

30 August 2023

[REDACTED]  
[REDACTED]

Northpower Fibre Limited  
28 Mount Pleasant Road  
Raumanga  
Whangarei 0110

By e-mail only: [REDACTED]

Tēnā koe [REDACTED],

## **Notice of exemption to Northpower Fibre Limited in relation to Crown financing requirements under the Fibre Information Disclosure Determination 2021**

1. The Commerce Commission (the **Commission**) is issuing an exemption to Northpower Fibre Limited (**Northpower**) in relation to Crown financing requirements under the Fibre Information Disclosure Determination 2021 (the **ID Determination**) for financial disclosures due by 31 August 2023.<sup>1</sup>
2. This notice exempts Northpower from certain Crown financing requirements with respect to its disclosures for disclosure years 2022 and 2023 that are due by 31 August 2023, which are contained within the following reports of the ID Determination:
  - 2.1 the Report on ID FFLAS Report on Investment,<sup>2</sup> as set out in Schedule 1;
  - 2.2 the Report on Regulatory Tax Allowance, as set out in Schedule 3; and
  - 2.3 the Report on the Calculation Inputs, as set out in Schedule 8.<sup>3</sup>

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<sup>1</sup> *Fibre Information Disclosure Determination 2021 [2021] NZCC 24, as amended 28 July 2022.*

<sup>2</sup> We note that Schedule 1 is referred to as "Report on ID FFLAS Return on Investment (ID-only regulated provider)" in the templates found [here](#) on our website.

<sup>3</sup> Schedules 1,3, and 8 of the ID-only regulated providers' templates.

3. We have granted this exemption due to inconsistencies between certain line items in the Schedules mentioned in paragraph 2 and the associated definitions for those terms in Schedule 16 of the ID Determination. We consider that it would be unworkable for Northpower to complete and publicly disclose all the information in the current ID-only schedules mentioned in paragraph 2.

### Background

4. Fibre providers (the **providers**) are subject to information disclosure (**ID**) regulation as a result of regulations made by the Governor-General under s 226 of the Telecommunications Act 2001 (the **Act**).<sup>4</sup> The providers are:
  - 4.1 Enable Networks Limited, Northpower, and Tuatahi First Fibre Limited (the **ID-only regulated providers**); and
  - 4.2 Chorus Limited.
5. Chorus and the ID-only regulated providers each have their own set of financial and asset management Schedules to complete for each disclosure year.<sup>5</sup>
6. Northpower's financial and asset management reporting for disclosure years 2022 and 2023 is due to be publicly disclosed by 31 August 2023.
  - 6.1 Subject to clause 2.4.1 of the ID Determination, clause 2.4.2 requires ID-only regulated providers, no later than 5 months after the end of each disclosure year, to complete and publicly disclose certain reports.<sup>6</sup>
  - 6.2 Clause 2.4.1 of the ID Determination provides the ID-only regulated providers with an exception from completing certain reports in respect of disclosure year 2022, with the remaining reports having to be completed and publicly disclosed no later than 5 months after the end of disclosure year 2023 (i.e., by 31 August 2023).

### *Crown financing*

7. The Fibre Input Methodology Determination 2020 (the **IM Determination** or **IM**) requires the providers to take into account Crown financing when calculating certain values. For ID-only regulated providers, those values are:<sup>7</sup>
  - 7.1 the annual benefit of Crown financing building block for regulated providers subject to only information disclosure regulation;<sup>8</sup> and

<sup>4</sup> Telecommunications (Regulated Fibre Service Providers) Regulations 2019, regulation 5.

<sup>5</sup> Commerce Commission, [Fibre Information Disclosure Final Decisions Reasons Paper](#) (30 November 2021), Table 4.1 Overview – Final Decisions on Financial Information,

<sup>6</sup> Northpower's disclosure year is the 12 months ending 31 March each year.

<sup>7</sup> *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, as amended.

<sup>8</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended, clause 2.4.11.

- 7.2 notional deductible interest, which takes into account outstanding Crown financing.<sup>9</sup>
8. Schedule 16 sets out the definitions used for terms used in the financial and asset management reporting (Schedules). The IM calculations alluded to in paragraph 7 are referred to in the definitions for the following Schedule 16 terms:
- 8.1 **annual benefit of Crown financing**, which means:
- in respect of-
- (a) forecast **annual benefit of Crown financing**, the result of applying clause 3.5.11 in the **IM determination**; and
- (b) actual **annual benefit of Crown financing**, the result of applying clause 2.4.10 or 2.4.11 (as applicable) in the **IM determination**;
- 8.2 **Notional deductible interest**, which:
- has the meaning given in clauses 2.3.1(7) to 2.3.1(9) (as applicable) of the **IM determination**;
9. "Annual benefit of crown financing" is either directly or indirectly (i.e., through another defined term) referred to within the definitions of other Schedule 16 terms, including:
- 9.1 "ROI – comparable to a vanilla WACC"; and
- 9.2 "ROI – comparable to a post-tax WACC".
10. Certain Schedule 16 terms reference Crown financing which must be reported on within certain Schedules for ID-only regulated providers.<sup>10</sup> Those terms and Schedules are:
- 10.1 "ROI – comparable to a vanilla WACC" in section 1(i) and 1(ii) of the Report on ID FFLAS Report on Investment,<sup>11</sup> as set out in Schedule 1;
- 10.2 "ROI – comparable to a post-tax WACC" in section 1(i) and 1(ii) of the Report on ID FFLAS Report on Investment,<sup>12</sup> as set out in Schedule 1; and

<sup>9</sup> *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended, clauses 2.3.1(7)-(9).

<sup>10</sup> Commerce Commission, *Fibre Information Disclosure Determination 2021 – ID-only regulated providers templates for financial and asset management (Schedules 1-13) – 28 July 2022*, found [here](#) on our website.

<sup>11</sup> We note that Schedule 1 is referred to as "Report on ID FFLAS Return on Investment (ID-only regulated provider)" in the templates found [here](#) on our website.

<sup>12</sup> We note that Schedule 1 is referred to as "Report on ID FFLAS Return on Investment (ID-only regulated provider)" in the templates found [here](#) on our website.

10.3 “**Notional deductible interest**” in section 3(i) of the Report on Regulatory Tax Allowance, as set out in Schedules 3 and section 8(iii) of the Report on the Calculation Inputs, as set out in Schedule 8.

11. When the ID Determination requirements were set, we provided for the benefit of Crown financing to be calculated for the providers in the Fibre ID final reasons paper.<sup>13</sup> However, due to the information we had at the time regarding the providers’ Crown financing, the IM calculations alluded to in paragraph 7 were not implemented into the financial and asset management Schedules for the ID-only regulated providers.<sup>14</sup>

#### *Communication with Northpower*

12. In June 2023, Northpower sent the Commission an ID enquiry which included a query regarding the calculation for “notional deductible interest” in section 8(iii) of the Report on the Calculation Inputs, as set out in Schedule 8, being inconsistent with the calculation defined in the IM Determination.
13. Commission staff responded to Northpower’s enquiries and as part of their response, informed Northpower they were assessing a related Crown financing issue impacting ROI calculations and would follow up in due course. In follow up correspondence, Commission staff informed Northpower that they considered the most appropriate course of action to resolve the matter would be to recommend to Commissioners an exemption is issued.

#### *Legal framework*

14. Clause 2.10.1(1) of the ID Determination allows the Commission to, by written notice to a provider, exempt the provider from any requirement of the ID Determination, for a period and on such terms and conditions as the Commission specifies in that notice. Furthermore, clause 2.10.1(2) gives the Commission the power to amend or revoke any such exemption.

#### **Exemption issued**

15. Using the exemption powers under clause 2.10.1(1) of the ID Determination, the Commission has decided to issue an exemption to Northpower from having to, for the purpose of clause 2.4.1 and 2.4.2 of the ID Determination, complete and publicly disclose the following line items for disclosure year 2022 and disclosure year 2023 with respect to Crown financing calculations in each of the following reports:

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<sup>13</sup> Commerce Commission, [Fibre Information Disclosure Final Decisions Reasons Paper](#) (30 November 2021), Table 4.1 Overview – Final Decision on Financial Information, pg. 63-64.

<sup>14</sup> Chorus’ Crown financing was incorporated into the schedules applicable to Chorus.

- 15.1 **ROI - comparable to a post-tax WACC**, as used in section 1(i)-1(ii) of the Report on ID FFLAS Report on Investment, as set out in Schedule 1 of the ID Determination;<sup>15</sup>
- 15.2 **ROI - comparable to a vanilla WACC**, as used in section 1(i)-1(ii) of the Report on ID FFLAS Report on Investment, as set out in Schedule 1 of the ID Determination;
- 15.3 **Notional deductible interest**, as used in section 3(i) of the Report on Regulatory Tax Allowance, as set out in Schedule 3 of the ID Determination; and
- 15.4 **Notional deductible interest**, as used in section 8(iii) of the Report on the Calculation Inputs, as set out in Schedule 8 of the ID Determination.
16. When making the ID Determination, due to the information we had at the time regarding Northpower’s Crown financing, we did not include line items for Crown financing for the terms “ROI – comparable to a post-tax WACC”, “ROI – comparable to a vanilla WACC” and “notional deductible interest” in the associated reports. This means that the line items for “ROI – comparable to a post-tax WACC”, “ROI – comparable to a vanilla WACC” and “notional deductible interest” are inconsistent with the definitions used for those terms in Schedule 16.
17. Because of the inconsistencies between the line items referred to in paragraph 16 and the associated definitions in Schedule 16, we consider that it would be unworkable for Northpower to complete and publicly disclose the line items for “ROI – comparable to a post-tax WACC”, “ROI – comparable to a vanilla WACC” and “notional deductible interest” in the ID-only Schedules mentioned in paragraph 2. Therefore, we have decided to issue the exemptions set out in paragraph 15 for disclosure years 2022 and 2023.
18. For the avoidance of doubt, this exemption is intended to relieve Northpower from its obligations relating to Crown financing specified in the ID Determination for disclosure years 2022 and 2023 only, which are due 31 August 2023.

#### **Further information**

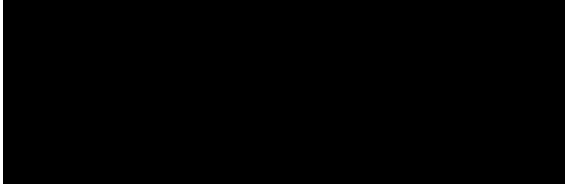
19. This exemption may be revoked or amended by the Commission at any time in accordance with clause 2.10.1(2) of the ID Determination.
20. A copy of this exemption response letter will be published on the Commission’s website.

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<sup>15</sup> We note that Schedule 1 is referred to as "Report on ID FFLAS Return on Investment (ID-only regulated provider)" in the templates found [here](#) on our website.

21. If you have any questions regarding this matter, please contact Frankie Toland at [infrastructure.regulation@comcom.govt.nz](mailto:infrastructure.regulation@comcom.govt.nz).

Nāku iti noa, nā



**Tristan Gilbertson**  
Telecommunications Commissioner