

# Telecommunications infrastructure in new developments

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As part of the Government's commitment to the roll out of the National Broadband Network (**NBN**) it released the 'Telecommunications infrastructure in new developments' (**the Policy**) in December 2014. The Policy updates the Government's previous 'The Fibre in New Developments Policy' (**FIND Policy**) introduced in June 2011, after concluding that it 'unduly tilted the playing field against private infrastructure providers'.<sup>1</sup>

In this article, we consider the impact of the Policy on developers in the provision of telecommunications in new developments.

## The Policy

The key feature of the Policy is stated to relate to fair competition. With multiple stakeholders (including developers, consumers, contractors and private infrastructure providers) to consider, the Policy seeks to balance a range of competing objectives and interests. Some of these include:

- ensuring residents in new developments have timely access to high grade telecommunication services;
- supporting choice amongst developers to choose a preferred infrastructure provider;
- supporting choice amongst consumers to choose a preferred retail supplier; and
- fair competition and competitive neutrality as related objectives.

NBN Co Limited (**NBN Co**) is wholly-owned by the Commonwealth. The Government continues to support the role of NBN Co as Internet Provider of Last Resort (**IPOLR**), but states it 'must compete fairly with other providers'.<sup>2</sup>

## Snapshot

Key factors affecting developers include:

- Developers can choose among competing infrastructure providers;
- Developers will meet the cost of pit and pipe infrastructure;
- NBN Co will levy a one-time connection charge of \$300, which it is anticipated retail service providers will pass through to end users;
- NBN Co will levy a deployment charge on developers for infrastructure; \$600 for single-dwelling units and \$400 for multi-dwelling units; and
- Where it doesn't have backhaul available to connect a new development, NBN Co may charge developers a co-contribution of up to 50 per cent of the first \$1000 per lot of capital costs it incurs. Developers will be liable for 100 per cent of backhaul costs in excess of \$1000 per lot.<sup>3</sup>

## What does it mean for developers?

One of the major changes the Policy brings about is the cost to developers who are required to make larger upfront contributions for the provision of telecommunications in their developments. The costs

<sup>4</sup> NBN Co will levy under the Policy are:

<b>NBN Co Charge Per Premises/Lot</b>	<b>Cost to Developers</b>
Deployment charge - Single dwelling unit	\$600
Multi dwelling unit	\$400
Backhaul costs - of up to \$1000	Up to 50% of costs
of more than \$1000	Up to 100% of costs
Wireless/satellite co-contribution - Single dwelling unit	\$1300
Multi dwelling unit	\$1100
Cost of pit and pipe infrastructure	Estimated to range between \$400 and \$800 per lot in typical developments

## Backhaul

Where backhaul is not already available in a new estate, developers will be responsible for half or the entire costs for backhaul. NBN Co will charge developers a co-contribution up to 50 per cent of capital costs incurred for the first \$1000 per lot, and up to 100 per cent where costs exceed \$1000 per lot.

Under the FIND Policy, NBN Co would meet the costs of providing fibre to new developments that fell within its fibre footprint.<sup>5</sup> The current measures see the costs of backhaul being shared only between developers and the NBN Co where costs fall below \$1000 per lot.

New backhaul costs may affect developers who have already acquired land on the basis that it will be feasible to develop in the future. The current position may also provide an unfair advantage to new developments falling within the NBN Co's existing fibre footprint.

The provision of new backhaul infrastructure can impose 'potentially hundreds of thousands of dollars upfront' on developers.<sup>6</sup> Where developers are required to meet 100 per cent of backhaul costs, this will significantly increase the costs of the development. For NBN Co, the costs of backhaul are born in the short term by taxpayers and in the long term by consumers and taxpayers. To address this concern, two complementary measures are proposed ('provision of backhaul by NBN Co' and 'capped backhaul contributions').<sup>7</sup>

## Pit and pipe infrastructure

To keep costs down, developers can source pit and pipe infrastructure from independent contractors. NBN Co has issued its own guidelines - 'Deployment of the NBN Co Conduit and Pit Network - Guidelines for Developers'. Although the Communications Alliance has released industry guidelines they are not mandatory and do not create an adequate benchmark for non-carriers. Given that developers are responsible for pit and pipe, the specifications require clarification. Failure to clarify pit and pipe specifications runs the risk of infrastructure later being overbuilt by NBN Co.

## Delay

Internet providers of last resort can require developers to give notice before they are obliged to provide infrastructure in new developments. The Policy sets the maximum notice period at six months and NBN Co proposes a minimum period of four months between the 'provision of pit and pipe and the ready for service date'. If the IPOLR cannot provide infrastructure by the 'ready for service' date it is responsible for delay and should meet the costs of providing any interim solutions and if caused by the developer, the carrier can seek compensation from the developer for any alternative solutions provided in the interim.

## Summary

The Policy requires developers to play a more active role in the provision of telecommunication services in new developments. Increased market competition provides developers with the opportunity to select a preferred provider however this will come at a cost to developers which may place an upward pressure on the housing market, as developers take measures to mitigate costs.

For more information or discussion, please contact HopgoodGanim Lawyers' [Planning and Development](#) team.

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1. Policy, page 6.
2. Policy, page 7
3. Policy, page 5
4. Policy, page 8
5. FIND Policy, page 2
6. Policy, page 22
7. Policy, p. 22, paragraphs [5.2] and [5.3].

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