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Dear Senator Fifield

## **Prince Henry at Little Bay Community Association DP 270427 Telecommunications – choice and competition**

As managing agent for the Prince Henry Community Association DP 270427 we are writing to you on behalf of the members of the Community Association Executive Committee. We are seeking whatever guidance, clarification and assistance you can offer in regard to obtaining fair and equitable access to competitive telephone and internet services for all Prince Henry residents.

Prince Henry at Little Bay is a master planned community developed in the early 2000s by Landcom, the NSW Government's property developer (now Urban Growth, the NSW Government's urban transformation agency). 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 masterplan was the inclusion of state-of-the-art, high speed telecommunications, based on fibre to the premises (FTTP) infrastructure for the delivery of telephone, television and internet services. The contract to supply and operate the infrastructure and services was awarded by Landcom to Pivit, a Queensland based provider specialising in developed community sites such as Prince Henry at Little Bay in the days before the NBN was announced.

Over the course of the site's development, with residents moving into dwellings as they have been 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 for others it has been dissatisfaction with the level and/or nature of customer service provided by Pivit, compounded by the lack of any viable alternative.

From time to time, residents (typically new ones) have made approaches to third party providers such as Telstra, TPG, iiNet etc with regard to having their homes connected to the internet. The response has typically varied from an immediate "no", to an initial "yes" followed by a subsequent "no" once the specifics of the location became apparent to the operator in question. This has led residents at various times to approach the Telecoms Industry Ombudsman for assistance, with approaches also having been made more recently by the Community Association to state and federal members of parliament. However, while sympathetic, all have seemed unable to assist.

This prompted the Prince Henry Community Association last year to make application under Freedom of Information provisions to obtain a copy of the original Network Management Services Agreement (NMSA) between Pivit and Landcom, in an effort to establish what could reasonably be expected of Pivit. The NMSA

clearly states that Pivit will provide basic telephony services, pay TV, free to air TV, video on demand, and broadband internet services and security services.

In addition to a number of service level requirements that were not being met, it revealed that Pivit is specifically required to provide wholesale access third party service providers, yet this has clearly not happened after almost 10 years of Pivit's operation at Prince Henry. It is unclear whether this has been due to actions on the part of Pivit to hinder the process, or reluctance on the part of third party providers to utilise another provider's wholesale services (or both). Either way, the end result has been an effective monopoly for Pivit at Prince Henry at Little Bay during that period.

That was until recently, when a newly arrived strata resident made yet another approach to Telstra to have his home connected to the internet, and for reasons that still remain unclear, Telstra this time agreed. The proviso was that this would not take place over Pivit's existing fibre infrastructure, but via new HFC cable to be rolled out by Telstra at a heavily discounted rate. Telstra even went so far as to send representatives out to meet with the Community Association Executive and "sell" the concept, which promised to deliver initial Telstra HFC internet access, with a subsequent re-assignment of the HFC network to NBN Co when the NBN rollout reached the local area.

However, it soon became apparent that larger apartment blocks only were eligible for this Telstra HFC rollout. Approaches by individual house or townhouse owners to Telstra were dismissed out of hand, with the costs of rollout being deemed prohibitive and/or uneconomical.

Several apartment blocks have taken up the Telstra offer to date and, if events follow the course indicated by Telstra, residents at Prince Henry will ultimately face a situation where many apartment dwellers will have their choice of internet provider over the HFC network (once it is transferred to NBN Co), while remaining residents in smaller apartment blocks, free-standing dwellings or townhouses will continue with Pivit as their only practical option.

A resident of Kelvin Grove Urban Village, based in Brisbane, Queensland, another Pivit site with similar concerns, recently alerted the Community Association to the ACCC's "Superfast Broadband Access Service declaration inquiry". In its Final Decision paper, 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."*

In relation to Pivit and similar providers, it went on to say:

*"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 nonregulated 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 ACCC findings above.

While the quality of the network infrastructure provided by Pivit may be on a par with the some of the best available on the NBN, the lack of choice of retail provider has greatly limited the potential and quality of the services available. In addition, the recent limited Telstra HFC rollout with its “back door to the NBN” makes something of a mockery of the “adequately served” provision, by ultimately circumventing that provision for some, but not all, of Prince Henry's residents.

With all of this in mind, we reiterate that our aim in writing to you is to seek whatever guidance, clarification and assistance you can offer in regard to obtaining fair and equitable access to competitive telephone and internet services for all Prince Henry residents.

We look forward to receiving your response.

Yours sincerely

*Derek McKinstry*

Derek McKinstry  
Licensed Strata Manager