nbn submission to ACCC Consultation Paper - Proposed Variation to the NBN Co Special Access Undertaking

February 2023

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Contents

1 Executive Summary

nbn welcomes the opportunity to provide this submission responding to the ACCC's consultation paper dated 13 January 2023 (**Consultation Paper**) on **nbn**'s revised SAU variation proposal lodged with the ACCC in November 2022 (**Variation**).

nbn is pleased that the ACCC has recognised the amendments and considerable enhancements that **nbn** has included in the Variation. In **nbn**'s view, these amendments and enhancements reflect a greater alignment with ACCC and industry expectations. At the same time, these amendments and enhancements create a framework for operational efficiency and for **nbn** to have the opportunity to earn minimum revenues to sustain and finance its business, to continue investing to upgrade its networks to meet customer demand, improve customer experience and maximise social and economic benefits across Australia.

nbn believes the Variation is capable of acceptance and welcomes the ACCC's acknowledgement that the Variation could be capable of achieving the five outcomes that were identified during the course of the ACCC-convened working groups in the latter half of 2021. These five outcomes are described below:

- that **nbn** has the opportunity to earn the minimum revenues it needs to meet its legitimate financing objectives, including to transition to a stand-alone investment-grade credit rating;
- that **nbn** end-users are protected from price shocks and from prices that are higher than necessary in later years;
- that the regulatory framework provides incentives for **nbn** to operate efficiently and promote use of the **nbn**® network;
- that **nbn** access seekers have greater certainty over the costs that they will face when using the **nbn**® network; and
- that there is a clear and robust quality of service framework so that access seekers and end-users know what to expect from **nbn** services, including a review mechanism so that service standards remain fit for purpose, (the **ACCC Outcomes**).

nbn acknowledges that, in relation to the regulatory framework, the ACCC has identified two key issues in its Consultation Paper and seeks further information in order to be satisfied that these proposals will promote the long-term interests of end-users (**LTIE**) and that the proposed terms and conditions are reasonable:

- **Investment-grade credit rating:** the ACCC has expressed the view that setting **nbn**'s revenue allowance in the post-2032 period so as to allow it a reasonable opportunity to achieve and maintain a stand-alone investment-grade credit rating with a stable outlook could:
  - limit the ACCC's ability to make regulatory determinations that encourage **nbn** to invest and operate efficiently over time; or
  - risk price shocks in the future.
- **Replacement Module Application (RMA) and ACCC Replacement Module Determination (RMD) process in the Subsequent Regulatory Period:** the ACCC is concerned that in the Subsequent Regulatory Period, if the ACCC does not make an RMD for the Regulatory Cycle in the prescribed period, the Variation provides that an RMD is taken to be in effect in the terms proposed by **nbn.** The ACCC is concerned that this could limit the ACCC's decision-making power.

nbn is carefully considering these issues and possible proposals to address them. More generally, **nbn** looks forward to hearing from industry in response to the Consultation Paper and remains committed to continuing to work constructively with the ACCC and stakeholders throughout the consultation process. To the extent that any further changes are necessary to the Variation to address key matters of concern, **nbn** anticipates, subject to further engagement with the ACCC, that these would be advised to stakeholders in advance of the ACCC's draft decision on the Variation.

Summary of this submission

In addition to its concerns expressed in relation to the investment-grade credit rating and RMA/RMD proposal in the post-2032 period (addressed in chapter 2 of this submission), the Consultation Paper seeks input on a range of other aspects of **nbn**'s Variation proposal. **nbn** has articulated its views on many of these issues in its Supporting Submission lodged with the Variation. This submission should be read in conjunction with **nbn**'s Supporting Submission and other materials provided to the ACCC in support of the Variation. This submission provides additional material on a targeted set of issues raised by the ACCC, to clarify and support the Variation.

nbn has addressed each of the questions raised by the ACCC in the Consultation Paper in this submission and submits that on each of the areas identified by the ACCC, **nbn**'s Variation meets the relevant statutory criteria and is in the LTIE. Summarised below are **nbn**'s key, high-level responses to the issues raised in the Consultation Paper.

Post-2032 arrangements

To address any concerns that may arise in the future about the outcomes the SAU arrangements deliver for RSPs and end-users, the Variation provides the ACCC with the power to reset **nbn**'s revenue and pricing regulation framework from 2032.

The proposed post-2032 framework must strike a balance between achieving long-term confidence for RSPs and end-users that the price and non-price regulation to which **nbn** will be subject remains fit for purpose, and long-term regulatory certainty for **nbn** about the ongoing operation of the SAU, while retaining sufficient flexibility to adapt to prevailing market conditions in the long-term. **nbn** submits that the proposed post-2032 framework balances this appropriately and is sufficiently flexible.

The Variation provides the ACCC with functions and powers to:

- directly set maximum prices for NBN Offers and Other Charges;
- set a framework for setting or controlling such maximum prices – such as a weighted average price control (**WAPC**), or a requirement that prices be set so that forecast revenue does not exceed a revenue cap;
- set rules applicable to the scope, form and publication by **nbn** of tariff lists and pricing roadmaps;
- set benchmark service standards (where **nbn** must include in its Standard Form of Access Agreement (**SFAA**) an obligation to meet or exceed standards which are no less favourable than the benchmark); and
- set rules applicable to **nbn**'s development and withdrawal of services.

The proposed regulatory framework for the post-2032 period needs to be considered as a package of new commitments that will provide certainty for RSPs, end-users and **nbn**, with appropriate flexibility for the ACCC to account for and respond to circumstances that will eventuate from 1 July 2032.

Regarding **nbn** being provided the opportunity to achieve and maintain a stand-alone investment-grade credit rating with a stable outlook, **nbn** submits that this is appropriate and necessary to enable **nbn** to cost-effectively finance its investments, promoting economic efficiency and competition across the telecommunications sector. Indeed, the ACCC itself has identified the achievement of an appropriate credit rating as one of the ACCC Outcomes (see above).

nbn recognises the ACCC has identified a number of potential concerns with the drafting in relation to the investment-grade credit rating principle for the post-2032 period. **nbn** is committed to working constructively with the ACCC to address those concerns, while maintaining a reasonable opportunity for **nbn** to achieve and maintain an investment-grade credit rating.

Replacement module process

The Variation proposes that if the ACCC does not make an RMD for an upcoming Regulatory Cycle by the timeframe prescribed in the Variation, then an RMD will be taken to be in effect for that Regulatory Cycle on the terms proposed by **nbn** in its RMA for that Regulatory Cycle. This is to ensure that no regulatory 'gap' arises in the absence of the ACCC making an RMD.

nbn recognises that the ACCC holds concerns over with the proposed arrangements and is committed to working with the ACCC to address this issue, including whether the framework proposed in the Variation could be amended to enable the timeframe for the ACCC's RMD decision to be extended to a set date in the first year of the next Regulatory Cycle, with specific transitional measures in respect of particular regulatory settings that would otherwise be set in an RMD.

Price and cost certainty available to retailers

The package of pricing certainty commitments **nbn** has proposed in the Variation provides RSPs with substantially greater transparency and certainty over future prices and costs associated with **nbn**'s services.

The new pricing constructs which are outlined in Part B of **nbn**'s Supporting Submission provide pricing certainty to RSPs and end-users through the following proposals:

- a glidepath to AVC-only on all TC-4 speed tiers by no later than 1 July 2026;
- reflecting current TC-4 bundle discounts in the SAU as NBN Offers;
- indexing bundle inclusions to increase twice a year at 50% of actual growth in consumer bandwidth consumption; and
- transforming the CVC billing model from billing 'provisioned' CVC to 'utilised' CVC across Bundled TC-4 Offers.

Additionally, the Variation provides RSPs with greater transparency and certainty over future prices and costs associated with **nbn**'s services by its commitments:

- to publish a Statement of Pricing Intent at the beginning of each Regulatory Cycle which sets out matters such as pricing strategies **nbn** intends to adopt in that Regulatory Cycle;
- to publish an annual SAU Tariff List which complies with the WAPC framework and relevant side constraints and sub-caps and is consistent with the Statement of Pricing Intent with **nbn**'s services; and
- to publish a three-year Pricing Roadmap – where the first year's prices are those in the Tariff List, the second year's prices are indicative but have binding price relativity commitments, and the third year's prices are indicative but consistent with the Statement of Pricing Intent.

Additionally, the ACCC will be conferred additional powers to intervene if **nbn**’s prices are inconsistent with the Statement of Pricing Intent.

nbn has included these commitments in the Variation despite concerns that the benefits of additional pricing and cost certainty to RSPs will be offset, and potentially outweighed by, the adverse consumer impacts arising from **nbn**’s constrained ability to respond dynamically to price-based competition and evolving market conditions.

Reasonableness of the proposed price / quality offer for the First Regulatory Cycle and incentives to efficiently improve quality over time

The Variation addresses the interaction between price controls and quality measures by ensuring that a set of Benchmark Service Standards are incorporated into the SAU and by providing the ACCC the power to set the Benchmark Service Standards which will apply for each Regulatory Cycle as part of an RMD. Under the Variation, **nbn** commits to include an obligation in its SFAA to meet or exceed service standards (including service levels, performance objectives, rebates and corrective action) that are no less favourable to RSPs than the Benchmark Service Standards set out in the SAU.

In addition to giving the ACCC the power to set the Benchmark Service Standards in the SAU as part of an ACCC RMD, which may be the same as or different to those proposed by **nbn** in its RMA, the Variation provides the ACCC with powers to revisit Benchmark Service Standards during a Regulatory Cycle where: (i) a change to **nbn**’s service standards is required for RSPs to comply with new retail service standards regulations, or (ii) the ACCC has identified a systemic issue with **nbn**’s existing service standards that results in a material adverse impact on RSPs and where changes to **nbn**’s service standards are required to address the issue (subject to cost pass-through arrangements). **nbn**'s commitment to confer on the ACCC powers with respect to Benchmark Service Standards not only during the RMA process, but also during a Regulatory Cycle, gives the ACCC power to ensure that the service standards set under the SAU reflect access seeker service requirements and willingness to pay at the start of a Regulatory Cycle and during a Regulatory Cycle.

nbn is committed to working with RSPs on continued improvements to end-user experience. While **nbn** appreciates that RSPs have advocated for enhanced service standards in the SAU (relative to the current Wholesale Broadband Agreement (**WBA4**)), the fundamental purpose of including Benchmark Service Standards in the SAU is to establish a price-quality link to ensure that **nbn** is not incentivised to reduce service standards (as an alternative to increasing prices) in order to increase margins. **nbn** submits that the proposed framework achieves this purpose while balancing the interests of RSPs, end-users and **nbn**, and is therefore in the LTIE. Importantly, the Benchmark Service Standards commitments in the SAU do not preclude **nbn** from agreeing to improved service standards over time with industry.

Support for low-income and disadvantaged consumers

Digital inclusion is at the core of **nbn**’s purpose yet is a complex issue that requires input and support from industry, consumer groups and government. The Low-Income Forum committed to in the Variation, which **nbn** will implement as a Low Income and Digital Inclusion Forum (**LIDIF**), is an important step towards the goal of sustainably improving digital inclusion and digital capability. The LIDIF will provide an opportunity for **nbn** to engage the broader industry to originate holistic solutions to barriers that impede access to the **nbn**® network, with potential initiatives spanning across wholesale, retail and community layers.

nbn submits that the commitments set out in the SAU are appropriate at this time, given the role that **nbn** will increasingly play in ensuring that as many end-users as possible are able to access the **nbn**® network, and given that improving the digital literacy and digital capabilities of low-income end-users is also an issue for a range of stakeholders across industry and government.

Ensuring that low-income end-users have access to broadband services is not a task for **nbn** to solve alone through the SAU, and the commitments set out in the Variation are not, and should not be, the only commitments by the telecommunications industry to support low-income and other disadvantaged end-users.

Price controls

nbn submits that the WAPC framework it has proposed is reasonable and promotes competition, including by providing for a reasonable degree of price certainty when considered in combination with the other pricing commitments in the Variation. The WAPC framework is designed to be broad-based, covering all **nbn** services with only limited exceptions.

The operation of the proposed WAPC is also expected to aid dynamic efficiency as **nbn** will benefit from introducing new products that consumers value at more than the costs to **nbn** of supplying them.

nbn has lodged alongside this submission an expert report from NERA Economic Consulting[1] that reviews the proposed WAPC in terms of its incentive and efficiency properties (**NERA Report**). Amongst other things, this report concludes that **nbn**'s proposed WAPC provides **nbn** with incentives to set efficient prices, promote the efficient use of the network, maximise demand, innovate and forecast accurately.

Unless indicated, defined terms in this submission have the same meaning as in the Variation and **nbn**'s Supporting Submissions lodged with the ACCC in November 2022.

[1] Dr William Taylor, *Review of the weighted average price control in nbn's special access undertaking,* February 2023.

2 Response to key issues raised

This chapter provides additional material on a targeted set of issues raised in the Consultation Paper. **nbn** has already articulated its views on many of these issues in its Supporting Submissions (see chapter 4 for a table cross-referring to **nbn** Supporting Submissions), and this chapter should be read in conjunction with the Supporting Submissions and other materials provided to the ACCC in support of the Variation.

2.1 Post-2032 arrangements

nbn has addressed the following questions from the Consultation Paper:

- *Whether the proposed arrangements achieve an appropriate balance between providing regulatory certainty to both NBN Co and retailers about how matters are to be determined through the replacement module process, and flexibility to determine arrangements that better respond to conditions and regulatory best practice at the time*
- *Whether the proposed arrangements are likely to result in any undue complexity or whether there are gaps in the regulatory framework that could lead to any unintended consequences*

To address any concerns that may arise in the future about the outcomes the SAU arrangements deliver for RSPs and end-users, the Variation provides the ACCC with the power to reset **nbn**'s revenue and pricing regulation framework from 2032.

The proposed post-2032 framework provides for the ACCC to recreate and revise the main types of economic regulation imposed by the SAU in the pre-2032 period. In particular, it provides for the ACCC to:

- directly set maximum prices for NBN Offers and Other Charges;
- set a framework for setting or controlling such maximum prices – such as a WAPC, or a requirement that prices be set so that forecast revenue does not exceed a revenue cap;
- set rules applicable to the scope, form and publication by **nbn** of tariff lists and pricing roadmaps;
- set benchmark service standards (where **nbn** must include in its SFAA an obligation to meet or exceed standards which are no less favourable than the benchmark); and
- set rules applicable to **nbn**'s product development and withdrawal (see proposed clause 5.10).

These also reflect the types of regulatory measures which have applied under the SAU to date in the 'Initial Regulatory Period' (with the exception of the measure relating to benchmark service standards, which are not regulated by the existing SAU).

The proposed regulatory framework for the post-2032 period needs to be considered as a package of new commitments that will provide certainty for RSPs, end-users and **nbn**, with appropriate flexibility for the ACCC to account for and respond to circumstances that will eventuate from 1 July 2032.

nbn confirms that the proposed post-2032 framework is not intended to allow the exact recreation (post-2032) of all **nbn**'s regulatory commitments given in relation to the pre-2032 period. For example, the proposed post-2032 framework does not provide for the ACCC to impose an obligation on **nbn** to hold a regular low-income industry forum. Rather, the commitment to hold a regular low-income forum is a regulatory commitment proposed by **nbn** for the pre-2032 period, reflecting the particular circumstances leading up to that period and acknowledging that obligations to conduct such low-income forums are not a standard feature of economic regulatory regimes. The framework proposed in the Variation does not prevent **nbn** from conducting such forums post-2032.

The balance between regulatory certainty and flexibility is appropriate

The proposed post-2032 framework must strike a balance between achieving long-term confidence for RSPs and end-users that the price and non-price regulation to which **nbn** will be subject remains fit for purpose, and long-term regulatory certainty for **nbn** about the ongoing operation of the SAU, while retaining sufficient flexibility to adapt to prevailing market conditions in the long-term. **nbn** submits that the proposed post-2032 framework balances this appropriately.

There are no gaps in the operation of the proposed regulatory framework and the framework will remain in the LTIE because of:

- the breadth of the ACCC's power to reset arrangements at the start of each three- to five- year Regulatory Cycle; and
- the flexibility built into the proposed framework which intentionally gives the ACCC power to reset the regulatory arrangements for access to the **nbn**® network, subject to a limited set of principles, to respond to circumstances that will eventuate from 1 July 2032.

In addition, the ACCC will continue to have the power to make access determinations and binding rules of conduct under Part XIC of the *Competition and Consumer Act 2010* (Cth) (**CCA**), noting that such instruments have effect except to the extent they are inconsistent with an accepted SAU or other documents which prevail in the regulatory hierarchy.

nbn's proposed arrangements are not unduly complex

The flexibility of the framework for the post-2032 period and powers for the ACCC to reset **nbn**'s pricing, service standards and product development/withdrawal framework removes complexity.

The Variation continues the propose-respond RMA/RMD process while implementing a principles-based approach. This means the requirements for RMAs and RMDs during this period are set at a higher level than those for the Subsequent Regulatory Period to reflect the newly introduced power the ACCC will have at this point to reset the regulatory framework that will apply to **nbn** post-2032. This reduces the risk of undue complexity.

Further, supporting the ACCC's ability to reset key elements of the regulatory framework that will apply from 2032, the SAU provides the ACCC with the ability to issue an ACCC Statement of Approach before **nbn** is required to submit an RMA, setting out the ACCC's proposed approach in relation to the matters that will be covered by the RMA. Providing **nbn** with details of the ACCC's proposed approach reduces the risk of there being gaps in the regulatory framework.

2.1.1 Investment-grade credit rating principle

nbn has addressed the following questions from the Consultation Paper:

- *Whether the proposed Module 3 principles are likely to provide appropriate incentives on NBN Co to operate in a prudent and efficient manner and safeguard against price shocks while allowing it a reasonable opportunity to achieve a stand-alone credit rating before the end of the SAU term. If not, what changes to the principles would you propose?*

- *Whether the proposed arrangements appropriately mitigate the risk of price shocks that could result from NBN Co pricing its services to achieve a stand-alone credit rating for the duration of each regulatory cycle in the post 2032 period*
- *Whether the proposal to determine ICRA drawdown amounts ahead of each regulatory cycle, subject to the condition that the total amounts specified in the SAU can be recovered, provides a suitable safeguard against price shocks or prices that are higher than needed given the more fundamental limitation proposed on the ACCC's power to make a determination in the post-2032 regulatory period.*

The Variation provides that **nbn**'s Annual Regulated Revenue Allowance for each financial year within a Regulatory Cycle within the Post-2032 Regulatory Period must be set to allow **nbn** a reasonable opportunity to achieve and maintain, for the duration of that Regulatory Cycle, a stand-alone investment-grade credit rating with a stable outlook (**Investment-Grade Credit Rating Principle**).

The ACCC asks in its Consultation Paper whether there is value in **nbn** having a stand-alone investment-grade credit rating during the SAU term, while **nbn** remains in Government ownership, suggesting it may be better that **nbn** work towards a standalone investment-grade credit rating by the end of the SAU term. **nbn** has responded to this question below.

nbn recognises the ACCC has identified a number of other potential concerns with the drafting in relation to the Investment-Grade Credit Rating Principle. While **nbn** considers the Investment-Grade Credit Rating Principle proposed in the Variation addresses the matters raised by the ACCC, **nbn** is committed to working constructively with the ACCC, while maintaining a reasonable opportunity for **nbn** to achieve and maintain an investment-grade credit rating.

As a Government Business Enterprise (**GBE**), and within the regulatory framework, **nbn** is required to target a stand-alone investment-grade credit rating and not benefit simply by virtue of its Government ownership. The expectation on **nbn** to achieve and maintain a stand-alone investment-grade credit rating is further mandated in the Statement of Expectations issued to **nbn** by its Shareholder Ministers in December 2022.[2] Importantly, targeting and maintaining a capital structure consistent with a stable outlook should be considered in the context of the long-term financial viability and competitiveness of the company.

Why nbn being provided the opportunity to achieve and maintain a stand-alone investment-grade credit rating as soon as possible would promote the long-term interests of end-users

nbn achieving a stand-alone investment-grade credit rating (with a stable outlook) as soon as possible is not only appropriate and necessary to enable **nbn** to cost-effectively finance its investments, but is also in the LTIE as it promotes both competition and competitive neutrality, which in general, improve economic outcomes (i.e., in terms of productive, allocative and dynamic efficiency).

Consistent with the Government's competitive neutrality policy,[3] price/revenue regulatory frameworks for the regulation of network businesses in sectors such as electricity and gas treat government owned businesses as if they are privately owned. This includes setting prices/revenues consistent with a benchmark of an efficient capital structure that would allow a network business (on a stand-alone, privately-owned basis) to attract sufficient debt

[2] Statement of Expectations issued to **nbn,** 19 December 2022: https://www.infrastructure.gov.au/sites/default/files/documents/December-2022-NBN-Co-SOE.pdf.

[3] Australian Government, *Commonwealth Competitive Neutrality Policy Statement*, June 1996.

and equity capital and minimise its weighted average cost of capital. The Variation proposes that such a framework form part of the post-2032 framework established under the SAU.

In practice, consistent with market evidence, the efficient financing assumptions adopted by Australian regulators (including the ACCC with respect to **nbn**) are based on a benchmark that includes a stand-alone investment-grade credit rating.

Nonetheless, **nbn**'s actual ability to transition to a stand-alone investment-grade credit rating may take a number of years – with the initial rollout of the **nbn**® network complete, as **nbn**'s revenues grow and there are improvements to its free cash flows, **nbn** will be in a position to reduce its level of debt, but will also need to continue to finance ongoing investment in the network. During and after this transition, **nbn**'s prices will better reflect the economic resources involved in the provision of **nbn**'s services over time, consistent with the rationale for the Commonwealth Competitive Neutrality Policy. **nbn** submits that this will promote economic efficiency and competition across the telecommunications sector, thereby promoting the LTIE.

2.2 Replacement Module process

nbn has addressed the following question from the Consultation Paper:

- *What alternative process measures could be considered to safeguard against a regulatory module coming into effect without proper regulatory assessment?*

The Variation proposes that if the ACCC does not make an RMD for an upcoming Regulatory Cycle by the timeframe prescribed in the Variation (i.e., 20 business days before the start of that Regulatory Cycle), then an RMD will be taken to be in effect for that Regulatory Cycle on the terms proposed by **nbn** in its RMA for that Regulatory Cycle. As discussed in **nbn**'s Supporting Submission lodged in November 2022, this is to ensure that no regulatory 'gap' arises in the absence of the ACCC making an RMD, and that **nbn** and industry have certainty about the regulatory arrangements to apply for the upcoming Regulatory Cycle.

The Consultation Paper expresses a concern that this timeframe could place a limitation on its decision-making, or could pose issues if the ACCC was waiting on relevant information which may impact its decision.

nbn understands the ACCC's concern to be that it may find itself in the situation of either:

- having to make an RMD where it has not been able to fully consider all necessary information in a reasonable timeframe; or
- having **nbn**'s proposed RMA terms take effect for the upcoming Regulatory Cycle.

While **nbn** acknowledges that such a situation could theoretically arise, in practice **nbn** considers it to be unlikely, including for the following reasons:

- the process contained in the Variation (and the current SAU, accepted in 2013) is that the ACCC may specify a date by which **nbn** is to submit an RMA, which must be between nine and 18 months before the start of the upcoming Regulatory Cycle. The ACCC must also give **nbn** no less than 12 months' notice of the required timeframe for lodging the RMA. This means that, depending on when the ACCC requires **nbn** to submit an RMA, the ACCC may have up to 17 months to consider the proposals in **nbn**'s RMA (i.e., 18 months, less the 20 business days before the start of the upcoming Regulatory Cycle);

- the ACCC will know at least 12 months in advance when **nbn** is due to submit its RMA and will have the opportunity to engage with **nbn** and industry in that time. **nbn** will also be engaging with the industry around that time – noting that under the Variation, **nbn** will be required to consult with access seekers and consumer advocacy groups on its proposed expenditures prior to lodging its RMA with the ACCC, and to provide a report to the ACCC summarising the views put by parties to that consultation. This means that upon an RMA being lodged, the ACCC will not be "starting from scratch" in its assessment of matters relevant to the RMA; and
- **nbn** will face strong incentives to respond in a timely manner to the ACCC's requests for additional information or clarification of its RMA proposal. It is in **nbn**'s interests for the ACCC to make an RMD that is fully informed, considered and reflects all information put to it. It would also be open to the ACCC to compel **nbn**'s provision of such information.

However, **nbn** recognises that the ACCC holds concerns with the proposed arrangements. **nbn** is committed to working with the ACCC on this issue. A simple alternative may be to retain the framework proposed in the Variation but enable the timeframe for the ACCC's RMD decision to be extended to a set date in the first year of the next Regulatory Cycle, with specific transitional measures in respect of particular regulatory settings that would otherwise be set in an RMD. Such an approach would balance any need to extend the timeframe with the objective of providing regulatory certainty to **nbn** and RSPs regarding the regulatory arrangements to apply for the upcoming Regulatory Cycle.

2.3 Pricing and product constructs

nbn has addressed the following question from the Consultation Paper:

- *Are stakeholders supportive of the proposed approach to encourage uptake of wholesale services at higher speed tiers, including migrating 12 Mbps broadband access towards a 25 Mbps speed tier, and more-intensively used 50/20 Mbps services to the 100/20 Mbps tier? Do retailers have the capability to manage individual AVCs onto the wholesale speed tier that would optimise their costs under the proposed pricing model? If not, what assistance might they need to achieve this? What would be the cost outcomes for a retailer that could not optimise in this manner?*

Under the proposed pricing framework in the Variation, there are a number of safeguards to ensure prices are stable over time and that the risks of price (and cost) shocks are minimised. This includes some specific commitments to ensure RSPs do not bear all of the cost risk in the period to 1 July 2026 (i.e., the date by which **nbn** has committed to transition all Bundled TC-4 Offers to $0 CVC pricing). Specifically, the Variation provides:

- for bundled offers in the First Regulatory Cycle, bundle inclusions have been designed to index twice a year at 50% of actual growth in consumer bandwidth consumption. This mechanism will naturally dampen the effect of consumption behaviours on RSPs' costs; and
- the price controls on Bundled TC-4 Offers in the Variation are applied on an average combined charge basis, which means that any impact of consumer bandwidth consumption growth on total wholesale price is contained within the price control constraints in the Variation. The Variation includes individual price controls as well as overall WAPC constraints. In addition, the effects of any unexpected usage surges are accounted for automatically through the excess adjustment mechanism in the WAPC, whereby any excess price movement is subtracted from **nbn**'s future price allowance.

To help RSPs manage and respond to the needs of end-users under the wholesale pricing structure proposed in the Variation, **nbn** will provide, or continue to provide, a number of additional tools to RSPs in the form of new APIs, data and additional reporting:

- **nbn** already provides data to help RSPs identify end-users who would be better served on higher speed **nbn** plans. Currently, **nbn** provides a plan matching report that identifies end-users on the 12/1 Mbps speed tier with high usage and who tend to utilise close to the maximum capability of their speed tier. **nbn** understands that RSPs have used this report successfully to migrate end-users to higher speeds where those end-users would benefit from higher speed.
- Under the Variation, **nbn** intends to provide both a daily and monthly report to assist RSPs to identify end-users who may be better suited by higher speed plans. The daily reports to RSPs will contain the utilisation of each AVC during the peak hour and the AVCs' maximum utilisation. The monthly plan matching report will be augmented to show, for each speed tier, end-user monthly utilisation and propensity to burst to the maximum of their speed tier. The multiple report cadences will provide greater flexibility to RSPs to optimise their end-user base.

To utilise these reports, it will be necessary for RSPs to ingest the new **nbn** reports and create a final list of AVCs to target to deploy their optimisation mechanism. **nbn** believes that these additional reports add value for RSPs by providing greater insights regarding end-user bandwidth consumption behaviours and could be used to formulate market activities targeted at customers with specific usage patterns.

nbn has addressed the following question from the Consultation Paper:

- *The gap in minimum access costs between the 50 Mbps and 100 Mbps services is relatively small, and narrows further once the cost of CVC overage is factored in. Do stakeholders consider that the proposed wholesale pricing model is suitably calibrated so that both the 50 Mbps and 100 Mbps wholesale speed tiers remain viable inputs that will support retail product and price differentiation?*

The price relativity between the 50 Mbps service and the 100 Mbps service is designed to allow RSPs and end-users to experience higher performing **nbn** products, while also providing RSPs and **nbn** with sustainable growth in margin and revenue in the medium term. There is a spectrum of willingness to pay across end-users for the performance improvement between the 50 Mbps service and the 100 Mbps service. The specific price relativity proposed by **nbn** seeks to maximise the proportion of end-users that would be attracted to the upgrades and the minimum price differential between the services to ensure that the two services both remain viable offers.

The price relativity between the 50 Mbps service and the 100 Mbps service proposed by **nbn** is already greater than offers from operators in comparable markets overseas:

- In New Zealand, the difference in price between Chorus' comparable 50/10 Mbps service and 100/20 Mbps services (now 300/100 Mbps services) is NZ$3.2 (NZ$47.3 vs NZ$50.5).[4]
- In the United Kingdom, the difference in price between Openreach's comparable FTTP 55/10 Mbps service and 100/15 Mbps service is £0.6 (£19.6 vs £20.2).[5]

In such circumstances, **nbn** submits that its proposed wholesale pricing model is suitably calibrated so that both the 50 Mbps and 100 Mbps services remain viable inputs that will support retail product and price differentiation.

[4] See: https://www.crn.nz/news/chorus-tweaks-wholesale-ufb-fibre-plan-pricing-582339. Premium is ~A$2.91 using exchange rate NZ$1.1 to A$1

[5] See: https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=M80QNeH46o4g6JKGD604vTypQOKfNn%2Beo6vmoVhAOBZZ6rNZujnCs99NbIKJZPD9hXYmiijxH6wrCQm97GZMyQ%3D%3D. Premium is ~A$1.05 using exchange rate £0.57 to A$1.

nbn has addressed the following question from the Consultation Paper:

- *The effectiveness of low-income measures could depend on a high level of engagement from low-income representatives, and NBN Co having a strong incentive to respond efficiently to their recommendations. Does the current proposal make these things likely? What other commitments if any could be needed so that low income and other disadvantaged consumers can receive a reasonable level of support?*

Access to the **nbn**® network is not only about price and affordability. Complex issues such as digital literacy and digital capability also play important roles in facilitating consumer access to the **nbn**® network. A core part of **nbn**'s purpose is to sustainably improve digital inclusion and digital capability across all Australian customer segments, including those who experience affordability issues or other forms of vulnerability that prevent them from accessing the network.

The Low-Income Forum committed to in the Variation, which **nbn** will implement as a Low Income and Digital Inclusion Forum (**LIDIF**) is an important step towards the goal of sustainably improving digital inclusion and digital capability. The LIDIF will provide an opportunity for **nbn** to engage the broader industry to originate holistic solutions to barriers that impede access to the **nbn**® network, with potential initiative spanning across wholesale, retail and community layers. **nbn** announced on 3 February 2023 that the first LIDIF meeting will be in March 2023, as it seeks to meet this commitment even in advance of the revised SAU being finalised.

The LIDIF is just one means by which **nbn** will continue to support, and respond to the needs of, low-income end-users. The LIDIF will sit alongside the other initiatives and programs, developed outside the SAU, that **nbn** has already put in place to support low-income, vulnerable and unconnected end-users, and which are being progressed with industry consultation and engagement. To date, **nbn** has put in place over 20 initiatives and programs specifically targeting low-income, vulnerable and unconnected end-users, including low-income families, older Australians, indigenous and remote communities,[6] and those with disabilities, which are being progressed with industry consultation and engagement. These include Digital Inclusion 4 Online Learning,[7] Retirement Village Pilot, Communities in Isolation program, School Student Broadband Initiative[8] and our Seniors campaign.[9] Further details of **nbn** initiatives are provided in **nbn**'s Annual Report for 2022, in the "*Customer experience, partnerships and connected communities*" section.[10]

Digital inclusion is a core part of **nbn**'s purpose yet is a complex issue that requires input and support from industry, consumer groups and government. While **nbn** is committed to continuing to support, and respond to the needs of, low-income end-users, and has demonstrated that it has incentives to support this cohort of end-

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[6] See, for example: *"Customer experience, partnerships and connected communities"* section of **nbn**'s Annual Report 2022, pp. 38-39: https://www.nbnco.com.au/content/dam/nbn/documents/about-nbn/reports/reports-and-publications/Customer-experience-partnerships-and-connected-communities.pdf.

[7] See, for example: https://www.nbnco.com.au/content/dam/nbn/documents/sell/testing-arrangements/2021/sfaa-test-description-digital-inclusion-for-online-learning-trial-20211101.pdf.

[8] See, for example: https://www.infrastructure.gov.au/media-communications-arts/internet/national-broadband-network/school-student-broadband-initiative-ssbi.

[9] See, for example: https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-encourages-seniors-to-embrace-the-internet-and-enjoy-more-meaningful-connections.

[10] **nbn**, *Annual Report 2022*, pp. 30-39: https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-encourages-seniors-to-embrace-the-internet-and-enjoy-more-meaningful-connections.

users, ultimately the success of the LIDIF and affordability initiatives across industry more broadly depends on the level of engagement, commitment and support provided by a range of key stakeholders across industry and government.

As noted, **nbn** has recently reached out to potential LIDIF members about the establishment of LIDIF and has developed terms that will govern participation in the LIDIF by **nbn** and other forum members. Despite the diverse cross-section of potential LIDIF members, initial feedback on the LIDIF purpose and approach has been generally positive, particularly in relation to the collaborative format of the forum and the focus on digital inclusion across access, affordability and digital ability.

The LIDIF terms include commitments by **nbn** to (among other things):

- publish on its website an update regarding **nbn**'s targeted initiatives to improve access, affordability and digital ability for low-income, vulnerable and unconnected end-users of the **nbn**® network;
- at least once every financial year, make available to forum members updates on:
  - initiatives proposed, implemented and improved by forum members;
  - **nbn**'s responses and actions in respect of member-proposed initiatives; and
- if an initiative identified by the LIDIF may involve **nbn** developing a new or enhanced wholesale product, to:
  - conduct any development of such an initiative as a "Product Idea" through the Product Development Forum; and
  - inform forum members about key decisions to develop the initiative, steps being taken in such development, the launch of any resulting product, and ongoing updates on the promotion and supply of such product.

nbn submits that the commitments set out in the SAU are appropriate at this time, given the role that **nbn** will increasingly play in ensuring that as many end-users as possible are able to access the **nbn**® network, and given improving the digital literacy and digital capabilities of low-income end-users is also an issue for a range of stakeholders across industry and government.

Finally, and importantly, ensuring that low-income end-users have access to broadband services is not a task for **nbn** to solve alone through its SAU and the commitments set out in the Variation are not, and should not be, the only commitments by the telecommunications industry to support low-income and other disadvantaged end-users.

nbn has addressed the following question from the Consultation Paper:

- *Does the SAU provide sufficient support for low use customers, particularly those that require maximum speeds of 12 Mbps or 25 Mbps beyond the first regulatory period?*

Under the Variation, **nbn** has committed to limit any price increases on the entry level offer (initially the 25/5Mbps speed tier) by CPI annually for the duration of the Subsequent Regulatory Period (noting that the entry level offer may itself change from one Regulatory Cycle to another, subject to a number of constraints and ultimately ACCC determination). Applying a CPI price control ensures that entry level pricing:

- remains at least flat in real terms (and may decline in real terms should **nbn** not increase prices by CPI); and
- may also decline in quality-adjusted terms (as the entry level shifts to higher speed over time).

This commitment is a material concession compared to similar regulatory regimes overseas where operators have much more flexibility to set the long-term price trajectory of their respective entry level offers and reflects **nbn**'s commitment in the SAU to provide sufficient support to low-use customers.

In addition, in recognition of the diverse needs of end-users across Australia, **nbn** has committed in the Variation to significantly reduce the effective price of basic voice-only connectivity services on fixed-line technologies (supplied using the 12 Mbps speed tier) to make these services more accessible and affordable.

In response to ACCC feedback, **nbn** also intends to commence industry consultation on a new wholesale offer that is targeted at end-users with a low usage and basic connectivity requirement. This offer may take the form of a wholesale data-capped offer. **nbn** has communicated its intention to commence industry consultation for such an offer by no later than 1 July 2024. **nbn** considers it appropriate that the Variation does not contain a firm commitment by **nbn** to develop a data-capped offer, at this time, for the following reasons:

- a data-capped offer has not yet been robustly tested with industry through **nbn**'s product development processes;
- a data-capped offer has not yet been fully costed and scoped for complexity of implementation, nor has a business case been developed;
- a data-capped offer may not play a meaningful role until CVC charging is removed from TC-4 speed tiers of 50 Mbps and below, which will occur by 1 July 2026; and
- **nbn** already has ongoing incentives to develop and supply products that meet the needs of low-data-use end-users, including because this is the market segment in which **nbn** faces the greatest level of competition. If **nbn** does not offer price-competitive products that meet the needs of these end-users, these end-users will switch from using the **nbn®** network to using alternative networks. For example, **nbn** observed that from September to December 2022, on average 48% of end-users that churned from the **nbn**® network were on 25 Mbps or lower speed tiers. This percentage of customers on 25 Mbps or lower speed tiers is disproportionate to **nbn**'s customer base where only 23% of customers are on 25 Mbps or lower speed tiers.

More broadly, **nbn** submits that the Variation does not need to capture every product or product feature **nbn** may introduce in the near term. What is important is that the SAU contains a robust process for developing, and consulting with industry on, new products and product features (including the associated prices and service levels). The Variation (and the current SAU) does this.

nbn notes that the pricing of **nbn**'s entry level product has an overall material impact on the rest of **nbn**'s product portfolio. An entry level product with adequate bandwidth provisioning will act as a price anchor to **nbn**'s other products, as the price for these other products when compared to the entry level offer must not exceed end-users' relative willingness to pay for additional performance characteristics.

nbn has addressed the following question from the Consultation Paper:

- *In relation to the ability to bypass regulatory consideration of product withdrawals, are there sufficient protections against NBN Co pushing wholesale services to higher yielding tiers in future by withdrawing or placing limitations on access to lower yielding tiers?*

Under the Variation, the ACCC will retain the power to object to the withdrawal of a product covered by the SAU's service description, with the following limited exceptions:

1. products **nbn** is required by law or a Shareholder Minister to withdraw; or
2. products **nbn** is prohibited from providing under section 41(3) of the *NBN Companies Act*.

The ACCC will also have a key role to play in the treatment of withdrawn products (and any replacement product) for the purposes of the WAPC, including in cases where the ACCC does not have an objection power to the product withdrawal itself.

The exceptions are appropriate, specific and limited in nature

nbn does not agree with the ACCC's categorisation that these exceptions will enable **nbn** to "*bypass regulatory consideration of product withdrawals"*. The exceptions proposed are very specific and limited in nature.

nbn is concerned that removing the exemption to the ACCC's 'objection power' for products **nbn** is required by a Shareholder Minister to withdraw could give rise to outcomes where **nbn** is 'stuck' between the positions of its Shareholder Ministers and the ACCC. The SAU drafting (in the current SAU and retained in the Variation) puts **nbn** in a position to respond to the requirements of its Shareholder Ministers. This exception and the exception for products **nbn** is prohibited from providing under section 41(3) of the *NBN Companies Act,* will cease to apply if there is a change of control in the ownership of **nbn** (noting that the SAU in its entirety will expire at that time).

As noted by the ACCC in its Final Decision to accept the SAU in 2013:[11]

> The ACCC considers that these provisions [in respect of the withdrawal of a product that **nbn** is required by law or Shareholder Minister to withdraw, or which **nbn** is prohibited from providing under the NBN Co Companies Act 2011] will ensure that access seekers are informed about the withdrawal of a product, and provide interested parties with an opportunity to comment on the withdrawal. While interested parties are not provided with the same notice as with the withdrawal of products in other circumstances (such as 12 to 24 months' notice), the ACCC considers that these provisions appropriately balance NBN Co's legitimate business interests to withdraw the product as soon as possible as required by law, and the rights of those access seekers and end-users that use the declared services.

nbn agrees with the views expressed by the ACCC in 2013 and considers that the ongoing application of the same product withdrawal provisions in the Subsequent Regulatory Period continue to strike an appropriate balance between **nbn**'s legitimate business interests and the interests of RSPs and end-users.

[11] ACCC, *Final Decision on NBN Co Special Access Undertaking*, 13 December 2013, p. 84.

nbn also notes that over the nine years the SAU has operated to date, only the following three product withdrawals have been made under the terms of the SAU, none of which have been directed by **nbn**'s Shareholder Ministers:

1. **Interim Satellite Service (2017)**: This was anticipated at the time the original SAU was accepted and specific terms for its withdrawal were included in the SAU.
2. **Fixed Wireless 50/20 Mbps speed tier (2019)**: This withdrawal was required as a result of changes made to the Radiocommunications Licence Conditions Determination 2013, which varied **nbn**'s Public Telecommunications Service transmitter licences, and changes to **nbn**'s spectrum licences.
3. **The Fibre Multicast Product Feature (2021)**: No services were ordered on this product from the time of its introduction in 2012.

Protections offered by the WAPC framework

The WAPC framework is designed to provide additional layers of protection to RSPs in the event **nbn** withdraws a product such that they are not paying higher prices (on average) than what is explicitly anticipated in the SAU. In the ordinary course, when **nbn** seeks to withdraw a service (and the ACCC does not object to that withdrawal), **nbn** will propose and the ACCC will determine the treatment of the withdrawn product in the WAPC, with a view to ensuring that the WAPC captures the price impact of moving existing demand to alternative services. This involves identifying expected 'successor' services and tying the notional 'price' of the product to be withdrawn (for the purposes of WAPC compliance) to the price of those successor services.

This mechanism has the effect of limiting any overall incremental pricing yield **nbn** can derive from customers migrating between the withdrawn offer and successor offers, where the limit would be equivalent to what **nbn** could otherwise achieve through allowed annual WAPC price adjustments. **nbn** has no incremental incentive to withdraw offers with the sole purpose of migrating users to higher yielding successor offers.

2.4 Price controls

nbn has addressed the following questions from the Consultation Paper:

- *Would better cost certainty and efficiency outcomes be achieved by some limitation being continued on the X factor beyond the annual cost break-even point that NBN projects it will achieve during the 2030 financial year?*

The WAPC framework proposed in the Variation only applies during the Subsequent Regulatory Period i.e., from 1 July 2023 to 30 June 2032. Under the WAPC framework, the 'basket' of prices for all **nbn** services (with some limited exceptions) will initially only be allowed to increase each year on average (on a 'use-it-or-lose-it' basis) at CPI i.e., a CPI-0 cap will apply. From the financial year after **nbn**'s Core Services revenues are forecast to exceed its Core Services ABBRR, the 'basket' of prices for all **nbn** services will be allowed to increase each year on average by a percentage which allows **nbn**'s forecast annual Core Services revenues to equal its Core Services ABBRR plus a portion of the ICRA in present value terms i.e., a CPI-X cap will apply.

Consistent with established practice in other regulated sectors, such as electricity and gas networks, the calculation of the X factor would be undertaken such that forecast revenue from the Core Services subject to the WAPC equals forecast costs (including ICRA drawdown) for the relevant Regulatory Cycle. Forecast costs will be subject to an ACCC assessment of prudency and efficiency.

As set out in the Frontier Economics report titled "*Further assessment of NBN Co's proposed SAU pricing arrangements*",[12] a WAPC is consistent with economic efficiency in the following ways:[13]

- the WAPC provides a commercial incentive for **nbn** to improve the allocative efficiency of its prices over time, to both increase demand and to restructure prices in line with changes in demand;
- the WAPC is tied to the proposed change in **nbn**'s efficient costs in a CPI – X formulation such that the incentive to cut costs below those forecast provides a link to productive efficiency; and
- the operation of a WAPC can aid dynamic efficiency as **nbn** will benefit through growing volumes and introducing new products that consumers value at more than the cost to **nbn** of supplying them. **nbn** and RSPs will also benefit from increased certainty about cost recovery and the path of prices, as this certainty promotes investment.

The NERA Report also refers to the CPI-X formulation of the WAPC, noting that this allows **nbn** to achieve cost recovery (in ex ante present value terms), provided that **nbn** at least achieves its volume forecasts, and noting the importance of cost recovery as a consideration because it incentivises efficient investment.[14]

In addition, the WAPC proposal promotes competition, including by providing for a reasonable degree of price certainty when considered in combination with the other pricing commitments in the Variation.

During the Post-2032 Regulatory Period, **nbn** would face the same incentives for efficiency if the ACCC maintained a similar approach to pricing regulation as in the Subsequent Regulatory Period, e.g., a WAPC for all **nbn** services with some limited exceptions. Given that the ICRA drawdown would be determined on a forecast basis ahead of the start of a Regulatory Cycle (rather than being determined ex-post to guarantee particular outcomes), its incentive properties (described above) would be essentially the same as for the ABBRR itself.

nbn has addressed the following question from the Consultation Paper:

- *Do stakeholders have views on the operation of the WAPC as specified in the SAU variation proposal, noting the complexity of the formulas, etc.? Would the WAPC operate appropriately in different scenarios such as where new products are added or replace an existing product?*

nbn submits that its proposed WAPC will operate appropriately in different scenarios. As described in chapter 8 of Part B of **nbn**'s Supporting Submission, the WAPC is designed to be broad-based, covering all **nbn** services with only limited exceptions. **nbn** has sought, where possible, to base its WAPC approach on relevant precedents,[15] noting that each such precedent involves some complexity and a degree of idiosyncrasy to deal with individual circumstances.

To provide certainty and transparency, the WAPC **nbn** has proposed includes appropriately detailed provisions that address how new products and/or product withdrawal will be accounted for in the WAPC over time to ensure accurate measurement of changes in weighted average prices. Importantly, these aspects of the WAPC

[12] Frontier Economics, *Further assessment of NBN Co's proposed SAU pricing arrangements,* 7 December 2022, pp. 12-13.

[13] A description of how the WAPC proposed by **nbn** is likely to promote the achievement of productive, allocative and dynamic efficiency is also set out in Chapter 8 of Part B of **nbn**'s Supporting Submission.

[14] Dr William Taylor, *Review of the weighted average price control in **nbn**'s special access undertaking,* February 2023, p. 15.

[15] For example, Access Arrangement JGN's NSW gas distribution networks 1 July 2020 – 30 June 2025, and Access arrangement for AusNet Services gas distribution network 2018 to 2022.

complement but do not substitute for the ACCC's reserve powers in relation to resetting the prices of new products and objecting to product withdrawals.

The NERA Report[16] reviews the detailed operation of the WAPC, including in terms of how it deals with the introduction of new products and withdrawal of existing products. Amongst other things, this report concludes that **nbn**'s proposed WAPC provides **nbn** with incentives to set efficient prices, promote the efficient use of the network, maximise demand, innovate and forecast accurately.

Further, as set out in the Frontier Economics report titled "*Further assessment of NBN Co's proposed SAU pricing arrangements*"[17] and above, the operation of a WAPC can aid dynamic efficiency as **nbn** will benefit from introducing new products that consumers value at more than the costs to **nbn** of supplying them.

2.5 Service quality

nbn has addressed the following questions from the Consultation Paper:

- *Whether the proposed regulatory oversight is sufficient to promote the adoption of benchmark service standards that reflect more closely end-user service requirements and willingness to pay*
- *Whether proposed regulatory safeguards provide sufficient flexibility during a regulatory cycle to respond to unforeseen events*
- *Whether the proposed benchmark service standards for the first regulatory period address current issues that could be impacting NBN consumers and, are reasonable. In addition, whether there is sufficient clarity and certainty with regards to service quality in the proposed benchmark service standards.*

The Variation addresses the interaction between price controls and quality measures applicable to the **nbn**® network, and safeguards service quality expectations, by ensuring that a set of Benchmark Service Standards are incorporated into the SAU and by providing the ACCC the power to set the Benchmark Service Standards which will apply for each Regulatory Cycle as part of RMD. Under the Variation, **nbn** commits to include an obligation in its SFAA to meet or exceed service standards that are no less favourable to RSPs than the Benchmark Service Standards set in the SAU. This will include service levels, performance objectives, rebates and corrective action.

Enhanced service level commitments should be assessed for their impact on **nbn**'s ability to continue upgrading and maintaining the network. While it is essential that end-users continue to receive a service that meets their expectations, and **nbn** is committed to continual improvement of services for all end-users, it is important that **nbn** does not introduce and entrench higher service standards on those access technologies that are subject to overbuild if such commitments would divert capital expenditure that is more efficiently spent on upgrading the network over time, or would impact **nbn**'s ability to maintain the network to meet existing service quality commitments.

[16] Dr William Taylor, *Review of the weighted average price control in nbn's special access undertaking,* February 2023.

[17] Frontier Economics, *Further assessment of NBN Co's proposed SAU pricing arrangements,* 7 December 2022, p. 13.

Regulatory oversight

The regulatory oversight framework in the Variation is sufficient and appropriate.

The Variation gives the ACCC the power to set the Benchmark Service Standards in the SAU as part of an RMD, which may be the same as or different to those proposed by **nbn** in its RMA. The Variation also gives the ACCC powers to revisit Benchmark Service Standards during a Regulatory Cycle where: (i) a change to **nbn**'s service standards is required for RSPs to comply with new retail service standards regulations, or (ii) the ACCC has identified a systemic issue with **nbn**'s existing service standards that results in a material adverse impact on RSPs and where changes to **nbn**'s service standards are required to address the issue (subject to cost pass-through arrangements).

nbn's commitment to confer on the ACCC powers with respect to Benchmark Service Standards not only during the RMA process, but also during a Regulatory Cycle, gives the ACCC power to ensure that the service standards set under the SAU reflect access seeker service requirements and willingness to pay at the start of a Regulatory Cycle and during a Regulatory Cycle. In such circumstances, **nbn** submits that the regulatory oversight framework in the Variation is sufficient and appropriate.

Sufficient flexibility

The proposed regulatory safeguards provide sufficient flexibility to respond to unforeseen events.

There are three key avenues for the Benchmark Service Standards to be updated during a Regulatory Cycle to respond to unforeseen events:

1. **Systemic issue:** The Variation gives the ACCC the power to set new or amend existing Benchmark Service Standards where there are systemic issues that result in a recurring material adverse impact on RSPs' access to **nbn**® Ethernet services if **nbn** is not taking reasonable steps to address those issues.
2. **Supporting retail-level regulation:** In the event that RSPs are subject to new or changed mandatory regulations that necessitate a change to the existing Benchmark Service Standards for RSPs to be capable of complying with the relevant regulations, **nbn** would be required to amend the Benchmark Service Standards to support retail level obligations.
3. **nbn-initiated changes:** The Variation provides that **nbn** may propose changes to the Benchmark Service Standards during a Regulatory Cycle. Any **nbn**-initiated changes to Benchmark Service Standards are subject to consultation with access seekers and ACCC approval.

In addition, regardless of whether the Benchmark Service Standards are updated during a Regulatory Cycle, **nbn** will still have the ability to commercially negotiate improvements. **nbn** maintains that commercial negotiations are the most effective means through which to evolve service standards in a way that responds to end-user and RSP concerns while acknowledging the additional cost, process and systems changes that enhanced service standards can place on both **nbn** and RSPs.

Proposed Benchmark Service Standards in the First Regulatory Cycle

The Benchmark Service Standards that **nbn** is proposing for the First Regulatory Cycle, commencing 1 July 2023 (i.e., the start of Module 4), are based on the key **nbn**® Ethernet service levels and performance objectives under WBA4, which have recently been supplemented with a targeted set of improvements.

While **nbn** appreciates RSPs have advocated for the SAU to incorporate enhanced service standards (relative to WBA4), and **nbn** is committed to working with RSPs on continued improvements to end-user experience, the fundamental purpose of including Benchmark Service Standards in the SAU is to establish a price-quality link to ensure that the network operator is not incentivised to reduce service standards (as an alternative to increasing prices) in order to increase margins. **nbn** submits that the proposed framework achieves this purpose while balancing the interests of RSPs, end-users and **nbn** and is therefore in the LTIE.

Clarity and certainty with regards to service quality in the proposed Benchmark Service Standards

The proposed approach to service standards under the Variation will provide RSPs and **nbn** with certainty regarding the applicable Benchmark Service Standards that apply for each Regulatory Cycle. Embedding these service levels and performance objectives in the SAU provides a meaningful price/quality link that is subject to regular review, which directly addresses key concerns raised by the ACCC and industry.

Embedding Benchmark Service Standards in the SAU does not preclude **nbn** from agreeing to improved service standards over time with industry. This is appropriate given that **nbn** is continually investing in its network and making operational improvements. This flexibility to commercially agree improved service standards, along with the proposed powers for the ACCC to set additional or alternate service standards over time, should provide RSPs and end-users with confidence that the service level commitments set out in the SAU will continue to reflect industry and consumer expectations of performance on the **nbn**® network.

2.6 Reporting

nbn has addressed the following question from the Consultation Paper:

- *Whether NBN Co's proposed performance and operational reporting commitments for the first regulatory cycle are appropriate and in the LTIE.*

The performance and operational reporting commitments set out in the Variation for the First Regulatory Cycle are appropriate and promote the LTIE by providing a transparent and robust quality of service commitment to ensure that RSPs and end-users know what to expect from **nbn** services. This will promote the take-up and use of the **nbn**® network.

The ACCC notes in the Consultation Paper that **nbn** has removed previously proposed commitments (proposed in the variation lodged by **nbn** on 29 March 2022 (**March Variation**)) to maintain its existing monthly reports to RSPs, or via its website, relating to congestion, network availability, and connection and assurance performance, and asks for views on whether **nbn** should continue its own public reporting.

In the absence of any formal requirement, including under the SAU, to do so, **nbn** has continued to provide monthly public updates on its network performance for five years, which includes two years of additional pro-active Fixed Wireless reporting that it has no formal obligation to provide.

There are two key points to note in relation to network performance reporting under the Variation:

1. **Benchmark Service Standards include commitments to continue WBA service level performance reporting:** Under the Benchmark Service Standards, **nbn** commits to continue the service level performance reporting that is currently provided to RSPs under WBA4. While targeted metrics from this reporting were included in

the network performance reporting commitments in the March Variation, the Variation commits **nbn** to continue this service level reporting on a holistic basis.[18]

2. **Other reporting commitments (based on nbn Monthly Progress Report) would duplicate the ACCC's proposed Record Keeping Rules:** As outlined in the Supporting Submission for the Variation, **nbn** is keen to avoid unnecessary and potentially inefficient duplication of reporting requirements. These additional network performance reporting requirements have been removed from the Variation given the indication that the ACCC would implement a more comprehensive and consolidated Record Keeping Rule (**RKR**) that covered similar reporting metrics. The ACCC's current consultation on the proposed RKR covers the key areas of network performance that industry considered as part of the ACCC convened SAU working groups – and which **nbn** was seeking to address through the initial reporting commitments proposed in the March Variation.

nbn remains committed to working with the ACCC and RSPs on the appropriate transparency metrics that would form any potential Record Keeping Rule and, in such circumstances, the performance and operational reporting commitments proposed in the Variation for the First Regulatory Cycle are appropriate and in the LTIE.

2.7 Asset lives and categorisation of asset classes

nbn has addressed the following question from the Consultation Paper:

- *Are the changes to NBN Co's approach to depreciation, including changes to asset lives and categorisation of asset classes, appropriate or seek to reflect the useful economic lives of these assets?*

nbn submits that the changes to its approach to depreciation under the Variation are appropriate and reflect an appropriate approximation of the useful economic lives of the assets in **nbn**'s Building Block Model (**BBM**). There are two material changes proposed to **nbn**'s calculation of depreciation expenses compared with the BBM provided with the March Variation:

- a change in asset lives; and
- a change to asset groupings used within the BBM (from almost 700 asset types to less than 20 asset classes).

Change in asset lives

Under the Variation, **nbn** will adopt regulatory asset lives consistent with **nbn**'s audited financial statements, to the extent the ACCC is satisfied that this is reasonable.

Under the relevant accounting standards that apply to **nbn**, **nbn** is required to perform a review of its useful life estimates for all non-current assets at least once every year and if there is any change in information that may affect the period over which its assets are intended to be used.

nbn, during the first half of FY23, completed a comprehensive review of the useful lives of **nbn**'s assets utilising its IOP23 forecasts, which include the planned capital expenditure to make fibre upgrades available to 3.5 million premises.

[18] See Part B, section 16.1 of Attachment I (Benchmark Service Standards for First Regulatory Cycle).

As a result of this review, **nbn** has made several changes to the useful lives of **nbn**'s assets within its statutory financial statements. These statutory changes have been reflected in **nbn**'s BBM provided with the Variation. The majority of **nbn**'s asset types retained the same useful life and the net impact of the changes in useful life estimates is an extension of the period **nbn** expects to use its assets.

These changes to the useful life of **nbn**'s assets are made prospectively from 1 July 2022 and there is no impact on the depreciated value of the RAB at the start of the FY23 year. As such, **nbn** submits that its proposed approach to depreciation appropriately approximates the useful economic lives of the assets in **nbn**'s BBM.

Change in asset groupings

Under the current SAU, **nbn**'s LTRCM model provides detailed historic capital expenditure and depreciation calculations. This was maintained in the BBM provided with the March Variation. However, to address issues related to the usability of the LTRCM (and BBM) and complexities with recording and calculating depreciation for asset types, under the Variation, **nbn** has adopted an aggregated asset approach to calculating depreciation across a smaller number of asset classes with similar asset functions and/or lives. This aggregated asset approach is commonly used in other regulatory BBMs[19] (and does not change the net present value (**NPV**) of BBM results) and **nbn** submits that this approach is appropriate.

To enhance transparency over **nbn**'s historical and forward approaches to depreciation, **nbn** has prepared two BBMs:

1. **FY09-FY23 BBM, which covers the period prior to 1 July 2023 (i.e., up to the end of Module 1):** Model 1 maintains the retrospective focus of the LTRCM with the retention of asset types and historical lives of **nbn**'s assets. While depreciation is based on individual asset types (rather than asset classes) during the period prior to 1 July 2023, the FY09-FY23 BBM shows the categorisation of asset types to asset classes for transparency and to allow for the calculation of weighted average asset class life.
2. **FY24-FY40 BBM, which covers the period from 1 July 2023 onwards (i.e., from the commencement of Module 2 onwards):** Model 2 simplifies the calculations of depreciation by separating past depreciation, which is based on applying the remaining asset value by class and weighted asset class life, from depreciation of new assets, which is based on the standard asset life for that asset class. This significantly reduces the calculations and model size, while retaining transparency.

The calculation of depreciation using weighted average asset lives across an asset class and calculation of individual depreciation by asset types does produce small differences in depreciation expenses over time.[20] **nbn** has sought to minimise the annual extent of such differences, ensuring that the NPV of BBM results is unaffected, and has estimated depreciation both with and without the proposed changes to asset classes. In practice, the result is that the average increase in the lives of **nbn**'s assets has a greater impact on depreciation than the change in modelling approach.

[19] For example, the AER's Electricity Distribution PTRM includes 11 asset categories as standard.

[20] This reflects that there will be some differences where there is a mix of remaining asset lives in a class.

2.8 Business cases and expenditure criteria

nbn has addressed the following questions from the Consultation Paper:

- *How important is the preparation of a business case to enabling assessment of the prudency and efficiency of major planned capex expenditures?*
- *If a business case would be valuable, what key requirements would it need to incorporate so that it could be relied upon in expenditure reviews that are undertaken pursuant to the SAU?*

As noted in section 20.5 of Part F of **nbn**'s Supporting Submission, under the expenditure assessment framework in the Variation, **nbn** will be incentivised to put forward business cases or cost/benefit analysis, with an appropriate level of detail, to justify its proposed expenditure for an upcoming Regulatory Cycle. The proposed framework for assessing prudency and efficiency allows the ACCC to assess any business cases and cost/benefit analysis put forward by **nbn** to justify its proposed expenditure and it is in **nbn**'s interests to put forward a proposal with enough information to allow the ACCC to make such an assessment.

nbn submits that in circumstances where **nbn** is incentivised to put forward business cases or cost/benefit analysis, it is not necessary or appropriate to require the production (or prescribe the form) of such analysis. Instead, the approach taken in the Variation will allow the expenditure assessment framework to evolve appropriately over time, in consultation with the ACCC.

3 Points of clarification

Throughout the Consultation Paper, there are a number of instances where the ACCC has indicated it is unclear how a particular aspect of the Variation would operate. This section of the submission seeks to provide clarification in respect of each of those matters. **nbn** has also taken the opportunity to clarify a few points of detail where the Consultation Paper description is not quite complete.

3.1 ACCC power to object to prices of new products

The ACCC notes in the Consultation Paper that it is unclear on whether the Variation would allow the ACCC to object to prices of new products for up to two years.[21]

The Variation includes a reserve power for the ACCC to reset the maximum Price of a new NBN Offer or Other Charge up to two years after it is introduced. In Module 2 this is provided for in the arrangements set out in clause 2F.5 and the definition of Resetting Regulatory Determination in the Dictionary. The power is essentially the same as that which has applied to date in Module 1 and it is not a power to object to, but rather a power to reset, a maximum Price for a new NBN Offer or Other Charge in the two-year period after the new NBN Offer or Other Charge is introduced.

3.2 The scope of the proposed post-2032 framework – mid-regulatory cycle review mechanism and / or a Service Target Performance Incentive Scheme

The ACCC asks in the Consultation Paper whether clauses 5.10(b)(iv) and (d) of the Main Body of the Variation would allow the ACCC to include a mechanism for a mid-regulatory cycle review of Benchmark Service Standards in any RMD for a Regulatory Cycle in the Post-2032 Regulatory Period.[22]

Relevantly, clause 5.10(b)(iv) provides that an RMD for the Post-2032 Regulatory Period can include Benchmark Service Standards (where **nbn** must include in its SFAA an obligation to meet or exceed standards which are no less favourable than the benchmark), while sub-clause (d) provides that the ACCC may perform such functions, undertake such activities and make such determinations as are reasonably necessary for, or ancillary to, giving effect to an RMD.

nbn confirms that these clauses (in combination) are not intended to allow a mid-cycle service standards review mechanism to be built into an RMD. Rather, a similar outcome is achieved through proposed clause 5.10(f), which provides for the ACCC to revoke an RMD for a Regulatory Cycle and substitute a new RMD for that cycle – thereby allowing the ACCC to change the Benchmark Service Standards applying within a Regulatory Cycle. In addition, proposed clause 6.1 provides for the ACCC to conduct consultations on matters in connection with the SAU, thereby providing for the ACCC to conduct a mid-cycle review of Benchmark Service Standards before revoking the current and issuing a new RMD.

[21] ACCC, *Proposed variation to the NBN Co Special Access Undertaking Consultation Paper*, January 2023, p. 33.

[22] ACCC, *Proposed variation to the NBN Co Special Access Undertaking Consultation Paper*, January 2023, pp. 62, 64.

The Consultation Paper also asks whether clauses 5.10(b)(iv) and (d) of the Variation would allow the ACCC to introduce a service performance incentive scheme for a Regulatory Cycle in the Post-2032 Regulatory Period.[23] While such schemes relate to service standards, they typically have impact by affecting the regulated revenue allowance or pricing of the regulated entity. **nbn** considers it would be open to the ACCC to establish such a scheme in an RMD for the Post-2032 Regulatory Period, as part of determining *"a framework for setting or controlling maximum prices*" – per clause 5.10(b)(ii) (in combination with clause 5.10(d), if necessary). That ability would be subject to the general principles applying to such RMDs set out in Module 3 of the Variation.

3.3 Information relevant to *ex post* reviews of capital expenditure

The Consultation Paper notes the ACCC's agreement that *ex post* reviews of capital expenditure (**capex**) should not have regard to information that only became available after the relevant capex was incurred, and seeks stakeholder views as to whether it is sufficiently clear that the ACCC could take account of analysis of **nbn**'s capex decisions that was commissioned and/or prepared subsequent to the capex being incurred, so long as it was based on information available at the relevant time, etc.[24]

The relevant clause of the Variation is clause 2G.5.10(b)(vi), which provides in effect that the ACCC's ex post assessment of the prudency and efficiency of capex will be based on the circumstances existing, and information and analysis that an operator in **nbn**'s position could reasonably have been expected to have considered or undertaken, at the time **nbn** incurred the relevant capex.

nbn considers that the application of this rule is clear. The rule does not prevent the ACCC from considering analysis that was in fact *created after* the relevant expenditure was occurred – *provided* that the same analysis could reasonably have been expected to have been considered or undertaken by an operator in **nbn**'s position at the time **nbn** incurred the expenditure.

This clause reflects the rule applying under the National Electricity Rules (**NER**) to *ex post* reviews of capex incurred by electricity transmission and distribution networks. In particular, those rules provide that in making an *ex-post* capex review determination, the Australian Energy Regulator (**AER**) must "*only take into account information and analysis that the provider could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure"* (see NER S6.2.2A(h) and S6A.2.2A(h)).

Those rules have been in place since 2012,[25] and are reflected in the AER's Capital Expenditure Incentive Guideline of November 2013 and its draft updated guideline of December 2022.[26] The rationale for those rules is explained in the AEMC's draft rule determination of August 2012,[27] as follows:

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[23] ACCC, *Proposed variation to the NBN Co Special Access Undertaking Consultation Paper*, January 2023, p. 64.

[24] ACCC, *Proposed variation to the NBN Co Special Access Undertaking Consultation Paper*, January 2023, p. 49.

[25] See: AEMC, *Economic Regulation of Network Service Providers, Final Rule Determination*, November 2012: https://www.aemc.gov.au/rule-changes/economic-regulation-of-network-service-providers.

[26] See: https://www.aer.gov.au/system/files/AER%20capital%20expenditure%20incentive%20guideline%20-%20November%202013.pdf and https://www.aer.gov.au/system/files/AER%20-%20Draft%20Decision%20-%20Capital%20expenditure%20incentive%20guideline%20-%20December%202022.pdf, respectively.

[27] See: https://www.aer.gov.au/system/files/AER%20-%20Draft%20Decision%20-%20Capital%20expenditure%20incentive%20guideline%20-%20December%202022.pdf.

> …in determining whether expenditure incurred was efficient, the AER must only take into account information and analysis that the NSP could have reasonably been expected to have considered or undertaken at the time that it undertook the relevant capex. The NSP should only be judged on material reasonably available to it at the time, though this would include material available not just at the start of a project but also during it. If for example the NSP chose the most efficient pole design in 2008 but further studies in 2010 indicated a different pole design would have been more efficient, it would depend on when the project was carried out relative to 2010 in the regulatory period whether it may be appropriate for the AER to take into account these further studies. As another example, in coming to a decision on whether work was undertaken efficiently the AER could only use unit costs at the time the expenditure was incurred. The AER could not take into account advancements in technology which may have reduced the unit costs of expenditure. One source of information that the AER could use is published forecasts of demand, for example the transmission annual planning report, and it would be reasonable for the AER to expect that NSPs actively and regularly reviewed capex plans based on the most up to date forecasts of demand.

3.4 Location of fault dropout and speed thresholds in respect of FTTP/B/C and Fixed Wireless networks

The ACCC observes in the Consultation Paper that there appears to be a lack of clarity in terms of the location of fault dropout and speed thresholds for **nbn** ordered products on the FTTP/B/C and Fixed Wireless networks in the current SFAA.[28]

Dropouts are predominantly associated with copper and HFC networks. Accordingly, the performance incident framework was introduced for FTTN and HFC under WBA4 and is reflected in RSP feedback relating to service stability / dropouts which is focused on these access technologies.

Under WBA5, the new dropout thresholds proposed in the Variation will apply to HFC and FTTN. In addition, as part of WBA5, **nbn** plans to implement the same performance incident framework (including the same dropout threshold criteria and process) on the FTTC network. The introduction of the performance incident framework in respect of FTTC has been subject to recent consultation and trials with RSPs. The performance incident framework (and associated dropout threshold) is not applied in respect of FTTP, Fixed Wireless or FTTB networks because copper is not a significant part of the **nbn** infrastructure for those networks. In respect of FTTB, the copper element of any significance is outside the **nbn** network boundary, belongs to the building owner and covers only the short distance between the basement/MDF and the apartment/unit.

In order to ensure that the Benchmark Service Standards reflect this amendment to WBA5, and in response to the concern raised by the ACCC, **nbn** is considering appropriate changes to the Benchmark Service Standards for the First Regulatory Cycle. Specifically, extending the dropout threshold criteria in clause 23(a) of the Benchmark Service Standards to FTTC – to be applicable once FTTC is captured under the performance incident framework in the WBA.

[28] ACCC, *Proposed variation to the NBN Co Special Access Undertaking Consultation Paper*, January 2023, p. 64.

3.5 Treatment of new products in the WAPC

The ACCC notes in the Consultation Paper that new products would only enter the WAPC when demand data for the period t-1.25 (that is, 31 March of financial year (t-1)) becomes available.[29]

This description of how new products are accounted for in the WAPC framework is incomplete in that the proposed WAPC approach allows for t-1.25 demand data to be for a part year. Clause 2D.2 in the Variation implicitly accounts for quantities of new products in the WAPC compliance formula as they are introduced. For example, a product that is introduced on 1 March of financial year (t-1) will be incorporated into the WAPC when it is applied on 1 May of financial year (t-1) in respect of the Tariff List published to apply to financial year (t). In this instance, the parameters necessary for WAPC compliance would be as follows:

- $q_{t-1.25}$ would be the average quantities supplied between 1 March (the day of introduction) and 31 March of the current financial year (t-1), multiplied by the relevant frequency of the charge;
- p_{t-1} would be the average Price at which the new product is supplied (and forecast to be supplied) between 1 March and 30 June of the current financial year (t-1); and
- p_t would be the Price in the Tariff List for the new product to apply in the next financial year (t).

3.6 Methodology of combining 12 Mbps and 25 Mbps services in the same bundle offer group

The ACCC observes in the Consultation Paper that the proposed methodology of combining the 12 Mbps and 25 Mbps bundled TC-4 offers in the combined charge formula could potentially raise issues for product affordability and the avoidance of price shocks.[30]

The proposed treatment of the 12 Mbps and 25 Mbps bundled TC-4 offers in the same bundle offer group is designed to deliver greater stability in the combined charge measurement and accurately reflect price movements, rather than those potentially artificially created from migrations – see Box 3 in section 8.2.1 of Part B of **nbn**'s Supporting Submission.

The treatment will not affect the actual price paid by RSPs for the individual products. In particular, the treatment does not mean RSPs acquiring the 12 Mbps bundled TC-4 offer would face an immediate price shock, nor does it mean that the 12 Mbps bundled TC-4 offer is potentially exposed to future price shocks. At its core, the treatment resets the initial level of average combined charge *for WAPC purposes* for the two offers. Price controls will continue to apply to both products individually, ensuring the prices for both products can only change within the SAU parameters. In addition, the pricing of the 12 Mbps bundled TC-4 offer will be further constrained by the 25 Mbps pricing commercially, with **nbn** unable to increase the 12 Mbps price above the 25 Mbps price.

[29] ACCC, *Proposed variation to the NBN Co Special Access Undertaking Consultation Paper*, January 2023, p. 37.

[30] ACCC, *Proposed variation to the NBN Co Special Access Undertaking Consultation Paper*, January 2023, Annexure C, p. 72.

4 Consolidated list of ACCC questions

nbn has articulated its views on many of the issues raised in the Consultation Paper in **nbn**'s Supporting Submissions. This current submission should be read in conjunction with the Supporting Submission and other materials provided to the ACCC in support of the Variation. The table below identifies where additional information which responds to the issues raised in the Consultation Paper can be found.

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
1.	Replacement module process *(Consultation Paper, section 5.1.3)*	The suitability and completeness of the proposed regulatory module processes, including the new pre-lodgement consultation requirement and the proposed timeframes	**nbn** notes the following sections of its Supporting Submission, which contain further detail: • Part D, chapter 13, pp. 6–8 • Part G, chapter 22, p. 17
		The appropriateness of the change in control provisions to terminate the SAU then in operation	**nbn** notes the following sections of its Supporting Submission, which contain further detail: • Part D, chapter 14, p. 11 • Part G, chapter 22, p. 30
2.	Post-2032 arrangements *(Consultation Paper, section 5.2.3)*	Whether the proposed arrangements achieve an appropriate balance between providing regulatory certainty to both NBN Co and retailers about how matters are to be determined through the replacement module process, and flexibility to determine arrangements that better respond to conditions and regulatory best practice at the time	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission, which contain further detail: • Part D, chapter 13, p. 8 and chapter 14, p. 11 • Part G, chapter 22, p. 30
		Whether the proposed Module 3 principles are likely to provide appropriate incentives on NBN Co to operate in a prudent and efficient manner and safeguard against price shocks while allowing it a reasonable opportunity to achieve a stand-alone credit rating before the end of the SAU term. If not, what changes to the principles would you propose?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission, which contain further detail: • Executive Summary – Part A, chapters 2 and 6, pp. 7–9 and 19–20 • Part D, chapter 13, p. 8 and chapter 14, p. 11 • Part G, chapter 22, p. 30

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
		Whether the proposed arrangements are likely to result in any undue complexity or whether there are gaps in the regulatory framework that could lead to any unintended consequences	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission, which contain further detail: • Part D, chapter 13, p. 8 and chapter 14, p. 11 • Part G, chapter 22, p. 30
		Whether the proposed arrangements appropriately mitigate the risk of price shocks that could result from NBN Co pricing its services to achieve a stand-alone credit rating for the duration of each regulatory cycle in the post 2032 period	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission, which contain further detail: • Part D, chapter 13 p. 8 and chapter 14, p. 11 • Part G, chapter 22 p. 30

3.	Pricing and product constructs
	(Consultation Paper, section 5.3.3)
		Are stakeholders supportive of the proposed approach to encourage uptake of wholesale services at higher speed tiers, including migrating 12 Mbps broadband access towards a 25 Mbps speed tier, and more-intensively used 50/20 Mbps services to the 100/20 Mbps tier? Do retailers have the capability to manage individual AVCs onto the wholesale speed tier that would optimise their costs under the proposed pricing model? If not, what assistance might they need to achieve this? What would be the cost outcomes for a retailer that could not optimise in this manner?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission and the expert report by Frontier, which contain further detail:
			• **nbn**'s Supporting Submission:
			    • Executive Summary – Part A, chapter 2, pp. 14–15
			    • Part B, chapter 7, pp. 9–10
			• Expert Report: Frontier, *Further assessment of NBN Co's proposed SAU pricing arrangements*, 7 December 2022

		The gap in minimum access costs between the 50 Mbps and 100 Mbps services is relatively small, and narrows further once the cost of CVC overage is factored in. Do stakeholders consider that the proposed wholesale pricing model is suitably calibrated so that both the 50 Mbps and 100 Mbps wholesale speed tiers remain viable inputs that will support retail product and price differentiation?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission, which contain further detail: • Executive Summary – Part A, chapter 2, pp. 14–15 and 45-51 • Part B, chapter 7, pp. 9-12

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
		The effectiveness of low-income measures could depend on a high level of engagement from low-income representatives, and NBN Co having a strong incentive to respond efficiently to their recommendations. Does the current proposal make these things likely? What other commitments if any could be needed so that low income and other disadvantaged consumers can receive a reasonable level of support?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following section of its Supporting Submission, which contains further detail: • Part B, chapter 7, pp. 16–18
		Does the SAU provide sufficient support for low use customers, particularly those that require maximum speeds of 12 Mbps or 25 Mbps beyond the first regulatory period?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission, which contain further detail: • Part B, chapter 7, pp. 11-13 • Part G, chapter 22, p. 15
		In relation to the ability to bypass regulatory consideration of product withdrawals, are there sufficient protections against NBN Co pushing wholesale services to higher yielding tiers in future by withdrawing or placing limitations on access to lower yielding tiers?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following section of its Supporting Submission, which contains further detail: • Part G, chapter 22, p. 27
4.	Price controls and transparency measures *(Consultation Paper, section 5.4.3)*	Would better cost certainty and efficiency outcomes be achieved by some limitation being continued on the X factor beyond the annual cost break-even point that NBN projects it will achieve during the 2030 financial year? • Is there sufficient assurance over the long-term price path? • Will NBN Co have appropriate incentives to manage demand risks and operate efficiently in the post-2032 period should it be able to drawdown the ICRA balance regardless of the scale of real price increases this could require?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following section of its Supporting Submission, which contains further detail: • Part B, chapter 8, pp. 20-24

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
		Do stakeholders have views on the operation of the WAPC as specified in the SAU variation proposal, noting the complexity of the formulas, etc.? Would the WAPC operate appropriately in different scenarios such as where new products are added or replace an existing product?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following section of its Supporting Submission, which contains further detail: • Part B, chapter 8, pp. 20–24
5.	**nbn**'s approach to the BBM *(Consultation Paper, section 5.5.3)*	Is there sufficient information in the public version of the BBM for stakeholders to meaningfully engage on key aspects of NBN Co's proposed approach to the BBM?	**nbn** refers stakeholders to the public versions of the BBM for the period 2009 to 2023 and 2024 to 2040
		Are the changes to NBN Co's approach to depreciation, including changes to asset lives and categorisation of asset classes, appropriate or seek to reflect the useful economic lives of these assets?	**nbn** has addressed the ACCC's specific question in section 2 above, and notes the following section of its Supporting Submission, which contains further detail: • Part E, chapter 17, p. 17

6.	Recovery of accumulated losses
	(Consultation Paper, section 5.6.3)
		Whether the proposed methodologies NBN Co has used in developing its proposed opening ICRA balance of $12.5 billion represents an appropriate approach to achieving and maintaining a stand-alone investment-grade credit rating.	**nbn** notes the following sections of its Supporting Submission and the expert report by Castalia, which contain further detail:
			• **nbn**'s Supporting Submission:
			  ◦ Executive Summary – Part A, pp. 8–9, 17, 21
			  ◦ Part E, chapter 16, p. 11
			• Expert Report: Castalia, *Economic effects of ICRA,* December 2022

		Whether the proposed arrangements would likely promote efficient investment in and use of the NBN	**nbn** notes the following sections of its Supporting Submission and the expert report by Castalia, which contain further detail:
			• **nbn**'s Supporting Submission:
			  ◦ Part E, chapter 16, pp. 5–12
			  ◦ Part G, chapter 22, p. 16
			• Expert Report: Castalia, *Economic effects of ICRA*, December 2022

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
		Whether the commitments to extinguish residual ICRA balances at the end of the subsequent regulatory period and the post-2032 regulatory period would resolve concerns around future price and regulatory uncertainty beyond 2040	**nbn** notes the following section of its Supporting Submission, which contains further detail: • Part E, chapter 16, pp. 11–12 • Part G, chapter 22, p. 16
		Whether the proposal to determine ICRA drawdown amounts ahead of each regulatory cycle, subject to the condition that the total amounts specified in the SAU can be recovered, provides a suitable safeguard against price shocks or prices that are higher than needed given the more fundamental limitation proposed on the ACCC's power to make a determination in the post-2032 regulatory period.	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission, which contain further detail: • Executive Summary – Part A, chapter 2, pp. 17 and 21 • Part E, chapter 16, pp. 7–12
7.	Expenditure criteria *(Consultation Paper, section 5.7.3)*	What alternative process measures could be considered to safeguard against a regulatory module coming into effect without proper regulatory assessment	**nbn** has addressed the ACCC's specific question in section 2 above. **nbn** considers that the current proposal is appropriate and meets the statutory criteria
		How important is the preparation of a business case to enabling assessment of the prudency and efficiency of major planned capex expenditures?	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following section of its Supporting Submission, which contains further detail: • Part F, chapters 20, 21 and Appendix A, p. 14
		If a business case would be valuable, what key requirements would it need to incorporate so that it could be relied upon in expenditure reviews that are undertaken pursuant to the SAU?	**nbn** has addressed the ACCC's specific question in section 2 above. **nbn** considers that the current proposal is appropriate and meets the statutory criteria
8.	Cost allocation and accounting separation	Would the proposed cost allocation principles and framework for the subsequent regulatory period provide for effective accounting separation of NBN Co's competitive services from its monopoly services?	**nbn** notes the following sections of its Supporting Submission, which contain further detail: • Executive Summary – Part A, chapter 2, pp. 16–17 • Part C, chapter 12, pp. 35–36 • Part E, chapter 17, pp. 17–18

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
	(Consultation Paper, section 5.8.3)		• Part G, chapter 22, pp. 18, 22-23
		Is the initial cost allocation manual submitted by NBN Co fit for purpose and clear in its approach to cost allocation between NBN Co's core and non-core services?	**nbn** notes the following sections of its Supporting Submission, which contain further detail: • Part E, chapter 17, p. 18 • Part H, chapter 22, p. 18 **nbn** has provided an initial cost allocation manual to assist the ACCC in assessing, and to enable RSPs to provide more informed feedback on, the Variation. The initial cost allocation manual is not yet approved by the ACCC and is subject to change. Under the Variation, **nbn** is required to formally submit to the ACCC, within 30 days of the Variation being accepted, a Proposed Cost Allocation Manual for approval.
		Are the proposed cost allocation principles for the subsequent regulatory period, and cost allocation manual, likely to reflect relevant cost drivers and appropriately allocate costs between NBN Co's core and non-core services?	**nbn** notes the following sections of its Supporting Submission, which contain further detail: • Executive Summary – Part A, chapter 2, pp. 16–17 • Part C, chapter 12, pp. 35–36 • Part E, chapter 17, pp. 17–18 • Part G, chapter 22, pp. 18, 22-23
		Are the processes for periodically reviewing cost allocations for the subsequent regulatory period through the replacement module process, and for considering cost allocations for new services in the subsequent regulatory period, appropriate and adaptable to changing market and other conditions?	**nbn** notes the following section of its Supporting Submission, which contains further detail: • Part E, chapter 17, pp. 14–15
		Do the proposed cost allocation framework and accounting separation procedures achieve the right balance between appropriate flexibility on implementation and effective ACCC oversight, regulatory control, and recourse where necessary?	**nbn** notes the following section of its Supporting Submission, which contain further detail: • Executive Summary – Part A, chapter 2, pp. 16–17 • Part C, chapter 12, pp. 35–36

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
			• Part E, chapter 17, pp. 17–18 • Part G, chapter 22, pp. 18, 22-23
9.	WACC *(Consultation Paper, section 5.9.3)*	NBN Co's proposed objectives to which regard must be had in estimating the nominal vanilla WACC for the purposes of all regulatory cycles of the subsequent regulatory period and the post-2032 regulatory period (other than the first regulatory cycle): • producing reliable estimates of the market cost of capital in a wide range of plausible market conditions • promoting stability in the rate of return over time.	**nbn** notes the following sections of its Supporting Submission and the expert reports by Frontier and CEG, which contain further detail: • **nbn**'s Supporting Submission: ◦ Part E, chapter 18, pp. 19–27 • Expert Report: Frontier, *Return on capital and inflation,* December 2022 • Expert Report: CEG, *WACC for **nbn***, June 2022 - see section 6 'Stability of the WACC estimate'
		NBN Co's proposed WACC values for the first regulatory cycle, including with respect to the scope of the benchmark firms and other aspects of the methodology and input parameter values used by NBN Co in estimating its proposed WACC values.	**nbn** notes the following sections of its Supporting Submission and the expert report by Frontier, which contain further detail: • **nbn**'s Supporting Submission: ◦ Part E, chapter 18, pp. 19–26 • Expert Report: Frontier, *Return on capital and inflation*, December 2022 As observed by the ACCC in its Consultation Paper, the WACC for the First Regulatory Cycle is unlikely to have a material impact on **nbn**'s prices because, for the duration of that cycle, the WAPC will be capped at CPI rather than being subject to the outputs of the BBM.
		Whether the proposed sample of benchmark firms used by NBN Co for the estimation of gearing and beta are appropriate. In particular, whether the resulting benchmark would be reasonable to adopt for NBN Co as a wholesale access provider.	**nbn** notes the following sections of its Supporting Submission and the expert report by Frontier, which contains further detail: • **nbn**'s Supporting Submission: ◦ Part E, chapter 18, pp. 24–26

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
			• Expert Report: Frontier, *Return on capital and inflation,* December 2022 As observed by the ACCC in its Consultation Paper, the WACC for the First Regulatory Cycle is unlikely to have a material impact on **nbn**'s prices because, for the duration of that cycle, the WAPC will be capped at CPI rather than being subject to the outputs of the BBM.
10.	Incorporating other access technologies *(Consultation Paper, section 5.10.3)*	We are seeking stakeholder views regarding the clarity of drafting on the included MTM definitions and service descriptions. Specifically, we are seeking feedback on NBN Co's proposed network boundaries for each of the new MTM networks.	**nbn** notes the following sections of its Supporting Submission, which contain further detail: • Part C, chapter 9, pp. 5–8
11.	Service quality *(Consultation Paper, section 5.11.3)*	Whether the proposed regulatory oversight is sufficient to promote the adoption of benchmark service standards that reflect more closely end-user service requirements and willingness to pay	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following sections of its Supporting Submission, which contain further detail: • Part C, chapter 10, pp. 9-10 • Part D, chapter 14, pp. 14-15
		Whether clause 5.10(b)(iv) and (d) (Main Body of the SAU variation) would permit the ACCC to establish a mid-cycle regulatory review mechanism and/or introduce a service performance incentive scheme for a regulatory cycle of the post-2032 regulatory period	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following section of its Supporting Submission, which contains further detail: • Part D, chapter 14, pp. 14-15
		whether proposed regulatory safeguards provide sufficient flexibility during a regulatory cycle to respond to unforeseen events	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following section of its Supporting Submission, which contains further detail: • Part C, chapter 10, pp. 9, 11-12

#	Category	ACCC question / matter for comment	Submissions / materials submitted to the ACCC by nbn which address ACCC question
		Whether the proposed benchmark service standards for the first regulatory period address current issues that could be impacting NBN consumers and, are reasonable. In addition, whether there is sufficient clarity and certainty with regards to service quality in the proposed benchmark service standards.	**nbn** has addressed the ACCC's specific question in section 2 above and notes the following section of its Supporting Submission, which contains further detail: • Part C, chapter 10, pp. 12-17
12.	Reporting *(Consultation Paper, section 5.12.3)*	Whether NBN Co's proposed performance and operational reporting commitments for the first regulatory cycle are appropriate and in the LTIE.	**nbn** notes the following section of its Supporting Submission, which contains further detail: • Part C, chapter 11, pp. 30–32
13.	ACCC functions and powers *(Consultation Paper, section 5.13.3)*	[The ACCC's] proposed approach to assessing the sufficiency and effectiveness of the proposed functions and powers that are to be conferred on the ACCC. Are there any other checks that we should be doing on the powers and functions that have been proposed to be conferred?	**nbn** notes the following sections of its Supporting Submission, which contain further detail: • Executive Summary – Part A, pp. 7–8 • Part D, chapter 14, pp. 9–15
		Whether there are any further functions and powers that should be conferred so that the proposed regulatory controls will be effective, and to ensure the SAU variation promotes the LTIE, and its terms and conditions are reasonable over time	
		Whether the limits that apply to the exercise by the ACCC of the functions and powers conferred on it by the varied SAU are certain and readily ascertainable.	
		Whether the proposed new clauses providing for general powers for the ACCC to request information in relation to its exercise of functions and powers and consult with third parties will ensure decisions are made on an informed basis, and that this occurs in an open and transparent process.	