



15 February 2022

Assistant Secretary  
Universal Service Guarantee Taskforce  
Communications Services & Consumer Division  
Department of Infrastructure, Transport, Regional Development and Communications  
[new.developments@communications.gov.au](mailto:new.developments@communications.gov.au)

Dear Sir,

**REVIEW OF INSTRUMENTS UNDER PART 20A OF THE *TELECOMMUNICATIONS ACT 1997*  
COMMENTS ON CONSULTATION PAPER (3 DECEMBER 2021)**

We refer the above matter and thank you for the opportunity to provide comments on the Consultation Paper dated 3 December 2021 as part of the broader review of the fibre-ready facilities exemptions under Part 20A of the *Telecommunications Act 1997*.

**Question 1**

Do the matters covered by the 2011 Instrument remain important and need to continue? Are refinements needed? Are the matters better dealt with in Part 20A, in subordinate legislation, or a combination?

InsiteSJC is a development (town planning and surveying) consultancy that assists clients in obtaining development approvals from assessment managers (predominantly councils) and in satisfying clients' approval conditions, including those pertaining to telecommunications. Our main office is in Bundaberg and, as such, most of our work relates to remote, rural and regional areas in the Wide Bay-Burnett region. Given this, our comments below focus on the exemptions currently available under the *Telecommunications (Fibre-ready Facilities—Exempt Real Estate Development Projects) Instrument 2021* (2021 Instrument) in relation to regional, rural and remote areas.

**Question 2**

Do the matters covered by the 2021 Instrument remain important and need to continue? Are refinements needed? Are the matters being dealt with in Part 20A or in subordinate legislation, or a combination?

**Question 4**

Should pit and pipe exemptions generally remain available in rural and remote areas where the provision of fixed lines is unlikely for the foreseeable future? If so, do the exemption criteria need to be refined and, if so, how? For example, are the utility, frontage and kerb and channelling requirements valid and appropriately worded?

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It is noted from the Consultation Paper that the 2021 Instrument targets development in areas that are unlikely to have fixed-line network infrastructure installed in the foreseeable future and where fibre-ready facilities are not warranted. It seems therefore incongruous that one of the exemption criteria requires the average street frontage of the new/proposed lots to be minimum 60 metres given frontage length does not correlate with the likelihood of or need for fixed-line network infrastructure being foreseeably installed.

Contrary to the remark on page 5 of the Consultation Paper, our experience so far has found this criterion to be the most common cause in disqualifying a development from claiming exemption. The possible perception that lots with frontages less than or equal to 60m are more urban in nature and therefore location (and therefore more likely and readily able to be serviced by fixed-line network infrastructure) or result from larger-scale subdivisions (and therefore more warrant fixed-line network infrastructure), is narrow and fails to account for smaller-scale development of properties distant from urban footprints that otherwise are supported by local planning instruments for subdivision.

We raise [REDACTED] in Horton as an example and attach a copy of our request for Ministerial exemption (which we further discuss in our response below to Question 3). The development met all other criteria but for the frontage (given the site's frontage to [REDACTED] could not be considered in the calculations). The distance of the site from the nearest fixed-line service area (approximately 3km) resulted in NBN Co estimating \$278,000 in backhaul charges and \$275,000 of developer contribution. Particularly noting the real estate value in Horton and the small number of lots, this cost alone rendered the project unviable.

The relevance and importance of the 2021 Instrument is indisputable in enabling exemption of developments unlikely to be serviced by fixed-line infrastructure in the foreseeable future. However, as illustrated by this case study, the criteria are currently not sufficiently discerning to ensure developments such as [REDACTED] do not "fall through the cracks".

As a minimum, we seek deletion of Item 1(c) – "the average length of the street frontages of the building lots within the project is 60 metres or greater.

We have also encountered other instances where Ergon Energy has proposed to supply the development with a combination of overhead and underground infrastructure. Is the Department of Infrastructure, Transport, Regional Development and Communications (the Department) delegated to determine whether the proposed electrical reticulation is "substantially above-ground electricity lines"?

### **Question 3**

Is the process by which developers claim exemptions appropriate? Can it be improved? If so, how?

The current application and assessment processes to claim exemptions is simple and quick for unequivocal developments. It is however quite the opposite for more nuanced developments. While we have found the various officers in the Department to be helpful and responsive, their discretions are limited/non-existent as only the Minister is able to decide and grant exemption.

It is regrettable the Minister's exemption powers under Part 20A is not covered by this review as we consider the process could be materially improved through the delegation of this power to the Department.

The process to apply for Ministerial exemption is involved, and neither reflective of the value of the project necessarily nor its likelihood of success (noting the paper's statement that only one exemption has been granted to date).

Upon lodgement of our request, we were advised by the Department that we needed to provide a quote for installing pit and pipe.

### **Question 5**

Should the willingness of NBN Co or another entity to take ownership of pit and pipe in a rural and remote area be a criterion in considering whether an exemption to install pit and pipe be granted? What proof should be required that a developer has contacted NBN Co or another appropriate entity?

This is a possibility but what would be the process to apply to NBN Co for willingness of ownership? Could the question be asked prior to any substantial expenditure (e.g. design of pit and pipe)? Would NBN Co be bound by statutory timeframes (important as we have found communications with NBN Co generally frustrating)? Would a register exist of other appropriate (approved) entities per location? Our experience in the Bundaberg region is that there are very few infrastructure providers and none that are interested in provisioning smaller developments.

### **Question 6**

What role, if any, should local governments play in setting telecommunications requirements in their jurisdictions and the grant of exemptions? What should happen if there are differences between Commonwealth policy and local government requirements, noting Commonwealth law would prevail over inconsistent local requirements? Should Commonwealth policy generally apply? Do Commonwealth requirements need to be clearer in this regard?

Bundaberg Regional Council (BRC) refers entirely to the *Telecommunications Act 1997* including Part 20A. There are therefore currently no discrepancies between Commonwealth policy and local government requirements.

BRC currently permits bonding of telecommunication works, with the bond to be held until such time as it is demonstrated exemption has been obtained or telecommunications infrastructure has been provided. This enables Telstra to provide telephone services to the end users if so requested, with Telstra able to choose the most appropriate technology – including wireless or satellite – if outside the fixed-line footprint.

#### **Question 7**

Should exemptions from pit and pipe installation not be available where a development is within 1,000 metres of the NBN fixed line network? Should countervailing factors still apply (e.g. the development is adjacent but blocks are still 10 ha each, or a carrier is not prepared to take ownership for the pit and pipe?

While we originally understood there is no backhaul charge for developments within 1,000 metres of the NBN fixed line network, an experience in late 2019 on another development countered this. Communications with Telstra (back when Telstra accepted applications for reticulation) indicated 640m of cable haulage and 115m of pipe were required – given only direct buried cable existed in the area – at a cost of \$22,500.

Perhaps it would be more appropriate for an additional exemption criterion to be introduced based on the existing and proximate fixed-line infrastructure? Telstra has previously advised direct buried cable reflects an area's rural character.

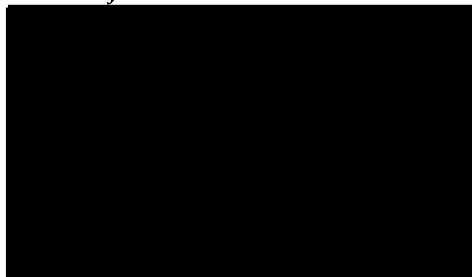
#### **Questions 8-10**

No comments.

We welcome any further discussion on the matter.

Kind regards,

**InsiteSJC**



Enc.  
Request for Ministerial exemption



Our Ref: GC21-081-T03

13 August 2021

The Honourable Paul Fletcher MP  
Minister for Communications, Urban Infrastructure, Cities & the Arts of Australia  
c/- Department of Infrastructure, Transport, Regional Development & Communications  
GPO Box 2154  
CANBERRA ACT 2601

By email: [New.Developments@communications.gov.au](mailto:New.Developments@communications.gov.au)

Dear Minister,

**DEVELOPMENT—SUBDIVISION (2 LOTS INTO 5 LOTS)  
AT [REDACTED] HORTON  
DESCRIBED AS [REDACTED]**

**REQUEST FOR EXEMPTION FROM THE REQUIREMENTS TO INSTALL FIBRE-READY PIT  
& PIPE UNDER PART 20A OF THE TELECOMMUNICATIONS ACT 1997**

### Introduction

We refer to the above matter and advise we act on behalf of the owners [REDACTED]  
[REDACTED] for town planning and surveying.

### Chronology

[REDACTED] have received development approval from Bundaberg Regional Council for a two into five lot subdivision at Horton. A copy of Survey Plan [REDACTED] is **enclosed**. Condition 12 of the **enclosed** Development Approval [REDACTED] requires entry into an agreement with a telecommunications authority or cable service provider to ensure that telecommunications/cable services will be available to each lot.

Development Approval [REDACTED] does not require kerb and channel nor underground electrical reticulation. A copy of Ergon Energy's Offer for Network Connection Services is **enclosed** to evidence supply by overhead reticulation.

Figure 1 shows the development site's inclusion in a nbn™ fixed wireless area.

Figure 2 shows the State planning intentions for the region which substantiates the site's rural/remote location. This makes service by fixed-line infrastructure unlikely.

Figure 3 shows the site's proximity to Childers township which is serviced by nbn™ fixed line.

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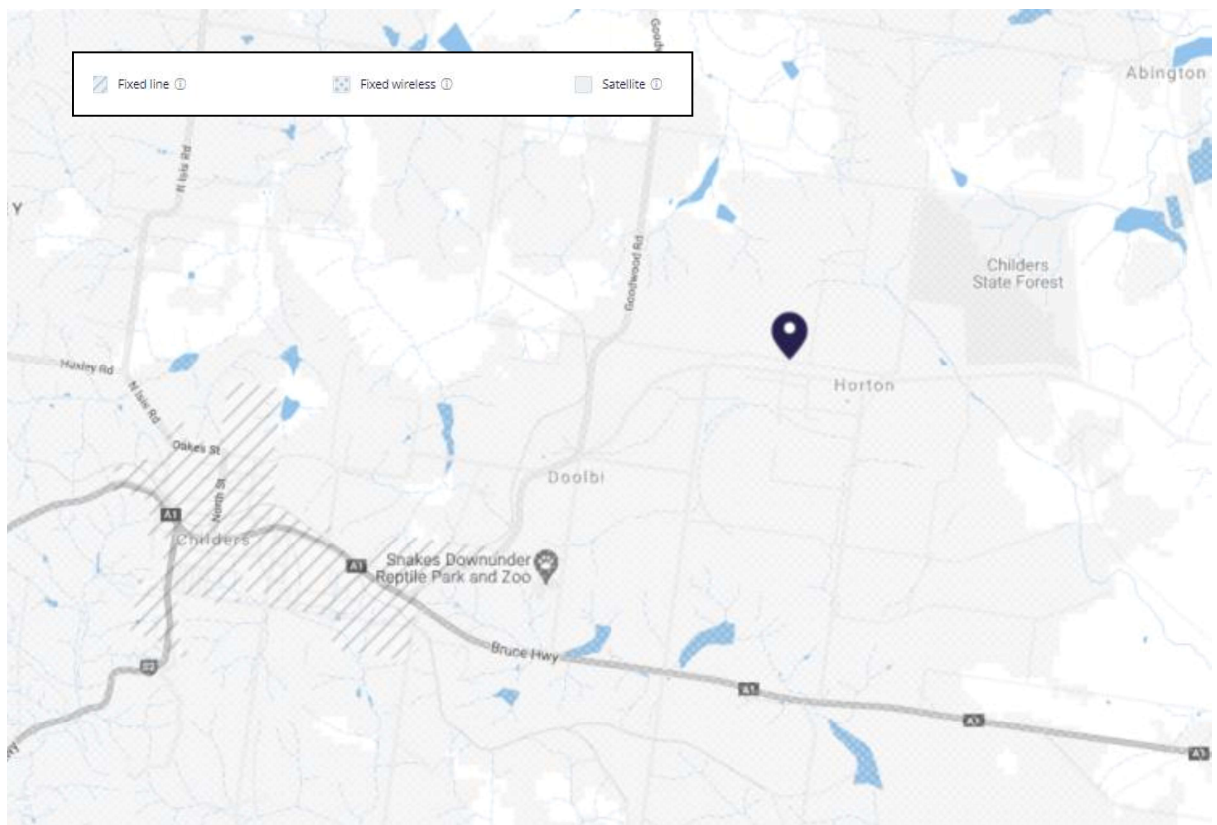


Figure 1—nbnTM service type areas (Source: [www.nbnco.com.au](http://www.nbnco.com.au))



Figure 2—Regional land use categories (Source: State Planning Policy Interactive Mapping System)

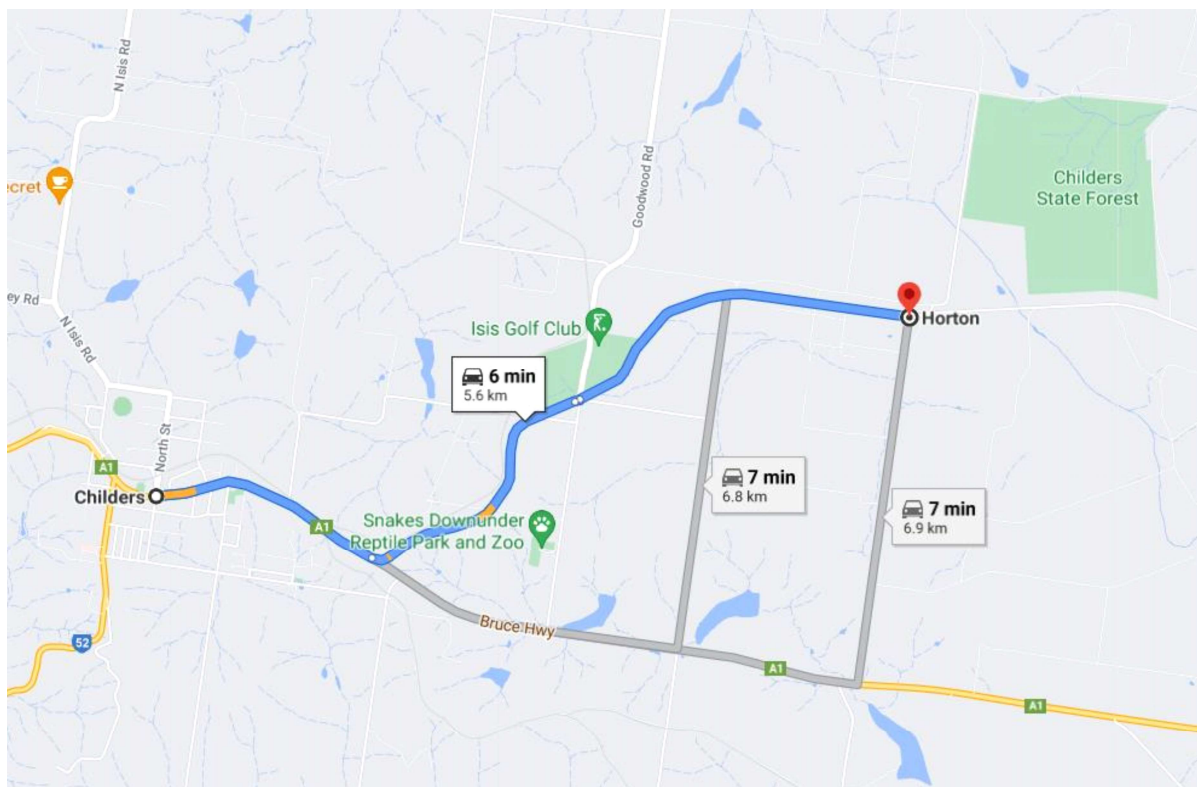


Figure 3—Site proximity to fixed-line area (Source: Google Maps)

### Step 1

A copy of the email thread between our office and the Communication Services & Consumer Division of the Department of Infrastructure, Transport, Regional Development and Communications from June 2021 is **enclosed**. It was confirmed the development could not claim exemption from the requirements to install fibre-ready pit and pipe under Part 20A of the *Telecommunications Act 1997* as the new lots had average road frontages less than 60m<sup>1</sup>, however noting the development's compliance with all other exemption criteria.

### Step 2

An application for reticulation was then made to Telstra on 11 June 2021. Telstra declined the application on 18 June 2021 on the basis that it no longer offers to reticulate new developments. A copy of Telstra's response is **enclosed**.

<sup>1</sup> Given the Telecommunications (Fibre-ready Facilities—Exempt Real Estate Development Projects) Instrument 2021 disallows more than one road frontage being considered.

### Step 3

Communications were resumed with Department of Infrastructure, Transport, Regional Development and Communications in July 2021. An estimate from NBN Co was obtained, as **enclosed**, for backhaul costs of \$278,000 with the developer contribution being \$275,000.

██████████ is currently being marketed for \$73,000 – ██████████. The developer contribution for the backhaul cost alone, disregarding all other costs incurred by ██████████ to realise the development, would render the project unviable.

### REASONS FOR EXEMPTION

We request your specific exemption for this development from the requirements to install fibre-ready pit and pipe under Part 20A of the *Telecommunications Act 1997* given—

- (1) the development otherwise satisfies all other criteria for exemption;
- (2) the site is demonstrably rural/remote and therefore the target intended of the exemption instrument;
- (3) the inability to engage Telstra to reticulate the development;
- (4) NBN Co not undertaking planning assessments for developments less than nine premises outside the fixed line footprint;
- (5) individual end users not being disadvantaged given—
  - a) the commitment of Telstra to deliver voice services to individual end users, noting Telstra is obliged to provide voice services on reasonable request by customers and, where outside the fixed-line footprint, Telstra can choose the technology including wireless or satellite;
  - b) ability for individual end users to receive voice services by mobile phone – Telstra coverage maps indicate the property is predicted to receive 5G outdoor and indoor coverage – <https://www.telstra.com.au/coverage-networks/our-coverage>;
  - c) ability for individual end users to receive broadband services by nbn<sup>TM</sup> fixed wireless.

██████████ have completed all other conditions of Development Approval  
██████████.

If you would like to discuss this matter, please do not hesitate to contact me on (07) 4151 6677 ██████████.



Yours faithfully,  
**InsiteSJC**



Enc.

