

Copper Withdrawal Code 2024

Decisions and Reasons Paper

Amendments made under Schedule 2A of the Telecommunications Act 2001

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5 February 2024	ISBN 978-1-991085-33-7	Copper Withdrawal Code 2024

Glossary

Table of terms and abbreviations	
CFLAS	Copper fixed line access services
copper service	CFLAS and UCLL/UCLL Backhaul
ESRI	The Environmental Systems Research Institute
FFLAS	Fibre fixed line access services
GIS	Geographic Information System
LFC	Local fibre companies
Previous Code	The previous version of this Code (published 10 December 2020 and in force from 1 March 2021) which has been superseded by the Copper Withdrawal Code 2024
PSTN	Public switched telephone network
RFSP	Relevant fibre service provider
RSP	Retail service provider
SFA	Specified Fibre Area
STD	Standard terms determination
TCF	Telecommunications Forum
UCLL	Unbundled copper local loop
UFB	Ultra-Fast Broadband
TDR	Telecommunications Dispute Resolution

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Executive Summary

- X1 The Copper Withdrawal Code 2024 (**the Code**) is a set of minimum requirements that must be met before Chorus is permitted to withdraw copper services in areas where specified fibre services are available to end-users. The principal purpose of a copper withdrawal code (**code**) is to protect the end-users of copper-based services during the transition to more modern technologies.¹
- X2 The Commerce Commission (**the Commission**) reviewed the previous version of the Code (**Previous Code**) to assess its operation and identify any improvements to better meet the minimum requirements in the Telecommunications Act 2001 (**the Act**).
- X3 In March 2023, we published a Request for Views on the effectiveness of the copper withdrawal code in meeting the requirements in the Act paper (**Request for Views paper**).² In that paper we also sought views on specific proposals Chorus had made for improving the Previous Code.
- X4 Consultation confirmed that, while the Previous Code was delivering against the minimum requirements in the Act, there was scope for improvement in some areas.
- X5 In September 2023, we published a Draft Copper Withdrawal Amended Code (**Draft Amended Code**),³ and Copper Withdrawal Amended Code – Draft Decisions and Reasons Paper (**Draft Decisions and Reasons paper**)⁴ seeking stakeholder views on proposed changes to the Previous Code.
- X6 Submissions mostly supported the changes we proposed as described later in this paper.
- X7 Our decisions to amend the Previous Code are intended to:
- X7.1 Simplify and improve the notice process;
 - X7.2 Allow flexibility in end-user communication channels; and
 - X7.3 Provide additional pause mechanisms to help resolve process issues.

¹ The copper services covered by the Code are specified in Schedule 2A(1) of the Act.

² https://comcom.govt.nz/_data/assets/pdf_file/0017/310904/Copper-Withdrawal-Code-Review-Request-for-Views-23-March-2023.pdf.

³ https://comcom.govt.nz/_data/assets/pdf_file/0030/329529/5BTracked5D-Draft-copper-withdrawal-amended-code-2023-27-Sept-2023.pdf. For our final decision we have used the name "Copper Withdrawal Code 2024", rather than "Copper Withdrawal Amended Code".

⁴ https://comcom.govt.nz/_data/assets/pdf_file/0029/329528/Copper-withdrawal-amended-code-2023-Draft-Decisions-and-Reasons-paper-27-Sept-2023.pdf.

- X8 We have published the Code alongside this final Decisions and Reasons paper (**Decisions and Reasons paper**). The Code comes into effect on 5 April 2024.

Chapter 1 Introduction

Purpose of this document

1. The Act allows the Commission to amend the Previous Code if we consider that it no longer meets all the requirements set out in the Act.⁵ We interpret this as permitting amendments where the amended code will better meet all the requirements set out in the Act.
2. We reviewed the Previous Code and in March 2023 sought views from stakeholders and interested persons on its effectiveness in meeting the requirements of the Act via our Request for Views paper. The submissions we received in response to this paper helped inform the draft amendments to the Previous Code.
3. On 27 September 2023, we published the Draft Amended Code and the Draft Decisions and Reasons paper. We sought feedback from interested parties, with submissions received by 9 November 2023.
4. Having considered the submissions, this Decisions and Reasons paper sets out our final decisions and reasons. The Code has been published alongside this Decisions and Reasons paper.
5. We would like to thank all those who participated in the process, including telecommunications service providers, consumers, and other stakeholders. Submissions received were an essential part of our process and have helped us to ensure the Code is fit for purpose.

Structure of this document

6. This Decisions and Reasons paper contains the following sections:
 - 6.1 **Chapter 2 – Context for the review** explains the context for this review, including the experience of stakeholders under the Previous Code to date;
 - 6.2 **Chapter 3 – Process and test for amending Previous Code** discusses the legal process and test for making amendments to the Previous Code; and
 - 6.3 **Chapter 4 – Decisions and Reasons** provides our reasoning for the content of the Code, including minimum requirements.

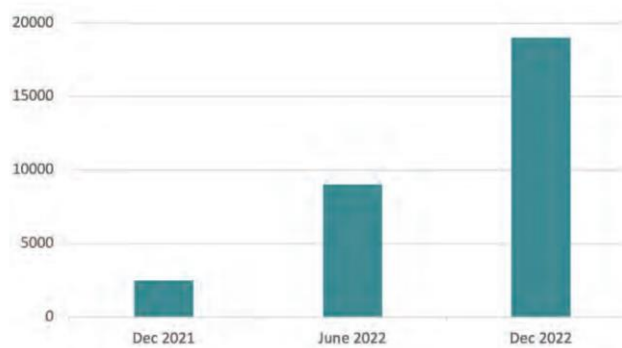
⁵ Schedule 2A, clauses 4(1) and 3 of the Act.

Chapter 2 Context and process for the review

Context for the review

7. In November 2018, the Act was amended by the Telecommunications (New Regulatory Framework) Amendment Act 2018. The amendments to the Act required the Commission to publish a code by 1 January 2022.
8. The Previous Code was approved by the Commission under clause 3 of Schedule 2A of the Act on 10 December 2020 and came into force on 1 March 2021.⁶ Section L of the Previous Code allows the Commission “to amend or revoke the Code if the Commission considers that the Code no longer meets all the requirements set out in the Act”.⁷
9. By late 2022, Chorus had undertaken various batches of copper withdrawal activity, filed its first disclosure, and provided views on how the Previous Code could be improved based on its experience up until that point.
10. We also noted a decline in the number of copper connections, due in part to commercial decisions by some retail service providers (**RSPs**) to stop selling copper services ahead of withdrawal, and consumer preferences for faster speeds or cheaper prices on other technologies.⁸ Copper withdrawal is also playing a role in the decline.

Figure 1: Initial notices issued under the Copper Withdrawal Code (cumulative); Source: Chorus⁹



11. Figure 1 above shows the cumulative number of initial copper withdrawal notices issued by Chorus in the period to 31 December 2022.¹⁰ In its half year results,

⁶ Refer to the commencement date set out in paragraph 1 of the Previous Code.

⁷ Telecommunications Act 2001, Schedule 2A, clause 4(1).

⁸ Commerce Commission “2022 Telecommunications Monitoring Report” see https://comcom.govt.nz/_data/assets/pdf_file/0028/318907/2022-Annual-Telecommunications-Monitoring-Report-15-June-2023.pdf page 28.

⁹ Chorus “2023 half year results – investor presentation” (20 February 2023), slide 27 – see <https://company.chorus.co.nz/reports>.

¹⁰ Commerce Commission “2022 Telecommunications Monitoring Report” see https://comcom.govt.nz/_data/assets/pdf_file/0028/318907/2022-Annual-Telecommunications-Monitoring-Report-15-June-2023.pdf page 17.

reporting up to 31 December 2022, Chorus reported that of the approximately 19,000 notices issued, it had withdrawn approximately 10,000 copper services.¹¹

12. We considered that the volume of notices and withdrawal activity provided a sufficient foundation to commence our review of the Previous Code, ahead of further copper withdrawal which Chorus plans to complete by 2026.

Process for the review

13. Our review considered the Previous Code against the requirements set out in Part 2AA and in Schedule 2A of the Act, which relate to the deregulation of copper and the code, respectively. This included considering whether the minimum requirements in clause 1(3) of Schedule 2A could be delivered more transparently, so that information about the requirements is more accessible to end-users.
14. Our review also considered whether the Previous Code could be improved to better deliver on the Act's minimum requirements, having regard to the operation of the Previous Code.
15. Further, we assessed the requirements in the Previous Code (including technical operational requirements), and whether these could be improved to better meet the Act's requirements.

Request for Views

16. In March 2023, we published a Request for Views paper. This paper set out the process for our review and sought stakeholder views on the operation of the Previous Code, and any improvements that could be made to better meet the Act's minimum requirements. It also presented Chorus' initial feedback following its withdrawal of copper services, and Chorus' proposed amendments to the Previous Code.
17. We received six submissions in response to our Request for Views paper.¹² The majority of responses focused on Chorus' proposals. Only some responses addressed questions about the effectiveness of the Previous Code in meeting the requirements in the Act. We inferred from this that the Previous Code was meeting its purpose, but there was an opportunity to improve some operational aspects of the Previous Code to better meet the minimum requirements.
18. In addition to the submissions, we also conducted an end-user survey, targeted at end-users who had been involved in copper withdrawal under the Previous Code. The responses we received did not raise concerns that the Previous Code was not

¹¹ Chorus "2023 half year results – investor presentation" (20 February 2023), slide 27 – see <https://company.chorus.co.nz/reports>.

¹² Copies of these submissions can be found here: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/review-of-the-copper-withdrawal?target=documents&root=310903>.

meeting its intended purpose but did highlight the need for better communication with more certainty on timing.

Draft Amended Code

19. In September 2023, we published the Draft Amended Code alongside a Draft Decisions and Reasons paper. Our proposed changes set out in the Draft Amended Code were based on our review and consideration of the submissions received in response to the Request for Views paper. The Draft Amended Code proposed mainly operational changes to the Previous Code.
20. We received four submissions in response to the Draft Amended Code and the Draft Decisions and Reasons Paper.¹³ These submissions mostly supported the changes we had proposed, which were focused on improving the operation of the Previous Code and ensuring clearer communications for end-users. Chorus also requested changes to address third party blocking issues that we did not adopt for the reasons set out in Chapter 4.

¹³ Copies of these submissions can be found here: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/review-of-the-copper-withdrawal?target=documents&root=334544>.

Chapter 3 Process and test for amending the Previous Code

21. In this chapter we describe the legal process and test for making amendments to the Previous Code. The relevant legal framework from the Act is included as **Appendix A**, and the provisions of the Act relating to the Code are included as **Appendix B** to this paper.

Process for amending an approved code

22. Clause 4(1) of Schedule 2A of the Act provides that the Commission may prepare an amendment to the approved code if we consider that it no longer meets all the requirements set out in the Act, and prescribes that the Commission must follow the following process for amending an approved code:¹⁴
- 22.1 Notify the process that will be followed to amend the approved code;¹⁵
 - 22.2 Consult with interested persons;¹⁶
 - 22.3 Give public notice of a draft code;¹⁷
 - 22.4 Approve the draft code if the Commission is satisfied that it meets all the requirements in the Act.
23. Interested persons are entitled to make submissions to the Commission within 30 working days after the date on which public notice of the draft amended code is given, and the Commission must have regard to any submissions received by this due date.¹⁸

The test for making amendments to the Previous Code

24. When considering whether the Previous Code meets the requirements of the Act, we consider it against the minimum requirements set out clause 1(3) of Schedule 2A, read in light of the purpose of the code and the purpose in Part 2AA to provide protections for end-users of copper fixed line access services in deregulated areas.

¹⁴ Clause 2 and 3 of Schedule 2A, via clause 4(2) of Schedule 2A of the Act.

¹⁵ In the context of this review: Copper Withdrawal Code Review – Request for Views paper (23 March 2023) published https://comcom.govt.nz/_data/assets/pdf_file/0017/310904/Copper-Withdrawal-Code-Review-Request-for-Views-23-March-2023.pdf.

¹⁶ In the context of this review: Submissions on Copper Withdrawal Code Review – Request for Views paper <https://comcom.govt.nz/regulated-industries/telecommunications/projects/review-of-the-copper-withdrawal?target=documents&root=310903>.

¹⁷ In the context of this review: Notification of Commerce Commission’s Draft Amendments to the Copper Withdrawal Code (27 Sep 2023) available at <https://gazette.govt.nz/notice/id/2023-au4552>.

¹⁸ Clause 2(2) and 2(3) of Schedule 2A of the Act.

25. We do not consider that we are constrained by clause 4(1) of Schedule 2A to only consider amendments where there is a clear gap in the Previous Code in meeting the minimum requirements in the sense that a requirement is not met at all.
26. Rather, we consider that we are permitted to make amendments to the Previous Code where an amended code would *better meet* the minimum requirements, including where a different way of doing something would better deliver on the requirements.
27. In the context of this review, we have therefore assessed whether the Previous Code could be amended to better meet the minimum requirements, considering the purpose of the code and the purpose of Part 2AA of the Act.
28. Our review included an examination of evidence on the effectiveness and efficiency of the technical operational requirements in the Previous Code, and whether these could be improved to better meet the minimum requirements to achieve better outcomes for end-users, in light of the Previous Code’s purpose.
29. In assessing whether to amend the Previous Code, we considered it as a whole and whether the amendments in combination would result in material improvements, including by improving transparency or making information more accessible to end-users.
30. In addition, we considered that clause 1(4) permits us to add new clauses to the Previous Code where we consider this would better meet its purpose.¹⁹

Purpose of a code

31. The purpose of a code is set out in Part B of the Previous Code, and states:
 2. The purpose of the Code is to protect end-users of certain copper services where Chorus seeks to withdraw those services. The Code ensures this by setting out minimum consumer protection requirements that Chorus must comply with before Chorus may withdraw the end-user’s copper service, such that the end-user –
 - 2.1 understands Chorus’s process for withdrawal of the copper service, and how this will affect the end-user;
 - 2.2 has access to information about fibre services available to the end-user;
 - 2.3 has reasonable time to prepare for a proposed withdrawal of the copper service; and
 - 2.4 is able to have a connection to a fibre service installed (if they wish to move to a fibre service), and that the fibre service provides similar functionality to the copper service.

¹⁹ Clause 1(4) of Schedule 2A of the Act provides that the Code may contain any other provisions that the Commission or the Forum (as appropriate) considers are necessary or desirable.

32. As noted in our December 2020 Reasons paper, this purpose reflects our view that the main purpose of a code is to establish consumer protection requirements. This is reflected in clause (1) of Schedule 2A, which provides that the Commission must make a code “setting out minimum consumer protection requirements for end-users” of certain copper services. Part 2AA of the Act enables Chorus to withdraw copper services where these minimum consumer protection requirements are met.²⁰
33. We also acknowledge that Part 2AA envisages the withdrawal of certain copper services, and that this is reflected in one of the purposes of Part 2AA being to deregulate copper fixed line access services (**CFLAS**) in areas where fibre fixed line access services (**FFLAS**) are available.²¹

²⁰ Telecommunications Act 2001, s 69AA; Copper Withdrawal Code - Decisions and Reasons Paper (10 December 2020) para 154.

²¹ Section 69AA(a) of the Act.

Chapter 4 Final Decisions and Reasons

34. In this chapter we set out our final decisions and reasons for the amendments to the Previous Code.
35. We only set out our decisions for the provisions reviewed in the Previous Code. For an explanation of our decisions on all other provisions and requirements, please refer to our December 2020 Reasons paper.
36. Below we outline:
 - 36.1 the requirements set out in the Act and Previous Code;
 - 36.2 our draft decisions as informed by submissions on our Request for Views paper; and
 - 36.3 our final decisions and reasons, again, as informed by submissions received in relation to these topics.
37. A summary of submissions received in response to the Draft Amended Code and the Draft Decision and Reasons paper is included as **Appendix C** and a summary of the changes to the Previous Code is included as **Appendix D** to this paper.

Requirement to give notice of proposed withdrawal of copper service

Requirements under the Act and Previous Code

38. The Act sets out that Chorus must give reasonable notice of the proposed withdrawal of the copper service and who must receive this notice.²² The Previous Code set out that Chorus was required to give reasonable notice to:
 - 38.1 the end-user;
 - 38.2 the access seeker, who will be the end-user's retail service provider (**RSP**); and
 - 38.3 the relevant fibre service provider (**RFSP**) for the end-user's premises, which will be one of the other local fibre companies (**LFCs**) or any other fibre provider.²³
39. Further, Chorus was required to ensure that end-users understood Chorus' process for withdrawal of their copper service and how this affected them before this service was withdrawn.²⁴

²² Clause 1(3)(b) of Schedule 2A of the Act.

²³ Part F1 of the Previous Code.

²⁴ Part B, clause 2.1 of the Previous Code.

40. The Previous Code also required Chorus to provide several notices to end-users, RSPs and RFSPs, regarding the proposed withdrawal of copper services. The notices that were required under the Previous Code are outlined in Table 1 below.

Table 1 Notices to be provided by Chorus and their timeframes under the Previous Code

Timeframes	Notice	End-user	RSPs	RFSP
No later than seven months prior to proposed copper withdrawal date	RFSP Notice			✓
No later than six months prior to proposed copper withdrawal date	RSP Notice		✓	
No later than six months prior to proposed copper withdrawal date	First Notice	✓		
Three months prior to proposed copper withdrawal date (unless a Continuation Notice has been provided)	Further Notice	✓		
20 working days prior to proposed copper withdrawal date (unless a Continuation Notice has been provided)	Final Notice	✓		
As soon as reasonably practicable after Chorus decides to continue to supply the copper service (but no later than 20 working days before the expiry of the notice period)	Continuation Notice	✓	✓	✓
Where Chorus has failed to comply with the minimum requirements and will continue providing the copper service (no later than one month after the six-month notice period has ended)	Continuation Notice	✓	✓	✓
Where an end-user does not order a retail fibre service or choose to have their copper service disconnected	Confirmation Notice	✓	✓	✓

Changes to the notice process

41. We made the amendments explained below as a set of pragmatic improvements that will increase clarity, operational flexibility, and visibility for all parties.

Naming of notices

Context and draft decision

42. The Previous Code named the notices to be provided to end-users as ‘First Notice’, ‘Further Notice’ and ‘Final Notice’. Our view was that the naming of the notices caused confusion. We agreed with Chorus’ submission that, for example, under the Previous Code, the Final Notice was not actually the final notice, given the final notice (stating finality) came after the end of the notice period.²⁵
43. Our draft decision was that the Previous Code be amended to:
- 43.1 refer to the First Notice as “Notice 1”, the Further Notice as “Notice 2”, and the Final Notice as “Notice 3”. These proposed changes aimed to reflect the intended sequence of notices, and reduce the confusion caused under the

²⁵ Chorus “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 11d, 21.

current process whereby the “Final Notice” is on occasion not actually the final notice an end-user receives; and

- 43.2 allow Chorus flexibility to change the names of these notices. Our view was that allowing discretion regarding naming convention would allow Chorus to manage end-user expectations and understanding.

Submissions

44. The change in notice names was supported by Chorus and the Telecommunications Forum (TCF).²⁶ No further changes were suggested by any other submitters.

Final decision and reasons

45. Given the support noted above, we have retained our draft decision in relation to the naming of notices, as set out above at 43.1 and 43.2.

Clarifying notice definitions

Context and draft decision

46. The Previous Code defined ‘notice period’ as “*the period between the date the First Notice is provided to an end-user and the proposed date of withdrawal of the copper service*” and the ‘proposed date of withdrawal of the copper service’ as “*the date (dd/mm/yyyy) Chorus intends to stop supplying the copper service to the end-user, as specified in a First Notice*”.
47. Chorus submitted that definitions of ‘notice period’ and ‘proposed date of withdrawal’ in the Previous Code inadvertently conflated the “notice period” ending with the “proposed date of withdrawal”. This was because rather than the end of notice period being at least six months from the date of the First Notice, it was defined as the “proposed date of withdrawal of the copper service.” Chorus submitted that this created confusion, as in practice, Chorus cannot withdraw copper until the notice period has lapsed i.e., the withdrawal date must follow the end of the notice period.²⁷
48. Our draft decision was that the term ‘proposed date of withdrawal of copper service’ be changed to ‘withdrawal date’, which would be defined as follows:

“Withdrawal date” means the date (dd/mm/yyyy) Chorus intends to stop supplying the copper service to the end-user, ~~as specified in a First Notice;~~ and is a date that follows the date the notice period ends.

49. As a necessary follow-on, we also proposed amending the definition of ‘notice period’, as follows:

²⁶ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 17; TCF “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 3.

²⁷ Chorus “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 18-19.

“Notice period” means the period between the date Notice 1 is provided to an end-user ~~and the proposed date of withdrawal of the copper service delivered to an end-user~~, and a date at least 6 months from the date of Notice 1.

50. Each notice would include the date the ‘notice period ends’ (being a date at least six months from the date of Notice 1), rather than the ‘proposed date of withdrawal of the copper service’ as previously required. The ‘withdrawal date’ would only be included in Notice 3 (we discuss this amendment in the next section). Accordingly, we proposed:
- 50.1 amending the requirement so Notice 1, Notice 2 and Notice 3 include the ‘date the notice period ends’.
- 50.2 removing the requirement that Notice 1 and Notice 2 must include the ‘proposed date of withdrawal of the copper service’; and require only Notice 3 to include the actual ‘withdrawal date’.
- 50.3 amending the requirement so Notice 1 is provided to the end-user at least six months before the date the notice period ends; the RSP notice is provided at the same time Chorus provides Notice 1 to the end-user; and the RFSP notice is provided no later than one month before Chorus provides Notice 1 to the end-user.
- 50.4 amending the requirement so notices to the RSP and RFSP include the ‘date the notice period ends’ for withdrawal of copper service, rather than the ‘proposed date of withdrawal of the copper service’.
51. These amendments were aimed at avoiding concerns about confusion noted by Chorus and the TCF,²⁸ by providing a date that copper will be withdrawn, which was separate from the date that marks the end of the notice period.
52. These amendments also addressed submissions that the ‘withdrawal date’ should be included in all notices to the end-user.²⁹

Submissions

53. The change in notice definitions was supported by Chorus and the TCF.³⁰ One NZ disagreed with the removal of the ‘proposed date of withdrawal of the copper service’ from Notices 1 and 2, stating that it should be retained in all of the notices, as a proposed date of withdrawal gives end-users a deadline and acts as a reminder of the need to migrate to an alternative service before copper service is switched off.³¹

²⁸ Chorus “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 18-19; TCF “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 7i.

²⁹ TCF “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 6i; One NZ “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 2, 3.

³⁰ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 17; TCF “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 3.

³¹ One NZ “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 2.

Final decision and reasons

54. We have retained our draft decisions in relation to the clarification of notice definitions given the general support noted above.
55. We note One NZ's view that the 'withdrawal date' should be included in all notices to the end-user.³² However, as a practical matter, Chorus is generally not able to specify a 'withdrawal date' until later in the process. In our view, requiring Chorus to specify a 'withdrawal date' in Notice 3 provides certainty to the end-user at a time when Chorus is reasonably able to provide it.
56. Moreover, we expect that requiring Chorus to provide a consistent 'date the notice period ends' in all notices will keep the end-user informed of the notice period in which they can still engage with the copper withdrawal process to transition away from copper services under the protection of the Code.

'Final Notice' and 'withdrawal date'

Context and draft decision

57. Under the Previous Code, Chorus was required to provide an additional 'Confirmation Notice' to the end-user where:
 - 57.1 Chorus had provided a First Notice, Further Notice and Final Notice to the end-user; and
 - 57.2 during the notice period, the end-user had neither placed an order with a retail service provider for a retail fibre service or chosen to have their copper service disconnected.
58. The Confirmation Notice marked completion of withdrawal and confirmed that Chorus was no longer required to supply the copper service to the end-user. Along with the end-user, Chorus was also required to provide such notice to the end-user's RSP and RFSP.
59. Further, the Previous Code provided for a 'Continuation Notice' in two scenarios, including where Chorus fails to satisfy the minimum requirements of the Previous Code. The Continuation Notice confirmed that Chorus was required to continue to supply the copper service to the end-user. Along with the end-user, Chorus was also required to provide such notice to the end-user's RSP and RFSP, no later than one month after the end of the notice period.
60. Chorus noted the process could be improved if the Final Notice was actually the last notice sent to the end-user.³³ One NZ and Consumer NZ supported the removal of the requirement of a Confirmation Notice, as it caused confusion and poor customer experience.³⁴ One NZ, Spark and Consumer NZ supported Chorus' proposal of

³² One NZ "Submission on draft amended Copper Withdrawal Code" (09 Nov 2023) para 2.

³³ Chorus "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 21, 22.

³⁴ One NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 2, 3; Consumer NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) page 4.

amending the Final Notice to communicate the ‘outcome’ at that point in time and provision of the actual withdrawal date.³⁵

61. Our draft decision was that unless Chorus provides, or is required to provide, a Continuation Notice to an end-user, Notice 3 should be the last required notice and should confirm the actual date of copper withdrawal (along with the ‘date the notice period ends’). Chorus would be required to inform the end-user’s RSP and the RFSP at the same time it provided Notice 3 to the end-user.
62. Accordingly, we proposed removing the requirement to provide a ‘Confirmation Notice’ to mark completion of the copper withdrawal process.
63. For end-users who do not order a retail fibre service or do not choose to have their copper service disconnected during the notice period, Notice 3 informs the end-user, the end-user’s RSP and the RFSP about the outcome – that Chorus will no longer be required to supply the copper service after the ‘date the notice period ends’.
64. However, for end-users who order a retail fibre service after receipt of Notice 3, but during the notice period, our draft decision was that the ‘withdrawal date’ is subject to change and Chorus should follow the ‘minimum requirements in relation to end-users who order a retail fibre service’ set out in Part G of the Draft Amended Code.
65. We decided to keep the requirement to provide a ‘Continuation Notice’ in these circumstances.

Submissions

66. Chorus and the TCF agreed with elements of the proposed changes, including the removal of ‘Confirmation Notices’.³⁶ The TCF supported the need to retain ‘Continuation Notices’ in circumstances where Chorus has not met its minimum obligations as set out in the Previous Code.³⁷
67. The TCF suggested a more flexible and proactive approach should be taken to ‘Continuation Notices’, primarily around late / in progress orders to avoid potential confusion for end-users and to minimise complexity and cost for industry.³⁸
68. Chorus submitted that our proposed approach to ‘Continuation Notices’ could cause confusion for end-users and “left no room for instances where Chorus have neither met nor failed to meet their requirements under the code because a fibre order is in progress”. Chorus argued that this would particularly be the case for any late/in progress fibre orders.³⁹

³⁵ One NZ “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 2, 3; Spark “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 3, 4; Consumer NZ “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) page 4.

³⁶ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 17; TCF “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 3, 9.

³⁷ TCF “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 7.

³⁸ TCF “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 8.

³⁹ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 45.

69. Chorus suggested removing the requirement to issue ‘Continuation Notices’ where a consumer has placed a late fibre order, or their fibre order is still progressing. Chorus also proposed that where existing fibre orders are in progress, or if a consumer placed a fibre order before the date the notice period ends, Chorus would communicate in Notice 3 that ‘their copper service will remain until the fibre order is complete’. Where Chorus is not able to install fibre within a reasonable time after three months, Chorus would then issue a Continuation Notice. Alternatively, in case of an ‘order in progress’, Chorus would communicate via Notice 4 that the copper service will remain until the order is complete.⁴⁰

Final decision and reasons

70. We have retained our draft decisions set out in paragraphs 60-65 above as follows:
- 70.1 ‘Notice 3’ should be the last required notice (unless Chorus provides, or is required to provide a ‘Continuation Notice’ to an end-user);
 - 70.2 ‘Notice 3’ should confirm the actual date of copper withdrawal (along with the ‘date the notice period ends’);
 - 70.3 Chorus should inform the end-user’s RSP and the RFSP at the same time it provides Notice 3 to the end-user; and
 - 70.4 To remove the requirement to provide a ‘Confirmation Notice’ to mark completion of the copper withdrawal process.
71. We agree with Chorus and the TCF that we should take a more flexible approach in relation to ‘Continuation Notices’ to allow for late / in progress orders.
72. Accordingly, our final decision is to also make the following changes to the timing and requirements for the ‘Continuation Notice’ and ‘Notice 3’:
- 72.1 Increase the maximum allowable time for Chorus to provide a ‘Continuation Notice’ for failing to satisfy the minimum requirements set out in sections F and G of the Code, after the ‘date the notice period ends’. This means changing the wording in clause 53 from ‘no later than one month after the expiry of the notice period’ to ‘no later than 75 days after the expiry of the notice period’.
 - 72.2 ‘Notice 3’ must also specify to the end-user that for any fibre connection orders placed before or which are in progress on the date the notice period ends, copper will be withdrawn only after such fibre connection has been installed.
73. Increasing the maximum time Chorus has to provide a ‘Continuation Notice’ after the end of the notice period will remove the requirement for Chorus to provide a ‘Continuation Notice’ in situations where fibre orders are in progress and still inside a ‘reasonable timeframe’ to install (as required by clause 41.1 of the Code). These

⁴⁰ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 47.

situations include the late/in progress orders referred to in both Chorus' and the TCFs' submissions.

74. Chorus should still provide a 'Continuation Notice' in a situation where it has not satisfied the minimum requirements in sections F and G (which includes the need to install a connection 'within a reasonable timeframe', as required by clause 41.1 of the Code).
75. This change only impacts 'Continuation Notices' required where Chorus has not met its minimum requirements under sections F and G of the Code. The timing for 'Continuation Notices' where Chorus has decided to continue to provide the copper service (20 working days prior to the 'date the notice period ends') has not changed.
76. The additional changes to 'Notice 3' will ensure end-users receive information on the actions they can take before the 'date the notice period ends'. It will also provide assurance to end-users that copper will not be withdrawn until a fibre connection has been installed, even for orders placed after they receive Notice 3 and/or those still in progress at the 'date the notice period ends'.

Duration between notices

Context and draft decision

77. Under the Previous Code, Chorus was required to provide three notices to the end-user, namely, First Notice, Further Notice and Final Notice. The notices were to be provided at six months, three months and at 20 working days before the proposed date of withdrawal, respectively.
78. Chorus submitted that, while it supported the requirement to provide three notices, it found that end-users often forgot and/or did not understand the urgency of an impending change to their copper service. The Previous Code's fixed date and timeframe between each notice might cause end-users to lose track of where they were in the process.⁴¹ Chorus recommended shortening the duration between each notice to allow a degree of flexibility in the process.
79. Our draft decision was to amend the duration between each notice as follows:
 - 79.1 Notice 2 must be issued no earlier than two months after the date of Notice 1 and no later than three months after the date of Notice 1.
 - 79.2 Notice 3 must be issued no later than 30 working days before the 'date the notice period ends' and no earlier than 40 working days before the 'date the notice period ends'.
 - 79.3 Extend the time between Notice 3 and the 'date the notice period ends' to provide extra time for the end-user to change service, and to allow for better co-ordination between RFSPs, RSPs and the end-user. We proposed to

⁴¹ Chorus "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 13.

increase the minimum time between Notice 3 and the ‘date the notice period ends’ from the current 20 working days to 30 working days.

Submissions

80. The change in relation to the duration between notices was supported by Chorus and the TCF.⁴² No further changes were suggested by the other submitters.

Final decision and reasons

81. Given the support noted above, we have retained our draft decisions in relation to the duration between notices, with the exception of increasing the time Chorus has to provide a ‘Continuation Notice’ after the ‘date the notice period ends’, in situations where fibre orders are still inside a ‘reasonable timeframe’ to install as discussed in paragraphs 66 to 76 above.
82. For clarity, the notices that are required under the Code are outlined in Table 2 below.

Table 2 Notices to be provided by Chorus and their timeframes under the Code

Timeframes	Notice	End-user	RSPs	RFSP
No later than seven months prior to the notice period end date	RFSP Notice			✓
No later than six months prior to the notice period end date	RSP Notice		✓	
No later than six months prior to the notice period end date	Notice 1	✓		
No earlier than two months after the date of Notice 1 and no later than three months after the date of the Notice 1 (unless a Continuation Notice has been provided)	Notice 2	✓		
Between 30 working days and 40 working days before the notice period end date (unless a Continuation Notice has been provided)	Notice 3	✓		
At the same time Chorus provides a Notice 3 to the end-user (specifying withdrawal date)	RSP, RFSP		✓	✓
As soon as reasonably practicable after Chorus decides to continue to supply the copper service (but no later than 20 working days before the notice period end date)	Continuation Notice	✓	✓	✓
Where Chorus has failed to comply with the minimum requirements and will continue providing the copper service (no later than 75 days after the notice period end date)	Continuation Notice	✓	✓	✓
Pause notices as under Section G5 of the Code	Pause Notice	✓	✓	✓

*For notice period pause due to extreme or unforeseen event, Chorus must also notify the Commission.

⁴² Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 17; TCF “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 3.

83. We consider that these decisions help to improve the timing of the notification process and will allow Chorus to better meet the requirement in clause 1(3)(b) of Schedule 2A (that it must give the end-user reasonable notice of the proposed withdrawal of the copper services, whilst continuing to meet the purpose of the Code, as they will make the notification process easier for end-users to understand).

Requirement regarding how Chorus must provide notice

Requirements under the Act and Previous Code

84. The Act provides that Chorus must give the end-user reasonable notice of the proposed withdrawal.⁴³
85. As part of the reasonable notice requirement, the Previous Code provided that the notice to the end-user must be addressed to the premises where the end-user resides⁴⁴ and that Chorus must, in the first instance, deliver the notices by posted mail.⁴⁵ However, where Chorus has been unable to deliver a notice by post, it must deliver the notice by a physical letter-drop to the premises.⁴⁶

Notices delivered to an alternative address

Context and draft decision

86. Under the Previous Code, Chorus was required to provide notices to the premises where the end-user resides.
87. Chorus proposed that it should be able to send notices to alternative addresses (such as a PO Box or an alternative residential address for the homeowner) where it knows that this would be preferred.⁴⁷ Submissions were supportive of this proposal, recognising it would provide for a better outcome and engagement with affected end-users.⁴⁸
88. The TCF noted that this change would also help address scenarios where an end-user does not reside at the premises.⁴⁹
89. Our draft decision was to allow for notices to be delivered to an alternative address, subject to the following conditions:
- 89.1 the first notice to an end-user (Notice 1) must always go to the copper network-connected premises address; and

⁴³ Clause 1(3)(b) of Schedule 2A of the Act.

⁴⁴ Clause 27.1 of the Previous Code.

⁴⁵ Clause 27.2.1 of the Previous Code.

⁴⁶ Clause 27.2.2 of the Previous Code.

⁴⁷ Chorus "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 27.

⁴⁸ TCF "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 6 ii; One NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 4; Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 8, 9.

⁴⁹ TCF "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 6ii.

89.2 RSPs would not be obligated to share alternative address information.

90. Our view was that including the option of delivering to an alternative address would increase the likelihood that notices are received and actioned by end-users. We noted that providing notice by post to the premises where the end-user resides may not always be sufficient, and that being able to deliver notices to an alternative address would be necessary in some instances.

Submissions

91. The change in the notice delivery requirements was supported by Chorus and the TCF, with no further changes suggested by other submitters.⁵⁰

Final decision and reasons

92. Given the support noted above, we have retained our draft decisions in relation to the notices delivered to an alternative address.
93. We remain of the view that the amendment will provide for a better outcome and engagement with affected end-users and that alternative communication channels may be more effective in meeting notice requirements.

Flexibility with communication channels

Context and draft decision

94. Under the Previous Code, Chorus was required to provide notices to an end-user, which must be delivered by posted mail or by a physical letter-drop to the premises.
95. Chorus submitted that it should be able to use alternative communication channels, such as email, when issuing notices.⁵¹ The feedback received was generally supportive of this proposal, with some caveats. Submitters (the TCF and Spark) recognised that greater flexibility in how notices are delivered could increase the likelihood that end-users receive and understand them.⁵²
96. Further, digitally received communications were seen as particularly helpful for those end-users who may need additional support, and those who do not speak English as their first language.⁵³
97. Our draft decision was to allow Chorus to use alternative methods of communication, such that:

⁵⁰ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 17; TCF “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 3.

⁵¹ Chorus “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) page 3, para 27, 28.

⁵² TCF “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 6 iii; Spark “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 10.

⁵³ TCF “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 6iii.

- 97.1 Chorus could ask end-users for their preferred communication method (i.e., post or email) and associated contact details (i.e., address of premises where end-users reside, an alternative postal address, or an email address); and
- 97.2 The end-user contact information collected by Chorus would only be used by Chorus for the purposes of delivering notices related to copper withdrawal.
98. In the submissions following the Request for Views paper, submitters were unanimous in their view that Chorus must source these alternative contact details for customers independently, without RSP assistance. Additionally, submitters considered that end-users' contact information should only be used by Chorus for the purposes of the copper withdrawal programme, and not for any other purpose.
99. In reaching our draft decision, we were mindful of RSPs concerns about allowing Chorus to communicate directly with end-users. We considered that Chorus should be able to communicate via different channels when an end-user opts-in to attempts to gather information directly, or when information is shared by an RSP, and only after confirming its data retention policy. Chorus communications should be strictly limited to the purpose of the Code.⁵⁴
100. As a result, we added clause 30.2.1 of the Draft Amended Code (as maintained in the Code) which explicitly states the end-user information collected by Chorus (for the purposes of applying the Code) is only to be used by Chorus for the purposes of delivering notices related to copper service withdrawal.

Submissions

101. This proposed change received support from the TCF and from Chorus who submitted that it would help to inform and support end-users.⁵⁵
102. One NZ stated concerns about 'how the information collected through the copper withdrawal process is used, for example ensuring that it is not used for direct-to-consumer marketing'. One NZ also sought clarification on the governance framework which would be in place to ensure the information collected by Chorus is only used for the purposes of copper withdrawal.⁵⁶

Final decision and reasons

103. We have retained our draft decisions with no further changes in relation to the flexibility with communication channels. We remain of the view that these changes will allow Chorus to better meet the requirement in clause 1(3)(b) of Schedule 2A that it must give end-users reasonable notice of the proposed withdrawal of the copper services, by giving Chorus more flexibility in how it communicates with end-users. In our view, these changes will also be consistent with the consumer

⁵⁴ One NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 5-8; Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 10-13.

⁵⁵ TCF "Submission on draft amended Copper Withdrawal Code" (09 Nov 2023) para 3; Chorus "Submission on draft amended Copper Withdrawal Code" (09 Nov 2023) para 17.

⁵⁶ One NZ "Submission on draft amended Copper Withdrawal Code" (09 Nov 2023) para 3.

protection focus of the Code as they will increase the reliability of end-users receiving information about proposed withdrawals.

104. We consider that One NZ's concerns are adequately addressed by the usage restrictions on the information. We also note that any non-compliance by Chorus can be addressed under section H of the Code (Dispute Resolution).

Requirement for a pause to copper withdrawal notice period

Requirements under the Act and Previous Code

105. The Act sets out that Chorus must give the end-user reasonable notice of the proposed withdrawal of the copper services.⁵⁷ The requirement to provide reasonable notice includes provision for Chorus to pause a notified withdrawal in certain circumstances.⁵⁸
106. Under Part I of the Previous Code, a pause could be triggered during an end-user's notice period if:
- 106.1 a dispute is referred to an industry dispute resolution scheme (or Utilities Disputes in connection with the installation of a connection to a fibre service under the Code);
 - 106.2 the end-user takes an enforcement action under section 156BA of the Act; or
 - 106.3 the Commission takes an enforcement action under section 156B of the Act for a breach that is related to the withdrawal of the end-user's copper service.
107. The notice period should be paused until the dispute or enforcement action is resolved (e.g., a determination by an industry dispute resolution scheme is made or an order is made by the High Court).

Notice period pause due to an extreme or unforeseen event

Context and draft decision

108. The Previous Code did not have any mechanism to pause the notice process in case of extreme or unforeseen events.
109. One NZ and Spark supported the inclusion of a formal pause mechanism in the Code.⁵⁹

⁵⁷ Clause 1(3)(b) of Schedule 2A of the Act.

⁵⁸ The Act does not explicitly allow Chorus to pause a proposed withdrawal due to unforeseen events as part of this requirement. However, clause 1(4) of Schedule 2A of the Act provides that the Code may contain any other provisions that the Commission considers necessary or desirable. Under clause 1(3)(h) of Schedule 2A of the Act, the minimum requirements that the Code must include before Chorus is permitted to stop supplying a copper service under section 69AC or 69AD also includes "any other prescribed matters must be complied with."

⁵⁹ One NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 9; Spark NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 14, 15.

110. Mercury, Consumer NZ and the TCF noted that recent events such as the pandemic/COVID lockdowns and cyclone Gabrielle have shown that there is need to be flexible and standard processes and timeframes need amendment to support end-users during such circumstances.⁶⁰
111. Our draft decision was to include a pause mechanism to the notice period for defined extreme or unforeseen events as follows:
- 111.1 A pause could only be applied during extreme or unforeseen events.
- 111.2 Chorus would notify end-users, RSPs, RFSPs and the Commission when a pause was applied and lifted.
- 111.3 The duration of the pause would be added to the notice period length (i.e., the end of the notice period would be extended by the length of the pause triggered by extreme or unforeseen events).

Submissions

112. Chorus and the TCF were supportive of the inclusion of this pause mechanism.⁶¹
113. Chorus suggested a minor amendment to clause 60 of the Draft Amended Code to modify the requirement to “immediately” lift the pause and notify all relevant parties that the pause has been lifted, to instead allow this to be done “as soon as reasonably practicable”.⁶²

Final decision and reasons

114. We have retained our draft decisions in relation to the notice period pause due to an extreme or unforeseen event. We remain of the view that allowing for a pause to the process during extreme or unforeseen events will improve the clarity and reliability of the process for industry participants and end-users by allowing the industry to respond and adapt to unforeseen events.
115. We agree with Chorus that the “immediately” requirement may not always be appropriate, especially in an extreme or unforeseen event. We consider that “as soon as reasonably practicable” is reasonable as it will provide more flexibility to Chorus while still ensuring consumers are protected.
116. We accept Chorus’ suggestion and have accordingly reflected this in the Code.

⁶⁰ Mercury “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) annex para 3; Consumer NZ “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) page 4; TCF “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 6 iv.

⁶¹ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 17; TCF “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 3.

⁶² Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 17d.

Requirement for a fibre connection installation

Requirements under the Act and Previous Code

117. The Act provides that, as a precursor to withdrawal of copper, Chorus is required to ensure that an end-user must be able to:⁶³
- 117.1 access a fibre service; and
 - 117.2 have a connection to the fibre service installed:
 - 117.2.1 within a reasonable timeframe; and
 - 117.2.2 at no cost to the end-user, whether the connection is standard or non-standard.
118. The Previous Code provided (and the Code continues to provide) that an end-user must have a fibre service connection installed (when an end-user places an order with a RSP for a connection to a fibre service):
- 118.1 within a reasonable timeframe (but, in any event, before Chorus stops supplying the copper service (even if later than the expiry of the notice period), and
 - 118.2 at no cost to the end-user.
119. There are two exceptions to this requirement:
- 119.1 Exception 1 in clause 41 of Previous Code (clause 44 of the Code):
 - 119.1.1 the end-user fails to cooperate with the process to have a connection to a fibre service installed; and
 - 119.1.2 all reasonable efforts have been made by the RFSP to install a connection to a fibre service for the end-user.⁶⁴
120. Exception 2 in clause 43 of Previous Code (clause 46 of the Code): the requirement for an end-user to be able to have 'connection to a fibre service installed within reasonable timeframe' does not need to be satisfied if, at a point in time after an end-user has ordered a retail fibre service:

⁶³ Clause (1)(3)(a) of Schedule 2A of the Act.

⁶⁴ As set out in clause 42 of the Previous Code (clause [45] of the Code), 'all reasonable efforts' means that the RFSP must: (i) have made at least three attempts to confirm an appointment with the end-user to fulfil that end-user's request to have a fibre connection installed; and (ii) after having made these three attempts, have informed the end-user's retail service provider of the lack of response from the end-user and that the order for a connection to a fibre service has therefore been cancelled. For the purposes of 'reasonable efforts', clause 44 of the Previous Code (clause 47 of the Code) where the RFSP is not Chorus, the RFSP must inform Chorus that they have made all reasonable efforts to install a connection to a fibre service for the end-user (if the RFSP considers that it has made all reasonable efforts) and Chorus is permitted to rely on this information.

- 120.1 the RFSP becomes aware that the installation of a connection to a fibre service will potentially be impeded by the acts or omissions of a third party (including a third party dispute regarding access to a premises or obtaining landlord permission);
- 120.2 as soon as reasonably practicable after the RFSP becomes aware of the third party issue, the RFSP informs the end-user:
- 120.2.1 of the third party issue; and
- 120.2.2 that the end-user must take reasonable steps available to them to resolve the third party issue (e.g., by seeking their landlord’s permission to have a fibre connection installed, under section 45B of the Residential Tenancies Act 1986 (**Residential Tenancies Act**), otherwise the end-user’s order for a retail fibre service may be cancelled and Chorus will be permitted to stop supplying the end-user’s copper service (provided it has complied with the rest of the Code); and
- 120.3 within a reasonable timeframe after the RFSP informs the end-user of the third party issue, the end-user does not take reasonable steps available to them to resolve the third party issue.

Fibre installation delays due to acts or omissions of third parties

Context and draft decision

121. In some instances, end-users are not able to have a fibre service installed within a reasonable timeframe. This could be due to a shortage of technicians, which is an industry-wide issue beyond the scope of the code,⁶⁵ and acts or omissions of a third party.
122. As we noted in our Request for Views paper, Chorus requested the removal of the ability for third parties to prevent copper withdrawal.⁶⁶
123. Following our Request for Views paper, Chorus submitted that the Previous Code should be amended to enable copper to be withdrawn where there is a third party issue preventing a fibre installation and where that issue remains in place after a three-month period following an order for fibre by the end-user.⁶⁷
124. Chorus also submitted that the Previous Code requirements went too far in requiring Chorus to retain copper in situations there is a third party delay issue, but non-fibre technologies are available (e.g., fixed wireless or satellite).⁶⁸ Chorus considered these

⁶⁵ Spark “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 45, 46; Mercury “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) Annex para 4.

⁶⁶ “Request for views on the effectiveness of the Copper Withdrawal Code in meeting the requirements in the Act” (23 March 2023) at para 36 and Appendix 1 (item 5).

⁶⁷ Chorus “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 45.

⁶⁸ Chorus “Copper Withdrawal Code Review – Request for Views – Appendix 1 – Proposal 5” (23 March 2023) page 13.

technologies provide acceptable alternatives to fibre, and that it should be able to proceed with copper withdrawal when these are available.⁶⁹

125. Some submitters supported Chorus. One NZ acknowledged Chorus' difficulties and supported the idea of removing the ability for third parties to delay copper withdrawal.⁷⁰ Consumer NZ submitted that where third party issues extend beyond a reasonable time, Chorus should not be required to keep the copper service running.⁷¹
126. Other submitters disagreed with Chorus. Both Spark and Mercury shared the view that the correct mechanism for enabling fibre installation in such cases is a legislative change.⁷²
127. Spark highlighted that the proposal potentially leaves customers without a key code protection of being able to access a replacement fibre service, and without the same statutory rights of access as Chorus to address consent issues.⁷³ Spark also cautioned against reliance on the availability of fixed wireless access as a means of unlocking a third party dependency, noting that the ability to order fixed wireless access is subject to availability, and that there are well acknowledged capacity constraints.⁷⁴
128. Mercury supported the industry developing a process that Chorus would work through with a third party, the RSP, and the customer, that would set out the reasonable options available to the third party for addressing the issues, and when Chorus could withdraw copper lines.⁷⁵
129. In our Draft Decisions and Reasons paper, we noted that our draft decision was:⁷⁶
 - 129.1 not to amend the Previous Code to allow copper withdrawal where third party disputes cannot be resolved within a 3-month period. We noted that, in our view, the Act does not permit the amendment sought by Chorus because "end-users subject to copper withdrawal must be able to access a fibre service... and be able to *have a connection to the fibre service installed...* within a reasonable time frame... and at no cost";
 - 129.2 to provide for a 'pause' mechanism (for premise-level delays) to provide a further 45 working days for Chorus to resolve delays caused by acts or omissions of a third party.

⁶⁹ Chorus "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 47-49.

⁷⁰ One NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 10.

⁷¹ Consumer NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) page 4.

⁷² Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 25; Mercury "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) Annex para 5.

⁷³ Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 18, 20, 22-23.

⁷⁴ Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 24.

⁷⁵ Mercury "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) Annex para 5.

⁷⁶ At [117]. Emphasis added.

130. Such new pause mechanism would work as follows:
- 130.1 This pause would only apply in situations where an end-user had ordered a retail fibre service (i.e., in situations where section G of the Code - “Minimum requirements in relation to end-users who order a retail fibre service” applies).
 - 130.2 Chorus would notify end-users, RSPs and RFSPs when a pause was applied and lifted.
 - 130.3 The duration of the pause would be added to the notice period length.
 - 130.4 The notification would include detailed reasons for the pause, and an end of pause date that was no later than 45 working days from the date that the pause is applied. We considered 45 working days sufficient to explore a workable solution.
 - 130.5 If no outcome was achieved after 45 working days, Chorus must follow the process set out in section G4 of the Code and provide a Continuation Notice to the end-user, the end-user’s RSP and RFSP.
 - 130.6 Chorus was required to provide pause information as part of its annual information disclosure to the Commission.

Submissions

131. Chorus welcomed the pause mechanism but noted that it does not provide a substantive mechanism for resolving third party issues. In Chorus’ view, the appropriate resolution is for the Code to specifically provide for Chorus to be able to withdraw copper in situations after a reasonable time has passed for the affected parties to resolve the issue (i.e., 3 months).⁷⁷
132. Chorus submitted that the Commission has the discretion to adopt its requested exemption in light of the code’s dual purposes of copper deregulation and consumer protection.⁷⁸
133. Further, Chorus submitted that it would be unreasonable to interpret consumer protection in such a way that a single incomplete fibre installation for a premises could prevent the decommissioning of an entire copper cabinet.⁷⁹
134. Chorus’ submission also points to limitations with utilising property access rights under the Act, and provisions in the Residential Tenancies Act, which are intended to prevent landlords from withholding consent to fibre installation requested by a tenant.⁸⁰

⁷⁷ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 19.

⁷⁸ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 21.

⁷⁹ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 22.

⁸⁰ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) paras 26 to 35.

135. Chorus further submitted that the Commission should recognise the limitations of the exceptions in the Previous Code, and the 45-day pause in relation to third party stalemates which we suggested under the Draft Amended Code.⁸¹

Final decision and reasons

136. We recognise the difficulty Chorus faces in the event of third party delays. However, we remain of the view that the Act does not permit the amendment sought by Chorus. This is because we consider that such amendment would cut across the consumer protection purpose of the Code and the prescribed minimum requirements in clause 1(3)(a) of Schedule 2A of the Act.
137. First, while section 69AA of the Act sets out the dual purposes of consumer protection and copper deregulation where FFLAS is available, the Act is clear that the main purpose of the Code is to establish consumer protection requirements.
138. This is reflected in clause 1 of Schedule 2A of the Act which emphasises the importance of consumer protection when it states that the Commission must “prepare a code...setting out minimum consumer protection requirements for end-users” of certain copper services. It was on this basis that we also included a consumer protection focused purpose statement in the Code.
139. Second, clause 1(3) of Schedule 2A of the Act sets out the minimum requirements that the Code must include before Chorus is permitted to stop supplying a copper service:
- (a) the end-user in relation to the service must be able to—
 - (i) access a fibre service; and
 - (ii) have a connection to the fibre service installed—
 - (A) within a reasonable time frame; and
 - (B) whether the connection is standard or non-standard, at no cost to the end-user;
 - (...)
140. In our view, a legislative bar is created by these minimum requirements, in particular, “*that end-users subject to copper withdrawal must be able to access a fibre service... and be able to have a connection to the fibre service installed... within a reasonable time frame... and at no cost”*. Chorus’ proposal is inconsistent with these minimum requirements as it is clear that the end-user would not be able to access a fibre service and have a connection to a fibre service installed in the scenario that Chorus’ proposed amendment would apply to.
141. The requirement that a connection to a fibre service is installed before Chorus may stop supplying a copper service is consistent with (i) the consumer protection focus of the Code, and (ii) clause 1(3)(a) of Schedule 2A of the Act. It ensures that the end-user is able to (i) access a fibre service, and (ii) have a connection to the fibre service installed within a reasonable timeframe. It means that end-users have certainty that they will be able to access a fibre service if they cooperate with the process to have a

⁸¹ Chorus “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) paras 36 to 39.

connection to a fibre service installed and take reasonable steps available to them to resolve any third party issue.⁸²

142. Chorus made a submission in response to our Request for Views paper that the Previous Code should be amended to allow for the withdrawal of copper services where alternatives to fibre are available. We remain of the view that this would be inconsistent with the minimum requirement that a connection to a fibre service is installed before Chorus can stop supplying a copper service. However, the Code no longer applies where end-users impacted by third party delays voluntarily shift to an alternative service.
143. Chorus submitted that its proposed exemption to the general requirement of an actual installation before withdrawal would be consistent with the other exceptions. We consider there is an important distinction between the existing exceptions and Chorus' proposal. The existing exceptions (i) take both the deregulation and consumer protection purposes in section 69AA of the Act into consideration by giving end-users the ability to influence their access to a fibre service, and (ii) relate to situations where end-users have chosen not to cooperate/take reasonable steps to influence their ability to access a fibre service. Chorus' proposal could result in situations where end-users who wish to have fibre installed are unable to access it for reasons outside of their control.
144. Chorus has not been able to provide evidence on the materiality of this issue – e.g., figures on the total number of lines impacted specifically by third party blocking and the number of copper cabinets that have not been decommissioned due to third party issues.⁸³
145. Therefore, given the wording of the Act, read in light of its purpose and context, we agree with Spark and Mercury that legislative change is the appropriate approach to resolving the issue.⁸⁴ This reading of the Act is also consistent with the Act's emphasis on consumer protection because it avoids end-users being unable to access either a fibre service or their existing copper service.
146. Finally, with respect to the limitations Chorus has noted regarding the use of existing avenues for resolving third party issues (i.e., the property access rights under the Act and provisions in the Residential Tenancies Act), if these limitations exist in the ways set out by Chorus, then this is another reason why in our view it would be more appropriate to address any inefficiencies by way of legislative amendment rather than amendment to the Previous Code.

⁸² This decision is consistent with the position we adopted when approving the Previous Code. "Copper Withdrawal Code – Decisions and reasons paper – 10 December 2020" para 257 to 261.

⁸³ Chorus "Submission on draft amended Copper Withdrawal Code" (09 Nov 2023) page 3 footnote 1.

⁸⁴ Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 25; Mercury "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) Annex para 5.

Other recommendations by submitters during the review

147. In submissions on the Request for Views paper, submitters put forward several other suggestions that they considered would improve the effectiveness of the Previous Code. These were regarding:
- i. Production of a map showing withdrawal dates for each address.
 - ii. Additional forecast time and information for RSPs.
 - iii. Clarification of the meaning of ‘no cost’ in relation to standard and non-standard fibre installations.
 - iv. The obligation to supply copper services until fibre is installed.
 - v. Clarity on roles of Chorus and RSPs to the end-user.
148. As noted in our Draft Decisions and Reasons paper, our view was that no amendment to the Previous Code was necessary or desirable to address these issues.
149. We did not receive submissions on our draft decisions which warrant a change in our previous views and have therefore retained our draft decisions. Having said this, we provide reasons and clarifications to our decisions in response to previous submissions on these suggestions, as explained below.

Withdrawal date map

150. Chorus has been required to make publicly available information in the form of a map and downloadable ESRI GIS shapefile⁸⁵ that identifies any local geographical area (e.g., a street or copper cabinet area) that is an area within which Chorus has provided a First Notice to an end-user under the Previous Code.
151. Spark suggested a change that would require Chorus to produce a map where customers can input their address and see their official ‘withdrawal date’ and the map be updated to include information on whether the withdrawal has been paused.⁸⁶

Draft and final decisions and reasons

152. Our draft decision was that no change was desirable to the Previous Code. We did not receive any submissions disagreeing with our draft decision and have therefore retained it.
153. We note that under the Previous Code and the Code Chorus must provide a map and downloadable ESRI GIS shapefile that identifies any local geographical area (e.g., a

⁸⁵ The Environmental Systems Research Institute's (ESRI) data storage file format for Geographic Information System (GIS) software, which stores the location, shape, and attributes of geographic features.

⁸⁶ Spark “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 48.

street or copper cabinet area) that is an area within which Chorus has provided a Notice 1 to an end-user under the Code.

154. The requirement for the map is to make publicly available any geographical area that is under the copper withdrawal process. As noted in our December 2020 Reasons paper, the primary reason for this requirement is to enable ancillary service providers – including alarm service providers – to proactively monitor which of their customers are being affected by copper withdrawal, and to assist their customers through the process.⁸⁷

Forecasts to RSPs in relation to Chorus’ planned copper withdrawal

155. Chorus has been required to provide a notice specifying the premises to which the notice was addressed and the proposed date of withdrawal of the copper service both to the end-user’s RSP and RFSP. Such notice to the RSP must be provided at the same time Chorus provides a First Notice to the premises where an end-user resides, and to the RFSP a month prior.
156. One NZ suggested that Chorus should be required to provide RSPs with the forecasts of the size and location of planned copper withdrawal in advance. One NZ noted that supporting customers through the transition to alternative telecommunications services is a resource intensive process, particularly for unengaged or reluctant customers. Visibility of Chorus’ longer-term plans would help it “forecast and plan for the right level of resources and budget this project will require over the coming years”.⁸⁸
157. One NZ also suggested that we should require Chorus to provide RSPs with Chorus’ intentions to withdraw copper at the same time as RFSPs are provided notice i.e., seven months prior to the notice period end date as opposed to the first notice RSPs receive at the same time as end-users, a minimum of six months before the notice period end date.⁸⁹

Draft and final decision and reasons

158. Our draft decision was that no change to the Previous Code was necessary or desirable. Our view was that RFSPs would need that additional time to plan for the possible impact on their networks of end-users switching to a fibre service and requiring a connection to be installed; unlike RSPs for whom we consider that six months’ notice for withdrawal of the copper service is a sufficient period of time to enable them to contact their affected customers and support their transition to fibre or alternative technologies.
159. One NZ suggested reconsideration of its previous request to receive notice of Chorus’ intentions to withdraw copper at the same time as RFSPs are provided notice, one month earlier than required under the Previous Code.

⁸⁷ “Copper Withdrawal Code - Decisions and Reasons Paper - 10 Dec 2020” Para 230, 231.

⁸⁸ One NZ “Submission on Copper Withdrawal Code Review – Request for Views” (04 May 2023) para 12-13.

⁸⁹ One NZ “Submission on draft amended Copper Withdrawal Code” (09 Nov 2023) para 4.

160. We disagree with One NZ and have retained our draft decision. As noted in our December 2020 Reasons paper and the Draft Decisions and Reasons paper, RSPs receive at least six months' notice of each instance of copper withdrawal. In our view, this should allow them sufficient time to manage migrations to new telecommunications technologies.⁹⁰

No-cost installations

161. The Act requires that, before Chorus is permitted to stop supplying a copper service, the end-user in relation to the service must be able to have a connection to the fibre service installed, at no cost to the end-user, whether the connection is standard or non-standard.⁹¹
162. Spark submitted that the Previous Code should be amended to clarify when a fibre installation that is required to enable Chorus to withdraw copper will be 'no cost', and to clarify that Chorus must meet the costs associated with 'no cost' installations, not the RSP. Spark considered that the Act does not distinguish between standard and non-standard installs.⁹²
163. Spark also sought clarity on the 'no cost' definition, so that the cost of a non-standard installation is funded by Chorus in circumstances such as infills, in cases where LFCs may have a non-standard installation fee, or where a premises was built and connected to copper after the specified fibre area (**SFA**) was determined.⁹³

Draft and final decisions and reasons

164. Our draft decision was that no change was required to the Previous Code because the wording of the Act and Previous Code was sufficiently clear.
165. Spark continued to request additional clarity around 'no cost' standard and non-standard installation for fibre installations following our draft decision. Spark also suggested that we either clarify the scenarios under which a fibre connection is to be provided at no cost to the end-user or amend the definition of SFA to clarify infill situations.⁹⁴
166. We do not believe that an amendment is required. In this regard, Schedule 2A clause 1(3)(a)(ii)(B) makes it clear that both "standard" and "non-standard" connections to a fibre service must be installed at no cost to the end-user.⁹⁵
167. In our view, this wording makes it sufficiently clear that Chorus must provide standard and non-standard connections at no cost to the end-user, and to do otherwise would likely breach the Code. We would encourage parties to report and take action if this were to occur.

⁹⁰ "Copper Withdrawal Code - Decisions and Reasons Paper - 10 Dec 2020" Para 190.

⁹¹ Schedule 2A of the Act, clause 1(3)(a)(ii)(B).

⁹² Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 34-36.

⁹³ Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 26, 29-36.

⁹⁴ Spark "Submission on draft amended Copper Withdrawal Code" (09 Nov 2023) at paras 2, 4-14.

⁹⁵ Section 155ZU of the Act defines "standard" and "non-standard" connections.

168. However, to provide further clarity, we outline below what the Act specifies in relation to the infill connections example Spark raised:

168.1 Infill connections: where a property was connected to copper after an SFA was declared, it is not eligible for the protections of the Code, including the no cost installation protection. Under sections 69AC(1)(b) and 69AC(2) of the Act, Chorus must have started supplying a copper service to the end-user prior to the SFA being declared before Chorus is required to comply with the Code in relation to stopping the supply of that service.

Obligation to supply a copper service before fibre is installed

169. Clause 38 of the Previous Code stated:

38. If, at any time after an end-user is provided a First Notice, the end-user places an order with a retail service provider for a connection to a fibre service to be installed, the end-user must have a connection to a fibre service installed:

38.1 subject to clause 39, within a reasonable timeframe but, in any event, before Chorus stops supplying the copper service (even if later than the expiry of the notice period); and

38.2 at no cost to the end-user.

170. Spark submitted that the requirement on Chorus to not stop supplying a copper service before fibre is installed should apply to orders placed at any time between the First Notice and the final disconnection day. Spark submitted that this should be formalised in the code by clarifying that section G1 applies to orders placed anytime between the First Notice and when the copper is finally disconnected.⁹⁶

Draft and final decision and reasons

171. Our draft decision was that no material change was required to the Previous Code. In our view, this clause sufficiently confirmed that fibre must be installed before Chorus stops supplying the copper service in situations where an end-user has placed an order with a retail service provider for fibre to be installed, at any time during the notice period after they have been provided a Notice 1.

172. We have made a minor amendment to make it clearer that this requirement on Chorus applies to all fibre orders placed at any time after receipt of Notice 1, but within the notice period. This aligns with our discussion in paragraphs 56 and 64 above.

173. We did not receive any submissions disagreeing with our draft decision and have maintained it.

174. A connection to a fibre service will be deemed to be installed when the relevant fibre service provider determines the installation is complete in accordance with standard

⁹⁶ Spark "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) para 49.

business processes.⁹⁷ Our expectation is that the fibre line will be active and ready to be used to supply services to the end-user. Some end-users may experience a short interruption to their service as it is switched over from copper to fibre, but any interruption should be minimised as far as possible and proactively managed with the end-user.

Clarity on the roles of Chorus and RSPs in relation to the end-user

175. In response to the Request for Views paper submitters argued there was some confusion amongst end-users regarding the different roles of Chorus and RSPs.⁹⁸ Submitters considered confusion could arise where Spark's public switched telephone network (PSTN) withdrawal and Chorus' copper withdrawal messaging overlapped.⁹⁹
176. There was a range of views as to whether end-users required further clarification as to the operational processes occurring because of copper withdrawal and required Previous Code amendments to address this scenario to ensure communications remained co-ordinated and streamlined.¹⁰⁰

Draft and final decisions and reasons

177. Our draft decision was that no change to the Previous Code was required as these matters were largely out of scope of the Code. We did not receive any submissions disagreeing with our draft decision and have therefore retained it.
178. Having said this, as indicated in the Draft Decisions and Reasons paper, we recognise the concerns regarding the need for New Zealanders to have a greater awareness of all the transitional arrangements currently in progress as the country moves from the legacy copper network to fibre and other technologies.
179. We will use the experience gained during this review to inform further collaboration with industry on this issue. We will continue to work with industry and other stakeholders to produce further consumer-centric guidance, such as factsheets created in collaboration with the TCF and Telecommunications Dispute Resolution.¹⁰¹

Consequential changes to the Previous Code

180. The final decisions set out in this paper require a number of consequential changes to the Previous Code. These changes relate to provisions that are not minimum requirements that must be satisfied before Chorus can stop supplying a copper service. This section sets out these changes.

⁹⁷ Clause 40 of Previous Code (clause 43 of the Code).

⁹⁸ Consumer NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) page 4.

⁹⁹ Mercury "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) Annex para 1.

¹⁰⁰ Consumer NZ "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) page 4; Mercury "Submission on Copper Withdrawal Code Review – Request for Views" (04 May 2023) Annex para 1.

¹⁰¹ Changes to Copper Landline and Broadband Services in New Zealand Factsheet, see https://comcom.govt.nz/_data/assets/pdf_file/0018/293121/Copper-transition-Factsheet.pdf; Home phone technology and calling 111 Factsheet, see <https://www.tdr.org.nz/sites/default/files/2022-03/Homephone%20and%20111%20-%20Factsheet.pdf>.

Requirement to disclose information and keep records

181. Under clause 1(4) of the Schedule 2A of the Act, the code may contain any other provisions that the Commission considers are necessary or desirable.
182. The additional disclosures and record keeping as a result of draft amendments were stated in the Draft Decisions and Reasons paper. We did not receive any submissions on these additional requirements. We have, therefore, retained our draft decisions noted below.
183. In addition to existing record keeping and information disclosure requirements under clause 64 of the Previous Code (clause 69 of the Code), our final decision is to include a requirement that Chorus disclose and keep a record of the following information:
- 183.1 in relation to pauses deemed necessary for premise-level delays and used in context of third party delays:
- a. the number of pauses it has applied;
 - b. the date each of these pauses was applied and lifted;
 - c. for the pauses that did resolve within 45 working days, the number that resolved and the reasons why; and
 - d. for the pauses that did not resolve within 45 working days, the number that did not resolve and the reasons why.
- 183.2 number of copper services withdrawn; and
- 183.3 number of copper services withdrawn where fibre service has not been installed.
184. We consider these changes to be necessary or desirable because they will allow us to monitor compliance with the Code by Chorus. Also, we consider these additional information disclosure requirements to be proportionate as they will help us meet the purpose of the Code without imposing unnecessary costs on Chorus.

Commencement date

185. The Code will come into force on 5 April 2024 and will apply from that date to all proposed withdrawals of a copper service, including those where Chorus has already commenced the copper withdrawal process by giving a notice under F1 - *Requirement to give notice of proposed withdrawal of a copper service* under the Previous Code. We consider that Chorus does not have to repeat equivalent steps already taken under the Previous Code, and this commencement date allows Chorus sufficient time to take relevant actions before the Code comes into force.

Appendix A: Legal framework

1. In this appendix, we set out the relevant legal framework for our decision by providing an overview of:
 - 1.1 **Part 2AA of the Act:** the relevant purposes of which are to:
 - 1.1.1 deregulate copper fixed line access services (**CFLAS**) in areas where fibre fixed line access services (**FFLAS**) are available; and
 - 1.1.2 provide protections for end-users of CFLAS and certain other designated services in deregulated areas.
 - 1.2 **Schedule 2A of the Act:** which contains the key provisions relating to the Code; and
 - 1.3 **Purpose of the Code:** which is to protect end-users of certain copper services where Chorus seeks to withdraw those services. The Purpose section of the Code sets out the minimum consumer protection requirements.

Part 2AA – deregulating CFLAS

2. Part 2AA of the Act concerns the deregulation of CFLAS in areas where FFLAS is available.
3. Section 69AA provides that the purpose of Part 2AA is to:
 - 3.1 deregulate CFLAS in areas where FFLAS are available;¹⁰²
 - 3.2 provide protections for end-users of CFLAS and certain other designated services in deregulated areas;¹⁰³ and
 - 3.3 provide for the Commission to investigate whether the regulation of CFLAS and certain other designated services should be altered.¹⁰⁴
4. The first two purpose statements above are relevant to the copper withdrawal process. The third relates to the requirement in section 69AH of the Act for the Commission to carry out a review of the regulation of copper services. This copper regulation review is outside of the scope of this Decisions and Reasons paper but will be carried out by the Commission no later than 31 December 2025, as required by the Act.¹⁰⁵
5. Section 69AC provides for withdrawal of CFLAS. It states:

¹⁰² Telecommunications Act 2001, s 69AA(a).

¹⁰³ Telecommunications Act 2001, s 69AA(b).

¹⁰⁴ Telecommunications Act 2001, s 69AA(c).

¹⁰⁵ Telecommunications Act 2001, s 69AH(1)(a).

69AC Withdrawal of copper fixed line access services

- (1) This section applies if—
 - (a) Chorus is required by a standard terms determination made under section 30M to supply a copper fixed line access service to an access seeker; and
 - (b) Chorus started supplying the service at a time when the end-user's building (or, where relevant, the building's distribution frame) was not located in a specified fibre area; and
 - (c) as a result of a notice under section 69AB—
 - (i) the end-user's building (or, where relevant, the building's distribution frame) becomes located in a specified fibre area; and
 - (ii) the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice.
- (2) Chorus may stop supplying the service referred to in subsection (1) only if—
 - (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
 - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—
 - (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
 - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).

6. Section 69AD provides for the withdrawal of certain other designated access services, namely Chorus' unbundled copper local loop network and Chorus' unbundled copper local loop network backhaul (distribution cabinet to telephone exchange) (**UCLL/UCLL Backhaul service**). Section 69AD states:

69AD Withdrawal of certain designated access services

- (1) This section applies if—
 - (a) Chorus is required by a standard terms determination made under section 30M to supply a relevant service to an access seeker; and
 - (b) Chorus started supplying the service at a time when the service was a designated access service; and
 - (c) as a result of section 13 of the Telecommunications (New Regulatory Framework) Amendment Act 2018, the service ceases to be a designated access service on and after 1 January 2020.
- (2) Chorus may stop supplying the service only if—
 - (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
 - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).

- (3) To avoid doubt, Chorus is not required to—
 - (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
 - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).
- (4) In this section, relevant service means either of the following:
 - (a) Chorus’s unbundled copper local loop network;
 - (b) Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).

7. Section 69AC applies if:

- 7.1 Chorus is required by a standard terms determination (**STD**) made under section 30M to supply a copper fixed line access service to an access seeker; and
- 7.2 Chorus started supplying the service at a time when the end-user’s building (or, where relevant, the building’s distribution frame) was not located in a specified fibre area; and
- 7.3 as a result of a notice under section 69AB,—
 - 7.3.1 the end-user’s building (or, where relevant, the building’s distribution frame) becomes located in a specified fibre area; and
 - 7.3.2 the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice.

8. Section 69AD applies if:

- 8.1 Chorus is required by a standard terms determination (**STD**) made under section 30M to supply the relevant service to an access seeker; and
- 8.2 Chorus started supplying the service at a time when the service was a designated access service; and
- 8.3 as a result of section 13 of the Telecommunications (New Regulatory Framework) Amendment Act 2018, the service ceases to be a designated access service on and after 1 January 2020.

9. In other words, the CFLAS and UCLL/UCLL Backhaul service to which Part 2AA applies are wholesale copper services which:

- 9.1 Chorus is required to supply under the relevant STDs;
- 9.2 Chorus started supplying when the service was regulated; and
- 9.3 are no longer designated access services.

10. Sections 69AC and 69AD of the Act give effect to the end-user protections in the purpose statement in section 69AA(b). They do this by permitting Chorus to stop supplying CFLAS and UCLL/UCLL Backhaul services, only if:
 - 10.1 Chorus complies with the Code in relation to stopping the supply of the service; or
 - 10.2 The end-user chooses to have the service disconnected (other than a temporary disconnection) e.g., voluntarily moving to satellite.¹⁰⁶
11. Otherwise, Chorus must continue to supply the copper service on the terms in the relevant STD.

Schedule 2A

12. Section 69AF(1) of the Act provides that the copper withdrawal code is the code approved under Schedule 2A.
13. Clause 1(1) of Schedule 2A states that:

The Commission, or the Forum if requested to do so by the Commission, must prepare a code to be known as the copper withdrawal code, setting out minimum consumer protection requirements for end-users of the following:

 - (a) copper fixed line access services in areas that are, or will become, specified fibre areas:
 - (b) Chorus's unbundled copper local loop network:
 - (c) Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).
14. The services described in subparagraphs (a)-(c) above are the services with which sections 69AC and 69AD are concerned.

Minimum requirements the Code must contain

15. Clause 1(3) of Schedule 2A sets out the minimum requirements that the Code must include. These minimum requirements must be satisfied before Chorus is permitted to stop supplying a CFLAS or UCLL/UCLL Backhaul service under sections 69AC or 69AD. These minimum requirements are:
 - (a) the end-user in relation to the service must be able to—
 - (i) access a fibre service; and
 - (ii) have a connection to the fibre service installed—
 - (A) within a reasonable time frame; and

¹⁰⁶ This does not include temporary disconnections.

- (B) whether the connection is standard or non-standard, at no cost to the end-user; and
 - (b) Chorus must give the end-user, the access seeker, and the relevant fibre service provider reasonable notice of the proposed withdrawal of the copper service; and
 - (c) the functionality provided by the services that are to be withdrawn must, apart from legacy services, be available to the end-user over a fibre service; and
 - (d) Chorus must provide the end-user with information about—
 - (i) the withdrawal of the copper services; and
 - (ii) the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure; and
 - (e) Chorus must, if it is reasonably practicable to do so, provide the end-user with information about the fibre services available to the end-user; and
 - (f) if an anchor service is declared under section 227, the anchor service (or a commercial equivalent) must be available at the end-user’s premises; and
 - (g) a Commission 111 contact code must be in force; and
 - (h) any other prescribed matters must be complied with.
16. In relation to the last requirement – “any other prescribed matters must be complied with” – the Act gives no explicit direction in relation to “prescribed matters”. However, clause 1(4) provides that the Code “may contain any other provisions that the Commission... considers are necessary or desirable.”
17. As stated in our December 2020 Reasons paper, we consider that this clause gives us the power to prescribe additional matters – or minimum requirements – that we consider are necessary or desirable to ensure the effective operation of the Code.¹⁰⁷

Purpose of the code

18. The purpose of the code is set out in Part B of the Previous Code,¹⁰⁸ and states:
- 2. The purpose of the Code is to protect end-users of certain copper services where Chorus seeks to withdraw those services. The Code ensures this by setting out minimum consumer protection requirements that Chorus must comply with before Chorus may withdraw the end-user’s copper service, such that the end-user –
 - 2.1 understands Chorus’s process for withdrawal of the copper service, and how this will affect the end-user;
 - 2.2 has access to information about fibre services available to the end-user;
 - 2.3 has reasonable time to prepare for a proposed withdrawal of the copper service; and

¹⁰⁷ “Copper Withdrawal Code - Decisions and Reasons Paper - 10 Dec 2020” Para 87.

¹⁰⁸ “Copper Withdrawal Code - 10 Dec 2020” Part B.

2.4 is able to have a connection to a fibre service installed (if they wish to move to a fibre service), and that the fibre service provides similar functionality to the copper service.

19. As noted in our December 2020 Reasons paper, this purpose reflects our view that the main purpose of a code is to establish consumer protection requirements.¹⁰⁹ This is reflected in clause (1) of Schedule 2A, which provides that the Commission must make a code “setting out minimum consumer protection requirements for end-users” of certain copper services. Part 2AA of the Act enables Chorus to withdraw copper services where these minimum consumer protection requirements are met.
20. We also acknowledge that Part 2AA envisages the withdrawal of certain copper services, and that this is reflected in one of the purposes of Part 2AA being to deregulate CFLAS in areas where FFLAS are available.¹¹⁰

¹⁰⁹ “Copper Withdrawal Code - Decisions and Reasons Paper - 10 Dec 2020” Para 154.

¹¹⁰ Telecommunications Act 2001, s 69AA(a).

Appendix B: Relevant statutory provisions for the Code

69AA Purpose

The purpose of this Part is to—

- (a) deregulate copper fixed line access services in areas where fibre fixed line access services are available; and
- (b) provide protections for end-users of copper fixed line access services and certain other designated services in deregulated areas; and
- (c) provide for the Commission to investigate whether the regulation of copper fixed line access services and certain other designated services should be altered.

69AB Specified Fibre Areas

- (1) The Commission must, before 1 January 2020 and at least annually thereafter, carry out an assessment to determine the geographic areas in which a specified fibre service is available to end-users.
- (2) The Commission must, by public notice, declare an area to be a specified fibre area if the Commission determines in an assessment under subsection (1) that a specified fibre service is available to end-users in the area.
- (3) A notice under this section must specify the date on and after which the area is to be a specified fibre area, and that date must not be before 1 January 2020.
- (4) A notice under this section may describe an area by any means, including (without limitation)—
 - (a) by use of a map; and
 - (b) by a narrative description of the area.
- (5) The Commission must maintain a record of all specified fibre areas that is available, at all reasonable times, for inspection on the Commission's Internet site in an electronic form that is publicly accessible.
- (6) In this section, **specified fibre service** means either of the following:
 - (a) a fibre fixed line access service; or
 - (b) a telecommunications service provided by a regulated fibre service provider (F) over fibre media where the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications).

69AC Withdrawal of copper fixed line access services

- (1) This section applies if—
- (a) Chorus is required by a standard terms determination made under section 30M to supply a copper fixed line access service to an access seeker; and
 - (b) Chorus started supplying the service at a time when the end-user's building (or, where relevant, the building's distribution frame) was not located in a specified fibre area; and
 - (c) as a result of a notice under section 69AB, —
 - (i) the end-user's building (or, where relevant, the building's distribution frame) becomes located in a specified fibre area; and
 - (ii) the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice.
- (2) Chorus may stop supplying the service referred to in subsection (1) only if—
- (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
 - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—
- (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
 - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).

69AD Withdrawal of certain designated access services

- (1) This section applies if—
 - (a) Chorus is required by a standard terms determination made under section 30M to supply a relevant service to an access seeker; and
 - (b) Chorus started supplying the service at a time when the service was a designated access service; and
 - (c) as a result of section 13 of the Telecommunications (New Regulatory Framework) Amendment Act 2018, the service ceases to be a designated access service on and after 1 January 2020.
- (2) Chorus may stop supplying the service only if—
 - (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
 - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—
 - (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
 - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).
- (4) In this section, relevant service means either of the following:
 - (a) Chorus’s unbundled copper local loop network:
 - (b) Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).

69AF Copper withdrawal code

- (1) In this Part, copper withdrawal code means the code approved under Schedule 2A.
- (2) Schedule 2A sets out the provisions that apply to the copper withdrawal code.

Schedule 2A Copper withdrawal code

- 1 Copper withdrawal code**
 - (1) The Commission, or the Forum if requested to do so by the Commission, must prepare a code to be known as the copper withdrawal code, setting out minimum consumer protection requirements for end-users of the following:
 - (a) copper fixed line access services in areas that are, or will become, specified fibre areas:
 - (b) Chorus’s unbundled copper local loop network:
 - (c) Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).
 - (2) The code must be prepared before the implementation date.

- (3) The minimum requirements that the code must include are that, before Chorus is permitted to stop supplying a copper service under section 69AC or 69AD, —
- (a) the end-user in relation to the service must be able to—
 - (i) access a fibre service; and
 - (ii) have a connection to the fibre service installed—
 - (A) within a reasonable time frame; and
 - (B) whether the connection is standard or non-standard, at no cost to the end-user; and
 - (b) Chorus must give the end-user, the access seeker, and the relevant fibre service provider reasonable notice of the proposed withdrawal of the copper service; and
 - (c) the functionality provided by the services that are to be withdrawn must, apart from legacy services, be available to the end-user over a fibre service; and
 - (d) Chorus must provide the end-user with information about—
 - (i) the withdrawal of the copper services; and
 - (ii) the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure; and
 - (e) Chorus must, if it is reasonably practicable to do so, provide the end-user with information about the fibre services available to the end-user; and
 - (f) if an anchor service is declared under section 227, the anchor service (or a commercial equivalent) must be available at the end-user’s premises; and
 - (g) a Commission 111 contact code must be in force; and
 - (h) any other prescribed matters must be complied with.

(4) The code may contain any other provisions that the Commission or the Forum (as appropriate) considers are necessary or desirable.

(5) In this clause, —

anchor service has the meaning set out in section 164(1)

fibre service means —

- (a) a fibre fixed line access service; or
- (b) a telecommunications service provided over a fibre-to-the-premises access network

legacy service means the services (if any) specified in the copper withdrawal code as legacy services

standard connection and **non-standard connection** have the meanings set out in section 155ZU.

2 Consultation process on code

- (1) The Commission or the Forum (as appropriate) must—
- (a) notify the process that will be followed to make the code; and
 - (b) consult with interested persons; and
 - (c) give public notice of a draft code.
- (2) A person is entitled to make submissions to the Commission or the Forum (as appropriate) before the date that is 30 working days after the date on which public notice of the draft code is given (the **due date**).

- (3) The Commission or the Forum (as appropriate) must have regard to any submissions received before the due date.

3 Commission’s discretion to approve draft code

The Commission may approve a draft code if the Commission is satisfied that the draft code meets all the requirements set out in this Act.

4 Amendment of approved code initiated by Commission

- (1) The Commission may prepare an amendment to the approved code or revoke the approved code if the Commission considers that the approved code no longer meets all the requirements set out in this Act.
- (2) The same procedure that applies to making a code in clauses 2 and 3 must be followed to make an amendment or a revocation.

5 Status of approved code

- (1) An approved code under this Schedule, or an amendment or revocation of the code, is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- (2) That Act applies if—
- (a) the Commission were the maker of the approved code; and
 - (b) the code was made by the Commission approving it.

1552U Fibre optic connections that owners of existing works must provide to landowners

Standard connections

- (1) If the distance between the breakout point (or equivalent) and the connection point is 200 metres or less, the owner of the existing works must provide the landowner with a standard connection.
- (2) The owner of the existing works provides a standard connection by aerially installing up to, and including, 200 metres of fibre optic cable between the breakout point (or equivalent) and the connection point, at no cost to the landowner.

Non-standard connections

- (3) If the distance between the breakout point (or equivalent) and the connection point is more than 200 metres, the owner of the existing works must provide the landowner with a non-standard installation.
- (4) The owner of the existing works provides a non-standard installation by—
- (a) aerially installing up to, and including, 200 metres of fibre optic cable along the distance between the breakout point (or equivalent) and the connection point, at no cost to the landowner; and
 - (b) contributing 50% of the costs of aerially installing fibre optic cable over the remaining distance, up to, and including, 500 metres, between the 200 metres installed under paragraph (a) and the connection point.

Rights and obligations of owner of existing works and landowner where aerial installation not possible

- (5) Despite subsections (1) to (4), if an aerial installation is not practicable and trenching is required at any point,—
- (a) the landowner must provide, or meet the cost of, that trenching; and
 - (b) the obligation of the owner of the existing works is not affected, except to the extent that, in any place where the fibre optic cable cannot be installed aerially, the landowner is responsible for trenching in that place as provided in paragraph (a).

Variations

- (6) Nothing in this section prevents an owner of existing works and a landowner from entering into an agreement to replace or vary the rights and obligations concerning the installation of a fibre connection to a building on the landowner's property provided for in this section.
- (7) In this section, an **equivalent**, in relation to a breakout point, means any means by which the owner of the existing works provides the landowner with the capability to connect to a fibre-to-the-premises access network, as referred to in section 155ZT(2)(b), other than by including a breakout point.

Appendix C: Summary of submissions

This table provides a summary of submissions and proposals received in response to the Draft Decisions and Reasons paper.

1. Clarify: Fibre connections at no-cost to the end-user			
1.1	Spark	<p>Request amendment to clarify when a fibre installation that is required to enable Chorus to withdraw copper will be ‘no cost’, what ‘no cost’ means. Spark see examples of Chorus proposing to charge certain customers for installations in copper withdrawal areas. Examples include:</p> <ul style="list-style-type: none"> i. infill scenarios, where a property has multiple copper lines to the house, or where the property was built and connected to a copper line after fibre was initially rolled out down the street so the property isn’t provisioned for fibre; ii. corporate premises which already have a fibre connection on one part of a site, but existing copper lines are still used to serve other parts of the building; and iii. items facilitating fibre installation such as tree trimming, internal wiring or electrical work. <p>Suggest an amendment could either: clarify the scenarios under which a fibre connection is to be provided at no cost to the end-user to ensure this includes the concept of ‘infill’ properties, or amend the definition of a Specified Fibre Area to account for situations such as infill.</p>	Paras 2, 4 - 14
2. Remove ability of third parties to prevent copper withdrawal			
2.1	Chorus	<p>Recommend amending the Previous Code to enable copper to be withdrawn where there is a third party issue preventing a fibre installation, and that issue remains in place after a reasonable period following placement of the order by the consumer. Consider three months a reasonable period of time, as third party issues that are unresolved in that time are likely to continue. Suggest that this amendment would be framed in the Code as an additional exception to the requirement for a connection to a fibre service to be installed.</p> <p>Indicate that the availability of such an exemption is likely to incentivise resolution of third party issues in many cases where the third party’s (often a landlord) own interests in enabling and ensuring connectivity at the premises would result in that party agreeing to install fibre (where ordered). Even if it did not, the likely availability of alternative technologies means that consumers are unlikely to be left without any connectivity.</p>	Paras 16a, 19, 40, 41
2.2	Chorus	<p>Repeats concerns that situations where fibre installation cannot proceed due to third party issues should not be able to indefinitely prevent copper withdrawal. Considers that the Commission has over-estimated the potential harm and under-estimated the benefits of wider facilitation of copper withdrawal.</p> <p>Suggests that the purpose of "consumer protection" should take into account harm done by the inability to withdraw copper for multiple cabinets due to a tiny proportion of incomplete fibre installations. Believe that prevention of the withdrawal of copper cabinets due to a single unresolved fibre</p>	Paras 41, 42

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		installation is an out of proportion response in the name of consumer protection that significantly impacts the overall copper withdrawal programme, including reducing the opportunity to help New Zealand meet its environment targets.	
2.3	Chorus	<p>Believes that the Commission's view, in which it considers it does not have the ability to provide for such an exemption, is legally incorrect. The Commission has already acknowledged that the requirement for fibre to be installed is not an absolute one in its existing Previous Code exception to the requirement that fibre must be installed (the exception where the end consumer has not acted reasonably).</p> <p>Indicate legal opinion advice would be provided separately to the Commission.</p> <p>While supportive of the purpose of consumer protection, consider it unreasonable to interpret consumer protection in such a way that a single incomplete fibre installation for a premises could prevent the decommissioning of an entire copper cabinet. Preserving copper as a never-ending default means there is no real pressure on the third party to actively engage with and/or facilitate the installation.</p> <p>Encouraged that Consumer NZ supported their position and are surprised that the Commission has taken a narrower and more prescriptive view of consumer protection.</p> <p>Indicate the Commission has not addressed how the purpose of facilitating copper withdrawal is met by preventing copper withdrawal in these third party scenarios.</p>	Paras 20 - 24
2.4	Chorus	<p>Indicate they are currently utilising the property access rights and the Residential Tenancies Act (RTA) regimes to the extent possible. Neither avenue is designed to address the specific issues raised in the copper withdrawal context, and both have legal and practical limitations that limit their efficacy. As a result, these avenues are not a satisfactory solution to the issue of third party constraints preventing fibre installation.</p> <p>Indicate that they have relied on the “unreasonableness” exception in limited cases and that reliance on this exception is both insufficient and unworkable for many situations. One of the problems with the scope of the exception is that it is difficult for Chorus to determine whether or not a consumer has acted reasonably. This is particularly true where there is a third party constraint.</p>	Paras 26, 36 - 37
2.5	Chorus	<p>Indicate that the property access rights provided under the Telecommunications Act support the install of fibre connections where applicable, but often don't support resolution of third party installation issues as property access rights are not necessarily the main cause of third party stalemates. Even where small a sub-group of installations are prevented or delayed due to property access, property access rights are not a complete solution for several reasons. These include rights not applying in cases of non-prescribed installations. There are also several grounds for an affected person to object to access rights, which are sometimes used by third parties to block fibre installations regardless of the merits of such claims.</p>	Paras 27 - 29

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		Note that the statutory rights of access only apply up until 1 January 2025. After this date, Chorus and end-users who want fibre installed will have no ability to require access where this is dependent on third party consent. The expectation is that this will negatively impact on Chorus' ability to complete fibre installations.	
2.6	Chorus	Share their experience that the RTA is of limited use in facilitating landlord consent in many situations. The RTA's onus is on tenants to seek landlords' consent to a fibre installation and tenants are often unwilling to invoke the RTA, likely due to a fear of retaliation or simply prioritisation of other tenancy issues (rent disputes, heating and damp, etc). This limits Chorus' ability to encourage utilisation of the RTA, as they usually don't know whether a tenant has tried to use the RTA or where in the process the tenant and landlord might be. Landlords also have to actively consent to a fibre installation, so if the landlord simply does not respond, that is an "unlawful act" under the RTA, but in practice does not resolve the issue by allowing the fibre installation to progress. Tenancy Tribunal Claims support the position that the RTA is of limited use to remove third party blockers, showing that of the six claims alleging a breach of s 45B, only two had awards made in the tenant's favour. Both of these resulted in damages awarded rather than the facilitation of the fibre connection.	Paras 30 - 35
2.7	Chorus	Supports the introduction a 45-day pause as a useful tool to enable some third party issues to be resolved within the Code timeframe, and therefore avoid a Continuation Notice (and restarting of the process for copper withdrawal in future). Note that the "pause" mechanism only addresses delay and does not provide a substantive mechanism for resolving third party issues. In some situations, delaying the process 45 days is unlikely to bring resolution, and Chorus would not be able to withdraw copper unless relying on the existing "unreasonableness" exception.	Paras 38 - 39
3. Allow for additional time before issuing Continuation Notices			
3.1	TCF	Supports the existing requirement for Chorus to provide the Continuation Notice to end-users' where Chorus have not met their responsibilities under the code. See that there are different scenarios around the use of continuation notices, in particular for late / in progress fibre orders, that should be distinguished and have a more nuanced approach to the process. Retaining Continuation Notices in situations such as late / in progress orders are confusing for consumers and adds complexity and cost to the industry – not just Chorus. Communicating the 'in progress' fibre status to the end-user in the Final Notice, rather than in a Confirmation Notice would result in communicating a clearer message to the end-user of the outcome (copper will stay on until the fibre order is complete).	Paras 6 - 9

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3.2	Chorus	<p>Do not support the requirement to issue Continuation Notices where a consumer has placed a late fibre order, or their fibre order is still progressing. The timing of issuing a Continuation Notice (no later than one month after the notice period), would likely fall within the ‘reasonable timeframe’ for late fibre orders. The current approach leaves no room for instances where Chorus have neither met nor failed to meet their requirements under the Previous Code because a fibre order is in progress. Continuation Notices can create an incentive for consumers to cancel their fibre order after receiving the Continuation Notice, which then means they will likely fall into a future batch and their copper withdrawal process re-starts.</p> <p>Recommend that where a late, or in progress, fibre order has not been able to be installed within a reasonable timeframe, Chorus would then issue a Continuation Notice where after three months the fibre order has not been installed (subject to the exception Chorus recommended introducing to address unresolved third party issues).</p>	Paras 16b, 43 - 47
4. Other suggestions			
4.1	One NZ	Do not support removal of the requirement to include the proposed date of withdrawal in all of the notices Chorus sends. Providing a proposed withdrawal date gives end-users a deadline and acts as a reminder of the need to migrate to an alternative service before their copper service is switched off. Having Chorus' proposed copper withdrawal date also supports RSP conversations with customers throughout the notice period. Often customers want to see evidence that copper is actually being withdrawn by Chorus before they agree to move onto an alternative service.	Para 2
4.2	One NZ	Seeks confirmation of the governance framework that will be put in place to ensure the information collected by Chorus (through actions under the Code) is only used for the purposes of copper withdrawal. Cites concerns that information collected could be used for direct-to-consumer marketing.	Para 3
4.3	One NZ	Request that Chorus be required to provide RSPs with seven months' notice prior to proposed copper withdrawal date. Receiving six months' notice means that RSPs are informed about copper withdrawal at the same that as our customers - this does not give us sufficient time to plan accordingly.	Para 4
4.4	Chorus	Supports changing the notices to “Notice 1, 2 and 3” and introducing flexibility to the notice name.	Para 17a
4.5	Chorus	Supports clarifying notice definitions.	Para 17b
4.6	Chorus	Supports allowing notice delivery to an alternative address and flexible communications channels.	Para 17c
4.7	Chorus	<p>Supports adding a notice period pause during an extreme of unforeseen event.</p> <p>Request a wording change that instead of the requirement for Chorus to “immediately” lift the pause and notify all relevant parties that the pause has been lifted, amend it to provide for this to be done “as soon as reasonably practicable”. This puts the onus on Chorus to act reasonably and not delay, while acknowledging that the timeframes may require some flexibility depending on the circumstances.</p>	Para 17d
4.8	Chorus	Supports removing the Confirmation Notice.	Para 17e

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4.9	Chorus	Supports the changes to the duration between notices.	Para 17f
4.10	TCF	Supports the proposed changes and aim to: <ul style="list-style-type: none">i. simplify and improve the notice process;ii. allow flexibility in end-user communication channels; andiii. provide additional pause mechanisms to help resolve process issues.	Para 3

Appendix D: Summary of final amendments

This table provides a summary of the final amendments to the Previous Code.

ID	Category	Previous position	Amendment	Description	Relevant Previous Code section / clause
1	Notice Changes	Current notice names are First Notice, Further Notice and Final Notice	Update notice naming conventions	Notices to be re-named from “First Notice” to “Notice 1”, from “Further Notice” to “Notice 2” and from “Final Notice” to “Notice 3”	C, D (5.2), E (9), F1 (14-19, 21), F2 (22), F3 (25), F4 (31.1.1), F5 (32-33, F7 (36), G (37), G1 (38), H (52.1), J (64.2), K (65.3)
2	Notice Changes	Absent in Previous Code	Include statement/information in notice	Add flexibility to Chorus in relation to end-user communications	F3 (25)
3	Notice Changes	Provides for a ‘proposed date of withdrawal’ (i.e., the date Chorus intends to stop supplying the copper service)	Remove the requirement to include a ‘proposed date of withdrawal’. Amend the term name to ‘withdrawal date’ and the term content to reflect that ‘withdrawal date’ comes after ‘the notice period ends’	Corresponding changes to definitions (see separate line items for detail)	C, F1 (14, 17-18), F7 (36)
4	Definitions	‘Proposed date of withdrawal’ defined as “means the date (dd/mm/yyyy) Chorus intends to stop supplying the copper service to the end-user, as specified in a First Notice”	Amend ‘proposed date of withdrawal’	Change to ‘withdrawal date’ and clarify that the date Chorus intends to stop supplying copper service comes after the date the notice period ends	C

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ID	Category	Previous position	Amendment	Description	Relevant Previous Code section / clause
5	Definitions	'Notice period' defined as "means the period between the date the First Notice is provided to an end-user and the proposed date of withdrawal of the copper service"	Amend 'notice period'	Remove proposed date of withdrawal Notice period is the period between the date Notice 1 is provided to an end-user and a date at least 6 months from the date of Notice 1	C
6	Notice Changes	First notice provided to the end-user no later than six months before the proposed withdrawal date; RSP provided at the same time and RFSP no later than one month prior to the that	Date of issue of Notice 1, RSP notice, RFSP notice	Notice 1 is provided to the end-user no later than six months before the date the notice period ends The RSP notice is provided at the same time Chorus provides Notice 1 to the end-user The RFSP notice is provided no later than one month before Chorus provides Notice 1 to the end-user	F1 (14, 19, 21)
7	Notice Changes	End-user notices include the proposed date of withdrawal	Notices to end-user to include 'date the notice period ends' instead of 'proposed date of withdrawal'	Remove 'proposed date of withdrawal' from all Notices Notice 1, Notice 2, and Notice 3 and include 'date the notice period ends'	C, F3 (25)
8	Notice Changes	RSP and RFSP notices include the proposed date of withdrawal	Notice to RSPs and RFSPs to include 'date the notice period ends' instead of 'proposed date of withdrawal'	Include 'date the notice period ends' to RSP and RFSP notices; (Chorus continues to give notice to RSPs and RFSPs of proposed stop of supply of a copper service) Inform withdrawal date to RSP and RFSP in parallel to Notice 3	F1 (19-21), F3 (31.1.2)

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ID	Category	Previous position	Amendment	Description	Relevant Previous Code section / clause
9	Notice Changes	Absent in Previous Code	<p>Notice 3 to include the ‘withdrawal date’ (Information to be provided in notices)</p> <p>Clarify that end-users can place order after receipt of Notice 3</p>	<p>Notice 3 includes the withdrawal date</p> <p>If an end-user orders a retail fibre service after receipt of Notice 3 but within the notice period, the ‘withdrawal date’ is subject to change and Chorus should follow the ‘minimum requirements in relation to end-users who order a retail fibre service’ set out in Part G</p>	F3 (25), G (37.2), G (50)
10	Notice changes	Absent in Previous Code	<p>Notice 3 to include information on ‘in progress’ and ‘late’ (after Notice 3 but before the end of the notice period) orders</p>	<p>Notice 3 specifies that for any existing orders to switch to another retail telecommunications service (including fibre connection in progress, or if a consumer places an order before the end of the notice period, their copper service will remain until the order is complete</p>	F3 (New section / clause)
11	Notice Changes	Provides for Confirmation Notice to be issued communicating the outcome	Remove the Confirmation Notice	No longer required	C, H1, J (64.2)
12	Notice Changes	Absent in Previous Code	<p>Notice 3 to be provided to the end-user, the end-user’s RSP and RFSP confirming ‘withdrawal date’</p>	<p>Chorus to inform the end-user’s RSP and the RFSP at the same time it provides Notice 3 to the end-user</p>	F1 (19-21)
13	Timing	First Notice is issued no later than six months before the proposed date of withdrawal, and the Further Notice is issued at three months before the proposed date of withdrawal	<p>Reduce duration between Notice 1 and Notice 2, provide flexibility for timing of the issue. Increase momentum, surface postal addressing issues sooner in the cycle, provide additional operational flexibility for Chorus during extended public holidays</p>	<p>Notice 2 to be issued no earlier than two months after the date of Notice 1 and no later than three months after the date of Notice 1</p>	F1 (17)

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ID	Category	Previous position	Amendment	Description	Relevant Previous Code section / clause
14	Timing	Further Notice is issued at three months before the proposed date of withdrawal and Final Notice is issued at 20 working days before the proposed date of withdrawal	Reduce duration between Notice 2 and Notice 3 provide flexibility for timing of the issue	Notice 3 to be issued no earlier than 40 working days and no later than 30 working days before the end of the notice period	F1 (18)
15	Timing	Provides for a Final Notice to be issued at 20 working days before the proposed date of withdrawal	Extend the time period between Notice 3 and the end of the Notice Period	The time period between Notice 3 and the end of the notice period will be increased from the current 20 working days to 30 working days	F1 (18)
16	Timing	Chorus to provide a continuation notice to an end-user as soon as reasonably practicable, but no later than one month after the expiry of the notice period, where they have failed to satisfy the minimum requirements in sections F and G	Extend the time period latest time Chorus can provide a Continuation notice following the end of the notice period where they haven't met their obligations under the Code	Increase the maximum time before Chorus must provide a continuation notice where they have failed to meet their obligations under sections F and G of the Code from one month to 75 days	G4 (50)
17	Timing	At any time after an end-user is provided a First Notice, the end-user places an order with a retail service provider for a connection to a fibre service to be installed, the end-user must have a connection to a fibre service installed:	Clarify the specific window where an end-user can place an order for a fibre connection to be installed.	Retention of the words 'at any time' (proposed to be deleted in the Draft Amended Code) and addition of the wording 'but during the notice period'	G1 (38)

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ID	Category	Previous position	Amendment	Description	Relevant Previous Code section / clause
18	Notice Changes	Notice to the end-user must be addressed to the premises where the end-user resides and that Chorus must, in the first instance, deliver the notices by posted mail. However, where Chorus has been unable to deliver a notice by postal operator, it must deliver the notice by a physical letter-drop to the premises	Allow for Notices to be sent to alternate postal address and via alternate communication channels	Code to allow for notices to be delivered to an alternative postal address subject to Notice 1 being delivered to the copper-connected premises Allow the use of alternative communication channels to meet consumers' preferences	F1, F4 (27-29)
19	End-User Data	Chorus to generically address the end-user notices, not to be addressed to the name (no additional information) of the particular end-user. Any notice that Chorus is required to provide to an end-user must be addressed to the premises where the end-user resides (e.g., "to the occupant of [insert premises address]")	Except for Notice 1, allow Chorus to tailor notices to the end-users' communication preferences	End-user information is only used by Chorus for the purposes of delivering notices This information is shared with the RSP and RFSP where relevant to do so	F1, F3, F4 (27-29)

Copper Withdrawal Code 2024 – Decisions and Reasons paper

ID	Category	Previous position	Amendment	Description	Relevant Previous Code section / clause
20	Pause Notice (premise-level)	Provides for a specific type of pause as an available option that can be triggered during an end-user's notice period under the Dispute Resolution clause	Allow Chorus to apply a pause to the process at any time during the notice period in case of premise-level delays (in context of third party delays)	<p>Applicable under the 'minimum requirements in relation to end-users who order a retail fibre service'</p> <p>Reason for the pause to be captured and communicated to the end-user</p> <p>Notification is sent to the end-user, the RSP and the RFSP with an estimate of how long the pause will be applied for (no greater than 45 working days)</p> <p>Duration of pause is added to the notice period</p> <p>If no outcome in 45 working days, Chorus to follow minimum requirements under G4</p>	G (New section / clause)
21	Pause Notice (premise-level)	Absent in the Previous Code	Allow Chorus to remove a pause to the process at any time during the notice period in case of premise-level delays (in context of third party delays)	<p>Confirmation that the reason for the pause to be originally applied has been resolved, to be captured and communicated</p> <p>Notification is sent to the end-user, the RSP and the RFSP</p>	G (New section / clause)
22	Definitions	Absent in the Previous Code	Include 'extreme or unforeseen event' definition	Include Chorus' ability to apply a pause to the notice period in these circumstances	C

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ID	Category	Previous position	Amendment	Description	Relevant Previous Code section / clause
23	Pause Notice (extreme or unforeseen event)	Absent in the Previous Code	Allow Chorus to apply a pause to the process at any time during the notice period only when circumstances fall under an extreme or unforeseen event	<p>Applicable under the definition of an extreme or unforeseen event</p> <p>Notification is sent to the end-user, the RSP and the RFSP, when pause is applied and lifted</p> <p>Duration of pause to be added to notice period</p> <p>Chorus to advise the Commission when it has undertaken 'pause'</p>	G (New section / clause)
24	Pause/ Information Disclosure	Absent in the Previous Code	Chorus to disclose Pause information (Premise-level delay in context of third party delays)	<p>Chorus to provide pause information in relation to premise-level delays with annual disclosure to show:</p> <ul style="list-style-type: none"> - the number of pauses it has applied; - the date each of these pauses was applied and lifted; - for the pauses related to third party delays that did resolve within 45 working days, the number that resolved and the reasons why; - for the pauses related to a third party delay that did not resolve within 45 working days, the number that did not resolve and the reasons why. 	J, K
25	Information Disclosure	Absent in the Previous Code	Chorus to disclose the number of copper services withdrawn	Chorus to disclose the number copper services withdrawn	J, K
26	Information Disclosure	Absent in the Previous Code	Chorus to disclose the number of copper services withdrawn	Chorus to disclose the number of copper services withdrawn where fibre has not been installed	J, K