AOTEAROA WATER ACTION

Overseas Investment

The Treasury

24 May 2019

OVERSEAS INVESTMENT ACT REFORM SUBMISSION

1. Aotearoa Water Action is a non-profit organisation with the purpose of protecting New Zealand's freshwater. Our Charter (attached to this submission) clearly sets out our kaupapa and includes the following:

   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).

   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.

   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.

2. We are concerned that the New Zealand Government's sovereign rights over our wai have been eroded by the provisions of New Zealand's free trade agreements. Treasury's statement, that Government can not include water as a new class of sensitive asset, supports our position as does Minister Sage's inability to decline consent to Cresswell NZ Ltd in 2018 (when it sought to purchase land for the purpose of operating a large water bottling plant in the Bay of Plenty).

3. Issues around water allocation are of course best dealt with by reform of the Resource Management Act but managing global demand for our water must be achieved via the OIA. Currently, anyone who can purchase land in New Zealand can apply for rights to take water. Given global demand for clean water, the growth of the bottled water industry and the failure of Councils to manage water allocation by activity (i.e. the ongoing use of a first in first served approach to water allocation) there is good reason for concern and a regulatory response.

4. At stake are our human right to clean drinking water, the ability to protect our wai and the Government's ability to Honour its obligations under te Tiriti, which in turn impacts on the rights of tangata whenua to act as kaitiaki to protect te mana o te wai.

5. The Government recently created a new class of sensitive land to protect residential land – our position is that the same level of protection must be afforded to our wai. We don't accept that this can't be done; if free trade agreements limit that ability then those agreements are not in the best interests of New Zealand and must be renegotiated or abandoned.

6. Including water as a factor that must be considered by the Minister(s) under section 17 is a positive first step and we support this option. Although managing water via limited 'sensitive' land can not adequately address the issue it would provide the government a degree of control over who can hold rights over large irrigation consents associated with sensitive rural land. We propose that there should also be some control (via enforceable consent conditions) over what this water can be used for. For example, we need to ensure that large irrigation consents can not be varied by overseas investors to take water for water bottling.

7. By way of explanation, we are aware that regional councils have been varying water consents to change the purpose of water takes. This is a concern that must be addressed under the RMA but an additional layer of protection would address demand issues arising from this consenting practice.

8. Therefore, we support the option to add water as a factor under section 17 of the Act but maintain that it does not go far enough. In addition, more information is needed to understand how the government plans to add this 'factor' to the Act including the weight it would be given.

9. We would also like to make the following recommendations understanding that some are beyond the scope of this review:
    a. Add water as a new class of sensitive asset so that any overseas investor seeking rights to water (whether via transferable consents or new applications under the RMA) must first seek Overseas Investment Office consent. We would recommend that apply to all water takes above 100m3 per day.

    b. Alternatively, we recommend that all land having an associated water permit above 100m3 per day is deemed 'sensitive' under the Act unless those permit(s) are surrendered prior to the sale of the land.

    c. When considering the benefit to NZ criteria, the use of water should be considered, and the 'use' of the water stated in the application to the OIO must become part of enforceable consent conditions. There should also be provisions requiring the Minister to decline consent if the use of water is for water bottling.

    d. Adherence to resource consent conditions should become part of the conditions of the OIO consent document so that the OIO may require disposal of the land/business if resource consent conditions are breached, relieving

(often poorly funded) local councils of that burden and providing an additional deterrent.

e. Two conditions of consent should be added to all OIO consents requiring that the investor must declare any water permits granted to the investor after OIO consent is granted; and a condition that all water permits granted to an investor after OIO consent is granted must be adhered to.

10. We also support a national interest test, with Ministerial powers to reject applications on the grounds of "not being in the national interest". This test should not be confined only to large foreign investments but should be a blanket requirement for all foreign investment applications.

11. We do not support options that would effectively weaken the 24.9% threshold that triggers the definition of foreign ownership. Options are offered to change it but none to leave it alone.

12. Likewise, do not support any increase the $100m threshold which triggers the need for a foreign investor to apply for permission. We would support a lower threshold.

13. We also believe that the matter of foreign investment is too important to be left to the Overseas Investment Office (which is simply part of Land Information NZ). Nor do we support decisions about environmental, economic and social outcomes being made by OIO solicitors – these matters are not within their realm of expertise. We support CAFCA's submission that the role be undertaken by a dedicated Regulator, one with the same independent status and statutory powers as the Parliamentary Commissioner for the Environment.

14. We also support CAFCA's submission that "the Act should be consistent with the Living Standards Framework that is being developed by Treasury. Meaning that it should take into account the impact on social, environmental and "human capital" issues, not simply its economic and financial considerations. We would single out impact on climate change as a major priority. It must be consistent with the Treaty of Waitangi".

15. A register of foreign-owned assets, including rights to take and use water, should be created (and it should include those below the current thresholds). There need to be much more readily available statistics.

16. The full application should be publicly notified before any Decision is made. And the public should have the legally guaranteed right to submit on, and object to, the application before any Decision is made. This is standard procedure in other sectors and is an important way of ensuring the regulator has all the information it needs to make good decisions.

17. We also support CAFCA's submission as follows: Finally, there needs to be a radical shift in emphasis in the foreign investment approval/oversight regime. The Government has said it is a privilege, not a right, for foreigners to buy land or companies in New Zealand. But the whole thrust of this proposed reform is to give foreign investors privileged treatment, to make things easier for them, to make the approval process more "efficient" and "streamlined". It needs to be written into the Act that the approving body works for the New Zealand people, not for the applicants. It is us who are the "clients".

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