

6 April 2010

Mr Stephen Palethorpe
Secretary
Senate Standing Committee on the Environment,
Communications and the Arts
PO Box 6100, Parliament House
CANBERRA ACT 2600

By e-mail: eca.sen@aph.gov.au

Dear Mr Palethorpe

**Re: Senate Standing Committee on the Environment, Communications and the Arts inquiry into the
*Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010***

The Urban Taskforce is a non-profit organisation representing Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment, to engage in constructive dialogue with government and the community.

The *Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010* is broadly phrased and more detail needs to be supplied before the development industry can pass judgment on it. There is currently no clarity about the extent of off-site linkage infrastructure (backhaul) that might have to be funded by developers – and home buyers. Nor are the technical details resolved. These issues will need to be addressed by the government if Parliament is to have any idea on what it is voting on.

Off-site infrastructure contributions for water and sewerage services have been known to add more than \$15,000 a residential lot. In NSW, the situation got so bad that those off-site levies for water and sewerage services were abolished in Sydney and in the Hunter Valley.

We can accept that a developer should be responsible for pit and pipe and fibre reticulation on the developer's site – provided there is an assurance by a network operator that the fibre will be connected to an operating fibre network operating to the standard of 100 megabits per second, prior to the planned occupation of the developed sites.

However, for greenfield development, there should be no requirement to do anything more than provide fibre reticulation past a lot. (In such sites, the final position of a building on a serviced lot, and the work necessary to connect the building to the infrastructure located adjacent to the lot, is often undertaken by a builder commissioned by the purchaser of the lot.)

A developer should not be obliged to fund the construction and maintenance of back-haul and head-end facility/equipment – the legal obligations of a developer should be limited to the provision of easements and the like on land which such infrastructure must be located.

At the current time the law does not compel developers to take any steps in relation to fibre-to-the-premises. The fact that many developers are equipping their projects with this technology is a sign that the current flexibility is working, rather than an indication that the transition to a regulated environment will be easy.

The status-quo allows significant scope for negotiation between the developer and service provider. When the Government mandates the provision of optic fibre technology this flexibility to respond to market demand and negotiate cost will be severely curtailed.

In relation to some specific issues, our comments are set out below.

1 Off-site linkage infrastructure ("backhaul") should be funded by all network users; not property developers

The Government's suggestion that a developer should fund "back-haul" (the off-site linkage infrastructure) could have a drastic impact on housing affordability.

In NSW it was found that the cumulative impact of development contributions were significantly impacting on lot production and hence housing affordability. The impact of fees and charges was so great that the government was forced to take unprecedented action and issued directives that capped local council developer fees and altered how state contributions to infrastructure were to be paid. It is of concern that the imposition of additional cost to comply with these Commonwealth infrastructure requirements could severely undermine the initiatives taken by the NSW Government to keep developer fees reasonable to improve housing affordability.

At this time it is unclear who will be responsible for linkage infrastructure/backhaul. A development project should not be obliged by law to fund the offsite costs of bringing optical fibre to the development site boundary, nor the costs of the head-end. A clear policy statement confirming this is important. The developer should only be required to provide works that are "internal" to the master planned site.

In relation to infrastructure such as roads and water, these off-site costs have added up to tens of thousands of dollars per home lot, and sterilised development (the slow-moving "growth centres" of Western Sydney is only one example). **We hope that the Australian parliament does not wish its regulatory requirements to be the reason that major housing and commercial development does not proceed, in any given region.**

We note that even apparently "modest" contributions to off-site infrastructure can be problematic, even when the cost is capped.

Consider, for example, a scenario where a developer's contribution to "backhaul" is limited to \$500 a lot. In a large master planned greenfield estate, say, 4,000 lots, this liability would be \$2 million. If the estate is to be developed gradually – say 200 lots per year, the backhaul contribution could easily amount to one third of the initial gross revenue! The backhaul contribution itself will probably prevent development from getting underway. **The timing of even apparently "modest" off-site contributions is critical to project viability.**

2. Optic fibre technology is desirable, but not essential

We appreciate the benefits of optic fibre technology and are prepared to make allowance for the provision of such technology in new developments. However, we regard the servicing of new urban development with optic fibre technology as desirable, but not essential. That is, we do not think that government should regard the network in the same category as public utility infrastructure such as:

- the supply of water;
- the supply of electricity; and
- the disposal and management of sewage.

All of these services are genuinely essential. It is not conceivable that any responsible planning authority would allow a new urban development to proceed without making satisfactory arrangements with regard to these matters. Clearly, if a development is unable to offer its ultimate occupiers all the necessary "essential" services, it cannot proceed.

3. Legislation must make allowance for alternative technology and innovation

Improvements to information technology are rapid and it may not be wise to specify a particular technology as the only way to deliver improved information, telecommunication and entertainment services to the community. We should be considering the outcomes that we need to achieve and ensure that our regulation/legislation is drafted in such a way to ensure that it does not limit us to fibre technology. It could be that at this point in time, the only way to deliver the desired outcome is via optic fibre, but who knows what the future will bring. **We need to ensure that our laws are sufficiently flexible to meet advances in technology.**

In this regard, we have been advised that there are a number of ways in which a new greenfield development may be “connected” in the absence of an optic fibre network at the development site boundary. We understand that satellite, microwave and/or radio transmission technologies or the like have the potential to provide connection in the absence of a local optic fibre network. Until resident numbers reach a level to make investment into back-haul viable to a network provider, the deployment of such technology could provide interim connection for a fibre-ready greenfield estate.

4. Legislation should remain focused on making development projects fibre ready/capable

To date, the Government’s approach to “future proofing” development has been to specify and require that optic fibre line be installed. No real consideration seemed to have been made where optic fibre networks/infrastructure are not available and/or is unlikely to be available for sometime.

It is encouraging to note that the *Telecommunications Legislation Amendment (Fibre Deployment) Bill* makes allowances for development projects to be “fibre-ready”. That is, it seems apparent that the legislation may make allowances for the provision of passive infrastructure aimed at ensuring that a new development can be easily provided with optic fibre technology and connected to an optic fibre network when available. This is a step in the right direction.

However, the reality is that future proofing has more to do with the provision of fibre optic networks to connect new development.

Developers are sophisticated enough to understand their market. If the market demands optic fibre technology, a developer does not need legislation for this technology to be provided. In fact, optic fibre has already been provided in many locations without legislation mandating its provision. Therefore, the Government’s “future proofing” efforts should be focused on network provision. In instances where there is an optic fibre network and consumer market to support its provision, developers are already working with service providers to service new developments with optic fibre technology.

It seems that the simplest solution would be to draft legislation that would ensure new urban developments are made “fibre-ready”. Being “fibre-ready” would mean that pit and pipe infrastructure would be provided at the time of development (possibly with copper as an interim measure). This would ensure that when there is connecting infrastructure available and a service provider is able to enter the market, the development site has the required pit and pipe infrastructure in place to enable easy cabling and servicing with optic fibre.

This approach would not only ensure that allowance has been made early in the development phase for fibre technology, but also does not impose an unreasonable cost burden on development.

5. The requirement to install FTTP should be linked to the presence of linkage optic fibre infrastructure; not to the size of an urban development

To achieve maximum take up of new technology, areas where the greatest proportion of new development is planned or occurring should be the priority locations for the provision of new infrastructure. These locations should become high priority locations for the provision of new infrastructure, including fibre optic facilities.

We believe that a requirement to install optic fibre technology should only apply when such infrastructure is present, or there are “concrete” plans to guarantee its presence in the immediate future.

For example, in the case of new residential subdivisions in urban release areas, FFTP should be required past individual residential lots **only** where optic fibre infrastructure is available at the subdivision boundary. In the case of a new townhouse or residential flat development within established suburban areas, FFTP should **only** be required when optic fibre infrastructure is available in the road reserve adjacent to the development site. The size of the development (number of lots) is not the primary concern; it is the accessibility to the required infrastructure that is the defining issue.

As articulated in the Urban Taskforce’s policy statement, we are supportive of providing the required pit and pipe infrastructure to ensure that development sites can be easily serviced by optic fibre when available.

6. The 1 July 2010 commencement is not realistic

The Urban Taskforce has already expressed its concern with the overly ambitious timeframe suggested by the Government. There is not sufficient time to work through the many development and market uncertainties prior to implementation.

The requirement to install FFTP from 1 July 2010 is not considered possible. Having consulted our members we can confirm that unless a development site has already made allowance for FFTP, it would be difficult to comply with the 1 July 2010 deadline. Government must be realistic with its time frames.

I look forward to continued dialogue between Government and the development industry on this matter and I would welcome the opportunity to appear before the Standing Committee as a witness at a public hearing.

Yours sincerely
Urban Taskforce Australia

Aaron Gadiel
Chief Executive Officer