

18 February 2022

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c-/ new.developments@communications.gov.au

Dear Director,

Review of Fibre-Ready Facility Exemptions - Part 20A, Telecommunications Act 1997

Introduction

Thank you for the opportunity to comment on the Review of the Fibre-Ready Facility Exemptions under Part 20A of the *Telecommunications Act 1997* ("**the Exemptions**").

The UDIA is the development industry's most broadly representative industry association with more than 2,500 member companies – spanning top tier global enterprises, expert consultants, small-scale developers and local governments. The development industry is critical to the Australian economy, contributing 1.15 million jobs and \$312 billion in GDP annually.

The UDIA is a strong supporter of the Exemptions remaining in place. They will continue to be necessary to sensibly balance provision of NBN services by fixed line or other means as well as ensuring existing legacy/hybrid systems can be maintained without excessive cost on new, unnecessary infrastructure.

Critically, the UDIA sees several improvements that can be made to the exemption rules. Currently, the highly prescriptive nature of the rules and impractical processes means that Developers face serious problems from misaligned rules including:

- 1) **Significant cost installing unnecessary "pit and pipe"** where there is no reasonable expectation that NBN will install fixed lines because the development failed the prescriptive rules eg: presence of curbing or underground utilities etc;
- 2) **Serious delay installing critical services** in urban areas not serviced by NBN because the fibre footprint area does not align with the strategic urban growth areas;
- 3) **Withheld land titles stalling development progress** because of Local Council confusion surrounding the carriage and ownership of pit and line services;
- 4) **Rural and other projects rendered unviable by high backhaul fees** that cross subsidise subsequent developments and fees that cannot be determined ahead of site purchase.

Fortunately, these issues are relatively simple to resolve:

- 1) Ensure new Exemptions are allowed where NBNco/carriers will not take ownership of the pit and pipe, or fixed line to use such facilities will not be installed within 12 months by a carrier- Developments should not be put to an unnecessary expense. Undertakings should be binding on NBN co and carriers to confirm their position on this with the Developer and NBN co should warrant that any service provided will be fit for purpose. These undertakings should be documented in any relevant strata records;
- 2) Ensure Exemptions are allowed if the development sits outside the NBN fibre footprint and ensure the footprint aligns with strategic urban growth area maps;
- 3) Develop guidance on provision of telecommunications by the commonwealth to prevent unnecessary overlapping local government involvement; and
- 4) NBN co and carriers provide infrastructure costs sharing scheme where they bear the cost of backhaul in growing areas or progressive introduction of contributions from property projects so it gets paid down over time.

Given the changing nature of telecommunications technology and urban growth areas, we recommend that the Exemptions remain as instruments rather than legislature. This will ensure the rules can be amended in a timely way that enables the rules to adapt as the development landscape changes.

We are keen to workshop any amendments you propose to implement and look forward to meeting with you at your convenience.

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FIBRE-READY FACILITY EXEMPTIONS SUBMISSION
URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA
FEBRUARY 2022

Introduction

The Government review seeks views on the need to continue or modify exemptions from statutory requirements to install fibre-ready facilities. UDIA appreciates our engagement with the NBN Co and Department of Infrastructure, Transport, Regional Development and Communications on these issues.

The UDIA supports the review of the legislative provisions in order to improve the exemptions from statutory requirements to install fibre-ready facilities. The UDIA does however recommend some change to the exemptions not included in the consultation paper to better respond to the nature of where exemptions are needed and other matters.

The exemptions at present have adverse, unintended impacts that, in some cases, effectively stop otherwise approved housing projects from meeting the housing needs of the community.

In addition, there are broad improvements needed to better identify fibre required areas, and more fairly distribute costs in telecommunications delivery to provide for smoother housing supply.

The economic viability of projects, especially in rural areas, can often be marginal or extremely sensitive to cost over-runs. It is critical to ensure these projects are delivered with cost effective services and that they excise any cost for infrastructure that will not be used. The Exemptions are a critical part of this effort and there are circumstances where pit and pipe infrastructure is statutorily required where it will never be used or unavailable. Our recommendations aim to improve housing affordability through reduced costs and delays in this area.

About Urban Development Institute of Australia (UDIA)

UDIA is the development industry's most broadly representative industry association with more than 2,500 member companies – spanning top tier global enterprises, expert consultants, small-scale developers and local governments. The development industry is critical to the Australian economy, contributing 1.15 million jobs and \$312 billion in GDP annually.

We have a long history of engaging positively with the Federal Government and its agencies on issues critical to the property industry.

UDIA National's advocacy is defined by our state-representative National Council – and informed by a diverse membership base, extensive network of state councils and committees and businesses on the frontline of housing development around the country. Our voice is backed by real experience and quality research designed to support good policy making and dialogue with governments, oppositions and the bureaucracy.

Context

The UDIA supports the intent of Exemptions.

Exemptions in brief are provided for:

- copper-based or hybrid-fibre-coaxial (HFC) networks and fibre-ready facilities have been installed or are also being installed (or, for small developments of no more than 10 building lots or building units;
- where it is necessary to install supplementary facilities in a project area, relocating facilities, carrying out minor network extensions, or replacing or modifying serviced by copper-based or HFC networks that existed prior to 27 September 2011;
- where existing facilities were formerly used in connection with a copper or HFC line (prior to 27 September 2011) and can effectively be re-used for those networks;
- for real estate development projects that are located in areas where it is unlikely fixed-line network infrastructure will be installed in the foreseeable future and fibre-ready facilities are not warranted. Subject to the following criteria:
 - no network utilities or only above-ground electricity lines will be installed in proximity to building lots (i.e. they are relatively remote and do not have mains water, sewerage, gas or underground electricity), and
 - there is no kerb and channelling constructed, or planned to be constructed, and
 - the average length of the street frontages of the building lots within the development is 60 metres or more (i.e. the lots are larger rural type blocks), and
 - the development is not in a current or announced NBN fixed-line network rollout area.

Presently nearly 200,000 new homes are commenced on average annually around Australia by the property industry. Smooth efficient and fair frameworks are critical to delivering these homes as affordably as possible.

Issues

1. Prescriptive Exemptions

The Problem

Under the present exemptions, difficulties arise, when a development meets the intent of the exemption being a rural subdivision outside the fibre footprint but does not satisfy all of the exemption criteria.

The unintended consequence is that these projects are required to provide pit and pipe and other facilities though the project may be of large size lots and rural in nature or a small local land division.

These sites are unable to obtain a carrier to supply services, are rejected by NBN co service (as outside the fibre footprint), and despite all other approvals, may not be permitted to sell any lots created.

The primary criterion, even more important than the current criteria for definition for the pit and pipe exemption, 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.

Also, if no carrier is prepared to take ownership of the pit & pipe, then an exemption should be allowed. The proof required for an exemption should be an NBN confirmation letter or email. They are already issuing these for areas not within the fibre footprint.

Where the NBN co or carrier confirm ownership and that fixed line using the pit and pipe is or will be provided within 12 months, the undertaking should be binding on the carrier to ensure services are delivered and NBN co should warrant that whatever service is installed, it will be fit for purpose. These undertakings should be documented in any relevant strata records.

Developers should not have to put in pit and pipe if no fixed line will be installed in the pit and pipe within 12 months.

Recommendation

Exemption from pit and pipe provision or inclusion of pit and pipe should be determined on whether the network is planned to be rolled out within 12 months and if they will take ownership of the pit and pipe. So long as NBN co has a binding undertaking that it will be installed and fit for purpose, this will ensure appropriate telecommunications are available for Australians.

Any answer to the negative on these two questions should result in Exemption (over and above any other exemptions ie: where services are already in place etc)

Prescriptive requirements that there can be no exemption if there are kerb/channel and powerlines etc is not appropriate where there is no plan for NBN any time soon and no carrier ownership of the pit and pipe.

NBN co and carriers will need to indicate their position in a timely way or the presumption is that NBN co/carriers are not taking ownership and will not use pit and pipe within 12 months.

2. Fibre footprint area Misalignment

Problem

The present fibre footprint area in some cases does not align with the strategic urban growth areas set by state, regional, and local authority planning scheme urban areas. This has significant impact on developments because those urban projects are unable to obtain NBN co servicing. This can cause additional costs and delays for new housing projects that despite being approved by relevant planning authorities face servicing issues. Impacts arise as NBN co is unwilling to serve an area despite it being a known urban growth area, specific projects face high back haul costs. Also costs from delays arise from the uncertainties created, arranging other carriers, and clarifying if the site can be serviced or exempted.

Recommendation

The rules should exclude pit and pipe where a project sits outside the NBN fibre footprint as indicated in the italic recommendation above.

Additional action be taken by NBN co in association with the department and industry to ensure the fibre footprint definition is reasonably up to date and aligns with each state's strategic urban growth areas.

3. Local government involvement in telecommunications delivery

Problem

Many local governments have a poor or unclear understanding of the arrangements and technology for telecommunications provision. Notwithstanding they require the provision of telecommunications services to new housing lots by condition of approval. They then stop or delay the issuing of land title until this is clarified for them.

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 and the staff of many local authorities do not appear to understand the intentions of the Act or the Instrument.

The concern is that their involvement is unnecessary in this area and the different requirements across local governments are leading to additional costs on new housing. Commonwealth policy should apply and override any local government requirements.

A review of the various states, territories, and local government approaches may be warranted to further ensure that the delivery and completion of telecommunications services particularly for infill apartment development is fit for purpose on completion as some concern has been raised on this issue in NSW.

Recommendation

A model guide be provided for telecommunications provision to new development reflecting the legislation. It should indicate it is a commonwealth not local responsibility.

4. Backhaul costs

Problem

Telecommunications backhaul costs can be very substantial for some new housing projects and can render a housing supply project unfeasible to be undertaken. Backhaul costs rise very significantly where the housing estate is in a newly developing area but some distance from existing facilities and the proponent is required to provide the facility extension. This is also an issue for some rural housing projects. Of particular concern also is, it is not generally possible at this time to obtain timely early advice on the backhaul requirements that may be required for a project site.

For developments in a strategic growth area, if the first developer is required to bear the full cost of backhaul, they then are effectively subsidizing future housing projects in the area. A similar problem exists in the electricity industry when high level assets are required to service a more remote development. Prior to 2011, this type of backhaul was covered by Telstra.

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 to enable further connections to be made.

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 co 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 unviable.

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. The backhaul cost on two recent small projects was in the vicinity of \$200 000 that proved financially disastrous.

Recommendation

NBN co and carriers provide infrastructure costs sharing scheme in the manner of Electricity providers or some state and local government arrangements. This would involve the carrier bearing the cost of backhaul in growing urban areas or progressive introduction of contributions from property projects. Upfront cost of the backhaul would be reduced to the first proponent and or reimbursed to the funder when subsequent users are connected to the trunk facility.

All carriers be required to apply additional resources to provide early pre-lodgement/proponent advice of likely telecommunications issues and ball park costs that may be needed for backhaul facilities that may be generated by a project.

5. Contestability of works

Problem

While not specifically part of this review issues also arise in relation to Telstra requirements for relocation of existing assets on a new project. The existing asset is located off the project site and not up to requirements. Beside the lack of early advice to proponents about these requirements, the relocation work is inevitably costly as it is not able to be undertaken by the project's consultants and is not subject to competitive tendering.

Required NBN backhaul works should also be subject to competitive tender

Recently a project was required to relocate major Telstra infrastructure currently running on a non-standard alignment in a road reserve. The project was required to undertake roadworks external to the project site to result in the Telstra infrastructure running parallel underneath a length of new kerb. The relocation of Telstra's asset, costs in excess of \$1,000,000.

Unexpected outlays like this can quickly overwhelm the feasibility of projects and is avoidable by proper strategic planning, use of experts with competitive tendering.

It is unfair a developer should have to pay for the relocation of a major communications asset installed historically on a non-standard alignment that was always going to be impacted by future roadworks.

Recommendation

Backhaul trunk works should be in the control of the property project proponents to ensure timely and cost-efficient delivery of infrastructure. This would be in accord with standards as presently used by carriers in delivering the infrastructure. If not delivered by proponents, backhaul works

should still be subject to competitive tender and subject to transparent delivery time requirements.

Review of any reasonable requirements that carriers can apply to projects should be also be undertaken.

6. Statute or Instrument

Issue

The Exemptions clearly have ongoing relevance and importance in determining cost effective and efficient telecommunication services. Critically, it is likely that the Exemptions will need amending from time to time to keep pace with changes in development, telecommunications and planning.

Equally, the potential complexity of the rules lends itself well to statute, however, the relative difficulty of amending statute in a timely manner makes legislation a difficult option for rules that need to react to changing environments.

Recommendation

Given the changing nature of telecommunications technology and urban growth areas, we recommend that the Exemptions remain as instruments rather than legislature. This will ensure the rules can be amended in a timely way.