

Submission

by

Business|NZ

to the

Local Government & Environment Select Committee

on the

Resource Management (Waitaki Catchment) Amendment Bill

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1. INTRODUCTION

- 1.1 Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce and the Otago-Southland Employers' Association), Business NZ is New Zealand's largest business advocacy body. Together with its 53-member Affiliated Industries Group (AIG) which comprises most of New Zealand's national industry associations, Business NZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.
- 1.2 In addition to advocacy on behalf of enterprise, Business NZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.
- 1.3 Business NZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services).
- 1.4 It is widely acknowledged that consistent, sustainable growth well in excess of 4% per year would be required to achieve this goal in the medium term.
- 1.5 The health of the economy also determines the ability of a nation to deliver on the social and environmental outcomes desired by all. First class social services and a clean and healthy environment are possible only in prosperous, first world economies.
- 1.6 Business NZ is of the view that a careful and considered approach to the management and allocation of freshwater resources will increase in importance if we are to achieve the desired growth outcomes. National freshwater resources are under increasing and competing demands including, but not limited to, electricity generation, irrigation, industrial and tourism use and a wide range of recreational activities.
- 1.6 The Resource Management (Waitaki Catchment) Amendment Bill ("the Bill"), in addressing a single catchment, is taking an ad hoc approach to water allocation. Such an approach, rather than contributing to a better understanding of how to resolve competing demands on the country's water resources, risks creating a hastily conceived precedent that will confuse decision making regarding other catchment areas. The demands on the Waitaki are extensive and several of them have implications for the national economy. For that reason alone those demands need to be resolved within the context of a national framework.
- 1.7 In the absence of such a framework Business NZ submits the Bill should not proceed and would like to draw to the Committee's attention several matters

that need to be given careful consideration when deciding on how to equitably and sustainably manage and allocate a finite resource.

2 A NATIONAL APPROACH

- 2.1 As noted, Business NZ does not support the ad hoc, “single river” approach embodied by this Bill. While the physical characteristics of freshwater systems differ, the underlying issues concerning uses of those systems are the same. Appropriateness of use, hydrological standards, existing property rights, and public access are not particular to the Waitaki but apply to all freshwater systems.
- 2.2 Business NZ is aware that the Ministry for the Environment in conjunction with the Ministry of Agriculture and Fisheries has embarked on a project, “The Water Programme of Action”, that includes developing, “...*the best possible way of making decisions about how we allocate and use water in New Zealand.*” The Programme will also identify, “*water bodies of national importance*”, and this is defined as follows: “*If something is ‘in the interests of all sections of the community at the national scale, now and in the future’, then it’s considered to be in the national interest.*” The values that will be assessed to determine a water body’s status include:
- tourism;
 - irrigation;
 - energy generation;
 - industrial uses;
 - recreation;
 - natural heritage, and
 - cultural heritage¹
- 2.3 Given this programme is under development Business NZ questions why the Bill has been introduced and why the Waitaki catchment is apparently now a matter of special urgency. The inadequacies of the RMA and a lack of capacity at local authority level have been cited as the key reasons this Bill needed to be introduced. Specifically, the Explanatory Note (p8) cites the consent applications of Meridian’s Project Aqua and two large irrigation proposals – Aoraki Water Trust and Irrigation North Otago.
- 2.4 Even if approved in its entirety over the next twelve month period Project Aqua will not be constructed in time to assist in the country’s projected energy supply/demand shortfall, particularly if we experience a repeat of 2001 and 2003. Increasing demands on river systems for substantial irrigation off takes are likely to increase with projected changes in land use patterns. Rather than attempt a “quick fix” solution for this one particular case it would seem far more prudent to begin developing methodologies to address the RMA and capacity issues that can apply both to the competing demands on the Waitaki and similar demands on other river systems.

¹ “The Water Programme of Action”, Ministry for Environment and Ministry of Agriculture & Forestry, November 2003

3 MINISTERIAL INFLUENCE

- 3.1 The Bill affords the Minister powers that Business New Zealand submits should not be part of any water allocation and use model. They are excessive and extreme and lead to the conclusion that the proposed model outlined in the Bill will result in direct political intervention in what should be an unbiased, balanced and considered decision making process.
- 3.2 Part 2 of the Bill details the establishment and operation of a Waitaki Catchment Water Allocation Board. Clause 8(1) declares the Board is to comprise, *“not fewer than 2 and not more than 5 members appointed by the Minister”*, and clause 8(4) states, *“The members of the Board hold office at the pleasure of the Minister”*. The problem is compounded with section 9 outlining where, *“Minister may give direction on procedure.”*
- 3.3 Part 4 details the establishment of a Panel of Commissioners, *“to decide applications in accordance with the Waitaki Water Allocation Regional Plan”* (clause 43). The Panel is subject to the same level of Ministerial appointment and direction as the Board.
- 3.4 As noted above, a number of bodies of water are subject to an increasing range of demands, many of them commercial in nature. The level of intervention proposed by this model will generate considerable uncertainty and act as a significant disincentive to investment. The idea that security of tenure and stability in the regulatory environment should be subject to Government “direction of the day” is unacceptable.
- 3.5 Business New Zealand also notes that the level of intervention proposed, albeit through an “allocation board”, raises serious questions over whether this particular model has been developed with a specific outcome in mind. The most significant demand proposed for the Waitaki catchment is Project Aqua. Meridian Energy is an SOE, and without debating the merits or otherwise of that project, Business New Zealand believes it is inappropriate and compromises credibility for the sole shareholder of a company to be intervening as a decision maker and regulator in an environment where that company is competing with private interests over the use of a valuable resource.
- 3.6 One obvious way of addressing the intervention issue would be to adopt a Commerce Commission model. In that case, the decision makers are well insulated from political direction. The provisions of the Commerce Act mean members are appointed by the Governor-General rather than, “at the pleasure of the Minister”, and apart from section 26 where the Commission is required, “to have regard to economic policies of Government”, the members essentially act as independent arbitrators and regulators.
- 3.7 Business New Zealand submits that as the national water programme is developed a fundamental consideration should be to ensure that if a decision making body is deemed to be an appropriate mechanism to resolve

competing use issues, then that body should be independent and not subject to either direct or indirect Ministerial intervention.

4 EXISTING PROPERTY RIGHTS

- 4.1 A critical issue in the development of a national water programme will be the manner in which existing property rights are addressed. A failure to effectively and equitably address such rights is an invitation for conflict and litigation and negative impacts on investor confidence.
- 4.2 An examination of the Bill under consideration suggests that the question of existing property rights has not been given the consideration it requires. The Explanatory Note (p14) states that, *“Although existing consents are able to be considered by the Board, the Bill provides a specific protection that will ensure that any review of conditions as a result of the framework cannot undermine the viability of activities allowed by permits granted under the principal Act”* (the RMA).
- 4.3 This assurance then seems to be modified by the comment on page 15 of the Note that, *“The effect of any government intervention on existing rights (including for water take and use) is of concern. This will require clarification through a communications strategy”*.
- 4.4 Clause 14(3) introduces further doubt over the fate of existing rights with, *“While the framework is operative, any other plan for the Canterbury region that relates to the use or allocation of water does not apply in the Waitaki catchment”*. Environment Canterbury does not have a regional water plan but like all other regional councils has issued water use permits under the RMA. Clause 14(3) would seem to suggest all these permits may now become subject to the framework. Business New Zealand also understands that a number of such permits which were liable for renewal have been included in Schedule 2 of the Bill. Schedule 2 lists the resource consent applications and notices of requirement for designations that Part 4, or the Panel of Commissioners, applies to.
- 4.5 This raises the very real concern that existing, permitted activities will be considered under the framework as “new” applications along with the proposed “new” activities and treated as one of a number of competing demands with little, if any, recognition given to their existing rights.
- 4.6 Business New Zealand submits the failure to adequately consider existing property rights to be further reason that the Bill not proceed. This is a complex area requiring careful consideration. It is not particular to the Waitaki catchment and national policies need to be developed if national equity and certainty is to be achieved.
- 4.7 Failure to develop such policies is likely to result in a proliferation of expensive and time consuming Court actions over water allocations and rights similar to that launched in the Timaru High Court shortly after this Bill was introduced to the House. In that case Aoraki Water Trust and the Timaru and Mackenzie

district councils are contesting Meridian Energy's claim to sole rights to all the available water allocation in the upper Waitaki River. The consequences of this action may be far-reaching in that precedents could be established regarding allocations. It would, therefore, seem prudent to await the High Court's findings and incorporate them into policy developments regarding national water resources.

5 TRANSFERABLE/TRADABLE RIGHTS

- 5.1 The proposed model outlined in the Explanatory Note and the Bill proper leans heavily toward an interventionist, "command and control" approach and this would suggest little consideration has been given by the Bill's drafters to alternate mechanisms.
- 5.2 One mechanism that deserves investigation in the development of The Water Programme of Action is the establishment of a water market allowing for the transferability and tradability of water property rights. As Federated Farmers, an organisation affiliated to Business New Zealand, has noted, "*The establishment of a water market will be crucial for the efficient use of scarce water resources over the longer term.*"² This is not to suggest Business NZ is advocating that an artificially low allocation levels be set in a catchment (thus inflating prices), but rather to begin developing a mechanism now that efficiently allocates the available water without recourse to the demands and counter-demands that have led to the Bill the Committee is currently considering.
- 5.3 The pressing need to develop a new mechanism is highlighted by the fact that the majority of the water currently allocated predated the RMA. Only 19% of the total weekly allocation has been allocated since 1990.³ Business New Zealand submits this is graphic evidence of the failure of the current processes, not just in the Waitaki catchment but in all catchment areas.
- 5.4 There is an extensive international literature on the theory and development of tradable water regimes and Business NZ submits that the Committee recommend this issue is given a high priority in The Water Programme of Action.

6 CONCLUSIONS and RECOMMENDATIONS

- 6.1 The Bill before the Committee is ad hoc and interventionist and will not lead to outcomes consistent with the goal of achieving sustainable economic growth. The nation's freshwater resources are under growing pressure from a number of competing demands and it is thus essential that policies and mechanisms are put in place that are robust and equitable and ensure a valuable resource continues to be available into the future. The situation that has emerged regarding the Waitaki (competing demands on a finite resource) will emerge in other catchment areas. The current RMA processes have failed to resolve the

² Lambie presentation to Local Government NZ 2003 Conference

³ *ibid*

Waitaki situation and the “first in first served” approach also employed elsewhere is not resulting in the most efficient use of the available allocation. Selective amendment of the RMA will not achieve effective outcomes, rather the development nationally applicable allocation and use methodologies should be viewed as a priority.

6.2 Business New Zealand recommends:

- the Resource Management (Waitaki Amendment Bill) not proceed;
- ad hoc approaches to water allocation and use should be rejected and a national framework addressing freshwater issues be speedily developed;
- the body identified to administer the framework and subsequent allocations be protected by legislation from direct and indirect political intervention;
- mechanisms within that framework be developed that protect existing property rights, and
- the framework incorporates a market mechanism that allows for the transferability and tradability of water property rights.

Business New Zealand wishes to be heard in support of this submission.