Submission by Robin Russell & Associates:

Review of Fibre-ready Facilities Exemptions

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Question 1 part A: *Do the matters covered by the 2011 Instrument remain important and need to continue? Are refinements needed?*

RESPONSE:

The matters included in the 2011 Instrument do remain valid and relevant. The goals should be: (1) to ensure the installation of fibre ready facilities in new developments that are deemed urban, include underground electrical infrastructure and are within the NBN fibre footprint, and (2) to provide above-ground facilities where warranted due to the location of new developments in the near proximity of the fibre footprint.

Question 1 part A: *Are the matters better dealt with in Part 20A, in subordinate legislation, or a combination?*

RESPONSE:

Subordinate legislation does afford greater flexibility for change. It should thereby be retained to incorporate those requirements which might have to be changed in the near future.

Question 2 part A: *Do the matters covered by the 2021 Instrument remain important and need to continue? Are refinements needed?*

RESPONSE:

The matters covered in the 2021 Instrument remain important and should continue. Developments should not be required to install fibre ready infrastructure if they meet acceptable exemption criteria.

As urban land becomes more and more scarce, development is moving into more remote rural areas.

In remote areas, whilst developers are not averse to paying for fibre ready facilities (around $700/lot), the extremely high backhaul costs sometimes quoted by NBN can make it uneconomical. Even for large subdivisions in remote areas, the lower market price of land there means that development costs must be tightly controlled, and high telecommunications fees can make a marginal development inviable.

When developers undertake due diligence prior to purchase, it is very difficult to determine what the backhaul costs will be. NBN can take many weeks -sometimes months - to provide a quotation. Waiting for NBN's cost prior to purchase, could mean missing out on the purchase. In this situation,

developers often make the purchase, but do not learn the high backhaul fees until they are fully committed.

We recently had two small projects, where the backhaul cost was in the vicinity of $200 000. That proved financially disastrous for our clients.

Question 2 part B: *Are the matters better dealt with in Part 20A, in subordinate legislation, or a combination?*

RESPONSE:

Subordinate legislation does afford greater flexibility for change. It should thereby be retained to incorporate those requirements which might have to be changed.

Question 3: *Is the process by which developers claim exemptions appropriate? Can it be improved? If so, how?*

RESPONSE:

We do find the current provision for exemptions, subject to strict criteria, to be reasonable and appropriate. Difficulties arise, however, when a development does not satisfy all criteria, but still falls within the broad definition of a rural subdivision outside the fibre footprint, which is what we believe is the ***intent*** of the exemption.

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?*

RESPONSE:

It is essential that exemptions remain, due to the increased number of future developments in rural areas that are only serviced by fixed wireless/satellite.

The exemption criteria should change however. Exemption should not require that all of the current criteria be satisfied. Instead, a combination of some of the criteria should be sufficient, provided the development meets the ***intent*** of the exemption.

Included as a **primary criterion,** even more important than the current criteria, should be whether the development is **outside of the current and/or future planned expansion of the fibre footprint** and would be rejected by NBN. This criterion should be of overriding importance.

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?*

RESPONSE:

NBN's unwillingness to accept ownership of the pit & pipe, which is based on whether the development is within the fibre footprint, should be the determining factor of an exemption.

As noted in the paper, should developers install pit & pipe without NBN's acceptance, then the issue of ongoing ownership remains. No developer would be willing to maintain the assets ad infinitum. Councils have not been willing to accept ownership, even though logically they would be an obvious entity to do this, as they control the verge. Councils, like developers, don't want to wear the cost of maintenance, with no corresponding benefit.

The proof required for an exemption should be an NBN rejection letter. They are already issuing these.

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?*

RESPONSE:

The requirements for satisfying council that a development has met the statutory regulations for telecommunications infrastructure can be unnecessarily onerous. The requirements vary greatly from council to council. The staff of many local authorities do not appear to understand the intentions of the Act or the Instrument, so they would not be in a position to grant exemptions.

Commonwealth policy should apply and override any local government requirements.

Commonwealth requirements for exemptions need to be expanded to generally include developments outside the fibre footprint, which have been rejected by NBN.

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)?*

RESPONSE:

The overriding precedent should be that, if no carrier is prepared to take ownership of the pit & pipe, then an exemption should be allowed.

Being 1000 metres from the nearest fixed line network, can still result in a high backhaul cost. This can have impact on a small development. It would be logical for the size of the development to be taken into consideration, when determining its exemption status. For instance, small owner-occupier property owners who wish to subdivide into say 3 or 4 lots should not be obliged to bear the substantial costs of backhaul, which could make their development unviable.

Question 8: *Should exemptions from pit and pipe installation not be available where a development is in a strategic growth corridor, or commuting zone, or similar? If so, how should such areas be identified? Should countervailing factors still apply (e.g. the development is in such an area but blocks are still 10 ha each on average, or a carrier is not prepared to take ownership for the pit and pipe)?*

RESPONSE:

Exemptions in the areas mentioned should certainly still apply. As stated above, exemption should apply if a carrier was not prepared to take ownership of the pit and pipe installation.

For developments in a strategic growth area, if the first developer is required to bear the full cost of backhaul, then they are effectively subsidizing future developers in the adjacent area. A similar problem exists in the electricity industry when high level assets are required to service a remote development. In the Queensland electricity industry, policies have been adopted to prevent the first developer in an area from having to bear an undue cost penalty.

This problem could be addressed by the carrier's bearing a substation part of the backhaul cost as this expansion would be in the interest of the carrier. Prior to 2011, this type of backhaul was covered by Telstra.

NBN's planners must surely be aware of strategic growth corridors when putting together their recommendations for servicing the site

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Question 9: *Are these other circumstances that need to be considered in terms of exemptions being available or not available? If so, what are they, how should they be handled?*

RESPONSE:

Developments in strategic growth areas should not be excluded automatically from exemption. Refer to reasoning above.

Question 10: *Should some or all of the matters in the two instruments be moved into statute? Are there particular issues best suited to statute, or to legislative instruments?*

RESPONSE:

Subordinate legislation does afford greater flexibility for change. It should thereby be retained to incorporate those requirements which might have to be changed.
