

Specified Points of Interconnection – draft decision to amend the s 231 notice

Consultation Paper

The Commission: Tristan Gilbertson
Sue Begg
Vhari McWha
Nathan Strong

Date of publication: 19 December 2023



Glossary

Act	Telecommunications Act 2001
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
Regulated fibre service provider	A person prescribed by the Governor-General as being subject to regulation under s 226 of the Act
SPOI	A POI which has been prescribed by the Commission under section 231 of the Act

CONTENTS

GLOSSARY	2
INTRODUCTION	4
<i>Structure of this document</i>	<i>5</i>
SUBMISSIONS PROCESS.....	5
<i>Confidentiality.....</i>	<i>5</i>
OVERVIEW OF NEXT STEPS	6
DRAFT DECISION TO AMEND THE S 231 NOTICE	6
CHORUS' CHANGE REQUEST	7
<i>Additional SPOIs.....</i>	<i>7</i>
<i>POI Area extension.....</i>	<i>7</i>
<i>Chorus reasons for the change</i>	<i>8</i>
<i>Industry process.....</i>	<i>8</i>
REASONS FOR OUR DRAFT DECISION TO AMEND THE S 231 NOTICE	8
<i>Additional SPOIs.....</i>	<i>8</i>
<i>POI Area extension.....</i>	<i>9</i>
<i>Conditions</i>	<i>9</i>
ATTACHMENT A – LIST OF SPOIS (AS OF 16 FEBRUARY 2023).....	10
CHORUS POIS.....	10
ENABLE NETWORKS LIMITED POIS.....	12
NORTHPOWER FIBRE LIMITED/NORTHPOWER LFC2 LIMITED POIS	12
TUATAHI FIRST FIBRE POIS	13

Introduction

1. Section 231 of the Telecommunications Act 2001 (**Act**) gives the Commerce Commission (**Commission**) the power to prescribe, by public notice, 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. This paper (**Consultation Paper**) seeks feedback from stakeholders on our draft decision to amend the ‘Notice of points of interconnection under section 231 of the Telecommunications Act 2001’ dated 16 February 2023 (the **s 231 notice**) in response to a change request received from Chorus Limited (**Chorus**).
3. In making our draft decision, we have considered Chorus’ change request under our SPOI framework for exercising our powers under s 231 of the Telecommunications Act (the **framework**).¹
4. Our draft decision is to amend the s 231 notice to:
 - 4.1 prescribe for Chorus three additional POIs;² and
 - 4.2 amend the SPOIs for the Frankton (FJN), Hamilton (HN), and New Plymouth (NU) POI Areas.
5. We also propose to take this opportunity to correct the spelling of Feilding for the POI Area name of Chorus’ Palmerston North Exchange (PM).
6. Published alongside this paper is Chorus’ **change request** that includes:
 - 6.1 Chorus’ cover letter to the Commerce Commission of 3 October 2023;
 - 6.2 Chorus’ SPOI change request of 3 October 2023 that requested we amend the SPOIs outlined in the s 231 notice, by way of prescribing additional POIs located in Claudelands, Gleniti, and Spotswood;³
 - 6.3 Chorus’ UFB Handover site capacity report of July 2023; and
 - 6.4 Chorus’ **clarification email** of 6 November to amend the descriptions (geographic extent) of the POI Areas for its Frankton (FJN), Hamilton (HN), and New Plymouth (NU) SPOIs.

¹ Commerce Commission, “Specified points of interconnections – Framework for exercising our powers under s231 of the Telecommunications Act 2001” (16 February 2023), available at https://comcom.govt.nz/_data/assets/pdf_file/0029/306938/Specified-points-of-interconnection-Framework-for-amending-s-231-notice-16-February-2023.pdf.

² Commerce Commission, “Notice of points of interconnection under section 231 of the Telecommunications Act 2001” (16 February 2023), available at https://comcom.govt.nz/_data/assets/pdf_file/0028/306937/Notice-of-Specified-Points-of-Interconnection-16-February-2023.pdf

³ Chorus, Chorus SPOI change request, 3 October 2023

Structure of this document

7. The remainder of this Consultation Paper has the following sections:
 - 7.1 Submissions process;
 - 7.2 Overview of next steps;
 - 7.3 Draft decision to amend the s 231 notice; and
 - 7.4 Attachment A – List of SPOIs (as at 16 February 2023).⁴

Submissions process

8. We are seeking submissions on our draft decision outlined in this paper by 5pm on **Friday, 23 February 2024**.
9. You should address your responses to:
 - 9.1 Keston Ruxton (Manager, Fibre PQ Regulation)
 - 9.2 c/o infrastructure.regulation@comcom.govt.nz
10. Please include “SPOI Consultation – draft decision to amend the s 231 notice” in the subject line.

Confidentiality

11. Please note that we intend to publish all submissions on this consultation paper.
12. The protection of confidential information is something the Commission takes seriously. The process requires you to provide (if necessary) both a confidential and non-confidential/public version of your submission and to clearly identify the confidential and non-confidential/public versions.
13. When including commercially sensitive or confidential information in your submission:
 - 13.1 Please provide clearly labelled confidential and public versions. We intend to publish all public versions on our website.
 - 13.2 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
 - 13.3 Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reason existed under the Official Information Act 1982 to

⁴ Attachment A sets out the updated full list of SPOIs prescribed under the s 231 notice of 16 February 2023 with the date they were prescribed.

withhold it. We would normally consult with the party that provided the information before any disclosure is made.

Overview of next steps

14. Following submissions on this Consultation Paper, consistent with the framework, as defined in para 6, our next steps are to:⁵
 - 14.1 make our final decision on whether to approve or decline the change request, which will include the consideration of submissions on this Consultation Paper and then publish our final decision with reasons about whether to amend the s 231 notice; and
 - 14.2 if the change request is approved:⁶
 - 14.2.1 publish the amended s 231 notice; and
 - 14.2.2 give notification of the amendment to the s 231 notice by Gazette.
15. Table 1.1 below provides the timeline we intend to follow for publications related to our proposal to amend the s 231 notice.

Table 1.1 **Timeline of process**

Key step	Date
Consultation Paper published	19 December 2023
Submissions due on Consultation Paper	23 February 2024
Publish our final decision with reasons and if the change request is approved an amended s 231 notice	29 March 2024

Draft decision to amend the s 231 notice

16. Our draft decision is to amend the s 231 notice to prescribe Chorus three additional POIs, amend the description of the POI Areas for Chorus' Frankton (FJN), Hamilton (HN), and New Plymouth (NU) prescribed POIs, and correct the name of Feilding, as set out in Table 1.2 below.

⁵ Commerce Commission, Specified Points of Interconnection – Framework for amending s 231 notice, 16 February 2023, at Figure 1.2

⁶ Ibid. As noted in Figure 1.2, If a change request is rejected, we will provide our reasoning.

Table 1.2 Proposed changes

POI Identifier	Name	UFB geographic area (POI Area)	Region	Proposed change
CLE	Claudelands	Hamilton, Tokoroa, Cambridge and Te Awamutu	Waikato	New SPOI
FJN	Frankton Exchange	Hamilton, Tokoroa, Cambridge and Te Awamutu	Waikato	POI Area extension
HN	Hamilton Exchange	Hamilton, Tokoroa, Cambridge and Te Awamutu	Waikato	POI Area extension
GLT	Gleniti	Timaru	Canterbury	New SPOI
PM	Palmerston North Exchange	Palmerston North and Feilding	Manawatu-Whanganui	POI Area spelling correction
SWO	Spotswood	New Plymouth and Hawera	Taranaki	New SPOI
NU	New Plymouth Exchange	New Plymouth and Hawera	Taranaki	POI Area extension

17. The remainder of this section sets out details of Chorus' change request and the reasons for our draft decision.

Chorus' change request

Additional SPOIs

18. Chorus submitted its request for additional SPOIs to the Commission on 3 October 2023. It requested that we amend the s 231 notice to prescribe three additional POIs within existing POI Areas.⁷
19. In its request Chorus notes it has started an internal process to provision the locations with commissioning likely to be late 2024, provided the additional POIs are prescribed by the Commission.

POI Area extension

20. Chorus also confirmed on 6 November 2023 by email that the Hamilton and New Plymouth POI areas (as shown in Table 1.2) were extended some time ago:
- 20.1 for Hamilton to include Cambridge, Tokoroa and Te Awamutu; and
- 20.2 for New Plymouth to include Hawera.

⁷ Chorus, "Letter to the Commerce Commission", "Specified points of interconnection (SPOIs) – request to prescribe additional SPOIs" (3 October 2023) and "UFB Handover site capacity report" (July 2023).

Chorus reasons for the change

21. Chorus provided the following reasons in its request for adding these POIs:
 - 21.1 decisions have largely been driven by network architecture requirements and customer demand as well as residual obligations under the NIPA;
 - 21.1.1 Claudelands is proposed to address immediate customer demand and RSPs want a handover at this site as there is also a Tuatahi First Fibre SPOI and co-locating is more efficient;
 - 21.1.2 Gleniti and Spotswood are proposed to meet future demand and lessen reliance on third party sites; and
 - 21.2 it considers that these reasons are consistent with those made for the additional nine SPOIs approved by the Commission on 16 February 2023.
22. Chorus also clarified in relation to the changes for Frankton (FJN), Hamilton (HN), and New Plymouth (NU) that these POI areas were actually extended some time ago and were recognised by CIP shortly before the new regulatory framework came into effect.

Industry process

23. Chorus states it undertook consultation with the industry on these three proposed POIs from 9 to 25 August 2023 and has published the outcome on its Service Provider website.⁸
24. Chorus notes that respondents were supportive of creating more SPOIs in general with all but one specifically supporting the creation of these three specific SPOIs. One respondent said it was unsure if the specific POIs would be useful at this stage.⁹

Reasons for our draft decision to amend the s 231 notice

Additional SPOIs

25. In reaching our draft decision, we are required to evaluate the change request against the Act and use the framework as our guide.
26. We have also had regard to Chorus' consultation with industry, where respondents were generally supportive of the three additional SPOIs. We acknowledge that access seekers have had an opportunity to provide input to Chorus' proposal. However, we consider broader consultation is an important part of the process so that proper regard of the impact on access seeker's networks has been taken into consideration.

⁸ A registered account is required to access this website.

⁹ Chorus, "Specified points of interconnection (SPOIs) – request to prescribe additional SPOIs" (3 October 2023), at [42].

27. In our view, prescribing each of the three additional SPOIs 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:
- 27.1 removing capacity constraints at existing SPOIs and planning for future growth (s 162(a)); and
 - 27.2 ensuring services are of a quality that end-users demand by improving resilience to spread risk where total end-user connections reach a threshold and to provide traffic load distribution across multiple locations (s 162(b)).
28. In terms of the requirements of s 166(2), and specifically s 166(2)(b):
- 28.1 where third parties are located close to the three POI locations, we believe they would have the ability to develop and offer backhaul services in a reasonably short timeframe, thereby providing competitive constraint in markets for intra-candidate/inter-candidate area and national backhaul services;¹⁰ and
 - 28.2 we also believe that geographically consistent pricing under s 201 of the Act may provide a degree of pricing constraint on intra area candidate area backhaul ICABS.¹¹
29. Overall, when considering 166(2)(a) alongside 166(2)(b), we find the requirements of s 166(2) are satisfied.

POI Area extension

30. We accept Chorus' explanation in its clarification email that the POI Area changes for Frankton (FJN), Hamilton (HN), and New Plymouth (NU) were recognised by CIP shortly before the new regulatory framework came into effect and were not captured in our last amendment to the s 231 notice.
31. We consider that this change meets the purpose of s 231(4)(a) as an amendment of a SPOI for a technical purpose. It enables Chorus to provide bitstream service to towns where it has fibre network coverage by including them in existing POI Areas.

Conditions

32. Our draft decision is to not impose any conditions on Chorus' change request (ie, conditions that must be met between approving a change request and amending the s 231 notice). We consider that, in the context of the current change request, a condition is not necessary to best give effect to the matters outlined in s 166(2)

¹⁰ We note that, as part of information gathered during our backhaul study in 2019, we are unaware of any impediments to competitive backhaul being established or expanded at Claudelands, Gleniti, and Spotswood when demand eventuates.

¹¹ For further background information on intra candidate area backhaul services (ICABS), see Chorus' website, available at <https://sp.chorus.co.nz/product/intra-candidate-area-backhaul-icabs/overview>.

(including the s 162 purpose). However, we will consider any stakeholder feedback on any potential condition when making our final decision.

Attachment A – List of SPOIs (as of 16 February 2023)

The date that the additional SPOIs that were prescribed when the s 231 notice was last amended on 16 February 2023 are shown in the table below in **RED**

Chorus POIs

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
AR	Ashburton Exchange	Ashburton	Canterbury	19/12/2019
AVO	Avonhead Exchange	Christchurch, Rangiora and Rolleston	Canterbury	16/02/2023
BM	Blenheim Exchange	Blenheim	Marlborough	19/12/2019
CH	Christchurch Exchange	Christchurch, Rangiora and Rolleston	Canterbury	19/12/2019
CPC	Courtenay Place Exchange	Wellington	Wellington	19/12/2019
DN	Dunedin Exchange	Dunedin	Otago	19/12/2019
FG	Feilding Exchange	Palmerston North and Feilding	Manawhatu-Whanganui	19/12/2019
FOR	Forrest Hill Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
FJN	Frankton Exchange	Hamilton	Waikato	19/12/2019
GS	Gisborne Exchange	Gisborne	Gisborne	19/12/2019
GLF	Glenfield Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
GM	Greymouth Exchange	Greymouth	West Coast	19/12/2019
HN	Hamilton Exchange	Hamilton	Waikato	19/12/2019
HBN	Hastings Exchange	Napier and Hastings	Hawke's Bay	19/12/2019
IN	Invercargill Exchange	Invercargill	Southland	19/12/2019
JV	Johnsonville Exchange	Wellington	Wellington	16/02/2023

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
KNG	Kensington Exchange	Whangarei	Northland	19/12/2019
LIN	Linwood Exchange	Christchurch, Rangiora and Rolleston	Canterbury	16/02/2023
LVN	Levin Exchange	Levin	Manawatu-Whanganui	19/12/2019
LYE	Lynmore Exchange	Rotorua	Bay of Plenty	16/02/2023
MAW	Marewa Exchange	Napier and Hastings	Hawke's Bay	19/12/2019
MS	Masterton Exchange	Masterton	Wellington	19/12/2019
MDR	Mayoral Drive Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
MOD	Mount Eden Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
MRE	Mangere Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	16/02/2023
MSY	Massey Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	16/02/2023
NA	Napier Exchange	Napier and Hastings	Hawke's Bay	19/12/2019
NN	Nelson Exchange	Nelson	Nelson	19/12/2019
NU	New Plymouth Exchange	New Plymouth	Taranaki	19/12/2019
NVY	North East Valley Exchange	Dunedin	Otago	16/02/2023
OTE	Otumoetai Exchange	Tauranga	Bay of Plenty	16/02/2023
OU	Oamaru Exchange	Oamaru	Otago	19/12/2019
PM	Palmerston North Exchange	Palmerston North and Fielding	Manawatu-Whanganui	19/12/2019
PRM	Paraparaumu Exchange	Paraparaumu and Kapiti	Wellington	19/12/2019
POY	Ponsonby Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
PRO	Porirua Exchange	Wellington	Wellington	19/12/2019

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
QST	Queenstown Exchange	Queenstown	Otago	19/12/2019
RO	Rotorua Exchange	Rotorua	Bay of Plenty	19/12/2019
SOD	South Dunedin Exchange	Dunedin	Otago	19/12/2019
STK	Stoke Exchange	Nelson	Nelson	16/02/2023
TPO	Taupo Exchange	Taupo	Waikato	19/12/2019
TG	Tauranga Exchange	Tauranga	Bay of Plenty	19/12/2019
TU	Timaru Exchange	Timaru	Canterbury	19/12/2019
WKW	Waikiwi Exchange	Invercargill	Southland	19/12/2019
WN	Wellington Exchange	Wellington	Wellington	19/12/2019
WG	Whanganui Exchange	Whanganui	Taranaki	19/12/2019
WR	Whangarei Exchange	Whangarei	Northland	19/12/2019
WHK	Whakatane Exchange	Whakatane	Bay of Plenty	19/12/2019

Enable Networks Limited POIs

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
HRB	Hornby	Christchurch, Rangiora and Rolleston	Canterbury	19/12/2019
RIC	Riccarton	Christchurch, Rangiora and Rolleston	Canterbury	19/12/2019

Northpower Fibre Limited/Northpower LFC2 Limited POIs

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
ALX	Alexander St	Whangarei	Northland	19/12/2019

Tuatahi First Fibre POIs

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
HME	Hamilton East	Hamilton, Tokoroa, Cambridge and Te Awamutu	Waikato	19/12/2019
HMW	Hamilton West	Hamilton, Tokoroa, Cambridge and Te Awamutu	Waikato	19/12/2019
NPL	New Plymouth	New Plymouth and Hawera	Taranaki	19/12/2019
TGE	Tauranga East	Tauranga	Bay of Plenty	19/12/2019
TGW	Tauranga West	Tauranga	Bay of Plenty	19/12/2019
WAN	Whanganui	Whanganui	Manawatu-Whanganui	19/12/2019