

Amendments to Fibre Input Methodologies: Capex IM final decision

Reasons paper

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Associated Documents

Publication date	Reference	Title
15 September 2020	ISBN 978-1-869458-38-6	Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period – 15 September 2020.
13 October 2020	ISBN 978-1-869458-43-0	Fibre Input Methodologies – Main final decisions reasons paper – 13 October 2020.
13 October 2020	ISSN 1178-2560	[2020] NZCC 21 – Fibre input methodologies determination 2020 – 13 October 2020.
3 November 2020	ISBN 978-1-869458-45-4	Fibre input methodologies – Financial loss asset – reasons paper – 3 November.
3 November 2020	ISSN 1178-2560	[2020] NZCC 24 – Fibre input methodologies (initial value of financial loss asset) Amendment determination 2020 – 3 November 2020.
30 April 2021	ISBN 978-1-869458-86-7	Determining Chorus' first fibre price-quality path: Process update paper April 2021.
30 April 2021	ISBN 978-1-869458-85-0	Chorus' initial regulatory asset base as at 1 January 2022 - Consultation on Chorus' initial price quality RAB proposal.
29 April 2021	-	Notice of intention: Proposal to make potential amendments to the Input Methodologies for Fibre – potential August 2021 amendments
27 May 2021	ISBN 978-1-869458-96-6	Proposed Amendments to Fibre Input Methodologies: draft decisions - Reasons paper - 27 May 2021.
27 May 2021	ISBN 978-1-869458-97-3	[Draft] Fibre Input Methodologies Amendment Determination 2021 – 27 May 2021.
27 May 2021	ISBN 978-1-869458-99-7	Chorus' price-quality path from 1 January 2022 – Draft decision – Reasons Paper – 27 May 2021.
27 May 2021	ISBN: 978-1-869458-94-2	[Draft] Fibre Price-Quality Path Determination 2021 – 27 May 2021.
29 June 2021	-	Determining Chorus' PQ RAB - Process update - 29 June 2021.
19 August 2021	-	Amended notice of intention: (Amending the Notice of Intention dated 29 April 2021) - Proposed Amendments to the Input Methodologies for Fibre - potential August 2021 amendments)
19 August 2021	ISBN 978-1-869459-23-9	Chorus' initial regulatory asset base as at 1 January 2022 - Draft Decisions: Reasons paper
29 September 2021	ISSN 1178-2560	[2021] NZCC 17 – Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021

Commerce Commission - Wellington, New Zealand

Chapter 1 Introduction

Purpose of the paper

- 1.1 The purpose of this paper is to outline our decision to amend the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21 (**fibre IMs**).
- 1.2 The amendments relate to 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 Chorus Limited (**Chorus**) for the first regulatory period, which starts on 1 January 2022 and ends on 31 December 2024 (**PQP1**).

Structure of this paper

- 1.3 This paper explains:
 - 1.3.1 our framework for considering the scope of input methodology (**IM**) amendments, and the decision-making framework we have applied in making the specific IM amendments set out in this paper (Chapter 2); and
 - 1.3.2 the amendments to the Capital Expenditure fibre IM that are necessary to implement the proposed approach to determining Chorus initial price-quality (**PQ**) path for PQP1 (Chapter 3).

Materials published alongside this paper

- 1.4 To give effect to the amendments discussed in this paper, we have also today published an IM amendment determination.¹

Our process for these decisions and the relationship to our process for determining Chorus' initial PQ RAB and transitional initial PQ RAB

- 1.5 We are currently in the process of determining matters relating to Chorus' initial PQ RAB. On 26 March 2021, Chorus submitted to us its initial PQ RAB model, setting out its \$5.5 billion estimate of the total initial PQ RAB value.
- 1.6 We published a consultation document on Chorus' initial PQ RAB on 30 April 2021 (**April consultation**).² Alongside that document, we published a Process Update Paper (**PUP**), in which we provided an update on the process and timing we intended to follow in determining Chorus' initial PQ RAB.³

¹ *Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021* [2021] NZCC 17.

² 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 Commerce Commission “Determining Chorus’ first fibre price-quality path – Process update paper” (30 April 2021).

- 1.7 On 27 May 2021, we published draft decisions on proposed amendments to the fibre IMs, which included proposed amendments that we considered necessary to implement the proposed approach to determining Chorus' initial PQ RAB.⁴ This included a proposed amendment to the Capital Expenditure fibre IM that would 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 (**capex allowance determination date changes**).
- 1.8 On 24 June 2021 and 8 July 2021, we received submissions and cross-submissions on our proposed amendments to the fibre IMs from 27 May 2021.
- 1.9 We published a further PUP on 29 June 2021. In response to submissions on our consultation on Chorus' estimate of its initial PQ RAB, we made changes to the process set out in the April consultation, and confirmed our intention to:
- 1.9.1 have regard to stakeholders' views on our August initial PQ RAB draft decision, in setting the transitional initial PQ RAB at the end of 2021; and
 - 1.9.2 narrow, to as great an extent possible, any differences between the transitional initial PQ RAB and the final initial PQ RAB (that we will determine in 2022) that would be subject to the proposed wash-up.^{5 6}
- 1.10 On 19 August 2021 we published draft decisions on matters relating to Chorus' initial PQ RAB.⁷ On 19 August 2021 we published an amended notice of intention which explained, amongst other things, that we would publish a final decision on the capex allowance determination date changes in September 2021.⁸

⁴ Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), Chapter 3.

⁵ Commerce Commission "Determining Chorus' first fibre price-quality path – Process update" (29 June 2021).

⁶ We have proposed this wash-up as part of another set of amendments to the fibre IMs. This approach is still subject to consultation and may change in response to submissions on our draft amendments.

⁷ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 - Draft Decisions: Reasons paper (19 August 2021).

⁸ Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), paragraph 7b. Our original notice of intention relevant to this matter was dated 29 April 2021 and published on 30 April 2021 - see Commerce Commission "Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments" (29 April 2021), paragraph 5d.

- 1.11 The decision in this paper is the final decision on the capex allowance determination date changes and is made in accordance with s 181 of the Telecommunications Act 2001 (**the Act**). In reaching the decision in this paper, we have had regard to views received from interested persons on 24 June 2021 and 8 July 2021 in relation to our proposed amendments to the capex allowance determination date changes from 27 May 2021.
- 1.12 We will make final decisions on the other fibre IM amendments proposed on 27 May 2021 and 31 August 2021⁹ in November 2021.

⁹ Commerce Commission “Proposed Additional Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” (31 August 2021).

Chapter 2 Framework for IM amendments

Purpose of this chapter

- 2.1 As part of the process to make information disclosure (**ID**) and PQ determinations, we noted it may be necessary for us to consider amendments to the IMs.¹⁰ 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 making these 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.¹¹
- 2.3 However, some uncertainty remains inevitable.¹² 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",¹³ and "there is a continuum between complete certainty at one end and complete flexibility at the other".¹⁴
- 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.

¹⁰ Commerce Commission "Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period" (15 September 2020), paragraph A1.

¹¹ *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph [213].

¹² *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph [214].

¹³ *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph [34].

¹⁴ *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph [60].

- 2.5 However, as recognised in sections 181 and 182, these rules, processes and requirements may change. We have further considered the relationship between the power to amend an IM and the s 174 purpose in light of submissions received on our *Proposed Amendments to Fibre Input Methodologies: draft decisions - reasons paper*, published 27 May 2021 (**draft IM amendment decisions paper**).¹⁵
- 2.6 The power to amend an IM must be used to promote the policy and objectives of the Act as ascertained by reading it as a whole. It is clear that Parliament saw the promotion of certainty as being important to the achievement of the purposes of PQ and ID regulation. This is reflected in s 174 in relation to the purpose of IMs, but also in other aspects of the regime.¹⁶
- 2.7 Accordingly, we are cautious about making amendments to IMs given the importance of certainty and predictability in the regime. While this is to an extent inherent in s 162 (for example providing regulated providers with incentives to invest in accordance with s 162(a) requires recognition of the role that predictability plays)), it is given extra force by s 174. However, we do not agree with Chorus that the Commission may only make amendments "that are consistent with the achievement of both" s 162 and s 174, such that s 174 acts as a veto to IM amendments.¹⁷ There will often be a tension between making changes to improve the regime and better promote the s 162 purpose (and, where we consider it relevant, the s 166(2)(b) purpose)) on the one hand, and certainty on the other.
- 2.8 While we will have regard to the s 174 purpose (and the other indications of the importance of promoting certainty), ultimately under s 166(2), we must nevertheless make recommendations, determinations and decisions that we consider best give, or are likely to best give, effect:
- 2.8.1 to the purpose of s 162, as set out in s 166(2)(a); and
- 2.8.2 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).

¹⁵ Chorus "Amendments to the Input Methodologies for Fibre: August 2021 amendments" (24 June 2021), paragraphs 2-6.

¹⁶ *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraphs [213]-[221].

¹⁷ Chorus "Amendments to the Input Methodologies for Fibre: August 2021 amendments" (24 June 2021), paragraph 5.

- 2.9 Section 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6. The other purpose statements within Part 6 are relevant matters, but should be applied consistently with s 166(2).¹⁸
- 2.10 When making our decisions we must only give effect to these other purposes to the extent that doing so does not detract from our overriding obligation to promote the purposes set out in s 166(2).

Powers to amend the IMs

- 2.11 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.
- 2.12 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 considering 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.

Amendments inside and outside the IM review cycle

- 2.13 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.
- 2.14 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.

¹⁸ 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 when applying the “materially better” test. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, paragraph [165].

- 2.15 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.¹⁹

Types of amendments outside the IM review

- 2.16 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:

2.16.1 those that support incremental improvements to PQ paths; and

2.16.2 those that enhance certainty about – or correct technical errors in – the existing IMs.

- 2.17 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.

- 2.18 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.²⁰

Status of the regulatory processes and rules IMs

- 2.19 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.

- 2.20 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.

¹⁹ 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.

²⁰ 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 quality and Capital Expenditure IMs

- 2.21 We consider that the quality dimensions and Capital Expenditure IMs are not ‘fundamental’ in the sense described above and should be treated in a similar way to the RPR IMs.
- 2.22 An exception to this could be the clauses of the Capital Expenditure 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

- 2.23 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.
- 2.24 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.²¹ As such, we have not considered the framework for doing so under Part 4.
- 2.25 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:
- 2.25.1 best give, or are likely to best give effect to s 166(2)(a) and s 166(2)(b) (where relevant); or
- 2.25.2 promote sufficient certainty to achieve the purpose of IMs in s 174.

Introducing new IMs outside of the IM review

- 2.26 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.
- 2.27 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).

²¹ Telecommunications Act 2001, section 178(2).

2.28 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

2.29 Before beginning this IM amendments process, we noted in our proposed process and approach paper 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.²² Because of these factors it was likely that the set of IM amendments that meet our criteria will be larger prior to PQP1 than in future resets (and compared to recent Part 4 resets).

Error correction

2.30 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 DPP2 for electricity distribution businesses).

Implementing PQ and ID approaches

2.31 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.

2.32 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.²³ We also sought submissions on our proposed approach for making fibre IM amendments in our 27 May 2021 draft IM amendment decisions paper.²⁴ We have had regard to submissions received on our proposed approach for making fibre IM amendments in our framework above.²⁵

²² Commerce Commission “Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period” (15 September 2020), paragraph A27.

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

²⁴ Commerce Commission “Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” (27 May 2021).

²⁵ For example, Chorus “Amendments to the Input Methodologies for Fibre: August 2021 amendments” (24 June 2021), paragraphs 1a, 2-6.

Decision-making framework we have applied

Statutory compliance

- 2.33 The IM amendments made in this paper are in accordance with s 181 of the Act.
- 2.34 In accordance with section s 179(1) of the Act, we published an amended notice of intention which explained that we would publish a final decision on the capex allowance determination date changes in September 2021.²⁶

IM amendment decision-making framework

- 2.35 We are using a decision-making framework based on one that we have developed over time to support our decision making under Part 4 of the Commerce Act 1986.²⁷ 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.
- 2.36 Consistent with the decision-making framework in previous Part 4 IM amendments, we have considered each IM amendment by asking the questions:
- 2.36.1 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;
- 2.36.2 does it promote the IM purpose in s 174 of the Act more effectively (without detrimentally affecting our obligation under s 166(2)); or
- 2.36.3 does it significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting our obligation under s 166(2)).
- 2.37 When asking each of the questions in para 2.36, for each IM amendment, we have had regard to the impacts on the IM purpose in s 174 and considered whether the amendment overall:
- 2.37.1 promotes the IM purpose in s 174 more effectively than the existing IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6; or

²⁶ Commerce Commission "Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments) (19 August 2021), paragraph 7b. Our original notice of intention relevant to this matter was dated 29 April 2021 and published on 30 April 2021 - see Commerce Commission "Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments" (29 April 2021), paragraph 5d.

²⁷ Commerce Commission "Proposed amendments to input methodologies for electricity distributors and Transpower New Zealand Limited – Reasons paper" (29 May 2019) paragraph 1.10.

- 2.37.2 does not promote the IM purpose in s 174 more effectively than the existing IM by providing less certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 2.38 As discussed at paragraphs 2.5-2.10, while the other purpose statements in Part 6 (including s 174) are relevant matters, s 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6. Therefore, we may make an IM amendment that does not promote the IM purpose in s 174 more effectively than the existing IM where we consider that the amendment nevertheless best gives, or is likely to best give, effect to the s 166(2) purposes.
- 2.39 We refer to the outcomes specified in paragraph 2.36 and 2.37 as the 'IM amendments framework outcomes' in this paper.

Chapter 3 Amendments to the Capital Expenditure fibre IM needed in order to implement to proposed approach to determining Chorus' expenditure over the PQP1 period

Purpose of this chapter

- 3.1 This chapter sets out the amendments to the Capital Expenditure fibre IM that are necessary to implement the proposed approach to determining Chorus' initial PQ path for PQP1. We will make final decisions on any further fibre IM amendments that are necessary to implement the proposed approach to determining Chorus' initial PQ RAB in November 2021.

IM amendment - capex allowance determination date changes

- 3.2 For our change, we explain:
- 3.2.1 our previous fibre IM requirement;
 - 3.2.2 our draft decision and reasons;
 - 3.2.3 interested persons' views on our proposed changes; and
 - 3.2.4 our final decision.

Previous IM requirement

- 3.3 The previous IM required us to determine a base capex allowance and a connection capex baseline allowance for PQP1, no later than 3 months before the start of PQP1.²⁸
- 3.4 Under the previous IM, we would have been required to determine our base capex allowance and connection capex baseline allowance for PQP1 by no later than 30 September 2021.

Draft decisions and reasons

- 3.5 In our draft IM amendment decisions paper, we proposed amending the fibre IMs to require us to determine a base capex allowance and connection capex baseline allowance for PQP1 as soon as practicable, but no later than before the start of PQP1.²⁹

²⁸ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, clause 3.7.12(1)(a) and 3.7.20(1)(a).

²⁹ Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraphs 3.33-3.40.

- 3.6 The purpose of this proposed amendment was to align our expenditure allowance decisions with our final PQ determination for PQP1 which is planned for December 2021.³⁰
- 3.7 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 PQP1.³¹ 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 maximum revenues in the PQ determination.
- 3.8 In our draft IM amendment decisions paper we explained that 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.³²
- 3.9 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 has been consulted on in August. This therefore ensures that we are consistent in our assessment of allocations across the initial PQ RAB and expenditure.
- 3.10 We also considered that it allowed us more time to appropriately consider cost and asset allocation submissions impacting on the allowance determination. We considered that the impact on Chorus from this proposed amendment would be manageable. This amendment would provide interested persons additional clarity on how these decisions (initial PQ RAB and expenditure) are linked and treated. Therefore, we considered that this proposed amendment would promote the same positive outcomes as the amendments we proposed in our draft IM amendment decisions paper to the Asset Valuation fibre IM that we considered necessary to implement our proposed approach to determining Chorus' initial PQ RAB.³³

³⁰ We note that when we published the draft IM amendment decisions paper, we were planning to make our final PQP1 decisions in November 2021.

³¹ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), paragraphs 7.356-7.372.

³² Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraphs 3.33-3.40.

³³ Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraphs 3.26 and 3.40.

3.11 In our draft IM amendment decisions paper, we considered that making those proposed amendments to the Asset Valuation fibre IM:

3.11.1 is likely to best give effect to s 166(2) of the Act because:³⁴

3.11.1.1 the [total] initial PQ RAB values³⁵ would have a material, ongoing effect on Chorus' financial viability and end-user prices for FFLAS;

3.11.1.2 conducting further scrutiny of Chorus' initial PQ RAB [estimate]³⁶ would reduce the risk of material under or overstatement of the [total] initial PQ RAB values,³⁷ which would 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

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

3.11.2 will enhance certainty, consistent with s 174, about the requirements for calculating the transitional initial PQ RAB. We considered our proposed approach would be 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 [estimate]³⁸ prior to determining PQP1).

³⁴ These reasons were provided for our proposed amendment to the Asset Valuation fibre IM in the draft IM amendment decisions paper. In our draft IM amendment decisions paper, we said that our proposed amendment to the capex allowance determination date changes "will promote the same positive outcomes as the related amendments to the Asset Valuation fibre IM". See Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraphs 3.26 and 3.40.

³⁵ We referred to this as "initial PQ RAB value" in our draft IM amendment decisions paper. See Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraph 3.26.1.1.

³⁶ We referred to this as "Chorus' initial PQ RAB proposal" in our draft IM amendment decisions paper. See Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraph 3.26.1.2.

³⁷ We referred to this as "initial PQ RAB value" in our draft IM amendment decisions paper. See Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraph 3.26.1.2.

³⁸ We referred to this as "Chorus' initial PQ RAB proposal" in our draft IM amendment decisions paper. See Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraph 3.26.2.

Submitters' views

3.12 We only received one submission on these proposed IM amendments. 2 degrees submitted in favour of our proposed IM amendment.³⁹

Our final decision

3.13 We have retained our draft decisions and have amended clauses 3.7.12(1) and 3.7.20(1) of the fibre IMs to now prescribe the determination of a base capex allowance and connection capex baseline allowance (respectively), for PQP1, as soon as practicable but no later than before the start of that regulatory period.⁴⁰ Our final decision to delay the determination of the base capex allowance and connection capex baseline allowance allows us sufficient time to assess Chorus' proposal and to include the capex allowance in the maximum revenues in the PQ determination.

3.14 Consistent with our draft decision, we consider that making this change:

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

3.14.1.1 Chorus' expenditure over the PQP1 period would have a material, ongoing effect on Chorus' financial viability and end-user prices for FFLAS;

3.14.1.2 conducting further scrutiny of Chorus' expenditure over the PQP1 period would reduce the risk of material under or overstatement of this expenditure, which would 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));

3.14.1.3 reducing the risk that this expenditure is over or understated is more limited to promote end-user prices that reflect those in a workably competitive market (s 166(2)(b)); and

3.14.2 will enhance certainty, consistent with s 174, about the requirements for calculating Chorus' expenditure over the PQP1 period. We consider our approach would be preferable to other ways of managing uncertainty that might risk a material under- or over-statement of Chorus' expenditure (for instance, not carrying out any scrutiny of Chorus' initial PQ RAB [estimate] prior to determining PQP1).

³⁹ 2 degrees "Proposed Amendments to Fibre Input Methodologies: draft decisions Reasons paper - Commerce Commission Consultation" (8 July 2021), page 2.

⁴⁰ *Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021* [2021] NZCC 17, clauses 3.7.12(1) and 3.7.20(1).

- 3.15 While we acknowledge that making this amendment within a year of the original fibre IM might have temporarily provided less certainty during the IM amendment consultation process, as does consulting on potentially amending any IM at this early stage of the fibre regime, we nevertheless consider that this amendment overall promotes the IM purpose in s 174 of the Act more effectively than the existing IM by being a preferable approach to managing uncertainty, as explained in paragraph 3.14.2.
- 3.16 Consistent with our draft decision as explained in paragraph 3.10, we consider this amendment will provide interested persons additional clarity on how our initial PQ RAB and expenditure decisions are linked and treated, and therefore, consider that it will promote the IM amendments framework outcomes for the reasons set out in paragraphs 3.14-3.15.
- 3.17 We consider that this amendment to the Capital Expenditure IM is not "fundamental" in the sense described in our framework in Chapter 2, consistent with paragraphs 2.21-2.22.