

2 June 2019

Ms Tasha Burrell
Executive General Manager, Projects
Landcom

Via email to: tburrell@landcom.nsw.gov.au

cc: Ms Maureen Wade, Manager, Infrastructure and Innovation – Landcom
Via email to: mwade@landcom.nsw.gov.au

Dear Ms Burrell

**PRINCE HENRY AT LITTLE BAY COMMUNITY ASSOCIATION DP 270427
PROVISION OF TELECOMMUNICATIONS SERVICES | PIVIT'S PRIVATE NETWORK**

The Prince Henry Community Association (CA) represents around 1,000 households and some 3,500 residents in Landcom's master planned community at Little Bay on the site of the former Prince Henry Hospital.

We are writing to you, as members of the CA Executive Committee and Prince Henry lot owners, to request Landcom to consider providing financial assistance to the CA to cover legal expenses it has already incurred and will likely continue to incur with respect to the provision of telecommunications services to Prince Henry residents (see attached copies of invoices for legal costs incurred to end May).

It's important to note that the CA is not a party to the Network Management Services Agreement (NA) between Pivit and Landcom, nor did its Management Statement as developed by Landcom contain a provision for telecommunications. However, as the reliable provision of telecommunications impacts all residents, the CA determined it prudent to obtain expert legal advice to assist in the community's deliberations.

Prince Henry's telecommunications history in summary

In the planning of the Prince Henry development during the early to mid-2000s, Landcom made provision for what was, at the time, advanced telecommunications infrastructure. This comprised fibre-to-the premises cabling and equipment that would deliver high-speed internet, fixed-line telephone, free-to-air television and Foxtel over a single optical fibre connection. This contract was put to tender and ultimately awarded to Pivit Pty Ltd, a Queensland-based company that specialised in telecommunications for greenfield sites in the days before the announcement of the NBN.

While the NMSA between Landcom and Pivit stipulated that the network was to be open to other retail service providers, what became apparent to residents as they progressively moved into Prince Henry was that Pivit, in practical terms, was the sole provider of telecommunications services. Over the course of the past decade both the CA and individual residents have made numerous approaches to RSPs, state and federal members of parliament, the TIO and even the Minister for Communications in an effort to remedy this situation, but to no avail due to Prince Henry's "adequately served" status.

Also during this period, the level of service provided by Pivit was variable at best, with outages of some or all service components for up to weeks at a time and with no form of compensation for subscribers. This issue was compounded by the fact that residents were in the dark as to what service levels they were entitled to, the NMSA having been unavailable to users (though eventually obtained after a FOI request on the part of the CA) due to it being deemed "commercial-in-confidence".

It was in this environment that Landcom approached the CA late in 2018 with the news that Pivit was seeking to assign the NMSA to a new service provider, LBNC0. Any initial optimism at this prospect was quickly quelled, however, as the specifics of the potential new arrangement became clear: a choice of only 2nd- and 3rd-tier retail providers, a network services agreement lacking in crucial detail, and a reluctance on the part of LBNC0 to commit to the continued free provision of free-to-air and Foxtel television services .

In addition, there was the urging by Landcom that the CA should take over its role as Principal in the NMSA, and that it had no ongoing obligations to the CA nor to the residents of Prince Henry (see attached letter from Landcom dated 13 March 2019). These clear suggestions ultimately prompted the CA to engage the services of legal counsel specialising in telecommunications law. As a body of volunteers, the CA executive was well aware it had neither the expertise to address and resolve the issues at hand, nor the guaranteed continuity of members needed to administer a contract for another sole provider some fifteen years into the future, and thus to proceed without qualified legal advice in both regards would be unwise.

At this point, the CA was very conscious of the cost of engaging lawyers to advise on contract negotiations to which they were not a party. It was made clear to the lawyers that a cap on fees was absolutely necessary, as these expenses would ultimately translate to an increase in CA levies for residents. As it was, the agreed cap on legal fees required an increase in levies of some 50 per cent for the financial year commencing 1 January 2019, a move that was met with some resistance from residents in light of the fact that little about the negotiations could be revealed. Raising more funds from lot owners to increase the current budget for legal fees is therefore not an option for the CA.

To further complicate the matter, a meeting with Landcom early in 2019 revealed that an approach had been made by Landcom to NBN Co, with a view to ascertaining whether an NBN overbuild at Prince Henry was a possibility. Although the initial outlook was positive, there was still the Pivit/LBNC0 matter on the table, the (then) upcoming Federal election with an anticipated change of government, and a significant number of roadblocks to be cleared before any possible NBN implementation at Prince Henry.

While the change of government did not happen, a new minister (and associated NBN priorities) did occur, leaving the situation somewhat “in limbo” for at least the short-term. A significant proportion of the CA’s legal budget has been spent and the outlook for extended negotiations are beginning to become a reality. In addition, Pivit is understandably applying pressure to the CA to reach a decision regarding their proposal, while at the same time the CA has been in close negotiations with Landcom’s parallel investigation into the NBN possibility, both of which practically demand the continuity of legal counsel.

The back story of the CA’s efforts over to remove the effective monopoly at Prince Henry is detailed in the Prince Henry telecoms web section at:

<http://www.princehenrycommunity.com.au/our-community/prince-henry-telecoms/>

Conclusion

And so, to reiterate, the CA is seeking financial assistance from Landcom to cover the ongoing legal expenses it has incurred and will likely continue to incur, given that (a) this is a situation neither of the CA’s own making nor in which it has any legal standing, and (b) even in the event of an ideal outcome whereby the NBN is made available to Prince Henry residents, it will have been at a significant financial outlay on the part of the CA – a cost that other NBN customers have not had to incur. Raising more funds from owners to meet legal fees exceeding the CA’s current budget is not an option.

In closing, the CA would like to emphasise its strong desire to continue working with Landcom to achieve a mutually acceptable outcome. The CA, on behalf of Prince Henry owners and residents would also like to express its gratitude for Maureen Wade’s invaluable assistance during the past few months. It is however hoped that a financial agreement can be reached that will allow an equitable outcome to what has, unfortunately, been a disappointing telecoms situation to date.

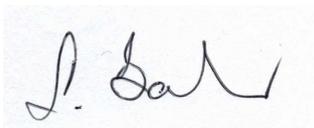
We’d be happy to meet with you if that would help.

Yours sincerely

Prince Henry Community Association



**Susan Graham | Executive
Committee Chair**



**Ken Barker | Executive
Committee Treasurer**



**Michael McIntosh | Lot
Owner**