

Terms of Reference: Demand Flexibility Product Co-design group

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1. Introduction

- 1.1 This document sets out the operational and governance arrangements for the Demand Flexibility Product Co-design Group (Co-design Group).

2. Background

- 2.1 Flexibility products can provide 'insurance' against high or volatile wholesale electricity prices that can prevail when demand is high (eg, winter morning or evening peaks), and/or supply is low (eg, hydro storage and production from intermittent generation is low). An example of such is the standardised super-peak hedge product that was introduced at the start of 2025.
- 2.2 The Electricity Authority Te Mana Hiko (Authority) recognises the potential that demand flexibility can also offer the electricity system for managing high or volatile electricity prices. In January 2025, the Standardised Flexibility Product Co-design Group [recommended the development of a demand flexibility product](#). A demand flexibility product could provide additional ways for financially managing peak periods, alongside other forms of hedging.
- 2.3 The Authority sought views on the development of a demand flexibility product through our [Industrial Demand Flexibility Roadmap](#) consultation, which was well supported by submitters.

3. Function of the Co-design Group

- 3.1 The Authority has decided to appoint a Co-design Group to develop a demand flexibility product.
- 3.2 The Co-design Group is an ad hoc technical group comprising industry experts. Its purpose is to develop a demand flexibility product that addresses barriers for prospective buyers and sellers of demand flexibility, thereby facilitating the wider use of flexibility in the wholesale electricity market.
- 3.3 At the conclusion of the development process, the Co-design Group will make a recommendation to the Authority's Chief Executive on this product.

4. Scope

- 4.1 The key scope for the Co-design Group is to develop a product within the following parameters:
- (a) a wholesale market product between purchasers (eg, retailers) and consumers (eg, commercials and industrials) or aggregators
 - (b) a capacity product for intra-day use (eg, peak management); seasonal demand response products are out of scope (eg, the Meridian and NZAS supply arrangement which contains demand response provisions)
 - (c) a product that works within current Electricity Industry Participation Code 2010 (Code) arrangements. However, the group may identify Code changes that could be investigated to enhance product use.

- 4.2 In recommending a product, the Co-design Group will consider:
- (a) how the product could improve transparency about the availability and price of demand flexibility
 - (b) the likelihood market participants will voluntarily contract the product to trade flexibility, meaning there are both natural sellers and buyers of the product
 - (c) the price and non-price barriers for trading flexibility and how the product will address these
 - (d) whether diverse forms of sellers and buyers will have access to the product
 - (e) how the product contributes to system level efficiencies, and whether it introduces new, or exacerbates existing, inefficiencies
 - (f) whether the product maintains or augments incentives for all participants to invest in demand flexibility services
 - (g) any regulatory barriers in the Code, with a view to ensuring that the product can integrate with existing Code provisions insofar as possible.
- 4.3 Consistent with this, the Co-design Group may be required to:
- (a) provide technical advice on the above criteria
 - (b) advise on customer and market participant impacts
 - (c) provide technical review of material prior to public communication
 - (d) provide case studies or worked examples to support its positions.

5. Procedure and administration

- 5.1 The Co-design Group may determine its own procedures, except as provided for in these Terms of Reference. The business and activities of the Co-design Group must be as transparent as practicable.
- 5.2 The Authority will provide administrative and secretariat support to the Co-design Group. In its capacity as secretariat, the Authority will:
- (a) schedule meetings of the Co-design Group
 - (b) set the agenda for each meeting
 - (c) give reasonable notice of meetings to each member, including details as to the time and venue of meetings
 - (d) distribute all meeting papers to members in advance of meetings, using reasonable endeavours to circulate papers at least five business days prior to meetings to enable members to properly consider the content of the papers
 - (e) publish non-confidential meeting papers on the Authority's website as soon as practicable after the papers have been distributed to members
 - (f) publish minutes of all meetings on the Authority's website as soon as practicable after their confirmation.
- 5.3 Consensus among Co-design Group members is the optimum result, although the Authority recognises this may not always be possible. In such circumstances, the Co-design Group's advice must reflect the views raised by all members. All such views must be reflected in the minutes of that meeting.

- 5.4 Any e-mails sent by a member of the Co-design Group about any substantive aspects of the group's business should be copied to:
- (a) all members of the Co-design Group
 - (b) the Authority's secretariat.

External advice and media

- 5.5 The Co-design Group does not have the authority to commission analysis or to commit resources and expenditure. However, the Co-design Group may recommend to the Authority resources, external to the Authority, which the Co-design Group considers necessary to perform its function.
- 5.6 Members of the Co-design Group have no media relations role and may not speak on behalf of the Authority or the group about matters on which the group has advised, or is advising, the Authority. The Authority is solely responsible for all media relations.

Interaction with the Electricity Authority

- 5.7 The Chair is accountable to the Authority for the successful and effective functioning of the Co-design Group.
- 5.8 Standard day-to-day interaction between the Co-design Group and Authority staff will be via the Chair unless the chair agrees otherwise.
- 5.9 If a member of the Co-design Group has any significant concerns, including (for example) in relation to the operation of the Co-design Group, they should first raise them with the Chair.

6. Provision of advice to the Authority

- 6.1 In formulating advice to the Authority, the Co-design Group must explain how any recommendations promote the Authority's statutory objectives.

7. Confidentiality

- 7.1 Unless there is a specific reason to the contrary, information (eg, reports) going to, or produced by, the Co-design Group or its members will be treated as non-confidential. This information is subject to the Official Information Act 1982. The Authority will only withhold information if it considers there are grounds for doing so under the Official Information Act.
- 7.2 If information shared at meetings is specifically identified as confidential, the published minutes will record that information by an oblique reference. See also paragraph 8.6 regarding confidentiality and competition law and information protocols.
- 7.3 Non-confidential information (eg, reports) may be published on the Authority's website.

8. Membership of the Co-design Group

8.1 This section sets out:

- (a) matters relevant to the role of members on the group, including membership criteria
- (b) the role of the chair/independent facilitator for the group.

Appointment of members

- 8.2 The Authority will appoint members of the Co-design Group after calling for nominations and considering nominees against the membership criteria set out in clauses 8.6 to 8.9.
- 8.3 The Co-design Group will comprise members who, between them, have appropriate knowledge and experience to provide advice to the Authority that fulfils the function of the Co-design Group as described in clause 3.
- 8.4 The Authority is targeting the appointment of six to eight members to the Co-design Group (excluding the chair). However, the Authority may appoint more or fewer members.
- 8.5 The Authority will appoint members by written notice. The notice will state the date the appointment takes effect and the term of the appointment.

Membership criteria

- 8.6 In making its appointments of members to the Co-design Group, the Authority seeks a membership that collectively has excellent:
 - (a) ability to work constructively with different parts of industry towards a best-for-industry approach
 - (b) knowledge and experience of the Authority's statutory objectives, the Code and market facilitation measures
 - (c) knowledge and experience of wholesale risk management tools, particularly those relating to a market with increased intermittent generation
 - (d) knowledge and experience of demand-side flexibility, including constraints on provision of service and practical considerations
- 8.7 The Authority will also consider the relevance of a nominee's organisation to this group. The Authority seeks a membership that collectively has a diverse:
 - (a) experience with hedging risks associated with demand flexibility or intermittent generation
 - (b) position in terms of a net buyer or seller of flexibility hedge products.
 - (c) approach to evaluating novel hedge products supporting increased intermittent generation or demand flexibility in their portfolio
 - (d) understanding of practical considerations for providers of demand flexibility.
- 8.8 The Authority will also consider a nominee's ability to consider the long-term interests of consumers, provide impartial advice, and contribute effectively to the Co-design Group's tasks.

- 8.9 The Authority does not expect an individual member of the Co-design Group to have all the requisite knowledge and experience required of the technical group in aggregate.

Term of appointment

- 8.10 The Authority will appoint members of the Co-design Group until 30 June 2026.
- 8.11 Despite clause 8.10, the Authority may, at its discretion:
- (a) extend a member's term (with the member's agreement)
 - (b) appoint a member for a period of less than three months.
- 8.12 Members may resign by written notice to the Authority, stating the date on which the resignation takes effect.
- 8.13 The Authority may, after consultation with the person concerned, end a person's membership of the Co-design Group by written notice to the person (with a copy to the Co-design Group), stating the date on which the membership ends.

Responsibilities of members

- 8.14 Members of the Co-design Group must:
- (a) comply with the requirements set out in these Terms of Reference
 - (b) be available for all meetings unless granted leave by the chair
 - (c) read all papers circulated to the Co-design Group
 - (d) actively contribute to the group's discussions
 - (e) inform the chair of any actual or potential conflicts of interest that may affect their ability to perform their functions as a member of the Co-design Group in accordance with the rules in sections 62 to 72 of the Crown Entities Act 2004 and these Terms of Reference. If a member of the Co-design Group is required to make a disclosure under these rules, the member must make the disclosure to the Authority as well as to the group.
 - (f) carry out the tasks that are assigned to the Co-design Group arising from the agenda for each meeting.
- 8.15 Members must remain mindful that:
- (a) they have been appointed for:
 - their knowledge and experience as well as their ability to participate constructively in meetings of the Co-design Group;
 - they have been appointed to act in their personal capacity and not as representatives of organisations, and they are to provide independent advice as a group, even though they may not be independent persons; and
 - (b) an expected contribution of the Co-design Group is to reconcile divergent views and interests in the group, and among wider stakeholders, in ways that promote the Authority's statutory objectives, and in a manner that achieves wider stakeholder "buy in". This requires serious intent by all

members to understand alternative views and find workable solutions.

- 8.16 The requirements in clause 8.14 mean that a member's role is to act in the best interests of all stakeholders irrespective of the organisation that they may be associated with.
- 8.17 Members of the Co-design Group must also be mindful that Authority staff and potential external advisors are free to form their own views on the matters discussed by the Co-design Group. The Board of the Authority expects members of the Co-design Group to respect the different roles Authority staff and external advisors play in assisting the group and advising the Board of the Authority.
- 8.18 In relation to non-confidential meeting papers, members may obtain input from anyone if they consider this appropriate and useful to the Co-design Group undertaking its function.
- 8.19 Any confidential information or commercially sensitive information that is shared by and with members, including market sensitive information, must be kept confidential by members. The Competition Law and Information Protocols in the Appendix to these terms of reference apply to all members to manage competition law and continuous disclosure risks.

Independent chair

- 8.20 The Authority will appoint an independent person to chair the group. The Authority will confirm this appointment prior to the first Co-design Group meeting.
- 8.21 The Authority will meet with the chair prior to the first meeting to agree meeting structure and approach.
- 8.22 The chair is a member of the Co-design Group. Accordingly, provisions in these Terms of Reference that apply to members also apply to the chair. However, provisions specific to the chair take precedence.

Functions of the independent chair

- 8.23 The key functions of the chair include:
 - (a) managing the Co-design Group's activities to facilitate the timely delivery of the Co-design Group's work
 - (b) facilitating discussions between members of the Co-design Group in a manner that will stimulate robust debate on issues and encourage effective contribution from members
 - (c) guiding relevant and effective discussions while ensuring that genuine disagreements and conflicts are aired and, if possible, resolved
 - (d) ensuring proper and correct minutes are kept of all proceedings at meetings of the Co-design Group, with support from Authority staff
 - (e) ensuring the views of the Co-design Group are accurately represented in any papers or correspondence to the Authority and approving and signing on behalf of the group any such communications.

- 8.24 When making representations to the Authority on any aspect of the Co-design Group's work and advice, the chair must take care to provide a balanced representation of the members' views.
- 8.25 The Authority may appoint a member of the Authority's staff or a member of the Co-design Group to be a temporary deputy chair. If the chair is unavailable, they may exercise all the functions and powers of the chair in relation to a matter.
- 8.26 The chair will meet with the Authority after each meeting to discuss its outcomes, next actions, and any other relevant matters.

9. Meetings

- 9.1 The Co-design Group must meet at least monthly during the period 3 November 2025 to June 2026.
- 9.2 A meeting of the Co-design Group may be held by several of the members who constitute a quorum, being assembled at the time and place appointed for the meeting.
- 9.3 A quorum for a meeting of the Co-design Group is a majority of its members, including the chair. No business may be transacted at a meeting of the Co-design Group if a quorum is not present.
- 9.4 Meetings may be held in person or virtually, if all the members who wish to participate in the meeting have access to the technology needed to participate and a quorum of members can simultaneously communicate with each other throughout the meeting.
- 9.5 Representatives of the Authority are entitled to attend Co-design Group meetings and participate in discussions but are not members of the Co-design Group.

Attendance

- 9.6 Members are not entitled to send an alternate in their place if they cannot attend a meeting of the Co-design Group.
- 9.7 Any member of the Co-design Group who, without leave from the chair, misses two consecutive meetings of the Co-design Group is deemed to have resigned from the Co-design Group except where there are identified extenuating circumstances such as illness.
- 9.8 If the chair considers that a member's absence from two consecutive meetings is likely to disadvantage the Co-design Group, the Authority may appoint a new member to replace the absent member as though the absent member had resigned. Any such appointment must be carried out in accordance with clause 8.2.
- 9.9 The chair may invite non-members (in addition to Authority representatives) to attend a meeting of the Co-design Group. The invited party may participate in discussions but is not a member of the Co-design Group, or part of the quorum.

10. Process for handling concerns about performance

Concerns about the performance of members

- 10.1 Any person concerned about the performance of a member of the Co-design Group should discuss those concerns with the chair.
- 10.2 If the chair considers action is warranted, the chair must:
- (a) discuss the matter with the member concerned and give the member an opportunity to state their view
 - (b) if the discussion does not resolve the matter to the chair's satisfaction, provide written notice to the member stating the concerns and the desired corrective action
 - (c) if the member is affiliated with an organisation, inform relevant people at the member's affiliated organisation of the matter, if appropriate, prior to sending the written notice
 - (d) if the member fails to address the concerns specified in the written notice, provide the member with an opportunity to discuss the matter further and, if appropriate, discuss the matter with the affiliated organisation
 - (e) if not satisfied after due consideration of the member's explanation, inform the member and the affiliated organisation, if appropriate, that the chair will recommend to the Authority's Chief Executive to terminate the member's appointment.
- 10.3 Any discussions with a member's affiliated organisation under clause 10.2 must not compromise the ability of the member to act in their personal capacity in relation to the advice the member contributes to the Co-design Group. The sole purpose of these discussions is to inform the affiliated organisation of the situation and to gather information about extenuating circumstances the chair may need to take account of in their handling of the situation.
- 10.4 The Authority's Chief Executive, on receiving a recommendation under clause 10.2(e), must be confident the processes in clause 10.2 have been satisfactorily complied with. If appropriate, the Authority's Chief Executive may also discuss the matter with the Chief Executive of the member's affiliated organisation.
- 10.5 If the Authority's Chief Executive agrees with a recommendation made under clause 10.2(e), the Chief Executive may terminate the member's appointment to the Co-design Group.

Concerns about the performance of the chair or other Authority staff

- 10.6 Any person involved with the Co-design Group who is concerned about the performance of the chair or other Authority staff should discuss those concerns with the Authority's Chief Executive.
- 10.7 The Chief Executive will determine the appropriate actions to be taken in response to such concerns.

Concerns about the performance of other personnel

- 10.8 Any person involved with the Co-design Group who is concerned about the performance of a contractor or external consultant associated with the Co-design Group should discuss those concerns with the chair.
- 10.9 The chair, in consultation with the Authority's Chief Executive, will determine the appropriate actions to be taken in response to such concerns.

Appendix: Competition law and Information protocol

Parties

A.1 Each member of the Co-design Group.

Context

A.2 The parties (members) have been appointed to a group to support the Electricity Authority's work.

A.3 Members are acting in their personal capacity as members of the group and not as employees or representatives of any other entity.

Purpose

A.4 The purpose of this protocol is to

- (a) manage the competition law risks (ie, compliance with the Commerce Act 1986 requirements, in particular those dealing with cartel behaviour) to members of their participation in the group; and
- (b) prevent confidential information provided to the group needing to be disclosed under the continuous disclosure obligations in the NZX Listing Rules and the Financial Markets Conduct Act 2013 (continuous disclosure obligations).

Competition Law and Information protocol

A.5 In the course of this work, it may be desirable for information to be disclosed to (and by) members that is confidential information or commercially sensitive information. Accordingly, the Authority has required members to agree to confidentiality requirements set out in the group's terms of reference (confidentiality requirements).

A.6 To manage the requirements of competition law, and the continuous disclosure obligations that may apply to the employers of some members (those who are listed on the NZX Main Board (issuers)), the members agree to engage subject to the following protocol. This protocol is supplementary to, and should be read alongside, the confidentiality requirements.

Procedure

A.7 Each member must take responsibility for ensuring ongoing compliance with this protocol and competition law more generally. Each member that is employed by an issuer must ensure any confidential information shared as part of the group's work is not shared with an issuer or any other person or third party. If any information is inadvertently shared with an issuer by a member, that member will promptly notify the Authority. Members should not be directly involved in sales and marketing of products/services in respect of which they or their home entity compete, or other operational decisions associated with those products/services.

A.8 Participation by personnel directly involved in negotiating, arranging and/or managing any BAU service supply between members should be minimised.

- A.9 Should circumstances arise that may conflict with these requirements, members will raise this with the Authority promptly so they can be managed

No arrangement nor understanding

- A.10 Members will not enter into any contract, arrangement nor understanding (either formal nor informal) about any matter unless and until both sides have had the opportunity to take advice on competition law matters and are satisfied that the matter can be pursued.

Confidential information and commercially sensitive information

- A.11 Members will limit the exchange of commercially sensitive information and confidential information to the minimum necessary to assist the Authority with its work.
- A.12 If commercially sensitive information or confidential information is shared (with price, cost and strategic information the most sensitive), members must keep the information confidential and not share it with any person in accordance with this protocol and the confidentiality requirements.

Termination

- A.13 Members will ensure confidentiality of any commercially sensitive or confidential information is maintained even if and when their membership of the group ceases. Any confidential information held by a member will be destroyed when that member's membership ceases.