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Commerce Commission

Wellington

Via email: wai@comcom.govt.nz

Tēnā koutou katoa

Economic regulation of Tiaki Wai – Consultation on additional information disclosure requirements

Water New Zealand (Water NZ) welcomes the opportunity to submit on the Commerce Commission's consultation on proposed additional information disclosure requirements for Tiaki Wai.

Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand's three waters (drinking water, wastewater and stormwater). Water NZ is the country's largest water industry body, providing leadership and support through advocacy, collaboration, and professional development. Its ~3,600 members are drawn from across the water management industry, including council-controlled organisations, regional councils and territorial authorities, consultants, suppliers, government agencies, academia, and scientists.

Water NZ recognises that Tiaki Wai will commence operations in a complex establishment environment and that the Commission has identified elevated risks and residual risks associated with inheriting challenges from Wellington Water. We also support the importance of ensuring there is sufficient transparency and accountability to provide confidence that these challenges are being addressed in the long-term interests of consumers.

At the same time, Tiaki Wai represents a different governance and operating structure established for the purpose of addressing many of the structural and governance challenges that contributed to the current state of the Wellington water network. Water NZ therefore questions whether the residual risk profile attributed to Tiaki Wai which forms the basis of this submission appropriately reflects the structural and governance improvements that the new model brings, relative to the inherited operational risks it has identified. It is important to ensure the regulatory package is proportionate to the circumstances of Tiaki Wai as a new entity.

In that context, Water NZ generally supports the Commission taking a risk-based and proportionate approach to regulation and focuses this submission on whether the proposed requirements, both individually and collectively, are proportionate, workable, and appropriately targeted given Tiaki Wai's establishment context and the broader regulatory package being proposed for the entity.

This submission addresses the following issues:

- the transparency of the Commission's residual risk assessment and whether its stated methodology has been consistently applied
- the proposed accelerated disclosure of core asset management planning documents and the sequencing concerns this raises
- the proposed asset management maturity and capability assessment and improvement plans, with regard to the implementation of independent verification requirements
- the proposed quarterly non-financial performance reporting requirements and their suitability to Tiaki Wai's unified service delivery model.

Detailed feedback on each proposal is set out below.

1. Transparency of the Residual Risk Assessment

The Commission's proposed additional information disclosure requirements are premised on the existence of material residual risk after accounting for Tiaki Wai's governance, accountability, and oversight arrangements.

However, Water NZ notes that the basis on which the Commission has arrived at its residual risk assessment is not sufficiently transparent to support a complete assessment of whether the proposed requirements are proportionate.

At paragraph 3.2.1 of the consultation document, the Commission states that its framework involves:

- identifying key risk areas and assessing the nature and significance of those risks
- assessing the extent to which the current and proposed governance and regulatory oversight arrangements for Tiaki Wai are expected to mitigate those risks and
- assessing the level of residual risk expected to remain once Tiaki Wai commences full operations.

The consultation document identifies several existing oversight and accountability mechanisms relevant to mitigating the identified risks, including an independent skills-based board, the Partners Committee, LGFA oversight arrangements, Taumata Arowai's drinking water regulatory role and wastewater and stormwater oversight, and Greater Wellington Regional Council's regulatory functions. The Commission also acknowledges that the Tiaki Wai model is intended to strengthen accountability, governance, and long-term decision-making.

However, the consultation document does not clearly demonstrate, through application of its stated methodology:

- the extent to which these arrangements or controls are expected to mitigate the identified risks
- why those controls are considered insufficient in particular areas or
- how the Commission determined the level of residual risk remaining after accounting for those controls.

For example, the consultation document identifies asset management capability and information quality as key risk areas and proceeds directly to the proposed additional disclosure interventions. However, it does not clearly articulate the extent to which the existing governance and oversight arrangements associated with the Tiaki Wai model

will mitigate those risks, why those mitigations will be insufficient, or what specific residual risks will remain following the application of those controls. A similar analytical gap is evident across several of the risk areas identified throughout the consultation document.

Water NZ is of the view that the extent of the proposed additional regulatory intervention should ultimately be informed by the residual risk remaining after existing governance and oversight arrangements are taken into account, rather than the existence of inherited risks alone.

Recommendation

Water NZ recommends that the Commission clearly articulate, in its final decision and supporting analysis, how it has assessed the effectiveness of Tiaki Wai's existing governance, accountability, and oversight arrangements in mitigating the identified risks, and how that assessment has informed the residual risk profile used to justify the proposed additional information disclosure requirements.

In particular, Water NZ recommends that the Commission clearly identify:

- the specific risks considered to remain after existing governance and oversight controls are taken into account;
- why those residual risks are considered sufficient to justify the proposed additional regulatory interventions and
- how the scale and timing of the proposed requirements have been determined in response to the residual risks identified.

2. Accelerated enduring information disclosure

Water NZ acknowledges the Commission's proposal to remove the transitional approach that would otherwise apply to Tiaki Wai under the enduring information disclosure framework, requiring earlier disclosure of its Strategic Asset Management Plan (SAMP), Investment and Delivery Plan (IDP), and Annual Delivery Report (ADR).

Water NZ notes that the enduring ID framework recognises that suppliers require time to mature systems, improve data quality, and build the capability to support more sophisticated disclosures. Those transitional considerations remain relevant to Tiaki Wai notwithstanding its elevated risk profile. In this context, Water NZ encourages the commission to consider the risk that accelerated disclosure requirements imposed too early in the establishment phase may result in disclosures that are premature,

incomplete, or insufficiently reliable, reducing the usefulness of the information being provided.

Water NZ also notes that the proposed disclosure timeline creates a sequencing concern that risks requiring the SAMP and IDP to be published before the improvement plan that should inform them has been finalised and independently verified.

Under the proposed disclosure timeline in Attachment D, the sequencing is as follows:

- asset management maturity and capability assessment — due 31 March 2027;
- SAMP, IDP, and consumer-related information — due within 30 days of adoption of the Water Services Strategy, itself due by 30 June 2027, placing these disclosures around late July 2027 at the earliest; and
- asset management improvement plan subject to independent verification — due 31 July 2027.

The improvement plan is intended to identify the actions required to address gaps in Tiaki Wai's asset management capability and maturity, matters directly relevant to the credibility of the investment planning, prioritisation, and delivery assumptions reflected in the SAMP and IDP. Requiring disclosure of those planning documents before the improvement plan and associated independent verification are complete, risks publishing documents that have not yet been informed by the capability assessment process the Commission itself considers necessary.

Finally, Water NZ notes that the proposed accelerated requirements form part of a broader regulatory package that includes additional ID obligations, independent verification requirements, quarterly reporting, and potentially performance requirement regulation. The cumulative compliance demands of these concurrent obligations risk diverting organisational capability away from the establishment, planning, and delivery activities that will ultimately determine whether Tiaki Wai can deliver the outcomes the regime is designed to promote.

Recommendation

- Water NZ recommends that the Commission reconsider the proposed sequencing of the accelerated enduring information disclosure requirements to ensure the SAMP and IDP are disclosed only once the asset management improvement plan and associated independent verification process have been sufficiently completed to support meaningful assessment of the credibility of those planning documents.
- Where the Water Services Strategy is adopted before the improvement plan has been finalised and independently verified, the Commission should consider

deferring the SAMP and IDP disclosure requirement until that verification is complete.

3. Asset management maturity assessment and improvement plans

Water NZ acknowledges the Commission's focus on strengthening asset management capability within Tiaki Wai and supports the objective of improving visibility of how identified capability gaps will be addressed over time. We also acknowledge the role independent verification can play in supporting accountability and providing confidence that improvement planning is robust and appropriately informed.

Water NZ takes the view that further detail regarding the implementation of the proposed independent verification framework would support greater certainty regarding how the requirement is intended to operate in practice.

In particular, the consultation document does not address:

- how the cost of independent verification will be determined, allocated, and managed, noting that the Commission itself acknowledges at paragraph 2.15.3 that compliance costs are ultimately borne by consumers
- how the independent expert will be appointed, and what respective roles Tiaki Wai and the Commission will have in that appointment process
- what criteria will be used to assess whether information is consistent with good water industry practice, and how those criteria will be developed and communicated in advance
- how disagreements between Tiaki Wai and the independent expert regarding verification conclusions would be identified, escalated, and resolved.

The consultation document states that the independent expert would owe a duty of care to both Tiaki Wai and the Commission through a three-way legal agreement structure. However, the existence of a duty of care does not in itself resolve questions regarding appointment process, verification scope, cost allocation, or dispute resolution where verification conclusions are contested.

Recommendation

- **Cost:** Water NZ recommends that the Commission confirm in its final decision that the likely cost of independent verification has been considered as part of the proportionality assessment, given that compliance costs are ultimately borne by consumers.

- **Appointment** Water NZ recommends that the Commission establish and publish a transparent appointment process for the independent expert, consistent with the approach applied in other regulated sectors under Part 4, including Transpower, Chorus, Watercare, Orion, and Aurora, where tripartite deeds and terms of reference are publicly available. The process should clearly set out the steps by which the expert will be selected, the respective roles of Tiaki Wai and the Commission, and the criteria against which candidates will be assessed.
- **Verification criteria:** Water NZ recommends that the Commission commit to developing the verification terms of reference collaboratively with Tiaki Wai before the process commences, with sufficient lead time for Tiaki Wai to understand the scope and basis of verification before preparing its improvement plan. This would provide appropriate input into the process while ensuring the verification framework is fit for purpose and clearly understood by all parties in advance.
- **Findings process:** Water NZ recommends that the Commission confirm that Tiaki Wai will have an opportunity to review and comment on draft verification findings before they are finalised, supported by clear timeframes for response.

4. Quarterly reporting of non-financial performance

The consultation document requires Tiaki Wai to seek Commission feedback on its draft quarterly reporting before publication. Water NZ notes that this requirement warrants careful scrutiny.

Requiring Tiaki Wai to seek Commission feedback on draft reports before they are published risks blurring the boundary between regulatory oversight and operational involvement in Tiaki Wai's internal reporting processes. While Water NZ understands the Commission's objective of supporting robust and useful disclosures, the consultation document does not clearly explain the intended purpose, scope, or limits of the proposed feedback process.

In particular, it is unclear:

- whether Commission feedback is intended to be advisory or carries regulatory weight
- what process and timeframe would apply to the provision of feedback

- what occurs where Tiaki Wai does not agree with feedback provided by the Commission.

Water NZ takes the view that clarity regarding the intended purpose, scope, and limits of any draft reporting engagement process would assist in ensuring the framework preserves appropriate governance accountability and clear ownership of disclosed information by Tiaki Wai's board and executive leadership.

Recommendation

Water NZ recommends that the Commission review the proposed quarterly reporting framework to ensure it appropriately reflects Tiaki Wai's intended operating model as a single integrated asset-owning entity, rather than historical reporting structures developed under the previous multi-owner Wellington Water arrangements.

In particular, Water NZ recommends that the Commission:

- clarify the intended purpose, scope, and status of the proposed draft reporting feedback process, including whether feedback is advisory or carries regulatory weight
- establish clear processes and timeframes for the provision of Commission feedback on draft quarterly reports

Concluding remarks

Water NZ recognise the Commission's objective of strengthening visibility of Tiaki Wai's planning, investment, delivery, and asset management capability during its establishment phase.

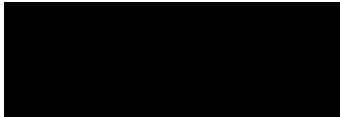
Water NZ shares the Commission's interest in seeing Tiaki Wai establish itself in a way that delivers improved outcomes for Wellington consumers over the long term. However, our submission identifies several areas where the proposed additional information disclosure framework would benefit from further refinement to ensure the regime is appropriately aligned to Tiaki Wai's establishment context, operating model, and the practical realities associated with implementing a significant and overlapping regulatory package during organisational transition.

In particular, Water NZ considers there would be value in:

- ensuring the proposed requirements appropriately reflect the residual risk profile remaining after existing governance and oversight arrangements are taken into account;

- improving the sequencing and integration of key planning, assurance, and disclosure requirements;
- providing greater clarity regarding the practical operation of proposed independent verification and draft reporting engagement processes; and
- assessing the cumulative implementation, compliance, and assurance burden of the package as a whole, including the extent to which those costs are proportionate to the expected benefits of the proposed interventions.

Water NZ appreciates the opportunity to provide feedback on the consultation and would welcome ongoing engagement with the Commission as the proposals develop further.



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Water New Zealand