

Our Ref: AM:DR:28694
Your Ref: Stuart McCowan

10 June 2016

UrbanGrowth NSW
DX 28448 PARRAMATTA

Also by email: smccowan@urbangrowth.nsw.gov.au

Dear Sir

RE: PRINCE HENRY AT LITTLE BAY
ALSO RE: NETWORK MANAGEMENT SERVICES AGREEMENT WITH PIVIT PTY LTD

1. Introduction

We act for Community Association DP No. 270427 which is the Community Association of Prince Henry at Little Bay.

We have been instructed to write to you about the Network Management Services Agreement (**Agreement**) between Landcom (now **UrbanGrowth NSW**) and Pivit Pty Ltd (**Pivit**).

The purpose of this letter is to make you aware of the concerns of the Community Association about the performance of Pivit under the Agreement and to request that you ensure that Pivit complies with its obligations under the Agreement.

2. The Agreement

Under the Agreement, UrbanGrowth NSW engaged Pivit to manage and operate the fibre network, headend and communications room at Prince Henry (**Network**) and to provide Network Management Services for the Network¹ and Communication Services to residents throughout Prince Henry (**residents**).² The Agreement also requires Pivit to provide access to the Network for other third party service providers to enable them to provide Wholesale Customer Services to residents through the Network.³

¹ See cl 4.1 of the Agreement.

² Cl 8.

³ Cl 6(a).

The Agreement requires Pivit to provide these services for an initial term of 25 years,⁴ in an efficient and professional manner, exercising all due care, skill and attention⁵ and in accordance with the lawful directions of UrbanGrowth NSW.⁶

3. The Services

The Network Management Services Pivit is required to provide under the Agreement consist of those services that are necessary for the proper management, operation and conduct of the Network.⁷

The Communication Services Pivit is required to supply to residents under the Agreement consist of a range of services to be provided over the Network including broadband internet and email services, fixed line telephony services, pay TV and free to air television services.⁸

Further, Pivit is required under the Agreement to provide a fully open Network⁹ and, in particular, to provide wholesale access to the Network to other telecommunications providers to enable them to provide various services to residents.¹⁰

4. Key Performance Indicators

Pivit is required to provide the Network Management Services in accordance with certain minimum operator service levels specified in the Agreement.¹¹

Pivit is also required to market the Communication Services it provides to residents fairly and accurately,¹² without engaging in misleading and deceptive conduct,¹³ including by ensuring that residents are fully aware of the range of services that are available to be provided by Pivit and other telecommunications providers through the Network.¹⁴

Pivit is also required to conduct the business of selling Communication Services to the residents in accordance with high ethical commercial standards.¹⁵

⁴ Cl 4.1(a), cl 8(a).

⁵ Cl 4.2 and 15.1.

⁶ Cl 4.3.

⁷ Cl 1.1 – definition of “Network Management Services”.

⁸ Cl 1.1 – definition of “Communication Services”.

⁹ Cl 6(a).

¹⁰ Cl 6(a); Schedule 4, Part 2.

¹¹ Cl 4.4 and Schedule 9.

¹² Cl 12(a).

¹³ Cl 12(g).

¹⁴ Cl 12(d).

¹⁵ Cl 12(b).

5. Areas of Concern

The Community Association is concerned that Pivit may not have performed some of its obligations under the Agreement. For example, the Community Association is concerned that:

- (a) Pivit may not have provided a fully open Network, and wholesale access to the Network, to other telecommunications providers to allow them to provide Wholesale Customer Services to residents as it is required to do under clause 6(a) of the Agreement;
- (b) Pivit may not at all times have provided all of the Communication Services it is required to supply residents by means of the Network, such as email services, as it is required to do under clause 8(a) of the Agreement.
- (c) Pivit may not have provided Communication Services to residents by means of the Network in accordance with the prescribed service requirements as it is required to do under clause 8(b) and Schedule 3 of the Agreement.
- (d) Pivit may have failed to provide Network Management Services in accordance with the prescribed minimum operator service levels, for example by restoring problems with the Network in accordance with target restoration times prescribed in Schedule 9 of the Agreement, as it is required to do under clause 4.4 and Schedule 9 of the Agreement.
- (e) Pivit may have failed to conduct the business of selling Communication Services to residents in accordance with high ethical standards and ensure that residents are fully aware of the range of services that are available across the Network, including Communication Services and Wholesale Customer Services that are able to be provided by other telecommunications providers, as it is required to do under clause 12 of the Agreement.

The Community Association is also concerned that neither UrbanGrowth NSW nor Pivit have built a driveway to provide a means of vehicular ingress to and egress from the Communications Room, with a lockable gate, as a result of which contractors vehicles have caused damaged to the footpath and other areas adjacent to the Communications Room.

6. Impact of Pivit's Conduct

The Community Association believes that the performance of Pivit has had a detrimental impact on the residents and Prince Henry as a whole. For example, residents have repeatedly informed the Community Association that:

- they are extremely dissatisfied with Pivit's standard of service;
- other telecommunications providers are not able or willing to provide services to residents through the Network or at all;

- consequently, they are hogtied to Pivit, and have no choice of provider, because Pivit enjoys an effective monopoly in respect of the provision of Communication Services to residents.

Indeed there has been a recent outpouring of discontent among residents with Pivit, including on social media, which has become too widespread for the Community Association to ignore.

7. Request

The Community Association wishes to discuss its concerns with you so that you are able to ensure that Pivit complies with its obligations under the Agreement.

We would therefore be grateful if you would indicate your availability to meet with the representatives of the Community Association to discuss their concerns and the way forward. The representatives of the Community Association are generally available to meet with you during business hours over the coming weeks.

We look forward to hearing from you.

Yours faithfully



J.S. MUELLER & CO

Per: Adrian Mueller