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Commerce Commission

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Tēnā koutou katoa

Submission on the draft Resilience Principles: Decision-making framework for critical infrastructure providers

Water New Zealand (Water NZ) welcomes the opportunity to comment on the Commerce Commission's Draft Resilience Principles: Decision-making Framework for Critical Infrastructure Providers.

Water NZ is the national industry body for New Zealand's drinking water, wastewater and stormwater sectors. Our approximately 3,600 members represent the breadth of the industry, including water service providers, territorial authorities, regional councils, consultants, contractors, suppliers, researchers, government agencies and other organisations involved in the planning, delivery and regulation of water services.

Water NZ supports the Commission's objective of strengthening resilience investment decision-making and providing greater clarity on the matters it will consider when assessing whether resilience investment is prudent and efficient. Resilience is a fundamental consideration for water services, where continuity of service, public health and environmental outcomes depend on infrastructure that can withstand, adapt to and recover from disruption.

Our submission is focused on ensuring the framework is clear in its regulatory application, proportionate in the evidence and analysis it expects, and practical for water service providers to implement. This is particularly important as the water sector enters a new economic regulatory regime and providers are simultaneously establishing new organisations, developing regulatory capability and progressing towards the asset management and investment planning expectations already established under information disclosure.

Our comments are therefore primarily directed at areas where greater clarity or refinement would help ensure the framework achieves its intended purpose without creating unnecessary regulatory burden or constraining providers to particular analytical approaches where equivalent outcomes can be demonstrated.

In particular, we recommend that the final guidance:

- clarify the practical and regulatory status of the expectations and indicators within the framework, while preserving flexibility for providers to demonstrate equivalent outcomes through alternative approaches;
- ensure proportionality reflects the decision value of additional analysis, rather than automatically requiring greater analytical complexity under situations of higher risk;

- align the transition towards mature resilience practice with the regulatory transition already underway for water service providers;
- recognise the value of resilience investment that provides redundancy or protects against irreversible service outcomes; and
- encourage coordination where multiple parties are seeking overlapping input.

Detailed feedback is below.

1. The regulatory purpose and practical status of the guidance should be clearer

Water NZ supports the principles proposed in the document as important guidance to ensure resilience investment is prudent and efficient. However, the draft guidance contains some internal inconsistencies in how it presents the practical status of the document. Paragraph 1.2 states that the is guidance and is not a requirement for providers to immediately and fully incorporate into their decision-making processes. However, the guidance also sets out what the Commission expects to see under each principle, states that all principles apply in every case subject to proportionality and anticipates providers moving towards full application within a reasonably short timeframe.

The Commission identifies price-quality and information disclosure processes as the mechanisms through which resilience investment and the principles will be considered. What remains unclear is the regulatory effect of the “what we expect to see” provisions and Chapter 3 indicators when they are considered through those processes. For information disclosure, the consultation document notes that current requirements do not prescribe how resilience investment should be reported. Therefore any additional mandatory disclosure requirements would necessitate an amendment to the Information Disclosure Determination. Water NZ considers it would be useful for the Commission to clarify how the resilience principles may interact with other regulatory tools over time, including information disclosure, price-quality regulation, and any future performance requirement regulation.

There is a related tension in Chapter 3. Paragraph 3.3 expects providers to work towards good practice over time and progressively achieve the baseline described in the chapter, while paragraph 3.4 states that the indicators are not a checklist but examples of evidence and approaches that exemplify good practice. The draft is therefore unclear about the extent to which the framework is permissive. If a provider can demonstrate robust and proportionate resilience investment decision-making through an alternative approach, it should be clear that departure from a particular method or indicator does not in itself represent a compliance breach.

Water NZ considers that guidance of this nature should primarily establish the outcomes and quality of decision-making the Commission expects to see, while allowing providers to determine how those outcomes are best demonstrated. Particular tools, methodologies and indicators can usefully illustrate good practice, but providers should retain discretion to use alternative approaches where they can demonstrate an equivalent outcome that is proportionate to the nature, scale and risk of the investment. This would preserve the value of the framework while allowing for differences in provider maturity, available information and established decision-making processes.

Water NZ recommends that the Commission:

- frame the guidance around the outcomes and quality of decision-making to be demonstrated, with particular tools, methodologies and indicators presented as ways of demonstrating those outcomes rather than requirements in themselves;
- clarify the regulatory effect of the “what we expect to see” provisions and Chapter 3 indicators when considered through information disclosure and price-quality processes;

- make clear where providers may use alternative approaches to demonstrate an equivalent outcome; and
- the final guidance should be clear that resilience analysis can be demonstrated through existing planning and disclosure documents where those documents already address the relevant matters. Providers should not be required to create parallel resilience-specific planning documents unless there is a clear additional benefit.

2. Proportionality should reflect the decision value of additional analysis

Water NZ supports the principle that analysis should be fit for purpose and proportionate to the scale, cost, uncertainty and consequences of a proposed resilience investment. Paragraph 2.7 sets out two related but distinct propositions:

- the level of analysis, modelling and documentation should be proportionate to the scale, cost, uncertainty and consequences of the proposed resilience investment; and
- the expected quality and robustness of evidence should increase with the significance of the risks to service, consumers and communities.

Read alongside the detailed expectations under the principles and the Chapter 3 indicators, this could be interpreted as requiring increasingly extensive or sophisticated analysis as risk significance increases.

More extensive analysis is valuable where it resolves material uncertainty, differentiates between credible options, identifies material impacts or otherwise improves the basis for a decision. It is less valuable where the risk, consequences and available responses are already well understood and the range of options is narrow. This is particularly relevant for smaller or isolated water supplies. A provider may rely on a single critical asset with no viable alternative supply. The consequences of failure may be significant, while the range of credible options is limited. In those circumstances, the significance of the risk should not, of itself, require greater analytical complexity where further analysis is unlikely to alter or materially improve the investment decision. Otherwise, the framework risks equating good decision-making with the amount and sophistication of analysis undertaken, rather than the extent to which that analysis materially improves the investment decision.

The framework should therefore place greater emphasis on the decision value of additional analysis. Evidential robustness should reflect the level of confidence necessary to support a sound decision rather than being measured by the volume or sophistication of analysis undertaken. This would reduce the risk of analysis becoming the deliverable and of providers incurring costs to demonstrate analytical rigour that does not improve resilience outcomes, with those costs ultimately borne by consumers.

Water NZ recommends that the Commission:

- frame the expectations under each principle, and the Chapter 3 indicators, around the understanding a provider must demonstrate and the soundness of its decision, rather than the analytical methods it must apply;

- revise paragraph 2.7 to make clear that the robustness of evidence should be proportionate to what is necessary to support the decision, including the value that further analysis is likely to add; and
- establish that a provider may demonstrate that further analysis is not warranted, where it would not reasonably resolve material uncertainty, differentiate between credible options or otherwise materially improve the investment decision.

3. The transition to mature resilience practice should align with the water sector's existing regulatory pathway

Water NZ supports the Commission's recognition that water-sector maturity may currently be lower as providers transition to new entities and regulatory arrangements. Noting this point, it is therefore important that the Commission considers existing transitional pathways in the sector as it defines the requirements in paragraph 2.5 that infrastructure providers are expected to transition to a more mature resilience practice "within a reasonably short timeframe."

For water service providers, these expectations need to be considered alongside the transition pathway already established under the Water Services Information Disclosure Determination 2026. The Determination provides a transitional pathway for asset management and investment planning disclosures through to July 2030. This reflects the circumstances of a sector entering economic regulation while providers establish new organisations, transfer assets and information, develop systems and capability, and prepare disclosures under the new regime.

Given the transition pathway already established for water service providers under information disclosure, Water NZ considers that the transition towards full application of the resilience principles should be aligned with that pathway. The resilience framework should build on this existing transition pathway rather than establish a separate or potentially accelerated maturity expectation. As currently drafted, it is unclear how the expectation of movement towards full application within a reasonably short timeframe relates to the transition arrangements already established under the Determination. This creates uncertainty for providers making decisions now about the capability, information and analytical work required for their first disclosures.

Water NZ recommends that the Commission:

- align the expected transition towards full application of the resilience principles with the pathway already established under the Water Services Information Disclosure Determination 2026, taking account of the transition through to 2030 and allowing flexibility for a longer timeframe where appropriate; and
- clarify what "within a reasonably short timeframe" and "full application" mean for water service providers operating within that pathway.

4. Investment that prevents irreversible outcomes should be recognised as efficient

Paragraph 1.15 defines efficient service delivery to include providers' statutory and regulatory obligations relating to public health, environmental performance and service continuity. Water

NZ supports this definition while noting that resilience investment that provides redundancy to prevent an irreversible loss of service can be a necessary cost of efficient service delivery.

Assets held to maintain service in the event of failure produce no measurable output in normal operation. A standby pump may sit idle for a decade; when the primary pump fails during a storm and the standby keeps the community supplied, the value of that decade of idleness is realised in a single event. Assessing such investment primarily by normal utilisation risks understating its resilience value. The relevant consideration is the consequence of the asset not being available when required.

Water services are not currently subject to price-quality regulation, but the guidance anticipates resilience investment being considered through future default price-quality path resets, reopener applications and customised price-quality path assessments. It would be useful to establish the treatment of resilience redundancy in the guidance as early as possible, rather than in the course of a first reset.

Water NZ recommends that the Commission:

- confirm that redundancy provided to prevent an irreversible loss of service can constitute efficient expenditure consistent with paragraph 1.15, and that its value should be assessed with regard to the consequences of its absence, rather than normal utilisation alone.
- address the treatment of resilience redundancy in the final guidance, providing certainty for providers in advance of the first price-quality process

5. Engagement expectations require coordination to be workable

Water NZ supports the emphasis the guidance places on engagement with consumers, communities, iwi and hapū. We particularly welcome the recognition at paragraphs 2.12 and 2.18 that local capability may already be absorbing part of the resilience burden, and that apparent community resilience through self-provisioning should not be treated as evidence of a resilient network where that self-provisioning is compensating for under-investment.

The engagement expectations should, however, recognise the practical capacity of communities, iwi and hapū to participate as providers are not engaging in isolation. The same groups may be engaged by multiple infrastructure providers, councils, regulators and government agencies on related matters, creating a real risk of engagement fatigue. This can affect both the time required to obtain meaningful input and the level of participation that can reasonably be achieved.

This is particularly relevant as new water service providers establish their engagement approaches and relationships. In many cases, relationships built between councils and iwi and hapū over a long period will need to be re-established with new water organisations. Meaningful engagement and the development of enduring relationships will take time, and will depend in part on the capacity of those being asked to participate.

The Commission should therefore take engagement capacity into account when considering the maturity and pace of providers' engagement practices. A slower progression should not

necessarily be interpreted as a lack of maturity or effort where providers can demonstrate a considered approach that respects the capacity and preferences of the communities, iwi and hapū involved.

Coordination can also help manage this burden. The guidance already contemplates coordinated engagement under Principle 4 where appropriate. Where multiple infrastructure providers or regulators are seeking substantially overlapping input from the same communities, iwi or hapū, coordinated engagement should be encouraged where it is appropriate and supported by those being engaged.

Water NZ offers these observations from the perspective of water service providers. We do not speak on behalf of iwi and hapū, and consider that submissions made directly by iwi, hapū and Māori organisations should carry greater weight on these matters.

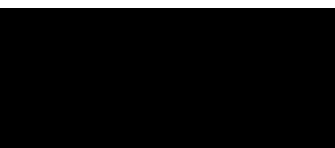
Water NZ recommends that the Commission:

- recognise engagement capacity and fatigue when assessing the expected pace and maturity of provider engagement, particularly during the water sector transition; and
- encourage coordinated engagement where multiple infrastructure providers or regulators are seeking substantially overlapping input from the same communities, iwi or hapū, where this is appropriate for and supported by those being engaged.

Concluding remarks

Water NZ supports the Commission's objective of strengthening resilience investment decision-making across critical infrastructure. Our recommendations are directed at strengthening the guidance so that it is clear in its regulatory application, proportionate in the expectations it places on providers, and practical for the water sector as it transitions into the new economic regulatory regime.

We would welcome the opportunity to continue working with the Commission as the guidance is finalised. If you have any questions about this submission, please contact us.



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