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4 September 2017

The Hon. Senator Mitch Fifield  
Minister for Communications and the Arts  
Department of Communications and the Arts  
GPO Box 2154  
CANBERRA ACT 2601

Also sent by email: [greenfields@communications.gov.au](mailto:greenfields@communications.gov.au)

Dear Senator Fifield

**PRINCE HENRY AT LITTLE BAY  
TELECOMMUNICATIONS INFRASTRUCTURE - COMPETITION AND CHOICE**

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We represent Community Association DP No. 270427 which is the Community Association of the Prince Henry Community at Little Bay, NSW.

We are writing in response to the letter to the managing agent of the Community Association, Dynamic Property Services, under the hand of Philip Mason, Assistant Secretary of the Market Structure Branch, dated 6 April 2017 (**the Letter**).

We have been asked to respond to the Letter on behalf of the Community Association in the manner set out below.

The representatives of the Community Association were extremely disappointed when they read the Letter.

The Government's Adequately Served Policy has had a considerable, detrimental impact on the residents of the Prince Henry Community and the Letter simply fails to acknowledge this in any meaningful way.

The Letter represents that the Prince Henry Community is "adequately served" by the telecommunication services provided by the network provider Pivit, as Pivit was granted "adequately served" status.

The unfortunate reality is that the Prince Henry Community Scheme is not "adequately served" by the telecommunication services provided by Pivit.

Indeed the residents throughout the Prince Henry Community do not have a sufficient choice of telecommunications provider. This is because Pivit enjoys a virtual monopoly in connection with the provision of wholesale and retail telecommunication services to those residents.

In other words, it seems that the open access criteria that Pivit is required to meet, are not being met. Put simply, retail level competition is not being fostered as there are no other telecommunications carriers who provide internet and telephone services to residents in the Prince Henry Community apart from a very small number of residents who receive limited services from Telstra.

Plainly, Pivit has no commercial incentive to embark on commercial initiatives to attract retail service providers onto its network because it appears not to be doing so.

The concerns of the Community Association are fortified by the conclusions reached by the Australian Competition and Consumer Commission (ACCC) in its Final Decision Paper in the “Superfast Broadband Access Service Declaration Inquiry”. In its Final Decision Paper, delivered in September 2016, the ACCC specifically noted that Pivit was:

*“[one of] a number of local optical fibre networks that appear to be operating as local monopolies in a number of geographic areas in Australia.”*

In relation to Pivit and similar providers, the Paper went on to say that:

*“The ACCC finds the lack of competitive retail options suggest there is insufficient pressure on vertically-integrated suppliers to remain competitive both on price and non-price terms and may, over time, lead to a larger divergence between retail offerings by vertically-integrated providers and those where wholesale competition is present.”*

and more specifically:

*“This can be seen from Clublinks and Pivit Telecom’s pricing, which is relatively high for high allowance offers compared to both that in South Brisbane and supply across the NBN network ... While Pivit’s lower allowance offers are in the same range as other providers on non-regulated wholesale networks, even with Pivit reducing its price by \$5 since the draft decision, they are still higher compared to similar NBN offerings.”*

Historically, the Prince Henry site was excluded from NBN rollout plans on the basis of being “adequately served”, yet this has clearly not been the case as indicated in the findings of the ACCC. In those circumstances, we have been asked to request that the decision to exclude the Prince Henry site from the NBN rollout be reconsidered to enable residents in the Prince Henry Community to be provided with the choice of telecommunications services that they require.

The plight of the residents in the Prince Henry Community is not helped by the fact that residents in neighbouring developments, such as Little Bay Cove, are able to choose from a range of different providers of high quality retail telecommunication services. The residents of Prince Henry, and the Community Association, do not understand why they should be in a different (and potentially far worse) position than their neighbours.

The Community Association is concerned that Pivit is not providing an open network to encourage other telecommunications providers to supply telecommunication services to residents in the Prince Henry Community. The Community Association turns to you to help redress these problems.

The Letter concludes that the “Adequately Served Policy” did not contemplate situations such as those that exist at Prince Henry as a result of which the Government needs to consider this matter further.

We would therefore be grateful if you would let us know the outcome of those further considerations, and otherwise provide your further response to the specific concerns and requests of the Community Association which we have outlined above, in due course.

We look forward to receiving your response in order that we may provide the Community Association, its representatives and the residents of the Prince Henry Community with some long overdue, welcome news.

Yours faithfully



J.S. MUELLER & CO