

Fibre Input Methodologies main 2021 amendments: final decisions

Final reasons paper

Date of publication 29 November 2021



Associated Documents

Publication date	Reference	Title
13 October 2020	ISBN 978-1-869458-43-0	Fibre Input Methodologies - Main final decisions reasons paper - 13 October 2020
13 October 2020	ISSN 1178-2560	[2020] NZCC 21 - Fibre Input Methodologies Determination 2020 - 13 October 2020
3 November 2020	ISBN 978-1-869458-45-4	Fibre input methodologies - Financial loss asset – reasons paper - 3 November
3 November 2020	ISSN 1178-2560	[2020] NZCC 24 - Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020 - 3 November 2020
29 April 2021	-	Notice of intention: Proposal to make potential amendments to the Input Methodologies for Fibre – potential August 2021 amendments
30 April 2021	-	Notice of intention: Proposal to make potential amendments to the Input Methodologies for Fibre – potential November 2021 amendments
27 May 2021	ISBN 978-1-869458-96-6	Proposed Amendments to Fibre Input Methodologies: draft decisions - Reasons paper - 27 May 2021
27 May 2021	ISBN 978-1-869458-97-3	[Draft] Fibre Input Methodologies Amendment Determination 2021 - 27 May 2021
9 July 2021	ISBN 978-1-869459-12-3	Fibre Input Methodologies Determination 2020 - consolidated determination consolidates the principal determination and all amendments as of 9 July 2021
19 August 2021	-	Amended notice of intention: (Amending the Notice of Intention dated 29 April 2021) - Proposed Amendments to the Input Methodologies for Fibre - potential August 2021 amendments)
31 August 2021	ISBN 978-1-869459-25-3	Proposed Additional Amendments to Fibre Input Methodologies: draft decisions - Reasons paper - 31 August 2021
31 August 2021	ISBN 978-1-869459-26-0	[Draft] Fibre Input Methodologies Amendment Determination 2021 - 31 August 2021
23 September 2021	-	Amended notice of intention: (Amending the Notice of Intention dated 19 August 2021) - Proposed Amendments to the Input Methodologies for Fibre - potential August 2021 amendments
29 September 2021	ISBN 978-1-869459-30-7	Amendments to Fibre Input Methodologies: Capex IM final decision - Reasons paper - 29 September 2021
29 September 2021	ISSN 1178-2560	[2021] NZCC 17 - Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021 - 29 September 2021

30 September 2021	ISBN 978-1-869459-32-1	Proposed amendments to fibre Input Methodologies wash-up mechanism revised draft - reasons paper - 30 September 2021
30 September 2021	ISBN 978-1-869459-31-4	[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021 - 30 September 2021
29 November 2021	ISSN 1178-2560	[2021] NZCC 25 - Fibre Input Methodologies Amendment Determination (No.2) 2021 - 29 November 2021
29 November 2021	ISBN 978-1-869459-56-7	Fibre input methodologies - Out of scope material received as part of submissions on the 2021 IM amendments

Commerce Commission

Wellington, New Zealand

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Chapter 1 Introduction

Purpose of this paper

- 1.1 The purpose of this paper is to outline our final decision to amend the *Fibre Input Methodologies Determination 2020* [2020] NZCC 21 (**principal fibre IM determination**).

Scope of this paper

- 1.2 The fibre IM amendments in this paper are being published (on 29 November 2021) before the dates of publication of the final information disclosure (**ID**) decisions and the final price-quality (**PQ**) decisions.
- 1.3 We will publish a new consolidated version of the principal fibre IM determination, which will include the fibre IM amendments described in this paper, in December 2021. The decision to publish a consolidated fibre IM determination is for ease of reference and will be independent of our final PQ decisions.
- 1.4 In relation to the decisions in this paper, we have published two draft decisions, a revised draft decision and two final decisions on fibre input methodology (**fibre IM**) amendments:
- 1.4.1 Draft decision: Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper, 27 May 2021 (**May 2021 draft decisions**);¹
- 1.4.2 Draft decision: Proposed Additional Amendments to Fibre Input Methodologies: draft decisions – Reasons paper, 31 August 2021 (**August 2021 draft decisions**);²
- 1.4.3 Revised draft decision: Proposed amendments to Fibre Input Methodologies – wash-up mechanism revised draft – Reasons paper, 30 September 2021 (**September 2021 revised draft decisions**);³

¹ Commerce Commission "Proposed Amendments to Fibre Input Methodologies draft decisions - Reasons paper" (27 May 2021).

² Commerce Commission "Proposed Additional Amendments to Fibre Input Methodologies draft decision - reasons paper" (31 August 2021).

³ Commerce Commission "Proposed Amendments to Fibre Input Methodologies wash-up mechanism revised draft - reasons paper" (30 September 2021).

- 1.4.4 Final decision: Amendments to Fibre Input Methodologies: Capex IM final decision – Reasons paper, 29 September 2021 (**September 2021 Capex IM final amendment decision**): we describe our recent decision to amend the capital expenditure fibre IM to change the date by which we must determine a “base capex allowance” and “connection capex baseline allowance” for Chorus Limited (**Chorus**) for the first regulatory period (**PQP1**);⁴ and
- 1.4.5 Final decision: Amendments to the fibre IMs, as discussed in this reasons paper.

Structure of this paper

- 1.5 This paper explains:
- 1.5.1 our framework for considering the scope of fibre IM amendments, and the decision-making framework we have applied in making the specific fibre IM amendments set out in this paper (Chapter 2);
 - 1.5.2 the fibre IM amendments that are necessary to implement the approach to determining Chorus’ initial PQ regulatory asset base (**RAB**) (Chapter 3);
 - 1.5.3 the fibre IM amendments that are necessary to give effect to the wash-up mechanism (Chapter 4);
 - 1.5.4 the fibre IM amendments that are necessary to implement decisions that we are planning to make for our first fibre PQ path and ID determinations (Chapter 5); and
 - 1.5.5 the fibre IM amendments that are necessary to clarify, improve workability and correct technical errors (Chapter 6).
- 1.6 In addition to our fibre IM amendment decisions, this paper also includes a summary of our non-material changes to the fibre IMs (Attachment A). These are changes we have made to the fibre IMs in accordance with s 181(2) of the Act, which states that we may amend an IM to make a non-material change without complying with s 179 of the Act (which, among things, requires us to publish a notice of intention and give notice of the draft methodology).

Change of identity of companies to which the fibre IMs apply

- 1.7 In this paper we refer to companies, and their respective submissions and cross-submissions made to us, by each company's current name. In that respect:

⁴ Commerce Commission "Amendments to Fibre Input Methodologies - Capex IM final decision - reasons paper" (29 September 2021).

- 1.7.1 Northpower Fibre Limited and Northpower LFC2 Limited were amalgamated to become Northpower Fibre Limited (**Northpower**) on 1 May 2021. Northpower also advised us that it has changed its balance date to 31 March.
- 1.7.2 UltraFast Fibre Limited changed its name to Tuatahi First Fibre Limited (**Tuatahi**) on 1 November 2021.

Our process for making the fibre IM amendment decisions and their relationship to our PQ and ID processes

- 1.8 As part of our process for determining the first PQ path for Chorus and determining the ID requirements that will apply to Chorus and the other local fibre companies (**LFCs**), Enable Networks Limited (**Enable**), Northpower and Tuatahi under s 170 of the Act we identified:
- 1.8.1 certain circumstances where amendments to the fibre IMs are necessary to implement decisions that we are planning to make for our first fibre PQ path and ID determinations; and
- 1.8.2 certain circumstances where amendments to the fibre IMs would enhance certainty about the rules, requirements and processes that apply to PQ paths.

How we have treated confidential information

- 1.9 Protecting confidential and commercially sensitive information is something the Commission takes seriously. Throughout our IM amendment process, stakeholders uploaded submissions via a portal on the Commission's website. This process required stakeholders to provide (if necessary) both a confidential and non-confidential version of submissions and to clearly identify the confidential and non-confidential versions. All public versions were published on our website.

Our regulatory framework for IMs

- 1.10 Part 6 of the Act introduces a form of regulation that is similar to that which applies to energy networks and airports in New Zealand under Part 4 of the Commerce Act 1986 (**Part 4**). This is the first time that this regulatory framework has been applied to telecommunications in New Zealand. The fibre IMs underpin the two forms of regulatory control that must be in place by 1 January 2022 (the **implementation date**):

1.10.1 PQ regulation: initially, we are required to determine the maximum revenue a regulated fibre service provider (**regulated provider**) is allowed to earn from its PQ fibre fixed line access services (**FFLAS**), as well as the quality at which PQ FFLAS must be provided.⁵ This regulation is implemented through PQ paths. From the implementation date PQ regulation will only apply to Chorus.

1.10.2 ID regulation: each regulated provider will be required to disclose information on its performance delivering ID FFLAS.⁶ From the implementation date ID regulation will apply to Chorus and the other LFCs – Enable, Northpower and Tuatahi.

1.11 Our framework for considering the scope of IM amendments, and the decision-making framework we have applied in the making of specific IM amendments set out in this paper is discussed in Chapter 2.

Our final decisions on the fibre IM amendments

1.12 This section explains where you can find our final decisions for the amendments to the fibre IMs for 2021:

1.12.1 Fibre IM amendments to implement the approach to determining Chorus' initial PQ RAB (Chapter 3):

1.12.1.1 amendments to the asset valuation and cost of capital fibre IMs to allow for transitional initial PQ RAB to be determined, in part, on estimates, rather than actual values;

1.12.1.2 add a new section to Schedule B of the fibre IMs to provide for alternative methodologies with equivalent effect or substantially the same effect in determining the financial loss asset (**FLA**); and

1.12.1.3 amendment to specify the application of the vanilla WACC to correct for the effect of tax losses.

1.12.2 Fibre IM amendments to give effect to the process and to the scope of the PQ wash-up mechanism (Chapter 4):

⁵ A "regulated provider" is defined in the fibre IM determination for the purposes of PQ regulation as someone to which Part 3 of the determination applies and who is prescribed under regulations made under the Telecommunications Act 2001 as being subject to price-quality regulation.

⁶ A "regulated provider" is defined in the fibre IM determination for the purposes of ID regulation as someone to which Part 2 of the determination applies and who is prescribed under regulations made under the Telecommunications Act 2001 as being subject to information disclosure regulation.

- 1.12.2.1 amendments to the process of the wash-up and how the "wash-up amount" will be calculated and carried forward;
 - 1.12.2.2 amendments to the specification of price and revenue fibre IM to insert details on the scope of the wash-up; and
 - 1.12.2.3 Drafting clarifications on the wash-up provisions.
- 1.12.3 Fibre IM amendments to implement decisions for the first PQ path and ID requirements (Chapter 5):
- 1.12.3.1 amendment to the asset valuation fibre IM to allow for the calculation of the revaluation date;
 - 1.12.3.2 amendment to the taxation fibre IM to proportionally adjust the cost of debt to reflect that the notional deductible interest is calculated for the same period;
 - 1.12.3.3 amendment to the cost of capital fibre IM to change the timing of our annual WACC determinations for disclosure year 2022 for LFCs other than Chorus; and
 - 1.12.3.4 amendments to the quality dimensions fibre IM to refine the drafting for the definitions of "downtime", "planned downtime" and "unplanned downtime".
- 1.12.4 Fibre IM amendments to clarify, improve workability and correct technical errors (Chapter 6):
- 1.12.4.1 amendments to the specification of price and revenues fibre IM to clarify key definitions;
 - 1.12.4.2 amendments to clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B to clarify other allocator types to be applied by the Commission in determining the FLA;
 - 1.12.4.3 amendments to the asset valuation fibre IM to clarify how forecast values are used to determine asset valuation inputs for Chorus' maximum revenues for PQP1, which starts 1 January 2022 and ends 31 December 2024;
 - 1.12.4.4 adding clause B1.1.5(1)(e) to Schedule B to clarify the treatment of negative, positive or nil values for the calculation of PQ path forecast values for the FLA;

- 1.12.4.5 amendments to improve the workability of the asset valuation fibre IM to clarify the requirements in respect of the cost allocation process used to determine the “opening RAB value” of fibre assets at implementation date in Chorus’ transitional initial PQ RAB;
 - 1.12.4.6 amendment to correct an error in clause 3.2.1(4) of the cost allocation fibre IM for price-quality paths to use the term "closing RAB value" in place of "asset value";
 - 1.12.4.7 amendments to correct technical errors with the asset valuation fibre IM;
 - 1.12.4.8 amendments to correct errors in formulae for "revenue date compounding factor" to include fixed values;
 - 1.12.4.9 amendment to correct errors in the formulae in clauses B1.1.2(5)-(6) of Schedule B for the present value benefit of Crown financing;
 - 1.12.4.10 amendment to correct errors in the formulae for “UFB cost allocation adjustment cash flow” to specify both the "closing cost allocator value" and the "opening cost allocator value"; and
 - 1.12.4.11 amendments to correct errors in the cost allocation fibre IM provisions that specify requirements for operating costs and asset values that are not directly attributable to regulated FFLAS and UFB FFLAS by prescribing how asset allocators and cost allocators must be used.
- 1.13 In this paper we refer to "current fibre IM requirements", "current fibre IMs" and “current provision”. These refer to the fibre IMs that we are amending in the decisions in this paper.

Materials published alongside this paper

- 1.14 To give effect to the fibre IM amendments discussed in this paper, we have today published alongside this paper the fibre IM amendment determination.⁷ The amendment determination shows our final amendment decisions as redlined mark-ups of the fibre IMs as most recently amended.
- 1.15 The fibre IM amendment determination comes into effect on 29 November 2021, the day on which public notice of it is given in the *New Zealand Gazette*.

⁷ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25.

- 1.16 We have also published a separate summary of the submission points on matters we concluded are outside the scope of the decisions in this reasons paper.⁸ These are submission points that we received during our process of considering the fibre IM amendments that were outside the scope of our fibre IM amendment notices of intention (NOIs) and therefore, outside the scope of our final decisions. We have not taken these submission points into account when making the decisions in this paper.

Our process for these decisions

- 1.17 We originally finalised the fibre IM determinations in October and November 2020. These determinations were consolidated into the principal fibre IM determination in July 2021.
- 1.18 The main fibre IM decisions in the October determination are discussed in the '**October 2020 fibre IM final reasons paper**'.⁹
- 1.19 The fibre IM decisions in the November fibre IM amendment determination are discussed in the '**November 2020 fibre IM financial loss asset reasons paper**'.¹⁰
- 1.20 We are currently in the process of determining our final ID decisions (30 November 2021), final PQ decisions (16 December 2021), and the final transitional initial PQ RAB (16 December 2021). The fibre IMs underpin the PQ path and ID requirements and promote certainty for regulated service providers (**regulated providers**), access seekers and end-users.
- 1.21 Since finalising the fibre IM determinations in 2020, we have published the following NOIs, as required under s 179 of the Telecommunications Act 2001 (the **Act**), with respect to our process of considering material changes to the fibre IMs:
- 1.21.1 29 April 2021: *Notice of Intention for potential amendments to IMs for Fibre in August 2021*;¹¹
- 1.21.2 30 April 2021: *Notice of Intention for potential amendments to IMs for Fibre in November 2021*;¹²

⁸ Commerce Commission "Fibre input methodologies - Out of scope material received as part of submissions on the 2021 IM amendments" (29 November 2021).

⁹ Commerce Commission "Fibre input methodologies: Main final decisions - reasons paper" (13 October 2020).

¹⁰ Commerce Commission "Fibre input methodologies: Financial loss asset final decision - reasons paper" (3 November 2020).

¹¹ Commerce Commission "Notice of Intention for potential amendments to IMs for Fibre in August 2021" (29 April 2021).

¹² Commerce Commission "Notice of Intention for potential amendments to IMs for Fibre in November 2021" (30 April 2021).

- 1.21.3 19 August 2021: *Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments)*;¹³ and
- 1.21.4 23 September 2021: *Amended Notice of Intention: (Amending the Notice of Intention dated 19 August 2021 - Proposed Amendments to the Input Methodologies for Fibre - potential August 2021 amendments)*.¹⁴
- 1.22 We have published three draft decisions in 2021 (May 2021 draft decisions; August 2021 draft decisions; and September 2021 revised draft decisions). The draft decisions in those papers, and the submissions and cross-submissions made on those papers, form the basis for the final decisions outlined in this paper.
- 1.23 On 29 September 2021 we amended the capital expenditure fibre IM in a separate paper to change the date by which we must determine a “base capex allowance” and “connection capex baseline allowance” for Chorus for PQP1.
- 1.24 On 30 April 2021, we published a process update paper providing an update on the process and timing we intended to follow in determining Chorus' initial PQ RAB.¹⁵
- 1.25 On 29 June 2021, we published a process update paper that outlined our updated process for determining Chorus' transitional initial PQ RAB.¹⁶
- 1.26 The final decisions in this paper are made in accordance with s 181 of the Act. In reaching the decisions in this paper, we have had regard to relevant views received from interested persons.

¹³ Commerce Commission "Amended 29 April 2021 Notice of Intention for potential amendments to IMs for Fibre" (19 August 2021).

¹⁴ Commerce Commission "Further amendments to 29 April 2021 Notice of Intention for potential amendments to IMs for Fibre" (23 September 2021).

¹⁵ Commerce Commission "Determining Chorus' first price-quality path: Process update" (30 April 2021).

¹⁶ Commerce Commission "Determining Chorus' PQ RAB - Process update" (29 June 2021).

Chapter 2 Framework for fibre IM amendments

Purpose of this chapter

- 2.1 As part of the process to make PQ and ID determinations, we noted it may be necessary for us to consider amendments to the fibre IMs.¹⁷ This chapter describes:
- 2.1.1 our framework for considering the scope of the fibre IM amendments;
 - 2.1.2 our views on fibre IM amendments since beginning the PQ and ID decisions process; and
 - 2.1.3 the decision-making framework we have applied in making these fibre IM amendments.

Framework for considering the scope of fibre IM amendments

Statutory context

- 2.2 The purpose of fibre IMs, set out in s 174 of the Act, is to promote certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of fibre fixed line access services (**FFLAS**) under Part 6 of the Act. To that end, fibre IMs, as far as is reasonably practicable, are required to set out relevant matters in sufficient detail so that each affected regulated provider is reasonably able to estimate the material effects of the methodology on the regulated provider (s 176(2)(a)). In that way, fibre IMs constrain our evaluative judgements in subsequent regulatory decisions and increase predictability.¹⁸
- 2.3 However, some uncertainty remains inevitable.¹⁹ As the Court of Appeal observed (in relation to a judicial review against decisions made in the IMs under Part 4 in 2012) "certainty is a relative rather than an absolute value",²⁰ and "there is a continuum between complete certainty at one end and complete flexibility at the other".²¹
- 2.4 The s 174 purpose is thus primarily promoted by having the rules, processes and requirements set upfront prior to being applied by regulated providers or ourselves.

¹⁷ Commerce Commission "Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period" (15 September 2020), paragraph A1.

¹⁸ *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph [213].

¹⁹ *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraph [214].

²⁰ *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph [34].

²¹ *Commerce Commission v Vector Ltd* [2012] NZCA 220, paragraph [60].

- 2.5 However, as recognised in sections 181 and 182, these rules, processes and requirements may change. We have further considered the relationship between the power to amend a fibre IM and the s 174 purpose in light of submissions received on our May 2021 draft decisions.
- 2.6 The power to amend a fibre IM must be used to promote the policy and objectives of the Act as ascertained by reading it as a whole. It is clear that Parliament saw the promotion of certainty as being important to the achievement of the purposes of PQ and ID regulation. This is reflected in s 174 in relation to the purpose of IMs, but also in other aspects of the regime.²²
- 2.7 Accordingly, we are cautious about making amendments to fibre IMs given the importance of certainty and predictability in the regime. While this is to an extent inherent in s 162 (for example providing regulated providers with incentives to invest in accordance with s 162(a) requires recognition of the role that predictability plays)), it is given extra force by s 174.
- 2.8 However, we do not agree with Chorus that the Commission may only make amendments "that are consistent with the achievement of both" s 162 and s 174, such that s 174 acts as a veto to IM amendments.²³ There will often be a tension between making changes to improve the regime and better promote the s 162 purpose (and, where we consider it relevant, the s 166(2)(b) purpose)) on the one hand, and certainty on the other.
- 2.9 While we will have regard to the s 174 purpose (and the other indications of the importance of promoting certainty), ultimately under s 166(2), we must nevertheless make recommendations, determinations and decisions that we consider best give, or are likely to best give, effect:
- 2.9.1 to the purpose of s 162, as set out in s 166(2)(a); and
- 2.9.2 to the extent that we consider it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services (promotion of workable competition), as set out in s 166(2)(b).

²² *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, paragraphs [213]-[221].

²³ Chorus "Amendments to the Input Methodologies for Fibre: August 2021 amendments" (24 June 2021), paragraph 5.

- 2.10 Section 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6 of the Act. The other purpose statements within Part 6 are relevant matters, but they should be applied consistently with s 166(2).²⁴
- 2.11 When making our decisions we must only give effect to these other purposes to the extent that doing so does not detract from our overriding obligation to promote the purposes set out in s 166(2).

Powers to amend the fibre IMs

- 2.12 We may amend the fibre IMs at any time, under s 181 of the Act. This extends to the publication of fibre IMs that deal with new matters (s 178(2)). Where an amendment is material, we must follow the process in s 179 that we were required to follow when first setting the fibre IMs.
- 2.13 In deciding whether to exercise our power to consult on amendments to the fibre IMs, we must make the decision that we consider best gives effect to, or is likely to best give effect to, the s 162 purpose and the promotion of workable competition (where relevant), in addition to considering the s 174 purpose of the fibre IMs discussed above.
- 2.14 Consideration of promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunication services is unique to fibre (s166(2)(b)) and could affect a decision to consider new fibre IMs.

Amendments inside and outside the fibre IM review cycle

- 2.15 All fibre IMs must be reviewed at least once every seven years, as mandated by s 182. This process is key to delivering on the s 174 certainty purpose of fibre IMs, while at the same time allowing the regime to mature and to evolve in response to changing circumstances.
- 2.16 Given the certainty purpose of the fibre IMs and the scheme set out in the Act to promote this purpose, we must carefully assess what amendments are appropriate to consider outside the fibre IM review cycle. Additionally, the predictability the fibre IMs provide is key to promoting the s 162 purpose (as required under s 166(2)(a)) and, in particular, incentives to invest.

²⁴ We note that the High Court in *Wellington International Airport Ltd & Ors v Commerce Commission* considered that the purpose of IMs, set out in s 52R of the Commerce Act 1986, is “conceptually subordinate” to the purpose of Part 4 of the Commerce Act 1986 as set out in s 52A when applying the “materially better” test. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, paragraph [165].

- 2.17 On the other hand, it is important that the IMs are fit-for-purpose going into a PQ reset, especially as under s 204(1) fibre IM amendments (other than in limited circumstances) made after the PQ path is determined (including any made under s 182) will not affect the PQ path until the next PQ reset.²⁵

Types of amendments outside the fibre IM review

- 2.18 In past PQ path resets under Part 4, the need to balance these competing considerations has led us to focus on two sorts of amendments outside the fibre IM review:

2.18.1 those that support incremental improvements to PQ paths; and

2.18.2 those that enhance certainty about – or correct technical errors in – the current fibre IMs.

- 2.19 Conversely, it will not generally be appropriate to consider 'fundamental' changes outside the fibre IM review cycle. Fundamental IMs are generally those that define the fundamental building blocks used to set PQ paths (listed in s 176(1)(a)), and that are central to defining the balance of risk and benefits between regulated providers and end-users.

- 2.20 This distinction is not absolute: we can and have reconsidered fundamental building blocks in relative isolation in the past. However, there needs to be an especially compelling and urgent rationale for doing so.²⁶

Status of the regulatory processes and rules fibre IMs

- 2.21 The regulatory processes and rules (**RPR**) matters listed under s 176(1)(c) of the Act are not generally 'fundamental' in the sense discussed above. Further, they are closely connected to the operation of the PQ regime, so may need to be amended to support incremental improvements. This is consistent with the approach we have taken under Part 4.

²⁵ Under s 204(2) a PQ path must be reopened by us with a new PQ path made by amending the PQ determination if: a fibre IM changes as a result of an appeal under s 183; and that changed fibre IM would have resulted in a materially different PQ path being set had the changed fibre IM applied at the time the PQ path was set.

²⁶ An example of this was the re-consideration of the Part 4 WACC percentile decision in 2014. The compelling reason for this was criticism by the High Court of this decision in the IM merits appeal process, and the urgency was due to the upcoming default price-quality path (**DPP2**) and individual price-quality (**IPP2**) resets for electricity distribution businesses and Transpower New Zealand Limited.

- 2.22 On the other hand, the RPR fibre IMs are intended to provide process certainty for providers and end-users (consistent with promoting s 174), so a process to amend them should only be entered into where the benefits in terms of s 166(2) outweigh any detrimental impact on this certainty.

Status of the quality dimensions and capital expenditure fibre IMs

- 2.23 We consider that the quality dimensions fibre IM and capital expenditure fibre IM are not "fundamental" in the sense described above and should be treated in a similar way to the RPR fibre IMs.
- 2.24 An exception to this could be the clauses of the capital expenditure fibre IM which deal with the process for Chorus preparing an expenditure proposal for a regulatory period, as Chorus will be complying with its obligations under these clauses during the reset process.

Consideration of introducing new fibre IMs

- 2.25 We consider that no special criteria need apply to the introduction of new fibre IMs outside the fibre IM review process, but that applying the general framework outlined above would in most cases mean such amendments are not appropriate outside a fibre IM review.
- 2.26 As noted above, one of the points of difference of the fibre regime is the explicit power to introduce fibre IMs that deal with new matters.²⁷ As such, we have not considered the framework for doing so under Part 4.
- 2.27 While the Act does not give explicit requirements about when we should (or must) add a new fibre IM, we would only add new fibre IMs if we thought that there was a gap in the mandatory fibre IMs that meant that as a package they did not:
- 2.27.1 best give, or are likely to best give, effect to s 166(2)(a) and s 166(2)(b) (where relevant); or
- 2.27.2 promote sufficient certainty to achieve the purpose of fibre IMs in s 174.

Introducing new fibre IMs outside of the fibre IM review

- 2.28 As with amendments to current fibre IMs, we do not consider there is a firm rule against introducing new fibre IMs outside the fibre IM review. However, applying the criteria above, we would be unlikely to do so.

²⁷ Telecommunications Act 2001, section 178(2).

- 2.29 Firstly, it is difficult to foresee a situation where we would need to introduce an entirely new fibre IM to implement an incremental improvement to PQ paths or ID requirements, or to correct for errors. Based on Part 4 experience, these kinds of changes have been accommodated with amendments to current fibre IMs (principally the RPR fibre IMs).
- 2.30 Secondly, extending the fibre IMs to cover an entirely new topic would in most cases be a fundamental change; one that needed to be considered in light of the scheme of the fibre IMs as a whole, rather than in relative isolation. Furthermore, making such a significant change outside the predictable seven-year cycle may reduce the certainty purpose of fibre IMs.

Views since beginning the PQ and ID process

- 2.31 Before beginning this fibre IM amendments process, we noted in our proposed process and approach paper there would be several contextual factors that would influence the scope of amendments we may consider as part of the PQ and ID setting process.²⁸ Because of these factors it was likely that the set of fibre IM amendments that meet our criteria would be larger prior to PQP1 than in future resets (and compared to recent Part 4 resets).

Error correction

- 2.32 While our initial fibre IM setting process was designed to ensure the IMs were as error free as possible, it was anticipated that through the process of making the PQ path and ID requirements we may identify errors in the fibre IMs. As the fibre IMs are new, there was a greater chance of this being necessary prior to the first reset (as was the case with the fibre IM amendments ahead of DPP2 for electricity distribution businesses).

Implementing PQ and ID approaches

- 2.33 Since beginning the process of setting the PQ and ID requirements it has become apparent that a small number of relatively minor fibre IM amendments are necessary to implement draft decisions that we have made for our first fibre PQ path and ID determinations that best gives effect to s 166(2), the s 186 purpose of ID, or to the s 192 purpose of PQ.

²⁸ Commerce Commission “Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period” (15 September 2020), paragraph A27.

2.34 We consulted on our proposed approach for amending fibre IMs as part of our proposed process and approach paper, and the approach was supported by Chorus.²⁹ We also sought submissions on our proposed approach for making fibre IM amendments in our May 2021 draft decisions.³⁰ We have had regard to submissions received on our proposed approach for making fibre IM amendments in our framework above.³¹

Decision-making framework we have applied

Statutory compliance

2.35 The fibre IM amendments made in this paper are in accordance with s 181 of the Act.

IM amendment decision-making framework

2.36 We used a decision-making framework based on one that we have developed over time to support our decision making under Part 4.³² This has been consulted on and used as part of prior processes and helps provide consistency and transparency in our decisions. This approach is relevant to the IM amendment process under Part 6 of the Act also.

2.37 Consistent with the decision-making framework in Part 4 IM amendments, we have considered each fibre IM amendment by asking the questions:

2.37.1 does it best give (or is it likely to best give) effect to the Part 6 purpose in s 162 of the Act, and workable competition (where relevant) as referred to in s 166(2)(b), more effectively than the current fibre IM;

2.37.2 does it promote the IM purpose in s 174 of the Act more effectively (without detrimentally affecting our obligation under s 166(2)); or

2.37.3 does it significantly reduce compliance costs, other regulatory costs or complexity without detrimentally affecting our obligation under s 166(2) of the Act.

²⁹ Commerce Commission “Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period” (15 September 2020), paragraph 23-24.

³⁰ Commerce Commission “Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper” (27 May 2021).

³¹ For example, Chorus “Amendments to the Input Methodologies for Fibre: August 2021 amendments” (24 June 2021), paragraph 1a, 2-6.

³² See, for example, Commerce Commission “Amendments to Electricity Distribution Services Input Methodologies Determination – Reasons paper” (26 November 2019), paragraph 2.17.

- 2.38 When asking each of the questions in paragraph 2.37 for each fibre IM amendment, we have had regard to the impacts on the IM purpose in s 174 and considered whether the amendment overall:
- 2.38.1 promotes the IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6; or
 - 2.38.2 does not promote the IM purpose in s 174 more effectively than the current fibre IM by providing less certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation of FFLAS under Part 6.
- 2.39 As discussed at paragraphs 2.5 to 2.11, while the other purpose statements in Part 6 of the Act (including s 174) are relevant matters, s 166(2) governs our decision-making process for all recommendations, determinations and decisions under Part 6. Therefore, we may make a fibre IM amendment that does not promote the IM purpose in s 174 more effectively than the current fibre IM where we consider that the amendment nevertheless best gives, or is likely to best give, effect to the s 166(2) purposes.
- 2.40 We refer to the outcomes specified in paragraph 2.37 and 2.38 as the '**IM amendments framework outcomes**' in this paper.

Chapter 3 Fibre IM amendments to enable determination of Chorus' initial PQ RAB

Purpose of this chapter

- 3.1 This chapter sets out the final decisions on the IM amendments required to implement the determination of Chorus' initial PQ RAB, and the reasons for those decisions. It is structured as follows:
- 3.1.1 Summary of our final fibre IM amendment decisions;
 - 3.1.2 Context for our fibre IM amendments; and
 - 3.1.3 Our reasons for our final fibre IM amendment decisions.

Summary of our final IM amendment decisions: initial PQ RAB for Chorus

- 3.2 We summarise our final IM amendments on the initial PQ RAB for Chorus in Table 3.1.

Table 3.1 Summary of final fibre IM decisions on the initial PQ RAB for Chorus

Issue	Final decision
Asset valuation fibre IM	Amend the asset valuation fibre IM to allow the transitional initial PQ RAB to be determined, in part, on estimates, rather than actual values.
Cost of capital fibre IM	Amend the "term credit spread differential allowance" and "term credit spread differential" fibre IMs for PQP1 such that the transitional initial PQ RAB inputs must be determined, in part, on "relevant historic values" rather than on "relevant actual values".
Alternative methodologies with an equivalent effect or substantially the same effect in determining the FLA	Add a new section to Schedule B of the fibre IMs that allows us to apply alternative methodologies in our determination of the FLA specified for any or all of the asset valuation, cost allocation or taxation fibre IMs of Schedule B.
To correct for the effect of tax losses	<p>We will specify the value of the tax losses for each regulated provider arising from the application of the vanilla WACC as the "opening tax losses" for disclosure year 2022.</p> <p>We will include a transitional calculation of the "opening tax losses" (the tax loss carry-over) for disclosure year 2022 for Chorus in the published model that will accompany the final decision on the transitional initial PQ RAB and will describe our method in the reasons paper accompanying that final decision in December 2021. We will determine the "opening tax losses" value for disclosure year 2022 for the other LFCs under clause 2.3.3(3)(a)(ii)-(iv) of the fibre IMs at the same time as our final decisions on matters relating to those LFCs' initial ID RABs in 2022.</p>

Context for our fibre IM amendments

3.3 The amendments contained in this chapter relate to chapters from the October 2020 fibre IM final reasons paper and the November 2020 fibre IM financial loss asset reasons paper:

3.3.1 amendments to the asset valuation and cost of capital fibre IMs correspond to:

3.3.1.1 Chapter 3 of the October 2020 fibre IM final reasons paper for the asset valuation fibre IM,³³ and

3.3.1.2 Chapter 6 of the October 2020 fibre IM final reasons paper for the cost of capital fibre IM,³⁴ and

3.3.2 the following amendments contained in this chapter correspond to the final decision in the November 2020 fibre IM financial loss asset reasons paper:

3.3.2.1 amendment to provide for alternative methodologies with equivalent effect or substantially the same effect (alternative methodologies); and

3.3.2.2 amendment to correct for the effect of tax losses.

3.4 The amendment to correct for the effect of tax losses also impacts on the opening tax losses at the implementation date and the subsequent roll-forward of those tax losses for future disclosure years, which is discussed in Chapter 8 of the October 2020 fibre IM final reasons paper for the taxation fibre IM.³⁵

Our final fibre IM amendment decisions

3.5 In order to implement our approach to determining Chorus' initial PQ RAB, we are making the following amendments to the IMs for PQ paths:

3.5.1 amendments to the asset valuation and cost of capital fibre IMs to:

3.5.1.1 specify that our transitional initial PQ RAB would be determined, in part, on "estimates", rather than "actual values";

³³ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), chapter 3.

³⁴ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), chapter 6.

³⁵ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), para 8.90-8.1110.

- 3.5.1.2 specify that the transitional initial PQ RAB inputs to the “term credit spread differential allowance” and “term credit spread differential” for PQP1 would be determined, in part, on “relevant historic values”, rather than “relevant actual values”;
- 3.5.2 an amendment to provide for alternative methodologies with equivalent effect or substantially the same effect in determining the FLA; and
- 3.5.3 an amendment to correct for the effect of tax losses.

Amendments to the asset valuation and cost of capital fibre IMs

Context for amendments to the asset valuation and cost of capital fibre IMs

- 3.6 The Act requires us to establish the first PQ path for Chorus by the implementation date.³⁶ The value of Chorus' fibre assets employed in the provision of PQ FFLAS at a given time is a key input used to determine a PQ path for Chorus. We refer to the collection of fibre assets employed in the provision of PQ FFLAS at a given time as the "**PQ RAB**".
- 3.7 The disclosure of information about fibre assets in the PQ RAB has significance for the ID aspect of our regulatory regime under Part 6. The value of fibre assets in the PQ RAB has an enduring impact as part of ID as it contributes to ensuring that sufficient information is disclosed under ID to allow interested persons to assess whether the purpose of Part 6 is being met.³⁷
- 3.8 The value of the PQ RAB at implementation date is the foundation for the value of the PQ RAB over time, as it identifies the fibre assets employed in the provision of PQ FFLAS, and the allocated value of those assets, as at the implementation date. We refer to the PQ RAB at the implementation date as the "initial PQ RAB". The initial PQ RAB value, once rolled forward for future years, is used as a key input for the second PQ path onwards.
- 3.9 The initial PQ RAB is made up of two components:

³⁶ Telecommunications Act 2001, s 172(1)(a).

³⁷ As specified in s 186 of the Telecommunications Act 2001, the "purpose of [ID] regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of [Part 6] is being met".

- 3.9.1 Core fibre assets: fibre assets that are employed by a regulated provider in the provision of FFLAS (whether or not the asset is also employed in the provision of other services);³⁸ and
- 3.9.2 The FLA: each regulated provider is treated as owning a FLA that captures unrecovered returns that have accumulated in the financial loss period (the period starting on 1 December 2011 and ending on 31 December 2021).³⁹
- 3.10 In determining the initial value of core fibre assets under s 177 of the Act, the cost allocation fibre IM rules ensure that only the value of those assets that are employed in the provision of regulated FFLAS are included in the determination.⁴⁰ This includes: assets that are directly attributable to the provision of regulated FFLAS (in that they are wholly and solely employed in the provision of regulated FFLAS); and an allocation of the value of any assets that are shared between regulated FFLAS and other services.
- 3.11 For asset values that are not directly attributable to regulated FFLAS, the accounting-based allocation approach (**ABAA**) must be used to allocate asset values, using asset allocators. An asset allocator is defined as “a ratio used to allocate asset values whose quantum is (a) based on a causal relationship; or (b) equal to a proxy asset allocator.”⁴¹
- 3.12 The methodology for determining the FLA involves a similar approach to that for determining the initial RAB value of the core fibre assets.
- 3.13 In determining the value of any financial losses under s 177(2) of the Act, the cost allocation fibre IM rules ensure that only those costs associated with the provision of Ultra-Fast Broadband (**UFB**) FFLAS are included in the determination.⁴² This includes:
- 3.13.1 costs that are directly attributable to the provision of UFB FFLAS; and

³⁸ Telecommunications Act 2001, s 177(6) and Fibre Input Methodologies Determination 2020, definition of "core fibre assets" in clause 1.1.4(2). There are some exclusions to the definition of core fibre assets, namely (a) the financial loss asset; (b) intangible assets, unless they are- (i) finance leases; or (ii) identifiable non-monetary assets whose costs do not include (wholly or partly) pass-through costs; and (c) works under construction.

³⁹ Telecommunications Act 2001, s 177(2) and (3).

⁴⁰ The cost allocation fibre IM rules relating to the determination of the initial RAB value of core fibre assets are set out in clause 2.1.1 and clause 2.1.2 of the fibre IMs. The initial RAB values of core fibre assets as at the implementation date must be determined as per clause 2.2.3(2) of the fibre IMs, as a result of applying clause 2.1.1 (in respect of regulated fibre service providers subject to both ID and PQ regulation) or clause 2.1.2 (in respect of regulated fibre service providers subject to ID regulation only) to the unallocated initial RAB value of the core fibre assets.

⁴¹ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, definition of "asset allocator" in clause 1.1.4(2).

⁴² *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, clause B1.1.6 of Schedule B.

- 3.13.2 an allocation of any costs that are shared between UFB FFLAS and other services (ie, not directly attributable to UFB FFLAS).
- 3.14 The cost allocation fibre IM rules are applied to UFB assets and to opex associated with UFB assets for each financial loss year between 1 December 2011 and 31 December 2021,⁴³ when determining the initial RAB value of the FLA.⁴⁴ For opex or asset values that are not directly attributable to the provision of UFB FFLAS, the cost allocation fibre IM requires these to be allocated to UFB FFLAS by applying ABAA.⁴⁵
- 3.15 Under ABAA, each service would bear the directly attributable cost of supplying that service, plus a contribution to the costs of the shared asset or activity. The contribution would be based on identifiable causal-based allocators or proxy allocators (where causal allocators are not available).⁴⁶
- 3.16 A “cost allocator” is a ratio used to allocate operating costs whose quantum is “(a) based on a causal relationship; or (b) equal to a proxy cost allocator”. As noted above, an “asset allocator” is a ratio used to allocate asset values whose quantum is “(a) based on a causal relationship; or (b) equal to a proxy asset allocator.”⁴⁷
- 3.17 On 26 March 2021, Chorus submitted to us its initial PQ RAB model, setting out its \$5.5 billion estimate of the total initial PQ RAB value.
- 3.18 Our initial evaluation of Chorus' initial PQ RAB estimate, as part of the process of determining the first PQ path for Chorus under s 170 of the Act, led us to review our intended process and time frame for determining Chorus' final initial PQ RAB.⁴⁸

⁴³ "Financial loss year" means a period of 12 months beginning on 1 July between 1 December 2011 and 31 December 2021. The period 1 December 2011 to 30 June 2012 is considered "financial loss year 2012". The period 1 July 2021 to 31 December 2021 is considered "financial loss year 2022". See *Fibre Input Methodologies Determination 2020*, definition of "financial loss year" in clause 1.1.4(2).

⁴⁴ The cost allocation fibre IM relating to the determination of the initial RAB value of the FLA is set out in Section 3 of Schedule B of the fibre IMs.

⁴⁵ *Fibre Input Methodologies Determination 2020* [2020] NZCC, clause B1.1.6(1)(b) and clause B1.1.6(2)(c) of Schedule B.

⁴⁶ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), paragraph 4.42.1.

⁴⁷ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, definition of "asset allocator" and "cost allocator" in clause 1.1.4(2).

⁴⁸ Commerce Commission "Determining Chorus' first fibre price-quality path - Process update paper" (30 April 2021); Commerce Commission "Chorus' initial price-quality regulatory asset base as at 1 January 2022 - Consultation on Chorus' initial price-quality RAB proposal" (30 April 2021); Commerce Commission "Determining Chorus' PQ RAB - Process update" (29 June 2021).

3.19 Table 3.2 below shows the key phases and milestones of the PQ and ID projects, including the process to finalise the transitional initial PQ RAB in December 2021 (and the eventual process to fully finalise the initial RABs for the local fibre companies in 2022).

Table 3.2 Indicative dates for the PQ and ID projects

Phase	Timing	Scope
Initiation Complete	Q4 2020 to Q1 2021	Process and approach paper Consultation on Chorus PQP1 expenditure proposal Stakeholder workshop on quality of service
Process update and initial PQ RAB proposal Complete	April 2021	Publication of Chorus' initial PQ RAB proposal
Draft PQ and ID decisions Complete	27 May 2021	ID draft decisions PQP1 draft decisions Potential August 2021 and November 2021 fibre IM amendment draft decisions
PQP1 WACC determination Complete	1 July 2021	Publication of final PQP1 WACC determination
Draft initial PQ RAB decisions Complete	19 August 2021	Initial PQ RAB draft and related decisions Submissions on draft initial PQ RAB (four weeks, 16 September 2021) Cross-submissions on draft initial PQ RAB (two weeks, 30 September 2021) Notice of intention for potential initial PQ RAB-related fibre IM amendments
Potential initial PQ RAB-related fibre IM amendments draft decision Complete	31 August 2021	Initial PQ RAB-related fibre IM amendments draft decision Submissions on draft fibre IM amendments (16 September 2021) Cross-submissions on draft fibre IM amendments (two weeks, 30 September 2021)
Final fast-track fibre IM amendment decisions Complete	September 2021	Final decisions on "fast-track" fibre IM amendments (capex IM timelines)
Revised draft decisions on wash-up mechanism fibre IM amendments Complete	September 2021	Revised draft decisions on wash-up mechanism fibre IM amendments Submissions on revised draft decisions (21 October 2021) Cross-submissions on revised draft decisions (28 October 2021)

Final PQ and ID decisions	November and December 2021	Final decisions on main fibre IM amendments (this paper) Final decisions on Chorus expenditure Final PQP1 decisions (including cost allocation and transitional PQ RAB) Final ID decisions
Final Initial RAB decisions	2022	Draft decisions on other local fibre company (LFC) initial ID RABs and the ID RAB and ID-only RAB for Chorus Final decisions on all FLAs and determination of all initial RABs Disclosure on all initial RABs

- 3.20 Following our review of our intended process and time frame for determining Chorus' final initial PQ RAB, we proposed to use a "transitional initial PQ RAB" for Chorus' first PQ path, to be determined in December 2021,⁴⁹ based on an application of provisional cost allocators, which would provide estimates of initial PQ RAB asset values.
- 3.21 The "transitional initial PQ RAB" is the sum of the adopted "opening RAB values" of all fibre assets for the PQ RAB as of the implementation date, as determined under clauses 3.3.1(8)-(9) of Attachment B of the fibre IM amendment determination.⁵⁰ We note that the current fibre IMs already provide for forecasts to be used in the determination of the transitional initial PQ RAB.⁵¹ Our proposal involved also using estimates in determining the transitional initial PQ RAB.

⁴⁹ We note that we originally planned to determine Chorus' transitional initial PQ RAB, as an input into the final decision on Chorus' first PQ path in November 2021. We changed this to mid-December 2021 as a result of the change to our process for determining Chorus' transitional initial PQ RAB. See Commerce Commission "Determining Chorus' PQ RAB - Process update (29 June 2021), para 4-7.

⁵⁰ *Fibre Input Methodologies Amendment Determination No. 2 2021* [2021] NZCC 25, clauses 3.3.1(8)-(9) of Attachment B.

⁵¹ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), footnote 263 and paragraph 3.127 and *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, clause 3.3.1(8)(b)-(c), (e) of Attachment B and clause B1.1.5(1)(b), (d) of Schedule B of Attachment B.

- 3.22 This recognised that at the time of determining the PQ path, we may not have had sufficient time to complete the required scrutiny of allocators that will be applied to determine the final initial PQ RAB asset values. Therefore, the final cost allocations that will be applied to determine the final initial PQ RAB asset values may not be available when we determined the transitional initial PQ RAB for Chorus' first PQ path.
- 3.23 On this approach, as much as possible of the initial PQ RAB for Chorus would be determined in 2021, but the final initial PQ RAB would be determined in 2022. Finalisation would occur once further review and scrutiny had been applied to actual values that replace certain values that could only be forecast when we determined the transitional initial PQ RAB, and to finalise any cost allocators that were not finalised for the transitional initial PQ RAB. We would then 'true-up' for differences between the transitional and final initial PQ RAB values through a wash-up mechanism, which would adjust revenue values in the second PQ path.
- 3.24 We note that the terms "final initial PQ RAB" and "transitional initial PQ RAB" are not used in the fibre IMs, but are used in this paper for ease of reference to differentiate between the:
- 3.24.1 values that will be used for the first PQ path, being the "transitional initial PQ RAB" values; and
- 3.24.2 values that will be disclosed under ID, washed-up against the transitional initial PQ RAB values for the second PQ path, and, once rolled forward for future years, used as a key input for the second PQ path onwards, being the "final initial PQ RAB" values.
- 3.25 The amendments to the asset valuation fibre IM provide for the use of estimates in determining the transitional initial PQ RAB. As discussed further below, while it is our intention to finalise the initial PQ RAB to the extent possible in December 2021, and ensure potential changes between the transitional initial PQ RAB and the final initial PQ RAB are narrowly confined, we are required to make decisions that best give effect to the purpose in s 162 and, to the extent we consider relevant, the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services. To meet that obligation, we consider that it is necessary that we properly scrutinise the cost allocations applying to the initial PQ RAB. The amendments will allow us to do so and therefore fulfil our obligations under ss 166(2) of the Act in a way that best balances with the objective of certainty in s 174.

Current fibre IM requirements

- 3.26 Clauses 3.3.1(6)-(8) of the asset valuation fibre IM specify the methodology for determining asset valuation inputs needed to determine "forecast building blocks revenue" for the first PQ path. They were transitional provisions that only operated for the purposes of determining the maximum revenues for PQP1. Clause 3.3.1(8) of the current fibre IM requirements specify how the "opening RAB values" of all fibre assets for the PQ RAB as of the implementation date would be determined. The sum of the "opening RAB values" of all fibre assets for the PQ RAB under clause 3.3.1(8) of the current fibre IM requirements represents the current methodology for determining the "transitional initial PQ RAB" value.
- 3.27 Under the current fibre IM requirements, the transitional initial PQ RAB would be determined based on both "relevant actual values" and by "applying forecasts" of other values.
- 3.28 In particular, it would be determined by taking the "opening RAB value" of all fibre assets employed in the provision of "PQ FFLAS" "as of the implementation date" (ie, 1 January 2022), in accordance with clause 3.3.1(8)(a) and (b) of the fibre IM, and this involved:⁵²

(a) adopting any relevant actual values prepared in accordance with **GAAP** and obtained from a **regulated provider** by the **Commission** prior to the **implementation date**, provided those **GAAP** values are applied in accordance with s 177 of the **Act** relating to the "initial value of a fibre asset";

(b) where relevant actual values are not available in respect of any **disclosure year** prior to the **implementation date**, applying forecasts of all values required to determine the "opening RAB values" as of the **implementation date** using **GAAP** values obtained under the previous paragraph to inform or support those forecast values.

- 3.29 Clause 3.3.1(8)(d) also provided:

the relevant actual values contributing to the "opening RAB value" of the **financial loss asset**, as adopted under paragraph (a), are determined in accordance with clause B1.1.5(1)(a) of Schedule B.

- 3.30 Clause B1.1.5(1)(a) of Schedule B then provided:

(1) For the purpose of clauses 3.3.1(8)(d)-(e), the "opening RAB value" of the **financial loss asset** adopted under clauses 3.3.1(8)(a)-(b) is determined by:

(a) adopting actual values for calculations under clauses B1.1.2(2)-(9) of Schedule B in respect of **financial loss year 2012, financial loss year 2013, financial loss year 2014, financial loss year 2015, financial loss year 2016, financial loss year 2017, financial loss year 2018, financial loss year 2019, and financial loss year 2020.**

⁵² *Fibre input methodologies determination 2020* [2020] NZCC 21, Clause 3.3.1(8)(a)-(b).

- 3.31 Clause 3.3.1(8)(c) also required that forecasts must either be based on relevant and demonstrably reasonable assumptions, data, methods and judgements, or that we have approved the forecast values in accordance with a fibre IM or a process relating to an ID or PQ determination.
- 3.32 The current cost of capital fibre IM specifies that the initial PQ RAB inputs used in calculating the “term credit spread differential allowance” and “term credit spread differential” for PQP1 refers to "relevant actual values".⁵³

Draft decision and our reasons

- 3.33 We published our draft fibre IM amendment decision in May 2021. We proposed amending the asset valuation fibre IM to specify that the transitional initial PQ RAB would be determined, in part, based on "estimates of historic values", rather than "actual values".⁵⁴
- 3.34 We proposed these amendments as a solution to the problem explained in paragraph 3.22.
- 3.35 In our May 2021 draft decisions, we also proposed amending the "term credit spread differential allowance" and "term credit spread differential" fibre IMs for PQP1 such that the transitional initial PQ RAB inputs would be determined, in part, on "relevant estimates of historic values", rather than on "relevant actual values".
- 3.36 In August 2021 we proposed further workability improvements to clause 3.3.1(8) and clause B1.1.5 of Schedule B of the fibre IM determination, along with a proposed new clause 3.3.1(9). These amendments are discussed in Chapter 6.⁵⁵ They are consistent with our May 2021 draft decisions that the transitional initial PQ RAB would be determined, in part, based on estimated historic values, rather than actual values.
- 3.37 Similar to the explanation for the amendment to the asset valuation fibre IM at paragraph 3.33 above, changing the term credit spread differential fibre IM for PQP1 so that it is based, in part, on “relevant estimates of historic values” would allow asset value inputs that are consistent with our transitional initial PQ RAB valuations.

⁵³ *Fibre input methodologies determination 2020* [2020] NZCC 21, clauses 3.5.7(2)(c)-(d) and 3.5.10(1)(d)(i)-(ii).

⁵⁴ Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions - Reasons paper" (27 May 2021), paragraphs 3.21-3.26.

⁵⁵ [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 3.3.1(8) of Attachment B.

- 3.38 In our August 2021 draft decisions, we proposed further workability improvements to clauses 3.5.7(2)(c)-(d) and 3.5.10(1)(d)(i)-(ii) of the cost of capital fibre IM. These are discussed in Chapter 6 of this paper.

Interested persons' views on our proposed changes

- 3.39 Chorus accepts that some form of transitional initial PQ RAB is unavoidable, but it considers that the true-up between the transitional and final initial PQ RAB should be limited to differences between forecast and actual costs in financial loss years prior to the implementation date. It submits that the proposed amendments:
- 3.39.1 involve fundamental changes that do not meet our fibre IM amendment framework for fibre IM amendments outside the 7-year review;
 - 3.39.2 are contrary to the requirements of the Act insofar as they would "facilitate a transitional initial RAB that doesn't meet the valuation requirements set out in the Act and are contrary to the principle that Chorus' allowable revenue should be based on a particular valuation approach" and because "there is no basis in the Act to effectively revise the RAB after implementation date";
 - 3.39.3 reduce, rather than promote, certainty, contrary to the purpose of the fibre IMs;
 - 3.39.4 are unjustified, submitting that the Commission has not given reasons for the process change beyond stating it would like more time.⁵⁶

⁵⁶ Chorus "Amendments to the Input Methodologies for Fibre – August 2021 amendments" (24 June 2021), paragraph 7-20.

- 3.40 2degrees, Spark and Vocus submitted in support of our proposed fibre IM amendment to allow for a transitional initial PQ RAB for PQP1.⁵⁷ 2degrees and Vocus stated that they disagreed with Chorus' position that the proposed amendments are unjustified, reduce certainty, and are inconsistent with the Act.⁵⁸ Spark was concerned that we do not fail to properly apply the fibre IMs as anticipated in the October 2020 fibre IM final reasons paper and fail to apply important validation and assurance processes set out in our 15 September 2020 process and approach paper.⁵⁹ In its 22 July 2021 cross-submission, Chorus disagreed with the submissions from 2degrees, Spark and Vocus.⁶⁰

Our response

- 3.41 We acknowledge that Chorus accepts that some form of transitional initial PQ RAB is unavoidable but that it considers that the true-up between the transitional and final initial PQ RAB should be limited to differences between forecast and actual costs in financial loss years prior to the implementation date.
- 3.42 We also acknowledge that it is desirable to "lock-in" as much of the initial PQ RAB this year as possible. We are making every effort to finalise the values in the transitional initial PQ RAB by December 2021 (other than the forecast values that will not be available until 2022) in a manner that is consistent with the s 166(2) purposes.
- 3.43 We have faced tight timeframes since we received Chorus' proposed initial PQ RAB estimate. This has included the time to evaluate Chorus' initial PQ RAB estimate and our considerations of submissions and cross-submissions throughout our process. We have also had to deal with disruptions resulting from the COVID-19 pandemic over the last third of 2021. Despite these issues, we expect the number of decisions that may be subject to change under this amended provision, if any, to be very limited.

⁵⁷ 2degrees "Proposed Amendments to Fibre Input Methodologies: draft decisions Reasons paper, Commerce Commission Consultation" (8 July 2021), pages 2-4; Spark "Proposed amendments to the IM for fibre" (9 July 2021), paragraph 4; and Vocus "Consultation on proposed amendments to fibre input methodologies: Draft decisions – Submission/cross-submission to the Commerce Commission" (8 July 2021), paragraphs 12 and 20

⁵⁸ 2degrees "Proposed Amendments to Fibre Input Methodologies: draft decisions Reasons paper, Commerce Commission Consultation" (8 July 2021), page 2-4.

⁵⁹ Spark "Proposed amendments to the IM for fibre" (9 July 2021), paragraph 4.

⁶⁰ Chorus "Cross-submission on Amendments to the Input Methodologies for fibre" (22 July 2021), paragraphs 4 and 5.

- 3.44 We do not accept that amendments are contrary to the Act. In particular, we do not consider that s 177 requires us to determine the final initial PQ RAB by the implementation date. The first PQ determination will incorporate an estimate of the initial PQ RAB value to enable the setting of PQP1. It has always been understood that this would be a transitional initial PQ RAB value given it was always anticipated it would be based in part on forecasts.
- 3.45 We have a duty under the Act to properly scrutinise the initial PQ RAB. It is a key input to the building blocks model (**BBM**) and has long lasting impacts. Initial PQ RAB values are used as an input into the calculation of forecast building blocks revenue for the first PQ path and also, once rolled forward for future years after being finally determined during 2022, used as an input for future PQ periods. The disclosure of information about fibre assets in the PQ RAB also has significance for the ID aspect of our regulatory regime under Part 6.
- 3.46 The value of fibre assets in the PQ RAB has an enduring impact as part of ID as it contributes to ensuring that sufficient information is disclosed under ID to allow interested persons to assess whether the purpose of Part 6 is being met. We need to balance the need to promote certainty, as required under s 174, with the importance of getting the initial PQ RAB value right given its foundational role in the BBM model for PQ paths and its enduring impact as part of ID.
- 3.47 In order to meet our obligations under s 166(2) of the Act, it is necessary for us to be satisfied that the initial PQ RAB has been properly determined and with adequate assurance. In meeting our obligations under s 166(2) of the Act, we are aiming to avoid an understatement of the initial PQ RAB, which would be contrary to Chorus having incentives to innovate and invest (the outcome under s 162(a)) and an overstatement, which would be contrary to Chorus being limited in its ability to extract excessive profits (the outcome under s 162(d)). In order to avoid an understatement or overstatement of the initial PQ RAB, it may not be possible to finalise all decisions by the end of 2021. For example:
- 3.47.1 in order to avoid an understatement of the initial PQ RAB, we may consider it necessary to allow time for assurance to be provided which shows that a proposed allocator is "objectively justifiable and demonstrably reasonable" before we omit a proposed allocation based on a lack of assurance; and
- 3.47.2 in order to avoid an overstatement of the initial PQ RAB, we may consider it necessary to determine our own allocator type instead of an allocator proposed by Chorus if we identify a proposed allocator type that is not "objectively justifiable and demonstrably reasonable".

- 3.48 The alternative to the approach as outlined in the amendment would be to make final decisions on all aspects of the initial PQ RAB (other than in relation to forecasts), even where we have been unable to gather and fully consider all relevant evidence in the available timeframes. In those circumstances, we may be required to take a conservative approach to manage uncertainty where scrutiny has not been possible, including by disallowing components of the initial PQ RAB where we are not yet satisfied that Chorus' proposal meets the requirements of the fibre IMs and the Act.
- 3.49 We consider that our amendments are a better and more principled way of addressing any remaining uncertainty. As we noted in relation to our May 2021 draft decisions, the change is likely to best give effect to s 166(2) of the Act by ensuring Chorus has incentives to innovate and invest (the outcome promoted in s 162(a)) and is limited in its ability to extract excessive profits (s 162(d)). We consider the change is also more likely to promote end-user prices that reflect those in a workably competitive market (s 166(2)(b)).

Final decision

- 3.50 Our final decision is to amend the asset valuation fibre IM to allow the transitional initial PQ RAB to be determined, in part, on estimates, rather than actual values. The amendments are those reflected in the amendments in the May 2021 draft decisions, as further amended by the amendments in the August 2021 draft decisions (discussed in Chapter 6).
- 3.51 In making these fibre IM amendments we have applied the fibre IM amendment decision-making framework in Chapter 2 and we consider they meet the fibre IM amendment framework outcomes. In particular, we consider they will enhance certainty more effectively than the current fibre IM, consistent with s 174, about the requirements for calculating the transitional initial PQ RAB. We consider our approach would be preferable to other ways of managing uncertainty that might risk a material under- or over-statement of Chorus' initial PQ RAB (for instance, not carrying out further scrutiny of Chorus' initial PQ RAB estimate prior to determining its first PQ path).
- 3.52 While we acknowledge that making this amendment just over a year after the original fibre IM might have temporarily provided less certainty during the fibre IM amendment consultation process, as does consulting on potentially amending any fibre IM at this early stage of the fibre regime, we nevertheless consider that this amendment overall promotes the fibre IM purpose in s 174 of the Act more effectively than the current fibre IM by being a preferable approach to managing uncertainty, as explained in paragraph 3.49.

- 3.53 As specified in clause 3.1.1(11)(a) of Attachment B of the fibre IM amendment determination, the differences between the transitional initial PQ RAB for Chorus determined in December 2021 and the final initial PQ RAB determined in 2022 will be "trued-up" through our wash-up mechanism.⁶¹ This "true-up" will result in adjusted revenue values in the second PQ path that include the impacts on forecast allowable revenue for a regulatory year of the differences between the transitional initial PQ RAB and the final initial PQ RAB. Our decisions on the wash-up mechanism are explained in Chapter 4.
- 3.54 As discussed at paragraph 3.49, these amendments are also necessary to enable us to best give effect to the purposes in s 162 and the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services, as set out in s 166(2)(b).
- 3.55 Our additional final decision is to amend the "term credit spread differential allowance" and "term credit spread differential" fibre IMs for PQP1 such that the transitional initial PQ RAB inputs must be determined, in part, on "relevant historic values", rather than on "relevant actual values".
- 3.56 This differs slightly from our draft decision, where we said the inputs were determined, in part, on "relevant estimates of historic values". The removal of the word "estimates" from draft to final is a result of the workability changes discussed in Chapter 6.
- 3.57 Our amendments to the "term credit spread differential allowance" and "term credit spread differential" fibre IMs for PQP1 are consequential changes resulting from our amendments to the asset valuation fibre IM, as discussed in paragraph 3.49. We have made our amendments to these fibre IMs for the same reasons as our asset valuation fibre IM amendments, as discussed in paragraphs 3.50-3.54.
- 3.58 We acknowledge that it is important to provide certainty for Chorus and other interested persons, such as investors, about the final initial PQ RAB value as soon as possible. Nevertheless, having balanced this consideration against the fibre IM amendment decision-making framework in Chapter 2, we consider that these amendments to the fibre IMs better meet the fibre IM amendment framework outcomes, in particular by more effectively promoting the fibre IM purpose in s 174 and best giving effect to the purposes in s 166(2) for the reasons explained above.

⁶¹ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25, clauses 3.1.1(11)(a) of Attachment B.

Amendment to provide for alternative methodologies with equivalent effect or substantially the same effect (alternative methodology) in the determination of the FLA

Current fibre IM requirements

- 3.59 There is currently no provision in the fibre IM requirements for a LFC to propose or apply (and the Commission to apply in our determination of the FLA) an alternative methodology with equivalent effect or substantially the same effect.

Draft decision and our reasons

- 3.60 Our draft IM amendment decision was published in our August 2021 draft decisions.⁶² We outlined that Chorus had advised in its submissions and in response to s 221 information requests that, in several instances, it is unable to comply with the asset valuation, cost allocation and taxation fibre IMs in Schedule B of the fibre IMs.
- 3.61 Chorus advised us this was due to limitations in Chorus' information, the way in which it recorded information in its accounting systems, and the design of its initial asset valuation model.
- 3.62 Instances in which Chorus was unable to comply with the fibre IMs, and so could propose or apply an alternative methodology under the proposed amendments, are described in detail in Chapter 6 of the draft initial PQ RAB paper.⁶³
- 3.63 As a general solution to these issues, we proposed adding a new section within Schedule B of the fibre IMs that allows us to apply alternative methodologies in our determination of the FLA (both as part of an initial RAB and as part of Chorus' transitional initial PQ RAB) as proposed (or applied) by regulated providers, where we are satisfied that the result of the alternative methodology proposed or applied by the regulated provider:
- 3.63.1 produces either an equivalent effect or substantially the same effect as the relevant methodology for asset valuation, cost allocation and taxation in Schedule B of the fibre IMs; and
- 3.63.2 relative to the methodology in the fibre IMs that would otherwise apply, does not detract from the purpose of Part 6 of the Act, and (where relevant) the promotion of workable competition.⁶⁴

⁶² Commerce Commission "Proposed Additional Amendments to Fibre Input Methodologies draft decision - reasons paper" (31 August 2021), paragraphs 3.5 to 3.18.

⁶³ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), para 6.78 onwards.

⁶⁴ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clause B1.1.14 of Schedule B of Attachment B.

- 3.64 We note that this approach is similar to provisions in the Part 4 IMs for customised price-quality paths.⁶⁵
- 3.65 The amendments were proposed in the new clause B1.1.14 in Section 6 of Schedule B of the draft fibre IM amendment determination.
- 3.66 *Application of s 166(2)*: these amendments would enable better promotion of the purpose of Part 6 and workable competition in telecommunications markets (where relevant). The original IMs in Schedule B of the fibre IMs were determined on the basis that, as a package, they best give (or are likely to best give) effect to the Part 6 purpose in s 162 and (where relevant), the promotion of workable competition as referred to in s 166(2)(b).
- 3.67 However, if these IMs are unable to be implemented, they cannot achieve this purpose. For this reason, including the ability to apply an alternative methodology that still achieves an equivalent or a substantially similar effect best gives effect to the Part 6 purpose in s 162, and (where relevant) the promotion of workable competition as referred to in s 166(2)(b), more effectively than the underlying fibre IM that would otherwise apply.
- 3.68 *Application of s 174*: we consider these amendments are consistent with s 174. Because the outcome when applying an alternative methodology must have an equivalent or substantially the same effect, a LFC can still reasonably estimate the material effects of a methodology on it (consistent with s 176(2)(a) of the Act). Because we propose to retain the ability to apply an alternative methodology, certainty for end-users and access seekers is also maintained, as we would be able to ensure that the alternative does (as far as it is possible to know) have an equivalent or substantially the same effect and does not detract from the promotion of certainty.
- 3.69 *Compliance costs and complexity*: we consider this proposed amendment would reduce the compliance costs and complexity of the IMs, without detrimental effect to s 166(2) and s 174. Where the original methodologies are unduly burdensome to apply, the cost to a LFC and to us may outweigh any benefit from doing so. Allowing the application of alternatives avoids this situation.

⁶⁵ See, for example, Commerce Commission, "Electricity Distribution Services Input Methodologies Determination 2012", as amended, clause 5.3.26.

- 3.70 *Application of the alternative methodologies provision:* in Chapter 6 of the draft initial PQ RAB paper,⁶⁶ we described circumstances where we might propose applying alternative methodologies with an equivalent or substantially equivalent effect to certain parts of Chorus' calculation of the FLA in its transitional and initial PQ RAB, for example:
- 3.70.1 capital contributions that are not matched to individual assets;⁶⁷
 - 3.70.2 use of net book value (NBV) adjustments;⁶⁸ and
 - 3.70.3 value of a commissioned asset not recorded as a separate asset.⁶⁹
- 3.71 We note that once the transitional initial RAB is determined, we will describe in our related reasons paper where we have actually applied alternative methodologies with equivalent or substantially equivalent effect.
- 3.72 Applying an alternative methodology with an equivalent or substantially equivalent effect is also proposed for the immaterial difference in the calculation of the "UFB cost allocation adjustment cash flow" for financial loss year 2022, discussed in Chapter 6. This is to be applied in conjunction with the "UFB cost allocation adjustment cash flow" IM amendment proposed in Chapter 6.
- 3.73 We proposed limiting the application of this provision to the methodologies for asset valuation, cost allocation and taxation in Schedule B of the IMs, as used for the determination of the FLA (both as part of an initial RAB and as part of Chorus transitional initial PQ RAB). We do not consider it appropriate to allow for alternative methodologies to apply on an on-going basis in the future for other aspects of PQ and ID regulation.
- 3.74 However, unlike the enduring aspects of PQ and ID, the final determination of the "initial RAB value" of the FLA for each regulated provider:
- 3.74.1 is a one-off process; and
 - 3.74.2 in many cases relates to historical information, that was collected prior to the requirements of the fibre IMs being in place.

⁶⁶ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraph 6.78 onwards.

⁶⁷ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraphs 6.77-6.92.

⁶⁸ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraphs 6.93-6.101.

⁶⁹ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraphs 6.102-6.111.

Interested persons' views on our proposed changes

3.75 Enable and Tuatahi submitted in favour of our draft decision to allow for the use of alternative methodologies.⁷⁰

3.76 Chorus also submitted in favour of this draft decision.⁷¹

Final decision

3.77 Our final decision is to add a new section to Schedule B of the fibre IMs that allows us to apply alternative methodologies in our determination of the FLA specified for any or all of the asset valuation, cost allocation or taxation fibre IMs of Schedule B. These amendments are unchanged from our draft decision, set out at paragraph 3.63 above.

3.78 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. As outlined in paragraph 3.68, our decision promotes the fibre IM purpose in s 174 more effectively than the current fibre IMs. It does not detract from the promotion of certainty because the outcome when applying an alternative methodology must have an equivalent or substantially the same effect. Therefore, an LFC will still be able to reasonably estimate the material effects of a methodology on it (consistent with s 176(2)(a)), and certainty for end-users and access seekers will be maintained by minimising instances where a regulated provider is unable to comply with the fibre IMs, while still producing an equivalent or substantially the same effect.

3.79 Further we consider this amendment is necessary to implement decisions we are planning to make for our first fibre PQ path and ID in a way that does not create an unrealistic regulatory burden or requirements where compliance costs may be very high.

Amendment to correct for the effect of tax losses in determining the FLA

Current fibre IM requirements

3.80 Section 177(2) provides that the financial losses are determined by the Commission.

⁷⁰ Enable and Tuatahi "Submission on NZCC proposed additional amendments to fibre input methodologies draft decisions" (16 September 2021), paragraph 3.2.

⁷¹ Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), paragraph 14 and Table 3, item #1

- 3.81 Clauses B1.1.10(1)-(4) and B1.1.11(2) of Schedule B of the fibre IMs currently specify the use of a post-tax weighted average cost of capital (**WACC**) in determining the initial RAB value of the FLA.⁷² Clause 2.3.3(3)(a) states that opening tax losses for disclosure year 2022 are UFB closing tax losses as at 31 December 2021.⁷³

Draft decision and our reasons

- 3.82 We published a draft IM amendment decision in our August 2021 draft decisions.⁷⁴
- 3.83 In our fibre IM financial loss asset final reasons paper, we explained that in using a post-tax WACC to discount pre-implementation date cashflows, in the event of substantial tax losses, we would make a correction to account for the difference in the time value of money of those losses and would consider implementing an adjustment to true up these amounts, for example through a fibre IM amendment.⁷⁵
- 3.84 As part of our determination of the initial RAB value of the FLA for Chorus, we have assessed the quantum of Chorus' tax losses. As our assessment of the tax losses currently indicates that these losses are substantial,⁷⁶ we proposed the following fibre IM amendments to account for the difference in the time value of money of the losses:
- 3.84.1 amendments to clause B1.1.10(1)-(4) and B1.1.11(2) of Schedule B of the fibre IMs to specify the use of a vanilla WACC, rather than a post-tax WACC in the determination of the initial RAB value of the FLA;⁷⁷
- 3.84.2 amendments to clauses B1.1.2(5) and B1.1.2(6) of Schedule B of the fibre IMs to remove the tax term "(1-Tc)" from the relevant formula used to calculate the finance rate used for the avoided cost of Crown financing;⁷⁸ and

⁷² *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience *July 2021: Fibre Input Methodologies Determination 2020*, clauses B1.1.10(1)-(4) and B1.1.11(2) of Schedule B.

⁷³ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience *July 2021 Fibre Input Methodologies Determination 2020*, clause 2.3.3(3)(a).

⁷⁴ Commerce Commission "Proposed Additional Amendments to Fibre Input Methodologies draft decision - reasons paper" (31 August 2021), paragraphs 3.19 to 3.27.

⁷⁵ Commerce Commission "Fibre input methodologies: Financial loss asset final decision – reasons paper (3 November 2020), paragraph 3.402.

⁷⁶ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 – Draft Decisions Reasons Paper" (19 August 2021), paragraph 6.25.

⁷⁷ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clauses B1.1.10(1)-(4) and B1.1.11(2) of Schedule B of Attachment B.

⁷⁸ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clauses B1.1.2(5)-(6) of Schedule B of Attachment B.

- 3.84.3 amendments to clause 2.3.3(3) of the taxation fibre IM to insert for disclosure year 2022 the opening carry-forward value of tax losses at the implementation date arising from applying a method that sums the annual values of notional deductible interest associated with financing privately funded assets in calculating the UFB tax costs cashflow over the pre-implementation period.⁷⁹
- 3.85 When there are tax losses, it is more accurate to use the vanilla WACC and model notional deductible interest in the tax cashflows. The inclusion of notional deductible interest in the tax cashflows allows for the correct recognition of the timing of the utilisation of losses and changes the closing value of tax losses that is carried forward.
- 3.86 This is an accurate and straightforward way of correcting the underestimate of the initial RAB value of the FLA is to use a vanilla WACC. The correction involves two proposed amendments to the IMs:
- 3.86.1 changing the compounding factor in the IM from a post-tax WACC to a vanilla WACC (clauses B1.1.10(1)-(4) of Schedule B of the fibre IMs); and
- 3.86.2 changing the formulas used to calculate the finance rate used for the avoided cost of Crown financing so that the cost of debt terms are not adjusted for tax (clauses B1.1.2(5) and (6) of Schedule B of the fibre IMs).
- 3.87 The additional changes to the fibre IMs that would be required to specify the methodology for the correct cumulative calculation of the tax losses are complex and, rather than propose those as changes to the fibre IMs, we considered it was much simpler to just specify the value of the tax losses for each regulated provider arising from the application of the vanilla WACC as the “opening tax losses” for disclosure year 2022.
- 3.88 We proposed determining the “opening tax losses” value for disclosure year 2022 for Chorus at the same time as our final decisions on matters relating to Chorus’ PQ RAB expected in mid-2022. We proposed determining the “opening tax losses” value for disclosure year 2022 for other LFCs at the same time as our final decisions on matters relating to those LFCs’ initial ID RABs in 2022.

⁷⁹ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (31 August 2021), clause 2.3.3(3)(a) of Attachment B.

3.89 We explained that making these changes to the fibre IMs would result in a more accurate valuation of the FLA, and this is therefore likely to best give effect to the Part 6 purpose in s 162 more effectively than the current fibre IM. Application of the current fibre IM would result in an undervaluation of the losses incurred. This would be inconsistent with s 177(2) of the Act, and this may have a detrimental impact on future incentives to invest (contrary to the outcome specified in s 162(a)).

Interested persons' views on our proposed changes

3.90 In its submission to the potential IM amendments reasons paper, Chorus considered that correcting for the use of a post-tax WACC was material and that it required the fibre IMs to be amended urgently so that the correction could be included in the final pricing decision for the first revenue path.⁸⁰

3.91 Chorus provided two options that could be used to make the correction to the FLA, which were to either use a vanilla WACC in the present value calculation of the FLA or to calculate the value of unused interest deductions and apply a one-off adjustment to the value of the FLA at the implementation date.⁸¹ Chorus indicated that it preferred the second of these adjustments and provided a method that could be used.⁸²

3.92 In a subsequent submission in response to the August 2021 draft decisions on Chorus' initial RAB, Chorus supported the amendments (which included using a vanilla WACC) but proposed two corrections:⁸³

a. Maintaining the reference to clause B.1.1.9(4) in clause 2.3.3(3). This will provide certainty that the tax losses are rolled forward correctly each financial year.

b. Adding a new clause to B1.1.7 (Tax costs for determining the financial losses) that provides guidance as to how notional interest is to be calculated during the pre-implementation period. The notional interest calculation is material to tax losses and therefore guidance is required to provide certainty. The outline of the proposed change is below:

B1.1.7(5) For the purpose of subclause (3), notional interest must be calculated for each financial loss year as the difference between:

⁸⁰ Chorus "Amendments to the Input Methodologies for Fibre, August 2021 amendments" (24 June 2021), page 3 and paragraph 42.

⁸¹ Chorus "Amendments to the Input Methodologies for Fibre, August 2021 amendments" (24 June 2021), paragraphs 44 and 45.

⁸² Chorus "Amendments to the Input Methodologies for Fibre, August 2021 amendments" (24 June 2021), pages 25 and 26.

⁸³ Chorus "Submission on draft decision for initial RAB and fibre input methodology amendments" (16 September 2021), page 33.

the notional interest that is consistent with the sum of the value of the core fibre asset and financial loss asset for the financial loss year in question, multiplied by the level of gearing and the debt interest rate that are as consistent as practicable with the rates applied when calculating the financial loss asset; and

the interest on the debt component of the Crown financing that is attributable to the financial loss year in question including, for the avoidance of doubt, interest associated with drawdowns of Crown financing that took place in years period to the year in question.

- 3.93 Enable and Tuatahi support the IM changes to modify the cost of capital compounding factor, include notional deductible interest, and include a carry forward value of tax losses at the implementation date.⁸⁴
- 3.94 Spark does not support the proposed amendments.⁸⁵ Spark submitted that we should account for Chorus' group tax position by assuming tax losses are used when incurred rather than carried forward.
- 3.95 Spark submitted that the proposed amendments increase end user costs, introduce uncertainty and require complex and arbitrary methodological choices.
- 3.96 In its cross-submission, Chorus disagreed with Spark's submission and noted that the proposed amendments relate to the calculation of the carry-forward value of tax losses rather than the principle of whether tax losses should be offset by profits from other services, which we rejected during the fibre IMs determination process.⁸⁶

Our response to submissions

- 3.97 Contrary to Spark's submission that the amendments would increase end user costs (in the context of PQ regulation), the effect of our decision would be that end users of Chorus would get the benefit of the accumulated tax losses because, under PQ regulation, tax losses reduce the tax building block and consequently reduce maximum allowable revenue as the tax losses are used.

⁸⁴ Enable and Tuatahi "Submission on NZCC proposed additional amendments to fibre input methodologies draft decision dated 31 August 2021" (16 September 2021), paragraph 4.1

⁸⁵ Spark "PQ RAB draft decision and Draft IM amendments, submission" (16 September 2021), page 13.

⁸⁶ Chorus "Cross-submission: PQ RAB & IM amendments draft decisions" (30 September 2021), page 9.

- 3.98 Spark's proposal would result, in the case of Chorus, in higher end user costs than our final decision. Therefore, we consider that Spark's proposal would not promote the outcome in s 162(d) of regulated providers being limited in their ability to extract excessive profits. Spark's proposal would result in a lower FLA, because it retains the use of a post-tax WACC in the present value calculation and has no effect on other cash flows (including tax which is zero across the pre-implementation period). However, this benefit to end users is more than offset by the cost to end users from not having a tax loss carry-over. In the case of Chorus, we indicated in the initial RAB draft decision that if we continued to use a post-tax WACC, the FLA would be lower by \$81 million, but the tax effect of losses at implementation would be zero instead of \$280 million.⁸⁷
- 3.99 Chorus proposed two corrections to provide certainty that the tax losses are rolled forward correctly each financial loss year and to provide guidance on how notional interest is calculated during the pre-implementation period:
- 3.99.1 Chorus' first proposed correction is to retain reference to clause B1.1.9(4) of Schedule B in clause 2.3.3(3).⁸⁸ Chorus suggested that this change would provide certainty that the tax losses are rolled forward correctly each financial loss year; and
- 3.99.2 Chorus' second proposed correction is to provide the method that is used to calculate notional interest. The drafting of this proposed correction provides a broad description of the method developed by Chorus' consultant to calculate notional interest.
- 3.100 In our draft reasons paper for the initial RAB we compared Chorus' consultant's calculation of notional interest with our alternative method.⁸⁹ We decided to use our alternative method as it is more accurate than the method developed by Chorus' consultant because of the way our method separates the financing of capital expenditure from the financing of the annual losses.
- 3.101 We have decided to not amend the fibre IMs to specify the method for determining the "opening tax losses" for disclosure year 2022. Instead, we will decide on the method for determining the "opening tax losses" for disclosure year 2022 for each regulated provider when making decisions on the affected regulated provider's financial losses.

⁸⁷ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 - draft decisions - reasons paper" (19 August 2021), paragraphs 6.7 and 6.8.

⁸⁸ Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions: Public version" (16 September 2021), paragraph 100(a).

⁸⁹ Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 - draft decisions - reasons paper" (19 August 2021), paragraph 6.37.

3.102 We have not specified this method in the fibre IMs, as we have not identified a way to do this that would promote the fibre IM purpose in s 174 more effectively than the current IM, while still best giving effect to the Part 6 purpose in s 162 of the Act more effectively than the current fibre IM. We consider that deciding on the method when making decisions on the affected regulated provider's financial losses would be much simpler and would ensure that our ultimate "opening tax losses" determination for disclosure year 2022 for each regulated provider would best give effect to the Part 6 purpose in s 162 of the Act.

3.103 We disagree with Chorus and do not consider the amendments introduce uncertainty because the calculation of the "opening tax losses" (the tax loss carry-over) for disclosure year 2022 for Chorus is a one-off calculation for each LFC that is required to more accurately account for the difference in the time value of money of these losses. As our final decisions on the transitional initial PQ RAB for Chorus will be made before the financial loss period has ended (on 31 December 2021), we will:

3.103.1 determine a transitional calculation of the "opening tax losses" (the tax loss carry-over) for disclosure year 2022 for Chorus in December 2021; and

3.103.2 make a final determination of the "opening tax losses" (the tax loss carry-over) for disclosure year 2022 for Chorus in accordance with clause 2.3.3(3)(a)(i) of the fibre IMs at the same as our final decisions on matters relating to Chorus' PQ RAB, which is expected in mid-2022.

3.104 We have not considered Chorus' group tax position, which is consistent with our final fibre IM decision in respect of the FLA calculation to not allow a group tax loss offset. For this reason we have rejected Spark's submission.

Final decision

3.105 Our final decision is to make the amendments proposed in our draft decisions, as set out at paragraphs 3.84, 3.86 and 3.88 above. We have decided to:

3.105.1 base the calculation of the FLA on the difference between UFB revenue and expenditure; and

3.105.2 calculate taxation in the FLA calculation using UFB revenue and expenditure.

- 3.106 In making these fibre IM amendments we have applied the IM amendment decision-making framework in Chapter 2 and we consider they meet the IM amendment framework outcomes. We consider the changes are likely to best give effect to the Part 6 purpose in s 162 more effectively than the current fibre IM. Application of the current fibre IM would result in an undervaluation of the losses incurred, which would be inconsistent with s 177(2), and may have a detrimental impact on future incentives to invest (contrary to the outcome specified in s 162(a)).
- 3.107 We will include a transitional calculation of the "opening tax losses" (the tax loss carry-over) for disclosure year 2022 for Chorus in the published model that will accompany the final decision on the transitional initial PQ RAB and will describe our chosen method in the reasons paper accompanying that final decision in December 2021. In deciding on our chosen method for Chorus, we will have regard to Chorus' consultant's suggested method.
- 3.108 We will determine the "opening tax losses" value for disclosure year 2022 for the other LFCs under clause 2.3.3(3)(a)(ii)-(iv) of the fibre IMs at the same time as our final decisions on matters relating to those LFCs' initial ID RABs in 2022.

Chapter 4 Fibre IM amendments to give effect to the PQ wash-up mechanism

Purpose of this chapter

- 4.1 This chapter sets out the final decisions on the fibre IM amendments required to give effect to the PQ wash-up mechanism and the reasons for those decisions. It is structured as follows:
- 4.1.1 summary of our final fibre IM amendment decisions;
 - 4.1.2 context for our fibre IM amendments;
 - 4.1.3 fibre IM amendments to the wash-up process; and
 - 4.1.4 fibre IM amendments to the scope of the wash-up.

Summary of our final fibre IM amendment decisions: PQ wash-up mechanism

- 4.2 We summarise our final fibre IM amendments on the PQ wash-up mechanism for Chorus in Table 4.1.

Table 4.1 Final decisions: PQ wash-up mechanism

Issue	Final decision
Amendments to the process of the wash-up	<p>The "wash-up accruals" and "wash-up account balance" will be maintained by the Commission, and will be subject to a definitive determination in respect of:</p> <ul style="list-style-type: none"> (a) wash-up accruals and the wash-up account balance for all regulatory years except the final regulatory year of a regulatory period, before the subsequent PQ path commences; and (b) wash-up accruals and the wash-up account balance for the final regulatory year of the regulatory period, which will be determined in the first regulatory year of the subsequent regulatory period. <p>The 'wash-up amount' for each regulatory year in the regulatory period from the second regulatory period (PQP2) onwards comprises amounts the Commission determines for each year, and these amounts equal (in present value terms) a "wash-up draw down amount".</p> <p>The wash-up draw down amount is the amount the Commission draws down from the wash-up account balance and in advance of each regulatory period (from PQP2 onwards).</p> <p>The wash-up draw down amount must not be greater or less (depending on whether the wash-up balance is positive or negative) than the sum of:</p> <ul style="list-style-type: none"> (a) the present value of the wash-up account balance for the last completed regulatory year of the current regulatory period, as at the end of that period; and (b) a forecast wash-up accrual for the final regulatory year of the current regulatory period. <p>Each year's actual or forecast accrual values are the actual (or forecast) difference between the actual allowable revenue and the total FFLAS revenue.</p>

	Drafting clarifications are set out in Tables 4.2 and 4.3.
Amendments to the scope of the wash-up	<p>The actual revenue allowance includes the actual (or forecast of actual) revenue impacts of:</p> <ul style="list-style-type: none"> (a) the difference between the transitional initial PQ RAB and the final initial PQ RAB (for PQP1 only); (b) the difference between the forecast and actual “annual benefit of Crown financing building block”; (c) differences between forecast cost/asset allocator values and actual cost/asset allocator values; (d) individual capex allowances in respect of the regulatory period determined after the price-quality path was set; (e) the difference between forecast and actual pass-through costs; (f) the difference between any forecast CPI values in the PQ determination used to determine forecast allowable revenue, and the corresponding actual CPI values; and (g) the connection capex variable adjustment as determined under clause 3.7.21(1). <p>Drafting clarifications are set out in Tables 4.2 and 4.3.</p>

4.3 We summarise the main factors in the final wash-up mechanism in Table 4.2.

Context for our fibre IM amendments

4.4 The current specification of price and revenues fibre IM provides for the inclusion of a wash-up amount as a component of allowable revenue.⁹⁰ The wash-up amount was defined as the amount the Commission specifies in a PQ determination for a regulatory year, including amounts in relation to the wash-up mechanism referred to in s 196(2) of the Act. The scope of the wash-up mechanism and how it operates were not further specified.

4.5 The amendments outlined in Chapter 4 relate to the following chapters from the draft fibre IM amendment papers in 2021:

4.5.1 amendments to the process of the wash-up as set out in the specification of price and revenues fibre IM – wash-ups relate to (see Chapter 3 of our May 2021 draft decisions),⁹¹ including:

⁹⁰ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021* [2021] NZCC 17 (29 September 2021), clause 3.1.1(2).

⁹¹ Commerce Commission "Proposed Amendments to Fibre Input Methodologies draft decisions - Reasons paper" (27 May 2021), chapter 3.

- 4.5.1.1 fibre IM amendments to change the process for administering the wash-up (see Chapter 3 of our 30 September 2021 revised draft decisions); and
- 4.5.1.2 drafting clarifications on the wash-up provisions (see Chapter 3 of our 30 September 2021 revised draft decisions); and
- 4.5.2 amendments to the scope of the wash-up as set out in the specification of price and revenues fibre IM (see Chapter 3 of our 30 September 2021 revised draft decisions):
 - 4.5.2.1 fibre IM amendment to the wash-up for forecast cost allocator values;⁹² and
 - 4.5.2.2 fibre IM amendment to the wash-up for in-period CPI forecasts.⁹³
- 4.6 The amendments discussed in this Chapter 4 were referenced in our 29 April 2021 NOI as amendments required to "implement this proposed approach to determining Chorus' initial PQ RAB".⁹⁴

Fibre IM amendments to the process of the wash-up

Current fibre IM requirements

- 4.7 The current specification of price and revenues fibre IM provides for the inclusion of a wash-up amount as a component of allowable revenue.⁹⁵ The wash-up amount is defined as the amount the Commission specifies in a PQ determination for a regulatory year, including amounts in relation to the wash-up mechanism referred to in s 196(2) of the Act.
- 4.8 The fibre IMs do not specify how this wash-up amount is calculated or carried forward into future periods.
- 4.9 We first outlined our proposed amendments for the process of the wash-up to the specification of price and revenues fibre IM in our May 2021 draft decisions. After receiving feedback, we revised our proposed amendments in our September 2021 revised draft decisions.

⁹² Commerce Commission "Proposed Amendments to Fibre Input Methodologies wash-up mechanism revised draft - reasons paper" (30 September 2021), chapter 3.

⁹³ Commerce Commission "Proposed Amendments to Fibre Input Methodologies wash-up mechanism revised draft - reasons paper" (30 September 2021), chapter 3.

⁹⁴ Commerce Commission "Notice of Intention for potential amendments to IMs for Fibre in August 2021" (29 April 2021).

⁹⁵ *Fibre input methodologies determination 2020* [2020] NZCC 21, Clause 3.1.1(2).

Final decision on the process of the wash-up mechanism

- 4.10 The wash-up mechanism will work on a 'balance' basis with amounts accruing to and being drawn-down from an ongoing wash-up balance and including time-value-of money adjustments.
- 4.11 The wash-up mechanism is composed of four key elements, determined by the Commission by applying the IMs and based on information provided by the regulated provider:
- 4.11.1 'wash-up accrual amounts' used to capture the relevant forecast versus actual differences in inputs to the revenue path, defined as the difference between:⁹⁶
- 4.11.1.1 actual 'total FFLAS revenue' (the revenue Chorus receives from access seekers); and
- 4.11.1.2 'actual allowable revenue' (a version of allowable revenue adjusted by updating only the specified inputs that are intended to be washed-up (see para 4.41 below on the scope of the wash-up));⁹⁷
- 4.11.2 a 'wash-up balance' used to track accruals, drawdowns, and time value of money adjustments;⁹⁸
- 4.11.3 a 'wash-up drawdown amount' used to deduct accrued balances to be returned to the regulated provider or access seekers (depending on whether the balance is positive or negative) via the revenue path in the subsequent regulatory period, and whose value must:
- 4.11.3.1 not be greater or less than (depending on whether the wash-up balance is positive or negative respectively) the existing wash-up balance at the time the wash-up drawdown is determined plus a forecast of the final years wash-up accrual amount; and
- 4.11.3.2 equal in present value terms to the sum of 'wash-up amounts' for the subsequent regulatory period; and
- 4.11.4 the 'wash-up amount' for the following regulatory period that is used to increase or decrease 'forecast allowable revenue'.

⁹⁶ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25, clause 3.1.1(8) of Attachment B.

⁹⁷ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25, clause 3.1.1(11) of Attachment B.

⁹⁸ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25, clause 3.1.1(7) of Attachment B.

- 4.12 The wash-up will operate on a period-to-period basis, rather than a year-to-year one. The discount rate applied to maintain the time value of money will be the vanilla WACC.
- 4.13 Figure 4.1 below illustrates how the concepts defined in paragraph 4.11 relate to one another. Figure 4.2 below illustrates the compliance process for the wash-up mechanism, and the associated s 221 notices.

Figure 4.1 Overview of the wash-up mechanism

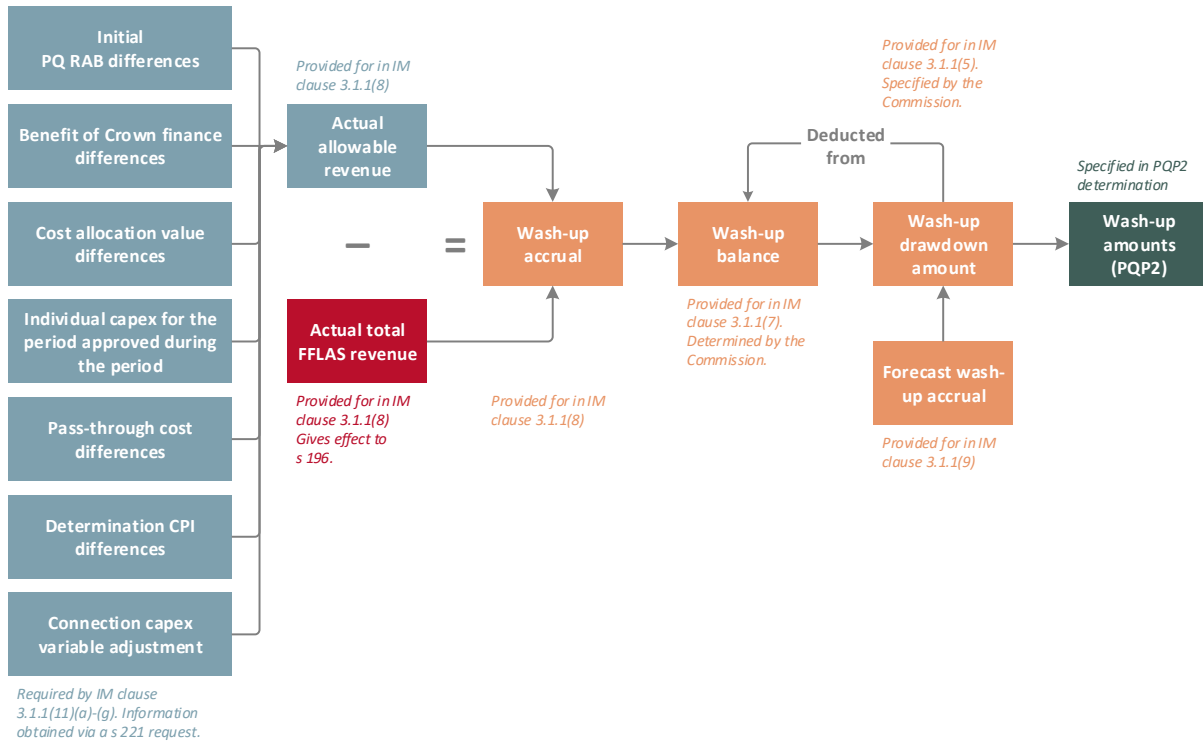
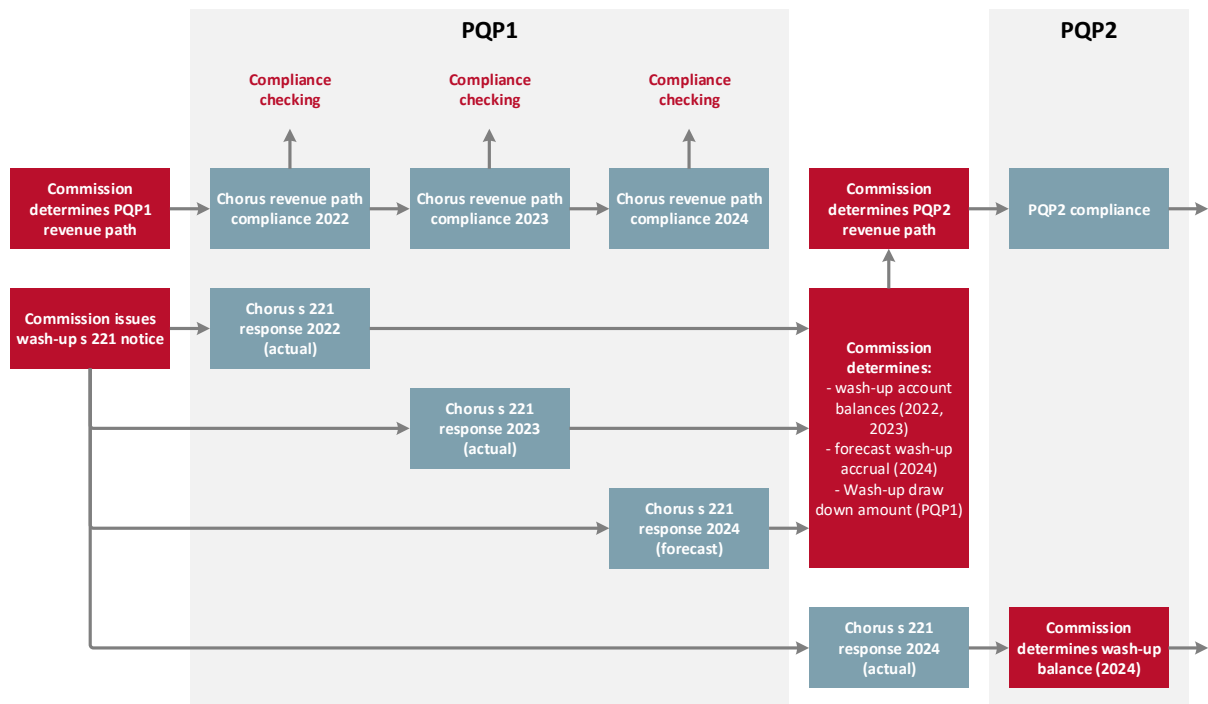


Figure 4.2 Illustration of the process for the revenue path and wash-up



Reasons for our final decision

4.14 *Promotion of the purpose of Part 6:* we considered a more robust compliance process – where the Commission obtains information from regulated providers via an information gathering request under s 221 of the Act⁹⁹ (the appropriate use of that power) that then forms the basis of a determination by the Commission¹⁰⁰ – will reduce the likelihood of error, and subsequent windfall gains or losses. This better promotes the s 162(a) (the outcome of regulated providers having incentives to innovate and to invest) and s 162(d) (the outcome of regulated providers being limited in their ability to extract excessive profits) purposes than the existing IMs.

4.15 *Promotion of certainty:* we considered this amendment will better promote the certainty purpose of the IMs under s 174 over the medium term (between regulatory periods). This is because:

4.15.1 currently, substantive regulatory requirements are not specified in the IMs, but depend on an information gathering notice under s 221 of the Act; and

⁹⁹ We have published a draft of this s 221 notice alongside this paper.

¹⁰⁰ We apply a similar determination approach to other values used in price-quality regulation. Specifically, to the cost of capital and to the financial loss asset determinations.

4.15.2 no provision is made for the Commission to fix with certainty the value of the wash-up account that would be carried forward into future regulatory years and regulatory periods.

4.16 *Compliance cost and complexity*: we considered that, overall, this process would be lower cost to administer and less complex than the unspecified process in the current IMs, or a process where substantive wash-up requirements were split across multiple determinations and notices (as we proposed in the May 2021 draft decisions). In particular, the clarification that the wash-up operates on a "balance" basis, and further detail on how present value adjustments apply, will simplify the compliance process.

How we arrived at our final decision

Draft decisions and our reasons (May 2021)

4.17 In our May 2021 draft decisions we proposed including the following additional detail about how the "wash-up amount" would be calculated and carried forward:

4.17.1 the 'wash-up amount' for each regulatory year in the regulatory period from the second regulatory period (**PQP2**) onwards would include amounts we determine for each year, and these amounts would equal (in present value terms) a "wash-up drawdown amount";¹⁰¹

4.17.2 the closing wash-up account balance adjustment would be an amount we draw down from the wash-up account balance in advance of each regulatory period (from PQP2 onwards);¹⁰²

4.17.3 the closing wash-up account balance adjustment would not be greater, in absolute value terms, than the sum of:

4.17.3.1 the present value of the wash-up account balance for the last completed regulatory year of the current regulatory period, as at the end of that period;¹⁰³ and

¹⁰¹ Commerce Commission "[[DRAFT](#)] [Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), clause 3.1.1(4) of Attachment B.

¹⁰² Commerce Commission "[[DRAFT](#)] [Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), clause 3.1.1(5) of Attachment B.

¹⁰³ Commerce Commission "[[DRAFT](#)] [Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), clause 3.1.1(5)(a) of Attachment B. For example, when calculating the "closing wash-up balance adjustment" that will be drawn down in PQP2, the "current period" referred to in clause 3.1.1(5)(a) of Attachment B would be PQP1.

- 4.17.3.2 a forecast wash-up accrual for the final regulatory year of the current regulatory period;¹⁰⁴
- 4.17.4 each year's actual or forecast accrual values would be the actual (or forecast) difference between the actual allowable revenue and the total FFLAS revenue,¹⁰⁵
- 4.17.5 the actual revenue allowance would include the actual (or forecast of actual) revenue impacts of:¹⁰⁶
- 4.17.5.1 the difference between the transitional initial PQ RAB and the final initial PQ RAB (for PQP1 only);¹⁰⁷
- 4.17.5.2 the difference between the forecast and actual "annual benefit of Crown financing building block";
- 4.17.5.3 the difference between the capex allowance determined before the regulatory period commences, and the actual capex allowance (updated for any individual capex allowance determined in respect of that year after that period commences);
- 4.17.5.4 the difference between forecast and actual pass-through costs; and
- 4.17.5.5 the forecast connection capex variable adjustment (for the final year of a regulatory period only);
- 4.18 In the case of each of the elements of paragraph 4.17.5, the requirements for calculating the elements will be specified by us.¹⁰⁸

¹⁰⁴ Commerce Commission "[\[DRAFT\] Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), clause 3.1.1(5)(b) of Attachment B. For example, when calculating the "closing wash-up balance adjustment" that will be drawn down in PQP2, the "current period" referred to in clause 3.1.1(5)(b) of Attachment B would be PQP1.

¹⁰⁵ Commerce Commission "[\[DRAFT\] Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), clauses 3.1.1(6) and 3.1.1(7) of Attachment B.

¹⁰⁶ Commerce Commission "[\[Draft\] Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), clause 3.1.1(8) of Attachment B.

¹⁰⁷ Commerce Commission "[\[Draft\] Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), clause 3.1.1(10) of Attachment B.

¹⁰⁸ For example, under a notice issued under s 221 of the Act.

- 4.19 Chorus would maintain the "wash-up account", which would track the balance of the actual wash-up accruals, as well as the effect of the closing wash-up account balance adjustments, and a time value of money adjustment would be applied using a rate equal to the mid-point estimate of the post-tax WACC.¹⁰⁹
- 4.20 The request for information and the calculations necessary to derive the wash-up account balance would also be included in a s 221 notice issued by the Commission. This would apply the formula below, which could alternatively be included in the fibre IMs, and would be calculated on a year-end basis (31 December):

Closing washup account balance

$$= \text{Opening washup account balance} \times (1 + \text{post tax WACC}) \\ + \text{washup accrual amount} \\ - \text{closing washup account balance adjustment}$$

- 4.21 Under this proposal, the wash-up account balance would reflect actual wash-up accruals, as well as amounts drawn down by us. Wash-up accruals would be the difference between the actual revenue allowance and actual total FFLAS revenue. The accrual amounts calculated in respect of PQP1 would include the revenue impacts of the difference between the transitional and final initial PQ RAB, as well as of a number of other matters (listed in paragraph 4.17.5 above).
- 4.22 As part of each PQP revenue setting decision from PQP2 onwards, we would determine how much we would draw down from the forecast wash-up account balance. In the draft IM amendment determination, this draw down amount is termed the "closing wash-up account balance adjustment". The forecast wash-up account balance is represented in the determination as the sum of: the actual wash-up account balance at the end of the second-to-last year of the regulatory period, brought forward in present value terms to the end of that period; and the forecast wash-up accrual for the last year of that period.
- 4.23 Because actual and forecast under- or over-recoveries of revenue might result in the forecast wash-up account balance being positive or negative, the amount we could draw down could also be positive or negative. However, the maximum amount we would be able to draw down would be the entire positive or negative forecast balance. In other words, if the balance is forecast to be positive (or negative), we could draw down the entire positive (or negative) amount to zero, but we could not draw down the forecast balance beyond that.

¹⁰⁹ Commerce Commission "[[Draft](#)] Fibre Input Methodologies Amendment Determination 2021" (27 May 2021), Clause 3.1.1(9) of Attachment B.

4.24 The drawdown amount (ie, the closing wash-up account balance adjustment) would then provide the basis for one of the inputs into the wash-up amounts included in forecast allowable revenue for each year of the coming regulatory period. The adjustment may be 'spread' across the coming regulatory period, but the amounts included in each wash-up amount must equal the total adjustment in present value terms. Any amounts not drawn down would remain in the wash-up account and would be available for draw down in future regulatory periods in a net present value manner.

Interested persons' views on our May 2021 draft decisions

- 4.25 In its submission on our May 2021 draft decisions, Chorus submitted in support of the use of a wash-up mechanism as part of the revenue path and suggested amendments it believed would improve the operation of the wash-up mechanism.¹¹⁰
- 4.26 2degrees submitted in support of the wash-up mechanism in our draft decisions, but it said it does not support an "unlimited" wash-up.¹¹¹
- 4.27 Vocus supported the inclusion of a wash-up mechanism in the fibre IMs generally.¹¹²
- 4.28 In its cross-submission on our draft decisions, Chorus disagreed with the other submissions on limiting the wash-up mechanism.¹¹³

Revised draft decision (September 2021)

4.29 In response to submissions, and based on additional internal work undertaken following the May 2021 draft PQ and IM decisions, in September 2021 we published a revised draft decision. In this draft, we proposed that the "wash-up accruals" and "wash-up account balance" would be maintained by the Commission, and would be subject to a definitive determination in respect of:

- 4.29.1 wash-up accruals and the wash-up account balance for all regulatory years except the final regulatory year of a regulatory period, before the subsequent PQ path commences;¹¹⁴ and

¹¹⁰ Chorus "Amendments to the Input Methodologies for Fibre – August 2021 amendments" (8 July 2021), para 21.

¹¹¹ 2degrees "Proposed Amendments to Fibre Input Methodologies: draft decisions Reasons paper, Commerce Commission Consultation" (8 July 2021), p 1 and 2.

¹¹² Vocus "Submission and cross-submission on Fibre IM Amendments draft decision" (8 July 2021), paragraphs 20-22.

¹¹³ Chorus "Cross-submission on Amendments to the Input Methodologies for fibre" (22 July 2021), para 4 and 5 (initial RAB) and 6 to 8 (wash-ups).

¹¹⁴ Commerce Commission "[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021" (30 September 2021), clauses 3.1.1(5)(a)(i), 3.1.1(8) and 3.1.1(9) of Attachment B.

4.29.2 wash-up accruals and the wash-up account balance for the final regulatory year of the regulatory period, which will be determined in the first regulatory year of the subsequent regulatory period.

4.30 Our May 2021 draft decisions had proposed that the "wash-up account" (the means for recording accruals, closing wash-up account balance adjustments, and time value of money adjustments) would be maintained by a regulated provider.¹¹⁵ Those draft decisions would have also required that the method for doing so would be either "as specified and obtained by the Commission" or "as specified in a PQ determination".¹¹⁶

4.31 Changes made in September 2021 as a result of submissions and our reconsideration of the May 2021 draft decisions are set out in Table 4.2 below.

Table 4.2 Summary of drafting changes in our September revised draft decision (proposed in September 2021 revised draft decisions)

Amendment	Clause(s) affected	Reasons
Removal of "derived by a regulated provider".	3.1.1(1)	To remove redundant wording, as the definition of "forecast total FFLAS revenue" already includes this.
Clarification that "forecast allowable revenue" and "[forecast] total FFLAS revenue"¹¹⁷ is calculated in accordance with a PQ determination	3.1.1(2) 1.1.4(2) – definition of "forecast total FFLAS revenue"	To clarify that the methodology for calculating the elements of "forecast allowable revenue" and "forecast total FFLAS revenue" are specified in the PQ determination.
Redrafting the clause such that the "wash-up amounts" (for a regulatory period) are a function of the "wash-up draw down amount" from the preceding regulatory period.	3.1.1(4)	To make the timing aspect of this requirement clearer (ie, which regulatory periods are being referred to). To clarify that these amounts may be positive or negative, as submitted by Chorus. ¹¹⁸

¹¹⁵ Commerce Commission "[\[Draft\] Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), Clause 3.1.1(9) of Attachment B.

¹¹⁶ Commerce Commission "[\[Draft\] Fibre Input Methodologies Amendment Determination 2021](#)" (27 May 2021), Clause 3.1.1(9) of Attachment B.

¹¹⁷ In our 27 May 2021 draft decision, we proposed changing the term "total FFLAS revenue" to "forecast total FFLAS revenue". See Commerce Commission "Proposed Amendments to Fibre Input Methodologies: draft decisions – Reasons paper" (27 May 2021), paragraph 5.6.

¹¹⁸ Chorus "Submission on draft decisions for fibre PQID IM amendments" (24 June 2021), Appendix A.

Amendment	Clause(s) affected	Reasons
Replaced reference to the “wash-up amounts” “including” recovery of the “wash-up draw down amount” to “comprising” this amount.	3.1.1(4)	To clarify that the “wash-up amounts” for future periods do not include any items other than recovery of the “wash-up draw down amount”, as submitted by Chorus ¹¹⁹ Where any future items are to be included (such as quality incentive payments) our view is that these could be included in the calculation of the wash-up accrual in clause 3.1.1(11) and would require an IM amendment.
Relabelling of the “closing wash-up account balance adjustment” as the “wash-up draw down amount”. Refining of the discretion, limits, and timing requirements for this amount.	3.1.1(5)	Relabelled to better reflect the purpose of this amount. To make it explicit that this is a decision where the Commission retains discretion, and the limits of that discretion. To clarify the timing of determination, including how present values are calculated.
Clause related to the “wash-up account” moved up (was clause 3.1.1(9)). Relabelled as the “wash-up account balance”.	3.1.1(6) and 3.1.1(7)	Clause moved to aid clarity, as submitted by Chorus. Relabelled to better reflect the on-going roll-forward nature of this mechanism.
Additional clause specifying the value of the “wash-up account balance” for regulatory year 2021 is nil.	3.1.1(6)	To clarify the starting point for “the wash-up account balance”, as submitted by Chorus. ¹²⁰
Redrafting of the “wash-up account balance” to clearly reflect the items that enter and exit the account, and how they are treated in present value (PV) terms	3.1.1(7)	To remove ambiguity about how the account balance operates and to avoid the potential for under- or over-counting based on present values.
Removal of the phrase “not yet returned to or recovered from access seekers”.	3.1.1(7)	To remove redundant wording, as “wash-up amounts” are inherently recovered from or returned to access seekers.
Specification that the “wash-up accrual” is deemed to accrue on a date 182 days prior to the end of a regulatory year (the date equivalent in PV terms to 12 equal revenue amounts on the 20th of each month).	3.1.1(8)	To enhance certainty and to avoid the potential for under- or over-counting based on present values. [Note: this change to clause 3.1.1(8) is further updated in Table 4.3]
Clarification of the timing and determination of the “forecast wash-up accrual”.	3.1.1(9)	To enhance certainty.

¹¹⁹ Chorus “Submission on draft decisions for fibre PQID IM amendments” (24 June 2021), Appendix A.

¹²⁰ Chorus “Submission on draft decisions for fibre PQID IM amendments” (24 June 2021), Appendix A.

Amendment	Clause(s) affected	Reasons
New clause stating that the discount rate for all PV calculations is the post-tax WACC for the relevant regulatory period, as determined under clause 3.5.1(2).	3.1.1(10)	To clarify that the post-tax WACC as the discount rate applies to all PV wash-up calculations, not just the maintenance of the “wash-up account balance”.
Relabelling of “actual revenue allowance” as “actual allowable revenue.”	1.1.4(2) – definition of “actual allowable revenue” 3.1.1(11)	For symmetry with “forecast allowable revenue”, as submitted by Chorus. ¹²¹
Clarification of how “actual allowable revenue” must be calculated.	3.1.1(11)	To make it explicit that “actual allowable revenue” is a recalculation of building blocks revenue and pass-through costs, as submitted by Chorus. ¹²²
Specification that for the calculation of any “individual capex allowance’s” impact on “actual allowable revenue”, the relevant difference is the incremental impact of the “individual capex allowance”.	3.1.1(11)(d)	Corrects for an error in the original draft determination (which treated “individual capex allowances” as a stand-alone amount replacing capex allowances approved prior to the period, rather than an increment). [Note: this change to clause 3.1.1(11)(d) is further updated in Table 4.3]

Interested persons' views on our September draft decision

- 4.32 In its submission on our September 2021 revised draft decisions, Chorus submitted in general support of our proposed clarifications of the fibre IMs. However, it also asked for more certainty on the connection capex variable adjustment in the final year of each regulatory period and the timing of connection capex through the regulatory period when calculating the connection capex variable adjustment.¹²³
- 4.33 We have set out our response to the clarifications and drafting changes proposed by Chorus in Table 4.3 below.
- 4.34 We did not receive submissions from other parties, or cross-submissions.

Final decision

- 4.35 Our final decision is substantially unchanged from our September 2021 revised draft decisions:

¹²¹ [Chorus “Submission on draft decisions for fibre PQID IM amendments” \(24 June 2021\)](#), Appendix A.

¹²² [Chorus “Submission on draft decisions for fibre PQID IM amendments” \(24 June 2021\)](#), Appendix A.

¹²³ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), paragraph 42.

- 4.35.1 the "wash-up accruals" and "wash-up account balance" will be maintained by the Commission, and will be subject to a definitive determination in respect of:
- 4.35.1.1 wash-up accruals and the wash-up account balance for all regulatory years except the final regulatory year of a regulatory period, before the subsequent PQ path commences; and
 - 4.35.1.2 wash-up accruals and the wash-up account balance for the final regulatory year of the regulatory period, which will be determined in the first regulatory year of the subsequent regulatory period.
- 4.36 As outlined in our September 2021 revised draft decisions, in addition to substantive changes we have also made a series of additional amendments to clarify the drafting of the wash-up provisions. Our decision is to also adopt the drafting clarifications set out below in Table 4.3.
- 4.37 In making these fibre IM amendments we have applied the IM amendment decision-making framework in Chapter 2 and we consider they meet the IM amendment framework outcomes. In particular, they promote the IM purpose in s 174 more effectively than the existing fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 4.38 By clarifying or better expressing our intent, we consider these changes help better promote certainty under s 174 about the rules, requirements, and processes applying to PQ regulation, and help to reduce compliance cost and complexity.¹²⁴

Table 4.3 Summary of final drafting changes in response to submissions on our September 2021 revised draft

Proposed change in submissions	Clause(s) affected	Reasons
Any wash-up amount is specified in the PQ determination, but the methodology for determining the amount is set out in clause 3.1.1 of the IMs (not the PQ determination). ¹²⁵	3.1.1(2)	Compliance cost and complexity - the clarification proposed more accurately captures the intent of the proposed amendment.

¹²⁴ Telecommunications Act 2001, s 174.

¹²⁵ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A, page 14. Chorus also sought to clarify that "pass-through costs" in clause 3.1.1(2)(b) and 3.1.1(11)(e) meant "those calculated at the beginning of each regulatory year as specified in Schedule 2 of the PQ determination". This is the case for the PQP1 determination (as proposed in our 27 May draft decisions), but as a decision made in the PQ determination rather than the IMs, is subject to change at each PQ reset.

Proposed change in submissions	Clause(s) affected	Reasons
<p>The use of absolute value is incorrect since, without further specification, it permits the wash-up draw down amount to be the opposite sign of the wash-up account balance. For example, a wash-up draw down amount of - \$100m in absolute terms is no greater than a +\$100m wash-up account balance so would satisfy the condition but would be \$200m less.¹²⁶</p>	3.1.1(5)(a)-(b)	<p>s 174 - We agree that the previous drafting created an unintended ambiguity.</p> <p>We have adapted the amended drafting proposed by Chorus. This is to improve certainty by properly expressing the limits on the Commission's discretion to determine the "wash-up draw down amount".</p> <p>The final determination makes it clear that:</p> <ul style="list-style-type: none"> - the 'direction' (positive or negative) of the draw down amount must be the same as the forecast of the wash-up balance; and - the Commission has discretion to specify a value between zero and the forecast of the balance.
<p>Limb (c) ignored the fact that section 170(3) of the Act provides for more than one PQ determination to be made for a regulatory period, and limb (d) was not effective in limiting the determination of a draw down amount to a final year of PQP1 and beyond.¹²⁷</p>	3.1.1(5)(d)-(e)	<p>Error correction - we agree that the previous drafting did not allow for the situation where more than one determination specifies the price-quality path.</p>
<p>The accrual date should match the revenue date to align with when revenue is received. This is consistent with the description in Table 3.1 – that the date is equivalent in PV terms to 12 equal revenue amounts on the 20th of each month¹²⁸</p>	3.1.1(8)	<p>S 162(d) - the date needs to be corrected to maintain real future capital maintenance (RFCM).</p> <p>[Note: this change further updates the change to clause 3.1.1(8) proposed in Table 4.2]</p>

¹²⁶ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A, page 15.

¹²⁷ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A.

¹²⁸ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A, page 16.

Proposed change in submissions	Clause(s) affected	Reasons
<p>We recommend adding an accrual date for consistency with subclause (8).</p> <p>For certainty we have included paragraph (d) to clarify that the forecast wash-up accrual includes a forecast of the connection capex variable adjustment and its modelled impacts on forecast allowable revenue. We previously submitted that the final connection capex annual report is not received until after the final year of the regulatory period but that the wash-up amounts (and therefore forecast wash-up accrual) would be specified before the end of each regulatory period and as a result this would mean this wash-up would be deferred. Not correcting for this error would mean that the wash-up for the connection capex variable adjustment for PQP1 would not be calculated until PQP2 and only available to draw down in PQP3.¹²⁹</p>	3.1.1(9)	<p>Error correction - clarification of scope of connection capex variable adjustment wash-up removes problematic ambiguity.</p> <p>We do not consider specifying an accrual date for wash-up accrual is necessary.</p>
<p>We have proposed the use of “modelled” rather than “actual” impacts. The impacts to forecast allowable revenue that are required for the wash-up calculation are only due to substituting actual data for the wash-ups in subclauses (11)(a) to (g), not all data is updated for actuals.¹³⁰</p>	3.1.1(11)	<p>Compliance cost and complexity – the use of “modelled” more accurately captures the nature of the wash-up calculation.</p>
<p>We propose simplifying this calculation since the difference between the sums in subparagraphs (i) and (ii) is the amount specified in subparagraph (C).¹³¹</p>	3.1.1(11)(d)	<p>Compliance cost and complexity – we consider this drafting achieves the same outcome with less complex drafting.</p> <p>[Note: this change further updates the change to clause 3.1.1(11)(d) proposed in Table 4.2]</p>

¹²⁹ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A, page 16.

¹³⁰ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A, page 17.

¹³¹ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A, pages 17-18.

Proposed change in submissions	Clause(s) affected	Reasons
As we have previously submitted, the IMs need to be updated to ensure that the connection capex adjustment can be included in the wash-up draw down amount for the following regulatory period and to ensure the modelled impacts of the connection capex adjustment are included. ¹³²	3.1.1(11)(g)	As above for clause 3.1.1(9)
We have proposed the use of “modelled” rather than “actual” impacts. The impacts to forecast allowable revenue that are required for the wash-up calculation are only due to substituting actual data for the wash-ups in 11(a)-(g), not all data is updated for actuals. ¹³³	3.1.1(12)	As above for 3.1.1(11)

Fibre IM amendments to the scope of the wash-up

Current fibre IM requirements

- 4.39 The current specification of price and revenues fibre IM provides for the inclusion of a wash-up amount as a component of allowable revenue.¹³⁴ The wash-up amount is defined as the amount the Commission specifies in a PQ determination for a regulatory year, including amounts in relation to the wash-up mechanism referred to in s 196(2) of the Act.
- 4.40 The existing capital expenditure IMs require us to include wash-ups for:¹³⁵
- 4.40.1 the connection capex variable adjustment; and
 - 4.40.2 any individual capex projects for a regulatory period approved after the determination of the PQ path.
- 4.41 The scope of the wash-up mechanism and how it operates is not further specified.

¹³² Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A, page 18.

¹³³ Chorus "Proposed amendments to fibre IMs: wash-up mechanism revised draft" (21 October 2021), Appendix A, page 19.

¹³⁴ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021* [2021] NZCC 17 (29 September 2021), clause 3.1.1(2).

¹³⁵ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, clause 3.7.1(4)(b).

Final decision on the scope of the wash-up mechanism

- 4.42 Elements within the scope of the wash-up mechanism are given effect to through the calculation of the ‘wash-up accrual amount’. This comprises:
- 4.42.1 the difference between forecast and actual “total FFLAS revenue” due to differences in forecast and actual demand for FFLASS;
 - 4.42.2 the difference between the transitional initial PQ RAB and the final initial PQ RAB (for PQP1 only);
 - 4.42.3 the difference between the forecast and actual “annual benefit of Crown financing building block”;
 - 4.42.4 differences between forecast cost/asset allocator values and forecast cost/asset allocator values;
 - 4.42.5 individual capex allowances in respect of the regulatory period determined after the price-quality path was set;
 - 4.42.6 the difference between forecast and actual pass-through costs;
 - 4.42.7 the difference between any forecast CPI values in the PQ determination used to determine forecast allowable revenue, and the corresponding actual CPI values; and
 - 4.42.8 the connection capex variable adjustment.

Reasons for our final decision

- 4.43 We have included an explicit wash-up where:
- 4.43.1 Chorus not bearing the risk that outcomes differ from forecasts best promotes the purpose of Part 6 or workable competition (often in terms of the economic principles and incentive framework); and
 - 4.43.2 there is no existing mechanism that provides for this.
- 4.44 The results of applying this analysis are summarised in Table 4.4. Specific reasons for our decisions to add items to the scope of the wash-up are discussed in more detail below.

Table 4.4 Scope of the wash-up mechanism

Factor	Wash-up	Mechanism to be applied	Rationale
Real WACC	No		Economic principle is ex ante RFCM

Nominal WACC	Yes	Hedged against revaluation CPI	Required by existing IMs
PQP1 return on/of initial RAB	Yes	Wash-up	Maintains RFCM/limits excessive profits
Enduring impact of initial RAB	Yes	PQP2 reset	Required by existing IMs
Asset allocator values	Yes	Wash-up	Risk allocation, consistency with demand wash-up
Depreciation	Partial	PQP2 reset	Required by existing IMs
Revaluation CPI	Yes	Hedged against nominal WACC	Required by existing IMs
Real unallocated opex	No		Incentives to improve efficiency
Cost allocator values	Yes	Wash-up	Risk allocation, consistency with demand wash-up
Real base capex	Partial	PQP2 reset	Incentives to improve efficiency
Connection capex real unit cost	Partial	PQP2 reset	Incentives to improve efficiency
Connection capex volumes	Yes	Wash-up	Required by existing IMs
Individual capex	Yes	Wash-up	Required by existing IMs
Expenditure input price inflation	Partial	Hedged against revenue path CPI	Risk allocation, consistency with revenue path CPI
Benefit of Crown financing rates	No		Required by existing IMs
Benefit of Crown financing level/mix	Yes	Wash-up	Consistency with IMs and Incentive framework
Tax	Partial	Via recalculation of other factors	Consistency with other building blocks
Stranding allowance	No		Required by existing IMs
Revenue path CPI	Partial	Annual updating Wash-up mechanism	Risk allocation, consistency with input price inflation
Pass-through costs	Yes	Wash-up	Consistency with existing IM policy intent
Demand forecasts	Yes	Wash-up	Required by section 196

Reasons for including pass-through costs

- 4.45 This decision is necessary to implement the intent of the specification of price and revenues IM.¹³⁶ Pass-through costs are costs over which Chorus has little or no control, and that it is appropriate that end-users bear the cost of.
- 4.46 As we have proposed compliance with the revenue path on a forecast basis, this requires an (annual) demonstrably reasonable forecast of pass-through costs, so that allowable revenue can be determined ex ante. However, this means that the value of pass-through costs recovered through the revenue path is subject to forecast error.
- 4.47 Including a wash-up for any potential differences eliminates this risk on a present value basis, meaning both future capital maintenance (**FCM**) is maintained, and Chorus has no incentive to over forecast pass-through costs (which would be contrary to s162(d)).

Reasons for including Crown financing repayments

- 4.48 This decision is necessary to implement the intent of the cost of capital IMs.¹³⁷ Our intention with the adjustment for the benefit of Crown financing was that Chorus does not face any artificial incentive for early repayment in order to maximise returns, and that end-users receive benefit from Crown financing through lower prices.
- 4.49 The benefit of Crown finance building block is based on a forecast repayment schedule. This may differ from actuals, and through this proposed wash-up, Chorus' incentives remain neutral.

Reasons for including cost allocator values

- 4.50 We did not include cost allocator values in our May 2021 draft IM amendment decision. However, in response to submissions on the May 2021 draft decisions, we proposed in our September 2021 revised draft decisions to include the impact of actual allocator values on forecast expenditure and asset values within the scope of the wash-up mechanism.¹³⁸

¹³⁶ Commerce Commission “Fibre input methodologies: Main final decisions – reasons paper” (13 October 2020), paragraph 9.30.

¹³⁷ Commerce Commission “Fibre input methodologies: Main final decisions – reasons paper” (13 October 2020), paragraph 3.234.

¹³⁸ Commerce Commission “[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021” (30 September 2021), clause 3.1.1(11)(c) of Attachment B.

- 4.51 Under the fibre IMs, each cost allocator and asset allocator has an “allocator type” and an “allocator value”. The allocator type is the “basis for the attribution or allocation of an operating cost or asset value”.¹³⁹ The allocator value is the value in units for each allocator.¹⁴⁰ This wash-up applies only to the allocator values but does not extend to changes in allocator types.

Interested persons' views on our proposed changes

- 4.52 In its submission on the draft decisions, Chorus proposed that the difference between forecast cost allocator metrics be included in the wash-up. In support of this position, Chorus noted:¹⁴¹

Chorus’s FFLAS business is still growing and the rates of demand, expenditure and other relative utilisation indicators over time are particularly hard to forecast. There is a material risk that some forecast allocator metrics turn out to not reflect the actual utilisation of expenditure or assets that are shared between PQ-FFLAS and other services. In particular, given the forecast uncertainty, Chorus has set allocators for PQP1 based on past actuals which in light of a growing fibre business could lead to actual utilisation (between PQ-FFLAS and other services) varying materially over PQP1.

To manage this risk, and to mitigate the need for extensive debate on cost allocator metrics at the time revenues are set, it is reasonable to wash-up for the revenue impact of differences between forecast and actual allocator metrics i.e. that this risk is not borne by Chorus. This is especially important given the transitional nature of PQP1. We note that this wash-up incentivises accurate forecasting of allocator metrics.

- 4.53 Chorus submitted in favour of these changes which we proposed in our September 2021 revised draft decisions.¹⁴²
- 4.54 We have considered the above submissions about the proper scope of our proposed IM amendments in the light of the framework outcomes in Chapter 2.
- 4.55 We consider including cost allocation values within the scope of the wash-up mechanism would better promote the purpose of Part 6. We also consider the promotion of competition, as referred to in s 166(2)(b), is relevant to this decision.

¹³⁹ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021* [2021] NZCC 17 (29 September 2021), definition for “allocator type” in clause 1.1.4(2).

¹⁴⁰ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021* [2021] NZCC 17 (29 September 2021), definition for “allocator value” in clause 1.1.4(2).

¹⁴¹ Chorus “Amendments to the Input Methodologies for Fibre – August 2021 amendments” (24 June 2021), paragraphs 30 and 31.

¹⁴² Chorus “Proposed amendments to fibre IMs: wash-up mechanism revised draft” (21 October 2021), para 21.

- 4.56 *Promotion of the purpose of Part 6*: cost and asset allocations determine what costs can be recovered from PQ FFLAS end-users, and what costs Chorus can be expected to recover from its other services (ID-only FFLAS and services that are not regulated FFLAS). As Chorus notes, the underlying values (especially those linked to demand) are also subject to significant uncertainty.
- 4.57 Given the ex ante nature of building-blocks regulation, it is necessary to use forecasts of allocator values to determine the revenue path for a regulatory period. However, the differences between actual and forecast values:
- 4.57.1 are largely beyond Chorus' ability to control, so there is limited efficiency incentive benefit in terms of s 162(b) (the outcome of regulated providers having incentives to improve efficiency and supply FFLAS of a quality that reflects end-user demands);
 - 4.57.2 could give rise to windfall gains or losses by Chorus or end-users, with a detrimental effect on either incentives to invest under s 162(a) (the outcome of regulated providers having incentives to innovate and to invest), or limits on excessive profitability under s 162(d) (the outcome of regulated providers being limited in their ability to extract excessive profits); and
 - 4.57.3 a wash-up for cost allocator values helps counterbalance the effect of the wash-up for under- or over-recovery of revenue due to differences in demand. This in part addresses the concerns raised by Spark, Vocus, and 2Degrees about limitations on wash-up balances.
- 4.58 Holding all other things equal, where actual demand is higher than forecast, "actual total FFLAS revenue" would be higher, giving rise to a negative wash-up accrual (and a lower revenue allowance in PQP2). However, demand-linked allocators would also be higher, giving rise to higher "actual allowable revenue" and a positive wash-up accrual. The effect is not a complete hedge but has the beneficial effect of moderating the size of any wash-up accruals.
- 4.59 While still giving effect to the requirement under s 196 to provide for any over- or under-recoveries of revenue, this approach does so in a way that reduces the likelihood of future revenue volatility.
- 4.60 We consider it is appropriate to make this amendment now, as the materiality of these effects may be especially high for Chorus and FFLAS end-users for the first PQ period. This is because:
- 4.60.1 a large proportion of Chorus' costs and assets are subject to the cost allocation fibre IM;

- 4.60.2 many of the cost allocator values proposed by Chorus and applied by us in our draft cost allocation decision are influenced directly or indirectly by levels of demand for FFLAS;¹⁴³ and
- 4.60.3 forecasts of demand on a relatively new network are subject to significant uncertainties.
- 4.61 As noted above, the wash-up applies to allocator values only, and not to allocator types. A regulated provider subject to price-quality regulation must apply the same cost allocation approach for disclosing actual expenditure under ID as was applied under Subpart 2 of Part 3 of the IMs for PQ, unless the regulated provider can show it is objectively justifiable and demonstrably reasonable to use an alternative allocator type or uses an allocator type that is comparable in all material respects to the allocator type applied for PQ.¹⁴⁴
- 4.62 *Promotion of workable competition:* in terms of competition in telecommunications markets, differences between forecast allocation values and actual allocation values may result in cross-subsidies between PQ FFLAS and unregulated or ID-only FFLAS. This may be a result of simple forecast error but may also give rise to gaming opportunities, where the costs of unregulated or ID-only FFLAS services are over-allocated to PQ FFLAS due to diverging forecasts and actual of allocator values.
- 4.63 Removing these effects through a wash-up therefore better gives effect to the s 166(2) purposes than our original draft decision.
- 4.64 *Promotion of certainty:* we consider this fibre IM amendment (as part of our broader package of wash-up fibre IM amendments) better promotes certainty under s 174, as the treatment of allocator values is no longer left to each PQ determination.
- 4.65 *Compliance cost and complexity:* we acknowledge that any addition to the scope of the wash-up mechanism increases the complexity and potentially increases the compliance cost of applying the wash-up. However, given the purpose of Part 6, competition, and certainty reasons above, we consider this additional complexity is justified. Additionally, given the wash-ups already proposed for other elements of the PQ path, the marginal cost is lower.

¹⁴³ For example, allocator types such as provisioning overhead, subscribers, or totex are all influenced by relative levels of demand for FFLAS and non-FFLAS services. See: Analysys Mason “Report for Chorus – Documentation of opex allocation for the BBM Opex workstream” (26 March 2021), p 15 to 62.

¹⁴⁴ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (base capex and connection capex baseline allowance determination dates) Amendment Determination 2021* [2021] NZCC 17 (29 September 2021), clause 2.1.3(4).

Reasons for including CPI values used in a PQ determination

- 4.66 In our September 2021 revised draft decisions we proposed adding a wash-up for any forecast CPI values referred to in a PQ determination for the purposes of calculating “forecast allowable revenue” under clause 3.1.1(2).¹⁴⁵
- 4.67 It should be noted that this is not a comprehensive CPI wash-up. It does not extend to:
- 4.67.1 CPI forecasts used in the forecast revaluation of the price-quality regulatory asset base; and
- 4.67.2 CPI forecasts used to smooth revenue over the PQP period on a forecast basis at the start of the PQP period.
- 4.68 As for the cost allocator value wash-up, a wash-up for updated CPI forecasts in the revenue path was not included in the May 2021 draft decision.
- 4.69 Chorus proposed this amendment as part of a wider submission on changes to the treatment of the CPI term within the PQP1 determination. In its submission, Chorus said:¹⁴⁶
- ... the draft determination requires forecast building blocks revenue (FBBR) to be rolled forward using the term $(1+\Delta CPI_{t-1})$. However, this is inconsistent with the formula for in period revenue smoothing which means the ex-ante expectation of real FCM will not hold. Failure to correct this will result in error due to variability in inflation. We expect this means Chorus will under-recover the PV of its maximum allowable revenue (MAR) by approximately \$4m for PQP1
- A better approach is to roll-forward FBBR using forecast CPI for the current regulatory year $(1+\Delta CPI_t)$. This will give Chorus an ex-ante expectation it will be able to recover its MAR, but would then require a wash-up for the difference between forecast and actual CPI for year t.
- This will promote the long-term benefit of end-users as it would preserve investment incentives by ensuring Chorus can recover its MAR (as will be explained in our price quality submission) and ensuring that prices are consistent with actual rather than forecast CPI over time.
- 4.70 Chorus submitted in favour of these changes proposed in our September 2021 revised draft decisions.¹⁴⁷

¹⁴⁵ Commerce Commission “[Revised draft] Fibre Input Methodologies (wash-up mechanism) Amendment Determination 2021” (30 September 2021), clause 3.1.1(11)(f) of Attachment B.

¹⁴⁶ [Chorus “Submission on draft decisions for fibre PQID IM amendments” \(24 June 2021\)](#), paragraphs 36-38.

¹⁴⁷ Chorus “Proposed amendments to fibre IMs: wash-up mechanism revised draft” (21 October 2021), paragraph 21.

- 4.71 We have considered Chorus' submission on our revised draft decisions and the impact of this proposed change in the light of the framework outcomes in Chapter 2.
- 4.72 *Promotion of the purpose of Part 6:* this change (including a wash-up for residual differences in updated forecast versus actual CPI) will enable the PQ determination to be drafted in a way that is consistent with ex ante real financial capital maintenance (**RFCM**). Through doing so, it better promotes incentives to invest under s 162(a), and would limit excessive profits under s 162(d).
- 4.73 Making allowance for a CPI forecast wash-up in the IMs permits (but does not require) such an approach. Where no forecast CPI values are used in the PQP determination, this element of the wash-up would have an effective zero value.
- 4.74 *Promotion of certainty relative to the current fibre IM:* we consider this amendment (as part of our broader package of wash-up IM amendments) better promotes certainty under s 174, as the treatment of any CPI forecasts used in PQ formulae is now partly fixed in the IMs, rather than being entirely a matter for the PQ determination.
- 4.75 *Compliance cost and complexity:* as with the wash-up for allocation values, this additional wash-up adds to the complexity of the wash-up mechanism. However, it will reduce the complexity of the underlying PQ determination. This should reduce the overall compliance cost of the regulatory regime.

Interested persons' views on the scope as a whole

- 4.76 Vocus noted that the scope of the proposed amendments went "well beyond" what was necessary to implement a transitional RAB approach.¹⁴⁸
- 4.77 Spark opposed any further additions to the wash-up mechanism in its fibre IM amendment cross-submission. This was on the basis that we should not revisit positions settled in the IMs, and that these proposals go beyond the scope of our Notice of Intention.¹⁴⁹
- 4.78 Chorus submitted support for the draft decision to not limit wash-up accruals based on undercharging:¹⁵⁰

We are pleased the wash-ups are symmetric and unconstrained, as required by the Act. We agree there is no need for service-specific price caps or an undercharging wash-up limit.

¹⁴⁸ Vocus "Submission on Fibre PQID - IM amendments draft decisions" (8 July 2021), paragraph 23.

¹⁴⁹ Spark "Proposed amendments to the IM for fibre" (9 July 2021), paragraph 18.

¹⁵⁰ Chorus "Submission on Fibre PQ draft decisions" (8 July 2021), paragraph 32.

4.79 Retail service providers (**RSPs**) Vodafone and Spark disagreed with this aspect of the draft decision, and they submitted that leaving the amount of voluntary undercharging that can be included in the wash-up account uncapped, the Commission was creating a risk that Chorus may price below costs to reduce or distort competition, for example for Chorus 1G and Hyperfibre products.¹⁵¹

4.80 Vodafone and Spark submitted several proposals:

4.80.1 Vodafone submitted that the Commission must reconsider the risk that Chorus will price below cost and reconsider the approach to identifying and addressing this.¹⁵²

4.80.2 Vodafone submitted that the Commission must limit how wash-up can be used to account for pricing below cost, and it proposed the approach to EDBs in Part 4 as an option.¹⁵³

4.80.3 Spark recommended that the Commission consult separately on requirements to mitigate undercharging risk.¹⁵⁴

4.81 Chorus cross-submitted, disagreeing with the RSPs that it has incentives to price below cost or that the wash-up could be used to distort competition:

Chorus has concerns about our longer-term ability to recover our investment in the fibre network due to increasing levels of competition from alternative technologies. While it is efficient, and beneficial to consumers, for Chorus to tailor pricing to ensure our services remain attractive, it would not be rational to forego revenues when it appears likely that there will not be an opportunity to recover these revenues in future.

4.82 Chorus disagreed with Vodafone's proposal to limit voluntary undercharging in the wash-up, stating that "s196 of the Act does not permit any limits".¹⁵⁵ Chorus also opposed Vodafone's suggestion for a Part 4 undercharging limit approach.

4.83 Chorus opposed Spark's recommendation for the further consultation on requirements to mitigate undercharging risk, stating:¹⁵⁶

It is not clear what these suggested requirements would be, or how they would be consistent with s196. It is also not clear what process or timeframe the proposed consultation would fit within.

¹⁵¹ Vodafone "[Submission on fibre price-quality path](#)" (8 July 2021), paragraphs 9-14; Spark "[Fibre ID and PQ draft decisions submission](#)" (8 July 2021), paragraphs 78-82.

¹⁵² Vodafone "[Submission on fibre price-quality path](#)" (8 July 2021), paragraphs 14.

¹⁵³ Vodafone "[Submission on fibre price-quality path](#)" (8 July 2021), paragraphs 14.

¹⁵⁴ Spark "[Fibre ID and PQ draft decisions submission](#)" (8 July 2021), paragraph 82.

¹⁵⁵ Chorus "Cross-submission on Fibre PQ draft decisions" (5 August 2021), appendix C10.

¹⁵⁶ Chorus "Cross-submission on Fibre PQ draft decisions" (5 August 2021), appendix C12.

Response to submissions on the scope of these amendments

- 4.84 We do not agree with Spark’s submission that this proposal goes beyond the scope of the original draft IM amendment and the NOI under s 179. The scope of this process was all aspects of the revenue path and wash-up mechanism necessary to implement our proposed approach to determining Chorus’ initial PQ RAB, including considering amendments to clause 3.1.1 of the specification of price and revenues fibre IM.
- 4.85 These would specify that the “wash-up amount” for each regulatory year of the second regulatory period onwards would include a wash-up account balance available to draw down, including a true-up for differences in revenue due to differences between the initial PQ RAB and the transitional initial PQ RAB.¹⁵⁷ Further additions to (or removal of items from) the scope of the wash-up clearly fall within this.

Response to submissions on an ‘unlimited’ wash-up

- 4.86 Incentives to invest under s 162(a), incentives to improve efficiency under s 162(b), and limits on excess profitability under s 162(d) have informed our judgement on this specific decision.
- 4.87 We also consider workable competition relevant, as the availability of the wash-up mechanism allows Chorus freedom to price below cost in the short term while still recovering revenue from end-users in the long term in a manner that may harm competition.
- 4.88 We consider this decision best promotes the purpose of Part 6 per s 166(2)(a) relative to the realistic alternatives we have identified because it enables our over-all approach to the wash-up, with all factors (both those that cause actual ‘allowable revenue’ and those that cause actual ‘total FFLAS revenue’ to differ from forecasts) accounted for.

¹⁵⁷ Commerce Commission “Amended notice of intention: (Amending the Notice of Intention dated 19 August 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments)” (23 September 2021), para 14. Our original notice of intention relevant to this matter was dated 29 April 2021 and published on 30 April 2021 - see Commerce Commission “Notice of Intention: Proposal to Make Potential Amendments to the Input Methodologies for Fibre – potential August 2021 amendments” (29 April 2021), para 5a. We amended this notice on 19 August 2021 – see Commerce Commission “Amended Notice of Intention: (Amending the Notice of Intention dated 29 April 2021 – Proposed Amendments to the Input Methodologies for Fibre – potential August 2021 amendments)” (19 August 2021), para 7a.

- 4.89 To best promote incentives to invest, Chorus requires a reasonable expectation that it will be able to earn a normal return (via the eventual wash-up draw down), factoring in things such as un-forecast 'individual capex' or lower than expected inflation (which depresses forecast 'allowable revenue').
- 4.90 On the end-user side, we must ensure that Chorus does not benefit from wind-fall gains based on factors beyond its control (such as lower than forecast demand for connection capex) creating excess profits.
- 4.91 Finally, we need to ensure that things Chorus can control (such as the efficiency of its real opex or the efficient timing of its capex) are not washed-up for, preserving its incentives to improve efficiency.
- 4.92 We consider that this approach to the wash-up mechanism addresses all three of these objectives.
- 4.93 We consider this decision best promotes workable competition under s 166(2)(b) of the Act relative to the realistic alternatives we have identified because, in terms of promoting workable competition, we are concerned that the wide scope of this wash-up – specifically the inclusion of unlimited accounting for undercharging – could in some circumstances harm workable competition from fixed wireless access (FWA) providers in access markets.
- 4.94 However, as noted above in relation to an undercharging limit, we have reason to consider that Chorus' cashflow incentives are stronger at this point in time.
- 4.95 We consider this approach the least-complex and most transparent way of implementing the wash-up. This should reduce compliance cost and the risk of unintended outcomes.
- 4.96 Since our draft decision we have reconsidered the risk of Chorus undercharging and reconsidered the setting we proposed which does not limit wash-up accruals based on undercharging. Under this setting, even though Chorus has the ability to manipulate prices in the way described by RSP submissions and recover revenue through the wash-up, we consider this risk highly unlikely during PQP1. The short-term cashflow incentives Chorus faces (and has cited in its proposed approach to alternative depreciation) act counter to the risk of under-charging.
- 4.97 We also consider that adding additional constraints (like the "limit on voluntary under-recovery" applied to EDBs) increases regulatory complexity.
- 4.98 In the future (from PQP3 onward) we will be able to change this and declare a reset date, subject to a PQ review under s 209.

Chapter 5 Fibre IM amendments to enable decisions on first PQ path and ID

Purpose of this chapter

5.1 This chapter sets out the final decisions on the IM amendments to implement decisions on the first PQ path and ID requirements. This chapter also explains the reasons for those decisions. It is structured as follows:

5.1.1 Summary of our final fibre IM amendment decisions;

5.1.2 Context for our fibre IM amendments; and

5.1.3 Our reasons for our final IM amendment decisions.

Our final fibre IM amendment decisions: first PQ path and ID requirements

5.2 We summarise our final IM amendments for the first PQ path and the ID requirements in Table 5.1.

Table 5.1 Final IM amendment decisions: first PQ path and ID requirements

Issue	Final decision
Asset valuation fibre IM	To add specific formulae for the calculation of the revaluation rate for the part of disclosure year 2022 following the implementation date for Enable, Tuatahi and Northpower.
Taxation fibre IM	To proportionately adjust the cost of debt to reflect that the notional deductible interest is calculated for the same period. This is a transitional adjustment, only needed for disclosure year 2022.
Cost of capital fibre IM	To change the timing of our annual WACC determinations for disclosure year 2022 for LFCs other than Chorus (the other LFCs) to require our determinations within "1 month of the implementation date", rather than within "1 month of the start of the disclosure year in question".
Quality dimensions fibre IM	To refine the drafting for the definitions of "downtime", "planned downtime" and "unplanned downtime", - we have decided to change the definition of "downtime" to "for a connection, the sum of planned downtime and unplanned downtime with respect to [ID FFLAS]/[PQ FFLAS]"; and - we have decided to change the definitions of "planned downtime" and "unplanned downtime" which referred in the May 2021 draft decisions to "...to its [ID FFLAS]/[PQ FFLAS]", to instead refer to "...to [ID FFLAS]/[PQ FFLAS] for that connection".

Context for our fibre IM amendments

5.3 The amendments contained in this chapter relate to chapters from the October 2020 fibre IM final reasons paper:

- 5.3.1 the amendment to the asset valuation fibre IM corresponds to Chapter 3 of the October 2020 fibre IM final reasons paper;¹⁵⁸
- 5.3.2 the amendment to the taxation fibre IM corresponds to Chapter 8 of the October 2020 fibre IM final reasons paper;¹⁵⁹
- 5.3.3 the amendment to the cost of capital fibre IM corresponds to Chapter 6 of the October 2020 fibre IM final reasons paper;¹⁶⁰ and
- 5.3.4 the amendment to the quality dimensions fibre IM corresponds to Chapter 5 of the October 2020 fibre IM final reasons paper.¹⁶¹

Our final fibre IM amendment decisions

- 5.4 In order to implement decisions that we will make for our ID requirements, we have amended a number of the fibre IMs for disclosure year 2022 for the LFCs. These consist of:
 - 5.4.1 an amendment to the asset valuation fibre IM to amend the definition of "revaluation rate";
 - 5.4.2 an amendment to the taxation fibre IM to amend the definition of "notional deductible interest"; and
 - 5.4.3 an amendment to the cost of capital fibre IM to change the timing of our WACC determinations.
- 5.5 In order to implement decisions that we have made in respect of quality for our first PQ path and ID requirements, we have amended the definition of "downtime" in the quality dimensions fibre IM.

Amendment to the asset valuation fibre IM

Current fibre IM requirements

- 5.6 The current fibre IM requirements set out a standard method for calculation of the revaluation rate for a disclosure year in clause 2.2.11(4).

¹⁵⁸ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), Chapter 3.

¹⁵⁹ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), Chapter 8.

¹⁶⁰ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), Chapter 6.

¹⁶¹ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), Chapter 5.

- 5.7 This definition assumes that a disclosure year for a regulated provider subject to this clause starts and ends on consistent dates from the commencement of ID and that the length of the disclosure year will always be 12 months.

Draft decision and our reasons

- 5.8 Our draft IM amendment decision was published in our May 2021 draft decisions.¹⁶²

- 5.9 The initial ID reporting period for “disclosure year 2022” will have different lengths depending on the regulated provider’s disclosure year end date as, based on our decisions, Enable, Northpower and Tuatahi’s first “disclosure year” under the new ID requirements will commence several months before we make our ID determination:

5.9.1 while “Disclosure year 2022” would commence on 1 July 2021 for Enable we would only require reporting for the period that commences on 1 January 2022 and ends on 30 June 2022; and

5.9.2 while “Disclosure year 2022” would commence on 1 April 2021 for Northpower and Tuatahi, we would only require reporting for the period that commences on 1 January 2022 and ends on 31 March 2022.

- 5.10 The requirements for the LFCs to revalue their RABs only apply from 1 January 2022, and the initial disclosure period will be shorter than a year. Therefore, we added specific formulae for the calculation of the revaluation rate for that part of the “disclosure year 2022” following the implementation date for Enable, Tuatahi and Northpower. These changes ensure that the revaluation rate for disclosure year 2022 is correctly calculated, given that the disclosure years for these regulated providers end on different dates.

- 5.11 The changes to the fibre IM, taking into account Northpower's change of balance date to 31 March, add the following calculations in clauses 2.2.11(5) and (6) for disclosure year 2022:

‘Revaluation rate’ means, for Northpower and Tuatahi, in respect of **disclosure year 2022**, the amount determined in accordance with the formula-

$$\left(\frac{CPI_t}{CPI_{t-1}} \right) - 1$$

where-

CPI_t means **CPI** for the quarter that coincides with 31 March 2022; and

CPI_{t-1} means **CPI** for the quarter that coincides with 31 December 2021.

¹⁶² Commerce Commission "Proposed Amendments to Fibre Input Methodologies draft decisions - Reasons paper" (27 May 2021), paragraphs 4.5 to 4.11.

'Revaluation rate' means, for Enable, in respect of **disclosure year 2022**, the amount determined in accordance with the formula-

$$\left(\frac{CPI_t}{CPI_{t-1}} \right) - 1$$

where-

CPI_t means **CPI** for the quarter that coincides with 30 June 2022; and

CPI_{t-1} means **CPI** for the quarter that coincides with 31 December 2021.

- 5.12 The above specific revaluation rate formulae for disclosure year 2022 recognise that the length of the reporting period in this first disclosure period will vary by regulated provider, depending on the regulated provider's disclosure year end date.
- 5.13 Correcting these formulas for the revaluation rate would reduce the risk of under- or over-statement of the RAB value, which is more consistent with Chorus' and other LFC's incentives to innovate and invest (s 162(a)) and with limiting their ability to extract excessive profits (s 162(d)).

Interested persons' views on our proposed changes

- 5.14 Enable and Tuatahi submitted in support of our draft decision to amend the asset valuation fibre IM revaluation rate.¹⁶³
- 5.15 Chorus submitted that our draft amendments were reasonable.¹⁶⁴

Final decision

- 5.16 As Northpower advised us of a change to its balance date (it is now on a 31 March year-end), we have refined our draft decision in our final decision so that revaluations for Northpower for disclosure year 2022 are determined using the same calculation as Tuatahi, another LFC on a 31 March year-end.
- 5.17 The rest of our final decision is unchanged from our draft decision to correct the formulae for the revaluation rate for disclosure year 2022.

¹⁶³ Enable and Tuatahi "Submission on PQID - IM amendments draft decisions" (8 July 2021), paragraph 3.1(a).

¹⁶⁴ Chorus "Submission on Fibre PQID - IM amendments draft decisions" (8 July 2021), page 1.

5.18 In making these fibre IM amendments we have applied the IM amendment decision-making framework in Chapter 2 and we consider they meet the IM amendment framework outcomes by best giving effect to the s 162 purposes more effectively than the current IM for the reasons set out in paragraph 5.13. These amendments also promote the IM purpose in s 174 more effectively than the current fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6 about the treatment of revaluations for disclosure year 2022 for the other LFCs.

Amendment to the taxation fibre IM

Current fibre IM requirements

5.19 In the current fibre IM requirements, the notional deductible interest calculation specified at clause 2.3.1(7) produces the value for a full 12-month disclosure year.

Draft decision and our reasons

5.20 Our draft IM amendment decision was published in our May 2021 draft decisions.

5.21 Our draft decision was to add the following provisions in clause 2.3.1(8) and (9) of the fibre IMs to implement the proportionate adjustment for the cost of debt for disclosure year 2022:

(8) In respect of Northpower and Tuatahi for disclosure year 2022, 'notional deductible interest' means the value determined in accordance with the following formula:

$$\left(\text{sum of all opening RAB values} - \text{Crown financing outstanding} \right) \times \text{leverage} \times \left(\frac{\text{cost of debt}}{4} \right)$$

where:

Crown financing outstanding is the amount of **Crown financing** outstanding as of the **implementation date**.

(9) In respect of Enable for disclosure year 2022, 'notional deductible interest' means the value determined in accordance with the following formula:

$$\left(\text{sum of all opening RAB values} - \text{Crown financing outstanding} \right) \times \text{leverage} \times \left(\frac{\text{cost of debt}}{2} \right)$$

where:

Crown financing outstanding is the amount of **Crown financing** outstanding as of the **implementation date**.

- 5.22 Similar to the correction of the revaluation rate, by correcting these formulae for notional deductible interest for the different reporting periods in disclosure year 2022, we would give effect to s 162(a) and s 162(d) more effectively than the current fibre IM.
- 5.23 The current fibre IM requirement for disclosure year ends would mean that Northpower and Tuatahi (31 March) and Enable (30 June) would be initially disclosing results in the 2022 disclosure year for reporting periods of three months and six months respectively. A proportionate adjustment to the cost of debt was therefore required to reflect that the notional deductible interest is calculated for the same period. This is a transitional adjustment, only needed for disclosure year 2022.

Interested persons' views on our proposed changes

- 5.24 Enable and Tuatahi submitted in support of our draft decision to amend the taxation fibre IM regarding notional deductible interest.¹⁶⁵
- 5.25 Chorus submitted it has "no objection" to the proposed amendment.¹⁶⁶

Final decision

- 5.26 As Northpower advised us of a change to its balance date (it is now on a 31 March year-end), we have refined our draft decision in our final decision so that notional deductible interest for Northpower for disclosure year 2022 is determined using the same calculation as Tuatahi, another LFC on a 31 March year-end.
- 5.27 The rest of our final decision is unchanged from our draft decision (set out at paragraph 5.21 above) to proportionately adjust the cost of debt to reflect that the notional deductible interest is calculated for the same period. This is a transitional adjustment, only needed for disclosure year 2022.
- 5.28 In making these fibre IM amendments we have applied the IM amendment decision-making framework in Chapter 2, and we consider they meet the IM amendment framework outcomes by best giving effect to the s 162 purposes more effectively than the current IM for the reasons set out in paragraph 5.22. These amendments also promote the IM purpose in s 174 more effectively than the current fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6 about the treatment of notional deductible interest for disclosure year 2022 for the other LFCs.

¹⁶⁵ Enable and Tuatahi "Submission on PQID - IM amendments draft decisions" (8 July 2021), paragraph 3.1(b).

¹⁶⁶ Chorus "Submission on Fibre PQID - IM amendments draft decisions" (8 July 2021), paragraph 6.

Amendment to the cost of capital fibre IM

Current fibre IM requirements

5.29 The current fibre IM requirements require us to determine annual vanilla WACC and post-tax WACC determinations and inputs to those determinations “within 1 month of the start of the disclosure year in question”.

Draft decision and our reasons

5.30 Our draft IM amendment decision was published in our May 2021 draft decisions.

5.31 As a result of our draft ID decision to specify 30 June as the disclosure year end for Enable, and 31 March for Northpower and Tuatahi, it is not possible for us to determine our annual WACC determinations for these LFCs until after we have made our final ID determination.¹⁶⁷ This is because the start of the disclosure year in question will not be known until after we have made our final decision on the applicable regulatory disclosure year ends to use for these regulated providers under ID.

5.32 We proposed changing the timing of our annual WACC determinations for disclosure year 2022 for LFCs other than Chorus (**the other LFCs**) to require our determinations within "1 month of the implementation date", rather than within "1 month of the start of the disclosure year in question".¹⁶⁸ This change would:

5.32.1 allow interested persons to assess the WACCs that apply for the disclosure year 2022 shortly after we make our final ID determination; and

5.32.2 align the annual WACC determination for the other LFCs with Chorus for disclosure year 2022, thus enabling interested persons to assess Chorus' annual WACC for disclosure year 2022 at the same time as the other LFCs.¹⁶⁹

5.33 Specifying the date for our annual WACC determinations for disclosure year 2022 for the other LFCs promotes certainty, consistent with s 174, as the current fibre IM requirement are not specific about when we would determine our annual WACC determinations for disclosure year 2022 for the other LFCs.

¹⁶⁷ Chorus has a draft disclosure year end of 31 December.

¹⁶⁸ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (27 May 2021), clauses 2.4.1(1)(b)-(c), 2.4.1(2)(b)-(c), 2.4.3(1)(a)-(c), 2.4.4(1)(a)-(c) and 2.4.5(1)(a)-(c) of Attachment B.

¹⁶⁹ *Fibre input methodologies determination 2020* [2020] NZCC 21, clauses 2.4.1(1)(b), 2.4.1(2)(b), 2.4.3(1)(b), 2.4.5(1)(b).

5.34 We note that the current fibre IM requirement will continue to apply for disclosure year 2023 onwards for all LFCs. Therefore, as a result of our draft decision from Fibre Information Disclosures: Draft Reasons Paper,¹⁷⁰ we will need to determine annual WACCs for:¹⁷¹

5.34.1 Enable by 31 July for disclosure year 2023 onwards;

5.34.2 Northpower and Tuatahi by 30 April for disclosure year 2023 onwards; and

5.34.3 Chorus by 31 January for disclosure year 2023 onwards.

Interested persons' views on our proposed changes

5.35 Enable and Tuatahi submitted in support of our draft decision to amend the cost of capital fibre IM for the "timing of annual WACC determinations for disclosure year 2022".¹⁷²

5.36 Chorus submitted in support of our draft decision, agreeing that it was necessary due to the differing disclosure year dates for LFCs.¹⁷³

Final decision

5.37 Our final decision is to change the timing of our annual WACC determinations for disclosure year 2022 for the other LFCs, to require our WACC determinations within "1 month of the implementation date", rather than within "1 month of the start of the disclosure year in question".

5.38 In making these fibre IM amendments we have applied the IM amendment decision-making framework in Chapter 2 and we consider they meet the IM amendment framework outcomes. In particular, they promote the fibre IM purpose in s 174 more effectively than the current fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.

5.39 We consider these amendments will promote certainty, consistent with s 174, by providing clarity about when we will determine our annual WACC determinations for disclosure year 2022 for the other LFCs.

¹⁷⁰ Commerce Commission "Fibre Information Disclosures - Draft decisions – Reasons Paper (27 May 2021).

¹⁷¹ *Fibre input methodologies determination 2020* [2020] NZCC 21, clauses 2.4.1(1)(b), 2.4.1(2)(b), 2.4.3(1)(b), 2.4.5(1)(b).

¹⁷² Enable and Tuatahi "Submission on PQID - IM amendments draft decisions" (8 July 2021), paragraph 3.1(c).

¹⁷³ Chorus "Submission on Fibre PQID - IM amendments draft decisions" (8 July 2021), paragraph 20.

Amendment to the quality dimensions fibre IM

Current fibre IM requirements

5.40 The current fibre IM requirements specify “downtime” in relation to the length of time an access seeker or end-user experienced a planned or unplanned outage. This means that the calculation of average downtime would also be in relation to planned and unplanned outages.¹⁷⁴

Draft decision and our reasons

5.41 Our draft IM amendment decision was published in our May 2021 draft decisions.

5.42 In our draft IM amendment paper, we stated that if not specified appropriately, availability performance measures could lead to perverse incentives. For example, where a regulated provider upgrading its network requires planned outages that benefit access seekers, including planned outages in the availability performance measure would detrimentally affect its reported availability performance.

5.43 We therefore proposed removing planned outages from the calculations of "average downtime" and have reporting for downtime differentiated by "planned downtime" and "unplanned downtime". A calculation of "average unplanned downtime" replaces the calculation of average downtime.

5.44 We therefore:

5.44.1 Changed the references to "planned outage" and "unplanned outage" to "planned downtime" and "unplanned downtime" in the "downtime" definition; and

5.44.2 Added new definitions for "planned downtime" and "unplanned downtime".

5.45 This means we can define a measurement for "average unplanned downtime" that would promote s 162(b) more effectively than the current fibre IM.

5.46 In addition, we changed the reference to "access seeker or end-user" in the definition of "downtime", from "access seeker or end-user" to "connection". We also included a definition of "connection", and a consequential definition for 'UNI' (ie, user-network interface).

¹⁷⁴ *Fibre input methodologies determination 2020* [2020] NZCC 21, clause 1.1.4(2), definition of “downtime”.

- 5.47 This change is to allow our proposed ID and PQ measures of availability to be implemented in a way that avoids ambiguity and the possibility of double counting, consistent with s 162(b) and s 174, because for many regulated fibre fixed line access services both an access seeker and an end-user would both be experiencing the same fault.

Interested persons' views on our proposed changes

- 5.48 Chorus submitted in support of our draft decision to remove planned outages from the calculations of "average downtime" and replace it with a calculation of "average unplanned downtime".¹⁷⁵

Final decision

- 5.49 Our final decision is to refine the drafting for the definitions of "downtime", "planned downtime" and "unplanned downtime". The drafting is slightly different from what we proposed in our May 2021 draft decisions:
- 5.49.1 we have decided to change the definition of "downtime" to "for a connection, the sum of **planned downtime** and **unplanned downtime** with respect to [ID FFLAS]/[PQ FFLAS]"; and
- 5.49.2 we have decided to change the definitions of "planned downtime" and "unplanned downtime" which referred in the May 2021 draft decisions to "...to its [ID FFLAS]/[PQ FFLAS]", to instead refer to "...to [ID FFLAS]/[PQ FFLAS] for that connection".
- 5.50 In making these fibre IM amendments we have applied the IM amendment decision-making framework in Chapter 2 and we consider they meet the IM amendment framework outcomes. In particular, they promote the IM purpose in s 174 more effectively than the current fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 5.51 We consider these amendments will promote certainty, consistent with s 174, by allowing for a more accurate measure of performance when recording downtime.

¹⁷⁵ Chorus "Amendments to the Input Methodologies for Fibre - November 2021 amendments" (24 June 2021), page 14.

Chapter 6 Fibre IM amendments to clarify, improve workability and correct errors

Purpose of this chapter

6.1 This chapter sets out the final decisions on the IM amendments to clarify, improve workability and correct technical errors. This chapter also explains the reasons for those decisions. It is structured as follows:

- 6.1.1 Summary of our final fibre IM amendments;
- 6.1.2 Context for our fibre IM amendments; and
- 6.1.3 Our reasons for our final fibre IM amendment decisions.

Summary of our final fibre IM amendment decisions: clarification, workability and error correction

6.2 We summarise our final fibre IM amendments for clarification, workability and error correction in Table 6.1.

Table 6.1 Final IM amendments: clarification, workability and error correction

Issue	Decision
Specification of price and revenues fibre IM (clarification)	Redefine "maximum revenues" in the specification of price and revenues fibre IM on the basis of "forecast total FFLAS revenue" and "forecast allowable revenue". The term "forecast allowable revenue" is now defined by reference to forecast "building blocks revenue" and forecast "pass-through costs". Change the references in the reconsideration of a price-quality path fibre IM of "total FFLAS revenue" and "allowable revenue" to "forecast total FFLAS revenue" and "forecast allowable revenue".
Other allocator types to be applied by the Commission in determining the FLA	Amend clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of the fibre IM determination to clarify that we may apply any other allocator type as determined by us when allocating operating costs/asset values that are not directly attributable to UFB FFLAS, provided that: (A) the circumstance has a relevant causal relationship or the ratio has a proxy [asset/cost] allocator, as applicable; and (B) the decision is consistent with s 166(2) of the Act.
How the asset valuation fibre IM for ID is used to determine asset valuation inputs for Chorus' maximum revenues for PQP1 (clarification)	Clarify that the forecast values determined by applying the asset valuation fibre IM for ID (as specified in Subpart 2 of Part 2 of the fibre IMs) for the "PQ RAB" are determined, in part, as follows: (A) the unallocated value of a core fibre asset adopted in accordance with clause 3.3.1(8)(a)-(c) of the fibre IMs is treated as if it is a "unallocated closing RAB value" for the purposes of: a. forecasting the value of that asset for each regulatory year of PQP1; and b. allocating a forecast "asset value" to regulated FFLAS under clause 2.2.5(4); and

	<p>(B) the “opening RAB value” of the FLA adopted in accordance with clause 3.3.1(9) is treated as if it is the “initial RAB value” for disclosure year 2022 for the purposes of forecasting the value of that asset for each regulatory year of PQP1 under clause 2.2.6.</p>
<p>Treatment of negative, positive or nil values for the calculation of price-quality path forecast values for the FLA (clarification)</p>	<p>New clause B1.1.5(1)(e) in Schedule B to clarify what happens when the resulting calculation to determine the “opening RAB value” is negative, positive or nil.</p> <p>Where the sum of the adopted values is:</p> <p>(i) negative, the “opening RAB value” of the FLA for a regulated provider will be determined by the Commission to be the absolute value of the financial losses; and</p> <p>(ii) positive or nil, the “opening RAB value” of the FLA for a regulated provider will be determined by the Commission to be nil.</p>
<p>Workability of the asset valuation fibre IM requirements in respect of the cost allocation process used to determine the "opening RAB value" of fibre assets at implementation date in Chorus' transitional initial PQ RAB (clarifications)</p>	<p>Clarify that the adopted historic values (and forecast values applied) to determine the “opening RAB value” of core fibre assets at implementation date in Chorus’ transitional initial PQ RAB are allocated in accordance with the cost allocation fibre IM for price-quality paths (clause 3.2.1) by:</p> <p>(a) specifying in clause 3.3.1(7)(a) that the “opening RAB values” of core fibre assets for the PQ RAB as of the implementation date are adopted in accordance with clause 3.3.1(8).</p> <p>(b) specifying in clause 3.3.1(7)(b) that the “opening RAB value” of the FLA for the PQ RAB as of the implementation date is adopted in accordance with a new clause 3.3.1(9).</p> <p>(c) refining clause 3.3.1(8) so that all adopted historic values (and forecast values applied) are explicitly “treated as asset values” and allocated to “PQ FFLAS” as of the implementation date in accordance with clause 3.2.1, and the resulting values are considered “estimates”.</p> <p>(d) specifying in clause 3.3.1(8)(d) that clause 3.2.1 is used to allocate the estimated values of adopted historic values (and forecast values applied) to PQ FFLAS.</p> <p>(e) removing clause 2.2.3(2)(b)(ii), as this subclause is now redundant.</p> <p>(f) clarifying, consistent with clause 2.1.1(7), that the adopted “opening RAB value” of the FLA for Chorus’ transitional initial PQ RAB is treated as being directly attributable to PQ FFLAS:</p> <p>(i) move the current clauses which specified how to adopt values contributing to the “opening RAB value” of the FLA to new clause 3.3.1(9);</p> <p>(ii) specify in clause B1.1.5(1)(c)-(d) of Schedule B that only unallocated adopted values (and forecast values applied) under the new clause 3.3.1(9)(a)-(b) must be consistent with equivalent values adopted under clauses B1.1.2(2)-(9) of Schedule B; and</p> <p>(iii) specify that the value resulting from the determination under clause B1.1.5(1) of Schedule B is treated as an "asset value" and as being directly attributable to PQ FFLAS.</p> <p>(g) removing reference to "estimates" in clause 3.5.7(2)(c)-(d) and 3.5.10(1)(d)(i)-(ii) of the cost of capital fibre IM.</p> <p>(h) updating the cross-references in 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of the cost of capital fibre IM to:</p> <p>(i) refer to the updated provisions in clauses 3.3.1(8)(a) and (d) and 3.3.1(9)(d), as applicable; and</p> <p>(ii) refer to clause 3.3.1(8)(c) and the new clause 3.3.1(9)(c).</p> <p>Correction of an error in clause 3.3.1(7) to clarify that unallocated values are being adopted. Replace "opening RAB value" in clause 3.3.1(7)(c)(i)(A) with the unallocated value. Also clarify that it is adopted in accordance with subclause (8)(a)-(c).</p>

Correct clause 3.2.1(4) of the cost allocation fibre IM for PQ paths (error correction)	Amend clause 3.2.1(4) of the cost allocation fibre IM to use the term "closing RAB value" in place of "asset value", and to specify that, subject to certain exceptions, "any 'closing RAB value' must be determined by applying, in respect of an asset value...asset allocators...or proxy asset allocators... ".
Correct technical errors in the asset valuation fibre IM (error correction)	Amend the asset valuation fibre IM to replace "commissioned" in clause 2.2.13(6)(b) with "commissioned for FFLAS".
Correct formulae for "revenue date compounding factor" (error correction)	Amend clause B1.1.2(7)(b) of Schedule B of the fibre IMs to include fixed values.
Correct formulae for the present value benefit of Crown financing (error correction)	Amend the formulae in clauses B1.1.2(5)-(6) of Schedule B of the fibre IMs to correct an error that prevents the fibre IM from achieving the original intent of the fibre IM. The correction includes removing the tax term "(1-Tc)" consistent with the tax losses amendment in Chapter 3.
Correct errors in formulae for "UFB cost allocation adjustment cash flow" (error correction)	Amend clause B1.1.2(4) of Schedule B to specify both the "closing cost allocator value" and the "opening cost allocator value" in respect of an asset class as defined in Schedule A of the fibre IMs.
Correct cost allocation fibre IM provisions that specify requirements for operating costs and asset values not directly attributable to regulated FFLAS and UFB FFLAS (error correction)	Amend the cost allocation fibre IMs so that asset allocators and cost allocators must be used to: <ul style="list-style-type: none"> (a) allocate applicable asset values and operating costs to "services that are not regulated FFLAS" where those asset values and operating costs are not directly attributable to "regulated FFLAS"; and (b) proportionally allocate applicable asset values and operating costs between "regulated FFLAS" and "services that are not regulated FFLAS" where those asset values and operating costs are not directly attributable to "regulated FFLAS"; (c) allocate applicable asset values and operating costs to "services that are not UFB FFLAS" where those asset values and operating costs are not directly attributable to "UFB FFLAS"; and (d) proportionally allocate applicable asset values and operating costs between "UFB FFLAS" and "services that are not UFB FFLAS" where those asset values and operating costs are not directly attributable to "UFB FFLAS".

Context for our fibre IM amendments

6.3 The amendments contained in this Chapter 6 relate to the following chapters from the October 2020 fibre IM final reasons paper and the November 2020 fibre IM financial loss asset reasons paper:

- 6.3.1 the three amendments to the asset valuation fibre IM in this chapter correspond to Chapter 3 of the October 2020 fibre IM final reasons paper;¹⁷⁶
- 6.3.2 the two amendments to the cost allocation fibre IM in this chapter correspond to Chapter 4 of the October 2020 fibre IM final reasons paper;¹⁷⁷
- 6.3.3 the remaining five amendments correspond to the November 2020 fibre IM financial loss asset reasons paper.¹⁷⁸

Our final fibre IM amendment decisions

- 6.4 In order to clarify, improve workability and correct technical errors, we are making the following amendments:
 - 6.4.1 amendments to the Specification of Price and Revenue fibre IM to clarify the definitions of:
 - 6.4.1.1 “total FFLAS revenue”;
 - 6.4.1.2 “allowable revenue”;
 - 6.4.1.3 “pass-through costs”; and
 - 6.4.1.4 “building blocks revenue”;
 - 6.4.2 amendment for other allocator types to be applied by the Commission in determining the FLA;
 - 6.4.3 amendments to clarify how certain asset valuation fibre IMs for ID are used to determine asset valuation inputs for Chorus’ maximum revenues for PQP1;
 - 6.4.4 amendments to clarify the treatment of negative, positive or nil values for the calculation of price-quality path forecast values for the FLA;
 - 6.4.5 amendments to improve the workability of asset valuation fibre IM requirements in respect of the cost allocation process used to determine the “opening RAB value” of fibre assets at implementation date in Chorus’ transitional initial PQ RAB;

¹⁷⁶ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), chapter 3.

¹⁷⁷ Commerce Commission “[Fibre input methodologies: Main final decisions – reasons paper](#)” (13 October 2020), chapter 4.

¹⁷⁸ Commerce Commission “[Fibre input methodologies – Financial loss asset – reasons paper](#)” (3 November 2020).

- 6.4.6 amendment to correct an error in clause 3.2.1(4) of the cost allocation fibre IM for price-quality paths;
- 6.4.7 amendments to correct technical errors with the asset valuation fibre IM;
- 6.4.8 amendments to correct errors in formulae for "revenue date compounding factor";
- 6.4.9 amendment to correct errors in formulae for the present value benefit of Crown financing;
- 6.4.10 amendment to correct errors in formulae for "UFB cost allocation adjustment cash flow"; and
- 6.4.11 amendments to correct errors in cost allocation fibre IM provisions that specify requirements for operating costs and asset values that are not directly attributable to regulated FFLAS and UFB FFLAS.

Amendments for clarity: specification of price and revenues fibre IM

Current fibre IM requirements

- 6.5 The current specification of price and revenues fibre IM states that "maximum revenues" for the purposes of s 194(2)(b) and s 195 are specified in terms of total FFLAS revenue not exceeding allowable revenue.¹⁷⁹

Draft decision and our reasons

- 6.6 Our draft IM amendment decision was published in our May 2021 draft decisions.¹⁸⁰ We proposed redefining "maximum revenues" on the basis of "forecast total FFLAS revenue" and "forecast allowable revenue". The term "forecast allowable revenue" will now be defined by reference to forecast building blocks revenue and forecast pass-through costs.
- 6.7 We proposed this change because our proposed approach to the revenue path in the PQ determination assesses compliance on a forecast basis. This amendment would clarify that compliance is not required to be demonstrated on the basis of actual allowable revenues or total FFLAS revenues.¹⁸¹ We consider that this change enhances certainty, consistent with s 174.

¹⁷⁹ *Fibre input methodologies determination 2020* [2020] NZCC 21, clause 3.1.1.

¹⁸⁰ Commerce Commission "Proposed Amendments to Fibre Input Methodologies draft decisions - Reasons paper" (27 May 2021), paragraphs 5.5 to 5.9.

¹⁸¹ The difference between forecast allowable revenues and total FFLAS revenues and actual allowable revenues and total FFLAS revenues are accounted for by the proposed wash-up mechanism discussed in Chapter 3.

- 6.8 As a consequence of this change, we also proposed changing the references to "total FFLAS revenue" and "allowable revenue" to "forecast total FFLAS revenue" and "forecast allowable revenue" in the reconsideration of a price-quality path fibre IM.¹⁸²

Interested persons' views on our proposed changes

- 6.9 Chorus submitted in favour of our draft decision.
- 6.10 Chorus also proposed changes to clause 3.1.1(2) of the specification of price and revenues fibre IM. However, we do not agree with Chorus' proposal to require forecast pass-through costs to be the forecast made each year by the regulated provider. While we have proposed this approach in our draft PQP1 decision, this approach may not be the best one to take in all future regulatory periods. For example, it may be necessary to specify forecast pass-through costs in advance of a regulatory period to limit revenue volatility, if in future periods they are a more significant proportion of forecast allowable revenue.

Final decision

- 6.11 Our final decision is to:
- 6.11.1 redefine "maximum revenues" in the specification of price and revenues fibre IM on the basis of "forecast total FFLAS revenue" and "forecast allowable revenue". The term "forecast allowable revenue" is now defined by reference to forecast "building blocks revenue" and forecast "pass-through costs"; and
- 6.11.2 change the references in the reconsideration of a price-quality path fibre IM of "total FFLAS revenue" and "allowable revenue" to "forecast total FFLAS revenue" and "forecast allowable revenue".
- 6.12 In making these fibre IM amendments we have applied the fibre IM amendment decision-making framework in Chapter 2 and we consider they meet the IM amendment framework outcomes. In particular, they promote the IM purpose in s 174 more effectively than the current fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.13 We consider these amendments will promote certainty, consistent with s 174, by clarifying for the benefit of regulated providers that compliance is not required to be demonstrated on the basis of actual allowable revenues or total FFLAS revenues.

¹⁸² Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (27 May 2021), clauses 3.9.3(1)(c)(i), 3.9.4(1)(b), 3.9.5(1) of Attachment B.

Decisions where we have decided not to amend fibre IMs

- 6.14 Our decision is not to clarify the meaning of "income" as used in Schedule B of the fibre IMs. This was despite our NOI for November amendments, where we had indicated that we were considering amendments to clarify the meaning of "income" as used in Schedule B of the fibre IMs.¹⁸³ We did not receive any submissions on our draft decision not to clarify the meaning of "income" as used in Schedule B of the fibre IMs.
- 6.15 We have applied the IM amendment decision-making framework to this proposed fibre IM amendment to clarify the meaning of "income", and we have concluded that making the amendment would not meet the IM amendments framework outcomes. In particular, it would not promote the IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.

Amendment for other allocator types to be applied by the Commission in determining the FLA

Current fibre IM requirements

- 6.16 When determining the initial RAB value of the FLA, Schedule B of the fibre IMs specifies the "default" allocator types that can be used for the allocation of operating costs and asset values that were not directly attributable to UFB FFLAS.¹⁸⁴ In the context of the determination of the initial RAB value of the FLA, "an allocator type" is the basis for the attribution or allocation of an operating cost or asset value to UFB FFLAS and services that are not UFB FFLAS.¹⁸⁵ For example "Number of customers, end-users, or premises (intact, connected or passed)" is one of the nine default allocator types available to be applied for the allocation of operating costs and asset values that were not directly attributable to UFB FFLAS.¹⁸⁶
- 6.17 Clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of the fibre IMs currently provide that the allocator types available to be applied include "any other allocator type as approved by the Commission".

¹⁸³ Commerce Commission "Proposal to Make Proposed Amendments to the Input Methodologies for Fibre – potential November 2021 amendments" (30 April 2021), paragraph 7b.

¹⁸⁴ The list of default allocator types is set out in clauses B1.1.6(1)(c)(i)-(ix) (in respect of the allocation of operating costs) and B1.1.6(2)(d)(i)-(ix) (in respect of the allocation of asset values) of Schedule B of the fibre IMs.

¹⁸⁵ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, definition of "allocator type" in clause B1.1.1(2) of Schedule B.

¹⁸⁶ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, clause B1.1.6(1)(c)(i)-(ix) and clause B1.1.6(2)(d)(i)-(ix) of Schedule B.

Draft decision and our reasons

- 6.18 In our August draft fibre IM amendment paper,¹⁸⁷ we stated that the original policy intent was for us to be able to substitute our own allocator types when determining the initial RAB value of the FLA, rather than only being able to approve allocator types proposed to us by regulated providers.¹⁸⁸ To clarify our original policy intent, we proposed amending clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of the fibre IMs to read “any other allocator type as determined by the Commission”.¹⁸⁹
- 6.19 Under the proposed August 2021 amendments, we would be able to substitute an alternative allocator type of our own where we consider it appropriate to do so, provided:
- 6.19.1 there is a circumstance or ratio that is, among other things, “objectively justifiable and demonstrably reasonable”,¹⁹⁰ and
- 6.19.2 the decision is consistent with s 166(2).
- 6.20 We considered that this clarification of the fibre IMs was consistent with our original policy intent and better promoted the s 174 purpose than the current provisions, as it provided more certainty about the application of other allocator types.

Interested persons’ views on our proposed changes

- 6.21 In its submission on our August draft fibre IM amendment paper, Chorus opposed this proposed change and suggested that as, in its view, the current fibre IMs only allow us to approve allocators proposed by the regulated provider, we should retain the current text.¹⁹¹ In summary, Chorus submitted that:
- 6.21.1 the proposed change is significant (not a “clarification”), will reduce certainty and is not supported by the reasons described by us in our August draft fibre IM amendment paper;
- 6.21.2 the proposed change does not meet our fibre IM amendment framework threshold for fibre IM amendments outside of the 7-year review;

¹⁸⁷ Commerce Commission “Proposed Additional Amendments to Fibre Input Methodologies: draft decisions - Reasons paper (31 August 2021), para 3.37-3.39.

¹⁸⁸ Commerce Commission “Fibre input methodologies: Financial loss asset final decision – reasons paper (3 November 2020), para 3.239.3, 3.333, 3.343 and 3.346.

¹⁸⁹ [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of Attachment B.

¹⁹⁰ Refer to the definitions in the fibre IMs of “causal relationship”, “proxy asset allocator” and “proxy cost allocator”, which set out the requirement of “objectively justifiable and demonstrably reasonable”.

¹⁹¹ Chorus “Submission on initial PQ RAB and additional IM amendments draft decisions” (16 September 2021), [pages 28-29](#).

- 6.21.3 the current drafting is consistent with our proposed approach for alternative methodologies that allows us to accept alternative methodologies proposed by a regulated provider;
- 6.21.4 the proposed change will “obviate the certainty” provided by the list of allocators in clauses B1.1.6(1)(c) and B1.1.6(2)(d) of Schedule B for regulated providers, which would “no longer allow the regulated provider to reasonably estimate the effect of the methodology...[and]...accordingly be inconsistent with s 176 of the Act”; and
- 6.21.5 the current drafting should remain as it materially better achieves the purposes in sections 162 and 176.
- 6.22 In its submission on our August draft fibre IM amendment paper, Enable and Tuatahi supported our draft decision and suggested that it was consistent with our policy intent and would help to reduce complexity and uncertainty.¹⁹²

Our response to submissions

- 6.23 We disagree with Chorus, and consider that a clarification amendment is necessary to promote the fibre IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers and end-users that we can determine and use our own allocator types when allocating operating costs/asset values that are not directly attributable to UFB FFLAS.
- 6.24 While our original policy intent in our November 2020 fibre IM financial loss asset reasons paper was for us to be able to use our own other allocator types, we acknowledge that the specific drafting in the current fibre IMs, which uses the term “as approved by the Commission” is not certain.¹⁹³ In particular, on one interpretation it requires an allocator to be actively proposed to us for approval.

¹⁹² Enable and Tuatahi "Submission on NZCC Proposed Additional Amendments to Fibre Input Methodologies Draft Decisions Dated 31 August 2021" (16 September 2021), [para 5.1\(a\) and 5.2.](#)

¹⁹³ *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24 (3 November 2020), clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of Attachment B.

- 6.25 While we acknowledge that the specific drafting in the current fibre IMs is not certain, we disagree with Chorus' suggestion that the current fibre IMs only allow us to approve allocator types proposed by a regulated provider. If Chorus' interpretation was correct, where a default allocator type was not available or an "other allocator type" proposed by the regulated provider did not meet the applicable definitions for "causal relationship" or "proxy [asset]/[cost] allocator" in the fibre IMs, that regulated provider would need to continue proposing further "other allocator types" until it met the applicable definitions for "causal relationship" or "proxy [asset]/[cost] allocator" in the fibre IMs. We do not consider that this suggestion (and associated process) is reflected in our November 2020 fibre IM financial loss asset reasons paper.
- 6.26 Rather, our November 2020 fibre IM financial loss asset reasons paper indicates a different approach where:
- 6.26.1 we would make the final cost allocation decisions for the determination of the initial RAB value of the FLA, as explained in paragraph 3.239.3;¹⁹⁴
- 6.26.2 we could apply available alternative allocators that provide a materially better proxy for causality from default allocators, as explained in paragraph 3.343;¹⁹⁵ and
- 6.26.3 the use of alternative allocator's data in certain situations would allow the cost allocation for the FLA to be completed in a more timely and cost-efficient manner, as explained in paragraph 3.344.¹⁹⁶
- 6.27 We consider that Chorus' suggestion may not allow the cost allocation for the FLA to be completed in a timely and cost-efficient manner as a regulated provider would need to continue proposing further "other allocator types" until it met the applicable definitions for "causal relationship" or "proxy [asset]/[cost] allocator" in the fibre IMs.

¹⁹⁴ Commerce Commission "[Fibre input methodologies – Financial loss asset – reasons paper](#)" (3 November 2020), para 3.239.2.

¹⁹⁵ Commerce Commission "[Fibre input methodologies – Financial loss asset – reasons paper](#)" (3 November 2020), para 3.343.

¹⁹⁶ Commerce Commission "[Fibre input methodologies – Financial loss asset – reasons paper](#)" (3 November 2020), para 3.344.

- 6.28 Further, Chorus' suggestion could allow a regulated provider to not propose a further "other allocator type" for certain operating costs and asset values. If this happened, in the absence of a default allocator type being available, we would not be able to apply an allocator type for those operating costs and asset values. This would not be desirable as it could result in an under or overstatement of the initial RAB value of the FLA, contrary to s 162. An understatement of the initial RAB value of the FLA would not promote the outcome of regulated providers having incentives to invest (s 162(a)) and an overstatement of the initial RAB value of the FLA would not promote the outcome of regulated providers being limited in their ability to extract excessive profits (s 162(d)).
- 6.29 As Chorus and Enable/Tuatahi disagree about the application of the current fibre IM (Chorus suggested that it was certain and Enable/Tuatahi suggested that our proposed amendment reduces uncertainty), we consider that there is some ambiguity in our current fibre IM, which needs to be clarified so that the fibre IM can promote certainty, consistent with s 174.
- 6.30 Having considered Chorus' submission, we have decided to explicitly clarify that we can use any other allocator type when allocating operating costs/asset values that are not directly attributable to UFB FFLAS, provided that:
- 6.30.1 the circumstance has a relevant causal relationship or the ratio has a proxy [asset]/[cost] allocator, as applicable;¹⁹⁷ and
- 6.30.2 the decision is consistent with s 166(2) of the Act.
- 6.31 In our August draft fibre IM amendment paper we acknowledged that the proposed amendment would only allow us to substitute an alternative allocator type of our own in the circumstances specified in paragraph 6.19.¹⁹⁸ We have now decided to explicitly specify these circumstances in the fibre IMs.¹⁹⁹ We consider that doing so would provide more certainty than the current fibre IMs, consistent with s 174, about when we would use other allocator types when allocating operating costs/asset values that are not directly attributable to UFB FFLAS. As the current fibre IMs do not specify when we would use "other allocator types", we consider that providing more detail would promote more certainty for regulated providers, access seekers and end-users in relation to this requirement.

¹⁹⁷ *Fibre Input Methodologies Amendment Determination No.2 2021* [2021] NZCC 25, clause B1.1.1(2) of Schedule B specifies that a "causal relationship" is in respect of "a circumstance"

¹⁹⁸ Commerce Commission "Proposed Additional Amendments to Fibre Input Methodologies: draft decisions - Reasons paper (31 August 2021), para 3.38.

¹⁹⁹ *Fibre Input Methodologies Amendment Determination No.2 2021* [2021] NZCC 25, clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of Attachment B.

6.32 We consider that this amendment would also promote more certainty than the current fibre IM, consistent with s 174, by resolving the ambiguity referred to in paragraph 6.29. This amendment ensures that there is a timely process for allocating operating costs/asset values that are not directly attributable to UFB FFLAS. This is because our fibre IM amendment would allow us to apply our own "other allocator type" when:

6.32.1 a default allocator type is not appropriate; or

6.32.2 a proposed circumstance does not have a relevant causal relationship, or a proposed ratio does not have a proxy [asset]/[cost] allocator, as applicable, and the decision is not consistent with s 166(2) of the Act.

6.33 We would consult with interested persons on the use of an "other allocator type" before determining it.

Final decision

6.34 Our final decision is to amend clauses B1.1.6(1)(c)(x) and B1.1.6(2)(d)(x) of Schedule B of the fibre IM determination to clarify that we may apply any other allocator type as determined by us when allocating operating costs/asset values that are not directly attributable to UFB FFLAS, provided that:

6.34.1 the circumstance has a relevant causal relationship or the ratio has a proxy [asset/cost] allocator, as applicable; and

6.34.2 the decision is consistent with s 166(2) of the Act.

6.35 For a circumstance (or ratio) to have a "causal relationship" (or "proxy [asset]/[cost] allocator"), it must be "objectively justifiable and demonstrably reasonable".²⁰⁰ While we decided not to define "objectively justifiable and demonstrably reasonable" in the fibre IMs, when assessing whether a proposed cost or asset allocator meets this requirement, we are likely to consider the following factors:

6.35.1 whether the proposed allocation promotes the purpose of Part 6 and, where relevant, workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services;

6.35.2 whether the allocator type meets the definition of a proxy cost allocator or proxy asset allocator;²⁰¹

²⁰⁰ *Fibre Input Methodologies Amendment Determination No.2 2021* [2021] NZCC 25, clause B1.1.1(2) of Schedule B defines "causal relationship", "proxy asset allocator" and "proxy cost allocator".

²⁰¹ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, definition of "proxy asset allocator" and "proxy cost allocator" in clause 1.1.4(2) and clause B1.1.1(2) of Schedule B.

- 6.35.3 whether the allocation is being undertaken at a reasonable level of aggregation – whether costs or assets that have been grouped together have sufficiently similar characteristics to be treated in common;
- 6.35.4 the extent to which the underlying data used is robust; and
- 6.35.5 whether there is a readily available alternative allocator which better meets these criteria above, such that it would be unreasonable to prefer the proposed allocator.²⁰²
- 6.36 In making this clarification to the fibre IMs we have applied the fibre IM amendment decision-making framework in Chapter 2, and we consider it meets the fibre IM amendment framework outcomes. As explained at paragraphs 6.23-6.32, we consider that this amendment promotes the fibre IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.37 As we are only able to determine an "other allocator type" that is consistent with s 166(2) of the Act, we consider that our clarification best gives effect to the Part 6 purpose in s 162 of the Act and s 166(2)(b) more than the current fibre IM. This is because it was not explicit in the previous drafting that any "other allocator type" approved by us needed to be consistent with our mandatory decision-making requirements in s 166(2).
- 6.38 Our clarification also best gives effect to the Part 6 purpose in s 162 of the Act and s 166(2)(b) more than the current fibre IM by reducing the likelihood of an under or overstatement of the initial PQ RAB that could result if the fibre IM allowed a regulated provider to not propose a further other allocator type for certain operating costs and asset values. Therefore, our clarification avoids the undesirable outcome explained in paragraph 6.28.

²⁰² We note that we used these factors in our draft decisions on matters relating to Chorus' initial PQ RAB. See Commerce Commission "Chorus' initial regulatory asset base as at 1 January 2022 - Draft Decisions: Reasons Paper (19 August 2021), para 2.62.

Amendments to clarify how certain asset valuation fibre IMs for ID are used to determine asset valuation inputs for Chorus' maximum revenues for PQP1

Current fibre IM requirements

- 6.39 Under the current clause 3.3.1(7)(b), subject to certain exceptions,²⁰³ the "opening RAB value" of all fibre assets for the PQ RAB as of the implementation date, as adopted in accordance with clause 3.3.1(8), are applied as forecast values to determine asset values for each regulatory year of PQP1.²⁰⁴
- 6.40 Subject to certain exceptions,²⁰⁵ those forecast values are determined by applying the asset valuation fibre IM for ID (as specified in Subpart 2 of Part 2 of the fibre IMs) for the "PQ RAB".²⁰⁶

Draft decision and our reasons

- 6.41 Our draft IM amendment decision was published in our August 2021 draft decisions.²⁰⁷ We proposed clarifying that the forecast values determined by applying the asset valuation fibre IM for ID (as specified in Subpart 2 of Part 2 of the fibre IMs) for the "PQ RAB" are determined, in part, as follows:

6.41.1 the "opening RAB value" of a core fibre asset adopted in accordance with clause 3.3.1(8) is treated as if it is an "unallocated closing RAB value" for the purposes of:²⁰⁸

6.41.1.1 forecasting the value of that asset for each regulatory year of PQP1; and

6.41.1.2 allocating a forecast "asset value" to regulated FFLAS under clause 2.2.5(4); and

²⁰³ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses 3.3.1(7)(b), 3.3.1(3)-(5).

²⁰⁴ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(7)(b).

²⁰⁵ Under clause 3.3.1(7)(b)(ii) of the fibre IMs, "depreciation" and "revaluation" are determined in accordance with clauses 3.3.2-3.3.4 of the fibre IMs.

²⁰⁶ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(7)(b)(i).

²⁰⁷ Commerce Commission "Proposed Additional Amendments to Fibre Input Methodologies draft decision - reasons paper" (31 August 2021), para 3.76 to 3.79.

²⁰⁸ [Draft] *Fibre Input Methodologies Amendment Determination 2021* [2021] NZCC [XX] (31 August 2021), clause 3.3.1(7)(c)(i)(A) of Attachment B.

- 6.41.2 the “opening RAB value” of the FLA adopted in accordance with clause 3.3.1(9) is treated as if it is the “initial RAB value” for disclosure year 2022 for the purposes of forecasting the value of that asset for each regulatory year of PQP1 under clause 2.2.6.²⁰⁹
- 6.42 We proposed these changes to improve the workability of these provisions as the RAB roll forward provisions in clause 2.2.5-2.2.6 of the asset valuation fibre IM for ID use:
- 6.42.1 different terms to clause 3.3.1 to determine the unallocated (and allocated) values of core fibre assets “rolled forward” over time – the asset valuation fibre IM for ID applies the cost allocation fibre IM to the “unallocated closing RAB value” of a core fibre asset, rather than the “opening RAB value”,²¹⁰ and
- 6.42.2 different terms to clause 3.3.1 to determine the value of the FLA “rolled forward” over time – the asset valuation fibre IM for ID uses the term “initial RAB value” as the starting point for tracking the value of the FLA over time.²¹¹
- 6.43 We consider that these changes will enhance certainty more than the current provisions, consistent with s 174, about the forecasting process used to determine asset values for each regulatory year of PQP1.

Interested persons’ views on our proposed changes

- 6.44 Chorus submitted in favour of our draft decision, however it noted that:

“the proposed changes in clause 3.3.1(7)(c)(i)(A) deem the “opening RAB values” at implementation date to be “unallocated closing RAB values” for rolling forward asset values through PQP1. Allocated and unallocated values should not be conflated in this way, and the relationship between opening and closing values also needs to be specified”.²¹²

²⁰⁹ [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 3.3.1(7)(c)(i)(B) of Attachment B.

²¹⁰ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 2.2.5(2) and 2.2.5(4).

²¹¹ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 2.2.6(1)(a).

²¹² Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), page 31.

Final decision

- 6.45 Our final decision is to clarify that the forecast values determined by applying the asset valuation fibre IM for ID (as specified in Subpart 2 of Part 2 of the fibre IMs) for the “PQ RAB” are determined, in part, as follows:
- 6.45.1 the unallocated value of a core fibre asset adopted in accordance with clause 3.3.1(8)(a)-(c) of the fibre IMs is treated as if it is a “unallocated closing RAB value” for the purposes of:
- 6.45.1.1 forecasting the value of that asset for each regulatory year of PQP1; and
- 6.45.1.2 allocating a forecast "asset value" to regulated FFLAS under clause 2.2.5(4); and
- 6.45.2 the “opening RAB value” of the FLA adopted in accordance with clause 3.3.1(9) is treated as if it is the “initial RAB value” for disclosure year 2022 for the purposes of forecasting the value of that asset for each regulatory year of PQP1 under clause 2.2.6.
- 6.46 We agree with Chorus' submission point and have now referred to the unallocated values of core fibre assets determined in accordance with clause 3.3.1(8)(a)-(c) in clause 3.3.1(7)(a) and 3.3.1(7)(c)(i)(A) of Attachment B our fibre IM amendment determination.²¹³ The references to "opening RAB value" of a core fibre asset in our August 2021 draft decisions was in error.
- 6.47 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.48 We consider this amendment will promote certainty by clarifying how the "opening RAB value" is determined for the benefit of regulated providers.

²¹³ *Fibre Input Methodologies Amendment Determination No. 2 2021* [2021] NZCC 25 (29 November 2021), clauses 3.3.1(7)(a) and 3.3.1(7)(c)(i)(A) of Attachment B.

Amendment clarifying the treatment of negative, positive or nil values for the calculation of PQ paths forecast values for the FLA

Current fibre IM requirements

6.49 Currently, under clause B1.1.2(1) of Schedule B, for the purposes of clause 2.2.4, in the case where the value of the "financial losses" is:²¹⁴

6.49.1 negative, the initial RAB value of the FLA for a regulated provider will be determined by us to be the absolute value of the financial losses; and

6.49.2 positive or nil, the initial RAB value of the FLA for a regulated provider will be determined by us to be nil.

6.50 Currently, under clause 3.3.1(8)(d)-(e), the relevant actual values (and forecast values) contributing to the "opening RAB value" of the FLA, as adopted (and applied) under clauses 3.3.1(8)(a)-(b) is determined in accordance with clause B1.1.5(1)(a) of Schedule B (and clause B1.1.5(1)(b) of Schedule B)).²¹⁵ Under clause B1.1.5(1)(a)-(b) of Schedule B, the actual values (and forecast values) are determined by adopting (and applying) calculations under clauses B1.1.2(2)-(9) of Schedule B.²¹⁶ However, there is no provision similar to clause B1.1.2(1) of Schedule B which specifies what happens when the resulting calculation is negative, positive or nil.

Draft decision and our reasons

6.51 In our draft IM amendment decision published in our August 2021 draft decisions, we proposed introducing a new clause B1.1.5(1)(e) of Schedule B to clarify that:²¹⁷

(e) "in the case where the sum of the adopted values under paragraph (a)-(b) is:

(i) negative, the "opening RAB value" of the **financial loss asset** for a **regulated provider** will be determined by the **Commission** to be the absolute value of the financial losses; and

(ii) positive or nil, the "opening RAB value" of the **financial loss asset** for a **regulated provider** will be determined by the **Commission** to be nil."

²¹⁴ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.2(1) of Schedule B.

²¹⁵ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses 3.3.1(8)(d)-(e).

²¹⁶ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.5(1)(a)-(b) of Schedule B.

²¹⁷ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clause B1.1.5(1)(e) of Schedule B of Attachment B.

- 6.52 This text was omitted from clause B1.1.5(1) of Schedule B in error.
- 6.53 This change clarifies our policy intent, consistent with s 166(2), as expressed in the November 2020 fibre IM financial loss asset reasons paper:²¹⁸

“where the overall value of the financial losses at implementation date is negative – indicating an overall shortfall for the pre-implementation period – the initial value of the regulated provider’s FLA is set to the absolute value of the losses (ie, an asset with a positive asset value will be established at implementation date). If overall financial losses are nil or a positive amount, this indicates that there is no overall shortfall, and the initial value of the FLA at implementation date is determined as nil.”

Interested persons’ views on our proposed changes

- 6.54 Chorus submitted in favour of our draft decision and recommended a change to clause 2.2.4 to clarify that the defined calculation of financial losses under clause B1.1.2(1)-(2) of Schedule B results in a positive value of the FLA to be added to the initial PQ RAB.²¹⁹

Final decision

- 6.55 Our final decision is to introduce a new clause of B1.1.5(1)(e) to clarify what happens when the resulting calculation to determine the “opening RAB value” is negative, positive or nil. This is unchanged from our August 2021 draft decisions.
- 6.56 We agree with Chorus' suggested change and have made a non-material change to clause 2.2.4(1) to clarify this. We describe this non-material change in Attachment A.
- 6.57 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.58 We consider this amendment will promote certainty by correcting an error and enabling the fibre IMs to implement our policy intent.

²¹⁸ Commerce Commission “Fibre input methodologies: Financial loss asset final decision – reasons paper” (3 November 2020), para 3.6.

²¹⁹ Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), page 31 and paragraph 103.

Amendments to improve the workability of asset valuation fibre IM requirements in respect of the cost allocation process used to determine the “opening RAB value” of fibre assets at implementation date in Chorus’ transitional initial PQ RAB

Current fibre IM requirements

- 6.59 Currently, clause 3.3.1(8) of the asset valuation fibre IM and clause B1.1.5(1) of the asset valuation fibre IM in Schedule B are the transitional provisions that operate for the purposes of determining Chorus’ maximum revenues for PQP1.²²⁰
- 6.60 Chorus’ transitional initial PQ RAB is determined, in part, based on “relevant actual values” and “relevant forecast values”. In particular, it is determined by taking the “opening RAB value” of all fibre assets employed in the provision of “PQ FFLAS” “as of the implementation date”, which involve:²²¹
- 6.60.1 adopting any relevant actual values prepared in accordance with GAAP and obtained from a regulated provider by the Commission prior to the implementation date, provided those GAAP values are applied in accordance with s 177 of the Act relating to the “initial value of a fibre asset”; and
- 6.60.2 where relevant actual values are not available in respect of any disclosure year prior to the implementation date, applying forecasts of all values required to determine the “opening RAB values” as of the implementation date using GAAP values obtained under the previous paragraph to inform or support those forecast values.
- 6.61 Clause 3.3.1(8)(d)-(e) provides:²²²
- (d) the relevant actual values contributing to the “opening RAB value” of the **financial loss asset**, as adopted under paragraph (a), are determined in accordance with clause B1.1.5(1)(a) of Schedule B; and
 - (e) the relevant forecast values contributing to the “opening RAB value” of the **financial loss asset**, as applied under paragraph (b) are determined in accordance with clause B1.1.5(1)(b) of Schedule B.

²²⁰ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(7)(a), clause 3.3.1(8) and clause B1.1.5(1) of Schedule B.

²²¹ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(8)(a)-(b).

²²² *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.3.1(8)(d)-(e).

6.62 Clause B1.1.5(1)(a) of Schedule B provides:²²³

(1) For the purpose of clauses 3.3.1(8)(d)-(e), the “opening RAB value” of the **financial loss asset** adopted under clauses 3.3.1(8)(a)-(b) is determined by:

- (a) adopting actual values for calculations under clauses B1.1.2(2)-(9) of Schedule B in respect of **financial loss year 2012, financial loss year 2013, financial loss year 2014, financial loss year 2015, financial loss year 2016, financial loss year 2017, financial loss year 2018, financial loss year 2019, and financial loss year 2020**; and
- (b) applying forecasts for calculations under clauses B1.1.2(2)-(9) of Schedule B in respect of **financial loss year 2021 and financial loss year 2022**,

where:

- (c) any relevant values adopted under clause 3.3.1(8)(a) must be consistent with any equivalent values adopted under paragraph (a); and
- (d) any relevant forecasts applied under clause 3.3.1(8)(b) must be consistent with any equivalent forecasts applied under paragraph (b).

Draft decision and our reasons

6.63 Our draft IM amendment decision was published in our August 2021 draft decisions.²²⁴ We stated that the drafting in the current clause 3.3.1(8) may have caused confusion about the cost allocation process used to determine the “opening RAB value” of fibre assets at implementation date in Chorus’ transitional initial PQ RAB.

6.64 In order to clarify that the adopted historic values (and forecast values applied) to determine the “opening RAB value” of core fibre assets at implementation date in Chorus’ transitional initial PQ RAB are allocated in accordance with the cost allocation fibre IM for price-quality paths (clause 3.2.1), we proposed:

6.64.1 splitting clause 3.3.1(7)(a) into clause 3.3.1(7)(a)-(b) so that:²²⁵

6.64.1.1 clause 3.3.1(7)(a) specifies that the “opening RAB values” of core fibre assets for the PQ RAB as of the implementation date are adopted in accordance with clause 3.3.1(8); and

6.64.1.2 clause 3.3.1(7)(b) specifies that the “opening RAB value” of the FLA for the PQ RAB as of the implementation date is adopted in accordance with a new provision (clause 3.3.1(9)); and

²²³ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.5(1) of Schedule B.

²²⁴ Commerce Commission “Proposed Additional Amendments to Fibre Input Methodologies draft decision - reasons paper” (31 August 2021), paragraphs 3.66 to 3.75.

²²⁵ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (31 August 2021), clause 3.3.1(7)(a)-(b) of Attachment B.

6.64.2 refining clause 3.3.1(8) so that:²²⁶

6.64.2.1 all adopted historic values (and forecast values applied) are explicitly “treated as asset values” and allocated to “PQ FFLAS” as of the implementation date in accordance with clause 3.2.1; and

6.64.2.2 the resulting values referred to in paragraph 6.64.2.1 are considered “estimates”,²²⁷ rather than the requirements proposed in May 2021 which specified that the adopted historic values (and forecast values applied) are “estimates”.²²⁸

6.65 As the proposed clause 3.3.1(8)(d) specifies that clause 3.2.1 is used to allocate the estimated values of adopted historic values (and forecast values applied) to PQ FFLAS, we have proposed removing clause 2.2.3(2)(b)(ii) as this subclause would become redundant.²²⁹

6.66 In order to clarify, consistent with clause 2.1.1(7) of the fibre IMs,²³⁰ that the adopted “opening RAB value” of the FLA for Chorus’ transitional initial PQ RAB is treated as being directly attributable to PQ FFLAS, we proposed:

6.66.1 moving the current clauses which specified how to adopt values contributing to the “opening RAB value” of the FLA (clause 3.3.1(8)(d)-(e)) to new clause 3.3.1(9);²³¹

²²⁶ [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 3.3.1(8) of Attachment B.

²²⁷ [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 3.3.1(8) of Attachment B.

²²⁸ [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (27 May 2021), clause 3.3.1(8)(a)-(d) of Attachment B.

²²⁹ Under clause 2.2.3(2)(b)(ii) of the fibre IMs, the initial RAB value of a core fibre asset as at the implementation date is the unallocated initial RAB value allocated to regulated FFLAS as a result of- (a) adopting its unallocated initial RAB value; and (b) applying...in respect of forecast values, clause 3.2.1. Our proposed amendment was captured in [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 2.2.3(2)(b) of Attachment B.

²³⁰ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 2.1.1(7).

²³¹ [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clause 3.3.1(9)(d)-(e) of Attachment B.

- 6.66.2 specifying in clause B1.1.5(1)(c)-(d) of Schedule B that only unallocated adopted values (and forecast values applied) under the new clause 3.3.1(9)(a)-(b) must be consistent with equivalent values adopted under clauses B1.1.2(2)-(9) of Schedule B;²³² and
- 6.66.3 explicitly specifying that the value resulting from the determination under clause B1.1.5(1) of Schedule B is treated as:²³³
- 6.66.3.1 an "asset value"; and
- 6.66.3.2 being directly attributable to PQ FFLAS.
- 6.67 As a consequence of making these changes, we also:
- 6.67.1 proposed removing reference to "estimates" in clause 3.5.7(2)(c)-(d) and 3.5.10(1)(d)(i)-(ii) of the cost of capital fibre IM,²³⁴ which was proposed in our May 2021 draft decisions;²³⁵ and
- 6.67.2 proposed updating the cross-references in 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of the cost of capital fibre IM to:²³⁶
- 6.67.2.1 refer to the updated provisions in clauses 3.3.1(8)(a) and (d) and 3.3.1(9)(d), as applicable; and
- 6.67.2.2 refer to clause 3.3.1(8)(c) and the new clause 3.3.1(9)(c), which are currently omitted in error.
- 6.68 We considered that making these changes would provide more certainty than the current provisions, consistent with s 174 of the Act, about the cost allocation process used to determine the "opening RAB value" of fibre assets at implementation date in Chorus' transitional initial PQ RAB.

²³² Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clause B1.1.5(1)(c)-(d) of Schedule B of Attachment B.

²³³ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clause 3.3.1(9)(f) of Attachment B.

²³⁴ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clause 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of Attachment B.

²³⁵ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (27 May 2021), clause 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of Attachment B.

²³⁶ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" [2021] NZCC [XX] (31 August 2021), clause 3.5.7(2)(c)-(d) and clause 3.5.10(1)(d)(i)-(ii) of Attachment B.

Interested persons' views on our proposed changes

- 6.69 Chorus submitted that it seems sensible to provide for cost allocation of core fibre assets at implementation date to be undertaken via the PQ cost allocation provisions (and the FLA considered to be directly attributable to PQ FFLAS). However, it stated that, it does not agree that the net calculation of post-allocated asset values in the transitional initial PQ RAB can be treated as estimates and referred to its submission on our May 2021 draft decisions on that issue.
- 6.70 We have addressed Chorus' submission on the point about the transitional initial PQ RAB being determined, in part, based on estimates rather than actual values, in Chapter 3.
- 6.71 Enable and Tuatahi supported the clarification of the value of the FLA to be applied at implementation date, which they submitted is consistent with the policy intent for the FLA and will help to reduce regulatory complexity and uncertainty.²³⁷

Final decision

- 6.72 Our final decision is to adopt the workability changes proposed in the August 2021 draft decisions (outlined in paragraphs 6.63 to 6.66). Additionally, we have identified and corrected an error in clause 3.3.1(7).
- 6.73 The correction of the error in clause 3.3.1(7) clarifies that unallocated values are being adopted. In our August 2021 draft decisions, we proposed a further change to clause 3.3.1(7) to ensure that it is clear that unallocated values are being adopted. We stated that all adopted historic values (and forecast values applied) are explicitly "treated as asset values" and allocated to "PQ FFLAS" as of the implementation date in accordance with clause 3.2.1.
- 6.74 The fibre IM defines an asset value as:
- 6.74.1 in respect of a core fibre asset, the unallocated opening RAB value; and
- 6.74.2 in respect of a UFB asset, the value as determined in clause B1.1.6(2) of Schedule B.²³⁸
- 6.75 However, we consider that clause 3.3.1(7)(a) in the August 2021 draft decisions was not clear on this point and we have now replaced

²³⁷ Enable and Tuatahi "Submission on NZCC proposed additional amendments to fibre input methodologies draft decisions dates 31 August 2021" (16 September 2021), para 5.1(e),5.2.

²³⁸ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25, B1.1.6(a) says "the 'UFB unallocated closing asset value', 'UFB unallocated opening asset value', and 'value of commissioned asset' in question shall be considered an 'asset value'."

"adopting the "opening RAB value" of all core fibre assets for the PQ RAB as of the implementation date in accordance with subclause (8)" to:

with

"adopting the unallocated values of all core fibre assets for the PQ RAB as of the implementation date in accordance with subclauses (8)(a)-(8)(c) contributing to the "opening RAB value" of all core fibre assets for the PQ RAB as of the implementation date in accordance with subclause (8)"

- 6.76 Clause 3.3.1(7)(c)(i)(A) in the August 2021 draft decisions incorrectly used "opening RAB value", which is an allocated value, rather than the unallocated value as intended. We have therefore replaced "opening RAB value" in this clause with unallocated value. We have also clarified that it is adopted in accordance with subclause (8)(a)-(c), whereas currently we refer only to subclause (8). This change is discussed further at paragraphs 6.45-6.46.
- 6.77 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.

Amendment to correct an error in clause 3.2.1(4) of the cost allocation fibre IM for price-quality paths

Current fibre IM requirements

- 6.78 Currently, clause 3.2.1(4) of the fibre IMs specifies that, subject to certain exceptions, "any **asset value** must be determined by applying...**asset allocators**...or **proxy asset allocators**..."²³⁹

Draft decision and our reasons

- 6.79 In our draft fibre IM amendment decision published in our August 2021 draft decisions, we proposed refining clause 3.2.1(4) of the fibre IMs so that it specified that, subject to certain exceptions, "any 'closing RAB value' must be determined by applying, in respect of an **asset value**...**asset allocators**...or **proxy asset allocators**..."²⁴⁰

²³⁹ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause 3.2.1(4).

²⁴⁰ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clause 3.2.1(4) of Attachment B.

- 6.80 The current drafting is in error in suggesting that an "asset value" is determined by applying asset allocators and proxy asset allocators. As "asset value" is defined by reference to unallocated values,²⁴¹ we proposed using the term "closing RAB value" instead to make it clear that the resulting value will apply the (unallocated) asset value to determine an allocated value. We consider that this change would enhance certainty more than the current provision, consistent with s 174 of the Act.

Interested persons' views on our proposed changes

- 6.81 Chorus submitted in favour of our draft decision.²⁴²

Final decision

- 6.82 Our final decision is to amend clause 3.2.1(4) of the cost allocation fibre IM to use the term "closing RAB value" in place of "asset value" and to specify that, subject to certain exceptions, "any 'closing RAB value' must be determined by applying, in respect of an **asset value...asset allocators...or proxy asset allocators...**".
- 6.83 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.84 We consider this amendment will promote certainty by correcting an error in the current drafting and clarifying how a "closing RAB value" is determined for regulated providers.

Amendments to correct technical errors: asset valuation fibre IM

Previous IM requirements

- 6.85 Currently, the value of commissioned assets fibre IM for ID, clause 2.2.13(6)(b) specifies (for the avoidance of doubt) that:²⁴³

"if, after a **core fibre asset** is **commissioned**, a **regulated provider** incurs expenditure on the **core fibre asset** that forms part of the cost of that **core fibre asset** under **GAAP**, such expenditure is treated as relating to a separate asset."

²⁴¹ See *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, definition of "asset value" in clause 1.1.4(2).

²⁴² Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), page 32.

²⁴³ *Fibre input methodologies determination 2020* [2020] NZCC 21, clause 2.2.13(6)(b).

Draft decisions and our reasons

- 6.86 Our draft fibre IM amendment decision was published in our May 2021 draft decisions. We proposed changing the phrase "commissioned" to "commissioned for FFLAS" in clause 2.2.13(6)(b), as the current reference to "commissioned" was made in error.²⁴⁴
- 6.87 An asset will become a "core fibre asset" when it is "commissioned for FFLAS". An asset may not be a "core fibre asset" when it is "commissioned", as it may be solely employed by a regulated provider in providing another service (i.e., "services that are not regulated FFLAS"). Therefore, the current reference to "commissioned" in clause 2.2.13(6)(b) of the fibre IMs is an error.
- 6.88 We consider that making the proposed change would:
- 6.88.1 promote certainty, consistent with s 174, about the requirements when a regulated provider incurs expenditure on a core fibre asset after it is employed in the provision of regulated FFLAS; and
- 6.88.2 align the drafting for clause 2.2.13(6)(b) with the equivalent requirement for UFB assets in clause B1.1.3(4)(b) of Schedule B, which uses the equivalent term "commissioned for UFB FFLAS".²⁴⁵

Interested persons' views on our proposed changes

- 6.89 Chorus submitted in agreement with our draft decision to replace "commissioned" with "commissioned for FFLAS".²⁴⁶

Final decision

- 6.90 Our final decision is to amend the asset valuation fibre IM to replace "commissioned" in clause 2.2.13(6)(b) with "commissioned for FFLAS".
- 6.91 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.

²⁴⁴ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (27 May 2021), clause 2.2.13(6)(b) of Attachment B.

²⁴⁵ *Fibre input methodologies determination 2020* [2020] NZCC 21, clause B1.1.3(4)(b) of Schedule B.

²⁴⁶ Chorus "Amendments to the Input Methodologies for Fibre - August 2021 amendments" (24 June 2021), page 20.

6.92 We consider this amendment will promote certainty by correcting an error in the current drafting and clarifying the meaning of the "value of commissioned asset" for regulated providers.

Amendments to correct errors in formulae for "revenue date compounding factor"

Current fibre IM requirements

6.93 Clause B1.1.2(7)(b) of Schedule B of the fibre IMs currently states that "days to implementation date" means:

for the purposes of determining a 'revenue date compounding factor', the number of days between:

the 20th day of the month following the month in which the day that is the mid-point of the financial loss year falls; and

the implementation date.

Draft decision and our reasons

6.94 Our draft IM amendment decision was published in our August 2021 draft decisions. We stated that the current formula did not reflect our original drafting expectation, as it results in the wrong number of days being used in the interval between the "revenue date" and the date to which values are being compounded.²⁴⁷

6.95 We therefore proposed an amendment that would replace clause B1.1.2(7)(b) of Schedule B of the fibre IMs with the following:

(b) for the purposes of determining a 'revenue date compounding factor':

- (i) for financial loss year 2012, is 3543;
- (ii) for financial loss year 2013, is 3254;
- (iii) for financial loss year 2014, is 2889;
- (iv) for financial loss year 2015, is 2524;
- (v) for financial loss year 2016, is 2159;
- (vi) for financial loss year 2017, is 1793;
- (vii) for financial loss year 2018, is 1428;
- (viii) for financial loss year 2019, is 1063
- (ix) for financial loss year 2020, is 698;
- (x) for financial loss year 2021 is 332; and
- (xi) for financial loss year 2022 is 58.

²⁴⁷ Commerce Commission "Proposed Additional Amendments to Fibre Input Methodologies draft decision - reasons paper" (31 August 2021), paragraphs 3.54 to 3.58.

- 6.96 This change aligns with the standard approach taken by the Commission, where the revenue date compounding factor assumes that revenue is received 148 days before the end of a 12-month period.
- 6.97 We consider that this change will enhance certainty more than the current provision, consistent with s 174 of the Act, by providing exact figures rather than a formula which might be misinterpreted and result in incorrect figures.

Interested persons' views on our proposed changes

- 6.98 Chorus submitted in support of our draft decision and recommended setting out an explanation of the "days from revenue date implementation" calculation as well as the numbers themselves.²⁴⁸
- 6.99 Enable and Tuatahi submitted in support of our draft decision to correct "the revenue date compounding factor provisions".²⁴⁹

Final decision

- 6.100 Our final decision is to amend clause B1.1.2(7)(b) of Schedule B of the fibre IMs to include the fixed values proposed in our draft decisions (set out above at paragraph 6.95).
- 6.101 Our final decision aligns with the standard approach taken by the Commission, where the revenue date compounding factor assumes that revenue is received 148 days before the end of a 12-month period.
- 6.102 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.103 We consider this amendment will promote certainty, consistent with s 174, by clarifying for the benefit of regulated providers exact figures, rather than a formula which might be misinterpreted and result in incorrect figures.

²⁴⁸ Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), page 30.

²⁴⁹ Enable and Tuatahi "Submission on NZCC proposed additional amendments to the fibre input methodologies draft decisions (16 September 2021), paragraph 5.1(c).

Amendment to correct errors in formulae for the present value benefit of Crown financing

Current fibre IM requirements

6.104 Currently, clause B1.1.2(5) of Schedule B of the fibre IMs expresses the calculation for the present value benefit of Crown financing as follows:

$((A \times B) + (C \times D)) \times \text{benefit of Crown financing compounding factor for the financial loss year in question}$

where-

A is the amount determined in accordance with the following formula:

$(\text{proportion of 'B' that is senior debt} \times \text{cost of debt for that financial loss year } (1 - T_c)) + (\text{proportion of 'B' that is subordinated debt} \times (\text{cost of debt for that financial loss year} + 0.41\%)(1 - T_c));$

B is the net drawdowns in the financial loss year that is debt (whether senior or subordinated);

C is the amount determined in accordance with the following formula:

$(0.75 \times \text{cost of equity for that financial loss year}) + (0.25 \times \text{cost of debt for that financial loss year});$

D is the net drawdowns in the financial loss year that is equity;

'benefit of Crown financing compounding factor' is the amount determined in accordance with the following formula:

$$\frac{(((1 + \text{financial loss year WACC})^Y) - 1)}{\text{financial loss year WACC}}$$

where Y is the amount determined in accordance with the following formula:

$$\frac{\text{the number of days between the day that is the mid - point of the financial loss year and the implementation date}}{365.25}$$

Draft decision and our reasons

6.105 In our draft IM amendment decision published in our August 2021 draft decisions, we stated that in its initial asset value (IAV) model documentation, Chorus identified an error in this formula.²⁵⁰

²⁵⁰ Commerce Commission "Proposed Additional Amendments to Fibre Input Methodologies draft decision - reasons paper" (31 August 2021), paragraphs 3.28 to 3.34.

- 6.106 In a financial loss year in which there is non-zero senior debt drawdown but no net debt drawdown (e.g. senior debt increases but subordinate debt decreases by an equal amount, or vice versa) the formula gives an incorrect result because the proportion calculation $(A \times B)$ can be undefined ($B=0$).
- 6.107 Chorus has implemented the $(A \times B) + (C \times D)$ term by term, as follows:
- $$= (\text{senior debt drawdown} \times \text{annual cost of senior debt}) + (\text{subordinate debt drawdown} \times \text{annual cost of subordinate debt}) \times (1 - \text{TaxRate}) + (\text{debt-like equity drawdown} \times \text{annual cost of debt-like equity}) + (\text{other equity drawdown} \times \text{annual cost of other equity})$$
- 6.108 Chorus' method gives the mathematically correct result for all financial loss years, including financial loss years in which there is a non-zero senior debt drawdown but no net debt drawdown.
- 6.109 While we consider that Chorus' proposed formula is economically equivalent to the method in clause B1.1.2(5) of Schedule B of the fibre IMs, we proposed amending clause B1.1.2(5) of Schedule B to replace the formulae with an equivalent of that proposed by Chorus at paragraph 6.107 above, but also removing the tax term " $(1 - T_c)$ " in accordance with the tax losses adjustment proposed in Chapter 3, in order to correct the error.²⁵¹
- 6.110 Correcting this error in the fibre IMs is consistent with s 166(2) of the Act, because the initial PQ RAB value has a material, ongoing effect on Chorus' incentives to invest and end-user prices of FFLAS.
- 6.111 The original fibre IM was determined because we considered it best promoted the purpose of Part 6 in s 162, and as necessary to meet the requirement under s 177(3)(b) that the determination of the FLA by us must "in respect of any Crown financing provided...refer to the actual financing costs incurred by the provider". The presence of the error described above prevents the fibre IM from achieving this purpose. As such, correcting for this error is necessary to achieve the original intent of the IM.

Interested persons' views on our proposed changes

- 6.112 Chorus submitted in support of the intended effect of our draft decision; however, it proposed alternative drafting that it believes is clearer and provides more certainty:²⁵²

²⁵¹ Commerce Commission "[Draft] Fibre Input Methodologies Amendment Determination 2021" (31 August 2021), clause B1.1.2(5) of Schedule B of Attachment B.

²⁵² Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), paragraph 101.

6.112.1 Chorus provided alternative drafting of the fibre IM that separated the equity term (C x D) into two components (C1 x D1 and C2 x D2) where C1 is “debt-like equity drawdown”, D1 is “annual cost of debt-like equity”, C2 is “other equity drawdown” and D2 is “annual cost of other equity”.²⁵³

Final decision

6.113 Our final decision is to amend clause B1.1.2(5) of Schedule B of the fibre IMs, to replace the formulae with an equivalent of that proposed by Chorus, but also removing the tax term “(1-Tc)” in accordance with the tax losses adjustment proposed in Chapter 3. Clause B1.1.2(5) of Schedule B is now as follows:

$((A_1 \times B_1) + (A_2 \times B_2) + (C \times D)) \times$ benefit of Crown financing **compounding factor for the financial loss year in question**

where-

- (a) A_1 is the **net drawdowns** in the **financial loss year** that is senior debt;
- (b) A_2 is the **net drawdowns** in the **financial loss year** that is subordinated debt;
- (c) B_1 is the **cost of debt** for that **financial loss year**;
- (d) B_2 is the **cost of debt** for that **financial loss year** + 0.41%;
- (e) C is the amount determined in accordance with the following formula:

$(0.75 \times$ **cost of equity** for that **financial loss year**) + $(0.25 \times$ **cost of debt** for that **financial loss year**);

- (f) D is the **net drawdowns** in the **financial loss year** that is equity;
- (g) 'benefit of Crown financing compounding factor' is the amount determined in accordance with the following formula:

$$\frac{(((1 + \textit{financial loss year WACC})^Y) - 1)}{\textit{financial loss year WACC}}$$

where Y is the amount determined in accordance with the following formula:

$\frac{\textit{the number of days between the day that is the mid - point of the financial loss year and the implementation date}}{365.25}$

- (h) 'net drawdowns' means the amount of **Crown financing** that a **regulated provider** (or related party as referred to in section 164 of the **Act**) draws down in that **financial loss year** less the amount of **Crown financing** repaid in that **financial loss year** by the **regulated provider** (or related party as referred to in section 164 of the **Act**).

²⁵³ Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), paragraph 101.

- 6.114 The calculation will provide the same value of the "present value benefit of Crown financing" as Chorus' proposal. However, the fibre IM as we proposed does not introduce new terms that would need to be defined.
- 6.115 Further, Chorus' proposal to separate the equity term into two components is not required to correct the error that exists when the annual net debt drawdown is zero.
- 6.116 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.117 The amendment corrects an error that prevents the fibre IM from achieving its purpose. As such, correcting for this error is necessary to achieve the original intent of the fibre IM.

Amendment to correct errors in formulae for "UFB cost allocation adjustment cash flow"

Current fibre IM requirements

- 6.118 The "UFB cost allocation adjustment cash flow" is defined in clause B1.1.2(4) of Schedule B of the fibre IMs as follows:²⁵⁴
- (a) 'UFB cost allocation adjustment cash flow' means the sum of all amounts for **UFB assets** with a **UFB closing asset value** for a **financial loss year** calculated in accordance with the following formula-
- $$UFB \text{ unallocated closing asset value} \times (\text{closing cost allocator value} - \text{opening cost allocator value})$$
- where-
- 'closing cost allocator value' is calculated in accordance with the following formula-
- $$UFB \text{ closing asset value} \div UFB \text{ unallocated closing asset value}; \text{ and}$$
- 'opening cost allocator value' is calculated in accordance with the following formula-
- $$UFB \text{ opening asset value} \div UFB \text{ unallocated opening asset value};$$

²⁵⁴ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clause B1.1.2(4)(a) of Schedule B.

Draft decisions and our reasons

- 6.119 In our draft fibre IM amendment decision published in our August 2021 draft decisions, we stated that we expected the effect of the "UFB cost allocation adjustment cash flow" on the "UFB costs cash flows" to be the increase in cost allocation that happens between the start of a financial loss year and the end of a financial loss year.²⁵⁵
- 6.120 However, the formula for the opening cost allocator value produced an incorrect calculation of the "UFB cost allocation adjustment cash flow" because it did not account for assets that are commissioned throughout a financial loss year or depreciation that occurred throughout the financial loss year.
- 6.121 The error is in the expression of the opening cost allocator value. The expression of the closing cost allocator value (UFB closing asset value ÷ UFB unallocated closing asset value), while correct, must be revised to apply at an asset class level in line with the proposed amendment for the opening cost allocator value described in paragraph 6.125 below.
- 6.122 In its IAV model Chorus did not use the fibre IMs formula for the opening cost allocator value and instead calculated the "UFB cost allocation adjustment cash flow" as the difference between the opening RAB for the subsequent financial period, and the closing RAB for the current financial period. In this calculation, Chorus used an opening cost allocator value, but did not use a closing cost allocator value.
- 6.123 The method proposed by Chorus is consistent with the formula we intended to apply for all financial loss years except for the last (ie, 1 July 2021 – 31 December 2021, defined in the IMs as "financial loss year 2022". In the last financial loss year, Chorus' method results in a zero value of the "UFB cost allocation adjustment cash flow" because the opening cost allocator value is outside of the pre-implementation period (ie, it is for the period 1 January 2022 to 31 December 2022).
- 6.124 The formula for the "opening cost allocator value" that would take into account the commissioned assets and depreciation is:

$$\text{(sum of UFB opening asset values for that asset class + sum of value of commissioned assets – depreciation) ÷ sum of UFB unallocated closing asset values for that asset class}$$

²⁵⁵ Commerce Commission "Proposed Additional Amendments to Fibre Input Methodologies draft decision - reasons paper" (31 August 2021), para 3.40 to 3.53.

6.125 The existing formula in the IMs is expressed at an individual asset level. Because additional expenditure on an asset with a UFB opening asset value is treated as relating to a separate asset under B1.1.3(4)(b) of Schedule B of the fibre IMs, the formula in paragraph 6.124 cannot be implemented at an individual asset level but must be applied at an aggregate level. For this reason, we proposed in the draft decisions to specify both the closing cost allocator value and the opening cost allocator value, as follows, in respect of an asset class as defined in Schedule A of the IMs:

'closing cost allocator value' is calculated in accordance with the following formula-

sum of UFB closing asset values for that asset class ÷ sum of UFB unallocated closing asset values for that asset class;

'opening cost allocator value' is calculated in accordance with the following formula-

(sum of UFB opening asset values for that asset class + sum of value of commissioned assets – depreciation) ÷ sum of UFB unallocated closing asset values for that asset class; and

'sum of value of commissioned assets' means the sum of **value of commissioned asset** for each **UFB asset** for that **asset class** with a **UFB FFLAS commissioning date** in the **financial loss year** in question after applying clause B1.1.6(2) of Schedule B to allocate each **value of commissioned asset** for that **asset class** to the provision of **UFB FFLAS**;

6.126 As indicated above, if regulated providers were to apply this formula it would result in the same values of the "UFB cost allocation adjustment cash flow" in all financial loss years, except for financial loss year 2022. However, there would be an immaterial change in the initial RAB value of the FLA, as can be seen from the following example:

6.126.1 If the "UFB cost allocation adjustment cash flow" for financial loss year 2022 was \$10 million, which is half of the amount in the previous full financial loss year, rather than zero, the initial RAB value of the FLA would change from \$1,446.340 million to \$1,446.457 million.

6.126.2 The reason for the small change is that the cash flow is a mid-year value which would be compounded to the implementation date. However, the UFB asset base closing value is a negative adjustment in the discounted cash flow calculation and is not compounded.

6.127 We proposed amending clause B1.1.2(4)(a) of Schedule B of the fibre IMs to express the "UFB cost allocation adjustment cash flow" value, applied to an asset class as in paragraph 6.124 above.²⁵⁶

²⁵⁶ [Draft] Fibre Input Methodologies Amendment Determination 2021 [2021] NZCC [XX] (31 August 2021), clauses B1.1.2(4)(a) of Schedule B of Attachment B.

- 6.128 We consider that Chorus' proposed calculation of the "UFB cost allocation adjustment cash flow" is economically equivalent to our proposed amendment. The immaterial difference arising in financial loss year 2022, described in paragraph 6.126, will be able to be addressed by applying our final decision on the alternative methodology change as discussed in paragraph 3.77 to 3.79.
- 6.129 Given the proposed amendment has an immaterial effect, we consider that it does not detract from the s 166(2) purpose, compared to the current approach.
- 6.130 We determined the original fibre IM because it best promoted the purpose of Part 6 in s 162. The presence of the error described above prevents the fibre IM from achieving this purpose. As such, correcting for this error is necessary to achieve the original intent of the fibre IM.

Interested persons' views on our proposed changes

- 6.131 Chorus submitted in agreement with our draft decision and proposed further changes to clause B1.1.2(4) of Schedule B to accurately reflect NBV adjustments and allocated depreciation.²⁵⁷ Specifically, Chorus proposed:

'opening cost allocator value' is calculated in accordance with the following formula-
(sum of UFB opening asset values for that asset class + sum of value of commissioned assets – sum of allocated depreciation + sum of allocated NBV adjustments) ÷ sum of UFB unallocated closing asset values for that asset class

- 6.132 Enable and Tuatahi submitted in support of our draft decision to correct "the cost allocation adjustment cashflow".²⁵⁸

Final decision

- 6.133 Our final decision is to amend clause B1.1.2(4) of Schedule B as outlined in paragraph 6.125. This is unchanged from our August 2021 draft decisions. The immaterial difference arising in financial loss year 2022 will be able to be addressed by applying our final decision on an alternative methodology. We consider the changes proposed by Chorus to be unnecessary.

²⁵⁷ Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), para 14 and 102.

²⁵⁸ Enable and Tuatahi "Submission on NZCC proposed additional amendments to the fibre input methodologies draft decisions (16 September 2021), paragraph 5.1(b).

- 6.134 As explained in paragraph 6.128, our amendment will provide a value of the FLA that is not materially different from Chorus' proposal. However, the fibre IM amendment we proposed removes the need to introduce the new terms, "allocated depreciation" and "allocated NBV adjustments", that would otherwise need to be defined.
- 6.135 In making this fibre IM amendment we have applied the IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IMs by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.136 The amendment corrects an error that prevents the fibre IM from achieving its purpose. As such, correcting for this error is necessary to achieve the original intent of the fibre IM.

Amendments to correct errors in cost allocation fibre IM provisions that specify requirements for operating costs and asset values that are not directly attributable to regulated FFLAS and UFB FFLAS

Current fibre IM requirements

- 6.137 Currently, the following clauses of the cost allocation fibre IM do not explicitly specify that asset allocators (and cost allocators) must be used to allocate applicable asset values (and operating costs) to “services that are not regulated FFLAS” (and “services that are not UFB FFLAS”) where those asset values (and operating costs) are not directly attributable to “regulated FFLAS” (and “UFB FFLAS”):²⁵⁹
- 6.137.1 clause 2.1.1(5)-(6);
 - 6.137.2 clause 2.1.2(5)-(6);
 - 6.137.3 clause 2.1.3(5);
 - 6.137.4 clause 3.2.1(7)-(8); and
 - 6.137.5 clause B1.1.6(4) of Schedule B.

²⁵⁹ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses 2.1.1(5)-(6), 2.1.2(5)-(6), 2.1.3(5), 3.2.1(7)-(8) and B1.1.6(4) of Schedule B.

6.138 Currently, the following clauses of the cost allocation fibre IM do not explicitly specify that asset allocators (and cost allocators) must be used to proportionally allocate applicable asset values (and operating costs) between “regulated FFLAS” and “services that are not regulated FFLAS” (and between “UFB FFLAS” and “services that are not UFB FFLAS”) where those asset values (and operating costs) are not directly attributable to “regulated FFLAS” (and “UFB FFLAS”):²⁶⁰

- 6.138.1 clause 2.1.1(5)-(6);
- 6.138.2 clause 2.1.2(5)-(6);
- 6.138.3 clause 3.2.1(7)-(8);
- 6.138.4 clause 3.2.1(11);
- 6.138.5 clause B1.1.6(1)(b) of Schedule B; and
- 6.138.6 clause B1.1.6(2)(c) of Schedule B.

Draft decision and our reasons

6.139 Our August 2021 draft decisions proposed clarifying the clauses referred to above so that it is explicit that asset allocators and cost allocators must be used to:²⁶¹

- 6.139.1 allocate applicable asset values (and operating costs) to “services that are not regulated FFLAS” (and “services that are not UFB FFLAS”) where those asset values (and operating costs) are not directly attributable to “regulated FFLAS” (and “UFB FFLAS”); and
- 6.139.2 proportionally allocate applicable asset values (and operating costs) between “regulated FFLAS” and “services that are not regulated FFLAS” (and between “UFB FFLAS” and “services that are not UFB FFLAS”) where those asset values (and operating costs) are not directly attributable to “regulated FFLAS” (and “UFB FFLAS”).

²⁶⁰ *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended by the *Fibre Input Methodologies (initial value of financial loss asset) Amendment Determination 2020* [2020] NZCC 24, consolidated for convenience July 2021 *Fibre Input Methodologies Determination 2020*, clauses 2.1.1(5)-(6), 2.1.2(5)-(6), 3.2.1(7)-(8), 3.2.1(11), B1.1.6(1)(b) of Schedule B and B1.1.6(2)(c) of Schedule B.

²⁶¹ Commerce Commission “[Draft] Fibre Input Methodologies Amendment Determination 2021” (31 August 2021), clauses 2.1.1(5)-(6), 2.1.2(5)-(6), 2.1.3(5), 3.2.1(7)-(8), (11) of Attachment B, clauses B1.1.6(1)(b), (2)(c) of Schedule B and B1.1.6(4) of Schedule B of Attachment B.

6.140 Chorus' alerted us to the error in the current drafting in its submission on our May 2021 draft decisions.²⁶² The current drafting in the clauses referred to in paragraphs 6.137 and 6.138 above was made in error.²⁶³

6.141 We consider that making these proposed changes will enhance certainty more than the current provisions, consistent with s 174, about the requirements for allocating asset values (and operating costs) not directly attributable to "regulated FFLAS" (and "UFB FFLAS").

6.142 However, we do not consider that clauses 2.1.1(9) and 3.2.1(13) are drafted in error as submitted by Chorus.

Interested persons' views on our proposed changes

6.143 Chorus submitted in support of our draft decision.²⁶⁴

6.144 Enable and Tuatahi submitted in support of our draft decision to correct "the cost allocation provisions for costs and assets not directly attributable".²⁶⁵

Final decision

6.145 Our final decision is to amend the cost allocation fibre IM so that it is explicit that asset allocators and cost allocators must be used to:

6.145.1 allocate applicable asset values and operating costs to "services that are not regulated FFLAS" (and "services that are not UFB FFLAS") where those asset values and operating costs are not directly attributable to "regulated FFLAS" (and "UFB FFLAS"); and

6.145.2 proportionally allocate applicable asset values and operating costs between "regulated FFLAS" and "services that are not regulated FFLAS" (and between "UFB FFLAS" and "services that are not UFB FFLAS") where those asset values and operating costs are not directly attributable to "regulated FFLAS" (and "UFB FFLAS").

²⁶² Chorus "Amendments to the Input Methodologies for Fibre: August 2021 amendments" (24 June 2021), page 19.

²⁶³ Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), paras 4.57-4.62 and Commerce Commission "Fibre input methodologies: Financial loss asset final decision – reasons paper" (3 November 2020), paragraph 3.239.3.

²⁶⁴ Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions" (16 September 2021), page 30.

²⁶⁵ Enable and Tuatahi "Submission on NZCC proposed additional amendments to the fibre input methodologies draft decisions" (16 September 2021), paragraph 5.1(d).

- 6.146 In making this fibre IM amendment we have applied the fibre IM amendment decision-making framework in Chapter 2 and we consider it meets the IM amendment framework outcomes. In particular, it promotes the IM purpose in s 174 more effectively than the current fibre IM by providing more certainty for regulated providers, access seekers, and end-users in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of FFLAS under Part 6.
- 6.147 We consider that making these changes will enhance certainty more than the current provisions, consistent with s 174, about the requirements for allocating asset values (and operating costs) not directly attributable to "regulated FFLAS" (and "UFB FFLAS").

Attachment A Non-material changes to the fibre IMs

A1 In addition to the material fibre IM amendments made in accordance with our NOIs, we have also made the following non-material changes to the fibre IMs in the amendment determination under s 181(2) of the Act:

- A1.1 an amendment to the definition of "access seeker";²⁶⁶
- A1.2 an amendment to the definition of "causal relationship";²⁶⁷
- A1.3 an amendment to the definition of "core fibre asset";²⁶⁸
- A1.4 an amendment to the definition of "operating expenditure";²⁶⁹
- A1.5 an amendment to the definition of "total FFLAS revenue";²⁷⁰
- A1.6 an amendment to clause 2.2.4(1) of the asset valuation fibre IMs for information disclosure;²⁷¹
- A1.7 an amendment to the heading for clause 3.3.4 of the asset valuation fibre IMs for price-quality paths;²⁷²
- A1.8 an amendment to clause 3.7.7(3) of the capital expenditure fibre IM;²⁷³ and
- A1.9 an amendment to clause B1.1.9(4) of Schedule B of the fibre IMs.²⁷⁴

A2 We have briefly described each amendment and our reasons for those amendments in Table B1 below.

²⁶⁶ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), definition of "access seeker" in clause 1.1.4(2) of Attachment B.

²⁶⁷ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), definition of "causal relationship" in clause 1.1.4(2) of Attachment B.

²⁶⁸ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), definition of "core fibre asset" in clause 1.1.4(2) of Attachment B.

²⁶⁹ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), definition of "operating expenditure" in clause 1.1.4(2) of Attachment B.

²⁷⁰ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), definition of "total FFLAS revenue" in clause 1.1.4(2) of Attachment B.

²⁷¹ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), clause 2.2.4(1) of Attachment B.

²⁷² *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), clause 3.3.4(1) of Attachment B.

²⁷³ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), clause 3.7.7(3) of Attachment B.

²⁷⁴ *Fibre Input Methodologies Amendment Determination (No.2) 2021* [2021] NZCC 25 (29 November 2021), clause B1.1.9(4) of Schedule B of Attachment B.

Table A1 Non-material changes to the fibre IMs

Non-material change	Clause affected	Reasons
An amendment to change the definition of "access seeker" so that it reads "has the meaning set out in paragraph (d) of the definition of "access seeker" in s 5 of the Act;"	1.1.4(2)	The current reference to "s 5(d) of the Act" is potentially confusing, as there are several definitions in s 5 that have a paragraph (d). Our intention is to refer to the paragraph (d) definition of "access seeker" in s 5. We have now corrected this typographical error.
An amendment to change the definition of "causal relationship" so that the terms "information disclosure" and "asset allocation" in paragraph (b)(ii)(A) are not bolded.	1.1.4(2)	The terms "information disclosure" and "asset allocation" are not defined and therefore should not have been bolded. We are correcting this typographical error.
An amendment to change the definition of "core fibre asset" so that the term "works under construction" is bolded.	1.1.4(2)	The term "works under construction" is defined in the fibre IMs and therefore, the reference to "works under construction" in the definition of "core fibre asset" should have been bolded. We have now corrected this typographical error.
An amendment to change the definition of "operating expenditure" so that the term "means" is deleted from paragraph (a) and (b).	1.1.4(2)	The references to "means" in paragraph (a) and (b) of the definition are superfluous as "means" is already used prior to those paragraphs in the definition. We have now corrected this typographical error.
An amendment to the definition of "total FFLAS revenue" to change "the providing of PQ FFLAS" to "providing PQ FFLAS".	1.1.4(2)	The references to "the providing of PQ FFLAS" in the definition are typographical errors. We have now corrected these references to read "providing PQ FFLAS".
An amendment to clause 2.2.4(1) of the asset valuation fibre IMs for information disclosure specifying that the "initial RAB value" of the financial loss asset is also determined in accordance with clause B1.1.2(1) of Schedule B.	2.2.4(1)	In its submission on Proposed Additional Amendments to Fibre Input Methodologies: draft decisions - Reasons paper, Chorus proposed that we add a reference to clause B1.1.2(1) of Schedule B in clause 2.2.4 so that it is clear that the calculation of financial losses under B1.1.2(1)-(2) of Schedule B (where a negative result indicates a shortfall) results in a positive value of the financial loss asset to be added to [an initial RAB]. Chorus noted that the current IM requirements only reference clause B1.1.2(2) of Schedule B which does not specify the treatment of negative financial losses. ²⁷⁵ We agree and have made this change. The current absence of a cross-reference to clause B1.1.2(1) of Schedule B in clause 2.2.4 is a typographical error.
An amendment to clause 3.3.4 of the asset valuation fibre IMs for price-quality paths that changes the heading "Revaluation treated as income" to "Revaluation treated as revenue".	3.3.4	Clause 3.3.4(1) specifies that "For the purposes of specifying a price-quality path, revaluation must be treated as revenue". Therefore, the current reference to "income" in the heading is a typographical error that has been corrected to accurately refer to "revenue".

²⁷⁵ Chorus "Submission on initial PQ RAB and additional IM amendments draft decisions: Public version" (16 September 2021), row 10 of Table 3 and paragraph 103.

An amendment to clause 3.7.7(3) of the capital expenditure fibre IM to add a missing "the".	3.7.7(3)	The clause currently omits a "the" between the phrases "...must include" and "following detail..." in error. We have now corrected this typographical error.
An amendment to clause B1.1.9(4) of Schedule B that removes the underline from the formula used to determine "UFB closing tax losses".	B1.1.9(4) of Schedule B	The current underlining in the formula is a typographical error, which we have now corrected.