

## **PRINCE HENRY AT LITTLE BAY TELECOMS BACKGROUND SUMMARY AND RECENT DEVELOPMENTS**

This document provides an overview of Prince Henry residents' experiences with a private network run by a private provider seemingly operating a monopoly, resulting in no choice of retail service provider for residents.

### **Background**

Prince Henry at Little Bay is a master planned community developed in the early 2000s by Landcom, the NSW Government's property developer. The development comprises heritage hospital buildings repurposed as residential dwellings, as well as various modes of individual dwellings developed on newly established lots, sensitive Aboriginal sites and other archaeological zones.

Given the relative Greenfield status of the site, a key component of the master plan was the inclusion of state-of-the-art (at the time), high speed telecommunications, based on fibre to the premises (FTTP) infrastructure for the delivery of internet, fixed-line telephone, free to air television, and Foxtel services. Some time before the NBN was announced, Landcom awarded the contract to supply and operate the telecoms infrastructure and services to Pivit, a Queensland based provider specialising in developed community sites such as Prince Henry at Little Bay.

Over the course of the site's development, with residents moving into dwellings as they were progressively completed, there has been a growing disquiet with regard to Pivit and its seeming 'monopoly' on the provision of telecommunication services. For some this has been simply due to the lack of choice that they may have previously had (since everyone moved to Prince Henry from somewhere else), while others have experiences dissatisfaction with the service levels and/or nature of customer service provided by Pivit, significantly compounded by the lack of a viable alternative.

Regular approaches by the Prince Henry at Little Bay Community Association (CA) as well as by individual residents to third party providers such as Telstra, Optus, TPG, iiNet, etc over the years have yielded no positive outcomes, these providers seemingly unwilling or unable to provide retail services over the Pivit infrastructure. The seeming monopoly led residents at various times to approach the Telecoms Industry Ombudsman for assistance, with the CA also making a number of approaches to Landcom, the Department of Communications, and to local state and federal members of parliament. While sympathetic, all seemed unable to assist.

After some persistent effort, the CA obtained, under Freedom of Information provisions, a copy of the original Network Management Services Agreement (NMSA) between Pivit and Landcom. The contents of the NMSA confirmed both the extent to which Pivit was not meeting its service levels and the fact that it was required to provide open access to third party retail service providers. This was borne out by the Final Decision paper of the ACCC's 'Superfast Broadband Access Service declaration inquiry' where it was specifically noted that Pivit Telecom 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.'*

### **More recent developments**

The situation took an unexpected turn in November 2018 when Pivit made an approach to the CA and Landcom with a view to novating the remaining 13 years of its 25-year NMSA to another private network operator, LBNCo. Meetings with Pivit/LBNCo and Landcom around that time were unproductive. Both Pivit and Landcom seemed keen to be free of their respective contractual responsibilities, Pivit strongly advocating a new contract be entered into by LBNCo and the CA. This was not a desirable option for the CA on several fronts.

The private network installed during the early days of Prince Henry's development, and run since then as a monopoly by Pivit, has not been a success. Users have had no choice of retail service provider (RSP), and pay more than other users with comparable packages in the immediate Little Bay area. In addition, there has been concern among the broader community that the absence of recognisable RSPs within the LBNCo stable, the distinct impression that it would be 'more of the same' should LBNCo become the wholesaler of Prince Henry's private network and, very importantly, without Landcom's involvement, that the CA would have little or no leverage should service levels not meet expectations.

The CA sought specialist legal advice over the ensuing months, and was considering its options when a further meeting with Landcom was arranged in April 2019. In addition to a change in personnel attached to the Prince Henry telecoms issue, was Landcom's advice that it had initiated discussions with NBN Co and that there was a possibility of an NBN overbuild at Prince Henry. This move of course would be subject to NBN Co conducting detailed investigations, producing a feasibility study, and a viable business case.

Since that time, the CA and Landcom have been working together to find a solution. Over several months of joint investigations, it's become clear that NBN is the only viable alternative. Any other solution would mean more of the same for Prince Henry users – lack of choice, potentially poor service levels and higher costs, and no leverage in the event of poor service.

Before the lead-up to the Federal election, Landcom's negotiations with NBN Co seemed to be progressing well, albeit rather slowly. However, during the caretaker period and following the Federal election, progress with NBN Co appeared to come to a virtual halt, with the review of NBN rollout priorities seeming to affect NBN-related decisions in respect of Prince Henry.

In the meantime, LBNCo, perhaps seeing an opportunity to capitalise on the vacuum created by the lack of progress relating to the Landcom/NBN Co negotiations, began installing its own infrastructure at Prince Henry. This not only meant using current infrastructure beneath public roads, but LBNCo staff have obtained the means to

enter a number of strata schemes' private and secure common property. Understandably, residents in these strata schemes are very concerned for their security and privacy.

## **Conclusion**

While the nature of the business arrangement between Pivit and LBNCo at the time of writing is still unknown, the likely outcome of LBNCo's activity is that, in the absence of a firm commitment by NBN Co to overbuild, Pivit may walk away from its contract with Landcom, LBNCo will become the default provider by virtue of simply 'being there', and NBN Co would likely deem an overbuild financially unviable due to LBNCo's capture of Pivit's monopoly.

With all of this in mind, we reiterate that the EC's aim is to seek assistance to obtain fair and equitable access to competitive internet, fixed line telephone, free to air television and Foxtel services for all Prince Henry residents.

Following 12 years with a private network and monopoly provider, and questionable service levels, as well as high costs when compared with users in neighbouring areas, the EC is very keen to find an appropriate solution to the current impasse. And, from investigations to date, it's clear that NBN Co is the only fair and viable solution.

The following two actions will achieve this aim:

1. Prince Henry's adequately served status to be lifted.
2. NBN Co to overbuild at Prince Henry in conjunction with the current build in the neighbouring areas of Little Bay, providing Little Bay residents with the same telecoms provider and the same level of RSP choice and telecoms packages / prices as its neighbours and the rest of Australia.

Should this occur, Prince Henry users would finally have choice, both with the national carrier NBN Co, with its long list of RSPs and, for those wishing to remain with a private network, with LBNCo.

More background information can be accessed on the Prince Henry Telecoms webpage at <http://www.princehenrycommunity.com.au/our-community/prince-henry-telecoms/>.