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Fibre input methodologies

Further consultation draft – reasons paper

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Associated documents

Publication date	Reference	Title
9 November 2018	978-1-869456-67-2	New regulatory framework for fibre: Invitation to comment on our proposed approach
21 May 2019	978-1-869456-95-5	Fibre regulation emerging views: Summary Paper
21 May 2019	978-1-869456-95-2	Fibre regulation emerging views: Technical Paper
19 November 2019	978-1-869457-73-0	Fibre input methodologies: Draft decision - reasons paper
11 December 2019	978-1-869457-78-5	[Draft] Fibre Input Methodologies Determination 2020
2 April 2020	978-1-869458-03-4	Fibre input methodologies: Draft decision – reasons paper (regulatory processes and rules)
2 April 2020	978-1-869458-04-1	[Draft – regulatory processes and rules] Fibre Input Methodologies Determination 2020
20 May 2020	978-1-869456-86-3	Fibre Input Methodologies: Process Update
23 July 2020	978-1-869458-29-4	[Draft – technical consultation] Fibre Input Methodologies Determination 2020.

Commerce Commission

Wellington, New Zealand

CONTENTS

Chapter 1 Introduction

Purpose of this paper

1.1 This paper is the first part of our further consultation on changes we are proposing to our draft decisions on Input Methodologies (IMs) for fibre fixed line access services (FFLAS) regulated under Part 6 of the Telecommunication Act 2001 (the Act) before we make our final IMs decisions.[1]

Approach to further consultation

1.2 Our further consultation will now take place in two stages:

1.2.1 this consultation paper, that covers changes to the majority of the IMs determination; and

1.2.2 a separate second paper that covers changes we are considering making to our approach to valuing the financial loss asset (required under s 177). [2]

1.3 We will publish our second consultation paper on the financial loss asset on Thursday, 13 August 2020.

Contents of this paper

1.4 This paper sets out proposed changes to our draft decisions and shows how we intend to give effect to updated decisions in the IMs if adopted as final decisions. It also reflects editorial refinements we are proposing to make to the IMs drafting and contains a brief discussion on whether or not COVID-19 could impact the IMs.

1.5 Our reasons for publishing this paper are to give interested persons an opportunity to provide feedback on:

1.5.1 the updates to our overall regulatory framework set out in Chapter 2;

1.5.2 the targeted changes to our draft decisions set out in Chapter 3; and

1.5.3 the accuracy and workability of the IMs determination drafting in the IMs determination accompanying this paper (further consultation determination) as a result of the changes explained in Attachment A.

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[1] Unless stated otherwise, or it appears otherwise from the context, all references to statutory provisions are references to provisions in the Telecommunications Act 2001.

[2] The exception to this is our estimate of the benefits of Crown financing. Both the pre-implementation and post-implementation treatment of this issue are dealt with in this paper, rather than in the forthcoming paper on the financial loss asset.

1.6 Our expectation is that submissions should be focused on the specific topics raised in this paper and whether the drafting in the further consultation determination accurately reflects our draft decisions and is workable.

1.7 We do not intend to take account of submissions on matters that are outside of the scope of this consultation.

Structure of this paper

1.8 Chapter 1 of this paper explains the context and scope for this consultation and sets out how you can provide your views.

1.9 Chapter 2 explains new reasoning or decisions relating to our regulatory framework (specifically questions about the scope of FFLAS and the impact of the final Telecommunications (Regulated Fibre Service Providers) Regulations 2019 (the Regulations)).

1.10 Chapter 3 explains new reasoning or decisions relating to specific IMs:

1.10.1 cost allocation;

1.10.2 asset valuation;

1.10.3 capital expenditure; and

1.10.4 regulatory processes and rules.

1.11 Chapter 4 considers the potential impact of COVID-19 on the IMs, focussing on the cost of capital IM.

1.12 Attachment A sets out the changes and explanations for the changes we propose to make to the draft determination in a table format.[3] Further context for Attachment A is provided at the beginning of the attachment.

1.12.1 Section 1 of Attachment A addresses editorial refinements such as clarifications, error corrections, and improvements to formatting.

1.12.2 Section 2 of Attachment A addresses substantive changes driven by the policy changes explained in Chapter 3.

1.12.3 Section 3 of Attachment A addresses substantive changes that are not explained in Chapter 3 (many of which arose from submissions and cross-submissions on our draft decisions).

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[3] The latest complete version of the draft determination is the Regulatory Processes and Rules draft determination which we published on 2 April 2020.

1.13 We have also published a further consultation draft determination alongside this paper showing the changes to the draft determination.

Context and scope for this further consultation

1.14 We are required to determine IMs for FFLAS under Subpart 3 of Part 6.

Draft decisions

1.15 On 19 November 2019 we published our main draft decision and reasons (draft decisions) on the IMs for regulated FFLAS specified in sections 176(1)(a), (b) and (d).[4] At that time, we did not publish any draft IMs, or our draft decisions and reasons on the regulatory processes and rules IMs (RPR IMs).

1.16 We published the main draft IMs on 11 December 2019.[5]

1.17 On 21 November 2019, a notice was published in the Gazette outlining that regulations had been made on 18 November 2019 under s 226 prescribing the providers and services that were subject to regulation under Part 6.

1.18 We published our draft decisions and reasons on the RPR IMs with the RPR IMs on 2 April 2020.[6]

Final regulations under s 226 of the Act

1.19 Both our draft decisions and draft determinations were based on the exposure draft of the regulations under s 226 published on 6 June 2019 and not the final Regulations made on 18 November 2019.

1.20 The key difference between the exposure draft and the final Regulations is that under the exposure draft Chorus was subject to price-quality (PQ) regulation in respect of all FFLAS, while the final Regulations include a proviso exempting Chorus from price-quality regulation in certain respects.

1.21 A key focus of this consultation is therefore on the impact of the change in the regulations on our draft decisions. Chapter 2 discusses the impact of this change on our regulatory framework.

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4 Commerce Commission "Fibre input methodologies – Draft decision paper"(19 November 2019).

5 Commerce Commission "[Draft] Fibre input methodologies determination 2020" (11 December 2019).

6 Commerce Commission "Fibre input methodologies – Regulatory processes and rules draft decision – Reasons paper (2 April 2020); Commerce Commission "[Draft] Regulatory processes and rules fibre input methodologies determination" (2 April 2020).

Changes in response to submissions where we have departed materially from the draft

1.22 Another important focus area for the consultation (other than the changes arising from the changes to the regulations discussed above) is where we are proposing to depart materially from positions adopted in our draft decisions (material new decisions or reasons for decisions) where we consider interested persons have not yet had an opportunity to submit on the matter.

Changes discussed in Chapter 3

1.23 Chapter 3 discusses the changed decisions relating to specific IMs arising both from:

1.23.1 changes to the regulatory framework; and

1.23.2 the other changes where we are proposing to depart materially from positions adopted in our draft decisions where interested persons have not yet had an opportunity to submit on the matter.

Accuracy and workability of the IMs determination

1.24 The last key focus area for this consultation is on the accuracy and workability of the IMs determination drafting and in particular the new determination drafting as a result of the changes explained in Attachment A.

Matters within (and outside) the scope of this consultation

1.25 We are not consulting on all proposed changed decisions, but only where we consider this desirable or necessary.

1.26 We welcome submissions on the proposed changes to our draft decisions discussed in this paper, and the accompanying amendments to the further consultation draft determination. These amendments are listed in Table A2 in Attachment A.

1.27 We also welcome submissions on the accuracy and workability of the amendments to the draft determination implementing the editorial refinements described in Table A1 and the proposed changes to our draft decisions described in Table A3 , in Attachment A.

1.28 However, we are not seeking views on the merits of the changed decisions that are given effect to through the changes set out in Table A3 of Attachment A (which address substantive changes to our draft decisions that are not explained in Chapter 3), but only on the accuracy and workability of the relevant IMs determination drafting. This is because we consider that these changed decisions are based on material on which interested persons have already had an opportunity to submit. We do not intend to take account of, any submissions from stakeholders on the substance of changes to our draft decisions reflected in Table A3.

1.29 We are further not consulting on any pure number changes to the parameters set in the cost of capital IM as these changes are also based on material on which interested persons have already had an opportunity to submit. These changes are not addressed in Attachment A or shown in the further consultation determination as there is no benefit to technical consultation on these changes.

1.30 The changed decisions that we are not consulting on in this paper (or the second consultation paper) will be explained in our final IMs decisions.

Process from here to the final decision

1.31 As discussed above, we intend to publish a second consultation paper on the financial loss asset on Thursday, 13 August 2020.

1.32 We intend to publish our final decisions and reasons (except for our decisions relating to the valuation of the financial loss asset) on Tuesday, 13 October 2020.

1.33 Our final decisions and reasons on the financial loss asset will be published on Tuesday, 3 November 2020.[7]

Invitation to make submissions

1.34 We invite your views on:

1.34.1 the matters outlined in Chapters 2, 3, and 4; and

1.34.2 whether the drafting of the further consultation determination as explained in Attachment A is workable and accurately gives effect to our draft decisions, including in particular the updated decisions explained in Chapter 3 of this paper.

1.35 Views on matters that are not discussed in Chapters 2, 3, or 4, or that do not relate to the workability and technical accuracy of the drafting in the further consultation determination are outside the scope of this consultation.

1.36 We do not intend to take account of submissions on matters that are outside of the scope of this consultation.

[7] The exception to this is our estimate of the benefits of Crown financing. Both the pre-implementation and post-implementation treatment of this issue are dealt with in this paper, and will be kept together in the final decisions.

How you can provide your views

Process for making a submission

1.37 Submissions can be made through the submission portal available on our website at: https://comcom.govt.nz/regulated-industries/telecommunications/projects/fibre-input-methodologies.

1.38 The project page will direct you to a form with instructions on how to upload your submission. Your submission should be provided as an electronic file in an accessible form.

Timeline for submissions

1.39 We invite submissions on the matters discussed in Chapters 2, 3 and 4 and on the drafting of the further consultation determination by **12pm on Thursday, 13 August 2020**.

1.40 We invite cross-submissions responding to matters raised by submissions by **12pm on Thursday, 3 September 2020**.[8] Please note the earlier time for submissions, to allow us to promptly make them available for other parties.

Confidentiality

1.41 The protection of confidential information is something the Commission takes seriously and in order to continue to protect confidential submissions we are trialling a new submission process. This will require you to upload your submission via the form on the project page. The process requires you to provide (if necessary) both a confidential and non-confidential version of your submission and to clearly identify the confidential and non-confidential versions.

1.42 When including commercially sensitive or confidential information in your submission, we offer the following guidance:

1.42.1 Please provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website.

1.42.2 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.

[8] Please note, this is one day earlier than was signalled in our 10 July process update. Commerce Commission "Fibre input methodologies – Change to further consultation process and publication dates" (10 July 2020).

1.43 If we consider the disclosure of information in the confidential version is in the public interest, we will consult with the party that provided the information before any disclosure is made.

Chapter 2 Updates to our regulatory framework

Purpose of this chapter

2.1 This chapter explains certain updates we have made to our overall regulatory framework since our draft decisions. Specifically, it addresses:

2.1.1 the impact of the final Regulations; and

2.1.2 the scope of FFLAS.

2.2 We invite stakeholder views on these matters.

Changes to reflect the Regulations

Under the draft regulations all Chorus' FFLAS was specified to be subject to both ID and PQ regulation

2.3 Our draft decisions, published on 19 November 2019, and draft fibre IM determination, published on 11 December 2019, were based on the exposure draft regulations published on 6 June 2019 (draft regulations).[9] The draft regulations proposed that all of Chorus' FFLAS would be subject to both information disclosure (ID) and PQ regulation under Part 6 of the Act.[10]

Under the Regulations Chorus' FFLAS in certain areas are exempt from PQ regulation

2.4 The Regulations provide that:

2.4.1 all regulated providers' FFLAS are subject to ID regulation (reg 5); and

2.4.2 all Chorus' FFLAS (except to the extent that a service is provided in a geographical area where a regulated fibre provider (other than Chorus) has installed a fibre network as part of the ultra-fast broadband (UFB) initiative) are subject to PQ regulation (reg 6) (the proviso). Reg 6 comes into force on 31 December 2021.

2.5 The introduction of the proviso in reg 6, which exempts certain Chorus' FFLAS from PQ regulation, has implications for how we will implement the Regulations in our final decision and IMs.[11]

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[9] Commerce Commission "Fibre input methodologies – Draft decision paper" (19 November 2019), paragraphs 2.39- 2.43.

[10] This was contemplated by the original bill: Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293—1) (explanatory note).

[11] The proviso in reg 6 also has implications for the implementation of the Regulations under PQ and ID regulation. This consultation only focuses on fibre IMs.

2.6 Reg 6 differed from the draft regulations: rather than providing that all Chorus' FFLAS would be subject to PQ regulation, it introduced a proviso exempting Chorus' FFLAS from PQ regulation in geographical areas where a local fibre company (LFC) other than Chorus has built a UFB network. The purpose of introducing this proviso was to address submissions that Chorus should not be subject to PQ regulation in areas where LFCs had built a UFB network and were only subject to ID regulation, "consistent with the regulatory framework which provides for less intrusive regulation where competition is present."[12]

2.7 The final Regulations retained PQ regulation where Chorus built networks outside of the UFB initiative (where it was likely to be the only fibre provider and face only limited competition from other technologies, eg, fixed wireless access).[13]

Context: roll out of UFB and development of fibre networks in New Zealand

2.8 Under the UFB initiative Chorus and the other LFCs are contracted to install and make available for connection fibre networks in identified areas.[14]Contracts with Crown Infrastructure Partners (CIP) specify the areas where each company is required to build its network, and the properties to which a fibre connection must be available.

2.9 Chorus won the contract to roll out UFB in most areas of New Zealand, while LFCs were contracted to install UFB in three areas: Christchurch (Enable), Whangarei (Northpower) and central North Island (Ultrafast).

Focus of reg 6: the overlaps between Chorus' commercial (non-UFB) networks and other LFCs' UFB networks

2.10 Although the majority of Chorus' fibre network (and therefore FFLAS supplied to end-users) was built pursuant to the UFB contracts, some of that infrastructure has been built independently of the UFB initiative in towns or cities where another LFC secured the UFB contract.

2.11 It is also foreseeable that Chorus will construct further fibre network in those areas on a commercial basis. Reg 6 is concerned with these overlaps, and requires the Commission to draw a distinction between Chorus' 'PQ-regulated FFLAS' and Chorus 'ID-only FFLAS'.

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[12] Office of the Minister of Broadcasting, Communications and Digital Media "Cabinet Paper" (12 November 2019).

[13] Telecommunications (Regulated Fibre Service Providers) Regulations 2019, Regulation 5-6.

[14] By UFB initiative we mean UFB, UFB2 and UFB2+.

Interpretation of reg 6

2.12 Reg 6 provides for Chorus to be subject to PQ regulation for all FFLAS:

> except to the extent that a service is provided in a geographical area where a regulated fibre service provider (other than Chorus Limited) has installed a fibre network as part of the UFB initiative.

2.13 The reference in reg 6 to "a service being provided" is capable of different interpretations. There are three available locations at which a service can be said to be provided:

2.13.1 at the handover point (since FFLAS are wholesale services that are supplied to access seekers);

2.13.2 at the premises, building or other access point of the end-user who is the ultimate recipient of the service; or

2.13.3 wherever the assets used to supply the service are located.

2.14 In the paragraphs that follow, we set out our view of which interpretation of reg 6 best fits with the purpose and scheme of the legislation.

Regulations made on the basis of s 226(3)(a): "geographic area in which service is supplied"

2.15 Section 226 provides that the regulations must describe the services in respect of which a regulated provider is subject to ID regulation, PQ regulation or both. The regulations may describe a service with reference to any one or more of the following:[15]

(a) the geographic area in which the service is supplied:

(b) the service's end-users:

(c) the service providers who seek access to the service:

(d) the technical specifications of the service:

(e) any other circumstances in which the service is supplied.

2.16 The Regulations that have been made describe services with reference to s 226(3)(a): "the geographic area in which the service is supplied".

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[15] Telecommunications Act 2001, s 226(3)(a).

2.17 One objective of the legislation was for PQ regulation to apply to the extent necessary to address a lack of competition.[16] The underlying policy rationale was to adopt a proportional approach to regulation, so that PQ regulation would be imposed to the extent a provider faces insufficient competitive constraint on their services.[17]

2.18 There are three elements to the proviso. It applies (1) to the extent that (2) a service [FFLAS] is provided (3) in a geographical area where an LFC has installed a fibre network as part of the UFB initiative. The Act includes the following definitions:

> FFLAS: 'a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider's fibre network'.
>
> Fibre network: 'a network structure used to deliver telecommunications services over fibre media that connects the user-network interface…of an end-user's premises, building or other access point to a regulated fibre service provider's fibre handover point.'

The phrase "a service [being] provided" in reg 6 refers to a service provided to an end-user

2.19 We noted above that there are three possible interpretations of where a service could be "provided": at the handover point, at the premises, or where the assets used to supply the service are located.

2.20 We consider the second alternative for interpreting "a service [being] provided" set out at paragraph 2.13.2 above (the premises, building or other access point of the end-user who is the ultimate recipient of the service) is consistent with the context and purpose of the legislation. While FFLAS are wholesale services, the demand for FFLAS is derived from the competitive dynamic (or absence thereof) in respect of the end-users who are the ultimate recipients of the service, and who are the focus of the purposes set out in s 166(2) of the Act. Access seekers only purchase FFLAS from Chorus (and other LFCs) in order to supply end-users. The underlying purpose of reg 6 is to exempt Chorus from PQ regulation where it is subject to more competitive constraints in respect of end-users relative to areas, for example where it faces no competition from other fibre networks.

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[16] Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293—1) (explanatory note).

[17] Office of the Minister for Communications "Review of the Telecommunications Act 2001: final policy decisions for fixed line communications services" (7 December 2016).

2.21 In our view, the alternative interpretations (ie, the handover point, or location of the assets used to supply the service) do not promote the purpose of the legislation:

2.21.1 In terms of defining the provision of the service by reference to the handover point (as set out at 2.13.1 above), given the fibre handover point is defined with reference to the specified point of interconnection "for the relevant end-user's premises", it would still be necessary to identify the end-users in respect of whom the FFLAS service is supplied. To say that a service is supplied in a geographical area where an LFC has a handover point would not help to identify the end-users in respect of whom the Regulations intend to remove PQ regulation.

2.21.2 Defining the provision of the service by reference to the location of the assets used to provide it (as set out at 2.13.3 above) may promote unintended outcomes. Not all assets are required to provide regulated FFLAS to users in a specific geographic area. Some shared assets (eg, a central office building) may be required to provide regulated FFLAS outside a specific geographic area. Defining the provision of a service by reference to the location of assets may provide undesirable incentives. In particular, Chorus may find it advantageous on the basis of differences in regulatory treatment to shift assets from areas subject to ID regulation to areas also subject to PQ regulation (or vice versa). For this reason, it would not be consistent with the purpose of reg 6 to determine the application of PQ regulation based on where assets happen to be located.

2.21.3 A location-based interpretation would also be inconsistent with the general approach to cost allocation in the fibre IMs. For example, the allocation of the cost of assets that are used partly to supply regulated FFLAS and partly to supply copper services is linked to the use of the asset for supplying different services, not its location.

2.22 We consider that the intended focus of reg 6 is on the geographical location of the end-users who are the ultimate recipients of FFLAS, rather than on the physical location of the corresponding handover point or of the assets used to supply that service (because this is where the competitive dynamic, or lack thereof, operates). The underlying rationale is that Chorus should not be subject to PQ regulation in respect of end-users in areas where LFC UFB has been installed as some competition between fibre networks is possible in these areas.

Identifying 'geographical areas'

2.23 Reg 6 requires the Commission to identify the:

> geographical area[s] where a regulated fibre service provider (other than Chorus Limited) has installed a fibre network as part of the UFB initiative.

2.24 Section 226(3) provides that the regulations made under the section can define the scope of regulation with reference to one or more of five criteria, including:

2.24.1 the geographic area in which the service is supplied; or

2.24.2 the service's end-users.

2.25 The Regulations define the scope of regulation by reference to the geographic(al) area. This suggests that the Regulations are not focused on whether a particular end-user actually has access to an LFC connection (or has such a connection installed), but contemplates a more flexible definition of geographical areas that does not require the Commission to define 'geographical areas' in terms of individual sections or titles.

2.26 There is inevitably a trade-off between precision and practicability. By defining the scope of regulation by reference to geographical areas and not end-users, the Regulations require the Commission to exercise a discretionary judgement, provided its approach to defining these areas best promotes the purposes of the regime.

2.27 The UFB contracts determined where the LFCs were required to construct a fibre network, and the end-users whom that network had to be available to serve. It follows that the coverage areas in the UFB contracts would be a useful starting point to identify the geographical areas caught by reg 6. The Commission intends to draw on the data used for the determination of specified fibre areas under s 69AB in this process.

Related issue: s 201 geographically consistent pricing requirement applies to PQ only

2.28 Section 201 provides:

> A regulated fibre service provider who is subject to price-quality regulation must, regardless of the geographic location of the access seeker or end-user, charge the same price for providing fibre fixed line access services that are, in all material respects, the same.

2.29 We consider that s 201 only requires Chorus to offer geographically consistent pricing in areas where it is subject to PQ regulation.

2.30 On a literal reading, s 201 is capable of being interpreted as applying to all services (ie, on the basis that Chorus is a ''regulated fibre service provider who is subject to price-quality regulation" and it must offer geographically consistent pricing whenever it supplies FFLAS, regardless of whether those particular services are subject to PQ regulation). The legislation signals, however, that Parliament intended that s 201 apply only to those services subject to PQ regulation, and not services that are subject to ID regulation only:

2.30.1 Section 201 is within subpart 6 (concerned with PQ regulation).

2.30.2 There are other instances in the legislation where regulation is described by reference to the regulated provider providing the services, when it is clear the intention was only to capture that regulated provider to the extent that they provided services regulated under s 226.

2.31 Parliament intended that regulations issued under s 226 would determine both which regulated providers and in respect of which services regulation would apply. That intention would be frustrated if some elements of PQ regulation (ie, the requirement to price services on a geographically consistent basis) applied on a blanket basis to all services.

2.32 In the case of FFLAS caught by the reg 6 proviso, Chorus' ability to compete with LFCs could be frustrated if it were required to price services on a geographically consistent basis.

Our overall approach to implementing reg 5 and reg 6 in the fibre IM determination

2.33 As set out at 2.3 above, the draft IMs published on 11 December 2019 were based on the exposure draft regulations, which indicated that all Chorus' FFLAS would be subject to PQ regulation under Part 6.

2.34 The Regulations provide a different scope of services between the:

2.34.1 FFLAS that is subject to PQ regulation for Chorus; and

2.34.2 FFLAS that is subject to ID regulation for all LFCs.[18]

2.35 We propose three "overarching decisions" which are intended to take account of the different scope of services specified in reg 5 and 6, as outlined in paragraph 2.34. We discuss our approach to other specific changes to give effect to the Regulations in the IMs below in paragraph 2.51.

2.36 Below we set out our three overarching decisions and explain our reasons for these. Attachment A sets out the corresponding changes to the draft IM determination.

2.37 Our three overarching decisions in respect of implementing reg 5 and reg 6 are:

2.37.1 providing for classes of regulated FFLAS within the defined term "regulated FFLAS", as explained below in paragraphs 2.38-2.40;

2.37.2 introducing the reporting of multiple regulatory asset bases (RABs) under ID, as explained below in paragraphs 2.41-2.43; and

[18] Telecommunications (Regulated Fibre Service Providers) Regulations 2019, Regulation 5-6.

2.37.3 specifying that fibre asset values and regulatory tax allowance values are (unless explicitly specified otherwise) determined for each PQ path on the basis of actual values determined for a "base year" in respect of a regulated provider's PQ FFLAS, as explained below in paragraphs 2.44-2.46.

Classes of regulated FFLAS

2.38 Our first overarching decision in respect of implementing reg 5 and reg 6 is to provide for classes of regulated FFLAS within the defined term "regulated FFLAS" so that our IMs have the flexibility to:

2.38.1 cover the FFLAS that is subject to ID regulation under reg 5 and PQ regulation under reg 6;

2.38.2 allow for the reporting of further FFLAS classes (eg, "ID-only FFLAS") as we may from time to time specify for the purposes of Part 6; and

2.38.3 cover any FFLAS that may be subject to future regulation under s 226.

2.39 We have set out the changes to our draft IM determination intended to give effect to reg 5 and reg 6 overarching decision 1 in Attachment A. We have introduced flexibility by defining the following terms.

2.39.1 We have defined 'regulated FFLAS' to mean any and all FFLAS classes. These FFLAS classes encompass any FFLAS that currently is subject to regulation under s 226 in respect of regulated providers, but also allows for the possibility for us to specify further subsets of FFLAS in the future for the purposes of Part 6.

2.39.2 We have defined 'FFLAS class' to mean a class of FFLAS that is subject to regulations under s 226, and includes:

2.39.2.1 ID FFLAS;

2.39.2.2 PQ FFLAS;

2.39.2.3 ID-only FFLAS; and

2.39.2.4 any additional FFLAS class.

2.40 We consider that this approach provides sufficient certainty in the IMs about which FFLAS are regulated, consistent with the purpose of IMs in s 174. The approach is likely able to also accommodate future changes in the scope of regulated FFLAS without the need for frequent amendments to the IMs.

Multiple RABs under ID

2.41 Following internal review and due to the difference in scope of services under the Regulations, we consider that the draft determination did not sufficiently promote certainty on what RAB information we would require disclosure of under ID in respect of certain FFLAS classes. Our second overarching decision in respect of implementing reg 5 and reg 6 is to explicitly introduce the reporting of multiple RABs under ID regulation by specifying in the IMs that an ID determination would:

2.41.1 require the disclosure of information for fibre assets employed by a regulated provider in the provision of FFLAS subject to ID regulation (ID RAB);

2.41.2 require the disclosure of information for fibre assets employed by a regulated provider in the provision of FFLAS subject to PQ regulation (PQ RAB);

2.41.3 allow for the Commission to require disclosure of information for further collections of fibre assets employed in the provision of a FFLAS class as we may from time to time specify for the purposes of Part 6 (additional RABs).

2.42 We have set out the changes to our draft IM determination intended to give effect to reg 5 and reg 6 overarching decision 2 in Attachment A.

2.43 We consider that this approach would be likely to best give effect to the purpose in s 162 by allowing interested persons, consistent with the purpose of ID regulation in s 186, to assess the following (once required to be disclosed under ID):

2.43.1 the extent to which regulated providers have incentives to innovate and to invest in fibre assets, as outlined in s 162(a) for FFLAS subject to different forms of regulation; and

2.43.2 the extent to which regulated providers are limited in their ability to extract excessive profits from regulated FFLAS across a variety of fibre assets, as outlined in s 162(d).

Fibre asset and regulatory tax allowance values are based on actual values for a 'base year'

2.44 Our third overarching decision in respect of implementing reg 5 and reg 6 is to specify that fibre asset values and regulatory tax allowance values are (unless explicitly specified otherwise) determined for each PQ path on the basis of actual values determined for a 'base year' in respect of a regulated provider's PQ FFLAS.[19]

2.45 This decision is a consequence of the difference of the scope of services between FFLAS subject to ID regulation and PQ regulation for Chorus. Our draft decision is to specify key fibre asset values and regulatory tax allowance values for PQ on the basis of actual values determined in accordance with the ID IMs.

2.46 Building on our draft decision, our decision is that:

2.46.1 key fibre asset values in respect of the PQ RAB for the base year will be used in PQ forecasts for a regulatory period.

2.46.2 key fibre regulatory tax allowances in respect of PQ FFLAS for the base year will be used in PQ forecasts for a regulatory period.

2.47 We have described the changes to our draft IM determination intended to give effect to reg 5 and reg 6 overarching decision 3 in Attachment A.

2.48 We consider that this approach:

2.48.1 provides sufficient certainty about how most fibre asset values and regulatory tax allowances will be determined for PQ, consistent with the purpose of IMs in s 174; and

2.48.2 reduces potential compliance costs for regulated providers by predominantly avoiding the need to apply different methodologies for the valuation of fibre assets and the determination of the regulatory tax allowance between the ID IMs applying for ID regulation and the IMs applying for PQ regulation.

[19] The base year is a disclosure year for which actual data is available and which is used for developing forecasts for setting a price-quality path. The base year is a disclosure year specified by the Commission. As discussed in paragraphs 3.75-3.88, for the first price quality regulatory period we have specified 2019 as a base year for estimating the transitional 'initial PQ RAB'.

Promotion of workable competition

2.49 We have considered whether the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services is relevant, as required under s 166(2)(b). We have not identified any reasons why the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services has implications that would require us to take a different approach from the one which promotes s 162 as outlined in paragraph 2.43 above.

2.50 We consider that s 166(2)(b) will have a role when we apply the Regulations as part of PQ regulation.

Other IM specific changes to implement s 226

2.51 In addition to these overarching changes, we have made more specific changes to the in the asset valuation, cost allocation and capex IMs. These changes are discussed in Chapter 3.

Fibre fixed line access services

2.52 FFLAS are defined in s 5 of the Act. We set out the definition of FFLAS and other key terms at paragraphs 2.45 to 2.47 of our draft decisions.

2.53 The concepts of FFLAS, and regulated FFLAS, are central to setting the scope of our regulation under Part 6. This section of the consultation paper explains the Commission's position regarding this concept and details the types of services offered by Chorus and the other LFCs that we currently regard as comprising FFLAS.

Draft decisions

2.54 In the regulatory framework chapter of our draft decisions (at paragraphs 2.44 - 2.72), we made the following observations about the definition of FFLAS.

2.54.1 FFLAS are not confined to telecommunications themselves (ie, the conveyance of telecommunications signals), since "telecommunications service" is defined to include things that enable or facilitate telecommunication.

2.54.2 Telecommunications services are not limited to those provided directly over a fibre network.

2.54.3 Although fibre regulation is focused on the fibre network between the handover point and the user-network interface—where services are generally not replicable and contestable so an economic bottleneck may exist—the definition of FFLAS includes services that enable access or interconnection, so can capture services beyond the physical boundaries of the network.

2.54.4 As matters stand, it is not necessary or appropriate to include services beyond the fibre network, with the exception of connection services that are necessary and proximate to the fibre network such as co-location at the point of interconnection (POI), noting in particular that "enable" is narrower than "enable and facilitate".

2.54.5 Services such as intra-candidate area backhaul (services (ICABS) are not excluded from the definition of FFLAS merely because they are supplied beyond a layer 1 point of aggregation, as observed in the Departmental Report to the Select Committee that considered the Telecommunications (New Regulatory Framework) Amendment Bill in 2018.[20]

2.55 We formulated in the draft decisions a list of "service types we consider to be FFLAS". This included, in particular, backhaul services (including ICABS); co-location and interconnection services; network services; and property development services.

Submissions

2.56 We received submissions and cross-submissions on our proposed approach to interpreting the definition of FFLAS in the draft decision.

2.57 Chorus generally agreed with the Commission's approach to defining FFLAS, but:[21]

2.57.1 reiterated its earlier submission that we should have set the L1 aggregation points as POIs (in addition to setting the L2 handover points as POIs);

2.57.2 disagreed with our preliminary view that network services and property development services fell within the definition of FFLAS; and

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[20] Telecommunications (New Regulatory Framework) Amendment Bill: Departmental Report to the Economic Development, Science and Innovation Committee – Initial Briefing (10 April 2018).

[21] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), page 16. See also L1 Capital "Submission on Fibre input methodologies – Draft decision" (30 January 2020), page 26.

2.57.3 disagreed with our view that ICABS fell within the definition of FFLAS.

2.58 Enable and Ultrafast:[22]

2.58.1 agreed with our view that FFLAS included services provided beyond the physical boundaries of the fibre network, and included backhaul services such as ICABS;

2.58.2 expressed reservations in their primary submission about whether network services and property development services constituted FFLAS, because they may "support" but do not necessarily "enable" FFLAS, but recorded that they did not object to them being included since then all the LFCs' services would constitute "regulated FFLAS" for the purpose of the cost allocation IM;

2.58.3 in their cross-submission, said that such services should be excluded because they did not represent an economic bottleneck; and

2.58.4 suggested that the criterion of whether services were "proximate" to the fibre network in defining FFLAS was too vague and unpredictable.

2.59 2degrees agreed with our approach, in particular to include ICABS.[23]

2.60 Vector expressed concerns about the Commission "deferring" to Chorus in relation to the setting of handover points for L1 services because the way Chorus was pricing Passive Optical Network Fibre Access Service (PONFAS) required retail service providers (RSPs) to purchase unnecessary inputs.[24]

2.61 Spark (in its cross-submission) generally agreed with the Commission's approach, but suggested that the Commission might need to provide more guidance on where a service is FFLAS (eg, the NGA Tail Extension Service, or TES).[25]

2.62 A number of submitters (Chorus, LFCs, Vector) agreed that the Commission should focus on whether a particular service constituted an economic bottleneck.

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[22] Enable Networks Ltd and Ultrafast Fibre Ltd "Submission on Fibre input methodologies – Draft decision" (30 January 2020), page 4; and Enable Networks Ltd and Ultrafast Fibre Ltd "Cross-submission on Fibre input methodologies draft decision" (18 February 2020), page 9.

[23] 2degrees "Submission on Fibre input methodologies – Draft decision" (30 January 2020), page 7.

[24] Vector Communications "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraph 10. See also Vocus Group "Cross-submission on Fibre input methodologies draft decision" (18 February 2020), paragraph 6.

[25] Spark "Submission on Fibre input methodologies – Draft decision" (30 January 2020), page 3.

Defining FFLAS

2.63 We considered the submissions and cross-submissions on the definition of FFLAS and, in response, have decided to provide more detailed guidance as to how we expect the definition of FFLAS to work in practice under our IM, PQ and ID determinations, including which particular service types are regulated.

Transport services

2.64 Where a regulated provider supplies telecommunication services within the boundaries of its fibre network – for example, telecommunication transport services between network aggregation points, such as central offices, including central offices that are also POIs – we consider that those services are covered by the definition of FFLAS.

2.65 Chorus argued that these transport services, in particular ICABS, do not fall within the scope of FFLAS.

2.66 ICABS is a bottleneck service that is often used by access seekers purchasing layer 1 services, such as mobile network operators purchasing direct fibre access services (DFAS), or unbundlers who are beginning to purchase PONFAS.[26] These access seekers usually require ICABS or an equivalent service to transport voice and data traffic between central offices, most often from a central office to the POI.

2.67 On 19 December 2019, we specified POIs at the layer 2 handover points based on the POIs under the UFB initiative.[27] In our final reasons paper we said a feature of the UFB architecture was for a single POI per candidate area and noted it was a requirement that every end-user within a UFB candidate area must be accessible by an RSP from a single POI.[28] Accordingly, most access seekers invest in equipment, co-location and backhaul at the POIs. For many access seekers of layer 1 services (such as DFAS and PONFAS) ICABS will be an essential service to transport these services from the central office to the POIs. In our s 9A backhaul study,[29] we found that Chorus did not face competition for the supply of intra-regional backhaul by other network operators at approximately 90% of all exchanges where it offers ICABS.

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[26] Under the Fibre Deeds, LFCs were required to offer PONFAS on an equivalent and non-discriminatory basis from 1 January 2020.

[27] Commerce Commission "Specified points of interconnection – reasons paper" (19 December 2019).

[28] Ibid, paragraphs 29 and 30. See also paragraph 2.82 of our draft decisions.

[29] Commerce Commission "Section 9A Backhaul services study – our findings" (11 June 2019).

2.68 Consistent with our view that such transport services are intended to be within the definition of FFLAS, as noted above, during Parliament's consideration of the Telecommunications (New Regulatory Framework) Amendment Bill, the Departmental Report to the Select Committee stated that:[30]

2.68.1 "It [the definition of FFLAS] is meant to cover telecommunications services that enable access to, and interconnection with, a regulated fibre service provider – including DFAS and backhaul services to mobile cell sites and fixed wireless sites";[31]

2.68.2 "the policy intent is to include services which extend past the point of aggregation within the FFLAS definition";[32] and

2.68.3 "DFAS and Intra Candidate Area Backhaul (ICABS) are both FFLAS and will be subject to regulatory oversight under the new Part 6".[33]

Services that extend beyond the provider's fibre network

2.69 As matters currently stand, based on the types of services presently supplied by regulated providers, we do not think it is necessary or appropriate to include services beyond a regulated provider's fibre network within the concept of FFLAS. The exceptions are:[34]

2.69.1 connection services that are necessary and proximate to the fibre network, such as co-location services at the POI; and

2.69.2 property development services.

2.70 Submitters did not express any concerns about the inclusion of co-location services.

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[30] Telecommunications (New Regulatory Framework) Amendment Bill: Departmental Report to the Economic Development, Science and Innovation Committee – Initial Briefing (10 April 2018).

[31] Ibid, Appendix 2, page 2.

[32] Ibid, Appendix 2, page 11.

[33] Ibid, Appendix 2, page 20.

[34] As noted at paragraph 2.67, the Commission specified POIs at the layer 2 handover points, and did not accept Chorus' argument that it should also specify layer 1 aggregation points as POIs. However, even if the Commission had also set POIs at the layer 1 aggregation points and this meant that the fibre network for layer 1 services terminated at these points, then ICABS would still, in the Commission's view, be within the definition of FFLAS as being necessary to enable access to, and interconnection with, the fibre network given that RSPs have invested at the layer 2 handover points as a result of the design of the UFB initiative. In this hypothetical scenario where layer 1 aggregation points defined the edge of a separate layer 1 fibre network, such transport services would have been added as a further exception to this list.

Property development services

2.71 Chorus submitted that property development services should be excluded from the definition of FFLAS. It argued that the inclusion of these services would make the boundaries of the regulated service definition vague and unpredictable, and in particular:

2.71.1 the definition of "telecommunications service" in s 5 only captures a service involving telecommunication and not the activity of constructing the network;

2.71.2 if these services constituted FFLAS, then this would arguably mean that Chorus was in breach of its line of business restrictions in s 69O;

2.71.3 it is unnecessary for these services to be regulated to capture the associated revenue, because the income earned by Chorus (in the form of capital contributions) will be subtracted before the cost of the corresponding assets enters the RAB; and

2.71.4 the inclusion of these services would be inconsistent with the Commission's approach under Part 4 of the Commerce Act.

2.72 We are satisfied that Parliament intended these services to be included within the definition of FFLAS, as bottleneck services that are necessary for the provision of a fibre connection to end-users. Our views in relation to Chorus' specific arguments are as follows.

2.72.1 The definition of "telecommunications service" captures any services that "enable or facilitate telecommunications". On its plain words, a service that is required to fit out premises to take a fibre service enables and facilitates that service. We do not consider that Parliament's decision to adopt language from the regulation of copper services in Part 2 of the Act suggests an intention to exclude "construction" services, since a number of the ancillary services regulated under Part 2 involved installation or construction rather than the provision of telecommunications,[35] and in any case Part 2 was introduced to regulate largely existing infrastructure.

[35] See for example the UCLL Price List (updated 15 December 2019) which includes "1.1 MPF New Connection" and "1.9 Remote Tie Cable Service Installation" or UBA Price List (updated 16 December 2018) which includes "1.42 Access Seeker Handover Connection Installation", "1.47 Handover Fibre Installation" and "1.50 Wiring and model installation".

2.72.2 The context in which "telecommunications service" appears in s 69O and Part 6 is different. We do not consider that this issue justifies reading down the definition of "telecommunications service" in Part 6 where the context and purpose supports the inclusion of property development services.[36]

2.72.3 The inclusion of property development services within the definition of FFLAS is not concerned solely with capturing the associated revenues, but also ensures that regulation can address potential competition concerns arising from the provision of services that are not necessarily contestable or provided in a competitive market.

2.72.4 Chorus noted in its submission on the draft decisions that under the Commission's proposed approach, the treatment of property development services for fibre networks under Part 6 would be different to the treatment of equivalent services under Part 4 of the Commerce Act (for example, to support the provision of electricity distribution connections). The basis for the difference in approach is the difference in the underlying statutory definitions. The definition of 'electricity lines service' in s 54C of the Commerce Act refers solely to the "conveyance of electricity by line", and so is a narrower concept than "telecommunications service" in s 5.

2.72.5 To the extent that costs are incurred by network providers in the deployment of networks to provide services to end-users, then under both approaches, those costs would be recognised in the RAB as part of the valuation of the assets used to construct the network.[37] The main implication of the difference in the broader scope of the definition of FFLAS and the narrower scope of electricity lines service, as they relate to property development services, would be in the Commission's future ability to regulate the price and quality of those services (or a subset of those services) through PQ or ID regulation.

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[36] We note that the definition of "telecommunications service" in s 5 applies "unless the context otherwise requires". This means that it could take a different meaning in the context of s 69O, or s 69O might otherwise be read as implicitly excluding situations where Chorus is providing a (one-off) service to an end-user which also relates to the construction of its network in exchange for a capital contribution.

[37] Related party provisions in Part 4 regulate costs that can be recognised when a related party builds assets or supplies services to a regulated electricity business.

Network services

2.73 In our draft decisions, we included in the preliminary list of FFLAS (at paragraph 2.63.7) a category entitled "network services", which we described as "[N]etwork engineering and other services provided for a fibre network (including, but not limited to, network design build and maintenance services)". Chorus argued that this category should be excluded for the same reasons as property development services.

2.74 Examples of these services would include fibre route surveys, cable locate services, site investigation services and network damage maintenance. We have given further consideration to this category and consider that these services are not generally associated with a particular property and largely consist of charges to third parties in connection with work near, or damage to, Chorus network infrastructure. We have reached the provisional view that these services do not qualify as FFLAS, as it appears that they do not enable or facilitate telecommunications in the sense of the definition of "telecommunications service" in s 5. We would particularly welcome stakeholders' views in relation to this category.

Description of FFLAS

2.75 We are not required to reach a final view on what individual services come within the definition of FFLAS until we make our PQ and ID determinations under s 170. Nevertheless, submitters supported our decision to provide an outline of our current views on this question.

2.76 In light of our approach to defining FFLAS in the preceding paragraphs, the service types we consider qualify as FFLAS for the purposes of regulation under Part 6 are as follows.

2.76.1 **Voice services:** Services to enable the delivery of telephony and low speed data services over a fibre network (including, but not limited to, anchor services, baseband, ATA voice).

2.76.2 **Bitstream PON services:** Single or multi-class point-to-multipoint fibre access services (including, but not limited to, anchor services, bitstream services, bitstream 2, 3, 3A, bitstream accelerate services, 10GPON, NGPON and multicast).

2.76.3 **Unbundled PON services:** Point-to-multipoint layer 1 fibre access services (including, but not limited to, PONFAS and unbundled fibre services).

2.76.4 **Point-to-point services:** Single, multi-class or layer 1 point-to-point fibre access services (including, but not limited to, bitstream 4, enhanced bitstream 4, HSNS, BFAS and DFAS).

2.76.5 **Transport services:** Layer 1 or managed throughput fibre services provided over the fibre network, to transport voice and data traffic between central offices, including central offices that are also POIs (including, but not limited to ICABS, TES and inter-CO fibre services; but excluding national / inter-candidate area backhaul services such as Chorus Regional Transport).

2.76.6 **Co-location and interconnection services:** Network equipment accommodation and management services including network interconnection services (including, but not limited to, Central Office and POI Co-location services, handover connections, Ethernet handover connections, tie-cables and jumpering).

2.76.7 **Property development services:** Services to develop properties, subdivisions, and non-building access points to support the provision of FFLAS (including, but not limited to, design, pre-wiring, cable and duct fit-out, and connections).

2.77 The term 'FFLAS' is used in a number of provisions in Part 6, including in s 177(2), which refers to the financial losses "incurred by the provider in providing fibre fixed line access services under the UFB initiative". The definition of FFLAS in s 5 refers to "a regulated fibre service provider's fibre network". In turn, under the definition in s 5, parties only become "regulated fibre service providers" once they are named in regulations made under s 226.

2.78 On a strict reading of these interconnected definitions, no regulated fibre service providers, and therefore no FFLAS, came into existence prior to the making of the Regulations in November 2019. Such a reading of the definitions would mean that no FFLAS existed during much of the period of the UFB initiative, which would limit the application of s 177(2). Our view is that this narrower interpretation is incorrect, and that references to 'FFLAS' should be read broadly to refer to an underlying concept. Under this underlying concept, FFLAS would exist if the fibre network in respect of which the service is provided would have met the definition of 'fibre network' in s 5 if the provider in question had, at that time, been named in regulations under s 226 as subject to Part 6 regulation.

2.79 We do not exclude the possibility that other services might be included within FFLAS over time, and will apply the statutory test in determining whether any given service is included within the definition.

Chapter 3 Updates to our draft decisions

Purpose of this chapter

3.1 This chapter seeks your views on a targeted set of changes to decisions on individual areas of the IMs. For each area of the IMs where we are consulting on proposed changes, it:

3.1.1 sets out the decisions we are seeking views on;

3.1.2 summarises our draft decision(s) on the issue(s);

3.1.3 explains out reasons for changing this decision, either in response to submissions or based on other factors (in most cases in response to the publication of the Regulations, as discussed in Chapter 2);

3.1.4 sets out our updated draft decision.

3.2 The areas of the IMs where we are consulting on changes to our decision are:

3.2.1 asset valuation;

3.2.2 cost allocation;

3.2.3 capital expenditure; and

3.2.4 regulatory processes and rules.

3.3 In addition to these changes, this chapter also discusses the potential for a future, aligned review of the cost of capital IM between Part 4 of the Commerce Act and Part 6. This issue is discussed at the end of the chapter.

Asset valuation

3.4 In this section we set out the reasons for material changes made to our draft asset valuation IM draft determination. These changes give effect to the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 (the Regulations).[38]

[38] The Regulations came into force on 20 December 2019, except reg 6, which comes into force on 31 December 2021: see reg 2(1).

3.5 In particular, this section focuses on changes to the further consultation determination reflect reg 6, which provides that Chorus' FFLAS provided in a geographical area where another LFC has installed a fibre network under the UFB initiative is exempt from PQ regulation (ie, Chorus' FFLAS in these areas is subject to ID regulation only).[39] The changes also respond to feedback we received in submissions on our draft determination.

3.6 We also include discussion on matters for which our decisions remain unchanged but where we have refined our reasons for those decisions, having considered stakeholders' submissions.

3.7 We have made changes in the following areas:

3.7.1 treatment of the benefit of Crown financing;

3.7.2 treatment of the funding of certain non-standard lead-ins;

3.7.3 transitional provisions for PQ RAB for the first regulatory period;

3.7.4 defining the term "employed" to clarify the meaning of "commissioned" assets;

3.7.5 changes to the "deregulation adjustment" and "sale adjustment";

3.7.6 changes to ID-only regulated FFLAS depreciation;

3.7.7 changes to the minimum level of asset specificity that regulated providers must be able to provide on assets in the RAB; and

3.7.8 changes to the definition of "network spares".

Treatment of the benefit of Crown financing

3.8 Chorus received finance from the Crown to assist in the construction of the UFB network under the UFB initiatives. Under the UFB agreements between Chorus and the Crown, favourable financing terms apply.[40] There are (or have been) similar financing arrangements between the Crown and other LFCs.

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[39] The Regulations were in contrast with the draft regulations, which had indicated that all of Chorus' FFLAS would be subject to PQ regulation.

[40] See s 171(2) and s 177(3)(b) of the Act, which are discussed at paragraphs 3.21 to 3.23 below.

3.9 Part 6 requires the Commission to take into account these concessional financing terms. In order to do so, we have adopted the concept of the "benefit of Crown financing". We use this to estimate the benefit of Crown financing to Chorus or the other LFCs compared with the financing costs that would have been incurred without Crown financing.

3.10 We quantify and take into account the benefit of Crown financing when:

3.10.1 calculating the financial loss asset relating to the pre-implementation period, which is reflected in the initial RAB at implementation;

3.10.2 determining the maximum allowable revenue for Chorus under PQ regulation in the post-implementation period; and

3.10.3 assessing performance under ID regulation in the post-implementation period.

3.11 In terms of how we deal with the benefit of Crown financing, the table below compares the draft decision with our draft decision for further consultation.

Decision area	Draft decision (December 2019)	Draft decision for further consultation
Scope of IM	Pre-implementation treatment of benefit of Crown financing included in the IM.	Both pre- and post-implementation treatment of benefit of Crown financing included in the IM.
Regulated provider subject to PQ and ID regulation		
Pre-implementation	The financing rate is the debt rate.	The financing rate is the regulatory WACC.
Post-implementation	N/A	The financing rate is the regulatory WACC with a modest discount of 25 basis points applied. The Commission may reconsider the financing rate to apply to a regulatory period prior to each regulatory period.
Regulated provider subject to ID-only regulation		
Pre-implementation	The financing rate is as follows: where the underlying characteristic of the financing is debt, then the regulatory debt rate will apply, where the underlying characteristic of the financing is equity, then the regulatory equity rate will apply. where the financing is a mixture of debt and equity, then a rate based on the regulatory WACC will apply.	As per draft decision.
Post-implementation	N/A	Consistent with pre-implementation period.

3.12 In this section we:

3.12.1 summarise our draft decision (November/December 2019);

3.12.2 set out reasons for including the post-implementation treatment of the benefit of Crown financing in the IM;

3.12.3 summarise our decision in relation to the post-implementation treatment of the benefit of Crown financing;

3.12.4 set out the legal requirements (in particular s 171(2) and s 177(3)(b)) and other relevant considerations;

3.12.5 summarise our decision in relation to the post-implementation treatment of the benefit of Crown financing;

3.12.6 provide our reasons for the treatment of the benefit of Crown financing (pre- and post-implementation); and

3.12.7 provide an illustration of the post-implementation approach in the context of PQ and ID regulation.

3.13 In this section we discuss the reasons for our decision in relation to both the post- and the pre-implementation treatment of the benefit of Crown financing. We consider this is useful because similar reasons apply to both. Providing our reasons for both periods will allow submitters to consider these reasons together.[41]

Draft decision

3.14 In the draft decision (November/December 2019) we explained the potential post-implementation treatment of the benefit of Crown financing under PQ and ID regulation.[42] We explained that in a building blocks calculation we intended to:

3.14.1 calculate the return on assets by applying the conventional regulatory weighted-average cost of capital (WACC) to the total RAB; and

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[41] Our updated draft determination published alongside this consultation paper only includes the clauses that provide for the treatment of the benefit of Crown financing for the post-implementation period. The determination clauses that provide for the pre-implementation period will be published on 13 August 2020.

[42] Commerce Commission "Fibre input methodologies – Draft decision paper"(19 November 2019). para 3.139 to 3.150. Note that in the draft decision we also referred to this benefit as the "avoided financing cost".

3.14.2 include a building block that reflected the ongoing benefit of Crown financing. The value of this ongoing benefit was to be calculated by multiplying the relevant avoided cost of financing for the relevant year by the nominal outstanding total of concessionary Crown financing. These deductions would continue until the Crown financing is repaid.

3.15 In the draft decision, in relation to the pre-and the post-implementation period we considered that the underlying characteristic of the benefit of Crown financing was:

3.15.1 for Chorus, the avoided interest on an amount of debt;[43]

3.15.2 for other LFCs, the avoided interest on an amount of debt and/or the avoided equity rate on an amount of equity.[44]

3.16 While we explained our intended post-implementation treatment of the benefit of Crown financing in the draft decision reasons paper, it was not included in the draft determination.

Reasons for including the post-implementation treatment of the benefit of Crown financing in the IM

3.17 Chorus submitted that:[45]

> The definition of "avoided financing cost building block" refers to clause 2.2.3(25), however that clause only refers to the pre-implementation period. Box 3.1 in the Reasons Paper (which discusses the maximum allowable revenue for the post-implementation period) suggests that an equivalent definition of "avoided financing cost building block" is required to address the post-implementation period.

3.18 Chorus proposed that we make the following change to the draft determination:

> Clause 2.2.5 needs to address the impact of the avoided financing cost building block on the financial loss asset in the roll forward, in accordance with the Commission's Reasons Paper and in light of Chorus' submissions.

3.19 We agree with Chorus that the IM should specify how the benefit of Crown financing will be treated for the post-implementation period. The Crown financing makes up a significant portion of the financing on which Chorus and other LFCs rely to finance investments under the UFB initiative. There are different ways in which the benefit of Crown financing might be treated, and we consider it useful to clarify the intended treatment in the IM.

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[43] Commerce Commission "Fibre input methodologies – Draft decision paper"(19 November 2019), paragraph 3.112.

[44] We will need to determine the underlying characteristic of Crown financing for other LFCs as part of information disclosure regulation.

[45] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), page 2.

3.20 We have also changed our treatment of the benefit of Crown financing from the draft decisions. We discuss our decisions and reasons for these decisions below.

Legal requirements and other relevant considerations in relation to the benefit of Crown financing

3.21 The Act requires us to have regard to the "actual costs of Crown financing" when determining:

3.21.1 **for the pre-implementation period,** the calculation of the financial loss asset: s 177(3)(b) provides the Commission "must refer to the actual financing costs incurred by the provider";[46] and

3.21.2 **for the post-implementation period,** the maximum allowable revenue which we set under a s 170 determination: s 171(2) provides that maximum revenues set by a s 170 determination must reflect the actual costs of Crown financing incurred by the provider in the regulatory period to which the determination applies.

3.22 Under the UFB agreements between Chorus and the Crown, favourable financing terms apply until the Crown financing is repaid.

3.23 In order to give effect to the requirements of s 171(2) and s 177(3)(b) in the IMs, we have adopted the concept of the "benefit of Crown financing" as an estimate of the benefit of Crown financing to Chorus or the other LFCs.[47] This benefit is estimated by comparing the actual costs of Crown financing with the financing costs that would have been incurred in the absence of this concessional financing. When the IMs take into account the benefit of Crown financing they thereby take into account the actual costs of Crown financing.

3.24 Further, we consider that in order to promote the long-term benefit of end-users, in accordance with the purpose of s 162, the maximum allowable revenue we set for Chorus under PQ regulation should appropriately reflect the benefit of Crown financing, so that Chorus is limited in its ability to extract excessive profits (s 162(d)).

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[46] We consider that the use of the terms "refer" (used in s 177(3)(b)) and "reflect" (used in s 171(2)) are intended to have the same meaning.

[47] In the draft decision, we referred to the financial benefit arising from these favourable terms as both the "avoided cost of Crown financing" and the "benefit of Crown financing" interchangeably. We now refer to this concept exclusively as the "benefit of Crown financing". The exception to this is where quoting directly from stakeholders' submissions in this document. For the avoidance of doubt, these concepts are to be understood as interchangeable.

3.25 Under ID regulation, to assist interested persons assessing whether the long-term benefit of end-users is being promoted, it is important that regulated providers' disclosed information appropriately reflects the benefit of Crown financing.

3.26 The two components of the benefit of Crown financing are:

3.26.1 the financing rate applied; and

3.26.2 the balance of Crown financing.[48]

3.27 Additional considerations are:

3.27.1 **Consistency between our pre-and post-implementation treatment**. We have sought to treat the benefit of Crown financing consistently for both the pre -and post-implementation periods, except where different considerations apply. As discussed above, we understand the actual costs of Crown financing in terms of the benefit of Crown financing.

3.27.2 **Avoiding any undesirable incentives created by our decisions**. For example, if Crown financing is repaid early due to our choice of financing rate, end-users would no longer benefit from the Crown financing on the refinanced portion. The prices end-users pay will reflect a lower benefit of Crown financing. This outcome is unlikely to be in the long-term benefit of end-users.[49]

Submissions on the benefit of Crown financing

3.28 Vodafone submitted that in its view, absent Crown financing, Chorus' credit rating would have been significantly worsened and that in practice, by implication it would have needed to inject equity in order to finance the UFB initiative.[50] For this reason, in Vodafone's view, to calculate the benefit of Crown financing, it would be best to either set the cost of Crown financing at zero or at an estimate of the cost of debt based on a sub-investment grade rating.

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[48] We have considered the extent to which locking in the balance of Crown financing upfront may prevent outcomes that are not in the long-term interest of end-users (refer to para 3.48.2 below).

[49] End-users of regulated FFLAS are generally also taxpayers. We acknowledge that to the extent that early repayment benefits the Crown, taxpayers would also benefit. However, under Part 6 regulation we are only concerned with the long-term benefit of end-users of regulated FFLAS.

[50] Vodafone "Submission on Fibre input methodologies – Draft decision" (30 January 2020), pages 12 to 13.

3.29 Chorus rejects Vodafone's argument, stating it is unrealistic to consider a hypothetical scenario of an absence of Crown financing. This is because without Crown financing, Chorus would have simply deferred the investment until it was both financeable and commercially viable.[51] Chorus favours assuming that Crown financing was a form of debt financing and submits that we should use the benchmark credit rating in order to calculate the benefit of Crown financing.[52]

Summary of decision: treatment of the benefit of Crown financing

3.30 Our decision is to treat the benefit of Crown financing for Chorus post-implementation under PQ regulation as follows:

3.30.1 **Financing rate**: the rate that best reflects the benefit of Crown financing is the regulatory WACC with a modest discount of 25 basis points applied.[53]

3.30.2 **Balance of Crown financing outstanding**: the balance outstanding is determined for each year of a PQ regulatory period reflecting the relevant financing agreements (in nominal terms) between Chorus and the Crown.[54]

3.31 To the extent that the calculation of the benefit of Crown financing is based on a forecast amount, we intend to wash-up this amount under PQ regulation.[55]

3.32 For the pre-implementation period, our decision is to use the regulatory WACC as the financing rate when incorporating the benefit of Crown financing in the calculation of the financial loss asset.

3.33 For other LFCs, with respect to the financing rate applicable when calculating the benefit of Crown financing, the pre- and post-implementation treatment are as follows:[56]

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[51] Chorus "Cross-submission on Fibre input methodologies draft decision" (18 February 2020), paragraph 23.2.

[52] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraphs 150 to 158.

[53] Determined before each regulatory period for the purposes of PQ regulation in accordance with the WACC IM.

[54] Chorus has published two documents that summarise the key terms of the securities issued by Chorus to CIP as part of its UFB1 and UFB2 rollouts at:
https://company.chorus.co.nz/file-download/download/public/1464 and
https://company.chorus.co.nz/file-download/download/public/1873
The balance of Crown financing for the first regulatory period will require a forecast of any additional Crown financing amounts Chorus is expected to draw down after 1 January 2022.

[55] Chorus is expected to complete its UFB rollout in 2022. Other LFCs completed have completed their UFB rollout. Refer to www.crowninfrastructure.govt.nz/wp-content/uploads/UFB-Programme-Schedule-MAY-2020.pdf

[56] This treatment is consistent with the draft decision for other LFCs.

3.33.1 where the underlying characteristic of the financing is debt, then the regulatory debt rate will apply;

3.33.2 where the underlying characteristic of the financing is equity, then the regulatory equity rate will apply; and

3.33.3 where the financing is a mixture of debt and equity, then a rate based on the regulatory WACC will apply.

3.34 When assessing profitability, the benefit of Crown financing must be treated as income in each disclosure year.

Reasons for the treatment of the benefit of Crown financing pre- and post-implementation

3.35 Since our draft decision we have carefully considered submissions, previous expert advice and reviewed evidence as to how we should quantify the benefit of Crown financing. As discussed above, a key consideration in reaching our decision is promoting the long-term benefit of end-users as required under s 162. We have also carefully considered the terms of the financing between the Crown and Chorus.

3.36 Below we explain our reasons for adopting the pre-and post-implementation approaches to determining the financing rate applied in the calculation of the benefit of Crown financing for Chorus and other LFCs.

Pre-implementation treatment

3.37 We consider there is some force to Vodafone's arguments (paragraph 3.28 above) and that, given the scale of the funding, Chorus would not have been able to replace Crown financing without recourse to both equity and debt. Consequently, the best proxy for Chorus' gains from Crown financing is the regulatory WACC calculated in accordance with the IMs. This also reflects that the Crown financing is an (equal) mixture of debt and equity.

3.38 In this respect we also note that:

3.38.1 Standard & Poor's Global treat the CIP equity securities as equity financing. This has the implication that if the equity securities were repaid and debt securities retained, this would be expected to have some impact on Chorus' credit rating unless it also raised equity:[57]

> About half of the UFB build cost is funded by payments from Crown Fibre Holdings (CFH, a New Zealand government-owned entity), in the form of debt and equity-like securities. We treat the equity securities as 100% equity in our financial ratio calculations, and the net present value of the debt securities as 100% debt.

[57] S&P Global Ratings "Chorus Ltd" (31 May 2018), page 6.

3.38.2 In Chorus' annual accountsthe total Crown financing is excluded from debt, and is treated in a category of its own (neither debt nor equity).[58] Each class of security is described consistently with its characteristics. For example, the CIP equity securities are described as being entitled to a dividend, a term that is only used for equity instruments, and not a term for debt. It therefore appears that Chorus (and its auditors) do not treat the CIP equity securities as debt.

3.38.3 The core characteristics of the CIP equity securities are akin to those of a preference share, which is a normal equity instrument, namely:

3.38.3.1 subordination to all other forms of finance except ordinary shares;

3.38.3.2 payment of a dividend that is at the discretion of the issuer (Chorus) with the standard proviso that no dividends can be paid on ordinary shares if the dividends on the preference shares are not paid;

3.38.3.3 the dividends are non-cumulative (unlike debt instruments) and the issuer has the option of whether to repay in cash or by way of ordinary equity.

3.38.4 We have also further considered the expert opinion from Incenta which Chorus provided in support of its submission.[59] This advice was broadly that CIP equity securities should be treated as debt and Dr Lally agreed with this.[60] We note that Incenta states that both parts of CIP debt securities should be estimated as a 47 basis point premium to senior debt, and CIP equity securities should be treated as junior subordinated debt, which would carry a higher risk and an estimated 193 basis point premium over our normal cost of debt estimates.[61] However, for the pre-implementation period, we believe that such debt would not be replaced with junior subordinated debt nor would equity be replaced by CIP-type equity securities. Rather our methodology for calculating the cost of capital and our estimate of a regulatory WACC represents our best view of the cost of (replacement) financing.

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[58] Chorus "Annual Report 2019" (26 August 2019).

[59] Incenta Economic Consulting, Chorus's actual financing cost for Crown-financed Investment: Report for Chorus Ltd, July 2019.

[60] Capital Financial Consultants Ltd, Review of Submissions on the Cost of Capital for Fibre Network Losses, November 2019, page 8.

[61] Incenta Economic Consulting, Chorus's actual financing cost for Crown-financed Investment: Report for Chorus Ltd, July 2019, paragraphs 13, 14 and 15.

3.39 Consequently, we now consider the regulatory WACC should apply to Chorus for the calculation of the financial loss asset.

3.40 For other LFCs, we are maintaining our draft decision for the pre-implementation period that:

3.40.1 where the underlying characteristic of the financing is debt, then the regulatory debt rate will apply; and that

3.40.2 where the underlying characteristic of the financing is equity, then the regulatory equity rate will apply.

3.40.3 where the financing is a mixture of debt and equity, then a rate based on the regulatory WACC will apply.

3.41 We have also considered whether the financing rate should be adjusted to represent the actual mix of debt and equity securities rather than use our benchmark leverage.

3.42 However, we consider it is preferable to use the notional gearing in the regulatory WACC given our standard estimate of the full WACC is our best estimate of the cost of capital over the pre-implementation period. It is also the measure we will use over the pre-implementation period as an input for calculating accumulated losses, and therefore represents our view of the overall cost of replacement financing in the absence of Crown financing.

3.43 Using actual leverage would also require us to consider the appropriate debt beta given the presence of the leverage anomaly in the SBLM CAPM which we employ to estimate the cost of equity. This would not be a straightforward exercise.

Post-implementation treatment

3.44 We have also reconsidered our draft decision on the benefits of Crown financing post-implementation. In the draft decision, we indicated that we considered Chorus' Crown financing to be debt in substance. Our reasons for adopting the regulatory WACC are the same as described in paragraphs 3.37 to 3.39 above. However, for the post-implementation period, additional considerations apply.

3.45 In particular, Crown financing can be repaid and it may be increasingly easy for Chorus to raise debt to refinance Crown financing, which could include equity components. As described in paragraph 3.27.1 we are concerned that using a full regulatory WACC would incentivise repayment earlier than would otherwise occur and that this is unlikely to promote the long-term benefit of end-users.

3.46 Using the full regulatory WACC may incentivise Chorus to repay early:

3.46.1 Our regulatory WACC estimate is a benchmark which is set in advance of, and applies for, a regulatory period. It could therefore be higher than the actual cost of finance for Chorus at times. Hence the calculated benefits of Crown financing (a loss of revenue to Chorus) could be outweighed by access to cheaper financing (a net gain in revenue where it outperforms the regulatory WACC) whereas end-users would be unambiguously worse off.

3.46.2 Chorus may be able to replace equity with debt financing. This may be the case at the margin, although some constraint would apply as raising debt above a certain level may negatively impact credit rating, in turn affecting the cost of all debt financing.

3.47 In order to minimise the risk of the regulatory setting incentivising Chorus to retire Crown financing early and to the detriment of consumers, our decision is to use the regulatory WACC with a modest discount of 25 basis points for Chorus as the financing rate in determining the benefit of Crown financing for Chorus. The discount of 25 basis points is based on judgement.

3.48 We have considered several approaches to mitigating the risk of early repayment by Chorus:

3.48.1 Our preferred approach is to apply a modest discount to the WACC of 25 basis points. The modest discount only needs to counter a moderate possibility of early repayment to be of benefit to end-users given repayment by Chorus implies a loss of the full WACC to end-users.

3.48.2 Alternatively, we have also considered applying the cost of debt. This shares the benefits of Crown financing between Chorus and end-users but may nevertheless be in the interest of end-users where otherwise the Crown finance is paid off earlier than otherwise would be the case. However, we consider that an adjustment of this scale is not required to avoid incentivising early repayment.

3.48.3 Finally, in addition to a sharing of the benefits between Chorus and end-users we have also considered whether the benefit of Crown financing should be locked-in whether or not the Crown financing is repaid until the scheduled agreed repayment dates. However, we believe that this would undermine the contract between the Crown and Chorus given it allows for early repayment of equity securities. To the extent the contract would allow, or could be modified to allow for early repayment of debt, we do not believe we should override the contract.

3.49 We have also considered the implications of the Incenta expert opinion referred to in paragraph 3.38.4 above. In principle this would imply:

3.49.1 We treat all Crown financing as debt, but only the senior debt is subject to our regulatory cost of debt estimate. All other debt is subject to the 47basis points premium, and equity is subject to the 193 basis points adjustment (above the regulatory cost of debt) estimated by Incenta.

3.49.2 Applying our regulatory cost of debt to Chorus' non-senior debt under-estimates the relevant rate and applying our estimated cost of equity to Chorus' equity would over-estimate the cost of equity in comparison to the Incenta view.

3.49.3 Once we have applied a modest discount to our regulatory WACC, we note the difference between these different approaches will be narrowed depending on the discount adopted.

3.50 For regulated providers subject to ID regulation only, similar to the pre-implementation period the nature of the financing will dictate the financing rate that applies. For these providers, we see no need to prescribe a discount. However, we will consider any discount to the financing rate these regulated providers use in their information disclosures to examine how the benefits from Crown financing are shared with end-users. We welcome further views and evidence on this.

We intend to review the financing rates that apply under PQ regulation

3.51 Finally, one further implication is that Chorus may repay all of the CIP equity securities. Consequently, under PQ regulation we will reconsider the appropriate rate to apply before each regulatory period. That may be to switch to a different financing rate where the value of outstanding CIP equity securities is small relative to the value of outstanding debt securities.

Illustration of the post-implementation approach in the context of PQ regulation

3.52 The box below illustrates the building blocks calculation for Chorus, including the calculation of the benefit of Crown financing building block.

In the building blocks calculation used to determine the maximum allowable revenue for Chorus PQ path we will:

calculate the return on assets by applying the conventional regulatory WACC to the RAB; and

deduct the benefit of Crown financing building block in the calculation.

The benefit of Crown financing building block is calculated for each year of the regulatory period as follows:

(Estimated balance of Crown financing outstanding) x (cost of financing applicable to the regulatory period)[62]:-

The cost of financing is the regulatory WACC less 25 basis points.

The benefit of Crown financing building block is a deduction in the calculation of the revenue or price cap.

3.53 Similar to other components of the "initial PQ RAB", the benefit of Crown financing building block requires transitional provisions as we will need to determine the price path before implementation date on 1 January 2022. These are further discussed from paragraph 3.75 below.

Treatment of the funding of certain non-standard lead-ins

3.54 We have revised our decision on the funding of non-standard connections, with the benefit of Spark's most recent submission and supporting information. We agree with Spark that the funding of non-standard connections should be treated as a capital contribution.

[62] Under PQ regulation we will further consider the implications of the benefit of Crown financing, including interactions with the tax IM. Our aim is to ensure that for every dollar adjustment to revenue there is a corresponding dollar reduction in the MAR (which in turn is expected to be reflected in end-user prices). For example, we intend to ensure consistency between the cost of debt used for adjusting for the benefit of Crown financing in the MAR, and the cost of debt used to adjust the interest tax shield for the tax allowance. To do this, we will factor in the impact of leverage on both calculations, and ensure consistency between both calculations.

Spark's submission that funding of non-standard connections should be treated as a capital contribution

3.55 In its submission in response to the emerging views paper, Spark submitted that funding of "non-standard connections"[63] should be treated as a capital contribution.[64] The basis for this argument was that the funding of these connections was the result of a commercial arrangement between Chorus and the Crown: [65]

> Where an asset has been created and a contribution made, in part, in lieu of contractual penalty or an in-kind contribution, this should be treated as a contribution and deducted from the cost of the asset. For example, Chorus' approach to non-standard lead-ins was the result of commercial agreement with the Crown and that contribution should be deducted from the lead-in asset.

3.56 In our draft decision, we stated that the commercial arrangements between the Crown and LFCs towards the building of network assets constituted "Crown financing" under s 164 (taking a broad view of the definition, and focussing on the component that provides for funding of the UFB initiative, within which "non-standard installations" are included).[66] We acknowledge that our draft position was incorrect: see paragraph 3.61 below for detail.

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[63] Please note, the UFB contract uses the terms "standard install' and "non-standard install", whereas the Act refers to "standard connection" and "non-standard connection". Non-standard lead-in is another term for the same concept. These terms are used interchangeably in this consultation paper, noting that the parameters of the definition of a non-standard installation changed over time.

[64] The UFB1 contract defined the parameters of a "standard install" for particular fibre services with reference to the maximum distance of a fibre lead-in from the Fibre Access Point to ETP for either open trench, aerial drop, or buried lead-in. Chorus was required to fund standard installs for residential premises: ie, there was no connection fee charged to an RSP. Where the installation requirements at an end-user's premises exceeded these limits however, and therefore amounted to a "non-standard install', Chorus could charge the RSP a fee for this service. In 2012, Chorus agreed to extend the maximum distance of a "standard install", and the period over which it would fund these connections, for the period ending in December 2016. The period was subsequently extended to the end of UFB1 (ie, to December 2019). Under the UFB2 contracts, the definition of "standard installation" was extended to distances of up to 200 metres from the boundary. The agreement to extend the distance for standard installs was achieved without any funding from the Crown. Refer to the CIP's 2012 and 2016 press releases:
www.crowninfrastructure.govt.nz/2012/11/01/free-ultra-fast-broadband-connections/
www.crowninfrastructure.govt.nz/2016/10/18/free-ufb-connections-continued/

[65] Spark "Fibre regulation emerging views: technical paper" (16 July 2019), page 19.

[66] The UFB initiative is defined in s 5 of the Act as 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; and includes UFB 2 and any other extension to the programme.

3.57 In its submissions in response to the draft decision, Spark provided further detail on the commercial arrangements to which it had referred in its earlier submission. In particular, Spark further submitted that liquidated damages owed by LFCs to the Crown were applied as grants to providers for additional network assets, and as such, should be treated as capital contributions. In making this submission, Spark has pointed to a report from the Office of the Auditor General (OAG) published in June 2016.[67]The report stated that the Crown had applied liquidated damages as grants to LFCs for additional network assets in two instances, in cases of contractual breaches:[68]

> When Crown Fibre enforced penalties in these two instances, rather than retaining the payments, it directed that the payments be reinvested in parts of the network that were additional to what those commercial partners had been contracted to build. This resulted in enhancements to the network.
>
> This approach meant that the two commercial partners would build and eventually own a better network than that the contract initially required. However, the commercial partners did not necessarily see it this way. One told us that, irrespective of the outcome, "it still cost us financially". In our view, Crown Fibre's approach resulted in enhancements to the network sooner than might otherwise have occurred.

3.58 Spark submitted that the Crown's application of these liquidated damages as grants to LFCs should be treated as capital contributions.[69] In its submission, Spark states:[70]

> Our concern was that other Crown funding through these other mechanisms may not be considered for the purposes of the BBM model, and that this would have a material adverse impact for end user prices. The draft clarified that Crown funding and capital contributions are defined terms in the Act, and that funding through these other mechanisms is unlikely to be considered Crown Financing for the purpose of the Act (it not being debt or equity financing for the purposes of UFB).
>
> We agree with the Commission's approach. The process should ensure that Crown contributions to assets that fall outside the s 164(1) definition of equity and debt financing are captured. This means that Crown use of liquidated damages, implicitly applied by CIP as a grant to UFB partners, and grants through the RBI programme and fibre lead-ins should be treated as capital contributions for BBM purposes.

3.59 In its summary, Spark states:[71]

> We agree with the Commission's approach to capital contributions. Crown UFB funding relates to specific equity and debt funding, and this does not limit recognition of other Crown grants and concessions. The Commission should be alive to adjusting for RBI and other Crown grants (liquidated damages) in PQ determinations.

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[67] Office of the Auditor General "Crown Fibre Holdings Limited: Managing the first phase of rolling out ultrafast broadband" (June 2016).

[68] Ibid at paragraphs 3.36-3.38.

[69] Spark "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraphs 49-53.

[70] Spark "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraphs 52-53.

[71] Spark "Submission on Fibre input methodologies – Draft decision" (30 January 2020), at p 10.

Our revised decision: funding of non-standard connections should be treated as a capital contribution

3.60 We have reviewed our draft decision, with the benefit of Spark's most recent submissions and the further detail provided in the OAG's report referred to in those submissions. We agree with Spark that the funding of non-standard installations constitutes a "capital contribution" and have revised our decision accordingly.

Funding of non-standard installations is not "Crown financing" in terms of s 164

3.61 Spark's submission has highlighted an error in our draft decision. We acknowledge that our earlier view that the funding of these installations was "Crown financing" is not correct: it cannot be characterised as "either debt or equity financing provided by the Crown to a regulated provider" in terms of s 164.

Crown's application of liquidated damages as grant to UFB partners with non-standard installations are capital contributions

3.62 We agree with Spark's submission that the commercial arrangement between the Crown and Chorus (in particular, CIP's use of liquidated damages, implicitly applied as a grant to UFB partners) should be treated as capital contributions.

3.63 We acknowledge that the Crown's surrendering of its liquidated damages claim constitutes consideration, therefore bringing it within the definition of a "capital contribution" for the purposes of the determination:

> A **Capital contribution** (a) means money or the monetary value of other considerations charged to or received in relation to the construction, acquisition or enhancement of a core fibre asset or UFB asset by a regulated provider from 1 or more of the following:
>
> ….
>
> (iii) any other party; but
>
> (b) does not include any Crown financing.

3.64 Based on the $20 million fund that Chorus established for non-standard installations, [72] the Commission assumes that the value of the liquidated damages surrendered was no more than $20 million. If Chorus was required to pay liquidated damages instead, it is likely that they would not have established the fund to the same extent. We will therefore treat this sum as a capital contribution.

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[72] Chorus stock exchange announcement "Chorus provides $20m fund for free UFB residential Installs" (1 November 2012).

Defining the term "employed" to clarify the meaning of "commissioned" assets

3.65 Chorus submitted that we should use the phrase "available for use" rather than "employed" within the definition of "commissioned" (relating to commissioned assets).[73]

3.66 We consider that retaining the term "employed" in the determination is appropriate but have now defined "employ" to mean "available for use" to provide clarity for interested persons. Refer to Attachment A for further detail.

Draft decision

3.67 In the draft decision, the term "commissioned" was defined with reference to assets "employed" under the UFB initiative. Our draft decision did not however include definitions of the terms "employ", "employed" and "employment".

Why we have changed this decision

3.68 In its submission Chorus stated:[74]

> We consider the use of the term "employed" in this definition to be vague. In addition, the term "employed" does not work well with the definition of "commissioning date", which assumes that the definition of "commissioned" has a clear start date. In our view, it is clearer to use the term "available for use" rather than "employed." Our proposed definition is also more consistent with how the term "commissioned" has been defined in IMs under Part 4 of the Commerce Act.

3.69 Chorus proposed a minor amendment to the definition of "commissioned", namely, that the word "employed" should be removed and replaced with the phrase "available for use" to ensure consistency with generally accepted accounting practice (GAAP).[75]

The issue with the use of "employed" in the draft determination definition

3.70 Chorus' submission highlighted that the use of the word "employed" within the definition of "commissioned" is open to interpretation and potentially in conflict with the GAAP concept of a commissioned asset.

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[73] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), Appendix C, page 3.

[74] Ibid.

[75] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), Appendix C, page 3. See also paragraphs 97-100.

3.71 Under GAAP, depreciation of an asset occurs once an asset has been commissioned, ie, when the asset "is available for use, ie, when it is in the location and condition necessary for it to be capable of operating in the manner intended by management".[76] Under GAAP, for an asset to be commissioned, it is not necessary that an asset is delivering a service to an end-user, rather, the asset must simply be capable of serving an end-user.

3.72 We consider that the use of the word "employed" within the definition of "commissioned" can give rise to some ambiguity. In particular, it could be interpreted to refer to the point in time at which the asset is first used to deliver a service to an end-user (rather than simply, the point in time when the asset is available for use), in conflict with the GAAP definition of a commissioned asset.

3.73 This may be problematic, for example, where a regulated provider's records of commissioning dates of assets are based on GAAP. If the end-user-focused interpretation were adopted in the IM, existing records would be incompatible with that definition, and therefore could not be used for regulatory purposes. This would raise practical challenges in terms of defining when an asset was commissioned from a regulatory perspective. It could also mean an asset that previously had an end-user connected, but where that end-user has now disconnected, is arguably not "employed".

3.74 We consider our revised approach meets requirements under the Act. Section 177(1)(b) directs that the initial value of a fibre asset must be adjusted for accumulated depreciation, as at the implementation date, under GAAP. As set out at paragraph 3.71 above, the asset is considered commissioned and hence depreciation under GAAP can begin, once the asset is in the location and condition necessary for it to be capable of operating in the manner intended by management.

Transitional provisions for PQ RAB for the first regulatory period

3.75 We have provided for a transitional forecast PQ RAB for the first regulatory period. This change recognises that at the time of determining the PQ path, actual values (as envisaged in the draft IM) are not yet available. Transitional assumptions are therefore needed to obtain an estimate of the "initial PQ RAB".

[76] NZ IAS 16, at paragraph 55.

Our draft decision

3.76 In the draft decision we specified IMs for the purposes of determining values used for PQ paths, where fibre asset values would be determined by adopting actual values using the ID IMs in respect of the base year and applying forecasts for future years.[77]

Why we have changed this decision

3.77 Our further consultation decision is to introduce a transitional provision for valuing fibre assets for the purposes of specifying the first PQ path. These transitional assumptions are needed to obtain an estimate of the "initial PQ RAB".

3.78 To determine the first PQ path, an opening RAB at implementation date is required. The actual values of the RAB at implementation date will not be known for several months after implementation date. We therefore need to forecast a value for the RAB at implementation date and determine which actual values will be used as the base for determining the forecast value at implementation.

3.79 The fibre asset values — including the value of the financial loss asset— will be determined for the first PQ path by:

3.79.1 adopting actual values calculated under the ID IMs for the PQ RAB in respect of the base year of a regulated provider obtained by the Commission;

3.79.2 applying forecasts of all values required to determine those fibre asset values by applying the ID IMs; and

3.79.3 applying the PQ IM to create allocated forecast asset values.

3.80 For the purposes of the ID IMs, the PQ RAB is not formed until the implementation date (1 January 2022). Our further consultation decision is to introduce a transitional requirement to allow the PQ RAB values used to determine the first price-quality path to be based on:

3.80.1 actual values for "regulatory year 2019" (the 12-month period ending 31 December 2019)[78]; and

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[77] Refer to clause 3.3.1 of the draft IMs.

[78] In general, the base year is a disclosure year for which actual data is available and which is used for developing forecasts for setting a price-quality path. The base year is a disclosure year specified by the Commission. By specifying regulatory 2019 as the basis for estimating the first price quality regulatory period 'initial PQ RAB' we have effectively specified 2019 as the base year.

3.80.2 a value for 1 January 2022 to be developed from forecast values of the initial RAB for "regulatory year 2020" (the 12-month period ending 31 December 2020) and "regulatory year 2021" (the 12-month period ending 31 December 2021).

3.81 We have done this by specifying in clause 3.3.1(6)(c) of the determination that certain references to "implementation date" and "the disclosure year 2022" in the ID IMs mean "regulatory year 2019".

3.82 For the purposes of specifying the PQ path for the second regulatory period and subsequent regulatory periods, clause 3.3.1(2) will apply where forecast asset values will be predominantly determined on the basis of actual values for the base year determined using the ID IMs. These actual values would have been determined from the commencement of the PQ RAB at implementation date.

3.83 Our draft decision specified IMs for the purposes of determining fibre asset values used for PQ paths but was unworkable for the first regulatory period as it relied on adopting actual values using the ID IMs in respect of the base year. As drafted, the ID IMs could not rely on actual values for the base year as the initial RAB is not formed under the ID IMs until 1 January 2022 (clause 2.2.1(1) and 2.2.2(2) of our draft IMs)). This was unworkable as s 172(1) requires us to determine our first PQ path before 1 January 2022, yet no actual asset values would have been determined under the ID IMs by this date.

3.84 We consider that specifying a workable IM for valuing fibre assets for the purposes of specifying the first PQ path promotes the purpose of IMs under s 174 more than our draft decision as our draft decision did not explicitly specify in a workable manner the actual fibre asset values that would predominantly be used for the first regulatory period.

3.85 Not specifying IMs for a transitional forecast RAB for the first regulatory period was an oversight in our draft decision, which we identified in the process of revising the decision. We did not receive submissions on this issue.

3.86 We welcome views on whether this method will allow suitable forecast values to be calculated in practice for the first regulatory period for all relevant fibre assets.

3.87 One alternative that we have considered is whether to specify that actual values obtained by the Commission prior to implementation date should be used as the basis for forecasting initial asset values for the first regulatory period, where the data obtained by the Commission is compliant with:

3.87.1 GAAP for core fibre assets per s 177(1) of the Act; and

3.87.2 the specification of financial losses in Schedule B of the determination, in respect of the financial loss asset.

3.88 This would potentially simplify the method applied and the drafting of the transitional provisions for the first regulatory period in clause 3.3.1(6)) of the determination. We also welcome any views on this alternative.

Changes to the "deregulation adjustment" and "sale adjustment"

3.89 We have made changes to the wording of relevant definitions and clauses of the determination related to the "deregulation adjustment" and "sale adjustment". These adjustments impact on the closing RAB value of the "financial loss asset".

Draft decision

3.90 Our draft determination included a "deregulation adjustment" that provided the mechanical approach to changing the value of the financial loss asset following deregulation of FFLAS.

3.91 The draft decision was based on the draft regulations, which had indicated that all of Chorus' FFLAS would be subject to PQ regulation. As set out at paragraph and 2.6 above, in contrast with the draft regulations, the Regulations provide that certain of Chorus' FFLAS are exempt from PQ regulation.[79, 80]

3.92 In addition, in the draft decision the formula for both the deregulation adjustment and the sale adjustment used the term "current value of initial core fibre asset".[81] We have identified that replacing this term with "UFB-related core fibre asset" will provide greater certainty regarding the assets that are included in the calculation of the deregulation adjustment and the sale adjustment.

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[79] Telecommunications (Regulated Fibre Service Providers) Regulations 2019, reg 6.

[80] The current Regulations would need to be changed (following a review) to exclude from PQ regulation deregulated assets that are in Chorus' UFB areas, rather than in other LFC's UFB areas.

[81] The policy intent is that the value of the financial loss asset is related to the assets that contributed to its value at implementation.

Why we have changed this decision

3.93 The draft decision was premised on all of Chorus' FFLAS being subject to PQ regulation, in line with the draft regulations. We have made changes in the IM to reflect reg 6 of the Regulations. Reg 6 provides that Chorus' FFLAS provided in a geographical area where another LFC has installed a fibre network under the UFB initiative is exempt from PQ regulation (ie, Chorus' FFLAS in these areas is subject to ID regulation only).[82]

3.94 The financial loss asset at implementation date is the same for both ID and PQ. It may vary post-implementation based on deregulation or asset sales (eg, if an asset is deregulated from PQ but not ID).[83] For example, deregulation of an asset from PQ to ID-only could lead to the total ID financial loss asset value being larger than the PQ financial loss asset value.

3.95 The changes to the deregulation adjustment allow for flexibility where the scope of regulation changes as follows:

3.95.1 FFLAS are no longer subject to PQ regulation, but remain subject to ID regulation; or

3.95.2 FFLAS are deregulated altogether (ie, they are no longer subject to either PQ or ID regulation).

3.96 In addition, as set out in the draft decision reasons paper at paragraph 3.269, we consider that the ability to recover revenue from the financial loss asset is closely linked to the ability to recover revenue from the "main RAB" (ie, the core fibre asset). This means that, as the size of the RAB decreases due to removing deregulated cost components, so too does the ability to recover revenue from the financial loss asset.

3.97 At paragraph 3.277 of the draft decision we explained that the value of the financial loss asset that will be removed from the RAB following a deregulation decision is linked to the value of the UFB assets in the RAB at the time of implementation.

3.98 The main situations where the financial loss asset value will need to be modified (other than annual RAB roll forward) are:

3.98.1 deregulation decisions; and

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[82] Refer to the discussion on our approach implementing s 226 in the IMs, which can be found in Chapter 2.

[83] As the financial loss asset is based on losses incurred providing services under the UFB initiative pre-implementation, the loss asset value will be adjusted in line with adjustments to the value of pre-implementation UFB assets.

3.98.2 changes in asset value following the sale of assets.

3.99 The relationship described in paragraphs 3.12-3.13 of the draft decision is reflected in the draft determination through the definition of "current value of initial core fibre asset".

3.100 In revising the draft decision, we have replaced the term "current value of initial core fibre asset" with the newly defined term "UFB-related core fibre asset" in the definitions of both the deregulation adjustment and sale adjustment. We consider this new term better gives effect to our policy intent. UFB-related core fibre assets are defined as core fibre assets that were UFB assets prior to the implementation date. The new definition better promotes certainty regarding which assets are to be included in the calculation of the deregulation adjustment and sale adjustment.

Changes to the depreciation rules for FFLAS subject to ID regulation only

3.101 We have made several changes to the depreciation rules that apply to FFLAS subject to ID regulation only. This provides appropriate flexibility when some FFLAS are subject to PQ and ID regulation, and some to ID-only regulation (at implementation, this is only Chorus). This will ensure consistency of treatment for assets that are only subject to ID regulation only.

Draft decision

3.102 The draft decision was based on the draft regulations, which had indicated that all of Chorus' FFLAS would be subject PQ regulation. As set out at paragraph 3.52.6 above, in contrast the Regulations provide that certain Chorus FFLAS are exempt from PQ regulation.[84]

Why we have changed this decision

3.103 We have made changes to reflect reg 6, which provides that Chorus' FFLAS provided in a geographical area where another LFC has installed a fibre network under the UFB initiative is exempt from PQ regulation (ie, Chorus' FFLAS in these areas is subject to ID regulation only).

3.104 The changes to the depreciation rules set out in Attachment A ensure that for FFLAS subject to ID regulation only, Chorus has the flexibility to choose a depreciation approach consistent with the expected time profile of cost recovery. This depreciation approach aligns with the rule that applies for other LFCs' FFLAS which is subject to ID regulation only. Our reasons for adopting this approach for FFLAS subject to ID regulation are set out in the draft reasons paper at paragraphs 3.210-3.214.

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[84] Telecommunications (Regulated Fibre Service Providers) Regulations 2019, reg 6.

Changes to the minimum level of asset specificity for asset values in the RAB

3.105 We have made changes to the minimum level of asset specificity that regulated providers must be able to provide when reporting on asset values in the RAB. Specifically, we have:

3.105.1 listed minimum levels of specificity that must be satisfied in respect of the financial loss period.

3.105.2 made changes and added more detail to the minimum levels of specificity that applies post-implementation.

Draft decision

3.106 Our draft decision set out our chosen minimum levels of assets specificity for pre- and the post-implementation.[85] These minimum levels of specificity clarify that we may require RAB information to be provided at a disaggregated level.

3.107 In the draft decision we explained that the chosen levels of granularity (as well as a regulated providers' application of judgement on required granularity) will:[86]

3.107.1 help prevent over or under-recovery of costs, in line with the purpose of Part 6, under s 162(a) and (d); and

3.107.2 provide data to be used in cost allocation to allocate costs between regulated FFLAS and services that are not regulated FFLAS, encouraging improvements in efficiency (s 162(b)).

Why we have changed this decision

3.108 We received submissions from various stakeholders, including from Chorus and the LFCs, on the requirements set out in Table 3.1 of the draft decision and Schedule A of the draft determination. Two key issues were raised in submissions. The first issue relates to the level of granularity for the pre-implementation period, while the second concerns the level that applies to the post-implementation period.

[85] Refer to Table 3.1 of the draft decision and Schedule A of the draft determination.

[86] Refer to para 3.292 of the draft decision.

Issue 1 - pre-implementation granularity data currently required may not exist

3.109 Enable and Ultrafast submitted that they would be unable to meet all of the asset granularity requirements set out in our draft decision when deriving the RAB at implementation. They noted that their asset registers are established for financial reporting purposes and reflect GAAP requirements, and that it would be prohibitively expensive to retrospectively re-work certain financial information such that the required level of granularity can be provided.[87]

3.110 Chorus submitted:[88]

> …we don't agree with the proposed level of granularity, in particular, when determining the initial RAB. Asset granularity should instead align with existing data, accounts and systems unless there is good reason to depart. If changes are necessary for the collection of information in future, then the transitional principle should apply.

3.111 Chorus also submitted there is a need for a transition to the new regulatory framework, and that the Commission's evaluation:[89]

> must take into account where Chorus is on its asset management journey. Chorus is transitioning into a new regulatory framework and that will necessarily require a period of development and adaptation.

3.112 Northpower submitted that the proposed information specified in Schedule A will result "in material increases in data collection, collation and assurance workload."[90]

3.113 Chorus proposed that the requirements at implementation date should align with the level of granularity of its existing data, accounts and systems. Chorus submitted that this would be consistent with the Commission's preference for simplification in the IMs.[91]

3.114 In terms of the pre-implementation period, we agree with Chorus and the LFCs that it may be impractical and costly to retrospectively re-work certain financial information where this currently does not exist. We consider that requiring regulated providers to develop this information would not be cost effective.

3.115 With this in mind, for the pre-implementation period, we have changed the determination to require regulated providers to provide information at the level of granularity required for GAAP. This requirement is aligned with the requirement under s 177(1)(b) that when calculating the initial value of a fibre asset, to adjust the cost of an asset for depreciation and impairment losses (if any) under GAAP.

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87 Enable and Ultrafast "Submission on Fibre input methodologies – Draft decision) (30 January 2020), paragraphs 8.7 and 8.8.

88 Chorus "Submission on Fibre input methodologies – Draft decision) (30 January 2020), paragraph 108.

89 Ibid, Appendix C, page 1.

90 Northpower "Submission on Fibre input methodologies – Draft decision) (30 January 2020), para 7.

91 Chorus "Submission on Fibre input methodologies – Draft decision) (30 January 2020), paragraph 109.

3.116 While we have aligned the pre-implementation asset specificity requirement with GAAP, we expect that regulated providers have kept additional records to maintain the minimum level of additional information that is aligned with good telecommunications industry practice. The information captured under GAAP is not necessarily sufficient to efficiently manage a telecommunications network, and a supplier following good practice will capture the necessary additional information. We have also made changes to the post-implementation period granularity requirements, as set out below.

Issue 2 - asset granularity requirements in general as applicable post-implementation

3.117 Chorus and the LFCs also raised concerns with their general ability to provide some of the minimum granularity specified in the draft decision for the post-implementation period.[92] For example, Chorus submitted:

> the level of granularity in the RAB should reflect a balance between needing to understand assets and the asset lives attached to them, with a level of practicality to ensure the process is workable" (page 16 of Appendix C).

3.118 The submissions by Chorus and the LFCs highlight the following issues.

3.118.1 The definitions in Schedule A of the draft determination of the minimum levels of specificity to describe assets are too prescriptive in some cases. For example, it may not be possible to categorise cables as either "feeder" or "distribution" under asset class,[93] or to assign a physical address to a given asset.

3.118.2 The requirements need to ensure that granular information is available for regulatory purposes, but do not need to be fully integrated into the RAB asset register for each individual asset.

3.118.3 The need to recognise that the IM is specifying minimum requirements that can be reviewed in future and/or enhanced through ID regulation requirements.

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[92] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), page 35 and Appendix C page 16; Enable and Ultrafast Fibre "Cross-submission on Fibre input methodologies draft decision" (18 February 2020) paragraph 8.9; Northpower Fibre "Submission on Fibre input methodologies – Draft decision" (30 January 2020) paragraph 7.

[93] A single cable sheath may contain some fibres that act as distribution and some as feeders. So the cable itself does not fit into a single category.

3.119 Some submitters previously argued for a prescriptive approach to asset granularity. This highlighted the risk that regulated providers will have incentives to provide less granular data as a means of increasing information asymmetries.[94]

3.120 Spark proposed in its submission on the draft decision that we supplement our proposed approach by:[95]

> Ensuring that regulatory provider data is collected or maintained at a granular level as anticipated by the draft decision (see draft decision para 3.444). On the face of it, the draft does not prescribe the data that must be used for allocations at this stage (see draft decision para 3.451) and there is a risk that the relevant data is lost (Loss of data is noted as an issue for past loss calculation, Draft decision [3.474]).
>
> We recommend the Commission consider clarifying that regulated providers should retain relevant disaggregated underlying data that would permit a proper assessment of avoided costs should this be required (subject to recommended benchmarking below).

3.121 We agree with Spark that the IMs should clarify that regulated providers are expected to keep appropriate records. We also agree that the level of disaggregation of the underlying data should permit an objective assessment of the factors that influence the employment of the asset, or the circumstances under which a cost driver leads to an operating cost.

3.122 We considered adopting a more prescriptive approach in setting granularity, which would require our IMs to define exactly what type of information is best or reasonable in each case. We did not consider that approach practical (see draft decision at paragraph 3.451). However, we consider that requiring regulated providers to capture and maintain relevant data will reduce the risk associated with information asymmetry and allow us to better assess the allocation of assets and costs to regulated FFLAS.[96]

3.123 In response to submissions we have changed the requirements to a more principles-based approach to asset specificity. The proposed requirements:

3.123.1 avoid specifying detailed categories, recognising developing such information may not be cost-effective.

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[94] We set out the reasons that we adopted our chosen level of granularity and why we rejected a more prescriptive approach in the draft decision at paragraphs 3.291-3.296.

[95] Spark "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraph 20.

[96] For example, when allocating power system assets and electricity usage costs, we would expect the power consumed by equipment is likely to be a factor leading to use for allocation. If this data was not captured and available for use, we would see this as breaching the granularity requirement.

3.123.2 clarify that location information is to be sourced from the appropriate business systems.[97]

3.124 We have also decided to remove the "special assets" category because:

3.124.1 generally, relevant information is captured with the other granularity requirements;

3.124.2 special asset values are generally based on cost estimates/assessments rather than representing objective, disaggregated data points in an asset register (ie, regulated providers do not uniquely identify services supported by assets); and

3.124.3 collecting data based on what they currently provide does not necessarily provide cost data on service provision across their service footprint.[98]

3.125 The IM specifies minimum regulatory requirements and we expect that we will require that asset information is provided on a more granular basis and in cross-sections of the "minimum granularity" categories (eg, by type within a geographical area) in the future.

Change to the definition of "network spares"

3.126 We changed the definition of "network spares". The new definition reflects that when determining the appropriate quantity of network spares to be held by regulated providers, the relevant standard is "good telecommunications industry practice".

Draft decision

3.127 The draft decision included a definition of network spares and the circumstances under which they should take a value of nil in the RAB of a regulated provider. The draft decision provided that regulated providers should have regard to the historical reliability of their equipment and the number of items installed on the network when determining the appropriate quantities of network spares.[99]

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[97] The draft decision implied that location information relies on fixed asset register categorisations.

[98] In other words, data on a limited number of unbundled service instances today is not a reliable indication of representative costs of that service across the entire service area.

[99] Commerce Commission "Fibre input methodologies – Draft decision paper"(19 November 2019), Attachment D "Treatment of network spares", paragraph 5.54.

Why we have changed this decision

3.128 Chorus submitted that:[100]

> While we generally agree with the draft decision on network spares, the appropriate quantities held shouldn't be based on historical reliability. This isn't practical when historical performance is not a predictor or driver for how many spares we need to hold (compared to Part 4 industries where historical reliability makes sense). Technology moves quickly in the telecommunications sector, where new versions of equipment (e.g. layer 2 assets) don't perform the same as their predecessor.
>
> What matters in practice are restoration times and failure rates (typically determined by equipment manufacturers), as these are more reflective of how the number of spares held are determined. We suggest the Commission removes the reference to historical reliability and instead refers to good telecommunications industry practice.

3.129 We agree that the historical reliability may be not be relevant for determining the appropriate quantity of network spares to be held by telecommunications providers. We consider that "good telecommunications industry practice" — which is also used in the capex IM — is an appropriate benchmark for determining the quantity of network spares required.[101]

Cost allocation

3.130 The specific cost allocation decisions we discuss in this section relate to:

3.130.1 implementation of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 (the Regulations); and

3.130.2 materiality assessment as part of the application of a cap on shared costs.

3.131 The revisions to the draft IM relating to the issues at 3.130 above are presented in Attachment A.

3.132 Attachment B presents technical revisions to the draft IM that relate to the following cost allocation decisions:

3.132.1 default cost allocator list changes; and

3.132.2 treatment of related party transactions and other costs shared with related parties.

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[100] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraphs 113-114

[101] Good telecommunications industry practice means the exercise of a degree of skill, diligence, prudence, foresight and economic management, that would reasonably be expected from a skilled and experienced asset owner engaged in the management of a fibre network under comparable conditions. A decision on good telecommunications industry practice should take into account domestic and international best practice, including international standards.

3.133 Attachment C presents other technical edits to the requirements for cost allocation, such as improving layout of the requirements.

Implementation of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019

New decisions

3.134 We propose adding two new decisions in order to give effect to the Regulations.

Two-step cost allocation process

3.135 The first decision prescribes the two-step process that a regulated provider must follow when applying the accounting-based allocation approach (ABAA) cost allocation methodology in order to determine the cost of:

3.135.1 regulated FFLAS overall; and

3.135.2 specific classes of regulated FFLAS.

3.136 This decision is illustrated in a flow chart at the end of this section.[102]

Allocation of costs between PQ FFLAS and ID-only FFLAS

3.137 The second decision prescribes how a regulated provider whose FFLAS are subject to both PQ and ID regulation (ie, Chorus) must allocate costs between specific classes of regulated FFLAS (ie, FFLAS subject to PQ and ID regulation, and FFLAS subject to ID regulation only.[103] In particular, the second decision requires regulated providers whose FFLAS are subject to both PQ and ID regulation to use the ABAA methodology when allocating costs between PQ FFLAS and ID-only FFLAS.

[102] ABAA is a cost allocation methodology we proposed using for certain cost allocations in our draft Cost Allocation IM - refer to paragraph 3.386 of Commerce Commission "Fibre input methodologies – Draft decision paper" (19 November 2019) .

[103] For ease of reference, we refer to these two categories as "PQ FFLAS" and "ID-only FFLAS" respectively.

Table 3.1 Two-step cost allocation process

Two-step cost allocation process
Regulated providers must allocate shared costs between regulated FFLAS and services that are not regulated FFLAS before allocating costs between different classes of regulated FFLAS.
Allocation between PQ FFLAS and ID-only FFLAS
A regulated provider whose FFLAS are subject to both PQ and ID regulation must apply the ABAA methodology when allocating costs between PQ FFLAS and ID-only FFLAS.

Background

Draft regulations

3.138 Our draft reasons paper published on 19 November 2019, and draft determination, published on 11 December 2019, were based on the exposure draft regulations which were published on 6 June 2019 (draft regulations).[104] The draft regulations indicated that all of Chorus' FFLAS would be subject to both ID and PQ regulation under Part 6.[105]

Problem definition: cost allocation needs to include a further step for allocation of shared costs between different classes of regulated FFLAS

3.139 The introduction of reg 6 means that many of Chorus' costs for both assets and operating expenses must be further shared between different classes of regulated FFLAS. For example, the cost for central offices (exchanges) may be shared between FFLAS subject to both PQ and ID regulation (PQ FFLAS), and FFLAS subject to ID regulation only (ID-only FFLAS).

3.140 When undertaking cost allocation, the task can therefore be thought of as involving two broad steps:

3.140.1 sharing costs between regulated FFLAS and services that are not regulated FFLAS (step 1); and

3.140.2 sharing costs between different classes of regulated FFLAS (step 2).

3.141 Our draft cost allocation IM, published on 11 December 2019, includes a methodology for the allocation of costs between regulated FFLAS and services that are not regulated FFLAS.

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[104] Commerce Commission "Fibre input methodologies – Draft decision paper" (19 November 2019), paragraph 2.43.

[105] This was contemplated by the original bill: Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293—1) (explanatory note).

3.142 Reg 6 requires us to take 'step 2': that is, allocating costs between PQ FFLAS and ID-only FFLAS.

3.143 In order to give effect to reg 6 of the Regulations, we have proposed adopting the approach outlined in the "Updates to our regulatory framework" chapter above. The key aspects of our overarching decisions, described at paragraphs 2.37 to 2.43 above are:

3.143.1 widening the defined term "regulated FFLAS" so that the further consultation IMs have the flexibility to:

3.143.1.1 cover the FFLAS that is subject to ID regulation under reg 5 and PQ regulation under reg 6;

3.143.1.2 cover any FFLAS that may be subject to regulation in future in accordance with regulations made pursuant to s 226; and

3.143.1.3 allow for the reporting of any additional FFLAS classes as we may from time to time specify for the purposes of Part 6.

3.143.2 introducing requirements for reporting of multiple FFLAS classes under ID and PQ regulation. We revised our IMs to:

3.143.2.1 require the disclosure of information for fibre assets employed or operating costs incurred by a regulated provider in the provision of FFLAS subject to ID regulation (ID RAB);

3.143.2.2 require the disclosure of information for fibre assets employed or operating costs incurred by a regulated provider in the provision of FFLAS subject to PQ regulation (PQ RAB);

3.143.2.3 allow for the disclosure of information for further collections of fibre assets employed or operating costs incurred in the provision of a FFLAS class as we may from time to time specify for the purposes of Part 6 (eg, additional RABs).

Amendments to draft IM required in order to give effect to reg 6 and to promote the Part 6 purpose and s 174

3.144 When considering which decision will best give effect to reg 6, as well as best promote the Part 6 purpose and the purpose of IMs set out in s 174, we have considered the following approaches:

3.144.1 making minor, high-level changes to the draft IM (in particular, the revised definition of "regulated FFLAS"); or rather

3.144.2 making changes to the draft IM in the form of greater prescription and additional defined terms.

3.145 We have determined that we will adopt the second approach: that is, amending the draft IM to include greater prescription and additional defined terms.

3.146 We have considered whether we could carry out cost allocation between different classes of regulated FFLAS using the existing cost allocation methodology developed under the draft IM for allocating costs between regulated FFLAS and services that are not regulated FFLAS. We have determined that this will not be possible however, for the following two reasons.

3.146.1 Certain costs that are directly attributable to regulated FFLAS are shared across different classes of regulated FFLAS. This means that an additional step is needed in the cost allocation process so that both of these attributes can be recognised.

3.146.2 In cases where costs are shared both between:

3.146.2.1 regulated FFLAS and services that are not regulated FFLAS; and

3.146.2.2 different classes of regulated FFLAS,

3.146.3 the causal allocator that applies in one context may not apply in the other context. This means that the sequence in which the allocation of each category of costs is carried out becomes important; performing the allocation of costs in a different sequence may lead to different and illogical outcomes (as is illustrated in Table 3.2).

3.147 Hence, we considered the significance of prescribing the sequence of cost allocation in giving effect to the Part 6 purpose.

Why the sequence of the two-step cost allocation process is significant

3.148 The sequence in which cost allocation is carried out can produce different outcomes. In the absence of a prescribed sequence for cost allocation, there would be an opportunity for a regulated provider to optimise the sequence of cost allocation. Two worked examples that illustrate this can be found in Table 3.2.

3.149 For example, by changing the sequence in which the two steps of the allocation are undertaken, the cost allocation outcome may change from:

3.149.1 a material share of costs being allocated to each type of service (using the relevant asset); to

3.149.2 the same services being allocated either 100% or zero cost.

3.150 We consider that an outcome where certain services (eg, a service that is not regulated FFLAS, such as co-location for other services, which uses valuable space) carry zero or only limited shared costs would not promote the purpose of the Act under s 162(c), of regulated providers allowing end-users to share the benefits of efficiency gains in the supply of FFLAS.

3.151 This approach to sequencing also has the benefit of explicitly requiring regulated providers to identify which costs are shared between services that are regulated FFLAS and services that are not regulated FFLAS. This step establishes a single reference point regarding how efficiency gains are shared at this level. This approach:

3.151.1 supports transparency of the outcome of how efficiency gains are shared; and

3.151.2 underpins our approach to reg 5 and reg 6 by acting as a safeguard to ensure that all allocations of costs between different classes of regulated FFLAS are based on a common view of the overall costs for regulated FFLAS.

3.152 Another advantage of this approach is that it helps future compliance by ensuring calculations are carried out in a way that is easier to follow.

Additional prescription for allocation of costs between PQ FFLAS and ID-only FFLAS

Giving effect to the Part 6 purpose

3.153 The purpose of ID regulation is to ensure that sufficient information is readily available to interested persons to allow an assessment of whether the purpose of Part 6 set out in s 162 is being met.[106] Of particular relevance for present purposes are s 162(c), the purpose of promoting outcomes consistent with those produced in workably competitive markets so that regulated providers allow end-users to share the benefits of efficiency gains, and s 162(d), that regulated providers are limited in their ability to extract excessive profits.

[106] Telecommunications Act 2001, s 186.

3.154 As we explained in our emerging views and draft decision, cost efficiencies from providing multiple services are relevant to the long-term benefit of FFLAS end-users, as recognised in the s 162 purpose. Specifically, the way costs are allocated between different services has a bearing on how efficiency gains arising from supplying more than one type of service are shared with end-users of regulated services over time.[107, 108]

3.155 Without rules that prevent cost-shifting or misallocation, regulated firms may be able to over-allocate costs to the regulated service, and in the case of a regulated provider that is subject to PQ regulation to PQ FFLAS, in particular. This could lead to cross-subsidies for an unregulated service (which could be contrary to the promotion of workable competition, where relevant, as specified in s 166(2)(b)) or the regulated firm extracting excess profits (contrary to s 162(d)).

3.156 Information that provides visibility of each key step in the chain of cost allocation that will occur in PQ and ID is important to ensure the Commission and interested persons can assess whether efficiency gains are shared with end-users of regulated FFLAS.

3.157 The allocation of efficiency gains will typically occur earlier on in the cost allocation process. Having information about this intermediate step (step 2 in figure 3.1) is important for assessing whether, and where, the efficiency gains have been shared. The dollar allocations for costs shared between different types of FFLAS provide insight into the appropriateness of that allocation ratio (step 2 in figure 3.1), but on their own do not demonstrate whether any efficiency gains have been shared with end-users.

3.158 Table 3.2 provides worked applications of an example to demonstrate that the sequence in which cost allocation for a given category of costs is carried out is crucial to producing a sensible result that gives effect to the Part 6 purpose. The example is of a central office (exchange) where space is used for a range of different services that Chorus offers.

3.159 The worked applications show that by combining the two steps into one, or by reversing the sequence in which the costs were allocated, the cost allocation outcome may vary from:

3.159.1 a material proportion of the shared cost being allocated to each type of service (using the relevant assets); to

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[107] Commerce Commission "Fibre regulation emerging views: Technical Paper" (21 May 2019), paragraphs 261-262.

[108] Commerce Commission "Fibre input methodologies – Draft decision paper" (19 November 2019), para 3.354.1.

3.159.2 the same services being allocated either close to 100% or zero cost.

3.160 We consider that an outcome where certain services, eg, co-location space for a non-FFLAS service, carry a negligible or disproportionately limited amount of shared costs, is inconsistent with the Part 6 purpose of allowing end-users to share in the efficiency gains under s 162(c).

Approach for cost allocation between PQ FFLAS and ID-only FFLAS

3.161 We have added a further specific rule to the cost allocation IM to provide for the allocation between PQ FFLAS and ID-only FFLAS. We adopt the ABAA methodology, which is used for the allocation of costs between regulated FFLAS and services that are not regulated FFLAS.

3.162 This provides certainty in a known context that must be addressed in the first year of ID and at the start of the PQ process. This is different to issues regarding allocation between FFLAS product families which do not need to be addressed at the start of the new regime, and for which the cost allocation IM does not need to prescribe how shared costs should be allocated between classes of FFLAS.[109]

3.163 We consider this addition to the IM will put in place a suitable methodology for ensuring that costs shared between PQ FFLAS and ID-only FFLAS are allocated in a manner that best gives effect to the Part 6 purpose. In Figure 3.1, this moves the scope of cost allocation line down a row in the flow chart (Step 2).

3.164 In line with the existing rules applicable to the allocation of costs between regulated FFLAS and services that are not regulated FFLAS, we propose that the cost allocation IM requires the use of ABAA.[110] This will exclude the potential for Chorus to apply other methodologies, such as the optional variation to the accounting-based allocation approach (OVABAA), which are likely to result in more limited sharing of efficiency gains between all major groups of FFLAS end-users. We consider our selected approach will be in accordance of the purpose of Part 6, set out in s 162(c).

3.165 We also consider that ABAA promotes s 162(d) in that it limits the ability of Chorus to extract excessive profits in PQ areas where it faces no or limited competition. If Chorus was able to select a particular cost allocation approach, it may choose a combination of approaches that result in a disproportionate share of costs being allocated to PQ areas which would flow through to higher prices for FFLAS end-users in PQ areas, and excessive profits.

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[109] In the draft IMs, fibre providers would not be required to allocate shared costs between FFLAS product families, but rather must identify costs directly attributable to each FFLAS product family.

[110] We discussed the reasons for using ABAA in our Draft Reasons Paper. See Commerce Commission "Fibre input methodologies: Draft decision - reasons paper" (19 November 2019), paragraphs 3.386-3.408.

3.166 We are not proposing to prescribe a particular allocator that must be used for allocations of shared costs between PQ FFLAS and ID-only FFLAS. This will allow for Chorus to choose and us to review and approve cost allocators that reflect the causal drivers for the relevant shared costs. We consider that this flexibility should allow Chorus to address the geographic aspects of the PQ and ID-only allocation as well as those aspects driven by connection numbers.[111]

3.167 We also note cost allocation issues may arise if "sub-RABs" are constructed in the future. At this stage we are not proposing to put in place rules for those situations, but rather we propose that these issues are deferred. We anticipate the Commission will add new IMs when the need for these future "sub-RABs" arises. We expect that the rules for setting these future IMs will depend on the context for which the sub-RABs are required, eg, anchor service or DFAS sub-RABs, or layer 1 vs layer 2 sub-RABs. This context will also include consistency with the wider fibre-related regulatory work (eg, EOI guidelines for pricing unbundling), and issues identified by external experts during the development and implementation of the Part 6 regime.[112] This approach would also allow us to consider issues such as whether FFLAS product family level reporting needs to be extended to the "sub-RABs".

[111] For example, the allocator 'used length of linear assets' could be an option to address differences in costs due to different average distance from the central office for PQ and ID-only connections. Chorus submitted that this allocator should be included in the list of allocator types and we have added it to the list (add ref).

[112] For example, see the discussion of pricing efficiency issues in Ingo Vogelsang and Martin Cave "Pricing under the new regulatory framework provided by Part 6 of the Telecommunications Act" (21 May 2019).

Figure 3.1 Flow chart demonstrating the two-step cost allocation process

Step 1: Allocation of costs between regulated FFLAS and services that are not regulated FFLAS; and

Step 2: Allocation of costs between different classes of regulated FFLAS (eg, PQ FFLAS and ID-only FFLAS)

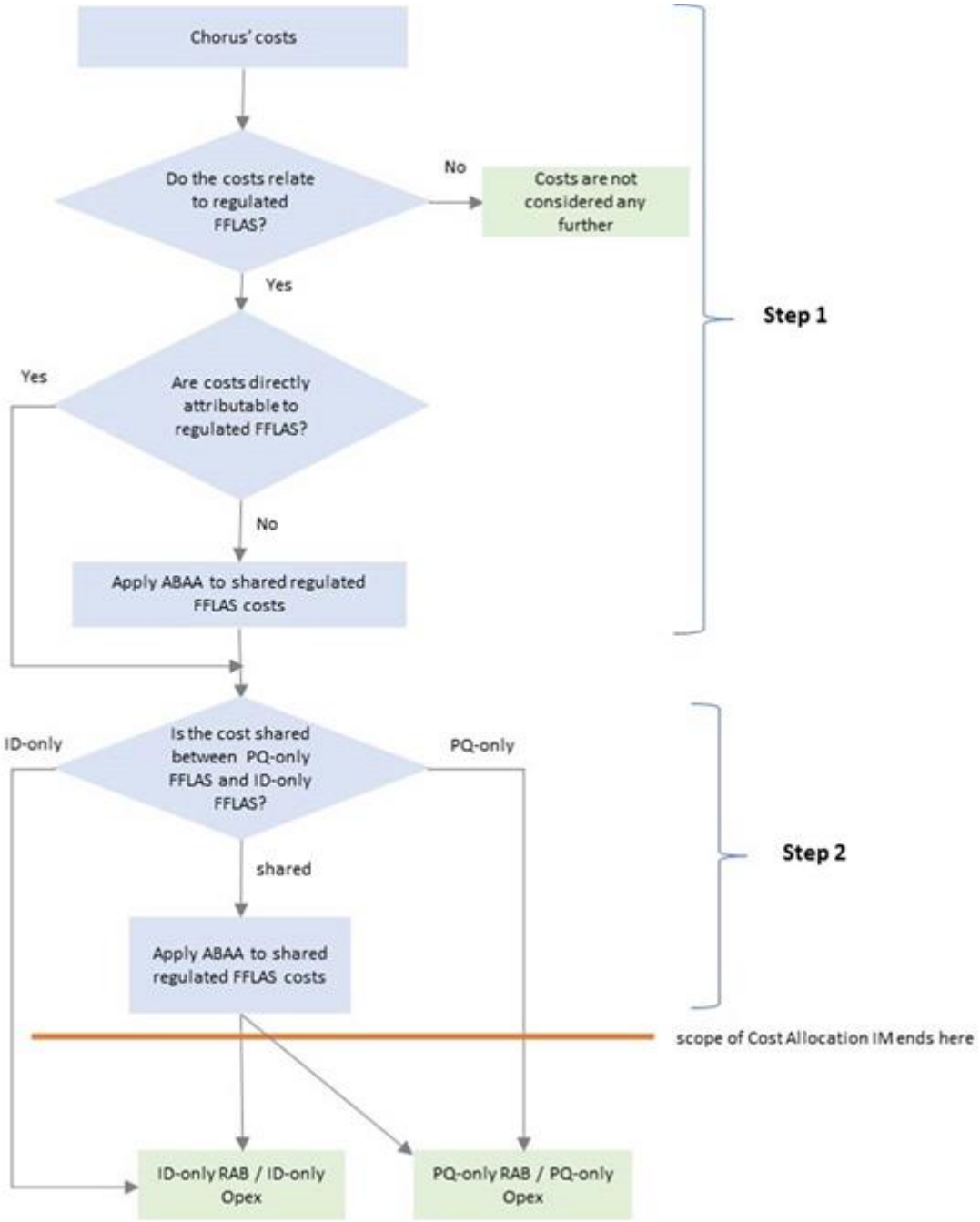

Table 3.2 Steps for allocation and worked example

Step 1
Identify all of Chorus' costs
Identify those costs related to regulated FFLAS
Identify directly attributable vs shared costs
Apply ABAA to shared costs
Step 2
For all regulated FFLAS costs, identify whether these are shared or are specific to ID or PQ
Apply ABAA all to shared costs and directly attributable costs
Example
Assume a central office building has shared costs of $100 and is located in a PQ area.
The allocator type and best proxy allocator for the $100 shared cost is floor area.
50% of the floor area is used for services that are not regulated FFLAS. In this particular case, this 50% of the floor area is used to store a rack containing a content server (eg for Netflix, YouTube etc) (non-FFLAS rack).
The remaining 50% of the floor area is for a rack used for regulated FFLAS. This rack is shared between PQ and ID-only connections (FFLAS rack).
Therefore the ratio of regulated FFLAS to services that are not regulated FFLAS is 50:50.
Relying on information from the specified fibre area (SFA) data set, 49 connections served by the central office are ID-only FFLAS and 49 connections served by the central office are PQ FFLAS. Therefore, the ratio of PQ FFLAS to ID-only FFLAS is 50:50.
In addition, one non-FFLAS backhaul connection is linked to the non-FFLAS rack and one non-FFLAS backhaul connection is linked to the FFLAS rack.
Application to cost allocation: Allocate in sequence: Step 1 precedes Step 2
Step 1
Allocating costs on a regulated FFLAS vs services that are not regulated FFLAS basis, the allocation would be $50 to regulated FFLAS and $50 to services that are not regulated FFLAS. This aligns with how the space is used in the exchange (ie, the 50:50 ratio as set out in the previous box)**.**
Step 2
Now we add in PQ/ID:
Applying the PQ FFLAS: ID-only FFLAS ratio as step two, you would then split the $50 of regulated FFLAS on a 50:50 basis, so that $25 would be allocated to ID-only connections and $25 is allocated to the PQ connections.
This results in an allocation that totals $100 ($50 to services that are not regulated FFLAS; $25 to ID-only FFLAS; and $25 to PQ FFLAS) and where the amounts allocated to regulated FFLAS are proportionate to those services' use of floor area, and are subsequently split in proportion to how the rack is used.

Counter application 1: Allocate in a single step with one allocator
Allocate total shared costs using connection numbers
The allocation would be $49 to PQ connections, $49 to ID-only connections and $2 to services that are not regulated FFLAS connections. This reflects the ratios of the 100 connections in the central office and results in $98 being allocated to regulated FFLAS. The costs allocated to services that are not regulated FFLAS are disproportionately small relative to the floor area used.
Counter application 2: Allocate in reverse sequence
Step 1: Allocate total shared costs between PQ and ID-only areas
The allocation would be $50 to services provided in PQ areas and $50 to services provided in ID-only areas based on the 50:50 ratio of PQ to ID-only connections.
Step 2 Allocate the PQ and ID-only area costs between regulated FFLAS and non-regulated FFLAS
As the central office is in a PQ area, the $50 cost allocated to PQ would then be split between both the regulated FFLAS connections ($25) and the services that are not regulated FFLAS ($25) based on floor area being evenly split. The $50 allocated to ID-only would not be allocated further since the non-regulated FFLAS service (rack space) does not use floor space located in the ID-only area. Hence PQ-regulated FFLAS falls to $25 which is half of the $50 allocated to ID-only despite both services taking up equal amounts on space on a shared rack. Services that are not regulated FFLAS are allocated less cost than its proportionate share of the floor area.
Summary of results
This table summarises the results from the three examples above. It illustrates the impact of using different approaches to cost allocation and why it is important to allocate between regulated FFLAS and non-regulated FFLAS before allocating between PQ FFLAS and ID-only FFLAS.

Allocation of shared cost to:	Allocate in sequence (two steps each with their own allocator)	One step allocation (one allocator)	Allocate in reverse sequence (2 steps each with their own allocator)
PQ FFLAS	$25	$49	$25
ID-only FFLAS	$25	$49	$50
Non-FFLAS	$50	$2	$25

Materiality assessment as part of the application of a cap on shared costs

Revised decisions

3.168 We have revised our decision on the proposed cap on shared costs allocated to regulated FFLAS to better capture our intended policy. The relevant paragraph of the draft decision stated:[113]

> The allocation of shared costs to regulated FFLAS should be no higher than the unavoidable costs that would be incurred if services that are not regulated FFLAS were not to be supplied.

[113] Commerce Commission "Fibre input methodologies – Draft decision paper" (19 November 2019), paragraph 3.381.3.

3.169 We have decided to replace this with the following:

> The total shared costs that a regulated provider can allocate to regulated FFLAS must not exceed the costs the regulated provider would have had to incur if it ceased supplying services that are not regulated FFLAS. This rule applies to an allocation of shared costs for asset values or operating expenses that would have a material effect on the total costs allocated to regulated FFLAS.

Draft decision

3.170 In our draft decision on the allocation of costs between regulated FFLAS and services that are not regulated FFLAS, we stated that the allocation of shared costs to regulated FFLAS should be no higher than the unavoidable costs that would be incurred if the services that are not regulated FFLAS were not supplied. We said that applying such a cap would limit regulated providers in their ability to earn excessive profits (in accordance with the purpose of Part 6 as set out in s 162(d)), while also allowing efficiencies to be shared with end-users, consistent with s 162(c)).

Why we have revised this decision

3.171 In submissions in response to our proposed cap, several LFCs raised the issue of whether the application of such a cap should be subject to a materiality assessment.[114]

3.172 In principle, we consider it is appropriate and consistent with promoting the above outcomes of the purpose of Part 6 for the cost allocation IM to set a materiality assessment as part of the cap on shared costs.[115]

3.173 This decision provides clarity to regulated firms and their assurance providers (eg, independent auditors) as to how they should assess materiality in preparing and forming assurance opinions of the information provided under PQ and ID. It also provides clarity as to how we will assess compliance with this methodology. Our PQ and ID processes will determine the specifics of the assurance and compliance requirements.

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[114] Northpower "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraph 11a; Enable and Ultrafast "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraph 7.5.

[115] We note that the cap only applies to shared costs, and not to costs that are directly attributed to regulated FFLAS. Hence if an asset was to transition from being shared to solely used for regulated FFLAS, then the full costs of that asset would be allocated to regulated FFLAS. As the cap would no longer apply, this may see a disproportionate increase in the asset's costs allocated to regulated FFLAS. The asset valuation IM sets out how asset values and depreciation are determined.

3.174 We also note that it is standard practice for regulatory disclosures to be prepared and audited with consideration given to materiality assessments. This step is typically required to enable regulated firms and their auditors to provide the regulators with assurance that the disclosed information fully complies with the requirements.

3.175 Under this approach, regulated firms and their auditors are required to assess which values are material and immaterial based on their impact on what is being calculated. This allows the regulated firms to exercise some discretion in how they assess materiality. This means that a dollar amount that a larger firm may consider immaterial may be considered by a noticeably smaller firm to be material. We consider it appropriate and pragmatic to provide for this discretion in the cost allocation IM.

Revised decision: add further detail to better give effect to our policy intent for the materiality assessment

3.176 We have decided to clarify the circumstances when regulated providers should consider materiality in applying the cap on shared costs. Specifically, regulated providers must apply the cap in all situations where it would have a material effect on the total costs allocated to regulated FFLAS. This will allow regulated providers to exercise some discretion in applying it.

3.177 To ensure there is an appropriate check on the degree of discretion that regulated providers exercise, we will reserve the right to require them to justify any application that we challenge (for example, as part of our compliance reviews). This will incentivise regulated providers to both exercise caution in assessing materiality, and to document the basis for their decisions accurately. Our draft IM already includes requirements for objectivity in relation to cost allocation. The specifics of how such justifications should be documented will be considered in PQ and ID.

3.178 We have added the concept of "total costs" as the basis for the materiality assessment. This is to clarify that materiality should be assessed in the context of allocating costs between services that are regulated FFLAS and services that are not regulated FFLAS. This recognises that:

3.178.1 this provision aims to assist in determining the overall cost of regulated FFLAS (step one in figure 3.1), rather than the costs of specific classes of regulated FFLAS (step 2); and

3.178.2 in applying the cap, materiality should be assessed in the context of the total costs being allocated to regulated FFLAS, rather than applied on an asset-by-asset basis or operating expense-by-operating expense basis.

3.179 In making our decision, we considered alternative approaches of specifying absolute dollar thresholds or percentage thresholds to determine how the cap on shared costs must be applied. We consider however that neither alternative will provide additional certainty. Conversely, in the context of complex telecommunication networks, we consider using thresholds could lead to unintended consequences (such as the potential for gaming). The values or thresholds for assessing materiality will be determined separately under the PQ and ID phase later on in of the regulatory process.[116]

3.180 We also considered whether we should require the materiality assessment to be applied on an asset-by-asset basis or operating expense-by-operating expense basis. As with the other thresholds, we consider that requiring materiality to be assessed on an asset or operating expense basis could lead to unintended consequences because there is no one way to define an asset or operating expense.

3.181 The potential for gaming arises because the use of thresholds, or an individual asset and operating expense basis, allows a regulated provider's costs to be aggregated and disaggregated in various ways which impact on the reported size and relativity of any unavoidable cost. This creates opportunities for regulated providers to sidestep the intent of such thresholds.

3.182 To illustrate this an example, consider a region with ten of a particular type of network element. Each element is calculated to have cost $10 more than the unavoidable cap and the materiality threshold is set at $50. If the elements were treated as separate assets, each excess would be assessed separately and hence each excess would be immaterial. However, if the elements were treated as one asset, the combined excess of $100 would exceed the threshold and be viewed as material.

3.183 Similar results could be produced with percentage-based thresholds. This would arise through combining multiple pools of costs to dilute the percentage effect (to a level below the threshold) when one of the pools breached the threshold (when assessed in isolation).

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[116] Under the PQ and ID processes, regulated providers and their auditors will have to apply their discretion to determine the values or thresholds at which the cap on shared costs must be applied. This will be based on factors including the context of the materiality assessments (such as the total value of the regulated providers operating expenses or whether the shared costs are forecasts or historical data) and the requirements prescribed by the PQ and ID determinations. The PQ and ID requirements may include specifications regarding the nature and format in which information is provided in order to demonstrate compliance with the cost allocation IM and the level of assurance that regulated providers and independent auditors must provide as to the reliability of that information.

3.184 We also consider it would be impractical to set prescriptive rules that effectively address all scenarios in which the cap must be applied, in terms of managing the risk of unintended consequences. For example, imposing prescriptive rules around how assets should be disaggregated for assessing the cap could lead to regulated providers needing to incur costs and make additional effort to comply with the rules, if the rules do not align with how the assets are recorded in the fixed asset register.

Capital expenditure

3.185 This section sets out the changes to the draft Chorus capex IM that we are consulting on.

Capital expenditure approvals

3.186 We are consulting on issues where there have been changes since the draft decision was published or where we felt there were benefits in understanding the practical implications of decisions better before finalising our decisions.

3.187 We have seen changes in the Regulations (refer to Chapter 2) and transitional arrangement impacts of later publication of the final IMs and are seeking further understanding on the scope of connection capex unit costs and capex audit and certification requirements.

Scope of connection capex unit costs

3.188 We have changed the scope of connection capex unit costs so that “non-linear connection costs” must be included in the forecast connection capex unit costs.

3.189 In the draft decision, the definition of connection capex meant that connection capex unit costs were effectively limited to costs for each connection type that are directly driven by the demand for end-user connections and that vary with each end-user connection. In the draft decision for further consultation these costs have been defined as “variable connection costs.”

3.190 The change means that the scope of connection capex unit costs comprises both “variable connection costs” and “non-linear connection costs”. In addition, Chorus's capex proposal must separately identify “variable connection costs” and “non-linear connection costs”.

3.191 This change aims to ensure that costs that have a relationship with demand (even though they do not vary with each connection) are included in connection capex. This change also ensures that the unit costs that are used in forecasting connection capex are aligned with Chorus' cost estimating practices. We have also considered an alternative option.

3.192 We are interested in stakeholders' views on our decision and the alternative option considered in relation to the treatment of non-linear connection costs.

Draft decision

3.193 Our draft decision split the approval of connection capex into two components:[117]

> A baseline component of connection capex that is approved alongside base capex. Baseline connection capex will include connection capex that is regarded as relatively certain to be required over the regulatory period; and
>
> A variable component of connection capex that represents the balance of connections between the baseline component forecast and the total number of actual connections for each year over the regulatory period.

3.194 We explained our reasons for determining the unit costs for the variable component of connection capex as follows:

> The information requirements set out what is necessary to ensure we can adjust for actual demand to provide certainty for Chorus and preserve its incentives to invest, as per s 162(a).
>
> We are requiring unit costs by connection type to ensure that approved unit rates are reflective of efficient costs. We are requesting annual reports to enable us to monitor changes in volumes and unit costs to inform both the variable connection capex adjustment for the current regulatory period and baseline component approvals for the subsequent regulatory period. We plan to adjust for actual volumes within a regulatory period but not for actual unit costs. This preserves Chorus' incentives to improve efficiency, as per s 162(b).

Why we have changed this decision

3.195 Chorus submitted that:[118]

> 355. However, base and connection capex are not necessarily discrete categories of expenditure. Connections are integrated into our overall plans and influence many areas of investment and operations. It will not be straightforward, in practice, to categorise all expenditure as either base or connection capex. This needs to be recognised in the approach to determining the connection capex allowance.
>
> […]
>
> 360. The draft decision requires a connection capex proposal to state any capex that Chorus considers should be included in the connection capex baseline allowance. We are also required to agree with the Commission, as part of the content and form of the regulatory templates, the forecast initial unit costs and forecast volumes by connection type.

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[117] Commerce Commission "Fibre input methodologies – Draft decision paper" (19 November 2019), paragraph 3.1591.

[118] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020).

> 361. We agree with the requirements to identify unit costs and baseline volume forecasts. We do not agree that a connection capex baseline allowance (derived by multiplying unit costs by baseline volumes) is a meaningful or necessary figure to determine. This is because:
>
> 361.1 Unit cost figures will not capture the full set of costs that respond to connection volumes. Provided our exposure to the connection adjustment mechanism is symmetric (discussed below), this is not a problem in itself.
>
> 361.2 Unit costs are not constant across the full range of possible connection volumes. Again, this is not a problem provided base capex and the unit rates are consistently aligned with a best estimate of connection volumes.
>
> […]
>
> 364. Our preference is for the connection capex adjustment to be made to the base capex allowance, rather than having a separate connections capex category. This will enable us to manage the residual volume and cost risks within a single fungible base capex pool. This approach also recognises that connections-related capex should include indirect as well as direct costs and that base and connections capex cannot coherently be treated as entirely discrete categories.

3.196 We agree with Chorus that some costs may not vary consistently (or in a linear fashion) as connection volumes change. However, we do not consider addressing this issue requires a change in the draft decision to apply the connection capex adjustment to a ringfenced connection capex allowance.

3.197 Chorus's submission that "[u]nit cost figures will not capture the full set of costs that respond to connection volumes" and "[u]nit costs are not constant across the full range of possible connection volumes" partly reflects that the draft decision's scope of connection capex was potentially limited to costs that directly vary with each connection.

3.198 Costs that do not vary across connections in a linear fashion, were potentially excluded from the scope of connections capex (and instead were to be included in the base capex forecast).

3.199 The intention of the connection capex mechanism is to mitigate forecast volume risk, not forecast cost risk. Generally, under building blocks regulation, expenditure allowances are set ex-ante, and the regulated business carries the forecast risk (including the cost risk).[119]

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[119] Given the ongoing and large-scale nature of fibre connection works, we expect the potential forecast error for connection costs to be low. We expect Chorus has a significant amount of historical cost data for developing robust connection capex unit cost estimates for the purposes of forecasting connection capex.

3.200 However, we consider it appropriate for the scope of connection capex unit costs to include costs for each connection type that are directly driven by the demand for end-user connections but do not vary in a linear way with the number of end-user connections. Expanding the scope of costs included in connection capex is likely to better align with Chorus' existing cost estimation practices and reduce Chorus' compliance costs.[120]

3.201 We have therefore changed the scope of connection capex unit costs to include variable and non-linear connection costs where:

3.201.1 variable connection costs mean costs for each connection type that are directly driven by the demand for end-user connections and that vary with each end-user connection; and

3.201.2 non-linear connection costs mean costs for each connection type that are directly driven by the demand for end-user connections but do not vary in a linear way with the number of end-user connections.

3.202 We expect that the majority of connection capex unit costs relate to variable connection costs rather than non-linear connection costs.

3.203 The nature of these non-linear connection costs, some of which may be shared between connection activities and other activities, means that some overheads may be split between forecast connection capex and forecast base capex. Given the potential for double counting, the IM requires transparency on the make-up of the connection capex unit costs. This will allow the Commission to scrutinise the scope of costs included in connection capex as part of its PQ proposal evaluation.

3.204 Cost transparency will also help us understand the materiality of any under or over recovery of these non-linear costs due to differences between forecast and actual fibre demand. This would inform baseline component approvals for the subsequent regulatory period.

Alternative option considered

3.205 We have also considered an alternative option. Under the alternative option, Chorus would have flexibility to propose whether to include these non-linear connection costs (at least partly) in its connection capex proposal (ie, as per the draft decision for further consultation) or in its entirety in its base capex proposal (ie, as per the draft decision). Chorus would also be required to transparently set out how it has included these non-linear connection costs in its capex forecasts.

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[120] For example, we expect that connection-related overheads (such as project management) have been included in Chorus historical connection costs, and hence its unit cost estimates.

3.206 We are interested in stakeholders' views on our decision and the alternative option considered in relation to the treatment of non-linear connection costs.

Expenditure broken down by geographical location of the end-user that the asset will serve

3.207 We propose a change to our draft decision requiring Chorus to provide capital expenditure for its base capex proposal broken down by Chorus UFB initiative areas, non-UFB initiative areas, and areas where an LFC other than Chorus have an LFC fibre network. This is because under the Regulations Chorus will be subject to only ID regulation in other LFCs' UFB areas. We only need to approve Chorus' capex in areas where it is subject to PQ regulation.

3.208 We are consulting on this change as the Regulations were published after our draft decision.

Draft decision

3.209 The draft decision required Chorus to break down capex information into UFB, non-UFB (rural) and LFC geographies (clause 3.6.7(8)):

> For each base capex sub-category identified in the regulatory template as requiring geographic information, Chorus must provide a breakdown of its capital expenditure for the base capex sub-category by the following geographical locations:
>
> Chorus UFB initiative areas;
>
> non-UFB initiative areas (such as rural areas); and
>
> areas where LFCs other than Chorus have an LFC fibre network.

3.210 This breakdown was specified to enable us to understand rural versus urban expenditure and expenditure in LFC areas specifically. The breakdown also aligned with how Chorus indicated they were thinking about the network horizon for capital expenditure in their FY19 full year results. [121]

Why we have changed this decision

3.211 Chorus submitted that they should be required to provide information on an all-of-FFLAS basis, with any more granular geographic breakdown agreed through the regulatory template and/or ID processes.

3.212 Chorus stated in its submission that the UFB/non-UFB definitions are less relevant after the initial investment has been made and as the network evolves.

3.213 Chorus recommended two options for consideration (preferring option 1 below).

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[121] Chorus FY19 full year results investor presentation, slide 19, 26 August 2019.

3.213.1 **Option 1:** Require information at an all-of-FFLAS level, with any more granular geographic breakdown agreed through the regulatory template and/or ID processes.

3.213.2 **Option 2:** Allow UFB, rural and LFC definitions to evolve with the network, rather than being tied to UFB agreements. These definitions (which could have different names) would essentially capture areas where there is full Chorus FFLAS coverage, full other LFC FFLAS coverage, and other areas.

3.214 The Regulations mean that Chorus is not subject to PQ regulation in other LFCs' UFB areas. To the extent Chorus is subject to only ID regulation in other LFCs' UFB areas, we do not require capex proposal information relating to those areas. This means the UFB/non-UFB distinction is no longer necessary.

3.215 For PQ we will still be interested in certain geographic breakdowns of expenditure (eg, urban versus rural), but this can be specified via the regulatory templates as suggested by Chorus in option 1 of its submission.[122]

General audit and certification requirements for capex proposals

3.216 We propose to refine the compulsory audit and certification requirements for capex proposals.

3.217 We are interested in stakeholder views on whether we should include assurance requirements for compliance with IMs applicable to IMs in the capex IM.

Draft decision

3.218 The draft decision set out high-level compulsory requirements, and director/CEO certification requirements.

3.219 We explained that we formalised audit requirements for Chorus' base capex proposal so that we, along with access seekers, end-users and other stakeholders have confidence that the information reflects Chorus' business operations.[123]

[122] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraph 336.1.

[123] Commerce Commission. Fibre input methodologies – Draft decision paper, (19 November 2019), paragraph 3.751.

3.220 We also noted that our decision to include audit requirements for base capex related to financial and quantitative information and the application of accounting standards is informed by our experience in the Part 4 context. Although Transpower is not required to undertake an external audit of its base capex, Transpower has voluntarily commissioned an external audit opinion of its base capex proposal for its last two proposals.[124]

Why we have changed this decision —audit requirements

3.221 Chorus expressed concerns with the audit requirements, including suggesting it is having difficulty procuring an auditor to meet the requirements.[125] Chorus also raised issues with specific drafting of the audit requirements.

3.222 Chorus submitted that:

> 388.1 A public audit report prepared for reliance by external parties is viewed very differently than a report intended for more limited reliance;[126]
>
> 388.2 Codified audit requirements restrict our ability to design an integrated and efficient approach to assurance to support director certification;
>
> 388.3 The proposed requirements are likely to leave Chorus with a limited pool of potential assurance providers, resulting in a cumbersome and expensive assurance process; and
>
> 388.4 It's not clear this cost and complexity is offset by any material improvement – director's certification is the 'gold standard' and taken seriously by any business, as evidenced by the steps Transpower takes to support its director certification.

3.223 In addition, Chorus submitted that:

> 3.89 We also have concerns with the focus of the required audit opinion – "underlying systems and accounting standards", as:
>
> 389.1 Forecasts and proposals tend to have limited reliance on underlying financial systems; and
>
> 389.2 Accounting standards are predominantly directed at historic financial performance rather than generating or presenting forecasts.

3.224 In line with the draft reasons paper,[127] our view remains that the part 6 purpose is best promoted by including compulsory audit requirements in the IM.

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[124] Commerce Commission. Fibre input methodologies – Draft decision paper, (19 November 2019), paragraph 3. 3.752.

[125] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraph 388.

[126] Chorus submitted that "we have begun the process of procuring assurance services for our RP1 proposal and have already found that the draft IM requirement for an external audit report is complicating this process."

[127] Commerce Commission. Fibre input methodologies – Draft decision paper, (19 November 2019), paragraphs 3.1751 to 3.1754.

3.225 In a regulatory context, the outcomes assurance requirements can contribute to include:

3.225.1 mitigating the impact of information asymmetry between the economic regulator and a regulated business;

3.225.2 improving confidence in the accuracy and quality of information that is disclosed to business external stakeholders;

3.225.3 mitigating the impact of a lack of information within a business; and

3.225.4 helping to drive business improvements.

3.226 Chorus is transitioning to a new regulatory regime under part 6. This regulatory transition means:

3.226.1 a shift from delivering a large investment programme to managing a network for the longer term, with a shift to longer term planning and forecasting;

3.226.2 an absence of historical information consistent with ID requirements tailored to the scope of regulation under Part 6; and

3.226.3 a first application of IMs, including a cost allocation IM applied to historical and forecast capex.

3.227 For the first regulatory period, our primary concern is information asymmetry. Having access to a report by an independent auditor will increase the confidence in the information we will be evaluating.

3.228 We agree with Chorus that the audit requirements in the draft decision can be clarified. The revised drafting draws on requirements specified under Part 4, specifically the electricity distribution customised price-quality path (CPP) audit requirements and the Transpower Individual price-quality path (IPP) requirements.[128][129] The changes to the audit requirements:[130]

3.228.1 distinguish between requirements for historical financial, forecast financial, historical non-financial and non-financial information; and

[128] Commerce Commission, Electricity Distribution Services Input Methodologies Determination 2012 (20 May 2020), clause 5.5.3.

[129] Commerce Commission, Transpower Individual Price-Quality Path Determination 2020, clause 34.

[130] For further detail refer to Table A.2 in Section 2 of Attachment A.

3.228.2 clarify that the auditor is expected to examine forecast financial information in accordance with appropriate standards, which may include:

3.228.2.1 applicable assurance standards issued by the External Reporting Board in accordance with its functions under the Financial Reporting Act 2013; or

3.228.2.2 any equivalent standards that replace these standards; or

3.228.2.3 any other relevant standards.

3.229 A key focus for the first regulatory period will be assurance on the first application of IMs. We considered requiring formal assurance on compliance with relevant IMs (in particular cost allocation) in the capex IM, to complement director/CEO certification.

3.230 On balance we consider that it is preferable to consider assurance requirements for compliance with IMs for the PQ proposal (including the capex proposal) as a package.

Why we have changed this decision — certification requirements

3.231 Chorus submitted that: [131]

> the proposed director certification includes two clauses that are consistent with Transpower requirements plus an additional clause – information provided is true and correct. The Commission provides no rationale for the additional clause and we are concerned it may unintentionally complicate the certification process. Terms carry specific meaning to assurance practitioners based on other assurance standards, so a small change can have implications to assurance procedures, and therefore the additional requirement should be deleted.

3.232 We consider that Transpower's certification requirements are also appropriate for the fibre IM. In combination with an independent auditor report required under the capex IM (and any assurance requirements that may be specified under PQ), the certification requirements will increase confidence in the information we will be evaluating. We propose a change in the capex IM that aligns the certification requirements to be consistent with Transpower's requirements.[132]

Time frames and processes for the first regulatory period

3.233 We are proposing to make several changes to our draft decisions on time frames and processes for capex proposals in the first regulatory period. This section outlines the reasons for changing our draft decision and why we are seeking stakeholder views.

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[131] Chorus "Submission on Fibre input methodologies – Draft decision" (30 January 2020), paragraph 391.

[132] For further detail refer to Table A.2 in Section 2 of Attachment A.

Our new decisions for time frames and processes for capex proposals for the first regulatory period

3.234 For the first regulatory period, the Commission will issue an information request for a base capex and connection capex proposal, as soon as it is reasonably practicable before the base capex and connection proposal needs to be submitted to the Commission.

3.235 For the first regulatory period, the Commission and Chorus must use reasonable endeavours to agree to the information required in the regulatory templates as soon as it is reasonably practicable before the base capex and connection proposal needs to be submitted to the Commission.

3.236 For the first regulatory period, Chorus must submit a base capex proposal to the Commission as soon as reasonably practicable but no later than 31 December 2020.

3.237 For the first regulatory period, the Commission must determine a base capex and connection capex allowance no later than 3 months before the start of that regulatory period.

Draft decision

3.238 Our draft decision included two timeframes for processes relating to setting information requirements for the first regulatory period capex proposal. We called these transitional arrangements for the first regulatory period, as alternative time frames and processes would apply to the second regulatory period onwards. The specific draft decisions on transitional arrangements were as follows.

3.238.1 The Commission will issue a base capex information request for the first regulatory period, at least 16 months before the start of the regulatory period (before 1 September 2020).

3.238.2 The Commission will agree with Chorus the regulatory templates for the first regulatory period; before the first working day in August 2020 which is at least 17 months before the start of the regulatory period.

3.239 Under the draft capex IM determination, Chorus would be required to submit a base capex proposal for regulatory period (RP)1 no later than 31 October 2020.

3.240 The draft decision also required the Commission to determine the capex allowances for a regulatory period no later than 6 months prior to the start of the regulatory period.

Why we have changed these decisions relating to time frames and processes

3.241 We are changing the specific time frames and processes relating to the first regulatory period because the final decisions and the final determination will be published no earlier than September 2020.

3.242 We consider it necessary to amend the current transitional arrangements from the Chorus capex IM and amend the base capex and connection capex baseline proposal submission date for the first regulatory period. We will rely on the PQ process to determine the timing for these process steps. We also consider it prudent to push back the date that the Commission must issue its determination on the capex allowance for the first regulatory period.

3.243 The change in publication date for the final IMs will mean that the dates relating to the transitional arrangements for the first regulatory period (issuing an information request and setting the regulatory templates with Chorus) will have elapsed. We have also decided to change the date Chorus must submit a capex proposal to the Commission to as soon as reasonably practicable but no later than 31 December 2020.

3.244 We need to ensure that Chorus has an appropriate amount of time to meet the information requirements in the relevant capex proposals once the final IMs have been published. We consider Chorus is likely to need additional time to do the following:

3.244.1 Address any changes in the IM requirements, which will potentially require time and resources to meet in the proposal.

3.244.2 Conduct the audit and certification requirements. These arrangements may need to be redone after the final IMs are published to ensure compliance with the final IM provisions. Certification requirements will require sign-off by the Board of directors, which will also take time.

3.245 We consider that removing the specific date for agreeing the regulatory templates and issuing the information requests will give flexibility for Chorus and the Commission to work constructively together to identify appropriate timeframes.

3.246 There is a consequential issue from pushing back the date for submitting a base capex (and connection capex baseline) proposal. The draft capex IM requires the Commission to determine a base capex allowance for each disclosure year of that regulatory period no later than 6 months before the start of that regulatory period. Moving the capex proposal submission dates reduces the amount of time available to the Commission to assess, consult on and ultimately determine the capex allowance for the first regulatory period.

3.247 Our proposed change provides time for us to undertake the capex evaluation given the later proposal submission date.

Regulatory processes and rules

3.248 Within the RPR IMs, we have restructured and simplified the regime for reconsideration of the PQ path (Subpart 9 of Part 3 of the IMs) to improve its coherence and ease-of-use. Rather than arising from submissions, these changes relate primarily to concerns we have about applying the provisions in practice.

3.249 While the drafting changes we propose are substantial, in general, these changes do not change the policy intent of the reconsideration provisions, but rather, better implement the intent of the provisions published in our draft decision.

3.250 These proposed changes involve:

3.250.1 revising the overall structure of the reconsideration regime and key terms used;

3.250.2 changing the time period in which reopener events may occur;

3.250.3 clarifying the information and process requirements that apply;

3.250.4 revising the factors the Commission must consider when deciding whether and how to reopen and amend the PQ path.

3.251 We have also made a series of editorial refinements to the definitions of 'reopener' events.

3.252 As a package, these changes will help better promote the purpose of IMs. With a clearer set of expectations and considerations, regulated providers and other interested persons will be able to better predict when the Commission will reconsider and amend the PQ path.

3.253 We also consider that these changes will reduce the compliance cost and complexity of a reconsideration process, as both the Commission, regulated providers, and other interested persons will have more consistent expectations about process.

Structure of the provisions and terminology

Draft decision

3.254 In our draft decision, the reconsideration provisions comprised a set of definitions of reopener events - that themselves contained many of the criteria the Commission must consider as part of the reopener process. This was followed by clauses setting out in brief what we must consider when amending the PQ path after having reopened it.

Why we have changed our draft decision

3.255 The process that must be followed and what the Commission must consider at each step of the process are different. Clarifying this process and clearly delineating these considerations will help improve certainty for regulated providers, access seekers, and end-users.

3.256 The proposed structure of the provisions reflects the reconsideration process in a logical sequence. This sequence comprises a series of steps:

3.256.1 a 'reopener' or trigger stage, where the Commission considers whether a "reopener event" has occurred;

3.256.2 definitions of reopeners events; and

3.256.3 an 'amendment' stage, where the Commission considers whether and how to amend the PQ path.

Time period in which reopener events may occur

Draft decision

3.257 In our draft decision, a reopener event had to occur during the regulatory period which is being reconsidered (ie, a reopener event *for* the first regulatory period must occur *during* the first regulatory period).

Why we have changed our draft decision

3.258 Reopener events that occur immediately prior to the determination of a PQ path, or during the period between when the PQ path is determined and when it commences, can have a material impact on the appropriateness of that PQ path. However, the Commission will not be able to account for these events when initially determining the PQ path. Accounting for reopener events that happen in the six months prior to the start of a regulatory period removes this arbitrary outcome.

Information and process requirements

Draft decision

3.259 The draft decision was largely silent on process and information requirements.

Why we have changed our draft decision

3.260 Providing a clear (but flexible) process for the reconsideration process should reduce the cost and complexity of applying the regime in practice. Clause 3.9.2 of the proposed IMs provides for:

3.260.1 what a regulated provider must do when it identifies a purported reopener event;

3.260.2 what the Commission must do when it received a request; and

3.260.3 what the Commission must if it is satisfied an reopener event has occurred and the PQ path should be amended.

Considerations and constraints on amending the PQ path

Draft decision

3.261 The provisions as set out in the draft decision contained a range of reopener and amendment considerations and constraints, both general ones applicable to all types of reopener events (in clause 3.9.7) and specific ones applicable to specific types of events, nested within the definitions of those events.

Why we have changed our draft decision

3.262 To give interested persons greater clarity about how the Commission will make decisions about amending the PQ path, we have collated and expanded the list of things the Commission must consider, and the constraints on our decision making.

3.263 Matters that must be considered are:

3.263.1 whether it is appropriate to delay any change until the next PQ path reset;

3.263.2 the impact of the reopener event on costs, revenues, and quality outcomes;

3.263.3 whether the event is already provided for within the PQ path;

3.263.4 whether the regulated provider can reprioritise its expenditure to respond to the event.

3.264 The principal constraint on the Commission's power to amend the PQ path is unchanged: the path must not be amended more than is reasonably necessary to respond to the reopener event.

Quality dimensions

3.265 In this paper we have not explained any of the changes we have made to the quality dimensions IM (quality IM). This is because all changes are either based on points raised in submissions or are editorial refinements we consider necessary to accurately reflect our policy intent. In our final IMs reasons paper we will respond to points raised in submissions on our draft decisions, including noting where these resulted in a change to the quality IM from the draft determination. In addition to responding to submissions and cross-submissions in the final IM reasons paper, we plan to discuss quality regulation in the paper we intend to release later this year on our proposed approach to PQ and ID.

3.266 Several submissions on our quality IM draft decisions raised issues that are more relevant to PQ and ID determinations, rather than the quality IM. For example, in the submission from 2degrees, Spark, Vocus and Vodafone, the submitters suggested that the Commission could build on Part 4 learnings, such as information on planned and unplanned outages, and quality improving over time. They also raised concerns about the fact that the Commission "has proposed a high-level principle-based approach to setting quality", and that "detailed service specifications are left unstated."[133] While we acknowledge that the quality IM is not highly detailed, this is intentional; we will set more detailed quality requirements in PQ and ID determinations, as we have done for Part 4 regulation.

3.267 It is worth noting that the fibre regime set out in Part 6 is different to the regulatory regime in Part 4 of the Commerce Act 1986 in that the latter does not require us to set a quality IM. We have experience in setting quality requirements under Part 4, such as the network-level reliability measures for electricity distribution businesses (measures of the duration and frequency of outages) or the major interruption standard applied for gas transmission businesses. However, these were not in the form of an IM.

3.268 Under Part 6, the quality IM will underpin quality performance measures and statistics we set via ID regulation, as well as quality standards we set via PQ regulation. In the draft decisions, we explained that in selecting quality dimensions to apply to ID and PQ we will ensure any measures and standards align with regulatory best practice, in that they are relevant, measurable, verifiable, controllable and proportionate. We also signalled that we would consult with interested persons, which may include holding a technical workshop on fibre industry practices.

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[133] 2degrees, Spark, Vocus and Vodafone "Submission on Fibre input methodologies – Draft decisions" (30 January 2020), page 4.

3.269 In their submission on our draft decisions, 2degrees, Spark, Vocus and Vodafone also sought additional contract-related metrics, such as requiring the disclosure of wholesale service agreements. Contract disclosure may be required as part of ID, but we do not consider that it is within scope of the quality IM.

Cost of capital

3.270 While we are not consulting on any further substantive changes to the cost of capital IM, we are interested in your views on a future aligned process to consider the cost of capital IMs across Part 4 of the Commerce Act and Part 6.

Aligning cost of capital IM Reviews across Part 4 and Part 6

3.271 In our draft decision we discussed the potential for aligning the assessment of the tax-adjusted market risk premium (TAMRP) within the cost of capital IM Review across Part 4 and Part 6.[134]

3.272 While some elements of the cost of capital are likely to vary between sectors, the overall approach and certain parameters such as the TAMRP have less rationale for divergent approaches across sectors.

3.273 We are conscious that the certainty the IMs are meant to provide across Part 4 and Part 6 may be undermined where a review in one leads to a change which could be expected to be implemented in the other.[135] There may also be greater efficiency both for the Commission and stakeholders from alignment where, absent alignment, engagement on the same topics could occur every two to four years rather than every seven years as envisaged in the statutes.

3.274 There is a trade-off as considering the cost of capital IM in isolation of other IMs, either for Part 4 or Part 6, may raise similar issues where a change in the cost of capital will lead to subsequent changes to other IMs. Nonetheless, we do not believe this trade-off inevitably favours either not aligning the reviews, or aligning reviews across the entire IMs.

3.275 Therefore, we are minded to leave open the option of bringing forward the s 182 review of the cost of capital IM for Part 6, so that review is aligned with our review of the cost of capital IM under Part 4. We note that under s 52Y of the Commerce Act, the next review of the cost of capital IM determined under Part 4 must be completed by December 2023. We welcome any further stakeholder views.

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[134] Commerce Commission "Fibre input methodologies – Draft decision paper"(19 November 2019), paragraph 3.984

[135] A similar issue arose in 2014 where we concluded the High Court's concerns around the WACC percentile required the uncertainty to be resolved prior to the scheduled 7-year review. See Commerce Commission, "Further work on the cost of capital input methodologies: Process update and invitation to provide evidence on the WACC percentile", 31 March 2014.

Chapter 4 Impact of COVID-19

4.1 Since we released our draft report in November 2019, events surrounding the COVID-19 pandemic have had a profound impact on the economy for New Zealand and the world.

4.2 New Zealand has experienced a severe contraction in economic activity following the impact of COVID-19. The Treasury has released several different scenarios of how this may impact the New Zealand economy in the years ahead which reflects inherent uncertainties. What is clear is that it will have a dramatic impact on the New Zealand economy. The Reserve Bank recently noted "*this year's projected decline in annual GDP is the largest in at least 160 years*".[136] This leaves open the question whether any changes should be made to the draft IMs as a consequence of the impact of COVID-19.

4.3 The cost of capital IM embeds parameter estimates that could conceivably be affected by unusual economic circumstances. We have consequently turned our minds to whether we should make changes to the cost of capital IM for Fibre due to current circumstances. Currently we believe not, but we will continue to monitor events and further evidence with a view to reaching a final decision on whether we should reopen the IMs as finally determined by April 2021.

Our current view on the impacts on the cost of capital IM

4.4 Our approach to the cost of capital IM is to reflect the financial market evidence before us and this is what we have done in reaching our current view. The impact from current events will feed into financial information and evidence we have based our view on and be reflected in future parameter estimates at future reviews, or in the case of the debt premium and risk-free rate, at every cost of capital determination.

4.5 In response to the post-2008 global financial crisis we reflected the effects on the premium for risk in a temporary uplift to the TAMRP based on advice from the cost of capital Expert Panel.[137] However, current events appear to be quite different to the global financial crisis.

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[136] Reserve Bank of New Zealand, "Financial Stability Report", May 2020.

[137] Commerce Commission "Input methodologies (electricity distribution and gas pipeline services) reasons paper" (22 December 2010), paragraphs 6.5.16 to 6.5.18.

4.6 On the evidence before us at the moment we are unconvinced that any other adjustment is warranted. To date we have observed that telecommunications is not one of the sectors most significantly affected by COVID-19. We would expect the most immediate impact would be on the risk-free rate and debt premiums which would be captured in our cost of capital determinations.

4.7 We also recognise that new evidence or further events may change this. For example, the RBNZ may move to a negative OCR and this may or may not raise practical issues for corporate debt. Other unanticipated matters may yet arise or further evidence from financial markets may be forthcoming.

4.8 Therefore, we consider the draft cost of capital IM remains fit for purpose for fibre while also recognising these are unusual circumstances and that further evidence would be useful before coming to a final decision on whether any changes to the cost of capital IM are appropriate. Consequently, we will continue to monitor developments in financial markets, and make a final decision on whether changed circumstances or additional evidence would justify considering amending the cost of capital IM for fibre by April 2021.

We see these events as exceptional

4.9 In November 2019 we explained that, for the purposes of Part 4 of the Commerce Act, fundamental IM changes such as changes to the cost of capital IMs outside of the s 52Y review cycle would only be considered in exceptional circumstances.[138]

4.10 While we consider a similar approach should be taken for Part 6 the impact of the COVID-19 Pandemic is clearly an exceptional event. Consequently, while we do not currently consider that any changes to the draft cost of capital IM are required, we consider this provides a gateway to consider amendments to the cost of capital IM outside of a s 182 review, including before the determinations under s 170 are made if required.

[138] Commerce Commission, "Amendments to Electricity Distribution Services Input Methodologies Determination: Reasons Paper", 26 November 2019, paragraphs 2.10 to 2.16.

Attachment A Changes to our draft determination

Purpose of this attachment and draft determination document history

A1 The purpose of this attachment is to explain the changes we have made to the "[Draft] Regulatory processes and rules fibre input methodologies determination" in our "[further consultation] Fibre Input Methodologies Determination 2020" (16 July 2020). published today.

A2 On 11 December 2019 we published our [Draft] Fibre Input Methodologies Determination 2020 (draft determination).[139]

A3 On 2 April 2020 we published our [Draft – regulatory processes and rules] Fibre Input Methodologies Determination 2020 (RPR draft determination), which contained tracked changes to the draft determination relating to the draft decisions for the regulatory processes and rules IM.

A4 We are now publishing our [Further consultation] Fibre Input Methodologies Determination 2020 (Further consultation determination). The Further consultation determination contains tracked changes to the RPR draft determination.

Further consultation determination

A5 The Further consultation determination published today updates our RPR draft determination to include:

A5.1 Editorial refinements, such as clarifications, error corrections and improvements to formatting; and

A5.2 Substantive drafting changes to areas where we have updated our views since the RPR draft determination.

[139] Our [Draft] Fire Input Methodologies Determination 2020 is available on our website here: https://comcom.govt.nz/__data/assets/pdf_file/0024/195207/Draft-Fibre-Input-Methodologies-Determination-2020-10-December-2019.pdf

A6 The Further consultation determination contains red mark-ups that show the changes we have made since our RPR draft determination. Clause references in this attachment are to clauses in the Further consultation determination unless otherwise specified. The changes we have made in the Further consultation determination are the result of our further deliberations in light of submissions on, and internal reviews of, our draft determination and RPR draft determination. Many of the substantive changes in the Further consultation determination were prompted by submissions, including a number of submissions on suggested drafting improvements. We have not comprehensively cited submissions in this attachment for the changes we have made in the Further consultation determination, but we have done so where we consider it useful in helping interested persons understand the changes.

Structure of this attachment

A7 Sections 1 to 3 of this attachment explain the changes we have made to the Further consultation determination. We have grouped the changes as follows:

A7.1 Section 1: Editorial refinements;

A7.2 Section 2: Substantive changes that are explained in Chapter 3 of this paper; and

A7.3 Section 3: Substantive changes that are not explained in Chapter 3 of this paper.

Section 1: Editorial changes in the Further consultation determination

Purpose of this section

A8 This section explains editorial changes we have made in the Further consultation determination. The table of changes below (Table A1) also indicates:

A8.1 which draft input methodology is affected by each change; and

A8.2 where in the Further consultation determination each change is located.

Table A1 Editorial changes in the Further consultation determination

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
1	**Cross-references updated** We have updated cross-references throughout the determination where required. This change arose out of an internal review and is intended to improve clarity.	All IMs	Throughout determination
2	**Bolding and un-bolding of terms** We have bolded and un-bolded some terms that were bolded or un-bolded in error in our draft determination. An example of this change can be seen in cl 1.1.4(2) where we have bolded the word "Act" at (b)(viii) of the definition of "operating cost" as it had been un-bolded in error. These changes arose out of an internal review and are intended to improve readability.	All IMs	Throughout determination
3	**Bolding and un-bolding and italicising and un-italicising of punctuation marks** We have bolded and un-bolded and italicised and un-italicised some punctuation marks that were bolded or un-bolded or italicised or un-italicised in error in our draft determination. An example of this change can be seen in cl 3.1.1(1) where we have un-bolded a full stop at the end of the subclause. These changes arose out of an internal review and are intended to improve clarity.	All IMs	Throughout determination
4	**Clarification around use of examples** We have added a clarification to cl 1.1.4(1) stating that "examples appearing in the determination are for guidance purposes only and do not form part of the determination". This change arose out of an internal review and is intended to improve clarity.	All IMs	1.1.4(1)(f)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
5	**Examples added to defined terms** We have added examples to some defined terms to aid reader understanding. These examples appear in italics under certain definitions in cl 1.1.4(2). An example of this change can be seen in the definition of "allocator type", which now includes the text: "*Example: if the **allocator type** for central office costs is 'floor area', and 30 square meters of the floor area of a 120-square metre central office is used for **regulated FFLAS**, then the 'asset allocator' is 1/4 (ie, 30/120)*". This change arose out of an internal review and is intended to improve clarity.	All IMs	1.1.4(2)
6	**Move provisions for determining the "initial RAB value" for the financial loss asset to new Schedule B (along with associated definitions)** In anticipation of our second consultation paper, relating to changes we are considering making to our approach to valuing the financial loss asset, we have created a new Schedule B which will be used to reflect the determination drafting impacts of any decisions we make on the valuation of the financial loss asset. In anticipation of the drafting of this new schedule, we have deleted all the provisions relating to the determination of the "initial RAB value" for the financial loss asset from Subparts 1, 2 and 4 of Part 2 and made consequential changes to affected definitions so that they will be defined in the new Schedule B. We have also made consequential changes to several cross-references to reflect this move to Schedule B. These changes arose out of an internal review and are intended to assist interested persons in engaging with our separate second consultation paper and final IM decisions reasons paper on our approach to the financial loss asset, as all affected provisions will be in one location within the determination. To give effect to this, we have changed the following definitions: • "allocator type";	Asset valuation, cost allocation, taxation, and cost of capital	1.1.4(2), previous cl 2.1.4, 2.2.4(1)-(27) (previous cls 2.2.3(2)-(27)), 2.2.13(1), 2.2.13(3), 2.2.13(3)(d), previous cl 2.2.12(2)(f), 2.2.13(3)(f), previous cl 2.2.12(2)(i), 2.2.13(4), 2.2.13(5), 2.2.13(5)(a)-(c), 2.2.13(6)(b), 2.2.15(1), previous cl 2.2.14(3)-(4), previous cl 2.3.1(7)(a), previous cl 2.3.2(2)(a)(ii), 2.3.2(3)(b)-(d), previous cl 2.3.2(3)(b), previous cl 2.3.2(5)-(6), previous cl 2.3.4, previous

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• "allocator value"; • "asset value"; • "causal relationship"; • "commissioned"; • "cost of debt"; • "debt premium"; • "disposed asset"; • "financial loss year"; • "network spare"; • "notional tax asset value"; • "operating cost"; • "operating expenditure"; • "proxy asset allocator"; • "proxy cost allocator"; • "regulatory tax asset value"; • "related party"; • "related party transaction"; • "result of asset allocation ratio"; • "tax asset value"; • "tax depreciation rules"; • "UFB asset"; • "UFB FFLAS"; • "value of commissioned asset"; and • "vested asset". To give effect to this, we have removed the following definitions: • "30 June 2012 WACC"'; • "30 June 2013 WACC"; • "30 June 2014 WACC"; • "30 June 2015 WACC"; • "30 June 2016 WACC"; • "30 June 2017 WACC"; • "30 June 2018 WACC";		cl 2.4.10-2.4.13, Schedule B

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• "30 June 2019 WACC"; • "30 June 2020 WACC"; • "30 June 2021 WACC"; • "30 November 2011 WACC"; • "accumulated unrecovered returns"; • "adjusted UFB asset initial values"; • "avoided financing cost building block"; • "closing balance of unrecovered returns on investment for notional deductible interest"; • "closing UFB asset base value"; • "compounded unrecovered return for financial loss year 2012"; • "compounded unrecovered return for financial loss year 2013"; • "compounded unrecovered return for financial loss year 2014"; • "compounded unrecovered return for financial loss year 2015"; • "compounded unrecovered return for financial loss year 2016"; • "compounded unrecovered return for financial loss year 2017"; • "compounded unrecovered return for financial loss year 2018"; • "compounded unrecovered return for financial loss year 2019"; • "compounded unrecovered return for financial loss year 2020"; • "compounded unrecovered return for financial loss year 2021"; • "compounding factor for financial loss year 2012"; • "compounding factor for financial loss year 2013"; • "compounding factor for financial loss year 2014"; • "compounding factor for financial loss year 2015";		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• "compounding factor for financial loss year 2016"; • "compounding factor for financial loss year 2017"; • "compounding factor for financial loss year 2018"; • "compounding factor for financial loss year 2019"; • "compounding factor for financial loss year 2020"; • "compounding factor for financial loss year 2021"; • "compounding factor for financial loss year 2022"; • "cost of capital"; • "opening balance of unrecovered returns on investment for notional deductible interest"; • "opening UFB asset base value"; • "services that are not UFB FFLAS"; • "sum of disposed assets"; • "sum of value of commissioned assets"; • "tax costs"; • "telecommunications services that are not UFB FFLAS"; • "UFB asset initial value"; • "UFB costs"; • "UFB revenues"; • "unallocated UFB asset initial value"; and • "unrecovered returns on investment".		
7	**Simplification of "ABAA" definition** We have simplified the definition of "ABAA" to refer to cl 2.1.2 and 3.2.1(8)-(9) rather than "operating costs" (cls 2.1.2(1)) and "asset values" (2.1.2(2)). This change arose out of an internal review and is intended to improve clarity.	Cost allocation	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
8	**Change from "allocator metric" to "allocator value" and update of definition** We have replaced references to "allocator metric" with "allocator value" in several cost allocation provisions and in the definition section. We have consequently moved the new term's position in cl 1.1.4(2) to maintain alphabetic order and have updated the language in the definition and added an example, to now read: (a) "for the purpose of determining the **financial loss asset**, has the meaning specified in Schedule B; and (b) In all other instances, means a value in units for each **cost allocator** or **asset allocator** that is used to calculate the ratio of **operating costs** or **asset values** to be allocated to **regulated FFLAS**, **services that are not regulated FFLAS**, **services that are not UFB FFLAS**, or **UFB FFLAS**; *Example: if the **allocator type** for a central office's **asset value** is 'floor area', and 30 square metres of the floor area of a 120-square metre central office is used for **regulated FFLAS**, then the 'allocator values' used to calculate the **asset allocator** (used for attributing **asset values** to **regulated FFLAS** would be a numerator of 30 and a denominator of 120.*" These changes arose out of an internal review and are intended to improve clarity.	Cost allocation	1.1.4(2), 2.1.5(1)(a) (previously cl 2.1.2(4)(a)), 3.2.1(7)
9	**Language around proportions/ratios updated** We have replaced instances of the words "proportion of a quantifiable measure", "proportion" and "quantifiable measure" with the word "ratio" throughout the determination. An example of this change can be seen in the definition of "asset allocator" in cl 1.1.4(2). We have also entirely removed the reference to "quantifiable measure" in cl 2.1.5(3)(b) (previously cl 2.1.2(3)(b)) and have now replaced it with "ratio", in order to widen the rationale that must be explained. These changes arose out of an internal review and are intended to improve clarity.	Cost allocation	1.1.4(2), 2.1.5(3)(b)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
10	**Editorial change to definition of "asset value"** We have made an editorial change to the definition of "asset value" by replacing the word "under" with the words "in accordance with". This change arose out of an internal review and is intended to improve clarity.	Cost allocation	1.1.4(2)
11	**Clarification of "base capex", "base capex proposal", "connection capex", "connection capex unit cost" and "individual capex" definitions** We have added more detail to the following definitions and clauses to clarify the differences in "base capex", "connection capex" and "individual capex": • "base capex"; • "base capex proposal"; • "connection capex"; • "connection capex unit cost"; • "individual capex"; • "regulatory template"; and • clause 3.7.8(2)(a). These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	1.1.4(2), 3.7.8(2)(a)
12	**Change of "fibre asset" to "core fibre asset" and clarification of financial loss asset** We have replaced references to "fibre asset" with "core fibre asset" in the definitions of "capital contribution" and "capital expenditure (capex)", and in cl 2.3.2. These references to "fibre asset" in our draft determination were made in error. We have also added the words "or **UFB asset**" after the words "**core fibre asset**" in the definition of "capital expenditure (capex)". We have also added a new cl 2.3.2(4)(c) stating that "in respect of the **financial loss asset**, ['result of asset allocation ratio' means] nil". This change was made to clarify that subclauses (a) and (b) are only in respect of core fibre assets. These changes arose out of an internal review and are intended to improve clarity.	All IMs	1.1.4(2), 2.3.2(2)(a)(iv), 2.3.2(3)(d), 2.3.2(3)(d)(ii), 2.3.2(4)(a)-(c)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
13	**Change to definition of "closing RAB value"** We have deleted subclause 2.2.5(5) because the "closing RAB value" for "deregulated shared assets" (previously "partly deregulated asset") is ascertained under cl 2.2.5(4). Therefore, the previous cl 2.2.5(5) was superfluous. We have also made a consequential change to the definition of "closing RAB value" by deleting paragraph (b) of the definition, as it referred to a clause (cl 2.2.4(5)) that has now been deleted. These changes arose out of an internal review and are intended to improve clarity.	Asset valuation	1.1.4(2), 2.2.5(5)
14	**Clarification of opening RAB values and closing RAB values for term credit spread differential, ex-ante allowance for asset stranding and major transaction reopener** We have made several changes to clarify which opening RAB values and closing RAB values are based on actuals and which are based on forecasts for the purposes of the PQ term credit spread differential and ex-ante allowance for asset stranding. These changes have been made to the following definitions and clauses: • "opening RAB value" (paragraphs (c)-(f)); • "closing RAB value" (paragraphs (c)-(f)); and • 3.3.5(2)(b)(i)-(ii). These changes arose out of an internal review and are intended to improve clarity.	Asset valuation, cost of capital and regulatory process and rules	1.1.4(2), 3.3.5(2)(b)(i)-(ii)
15	**Clarification of commissioning dates for core fibre assets acquired from a party** We have changed the definition of "commissioned" to clarify that a core fibre asset acquired from another party will have a "commissioning date" when it is first employed in the provision of regulated FFLAS by the acquiring regulated provider, even if that asset was previously employed by the previous party for regulated FFLAS. This change arose out of an internal review and is intended to improve clarity.	Asset valuation	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
16	**Deletion of "customer premises equipment" definition** We have deleted the definition "customer premises equipment" as it is no longer used in the definition of "fault". This change arose out of an internal review and is intended to improve clarity.	Quality dimensions	1.1.4(2)
17	**Change to "customer service" definition** We have changed the definition of "customer service" to now read: "means: (a) for the purpose of Part 2, the way a **regulated provider** interacts with **access seekers** and **end-users** in relation to the supply of **ID FFLAS**; and (b) for the purpose of Part 3, the way a **regulated provider** interacts with **access seekers** and **end-users** in relation to the supply of **PQ FFLAS**." This change arose from an internal review but was also made in response to the 'joint access seeker' submission by 2degrees, Spark, Vocus and Vodafone (at p 3) to clarify that the definition is concerned with the supply of regulated FFLAS, rather than the contractual processes for regulated FFLAS.	Quality dimensions	1.1.4(2)
18	**Clarification of "dedicated asset" definition** We have added the word "solely" to the definition of "dedicated asset" so that the definition now reads: "means a **core fibre asset** operated solely for the benefit of a particular **customer** under a fixed term agreement for the **provision** of **regulated FFLAS** between the **regulated provider** in question and customer, and which is not expected to be **employed** by the **regulated provider** to provide **regulated FFLAS** beyond the term of the fixed term agreement;" This change arose out of an internal review and is intended to improve clarity.	Asset valuation	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
19	**Editorial change to definition of "depreciation"** In its submission on our draft determination (at p 4 of Appendix C), Chorus suggested that we add the clarifying words "in that disclosure year" to the definition of "depreciation". We agree that the definition needs clarifying and have changed the wording around disclosure years in the definition to now read: "means an allowance to account for the diminution in a **fibre asset's** remaining service life potential in the **disclosure year** in question with respect to its **opening RAB value** and the amount of such allowance is,-".	Asset valuation and Taxation	1.1.4(2)
20	**Movement of definitions related to "deregulation adjustment" and "sale adjustment", and change to "deregulated asset" definition** We have moved the definitions for "deregulated asset", "deregulated asset value", "deregulated shared asset" (previously "partly deregulated asset") and "deregulated shared asset value" (previously "partly deregulated asset value" from the definition section in cl 1.1.4(2) to the "RAB roll forward of financial loss asset" clause (2.2.6). As these definitions are only used to ascertain the "opening RAB value" of the "financial loss asset" for disclosure years from 2023 onwards, we consider that it would assist interested persons for all these definitions to be located together. We have also changed the definition for "deregulated asset" to now read: "means: (a) for the purposes of the **ID RAB**, an asset, being an asset that: (i) immediately prior to regulations made under s 226 of the **Act** was a **core fibre asset employed** in the provision of **ID FFLAS**; and (ii) immediately after those regulations ceased to be a **core fibre asset employed** in the provision of **ID FFLAS**; and (b) for the purposes of the **PQ RAB**, an asset, being an asset that:	Asset valuation	1.1.4(2), 2.2.6(9)-(12)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	(i) immediately prior to regulations made under s 226 of the **Act** was a **core fibre asset employed** in the provision of **PQ FFLAS**; and (ii) immediately after those regulations ceased to be a **core fibre asset employed** in the provision of **PQ FFLAS**. These changes arose out of an internal review and are intended to improve clarity.		
21	**Ascertaining "deregulated shared asset value" (previously "partly deregulated asset value") with a formula** We have changed the definition of "deregulated shared asset value" (previously "partly deregulated asset value") by prescribing this value formulaically rather than by referencing "not **directly attributable** to **regulated FFLAS** which has been removed from information disclosure regulation under s 226 of the **Act**". The previous reference to "not **directly attributable** to **regulated FFLAS** which has been removed from information disclosure regulated under s 226 of the **Act**": • did not capture FFLAS that is no longer subject to price-quality regulation (as intended); and • may have caused confusion for interested persons. This change arose of an internal review and is intended to improve clarity.	Asset valuation	1.1.4(2), 2.2.6(12)-(13)
22	**Clarification of "directly attributable" definition** We have changed the definition of "directly attributable" to now read: "means- (a) **in relation to operating costs, where a cost** is wholly and solely incurred in the provision of a particular service; and (b) **in relation to asset values, where an asset is** wholly and solely **employed** by a **regulated provider** in the provision of a particular service;" This change arose out of an internal review and is intended to improve clarity.	Cost allocation	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
23	**Editorial change to definition of "easement land"** In its submission on our draft determination (at p 5 of Appendix C), Chorus suggested that we change the word "disposed" to "disposing" in subclause (b) of the definition of "easement land". We agree and have made this change.	Asset valuation	1.1.4(2)
24	**Clarification of "frame delay variation" definition** In its submission on our draft determination (at p 5 of Appendix C), Chorus suggested a change to the definition of "frame delay variation" to clarify that it means the variation in frame delay over "a time interval". We agree and have made this change.	Quality dimensions	1.1.4(2)
25	**Clarification of "frame loss" defined term** In its submission on our draft determination (at p 5 of Appendix C), Chorus suggested a change to the defined term "frame loss". It submitted that the definition in our draft determination was inconsistent with the engineering definition and the generally accepted term which is "frame loss ratio". Frame loss ratio is usually expressed as a percentage, not a number of frames. We agree and have made the following changes: • changed the defined term from "frame loss" to "frame loss ratio"; • changed the definition to read "means the portion of frames that are lost between the ingress interface and the egress interface of the **fibre network**, expressed as a percentage"; and • added the word "ratio" to cls 2.5.1(1)(b)(ii) and 3.6.1(1)(b)(ii).	Quality dimensions	1.1.4(2), 2.5.1(1)(b)(ii), 3.6.1(1)(b)(ii)
26	**Addition of new term "impairment losses"** In its submission on our draft determination (at p 5 of Appendix C), Chorus suggested that we define a new term, "impairment losses", in relation to GAAP. We agree and have defined "impairment losses" as "has the same meaning as under **GAAP**". We have bolded this term throughout the determination.	Asset valuation	1.1.4(2), 2.2.13(1)(b)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
27	**Clarification of "integrated fibre plan" definition** We have made a change to the definition of "integrated fibre plan" in cl 1.1.4(2). The defined term now reads: "means a collection of documents as set out in clause 3.7.7, that provides the **Commission** with an overview of **Chorus's capital expenditure** related to the management of its **fibre network** and the provision of **PQ FFLAS**;" This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	1.1.4(2)
28	**Editorial change to definition of "network spare"** In its submission on our draft determination (at p 6 of Appendix C), Chorus suggested that we un-bold the word "asset" in the definition of "network spare" because it is not a defined term. We agree and have made this change.	Asset valuation	1.1.4(2)
29	**Clarification that "NZ IAS 24" is proposed to be incorporated by reference into our IMs** We have clarified the definition of "NZ IAS 24" to explicitly indicate that *New Zealand Equivalent to International Accounting Standard 24, Related Party Disclosures (NZ IAS 24)* (**NZ IAS 24**) has been "incorporated by reference" into our IMs. As explained in *Intended implementation approach for [DRAFT] Fibre input Methodologies Determination 2020* (11 December 2019) (paragraphs 18-24), we have proposed incorporating the definition of 'related party' from NZ IAS 24 into our IMs.	Asset valuation	1.1.4(2)
30	**Deletion of "ONT" definition** We have deleted the defined term "ONT" as it is no longer used in the definition of "customer premises equipment". This change arose out of an internal review and is intended to improve clarity.	Quality dimensions	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
31	**Change to "operating expenditure" definition to apply to reconsideration of price-quality path** We have added the following wording to the definition of "operating expenditure" so that it now applies to any regulated provider subject to price-quality regulation, not just Chorus: "…in all other instances, means the value of **operating costs** attributable to **PQ FFLAS** supplied by a **regulated provider** which are incurred in a **regulatory period**". This change arose out of an internal review and is intended to improve clarity.	Regulatory processes and rules	1.1.4(2)
32	**Change to "outage" definition** We have changed the definition of "outage" to read as follows: "outage means: (c) for the purpose of Part 2, a cessation in the supply of **ID FFLAS**; and (d) for the purpose of Part 3, a cessation in the supply of **PQ FFLAS**". This change arose out of an internal review and is intended to improve clarity.	Quality dimensions	1.1.4(2)
33	**Renaming of "partly deregulated asset" and "partly deregulated asset value"** In its submission on our draft determination (at pp 6-7 of Appendix C), Chorus suggested that we rename the defined term 'partly deregulated asset value' by replacing it with the term 'deregulated shared asset value'. We agree and have made this change, and consequently have also renamed the defined term "partly deregulated asset" by replacing it with the term "deregulated shared asset". Consequential changes to these terms have been made throughout the determination.	Asset valuation	1.1.4(2), 2.2.6(3), 2.2.6(7)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
34	**Clarification of "performance" definition** In its submission on our draft determination (at p 7 of Appendix C), Chorus suggested the word "performance" in the definition of "performance" be changed to "functioning". We agree and have changed the definition to read as follows: "means: (a) for the purpose of Part 2, the technical functioning of **ID FFLAS**, including the extent to which this affects the experience of an **access seeker** or **end-user**; and (b) for the purpose of Part 3, the technical functioning of **PQ FFLAS**, including the extent to which this affects the experience of an **access seeker** or **end-user**;".	Quality dimensions	1.1.4(2)
35	**Clarification of regulated provider terminology** We have changed the term "regulated provider" to "regulated fibre service provider" in several instances, so that the term covers regulated providers subject to both Part 2 and Part 3. We have made this change in the clauses specified in the fourth column of this row. This change arose out of an internal review and is intended to improve clarity.	Asset valuation and cost allocation	1.1.4(2), 2.2.8 (header), 2.2.8(1), (2) and (3), 2.2.8(8)
36	**Clarification of "regulatory year" definition** We have added words to the definition of "regulatory year" to clarify that it means "a 12-month period ending on 31 December, where if the term "regulatory year" is combined with a year, the 12-month period ending on 31 December of that year (for instance, "**regulatory year** 2022" means the 12-month period ending on 31 December 2022)". This change arose out of an internal review and is intended to improve clarity.	All IMs	1.1.4(2)
37	**Change to definition of "remaining asset life"** In its submission on our draft determination (at p 8 of Appendix C), Chorus suggested that we delete the words "at the commencement of the disclosure year in question" in the definition of "remaining asset life" to address timing inconsistencies. We agree and have made this change.	Asset valuation	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
38	**Clarification of "restore" definition** In its submission on our draft determination (at p 8 of Appendix C), Chorus suggested that the term "end user's" in the definition of "restore" was confusing. We agree and have removed the reference to an end-user. The definition now reads as follows: "means: (a) for the purpose of Part 2, when **ID FFLAS** functions again following a fault; and (b) for the purpose of Part 3, when **PQ FFLAS** functions again following a fault;".	Quality dimensions	1.1.4(2)
39	**Clarification of "switching" definition** We have clarified and broadened the definition of "switching" to ensure it does not inadvertently exclude certain types of switching. The definition now reads as follows: "means: (a) for the purpose of Part 2, the process by which a **regulated provider** changes an **end-user's ID FFLAS** connection from one **access seeker** to another **access seeker**; and (b) for the purpose of Part 3, the process by which a **regulated provider** changes an **end-user's PQ FFLAS** connection from one **access seeker** to another **access seeker**;". This change arose out of an internal review and is intended to improve clarity.	Quality dimensions	1.1.4(2)
40	**Clarification of "unallocated depreciation" definition** We have added a subclause (c) to the definition of "unallocated depreciation" to cover regulated providers subject to PQ regulation in regulations made under s 226 of the Act. This change arose out of an internal review and is intended to improve clarity.	Asset valuation	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
41	**Clarification preventing double recovery of costs** We have added a subclause (c) to cls 2.1.1(2) and 3.2.1(3) to make clear that "any other cost that is recovered in respect of a Part 4 regulated service" must not be allocated to regulated FFLAS. This change arose out of an internal review and is intended to more explicitly prevent double recovery. We have also removed what was cl 2.1.3(2) as the addition of new cl 2.1.1(2)(c) makes it redundant.	Cost allocation	2.1.1(2)(c), 3.2.1(3)(c)
42	**Clarification as to how ABAA is to be applied** We have added words to cl 2.1.1(3) to clarify that ABAA must be applied "in accordance with clause 2.1.2". This change arose out of an internal review and is intended to improve clarity.	Cost allocation	2.1.1(3)
43	**Movement of ABAA provisions** We have moved the ABAA provisions that were in cls 2.1.2(3) and (4) to new cls 2.1.5(1) and (3). This change arose out of an internal review and is intended to clarify that the clauses are requirements for applying ABAA, not part of ABAA itself.	Cost allocation	2.1.2(3) and (4), 2.1.5(1) and (3)
44	**Deletion of signposting clause** We have deleted cl 2.1.2(5) because it did not have any legal effect other than signposting the requirements set out in the previous cl 2.1.3 (now cl 2.1.5). This change arose out of an internal review and is intended to improve clarity.	Cost allocation	2.1.2(5)
45	**Clarification of regulated fibre service provider requirements** We have changed cl 2.1.5(5) (previously clause 2.1.3(3)) to clarify that the cost allocation requirements, and the exceptions set out in that subclause, apply to "a regulated fibre service provider subject to both information disclosure regulation and price-quality regulation in regulations made under s 226 of the Act". This change arose out of an internal review and is intended to improve clarity.	Cost allocation	2.1.5(5)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
46	**Clarification that PQ operating costs and asset values are allocated as forecasts** We have clarified that PQ operating costs and asset values are allocated on a forecast basis. Previously, the drafting required the application of the ID IMs for "allocation between regulated FFLAS and services that are not regulated FFLAS" under clause 2.1.1(1)-(2). As clause 2.1.1(1)-(2) is intended to cover actual operating costs and asset values, rather than forecasts, we have changed clause 3.2.1(1) and (3) to instead draw on the language from clause 2.1.1(1)-(2), rather than explicitly refer to it. This allows us to clarify that the operating costs and asset values applicable for PQ allocations are forecasts derived using the same approach as that specified in clause 2.1.1(1)-(2). We have also added wording to cls 2.2.3(2)(b) and 2.2.5(4)(b) to differentiate between actual and forecast values. These changes arose out of an internal review and are intended to improve clarity.	Cost allocation and consequential changes to asset valuation	2.2.3(2)(b), 2.2.5(4)(b), 3.2.1(1), 3.2.1(3)(a)-(b), 3.2.1(6), 3.2.1(8)-(9)
47	**Clarification that assets that are both "UFB assets" and "core fibre assets" cease to be a "UFB asset" at "implementation date"** We have added a subclause (3) to cl 2.2.3 that reads: "Where an asset is both a **UFB asset** and a **core fibre asset**, it ceases to be a **UFB asset** at **implementation date**." This change arose out of an internal review and is intended to improve clarity.	Asset valuation	2.2.3(3)
48	**Change to initial RAB value sentence structure** We have reworded subclause 2.2.6(1)(a) by replacing the words "the **financial loss asset's initial RAB value**" with "the **initial RAB value** of the **financial loss asset**". This change arose out of an internal review and is intended to improve clarity.	Asset valuation	2.2.6(1)(a)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
49	**Clarification of opening RAB value formula** We have reworded the formula in subclause 2.2.6(1)(b) by replacing "**disclosure year** less the values resulting from the **deregulation adjustment** and the **sale adjustment**" with "**disclosure year** multiplied by (1 – **deregulation adjustment** for the preceding **disclosure year** – **sale adjustment** for the preceding **disclosure year**)". This change arose out of an internal review and is intended to correct a typographical error, while clarifying that the "opening RAB value" of the "financial loss asset" will be impacted by the sum of: • any deregulated asset values and deregulated shared asset values (previously "partly deregulated asset values") in the previous disclosure year; and • any sale adjustment values in the previous disclosure year.	Asset valuation	2.2.6(1)(b)
50	**Deregulation adjustment changes** We have changed the formula of the RAB roll forward of the opening RAB value, (recognising that the deregulation adjustment is a ratio) and have simplified the description of the deregulation adjustment. This change arose out of an internal review and is intended to improve clarity.	Asset valuation	2.2.6(3)
51	**Change to sale adjustment sentence structure** We have reworded cl 2.2.6(4) to now read "The 'sale adjustment' in subclause (1) must be calculated in accordance with the formula…". The clause used to read "For the purposes of subclause (1), the value of the **financial loss asset** must be adjusted commensurate with the value of a 'sale adjustment', where a 'sale adjustment' must be calculated in respect of a **financial loss asset** for a **disclosure year** in accordance with the formula…". This change arose out of an internal review and is intended to improve clarity.	Asset valuation	2.2.6(4)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
52	**Change to deregulation defined terms for consistency with the Act** We have replaced the words "has been removed from" with the words "is no longer subject to" in the definitions of the following defined terms: • "deregulated shared asset" (previously "partly deregulated asset"); and • "deregulated shared asset value (previously "partly deregulated asset value"). This change arose out of an internal review and is intended to provide consistency with the language used in s 210 and s 226 of the Telecommunications Act 2001 (**Act**).	Asset valuation	2.2.6(11)-(12)
53	**Clarification around time profile of revenue recovery** In their submission on our draft determination (at paragraph13.2), Enable and Ultrafast noted that references to the "time profile of revenue recovery" should be changed to the "expected time profile of revenue recovery". We agree and have added the word "expected" in three places in cl 2.2.7 to clarify that time profiles of revenue recovery are expected time profiles of revenue recovery.	Asset valuation	2.2.7(1)-(3)
54	**Change to revenue recovery "disclosure year" terminology** In their submission on our draft determination (at paragraph13.2(b)), Ultrafast and Enable suggested that the words "at the time of a disclosure" should be replaced with "for the **disclosure year**" throughout cl 2.2.7. We agree and have made this change. This change seeks to clarify that the expected revenue recovery concept may be disclosed under an information disclosure (**ID**) determination on an ex-post basis. Given that the time of disclosure may occur after the disclosure year ends, use of the phrase 'time of a disclosure' could potentially result in a mismatch between revenue and depreciation.	Asset valuation	2.2.7(1)-(3)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
55	**Clarification of other/alternative methods** We have replaced the words "an alternative method" with "any other method" in subclauses 2.2.7(2)(b) and 2.2.7(3)(b). This change arose out of an internal review and is intended to improve clarity.	Asset valuation	2.2.7(2)(b), 2.2.7(3)(b)
56	**Clarification of depreciation method for regulated fibre service providers subject to both ID regulation and PQ regulation in final disclosure year of a regulatory period** We have clarified the applicable depreciation methods for regulated fibre service providers subject to both ID regulation and PQ regulation when disclosing information in accordance with an ID determination for the final disclosure year of a regulatory period. Consistent with our draft decision, a regulated fibre service provider must apply the depreciation method applicable for a regulatory period under a PQ determination for the final disclosure year. As a result of an internal review, we identified that the previous drafting may have inadvertently required regulated fibre service providers to apply a different depreciation method for a potential ex-post disclosure for the final disclosure year of a regulatory period from that applied for any other disclosure year in that regulatory period. This may have occurred where a new depreciation method applied for a subsequent regulatory period that commenced prior to the due date for the potential ex-post disclosure. This change is intended to improve clarity and avoid potential confusion.	Asset valuation	2.2.8(8)
57	**Deletion of superfluous revaluation text in clause 2.2.11(3)** We have deleted cl 2.2.11(3)(b) and merged what was subclause (a) into cl 2.2.11(3). This change was made because subclause (b) was superfluous. This change arose out of an internal review and is intended to improve clarity.	Asset valuation	2.2.11(3)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
58	**Editorial change to revaluation rate calculation** We have fixed an error in the formula for calculating the revaluation rate in cl 2.2.11(4) and the corresponding definitions in that clause. The formula did read: $$\left(\frac{CPI_4}{CPI_4{}^{-4}}\right)-1$$ We have changed the formula to read: $$\left(\frac{CPI_t}{CPI_{t-1}}\right)-1$$ This change arose out of an internal review and is intended to improve clarity.	Asset valuation	2.2.11(4)
59	**Clarification of value of commissioned assets clause** We have added the words "with a **commissioning date** prior to the **implementation date**" into cl 2.2.13(1) so that it now reads: "'value of commissioned asset', in relation to a **core fibre asset** with a **commissioning date** prior to the **implementation date**... means". This change arose out of an internal review and is intended to improve clarity.	Asset valuation and taxation	2.2.13(1)
60	**Clarification of method in calculating taxable income** We have replaced "the same methods used by the **regulated provider**" with "the same method as that elected to be used by the **regulated provider**" in cl 2.3.1(4). This change arose out of an internal review and is intended to improve clarity.	Taxation	2.3.1(4)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
61	**Clarification of treatment for fibre assets and UFB assets when applying the tax rules in respect of particular items of income and expenses included in regulatory profit / (loss) before tax** In cl 2.3.1(6) which specifies the requirements when applying the tax rules in respect of particular items of income and expenses included in regulatory profit / (loss) before tax, we have clarified that: • Any tax deduction for interest incurred in relation to debt that must be substituted with a tax deduction for notional deductible interest is only "in respect of **fibre assets**". Our RPR draft determination was silent about the assets affected by these tax deductions. • Any tax deduction for depreciation, which must be calculated by applying the tax depreciation rules to the regulatory tax asset value is only available in respect of fibre assets and UFB assets. Our RPR draft determination specified that these tax deductions were only available in respect of "fibre assets" in error. • The effect of any tax losses (other than those produced from the provision of regulated FFLAS in respect of fibre assets and the provision of UFB FFLAS in respect of UFB assets) made by a regulated provider must be ignored. Our RPR draft determination only made an exception to this treatment in respect of tax losses "produced from the provision of regulated FFLAS" in error. These changes arose out of an internal review and are intended to improve clarity.	Taxation	2.3.1(6)(a)-(b), 2.3.1(6)(c)(ii)
62	**Typographical correction to cross-reference in "result of asset allocation ratio"** We have changed a cross-reference in clause 2.3.2(4)(b) which defines "result of asset allocation ratio" to now reference the cost allocation IMs in Subpart 1, rather than the asset allocation IMs in Subpart 2. The reference to "Subpart 2" was an error. This change arose out of an internal review and is intended to improve clarity.	Taxation	2.3.2(4)(b)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
63	**Changes to "leverage"** In its submission on our draft determination (at p 65), Sapere (for Chorus) suggested that we add a definition for "leverage" to cls 2.4.2, 2.4.11 and 3.5.2, and make consequential changes. We agree and have added the following definition in new cls 2.4.2(1), 3.5.2(1) for ease of reference: "'Leverage' means the ratio of debt capital to total capital and is 31%". We have also un-bolded the word "leverage" in cls 2.4.1(3), 3.5.1(3), and added the words "the leverage" to cls 2.4.1(4)(a) and 3.5.1(4)(a)	Cost of capital	2.4.1(3), 2.4.1(4)(a), 2.4.2(1), 3.5.1(3), 3.5.1(4)(a), 3.5.2(1)
64	**Clarification of "debt issuance costs" definition** We have un-bolded the term "debt issuance costs" in cls 2.4.1(3) and (4), as it is defined in the clause immediately below (cl 2.4.2(6)). We have also changed the definition of "debt issuance costs" in cls 2.4.2(6), 3.5.2(6) to clarify that debt issuance costs are "costs associated with the issuance of debt by a **regulated provider** and are determined by the term of the **regulatory period**". These changes arose out of an internal review and are intended to improve clarity.	Cost of capital	2.4.1(3) and (4), 2.4.1(6), 3.5.2(6)
65	**Editorial change to quality performance measures and statistics** We have changed the heading and wording of cl 2.5.3, previously titled "Quality reporting requirements", to now read: "Quality performance measures and statistics (1) An **ID determination** may include requirements to disclose information on quality performance measures and statistics that are differentiated by: (a) **regulated providers**; (b) geography; (c) **fibre network** architecture; (d) **ID FFLAS**, such as layer 1 and layer 2; and (e) classes of **end-users**, such as rural, urban, business or residential."	Quality dimensions	2.5.3

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	This change arose in response to submissions from Chorus (at paragraph299 of its main submission and p 19 of Appendix C), and Ultrafast and Enable (at paragraph5.4) and is intended to clarify that while measures may be differentiated by end-users, this is optional and may only be the case for some measures.		
66	**Deletion of typographical error clause (previously clause 3.2.1(6))** We have deleted what was previously clause 3.2.1(6) which read "for the purposes of subclauses (2) and (3), any reference to 'requirements in the relevant **ID determination**' in Subpart 1 of Part 2 means 'any requirement specified by the **Commission**". This clause was identified as a typographical error in an internal review and its deletion is intended to improve clarity.	Cost allocation	3.2.1(7)
67	**Combining of subclauses in calculation of price-quality path forecast values provision** We have combined what was subclause (2) of cl 3.3.1 with subclause (1) of cl 3.3.1 so that the values used to specify a price-quality path are not set out in their own subclause. We have also made a consequential change to cl 3.3.1(2). These changes arose out of an internal review and are intended to improve clarity.	Asset valuation	3.3.1(1)
68	**Clarification that certain PQ asset values are not determined on the basis of the ID IMs** We have clarified that certain asset values specified for the purposes of a PQ path are not determined by adopting relevant values calculated under the ID IMs for the PQ RAB in respect of the base year of a regulated provider. This change arose out of an internal review and is intended to improve clarity.	Asset valuation	3.3.1(2)(a)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
69	**Change to reflect Commission's methods of obtaining information** We have replaced the words "provided to the **Commission** under s 98 of the Commerce Act 1986 or s 221 of the **Act**" with "obtained by the **Commission**" to reflect that the Commission has methods of obtaining information other than s 98 of the Commerce Act 1986 or s 221 of the Act. This change arose out of an internal review and is intended to improve clarity.	Asset valuation	3.3.1(2)(a)(ii)
70	**Clarification that minimum standards of specificity required under ID are not required for PQ forecasts** We have added a new subclause (5) to cl 3.3.1. The new subclause reads: "For the purposes of subclause (2)(b), a **regulated provider** is not required to maintain the minimum levels of specificity specified in clause 2.2.14 for any forecasts of the values referred to in paragraphs (a)-(f) of subclause (1)". We have also made a consequential change to cl 3.3.1(2)(b). These changes arose out of an internal review and are intended to clarify that the minimum standards of specificity required under ID are not required for PQ forecasts.	Asset valuation	3.3.1(2)(b), 3.3.1(5)
71	**Typographical correction to cross-reference in clause 3.5.7(2)** We have changed the cross-reference applicable for "*a*" in cl 3.5.7(2) from cl "3.5.10(3)" to cl "3.5.10(1)". Clause 3.5.10(3) was referenced in error. This change arose out of an internal review and is intended to improve clarity.	Cost of capital	3.5.7(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
72	**Change to PQ determination quality standards requirements** We have changed the quality standards provision in cl 3.6.3 to read: "When specifying quality standards in a **PQ determination**, the **Commission** may include quality standards that are differentiated by: (a) **regulated providers**; (b) geography; (c) **fibre network** architecture; (d) **PQ FFLAS**, such as layer 1 and layer 2; and (e) classes of **end-users**, such as rural, urban, business or residential." This change arose out of an internal review and is intended to improve clarity.	Quality dimensions	3.6.3
73	**Change from "must" to "will" in capex overview** In its submission on our draft determination (at p 24 of Appendix C), Chorus suggested that the operative wording "must" should be removed from cl 3.7.1. We agree and have changed "must" to "will" in subclauses (1), (2)(a), and (3) to clarify that the requirements in those subclauses are not operative. We have also removed the phrase "Note: This clause is only a guide to the general scheme and effect of this subpart" to avoid confusion.	Capital expenditure	3.7.1(1), 3.7.1(2)(a), 3.7.1(3)
74	**Change so individual capex proposals may be submitted before or during regulatory period** In its submission on our draft decision, Chorus (at p 25 and p 28 of Appendix C) suggested that we allow Chorus to submit an individual capex proposal at any time before or during a regulatory period, not just during. We have added the words "before or" to in cl 3.7.1(2)(b) and reworded it to clarify that Chorus may submit one or more individual capex proposals before or during a regulatory period. We have also made this change to cl 3.7.22(1) to clarify that Chorus may apply to the Commission to determine an additional capex allowance before or during a regulatory period.	Capital expenditure	3.7.1(2)(b), 3.7.22(1)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
75	**Change from "disclosure year" to "regulatory year" in Capex provisions** We have replaced references to "disclosure year" with "regulatory year" in cls 3.7.1(3) and 3.7.20(2)(a)-(c). This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.1(3), 3.7.20(2)(a)-(c)
76	**Editorial changes to cl 3.7.1(4)(a)** We have changed the phrase "any **capex allowances** determined by the **Commission**…" in cl 3.7.1(4)(a) to "any **capex allowance** determined…" This drafting is intended to make cl 3.7.1(4)(a) consistent in style to cl 3.7.1(4)(b). This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.1(4)(a)
77	**Change to heading and text of cl 3.7.2 "General rule for capital contributions"** We have changed the heading of cl 3.7.2 from "Capital contributions" to "General rule for capital contributions". We have also added the words "and **capex allowances**" to subclause (1) so that it reads "All **proposed capex** and **capex allowances** must be net of **capital contributions**". These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.7.2, 3.7.2(1)
78	**Change from "was" to "is" and removal of "each" in cl 3.7.3** We have changed the word "was" to "is" in cl 3.7.3(1)(a) to reflect the correct tense. We have also removed "each" from the phrase "…the **director** or **CEO** must each certify in writing…". These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.7.3, 3.7.3(1)(a)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
79	**Clarification of wording relating to director or CEO certification** We have changed the words "has made" to "provided" in cl 3.7.2(2)(a) so that it reads "the **director** or **CEO** provided a certification involving confirmation of a matter in accordance with subclause (1)". We have also changed the wording in cl 3.7.2(2)(b) to read "their belief, as certified, has changed before the **Commission's** determination in relation to the capex proposal in question." These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.7.3(2)(a)-(b)
80	**Simplification of general rule for information required for more than one purpose** We have simplified the wording in cl 3.7.5(1) and (1)(c) by deleting several lines of superfluous text and using the term "under this subpart". Subclause (1) now reads: "Where **Chorus** must provide information under this subpart, an information requirement may be met by **Chorus** providing a reference to information in another document…". Subclause (1)(c) now reads: "the referenced information is provided under this subpart and available to the **Commission** when the information is required". We have also added a new subclause (1)(a) which reads: "where the information is required to be certified, audited or independently verified, the information is covered by a relevant **certification**, audit report, or independent verification;" These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.7.5(1), (1)(a) and (1)(c)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
81	**Editorial change to wording in base capex and connection capex regulatory template clauses** We have changed the wording in cls 3.7.8(3) and 3.7.14(3) to now read: "The **Commission** and **Chorus** must use reasonable endeavours to agree the information required in the **regulatory templates** for the relevant **regulatory period**, including…". This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.8(3), 3.7.14(3)
82	**Editorial change to capital expenditure allocator type** We have replaced the term "cost allocator" with "asset allocator" in cl 3.7.8(8) as it was drafted in error. This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.8(8)
83	**Clarifying that information requirements for base capex proposals and individual capex proposals, and the assessment factors, require information on both "regulated FFLAS" and "services that are not regulated FFLAS"** We have clarified that information requirements in clause 3.7.8(8), 3.7.9(1)(l), 3.7.26(1)(k) and 3.8.6(1)(l) which require information on "**services that are not regulated FFLAS**" must also include information on "**regulated FFLAS**". We consider that information requirements which include "**services that are not regulated FFLAS**" must also include "**regulated FFLAS**" to allow for a comparison. Our RPR draft determination only specified information requirements for "**services that are not regulated FFLAS**" in error. These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.7.8(8), 3.7.9(1)(l), 3.7.26(1)(k), 3.8.6(1)(l)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
84	**Deletion of superfluous words "as follows" from cl 3.7.13 and clarification of policy** We have deleted the words "as follows" from cl 3.7.13(1) as they were superfluous. We have also added two new subclauses (2) and (3) to clarify original policy intent. The new subclauses read as follows: (2) "The **capital expenditure** determined for the **connection capex allowance** must be additional to the **base capex allowance** and any **individual capex allowance**. (3) The **capital expenditure** determined for the **connection capex allowance** is not substitutable for **capital expenditure** determined for the **base capex allowance** or any **individual capex allowance** for a **regulatory year** or between **regulatory years** for the **regulatory period**." We have also clarified in cl 3.7.14(2) that the proposed connection capex baseline allowance must be additional to the proposed base capex allowance. These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.7.13(1)-(3), 3.7.14(2)
85	**Editorial refinements to cl 3.7.16** We have deleted the word "all" from cl 3.7.16(1) as it was superfluous. We have also changed the word "capability" to "capable" in cl 3.7.16(3)(a) as it was written in error. We have also reworded cl 3.7.16(3)(b) to read "the terms and conditions of engagement and the scope of the **independent verification report** will provide the appropriate assurance needed to assess the **connection capex baseline proposal**." These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.7.16(1), 3.7.16(3)(a) and (b)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
86	**Removal of specific clause references and rewording of connection capex annual report updated forecast connection capex unit costs** We have removed specific clause references from cl 3.7.18(2)(c) and reworded it to require the connection capex annual report to include: "updated forecast **connection capex unit costs** and forecast connection volumes by **connection type** for the remaining **regulatory years** of the **regulatory period**." This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.18(2)(c)
87	**Clarification that individual capex proposal must include individual capex that Chorus considers should be included for "each regulatory year" of a regulatory period** We have changed clause 3.7.22(2) to clarify that an individual capex proposal must, in relation to a regulatory period, state any individual capex that Chorus considers should be included in the capex allowance for each regulatory year of that regulatory period. This change arose internally and is intended to improve clarity.	Capital expenditure	3.7.22(2)
88	**Clarification that individual capex proposal amount is measured over the life of the project or programme** We have added the words "over the life of the **project** or **programme**" to cl 3.7.22(3)(c) so that it now reads: (c) "the proposed **individual capex** must relate to a **project** or **programme**, where the forecast **capital expenditure** for **PQ FFLAS** on that **project** or **programme** is at least $5 million over the life of the **project** or **programme**; and" This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.22(3)(c)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
89	**Replacement of "amounts to" with "is" in individual capex overview provision** We have replaced the words "amounts to" with "is" and added the word "and" after the semicolon at the end of cl 3.7.22(3)(c). This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.22(3)(c)
90	**Changes to individual capex design proposal key parameters** We have changed and added to the key parameters for the individual capex design proposal to increase consistency between the information requirements and assessment factors for capex proposals. There is a change to the first key parameter (at cl 3.7.23(3)(a)) that must be included in the individual capex design proposal to now be: "the need for investment and the timing of the **individual capex project** or **individual capex programme** and the extent of any related uncertainty". There is a revised requirement at cl. 3.7.23(3)(f) – "any impact of the proposed **individual capex** on previously determined or forecast **base capex** and **operating expenditure**". There is also an additional requirement at cl 3.7.23(3)(g)- "the possible expected costs, benefits and risks associated with the **individual capex project** or **individual capex programme**". These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.7.23(3)(a), (f) and (g)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
91	**Clarification that the information requirements for individual capex design proposals and an individual capex proposal include information on quality outcomes** We have clarified that the information requirements for individual capex design proposals and an individual capex proposal include information on quality outcomes. To clarify this, we have changed: • clause 3.7.23(3)(e) to clarify that the individual capex design proposal must include the impact of the proposed individual capex on PQ FFLAS quality outcomes; • clause 3.7.26(1)(f) to require information on "the linkages between the proposed **capex expenditure** and quality, including the impact the **capital expenditure** would have on **PQ FFLAS** quality outcomes and forecast **PQ FFLAS** quality outcomes and where applicable an assessment of the updated forecast **PQ FFLAS** quality outcomes against the quality standards within the **PQ determination**"; and • clause 3.7.26(1)(g) to require information on "consideration and analysis of alternatives to the proposed **capital expenditure**, including the impact of the alternatives on **PQ FFLAS** quality outcomes;". These changes arose internally and are intended to improve clarity.	Capital expenditure	3.7.23(3)(e), 3.7.26(1)(f), 3.7.26(1)(g)
92	**Clarification of certain key parameters for the individual capex design proposal and the individual capex assurance requirements** We have clarified and made consistent the independent verification requirements in both the individual capex design proposal and the individual capex final proposal relating to an intended independent verifier. The key parameters of the individual capex design proposal under clauses 3.7.23(3)(j)(i)-(ii) now reads:	Capital expenditure	3.7.23(3)(j)(i)-(ii), 3.2.27(1)-(3)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	"(j) a proposal for independent verification that is commensurate with the size and complexity of the **individual capex proposal**, including: (i) details of the intended independent verifier and enough information to demonstrate that verifier is **independent** and capable of undertaking the intended **independent verification report**; (ii) the proposed terms and conditions of the verifier's engagement and the scope of the proposal for independent verification, including enough information to demonstrate the scope and terms of engagement for the intended **independent verification report** is appropriate for the size and complexity of the **individual capex project** or **individual capex programme**; and". The clause (previously 3.7.22(3)(f)) previously read: "(f) the intended independent verifier, the terms and conditions of the verifier's engagement and the scope of the **independent verification report**, including: (i) enough information to demonstrate that the verifier is **independent** and capable; (ii) enough justification that the scope and terms of the intended **independent verification report** will be commensurate to the size and complexity of the **individual capex project** or **individual capex programme**." In relation to the final proposal, the requirements in clause 3.7.27(1)-(3) are consistent with those of the design proposal:		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• if an independent verification report is required, the scope and the terms and conditions of the report must be consistent with the approved individual capex design proposal; and • the verification information submitted to us must include enough information for us to be satisfied that: o the verifier is independent and capable of undertaking the verification; and o the terms and conditions of engagement and the scope of the independent verification report will provide the appropriate assurance needed to assess the individual capex proposal. Under cl 3.7.26 of our RPR draft determination, an individual capex proposal was required to "be verified by an **independent verifier** providing an **independent verification report** as approved in the **individual capex design proposal**". These changes arose out of an internal review and are intended to improve clarity.		
93	**Addition of the word "approved" to final individual capex proposal clause** We have added the word "approved" before the words "individual capex design proposal" in cl 3.7.25(1). This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.25(1)
94	**Removal of superfluous requirement in final individual capex proposal** We have removed clause 3.7.25(3) (previously clause 3.7.24(3)). Clause 3.7.25(3) required that "proposed **individual capex** must be net of any determined **base capex allowance**". This clause was superfluous due to clause 3.7.22(3)(a), which requires that "the **proposed capex** must be additional to any **base capex allowance** and **connection capex baseline allowance** for the **regulatory years** of each **regulatory period** relevant to the **individual capex proposal**;".	Capital expenditure	3.7.25(3)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	This change arose out of an internal review and is intended to improve clarity.		
95	**Change in wording to individual capex proposal audit compliance clause** We have reworded cl 3.7.27(5)(a) to now read: "that the **individual capex proposal** complies, in all material respects, with the information requirements, key parameters and conditions in the approved **individual capex design proposal**; and". This change arose out of an internal review and is intended to improve clarity.	Capital expenditure	3.7.27(5)(a)
96	**Clarification that an individual capex allowance can be for subsequent regulatory periods** We have clarified in clause 3.7.28(2)(a) that an individual capex allowance determined by us can apply for subsequent regulatory periods. As part of our draft decision, we intended for this to be possible. This change arose internally and is intended to improve clarity.	Capital expenditure	3.7.28(2)(a)
97	**Clarification of Commission consultation on base capex proposal and connection capex baseline proposal** We have changed cl 3.8.4(1) by removing reference to "or application" in cl 3.8.4(1)(b) as it is superfluous and potentially confusing. We have also combined the previous 3.8.4(1)(d)-(e) into one subclause that requires us to "consult with interested persons". These changes arose out of an internal review and are intended to improve clarity.	Capital expenditure	3.8.4(1)(b), 3.8.4(1)(d), previous 3.8.4(1)(e)
98	**Change to capex major transaction wording** We have replaced the word "have" with "result in" in cl 3.9.7(1) and have made consequential changes to the start of subclauses (a)-(d) to reflect this language change. This change arose out of an internal review and is intended to improve clarity.	Regulatory processes and rules	3.9.7(1)

Section 2: Changes in the Further consultation determination that are explained in Chapter 3 of this paper

Purpose of this section

A9 This section explains changes we have made in the Further consultation determination that are explained in Chapter 3 of this paper. The table of changes below (Table A2) also indicates:

A9.1 which draft input methodology is affected by each change; and

A9.2 where in the Further consultation determination each change is located.

Table A2 Changes in the Further consultation determination that are explained in Chapter 3 of this paper

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
1	**Overarching changes resulting from the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 (the Regulations)** The Regulations were made on 18 November 2019, after our draft decisions reasons paper was issued. The implications of the Regulations for our input methodologies are explained broadly at paragraphs 2.33 to 2.50 of Chapter 2 of this paper. To give effect to our overarching further consultation decisions arising from the Regulations, we have made changes in our Further consultation determination in respect of the following implementation decisions: • our further consultation implementation decision to provide for classes of regulated FFLAS within the defined term "regulated FFLAS" (**Classes of regulated FFLAS**), as discussed at paragraphs 2.38 to 2.40 of Chapter 2 of this paper; • our further consultation implementation decision to introduce the reporting of multiple regulatory asset bases (**RAB**) under an information disclosure (**ID**) determination (**Multiple RABs under ID**), as discussed at paragraphs 2.41 to 2.43 of Chapter 2 of this paper; and	All IMs	1.1.4(2), 2.2.1, 2.2.2, 2.2.6(3), 2.2.6(10), 3.3.1(2)(a), and 3.4.1(1). Consequential changes made to 1.1.4(2), 2.2.6(8), 2.2.9(1)(b)(i)-(ii), 2.2.14(1), 2.3.2(2)(a)(i), 2.3.2(3)(a)(ii), 2.5.1(1)(c)(ii), 2.5.2(1)(b), 2.5.2(1)(c)(i)-(ii), 2.5.3(1)(d), 3.6.2(1)(b), 3.6.2(1)(c)(i)-(ii), 3.6.2(1)(d)(ii), 3.6.3(1)(d), 3.7.7(1)(d), 3.7.8(8), 3.7.9(1)(j), 3.7.15(1)(h), 3.7.22(3)(c), 3.8.5(2), 3.8.6(1)(a), 3.8.6(1)(q), 3.9.4(1)(b)(i)-(ii)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• our further consultation decision to (unless explicitly specified otherwise) specify that fibre asset values and regulatory tax allowance values are determined for each price-quality (**PQ**) path on the basis of actual values determined for a "base year" for "PQ FFLAS" (**Fibre asset and regulatory tax allowance values are based on actual values for a "base year"**), as discussed at paragraphs 2.44 to 2.48 of Chapter 2 of this paper. We discuss the changes made in our Further consultation determination below. *Classes of regulated FFLAS* In respect of this decision, we have: ○ introduced the following new terms to the Further consultation determination: ▪ "additional FFLAS class"; ▪ "FFLAS class'; ▪ "ID FFLAS'; ▪ "ID-only FFLAS"; and ▪ "PQ FFLAS"; and ○ changed the definition of "regulated FFLAS" to mean "any and all **FFLAS classes** as the case may be and context requires"; and ○ made consequential changes to the following definitions and clauses to clarify which "FFLAS class" is applicable for certain IMs: ▪ "availability"; ▪ "connection capex"; ▪ "customer service"; ▪ "downtime"; ▪ "fault"; ▪ "operating expenditure"; ▪ "outage"; ▪ "performance"; ▪ "provisioning";		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	▪ "restore"; ▪ "switching"; ▪ "total FFLAS revenue"; ▪ clause 2.5.1(1)(c)(ii); ▪ clause 2.5.2(1)(b); ▪ clause 2.5.2(1)(c)(i)-(ii); ▪ clause 2.5.3(1)(d); ▪ clause 3.6.2(1)(b); ▪ clause 3.6.2(1)(c)(i)-(ii); ▪ clause 3.6.2(1)(d)(ii); ▪ clause 3.6.3(1)(d); ▪ clause 3.7.7(1)(d); ▪ clause 3.7.8(8); ▪ clause 3.7.9(1)(j); ▪ clause 3.7.15(1)(h); ▪ clause 3.7.22(3)(c); ▪ clause 3.8.5(2); ▪ clause 3.8.6(1)(a) and (q); and ▪ clause 3.9.4(1)(b)(i)-(ii). *Multiple RABs under ID* In respect of this decision, we have: (a) introduced the following new terms to the Further consultation determination: ▪ "additional RAB"; ▪ "ID RAB"; ▪ "PQ RAB"; and ▪ "RAB"; (b) specified in clause 2.2.1(1) that an ID determination must require the disclosure of information for the "ID RAB" and "PQ RAB"; (c) specified in clause 2.2.1(2) that an ID determination may require the disclosure of information for any "additional RAB";		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	(d) clarified in clause 2.2.2 when an "initial RAB" is formed in respect of the "ID RAB", the "PQ RAB" and any "additional RAB(s)"; (e) made consequential changes to the following definitions so that they have different meanings depending on whether they contribute to the ID RAB or PQ RAB: ▪ "depreciation"; ▪ "deregulated asset"; ▪ "deregulated shared asset"; ▪ "deregulation adjustment"; and ▪ "unallocated depreciation"; and (f) made consequential changes to the following definitions and clauses so that they reflect how fibre assets may have more than one "initial RAB value" depending on which "FFLAS class" they are employed in the provision of: ▪ "initial RAB value"; ▪ "unallocated initial RAB value"; ▪ clause 2.2.6(8); ▪ clause 2.2.9(1)(b)(i)-(ii); ▪ clause 2.2.14(1); ▪ clause 2.3.2(2)(a)(i); and ▪ clause 2.3.2(3)(a)(ii). *Fibre asset and regulatory tax allowance values are based on actual values for a "base year"* In respect of this decision, we have: • changed clause 3.3.1(2)(a) to reflect that the applicable fibre asset values adopted under the ID IMs in respect of the "base year" are those determined for the "PQ RAB"; and • changed clause 3.4.1(1) to reflect that the applicable regulatory tax allowance values adopted under the ID IMs in respect of disclosure years after the "base year" are those determined for "PQ FFLAS".		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
2	**Meaning of "employ", "employed" and "employment"** *Our further consultation decision* In its submission on our draft determination (at p 3 of Appendix C), Chorus suggested that we should use "available for use" rather than "employed" in the definition of "commissioned". We consider that retaining reference to "employed" is still appropriate and have now defined "employ" to mean "available for use" to provide clarity for interested persons. We have bolded references to "employ", "employment" and "employed" as a consequential change throughout the Further consultation determination, including the following definitions: • "causal relationship"; • "commissioned"; • "core fibre asset"; • "dedicated asset"; • "depreciation"; and • "directly attributable". Our reasons for this change are explained starting at paragraph 3.65 of Chapter 3 of this paper. *Our draft decision* Our RPR draft determination did not define what "employ", "employed" and "employment" mean.	All IMs	1.1.4(2), 2.1.6(1)(d), 2.2.13(3)(e)-(f), Schedule A
3	**Connection capex - scope of connection capex unit costs** *Our further consultation decision* We have changed the scope of connection capex unit costs. To support this change, we: • Clarified in the new definition of "connection capex" that this capital expenditure must be "directly incurred by **Chorus** in relation to connecting new end-user premises, buildings or other access points";	Capital expenditure	1.1.4(2), 3.7.14(3), 3.7.18(2)(a)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• Changed the defined term "connection unit rate" to "connection capex unit cost" and made consequential changes to this term throughout the determination, including moving its position in the definition list to maintain alphabetical order; • Added a new defined term "non-linear connection costs", which "means costs for each **connection type** that are directly driven by the demand for new **end-user** connections but do not vary in a linear way with the number of new **end-user** connections"; • Added a new defined term "variable connection costs", which "means costs for each **connection type** that are directly driven by the demand for new **end-user** connections and that vary with each new **end-user** connection"; • Changed the information required in regulatory templates specified in cl 3.7.14(3) (previously cl 3.7.13(4)); and • Clarified in cl 3.7.18(2)(a) that the connection capex annual report must include actual connection capex unit costs by connection type for the regulatory year which is the subject of the annual report, including separate identification of the non-linear connection costs. Our reasons for these changes are explained at paragraphs 3.195 to 3.206 of Chapter 3 of this paper. *Our draft decision* Our draft decision did not mention direct connection costs.		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
4	**Introduction of Crown financing building block** We have introduced an annual avoided cost of Crown financing building block which has resulted in several changes to the Further consultation determination. These changes appear in the following definitions and clauses (some of which are new): • "cost of debt"; • "cost of equity"; • 2.3.1(7); • 2.4.10; • 2.4.11; and • 3.5.11. Our reasons for these changes are explained starting at paragraph 3.8 of Chapter 3 of this paper.	Taxation and cost of capital	1.1.4(2), 2.3.1(7), 2.4.10, 2.4.11, 3.5.11
5	**Changes to ID-only FFLAS depreciation** *Our further consultation decision* We have made several changes to cls 2.2.8(4)-(8), and the definitions of "depreciation" and "unallocated depreciation" to provide appropriate flexibility for depreciation relating to FFLAS subject to ID-only regulation. In particular, the changes give effect to the policy that regulated providers subject to both ID and PQ have flexibility to choose a depreciation approach consistent with the time profile of revenue recovery (ie, consistent with the requirements that apply to regulated providers subject to ID only). These changes are necessary to give effect to regulation 6 of the Regulations, which exempts certain Chorus' FFLAS from PQ, and as such, leaves a category of Chorus' FFLAS subject to ID only. We have also made consequential changes to cls 2.2.8(1) and 2.2.9(1). These changes are further explained starting at paragraph 3.101 of Chapter 3 of this paper. *Our draft decision*	Asset valuation	1.1.4(2), 2.2.8(1), 2.2.8(4)-(8), 2.2.9(1)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	In our draft decision, under the ID IMs, in respect of regulated fibre service providers subject to both information disclosure and price-quality regulation, "depreciation" was treated the same for all fibre assets, regardless of whether a regulated provider was subject to information disclosure regulation in respect of FFLAS that was not subject to price-quality regulation.		
6	**Allocations of "asset values" and "operating costs" to classes of regulated FFLAS** *Our further consultation decision* We have introduced further allocations for classes of "regulated FFLAS". These further allocations will occur as follows: 1. In respect of regulated fibre service providers subject to both ID regulation and PQ regulation: • where operating costs/asset values are allocated to regulated FFLAS, the operating costs or asset values must be further allocated as follows: ▪ operating costs/asset values that are directly attributable to the provision of: • "PQ FFLAS" must be allocated to "PQ FFLAS"; • "ID-only FFLAS" must be allocated to "ID-only FFLAS"; ▪ in respect of operating costs/asset values that are not directly attributable to the provision of "PQ FFLAS" or "ID-only FFLAS", cost allocators/asset allocators must be used to allocate operating costs/asset values; • If we specify an "additional FFLAS class": ▪ any operating costs/asset values allocated to "PQ FFLAS" that: • are directly attributable to that additional FFLAS class must be further allocated to that additional FFLAS class;	Cost allocation and consequential changes to asset valuation	1.1.4(2), 2.1.3-2.1.4, 2.1.5(2), 2.2.3(2)(b), 2.2.5(4)(b) and 3.2.1(2), 3.2.1(4)-(6), 3.2.1(10)-(14)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• are not directly attributable to that additional FFLAS class must be further allocated using cost allocators/asset allocators to allocate operating costs/asset values; ▪ any operating costs/asset values allocated to "ID-only FFLAS" that: • are directly attributable to that additional FFLAS class must be further allocated to that additional FFLAS class; • are not directly attributable to that additional FFLAS class must be further allocated using cost allocators/asset allocators to allocate operating costs/asset values. 2. In respect of regulated providers subject only to ID regulation: • If we specify an "additional FFLAS class": ▪ any operating costs/asset values allocated to "regulated FFLAS" that: • are directly attributable to that additional FFLAS class must be further allocated to that additional FFLAS class; • are not directly attributable to that additional FFLAS class must be further allocated using cost allocators/asset allocators to allocate operating costs/asset values; These changes have also required consequential changes: 1. We have specified for ID purposes that a regulated provider must update the allocator values it uses to apply cost allocators and asst allocators used for the applicable FFLAS class at least once every 12 months.		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	2. In respect of regulated fibre service providers subject to both ID regulation and PQ regulation, we have clarified that the "financial loss" asset must be treated as being directly attributable to "PQ FFLAS". 3. In respect of regulated providers subject only to ID regulation, we have clarified that the "financial loss asset" must be treated as being directly attributable to "regulated FFLAS". 4. We have clarified the definition of "initial RAB value" and "closing RAB value" so that further values in respect of FFLAS classes will be determined. Our reasons for these changes are explained at paragraphs 3.120, 3.129-3.137, and 3.144-3.152 of Chapter 3 of this paper. *Our draft decision* In our draft decision, we did not specify allocations for FFLAS classes allocated to regulated FFLAS.		
7	**Changes to improve the clarity and workability of reconsideration provisions** Within the RPR IM we have restructured and simplified the regime for reconsideration of the PQ path (Subpart 9 of Part 3 of the IMs) to improve its coherence and ease-of-use. Rather than arising from submissions, these changes relate primarily to concerns we have about applying the provisions in practice. While the drafting changes we propose are substantial, in general, these changes do not change the policy intent of the reconsideration provisions, but rather, better implement the intent of the provisions published in our draft decision. These changes include the addition of a new defined term "reopener event" in cl 1.1.4(2). Our reasons for these changes are explained at paragraphs 3.248-3.264 of Chapter 3 of this paper.	Regulatory processes and rules	1.1.4(2), 3.9.1-3.9.9
8	**Changes to "deregulation adjustment" and "sale adjustment" definitions and related clauses** *Our further consultation decision*	Asset valuation	1.1.4(2), 2.2.6(3), 2.2.6(10), 2.2.6(12)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference

	We have made changes to the wording of relevant definitions and clauses related to the "deregulation adjustment" and "sale adjustment" which impact on the closing RAB value of the "financial loss asset".
	
	Our changes include:
	
	• clarifying that:
	  ○ in respect of the ID RAB, the "deregulation adjustment" will be nil where no service has been deregulated from ID regulation in regulations made under s 226 of the Act in a disclosure year;
	  ○ in respect of the PQ RAB, the "deregulation adjustment" will be nil where no service has been deregulated from PQ regulation in regulations made under s 226 of the Act in a disclosure year;
	  ○ in respect of the ID RAB, the "deregulation adjustment" for a disclosure year is only in respect of services deregulated from ID regulation in regulations made under s 226 of the Act in that disclosure year; and
	  ○ in respect of the PQ RAB, the "deregulation adjustment" for a disclosure year is only in respect of services deregulated from PQ regulation in regulations made under s 226 of the Act in that disclosure year;
	• creating a new defined term – "UFB-related core fibre asset";
	• changing the definitions of "deregulated asset value", "deregulated shared asset value" (previously "partly deregulated asset value") and "sold asset" to only apply in relation to "UFB-related core fibre assets", rather than "core fibre assets"; and
	• expanding the definition of "deregulated shared asset" (previously "partly deregulated asset") to clarify that:		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	○ in respect of the ID RAB, an adjustment will only apply where services (or circumstances for that service) are no longer subject to ID regulation; and ○ in respect of the PQ RAB, an adjustment will only apply where services (or circumstances for that service) are no longer subject to PQ regulation. *Our draft decision* In our draft decision: • we did not specify how the "deregulation adjustment" would operate for deregulation in respect of either ID regulation or PQ regulation; • we did not clarify when a "deregulation adjustment" value would be nil; and • the terms "deregulated asset value", "partly deregulated asset" and "partly deregulated asset value" applied in respect of all core fibre assets. These changes are further explained starting at paragraph 3.89 of Chapter 3 of this paper.		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
9	**Change requiring a different geographic breakdown of forecast expenditure rather than UFB initiative areas** *Our further consultation decision* We have changed the type of capital expenditure breakdown Chorus must provide for the base capex sub-category in cl 3.7.8(7) to be: "…one or more geographical locations including: (a) urban areas; (b) rural areas; and (c) any further or other geographical breakdown set out in the **regulatory templates**." We have consequently deleted the defined terms "LFC" and "LFC fibre network" from cl 1.1.4(2) as they are now superfluous. Our reasons for these changes are explained at paragraphs 3.211 to 3.215 of Chapter 3 of this paper. *Our draft decision* The capital expenditure breakdown in our RPR draft determination was: "the following geographical locations: (a) **Chorus UFB initiative** areas; (b) non-**UFB initiative** areas (such as rural areas); and (c) areas where **LFCs** other than **Chorus** have an **LFC fibre network**."	Capital expenditure	1.1.4(2), 3.7.8(7)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
10	**Materiality assessment as part of applying cap on shared costs** *Our further consultation decision* Our further consultation decision is to revise how the existing cap on the allocation of shared costs to regulated FFLAS applies by: • clarifying the wording of the original provision (now cl 2.1.5(6)) so it applies to the allocation of an asset value or an operating cost not directly attributable; • clarifying that the cap on the allocation of shared costs to regulated FFLAS also applies for the purposes of specifying a price-quality path (clause 3.2.1(15)); and • adding a new subclause for the ID IMs (2.1.5(7)) and PQ IMs (3.2.1(16)) that provides that the cap on the allocation of shared costs under clause 2.1.5(6) (in respect of ID) or clause 3.2.1(15) (in respect of PQ) only applies to an allocation or allocations of an asset value or an operating cost that would have a material effect on the total asset values or total operating costs allocated to regulated FFLAS. The effect of the main change immediately above is that the cap on the allocation of shared costs to regulated FFLAS only applies if the relevant allocation of operating costs or an asset value would have a "material effect" on the total asset values or operating costs allocated to regulated FFLAS. Our reasons for this change are explained at paragraphs 3.171 to 3.184 of chapter 3 of this paper. *Our draft decision* In our draft decision, clause 2.1.3(4) (now clause 2.1.5(6)) of our RPR draft determination required that "the allocation of common costs to **regulated FFLAS** must not be higher than the unavoidable costs that would be incurred if the **regulated provider** were to cease supplying **services that are not regulated FFLAS**." In our draft decision, we did not include an equivalent clause in the PQ IMs in error.	Cost allocation	2.1.5(6)-(7)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
11	**Change to defined term "current value of initial core fibre asset base"** *Our further consultation decision* We have changed the meaning of the term "current value of initial core fibre asset base" to only relate to "UFB-related core fibre assets", not "core fibre assets". *Our draft decision* In our RPR draft determination, all current core fibre assets were included in the "current value of initial core fibre asset base". This change arose out of an internal review and is further explained starting at paragraph 3.89 of Chapter 3 of this paper.	Asset valuation	2.2.6(7)
12	**Change to defined term "initial value of initial core fibre asset base"** *Our further consultation decision* We have changed the meaning of the term "initial value of core fibre asset base" to only relate to "UFB-related core fibre assets", not "core fibre assets". *Our draft decision* In our RPR draft determination, all core fibre assets at implementation date were included in the "initial value of core fibre asset base". This change arose out of an internal review and is further explained starting at paragraph 3.89 of Chapter 3 of this paper.	Asset valuation	2.2.6(8)
13	**Detail added to minimum levels of specificity required to describe assets in RAB** *Our further consultation decision* We have made changes to the minimum level of asset specificity that regulated providers must supply where recording asset values in the RAB. Specifically, we have changed cl 2.2.14(1) to list minimum levels of specificity that must be satisfied in respect of the financial loss period and on or after the implementation date. We have also made changes and added more detail to the minimum levels of specificity described in Table A.1 of Schedule A of the Further consultation determination.	Asset valuation	2.2.14 and Schedule A

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	Our changes include: • changing the "network layer" category to require core fibre assets/collections of core fibre assets to correspond to layer 1 and layer 2; • changing the "asset class" category to reflect generally accepted accounting practice (**GAAP**) depreciation categories; • changing the "geographic location" category to reflect the location recorded in a regulated provider's asset management or geographical information systems; • changing the "shared with other parties" category to require information sufficient to permit an objectively justifiable and demonstrably reasonable assessment of assets/operating costs by the regulated provider and other parties; • changing the "shared with other services" category to now be called the "shared with **services that are not regulated FFLAS** or **FFLAS** not regulated under Part 6 of the **Act**", where this category requires information sufficient to permit an objectively justifiable and demonstrably reasonable assessment of the factors influencing the use of the core fibre asset or the circumstances when a cost driver leads to an operating cost being incurred, where such information must be kept current; • deleting the "special assets" category; and • replacing the "Non-UFB initiative assets" category with the "Related to additional RABs" category, where this category requires information sufficient to permit an objectively justifiable and demonstrably reasonable assessment of assets relating to: ○ fibre assets in any additional RAB; ○ a subset of fibre assets relating to any additional RAB, where the **Commission** may from time to time specify subsets of **core fibre assets** for the purposes of Part 6 of the **Act**; or		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	○ fibre assets that were not part of the UFB initiative. These changes are further explained starting at paragraph 3.105 of Chapter 3 of this paper. *Our draft decision* In our draft decision: • the "network layer" category required assets to be specified to layer 1 and layer 2; • the "asset class" category required "feeder fibre, distribution fibre, roadside cabinet, customer premises, and equipment"; • the "geographic location" category required "address, building, area"' • the "shared with other parties" category required "shared with entity #"; • the "shared with other services" category required "shared with power lines, copper telco cables/assets"; • we required a "special assets" category which included "assets supporting unbundling, assets relating to a point of interconnection"; and • we required a "non-UFB initiative assets" category which included "core fibre assets not employed in the provision of UFB FFLAS".		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
14	**Transitional forecast PQ RAB for the first regulatory period** *Our further consultation decision* Our further consultation decision is to introduce a transitional provision for valuing fibre assets for the purposes of specifying the first price-quality path. Subject to clauses 3.3.2-3.3.4, fibre asset values will be determined for the first price-quality path by: • adopting actual values calculated under the ID IMs for the PQ RAB in respect of the base year of a regulated provider obtained by the Commission; and • applying forecasts to those actual values to determine the forecast values required as at implementation date by applying the ID IMs and cost allocation IMs for PQ paths specified in clause 3.2.1. As the PQ RAB (which includes the financial loss asset) for the purposes of the ID IMs is not formed until the implementation date (1 January 2022), we have created a transitional requirement to allow the actual PQ RAB values used to determine the first price-quality path to be based on values for "regulatory year 2019" (the 12-month period ending 31 December 2019). We have done this by specifying in clause 3.3.1(6)(c) that certain references in the ID IMs to "the **implementation date**" mean "1 January 2019" and to "the **disclosure year** 2022" mean "**regulatory year** 2019". Our reasons for this change are explained starting at paragraph 3.75 of Chapter 3 of this paper. Not specifying IMs for a transitional forecast RAB for the first regulatory period was an error in our draft decision. *Our draft decision* Under clause 3.3.1 of our RPR draft determination, we specified IMs for the purposes of determining values used for price-quality paths, where fibre asset values are determined by adopting actual values using the ID IMs in respect of the base year and applying forecasts. We did not receive submissions on this matter.	Asset valuation	3.3.1(2), 3.3.1(6)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
15	**Change to audit and certification requirements** *Our further consultation decision* We have made the following changes to capex proposal audit and certification requirements: • Removed the requirement that information provided must be true and correct in cl 3.7.3(1) (previously cl 3.7.3(1)(b)); • Required that a capex proposal being certified must comply, in all material respects, with the requirements set out in Part 3 of the IMs, rather than just Subpart 7; • Replaced the general audit requirements for capex proposals with more detailed requirements in cl 3.7.4(1); and • Replaced the words "The **CEO** of **Chorus**" with "At least 2 **directors** of **Chorus**" in cl 3.7.19(1). Our reasons for these changes are explained at paragraphs 3.221 to 3.232 of chapter 3 of this paper. *Our draft decision* The capex proposal audit and certification requirements in our RPR draft determination were less specific.	Capital expenditure	3.7.3(1), 3.7.4(1), 3.7.19(1)
16	**Change to capex proposal transitional arrangements for first regulatory period** *Our further consultation decision* We have made the following changes relating to capex proposal processes and timeframes: • Distinguished between the first regulatory period and the second and subsequent regulatory periods when specifying when Chorus must submit a base capex proposal in cl 3.7.8(1) by requiring that a base capex proposal for the first regulatory period must be submitted to us "as soon as reasonably practicable but no later than 31 December 2020";	Capital expenditure	3.7.8(1), 3.7.8(5)(a), 3.7.8(9)(a), 3.7.12(1), 3.7.14(1), 3.7.14(5)(a), 3.7.14(7)(a), 3.7.20(1)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• Replaced the words "before the first **working day** in August which is at least 17 months before the start of the **regulatory period**" with "as soon as it is reasonably practicable" in cls 3.7.8(5)(a) and 3.7.14(5)(a); • Replaced the words "at least 16 months before the start of the **regulatory period**" with "as soon as it is reasonably practicable" in cls 3.7.8(9)(a) and 3.7.14(7)(a); • Distinguished between the first regulatory period and the second and subsequent regulatory periods when specifying when the Commission must determine a base capex allowance in cl 3.7.12(1) by requiring that a base capex allowance for the first regulatory period must be determined by us "no later than 3 months before the start of that **regulatory period**"; • Deleted reference to "at least 14 months before the start of the **regulatory period**" from clause 3.7.14(1) as the reference to "at the same time that it submits the **base capex proposal**" made the reference to "14 months before the start of the **regulatory period**" superfluous; and • Distinguished between the first regulatory period and the second and subsequent regulatory periods when specifying when the Commission must determine a connection capex baseline allowance in cl 3.7.20(1) by requiring that a connection capex baseline allowance for the first regulatory period must be determined by us "no later than 3 months before the start of that **regulatory period**". Our reasons for these changes are explained at paragraphs 3.241 to 3.247 of Chapter 3 of this paper.		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	Our draft decision Our draft decision did not distinguish between the first regulatory period and the second and subsequent regulatory periods when requiring capex proposal-related submissions by Chorus and determinations by the Commission and was specific as to how many months before the start of the regulatory period submissions and determinations had to be made.		

Section 3: Changes in the Further consultation determination that are not explained in Chapter 3 of this paper

Purpose of this section

A10 This section explains changes we have made in the Further consultation determination that are not explained in Chapter 3 of this paper. The table of changes below (Table A3) also indicates:

A10.1 which draft input methodology is affected by each change; and

A10.2 where in the Further consultation determination each change is located.

Table A3 Changes in the Further consultation determination that are not explained in Chapter 3 of this paper

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
1	**Change to "availability" definition** *Our further consultation decision* We have changed the definition of "availability" in cl 1.1.4(2). In our Further consultation determination, "availability" is defined as follows: "means: (a) for the purpose of Part 2, the extent to which **ID FFLAS** is not subject to **downtime**; and (b) for the purpose of Part 3, the extent to which **PQ FFLAS** is not subject to **downtime**;". In its submission on our draft determination (at p 2 of Appendix C), Chorus submitted that "availability" is a generic term and should not be defined in relation to a "fibre network" or in relation to "regulated FFLAS". While we agree with Chorus that the definition should not relate solely to the fibre network (as availability may be impacted by factors outside the fibre network), we consider it necessary to retain regulated FFLAS in the definition, as the quality dimensions IM relates to regulated FFLAS. We have changed the definition accordingly.	Quality dimensions	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	Our draft decision In our RPR draft determination "availability" was defined as "means the extent to which a **fibre network** is available, including the extent to which an **access seeker** or an **end-user** can use **regulated FFLAS**".		
2	**Do not specify regulatory balance date for ID disclosure year in the IM** *Our further consultation decision* In submissions on our draft decision, Enable and Ultrafast (at pp 2-3) and Northpower (at pp 2-3) disagreed with our decision to impose a single 31 December balance date for all FFLAS suppliers. Their submissions contained details about the difficulties they would face in complying with this obligation and the costs involved. Our further consultation decision is to define "disclosure year" as follows: "means: (a) for the purposes of specifying the price-quality path for the **first regulatory period**, a 12-month period ending on 31 December, where if the term "disclosure year" is combined with a year, the 12-month period ending on 31 December of that year (for instance, "**disclosure year**" 2019 means the 12-month period ending on 31 December 2019); and (b) in all other instances, a 12-month period ending on the date specified in an **ID determination**;" We consider that this decision is appropriate because we can set regulatory balance dates in an ID determination in a way that reduces regulatory burden, while still supporting ID and PQ. For example, we may require regulated providers to report on certain information as at their financial reporting balance date, and other information at a uniform date on a quarterly or half-yearly basis.	Regulatory processes and rules	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	Our draft decision Our draft decision was to define disclosure year as follows: "means a 12-month period ending on 31 December, where if the term "disclosure year" is combined with a year, the 12-month period ending on 31 December of that year…"		
3	**Change to "downtime" definition** *Our further consultation decision* In its submission on our draft determination (at p 5 of Appendix C), Chorus suggested a change to the definition of "downtime". Specifically, Chorus submitted that we remove reference to "regulated FFLAS" from this definition (and others). We disagree that regulated FFLAS should be removed - as the quality dimensions IM relates to regulated FFLAS, we consider it is appropriate to define terms by reference to it. However, we agree that the definition should be changed to clarify the relationship between it and other quality dimensions IM defined terms (such as "availability", "fault" and "outage") as we recognise that our original drafting may have caused ambiguity. We have therefore changed the definition of "downtime" to read as follows: "downtime means: (a) for the purpose of Part 2, the length of time an **access seeker** or **end-user** experiences a **planned outage** or **unplanned outage** to their **ID FFLAS**; and (b) for the purpose of Part 3, the length of time an **access seeker** or **end-user** experiences a **planned outage** or **unplanned outage** to their **PQ FFLAS**;". *Our draft decision* In our RPR draft determination "downtime" was defined as follows: "means the length of time an **access seeker** or **end-user** experiences an **outage** to their **regulated FFLAS**".	Quality dimensions	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
4	**Remove false or misleading information reopener** *Our further consultation decision* In submissions on our draft decision, 2degrees (at p 2) and Vocus (at pp 4-5) submitted that we should remove the "knowingly" provided requirement from the false or misleading information reopener. Our further consultation decision is to remove the false or misleading information reopener. We consider that this decision is appropriate as the false or misleading information reopener is no longer needed, since all situations where it may be used are covered by the "error event" reopener. We have consequently deleted the defined term "false or misleading information" from cl 1.1.4(2). *Our draft decision* In our draft decision we set out that price-quality paths may be reconsidered when false or misleading information has been provided, defined as follows under cl 3.9.6(2) of our RPR draft determination: "'false or misleading information' means- (a) false or misleading information relating to the making or amending of the **PQ determination** has been knowingly- (i) provided by a **regulated provider** or any of its agents to the **Commission**; or (ii) disclosed under an **ID determination**; and **(b)** the **Commission** relied on that information in making or amending the **PQ determination**."	Regulatory processes and rules	1.1.4(2), deleted 3.9.8(1)(a)(vi) (previous cl 3.9.6(1)(a)(vi)), deleted 3.9.8(2) (previous cl 3.9.6(2)), deleted cl 3.9.9(3)(c) (previous cl 3.9.7(3)(c))
5	**Change to "fault" definition** *Our further consultation decision* In its submission on our draft determination (at p 5 of Appendix C), Chorus suggested that the definition of "fault" should be defined as: "…means an unplanned outage of a service caused by a matter for which the regulated provider is responsible".	Quality dimensions	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	We agree that faults should be defined with reference to unplanned outages (rather than just outages) but also consider that faults can render regulated FFLAS unusable through reduced performance. We have changed the definition of "fault" to read as follows: "means: (a) for the purpose of Part 2: (i) an **unplanned outage** in **ID FFLAS**; or (ii) a reduction in the performance of **ID FFLAS** below any levels specified in an **ID determination**; and (b) for the purpose of Part 3: (i) an **unplanned outage** in **PQ FFLAS**; or (ii) a reduction in the performance of **PQ FFLAS** below any levels specified in a **PQ determination**;". *Our draft decision* In our RPR draft determination "fault" was defined as follows: "means an **outage** to an **access seeker's** or **end-user's regulated FFLAS** caused by a **fibre network** failure or system failure, and excludes: (a) service **outages** initiated by that **end-user** or an **access seeker**: and (b) **end-user** or **access seeker** owned **customer premises equipment outages**;".		
6	**Apply cost allocation to pass-through costs** *Our further consultation decision* In submissions on our draft decision, 2degrees (at p 3), Spark (at pp 1-3), and Vocus (at pp 5-6) submitted in favour of applying cost allocation to pass-through costs, citing the inappropriateness of allowing levy costs faced by Chorus and LFCs in respect of non-FFLAS services to be included in regulated FFLAS costs and revenues. Our further consultation decision is to apply the cost allocation rules to pass-through costs by including them in operating costs. This is determined in cl 3.1.2(2) as follows:	Regulatory processes and rules	1.1.4(2), 3.1.2(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	"If the **operating cost** under subclause (1) relates to both **regulated FFLAS** and **services that are not regulated FFLAS** supplied by the **regulated provider**, only the proportion of the **operating cost** allocated to **regulated FFLAS** and **PQ FFLAS** (where applicable) according to the following requirements is a 'pass-through cost': (a) if the cost is an actual **operating cost**, it must be allocated according to clauses 2.1.1 and 2.1.3 (where applicable); and (b) if the cost is a forecast **operating cost**, it must be allocated according to clause 3.2.1(1), (2) (where applicable), and (4)." This has also required a consequential deletion of the exclusion for "pass-through costs" in the definition of "operating cost". We consider that this decision is appropriate because pass-through costs are often shared between regulated and other businesses. For example, the TDL and TRL are allocated amongst liable persons based on qualifying revenue. As such, there may be circumstances in which cost allocation rules should apply. *Our draft decision* In our draft decision, we did not explicitly apply cost allocation to pass-through costs.		
7	**Clarification of "ordering" definition** *Our further consultation decision* In its submission on our draft determination (at p 6 of Appendix C), Chorus suggested a change to the definition of "ordering". It submitted that ordering is not only about new connections and can also relate to other types of orders. We agree and have changed the definition to read as follows: "means:	Quality dimensions	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	(a) for the purpose of Part 2, processing and management of a request from an **access seeker** to provide **ID FFLAS**, change **ID FFLAS**, change an **end-user's ID FFLAS** connection from one **access seeker** to another **access seeker**, and disconnect **ID FFLAS**, including how the request is accepted or rejected; and (b) for the purpose of Part 3, processing and management of a request from an **access seeker** to provide **PQ FFLAS**, change **PQ FFLAS**, change an **end-user's PQ FFLAS** connection from one **access seeker** to another **access seeker**, and disconnect PQ **FFLAS**, including how the request is accepted or rejected". *Our draft decision* In our RPR draft determination "ordering" was defined as follows: "means the process by which a **regulated provider** manages a request from an **access seeker** to connect an **end-user** to the **fibre network**, including how it accepts or rejects requests".		
8	**Addition of new terms "planned outage" and "unplanned outage"** *Our further consultation decision* We have added two new defined terms, "planned outage" and "unplanned outage". The new definitions are as follows: "planned outage" means "a scheduled **outage** that a **regulated provider** has notified to **access seekers**: (a) in advance; and (b) in accordance with relevant procedures as: (i) agreed between the **regulated provider** and **access seeker**; (ii) prescribed in regulations made under Part 6 of the **Act**; or (iii) prescribed in a determination made under s 170 of the **Act**". "unplanned outage" means "an **outage** that is not a **planned outage**".	Quality dimensions	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	We added these definitions in an attempt to clarify the relationship between "availability", "downtime", "fault" and "outage", as we recognise that our original drafting may have caused ambiguity. We recognise that in setting "faults" and "availability" as quality dimensions, it is necessary to clearly delineate between planned and unplanned outages. *Our draft decision* In our RPR draft determination, "planned outage" and "unplanned outage" were not defined.		
9	**Clarification of "provisioning" definition** *Our further consultation decision* In its submission on our draft determination (at p 7 of Appendix C), Chorus submitted that "[p]rovisioning processes will generally include access seeker and end-user actions. Accordingly, the definition of "provisioning" should be defined so as to clearly relate to the regulated provider's provisioning actions, as opposed to the whole process of getting the service up and running." Though we have not adopted Chorus' suggested wording, we agree that the definition needs updating and have changed the definition to read as follows: "means: (a) for the purpose of Part 2, the process by which a **regulated provider** installs, activates, changes (including bulk migrations from one type of **ID FFLAS** to another) and disconnects **ID FFLAS**; and (b) for the purpose of Part 3, the process by which a **regulated provider** installs, activates, changes (including bulk migrations from one type of **PQ FFLAS** to another) and disconnects **PQ FFLAS**;". We made this change to clarify that: • "provisioning" may be broader than regulated FFLAS connections; • disconnections are now covered under "provisioning"; and • changes under "provisioning" would include bulk migrations from one type of ID/PQ FFLAS to another.	Quality dimensions	1.1.4(2), 2.5.2(1)(b)(ii), 2.5.2(1)(c), previous 2.5.2(1)(c)(i)-(ii), 3.6.2(1)(b)(ii), 3.6.2(1)(c), previous 3.6.2(1)(c)(i)-(ii)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	We have also made a consequential change to cls 2.5.2(1)(b)-(c) and 3.6.2(1)(b)-(c) by moving the example text "the time to disconnect from one type of **[ID/PQ] FFLAS** and connect to another" from subclause (c) (under the heading "switching") to subclause (b) (under the heading "provisioning"). We have also made consequential changes to the rest of these clauses to adjust for this change, and have added the words "the time to disconnect **[ID/PQ] FFLAS** from a losing **access seeker** and connect to a gaining **access seeker**" to cls 2.5.2(1)(c) and 3.6.2(1)(c). *Our draft decision* In our RPR draft determination "provisioning" was defined as follows: "means the process by which a **regulated provider** connects an **end-user** or **access seeker** to the **fibre network** and includes installing, activating or modifying a **regulated FFLAS** connection".		
10	**Clarify definition to adjust total FFLAS revenue for customer discounts in accordance with GAAP** *Our further consultation decision* In submissions on our draft decision (at pp 13-14 of Appendix C), Chorus submitted that the Commission should amend the definition of "total FFLAS revenue" to clarify our intention to apply GAAP treatment to revenue. Our further consultation decision is to define "total FFLAS revenue" as follows: "means all revenue derived by a **regulated provider** from: (a) the provisioning of **PQ FFLAS**; (b) in nominal terms, excluding **GST**; and (c) including discounts and rebates taken up by customers, adjusted in accordance with **GAAP**". We consider that this decision is appropriate because it clarifies our policy intent. *Our draft decision* In our draft decision we defined total FFLAS revenue as follows:	Regulatory processes and rules	1.1.4(2)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	"means all revenue derived by **Chorus** from the provision of **regulated FFLAS**, in nominal terms exclusive of **GST**, and must include discounts and rebates taken up by customers".		
11	**Splitting of "value of commissioned asset" into pre- and post-implementation date for core fibre assets** *Our further consultation decision* In its submission on our draft determination (at p 14 of Appendix C), Chorus suggested that we split the concept of "value of commissioned asset" in two to better address and clarify the difference between pre- and post-implementation assets. We agree and have made the following changes: • The definition of "value of commissioned asset" for the purpose of core fibre assets in Part 2 is now split in two and reads as follows: "**value of commissioned asset** (b) means the value determined, for the purpose of Part 2, in respect of **core fibre assets commissioned** prior to the **implementation date**, in accordance with clause 2.2.13(1); (c) means the value determined, for the purpose of Part 2, in respect of **core fibre assets commissioned** on or after the **implementation date**, in accordance with clause 2.2.13(2);" • Clause 2.2.13(1)-(2) (Value of commissioned assets) has been changed to reflect the above. Specifically, subclause (1) now relates to core fibre assets commissioned prior to the implementation date and reads as follows: (1) subject to subclause (3) and (4), 'value of commissioned asset', in relation to a **core fibre asset** with a **commissioning date** prior to the **implementation date** (including a **core fibre asset** in respect of which **capital contributions** were received, or a **vested asset**), means- (a) the cost as of the **commissioning date**-	Asset valuation and taxation	1.1.4(2), 2.2.13(1) and (2) with consequential changes to cl 2.2.13(3)-(4)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	(i) incurred by a **regulated provider** under **GAAP** in constructing or acquiring the **core fibre asset**, net of **capital contributions**; or (ii) if **Chorus** owned the **core fibre asset** before 1 December 2011, recorded by **Chorus** for the **core fibre asset** in its published general purpose financial statements as of 1 December 2011; and (b) adjusting that cost for accumulated depreciation and **impairment losses** (if any) recognised by the **regulated provider** (ignoring any accounting adjustment for **Crown financing**), as at the **implementation date**, under **GAAP**. • New subclause (2) relates to core fibre assets commissioned after the implementation date and reads as follows: (2) Subject to subclause (3) and (4), 'value of commissioned asset', in relation to a **core fibre asset** with a **commissioning date** on or after the **implementation date** (including a **core fibre asset** in respect of which **capital contributions** were received, or a **vested asset**), means- (a) the cost as of the **commissioning date**- (i) incurred by a **regulated provider** under **GAAP** in constructing or acquiring the **core fibre asset**, net of **capital contributions**; or (ii) if **Chorus** owned the **core fibre asset** before 1 December 2011, recorded by **Chorus** for the **core fibre asset** in its published general purpose financial statements as of 1 December 2011; and		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	(b) djusting that cost for accumulated depreciation and **impairment losses** (if any) recognised by the **regulated provider** (ignoring any accounting adjustment for **Crown financing**), as at the **commissioning date**, under **GAAP**. *Our draft decision* In our draft decision, "value of commissioned assets" did not distinguish between core fibre assets commissioned before implementation date and core fibre assets commissioned after implementation date.		
12	**Addition of default asset life for financial loss asset** *Our further consultation decision* We have added a default asset life for the financial loss asset by adding a new subclause (d) to cl 2.2.10(1). The new subclause reads as follows: "(d) the **financial loss asset**, either: (i) the period equivalent to the weighted average life of the **UFB-related core fibre assets** in an **initial RAB** as at the **implementation date**, where the weights used are the **initial RAB values** of those **UFB-related core fibre assets**; or (ii) a period adopted by the **regulated provider** under an alternative method;" This change was made in response to a submission by Enable and Ultrafast (at paragraph13.3). *Our draft decision* In our draft decision, the financial loss asset's asset life was its asset life "adopted by the regulated provider under GAAP'.	Asset valuation	2.2.10
13	**Change to assessment of network spares to be consistent with good telecommunications industry practice** *Our further consultation decision*	Asset valuation	2.2.13(3)(c)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	In its submission on our draft determination (at pp 14-15 of Appendix C), Chorus suggested that when determining the number of network spares held, the relevant standard is the number consistent with "good telecommunications industry practice". We agree and have changed cl 2.2.13(3)(c) to now read: "a network spare is nil, where it is not held in accordance with **good telecommunications industry practice**." *Our draft decision* Our RPR draft determination referred to "historical reliability" rather than good telecommunications industry practice.		
14	**Change to optional and mandatory quality dimensions** *Our further consultation decision* We have changed two optional quality dimensions, "faults" and "customer service", into mandatory quality dimensions. We have done this by deleting the two quality dimensions from cls 2.5.2 and adding them to 2.5.1. This change was made in response to the 'joint access seeker' submission by 2degrees, Spark, Vocus and Vodafone (at pp 11 and 28), Nova's submission (at p 5) and 2degrees' submission (at p 28) that "faults" and "customer service" should be mandatory quality dimensions. While we agree these dimensions should be mandatory for ID, we have decided not to make them mandatory under PQ, as quality standards may not be required for these dimensions. We have also deleted the words "one or more of" from cl 2.5.1(1). This was drafted in error and our original policy intent was for all the listed quality dimensions to be specified. *Our draft decision* The above quality dimensions were optional in our RPR draft determination. Our draft decision was that "faults" and "customer service" were optional quality dimensions.	Quality dimensions	2.5.1, 2.5.1(1)(c)-(d), 2.5.2

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
15	**Include local authority rates and dispute membership costs as pass-through costs** *Our further consultation decision* In submissions on our draft decision, Chorus (at pp 9-10 of Appendix C and p 2 of its cross-submission), Enable and Ultrafast (at p 4), Vector (at p 2) and the ENA (at pp 1-2) disagreed with our draft decision to exclude local body rates and disputes scheme costs from pass-through costs. Our further consultation decision is to include these costs as pass-through costs, along with levies. As such, we have adjusted the wording in cl 3.1.2(1) to apply to an "operating cost payable" rather than "a levy payable" and added the following text in relation to rates and dispute resolution schemes: "…rates on **fibre assets** paid or payable by a **regulated provider** to a **local authority** under the Local Government (Rating) Act 2002; and a fixed membership fee relating to, or fixed amount payable as a member of: Utilities Disputes Limited's dispute resolution scheme; the Telecommunications Dispute Resolution Scheme; and any other dispute resolution scheme specified in a **PQ determination**." We consider that this decision is appropriate because: • we agree with arguments raised in submissions about the sources and magnitude of uncertainty versus the degree of control; and • for disputes schemes, the disincentive to participate created by treating these costs as ordinary opex is not in the interests of end-users. *Our draft decision* Our draft decision was to only include levies as pass-through costs, as follows: "a 'pass-through cost' is a levy payable by a **regulated provider** on or after the **implementation date**, being: (a) an amount levied by regulations made under sections 11 or 12 of the **Act**; and	Regulatory processes and rules	3.1.2(1)(c)-(d)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	(b) the telecommunications development levy, as determined by the **Commission** under sections 87 and 88 of the Act."		
16	**Change allowing Commission to publish confidential information if in public interest** *Our further consultation decision* In its submission on our draft decision, 2degrees suggested that: "While Chorus has emphasised elements of its capex proposals would be confidential and has argued a relevant factor is that unlike Transpower it faces competition from access seekers (RSPs), the Transpower Capex IM explicitly addresses confidential information but the Chorus Capex IM does not. The clarification that "For the avoidance of doubt- (a) nothing … prevents the Commission publishing such information in respect of which it considers Transpower has no right to confidentiality" should be transposed into the Chorus Capex IM." (page 25). We agree and have added a new cl 3.7.6 in place of the old cls 3.7.7(3), 3.7.13(3) and 3.7.18(4) of our RPR draft determination. Clause 3.7.6 sets out the general rule for information claimed to be confidential. The new clause reads as follows: "<u>3.7.6 General rule for information claimed to be confidential</u> (1) Where **Chorus** considers that it has a right to confidentiality in any information it provides the **Commission** in relation to this subpart and it does not waive the right, it must: (a) include that information in an appendix; and (b) clearly mark the information as confidential. (2) For the avoidance of doubt: (a) nothing in subclause (1) prevents the **Commission** publishing such information if it considers **Chorus** has no right to confidentiality; and (b) nothing in paragraph (a) affects **Chorus'** rights or remedies for breach of any right to confidentiality."	Capital expenditure	3.7.6, 3.7.7(3), 3.7.13(3), 3.7.18(4)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	Our draft decision Our RPR draft determination had confidential information requirements in separate provisions and did not clarify that the Commission may publish confidential information that Chorus identifies as confidential if the Commission considers the information is not confidential or if it is in the public interest.		
17	**Change to strengthen information requirements in an integrated fibre plan on Chorus' stakeholder engagement plan** *Our further consultation decision* In its submission on our draft decision, Chorus submitted (at paragraph 394) that the extent of Chorus' consultation prior to its proposal should be part of the information in the proposal and the Commission evaluation. It also submitted (at paragraphs 395-399) that Chorus is best placed to consult on quality standards, the needs of RSPs and consumers, and balancing PQ trade-offs as required, because they have good feedback loops and can take a holistic approach to consultation. In their submissions on our draft decision, 2degrees, Nova and Vocus suggested that consultation on Chorus' proposal is necessary as it provides additional scrutiny for the proposal and is a way to promote the outcomes specified in s 162 of the Act. They submitted (2degrees at p 20, Nova at paragraph 5 and Vocus at paragraph 8) that the requirements for Chorus should be more similar to the Part 4 requirements that include consultation before submitting a proposal. We have strengthened the requirements for Chorus' integrated fibre plan (**IFP**) by adding more prescription into the engagement plan. As part of Chorus' engagement plan, under clause 3.7.7(1)(g), it must outline engagement and consultation on capital expenditure undertaken and planned by Chorus, including: • consultation and engagement prior to submitting the base capex proposal and connection capex baseline proposal and planned consultation on any aspects of capex relevant to the capex proposal or subsequent regulatory periods; and	Capital Expenditure	3.7.7(1)(g)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• identifying consultation objectives, processes, stakeholders consulted, and any other aspect of engagement that is relevant to proposed capex and PQ FFLAS quality outcomes. *Our draft decision* In our draft decision, Chorus was not required to consult on its base capex proposal, the integrated fibre plan requirement for an engagement plan was general, and it did not refer to quality outcomes.		

18	**Changes to integrated fibre plan required content for "overview", "quality report", "demand report", "investment report" and "delivery report"**
	
	Our further consultation decision
	
	In submissions on our draft decision**:**
	
	• Chorus submitted that:
	  ○ "A rule requiring separate documents for the IFP 'report' is unnecessary. Packaging information in a way that is logically coherent makes it more meaningful and easier for the Commission and stakeholders to understand" (paragraph 339);
	  ○ "We disagree with the draft decision to arrange the investment report around assets. While it makes sense for some investment areas, it isn't appropriate for all. Asset-based categorisation is most applicable to lifecycle investment in physical assets, which is a small part of Chorus' investment compared to Part 4 regulated assets" (paragraph 440);
	  ○ "We recommend for other classes of investment to arrange by (paragraph 341):
		Capital expenditure	3.7.7(1)(a)-(b) and (d)-(f), 3.7.7(2)-(4), 3.7.9(1)(h) and (m), 3.7.15(1)(i)-(j), 3.7.23(3)(e), 3.7.26(1)(f)-(g), 3.8.4(3)(e), 3.8.6(1)(h)-(i) and (n)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	▪ By activity – Where new assets are created and flow into an asset view in future regulatory periods. For example, network electronics, network expansion and IT, are better broken down by activity (eg, connections and extensions); and ▪ By outcomes – Where assets are cycled to optimise a set of system outcomes, rather than managed by asset class through a traditional lifecycle approach as is typical in Part 4. For example, network electronics". • 2degrees submitted that the IFP requirements should follow the integrated transmission plan requirements applicable for Transpower New Zealand Limited more closely (page 25). We: • agree with Chorus that it is not necessary to arrange the investment report around assets and have removed this requirement. We consider it appropriate to instead require "categories of investment and **capex** set out in the **regulatory templates**" and a description of synergies between projects/programmes and capital expenditure and operating expenditure trade-offs; • agree with Chorus that the IFP may be one or more documents if the component reports are separate reports and clearly identified; • have aligned the IFP with the integrated transmission plan requirements where appropriate;		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• consider it appropriate to require the following information for the five regulatory years after the start of a regulatory period (commencing with the regulatory year that starts on the same day as the regulatory period): ○ a summary and commentary on forecast expenditure, including past expenditure and linkages with PQ FFLAS quality outcomes, operating costs and delivery performance within the "overview" component report; ○ a report on the forecast PQ FFLAS quality outcomes and the linkages between forecast expenditure and PQ FFLAS quality outcomes, including sensitivity of forecast PQ FFLAS quality outcomes to varying levels of forecast expenditure and the demonstration of past performance within the "quality report" component report; ○ a report describing anticipated PQ FFLAS demand, including linkages between PQ FFLAS uptake, data growth, and types of PQ FFLAS, including by reference to historic demand and past trends within the "demand report" component report; ○ a report on investment plans and forecast capital expenditure, including categories of investment and capex set out in the regulatory templates and the investment approach to each within the "investment report" component report; ○ a report on anticipated and actual past delivery of capital expenditure, including capex projects and programmes, including any linkages with operating costs and network performance within the delivery component report;		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• consider it appropriate to require that the "overview" component report, "quality report" component report, "demand report" component report, "investment report" component report and "delivery report" component report require assumptions relied on for the forecasts and uncertainties associated with the forecasts; • consider it appropriate to require that the "overview" component report, "demand report" component report and "investment report" component report require activity volumes and trends as relevant; • consider it appropriate within the "quality report" component report to require information on the "sensitivity of forecast PQ FFLAS quality outcomes to varying levels of forecast expenditure and the demonstration of past performance" rather than the previous requirement for "past delivery performance and linkages to expenditure"; and • consider it appropriate within the "delivery report" component report to require anticipated and actual past delivery of capital expenditure, including network performance (such as fault rates). *Our draft decision* In our draft decision, Chorus were required to include the following information for the "overview", "quality report", "demand report", "investment report" and "delivery report": (a) An overview: a summary and commentary on forecast expenditure for the **regulatory period**, including past expenditure and linkages with quality, **operating costs** and delivery performance. (b) Quality report: a report on the linkages between forecast expenditure for the **regulatory period** and quality outcomes, including past delivery performance and linkages to expenditure.		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	(c) Governance report: a report describing **Chorus'** organisational governance, risk management and high-level asset management approach. (d) Demand report: a report describing anticipated **regulated FFLAS** demand for the regulatory period, including linkages between **regulated FFLAS** uptake, data growth, and types of **regulated FFLAS**, including by reference to historic demand and past trends. (e) Investment report: a report on the asset portfolios, the investment approach to each asset class, and investment plans for the next five **regulatory years**, including risks and linkages to the forecast expenditure for the **regulatory period**. **(f)** Delivery report: a report on actual **capex project** and **programme** delivery and any linkages with **operating costs** and delivery performance (such as **fault** rates).		
19	**Clarification of requirements for assessment factors and alignment with information requirements** *Our further consultation decision* Several submissions on our draft decision suggested that the capital expenditure information and assessment requirements needed more detail, clarity and strength. Submissions emphasised the need for analysis of alternatives, impacts on quality outcomes, consultation and engagement, and quantitative and economic analysis. Some of these suggested changes are explained in other parts of this table, such as the inclusion of requirements related to the analysis of alternatives and impacts on quality outcomes (discussed in Section 1) and changes to the consultation and engagement requirements for the IFP and other clarifications in the IFP related to quality and investment information (discussed in Section 3). These changes flow through to the information requirements and the assessment factors. In addition to changes explained in other parts of this table, we received submissions on the following elements of information and assessment: In relation to general consistency and clarity:	Capital expenditure	3.7.9(1)(a)-(h), 3.7.9(1)(j)-(o), 3.7.15(1)(a)-(l), 3.7.26(1)(a)-(e), 3.7.26(1)(h)-(p), 3.8.6(1)(a)-(m), 3.8.6(1)(o)-(t), 3.7.23(3)(d)-(h)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• 2degrees submitted (at p 23) that the minimum information requirements should mirror the assessment factors and include material relevant to each of those factors; and • Chorus submitted (at paragraphs 378 and 380) that it is important to have clarity on how the Commission will assess proposals and to be clear on how proportionate scrutiny will apply. In relation to requirements for information on alternatives considered, Vector suggested that looking at alternatives could be used to assess efficiency (at paragraphs 56-58) and Vector focused on unbundling and pointed out that information on alternatives is needed to limit inefficient spending and prevent gold-plating. In relation to quantitative and economic analysis: • Chorus submitted (at paragraph 377) that there is value in developing clearer economic criteria and considerations for network expansion; • 2degrees submitted (at p 3) that the evaluation of capex proposals should be consistent with Part 4 and includes testing the reasonableness of key assumptions such as by considering the method and information used to develop them; how they were applied; and their effect on the proposed base capex allowances; and • Vocus submitted (at paragraph 27) that the Capex IM should require Cost-Benefit Analysis, including quantification of the net expected benefits from its capex proposals, sensitivity analysis and evidence of consideration and evaluation of alternative options. Our further consultation decision is to clarify and strengthen the information requirements and assessment factors related to capital expenditure by setting them out in more detail and ensuring consistency between the elements included in information and assessment.		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	We have aligned the requirements for the different categories of capex proposals (including both the individual capex design stage and the final proposal) and the assessment factors. *Our draft decision* Our assessment factors and information request requirements for base capex proposals, connection capex baseline proposals and individual capex proposals did not fully align.		
20	**Changes to Commission discretion over whether to ring-fence capital expenditure proposed for base capex or in an individual capex proposal** *Our further consultation decision* In submissions on our draft decision, Chorus submitted that: • "The individual capex mechanism would be improved by making ring-fencing an optional feature rather than a requirement" (paragraph 371). • "Ring-fencing makes most sense where a proposal is for a discrete asset to be built. The outcome of the investment can then be defined in terms of that particular asset, its characteristics, and expenditure can be clearly related to the resulting asset. Even in this case, Chorus and the Commission should be careful about how the asset to be built is specified, so as not to prevent design refinement during the project. This may mean an output variation process is needed" (paragraph 372).	Capital expenditure	3.7.12(3), 3.7.22(3)(d), 3.7.22(4)-(5), 3.7.23(3)(i), 3.7.28(3)-(5)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• "However, ring-fencing is more problematic where the proposal is for a particular outcome or output (rather than a particular asset) or where the investment involves modifying a stream of investment in multiple assets. The Commission's proposed definition of individual capex would include these scenarios. In those cases, it should still be possible to check that the investment is not doubling up on base capex outcomes, but it may not be possible or desirable to then manage funding as a discrete investment in defined assets. Preventing Chorus from managing these types of investments as part of an integrated programme including base capex may also drive inefficient investment strategies" (paragraph 373). • "Given ring-fencing will not always be practical (or preferable), we recommend that individual capex proposals should include proposed treatment and supporting rationale, and that the Commission should have a discretion as to whether to ring-fence the expenditure." (paragraph 374). Our further consultation decision is: • Individual capex will be ring-fenced unless the Commission exercises its discretion to waive the ring-fencing requirement, in order to facilitate efficient outcomes. Note this does not remove the requirement that the individual capex is additional to the base capex allowance already approved; and • That our power to ring-fence an individual capex proposal will include matters for us to consider when exercising our discretion, such as the characteristics of the project or programme and the need to identify and distinguish the expenditure from other base capex spending (including for tracking base capex overspend/underspend for the regulatory period).		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	We consider it essential that individual capex is additional to capex already approved and is not used as a mechanism to dilute efficiency incentives. In some cases, it may be in the long-term benefit of end-users to allow individual capex to be substituted with base capex. Therefore, provision to allow discretion for ring-fencing where it leads to efficient outcomes is appropriate. *Our draft decision* Our draft decision was not to allow individual capex to be substitutable with base capex or other individual capex proposals. This was because individual capex proposals will be initiated by Chorus to meet a specific investment need or relate to particular capex sub-categories that we determine should be ring-fenced. This suggests the need to prioritise or defer the investment will be minimal. Having the ability to ringfence individual capex will make it easier to monitor these projects through separate reporting.		
21	**Discretion on the requirement for an independent verifier for an individual capex proposal** *Our further consultation decision* In submissions on our draft decision: • Chorus submitted that "we are less confident an independent verifier will add value for all individual capex proposals. The Commission may wish to consider applying the independent verification requirement only to larger individual capex applications – eg, for investments greater than $10m for RP1 – and allow for the scope of verification to be agreed in the first stage decision-making" (paragraph 393); and	Capital expenditure	3.7.23(3)(j)(iii), 3.7.24(2)-(3),

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	• 2degrees submitted that "As highlighted by our earlier submissions we consider Independent Verification is an important regulatory safeguard. Independent Verification is particularly critical given the inflation of cost estimates that has taken place in the past eg, in relation to the TSO and copper TSLRIC modelling. Notably, if this strategy is adopted in the fibre regulatory regime, the Commission will not be able to safely rely on Chorus' supplier or capex proposals in the same way it has under Part 4 Commerce Act" (page 13). Our further consultation decision is to: • retain the independent verifier requirement for individual capex proposals, but provide the Commission with discretion to waive the requirement for an independent verifier for certain proposals; and • include a simple framework in the IMs for the considerations we must have regard to when exercising our discretion during the proposal assessment stage. We consider that this decision is appropriate given: • the wide variety of investment types that may be covered by the individual capex mechanism; and • that providing discretion to us, subject to appropriate criteria, is also consistent with applying proportionate scrutiny. *Our draft decision* In our draft decision, we required that Chorus must submit an independent verification report for all individual capex proposals, proportionate to the materiality and complexity of the proposal.		
22	**Clarity on determining whether to consult on individual capex proposals** *Our further consultation decision* In submissions on our draft decision: • 2degrees submitted that:	Capital expenditure	3.8.4(2)-(3)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	○ ““we oppose inclusion of a threshold test that “The Commission may consult on the individual capex proposal if satisfied that the consultation is for the long-term benefit of end-users”. This will inevitably result in needless arguments about whether consultation “is for the long-term benefit of end-users” (clause 3.6.27(3)). We consider the answer is yes, in all instances”” (page 22); ○ “The Transpower Capex IM requires the Commission publish and consult on both base and major capex proposals. We don’t see any industry specific reason for adopting a different approach to the Chorus Capex IM and base and individual capex proposals. The proposed consultation requirements for base and connection capex (clause 3.7.4) should also apply for individual capex. Consultation on individual capex is particularly important as there won’t be an equivalent opportunity to submit in relation to the PQR draft determination (which will include base and base connection capex, but not individual capex)” (page 23); ○ “The Commission should be required to consult on individual design proposals (clause 3.6.23). Again, no explanation has been provided why the Commission does not favour this approach” (page 23); and • Vocus submitted that “We similarly are unclear why the Commission considers its own capex consultation should be limited to base and connection capex, with consultation on individual capex left discretionary. This is not explained and is inconsistent with Part 4 Capex IM precedent” (paragraph 8). Our further consultation decision is:		

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference

	• to give greater clarity to stakeholders on how we would decide when consultation is and is not needed. We have intended to do this by adding criteria to the Capex IM that we will consider when deciding when to consult on a draft individual capex proposal;
	• that we must have regard to the following matters when applying discretion:
	  ○ the size and complexity of the proposed capex and related project or programme;
	  ○ any consultation already undertaken by Chorus related to the capital expenditure (for example, when consulting on the base capex proposal);
	  ○ the extent to which the consultation might assist us when determining the individual capex allowance;
	  ○ the commercial sensitivity of the proposed project or programme and whether consultation might adversely impact competition; and
	  ○ the impact of the capital expenditure on PQ FFLAS quality outcomes for access seekers and end-users.
	We consider that decision is appropriate:
	• to provide certainty to interested persons on when consultation will be sought; and
	• because it uses factors relevant to a determination of whether a consultation is in the long-term benefit of end-users.
	Our draft decision
	Our draft decision was to reserve the right to consult on the project or programme expenditure increase, if we determine consultation is in the long-term benefit of end-users.		

23	**Include quality reopener threshold** *Our further consultation decision*	Regulatory processes and rules	3.9.3(1)(c)(ii), 3.9.4(1)(b)(iii), 3.9.8(1)(a)-(d)

Change #	Explanation of change from our RPR draft determination	Draft IM(s) affected	Clause reference
	In submissions on our draft decision, Enable and Ultrafast (at p 5) submitted that "an additional threshold is included, specified as the impact on expected quality performance of at least 1% of the quality standard (ie, the performance standard which must be met under the PQ path) for the affected years of the regulatory period." Our further consultation decision is to include a quality reopener threshold, since there may be events that impact the quality of FFLAS. However, we do not consider it is meaningful to attach a percentage amount to this threshold as suggested by Enable and Ultrafast. Instead, we have included the wording "results in a **regulated provider** failing to meet its quality standards under the **PQ determination**" as a quality threshold for catastrophic event and change event reopeners. This is because we consider it is more practical to assess whether a regulated provider has met its quality standards than assess the impact on quality standards as a percentage. *Our draft decision* Our draft decision was to include a materiality threshold relating to costs as a percentage of revenue for certain reopener events, but not a quality threshold.		