



10 October 2025

[REDACTED]
A/g Assistant Secretary
Broadband and Emerging Communications Branch
Department of Infrastructure, Transport, Regional Development,
Communications, Sport and the Arts
GPO Box 594, Canberra ACT 2601

Dear [REDACTED]

Re: Government Policy Project Notice – NBN Transformation Projects

Thank you for your letter of 23 September 2025 seeking feedback from the ACCC on the updated draft Project Notice relative to that provided by the Minister for Communications on 3 July 2025. You have indicated in your letter that the ACCC's response will inform the Minister's consideration of whether to issue a Project Notice in relation to the NBN Transformation Projects, and the structure and content of any such Project Notice.

The ACCC supports the Minister issuing a Project Notice for the NBN Transformation Projects and we consider that it will be important to get the settings in the Project Notice right to meet the intent as stated by the Minister in her 3 July 2025 letter:

My view is that it is important that NBN Co has the opportunity to earn additional revenue forecast to result from the project. However, I am also concerned to ensure that, if I were to issue Project Notice, the long-term cost implications for retailers and consumers resulting from such a decision would be appropriately managed.

Our feedback on the updated draft Project Notice is detailed below. This feedback focuses on the proposed expenditure capping and reporting requirements detailed in the updated draft Project Notice.

Proposed expenditure capping

We strongly support the inclusion in the notice of a recommended cap on the expenditures that could be admitted into the calculations of the annual building block revenue requirement values, and flow through into NBN pricing in future years, given the constraint on regulatory scrutiny the expenditures will receive because of the notice.

We note that the proposed cap applies to the total expenditure incurred on the network upgrade 'build' component, and that no cap is proposed for the premises build component. We understand the intent is that NBN Co implementing each component as described in the notice would be deemed prudent, with only the efficiency of the expenditures to be assessed as part of each replacement module.

Importantly, such a cap if suitably calibrated, can be an effective means to protect retail service providers, and in turn the households and businesses that rely on the NBN for their

broadband, from the risk of inefficiently high pricing. Inefficiently high pricing would likely result in a significant number of households and businesses making less than optimal use of the NBN even though they would be willing to pay the efficient cost of broadband products that suit their needs.

In providing a proposed cap on the expenditure contained in the updated draft Project Notice your letter indicates that an objective has been to more closely align the amount of expenditure recovered with the additional revenues that NBN Co expects to earn from the Transformation Projects.

We consider that this conceptual method to setting the expenditure cap is reasonable in the circumstance, as these amounts are the best available indicators of end-users' expected willingness to pay for the additional quality that the Transformation Projects are expected to provide.

The updated draft Project Notice includes a proposed cap on expenditure for the network upgrade 'build' component of the project of \$2 billion (nominal). Based on information provided by Departmental staff, we note that this is \$400 million above a 'base case' estimated by NBN Co to be necessary to achieve the forecast additional revenue from the project, and is included by the Department as a contingency due to:

- concern about uncertainty of the regulatory rate of return applied to NBN Co's RAB over the forecasting period to 2040
- the potential for customer take-up of fibre services to be higher than forecast resulting in higher actual build costs
- the potential for the cost per premises for 'connection' to be lower than forecast following an efficiency assessment, resulting in less actual connection expenditure added to the RAB than forecast, and the risk that the revenue uplift goal will not be achieved from the 'base case' cap on the network upgrade 'build' expenditure.

Our view is that the decision on the level of the expenditure cap should be directly based on the objective of addressing the risk to end-users of inefficiently high pricing. In our view, this supports the expenditure cap being aligned closely with the forecast incremental revenues and savings from the Transformation Projects based on reasonable assumptions of future demand and willingness to pay.

In this regard, there will be a degree of uncertainty over forecast demand, in terms of the number of active connections or the mix between lower and higher revenue yielding services. For an investment of this scale, it would be difficult for such demand risk to be absorbed by NBN Co or retailers. In the case of a material demand shortfall, without an appropriate regulatory cap there would be significant risk that NBN Co's Annual Building Block Revenue Requirement (ABBRR) could only be met through significant price increases for all end-users, including for those households and business that receive no benefit from the investment.

More particularly, we note that:

- An expenditure cap that is set above reasonably forecast incremental revenue is not required to give assurance that NBN Co will have the reasonable opportunity to fund and complete the investment and remain financially secure. In this regard, we note that NBN Co has advised the Department that the current Initial Cost Recovery Account allowances are sufficient to achieve these outcomes.

- While there is potential for regulatory return (i.e. WACC) values to depart from those that have been forecast, actual values in an individual year could be either above or below forecast. Further, we note that the methods under consideration to estimate the WACC each provide for a relatively stable rate of return in different market conditions, consistent with the objectives of the Special Access Undertaking by which NBN Co is regulated. Further there is no reason to believe that WACC values subsequently calculated would depart significantly and be systemically above or below what has been projected in the base case modelling. We can advise that a methodology we are considering arrives at a WACC for the current financial year that is within 17 basis points of the value NBN Co has proposed.
- A higher expenditure cap potentially reduces NBN Co's incentives to deliver the Project efficiently, including by selecting the efficient mix of access technologies that the notice leaves open for NBN to decide. This is because a cap that is higher than necessary could be perceived as supporting inefficiency, which will be more difficult to correct for ex-post under the regulatory framework with the notice in place.
- While there is the potential for various aspects of the investment case to depart from that forecast, the use of a building block model to set regulatory values allows for flexibility where forecasts are not realised. This in turn obviates the need for a separate buffer to be built into the expenditure cap. For instance, customer take-up of fibre services may be higher than forecast, resulting in higher connection costs. However, a higher customer take up would also provide NBN Co higher revenue than forecast. Similarly, where actual project costs within a regulatory cycle are below those reflected in NBN Co's ABBRR for the cycle, due to greater efficiencies than forecast, NBN Co will benefit.
- Providing an allowance to compensate for the potential risk that the revenue uplift goal will not be achieved from the 'base case' cap on 'build' expenditure, because the potential for 'connection' expenditures to be reduced for regulatory purposes following an efficiency review, shifts the potential risks of inefficient build practices from NBN Co, which is best placed to control for any such inefficiency, to customers who cannot control this risk.

On this basis we propose that the cap for the build component be set with a view to allowing a total uplift in ABBRR of \$1.6 billion (nominal) consistent with the Department's 'base case' cap on 'build' expenditure. However, if the Department is concerned about the prospect of the WACC being consistently below what NBN Co has forecast, the value of the cap could be alternatively specified at no more than \$1.7 billion (nominal). This alternative cap assumes a WACC that is 17 basis points below the annual values that NBN has forecast for its modelling provided by the Department while supporting the additional revenues expected to be earned from the Transformation Projects. We attach at **Annex A** the annual and total expenditure values in nominal terms that would apply under these two capping proposals.

We also recommend that any caps on the amount of annual expenditure that can be admitted into NBN Co's regulatory asset base (RAB) retain a degree of flexibility within a regulatory cycle, that is, within the total cap on expenditures that can be admitted to the RAB in the GPPN. This would assist in providing suitable incentives for the 'build' component of the Transformation Projects to proceed as scheduled while enabling this component to proceed ahead of schedule should this be efficient for NBN Co to do so.

Proposed reporting requirements

We welcome the attention that the reporting arrangements have received in preparing the updated draft Project Notice. These arrangements will be important to improve transparency and promote efficiency in the delivery of the Transformation Projects.

That said, we would be concerned if the reporting were to not require reporting of matters of importance to the investment case, or to be inflexible to adapt to future changes in deployment approaches.

We recommend that the connection metrics and demand metrics not be provided in aggregate across the Transformation Projects and earlier FTTP upgrade projects. We consider that having the data specific to the 'upgrade' component covered by the Project Notice is essential for tracking project progress and providing suitable accountability for the expenditure, revenue and demand outcomes of the Transformation Projects. We note that NBN Co's investment case has been developed with particular targets in mind, and we would be concerned should it be the case that NBN Co and key stakeholders have no way to closely monitor progress against the investment case from these perspectives.

We consider that one of the key objectives of the reporting requirements is being able to track whether, and by how much, services outside the project footprint and that are not upgraded within the footprint, will contribute to the recovery of the annual costs for those services that are upgraded. To this end, the reporting requirements do include estimated revenue from services upgraded and the estimated average revenue per user for these upgraded services. Confirmation of whether or not there is a contribution from other services to the costs of the upgraded services, will require these revenue metrics to be compared to the upgrade project ABBRRs and average costs or ABBRRs per user respectively. As these cost metrics will otherwise need to be derived from other information reported it would be preferable to require these directly as part of the reporting requirements of the Project Notice.

Further, we note that certain metrics, such as those dealing with operating expenditures, are not to be included in reporting on the basis that such expenditures are not currently anticipated. We note that this deployment approach may change in which case such metrics will be needed. For example, some transit infrastructure may be leased, and treated as operating expenditure, rather than built. In our view the notice should take a broader perspective noting that a nil value can be returned if for instance it turns out that no operating expenditure has been incurred on the project. We also propose that NBN Co reports forecast expenditures that it has avoided as a result of the project, namely those otherwise expected to occur for a continuing FTTN network.

We propose a number of other more minor changes to help improve the reporting processes and transparency. These include provision for:

- reports to be shared with the ACCC as well as the Department
- the Department to have the power to direct NBN Co to publish materials rather than leave it to NBN Co to determine that it need not publish information it identifies as commercial-in-confidence
- NBN Co having an obligation to certify that it is reporting on the correct premises and expenditures associated with the project
- proxies and estimates to be provided while information limits are being addressed – rather than on a permanent basis.

We have attached a marked-up copy of the updated draft Project Notice to reflect the proposed changes detailed in this letter.

ACCC staff would welcome clarifying or discussing any aspect of our feedback with the Department as required.

Yours sincerely

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Executive General Manager
Infrastructure Division

Annex A

Annual and total expenditure cap under NBN Co base case (\$m nominal)

FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	Total cap
1.7	29.6	284.8	425.2	391.5	266.7	150.8	34.6	1,584.8

Annual and total expenditure cap under ACCC alternative proposal (\$m nominal)

FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	Total cap
1.8	32.2	309.6	462.3	425.7	289.9	163.9	37.6	1,723.0