

Submission on Specified Points of Interconnection – draft framework

16 September 2022

Summary

The Commerce Commission's (**Commission's**) proposed framework for specifying points of interconnection (**POIs**) goes well beyond what is necessary or appropriate in order for it to carry out its function under s 231. The proposals to introduce a new consultation and evaluation framework prior to specifying POIs are disproportionate and unworkable. Given that the Commission has not demonstrated any issues or end-user harm actually exist, the cost and complexity of the proposals would outweigh any benefits to end-users and the industry.

Prior to implementation of the Part 6 regulatory framework, establishing the location of POIs – sites at which our bitstream services can be handed-over – was an industry-led process, driven principally by technical and operational considerations, undertaken through consultation with retail service provider customers (**RSPs**) and ultimately ratified by Crown Infrastructure Partners (**CIP**). Under the new framework the industry-led process for determining POI locations continues, but there is an additional step whereby the Commission determines which POI locations should be "specified POIs" and thereby act as a boundary of the regulated "fibre network". The Commission's proposed approach to making these determinations:

- ignores or de-emphasises the essentially technical nature of POI specification in favour of largely hypothetical competition concerns
- unnecessarily duplicates the industry consultation process
- seeks to impose a disproportionate regulatory process that would constrain Chorus from moving quickly and efficiently to respond to network demands
- risks decoupling the boundaries of regulation from the reality of how the network operates.

We agree that the Commission, in making any decision under Part 6 (including to amend or specify a POI), must give effect to the s 162 purpose and, to the extent relevant, to the promotion of workable competition. However, the Commission's explanation of its intended approach to evaluating specified POI applications largely ignores the technical drivers of POI locations.

POI changes are principally a function of the scale of connections, taking into account current volumes and anticipated growth due to population and uptake changes over time. Given our RSPs decide where to run their end-users' traffic to, and which locations to handover to network providers, we have limited influence over managing demand at handover sites. Our role is to manage these sites prudently and effectively to ensure the network performs as required. We have done this by offering new handover sites/POIs where existing ones have met, or are close to, target capacity.

In almost every instance, the technical/operational requirements of the network will be the sole relevant consideration for specifying POIs.¹ The primary forum in which these technical/operational issues are worked out is the industry-led consultation process through the TCF. While the Commission has an important role in safeguarding the interests of end-users, the Commission shouldn't substitute its own judgement for the

¹ The potential competition concerns identified in the Commission's consultation paper are largely hypothetical, as we explain in more detail below.

outcome of industry-led consultation.² Rather, the Commission's role is to intervene in circumstances where the specification of a POI would not be consistent with the s 162 purpose or, if relevant under the circumstances, competition. We would anticipate that in almost every case there would be no reason to depart from the position reached through industry consultation.

The Commission's proposed process is not fit for purpose. Currently, the Commission is proposing to:

- undertake its own separate formal consultation after the TCF-led consultation, including its own evaluation. This unnecessarily duplicates the consultation process undertaken with industry participants.
- treat POI related expenditure differently from other base capex for the purposes of the Part 6 regime. It is not clear if the Commission intends to change the current approach to expenditure and the timing of commissioned assets entering the ID RAB, and type of projects envisaged under individual capex proposals (**ICPs**).

The proposed process raises the possibility of specified POI locations diverging from the POI locations at which services are handed over. This, in turn, creates uncertainty around the boundaries of the regulated fibre network, and the scope of regulated FFLAS. There would be potential for regulated and unregulated instances of the same service depending on the RSP's choice of handover location. The regulation would become unpredictable, and the purpose set out in s 162 – particularly the incentives to innovate and invest, and to improve efficiency of supply – would be undermined.

We need a regulatory process to enable us to create POIs quickly and efficiently to ensure network performance without risk to the workability of the regulatory framework. These proposals will impose a prolonged regulatory process that will prevent Chorus from efficiently managing the network. On occasion, it is necessary to move quickly to specify new POIs in order to meet rapid changes in network demand or utilisation and a regulatory framework meeting the s 162 purpose would facilitate that. A slow and unwieldy regulatory process would jeopardise that.

The Commission already has a significant work programme for Part 6 and needs to ensure that the processes it designs are proportionate to the issue being addressed and considers the opportunity cost of Commission and industry time.

We **recommend** the Commission:

- **retain the current industry forum as the sole forum for consultation** - additional Commission consultation will drive increased cost and resources for little benefit.
- **reconsider its competition evaluation guidance** – the proposals would impose heavy-handed regulatory exercise over a highly-technical process, where it has not established a case for any real or potential consumer harm. We urge the Commission to be cautious about addressing theoretical competition issues with the purpose of maximising competition in a manner that does not reflect natural development of the network.
- **remove the principle that a POI must have two wholesale backhaul providers** – imposing this principle would remove the possibility for a proper

² Subject to instances where the Commission's intervention is warranted, e.g., where there is no clear consensus among industry.

assessment of any SPOI request for a pre-determined outcome, which may not be desirable for each new SPOI.

- **forecast POI related expenditure is treated as forecast base capex** – a more appropriate and workable approach is to continue treating POI expenditure in the same way as other capex. This also provides the Commission and stakeholders with the opportunity to engage on our proposals via existing regulatory processes.
- **consider how its proposals may impact our ability to meet our quality requirements** – the proposals may change current incentives to manage our network efficiently and prudently.

We also **recommend** that the Commission specify the nine additional POIs created over the last three years within the then prevailing industry and CIP-approved process, and for which we sought a declaration in May this year.

Overall, we are concerned that the Commission has simply lost sight of the fact that POI specification is principally a matter of efficient network architecture and management rather than a regulatory policy question. We acknowledge the Commission's role in safeguarding the interests of end-users, including through POI specification. But the Commission's process has to recognise the practical reality that Chorus establishes new POIs because the efficient management of the network requires it, and we do so principally through a consultative process with our customers.

Introduction

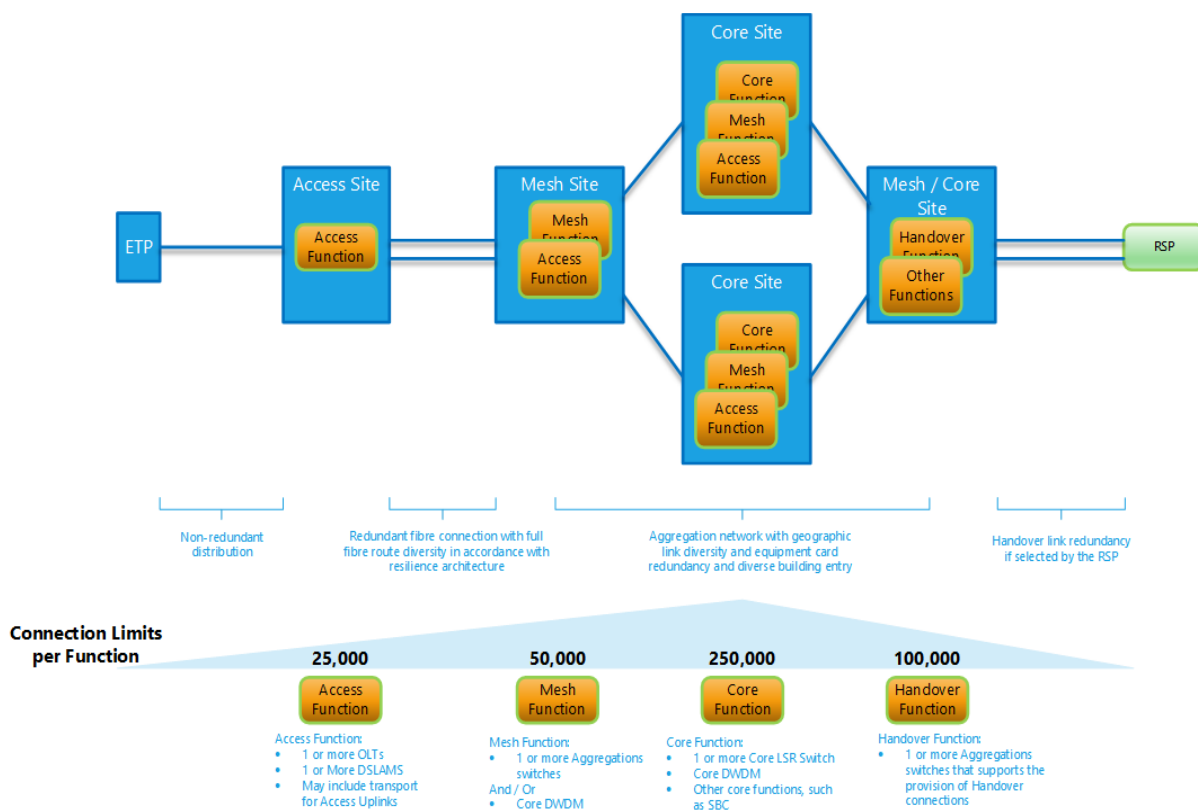
The Commission's framework

1. We urge the Commission to adopt a framework that applies proportionate regulatory scrutiny and a workable process for the specification of POIs.
2. For Chorus, establishing POIs is a technical matter driven by network resilience requirements and customer needs. The specification of POIs by the Commission delineates the boundary of the fibre network and regulated fibre fixed line access services (**FFLAS**). It also helps define specified fibre areas.

Nature of POI Lifecycle

3. We consider it useful to set out the function of POIs, the POI lifecycle and the drivers for amending or adding POIs, as this provides context that is important for the Commission to take into account when formulating a process for specifying POIs under s231.

Figure 1. Fibre to the home architecture showing where Handover Sites sit and our target maximum consumers



4. The diagram above shows where a handover site / POI sits within the network, and that our network buildings or sites have different functions and purposes. We classify a site according to the highest-order function. A handover site (or a POI) usually

occurs in a building with a core or mesh function³ - but may not be a service that is offered at that site until it is required (either for network resilience or customer/traffic demand).

5. In order to manage network resilience, connections and traffic growth, we apply a target maximum of 100,000 connections per POI site. This is primarily a network resilience standard; capacity is a secondary factor. As a result, POI changes are a function of the scale of connections taking into account current volumes and anticipated growth due to population and uptake changes over time. For example, Auckland has approximately 400-500k services, which means at least 5 POIs are required and this will grow as population and housing growth will drive broadband uptake.
6. Given our customers (RSPs) decide where to run their end-users' traffic to (i.e., which POI to map their customers to), and which locations to handover to network providers, we have limited influence over managing demand at handover sites. Our role is to manage these sites prudently and effectively. We have effectively managed them by offering new handover sites/POIs where others have met, or are close to, meeting the target maximum.
7. We also have POIs in third party sites that have become 'capped' in terms of capacity, where Chorus has limited ability to efficiently and prudently add or augment existing equipment (e.g., Mayoral Drive, Glenfield, and Wellington). This is because we have limited control in sites we do not own. Therefore, when facing sub-optimal constraints at a site at or near capacity, Chorus has managed network performance by establishing an alternative site to serve growth.

Dynamic management of POIs is critical for network performance

8. Given this essential technical functionality of POIs, it is critical that network providers can continue to make appropriate network configuration changes and respond to dynamic changes in demand, without being overly constrained by regulatory processes or risking the regulatory framework becoming decoupled from the network reality. For example, the key factors that would drive an amendment to or creation of a new POI led by our network planning function would include:
 - a. increased traffic demand due either to natural growth (such as population growth in Auckland) or specific situations changing anticipated traffic flows (such as the streaming of the Rugby World Cup)
 - b. increased service volume demand due to broadband market growth or specific situations where RSP's make changes to their own networks that cause a remapping of customers to different POIs
 - c. capacity constraints at existing POIs requiring a new POI (or a move to a POI with greater capacity) in the same candidate area
 - d. where an existing exchange requires building upgrades or other capital investment that is not economically efficient, and it is more efficient to

³ "Mesh sites" take traffic from multiple access sites (as well as being directly connected to some access customers themselves and containing access functions). "Core sites" take traffic from multiple mesh sites and house large-capacity switches and the equipment for national transport (core sites will also contain mesh and access functions).

establish a new POI for expansion or in replacement for the POI requiring upgrade

- e. actual damage or an unacceptable level of risk (e.g., natural disasters) to existing POIs or other event out of our control, which requires urgent action such as establishing an alternative POI.
9. We need a regulatory approach which supports us making changes to POIs quickly and efficiently to ensure network performance. The existing change process is based on contractual arrangements with RSPs (which include requirements to consult via existing mechanisms, such as the Change Management/Product Forum). Prior to 1 January 2022, this was followed by CIP approval as required by the NIPA, with the Commission specifying the first s 231 notice in 2019.
10. To date, new POIs offer alternative options for RSPs, i.e., the establishment of new POIs have not led to a requirement for RSPs to migrate. Instead, RSPs choose whether to use a new POI/handover service if the offer, based on location and price, is an attractive option. Otherwise, RSPs may continue to use an existing POI.
11. However, specific uncontrollable events could compromise an exchange building resulting in it no longer being suitable for use (e.g., a natural disaster or fire). Where this occurs, we may need to move a POI due to necessity/resilience.
12. The process for establishing POIs is driven by dynamic network management and our customer demands. While we acknowledge the significance of SPOIs for setting the boundary of the regulated fibre network, the regulatory process should not impede network architecture decisions.

Framework for s 231

13. The Commission's proposed framework:
 - a. fails to acknowledge the technical and operational drivers for establishing new POIs and places undue emphasis on hypothetical competition concerns; and
 - b. imposes a disproportionate level of regulatory involvement relative to the current industry process.
14. We **recommend** the Commission reconsider its proposed framework. As currently proposed, it would impose regulatory inefficiencies, complexities, and would increase costs that would be ultimately borne by end-users. To this end, we consider the proposals disproportionate and unworkable for a task that is essentially technical and administrative under s 231 – i.e., to notify a "SPOI" and set the boundary of the regulated fibre network.
15. Network providers have always had to demonstrate their reasons for establishing or changing POIs and providing sufficient time for industry stakeholders to comment. Given there have not been any issues to date, nor since the Commission's initial SPOI declaration, it is unclear why the Commission considers that the current approach isn't working, and it has gone beyond what it signalled in 2019, i.e., it has never signalled a need for significant changes.

16. It is unclear why the Commission has jumped to increased levels of scrutiny, particularly when there are existing layers of regulatory scrutiny and consultation requirements (through our contracts and the Fibre IMs).

Process for changing POIs

17. We do not support the Commission's proposal that all proposed POI changes follow both an industry-owned process through the Change Management Forum/Product Forum and, following this, a separate industry consultation by the Commission.
18. We **recommend** the Commission continue use of the existing industry forums when considering applications for changing (or adding) a POI.⁴ This is because:
- a. The change mechanism provided in our existing contractual framework is, and has been for some time, effectively used by industry to discuss matters relating to network architecture
 - b. The Commission already accepts the existing approach as its baseline - we query what value additional formal consultation may provide, in addition to Commission papers and other formal steps
 - c. Two separate consultation rounds (in addition to our regulatory expenditure proposals and consultation) would be disproportionate and unwarranted to an already established, straight forward process for technical issues about network architecture.
19. In addition, the Commission's application of evaluation guidelines on top of the outcome of the consultation will lead to an inappropriate focus on creating a theoretically perfect competition outcome instead of a workable outcome that meets industry needs.
20. Rather, we consider an appropriate Commission process could include the following:
- a. **Allow a window for stakeholders to object to a SPOI** – rather than creating additional consultation, the Commission should presume to adopt the outcome of the industry consultation and give stakeholders a short window to object. If there are no objections the Commission should proceed to issue a SPOI notice reflecting the change.
 - b. **Limited intervention** – the Commission may intervene when there is significant industry misalignment, i.e., if the consultation outcome does not present a clear path forward. A clear outcome may be short of unanimous industry support, as it is possible that a single RSP or provider will have its own interests in delaying or preventing new or amended POIs, so the Commission should be wary of self-interested objections.
 - c. **Exceptions to the process** – whereby a requirement for consultation and / or additional steps could be disregarded in extraordinary circumstances.

⁴ We consider changing a POI to include adding a POI, moving a POI, removing a POI and any other changes that the network may require.

E.g., a natural disaster or other events outside of our control that require immediate action.⁵

- d. **Make efficient and timely decisions** – to mitigate the risk of industry uncertainty, we recommend that the Commission’s decision-making process is carried out as quickly as possible, i.e., within a matter of weeks not several months, from any change request. However, there may be extraordinary circumstances where a shorter timeframe may be justified (such as managing network risk).

Evaluation guidance

21. The Commission is entitled to adopt principles and guidelines to assist an assessment of whether to specify a new/changed SPOI. However, it should not set prescriptive criteria that are unrelated to the reasons for which changes to POI locations are made, such as requiring two backhaul providers at a POI regardless of the circumstances.

Promotion of workable competition

22. While we acknowledge s 162 creates an overarching purpose for Part 6 decisions, the Commission should recognise that: POI changes are primarily a question about network architecture; there is an existing process that has worked well; and the Commission has not established a case for any real or potential consumer harm in aligning SPOI notification with the existing process. It is unclear why the Commission considers it necessary to go over and above this baseline and curtail our ability to be an effective network operator.
23. Accordingly, we do not support the Commission’s proposed evaluation criteria. Our specific comments are included in the table below:

Table 1: Response to paragraph 72 proposed criteria

Whether the change request might:	Chorus’ view
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;	The existence of a POI in another LFC network is not what drives competition. Rather, it is the existence of different LFCs’ fibre networks that drives competition, and there is only overlap at the edges of this. Our POIs in other LFC areas do not create competition within those areas, or vice versa, because our POIs are connected to end-users on our network, and the other LFCs’ POIs are connected to end-users on their network, and it is not possible to connect an end-user on their network to our POI. Given this, encouraging POI growth by one LFC in another LFC area should not be seen as a relevant factor for specifying POIs.
72.2 introduce additional costs for some existing retail service providers or for new retail service providers such that these access	In a technology-driven market, all development drives an element of cost for participants. The scale of the investment required will vary for existing and new RSPs depending on factors such as existing equipment, where such equipment is

⁵ For example, during the Rugby World Cup we added new POIs under urgency to ensure handover capacity could manage network resilience and growth based on forecast of peak demands during that event. This was agreed with RSPs (with CIP’s knowledge), where CIP approved them at a later date.

Whether the change request might:	Chorus' view
<p>seekers will be disadvantaged in their ability to compete in downstream (retail) markets compared to other access seekers;</p>	<p>in its life cycle, how RSPs procure their equipment and scale etc. It is not possible (or desirable) to design a POI (or any other part of the network) to enable every RSP to be equally well-positioned to take up that development/service at the same time.</p> <p>Our intention and past practice has been to provide sufficient notice (though the 2019 Rugby World Cup was an exception supported by RSPs), to enable RSPs to plan / consider whether they wish to take up the service – a new POI is an option. To date 'old' POIs have remained therefore RSPs can choose whether to migrate completely. However, as the network and assets mature and external circumstances change (i.e., where third party decisions impact the technology chain – such as the life cycle of exchange buildings, supply chain cost changes), existing POIs may be withdrawn. This has not happened to date. If/where this occurs, we would envisage sufficient industry consultation and timeframes for planning.</p> <p>With respect to the recent 9 new POIs (established post-2019), RSPs uptake ranges from 3-10 RSPs at each, including a range of small and larger RSPs. There is no evidence of RSP disadvantage - in fact the opposite, there is strong evidence that RSPs benefit from the addition of new POIs.</p> <p>The Commission should be cautious before identifying a competition issue simply because RSPs have to incur costs as the network evolves. Only where those costs are so prohibitive as to constitute a genuine barrier to competition does a competition issue arise. Moreover, there are potential perverse outcomes in treating entry costs as a determinative factor for specification of POIs. This would enable RSPs who do not face those costs (for example RSPs who have their own exchanges or do not intend to use a new POI) to point to the costs to be borne by other (willing) RSPs in order to prevent needed network development and expansion of competitors. The Commission would then become an arbiter of a commercial dispute which falls well below the level of competitive harm.</p>
<p>72.3 have an exclusionary effect for some access seekers (e.g., because they are unable to extend their network to interconnect at a new location within a reasonable timeframe);</p>	<p>See above comments regarding cost – RSPs differ in size, scale and need, and it is not appropriate to use the establishment of a new POI or changes one to assess the ability for RSPs to expand/be excluded.</p> <p>There is always a lead time, within which we seek to provide RSPs with sufficient time to consider the change and enable them to interconnect within a sufficient time (within reason).</p> <p>RSPs that do not wish to install equipment in a new POI also have the option to connect between existing exchanges through services such as ICABS. This reinforces that the presence and location of POIs are not the sole determinant of an RSP's ability to compete in downstream markets.</p>

Whether the change request might:	Chorus' view
72.4 reduce competition in inter-candidate area/national backhaul markets (e.g., because backhaul providers have built their networks to existing SPOIs); and/or	<p>It is unclear how introducing a new POI could reduce competition due to existing backhaul providers building to new POIs.</p> <p>Competition is not about ensuring that all competitors are ensured an equal ability to compete, but about a competitive process whereby providers who are prepared to provide (and pay for) expansion that customers want do not face artificial hurdles in doing so.</p> <p>Having said that, our belief is that in practice other backhaul providers are generally keen to establish their backhaul services from our new POIs once demand is evident or anticipated) – we do not have complete visibility of this (and none at non-Chorus exchanges) but this is based on our assessment of related services we sell that would enable backhaul from Chorus POIs.</p> <p>The Commission should not lightly intervene in order to specifically protect backhaul providers who would like the market to remain static in order to maximise return – the competition purpose of s166/162 is not enhanced by inhibiting network developments merely because they do not suit all competitors.</p> <p>Continuously optimising the network as a prudent and efficient operator to meet customer demands is our key driver. As a result, like RSPs, backhaul providers have the option to build to new POIs.</p>
72.5 have a dampening effect on innovation and access seekers' ability to add new services for end-users (e.g. because of the technical capabilities of the proposed new SPOI).	<p>We are confused and unclear why the Commission has suggested this guideline.</p> <p>We expect every POI to have the full technical capabilities necessary for handover of traffic, and it is unclear what situation is contemplated in which we would construct a POI that would have different technical capabilities preventing access seekers from using them fully.</p> <p>POIs use a standard set of equipment to enable handovers and although this might develop over time (as all equipment does) there are no material changes to capabilities at new or planned POIs that would reduce any access-seeker's ability to add new services. As described above, each handover / POI site is also a mesh and core site on our network. That is the nature of the fibre network architecture that facilitates our aggregation services and allows RSPs to offer fibre services to their customers. It is not a function for 'innovation' but a necessity for delivering fibre services.</p>

Technical purpose

24. We agree that the s 231 requires any SPOI amendment to be for an appropriate technical purpose.

25. For example, we can only manage the number/capacity of handover links at a POI and seek to upgrade links or provide new ones at alternative sites where our cap is met. But where third party permission is required before we can upgrade or replace existing handover links or ports and that permission is not granted – the only option may be to establish a new POI so RSPs have the requisite handover links to meet their traffic/customers’ needs. Other RSPs who may not be at the point of requiring new handover capacity need to interconnect at a new POI – it is an optional alternative.
26. Therefore, the same technical driver could result in either a change to the existing POI (e.g., upgrade or life cycle replacement), or the development of a new POI (e.g., if an upgrade or asset replacement were not possible at an existing POI). This is because we cannot control where RSPs map their customers to a handover link/POI, we can only provide options for the mapping – we do not do the actual mapping.

Proposal principles

27. We agree that there can be more than one POI in each candidate area (and in fact candidate areas above a certain population will require this). However, we do not agree that, in order to be specified, a POI must have access to at least two wholesale backhaul providers.
28. We **recommend** the Commission remove the requirement for two backhaul providers. Imposing a requirement that a SPOI must have at least two backhaul providers removes the possibility of a proper assessment of any request for a specification of a POI. This implies that a predetermined outcome delivers effective competition and is therefore desirable in every case, which is inappropriate - particularly for a SPOI which (again) is primarily a technical decision and fundamental to our network architecture. Additionally:
 - a. There are other considerations that should take precedence over the number of providers – technical in nature, but also our ability to meet demand, network resilience and quality requirements.
 - b. When a new POI is established, there may be only one backhaul provider initially, but others are likely to utilise it over time. Requiring two providers at the outset to receive specification does not allow for this possibility.
 - c. Decisions for new / changes to a POI may be competitively neutral – i.e., where an existing POI with as single backhaul provider is changed to a new POI, or demand for a new POI is driven by a single backhaul provider, the consideration of two or more would appear irrelevant.
 - d. It is impracticable as a criterion for a regulated provider to meet when planning a new or amended POI. As noted above we do not have complete visibility (and in some cases little to no visibility) of current backhaul providers at a POI, let alone whether there would be other backhaul providers at a planned POI. It would be unreasonable for us to go through the whole planning process and then find a request for specification was refused due to a requirement that we cannot test or even know about.
 - e. If it is pre-determined that a SPOI must have two backhaul providers, other providers that wanted to prevent Chorus expanding its backhaul network could game the system by choosing not to provide (or indicating to the

Commission that they would not provide) backhaul services from a particular POI, thus preventing it from becoming a SPOI. It is inappropriate to incentivise competing providers to be able to dictate the scope of Chorus' regulated network in this manner.

POI expenditure and assets

Investment in POIs

29. A new POI may be introduced in a range of different contexts. In its simplest form this could be the offering of handover connections at a Chorus exchange that already contains the assets needed to provide POI functions. At its most complex, it could be a part of large scale, multi-year project to replace an existing Chorus exchange at a new site, including construction of a new building diversion of all network connectivity and exchange functions to that new site.
30. Actual handover links, or the point that RSPs interconnect, are ports on an aggregation switch. Those switches can, and generally are, used to provide other services. As such, handover ports alone are generally minor investments (although they can be combined with larger investments such as building a new exchange, the actual handover switch investment is usually immaterial, and the larger project would likely be subject to consultation via other regulatory processes⁶).
31. Importantly, the expenditure on a POI is not separately identifiable from other FFLAS assets as the network electronics may be used for a variety of functions, which may include dedicated handover functions. For example, a network switch will have optical line terminal (OLT) uplink ports, network internodal ports along with handover ports. The ports are located on common linecards in the same chassis.
32. If a new exchange is constructed, it may be a POI if it is determined that handover links are required at the new exchange. The costs associated with the establishment of a POI (separate to the costs of the new exchange itself) are limited to the ports or assets providing aggregation switches. In this sense, the POI investment is a relatively small (though important) part of wider network investment drivers.

Regulatory treatment of expenditure

33. We do not support the Commission's proposal set out in paragraphs 40-45 that:
 - a. Only SPOIs will be treated as "FFLAS handovers", but not POIs
 - b. POI assets cannot enter the ID RAB until those assets are prescribed as a SPOI
 - c. Forecast POI assets can only be involved in the PQD if it has had prior approval, otherwise the forecast POI assets must be included as part of an individual capex proposal (**ICP**).
34. It is unclear if the Commission intends to change the regulatory treatment of POI assets, but this is the effect of its proposal. Assets used to support a POI that is not a specified POI are within the fibre network and therefore clearly used in the provision of FFLAS.

⁶ Such as the regulatory expenditure proposal consultation and engagement plans, and if relevant an ICP.

35. No explanation has been provided as to why POI assets should be treated differently to other assets within the fibre network. These proposals would result in a disproportionate and unworkable framework for the investment of POIs/SPOIs and introduce a complex and inconsistent regulatory process and treatment of expenditure for small subset of FFLAS assets.
36. The Commission's argument appears to be that the commissioning of SPOI assets is conditional on a regulatory action (prescription of the POI by the Commission) and that it constitutes an unacceptable level of uncertainty to include the assets in the forecast value of commissioned asset. We consider this is illogical: the fact that commissioning of these assets is conditional on a regulatory step being taken does not mean these assets are incapable of being included in a base capex forecast. In any given regulatory period, regulated suppliers in a range of sectors may forecast capex which is intended to respond to anticipated regulatory change. Relevant forecast capex does not represent a qualitatively or quantitatively different challenge from a forecasting perspective and therefore does not warrant different treatment.
37. We **recommend** a more appropriate and workable approach is to continue treating forecast POI related expenditure as forecast base capex within current regulatory requirements, so that:
- a. POI related expenditure continues to be captured via our regulatory proposals as aggregation and/or property/co-location expenditure. This allows the Commission and stakeholders to scrutinise related expenditure proposals, and have their say via the existing regulatory proposal processes and engagement.
 - b. Where a POI is commissioned, it enters the ID RAB. It is then part of the opening RAB at the start of the next regulatory period.
38. The above approach is more workable than the Commission's proposals and more consistent with the purpose statement because of the following:
- a. When commissioning a POI our expectation would be that it would become a SPOI. If the Commission declined to specify a POI, we would need to consider whether we commissioned it anyway if our network / service conditions warranted it.
 - b. SPOI expenditure is not separately identifiable from other FFLAS assets. The sites and network electronics provide multiple functions, beyond just handover functions.
 - c. We are not clear what the basis is for suggesting that POI assets are somehow different from other asset types in that they can only be included in a base capex allowance after the POI has been specified.
 - d. It would create an additional barrier for placing POI assets into the RAB, a barrier that does not apply to any other asset types, creating a disincentive to invest in POI assets, contrary to section 162(a).
 - e. If we started seeing a proliferation of POIs that were not SPOIs, we would be concerned with potential consequences and misalignment this could create for the treatment of expenditure within current regulatory settings and the demarcation of the FFLAS network, notwithstanding the fact that we

would continue to commission POIs for the operation of the FFLAS network and our customers.

- f. The option of making an ICP for a SPOI is not workable. To submit an ICP application for every SPOI (noting there have been nine in the last three years) would be unduly onerous and costly for both Chorus and the Commission. The resource impacts of an ICP process are such that they would not be justified for such a small investment and the delay that would be caused by going through an ICP process would impact our ability to meet RSP and end-user expectations, and our quality standards, regarding the establishment of new handover points.
 - g. The ICP process was intended to deal with substantial amounts of capex that either could not be forecast prior to the PQ path, or which required additional scrutiny. As noted, the value of commissioned assets associated with establishing a POI will be generally less than \$1m. This is not capex of the type that the ICP process was intended for, and the evaluation process is wholly disproportionate to the amount of capex involved.
 - h. Notwithstanding the above, an ICP for an SPOI would be challenging and the process would be unworkable as typical SPOI investment is unlikely to meet the requirements of an ICP:
 - i. The value of the SPOI assets will likely be less than \$5m, so cl. 3.7.22(3)(c) of the IMs would not be met. Even in the rare situation where a completely new exchange is constructed, only a small proportion of the assets would be used exclusively for a POI – most would be used by other FFLAS and therefore outside an ICP for SPOIs. We note that there are no sites within our network where the assets are exclusively utilised for SPOIs – all are used for other FFLAS as well.
 - ii. There would not, or at least not necessarily, be uncertainty about the need, economic case or timing of the SPOI investment at the time the base capex proposal is submitted, so cl. 3.7.22(3)(d) of the IMs would unlikely be met.
39. If the Commission maintains its proposal, we request that it clarify its rationale for this and assess the costs and complexity against level of harm it intends to address (which does not appear to be outlined in its paper). The Commission should also confirm that it is sufficiently resourced to assess the expected volume of ICP applications without impacting the delivery of other, more valuable, priorities. We suggest the Commission considers how this sits alongside the existing rigor and scrutiny applied to our expenditure through the current IMs and existing consultation processes.

Quality considerations

40. We **recommend** the Commission takes into consideration the impact of its proposed approach on our ability to meet our quality requirements. The current process for managing POI changes works to deliver our quality standards as follows:
- a. managing unplanned downtime through a target number of connections at each POI. Risk of unplanned downtime increases as the volume of services at a POI increase. To manage this, we need to create new POI sites to help manage the distribution of services across handovers (specifically as it approaches 100,000 connections). Constraints or delays on that process could put increased pressure on the POI and result in breaches of the quality standards relating to unplanned downtime
 - b. we need to manage network chassis and port upgrades to meet our port utilisation quality standards – this can be done in a number of ways involves either upgrading existing POIs or establishing new or alternative POIs. The most efficient way to do this can be to add POI functions to existing sites (such as mesh sites) to meet increasing demand for handover links. If we are unable to do this to optimise the technical performance of the network we risk breaching our port utilisation standards.
41. The Commission's proposed process sets up a 'catch-22' for Chorus whereby we are forced to choose between prudently managing the network, and keeping the regulatory framework workable. If we choose the former, the distinction between regulated and unregulated services breaks down (because instances of the same service will or will not be FFLAS depending on the handover location), the RAB status of assets becomes unclear and the regulation becomes unworkable. If we choose the latter (i.e., by not making changes to POIs unless/until the Commission approves the adjustment to the SPOI notice) then the quality of our network and services is put at risk.

Draft decision to prescribe additional POIs

42. We support the Commission's decision to prescribe the additional POIs we requested since its initial 2019 declaration of specified POIs. Our reasons outlined in our letter are still relevant. We have several RSPs taking the handover service offered at each of these 9 sites.