support healthier water, healthier communities, and reduced emissions. The Plan should reject activities that damage our natural environment. In other words, **the ORC should look to use water allocation as a 'lever' to significantly improve environmental outcomes.** For example, regenerative agriculture (through use of activity status and other rules) should be able to access water much more easily than intensive dairy feed lots.
 - d. **Redefine efficient:** Define 'efficient' allocation in a way that considers true economic efficiency (including environmental and social costs and benefits) rather than just the minimisation of wasted water. The limited definition of 'efficiency' we use currently (in all Plans and the NPSFM) fails to challenge us to manage water in a sustainable way. Given the number of catchments that are fully or overallocated and given our migration levels, I would go so far as to say that it is contrary to the section 5 purpose of the Act.

The Randerson Report proposed to define 'efficiency' as follows:

“efficiency: 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 (see text box on total economic value below)”¹

It was drafted to work with the following definition of ‘equity’, noting that these definitions have not been transferred to the Natural and Built Environment Act:

“equity: 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.”

- e. **Manage risk:** Water is essential for growth and yet it is a very scarce resource (in terms of available allocation). Understanding the opportunity costs of water use and managing the risks associated with allocation, needs to be front of mind when developing rules and policy and when making consenting decisions. The ORC should also ensure that the most up-to-date information can be considered through consenting processes, regardless of any limits in plans. The consenting process needs to be responsive to the latest science in order to manage risk appropriately.
 - f. **Reject a market-based approach to freshwater allocation.** Instead, regulate to support the best uses of water in terms of achieving a range of social, environmental, and economic objectives (as determined through community consultation). It would be foolish to assume that those who can pay the most will deliver the best uses of water – and yet that is the premise behind market-based allocation. That approach could give foreign investors and large corporates an advantage over local owner-operators and SMEs and could lead to economic ‘leakage’ as well as social and environmental costs.
9. Section 30 RMA and s126 (5)(e) NBEA both enable regional councils to create rules in their Plans to allocate fresh water amongst competing activities. The NBEA also enables a comparative consenting process and requires that when considering allocation methods particular regard must be had to the (undefined) allocation principles of environmental sustainability, efficiency, and equity. We think our principles and general approach could be implemented under either the NBEA or the RMA - subject to achieving the support of iwi and mana whenua.
10. We also see our approach as aligning with the Te Mana o te Wai but, in a sense, ‘going further’. Te Mana o te Wai ensures the health and well-being of the water is protected and human health needs are provided for before enabling other uses of water, but it does not prioritise amongst the ‘other uses of water’. We believe that prioritisation amongst the ‘other uses’ category is the key to improving environmental and human health outcomes.

¹ Point 71 page 337, Randerson Report

11. Finally, AWA believes any Plan Review should make water bottling a prohibited activity. Water bottling requires our best, deepest, aquifer water and AWA wants to see that water protected for drinking water for future generations.
12. We recommend considering the discussion on freshwater allocation in the Randerson Report. The discussion starts at page 326 and goes on to discuss a 'regulatory approach based on the merit of uses' on page 340. It challenges use of the 'first in first served' approach where there is resource scarcity. It says,

"When a resource is becoming scarce, the first-in, first-served system does not guarantee that it is allocated to current or future uses which offer the greatest environmental, social, cultural or economic value"²

And

"A regulatory approach based on the merit of uses

79. While developing more flexible permit provisions can reduce some of the negative impacts of the first-in, first-served approach, it does not address them entirely. In particular, significant equity and efficiency concerns are likely to remain.

80. One option for replacing the first-in, first-served approach is to employ allocative approaches based on administrative judgment and/or criteria. These criteria could be developed on the basis of the allocation principles above, namely sustainability, efficiency and equity. They might include objective measures, such as the land's productive potential and ability to leach nitrogen, as well as more subjective measures, such as environmental performance, and the potential for a resource use to contribute to the wellbeing of people and communities. Phasing in common expiry dates could make this merit-based selection process more effective as it would allow councils to identify the 'best' uses when multiple applicants are viewed together.

81. This process would allow communities to maintain an active role in decision-making on how their local water is used, and it may require less infrastructure than market-based approaches. It also provides one mechanism to help prioritise access to water for Māori to address Tiriti interests."

13. Thank you for considering our suggestions. If you have any questions, please don't hesitate to get in touch.

Best regards

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² Page 329, Chapter 11 Allocation of resources and economic instruments,

