

Proposed Amendments to Fibre Input Methodologies: draft decisions

Reasons paper

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Associated documents

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Contents

Chapter 1	Introduction.....	4
Chapter 2	Framework for IM amendments.....	8
Chapter 3	Amendments needed in order to implement the proposed approach to determining Chorus’ initial PQ RAB.....	15
Chapter 4	Proposed amendments that are necessary to implement draft decisions we have made for our first PQ path and ID requirements	25
Chapter 5	Proposed amendments to enhance certainty for PQ.....	31
Attachment A	Proposed amendments to correct technical errors	33

Chapter 1 Introduction

Purpose of the paper

- 1.1 The purpose of this paper is to outline our draft decisions, and invite submissions, on proposed amendments to the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21 (fibre IMs).¹

Structure of the paper

- 1.2 This paper explains:
- 1.2.1 our framework for considering the scope of input methodology (IM) amendments, and the decision-making framework we have applied in proposing the specific IM amendments set out in this paper (Chapter 2);
 - 1.2.2 the proposed IM amendments that are necessary to implement the proposed approach to determining Chorus Limited's (Chorus) initial price-quality (PQ) regulatory asset base (RAB) (Chapter 3);
 - 1.2.3 the proposed IM amendments that are necessary to implement draft decisions that we have made for our first fibre PQ path and information disclosure (ID) determinations (Chapter 4);
 - 1.2.4 the proposed IM amendments that would enhance certainty about the rules, requirements and processes that apply to PQ paths (Chapter 5); and
 - 1.2.5 proposed IM amendments to correct technical errors (Attachment A).

Materials published alongside this this paper

- 1.3 To give effect to the amendments discussed in this paper, we have also today published a draft IM amendment determination.²
- 1.4 Alongside this paper we are publishing our draft decisions and draft determinations for the PQ path³ and ID requirements.⁴

¹ The fibre IM determination was most recently amended in November 2020 by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24.

² Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (27 May 2021).

³ Commerce Commission "Chorus' price-quality path from 1 January 2022 – Draft decision – Reasons Paper (27 May 2021); Commerce "[Draft] Fibre Price-Quality Path Determination 2021 (27 May 2021).

⁴ Commerce Commission "Fibre Information Disclosures - Draft decisions – Reasons Paper (27 May 2021); Commerce Commission "[Draft] Fibre Information Disclosure Determination 2021 (27 May 2021).

Relationship to the PQ and ID processes

- 1.5 As part of our process for determining the first PQ path for Chorus and the ID requirements that will apply to Chorus and the other local fibre companies (LFCs), Enable Networks Limited (Enable), Northpower Fibre Limited (Northpower) and UltraFast Fibre Limited (UltraFast) under s 170 of the Telecommunications Act 2001 (the Act) we have identified:
- 1.5.1 certain circumstances where amendments to the fibre IMs are necessary to implement draft decisions that we have made for our first fibre PQ path and ID determinations; and
 - 1.5.2 certain circumstances where amendments to the fibre IMs would enhance certainty about the rules, requirements and processes that apply to PQ paths.

Proposed process

- 1.6 Our proposed process to finalise IM amendments is outlined in the table below. There will be two final decisions on IM amendments, one in August and a second in November. The timing of the earlier amendments in August is necessary to implement the proposed change to the approach to setting Chorus' initial PQ RAB.

Process	Indictive time frame
Draft Decisions by the Commission – Draft Decisions on proposed fibre IM amendments	27 May 2021
Submissions due from interested persons on the proposed August 2021 fibre IM amendments (4 weeks)	24 June 2021
Submissions due from interested persons on the proposed November 2021 fibre IM amendments (6 weeks)	8 July 2021
Cross-submissions due from interested persons on the proposed August 2021 fibre IM amendments (2 weeks)	8 July 2021
Cross-submissions due from interested persons on the proposed November 2021 fibre IM amendments (2 weeks)	22 July 2021
Final decisions by the Commission – Publication of final decisions on August 2021 potential fibre IM amendments	August 2021
Final decisions by the Commission – Publication of final decisions on November 2021 potential fibre IM amendments	November 2021

How you can provide your views

- 1.7 We encourage interested persons to consider these proposed IM amendments to the fibre IMs and provide views to help shape the IM amendment process going forward. In particular, we invite interested persons to indicate whether they agree or disagree with each proposed amendment, or to suggest alternative ways of giving effect to the intent of each proposed amendment, with supporting reasons. This in turn will assist us in determining the first PQ path for Chorus and the ID requirements that will apply to Chorus and the other LFCs.
- 1.8 Submissions and cross-submissions can be made through the submission portal available on our website at: <https://comcom.govt.nz/file-upload-form-folder/file-upload-form>.
- 1.9 The project page will direct you to a form with instructions on how to upload your submission. Your submission should be provided as an electronic file in an accessible form.
- 1.10 We invite submissions on the proposed amendments to the fibre IMs in Chapter 3 and Attachment A of this paper by **5pm** on 24 June 2021, and cross-submissions by **5pm** on 8 July.
- 1.11 We invite submissions on the proposed amendments to the fibre IMs in Chapters 4 and 5 of this paper by **5pm** on 8 July 2021, and cross-submissions by **5pm** on 22 July.

Confidentiality

- 1.12 The protection of confidential information is something the Commission takes seriously. To continue to protect confidential submissions, we require you to upload your submission via the form on the project page. The process requires you to provide (if necessary) both a confidential and non-confidential/public version of your submission and to clearly identify the confidential and non-confidential/public versions.
- 1.13 When including commercially sensitive or confidential information in your submission, we offer the following guidance:
 - 1.13.1 Please provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.
 - 1.13.2 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.

- 1.13.3 Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult with the party that provided the information before any disclosure is made.

Chapter 2 Framework for IM amendments

Purpose of this chapter

- 2.1 As part of the process to make ID and PQ determinations, we noted it may be necessary for us to consider amendments to the IMs.⁵ This chapter describes:
- 2.1.1 our framework for considering the scope of IM amendments;
 - 2.1.2 our views on IM amendments since beginning the PQ and ID decisions process; and
 - 2.1.3 the decision-making framework we have applied in proposing IM amendments.

Framework for considering the scope of IM amendments

Statutory context

- 2.2 The purpose of IMs, set out in s 174 of the Act, is to promote certainty for regulated fibre service providers (regulated providers), access seekers, and end-users in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of fibre fixed line access services (FFLAS) under Part 6. To that end, IMs, as far as is reasonably practicable, are required to set out relevant matters in sufficient detail so that each affected regulated provider is reasonably able to estimate the material effects of the methodology on the provider: s 176(2)(a). In that way, IMs constrain our evaluative judgements in subsequent regulatory decisions and increase predictability.⁶
- 2.3 However, some uncertainty remains inevitable.⁷ As the Court of Appeal observed (in relation to a judicial review against decisions made in the IMs under Part 4 of the Commerce Act 1986 in 2012) "certainty is a relative rather than an absolute value",⁸ and "there is a continuum between complete certainty at one end and complete flexibility at the other".⁹

⁵ Commerce Commission "Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period" (15 September 2020), paragraph A1.

⁶ *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph 213.

⁷ *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph 214.

⁸ *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph 34.

⁹ *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph 60.

- 2.4 The s 174 purpose is thus primarily promoted by having the rules, processes and requirements set upfront prior to being applied by regulated providers or ourselves. However, as recognised in sections 181 and 182, these rules, processes and requirements may change. Where the promotion of s 162 or (where we consider it relevant) the promotion of s 166(2)(b) requires amendment to an IM, s 174 does not constrain this. This is because under s 166(2), we must make recommendations, determinations and decisions that we consider best give, or are likely to best give, effect:
- 2.4.1 to the purpose of s 162, as set out in s 166(2)(a); and
 - 2.4.2 to the extent that we consider it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services (promotion of workable competition), as set out in s 166(2)(b).
- 2.5 Section 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6 and other purpose statements within Part 6 are likely to be conceptually subordinate.¹⁰
- 2.6 When making our decisions we must only give effect to these subordinate purposes to the extent that doing so does not detract from our overriding obligation to promote the purposes set out in s 166(2). Giving effect to the s 162 purpose may, however, require recognition of the role that predictability plays in providing regulated providers with incentives to invest in accordance with s 162(a).

Powers to amend IMs

- 2.7 We may amend the IMs at any time, under s 181 of the Act. This extends to the publication of IMs that deal with new matters (s 178(2)). Where an amendment is material, we must follow the process in s 179 that we were required to follow when first setting the IMs.
- 2.8 In deciding whether to exercise our power to consult on amendments to the IMs, we must make the decision that we consider best gives effect to or is likely to best give effect to the s 162 purpose and the promotion of workable competition (where relevant), in addition to the s 174 purpose of the IMs discussed above. Consideration of promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunication services is unique to fibre (s166(2)(b)) and could affect a decision to consider new IMs.

¹⁰ We note that the High Court in *Wellington International Airport Ltd & Ors v Commerce Commission* considered that the purpose of IMs, set out in s 52R of the Commerce Act 1986, is “conceptually subordinate” to the purpose of Part 4 of the Commerce Act 1986 as set out in s 52A. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, paragraph 165.

Amendments inside and outside the IM review cycle

- 2.9 All IMs must be reviewed at least once every seven years, as mandated by s 182. This process is key to delivering on the s 174 certainty purpose of IMs, while at the same time allowing the regime to mature and to evolve in response to changing circumstances.
- 2.10 Given the certainty purpose of the IMs and the scheme set out in the Act to promote this purpose, we must carefully assess what amendments are appropriate to consider outside the IM review cycle. Additionally, the predictability the IMs provide is key to promoting the s 162 purpose (as required under s 166(2)(a)) and, in particular, incentives to invest.
- 2.11 On the other hand, it is important that the IMs are fit-for-purpose going into a PQ reset, especially as under s 204(1) IM amendments (other than in limited circumstances) made after the PQ path is determined (including any made under s 182) will not affect the PQ path until the next reset.¹¹

Types of amendments outside the IM review

- 2.12 In past PQ path resets under Part 4 of the Commerce Act 1986 (Part 4), the need to balance these competing considerations has led us to focus on two sorts of amendments outside the IM review:
- 2.12.1 those that support incremental improvements to PQ paths; and
- 2.12.2 those that enhance certainty about – or correct technical errors in – the existing IMs.
- 2.13 Conversely, it will not generally be appropriate to consider 'fundamental' changes outside the IM review cycle. Fundamental IMs are generally those that define the fundamental building blocks used to set PQ paths (listed in s 176(1)(a)), and that are central to defining the balance of risk and benefits between regulated providers and end-users.
- 2.14 This distinction is not absolute: we can and have reconsidered fundamental building blocks in relative isolation in the past. However, there needs to be an especially compelling and urgent rationale for doing so.¹²

¹¹ Under s 204(2) a PQ path must be reopened by us with a new PQ path made by amending the PQ determination if: an IM changes as a result of an appeal under s 183; and that changed IM would have resulted in a materially different PQ path being set had the changed IM applied at the time the PQ path was set.

¹² A previous example of this was the re-consideration of the Part 4 WACC percentile decision in 2014. The compelling reason for this was criticism by the High Court of this decision in the IM merits appeal process, and the urgency was due to the upcoming default price-quality path (DPP2) and individual price-quality (IPP2) resets for electricity distribution businesses and Transpower New Zealand Limited.

Status of the regulatory processes and rules IMs

- 2.15 The regulatory processes and rules (RPR) matters listed under s 176(1)(c) of the Act are not generally ‘fundamental’ in the sense discussed above. Further, they are closely connected to the operation of the PQ regime, so may need to be amended to support incremental improvements. This is consistent with the approach we have taken under Part 4.
- 2.16 On the other hand, the RPR IMs are intended to provide process certainty for providers and end-users (consistent with promoting s 174), so a process to amend them should only be entered into where the benefits in terms of s 166(2) outweigh any detrimental impact on this certainty.

Status of the quality and capex IMs

- 2.17 We consider that the quality dimensions and capex IMs are not ‘fundamental’ in the sense described above and should be treated in a similar way to the RPR IMs.
- 2.18 An exception to this could be the clauses of the capex IM which deal with the process for Chorus preparing an expenditure proposal for a regulatory period, as Chorus will be complying with its obligations under these clauses during the reset process.

Consideration of introducing new IMs

- 2.19 We consider that no special criteria need apply to the introduction of new IMs outside the IM review process, but that applying the general framework outlined above would in most cases mean such amendments are not appropriate outside an IM review.
- 2.20 As noted above, one of the points of difference of the Fibre regime is the explicit power to introduce IMs that deal with new matters.¹³ As such, we have not considered the framework for doing so under Part 4.
- 2.21 While the Act does not give explicit requirements about when we should (or must) add a new IM, we would only add new IMs if we thought that there was a gap in the mandatory IMs that meant that as a package they did not:
- 2.21.1 best give, or are likely to best give effect to s 166(2)(a) and s 166(2)(b) (where relevant); or
- 2.21.2 promote sufficient certainty to achieve the purpose of IMs in s 174.

¹³ Telecommunications Act 2001, section 178(2).

Introducing new IMs outside of the IM review

- 2.22 As with amendments to existing IMs, we do not consider there is a firm rule against introducing new IMs outside the IM review. However, applying the criteria above, we would be unlikely to do so.
- 2.23 Firstly, it is difficult to foresee a situation where we would need to introduce an entirely new IM to implement an incremental improvement to PQ paths or ID requirements, or to correct for errors. Based on Part 4 experience, these kinds of changes have been accommodated with amendments to existing IMs (principally the RPR IMs).
- 2.24 Secondly, extending the IMs to cover an entirely new topic would in most cases be a fundamental change; one that needed to be considered in light of the scheme of the IMs as a whole, rather than in relative isolation. Furthermore, making such a significant change outside the predictable seven-year cycle may reduce the certainty purpose of IMs.

Views since beginning the PQ and ID process

- 2.25 Before beginning this IM amendments process, we noted in our proposed process and approach paper¹⁴ there will be several contextual factors that will influence the scope of amendments we may consider as part of the PQ and ID setting process. Because of these factors it was likely that the set of IM amendments that meet our criteria will be larger prior to the first regulatory period, which starts on 1 January 2022 and ends on 31 December 2024, (PQP1) than in future resets (and compared to recent Part 4 resets).

Error correction

- 2.26 While our initial IM setting process was designed to ensure the IMs were as error free as possible, it was anticipated that through the process of making the PQ path and ID requirements we may identify errors in the IMs. As the fibre IMs are new, there was a greater chance of this being necessary prior to the first reset (as was the case with the IM amendments ahead of the second default price-quality path reset (DPP2) for electricity distribution businesses (EDB)).

¹⁴ Commerce Commission “Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period” (15 September 2020), paragraph A27.

Implementing PQ and ID approaches

- 2.27 Since beginning the process of setting the PQ and ID requirements it has become apparent that a small number of relatively minor IM amendments are necessary to implement draft decisions that we have made for our first fibre PQ path and ID determinations that best gives effect to s 166(2), the s 186 purpose of ID, or to the s 192 purpose of PQ.
- 2.28 We consulted on our proposed approach for amending fibre IMs as part of our proposed process and approach paper, and the approach was supported by Chorus in its submission.¹⁵

Decision-making framework we have applied

Statutory compliance

- 2.29 The IM amendments proposed in this paper are in accordance with s 181 of the Act.
- 2.30 In accordance with section s 179(1) of the Act, we published notices of intention relevant to the proposed IM amendments set out in this paper on 29 April 2021 (**August NOI**)¹⁶ and 30 April 2021 (**November NOI**).¹⁷

IM amendment decision making framework

- 2.31 We are using a decision-making framework that we have developed over time to support our decision making under Part 4 of the Commerce Act 1986.¹⁸ This has been consulted on and used as part of prior processes and helps provide consistency and transparency in our decisions. This approach is relevant to the IM amendment process under Part 6 of the Act also.
- 2.32 Consistent with the decision-making framework in previous Part 4 IM amendments, we have considered each proposed IM amendment by asking the questions:
- 2.32.1 does it best give (or is it likely to best give) effect to the Part 6 purpose in s 162 of the Act, and workable competition (where relevant) as referred to in s 166(2)(b), more effectively than the current IM;

¹⁵ Commerce Commission “Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period” (15 September 2020), paragraphs 23-24.

¹⁶ Commerce Commission “Notice of Intention for potential amendments to IMs for Fibre in August 2021” (29 April 2021).

¹⁷ Commerce Commission “Notice of Intention for potential amendments to IMs for Fibre in November 2021” (30 April 2021).

¹⁸ Commerce Commission “Proposed amendments to input methodologies for electricity distributors and Transpower New Zealand Limited – Reasons paper (29 May 2019) paragraph 1.10.

- 2.32.2 does it promote the IM purpose in s 174 of the Act more effectively (without detrimentally affecting our obligation under s 166(2)); or
 - 2.32.3 does it significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting our obligation under s 166(2)).
- 2.33 We refer to the outcomes specified in the paragraph above as the 'IM amendments framework outcomes' in this paper.

Chapter 3 Amendments needed in order to implement the proposed approach to determining Chorus' initial PQ RAB

Purpose of this chapter

- 3.1 This chapter sets out the proposed IM amendments that are necessary to implement the proposed approach to determining Chorus' initial PQ RAB. These proposed IM amendments were identified as potential IM amendments in the August NOI.
- 3.2 For each of our proposed changes, we explain:
- 3.2.1 our current requirement; and
 - 3.2.2 our proposed amendment, and how the proposed amendment is likely to promote an IM amendments framework outcome.

Summary of proposed IM amendments

- 3.3 We are currently in the process of determining the first PQ path for Chorus under s 170 of the Act. We have commenced evaluation of Chorus' initial PQ RAB proposal as part of that process. That initial evaluation has led us to refine our intended process and timeframe for determining Chorus' initial PQ RAB.¹⁹
- 3.4 We propose to use a transitional initial PQ RAB for Chorus' first PQ path to be determined in November 2021, based on an application of provisional cost allocators, which will provide provisional estimates of initial PQ RAB asset values. This is to recognise that at the time of determining the PQ path, scrutiny of unallocated asset values may not have been completed and the final cost allocators that will be applied to determine the actual initial PQ RAB asset values will not yet be available. Transitional assumptions are therefore needed to obtain an estimate of the initial PQ RAB.
- 3.5 The actual initial PQ RAB for Chorus will be determined in 2022, once we have applied further review and scrutiny to the asset values and cost allocators that comprise the transitional initial PQ RAB. We will then 'true-up' for differences between the transitional and actual initial PQ RAB values through a wash-up mechanism, which will result in adjusted revenue values in the second PQ path.
- 3.6 In order to implement this proposed approach to determining Chorus' initial PQ RAB, we are proposing to make the following amendments to the IMs for PQ paths:

¹⁹ Commerce Commission "Determining Chorus' first fibre price-quality path – Process update paper" (30 April 2021); Commerce Commission "Chorus' initial price-quality regulatory asset base as at 1 January 2022 – Consultation on Chorus' initial price quality RAB proposal" (30 April 2021).

- 3.6.1 We propose amending the Specification of Price and Revenues fibre IM to provide greater detail and more certainty about the “wash-up amount” that will apply to Chorus’ price path from the second regulatory period onwards, including:
- 3.6.1.1 specifying how wash-up accruals are calculated;
 - 3.6.1.2 specifying how the wash-up account is to be maintained; and
 - 3.6.1.3 requiring that the wash-up includes the revenue impact of the difference between the transitional initial PQ RAB and the final initial PQ RAB.
- 3.6.2 We propose amending the Asset Valuation fibre IM to specify that our transitional initial PQ RAB would be determined, in part, on “estimates of historic values”, rather than “actual values”.
- 3.6.3 We propose amending the Cost of Capital fibre IM to specify that the transitional initial PQ RAB inputs to the “term credit spread differential allowance” and “term credit spread differential” for PQP1 would be determined, in part, on “relevant estimates of historic values”, rather than “relevant actual values”.
- 3.6.4 We propose amending the Capital Expenditure fibre IM to change the date by when we must determine a “base capex allowance” and “connection capex baseline allowance” for PQP1.

Proposed amendment to Specification of Price and Revenues fibre IM – wash-ups

Current IM requirement

- 3.7 The current specification of price and revenues IM provides for the inclusion of a wash-up amount as a component of allowable revenue.²⁰ The wash-up amount is defined as the amount the Commission specifies in a PQ determination for a regulatory year, including amounts in relation to the wash-up mechanism referred to in s 196(2) of the Act.
- 3.8 How this wash-up amount is calculated or carried forward into future periods is not specified.

²⁰ *Fibre input methodologies determination 2020* [2020] NZCC 21, Clause 3.1.1(1).

Proposed amendment and reasons

- 3.9 We propose including additional detail about how the wash-up amount would be calculated and carried forward. Specifically:
- 3.9.1 the ‘wash-up amount’ for each **regulatory year** from PQP2 onwards would include amounts we determine for each year, and these amounts would equal (in present value terms) a **closing wash-up account balance adjustment**,²¹
 - 3.9.2 the **closing wash-up account balance adjustment** would be an amount we draw down from the **wash-up account balance** in advance of each **regulatory period** (from PQP2 onwards);²²
 - 3.9.3 the **closing wash-up account balance adjustment** would not be greater, in absolute value terms, than the sum of:
 - 3.9.3.1 the present value of the **wash-up account balance** for the last completed **regulatory year** of the current **regulatory period**, as at the end of that period;²³ and
 - 3.9.3.2 a **forecast wash-up accrual** for the final **regulatory year** of the current **regulatory period**;²⁴
 - 3.9.4 each year’s actual or forecast accrual values would be the actual (or forecast) difference between the **actual revenue allowance** and the **total FFLAS revenue**,²⁵
 - 3.9.5 the **actual revenue allowance** would include the actual (or forecast of actual) revenue impacts of:²⁶

²¹ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), Clause 3.1.1(4).

²² Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), Clause 3.1.1(5).

²³ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), Clause 3.1.1(5)(a). For example, when calculating the ‘closing wash-up balance adjustment’ that will be drawn down in PQP2, the “current period” referred to in clause 3.1.1(5)(a) would be PQP1.

²⁴ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), Clause 3.1.1(5)(b). For example, when calculating the ‘closing wash-up balance adjustment’ that will be drawn down in PQP2, the “current period” referred to in clause 3.1.1(5)(b) would be PQP1.

²⁵ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), Clauses 3.1.1(6) and 3.1.1(7).

²⁶ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), Clause 3.1.1(8).

- 3.9.5.1 the difference between the transitional **initial PQ RAB** and the final **initial PQ RAB** (for PQP1 only²⁷); and
 - 3.9.5.2 the difference between the forecast and actual “annual benefit of Crown financing building block”;
 - 3.9.5.3 the difference between the capex allowance determined before the regulatory period commences, and the actual capex allowance (updated for any individual capex allowance determined in respect of that year after that period commences);
 - 3.9.5.4 the difference between forecast and actual pass-through costs;
 - 3.9.5.5 the forecast connection capex variable adjustment (for the final year of a regulatory period only);
 - 3.9.5.6 where the requirements for calculating the matters above are specified by us;²⁸ and
- 3.9.6 Chorus would maintain the ‘wash-up account’, which would track the balance of the actual wash-up accruals, as well as effect of the closing wash-up account balance adjustments, and a time value of money adjustment would be applied using a rate equal to the mid-point estimate of the post-tax weighted average cost of capital (WACC).²⁹
- 3.10 The request for information and the calculations necessary to derive the wash-up account balance would also be included in a s 221 notice issued by the Commission. This would apply the formula below, which could alternatively be included in the IM determination, and would be calculated on a year-end basis (31 December):

$$\begin{aligned}
 & \textit{Closing washup account balance} \\
 &= \textit{Opening washup account balance} \times (1 + \textit{post tax WACC}) \\
 &+ \textit{washup accrual amount} \\
 &- \textit{closing washup account balance adjustment}
 \end{aligned}$$

²⁷ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), Clause 3.1.1(10).

²⁸ For example, under a notice issued under s 221 of the Act.

²⁹ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), Clause 3.1.1(9).

- 3.11 Under this proposal, the wash-up account balance would reflect actual wash-up accruals, as well as amounts drawn down by us. Wash-up accruals would be the difference between the actual revenue allowance and actual total FFLAS revenue. The proposed IM amendments make clear that the accrual amounts calculated in respect of PQP1 would include the revenue impacts of the difference between the transitional and final initial PQ RAB, as well as of a number of other matters (listed in paragraph 3.9.5 above).
- 3.12 As part of each PQP revenue setting decision from PQP2 onwards, we would determine how much we would draw down from the forecast wash-up account balance. In the draft IM amendment determination, this draw down amount is termed the “closing wash-up account balance adjustment”. The forecast wash-up account balance is represented in the determination as the sum of: the actual wash-up account balance at the end of the second-to-last year of the regulatory period, brought forward in present value terms to the end of that period; and the forecast wash-up accrual for the last year of that period.
- 3.13 Because actual and forecast under- or over-recoveries of revenue might result in the forecast wash-up account balance being positive or negative, the amount we could draw down could also be positive or negative. However, the maximum amount we would be able to draw down would be the entire positive or negative forecast balance. In other words, if the balance is forecast to be positive (or negative), we could draw down the entire positive (or negative) amount to zero, but we could not draw down the forecast balance beyond that.
- 3.14 The drawdown amount (ie, the closing wash-up account balance adjustment) would then provide the basis for one of the inputs into the wash-up amounts included in forecast allowable revenue for each year of the coming regulatory period. The adjustment may be ‘spread’ across the coming regulatory period, but the amounts included in each wash-up amount must equal the total adjustment in present value terms. Any amounts not drawn down will remain in the wash-up account and will be available for draw down in future regulatory periods in a net present value manner.
- 3.15 We consider this amendment better promotes the s 174 purpose of IMs, as it provides more certainty about how the wash-up mechanism will work.

Proposed amendment to Asset Valuation fibre IM

Current IM requirement

- 3.16 Clauses 3.3.1(6)-(8) of the Asset Valuation IM are transitional provisions and only operate for the purposes of determining the maximum revenues for PQP1.

- 3.17 The transitional initial PQ RAB is determined, in part, based on “relevant actual values”. In particular, it is determined by taking the “opening RAB value” of all fibre assets employed in the provision of “PQ FFLAS” “as of the implementation date”, in accordance with clauses 3.3.1(7)(a) and 3.3.1(8) before 1 January 2022, which involves:³⁰
- 3.17.1 adopting any relevant actual values prepared in accordance with **GAAP** and obtained from a **regulated provider** by the **Commission** prior to the **implementation date**, provided those **GAAP** values are applied in accordance with s 177 of the **Act** relating to the “initial value of a fibre asset”;
- 3.17.2 where relevant actual values are not available in respect of any **disclosure year** prior to the implementation date, applying forecasts of all values required to determine the “opening RAB values” as of the **implementation date** using **GAAP** values obtained under the previous paragraph to inform or support those forecast values.
- 3.18 Clause 3.3.1(8)(d) provides:
- the relevant actual values contributing to the “opening RAB value” of the **financial loss asset**, as adopted under paragraph (a), are determined in accordance with clause B1.1.5(1)(a) of Schedule B.
- 3.19 Clause B1.1.5(1)(a) of Schedule B provides:
- (1) For the purpose of clauses 3.3.1(8)(d)-(e), the “opening RAB value” of the **financial loss asset** adopted under clauses 3.3.1(8)(a)-(b) is determined by:
- (a) adopting actual values for calculations under clauses B1.1.2(2)-(9) of Schedule B in respect of **financial loss year 2012, financial loss year 2013, financial loss year 2014, financial loss year 2015, financial loss year 2016, financial loss year 2017, financial loss year 2018, financial loss year 2019, and financial loss year 2020**
- 3.20 Clause 3.3.1(8)(c) also requires that forecasts must either be based on relevant and demonstrably reasonable assumptions, data, methods and judgements, or that we have approved the forecast values in accordance with an IM or a process relating to an ID or PQ determination.

³⁰ *Fibre input methodologies determination 2020* [2020] NZCC 21, Clause 3.3.1(8)(a)-(b).

Proposed amendment and reasons

- 3.21 We propose amending the Asset Valuation IM to specify that the transitional initial PQ RAB would be determined, in part, based on “estimates of historic values”, rather than “actual values”.
- 3.22 We consider this change is necessary because the “actual values” that currently exist are simply asset values within Chorus’ financial systems. Actual values will be based on adopting certain historic values and applying appropriate IMs (including cost allocation) to determine the RAB value. The relevant RAB asset values, which the current IMs envisage, can only be determined once we have carried out appropriate scrutiny.³¹ We consider that we do not have sufficient time to complete the required scrutiny in 2021, so we propose adopting estimates of historic values for the transitional initial PQ RAB used in determining the PQP1 path, and completing scrutiny of the initial PQ RAB before finalising the initial PQ RAB in 2022.
- 3.23 In order to determine the UFB asset values, Chorus has:
- 3.23.1 taken individual actual asset values from its financial systems;³²
 - 3.23.2 applied a transformation method to aggregate and summarise those values;³³ and
 - 3.23.3 applied chosen cost allocators in order to produce proposed UFB asset values for each year of the pre-implementation period.³⁴
- 3.24 As part of our determination of the financial loss asset (FLA), we are scrutinising both the transformation of individual actual values to aggregated values, and the choice and calculation of the cost allocators that are then applied. We do not consider that Chorus’ asset values will have been subject to sufficient scrutiny by the time the PQ path decision is made in 2021.

³¹ For example, see Commerce Commission “Main final decisions reasons paper” (13 October 2020), paragraph 4.69.

³² Analysys Mason report for Chorus “Building Block model IAV model documentation IAV model v314_120c” (24 March 2021), page A-3.

³³ Analysys Mason report for Chorus “Building Block model IAV model documentation IAV model v314_120c” (24 March 2021), page A-3.

³⁴ Analysys Mason report for Chorus “Building Block model IAV model documentation IAV model v314_120c” (24 March 2021), section 3.6.5.

3.25 We therefore need to specify that rather than adopting “actual values” (which can only be determined after appropriate scrutiny), in the calculation of the transitional initial PQ RAB we would need to adopt “estimates of historic values”. This change is intended to make clear that the asset values and cost allocators comprising the transitional initial PQ RAB would have undergone some review of material cost allocations and direct attribution of assets and operating costs at that stage. However, those asset values and cost allocators would still need to be subject to further assurance and scrutiny before the initial PQ RAB is finalised in 2022.

3.26 We consider making this change:

3.26.1 is likely to best give effect to s 166(2) of the Act because:

3.26.1.1 the initial PQ RAB value has a material, ongoing effect on Chorus’ financial viability and end-user prices for FFLAS;

3.26.1.2 conducting further scrutiny of Chorus’ initial PQ RAB proposal will reduce the risk of material under or overstatement of the initial PQ RAB value, which will ensure Chorus has incentives to innovate and invest (the outcome promoted in s 162(a)) and that Chorus is limited in its ability to extract excessive profits (the outcome promoted in s 162(d)); and

3.26.1.3 reducing the risk of an initial PQ RAB that is over or understated is more likely to promote end-user prices that reflect those in a workably competitive market (s 166(2)(b)).

3.26.2 will enhance certainty, consistent with s 174, about the requirements for calculating the transitional initial PQ RAB. We consider our proposed approach is preferable to other ways of managing uncertainty that might risk a material under- or over-statement of Chorus’ initial PQ RAB (for instance, not carrying out any scrutiny of Chorus’ initial PQ RAB proposal prior to determining PQP1).

Proposed amendment to the Cost of Capital fibre IM

Current IM requirement

3.27 The current requirements in the Cost of Capital fibre IM that specify the initial PQ RAB inputs to the “term credit spread differential allowance” and “term credit spread differential” for PQP1, refer to ‘actual values’.³⁵

³⁵ *Fibre input methodologies determination 2020* [2020] NZCC 21, clauses 3.5.7(2)(c)-(d) and 3.5.10(1)(d)(i)-(ii).

Proposed amendment and reasons

- 3.28 We propose amending the “term credit spread differential allowance” and “term credit spread differential” IMs for PQP1 such that the transitional initial PQ RAB inputs must be determined, in part, on “relevant estimates of historic values”, rather than on “actual values”.³⁶
- 3.29 As described above, our proposed approach to determining Chorus’ initial PQ RAB is to use a transitional initial PQ RAB for PQP1 to be determined in November 2021, based on estimates of actual values and an application of provisional cost allocators.³⁷
- 3.30 Having the term credit spread differential IMs for the first regulatory period based, in part, on “relevant estimates of historic values” would allow asset value inputs that are consistent with our transitional initial PQ RAB valuations as outlined in our proposed amendment to the Asset Valuation fibre IM discussed above.
- 3.31 As with our other proposed IM amendments that implement our process for determining Chorus’ initial PQ RAB, we consider that IM amendments allowing us to use a transitional initial PQ RAB for PQP1 to be determined in November 2021 would allow for further scrutiny that will improve the quality and accuracy of the final initial PQ RAB determination in 2022. These will be based on estimates of asset values and an application of provisional cost allocators.
- 3.32 This further scrutiny will reduce the risk of material under or overstatement of these values, which would not be likely to best give effect to the s 166(2) purposes (in particular the outcome in s 162(a) of regulated providers having incentives to innovate and to invest and the outcome in s 162(d) of regulated providers being limited in their ability to extract excessive profits)).

Proposed amendment to the Capital Expenditure fibre IM

Current IM requirement

- 3.33 The current IM requires us to determine a base capex allowance and a baseline connection capex allowance for PQP1, no later than 3 months before the start of PQP1.³⁸

³⁶ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), clauses 3.5.7(2)(c)-(d) and 3.5.10(1)(d)(i)-(ii) of Attachment B.

³⁷ Commerce Commission “Determining Chorus’ first fibre price-quality path: Process Update” (30 April 2020), paragraph 13.

³⁸ Refer to section 3.7.12(1)(a) for the relevant IM requirement for a base capex allowance determination and section 3.7.20(1)(a) for the relevant IM requirement for a baseline connection capex allowance determination.

- 3.34 Under the current IMs, we would need to determine our base capex allowance and connection capex baseline allowance by no later than 30 September 2021.

Proposed amendment and reasons

- 3.35 We propose amending the IMs to require us to determine a base capex allowance and connection capex baseline allowance as soon as practicable, but no later than before the start of PQP1. .
- 3.36 The purpose of this amendment is to align our expenditure allowance decisions with our final PQ determination for PQP1 which is planned for November 2021.
- 3.37 In our main final IM reasons paper, we explained that there would be different timeframes for two processes relating to the capex allowance determination for PQP1.³⁹ We originally considered that to determine the base capex allowance three months prior to the start of PQP1 provided sufficient time to assess Chorus' proposal and to include the capex allowance in the MAR in the PQ determination.
- 3.38 We now consider it is important to align our capex allowance determinations with the final PQ determination. This is because it ensures that cost allocation assessments across Chorus' transitional initial PQ RAB and forecast capital expenditure for PQP1 are aligned.
- 3.39 The process for determining cost allocation for expenditure allowances is linked to the process for assessing the initial PQ RAB. Postponing the date means we can assess cost and asset allocation for expenditure along with related issues for the initial PQ RAB valuation, which is being consulted on in August. This therefore ensures that we are consistent in our assessment of allocations across the initial PQ RAB and expenditure.
- 3.40 We also consider that it allows us more time to appropriately consider cost and asset allocation submissions impacting on the allowance determination. We consider that the impact on Chorus from this proposed amendment is manageable. This amendment will provide interested persons additional clarity on how these decisions (initial PQ RAB and expenditure) are linked and treated. Therefore, this proposed amendment to the Capital Expenditure fibre IM will promote the same positive outcomes as the related amendments to the Asset Valuation fibre IM above.

³⁹ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), paragraphs 7.356-7.372.

Chapter 4 Proposed amendments that are necessary to implement draft decisions we have made for our first PQ path and ID requirements

Purpose of this chapter

- 4.1 This chapter describes the amendments to the fibre IMs that we consider to be necessary to implement draft decisions that we have made for our first draft PQ path and ID requirements. These proposed IM amendments were identified as potential IM amendments in the November NOI.
- 4.2 For each of our proposed changes, we explain:
- 4.2.1 our current requirement; and
 - 4.2.2 our proposed amendment, and how the proposed amendment is likely to promote an IM amendments framework outcome.

Summary of proposed IM amendments

- 4.3 In order to implement draft decisions that we have made for our ID requirements, we are proposing a number of amendments to the fibre IMs for disclosure year 2022 for the LFCs. These consist of:
- 4.3.1 An amendment to the Asset Valuation fibre IM to amend the definition of “revaluation rate”;
 - 4.3.2 An amendment to the Taxation fibre IM to amend the definition of “notional deductible interest”; and
 - 4.3.3 An amendment to the Cost of Capital fibre IM to change the timing of our weighted average cost of capital (WACC) determinations.
- 4.4 In order to implement draft decisions that we have made in respect of quality for our first PQ path and ID requirements, we are proposing an amendment to the definition of “downtime” in the Quality Dimensions fibre IM.

Proposed amendment to Asset Valuation fibre IM

Current IM requirement

- 4.5 The current IM sets out a standard method for calculation of the revaluation rate for a disclosure year in clause 2.2.11(4).
- 4.6 This definition assumes that a disclosure year for a regulated provider subject to this clause starts and ends on consistent dates from the commencement of ID and that the length of the disclosure year will always be 12 months.

Proposed amendment and reasons

4.7 The initial ID reporting period for “disclosure year 2022” will have different lengths depending on the regulated provider’s disclosure year end date as, based on our draft decisions, Enable, Northpower and UltraFast’s first “disclosure year” under the new ID requirements would commence several months before we make our ID determination:

4.7.1 while “Disclosure year 2022” would commence on 1 July 2021 for Enable and Northpower, we would only require reporting for the period that commences on 1 January 2022 and ends on 30 June 2022; and

4.7.2 while “Disclosure year 2022” would commence on 1 April 2021 for UltraFast, we would only require reporting for the period that commences on 1 January 2022 and ends on 31 March 2022. .

4.8 The requirements for the LFCs to revalue their RABs only applies from 1 January 2022, and the initial disclosure period will be shorter than a year. Therefore, we are adding specific formulas for the calculation of the revaluation rate for that part of the “disclosure year 2022” following the implementation date for Ultrafast, Enable and Northpower. These changes ensure that the revaluation rate for disclosure year 2022 is correctly calculated, given disclosure years for these regulated providers will end on different dates.

4.9 The changes to the IM add the following calculations for disclosure 2022:

4.9.1 ‘Revaluation rate’ means, for **UltraFast**, in respect of **disclosure year 2022**, the amount determined in accordance with the formula-

$$\left(\frac{CPI_t}{CPI_{t-1}} \right) - 1$$

where-

CPI_t means **CPI** for the quarter that coincides with 31 March 2022; and

CPI_{t-1} means **CPI** for the quarter that coincides with 31 December 2021.

4.9.2 ‘Revaluation rate’ means, for **Enable** and **Northpower Fibre**, in respect of **disclosure year 2022**, the amount determined in accordance with the formula-

$$\left(\frac{CPI_t}{CPI_{t-1}} \right) - 1$$

where-

CPI_t means **CPI** for the quarter that coincides with 30 June 2022; and

CPI_{t-1} means **CPI** for the quarter that coincides with 31 December 2021.

- 4.10 The above specific revaluation rate formulas for disclosure year 2022 recognise that the length of the reporting period in this first disclosure period will vary by regulated provider, depending on the regulated provider's disclosure year end date.
- 4.11 Correcting these formulas for the revaluation rate will reduce the risk of under or overstatement of the RAB value, which is more consistent with Chorus' and other LFC's incentives to innovate and invest (s 162(a)) and with limiting their ability to extract excessive profits (s 162(d)).

Proposed amendment to Taxation fibre IM

Current IM requirement

- 4.12 The notional deductible interest calculation specified at clause 2.3.1(7) produces the value for a full 12-month disclosure year.

Proposed amendment and reasons

- 4.13 Our draft decisions on disclosure year ends means that Ultrafast (31 March) and Enable and Northpower (30 June) will be initially disclosing results in the 2022 disclosure year for reporting periods of three months and six months respectively. A proportionate adjustment to the cost of debt is therefore required to reflect that the notional deductible interest is calculated for the same period. This is a transitional adjustment, only needed for disclosure year 2022.
- 4.14 We propose adding the following provisions to implement the proportionate adjustment for the cost of debt for disclosure year 2022:

(8) In respect of **UltraFast** for **disclosure year 2022**, 'notional deductible interest' means the value determined in accordance with the following formula:

$$\left(\text{sum of all opening RAB values} - \text{Crown financing outstanding} \right) \times \text{leverage} \times \left(\frac{\text{cost of debt}}{4} \right)$$

where:

Crown financing outstanding is the amount of **Crown financing** outstanding as of the **implementation date**.

(9) In respect of **Enable** and **Northpower Fibre** for **disclosure year 2022**, 'notional deductible interest' means the value determined in accordance with the following formula:

$$\left(\text{sum of all opening RAB values} - \text{Crown financing outstanding} \right) \times \text{leverage} \times \left(\frac{\text{cost of debt}}{2} \right)$$

where:

Crown financing outstanding is the amount of **Crown financing** outstanding as of the **implementation date**.

- 4.15 Similarly to the proposed correction to the revaluation rate, by correcting these formulas for notional deductible interest for the different reporting periods in disclosure year 2022, we would give effect to s 162(a) and s 162(d) more effectively than the current IM.

Proposed amendment to Cost of Capital fibre IM

Current IM requirement

- 4.16 The IMs require us to determine our annual vanilla WACC and post-tax WACC determinations and inputs to those determinations “within 1 month of the start of the disclosure year in question”.

Proposed amendment and reasons

- 4.17 As a result of our draft decision to specify 30 June as the disclosure year end for Enable and Northpower and 31 March for UltraFast, it is not possible for us to determine our annual WACC determinations for these LFCs until after we have made our final ID determination.⁴⁰ This is because the start of the disclosure year in question will not be known until after we have made our final decision on the applicable regulatory disclosure year ends to use for these regulated providers under ID.
- 4.18 We propose changing the timing of our annual WACC determinations for disclosure year 2022 for the other LFCs to require our determinations within “1 month of the implementation date”, rather than within “1 month of the start of the disclosure year in question.”⁴¹ This change would:
- 4.18.1 allow interested persons to assess the WACCs that apply for the disclosure year 2022 shortly after we make our final ID determination (December 2021); and
 - 4.18.2 align the annual WACC determination for the other LFCs with Chorus for disclosure year 2022, thus enabling interested persons to assess Chorus’ annual WACC for disclosure year 2022 at the same time as the other LFCs.⁴²

⁴⁰ Chorus has a draft disclosure year end of 31 December.

⁴¹ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), clauses 2.4.1(1)(b)-(c), 2.4.1(2)(b)-(c), 2.4.3(1)(a)-(c), 2.4.4(1)(a)-(c) and 2.4.5(1)(a)-(c).

⁴² *Fibre input methodologies determination 2020* [2020] NZCC 21, clauses 2.4.1(1)(b), 2.4.1(2)(b), 2.4.3(1)(b), 2.4.5(1)(b).

- 4.19 Specifying the date for our annual WACC determinations for disclosure year 2022 for the other LFCs would promote certainty, consistent with s 174, as the current IMs are not specific about when we will determine our annual WACC determinations for disclosure year 2022 for the other LFCs.
- 4.20 We note that the existing IMs would continue to apply for disclosure year 2023 onwards for all LFCs. Therefore, as a result of our draft decision from Fibre Information Disclosures: Draft Reasons Paper,⁴³ we would need to determine annual WACCs for:⁴⁴
- 4.20.1 Enable and Northpower by 31 July for disclosure year 2023 onwards;
 - 4.20.2 Ultrafast by 30 April for disclosure year 2023 onwards; and
 - 4.20.3 Chorus by 31 January for disclosure year 2023 onwards.

Proposed amendment to Quality Dimensions fibre IM

Current IM requirement

- 4.21 The current IM determination specifies ‘downtime’ in relation to the length of time an access seeker or end-user experiences a planned or unplanned outage. This means that the calculation of average downtime would also be in relation to planned and unplanned outages.⁴⁵

Proposed amendment and reasons

- 4.22 If not specified appropriately, availability performance measures can lead to perverse incentives. For example, where a regulated provider upgrading its network requires planned outages that benefit access seekers, including planned outages in the availability performance measure would detrimentally affect its reported availability performance.
- 4.23 We therefore propose removing planned outages from the calculations of “average downtime” and have reporting for downtime differentiated by “planned downtime” and “unplanned downtime”. A calculation of “average unplanned downtime” replaces the calculation of average downtime.
- 4.24 We have therefore:

⁴³ Commerce Commission “Fibre Information Disclosures - Draft decisions – Reasons Paper (27 May 2021).

⁴⁴ *Fibre input methodologies determination 2020* [2020] NZCC 21, clauses 2.4.1(1)(b), 2.4.1(2)(b), 2.4.3(1)(b), 2.4.5(1)(b).

⁴⁵ *Fibre input methodologies determination 2020* [2020] NZCC 21, clause 1.1.4(2), definition of “downtime”.

- 4.24.1 Changed the references to “planned outage” and “unplanned outage” to “planned downtime” and “unplanned downtime” in the “downtime” definition; and
 - 4.24.2 Added new definitions for “planned downtime” and “unplanned downtime”.
- 4.25 This means we can define a measurement for “average unplanned downtime” that would promote s 162(b) more effectively than the current IM.
- 4.26 In addition, we have changed the reference to “access seeker or end-user” in the definition of “downtime”, from “access seeker or end-user” to “connection”. We have also included a definition of “connection”, and a consequential definition for “UNI” (ie, user-network interface).
- 4.27 This change is to allow our proposed ID and PQ measures of availability to be implemented in a way that avoids ambiguity and the possibility of double counting, consistent with s 162(b) and s 174, because for many regulated fibre fixed line access services both an access seeker and an end-user would both be experiencing the same fault.

Chapter 5 Proposed amendments to enhance certainty for PQ

Purpose of the chapter

- 5.1 This chapter describes the amendments to the fibre IMs that would enhance certainty about the rules, requirements and processes that apply to PQ paths. These proposed IM amendments were identified as potential IM amendments in the November NOI.
- 5.2 For each of our proposed changes, we explain:
- 5.2.1 our current requirement;
 - 5.2.2 our proposed amendment, and how the proposed amendment is likely to promote an IM amendments framework outcome.
- 5.3 We have also explained we are not proposing an IM amendment, despite indicating a potential IM amendment in the November NOI.

Summary of our proposed IM amendments

- 5.4 In order to enhance certainty about the rules, requirements and processes that apply to PQ paths we are proposing a number of amendments to the Specification of Price and Revenue fibre IM, to clarify the definitions of “total FFLAS revenue”, “allowable revenue”, “pass-through costs” and “building blocks revenue”. These changes would clarify that these definitions are to be applied on a forecast basis.

Proposed amendments to Specification of Price and Revenue fibre IM

Current IM requirement

- 5.5 The current specification of price and revenue IMs state that ‘maximum revenues’ for the purposes of s 194(2)(b) and s 195 are specified in terms of **total FFLAS revenue** not exceeding **allowable revenue**.⁴⁶

Proposed amendment and reasons

- 5.6 We have proposed redefining ‘maximum revenues’ on the basis of **forecast total FFLAS revenue** and **forecast allowable revenue**. **Forecast allowable revenue** is now defined by reference to forecast **building blocks revenue** and forecast **pass-through costs**.

⁴⁶ *Fibre input methodologies determination 2020* [2020] NZCC 21, clause 3.1.1.

- 5.7 We have made this change because our proposed approach to the revenue path in the **PQ determination** assesses compliance on a forecast basis. This amendment would clarify that compliance is not required to be demonstrated on the basis of actual allowable revenues or total FFLAS revenues.⁴⁷ We consider that this change enhances certainty, consistent with s 174.
- 5.8 As a consequence of this change, we have also proposed changing the references to “total FFLAS revenue” and “allowable revenue” to “forecast total FFLAS revenue” and “forecast allowable revenue” in the Reconsideration of a Price-Quality Path IM.⁴⁸

We are not proposing an amendment to the meaning of “income”

- 5.9 In our November NOI, we indicated that we were considering amendments to clarify the meaning of “income” as used in Schedule B of the fibre IMs.⁴⁹ Having considered this further, we do not consider that clarifying this term is necessary.

⁴⁷ The difference between forecast allowable revenues and total FFLAS revenues and actual allowable revenues and total FFLAS revenues are accounted for by the proposed wash-up mechanism discussed in Chapter 3.

⁴⁸ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), clauses 3.9.3(1)(c)(i), 3.9.4(1)(b), 3.9.5(1).

⁴⁹ Commerce Commission “Proposal to Make Proposed Amendments to the Input Methodologies for Fibre – potential November 2021 amendments” (30 April 2021), paragraph 7b.

Attachment A Proposed amendments to correct technical errors

Purpose of Attachment A

- A1 This attachment outlines the amendments to fibre IMs that are necessary to correct technical errors in our IM determination. These proposed IM amendments were identified as potential IM amendments in the August NOI.
- A2 While our initial IM setting process was designed to ensure the IMs were as error free as possible, it was anticipated that through the process of making our PQ path and ID requirements we may identify errors in the determination. As the fibre IMs are new, there was a greater chance of this being necessary prior to the first PQ path reset.
- A3 We have also explained we are not proposing IM amendments, despite indicating a potential IM amendments in the August NOI.

Error in our use of “commissioned”

Current IM requirement

- A4 In the value of commissioned assets IMs for ID, clause 2.2.13(6)(b) specifies (for the avoidance of doubt) that:⁵⁰

“if, after a **core fibre asset** is **commissioned**, a **regulated provider** incurs expenditure on the **core fibre asset** that forms part of the cost of that **core fibre asset** under **GAAP**, such expenditure is treated as relating to a separate asset.”

Proposed amendment and reasons

- A5 We propose changing the phrase “commissioned” to “commissioned for FFLAS” in clause 2.2.13(6)(b) as the existing reference to “commissioned” was made in error.⁵¹
- A6 An asset will become a “core fibre asset” when it is “commissioned for FFLAS”. An asset may not be a “core fibre asset” when it is “commissioned” as it may be solely employed by a regulated provider in providing another service (i.e., “services that are not regulated FFLAS”). Therefore, the current reference to “commissioned” in clause 2.2.13(6)(b) is an error.

⁵⁰ *Fibre input methodologies determination 2020* [2020] NZCC 21, clause 2.2.13(6)(b).

⁵¹ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), clause 2.2.13(6)(b) of Attachment B.

A7 We consider that making this change would:

- A7.1 enhance certainty, consistent with s 174, about the requirements when a regulated provider incurs expenditure on a core fibre asset after it is employed in the provision of regulated FFLAS; and
- A7.2 align the drafting for clause 2.2.13(6)(b) with the equivalent requirement for UFB assets in clause B1.1.3(4)(b) of Schedule B, which uses the equivalent term “commissioned for UFB FFLAS”.⁵²

We are not proposing amendments for other formulas or terms

- A8 In our August NOI, we indicated that we were considering amendments which would correct for possible technical errors in the formulas in clause B1.1.2(5)-(6) of Schedule B of the fibre IMs for determining the “present value benefit of Crown financing”. Having considered this further, we have not identified any errors in those formulas, and therefore we do not propose any amendments to them.
- A9 We also indicated that we were considering amendments which would correct for technical errors in our use of the terms “commissioned for FFLAS”, “commissioning date”, “FFLAS commissioning date”, “regulated provider” and “regulated fibre service provider”.⁵³ Having considered this further, we have not identified any errors in our use of “commissioned for FFLAS”, “commissioning date”, “FFLAS commissioning date”, “regulated provider” and “regulated fibre service provider”. Therefore, we do not propose any amendments to these terms.

⁵² *Fibre input methodologies determination 2020* [2020] NZCC 21, clause B1.1.3(4)(b) of Schedule B.

⁵³ Commerce Commission “Proposal to Make Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments” (29 April 2021), paragraph 6b.