



19 December 2014

Jxeeno

Sent via email: foi+request-799-359c3124@righttoknow.org.au

Our Ref: FOI1415/27

Dear Jxeeno,

FOI Application – NBN Multi-Technology Deployment

I am writing in relation to your request made under the *Freedom of Information Act, 1982 (the FOI Act)*, seeking access to the detailed, technical guideline from which the “NBN Multi-Technology Deployment Principles” summary was based.

The Statement of Reasons (**Attached**) outlines the specific terms of the FOI request, the decision-maker’s findings and the access decision. For your reference, the FOI decision is subject to review under sections 53A and 54 of the FOI Act. The Office of the Australian Information Commissioner’s *FOI Fact Sheet 12 – Your review rights* is attached for your information and may be found [here](#).

If you have any questions, need to discuss your FOI application or require any other information relating to this matter, please feel free to contact the writer on Tel. (02) 89185670 or via email on yvettedeerness@nbnco.com.au.

Kind regards

Yvette Deerness

Acting GM Legal Counsel

FOI, Privacy and Knowledge Management

cc. Justin Forsell, Chief Legal Counsel, NBN Co

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FREEDOM OF INFORMATION REQUEST – 1415/27

Jxeeno

ACCESS DECISION STATEMENT OF REASONS

Background

1. NBN Co Limited (**NBN Co**) is a government business entity (**GBE**), which has the mandate of realising the Australian Government's vision to develop a national broadband network that is truly national in character.
2. NBN Co recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why NBN Co fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent and accountable. In that light, members of the public will be able to find a large amount of information freely available on our [website](#).
3. In addition, NBN Co manages its information assets within the terms and spirit of the *Freedom of Information Act 1982* (**the FOI Act or the Act**). We also endeavour to release information proactively, while taking into account our commercial and other legal obligations.
4. Subject to relevant exemptions, the FOI Act gives the Australian community the right to access documents held by Commonwealth Government agencies, as well as "prescribed authorities", such as NBN Co.
5. Under subsection 23(1) of the FOI Act, NBN Co's Chief Executive Officer has authorised me, Yvette Deerness, to make decisions about access to documents under the FOI Act.
6. Under section 26 of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI access applications. I am also required to set out my findings on any material questions of fact, referring to the material upon which those findings were based.

Application Chronology and Terms of Request

7. On 13 November 2014, NBN Co received an email from Jxeeno of the "Right to Know" website (**Applicant**), in which he made an application under the *Freedom of Information Act, 1982* (**FOI Act or Act**), seeking access to:

the detailed, technical guideline from which the summary called the "NBN Multi-Technology Deployment Principles" was based off.
8. On 14 November 2014, NBN Co staff acknowledged receipt of the Applicant's application as required by section 15 of the Act and informed the Applicant that a determination would be due on 13 December 2014. However, as 13 December 2014 fell on a Saturday, NBN was required to make a determination by Monday, 15 December 2014.
9. On 19 November 2014, NBN Co informed the Applicant that he was liable to pay a charge of \$245 in respect of the processing of this request. As the charge exceeded \$100, the Applicant was informed that he was liable to pay a deposit of 25% (**\$61.25**).
10. On 21 November 2014, NBN Co received confirmation of the Applicant's payment of \$61.25.
11. On 15 December, I sought the Applicant's consent to extend the due date for issue of my final decision to, Friday 19 December 2014. On the same day, the Applicant agreed to the new deadline, and NBN Co advised the Office of the Australian Information Commissioner that the Applicant had agreed, as per section 15AA of the FOI Act, to extend the processing deadline.

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12. On 19 December 2014 I finalised my decision as outlined below and forwarded this decision to the Applicant, advising the Applicant that I had waived the balance of the processing charges owing, as permitted by regulation 3 of the *Freedom of Information (Charges) Regulations 1982*.

Findings of Material Fact

13. Following receipt of the Applicant's request, NBN Co staff undertook searches through the company's relevant files. Following these searches, I identified one document as falling within the scope this FOI request (**Document**).
14. To assist in making my decision, I sought advice from internal business experts regarding the commercial nature of the Document.

Summary of Access Decision

15. As an FOI decision maker, it is open to me to consider whether the Document falls within the terms of section 7(3A) of the FOI Act – NBN Co's commercial activities exemption (**CAE**) – and is, therefore, not subject to the operation of the Act. General background information regarding NBN Co's FOI processes and the principles underpinning NBN Co's CAE may be found at the following [link](#). It is my decision that the Document falls within NBN Co's CAE.
16. It is also my decision that the Document is exempt from release based upon section 47 (Commercially valuable information) of the FOI Act.

Reasons for Decision

Commercial Activities Exemption

17. As outlined above at paragraph 15, I refer you to a summary explanation regarding NBN Co's CAE, found at the following [link](#). It is my decision that the Document falls within the CAE.
18. The Document is a PowerPoint presentation and contains detailed descriptions of each element of NBN's Multi-Technology Mix (**MTM**) planning process. It contains other details regarding NBN's corporate planning process, including the internal outputs required to feed into the overall MTM planning process, estimates of the resourcing required to support the process and details of core data sets required, including those related to financial modelling and performance metrics. The company's ability to plan, forecast resourcing – both labour and technology – and define core datasets, are all integral to the company's ability to stay within budget, meet timelines for building the network, and operate efficiently. This in turn, will impact on NBN's ability to return a profit. In this context, it is clear that the Document meets the threshold test, in that there is a link to the company's profit-making or commercial goals. It follows therefore, that the Document may be described as falling within the section 7(3A) definition, and is not subject to the operation of the FOI Act.
19. Along with the substantive points set out above, I note that the Document has been watermarked as "commercial in confidence". This suggests that the Document is commercial in nature, but this fact is indicative, rather than being determinative.
20. However, notwithstanding that I am of the view that the CAE applies to the Document, I have determined to exercise my discretion and to partially release the Document as permitted by section 22 of the FOI Act. In particular I have released slide 8 of the Document for the reason outlined in paragraph 21 below.
21. The "NBN Multi-Technology Deployment Principles" document dated 13 November 2014 (**Principles Document**), which prompted the Applicant's FOI request, sets out the business rules established to determine which technology is used in each locality i.e whether:
- existing infrastructure can be leveraged to deliver the required bandwidth and reliability to premises;
 - delivery partners have construction capacity;
 - network complexity can be reduced by consistent use of technologies within a particular area;
 - advances in technology may mean an alternative approach may be preferable;
 - there are opportunities to prioritise underserved areas; and
 - there are opportunities to achieve early/high revenue (e.g from areas with a large number of business customers).

In making my enquiries of relevant subject matter experts in our business in connection with this FOI request, it quickly became apparent to me that a comprehensive analysis is involved in the process of determining the deployment of MTM technology. It was in

this context, and in recognition of the community interest in the processes that enable NBN Co to make its decisions as to which areas are rolled out before others, that I determined to exercise my discretion as outlined in paragraph 20 above, so as to provide the Applicant with further information, and to support that information already publicly available in the Principles Document, about the detailed planning that goes into determining the deployment of MTM technology. Slide 8 of the Document provides detail about the methodology involved in the planning process i.e:

- define geo model; model cost and revenue;
- optimise technology choice and rollout profile;
- apply financial model and validate performance; and
- deliver output to NBN Co stakeholders.

General Exemptions (Commercially Valuable Information)

22. Section 47 of the FOI Act exempts documents from release if they would disclose trade secrets or commercially valuable information. The relevant section of the Act provides:

Trade Secrets or Commercially Valuable Information

47(1) A document is an exempt document if its disclosure under this Act would disclose:

....; or

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

23. Drawing from the points made in relation to the “commercial activities” exemption above, I consider that the Document falls within the meaning of commercially valuable information for NBN Co, not least because it goes directly to the corporate planning activities of the company. As to the commercial value of the information, I am of the opinion that the value would be diminished or destroyed as it could be used by third parties to disadvantage NBN Co’s rollout and corporate planning efforts. In particular, the Document provides assumptions about resourcing requirements (both technology and people), which if released could be used by a number of market players to improve their negotiating position both in commercial arrangements with NBN Co and with other commercial entities in the telecommunications industry. This could disadvantage NBN Co.

Additional Points

24. Without limiting the reasons noted above, there are other potential FOI exemptions, which could apply to the Document, including: confidential information (s.45); deliberative matters (s. 47C), and operation of agencies (s. 47E). Despite their potential application, I have not formally considered these potential exemptions.

Processing Charges

25. It is NBN Co’s general policy to charge applicants for FOI processing time. In its [Submission to the OAIC Charges Review](#), NBN Co outlined its support of fees and charges and their importance to the FOI scheme. In the Advance Deposit Request sent to the Applicant in November, estimated processing charges of \$245 were detailed. The Applicant paid the advance deposit of \$61.25 leaving a final amount owing of \$183.75. While the search, retrieval and decision making time was accurately estimated in the Advance Deposit Request and in fact, more time was ultimately spent in making the decision - I have determined to waive the remainder of the amount owing. This fee waiver is permitted by regulation 3 of the *Freedom of Information (Charges) Regulations 1982*, which provides decision-makers with a general discretion to impose or not impose a charge, or impose a reduced charge for the processing of an FOI request and in part is an acknowledgment of the Applicant’s responsiveness throughout the process.

Right of Review

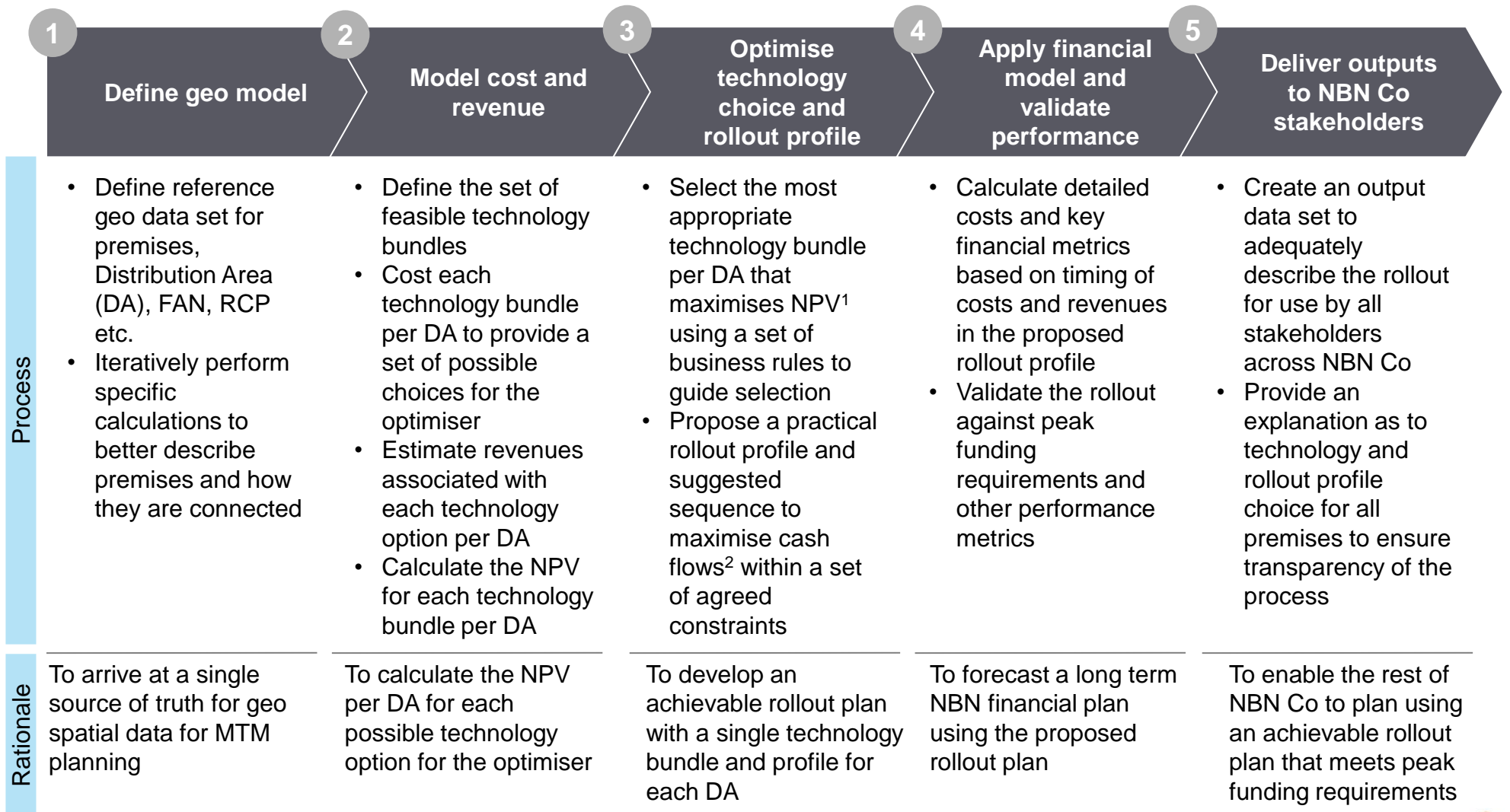
26. If you are dissatisfied with this decision, you have certain rights of review. Details regarding your rights of review and appeal are outlined in the covering letter, provided with this Statement of Reasons.

Annexure A

Annexure A – NBN Co FOI Matter 1415/27 – NBN Multi-Technology Deployment (Partial Release)

Section 22 of the *Freedom of Information Act, 1982* (**the FOI Act or the Act**) enables Government authorities to delete exempt or irrelevant matter from a document that may allow for an edited form of the document to be released.

Five steps in the MTM planning process



1. Directly optimising for peak funding is extremely complex, so to reduce complexity the optimiser will maximise for NPV as per the Strategic Review. 2. Maximise cash flows are used in order to reduce reliance on funding requirements as a proxy for minimising peak funding

0. Proposed MTM model summary.pptx