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Specified Points of Interconnection – Draft framework and decision relating to amending the s 231 notice and changes since 2019

Consultation paper

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Glossary

Access seeker	A company that provides telecommunications services to end-users using FFLAS as an input
Act	Telecommunications Act 2001
Central office	Has the same meaning as in the Fibre Information Disclosure Determination 2021
CIP	Crown Infrastructure Partners
End-user	In relation to a telecommunications service, means a person who is the ultimate recipient of that service or of another service whose provision is dependent on that service
FFLAS	Fibre fixed line access service
ID	Information Disclosure
NIPA	Network Infrastructure Project Agreement
POI	Point of Interconnection
POI Area	Has the same meaning as in the Fibre Information Disclosure Determination 2021
PQ	Price-quality
RAB	Regulatory Asset Base
Regulated fibre service provider	A person prescribed by the Governor-General as being subject to regulation under s 226 of the Act
SFA	Specified Fibre Area
Specified fibre service	Has the meaning given to that term in section 69AB of the Act
SPOI	A POI which has been prescribed by the Commission under section 231 of the Act
UFB initiative	The New Zealand Government's Ultra-fast broadband initiative
UFB services agreements	Means the Wholesale Services Agreements for UFB services between regulated fibre service providers and access seekers

CONTENTS

GLOSSARY	2
INTRODUCTION	4
PURPOSE AND STRUCTURE OF THIS PAPER	4
SUBMISSIONS PROCESS.....	5
OVERVIEW OF NEXT STEPS.....	6
PART A: FRAMEWORK FOR AMENDING S 231 NOTICE	7
PURPOSE OF THE FRAMEWORK.....	7
BACKGROUND	7
LEGAL FRAMEWORK	7
SECTION 231.....	7
SPOI DEFINITION	8
PROVISIONS RELEVANT TO AMENDING THE SECTION 231 NOTICE.....	9
SECTION 166.....	9
SECTION 162.....	9
ISSUES CONSIDERED IN OUR 2019 REASONS PAPER	10
SINGLE POI PER CANDIDATE AREA UFB REQUIREMENT	10
ONLY LAYER 2 POIS ARE TO BE PRESCRIBED	10
RELATING END-USER PREMISES TO POIS	10
MINIMUM TECHNICAL SPECIFICATION OF A SPOI	11
INCLUSION OF POI ASSETS IN THE REGULATORY ASSET BASE	11
CHANGE REQUEST PROCESS	12
OUTLINE OF CHANGE REQUEST PROCESS.....	13
INDUSTRY PROCESS.....	14
COMMISSION PROCESS.....	15
SCOPE OF THE FRAMEWORK	16
EVALUATION OF CHANGE REQUESTS	16
APPLICATION OF THE LEGAL FRAMEWORK	16
<i>Amendment of a SPOI.....</i>	17
<i>Addition of a SPOI.....</i>	17
GUIDE FOR OUR EVALUATION	17
<i>Promotion of workable competition.....</i>	17
<i>Technical purpose</i>	18
<i>Relevant principles.....</i>	19
INFORMATION TO BE INCLUDED IN CHANGE REQUESTS	19
USE OF INFORMATION PREVIOUSLY DISCLOSED TO THE COMMISSION	20
IMPOSITION OF CONDITIONS.....	20
CONSULTATION QUESTIONS.....	21
PART B: DRAFT DECISION TO PRESCRIBE CHORUS' POIS	22
DRAFT DECISION.....	22
BACKGROUND	22
CHORUS' CHANGE REQUEST	22
CONSULTATION QUESTIONS.....	24
ATTACHMENT – LIST OF SPOIS AS AT 19 DECEMBER 2019	25

Introduction

Purpose and structure of this paper

1. Section 231 of the Telecommunications Act 2001 (**Act**) gives the Commerce Commission (**Commission**) the power to prescribe points of interconnection (**POIs**) for the purpose of establishing fibre handover points. A POI that has been prescribed under section 231 is a “specified point of interconnection” (**SPOI**).
2. We published our initial [Notice of points of interconnection under section 231 of the Telecommunications Act 2001](#) (**initial notice**) along with our [Specified Points of Interconnection Reasons Paper](#) on 19 December 2019 (**SPOI reasons paper**).
3. For our initial notice, we were required to prescribe those POIs that applied as at the close of 31 December 2019 under the Ultra-fast Broadband (**UFB**) initiative¹ and had the option to prescribe additional POIs under s 231(5)(b) of the Act. We did not prescribe any additional POIs at the time, which meant that we simply prescribed those POIs that had been adopted by the industry under the Network Infrastructure Project Agreement (**NIPA**).²
4. The Attachment sets out the SPOIs that were prescribed under our initial notice. As defined in the Fibre Information Disclosure Determination 2021, we consider the column UFB geographic area(s) to be a list of the POI Areas.³
5. We previously noted that our ongoing role to prescribe POIs was outside of the process for issuing the initial notice, but that we intended to provide guidance on how we will exercise our role under s 231 at a later stage.⁴
6. The purpose of this consultation paper (**Consultation Paper**) is to seek feedback on;
 - 6.1 Part A – our proposed framework for exercising our powers under s 231 of the Act; and
 - 6.2 Part B – our draft decision prescribing Chorus’ nine additional POIs which were approved under the UFB initiative after the date of our initial notice.
7. The remainder of this Consultation Paper has the following sections:

Part A – Framework for amending s 231 notice:

- 7.1 Purpose of the framework;
- 7.2 Background;

¹ See definition of “UFB initiative” in s 5 of the Act.

² Crown Infrastructure Partners “Network Infrastructure Project Agreement – Chorus Limited and Crown Fibre Holdings Limited” (26 January 2017).

³ Commerce Commission [Fibre Information Disclosure Determination 2021](#) as amended 28 July 2022, page 23.

⁴ Commerce Commission “Specified Points of Interconnection: reasons paper” (19 December 2019), paragraphs 66-67.

- 7.3 Legal framework;
- 7.4 Issues considered in our 2019 Reasons Paper;
- 7.5 Inclusion of POI assets in the RAB;
- 7.6 Change request process;
- 7.7 Scope of the framework;
- 7.8 Evaluation of change requests;
- 7.9 Consultation questions; and

Part B – Draft decision:

- 7.10 Draft decision;
- 7.11 Background;
- 7.12 Chorus' change request;
- 7.13 Reasons for our draft decision;
- 7.14 Consultation questions; and

Attachment:

- 7.15 Attachment – List of SPOIs as at 19 December 2019.

Submissions process

- 8. We are seeking submissions on this Consultation Paper. We have included some specific questions at pages 21 and 24, but we welcome submissions on any aspect of this paper.
- 9. Please make your submission to the Infrastructure Regulation mailbox (infrastructure.regulation@comcom.govt.nz) by 5pm on **2 September 2022**. Please include "SPOI Consultation" in the subject line.
- 10. When including commercially sensitive or confidential information in your submission, we offer the following guidance:
 - 10.1 Provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.
 - 10.2 The responsibility for ensuring confidential information is not included in a public version of a submission rests entirely with the party making the submission.

11. If we consider information disclosed in the confidential version to be in the public interest, we will consult with the party that provided the information before any such disclosure is made.

Overview of next steps

12. Following submissions on the Consultation Paper, we intend to:
 - 12.1 publish a final framework for exercising our powers under s 231; and
 - 12.2 publish our final decision on whether to amend the s 231 notice to prescribe additional POIs approved under the UFB initiative.
13. Once the framework has been finalised, we will use that framework to assess requests to amend or remove SPOIs or prescribe additional POIs under s 231 (**change request**). At that point, regulated fibre service providers may wish to submit any change requests to capture updates to their POIs since the initial notice was issued.
14. Table 1 below provides a timeline of the process we intend to follow.

Table 1 – Timeline of process

Key step	Date
Consultation Paper published	19 August 2022
Submissions on Consultation Paper due	2 September 2022
Final framework and final decision published	October 2022

Part A: Framework for amending s 231 notice

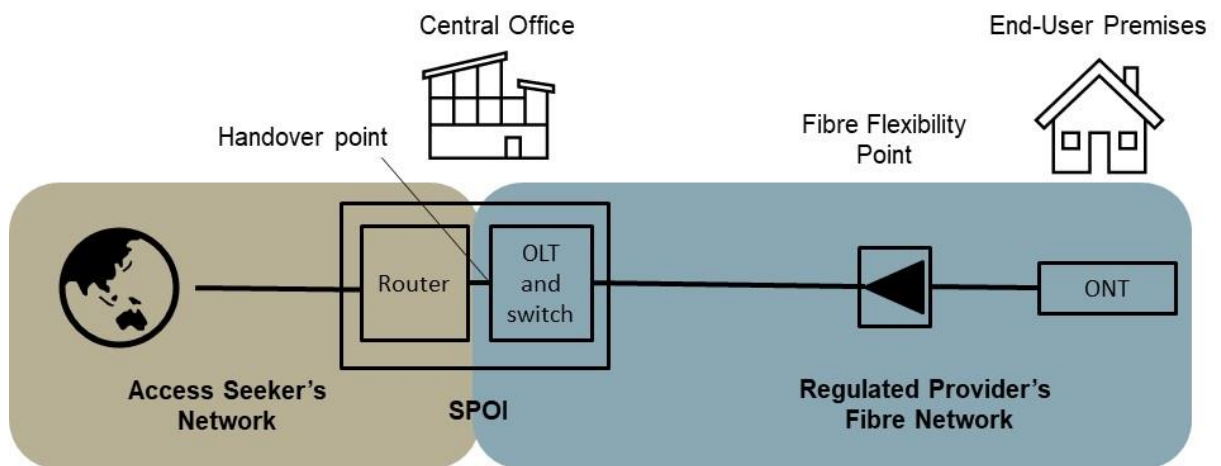
Purpose of the framework

15. The purpose of the draft framework set out in this Consultation Paper is to:
 - 15.1 ensure our processes and considerations are clear and transparent;
 - 15.2 clarify how our proposed process fits with the current industry processes; and
 - 15.3 provide guidance on the information/evidence that we expect regulated fibre service providers to provide to enable us to assess any change request.

Background

16. SPOIs are part of a regulated fibre service provider's fibre network and delineate the boundary with the access seeker's network.
17. SPOIs are central office locations with co-location services where there is a fibre handover point. Fibre handover points enable access seekers to connect to a regulated fibre service provider's (layer 2) bitstream services.
18. Figure 1.1 below shows where the SPOI sits between the access seeker's network and the regulated fibre service provider's fibre network.

Figure 1.1 SPOI location in the fibre network



Legal framework

Section 231

19. The Telecommunications (New Regulatory Framework) Amendment Act 2018 inserted s 231 into the Act.
20. Section 231, which is in Part 6 of the Act, gives the Commission the power to prescribe POIs. It provides:

231 Specified points of interconnection

- (1) The Commission may, by public notice, prescribe points of interconnection for the purposes of establishing fibre handover points.
- (2) The notice may prescribe a point of interconnection by reference to 1 or more of the following:
 - (a) a regulated fibre service provider's network:
 - (b) a geographical location:
 - (c) the UFB initiative.
- (3) The Commission may amend or revoke a notice in the manner in which it was made.
- (4) However, the Commission must not amend a specified point of interconnection unless the amendment—
 - (a) is for an appropriate technical purpose; and
 - (b) is consistent with the purpose in section 162.
- (5) The first notice made under this section—
 - (a) must prescribe points of interconnection based on the points of interconnection that apply as at the close of 31 December 2019 under the UFB initiative; and
 - (b) may prescribe additional points of interconnection.
- (6) *[Repealed]*

SPOI definition

21. Section 5 of the Act defines 'specified point of interconnection' as a POI prescribed under s 231.

22. As s 231(1) states, the purpose of prescribing POIs is to establish fibre handover points. The term 'fibre handover point' is defined in s 5 of the Act:

fibre handover point means the external network-to-network interface (or equivalent facility) located at the specified point of interconnection for the relevant end-user's premises, building, or other access point that enables access to, and interconnection with, a regulated fibre service provider's fibre network

23. The definition of 'fibre network' in the Act indicates that the fibre handover point defines the upstream boundary of a fibre network, with the downstream boundary demarcated by the user-network interface:

fibre network means a network structure used to deliver telecommunications services over fibre media that connects the user-network interface (or equivalent facility) of an end-user's premises, building, or other access point to a regulated fibre service provider's fibre handover point

24. In turn ‘fibre fixed line access service’ (**FFLAS**) is defined with reference to ‘fibre network’:

fibre fixed line service—

- (a) means a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider’s fibre network [...]

25. SPOIs therefore determine the scope of a regulated fibre service provider’s fibre network, in combination with the user-network interfaces (or equivalent facilities).

Provisions relevant to amending the section 231 notice

Section 166

26. Section 166 applies where the Commission is required to make a recommendation, determination, or decision under Part 6 of the Act.
27. We consider that in determining whether to amend or remove any SPOI or prescribe any additional POI, we are making a decision under s 231.
28. Under s 166(2), we must make the decision that we consider best gives, or is likely to best give effect:
- 28.1 to the purpose in s 162; and
- 28.2 to the extent we consider it relevant to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

Section 162

29. All decisions under Part 6 must be consistent with the purpose set out in s 162. In addition, ss 231(4)(b) and 166 each explicitly refer to the s 162 purpose.
30. Section 162 sets out the purpose of Part 6 as follows:

The purpose of this Part is to promote the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes that are consistent with outcomes produced in workably competitive markets so that regulated fibre service providers—

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
- (b) have incentives to improve efficiency and supply fibre fixed line access services of a quality that reflects end-user demands; and
- (c) allow end-users to share the benefits of efficiency gains in the supply of fibre fixed line access services, including through lower prices; and
- (d) are limited in their ability to extract excessive profits.

Issues considered in our 2019 reasons paper

31. In our SPOI reasons paper published in 2019, we considered the following issues:⁵
 - 31.1 the single POI per candidate area UFB requirement;
 - 31.2 whether layer 1 POIs should be prescribed; and
 - 31.3 the requirements to relate end-user premises, buildings and other access points (for simplicity, referred to as ‘end-user premises’) to a POI.
32. Our views on these issues, as summarised below, remain unchanged from those expressed in our SPOI reasons paper.

Single POI per candidate area UFB requirement

33. In our SPOI reasons paper we confirmed that there can be more than one POI per candidate area, but that each POI in a candidate area must enable access to all end-users in a candidate area.⁶

Only layer 2 POIs are to be prescribed

34. In our SPOI reasons paper we expressed the view that the UFB initiative POIs were limited to layer 2 handover points and should not be prescribed at layer 1 handover points.⁷ We note that submissions in response to our draft SPOI reasons paper were mixed on this point.
35. Accordingly, we determined that SPOIs:⁸
 - 35.1 define the upstream boundary of the fibre network, and that this boundary is important as we do not consider it necessary or appropriate to include services beyond a fibre network within the scope of FFLAS; and
 - 35.2 are the locations where access seekers interconnect to take layer 2 services. All end-users within a UFB geographic area will be accessible from each specified POI for that area.

Relating end-user premises to POIs

36. In our SPOI reasons paper we provided that we needed to identify the end-user premises which the POI relates to in the public notice issued under s 231.⁹
37. In terms of our approach for relating end-user premises to POIs, we considered that:
 - 37.1 end-user premises inside a UFB geographic area are to be related to the UFB 1 candidate area it was created to service, but that the names used in the

⁵ Commerce Commission “Specified Points of Interconnection: reasons paper” (19 December 2019).

⁶ *ibid*, paragraphs 29 to 32.

⁷ *ibid*, paragraph 33.

⁸ *ibid*, paragraph 46.

⁹ *ibid*, paragraph 53 to 54.

notice are to be defined to include all geographic areas under the UFB initiative that the POI is intended to service, including UFB 2 and UFB 2+ areas.¹⁰

- 37.2 end-user premises outside a UFB geographic area are to be related to the nearest UFB initiative POI (whether on a geographic or network topology basis) such that access seekers can access the end-user premises from a UFB initiative POI.¹¹

Minimum technical specification of a SPOI

38. As part of the consultation process for our SPOI reasons paper, Spark submitted that we should specify the relevant minimum technical handover functionality at specified POIs (for example, Layer 1 and Layer 2 technical interface at demanded capability and capacities).¹² Our view remains that this concerned service levels that may be considered as part of our other Part 6 regulatory functions such as information disclosure requirements.
39. In addition, we note the Layer 1 and layer 2 technical functionality of a handover connection is defined in the TCF UFB Ethernet Access Service Description,¹³ and capability is covered by co-location and interconnection services. We do not consider it necessary to specify minimum technical functionality for a SPOI in our framework.

Inclusion of POI assets in the Regulatory Asset Base

40. In our view, until a POI becomes a SPOI:
- 40.1 it is not considered to be a “fibre handover point” and is therefore not part of a regulated fibre service provider’s “fibre network”,¹⁴ and
- 40.2 it is not a “core fibre asset”, as defined in the Fibre Input Methodologies Determination 2020 (**fibre IMs**), as it is not “employed in the provision of FFLAS”.¹⁵
41. Accordingly, we consider that any commissioned layer 2 POI assets cannot enter a fibre regulatory asset base (**RAB**) for information disclosure (**ID**) purposes until those assets are prescribed as a SPOI.

¹⁰ Commerce Commission “Specified Points of Interconnection: reasons paper” (19 December 2019), paragraphs 55-58

¹¹ *ibid*, paragraph 61.

¹² Spark “Submission on specified points of interconnection consultation paper” (26 November 2019) at paragraph 5(b).

¹³ NZ Telecommunications Forum Inc “UFB Ethernet Access Service Description” (11 May 2017), at Chapter 13.

¹⁴ See the definitions for those terms set out above in the Legal framework section at paragraphs 22-23.

¹⁵ Commerce Commission, “Fibre Input Methodologies Determination 2020, as amended on 29 November 2021”, clause 1.1.4(2).

42. In terms of a regulated fibre service provider's RAB for price-quality (**PQ**) purposes, the fibre IMs require a POI to be forecast to be commissioned in the provision of "PQ FFLAS" (as defined in the fibre IMs) for an upcoming regulatory period before the POI asset can contribute to the forecast RAB via forecast "value of commissioned assets" (capex).¹⁶
43. With regards to forecast capex, we see two scenarios:
 - 43.1 where the POI has either already been approved to be specified as a SPOI, or is specified at the same time the PQ path is determined; and
 - 43.2 where a supplier forecasts a POI being added but where this has not yet been approved.
44. In the first situation we consider that where a commissioned POI has entered a PQ RAB for ID purposes (ie, at the point it is prescribed under s 231) and is forecast to still be employed in the provision of PQ FFLAS for an upcoming regulatory period, the value of that POI would be included as forecast capex used to specify the PQ path for that regulatory period.
45. However, in the second situation, the assets would not be included as forecast capex used to specify the PQ path. We see the individual capex proposal mechanism in the fibre IMs as the appropriate tool for managing this uncertainty. However, we are interested in parties' views on how else this could be managed.

Change request process

46. We have a statutory decision-making function in respect of our powers to prescribe POIs under the Act.
47. Prior to the introduction of s 231 in the Act, POIs and the requirements for them were initially set by Crown Infrastructure Partners (**CIP**) under the terms of the NIPAs and requests to change POIs were managed under the processes for changes described in the Chorus UFB Services Agreement that ended on 31 December 2021.¹⁷
48. We understand that the process under CIP operated as follows.
 - 48.1 The regulated fibre service provider (formerly a UFB Local Fibre Company) submits a change proposal to the Product Forum (which is under the Change Management Forum, within the NZ Telecommunications Forum) for consultation and approval.
 - 48.2 The Product Forum consults with the industry and votes on the proposal.

¹⁶ Commerce Commission, "Fibre Input Methodologies Determination 2020, as amended on 29 November 2021", clause 3.3.1(1)-(2).

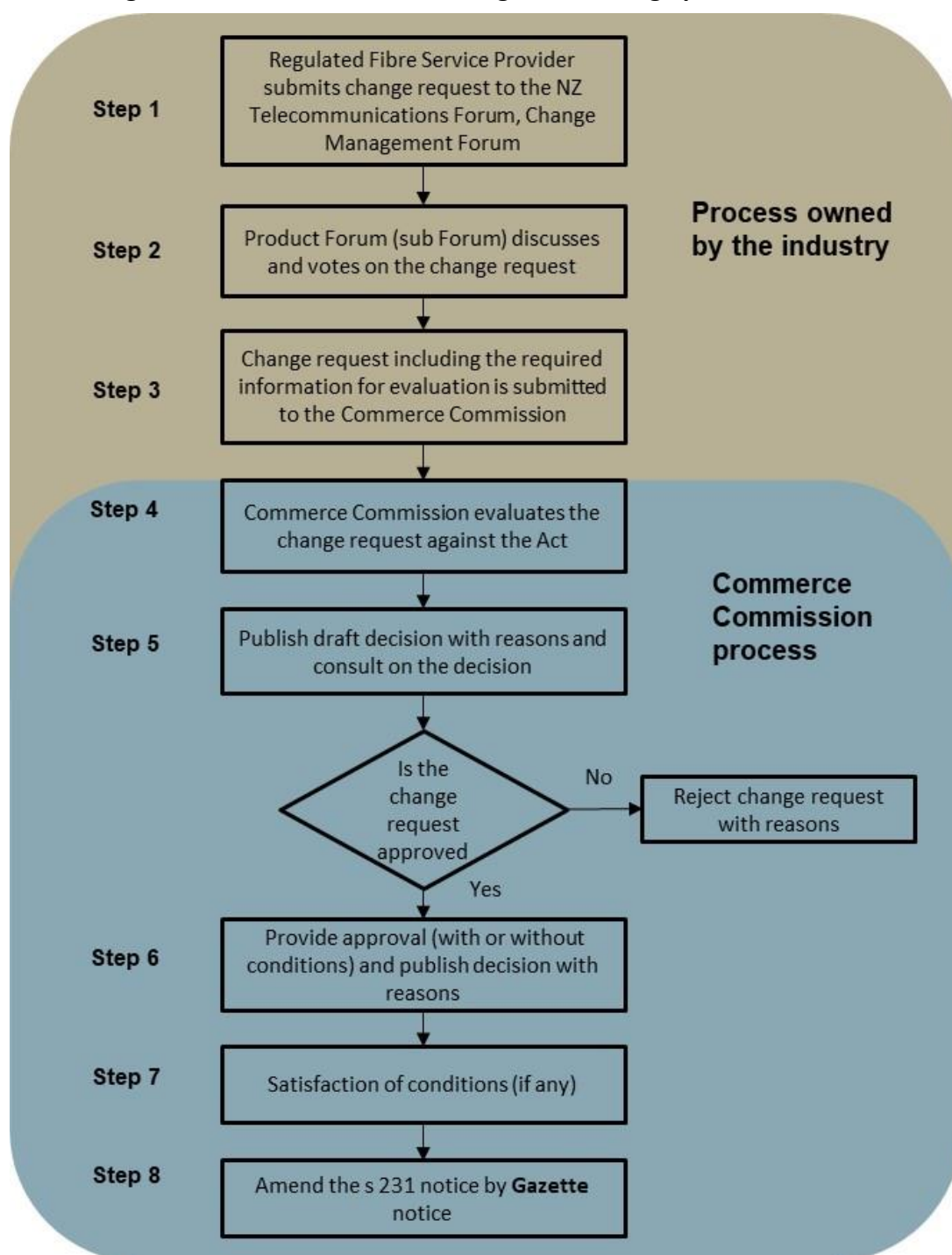
¹⁷ Chorus "Chorus UFB Services Agreement General Terms", (10 December 2012)

- 48.3 The change request is then submitted to CIP for conditional approval of a variation.
49. We have drawn on the existing CIP process to inform the process we intend to follow in terms of amending the s 231 notice. However, we note the following:
- 49.1 We see benefit in retaining the Change Management Forum/Product Forum process noted below. While the forum (and any resulting decision from that forum) will be a useful input to our decision making under s 231, it is not determinative.
- 49.2 In order to assess a change against the legal framework, the range of information (discussed further below) we require may be broader than that previously required by CIP.

Outline of change request process

50. The proposed process for amending or revoking the s 231 notice (eg, by prescribing new POIs or amending SPOIs) is set out in Figure 1.2 below.

Figure 1.2 Illustrative flow diagram of change process



Industry process

51. The industry process (highlighted in brown in Figure 1.2) represents a process owned by the industry, and it is open to industry stakeholders to shape how this process may change in future. However, the extent to which the industry process has been followed and any relevant information produced as part of that process (including a summary of the views of industry) will assist the Commission when evaluating any change request.

52. Steps 1 to 3 of the process set out in Figure 1.2 reflect the change process we understand was adopted by the industry under the UFB Services Agreement. However, to comply with the requirements of the Act, the outcome of that process must be submitted to the Commission for approval (rather than to CIP, as was previously the case).
53. We see benefit in regulated fibre service providers continuing to use the change process developed under the UFB Services Agreement – whereby the industry considers and votes on any change request at the UFB Broadband Forum – because we have a reasonable expectation that those in the industry participate in the Product Forum which means a representative view is expressed in the industry evaluation.
54. However, to be clear, a change request could be submitted to the Commission irrespective of whether industry approval was given in the industry process.
55. To enable us to effectively evaluate a change request, we expect a regulated fibre service provider to provide the documentation outlined in the section titled “Information to be included in change requests” set out from paragraph 80 below.

Commission process

56. Section 231(3) requires that the s 231 notice be amended or revoked in the manner in which it was made.
57. The process we are proposing to follow (highlighted in blue in Figure 1.2) reflects the key aspects of the process we followed in issuing the initial notice.
58. In summary, once a change request is submitted to us, we will follow the process described below.
 - 58.1 We will evaluate the change request in accordance with the legal framework under the Act.
 - 58.2 We will publish our draft decision (including a draft updated s 231 notice if we are proposing to amend that notice) along with our reasons and consult on that draft decision. We will tailor the extent of our consultation based on the proposed changes to the notice.
 - 58.3 We will make a final decision, which may impose conditions which must be satisfied before we will amend the s 231 notice.
 - 58.4 Depending on our final decision, we will publish a Gazette notice amending the s 231 notice, either at the time of the final decision (if without conditions) or upon the satisfaction of any conditions. We will publish any amended notice on our website and notify all interested parties.
59. We consider that we can impose conditions as part of a decision to prescribe a POI or amend a SPOI. Where conditions are imposed, we will only amend the s 231 notice

once the conditions have been satisfied. See from paragraph 83 below for further discussion on this point.

60. We expect change requests to be submitted to us for approval ahead of a new POI being commissioned or a change to a SPOI being made. However, we understand that in certain circumstances (eg, a disaster event), this may not be possible/practical.

Scope of the framework

61. Any change which may result in an amendment to the s 231 notice will be considered under the framework set out in this Consultation Paper.
62. For example, the following changes would require us to make a decision under s 231:
 - 62.1 amending a SPOI (ie, any change to the details of a SPOI which are set out in the s 231 notice);
 - 62.2 adding a POI (whether in an existing or new POI Area); and
 - 62.3 changing a POI Area for a SPOI.

Evaluation of change requests

Application of the legal framework

63. We will evaluate change requests in accordance with the requirements under the Act.
64. The following provisions of the Act are relevant as outlined in the “Legal Framework” section above:
 - 64.1 section 231 – in particular, section 231(4);
 - 64.2 section 166 – which sets out matters the Commission must consider when making decisions under Part 6 of the Act (within which s 231 sits); and
 - 64.3 section 162 – which sets out the purpose of fibre fixed line access service regulation.
65. We consider that s 231(4), only applies to amendments to SPOIs, rather than prescribing additional POIs, as set out previously in our SPOI reasons paper.¹⁸
66. Section 221(1)(d) may also be relevant in some instances, as it enables the Commission to use information previously disclosed to us under the Act or the Commerce Act 1986 for the purpose of carrying out our functions and exercising our powers under Part 6 of the Act.

¹⁸ Commerce Commission “Specified Points of Interconnection: reasons paper” (19 December 2019), at paragraph 68.2.

Amendment of a SPOI

67. We will evaluate any requests to amend a SPOI in accordance with s 231(4) and s 166, such that we will only amend the s 231 notice to reflect an amendment to a SPOI where it:

67.1 is for an appropriate technical purpose; and

67.2 where it best gives, or is likely to best give effect:

67.2.1 with the purpose in s 162; and

67.2.2 to the extent we consider it relevant to the promotion of workable competition in the telecommunications markets for the long-term benefit of end-users of telecommunications services.

68. An amendment of a SPOI includes any of the following:

68.1 removing a SPOI;

68.2 moving a SPOI (revoking an existing SPOI and the addition of a new SPOI in a POI Area); or

68.3 amending any of the details of a SPOI listed in the s 231 notice – eg, the UFB geographic area (POI Area).

Addition of a SPOI

69. We will evaluate any requests to prescribe additional POIs in accordance with sections 231 and 166, such that we will only amend the s 231 notice to include any additional POI where it best gives, or is likely to best give, effect:

69.1 to the purpose in s 162; and

69.2 to the extent we consider it relevant to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

Guide for our evaluation

70. This guidance should not be used as a substitute for, or relied on as, legal advice on any matter. We may revise or update this guidance from time to time, if required, and at our discretion.

Promotion of workable competition

71. As set out in s 166, in deciding whether to amend the s 231 notice, we are required to consider, and give effect to, the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

72. We will consider the change request in the context of how the proposed amendment to a SPOI or request to prescribe a new POI is likely to impact on the competitive outcomes in the wholesale or retail telecommunications markets. For example, we will evaluate, among other things, whether the change request might:
- 72.1 result in an overlap with a POI Area of another regulated fibre service provider, such that some end-users could be switched at SPOIs of different regulated fibre service providers, thus introducing more competition at the wholesale level;
 - 72.2 introduce additional costs for some existing retail service providers or for new retail service providers such that these access seekers will be disadvantaged in their ability to compete in downstream (retail) markets compared to other access seekers;
 - 72.3 have an exclusionary effect for some access seekers (eg, because they are unable to extend their network to interconnect at a new location within a reasonable timeframe);
 - 72.4 reduce competition in inter-candidate area/national backhaul markets (eg, because backhaul providers have built their networks to existing SPOIs); and/or
 - 72.5 have a dampening effect on innovation and access seekers' ability to add new services for end-users (eg, because of the technical capabilities of the proposed new SPOI).
73. In cases where a potential effect on competition from the change request is identified, we will also consider any mitigations proposed by the regulated fibre service provider – for example, in the case of moving a SPOI, options for backhaul services to the new location until the access seekers are able to build their networks to interconnect at the new location.

Technical purpose

74. As required by section 231(4)(a), any amendment of a SPOI must be for an appropriate technical purpose. As set out above, this threshold does not apply to prescribing new SPOIs.
75. Examples of an appropriate technical purpose may include (but are not limited to) traffic load distribution across multiple locations, for example where there are more than 50,000 connections and situations where existing SPOI locations cannot be expanded.¹⁹

¹⁹ Crown Infrastructure Partners, Telecom Corporation of New Zealand NIPA, (24 May 2011), Schedule 3 Annexure 2, at paragraph 26.

Relevant principles

76. We consider that the following principles are relevant to our evaluation of change requests under s 231;
- 76.1 For the purposes of 162(b), there can be more than one POI per candidate area, each POI in a candidate area must enable access to all end-users in a candidate area (as discussed above at paragraph 33).
 - 76.2 For the purposes of s 166(2), a SPOI must have access to at least two wholesale backhaul providers. This promotes workable competition by preventing the regulated fibre service provider from being the only provider of backhaul.
77. We consider that the intent of a “single POI per candidate area” requirement in the NIPA means a single POI per POI Area which is a collection of candidate areas.²⁰ Therefore, where there is more than one POI in a POI Area all end users in the POI Area must be accessible from each of the POIs. This minimises the national number of POIs, and together with the requirement for two backhaul providers, supports competition via open access to the fibre network.
78. The fibre network has been implemented with at least one POI per POI Area. If access seekers were required to handover at more than one location in each POI area, they would need to set up co-location at a larger number of locations increasing costs (including to end-users), which could result in smaller access seekers being excluded from the market.
79. We welcome any submissions on these principles, as well as any additional principles you consider to be relevant.

Information to be included in change requests

80. To help us evaluate any change request, we would expect a regulated fibre service provider to provide the following information.
- 80.1 **Type of change.** Whether the change request relates to an amendment to a SPOI or the addition of a new POI and whether this change has been forecast in the RAB.
 - 80.2 **Details of the POI** Identifier, central office, address and POI Area (geographic area).
 - 80.3 **How the change request is consistent with the requirements under the Act.**
 - 80.3.1 The commercial and technical drivers and outcome objectives for the proposal.

²⁰ Crown Infrastructure Partners, Telecom Corporation of New Zealand NIPA, (24 May 2011), Schedule 3 Annexure 2, at paragraphs 27-28

80.3.2 The benefits, costs and risks associated with the proposal, including how these have been assessed and justification of reasonableness; the parties on whom they are likely to fall; and what mitigation steps are proposed or have been implemented.

80.3.3 A consideration of the impact on third parties, including (but not limited to) backhaul providers, access seekers and end users – generally and by comparison to the status quo.

80.4 **A timeline and process for implementation.** Including when the change is expected to be effective from, and transition management (if relevant) that ensures equitable access and competitively neutral migration.

80.5 **Industry evaluation.** Whether there is industry consensus, and if not, the points of divergence of views, identification of the parties who disagree and the reasons put forward by them in opposition to the proposal.

Use of information previously disclosed to the Commission

81. In accordance with s 221(1)(d), we may use information previously provided to the Commission under the Act in deciding whether to amend the s 231 notice.
82. We may refer to previous change requests of a regulated fibre service provider when considering new requests from that provider, in particular, the reasons provided for any earlier change request.

Imposition of conditions

83. As noted above, we consider that we can impose conditions as part of a decision to amend the s 231 notice.
84. We note that the Act is silent on this point, and therefore it is open to interpretation whether we can impose conditions.
 - 84.1 On one hand, the legislative history indicates that prescribing POIs was viewed by Parliament as a wholly technical function, which did not warrant the involvement of the Minister or Governor-General.²¹ This could be viewed as at odds with the imposition of conditions.
 - 84.2 On the other hand, s 231 provides us with powers to amend the s 231 notice and does not prescribe the process we must follow (other than that the notice must be amended in the manner it was made – eg, we must consult).
85. While we agree that prescribing POIs is generally a technical function, we consider that the interpretation that allows us to impose conditions when amending the s 231 notice best gives effect to the s 166(2) matters (which include the s 162 purpose) because it enables us to consider matters such as the impact of the change proposal

²¹ Telecommunications (New Regulatory Framework) Amendment Bill (293–2) at 6 (select committee report).

on existing or future competition in telecommunication markets or the potential implications for investment by the regulated fibre service provider and/or access seekers active in the POI area.

86. We note that the alternative to imposing conditions as part of amending the s 231 notice is to provide reasons for any decision not to amend the notice. The applicant can then re-submit its request at a later date once our concerns have been addressed. However, we consider that this approach is more time (and resource) intensive and lacks certainty for regulated fibre service providers.
87. Examples of conditions may include (but are not limited to):
- 87.1 Where a new POI is being added, that the s 231 notice only be updated once the new POI has been commissioned.
 - 87.2 Where a regulated fibre service provider is proposing to remove a SPOI because it is adding a new POI in the same POI Area, we may impose a condition that the SPOI only be removed (and the s 231 notice only be updated) once the new POI is in place.

Consultation questions

Number	Question
1	Does this Consultation Paper reflect the process administered by the NZ Telecommunications Forum? Please describe the consultation process within the industry if it differs.
2	How would the industry continue to ensure adequate opportunities for all interested parties to comment on any proposed change request? Who do you see as stakeholders?
3	What would you consider to be an appropriate technical purpose for adding or amending a SPOI?
4	What principles or factors do you consider to be relevant in considering s 166 and s 162?
5	Do you agree that the Commission can impose conditions as part of its decision to amend the s 231 notice? Why/why not?

Part B: Draft decision to prescribe Chorus' POIs

Draft decision

88. We are proposing to amend the s 231 notice to prescribe Chorus' nine additional POIs set out in Table 1.2 below.

Table 1.2 – Chorus' additional POIs approved under the UDF initiative

POI Identifier	POI Name (Central Office)	UFB geographic area/s	Regulated Fibre Service Provider
AVO	Avonhead Exchange	Christchurch, Rangiora and Rolleston	Chorus
JV	Johnsonville	Wellington	Chorus
LIN	Linwood Exchange	Christchurch	Chorus
LYE	Lynmore Exchange	Rotorua	Chorus
MRE	Mangere Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Chorus
MSY	Massey Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Chorus
NVY	North East Valley Exchange	Dunedin	Chorus
OTE	Otumoetai Exchange	Tauranga	Chorus
STK	Stoke Exchange	Nelson	Chorus

Background

89. In our initial notice, we only prescribed those POIs which applied under the UFB initiative as at 31 December 2019, as required under s 231(5)(a)).
90. The UFB initiative was in effect until 1 January 2022, and we understand that from 31 December 2019 until 1 January 2022 additional POIs were approved by CIP under the UFB initiative.

Chorus' change request

91. Chorus has requested by letter that we amend the s 231 notice to prescribe nine additional POIs which were approved under the UFB initiative between 31 December 2019 to 1 January 2022.²² This letter and Chorus' proposed notice are published alongside this paper.
92. Chorus provided the following reasons for adding these POIs:
- 92.1 There are capacity constraints at a number of Spark owned central offices in relation to power and space that require an alternative location to be built.

²² Letter from Chorus to the Commerce Commission "Specified points of interconnection – request to update s 231 notice" (19 May 2022).

- 92.2 To meet its obligations under the NIPA in relation to population density. As required under the NIPA, each POI must support no more than 50,000 layer 2 end users.²³
- 92.3 Additional POIs are required for ongoing planning for future demand, and to provide greater resilience in the network.
- 93. Chorus also noted that it provides regular updates via the Product Forum and on its website, including by inviting retail service providers to comment on their preferred handover sites.

Reasons for our draft decision

- 94. The Act required us to prescribe the POIs that applied under the UFB initiative as at 31 December 2019. Taking a purposive interpretation, this suggests that it was intended for all POIs agreed under the UFB initiative to be prescribed, because all such POIs are approved under the same regime and are subject to the same level of scrutiny.
- 95. The fact that the nine new POIs were agreed under the UFB initiative provides us with some assurances in terms of satisfying the requirements of s 166.
- 96. Accordingly, we do not consider that we require the level of information which we would ordinarily require to make a decision to amend the s 231 notice (as set out in Part A of this paper).
- 97. We consider that prescribing each of the nine additional POIs satisfies the requirements of s 166, as it best gives, or is likely to best give, effect:
 - 97.1 to the purpose in s 162; and
 - 97.2 to the extent we consider it relevant to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.
- 98. In respect of s 166(2), we consider that these changes enable access to two backhaul providers at each POI, which supports workable competition.
- 99. In respect of the s 162 purpose, we consider that prescribing each of the nine additional POIs promotes the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes produced in workably competitive markets by:
 - 99.1 investing in new locations by removing capacity constraints at existing SPOIs and planning for future growth (s 162(a)); and

²³ Crown Infrastructure Partners, Telecom Corporation of New Zealand NIPA, (24 May 2011), Schedule 3 Annexure 2, at 26 to 28.

- 99.2 ensuring services are of a quality that end-users demand by investing in new locations so that there are no more than 50,000 end users at each POI and all end-users can access each POI (s 162(b)).

Consultation questions

Number	Question
1	Do you agree with our draft decision to prescribe Chorus' nine additional POIs approved under the UFB initiative? Why/why not?
2	Were any other POIs approved under the UFB initiative between 31 December 2019 and 1 January 2022?

Attachment – List of SPOIs as at 19 December 2019

POI Identifier	POI Name (Central Office)	UFB geographic area/s	Regulated Fibre Service Provider
AR	Ashburton	Ashburton	Chorus
BM	Blenheim	Blenheim	Chorus
CH	Christchurch	Christchurch, Rangiora and Rolleston	Chorus
CPC	Courtenay Place	Wellington	Chorus
DN	Dunedin	Dunedin	Chorus
FG	Fielding	Palmerston North and Feilding	Chorus
FOR	Forrest Hill	Auckland, Pukekohe, Waiheke Island and Waiuku	Chorus
FJN	Frankton	Hamilton	Chorus
GS	Gisborne	Gisborne	Chorus
GLF	Glenfield	Auckland, Pukekohe, Waiheke Island and Waiuku	Chorus
GM	Greymouth	Greymouth	Chorus
HN	Hamilton	Hamilton	Chorus
HBN	Hastings	Napier and Hastings	Chorus
IN	Invercargill	Invercargill	Chorus
KNG	Kensington	Whangarei	Chorus
LVN	Levin	Levin	Chorus
MAW	Marewa	Napier and Hastings	Chorus
MS	Masterton	Masterton	Chorus
MDR	Mayoral Drive	Auckland, Pukekohe, Waiheke Island and Waiuku	Chorus
MOD	Mt Eden	Auckland, Pukekohe, Waiheke Island and Waiuku	Chorus
NA	Napier	Napier and Hastings	Chorus
NN	Nelson	Nelson	Chorus
NU	New Plymouth	New Plymouth	Chorus
OU	Oamaru	Oamaru	Chorus
PM	Palmerston North	Palmerston North and Fielding	Chorus

POI Identifier	POI Name (Central Office)	UFB geographic area/s	Regulated Fibre Service Provider
PRM	Paraparaumu	Paraparaumu and Kapiti	Chorus
POY	Ponsonby	Auckland, Pukekohe, Waiheke Island and Waiuku	Chorus
PRO	Porirua	Wellington	Chorus
QST	Queenstown	Queenstown	Chorus
RO	Rotorua	Rotorua	Chorus
SOD	South Dunedin	Dunedin	Chorus
TPO	Taupo	Taupo	Chorus
TG	Tauranga	Tauranga	Chorus
TU	Timaru	Timaru	Chorus
WKW	Waikiwi	Invercargill	Chorus
WG	Whanganui	Whanganui	Chorus
WHK	Whakatane	Whakatane	Chorus
WR	Whangarei	Whangarei	Chorus
HRB	Hornby	Christchurch, Rangiora and Rolleston	Enable
RIC	Riccarton	Christchurch, Rangiora and Rolleston	Enable
ALX	Alexander St	Whangarei	Northpower
HME	Hamilton East	Hamilton, Tokoroa, Cambridge and Te Awamutu	Tuatahi
HMW	Hamilton West	Hamilton, Tokoroa, Cambridge and Te Awamutu	Tuatahi
NPL	New Plymouth	New Plymouth and Hawera	Tuatahi
TGE	Tauranga East	Tauranga	Tuatahi
TGW	Tauranga West	Tauranga	Tuatahi
WAN	Whanganui	Whanganui	Tuatahi