

27 August 2024

[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 disclosure 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 disclosure requirements under the Fibre Information Disclosure Determination 2021 (the **ID Determination**) for financial disclosures due no later than 5 months after the end of the disclosure year 2024.^{1 2}
2. This notice exempts Northpower from certain Crown financing disclosure requirements with respect to its disclosures for disclosure year 2024, which is contained within the Report on ID FFLAS Report on Investment,³ as set out in Schedule 1 of the ID Determination.
3. We have granted this exemption due to inconsistencies between certain line items in Schedule 1 and the associated definitions for those terms in Schedule 16 of the ID Determination. We consider that, due to these inconsistencies, it would be unworkable for Northpower to complete and disclose the information in Schedule 1 in its current form.
4. We note that Northpower was granted a similar exemption for disclosure years 2022 and 2023 in relation to Crown financing disclosure requirements under Schedules 1,

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

² The disclosure year for Northpower Fibre is the 12-month period ending on 31 March of the year the disclosure relates to.

³ 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.

3 and 8 of the ID Determination for financial disclosures due by 31 August 2023.⁴ In April 2024, we amended the ID Schedule templates for Chorus and ID-only regulated providers.⁵ In this amendment we addressed inconsistencies in Schedule 3 and Schedule 8 for Crown financing related line items for the calculation of notional deductible interest. However, the necessary adjustments were not made to provide for the impact of Crown financing on the calculation of the return on investment (ROI) in Schedule 1.

Background

5. 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**).⁶ The providers are:

5.1 Chorus Limited; and

5.2 Enable Networks Limited, Northpower, and Tuatahi First Fibre Limited (the **ID-only regulated providers**).

6. Chorus and the ID-only regulated providers each have their own set of financial and asset management schedules to complete for each disclosure year.⁷

7. Northpower's financial and asset management reporting for disclosure year 2024 is due to be publicly disclosed by 2 September 2024. 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.⁸

Crown financing

8. The Fibre Input Methodology Determination 2020 (the **IM Determination** or **IM**) requires the providers to take into account the annual benefit of Crown financing when calculating certain values.⁹

9. Schedule 16 sets out the definitions used for terms used in financial and asset management reporting (Schedules). The IM calculations described in paragraph 8 are referred to in the definitions for the Schedule 16 terms:

⁴ Commerce Commission, Northpower Fibre Limited - Exemption in relation to Crown financing requirements under the Fibre Information Disclosure Determination 2021, dated 30 August 2023. This exemption notice can be found [here](#) on our website.

⁵ Commerce Commission, Amendments to information disclosure requirements found [here](#) on our website.

⁶ Telecommunications (Regulated Fibre Service Providers) Regulations 2019, regulation 5.

⁷ Commerce Commission, [Fibre Information Disclosure Final Decisions Reasons Paper](#) (30 November 2021), Table 4.1 Overview – Final Decisions on Financial Information,

⁸ Northpower's disclosure year is the 12 months ending 31 March each year.

⁹ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended, clause 2.4.11.

9.1 **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**;

10. "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:

10.1 **"ROI – comparable to a vanilla WACC"**; and

10.2 **"ROI – comparable to a post-tax WACC"**.

11. Certain Schedule 16 terms reference Crown financing which must be reported on within certain Schedules for ID-only regulated providers.¹⁰ Those terms and Schedules include:

11.1 **"ROI – comparable to a vanilla WACC"** in section 1(i) and 1(ii) of the Report on ID FFLAS Report on Investment,¹¹ as set out in Schedule 1; and

11.2 **"ROI – comparable to a post-tax WACC"** in section 1(i) and 1(ii) of the Report on ID FFLAS Report on Investment,¹² as set out in Schedule 1.

12. When the ID Determination requirements were set, we provided for the benefit of Crown financing to be calculated for the ID-only providers in the Fibre ID final reasons paper.¹³ However, due to the information we had at the time regarding the ID-only providers' Crown financing, the IM calculations alluded to in paragraph 8, as well as inconsistencies in Schedule 3 and Schedule 8 for Crown financing related items for the calculation of notional deductible interest, were not implemented into

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ Commerce Commission, *Fibre Information Disclosure Final Decisions Reasons Paper (30 November 2021)*, Table 4.1 Overview – Final Decision on Financial Information, pg. 63-64.

the initial financial and asset management schedules for the ID-only regulated providers.^{14 15}

Previous exemption and correspondence with Northpower

13. In June 2023, Northpower sent the Commission an ID enquiry 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.
14. On 30 August 2023, the Commission issued an exemption to Northpower for disclosure year 2022 and disclosure year 2023 from the requirement to complete and publicly disclose the line items outlined in paragraph 11.1 – 11.2 with respect to Crown financing calculations as well as inconsistencies in Schedule 3 and Schedule 8 for Crown financing related items for the calculation of notional deductible interest.¹⁶
15. On 3 April 2024, we published on our website amended ID Schedule templates for Chorus and ID-only regulated providers. In this amendment, we addressed inconsistencies in Schedule 3 and Schedule 8 regarding Crown financing related line items for the calculation of notional deductible interest.
16. In July 2024, Northpower sent the Commission an ID enquiry regarding the adjustments required to provide for the impact of Crown financing on the calculation of ROI in Schedule 1. As the necessary adjustments had not been made to the ID Schedule templates to account for the annual benefit of Crown financing on the calculation of ROI, this prompted us to consider issuing an exemption for these requirements for disclosure year 2024.¹⁷

¹⁴ See our previous exemption to Northpower for more information on the inconsistencies in Schedule 3 and Schedule 8 relating to Crown financing and notional deductible interest. This exemption notice can be found [here](#) on our website.

¹⁵ Chorus’ Crown financing was incorporated into the schedules applicable to Chorus.

¹⁶ See our previous exemption to Northpower for more information on the inconsistencies in Schedule 3 and Schedule 8 relating to Crown financing and notional deductible interest. This exemption notice can be found [here](#) on our website.

¹⁷ Email correspondence from Northpower to the Commission, dated 31 July 2023.

Legal framework

17. 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

18. 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 2.4.2 of the ID Determination, complete and publicly disclose the following line items for disclosure year 2024 as adjusted by the annual benefit of Crown financing calculations in each of the following reports:
- 18.1 **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;¹⁸ and
- 18.2 **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.
19. 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 to account for adjustments for the annual benefit of Crown financing for the terms "ROI – comparable to a post-tax WACC", "ROI – comparable to a vanilla WACC" and "notional deductible interest" in the report.
20. On 3 April 2024, we published on our website amended ID Schedule templates for Chorus and ID-only regulated providers. In this amendment we addressed inconsistencies in Schedule 3 and Schedule 8 for Crown financing related line items for the calculation of notional deductible interest. However, we did not make the necessary amendments to line items for "ROI – comparable to a post-tax WACC" and "ROI – comparable to a vanilla WACC" which are inconsistent with the definitions used for those terms in Schedule 16. We are aiming to make these amendments to the ID Schedule templates next time these are reviewed.¹⁹
21. Because of the inconsistencies between the line items referred to in paragraph 19 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" and "ROI – comparable to a vanilla WACC" in the current Schedule 1 of the ID Determination as adjusted by the annual benefit of

¹⁸ 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.

¹⁹ The amended templates found [here](#) on our website.

Crown financing. Therefore, we have decided to issue the exemption set out in paragraph 18 for disclosure year 2024.

22. For the avoidance of doubt, this exemption is intended to relieve Northpower from its obligations relating to reporting on the annual benefit of Crown financing specified in the Report on ID FFLAS Report on Investment, set out in Schedule 1, of the ID Determination for disclosure year 2024 only, which are due no later than 5 months after the end of disclosure year.

Further information

23. 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.
24. A copy of this exemption response letter will be published on the Commission's website.
25. If you have any questions regarding this matter, please contact Frankie Toland at infrastructure.regulation@comcom.govt.nz.

Nāku iti noa, nā



Tristan Gilbertson
Telecommunications Commissioner