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Local Fibre Companies' initial information disclosure regulatory asset bases as at 1 January 2022 – Final Decision

Reasons paper

Date: 29 June 2023

Associated Documents

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15 September 2020	ISBN 978-1-869458-38-6	Fibre information disclosure and price-quality regulation – Proposed process and approach for the first regulatory period
13 October 2020	ISBN 978-1-869458-43-0	Fibre Input Methodologies – Main final decisions reasons paper
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3 November 2020	ISBN 978-1-869458-45-4	Fibre Input Methodologies – Financial loss asset final decision – reasons paper
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7 April 2022	-	Determining Fibre initial regulatory asset bases: Process update
28th July 2022	ISSN 1178-2560	Fibre Information Disclosure Amendment Determination 2022 [2022] NZCC 26
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6 October 2022	ISSN 1178-2560	Determination of Chorus' Initial PQ RAB, Initial ID-only RAB, Initial ID RAB, and Opening Tax Losses for Disclosure Year [2022] NZCC 33
30 March 2023	ISBN 978-1-99-101277-7	Local Fibre Companies' initial ID RAB as at 1 January 2022 – Draft decisions – reasons paper
28 June 2023	ISBN 978-1-991085-19-1	Amendments to Fibre Input Methodologies: Final decision – reasons paper
28 June 2023	[2023] NZCC13	Fibre Input Methodologies Amendment Determination 2023 [2023] NZCC 13

List of abbreviations

Abbreviation	Definition
The Act	The Telecommunications Act 2001
ABAA	Accounting-based allocation approach
AUP	Agreed-upon procedures
Capex	Capital expenditure
Enable	Enable Networks Limited
ESL	Enable Services Limited
FAR	Fixed asset register
FFLAS	Fibre fixed line access service
Financial loss period	The period starting on 1 December 2011 and ending on 31 December 2021
FLA	Financial loss asset
FLY	Financial loss year
FY	Financial year
GAAP	Generally accepted accounting practice (in New Zealand)
ID	Information disclosure
ID RAB	Information disclosure regulatory asset base
IM	Input methodology
LFC	Local fibre company
Northpower	Northpower Fibre Limited
Opex	Operating expenditure
PQ	Price-quality
PQ RAB	Price-quality regulatory asset base
RAB	Regulatory Asset Base
Regulated provider	Regulated fibre service provider
Regulations	Telecommunications (Regulated Fibre Service Providers) Regulations 2019
ROI	Return on investment
The Commission	Commerce Commission
Tuatahi	Tuatahi First Fibre Limited
UFB	Ultra-fast broadband
UFB FFLAS	any FFLAS provided by a regulated provider under the UFB initiative during the financial loss period
UFB initiative	the competitive tender programme, known as the Ultra-fast Broadband Initiative, to develop fibre-to-the-premises broadband networks connecting 75% of New Zealand households, with the support of $1.5 billion of Crown investment funding
WACC	Weighted average cost of capital

Note: Unless the context requires otherwise, words or phrases that are defined in the IMs or in the Act have the same the meaning as in the IMs or the Act as the case may be.

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Executive Summary

Purpose

X1 This paper sets out and explains our final decisions required to establish the value as at 1 January 2022 of the initial information disclosure regulatory asset base (**initial ID RAB**) for:

X1.1 Enable Network Limited (**Enable**);

X1.2 Northpower Fibre Limited (**Northpower**); and

X1.3 Tuatahi First Fibre Limited (**Tuatahi**).

X2 Our final determination of the value of the initial ID RAB for each local fibre company (**LFC**) is as follows:

Table X1 Our final determination of each LFC's initial ID RAB

LFC	Initial ID RAB value ($ millions)
Enable	588.2
Northpower	85.2
Tuatahi	675.3

X3 Our final determination of the value of "opening tax losses as at 1 January 2022" for disclosure year 2022 for each LFC is as follows:

X3.1 Enable final value of "opening tax losses" for disclosure year 2022 is $0;

X3.2 Northpower final value of "opening tax losses" for disclosure year 2022 is -$9.4m; and

X3.3 Tuatahi final value of "opening tax losses" for disclosure year 2022 is $0.

X4 The values of the ID RABs will be applied and updated over time by each LFC in line with the rules set out in the input methodologies (**IMs**) to reflect changes to each LFCs' asset base. The value of the opening tax losses will be rolled forward to contribute to the calculation of the regulated provider's regulatory tax allowance for future years.

X5 We will use the values of the ID RABs as part of our summary and analysis of LFCs' performance, alongside other information we will collect through ID. The value of the "opening tax losses as at 1 January 2022" represent any tax losses accumulated by the LFC associated with any operating losses during the pre-implementation period, as assessed by the Commission.

X6 We have published updated versions of our financial loss asset (**FLA**) discounted cash flow model for each LFC, reflecting our final decisions, the amendment to the Fibre IMs and final input information provided by each LFC.[1]

Information disclosure for 2022 and 2023

X7 The final initial ID RAB values and any opening tax losses we have determined will be used by each of the three LFCs to meet a requirement to submit ID reports for the 2022 and 2023 disclosure years later in 2023. These reports are due no later than 5 months after the end of disclosure year 2023 for the regulated entity. Northpower and Tuatahi are due to submit ID reports by 31 August 2023, while Enable's report is due by 30 November 2023.[2]

What is the initial ID RAB?

X8 The collection of fibre assets that an LFC employs in the provision of fibre fixed line access services (FFLAS) that are subject to ID regulation is known as its "ID RAB". The initial ID RAB is the value of these assets as at 1 January 2022, the "implementation date"[3] of the new fibre regulatory regime under **Part 6** of the Telecommunications Act 2001. Future ID RAB values will be calculated by rolling forward the ID RAB values from 1 January 2022. Note that we determined Chorus' initial ID RAB in October 2022.

Final values for each LFCs' initial ID RAB

X9 The following tables summarise our final determination of the initial ID RAB and opening tax losses for each LFC.

X10 The initial ID RAB as at 1 January 2022 is the sum of the value of Core Fibre Assets and the financial loss asset, as determined by the Commission.

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1 There has been a change to Enable's core fibre asset and financial loss asset values, though the changes have not affected Enable's total initial ID RAB value. These changes are discussed at paragraphs 3.74 and 3.75.

2 See paragraph 3.16 for further explanation of the ID reporting dates.

3 As defined in s 5 of the Telecommunications Act.

X11 Our final determination establishes the allocated initial ID RAB values. We have also provided an unallocated value for the ID RABs. As the LFCs have not applied cost allocation, the unallocated values are the same as the ID RAB values.[4]

Table X2 Enable initial ID RAB

Value	Initial ID RAB Unallocated values ($ millions)	Initial ID RAB values ($ millions)
Total	588.2	588.2
Core Fibre Assets	499.4	499.4
FLA	n/a	88.7
Tax losses	n/a	0

Table X3 Northpower initial ID RAB

Value	Initial ID RAB Unallocated values ($ millions)	Initial ID RAB values ($ millions)
Total	85.2	85.2
Core Fibre Assets	73.0	73.0
FLA	n/a	12.3
Tax losses	n/a	-9.4

Table X4 Tuatahi initial ID RAB

Value	Initial ID RAB Unallocated values ($ millions)	Initial ID RAB values ($ millions)
Total	675.3	675.3
Core Fibre Assets	539.2	539.2
FLA	n/a	136.0
Tax losses	n/a	0

[4] As noted in Chapter 3, we have accepted that the unallocated values are the same as the allocated values. The allocated values for Enable and Northpower are the same as the unallocated values. For Tuatahi, the unallocated values are slightly different to the allocated. Given the low materiality of the cost in question, we have accepted Tuatahi's allocation, and we have not sought to further consider the unallocated value as the work required to verify this in detail would be disproportionate to the impact of the value on the FLA.

X12 Our final determination of the initial ID RABs differs from the draft calculations of the FLA submitted by the three LFCs.[5] The Tables below set out the differences, for each LFC, between our determination and the figures submitted in the FLA discounted cash flow model.[6]

X13 We note that the submitted initial ID RAB figures for Enable have changed from those presented in the draft decision. This change has resulted in a reduction of the FLA value and an increase in the value of core fibre assets. The change is discussed at paragraphs 3.75 and 3.76.[7] The submitted figures for Northpower and Tuatahi have not changed between draft and final.

X14 The differences all relate to changes in the calculation of the benefit of Crown financing and tax losses within the FLA discounted cash flow model. Chapters 4 and 5 explain the source of these differences.

Table X5 Enable: Commission initial ID RAB versus submitted figures

Value	Final determination: Initial ID RAB values ($,000s)	Submitted figures ($,000s)	Difference ($,000s)
Total	588,176	592,849[8]	-4,673
Core Fibre Assets	499,426	499,426	0
FLA	88,749	93,423	-4,673
Tax losses	0	0	0

5 The calculations submitted by the LFCs have undergone changes, based on our review to reach our final decision. We explain the source of the differences in later chapters.

6 Enable submitted updated figures for its initial ID RAB in April 2023. These figures have been used in the comparison above.

7 We note that, due to rounding, the total initial ID RAB value submitted by Enable is shown as $10,000 higher now when compared to the draft decision total.

8 Note that the minor change in the total compared to the total in our draft decision is due to rounding after correcting depreciation, as outlined at paragraphs 3.75 - 3.76.

Table X6 Northpower: Commission initial ID RAB versus submitted figures

Value	Final determination: Initial ID RAB values ($,000s)	Submitted figures ($,000s)	Difference ($,000s)
Total	85,249	84,043	1,207
Core Fibre Assets	72,959	72,959	0
FLA	12,290	11,084	1,207
Tax losses	-9,445	-14,719	5,274

Table X7 Tuatahi: Commission initial ID RAB versus submitted figures[9]

Value	Final determination: Initial ID RAB values ($,000s)	Submitted figures ($,000s)	Difference ($,000s)
Total	675,259	675,482	-223
Core Fibre Assets	539,230	539,230	0
FLA	136,030	136,252	-223
Tax losses	0	0	0

Opening tax losses for disclosure year 2022

X15 During the financial loss period, LFCs were accumulating tax losses associated with the operating losses in the early stages of the ultra-fast broadband (UFB) initiative. The LFCs have used up some or all of the tax losses in recent years. The Fibre IMs require us to determine the value of these tax losses for each LFC, at 1 January 2022. Once determined these are referred to as the LFCs' "opening tax losses". We have now made a final determination of the value of these opening tax losses.

X16 Our final determination on the value of the "opening tax losses" for disclosure year 2022 is set out above at paragraph X3.

Final decision compared to our draft decision

X17 Table X8 below sets out the changes in initial ID RAB values between our draft and final decisions.

9 The final determination uses the same inputs as provided by Tuatahi. The small difference in this table is due to a revision to the tax calculation whereby notional deductible interest has been set to zero when it would otherwise be a negative value. The calculation of opening tax losses is discussed in chapter 4.

Table X8 Our final initial ID RAB values versus draft decision values

LFC	Final Initial ID RAB value ($m)	Draft Initial ID RAB value ($m)	Change ($m)
Enable	588.2	583.6	4.6
Northpower	85.2	84.8	0.4
Tuatahi	675.3	675.3	0

Chapter 1 Introduction

Purpose and structure of this paper

1.1 This paper sets out and explains our final decisions that establish the value of the initial information disclosure regulatory asset base as at 1 January 2022 (**initial ID RAB**) for:

1.1.1 Enable Network Limited (Enable);

1.1.2 Northpower Fibre Limited (Northpower); and

1.1.3 Tuatahi First Fibre Limited (Tuatahi).

1.2 It also sets out our final decision of the value of "opening tax losses as at 1 January 2022" for disclosure year 2022 for each LFC.

1.3 The paper is structured as follows:

1.3.1 **Chapter 1** is an introduction to this paper, summarising our final determinations, the process we have taken and the accompanying material we have published to support our final determination of the initial ID RABs;[10]

1.3.2 **Chapter 2** sets out the regulatory framework we have applied in making these determinations and the key concepts/terminology involved;

1.3.3 **Chapter 3** sets out our consideration of the draft initial regulatory asset base (**RAB**) figures submitted by LFCs, and the final determinations of the initial ID RABs;[11]

1.3.4 **Chapter 4** sets out our final determination of the opening tax losses for disclosure year 2022; and

1.3.5 **Chapter 5** sets out our final decision on the calculation of the benefit of Crown financing.

Summary of decisions contained in this paper

1.4 In this paper we set out our final decisions on the initial ID RAB values:

[10] This material has been published over time and only a final version of the determination is published with the final decision. Other supporting material is available at https://comcom.govt.nz/regulated-industries/fibre/projects/fibre-price-quality-path-and-information-disclosure.

[11] Updated draft figures were submitted by Enable on 5 April 2023. This is discussed at paragraphs 3.75 and 3.76.

1.4.1 the "initial RAB value" of the FLA, in accordance with s 172(2) of the Telecommunications Act 2001 (**the Act**);

1.4.2 the values for core fibre assets in the initial ID RABs at 1 January 2022 of:

1.4.2.1 the "unallocated initial RAB value" of all core fibre assets; and

1.4.2.2 the "initial RAB value" of all core fibre assets.

1.5 This paper also describes our final decisions on the opening tax losses as at 1 January 2022 for each LFC for disclosure year 2022.

Our final determinations

1.6 In the tables below we set out our final determinations for each of the three LFCs of the values of the:

1.6.1 initial ID RAB; and

1.6.2 opening tax losses for disclosure year 2022 (noting our decision is explained in Chapter 4).

1.7 We note that we have already finalised the total value of Chorus' initial ID RAB in October 2023.[12]

Table 1.1 Enable initial ID RAB

Value	Initial ID RAB Unallocated values ($ millions)	Initial ID RAB values ($ millions)
Total	588.2	588.2
Core Fibre Assets	499.4	499.4
FLA	n/a	88.7
Tax losses	n/a	0

Table 1.2 Northpower initial ID RAB

Value	Initial ID RAB Unallocated values ($ millions)	Initial ID RAB values ($ millions)
Total	85.2	85.2
Core Fibre Assets	73.0	73.0
FLA	n/a	12.3
Tax losses	n/a	-9.4

[12] Commerce Commission "Chorus' initial regulatory asset base – Final decision – Reasons paper", 6 October 2023.

Table 1.3 Tuatahi initial ID RAB

Value	Initial ID RAB Unallocated values ($ millions)	Initial ID RAB values ($ millions)
Total	675.3	675.3
Core Fibre Assets	539.2	539.2
FLA	n/a	136.0
Tax losses	n/a	0

Our Process for determining the initial ID RABs

1.8 We determined Chorus' initial RAB on 6 October 2022. The initial ID RABs of Enable, Northpower and Tuatahi were outside of the scope of that decision.

1.9 Our draft decision as part of the process of determining the initial ID RABs for Enable, Northpower and Tuatahi was published on the 30 March 2023.

1.10 We received two submissions on our draft decision, one from Northpower and one from Enable. We did not receive any cross-submissions.[13]

1.11 We have now made our final determination of the ID RABs. This determination has taken account of submissions on the draft decision. The three LFCs require the initial ID RABs to be finalised to meet ID reporting requirements later in 2023 (see paragraph 3.16 for details of the dates by which reporting is required).

1.12 We have gathered information from Enable, Northpower and Tuatahi by issuing each entity with a s221 notice, including a Commerce Commission FLA discounted cash flow model that calculates the financial loss asset for each LFC, based on LFC inputs in compliance with the Fibre IMs.[14] We have also issued several voluntary requests for information (RFIs) and held meetings with each LFC to discuss questions seeking clarification of the information submitted.

1.13 We have then required each LFC to:

1.13.1 populate the FLA discounted cash flow model with the required input information;

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[13] Submissions received were Northpower " Submission on: Local Fibre Companies' initial information disclosure regulatory asset bases as at 1 January 2022 – Draft Decision", 27 April 2023 and Enable Networks Limited "Submission on Commerce Commission Draft Decision of Local Fibre Companies' initial information disclosure regulatory asset bases as at 1 January 2022", 27 April 2023.

[14] We refer to this model in this document as the "FLA discounted cash flow model". We also used this model for our assessment of Chorus' initial RAB, though note it has been modified to apply Fibre IM rules relevant to a regulated provider subject only to information disclosure regulation in relation to Crown financing calculations.

1.13.2 provide supporting information that demonstrates how the input information to the FLA discounted cash flow model complies with the Fibre IMs and how it can be reconciled to the LFC's financial reports over the financial loss period; and

1.13.3 provide reports on agreed-upon procedures[15] and assurance reports produced by an expert practitioner in accordance with ISRS (NZ) 4400.[16]

Materials we have published

1.14 Alongside our draft decision we published:

1.14.1 public versions of documents provided by each LFC, including the originally submitted FLA discounted cash flow models;

1.14.2 public versions of agreed-upon procedures and assurance reports; and

1.14.3 updated versions of our FLA discounted cash flow model (updated to reflect our draft decisions, proposed changes to the Fibre IMs and input information provided by each LFC).

1.15 We are publishing final versions of our FLA discounted cash flow model (updated as necessary to reflect our final decisions, changes to the Fibre IMs and input information provided by each LFC). Alongside this paper, we have published a determination which specifies the relevant initial RAB values resulting from the determinations we have made.[17]

1.16 An updated version of the FLA discounted cashflow model submitted by Enable in April 2023 is also being published with our final decision.[18]

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[15] See paragraphs 3.10 to 3.12 for more detail on the matters covered by the assurance reports.

[16] ISAE (NZ) 3000 (Revised) – Assurance Engagements Other than Audits or Reviews of Historical Financial Information and SAE 3100 (Revised) – Compliance Engagements.

[17] *Determination of Local Fibre Companies' Initial ID RABs and Opening Tax Losses for Disclosure Year 2022* [2023] NZCC 14.

[18] This revised model was received after the publication of our draft decision and supersedes the Enable FLA discounted cash flow model published with our draft decision. The revisions are explained at paragraphs 3.75 and 3.76.

Chapter 2 Regulatory Framework

Purpose of this chapter

2.1 This chapter sets out the regulatory framework we have applied in making our final decisions that determine the value of each of Enable's, Northpower's and Tuatahi's initial ID RAB, as well as each LFC's "opening tax losses".

What is the initial ID RAB?

2.2 The collection of fibre assets that an LFC employs in the provision of FFLAS that are subject to ID regulation is known as its "ID RAB".[19]

2.3 The ID RAB is made up of two components:

2.3.1 **Core fibre assets**: fibre assets that are employed by an LFC in the provision of ID FFLAS (whether or not the asset is also employed in the provision of other services);[20] and

2.3.2 **The FLA**: an LFC is treated as owning a FLA that captures unrecovered returns that have accumulated in relation to the UFB initiative over the financial loss period (the period starting on 1 December 2011 and ending on 31 December 2021).[21]

2.4 An LFC's initial ID RAB value is the value of the ID RAB at the commencement of the fibre regulatory regime on 1 January 2022. This value, once rolled forward for future years, is important to interested persons as it is a major component of the return on investment (ROI) calculation under ID, which is a key indicator in assessing whether the purpose of Part 6 of the Act is being met.[22] Determining the value of the initial ID RAB is a critical foundational step for the new regulatory regime, since it underpins the value of an LFC's ID RAB in subsequent disclosure years and its value cannot be reconsidered later.

[19] Clause 2.2.2(1)(a) of *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021. This FFLAS is referred to as "ID FFLAS". "ID FFLAS" is defined as "means, in respect of a regulated provider, all FFLAS provided by that regulated provider that is subject to information disclosure regulation in regulations made under s 226 of the Act". *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, clause 1.1.4(2), definition of "ID FFLAS".

[20] Telecommunications Act 2001, s 177(6); and *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, 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.

[21] Telecommunications Act 2001, s 177(2) and (3). The definition of "financial loss period" is specified in *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, clause 1.1.4(2).

[22] Under s 186 of the Act, 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.

How we determine the value of initial ID RAB

2.5 Determining the initial ID RAB value requires us to carry out the following two steps, as required by the fibre asset valuation and cost allocation IMs.

2.6 First, we determine the initial RAB value of the core fibre assets in the ID RAB. This requires us to:

2.6.1 Determine the unallocated initial RAB value of the core fibre assets. This is the value before we apply the cost allocation IM and which therefore reflects the total value of assets either wholly or partly employed in the provision of FFLAS.

2.6.2 Then the initial RAB value at implementation date is arrived at by applying the cost allocation IM to the unallocated initial RAB value. At a high-level, the cost allocation IM requires that:

2.6.2.1 unallocated asset values that are "directly attributable" to the provision of FFLAS are allocated to FFLAS. Conversely, asset values that are directly attributable to the provision of services that are not FFLAS must not be allocated to FFLAS; and

2.6.2.2 unallocated asset values that are not directly attributable to either FFLAS or services that are not FFLAS (ie, are shared) must undergo cost allocation. Specifically, shared costs must be allocated between those services using the accounting-based allocation approach (ABAA).

2.7 Second, we determine the initial RAB value of the FLA:

2.7.1 The FLA is equal to the financial losses accumulated in providing UFB FFLAS in the financial loss period. At a high-level, the financial losses are the difference between the present value (PV) of the total net cash flows and the sum of the UFB closing asset base at implementation date and the PV of the benefit of Crown financing at implementation date.

2.7.2 Because some costs incurred during the financial loss period may have been shared with services that are not UFB FFLAS, the cost allocation IM must be applied to determine the share of costs attributable to the provision of UFB FFLAS.

2.8 Following this two-step process, the initial ID RAB value is the sum of the initial RAB values of the core fibre assets and the FLA.

How we have determined the opening tax losses

2.9 We have also determined each LFC's "opening tax losses". During the financial loss period, each LFC was accumulating tax losses associated with its operating losses.[23] The value of these tax losses, at 1 January 2022, are each LFC's "opening tax losses". As specified in the IMs, opening tax losses for each regulated fibre service provider (regulated provider) for disclosure year 2022 are a value as determined by us (clause 2.3.3(3)(a)).

2.10 The opening carry-forward value of the tax losses at the implementation date is calculated by applying a method that includes summing the annual values of notional deductible interest associated only with privately funded assets (ie financing costs excluding the portion that is Crown financing) in calculating the UFB tax costs cash flow over the financial loss period. The inclusion of notional deductible interest in the calculation of the UFB tax costs cash flow allows for the tax benefits of interest costs to be recognised and for the correct recognition of the timing of the utilisation of losses and changes the closing value of tax losses that is carried forward.

2.11 The value of opening tax losses, once rolled forward for future years, contributes to the calculation of a regulated provider's regulatory tax allowance. The regulatory tax allowance is a significant component of regulatory profit, and therefore, important to interested persons as it is used to determine the ROI calculation under ID, which is a key indicator in assessing whether the purpose of Part 6 of the Act is being met.

Mandatory considerations that apply for our decisions

2.12 When making the decisions described in this paper, we were required to consider certain matters specified in s 166(2) of the Act:[24]

> (2) The Commission or Minister must make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect—
>
> (a) to the purpose in section 162; and
>
> (b) to the extent that the Commission or Minister considers it relevant to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

2.13 Section 162 sets out the purpose of Part 6 of the Act:[25]

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

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[23] These are notional tax losses, based on the allocation of revenues and costs to FFLAS activities.

[24] Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), paragraphs 2.206-2.271.

[25] Telecommunications Act 2001, s 162.

(a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and

(b) have incentives to improve efficiency and supply fibre fixed line access services of a quality that reflects end-user demands;

(c) allow end-users to share the benefits of efficiency gains in the supply of fibre fixed line access services, including through lower prices; and

(d) are limited in their ability to extract excessive profits.

2.14 As with all decisions under Part 6, we must make decisions relating to each LFC's initial ID RAB and opening tax losses for disclosure year 2022 that we consider best give, or are likely to best give, effect to the purposes set out in s 166(2).

2.15 However, in many cases, we must make our decisions according to specific legal requirements that constrain the exercise of judgement. This arises in relation to:

2.15.1 the application of IMs (for instance, the estimation of the cost of capital for the financial loss period)[26] where parameters were determined because we considered that they best give, or are likely to best give, effect to the s 166(2) purposes; and

2.15.2 the application of mandatory requirements in the Act (for instance, the meaning of "fibre asset" in s 177(6) of the Act).

2.16 In these cases, we have explained our decisions by referring to our specific obligations under the IMs or the Act.

2.17 Further detail on the legal framework for determining the initial ID RAB and the opening tax losses is set out in 2.53-2.68 of "Chorus' initial regulatory asset base as at 1 January 2022 – Final Decision: Reasons Paper" (6 October 2022).[27]

[26] *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, Section 5 of Schedule B.

[27] Commerce Commission "Chorus' initial regulatory asset base – Final decision – Reasons paper", 6 October 2023.

Chapter 3 Reaching our final decisions on the LFCs' initial information disclosure regulatory asset bases

Purpose of this chapter

3.1 This chapter discusses our consideration of the draft initial ID RAB figures submitted by the three LFCs that have informed our final decisions on the initial ID RAB for Enable, Northpower and Tuatahi.

3.2 We have carried out a number of steps to reach our final decisions and to determine the values of the initial ID RAB and the "opening tax losses", as detailed in Chapter 2. Our final decisions on the opening tax losses is discussed in Chapter 4.

3.3 The details of the various components of our final decisions and determination of the initial RAB values are set out at paragraph 1.6. The discussion in this chapter relates to key components of the initial ID RAB. Note that we discuss the calculation of the benefit of Crown financing in Chapter 5, as we have made changes to adopt a unified approach across the three LFCs.

The decisions we are required to make

3.4 As discussed in the regulatory framework section (Chapter 2) above, in making our final decision on the initial ID RABs we have determined the final value of the initial ID RAB for each LFC. This is a critical foundational step for the new regulatory regime, since it underpins the value of an LFC's ID RAB in subsequent disclosure years and its value cannot be reconsidered later.

3.5 The initial ID RAB consists of core fibre assets and a financial loss asset. This value, once rolled forward for future years, is a major component of the ROI calculation under ID, which is a key indicator in assessing whether the purpose of Part 6 of the Act is being met.

Analysis of the information required from LFCs to make our final decisions

Information required from the LFCs

3.6 We have gathered information from Enable, Northpower and Tuatahi by issuing each entity with a s221 notice. We have also issued several voluntary requests for information and held meetings with each LFC to discuss questions seeking clarification of the information submitted.

3.7 We set out our analysis of this information received from LFCs in response to our s221 notice and other enquiries in the following sections of this chapter. We note that the submissions we received on our draft decision mainly addressed the calculation of the benefit of Crown financing, discussed in Chapter 5. The only submission we address in this chapter is a minor correction to our table of financial reporting dates for the loss period.

3.8 We also received updated depreciation figures from Enable after we published our draft decision. The changes address errors in some depreciation figures previously submitted. The updated depreciation figures lead to a reduction in the value of Enable's financial loss asset and a commensurate increase in the value of Enable's core fibre assets. Overall, the total initial ID RAB value is not affected, just these components. This is discussed at paragraphs 3.75-3.76.

Assurance

Agreed-upon procedures

3.9 We have required each of the three LFCs to provide agreed-upon procedures (AUP) reports. These reports are produced by an expert practitioner in accordance with the International Standard on Related Services (New Zealand) 4400 Agreed-Upon Procedures Engagements. The AUP report sets out the factual findings obtained from conducting the agreed-upon procedures to reconcile the figures provided as inputs to the FLA discounted cash flow model back to the fixed asset register (FAR) for the various metrics. It also reconciles the figures provided as inputs to the FLA discounted cash flow model back to financial accounting systems used to prepare general purpose financial reports (general ledger) for the certain metrics.

Independent assurance reports

3.10 We have also required each LFC to provide assurance reports. The reasonable assurance engagement provides an opinion on the LFC’s compliance, in all material respects, with the fibre input methodologies determination. The engagement and the associated opinion is in accordance with:

3.10.1 Standard on Assurance Engagements 3100 (Revised), Compliance Engagements (SAE 3100 (Revised)), issued by the New Zealand Auditing and Assurance Standards Board; and

3.10.2 International Standard on Assurance Engagements (New Zealand) 3000 (Revised): Assurance Engagements Other than Audits or Reviews of Historical Financial Information (ISAE (NZ) 3000 (Revised)) issued by the New Zealand Auditing and Assurance Standards Board.

Reliance upon assurance procedures

3.11 The provision of assurance of the draft figures via agreed upon procedures and the reasonable assurance engagement reports is important given these decisions underpin the value of the draft initial ID RABs for each of the three LFCs. Now that we have determined the final initial ID RABs for each LFC they cannot be reconsidered at a future date.

3.12 We also asked for non-cash items and accruals to be identified via agreed-upon procedures reviews and compliance assurance reports.[28] Given the FLA calculation is based on cash flows we wanted to check the level of non-cash items impacting the calculation.

Timing adjustments

Balance dates

3.13 The balance dates of the three LFCs do not always coincide with the financial loss years (FLYs) as defined in the IMs, which normally end on 30 June (the final FLY is only 6 months and ends on 31 December 2021). The current balance dates of each LFC is:

3.13.1 Enable: 30 June;

3.13.2 Northpower: 31 March; and

3.13.3 Tuatahi: 31 March.

3.14 For these regulated providers disclosure year-ends are aligned with their financial reporting balance dates.[29]

3.15 The financial reporting dates during the financial loss period of each LFC are summarised in the table below. There have been changes to balance dates for some of these LFCs during the financial loss period.

Table 3.1 Financial reporting dates for the loss period

LFC	Current reporting date	Previous reporting date	Change of balance date
Enable	30 June	N/A	
Northpower	31 March	30 June	30 June 2021

[28] Accruals or non-cash items over a value of either $1 million for Enable and Tuatahi, or $500,000 for Northpower.

[29] Note that this is not the case for Chorus, which has a balance date of 30 June, but a disclosure date of 31 December.

Northpower LFC2 (incorporated January 2017, amalgamated with NFL 1 May 2021)[30]	N/A	31 March (from 2017 to 2021)[31]	N/A
Tuatahi	31 March	30 June	31 March 2017

ID reporting dates

3.16 The ID reporting dates for each LFC, including Chorus are summarised in the table 3.2 below.[32]

Table 3.2 Current reporting dates

LFC	Current reporting date for 2023
Enable	30 November 2023
Northpower	31 August 2023
Tuatahi	31 August 2023
Chorus	31 May 2023

The financial loss period and financial loss years

3.17 The financial losses for each LFC are calculated over the financial loss period, which is the period starting on 1 December 2011 and ending on 31 December 2021. The financial loss period ends the day immediately before 1 January 2022, the implementation date of the new fibre regime.

3.18 The Fibre IMs define a FLY as a period of 12 months beginning on 1 July in any year within the financial loss period and ending on 30 June in the following year. For example, “financial loss year 2013” means the 12-month period ending on 30 June 2013.

3.19 The IMs also define two periods within the pre-implementation period that are less than 12 months in length:

30 Given the amalgamation with Northpower, Northpower LFC2 is no longer a separate relevant entity.

31 Northpower submitted that we had previously incorrectly recorded Northpower LFC2's reporting date as 30 June. See Northpower " Submission on: Local Fibre Companies’ initial information disclosure regulatory asset bases as at 1 January 2022 – Draft Decision”, 27 April 2023, paragraph 2.

32 Generally, ID reporting is required no later than five months after the end of each disclosure year. See *Fibre Information Disclosure Determination 2021*, as amended on 28 July 2022, clauses 2.3 and 2.4.

3.19.1 the period from 1 December 2011 to 30 June 2012 is considered "financial loss year 2012"; and

3.19.2 the period from 1 July 2021 to the close of the day immediately before the implementation date is considered "financial loss year 2022".

Timing adjustments to align with financial loss years

3.20 The FLYs, as noted above, are defined as a period ending on 30 June (except for FLY 2022, which ends on 31 December 2021). As both Northpower and Tuatahi have had reporting dates for at least part of the financial loss period that did not end on this date, these LFCs have had to make timing adjustments to the figures submitted.

3.21 These adjustments effectively restate financial results to align with the FLY period ending on 30 June. The resulting cash flow figures are therefore not directly comparable to reported financial results aligned with the financial reporting years of the LFC.

3.22 Given the final period covers 6 months to 31 December 2021, all LFCs have had to rely on taking part financial reporting year results to provide the appropriate figures for FLY 2022.

Specific cash flow inputs for the calculation of the FLA

Revenue

3.23 The Fibre IMs define "UFB revenues cash flow" as consisting of revenues derived by a regulated provider from the provision of UFB FFLAS for the financial loss year in question, excluding any capital contributions to the extent they were accounted for as revenue under generally accepted accounting practice (**GAAP**).[33]

3.24 To comply with this requirement, the LFCs have adjusted the revenues reported under GAAP. Below we briefly summarise the adjustments undertaken and the results of our review of the UFB revenues cash flow figures entered in the FLA discounted cash flow model.

3.25 We note that no revenue allocators have been applied.[34] Any non-UFB FFLAS revenues have been removed directly.

[33] *Fibre input methodologies determination 2020*, as amended on 29 November 2021, clause B1.1.2(3)(b).

[34] While allocations are typically applied to costs and asset values, we have asked for details of any allocations of revenues that were required to determine the Fibre IM compliant UFB revenues. This was to ensure that we could scrutinise any allocations that may have been required.

Enable revenue cash flow

3.26 Revenue cash flows submitted by Enable excluded some categories of other income from UFB Income and associated operating or capital costs. This income related to recovery of costs for faults or network changes.

3.27 Capital contributions from developers have been excluded from revenue, as required by the Fibre IMs. Most of the capital contribution revenue was not accounted for as revenue by Enable but were received by the contractor that constructed the network, Enable Services Limited (ESL), who recognised the associated revenue.

3.28 Other adjustments have also been made to revenues to account for internal transfers appropriately.

Northpower revenue cash flow

3.29 Northpower has excluded income received prior to 1 December 2011 from the revenue cash flow. It has also excluded revenue that related to cost recovery from Northpower Limited and Northpower LFC2 along with associated costs, as these transactions are internal transfers.

3.30 Deferred income release revenue, relating to the receipt of Crown financing, has also been excluded.[35] We discuss the treatment of Crown financing in more detail in Chapter 5. This includes the approach taken by Northpower to the benefit of Crown financing that led to the deferred income.

3.31 Capital contributions have been excluded from revenue, as required by the IMs.

Tuatahi revenue cash flow

3.32 The adjustments made by Tuatahi are the direct removal of various non-UFB FFLAS revenue lines. This includes the removal of Velocity Network revenue (a non-UFB initiative network), other non-UFB town revenue and other non-FFLAS related categories, including internal allocated revenue, interest income, and minor capital gains on asset sales. [36]

3.33 Along with removing revenue earned directly by non-UFB network assets, Tuatahi has also removed associated operating costs (see below). We note that the revenues removed represent a small fraction of the total revenue earned.

3.34 Capital contributions have been excluded from revenue, as required by the IM.

[35] Deferred income release revenue is the balance of receipts where the associated contract services are yet to be performed. It is treated as a liability and released to (ie, recognised as) revenue as the services are performed.

[36] While other non-UFB town revenue will be part of Tuatahi's FFLAS revenues in future for the purposes of ID, only income from UFB FFLAS is relevant for the calculation of the financial losses.

Conclusion of our review

3.35 We have reviewed the revenue cash flows submitted by Enable, Northpower and Tuatahi, along with the associated adjustments made to comply with the Fibre IMs. Based on this review, together with the assurance described at paragraphs 3.10 and 3.11, we are satisfied that the UFB revenues cash flow from each LFC, in all material respects, is compliant with the IM.

Operating costs

3.36 The Fibre IMs define "UFB operating expenditure cash flow" as operating costs incurred under the UFB initiative for a FLY, allocated to the provision of UFB FFLAS by applying clause B1.1.6(1) of Schedule B.

3.37 To comply with this requirement, each LFC has reviewed its reported operating costs and adjusted costs to remove any that do not comply with the Fibre IMs.

3.38 The Fibre IMs require that the "UFB operating expenditure cash flow" includes operating costs incurred under the UFB initiative for a FLY, allocated to the provision of UFB FFLAS.[37]

3.39 None of the LFCs have submitted details of any cost allocators. As we discuss below, Tuatahi has allocated some operating costs that relate to non-UFB services, which we consider are of very low materiality. The LFCs have newly built networks, which are dedicated to the provision of UFB FFLAS, therefore avoiding the need for cost allocation.[38]

Enable operating expenditure cash flow

3.40 Enable has adjusted the operating expenditure cash flow submitted to reflect actual cash flow by adjusting for non-cash items (for example, making adjustments for opening and closing accounts payable).

Northpower operating expenditure cash

3.41 Some operating costs incurred by Northpower fibre Limited on behalf of LFC2 and Northpower Limited have been excluded, along with associated revenue, as they are internal transfers. Operating expenditure related to UFB but incurred prior to 1 December 2011 has also been excluded. [39]

[37] *Fibre input methodologies determination 2020*, as amended on 29 November 2021, clause B1.1.2(4)(b).
[38] Noting that Chorus has significant cost allocations, as it employs both pre-existing and newly built assets that are shared between the provision of both UFB FFLAS and other non-FFLAS services.
[39] Noting that only operating expenses incurred during a financial loss year may be included in operating expenditure cash flow.

Tuatahi operating expenditure cash flow

3.42 Tuatahi has reviewed its operating expenditure to identify and remove non-UFB FFLAS expense lines. The expenses removed include those related to the Velocity Network and expenses related to the operation of the UFB FFLAS network prior to 1 December 2011.

3.43 The removal of operating costs relating to non-UFB network assets has involved a degree of cost allocation. Given the very low materiality of the costs in question, we have not sought to obtain a detailed explanation of these cost allocations and the rationale for the allocations applied. We view the work required to provide and review this detail is not proportionate to the impact of the costs on the calculation of the FLA.

Conclusion of our review

3.44 We have reviewed the "UFB operating expenditure cash flows" submitted by Enable, Northpower and Tuatahi, along with the associated adjustments made to comply with the Fibre IMs. Based on this review, together with the assurance described at paragraphs 3.10 and 3.11, we are satisfied that the UFB operating expenditure cash flow from each LFC, in all material respects, is compliant with the Fibre IMs.

Value of net commissioned assets

3.45 The Fibre IMs define "UFB value of net commissioned assets cash flow" as:[40]

3.45.1 in respect of FLY 2012, the amount calculated in accordance with the following formula:

Sum of value of commissioned assets - Sum of value of disposed assets + Sum of UFB opening asset values as of 1 December 2011; and

3.45.2 in all other cases, the amount calculated in accordance with the following formula:

Sum of value of commissioned assets - Sum of value of disposed assets.

3.46 We have reviewed the opening commissioned asset value at 1 December 2011, disposed asset values and the value of commissioned assets for each financial loss year.

[40] Refer to the *Fibre input methodologies determination 2020*, as amended on 29 November 2021, clause B1.1.2(4)(d) for further details.

3.47 Each LFC has provided details of how the commissioned asset values within its financial accounts can be reconciled with the cash flow. This reconciliation includes details of adjustments made in relation to capital contributions and disposed assets.

UFB value of net commissioned assets cash flow (including capital contributions treatment)

Enable

3.48 Enable has deducted capital contributions from commissioned asset values as required. The capital contributions have been deducted from the net commissioned asset cash flow.

Northpower

3.49 The Northpower commissioned asset figures have a timing difference, in terms of FLY, between the deduction from revenue of the capital contributions and the deduction of those contributions from the commissioned asset values. This difference is caused by a delay between receiving the capital contribution and the commissioning of the associated assets.

3.50 We have assessed this timing difference. The IMs require that capital contributions are deducted from the cost of the asset at commissioning date, therefore revenue cash flow is reduced in advance of the associated reduced commissioning costs being recognised in the cash flow. As this difference arises from complying with the IMs, no adjustment is necessary.

Tuatahi

3.51 Tuatahi has a timing difference in the deduction of capital contributions from commissioned asset values versus the deduction of the capital contribution from revenue. This is a result of contributions being collected in advance of the commissioning of the assets for which the contribution is collected.

3.52 We have assessed this timing difference. It results from complying with the IM and no adjustment is therefore necessary.

3.53 Tuatahi's net commissioned assets cash flow is based on when the asset was available for use, which is different to the time when the asset is recorded within Tuatahi's Tax FAR.[41] This has resulted in some significant differences in the timing of the net commissioned assets cash flow when compared to the commissioning dates in Tuatahi's Tax FAR.

[41] As Tuatahi undertook revaluations of its assets to fair value, variances between the net commissioned assets' cash flow and the FAR net book values, adjusted to back out revaluations, are also substantial. Given the Tax FAR values are not impacted by revaluation we have used this as our basis for comparison.

3.54 We have sought further information and assurance of the asset commissioning timings reflected in the FLA discounted cash flow model, given earlier timings will produce a higher FLA, due to time-value of money impacts.

3.55 Tuatahi has explained that processing delays impacted the timing of assets being recognised in the Tax FAR. For example, an asset might not be shown as complete in the Tax FAR until invoices are all recorded as paid. However, the asset has been available for use after technical commissioning tests are successfully completed.

3.56 The commissioning timings as recorded in the Tax FAR do show evidence of significant swings in value between FLYs. This is supporting evidence that there were delays between the recording of assets as "commissioned" in the Tax FAR and when the asset was actually available for use.

3.57 There is also a difference in the total spend during the financial loss period on commissioned assets between the Tax accounts and net commissioned assets cash flow. This is also a result of timing differences between the date on which assets are available for use, and the recording of the asset within the Tax FAR.[42]

3.58 We are satisfied with the explanations for the variances provided by Tuatahi, and with the assurance work undertaken by PWC that provides an opinion that Tuatahi has in all material respects, complied with the Fibre IMs.

Conclusion of our review

3.59 We have reviewed the UFB value of net commissioned assets cash flows submitted by Enable, Northpower and Tuatahi. The review includes the associated adjustments made to comply with the IMs in terms of the deduction of capital contributions from commissioned asset values. We have also reviewed specific asset commissioning timings reflected in the FLA discounted cash flow model. Based on this review, together with the assurance described at paragraphs 3.10 and 3.11, we are satisfied that the UFB value of net commissioned asset cash flow from each LFC, in all material respects, is compliant with the Fibre IMs.

Allocators and direct attribution

3.60 The Framework chapter above briefly explains how the cost allocation IM is applied to unallocated RAB values to determine the allocated portion of the asset value relevant to the provision of regulated FFLAS (or UFB FFLAS in the loss period).

3.61 All three LFCs have each stated that no cost allocators have been used. All asset values are directly attributable to UFB FFLAS.

[42] We have been advised that the Tax FAR has backdated depreciation based on the actual commissioning date of the assets.

3.62 We have discussed the treatment of asset values with Tuatahi in relation to the non-UFB FFLAS portions of its network. While there will be some minor sharing of assets between the UFB FFLAS network and the non-UFB FFLAS networks, we are satisfied that this is not material.

3.63 We consider the effort required to develop and review asset allocators is disproportionate to the impact of the resulting asset allocation on the calculation of the FLA. The associated non-FFLAS revenues represent a small fraction of the total revenue earned.

Capital contributions treatment

3.64 The IMs require that:

3.64.1 UFB FFLAS revenues that result in the "UFB revenues cash flow" for the financial loss year in question must exclude any capital contributions to the extent they were accounted for as revenue under GAAP.[43]

3.64.2 the value of commissioned assets in relation to UFB assets is the GAAP cost as of the commissioning in constructing or acquiring the UFB asset, net of capital contributions.[44]

3.65 All three LFCs derived revenue from capital contributions. We have reviewed the treatment of capital contributions for each LFC, and we are satisfied that the capital contributions have been treated in accordance with the Fibre IM requirements.

3.66 We note that in some cases there is a mismatch in the timing of the deduction of the capital contributions from revenue with the subsequent deduction of the contribution from the commissioned asset value. This is a natural consequence of the collection of the contribution ahead of the asset being completed and available for use.

3.67 See paragraphs 3.23 to 3.34 above for further comments on our review of the reduction in revenue due to the removal of capital contributions. Paragraphs 3.48 to 3.59 set out our review of the removal of capital contributions from commissioned asset cash flows.

Conclusion of our review

3.68 We have reviewed the details of the treatment of capital contributions submitted by Enable, Northpower and Tuatahi. Based on this review, together with the assurance described at paragraphs 3.10 and 3.11, we are satisfied that the treatment applied by each LFC, in all material respects, is compliant with the IM.

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[43] *Fibre input methodologies determination 2020,* as amended on 29 November 2021, clause B1.1.2(3)(b).
[44] *Fibre input methodologies determination 2020,* as amended on 29 November 2021, clause B1.1.3(1)(a).

UFB cost allocation adjustment cash flow

3.69 The calculation of an adjustment cash flow in relation to cost allocation is set out in the IMs.[45]

3.70 Given no cost allocation has been applied by any of the LFCs, we do not consider this further.

Depreciation - general

3.71 The Fibre IMs define "depreciation" as:

> depreciation and impairment losses recognised by the regulated provider (ignoring any accounting adjustment for Crown financing) under GAAP during the financial loss year.[46]

3.72 Depreciation is used as part of the roll forward of the unallocated and allocated fibre assets.

3.73 Tax depreciation is also used to calculate the roll forward of the tax asset base.

Enable depreciation

3.74 We reviewed Enable's depreciation calculation to arrive at the depreciation for each FLY in the Enable FLA discounted cash flow model. When we made our draft decision, we noted that we were satisfied that adjustments had been made to account for the impact of the deduction of capital contributions from commissioned asset values and to remove the depreciation associated with revaluations.

3.75 After publication of the draft decision, Enable supplied revised depreciation figures. The revision corrected an over-estimation of depreciation that was the result of changes made to depreciation when revaluations where undertaken. The revaluation changes allowed continuing application of depreciation to assets after they were fully depreciated. This resulted in some short-lived assets having a negative book value.

3.76 The impact of this error was that Enable's depreciation figures in the draft decision overstated depreciation by approximately $7m and increased the financial loss asset, while the core fibre asset values were reduced by an equal amount. Correction of the error has not changed the value of Enable's initial ID RAB but has changed the constituent core fibre asset and FLA values. We have reviewed this change and accepted its impact and Enable's explanation of it.

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45 *Fibre input methodologies determination 2020,* as amended on 29 November 2021, clause B1.1.2(4)(a).

46 *Fibre input methodologies determination 2020,* as amended on 29 November 2021, clause B1.1.2(9).

Northpower depreciation

3.77 Northpower's value of assets commissioned prior to 1 December 2011 that form the UFB opening asset values as of 1 December 2011 are net of depreciation as required by the Fibre IMs. Depreciation prior to FLY 2012 is excluded from the FLA calculation as required.

3.78 We have reviewed Northpower's depreciation calculation to arrive at the depreciation for each FLY in the Northpower FLA discounted cash flow model. We are satisfied that adjustments have been made to account for the impact of the deduction of capital contributions from commissioned asset values as required.

Tuatahi depreciation

3.79 The assets commissioned prior to 1 December 2011 that form the UFB opening asset values as of 1 December 2011 are net of depreciation as required by the Fibre IMs. Depreciation prior to FLY 2012 is excluded from the FLA calculation as required.

3.80 We note that Tuatahi has undertaken revaluations under GAAP (to present fair value). The IMs do not allow these revaluations, and no revaluations are allowed in the financial loss period. Tuatahi's accounting depreciation as reported in its annual reports does not reconcile over the entire period, given the impact of revaluations.

3.81 A further cause of the difference between the depreciation in Tuatahi's financial reports and depreciation in the FLA calculation submitted by Tuatahi is the changes to timing to recognise when the asset was available for use, which differs from the recording of the asset within the accounting FAR.[47]

3.82 We have reviewed Tuatahi's depreciation calculation to arrive at the depreciation for each FLY in the Tuatahi FLA discounted cash flow model. We are satisfied that adjustments have been made to account for the impact of the deduction of capital contributions from commissioned asset values as required.

Conclusion of our review

3.83 We have reviewed the depreciation figures submitted by Enable, Northpower and Tuatahi, along with the associated adjustments in relation to capital contributions made to comply with the Fibre IMs. Based on this review, together with the assurance described at paragraphs 3.10 and 3.11, we are satisfied that the depreciation figures from each LFC, in all material respects, are compliant with the IM.

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[47] This has also resulted in a timing difference from the values previously reported by Tuatahi in the information disclosures to the Commission.

Related Parties

3.84 We have reviewed related party transactions to ensure they have been given values not greater than if those transactions had the terms of arm's-length transactions.

3.85 Northpower's UFB assets include a number of related party transactions entered into with Northpower Limited, a related party through its shareholding in Northpower and Northpower LFC2 Limited (LFC2).[48] Northpower Limited (or any relevant subsidiary) is the sole contractor providing network build and connection services to Northpower and Northpower LFC2, and these transactions make up the majority of its UFB assets.

3.86 Northpower considers that these transactions meet the arm's-length transaction requirement outlined in the Fibre IMs based on the Crown being a party to the agreements.

3.87 For this reason, we consider the terms of Northpower's contracts with Northpower Limited to have been effectively agreed on an arm's-length basis. We are satisfied that the costs of UFB assets recognised by Northpower are consistent with the contract pricing.

3.88 Tuatahi's UFB assets were acquired via related party transactions from Waikato Networks Limited (WNL).[49] WNL (now UltraFast Fibre Holdings) built the network using third party contractors, primarily Transfield at that time.[50] The agreed contractual price was based on an appropriate estimate of cost per premise / activity / asset at the time. WNL also charged Tuatahi an overage amount (excess communal build actual costs) on top of the contracted rate. The overage amount was agreed between the parties and was based on the actual costs incurred by the third-party contractors. Costs were also allocated for other time and material associated with the build, and related financing costs. Given the contract build costs were agreed with third parties, we are satisfied that the costs of Tuatahi's UFB assets reflect arm's-length costs.

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[48] Northpower LFC2 Limited was incorporated on 26 January 2017 and set up solely to provide services under the UFB 2 initiative. On 1 May 2021 Northpower LFC2 Limited amalgamated with Northpower Fibre Limited.

[49] Waikato Networks Ltd – Waikato Networks Limited is a special purpose vehicle which was created by WEL Networks Ltd (an electricity distribution company) to partner in the creation of a Local Fibre Company (UltraFast Fibre limited). They carried out the operational aspect of installing fibre to key areas of the central North Island.

[50] Ultrafast Fibre Limited – the company name prior to becoming Tuatahi First Fibre Limited on 1 November 2022.

3.89 All UFB assets acquired by Enable Networks Limited (ENL) from Enable Services Limited (ESL) were transacted on an arm's-length basis. Capital expenditure incurred within ENL/ESL was on charged at cost. All construction activity was carried out by an independent sub-contractor. The value of the completed work was then transferred from ESL to ENL at cost.

3.90 We are satisfied that costs of Enable's UFB assets reflect arm's-length costs.

Benefit of Crown financing

3.91 See Chapter 5.

Value of specific assets and identifiable monetary assets

3.92 Identifiable non-monetary assets include finance leases and software/IT assets that are used to manage, monitor and support the network and associated activities such as build, provisioning, and maintenance. These are appropriately included in the value of commissioned assets.

3.93 There were no specific assets warranting investigation of the commissioned value recognised.

Relationship between unallocated RAB/allocated RAB

3.94 The IMs require us to determine as at the implementation date (1 January 2022): [51]

3.94.1 the "unallocated initial RAB value" of the core fibre assets; and

3.94.2 the "initial RAB value" of all core fibre assets.

3.95 None of the LFCs have applied cost allocation. While we note that for Tuatahi the unallocated values are slightly different to the allocated, the impact is immaterial, and we do not consider it proportionate to require further work to determine this difference. Our final decision is that cost allocation is not required, and the unallocated RAB is the same as the allocated RAB.

Tax

3.96 The UFB tax costs cash flow for each period has been correctly calculated based on our Fibre IMs tax calculation methodology.

3.97 Key permanent and temporary differences between the UFB cashflows and the UFB tax costs cashflow included the treatment of capital contributions and tax depreciation. Based on our review, together with the assurance described at paragraphs 3.9 and 3.10, we consider these have been appropriately recognised in accordance with their treatment for income tax purposes.

[51] *Fibre Input Methodologies Determination 2020*, as amended on 29 November 2021, clause 2.2.3(1).

Alternative methodologies for determining financial losses – none applied

3.98 The Fibre IMs provide for the use of an ”alternative methodology with equivalent effect or substantively the same effect” provision (alternative methodologies), which provides a mechanism to permit departures from the IMs where certain criteria are met.[52]

3.99 None of the three LFCs has proposed that the Commission apply an alternative methodology or that the LFC be allowed to apply an alternative methodology to that specified, in relation to asset valuation, cost allocation or taxation.

[52] The alternative methodologies for determining financial losses are specified in *Fibre input methodologies determination 2020,* as amended on 29 November 2021, clause B1.1.14 of Schedule B.

Chapter 4 Opening tax losses for disclosure year 2022

Purpose of this chapter

4.1 This chapter explains our final decisions on the value of "opening tax losses as at 1 January 2022" for disclosure year 2022 for each LFC, in accordance with clause 2.3.3(3)(a)(ii - iv) of the Fibre IMs. The value of "opening tax losses" is affected by changes to the values of UFB assets and the financial losses as these changes have tax implications, such as by affecting tax depreciation and the cost of financing assets and losses. The tax calculation is also affected by changes to the proportion of Crown financing that is in substance debt, through the offsetting affect this has on notional deductible interest.

Final decision

4.2 Our final decisions on the value of the "opening tax losses" for:

4.2.1 Enable is $0.

4.2.2 Northpower is $9.445 million.

4.2.3 Tuatahi is $0.

4.3 The value is zero for Enable because it built-up tax losses until 30 June 2018 and then fully utilised these tax losses by 31 December 2021.

4.4 The value is zero for Tuatahi because it built-up tax losses until 30 June 2017 and then fully utilised these tax losses by 31 December 2021.

4.5 The value is $10.086 million for Northpower because it built-up tax losses until 30 June 2019, and had not fully utilised these tax losses by 31 December 2021.

Proposals by LFCs

4.6 Enable and Tuatahi proposed values of the "opening tax losses" of zero and Northpower proposed a value of $14.719 million.

Relevant considerations

4.7 Clause 2.3.3(3)(a)(ii - iv) of the IMs specifies that, "opening tax losses as at 1 January 2022", for disclosure year 2022, in respect of either Enable, Northpower Fibre or Tuatahi, is a value as determined by the Commission.

4.8 Calculating the "opening tax losses" involves judgement, which we must exercise according to s 166(2) of the Act. The calculation involves the use of many of the values determined from applying the IMs, including "value of commissioned asset", "depreciation", "cost of debt", "leverage" and "net drawdown" of Crown financing.

4.9 The lower value for Northpower than it proposed is because the value of notional deductible interest in the tax calculation is affected by our decision that 50% of its Crown financing was in substance debt and 50% was in substance equity, rather than Northpower's proposal that Crown financing received prior to 30 June 2018 was equity and Crown financing received after that date was debt (this is discussed in the next chapter).

4.10 We developed the steps involved in the calculation of the "opening tax losses" in our decision on Chorus' initial RAB for disclosure year 2022. We have decided to apply the same calculation method to the LFCs.

4.11 The steps to calculate "opening tax losses" are:

4.11.1 **Step 1** Calculate the debt financing costs of commissioned assets.

4.11.1.1 This involves calculating for each annual amount of commissioned UFB assets, the depreciated value of the Commissioned UFB assets for each of the remaining FLYs until implementation.

4.11.1.2 The interest rate applicable to the year in which the UFB assets are commissioned is used to calculate the gross cost of debt financing for each FLY of the remaining term. The calculation accounts for leverage.

4.11.2 **Step 2** Calculate the avoided costs of debt financing for Crown funded assets.

4.11.2.1 This is like the previous step except the avoided costs are calculated for the Crown financing that is in substance debt.

4.11.2.2 The Crown debt financing rate for the FLY in which the assets are commissioned is used to calculate the avoided interest on Crown funded assets.

4.11.3 **Step 3** Calculate the debt financing costs of annual losses.

4.11.3.1 This step first involves calculating the sum of UFB closing asset values including an adjustment for losses for each FLY of the financial loss period. The UFB closing asset value for a FLY including an adjustment for losses is the UFB closing asset value that is rolled-forward each year inclusive of losses.[53]

4.11.3.2 The UFB closing asset value for a FLY adjusted for losses is calculated as the difference between the UFB revenues cash flow and UFB costs cash flow that includes the cumulative financing costs of losses for a given FLY.

4.11.3.3 The UFB closing asset value including an adjustment for losses for each FLY is then used to calculate the annual loss that is needed to reconcile the UFB closing asset value exclusive of losses with the UFB closing asset value inclusive of losses for the FLY.

4.11.3.4 Each annual loss is then used to calculate the debt financing costs associated with that loss for the remainder of the financial loss period. The calculation accounts for leverage.

4.11.3.5 The debt financing costs associated with losses for each year are then summed to obtain the total annual cost of debt financing losses.

4.11.4 **Step 4** Calculate the annual values of notional deductible interest by summing the debt financing costs of commissioned assets, the (negative) avoided costs of debt financing Crown funded assets and the debt financing costs associated with losses.[54]

4.11.5 **Step 5** These annual values of notional deductible interest are then used in the tax accounts to calculate the value of the “opening tax losses” for disclosure year 2022. Specifically, the tax costs are calculated for a financial loss year as per clause B1.1.7 and any tax losses are rolled forward as per clause B1.1.9(4) by adding current period tax losses and subtracting utilised tax losses.

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53 This differs from the general calculation of the roll-forward of the allocated UFB fibre assets, which does not include the losses accumulated over time. Note that our method works by deconstructing the FLA into its constituent parts on an annual basis for the purpose of calculating the annual financing costs. The FLA is calculated as the “present value of total net cash flows” plus the “UFB asset base closing asset value at implementation date” plus the “present value benefit of Crown financing”.

54 There were some FLYs for which this calculation resulted in a positive value of notional deductible interest for Tuatahi and Northpower. In those FLYs we set the value of notional deductible interest to zero.

4.12 These steps are implemented in the Commission versions of the FLA discounted cash flow models that accompany this final decision.[55]

[55] Noting that we have published both the versions of the FLA discounted cash flow models as submitted by the LFCs (with our draft decision) and our own versions of these models for each LFC.

Chapter 5 Benefit of Crown financing

Purpose of this chapter

5.1 This chapter provides our reasoning on the calculation of the present value benefit of Crown financing for each of the LFCs.

Final decision

5.2 Our final decision is to set the following values of the present value benefit of Crown financing:

5.2.1 Enable $61.966 million.

5.2.2 Northpower $18.378 million.

5.2.3 Tuatahi $59.359 million.

Proposals by LFCs

5.3 The proposals of the present value benefit of Crown financing were:

5.3.1 Enable $59.783 million.

5.3.2 Northpower $19.584 million.

5.3.3 Tuatahi $59.359 million.

5.4 Each LFC calculated these values by using the FLA demonstration model as it applied to our final decision on Chorus' initial RAB for disclosure year 2022. The assurance opinions provided by each LFC in support of its submission are based on the calculation of the benefit of Crown financing as provided by the LFC.

5.5 The FLA demonstration model applies the Fibre IMs method at section B1.1.2(6)(a). This method requires that, for each FLY, it is determined whether the net drawdowns were (in substance) debt, equity or a combination of debt and equity. If net drawdowns in a FLY were a combination of debt and equity, the method then requires a determination of the proportions of those drawdowns that were, in substance, debt or equity. The LFCs specified different amounts using this method:

5.5.1 Enable assumed that Crown financing received before the 2017 FLY was largely in substance debt (more than 65% depending on the year), whereas Crown financing received from the 2017 FLY was all in substance debt.

5.5.2 Northpower assumed the Crown financing received before the 2018 FLY was in substance equity, whereas Crown financing received from the 2018 FLY was in substance debt.

5.5.3 Tuatahi assumed half of the Crown financing received was equity and half was debt.

5.6 Enable indicated in the spreadsheet accompanying its proposal that the pre-2017 calculation of the portion that was in substance debt is a present value calculation, using a discount rate that appears to be based on the cost of debt at the time, and an assumption that the Crown financing will be repaid a certain number of years after it was received[56]. The pre-2017 calculation of the portion that is in substance equity is the residual between the total Crown financing received for the year and the amount that was determined to be in substance debt.

5.7 Northpower explained its method as follows:

> NFL received equity funding via shares held by CIP. These shares were progressively purchased by Northpower Limited and the final buyout took place on 1 April 2021. Shares issued to CIP (i.e. shares held by CIP) have been treated as drawdown and shares transferred to Northpower Limited (i.e. purchased by Northpower Limited) have been treated as repayments. NFL did not receive any form of debt funding from CIP.
>
> LFC2 received debt funding via interest free loan provided by CIP, no repayments were made during the financial loss period. LFC2 did not receive any form of equity funding from CIP as it is wholly owned by Northpower Limited.
>
> The treatment of equity funding in NFL and debt funding in LFC2 aligns with GAAP treatments.[57]

5.8 Tuatahi's proposed a 50:50 allocation based on the following reasoning:

> Under NZ IAS 32, it is the substance of a financial instrument, rather than its legal form, which governs its classification.
>
> The share buyback arrangement was in the form of A shares, which, in our view, is strongly indicative of an equity instrument.
>
> On the other hand, the nature of the agreement (overall at the Group level) has an element of debt because:
>
>> the financial instrument contained an obligation (whereby the issuing entity was or may have been required to deliver cash or another financial asset to the instrument holder); and

[56] Enable has clarified in its submission in response to the draft decision that it used a term of three years for the first three network deployment plans and a term that ended on 31 December 2019 for the four subsequent plans.

[57] Correspondence from Northpower, by email 27 January 2023. CIP is Crown Infrastructure Partners.

the buyback nature of the shares was on a quarterly basis, based on the number of connections completed.[58]

Relevant considerations

5.9 After reviewing the proposals, we considered whether consistency can be achieved across Enable, Northpower and Tuatahi regarding the calculation of the present value benefit of Crown financing for the determination of the financial loss asset for our draft decision.

5.10 We developed three options, which we provided to the three LFCs for their feedback:

5.10.1 The first was to accept that methods can differ between suppliers and to use the methods as proposed.

5.10.2 The second was to assume for all suppliers that 50% of Crown financing received was in substance equity and 50% was in substance debt, which is the method proposed by Tuatahi.

5.10.3 The third was to assume the Crown financing would be repaid at a set time in the future, with the present value of this repayment used as the value of Crown financing that is in substance debt, which is the method used by Enable for part of its calculation.

5.11 For the third option, we developed two sub-options.

5.11.1 The ”Debt NPV” option, which is based on Enable’s proposal, assumed Crown financing is repaid three years after it is received, and the present value of that repayment in three years is classified as the amount of debt that was received, with the residual between that debt amount and the total amount received classified as the amount of equity that was received. The present value calculation uses a discount rate that is the cost of debt for the FLY when the Crown financing was received. This calculation is repeated for each year that Crown financing was drawn down.

5.11.2 The ”Debt NPV alternate” option assumed the debt proportion was based on Crown financing being repaid at 31 December 2021, and the discount rate used is the cost of debt at the time. The actual net drawdowns are used in the calculation of the present value benefit of Crown financing.

[58] Correspondence from Tuatahi, by email 17 November 2022.

5.12 We consulted each of the LFCs on the method we should use for the draft decision, including by providing them a spreadsheet model that identified the effect each option had on the present value benefit of Crown financing of each supplier.

5.13 Enable's response was that it preferred the Debt NPV option on the basis that it is a "fairer reflection on how the funding is treated from both an economic and accounting perspective". Enable also indicated that even though the calculation is slightly different to its proposal, this was "offset by achieving consistency with the other LFCs". [59]

5.14 Northpower's response was that, while it preferred its own proposal, and did not want an outcome that is more unfavourable to Northpower, they "appreciate the Commerce Commission's preference is to adopt a consistent approach across all LFCs". [60]

5.15 Tuatahi's response was that the 50:50 option most accurately reflects their circumstances. However, Tuatahi indicated that if a consistent option is preferred, then they propose the debt NPV option, but with a two-year repayment period. [61]

5.16 We calculated the present value benefit of Crown financing for each option provided to the LFCs as part of our consideration of a consistent approach prior to reaching our draft decision, and these are shown below.[62]

Table 5.1 Comparison of the present value benefit of Crown financing by option ($,000)

LFC	Proposed	Option		
		50:50	Debt NPV	Debt NPV alternate
Enable	59,783	64,688	59,471	62,362
Northpower	19,599[63]	18,870	17,635	18,547
Tuatahi	59,359	59,359	57,107	61,451

59 Correspondence from Enable, by email 27 January 2023.
60 Correspondence from Northpower, by email 27 January 2023.
61 Correspondence from Tuatahi, by email 18 January 2023.
62 The values shown in this table are updated values compared to the values we provided to the LFCs for their consultation.
63 Northpower proposed $19,584 as the present value benefit of Crown financing. The value shown in this table includes the time value of money associated with the Fibre IM amendment to include the benefit of Northpower's Crown financing received prior to the 2012 FLY.

Our draft decision

5.17 For the draft decision, we decided to apply the 50:50 method. Our reasoning was as follows.

5.18 Regarding Northpower's view that it did not receive any debt funding from Crown Infrastructure Partners prior to 30 June 2018, we considered that the terms of the Crown funding had elements that indicated at least part of the funding was in substance debt. The funding during this period was in the form of "A Shares", which had similar terms to the funding provided to Tuatahi over this period. Tuatahi considered, and we agreed, that the A Shares had elements indicative of debt financing, such as obligations on Crown Infrastructure Partners to provide funding at certain times. In addition, Northpower's practice of making ongoing repayments throughout this period, even though termed "buybacks", had similarities to debt financing because the repayments were at the original purchase price.

5.19 Regarding Enable's assumption that the Crown Financing would be repaid after a certain number of years (or the two years suggested by Tuatahi), at the time of the draft decision we did not consider this to be a reasonable assumption as we considered it arbitrary and not consistent with actual repayments.

5.20 The remaining options for the draft decision were either the 50:50 option proposed by Tuatahi or the NPV alternative option, which assumes the Crown financing would be repaid at the implementation date. However, we did not consider the NPV alternative option was a reasonable option to be used across all three LFCs because Tuatahi repaid its financing by 30 June 2017.

5.21 For the draft decision, we considered one consistent method was preferable because the terms of the contracts with the Crown are sufficiently similar and indicate that the Crown financing had elements that are in substance debt and in substance equity. We had no reason to assume that the financing was predominantly more equity or predominantly more debt. Therefore, for the purpose of the draft decision we assumed half the Crown financing was in substance debt and half was in substance equity.

5.22 We decided to apply the 50:50 method for the draft decision on the basis that we did not consider the NPV method was a robust way of calculating the debt-equity split and there was no alternative method that we knew of that was more precise than assuming the Crown financing comprised equal shares of debt and equity funding.

Submissions on the draft decision

5.23 Northpower submitted that it supports our draft decision:

> Northpower Fibre's original proposal aligned the treatment of Crown financing with that adopted in the relevant financial statements, which resulted in the drawdowns prior to financial loss year 2018 being treated as equity and those from 2018 as debt. Whilst we consider that this treatment was appropriate, we acknowledge the Commission's preference of a consistent approach for all LFCs. We consider that the Commission's proposal of a 50:50 split provides a pragmatic solution to this complex issue. Northpower Fibre therefore supports the Commission's proposal.[64]

5.24 Enable did not support the draft decision on the basis that it was inconsistent with the IMs, and that their proposed method is more precise and more consistent with the intent of the IMs.

> We have provided the Commission with the actual proportions of debt and equity which are consistent with our audited published financial statements, and the relevant contracts with the Crown over the financial loss period. We submit that this is more precise than the 50/50 Method which is proposed, and more consistent with the intent of the IMs.
>
> We submit that our PV calculations are consistent with the IMs, are robust, and are not arbitrary.[65]

5.25 We did not receive a submission from Tuatahi.

Our final decision

5.26 Our final decision is to calculate the present value benefit of Crown financing assuming:

5.26.1 equal shares of equity and debt financing for Tuatahi, for Enable up to FY 2016, and for Northpower up to FY 2017; and

5.26.2 debt financing for Enable from FY 2017 and for Northpower from FY 2018.

5.27 This final decision assumes Crown financing received after Enable's and Northpower's respective reorganisations was in substance debt. At the draft decision, we assumed this Crown financing comprised equal shares of equity and debt financing.

5.28 Our final decision is largely based on consideration of Enable's submission. Enable considered our draft decision was inconsistent with the IMs because it was not calculated in accordance with Enable's actual debt and equity positions.[66]

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64 Northpower Submission on: Local Fibre Companies' initial information disclosure regulatory asset bases as at 1 January 2022 – Draft Decision", 27 April 2023, page 2.

65 Enable Networks Limited "Submission on Commerce Commission Draft Decision of Local Fibre Companies' initial information disclosure regulatory asset bases as at 1 January 2022", 27 April 2023, paragraphs 4.7 - 4.8.

66 Enable Networks Limited "Submission on Commerce Commission Draft Decision of Local Fibre Companies' initial information disclosure regulatory asset bases as at 1 January 2022", 27 April 2023, paragraphs 3.3, 3.4 and 3.7.

> The IMs do not specify a proportion of debt or equity for Enable or the other LFCs that are only subject to ID regulation. The explanations in the IM reasons paper indicate that it is the actual proportions of debt and equity in each financial loss year which are to be used to derive the actual costs of Crown financing received by each entity, for example at paragraphs X13.3, X29 and 3.422. The Draft Decision to assume a 50:50 apportionment of debt and equity where there is robust evidence to the contrary is therefore inconsistent with the IMs.
>
> The proportions of debt and equity for Chorus are specified in the IMs, with reference to the contract between Chorus and Crown. They are not specified for the other LFCs, including Enable. While we cannot comment on the funding arrangements of the other LFCs, we note that each party negotiated its own contracts with the Crown, including in respect of financing. The IMs contemplate these arrangements by requiring the actual proportions of debt and equity to be used by each LFC entity in applying the formula in clause B1.1.2(6).
>
> …
>
> We further note that the IMs do not require the LFCs to adopt consistent proportions of debt and equity when calculating the benefit of Crown financing, or that these proportions would be fixed across the financial loss period.

5.29 The formula in the IMs for calculating the benefit of Crown financing, at clause B1.1.2(6)(a) requires a determination of the net drawdowns in each FLY which, in substance, are debt, equity, or a combination of the two. If drawdowns in a FLY Are a combination of debt and equity, it needs to be determined what proportion of those is, in substance, debt or equity.

5.30 The use of the words 'in substance' in the formula indicates that we are required to look at the underlying nature of the financing advanced to the LFC in order to determine the proportions that are debt or equity.[67] The different interpretations by each LFC about the extent that their Crown financing was, in substance, debt or equity has confirmed that this exercise is not straightforward (even though the Crown financing arrangements were similar across the LFCs) and requires judgement. For example, Northpower assumed they did not receive any debt financing from the Crown prior to 30 June 2018, whereas Enable assumed their financing from the Crown prior to June 2016 was between 65% and 85% debt. Tuatahi recognised this classification difficulty by assuming their financing was 50% debt and 50% equity.

[67] The final reasons paper for the Input Methodologies explained the complexity in determining the Crown financing rates for Chorus. See Commerce Commission "Fibre Input Methodologies: Main Final Decisions– Reasons paper", 13 October 2020, paragraphs 3.208 – 3.231.

5.31 When we determined the finance rates for Chorus in the fibre IMs, we recognised that financing that is nominally equity may not be in substance equity. We determined that the Crown financing provided to Chorus should assume a mix of 50% debt and 50% equity. However, we decided that the cost of equity would be based on a 75% weighting to the benchmark cost of equity and 25% weighting to the benchmark cost of debt; and the cost of debt would be based on an estimate of senior and subordinated debt with the mix consistent with the contract with the Crown.[68]

5.32 We also noted in the main reasons paper for the fibre input methodologies that a less precise approach can be taken for the calculation of the benefit of Crown financing for the LFCs than for Chorus as the purpose of these calculations for ID purposes is to provide a benchmark to allow interested parties to assess performance against.[69]

5.33 After considering Enable's submission, we identified an alternative to our draft position that reflects the different characteristics of the Crown financing received prior to and after Enable's reorganisation in 2016.

5.34 For financing received prior to June 2016, Enable has assumed that it would be repaid at a certain date and that the portion classified as debt could be calculated as the present value of the future repayment (with the remainder classified as the equity component).

5.35 While we accept that this method was endorsed by Enable's directors, which included two directors appointed by Crown Infrastructure Partners, we note that Enable repaid the financing in full in 2021. It is not apparent that there was, in practice, a material distinction between the debt and equity characteristics of the financing received prior to June 2016 when it was repaid.

5.36 We also note that, while Enable considers that it had an 'unavoidable obligation of the company to repurchase the A shares for cash', the contract provided only the option for Crown Fibre Holdings (CFH)[70] to require the shares to be repurchased (subject to certain conditions):

> The A shares held by CFH may be required to be repurchased by the Company (at a fixed price of $1 per share) at any time during the concession period when notified to do so by ESL.[71]

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[68] Ibid, paragraph 3.194.
[69] Ibid, paragraph 3.232.
[70] Crown Fibre Holdings is the former name of Crown Infrastructure Partners.
[71] Enable Networks Limited "Submission on Commerce Commission Draft Decision of Local Fibre Companies' initial information disclosure regulatory asset bases as at 1 January 2022", 27 April 2023, page 6.

5.37 More generally, we note that Enable's Shareholders' Agreement provided CFH with various rights and that these rights indicated equity ownership. These rights included CFH having:

5.37.1 representation of up to three directors on the Board (out of a maximum of seven directors);

5.37.2 at least one of its directors present for a quorum at Board meetings;

5.37.3 a put option (right to sell) in the event the CFH shareholding became less than 10%;

5.37.4 the right to purchase the shares of any insolvent shareholders; and

5.37.5 the right to take up any new shares offered after the pre-implementation period if it is still a shareholder.

5.38 However, we note that CFH was no longer represented on the Board of Enable after the reorganisation in 2016.

5.39 While we can understand why Enable classified its financing received prior to June 2016 in the way it did, in practice the Crown financing had characteristics of both debt and equity. The right to repay the Crown financing at its initial value was indicative of debt (even though there were no interest payments). On the other hand, the control rights provided to CFH were indicative of a substantial equity stake (even though there were no dividend payments).

5.40 Where there are similarities in the Crown financing arrangements, we consider that it is important to treat the LFCs consistently, even though the LFCs may have different interpretations about the extent that their financing was actually debt or equity. Tuatahi repaid its Crown financing in 2018 and has proposed we classify its financing using the 50:50 method. Northpower initially proposed that we classify the financing it received prior to 30 June 2018 as entirely equity but following the draft decision has endorsed the use of the 50-50 method.

5.41 We indicated in the draft decision that we considered Enable's method of distinguishing between debt and equity was not a robust way of calculating the benefit of Crown financing. We continue to hold that view for the period prior to the reorganisation in 2016 and prefer to use the 50:50 method for Crown financing received by Enable for that period. We have also decided to apply this method for all of Tuatahi's financing, which was repaid in 2018, and for Northpower's financing received up to June 2018 (as the terms of the financing provided to Northpower was similar to the financing provided to Enable).

5.42 We are not satisfied that the method used by Enable to distinguish the equity component from the debt component for financing received prior to June 2016 is sufficiently robust. While Enable considers it has used its actual proportions of debt and equity, its method is based on assumptions about the characteristics of the financing received.

5.43 However, for the period after Enable's reorganisation, we have decided to change our draft decision. We note that Enable classified the Crown financing for this period as entirely debt. That is, it no longer issued A shares for the Crown financing and did not use its present value method to separate the financing into debt and equity components. The financing received after June 2016 was part of a complex arrangement where financing was provided by CFH to Christchurch City Holdings, interest free, for the purpose of Christchurch City Holdings providing a subordinated loan to Enable. The repayment date of this loan was 31 May 2021.

5.44 We also note that Northpower classified its Crown financing received from FY 2017 as entirely debt. This financing provided by CFH to Northpower (specifically Northpower LFC 2) was a 15 year loan facility. As with Enable, CFH did not have representation on the Northpower Board after they received this financing and CFH did not receive shares.

5.45 We are satisfied that the financing received by Enable from FY 2017 and by Northpower from FY 2018 can be classified as debt. We have calculated the present value benefit of Crown financing of this final decision, which is provided in the table below. The benefits of Crown financing to Enable and Northpower are lower under the final decision than under the draft decision because the Crown financing rate used in the second period (the cost of debt) is less than the Crown financing rate used in the first period (50% cost of equity and 50% cost of debt).

Table 5.2 Revised comparison of the present value benefit of Crown financing by option ($,000)

LFC	Proposed	50:50	Final decision
Enable	59,783	64,688	61,966
Northpower	19,599[72]	18,870	18,378
Tuatahi	59,359	59,359	59,359

[72] Northpower proposed $19,584 as the present value benefit of Crown financing. The value shown in this table includes the time value of money associated with the Fibre IM amendment to include the benefit of Northpower's Crown financing received prior to the 2012 FLY.

5.46 As stated above, our final decision is to calculate the present value benefit of Crown financing assuming:

5.46.1 equal shares of equity and debt financing for Tuatahi, for Enable up to FY 2016, and for Northpower up to FY 2017; and

5.46.2 debt financing for Enable from FY 2017 and for Northpower from FY 2018.