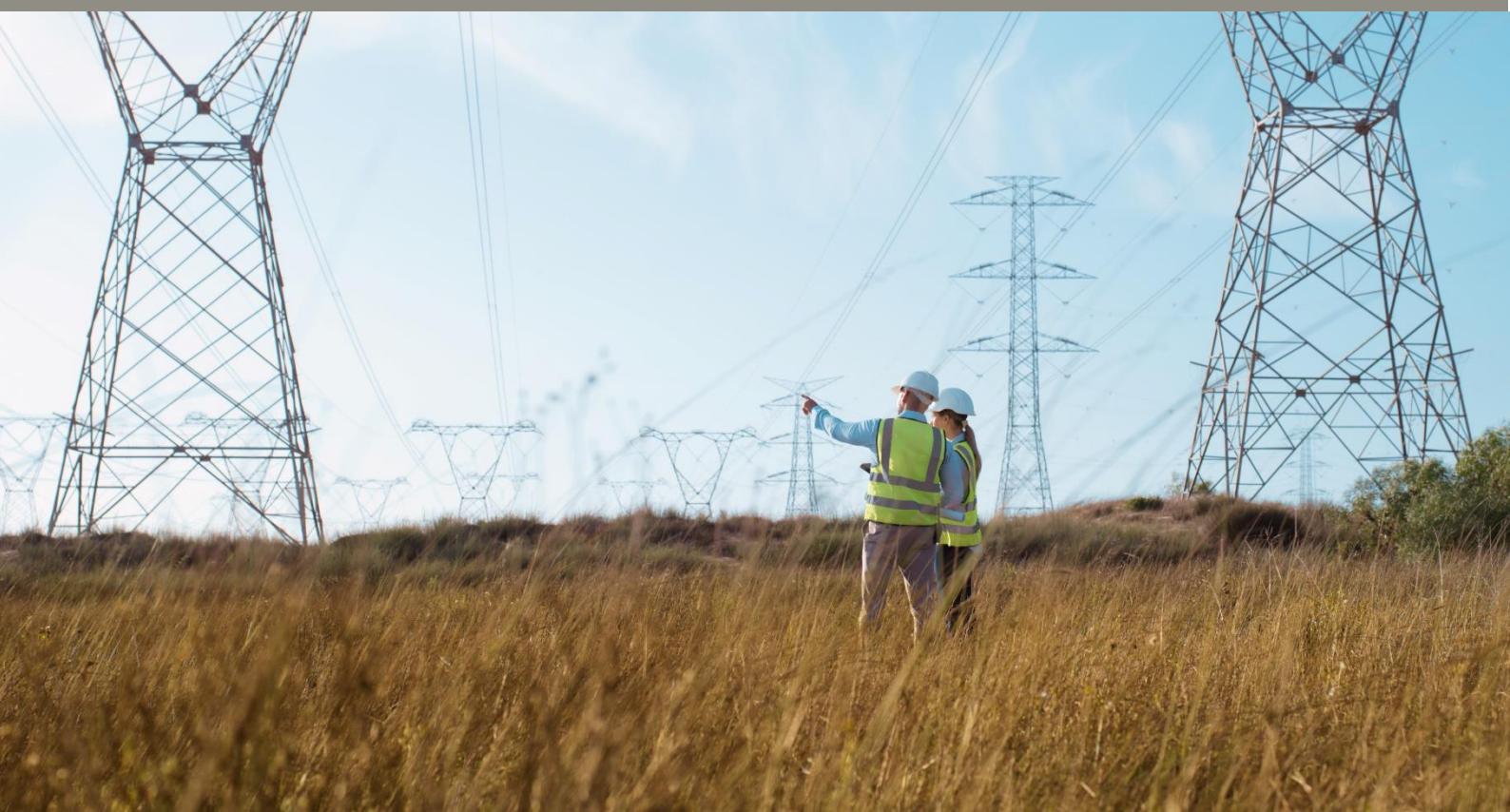


Proposed amendment to Transpower Capital Expenditure Input Methodology Determination relating to major capex incentive formula

Draft decision - reasons paper

5 February 2026



Associated documents

Publication date	Reference	Title
31 January 2012	[2012] NZCC 2	Transpower Capital Expenditure Input Methodology Determination ('principal determination')
13 December 2023	[2023] NZCC 39	Transpower Capital Expenditure Input Methodology (IM Review 2023) Amendment Determination 2023
29 August 2024	ISBN 978-1-991287-75-5	Transpower's individual price-quality path for the regulatory control period commencing 1 April 2025
11 December 2024	[2024] NZCC 40	Transpower Capital Expenditure Input Methodology (treatment of insurance entitlements) Amendment Determination 2024
5 February 2026	N/A	[Draft] Transpower Capital Expenditure Input Methodology (Major Capex Incentive Formula) Amendment Determination 2026

Commerce Commission

Wellington, New Zealand

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Chapter 1 Introduction

Purpose of paper

- 1.1 This paper sets out our draft decision to amend the incentive rate formula in the Transpower Capital Expenditure Input Methodology Determination [2012] NZCC 2 (**Capex IM**) that applies to Transpower's major capex projects. We propose amending the major capex incentive rate formula to give effect to the incentive deadband we introduced in the 2023 IM Review.¹
- 1.2 Alongside this paper, we have published a draft amendment determination giving effect to our draft decision (**draft Capex IM amendment determination**).²
- 1.3 We seek the views of interested parties on the proposed amendment by Friday, 20 February 2026.

Effective date for proposed amendments

- 1.4 Section 52W of the Act requires us to publish, by way of notice in the *Gazette*, a brief description of any IM amendment and the goods and services to which it applies, the reasons for determining that IM amendment and how we are making it publicly available.³
- 1.5 If, after taking account of submissions on our draft decision, we decide to make the proposed amendment, then we propose that the amendment take effect on the day following publication in the *Gazette* in accordance with s 52W.
- 1.6 This means that the amendment would apply to major capex projects approved after the date on which the amendment takes effect. This would include the Redclyffe 220kV switchyard resilience (**RDF**) major capex project (**MCP**), for which we plan to make our final decision by the end of March 2026, after taking account of submissions on our RDF draft decision.⁴

¹ [Transpower Capital Expenditure Input Methodology \(IM Review 2023\) Amendment Determination 2023](#), at clause B3(2) of Schedule B.

² [Draft] Transpower Capital Expenditure Input Methodology (Major Capex Incentive Formula) Amendment Determination 2026.

³ Section 52W(1)(b) states that IM amendments are secondary legislation which means that the publication requirements for secondary legislation in the Legislation Act 2019 apply.

⁴ *Commerce Commission*, Transpower's Redclyffe Major Capex Proposal – Draft decision reasons paper, 9 December 2025, available [here](#).

How you can provide your views

Submissions on this paper

1.7 We welcome your views on our draft decision and draft Capex IM amendment determination by **5pm on Friday 20 February 2026**.

Address for submissions

1.8 Please email submissions to infrastructure.regulation@comcom.govt.nz with “Submission on Transpower Capex IM amendment” in the subject line of the email.

1.9 We prefer submissions in both a format suitable for word processing (such as a Microsoft Word document), as well as a ‘locked’ format (such as a PDF) for publication on our website.

Confidential submissions

1.10 While we encourage public submissions so that all information can be tested in an open and transparent manner, we recognise that there may be cases where parties that make submissions wish to provide information in confidence. We offer the following guidance:

- 1.10.1 If it is necessary to include confidential material in a submission, the information should be clearly marked, with reasons why that information is confidential.
- 1.10.2 Where commercial sensitivity is asserted, submitters must explain why publication of the information would be likely to unreasonably prejudice their commercial position or that of another person who is the subject of the information.
- 1.10.3 Both confidential and public versions of the submission should be provided.
- 1.10.4 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.

1.11 Parties can also request that we make orders under s 100 of the Act prohibiting the publication or communication of any confidential information. If we receive a request we will exercise our judgement in deciding whether or not an order is appropriate and any order we make will apply for a limited time as specified in the order. We will provide further information on these orders if requested by parties.

We request that you provide multiple versions of your submission if it contains confidential information or if you wish for the published electronic copies to be ‘locked’. This is because we intend to publish all submissions on our website. Where relevant, please provide both an ‘unlocked’ electronic copy of your submission, and a clearly labelled ‘public version’.

Chapter 2 Proposed amendment to the Capex IM

Purpose of this chapter

2.1 This chapter describes our proposed change to the Capex IM. For the proposed change, we explain:

- 2.1.1 the current requirement;
- 2.1.2 our proposed amendment; and
- 2.1.3 how the proposed amendment is likely to promote an IM amendments framework outcome, as defined in Chapter 3, paragraph 3.24.

The current requirement

2.2 The Capex IM requires us to calculate Transpower’s incentive penalty or reward – the major capex expenditure and output adjustment – when Transpower commissions the final output of an approved MCP.⁵ Schedule B of the Capex IM sets out the formula for how we calculate the incentive penalty or reward.

2.3 In the 2023 IM Review, we introduced a project cost deadband mechanism where Transpower would not be subject to an incentive penalty/reward if an MCP’s delivered project costs are within the project’s P30 and P70 cost estimates.⁶ The deadband was introduced in addition to the existing mechanism requiring us to set an amount of exempt major capex.⁷

2.4 We amended Schedule B of the Capex IM in 2023 to recognise that Transpower does not receive an incentive reward or penalty where its actual capex on an MCP falls within the deadband.

2.5 However, we did not update the incentive formula in clause B3(3) of Schedule B of the Capex IM to account for the deadband when Transpower’s actual capex falls outside the deadband. As a result, Transpower will be over-rewarded or over-penalised when its actual capex is below or above the deadband.

Our proposed amendment

2.6 We propose to amend the clause B3(3) formula by introducing conditionality to the calculation of the incentive penalty or reward as follows:

⁵ Capex IM, clause 3.3.9(1).

⁶ Capex IM, clause B3(2) of Schedule B.

⁷ Exempt major capex are those portions of the major capex allowance (**MCA**) to which the major capex incentive rate does not apply. For previously approved MCPs we have typically set the exempt major capex in reference to the portions of the MCA that reflect uncertainties.

- 2.6.1 if the exempt major capex is zero and the capital expenditure (the final delivered cost) is less than the P30 cost estimate, then applying the major capex incentive rate, Transpower will be rewarded;
- 2.6.2 if the exempt major capex is zero and the capital expenditure (the final delivered cost) is more than the P70 cost estimate, then applying the major capex incentive rate, Transpower will be penalised.
- 2.6.3 if the capital expenditure (the final delivered cost) is less than the P50 MCA minus exempt major capex and less than the P30 cost estimate, Transpower will be rewarded.

2.7 The exempt major capex will be retained as a mechanism if we consider Transpower cost estimates contain excessive contingency, and a different reward trigger needs to be set below the P30 cost estimate.

How the proposed amendment is likely to promote an IM amendments framework outcome

- 2.8 Prior to 2018, the major capex incentive scheme was based on identifying specific efficiencies in the delivery of all major capex projects within a regulatory control period (**RCP**). Transpower was entitled to rewards for any identified efficiency gains and penalised for inefficiencies.
- 2.9 In our 2018 Review of the Capex IM, we revised the major capex incentive scheme (**incentive scheme**).⁸ We decided to require that major capex allowances are set at a P50 level of cost accuracy. A P50 cost estimate is the estimate such that there is a 50% chance the project will come in under this value, and a 50% chance that it comes in above it, i.e., there is an equal chance of over/underestimation.
- 2.10 In our 2023 IM Review, we revised the incentive scheme by introducing a deadband between the P30 and P70 project cost estimates as a means to accelerate MCP proposal development and reduce the risk that there are early MCP cost estimation inaccuracies.⁹
- 2.11 To fully implement the deadband we introduced in the 2023 IM Review, we must correct the Schedule B3 formula. This correction gives effect to our policy intent and enables the benefits under our statutory framework outlined in our 2023 IM Review decision. Specifically, the amendment would promote the s 52A(1)(b) limb of the Part 4 purpose by better incentivising Transpower to improve its efficiency. It would do this

⁸ Commerce Commission, “Transpower Capex Input Methodology Review: Decision and Reasons” (29 March 2018), paras 74-108, available [here](#).

⁹ Commerce Commission, Transpower investment topic paper, Part 4 Input Methodologies Review 2023 - Final decision, 13 December 2023, Section 3, p.41, available [here](#).

by ensuring Transpower is rewarded/penalised for project delivery cost efficiencies rather than project cost forecast inaccuracies.¹⁰

2.12 Correcting an error that does not impact on a fundamental IM also means this is an amendment that we consider appropriate to make outside the IM review cycle.¹¹

¹⁰ See above fn 9.

¹¹ We do not generally consider it to be appropriate to consider significant changes to fundamental IMs outside the statutory IM review cycle. Fundamental IMs are generally those that define the foundational building blocks used to set PQ paths (listed in s 52T(1)(a)), and that are central to defining the balance of risk and benefits between suppliers and consumers.

Chapter 3 Decision-making framework

Purpose of this chapter

3.1 This chapter describes:

- 3.1.1 our framework for considering the scope of potential Capex IM amendments, which is relevant in considering what IMs it may be appropriate to amend outside of the statutory IM review cycle in s 52Y of the Act; and
- 3.1.2 the decision-making framework we have applied in proposing the Capex IM amendment set out in this paper.

Framework for considering the scope of potential Capex Input Methodologies amendments

3.2 Our framework considers:

- 3.2.1 the statutory context
- 3.2.2 our specific powers to amend the Capex IM; and
- 3.2.3 what we take account of when amending Capex IM outside of the statutory IM review cycle under s 52Y.

Statutory context

3.3 When considering amendments to IMs, we must consider the purpose of IMs and the purpose of Part 4. This section discusses the tensions between making changes to improve the regime and the certainty intended by the IMs.

3.4 The purpose of IMs, set out in s 52R of the Act, is to promote certainty for suppliers and consumers in relation to the rules, requirements and processes applying to the regulation, or proposed regulation, of goods or services under Part 4.

3.5 To that end, s 52T(2)(a) requires all IMs, as far as is reasonably practicable, to set out relevant matters in sufficient detail so that each affected supplier is reasonably able to estimate the material effects of the methodology on the supplier. In that way, the IMs constrain our evaluative judgements in subsequent regulatory decisions and increase predictability.¹²

¹² *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para [213].

3.6 However, some uncertainty remains inevitable.¹³ As the Court of Appeal observed (in relation to a judicial review against decisions made in the IMs under Part 4) “certainty is a relative rather than an absolute value”,¹⁴ and “there is a continuum between complete certainty at one end and complete flexibility at the other”.¹⁵

3.7 The s 52R purpose is primarily promoted by having the rules, processes and requirements set upfront prior to being applied by regulated suppliers or us.

3.8 However, as recognised in ss 52X and 52Y, these rules, processes and requirements may change over time.

3.9 The power to amend an IM must be used to promote the policy and objectives of Part 4 of the Act as ascertained by reading it as a whole. It is clear that Parliament saw the promotion of certainty as being important to the achievement of the purposes of price-quality (**PQ**) regulation.

3.10 While this is to an extent implicitly inherent in s 52A (for example, providing suppliers with incentives to invest in accordance with s 52A(1)(a)), it is also expressed in s 52R in relation to the purpose of IMs, but also in other aspects of the regime, such as the restrictions on reopening DPPs during their regulatory periods.¹⁶

3.11 When considering IM amendments, we must therefore be mindful that this may have a detrimental effect on:

- 3.11.1 the role that predictability plays in providing suppliers with incentives to invest in accordance with s 52A(1)(a); and
- 3.11.2 the role that the IMs play in promoting certainty for suppliers and consumers in relation to the rules, requirements, and processes in advance of being applied by us and suppliers in setting revenues for Transpower under the Individual Price-Quality Path (**IPP**).

3.12 At times there will be a tension between making changes to improve the regime and better promote the s 52A purpose on the one hand, and certainty on the other.

3.13 While we will have regard to the s 52R purpose (and the other indications of the importance of promoting certainty), ultimately, we must nevertheless make decisions that we consider promote the s 52A purpose.

¹³ *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para [214].

¹⁴ *Commerce Commission v Vector Ltd* [2012] NZCA 220, para [34].

¹⁵ *Commerce Commission v Vector Ltd* [2012] NZCA 220, para [60].

¹⁶ For further discussion see *Wellington International Airport Ltd & others v Commerce Commission* [2013] NZHC 3289, para [213]-[221].

- 3.14 Section 52A governs all our decision-making processes under Part 4, including our IM decisions. The other purpose statements within Part 4 are relevant matters but they should be applied consistently with s 52A.¹⁷
- 3.15 When making our decisions we must only give effect to these other purposes to the extent that doing so does not detract from our overriding obligation to promote the purpose set out in s 52A.
- 3.16 Therefore, where the promotion of s 52A requires amendment to an IM, s 52R does not prevent us from making a change that is consistent with s 52A.

Amendments inside and outside the IMs statutory review cycle

- 3.17 This section considers the circumstances in which IMs may be amended and what must be taken into account when making amendments to IMs outside of the statutory review cycle.
- 3.18 All IMs must be reviewed at least once every seven years, as mandated by s 52Y. This process is key to delivering on the s 52R certainty purpose of IMs, while at the same time allowing the regime to mature and evolve in response to changing circumstances.
- 3.19 Given the certainty purpose of the IMs and the scheme set out in the Act to promote this purpose, we must carefully assess what amendments are appropriate to consider outside the statutory IM review cycle. Additionally, as noted previously, the predictability the IMs provide is key to promoting the s 52A purpose and, in particular, incentives to invest as required under s 52A(1)(a).

Amendments outside of the statutory IM review cycle

- 3.20 We generally focus on two types of amendments outside the statutory IM review cycle:
 - 3.20.1 those that support incremental improvements to PQ paths; and
 - 3.20.2 those that enhance certainty about – or correct technical errors in – the existing IMs.
- 3.21 We do not generally consider it to be appropriate to consider 'fundamental' changes outside the statutory IM review cycle. Fundamental IMs are generally those that define the fundamental building blocks used to set PQ paths (listed in s 52T(1)(a)), and that are central to defining the balance of risk and benefits between suppliers and consumers.

¹⁷ We note that the High Court, in *Wellington International Airport Ltd & Ors v Commerce Commission* considered that the purpose of IMs, set out in s 52R, is “conceptually subordinate” to the purpose of Part 4 as set out in s 52A when applying the “materially better” test. See *Wellington International Airport Ltd v Commerce Commission* [2013] NZHC 3289, para [165].

3.22 However, we can and will reconsider fundamental building blocks where there is a compelling and urgent rationale for doing so.¹⁸

The decision-making framework we have applied

3.23 In deciding whether to propose IM amendments, we are using a decision-making framework that we have developed over time to support our decision-making under Part 4 of the Act.¹⁹ This has been consulted on and used as part of prior processes and helps provide consistency and transparency in our decision-making.

3.24 Specifically, in respect of each potential IM amendment we will consider whether they would:

- 3.24.1 promote the Part 4 purpose in s 52A of the Act more effectively;
- 3.24.2 promote the IMs purpose in s 52R of the Act more effectively; or
- 3.24.3 reduce compliance costs, other regulatory costs or complexity.

3.25 As part of these considerations, we will also consider whether the potential IM amendment would detrimentally affect any of the matters in paragraph 3.24. As discussed in paragraphs 3.12 to 3.15 above, while the other purpose statements in Part 4 of the Act (including s 52R) are relevant matters, s 52A governs our decision-making process under Part 4.

3.26 We may, therefore, make an IM amendment that does not promote the IM purpose in s 52R more effectively than the current IM where we consider that would promote the s 52A purpose more effectively. We further consider that we must generally only make IM amendments to promote the IMs purpose in s 52R, or to reduce costs or complexity, where this does not detract from our obligation to promote the purpose in s 52A.

3.27 We refer to the outcomes specified in paragraph 3.24 as the ‘IM amendment framework outcomes’ in this paper.

¹⁸ An example of this was the re-consideration of the Part 4 WACC percentile decision in 2014. The compelling reason for this was criticism by the High Court of this decision in the IM merits appeal process, and the urgency was due to the upcoming default price-quality path and individual price-quality resets for EDBs and Transpower New Zealand Limited.

¹⁹ See, for example, [Commerce Commission “Input methodologies review decisions: Framework for the IM review” \(20 December 2016\)](#), para 59 and [Commerce Commission “Amendments to Electricity Distribution Services Input Methodologies Determination – Reasons paper” \(26 November 2019\)](#), para 2.17-2.20.