

Independent Expert Report nbn SAU Variation Expenditure

24 April 2023

Final draft

Contents

Part A Introduction and context	3
1 Introduction	3
1.1 Background	3
1.2 Independent Expert Report	3
1.3 Process & Methodology	3
1.4 Structure of this Report	3
2 Context	4
2.1 NBN Co proposed expenditure assessment framework	5
2.2 NBN Co's explanation of its own internal expenditure processes (including governance and risk management)	5
2.3 Recommended process – Part D	6

Part A Introduction and context

1 Introduction

1.1 Background

NBN Co (an Australian Government owned corporation) owns and operates Australia's national broadband network (NBN).

Part XIC of the Competition and Consumer Act 2010 (CCA) establishes a regime for third party access to telecommunications infrastructure services. Under that regime, NBN Co has previously submitted to the ACCC, and had accepted by the ACCC in 2013, an undertaking, referred to as a 'Special Access Undertaking' (SAU), to govern third party access to NBN Co's infrastructure services provided by means of the NBN until 2040.

NBN Co has recently submitted to the ACCC a variation to that SAU (SAU Variation), which involves a comprehensive revisit of the regulation of access to the services of the NBN by the SAU. The ACCC is required to make a decision, under section 152CBG(3) of Part XIC of the CCA, on whether to accept or reject NBN Co's variation.

1.2 Independent Expert Report

Grex Consulting (Grex) has been engaged by DLA Piper as an independent expert in accordance with the *Federal Court of Australia's Expert Evidence Practice Note (GPN-EXPT)*. At all times throughout the engagement, Grex has performed the services in accordance with Rule 23.13 of the Federal Court Rules and the Federal Court of Australia's Expert Evidence Practice Note.

Throughout this Report, Grex describes assumptions made and the reasons for making those assumptions and, where relevant, gives reasons for each opinion that Grex expresses in this Report.

Grex provides, where relevant, any qualifications to any opinion expressed where Grex considers that the Report may be incomplete or inaccurate without the qualification and/or where Grex is unable to form a conclusive opinion because of insufficient research, insufficient information, or for any other reason.

1.3 Process & Methodology

The process undertaken by Grex in preparing this Report is set out in Part C.

Grex has made all the enquiries that Grex believes are desirable and appropriate. No matters of significance that Grex regards as relevant have, to Grex's knowledge, been withheld.

1.4 Structure of this Report

This Report is split into the following four parts:

- **Part A: Introduction and Context:** this Part provides an introduction to the Report and details the background context to the assessment of expenditure carried out. The process and methodology followed are summarised in Grex's role as an independent expert in Part C.

- **Part B: NBN Co Expenditure Process:** this Part details NBN Co's process to determine its expenditure forecasts used for the First Regulatory Cycle under the SAU. A breakdown of the Integrated Operating Plan (IOP) process is provided, as well as the (relevant) expenditure-related components of the SAU process (i.e., the BBM), and the interconnection between the two processes is explained. Further, NBN Co's demand forecasting methodology is summarised, as well as the key drivers of the capital and operating expenditure forecasts.
- **Part C: NBN Co Expenditure Assessment:** This Part presents the findings of the expenditure assessment. The findings are presented across capital expenditure and operating expenditure, aligned to the categories and initiatives or spend items as described by NBN Co. This Part presents analyses of NBN Co's current reporting and monitoring mechanisms, identifying areas that can be leveraged and gaps that can be filled through the recommended process for ex ante and ex post expenditure reviews described in Part D.
- **Part D: Recommendations:** This Part recommends a process to capture the current mechanisms and data used by NBN Co presently and proposed in the SAU Variation whilst making further enhancements to support ACCC's review and assessment of expenditure during the First Regulatory Period and beyond. A brief comparison is also provided against the mechanisms employed by comparable regulators across UK, Canada, and NZ.

2 Context

NBN Co has proposed an expenditure assessment framework in the SAU Variation that “comprises various commitments and incentives for nbn to incur only prudent and efficient costs”.¹

It is within this broader context that this Report has been prepared with a focus on the aspects of the SAU Variation which pertain to capital and operating expenditure and how NBN Co proposes to forecast and then incur only prudent and efficient costs, particularly in the First Regulatory Cycle from 1 July 2023 to 30 June 2026.

The proposed expenditure assessment framework, expenditure objectives and expenditure factors set out in Section 2 Part F of the supporting submission to the SAU Variation have been reviewed together with further materials provided as part of the briefings NBN Co gave to the ACCC on 16 December 2022, and on 17, 19 and 20 January 2023 (ACCC Briefings).² Where relevant, further information and answers to questions provided through the RFI Process described in Part C were also incorporated into the review and assessment of expenditure items.

¹ SAU Supporting Submission Part F.

² Further materials were provided as part of a brief “request for information” process carried out post the ACCC briefing sessions. This is described in more detail throughout this Report where relevant to the findings.

The expenditure elements of the building block model have also been reviewed to the extent that these are relevant to the overall expenditure profile put forward by NBN Co under the SAU Variation.

2.1 NBN Co proposed expenditure assessment framework

Under Module 2 of SAU Variation, NBN Co proposes³ that its forecast operating and capital expenditure needs to “reasonably reflect the prudent and efficient expenditure that an operator in NBN Co’s position would incur in achieving” its “expenditure objectives” which are summarised by ACCC in its January 2023 consultation paper:

- meeting the expected demand for products and services,
- complying with all regulatory requirements,
- implementing projects or programs which are the subject of a government policy project notice, and
- maintaining and improving the quality, reliability, safety, security, and integrity of supply of any products and services, including by meeting the benchmark service standards (which are to apply in the relevant Regulatory Cycle).

NBN Co has also proposed that “prudent” and “efficient” expenditure be interpreted in accordance with their ordinary meaning⁴.

2.2 NBN Co’s explanation of its own internal expenditure processes (including governance and risk management)

NBN Co has described its regular planning cycle (IOP) in its briefings to the ACCC and supporting papers referred to in this Report.

NBN Co has described the 12 Key Outcomes underpinning the IOP along with the expenditure themes summarised by NBN Co and described as “building on NBN Co’s purpose, vision and strategic pillars”.⁵

Additionally, NBN Co has described in the briefings to the ACCC carried out on 16 December 2022 and 17, 19 and 20 January 2023 (together referred to as “ACCC Briefings” in this Report) its current expenditure themes:

- End user experience,
- Successful partnerships,
- Resilient and reliable network,
- Upgrading and evolving the network over time,
- Build a sustainable, efficient business, and
- Supporting regional and remote Australia.

³ Under clause 2G.2.5(b) of the SAU Variation.

⁴ “Proposed variation to the NBN Co Special Access Undertaking”, ACCC, Consultation paper, January 2023, Section 5.7.1.4

⁵ 001 nbn ACCC Briefing – IOP23 Expenditure Overview – CONFIDENTIAL.

2.3 Recommended process – Part D

Part F of NBN Co's supporting submissions makes numerous references to its proposed expenditure assessment framework being consistent with the approach adopted under the National Energy Rules (NER) and detailed in the Expenditure Forecast Assessment Guideline for Electricity Distribution.

Whilst this Report does not analyse the relative merits of adopting a process which is very similar to the Australian Energy Regulator's (AER) review of electricity utilities, it does recommend the adoption of a detailed, rigorous process of review. This is set out in Figure 1 below.

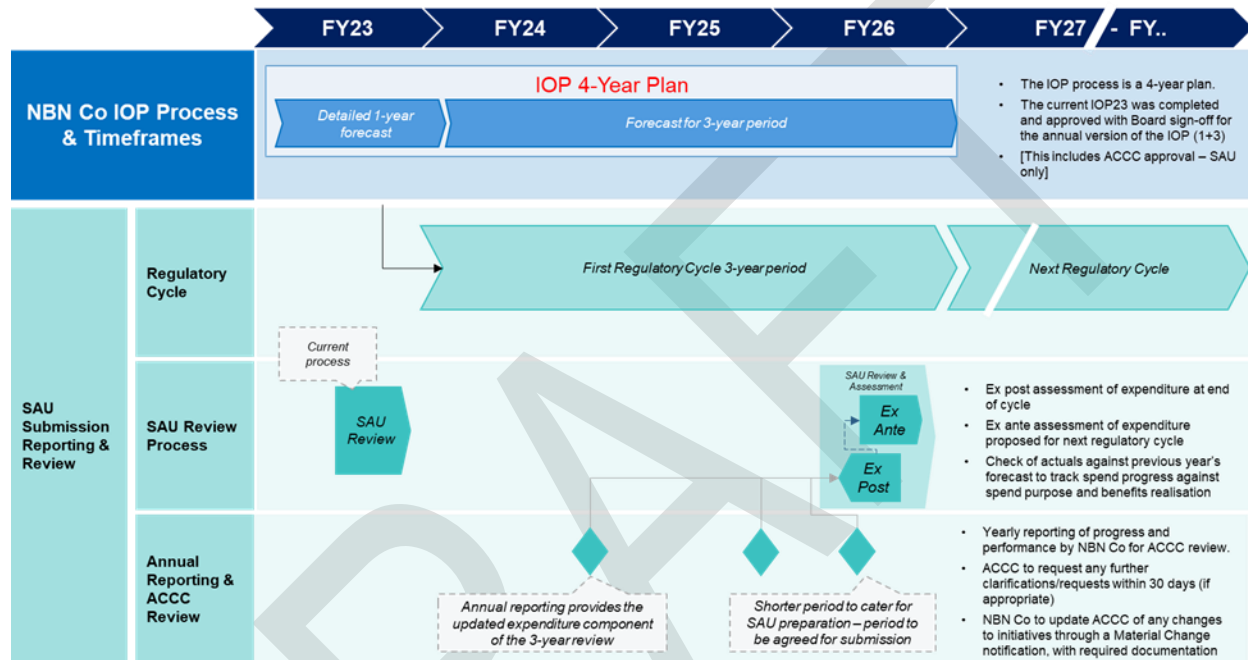


Figure 1: Recommended process to prepare for and review expenditure (Source: Grex)

For an effective review and assessment, the following two main activities are recommended for the process further described in Part D of this Report:

- (early in First Regulatory Cycle) collection of data and information to establish a baseline and metrics for review. The transparent provision by NBN Co of data, information, and metrics to measure the progress of capital and operating expenditure against targets it has set will be critical to enable an effective review, and
- (at/towards the end of the First Regulatory Cycle) a timely review on an ex-ante and ex-post basis, using the data, information and metrics collected during the First Regulatory Cycle.

Part C of this Report seeks to establish a starting point for the provision of this data, information and reporting to prepare for the recommended process of reporting, monitoring and review. Wherever possible, relevant, and sufficiently detailed data and information is recommended to be provided by NBN Co as part of this process on the same regular basis that NBN Co has described to ACCC through its briefings its own Integrated Operating Plan (IOP) process.