

# The NBN and Strata Buildings

Considerable confusion remains about what is going to happen and when and this is not assisted by some of the announcements made in relation to the NBN.

Some support the NBN, on the basis that it is a government business enterprise and more likely to provide an equitable solution for all users than a commercial enterprise. Others remain sceptical about the NBN and are considering other options. There is doubt about how metropolitan connections can be priced equitably if there is significant leakage to the mobile and TPG fibre networks. The cap on funding announced in the 2014 Budget increases these doubts.

Some things are clear:

- The NBN is going to happen and owners corporations and other property owners will need to decide what they are going to do about it. Details of the rollout plan can be viewed through the [following link](#).
- The NBN will provide infrastructure, but connections will be through various service providers, which will enter into their own arrangements with the NBN. In practical terms, after the infrastructure is installed, property owners will continue dealing with service providers.
- The NBN is not the only option and it has serious competition. In particular, there are the Telstra, Optus and Vodafone mobile networks, particularly in metropolitan areas, using a data focused 4G network. There is also the TPG option, with TPG and its provider Pipe Networks aggressively rolling out TPG's own fibre network and making very attractive proposals to some strata buildings. TPG can be expected to "cherry pick" its network, with the likelihood of attractive offers to those whom TPG wishes to connect.
- Although the NBN has limited compulsory access powers under the Telecommunications Act 1997 and Telecommunications (Low Impact Facilities) Determination 1997, particularly to gain access through service of a land access and activity notice, it is unlikely to exercise those powers. In contrast, we understand that TPG and Pipe Networks are using those powers, particularly for CBD strata title buildings attractive to them. We have included a link to our article on how to deal with receipt of such a notice and stress that there are things which one can do about such a notice, provided they are done within the tight time frames required. We have included a link to our article '[Strata Schemes and Telecommunications Facilities – 3G & 4G](#)' which covers the use of such powers in a conventional telecommunications context, but repeat that it is unlikely that these powers would be exercised in this context.

- It is much more likely that the NBN will try to negotiate access and that, if strata buildings do not consent to access, they will be classified as "frustrated" and passed over. This can cause serious problems down the track, as discussed below.
- New copper cable will not be provided and existing copper and other Telstra and Optus cable will be disconnected at some point after NBN fibre becomes available. This includes copper telephone, ADSL Internet and Telstra & Optus cable. This means that new connections must use the NBN or one of its alternatives and that existing connections will eventually need to be replaced with the NBN or one of its alternatives.

There are some traps which owners corporations and other property owners should avoid. All of these involve leaving it too late to make a decision about these issues. In particular, owners should avoid the following scenarios:

- Missing the opportunity to make arrangements with the NBN, during the rollout phase, if that is what they want to do. If the property is passed over, free connection may no longer be an option and a considerable amount may be payable to the NBN to connect the building at a later date. Further, less flexibility may be available for internal cabling arrangements within strata buildings.
- Failing to make arrangements with a service provider for a connection utilising the NBN infrastructure or one of its alternatives before existing services are disconnected, leaving the building without a connection.
- Failing to come up with a connection plan for the building now, exposing the owners corporation to the risk of further costs in the future. One or more lot owners may argue that telephone and Internet are services which the owners corporation is required to route through common property in the same way as other services. Clearly, the cost of doing that on a lot by lot basis will be considerably more than the cost of going about this in a comprehensive way on a one-off basis.

Owners corporations and their strata managing agents have a number of things to consider, including:

- Do we want NBN cable when it rolls out in our area? If so, you should get in contact with the NBN as soon as possible to register your interest.
- Do we wish to implement a building cabling plan, e.g. one providing for cabling of individual apartments? If so, you should contact an appropriate consultant in relation to technical issues and obtain legal advice about making a by-law providing for this.
- Have we received a proposal from NBN or TPG or do we wish to request one? If so, you should obtain legal advice about the licence agreement and any associated incentive agreement proposed.

In all cases, you should consider what you want to do about future telephone and Internet connection for your building and appoint your strata managing agent or an executive committee member as your representative for further enquiries and negotiations.

**Prepared by Bannermans Lawyers**  
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