

Master Builders Australia

Submission to  
The Department of Communications  
on  
*Telecommunications Infrastructure  
In New Developments*

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# CONTENTS

1	Introduction.....	1
2	Overview .....	1
3	Master Builders Core Principles.....	3
4	The Policy Update – Key Principles .....	4
5	The Policy Update – Consumers and Suppliers.....	5
6	The Policy Update – A Level Playing Field .....	6
7	The Policy Update – Backhaul.....	8
8	The Policy Update – Other Issues .....	10
9	Bibliography.....	13

## 1 Introduction

- 1.1 Master Builders Australia is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder state and territory Associations.
- 1.2 Over 125 years the movement has grown to over 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
- 1.3 The building and construction industry is a major driver of the Australian economy and makes a major contribution to the generation of wealth and the welfare of the community, particularly through the provision of shelter.
- 1.4 At the same time, the wellbeing of the building and construction industry is closely linked to the general state of the domestic economy

## 2 Overview

- 2.1 Master Builders has set down a number of important principles and benchmarks for the effective and efficient delivery of the new broadband service being put in place by the NBN Co, and the associated policy framework.
- 2.2 Key amongst these core principles and benchmarks, Master Builders:
  - supports improving access to high-speed broadband for businesses, households and the community, being integral to Australia's future competitiveness and economic prosperity.
  - takes as a given the underlying fibre-to-the-premises (FTTP) technology is the optimal communications technology in all cases now or for the future;
  - expect national consistency in regulatory systems applying to the delivery and operation of the new broadband service; and,

- policy development and implementation, and rollout and performance, of the new broadband service need to recognise the implications for housing affordability, especially for first home buyers and older persons looking to downsize for retirement.

2.3 Against this background, Master Builders:

- broadly endorses the consumer/supplier choice, market-based approach to the delivery of telecommunications services to new residential property developments set out in the Policy Update. However, we will be looking for genuine consultation and maximum transparency in the determination of the proposed minimum service requirements.
- recommends the Australian Government in due course, open to effective competition the provision of new broadband services, including the retrofitting and/or upgrading of existing, services to 'brownfields' areas and, justify the quanta of the proposed NBN Co charging for connectivity against the benchmark of true/avoidable cost recovery;
- does not object, as a matter of principle, to the movement over time toward developers having financial responsibility for backhaul supply in larger developments (more than 200 dwellings), subject to a number of conditions set down in the body of this submission (see paragraphs 7.7 and 7.8);
- has deep reservations about the implementation of an industry-based scheme to fund the new broadband services in loss-making areas. As a matter of general principle, where governments' want to see some 'public good or service' delivered to a group or area for political or social equity reasons, any subsidies should be funded in the first instance in a transparent manner from the public account – through annual budgetary appropriation; and
- sees merit in the creation of an industry-based co-ordination forum to discuss issues associated with the development and ongoing functioning of the new broadband network. However, we do not consider the forum, and the proposed arbitral mechanism, should be skewed in favour of any group of players.

### 3 Master Builders Core Principles

- 3.1 Master Builders has set down a number of important principles and benchmarks for the effective and efficient delivery of the new broadband service being put in place by the NBN Co, and the associated policy framework (Master Builders, 2009; 2010a, b and c).
- 3.2 Key amongst these core principles and benchmarks are Master Builders:
- supports improving access to high-speed broadband for businesses, households and the community, being integral to Australia's future competitiveness and economic prosperity. However, this outcome should be achieved in an efficient manner, and without compounding existing housing affordability stresses and/or financial pressure on small businesses.
  - takes as a given the underlying FTTP technology is the optimal communications technology in all cases now or for the future. We note policy and implementation is moving forward on the assumption this technology is, and will remain, best practice over its functional life.
  - expects there to be national consistency in regulatory systems applying to the delivery and operation of the new broadband service. Master Builders would be very concerned to see the introduction and/or the operation of the new broadband service undermined by State, Territory and/or Local Government regulatory variations (as all too often happens in other areas of construction and housing supply).
- 3.3 Federal legislation, regulation and policy should provide sufficient, effective controls and enforcement to ensure such variations are held to the absolute minimum and only permitted after rigorous, transparent and public regulatory assessments consistent with the "Australian Government Guide to Regulation".
- 3.4 Policy development and implementation, and rollout and performance, of the new broadband service need to recognise the implications for housing affordability, especially for first home buyers and older persons looking to downsize for retirement.

3.5 This issue is far from trivial given cities such as Sydney, Melbourne, Adelaide and Perth are already “severely unaffordable”, with Brisbane, Hobart, Canberra and Darwin being “not affordable”

- The pricing of backhaul is particularly important in this regard, with the Policy Update (at page 9) acknowledging, by way of examples, backhaul connections could add between \$460 and as much as \$1600 to the cost of a new residential dwelling, depending on its location.
- As with other infrastructure supply, such as electricity and water, these additional costs will have to be reflected in the price of new dwellings to home buyers.

## 4 The Policy Update – Key Principles

4.1 The Coalition Government (Turnbull and Cormann, 2014) has set down three over-arching principles for the regulatory framework for the telecommunications market place:

- regulation should encourage both infrastructure and retail competition;
- industry players should be treated equally, to the greatest extent possible; and,
- new high-speed networks should be vertically separated – that is, the underlying network must be operated ‘at arm’s length’ from the services sold over it.

4.2 The Federal Government (Department of Communications, 2014) has set down a number of key principles which will guide its approach to the supply of telecommunications infrastructure in new residential developments.

4.3 These principles are:

- developers will continue to be able to choose between competing carriers, including NBN Co, to service their developments;
- developers will continue to meet the cost of pit and pipe;
- developers will make a financial contribution to the cost of providing telecommunications infrastructure;

- NBN Co, like other carriers, will be able to charge retail service providers for the connection of end-users; and
- network providers will need to meet minimum service standard in servicing new developments.

## 5 The Policy Update – Consumers and Suppliers

5.1 The Policy Update sets down two objectives for consumers and suppliers in the provision of new broadband services to new developments:

- for consumers: “... to ensure occupants of new developments have timely access to high quality and fairly priced telecommunications services.” (at page 10); and,
- for suppliers (developers): to “... have a choice of network provider in all cases and can purchase network components ... as they wish...” (at page 11).

5.2 Key features of the new arrangements for consumers include:

- the new infrastructure must support high-speed broadband and voice services;
- it will need to be upgradeable and affordable; and,
- deliver download rates of 50 MBs per second, with proportional upload capabilities.

5.3 Key features of the new arrangement for suppliers (developers) include:

- developers, and any network operators they may engage, will be free to determine and deploy the most cost effective access technology, taking into account minimum service requirements (MSRs). This approach could involve outsourcing individual network elements to specialist providers, again subject to meeting MSRs; and
- the best model for competition involving retail service providers (RSPs) will be left to the private sector.



- 5.4 Master Builders broadly endorses this consumer/supplier choice, market-based approach to the delivery of telecommunications services to new residential property developments. However, we will be looking for genuine consultation and maximum transparency in the determination of the proposed MSRs.

## 6 The Policy Update – A Level Playing Field

- 6.1 The Policy Update Paper (at page 6) states the policy framework adopted by the then Labor Government “... *unduly tilted the playing field against private (telecommunications) infrastructure providers.*”
- 6.2 Against this background, the current Coalition Government had decided to adopt a two-track approach to the provision of new broadband services in Australia:
- the National Broadband Network (NBN) will likely become the dominant provider of such services where it replaces existing Telstra services (largely in what can be considered ‘brownfields’ areas); and,
  - a more competitive market for the provision of such services will apply in areas of new residential development (so-called ‘greenfields’ areas), although the standard of service will need to be comparable to that provided elsewhere by the NBN.
- 6.3 The two-track arrangement reflects the policy decision of the Coalition Government to separate wholesale provision of telecommunications infrastructure from the supply of retail services to residential and smaller business consumers.
- 6.4 The new policy framework has potentially profound implications for the building and construction industry, in particular those involved in the development and building of new residential areas.

6.5 These implications include:

- property developers can no longer assume default telecommunications carriers or service providers will automatically identify and provide services to a new residential development;
- rather they will need to proactively manage the supply of new broadband services to such developments, much in the same way they already do for other infrastructure like electricity, water and sewerage; and
- developers will also be called upon to make contributions to the costs of providing telecommunications infrastructure, with the commercial option of passing through, in part or in full, these costs to the end consumer (e.g. the residential home buyer).

6.6 Master Builders supports wider application of effective competition in the provision of telecommunications services, and in greater application of true (and avoidable) cost recovery for the supply of key infrastructure.

6.7 However, in the current context, Master Builders remains concerned that:

- the expanded competition arrangements only relate to new developments (greenfields sites) and do not apply to infrastructure supply to existing residential (brownfields) developments.

As we have stated previously “... *there should be no difference in relation to the treatment of new estates and the retrofitting of existing housing for fibre.*” (Master Builders, 2009: 8).

- similarly, any cost recovery by NBN for infrastructure costs associated with connectivity to its network must be based on true, not inflated, cost recovery.

As such, the Federal Government should justify how the proposed quanta in the charging regime for connectivity, especially as it relates to backhaul, as set down at page 8 (in general) and page 9 (by way of example), were determined.

6.8 Against this background, Master Builders recommends the Australian Government:

- in due course open to effective competition the provision of new broadband services, including the retrofitting and/or upgrading of existing, services to 'brownfields' areas; and
- justify the quanta of the proposed NBN Co charging for connectivity, especially for backhaul, against the benchmark of true/avoidable cost recovery.

## 7 The Policy Update – Backhaul

7.1 The Policy Paper (at Section 5) identifies backhaul as a critical and challenging issue for new telecommunication supply.

- Backhaul involves connecting a new residential development to the wider telecommunications network.

7.2 In 'brownfields' areas, for example where there is an urban infill immediately adjacent to the existing telecommunications network, such costs may well be relatively modest.

7.3 By contrast, in 'greenfields' areas, for example where a developer/builder creates a new residential estate on previously vacant land on the urban periphery within intermediate proximity to the telecommunications network, such costs can be potentially substantial and add considerably to the cost of the development and housing supply.

7.4 The Policy Paper (at page 22) recognises:

*While the cost of managed backhaul ... has declined in recent years, the provision of new backhaul infrastructure can still impose a significant cost – potentially hundreds of thousands of dollars upfront – and take significant time to provide, potentially leading to delays in providing services.*

- 7.5 The Policy Paper proposes (at page 22) a multi-phase approach to dealing with this critical challenge, recognising the central nature of backhaul supply to an effective network and the considerable costs involved in its provision.
- 7.5.1 The first phase will be a set of interim measures, which will operate pending the development and promulgation of definitive, long-term measures.
- 7.5.2 The second phase “... may include an option, phased in over time, whereby developers contribute much more to the cost of backhaul over time.” (page 22)
- 7.6 The interim measures for the provision of backhaul will have three key elements:
- first, where the NBN has backhaul capacity, it will provide access to its existing network to alternative network operators on commercial terms to its nearest available point of interconnection, with other carriers being able to compete in such supply;
  - second, where the NBN has backhaul capacity, developers will be required to contribute, on a partial cost-recovery basis, to NBN costs in providing backhaul facilities to new estates; and
  - third, where the NBN does not have backhaul capacity and would need to build a backhaul connection for a new estate, development will be required to make a co-contribution, the quantum depending on the characteristics of the development.
- 7.7 Master Builders recognises backhaul connectivity to the network is critical for the supply of telecommunications services in new developments where customers want access to a fibre-wireline facility.
- 7.8 Given the potentially sizeable costs of backhaul provision in the context of greenfields developments where the pathway and/or timing of NBN rollout are not definitively known, the multi-phase approach is appropriate.

- 7.9 Master Builders does not object, as a matter of principle, to the movement over time toward developers having financial responsibility for backhaul supply in larger developments (more than 200 dwellings), providing:
- the costs of such supply are based on the true avoidable cost of provision for the particular connection;
  - the regulatory framework and the timelines for the transition are developed in conjunction with the building and construction industry, and when finalised are well known in advance to inform business modelling and project evaluation;
  - pricing and charging for backhaul should be determined by market forces, recognising a ‘one pricing structure fits all situations’ approach may not be appropriate given the heterogeneity of property development; and
  - any regulations are subject to the requirements of the “Australian Government Guide on Regulation”, and are supervised by the relevant agencies (e.g. the Australian Competition and Consumer Commission; the Australian Building Codes Board, et al).
- 7.10 Against this background, it is important all parties – builders, developers, policy makers, and regulators – participate in a genuine process of consultation to address the many challenges issues involved in transitioning to a commercially sustainable approach to the delivery of backhaul in new residential property developments.

## **8 The Policy Update – Other Issues**

- 8.1 The Policy Update raises a number of other important issues which are likely to have a substantial impact on the delivery of new broadband services to new residential estates.
- 8.2 Most prominent amongst these issues are:
- the payment of cross-subsidies to the NBN; and
  - consultation and arbitration in the co-ordination of infrastructure.

8.3 On the issue of cross-subsidies, the Policy Update states:

*“Since the NBN includes loss-making networks ... and the NBN entails funding these through cross-subsidies, it follows that profitable networks in new developments which are not part of the NBN, need to contribute to this cross-subsidy.”* (at page 7); and,

*“... the Government intends to introduce an industry-based scheme to fund the provision of broadband infrastructure in loss-making areas. Infrastructure providers in new developments would be expected to contribute to this scheme on an equitable basis.”* (page 13).

8.4 Master Builders has deep reservations about the implementation of an industry-based scheme to fund the new broadband services in loss-making areas.

8.5 As a matter of general principle, where governments want to see some ‘public good or service’ delivered to a group or area for political or social equity reasons, any subsidies should be funded in the first instance in a transparent manner from the public account – through annual budgetary appropriation.

8.6 Should the Coalition Government wish to persist with the ‘industry-funded subsidy model’ described in the Policy Update, then there must be maximum transparency in the prerequisite cost/benefit analyses, determination of the quanta and the flows of any subsidies (in general and in particular) and contain processes for regular reviews thereof including strategies for their progressive wind-back. Such work must necessarily involve industry at every stage.

8.7 On the issue of consultation and arbitration in the co-ordination of infrastructure, the Policy Update states (at page 19)

*“This could take the form of a co-ordination forum where Telstra, NBN Co and other providers discuss how particular developments outside the NBN fixed line footprint should be serviced, particularly where they are close to the edge of the footprint.”*, and

*“... the Government proposes the Communications Alliance establish an arbitrator to determine IPOLR (Infrastructure Provider of Last Resort) responsibilities in the event of disputes or where a particularly complex situation arises...”*

- 8.8 Master Builders sees merit in the creation of an industry-based co-ordination forum to discuss issues associated the development and ongoing functioning of the new broadband network. However, we do not consider the forum, and the proposed arbitral mechanism, should be skewed in favour of one group of players, namely the telecommunications service providers.
- 8.9 At very least, membership the co-ordination forum must include representatives from the building and construction industry, and the property development sector, while the appointment of an arbitrator should be made by the Minister for Communications from suitable high-calibre candidates, and be independent of all players in the market.

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