



Amplitel's Submission in response to the Draft Report of the Independent Pricing and Regulatory Tribunal, NSW dated July 2024

Review of rents for communication sites on certain Crown land

12 August 2024

This submission is made by Amplitel Pty Ltd (**Amplitel**) in response to the “*Draft Report– Review of rents for communication sites on certain Crown land*” issued by the Independent Pricing and Regulatory Tribunal, NSW (**IPART**) dated July 2024 (**Draft Report**) and is supplementary to Amplitel’s Submission to IPART dated 2 April 2024, which is Annexure B to this submission (**our April 2024 Submission**).

We also refer to IPART’s Public Hearing held on 30 July 2024 (**Public Hearing**) and IPART’s Terms of Reference issued on 12 December 2023 (**Terms of Reference**).

Amplitel welcomes and appreciates the opportunity to participate in IPART’s review of rent arrangements for communications towers on Crown land and to give feedback on the Draft Report.

1. Executive Summary

Amplitel is of the strong view that the Draft Report contains fundamental flaws in the methodology and serious errors in the source data. By not taking up some of the positive aspects of IPART’s 2019 Report (**IPART’s 2019 Report**)¹, including the recommendation to remove co-user fees, the Draft Report recommendations represent a step backwards for the industry, particularly at a time when the reliance on telecommunications by all people across the State is a critical aspect of economic development and wellbeing.

IPART’s current recommendations result in rents that do not align with recognised land valuation principles and which:

- far exceed rentals charged to other users of Crown land.² We particularly reiterate the difference in treatment by the Crown of other similar utility users of the land³;
- on many occasions, far exceed the value of the land occupied⁴; and
- far exceed rentals achieved recently in the private market⁵.

At a minimum IPART must:

- replace the dataset used in its analysis so that it only contains new site evidence;
- abolish the concept of co-user fees as there is **no evidence** of these in the private market and there is otherwise no economic justification for them. In its current form, the Draft Report recommends a minimum 50% premium for the communications industry to occupy Crown land compared to the private market; and
- align rentals with the ABS classifications so that rents correlate better with the locations and underlying land value as is required under recognised land valuation principles and which represents a simple methodology.

In addition, as there has been no review of rents since 2013, we recommend retrospective implementation of IPART’s 2019 report.

We reiterate that it is our strong position that Crown rents should be based on a reasonable rate of return applied to the **unimproved freehold value of the land**. We recommend a rate of 6%.

¹ IPART NSW Final Report - Review of rental arrangements for communication towers on Crown land - November 2019

² Section 10 of our April 2024 Submission for examples

³ Section 11 of our April 2024 Submission for examples

⁴ Section 8 of our April 2024 Submission for examples

⁵ Email from Amplitel to IPART dated 7 June 2024 and section 13 of our April 2024 Submission

We think that it is important again to state that telecommunications are a critical driver of development and wellbeing across the State of NSW. The importance and benefits of telecommunications to the people, businesses and communities of NSW cannot be overstated and we take this opportunity to again outline those benefits in section 9 of this submission. It is critical that in setting Crown rents for communications sites, the benefits delivered by this infrastructure are considered by IPART and the Crown Land Management Agencies (**CLMAs**) to ensure that any rent regime does not disincentivise investment in telecommunications across the State. This will help ensure that the full benefits of connectivity are delivered across NSW so that all communities can share in the recognised benefits of mobile connectivity, promoting equity of telecommunications access for all.

We also take this opportunity to highlight again that, as a landlord, the State is in a unique position to reduce the cost of telecommunications infrastructure, and increase efficiencies, by reducing and maintaining reasonable rents with reasonable escalation rates on Crown lands. This is particularly relevant in NSW where Crown land accounts for over half of all land in the State. The actions of the Crown as landlord can cause the business case for telecommunications locations to become marginal or negative which can in turn impact the roll out of telecommunications infrastructure to areas of NSW. We are aware of at least one instance where a carrier has chosen not to co-locate on our infrastructure due to the financial impact of the NSW Crown's co-user fee. This type of decision by a carrier has a direct impact on the communities of NSW in terms of the mobile services available to them which can perpetuate and compound over time.

A fair review of rentals is **significantly overdue**. The Crown Land Management Act allows all other users of Crown Land the benefit of a 5 yearly review with a mechanism to challenge, and IPART itself recommended 5 yearly reviews. Since 2005 when this rental regime was introduced, there has been only one review implemented by the NSW Government and the CLMAs. There should have been three reviews in this period and a 4th by next year.

We also take this opportunity to refer IPART again to our April 2024 Submission which includes detailed analysis of the matters raised in this submission, including various case studies and specific examples of the impact of excessive Crown rents.

2. Discrimination and use of private market rents as a comparator

Amplitel remains firmly of the view that private market evidence is not the correct comparator to use when setting rents for communications infrastructure on Crown land. The Federal Court of Australia confirmed this view in 2016 in *Telstra Corporation Ltd v State of Queensland*.⁶

It is Amplitel's submission that the current regime in NSW (and the approach recommended in the Draft Report) is discriminatory against communications tenants (including carriers) on Crown land. IPART's view that its "approach is not discriminatory for purposes of the *Telecommunications Act 1997 (Cth)* as it treats all users of communications sites the same"⁷ is not supported by any fair assessment of discrimination at law or otherwise.

We refer IPART to *Bayside City Council v Telstra Corporation Ltd*⁸ and acknowledge that although treatment of other users of communications leases is not wholly irrelevant, the relevant question is not how other communications users are treated but:

⁶ *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213

⁷ IPART Draft Report page 14

⁸ *Bayside City Council v Telstra Corporation Limited* [2004] HCA 19, (2004) 216 CLR 595

“... the subjection of carriers, in that capacity, to a burden of a kind to which others in a similar situation are generally not subject, and that a similar situation includes the use of public space for the installation and maintenance of facilities ...”⁹

We refer IPART to section 11 of our April 2024 Submission for further analysis of the approach by the Crown to other utility providers. IPART’s recommendations perpetuate a discriminatory approach by the Crown against communications tenants as compared to other utility users of the land and other users of Crown land.

We support Telstra’s submission to IPART on this topic. In summary, not only are carriers charged co-user fees for co-locating on Crown sites (unlike any other Crown tenants and most obviously, unlike other utilities who pay nominal charges for access rights) but excessive rents are charged to the primary user which are ultimately passed through to the co-user by way of increased sub-licence fees.

To support continued efficient roll outs of telecommunications services across the State, IPART must make recommendations that do not result in the direct or indirect discrimination against carriers and ensure that treatment of carriers and other utilities and/or other users of Crown Land is comparable.

3. Determining Market Rent

We refer to the discussion at the Public Hearing on general land valuation principles. As outlined above and in our April 2024 Submission, we are of the view that it is absolutely critical that any rent regime recommended by IPART and adopted by the Crown be underpinned by recognised land valuation and rent determination principles (including relevant standards and legislation). To assist IPART in this respect, we take this opportunity to submit Annexure A “Determining market rent” dated 8 August by independent valuer David Sullivan of International Valuation & Property Services. Annexure A provides a summary of the matters to be considered when determining rent in NSW.

4. Incorrect dataset used by IPART

Amplitel has material concerns in relation to the dataset used by IPART in its analysis of appropriate rents for communications sites.¹⁰

If IPART’s approach to benchmarking Crown land rents against private market rents prevails, we agree with IPART that the evidence must be limited to “*negotiations for new sites (i.e. not roll-over leases or renegotiations on existing sites)*”.¹¹

International Valuation Standards also confirm this in that they direct valuers to utilise a hierarchy of evidence in assessing market rents. The hierarchy states that the most reliable/best evidence is “*new lease to new tenant*” data. Evidence of renewal leases to sitting tenants and rents paid by sitting tenants at mid-term market rent reviews should not be used where there is sufficient “*new lease to new tenant*” evidence.

Despite clearly stating that it has relied on new site evidence, we believe that IPART has in fact relied on private rent data for existing sites. We have analysed the data used by IPART

⁹ [\[2004\] HCA 19](#) paragraph 43

¹⁰ [Analytical Model - 2023 Review of rents for communication sites on certain Crown land - 19 July 2024 | IPART \(nsw.gov.au\)](#)

¹¹ IPART Draft Report page 29

in the Analytical Model and have identified 148 sites out of the 610 sites as Amplitel sites, with the following characteristics:

No of sites	Type of lease	Relevance to IPART review
3	Renewal lease on an existing site	<ul style="list-style-type: none"> • International Valuation standards dictate that renewal leases should not be used when new site evidence is available • The tenant cannot act without compulsion given its existing investment in the site and the cost and disruption associated with moving from the site • This is further compounded when all surrounding land is owned by the State <p>These leases should be disregarded from the dataset</p>
140	Sequential lease in a series of leases registered on the title for an existing site	<ul style="list-style-type: none"> • It is industry practice to register sequential leases, eg 5 x 5 yearly leases • Whilst IPART has reviewed a lease which started after 2020, it was negotiated many years ago, sometimes up to 20 years ago • These are not evidence of “<i>recent and representative market rentals</i>” and are directly contrary to the Terms of Reference <p>These leases should be disregarded from the dataset</p>
5	New Site leases	<ul style="list-style-type: none"> • New lease to a new tenant • Primary evidence in the hierarchy of evidence <p>These leases should be included in the dataset</p>

IPART made a finding¹² that the data provided by Amplitel to IPART prior to the Draft Report¹³ represented only around 10% of relevant sites and that the Amplitel private rents were not consistent with IPART’s data and rent expectations. As a result, IPART chose not to include this data in its benchmark price analysis. We believe it was an error not to include and prioritise this evidence.

As dictated by valuation standards and the hierarchy of evidence, roll-over leases or renegotiations on existing sites are not appropriate comparables and cannot be relied on, as rents have escalated via annual increases to rates well above the current market. In contrast, the evidence which Amplitel provided to IPART on **new sites** clearly shows starting ground rents for leases of new telecommunications sites have not materially increased over the same time period.

Amplitel has updated the evidence it provided to IPART on 7 June 2024 and has identified 38 Amplitel leases of new sites on private land in NSW. We will provide information on these sites separately to IPART so that IPART can consider this evidence of rents on new sites in its review.

The use of the data on existing sites is directly contrary to the Terms of Reference that require use of “*recent and representative market rentals*” data. IPART’s current approach has resulted in a Draft Report that is recommending rentals that significantly exceed the current private market.

¹² IPART Draft Report page 34

¹³ Via email from Amplitel to IPART dated 7 June 2024

As an example, in the Sydney Category, IPART has recommended a Primary user rate of about \$36,000 p/a whereas the new site evidence provided by Amplitel indicates a rental of approximately \$26,000 p/a and these leases include rights for all co-users to use the site.

On the basis of the reasons set out above, we strongly recommend that IPART use all new site lease data provided by Amplitel as part of its analysis of benchmark private rents. Furthermore, to comply with International Valuation Standards, IPART must remove all existing site lease data from its dataset. Amplitel offers to assist IPART to identify the original commencement dates for any Amplitel lease to ensure only new site evidence is used.

5. Co-User Fees

Co-user fees as they are currently applied should be abolished. Co-users should only pay fees, rents or charges for additional land they occupy. We refer IPART to Part C of our April 2024 Submission which includes a detailed analysis of the impact of co-user fees.

As a preliminary comment and to be clear, the charging of co-users of communications sites when no additional land is used cannot be categorised as a “*co-user discount*”¹⁴ and Amplitel objects to IPART characterising these charges in this way.

IPART confirmed in its 2019 report that its analysis of updated market data found that co-users of sites on private land generally only pay rent to the landowner for any additional land they occupy.¹⁵

This finding should have been confirmed by IPART in the Draft Report. IPART has instead incorrectly reviewed and relied upon evidence of registered leases purporting to be for co-user fees¹⁶. It is a fundamental property principle that the same land cannot be leased twice and so this co-user evidence relied upon by IPART must be for leases where the user is leasing additional land. As a result, the evidence used by IPART is not evidence that can be relied upon to reach a finding of the presence of co-user fees on private land in NSW.

We have undertaken some checks on the IPART data and it is hard to see how there can be a conclusion other than there is *no evidence of co-user fees in the private market*.

Since the last IPART review, there has been material changes in the telecommunications industry with carriers divesting their tower businesses and many mobile tower sites being owned and built by mobile network infrastructure providers (**MNIPs**). The reality is that when an MNIP such as Amplitel builds a site, no sites are built without at least one mobile network operator on site. This means that, where the structure is owned by an MNIP there will, in most cases, be a minimum of two entities located on the site.

As a result, in its Draft Report, IPART is recommending rentals that would see communications users together pay a minimum 50% premium above the private market.

CLMAs gain the corresponding windfall which arises simply by virtue of restructuring of ownership of infrastructure across the telecommunications industry. There has been no increase in the use of the site following the telecommunications businesses restructures simply by virtue of those restructures.

In addition, the Crown receives the benefit of the MNIP’s investment in the site. This approach directly contradicts all recognised principles of land valuation, including the Australian Property Institute and International Valuation Standards, under which valuation of land should ignore the value of the tenant’s business and improvements when assessing a fair market rent.

¹⁴ IPART Draft Report page 4 and throughout

¹⁵ IPART’s 2019 report, page 84

¹⁶ IPART’s Analytical Model (Lease data page)

Put simply, co-user fees should be abolished as they disincentivise co-location on mobile infrastructure, contrary to all legislative and market expectations and benchmarks. Co-location not only meets Commonwealth government policy and legislative requirements (including under the Telecommunications Act), but it is critical to ensure enhanced competition and choice outcomes for the people, businesses and communities across NSW.

Figure 1 Impact of recommended IPART co-user fees on a tower site on Crown land



Private Market Rent: Primary User and 1 Co-User = \$X
 Private Market Rent: Primary User and 3 Co-Users = \$X



IPART Rent: Primary User and 1 Co-User = \$X + 50% Premium
 IPART Rent: Primary User and 3 Co-Users = \$X + 150% Premium

By way of specific example of the impact of excess rents, as set out in our April 2024 Submission and as raised at the Public Hearing, we take the opportunity to outline the case study of the site of Cottage Point.

Cottage Point case study – impact of excessive rents, co-user fees and National Parks & Wildlife Service (NPWS) site charging

The small community of Cottage Point was a long term mobile “black spot”. Following significant political and community pressure and in response to community safety issues, in 2023, Amplitel deployed a new tower on NPWS managed land at this location.

As a result of the land being managed by NPWS, the High rent rate is uplifted to the Sydney rate and the communications site (of approximately 110m²) attracts total rent and co-user fees of \$84,264 p/a, with Amplitel as the primary user and Telstra and Optus as co-users.

The Valuer-General has valued the unimproved freehold interest in nearby superior and larger parcels at \$287,000 each. On this valuation, these nearby parcels are valued at \$282/m².

By comparison, Amplitel’s rent and the co-users fees are calculated at a total of \$766/m²p/a for the communications site.

Using the value of the nearby superior parcels of land as an indicator, the total rents and co-user fees calculated for this site mean that Amplitel and the co-users are effectively purchasing the freehold land every 134 days or nearly 3 times each year.

The total rents and co-user fees charged by the Crown for this site are example of excessive rents calculated for communications sites, when compared to the unimproved value of the land.

Figure 13 Aerial photo of Cottage Point with sites marked



Property Address : 6 NOTTING LANE, COTTAGE POINT NSW 2084
Property Number: 928516
***Zone:** C1 - National Parks & Nature Reserves
Area: 1018 square metres
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$287,000
1 July 2022	\$287,000
1 July 2021	\$287,000
1 July 2020	\$275,000
1 July 2019	\$275,000

Property Address : 8 NOTTING LANE, COTTAGE POINT NSW 2084
Property Number: 928514
***Zone:** C1 - National Parks & Nature Reserves
Area: 1062 square metres
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$287,000
1 July 2022	\$287,000
1 July 2021	\$287,000
1 July 2020	\$275,000
1 July 2019	\$275,000

6. Density Classifications

In respect of the density classifications recommended by IPART, the Terms of Reference require IPART to adopt a simple approach to charging.

If IPART is to adopt a schedule of rates (and not use the unimproved value of the land as the determinator of rent as we think is the best approach), the approach recommended in the Draft Report is not simple in terms of application. The 2013 approach (as represented in Box 1 of the Draft Report¹⁷) which IPART has recommended is retained, perpetuates a complicated methodology. If adopting a schedule of rates, the best approach is the adoption of the ABS zones which, in addition to being of simple application, are also more closely aligned with the unimproved value of the land. This means that the charging approach is more in line with recognised land valuation principles.

Specifically, the retention of the arbitrary 2013 categories instead of using the ABS zones sets a higher location category than is appropriate for Remote and Very Remote sites. This has a material impact as many sites on Crown land are located in these remote locations. This is further compounded by the recommendation to continue to allow National Parks to charge rents one category higher than the schedule.

Amplitel supports IPART's 2019 recommendation to:

- combine the Sydney and High Categories and to limit this to the metropolitan areas located in the ABS Significant Urban Areas of Sydney, Newcastle – Maitland, Wollongong and Central Coast. These ABS Significant Urban Areas do contain vast areas of low density rural and bushland and these should rightly be removed from the High category and charged accordingly; and
- introduce the Remote and Very Remote categories which, as previously stated will result in pricing that correlates more closely with the value of the land occupied.

To provide an example, in its current form, the Draft Report is recommending a rent for a tower with a single mobile network operator on it, in the most remote corner of the most remote National Park of more than \$25,000p/a. That is an extremely high rate, particularly in light of the benefits being brought to the area by connectivity (particularly in time of emergencies) and, as confirmed by the new site evidence, is more in line with what we would expect to pay for a Sydney metropolitan site.

7. National Parks

Due to the location and the percentage of NSW land managed by CLMAs, Amplitel often has no choice but to licence land from NPWS as no other options exist for tenancies in these areas. As required by the National Parks and Wildlife Act 1974 (NSW), it is a last option when locating infrastructure on NPWS land.

Amplitel does not support NPWS setting rents for their sites one category higher than other CLMAs. This does not result in fair, market-based commercial returns for the Crown as a blanket "one category higher" approach means that the rent is even further disconnected from the unimproved value of the land.

The unimproved value of the freehold land should be the basis of any Crown rent assessment, with a rate of return applied (Amplitel recommends 6%) to arrive at fair, market-based commercial returns. If this methodology is adopted, then any special characteristics of the land including the social, cultural and environmental value of national park land will be recognised in the land valuation.

NPWS's current approach means that Low category charging does not apply at any NPWS sites. A fair and market-based outcome is not achieved when all Low category sites are charged at the Medium rate, particularly taking into account that some sites were re-categorised as Remote or Very Remote under the 2019 IPART recommendations.

Much of the NPWS land licenced by Amplitel is subject to bush fire and other natural disaster risk. This makes the presence of communications facilities in these locations a valuable asset to communities, emergency service organisations and the Crown in the context of disaster preparedness and recovery. Mobile services at these locations bring an increased level of safety and wellbeing to all visitors to these sites. Amplitel does not agree that communications tenants should be charged at increased rates when

¹⁷ IPART Draft Report page 4

investing in critical services at these varied and often remote locations (where cost of deployment can be high).

The Cottage Point case study set out in section 5 of this submission shows that the current approach has a disproportionate and arguably unintended financial impact on rent calculations for NPWS sites.

Additionally, when calculating rents for NPWS sites, the valuation concept of “betterment” should be applied. This concept dictates that, when assessing value, consideration should be given to any increase in the value of adjoining land due to the existence of, in this case, the communications infrastructure. This increase in value of the adjoining land must then be deducted from any consideration payable for the land used to host the communications infrastructure.

Amplitel asserts that there is a significant increase in the value of the remainder of any National Park that hosts and enjoys the benefit of the communications infrastructure. This increase in value to the National Park comes from the benefit of mobile phone/wireless coverage through:

- availability of communications for workers in the park;
- the social benefits afforded to visitors via the ability to connect to social media, and access educational material, which results in increased visitation and associated revenue for NPWS; and
- the ability for users of the park to make calls in emergency situations.

Amplitel asserts that, in the case of NPWS land, the increase in value to the remainder of the National Park would clearly exceed the value of the land occupied. Consequently, rent for communications towers in National Parks should be set at \$1 if requested.

8. IPART’s charging approach to Rooftops

Amplitel does not support IPART’s recommendations relating to rooftop charging and the charging of \$3,821 per year for rooftop sites *in addition* to the underlying density classification charge.

We note IPART’s statement that it “*reached this draft decision because rooftop sites are more valuable to users and this added value was able to be quantified through our regression analysis on private market rents*”.¹⁸

This approach compounds the impact of IPART’s incorrect approach to valuing the land by imposing an additional charge for rooftops based solely on a notion that these sites are more valuable to the user. This approach directly contradicts all recognised principles of land valuation, including the Australian Property Institute and International Valuation Standards, under which valuation of land should ignore the value of the tenant’s business and improvements when assessing a fair market rent. We refer IPART to section 8 of our April 2024 Submission.

We also note that by using the available rooftop data and applying a standard rate across all rooftops regardless of the density zone, this approach does not take into account the fact that most rooftop leases are in built up, metropolitan areas, the pricing of which cannot be applied across all locations across the State. Again, this approach which has no relativity to the underlying unimproved value of the land and results in excessive charges for these sites.

9. The benefits of telecommunications services to the people of NSW and co-location on mobile infrastructure

As we outlined in section 6 of our April 2024 Submission, telecommunications services deliver substantial recognised benefits to the people of NSW. These benefits are critical to life in the 21st century. We also outlined in section 5 of our April 2024 Submission the recognised benefits that arise from the co-location of carriers on telecommunications infrastructure. Following the discussion on this

¹⁸ IPART Draft Report page 4

topic at the Public Hearing, we take this opportunity to reiterate the critical importance of these factors to the people of NSW.

One of the main objects of the Telecommunications Act is to promote “*the availability of accessible and affordable carriage services that enhance the welfare of Australians*”¹⁹ and in this respect Amplitel, other MNIPs and carriers pursue activities across NSW that support this social objective. The infrastructure provided by Amplitel is critical to communities across NSW.

Connectivity is a key driver of development and wellbeing across the State of NSW. It brings the recognised benefits of the digital economy and services to the people of NSW – this includes to individuals, families, small businesses, large corporates, emergency services, not for profits and government entities in the form of digital business, connectivity across the State, the country and globally, health and wellbeing services and education. It also helps bridge the digital divide experienced by our most vulnerable Australians and it connects people, communities and emergency services in the event of disasters and emergencies.

The NSW Government itself recognises the opportunities on Crown land to drive solutions that accelerate economic progress in regional and rural NSW²⁰ and telecommunications play a key role in that goal.

Co-location through passive mobile infrastructure sharing offers many recognised economic and other benefits including:

- a more efficient use of land and increased access to favourable locations by more operators – so more end users can ultimately get access to mobile services;
- economic efficiencies – in general terms, it can be less costly to build a single tower that will accommodate multiple carriers, than it is to build multiple structures that only support a single carrier;
- mitigation of visual impact that comes with multiple structures; and
- increased choice for end users – if multiple carriers co-locate on a tower, this can improve the choice of service providers available in that location, with the corresponding benefits that increased competition and consumer choice brings.

Sharing of communications infrastructure and the need for multi-carrier coverage outcomes is also supported and encouraged at various level of government including by the NSW Government²¹ and the Commonwealth Government²².

In addition, the Report of its Inquiry into co-investment in multi-carrier regional mobile infrastructure, tabled in Federal Parliament on 15 November 2023, the House of Representatives Standing Committee on Communications and the Arts also recognised the importance of this issue - it recommended that the Australian government prohibit its agencies from charging additional co-user rent fees above the rent a principal tenant pays to lease Commonwealth crown land for the purpose of providing

¹⁹ Telecommunications Act 1997 (Cth) Section 3(1)(c)

²⁰ Crown Lands 2031 State Strategic Plan for Crown land - June 2021 (nsw.gov.au)

²¹ As referenced in the NSW Government Submission to the 2022 ACCC Regional Mobile Infrastructure Inquiry, dated August 2022, at page 2 *The NSW Government supports infrastructure sharing models to achieve improved coverage and better outcomes for end users in regional areas.*

²² For example under the Telecommunications Act 1997 (Cth), as announced in conjunction with its State and Territory Governments partnership to boost multi carrier coverage on roads and under Commonwealth Government mobile co-funding programs which score multi carrier outcomes favourably such as PUMP.

telecommunications services.²³ Amplitel notes that the Commonwealth is yet to respond to this recommendation.

On the basis of these recognised benefits, it is critical that any telecommunications Crown rents regime recommended by IPART encourages expansion of mobile connectivity and does not disincentivise investment in multi-tenanted telecommunications solutions by way of excessive rents or co-user fees so that all of the above benefits can be best realised.

10. Conclusion

In summary, Amplitel holds significant concerns about the Draft Report in its current format. At a minimum IPART must:

- Replace its dataset so that it only contains new site evidence;
- Abolish the concept of co-user fees as there is no evidence of these in the private market and there is otherwise no economic justification for them, and
- Align rentals with the ABS zones so rents correlate better with the locations and underlying land value.

Given the fact that there has been no review of rents since 2013, IPART should also recommend retrospective implementation of its 2019 report.

Finally, we reiterate that it is our strong position that Crown rents should be based on a reasonable rate of return applied to the unimproved freehold value of the land. We recommend a rate of 6%. Any Crown rents regime must be simple and fair one that supports and encourages continued investment in telecommunications across the State.

We again refer IPART to our Submission made on 2 April 2024 for further information on the issues we have covered in this submission, in which we have provided additional detail on each topic and relevant case studies. We are happy to provide further information on any topic covered in our submissions, the report attached at Annexure A or any data provided by Amplitel to IPART.

²³ [Connecting the country: Mission critical – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au), Recommendation 13



██████████
██████████
Amplitel

Dear ██████,

RE: DETERMINING MARKET RENT

IVPS has been instructed to provide guidance on the appropriate method and approach to determining market rent of land.

Market Value

The Australian Property Institute has adopted the International Valuation Standards Council definition of market value:

The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

Valuation Method

Direct Comparison is considered to be the primary valuation method for determining market rent given its simplicity.

The Direct Comparison approach is based on the "Principle of Substitution" which implies that a rational market participant will pay no more for a particular interest (i.e. lease rental) than the cost of securing another with the same utility, therefore, rents that are paid for similar or comparable new sites inherently reflect the market value of a given asset.

Using commercial lease terms, (i.e. the rent paid), for comparable sites provides the basis on which the market rent of the subject property is determined.

Adjustments are made to the comparables to account for site-specific attributes including date, location, onerous lease terms etc.

Matters for consideration in determining market rent

The appointed valuer should:

1. Determine the reviewed lease / licence fee taking into account current market prices paid for similar new site leases and licences, settled within a reasonably recent and comparable period (say, 12-24 months), for similar purposes, in comparable locations / the same general region.
2. Take into account all relevant matters applicable on the relevant Review Date assuming that:
 - a. The lessor / licensor is willing but not anxious; the lessee / licensee is willing but not anxious.
 - b. The leased / licensed area is vacant, available and suitable for the intended purpose.
 - c. The intended use is consistent with the permitted use of the lease / licensed area.
3. Not take into account:
 - a. Improvements to the leased / licensed area installed or paid for by the lessee / licensee.
 - b. Any special interest of the lessee / licensee.
 - c. The value of the tenant's business or any goodwill associated with the tenancy.
4. Act as an expert and not as an arbitrator.

Hierarchy of evidence

During the valuation process, valuer's have access to a wide range of sources for comparable evidence, however, some will always be more relevant than others. Leasing transactions that have taken place for similar assets / sites to that being valued provide the best market evidence, while databases and indices offer secondary, more general guidance. Rent review and lease renewal agreements reached via negotiation or settled by an expert provide third tier comparable evidence and are normally at higher levels due to existing tenants, legacy terms and escalations in previous leases and the cost of re-locating. Generally, these rents require considerable levels of downward adjustments to align with new site rental evidence.

Guidance Paper AVGP 301 - Assessing Rent and Rent Determinations, published by The Australian Property Institute, dated July 2021, states the following in relation to a hierarchy of evidence:

5.4 Comparable Evidence:

In assessing market rent the valuer should consider the most appropriate evidence in the marketplace. The circumstances where the lease was entered into are also relevant. There is a hierarchy to weight that is placed on evidence. That priority is:

- a) New lease to a new tenant.*
- b) Where current market rent is agreed between the lessor and lessee at a mid-term review or exercise of option specifically, where the rent is to be the market rent and, if not agreed, can be set by determination.*
- c) Where current market rent is set by determination at a mid-term review or exercise of option. In this case the evidence used by the determining Valuer may have more relevance; and*
- d) New lease to a sitting tenant on expiry of an existing lease where the tenant has no right of continuing tenure. In this circumstance consideration must be given as to whether a premium rent was agreed rather than lose the goodwill and benefit of an existing fit out.*

In summary, the most relevant comparable evidence is to be treated as follows:

- New site leases are considered primary evidence and are generally paramount in the majority of assessments for market value as they mostly reflect the true value of a site, unless there are exceptional circumstances. Where this primary new site evidence exists, it should be relied on; there is no benefit in reviewing and adjusting existing site evidence;
- Mid-term reviews or options represent second and third tier evidence and carry little weight, generally most valuers avoid these as the tenant cannot act without compulsion due to its investment in the site;
- New leases to an existing tenant are fourth tier evidence and, in many cases, require adjustment to cater for current market trends and variables. Many existing tenants pay a premium at renewal of a new lease term;
- Finally, the use of sequential leases in the telecommunications industry is common throughout NSW, whereby, many practitioners make the common mistake of highlighting sequential leases as new renewals when in fact they're in their third term which means they commenced 10 years prior. These are not new market evidence and do not meet the requirements of the International Valuation Standards Council, Australian Property Institute and the Royal Institute of Chartered Surveyors.

Kind regards

[Redacted signature block]

Annexure B



Amplitel's Submission to the Independent Pricing and Regulatory Tribunal, NSW

Review of rents for communication sites on certain Crown land

2 April 2024

Executive summary

Communications and connectivity are critical drivers of growth, development and wellbeing across the State of NSW. They play an essential role in times of disaster and disaster recovery. Any Crown rent regime for communications sites recommended by IPART must encourage expansion of mobile infrastructure and connectivity and not disincentivise investment in communications solutions by way of excessive rents or co-user fees.

There are strong public benefits associated with a simple and easily implemented regime that promotes fair, market-based commercial returns for the Crown.

To ensure the realisation of these social, economic and community benefits, Amplitel submits that the Crown rents regime for communications sites should reflect the following principles:

- The unimproved value of the freehold land must be used as the basis for assessment of rent;
- In determining what rent would deliver fair, market-based commercial returns to the Crown, the “rate of return” methodology must be used;
- A rate of return of 6% should be adopted;
- Crown rents paid by non-communications tenants are the best comparator when considering Crown rents to be paid by communications tenants. Private market rates are not an appropriate rent comparator;
- Communications tenants must be afforded the benefit of rent reviews;
- The Australian Bureau of Statistics’ Australian Statistical Geography Standard (ABS ASGS) is not the correct reference to assess communications sites Crown rents as any categories used to assess rent must be more closely connected to the underlying value of the freehold land;
- If the ABS ASGS is used to inform a fee schedule, the schedule must be adjusted to reflect the categories recommended by IPART in 2019 (High, Medium, Low, Remote and Very Remote); and
- Co-user fees as they are currently applied should be abolished. Co-users should only pay fees, rents or charges for additional land they occupy.

By adopting the above, IPART will ensure a charging regime that will:

- meet the Terms of Reference;
- reflect standard valuation practices;
- be simple and easily implemented by the responsible Crown Land Management Agency;
- be non discriminatory; and
- result in fair market-based commercial returns for the Crown.

Most importantly, by adopting these principles, IPART will ensure a rent regime that encourages continued investment in communications infrastructure that will support continued growth and development across the State of NSW and enhance the health and wellbeing of all.

As landlord, the Crown is in a unique position to facilitate the rollout of new communications infrastructure and technology across the State and to set rents that do not disincentivise investment. Amplitel is keen to explore opportunities on Crown land to drive solutions that accelerate economic progress in regional and rural NSW¹ and deliver the best outcomes under government funded programs. By the Crown and the communications industry working together on these outcomes, growth, development and wellbeing opportunities will be realised across the State.

¹ [Crown Lands 2031 State Strategic Plan for Crown land - June 2021 \(nsw.gov.au\)](https://www.nsw.gov.au/crown-lands-2031-state-strategic-plan-for-crown-land-june-2021)

PART A - Introduction

This submission is made by Amplitel Pty Ltd (**Amplitel**) in response to the “Issues Paper – Review of rents for communication sites on certain Crown land” issued by the Independent Pricing and Regulatory Tribunal (**IPART**), dated 26 February 2024 (**Issues Paper**).

Amplitel appreciates the opportunity to participate in IPART’s review of rent arrangements for communications towers on Crown land as initiated by the Terms of Reference issued by The Hon. Stephen Kamper MP, Minister for Lands and Property on 12 December 2023 (**Terms of Reference**).

IPART has been asked by the Minister to review rents for communication sites on lands managed under the:

- Crown Land Management Act 2016;
- National Parks and Wildlife Act 1974; and
- Forestry Act 2012.

As outlined in the Issues Paper, the review will cover the following Crown lands management agencies (**CLMAs**):

- The Department of Planning, Housing and Infrastructure – Crown Lands and Public Spaces;
- NSW National Parks and Wildlife Service (**NPWS**), which is part of the Environment and Heritage Group in the Department of Climate Change, Energy, the Environment and Water; and
- Forestry Corporation of NSW (Forestry Corporation), which is a State-owned corporation.

Amplitel welcomes the Terms of Reference which require IPART to recommend a fee schedule that is simple and able to be easily implemented by the responsible land management agencies that results in a dollars per site charge that varies by location and that IPART is to have regard to:

- updating current rents to reflect fair, market-based commercial returns;
- recent and representative market rentals agreed for comparable communication sites, reflective of different site conditions and representative locations across the State;
- the land management agencies’ requirements under legislation as well as any relevant State strategic plans and policies; and
- consultations with key stakeholders.

Amplitel also notes that as set out in the Issues Paper, IPART is proposing to recommend rents using a schedule that reflects efficient prices in a workably competitive market. IPART proposes that:

- the fee schedule would vary by geographic remoteness (e.g. by using categories in the Australian Bureau of Statistics’ (**ABS**) Australian Statistical Geography Standard (**ASGS**));
- the fees would be based upon benchmarking of commercial sites that are similar to those on Crown land as well as any relevant existing leases for other sites on Crown land (i.e. not communication sites); and
- more than one set of fees may be appropriate to reflect the difference in footprint of the user.

1. About Amplitel

Amplitel was established on 1 September 2021 following the transfer of the towers business of Telstra Corporation Ltd (**Telstra**) to Amplitel and sale of a 49% interest in that business to a consortium of investors. This consortium includes the Future Fund, Australian Retirement Trust, Commonwealth Superannuation Company and Morrison & Co IP. The Telstra Group continues to hold 51% of Amplitel.

Amplitel is a mobile network infrastructure provider (**MNIP**) and provides most of the passive infrastructure assets at a communications site required to establish and operate a telecommunications tower. These include land, security fencing, access tracks, the tower and connection to the power network (where available). The active assets (those that require power to operate or can transmit data) are provided and operated by Amplitel's customers. In addition, some passive assets (such as equipment huts) which are unique to a customer's equipment will be provided by the customer.

Amplitel's mission is to be Australia's leading provider of towers infrastructure to support customers to deliver wireless communications. Across Australia, Amplitel operates over 8,000 towers, masts, poles, and other structures. Amplitel also has access to Telstra's equipment building rooftops and approximately 160,000 of Telstra's street side poles. In New South Wales (**NSW**), Amplitel operates over 1540 structures.²

Amplitel's strategic objectives are to:

- invest in new passive tower infrastructure to support its customers' mobile and non-mobile networks;
- increase utilisation of its infrastructure by providing better access;
- provide competitive market offerings;
- improve asset health;
- pursue growth and drive asset efficiency; and
- be the home of tower infrastructure expertise.

Amplitel serves a broad range of customers including mobile carriers, public emergency networks, private wireless providers, major corporations and not-for-profits. Amplitel is not a mobile network operator, not a carrier and does not supply carriage services.

2. Telecommunications Infrastructure

Passive tower infrastructure owned or operated by an MNIP such as Amplitel is one part of the total upfront and ongoing investment required to deliver a telecommunications service. The provision of mobile and non-mobile telecommunications services requires the installation and use of both passive assets and active assets. These assets will include, at a minimum, spectrum (for mobile services), radio/mobile antennas, radio units, network access equipment, power, shelter and the passive infrastructure required to install antennas at height (e.g. a tower). Depending on where a tower is located, connection to the mobile network (backhaul) will be via the fibre network or via microwave dish connections between towers.

The location of every tower is unique and is designed to meet customers' radio frequency requirements which have a substantial impact on site choice and tower design (height and capacity) and to withstand the local environmental conditions. Customers' radio frequency requirements to support mobile coverage and capacity outcomes for communities determine the quantity of equipment and the height at which that equipment is installed. This impacts choice of structure, structural capacity and location of the tower.

² Amplitel's tower locations are available at <https://www.amplitel.com.au/tower-locations>

3. Amplitel's Crown Tenures in NSW

Amplitel currently licences 134 sites from the CLMAs in wide and varied locations across the State. Under these arrangements, Amplitel's passive telecommunications infrastructure is located on the site, within a designated square meterage area or "compound", with Amplitel in turn entering into sub-licence arrangements with its customers, giving customers the right to locate their active equipment and other assets within the designated licenced area.

Under the current rent regime, the CLMAs also require Amplitel's customers and other entities co-locating on Amplitel's tower or within the designated area to enter into a separate agreement with the CLMA and pay an additional and separate fee of 50% of Amplitel's rent to the CLMA (**co-user fee**).

Crown land owned and managed by the NSW government accounts for approximately half of all land in New South Wales³. Some of this land is subject to bush fire and other natural disaster risk. This makes the presence of communications facilities in these locations a valuable asset to communities and emergency service organisations in the context of disaster preparedness and recovery as well as to enable communities across the State to share in the recognised benefits that mobile connectivity brings.

Due to the location and the percentage of NSW land managed by CLMAs, Amplitel often has no choice but to licence land from a CMLA as no other options exist for tenancies in these areas and, as required by legislation⁴, it is a last option when locating infrastructure on land managed by NPWS.

4. Recent Industry Changes

Since IPART's 2019 review and report⁵ (**2019 report**), the Australian telecommunications industry has undergone some structural changes under which carriers have divested infrastructure businesses. This includes the creation of Amplitel, as described in section 1 of this submission and Waveconn (an MNIP formed in 2022)⁶.

In addition, within the Telstra Group, from 1 January 2023, a new structure has been established with Telstra Group Limited as the head entity of the Telstra Group. Four key subsidiaries sit under Telstra Group Limited (called New Telstra Corp in Figure 1):

- Telstra Limited (called ServeCo in Figure 1) owns the active parts of Telstra's network (and some sites and structures), including the mobile network and spectrum assets and delivers products and services to Telstra's customers;
- Telstra Corporation Limited (also known as InfraCo Fixed) owns and operates Telstra's passive infrastructure assets: the ducts, fibre, data centres and fixed network sites that underpin Telstra's fixed telecommunications network;
- Amplitel owns and operates physical mobile tower assets; and
- Telstra International owns and operates Telstra's international network infrastructure and carries on the international business.

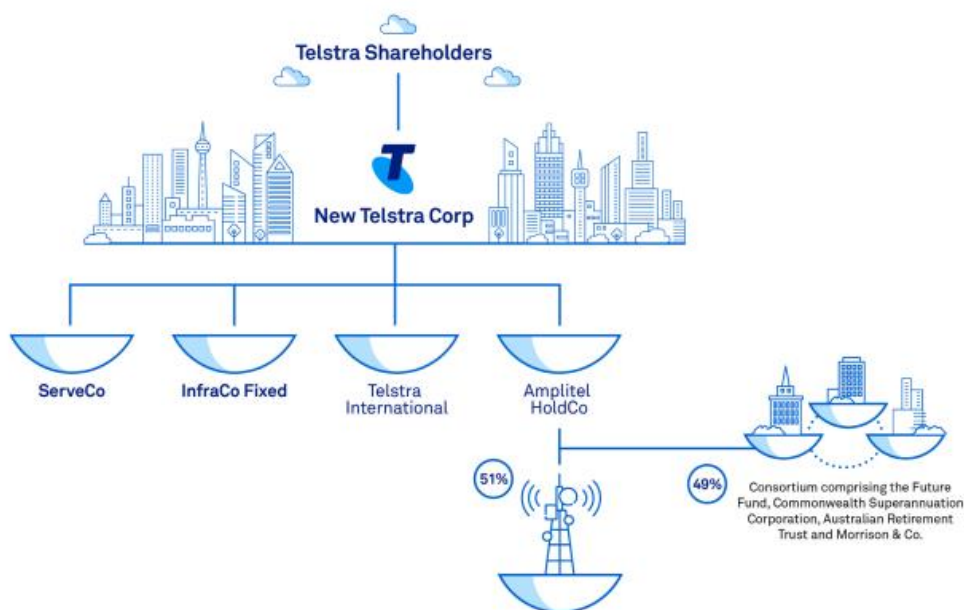
³ [Crown Land - NSW Land Registry Services \(nswlrs.com.au\)](https://nswlrs.com.au)

⁴ National Parks and Wildlife Act 1974

⁵ IPART NSW Final Report - Review of rental arrangements for communication towers on Crown land - November 2019

⁶ [Waveconn – an independent Australian digital infrastructure leader](#)

Figure 1 Telstra Group Structure as from 1 January 2023



As a result of these changes, Amplitel owns and operates telecommunications facilities located on Crown land and therefore holds tenure with the Crown. The level of Crown rents has a direct impact on Amplitel (as the Crown licensee) and its investment decisions across the State as well as other Telstra Group entities who might be co-located on an Amplitel site on Crown land (as co-user fees are charged.)

5. The benefits of communications infrastructure co-location and sharing

Amplitel's position on co-user fees is set out in Part C of this submission. Co-user fees as they are currently applied should be abolished and co-users should only pay fees, rents or charges for additional land they occupy.

Amplitel is committed to maximising utilisation of its existing and future network infrastructure assets, in line with its mission to be Australia's leading provider of towers infrastructure, to support customers to deliver wireless communications. This means that Amplitel, where possible, builds new towers to support more than one customer and explores co-location options with its customers.

Co-location through passive mobile infrastructure sharing can offer a number of benefits to MNIPs, carriers, and the public. These benefits include:

- more efficient use of land and increased access to favourable locations - in Amplitel's experience, the benefit that the site will deliver to the overall networks of our customers is often the most important factor in determining the best location for the installation of a new telecommunications site. Amplitel's customers will specify a search ring to Amplitel within which to secure a new site, and that location and the size of the ring will depend upon expected network demand, spectrum to be used, distance to the core network (backhaul distance), distance to power and topology of the surrounding region. Often the best location for a tower is an elevated position. Site location must maximise benefit to a carrier's network, which limits the availability of suitable sites. In geographic locations where there is a lack of availability for suitable sites, passive mobile infrastructure which supports co-location can allow multiple carriers to gain access to these sites;

- economic efficiencies – in general terms, it can be less costly to build a single tower that will accommodate multiple carriers, than it is to build multiple structures that only support a single carrier;
- increased choice for end users – if multiple carriers co-locate on a tower, this can improve the choice of service providers available in that location, with the corresponding benefits that increased competition and consumer choice brings.

Sharing of communications infrastructure and the need for multi-carrier coverage outcomes is also supported and encouraged at various level of government. This includes by:

- the NSW Government, as referenced in the NSW Government Submission to the 2022 ACCC Regional Mobile Infrastructure Inquiry, dated August 2022⁷; and
- the Commonwealth Government, for example:
 - under the Telecommunications Act 1997 (Cth) (**Telco Act**);
 - as announced in conjunction with its State and Territory Governments partnership to boost multi carrier coverage on roads⁸; and
 - under Commonwealth Government mobile co-funding programs which score multi carrier outcomes favourably.⁹

In the Report of its Inquiry into co-investment in multi-carrier regional mobile infrastructure, tabled in Federal Parliament on 15 November 2023, the House of Representatives Standing Committee on Communications and the Arts also recognised the importance of this issue - it recommended that the Australian government prohibit its agencies from charging additional co-user rent fees above the rent a principal tenant pays to lease Commonwealth crown land for the purpose of providing telecommunications services.¹⁰ Amplitel notes that the Commonwealth is yet to respond to this recommendation.

Any approach to charging must not disincentivise the most efficient use of communications assets across the State.

6. The benefits of investment in communications facilities across NSW

One of the main objects of the Telecommunications Act is to promote “*the availability of accessible and affordable carriage services that enhance the welfare of Australians*”¹¹ and in this respect Amplitel, other MNIPs and carriers pursue activities across NSW that support this critical social objective. The services provided by Amplitel are critical to communities across NSW.

Connectivity is a critical driver of development across the State of NSW. It is critical that any telecommunications Crown rents regime recommended by IPART encourages expansion of mobile connectivity and does not disincentivise investment in multi-tenanted telecommunications solutions by way of excessive rents or co-user fees.

⁷ At page 2 *The NSW Government supports infrastructure sharing models to achieve improved coverage and better outcomes for end users in regional areas.*

⁸ [Regional Communications Ministers delivers partnerships to boost multi-carrier coverage on roads | Ministers for the Department of Infrastructure](#)

⁹ [Peri-Urban Mobile Program | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#)

¹⁰ [Connecting the country: Mission critical – Parliament of Australia \(aph.gov.au\)](#), Recommendation 13

¹¹ Telco Act Section 3(1)(c)

Amplitel believes there are strong public benefits associated with a simple, fair, market-based and commercial Crown rents regime which will support and encourage continued investment in telecommunications solutions across the State.

Amplitel has observed that regional, rural and remote areas (where many CLMA managed lands are located) have special factors when considering telecommunications infrastructure investment. The commercial incentives for investing in regional Australia are often challenging, with generally low commercial returns from sparsely populated areas.¹² There are limited commercial incentives outside government subsidisation to improve the quality or depth of coverage in circumstances where costs far outweigh the potential returns. There is, and will continue to be, an important role for government to ensure Crown rents are fair and commercial and incentivise investment in these areas.

The actions of landlords, including the Crown, can cause the business case for tower locations to become marginal or negative in some areas.

Government landowners are in a unique position to reduce the cost of providing new telecommunications infrastructure by reducing rents on Crown land and removing co-user fees.

This would have the additional benefit that the effects of any co-funding from government would be more effective as grants would not be blunted by increased rents by other levels of government.

Commonwealth and State government co-funding initiatives seek to support the provision of new mobile coverage through investments that address coverage, capacity and competition issues e.g. the Commonwealth Government's Mobile Black Spot Program. There is a fundamental inconsistency with the Crown charging excessive rents on Crown land while these types of co-funding initiatives exist. In considering appropriate rents, IPART should explicitly consider:

- the maximisation of social welfare outcomes;
- the positive externalities generated by communications infrastructure; and
- the self-defeating effect of excessive rents while at the same time providing co-funding from public funds which in part goes back to the Crown in the form of rents for sites at these locations.

In Amplitel's view, the public interest in governments setting rents at a level which does not make it harder to establish a business case for a telecommunications infrastructure (including in regional and remote areas) is clear and overrides maximising revenue collection by Crown agencies.

7. Protection for carriers from discrimination under the Telecommunications Act 1997

The Terms of Reference require IPART to make recommendations that consider the CLMA's requirements under legislation and the Issues Paper refers to compliance with the Telco Act.

Although Amplitel is not a carrier, it is important at the outset to recognise that carriers are afforded certain protections by clause 44 of Schedule 3 of the Telco Act (**Clause 44**). This provision renders invalid State laws (and exercises of power pursuant to State laws) to the extent they discriminate (both directly and indirectly) against carriers. This section provides that:

"a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;"

In *Telstra Corporation Ltd v State of Queensland*¹³ (the **Telstra Case**), the Federal Court found that the Queensland Crown discriminated against carriers in breach of Clause 44 as carriers were paying more than other users of Crown land and so the State law was of no

¹² Also see ACCC's [Regional Mobile Infrastructure Inquiry final report.pdf \(acc.gov.au\)](#) page 76

¹³ *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213

effect. The Federal Court made it clear that “*price-gouging*”¹⁴ by the State government was precisely the type of conduct that Clause 44 was designed to prevent.

Specifically, the Court determined that Clause 44 “*provides protection for carriers against the effects of discriminatory laws, including protection against the imposition of discriminatory taxes, rents and charges.*”¹⁵

Since the conclusion of the Telstra Case, the Queensland government adjusted the rents for both carriers and MNIPs in order to remove the rent regime which caused both direct and indirect discrimination in breach Clause 44.

It is Amplitel’s submission that the current regime in NSW is discriminatory against communications tenants (including carriers) on Crown land.

Not only are carriers charged co-user fees for co-locating on Crown sites (unlike any other Crown tenants) but excessive rents are charged to the primary user which are ultimately passed through to the co-user by way of increased sub-licence fees.

By failing to reference the unimproved value of the freehold land or rents paid by non-communications tenants on Crown land, communications tenants, on the whole, are paying substantially more to rent Crown land than other tenants. The approach of the Crown has also resulted in communications tenants not being afforded the benefit of legislative rent review, which is available to other Crown tenants. Arguably, the existence of a special rent regime for communications sites in itself represents a discriminatory approach to charging of the communications industry.

Amplitel proposes alternative rent assessment methodologies that would best reflect fair, market-based commercial returns for the Crown.

Any regime recommended by IPART must not amount to discriminatory treatment and charging of the communications industry, including carriers.

¹⁴ Telstra Case, paragraph 147

¹⁵ Telstra Case, paragraph 141

Part B - Crown Rents (Primary user of land)

The following rental principles and methodologies must be considered by IPART to ensure a Crown rents regime that will:

- meet the Terms of Reference;
- reflect standard valuation practices;
- be simple and easily implemented by the responsible CLMA;
- be non discriminatory; and
- result in fair market-based commercial returns for the Crown.

8. Unimproved value of freehold land methodology - analysis and comparison to Crown rents

The unimproved value of the freehold land must be used as the basis for assessment of rent for communications sites on Crown land. This approach will ensure an outcome pursuant to the Terms of Reference and more specifically, will result in fair market-based commercial returns for the Crown.

This approach also aligns with Australian Property Institute and International Valuation Standards. Valuation principles dictate that valuation of land should ignore the value of the tenant's business and improvements when assessing a fair market rent.

The Valuer-General values Crown land pursuant to the Valuation of Land Act 1916 (NSW)¹⁶. Communications tenants (primary users) licence vacant land from CLMAs.

The determinative factor (as standard valuation methods reflect) is the nature and level of demand for the site, having regard to the characteristics of the land and the range of uses to which it might be put by actual or prospective tenants or licensees.

This approach is not used under the current regime as is evidenced by the disconnection between the unimproved freehold value of the land and the rents.

Figure 2 sets out examples of Crown tenures in Perisher Valley. Based on information available from the Valuer-General and referenced in Figure 2, land value in Perisher Valley, excluding structural improvements, ranges from \$70/m² to \$118/m².

The communications site at Perisher Valley is 106 m² in size. Adopting the higher published value of \$118/m², this equates to a land value for the communications site of approximately \$12,500.

Under the current rent regime, the total rent calculation on this site exceeds \$29,000 p/a (for the primary user and one co-user).

In this example, total annual rent and co-user fees are calculated at more than double the land value (234% of land value). Effectively, the communications tenants pay rent to the Crown equivalent to an amount to purchase the underlying freehold land every 6 months.

Communications tenants occupy vacant land and should be charged rent on that basis only. A price calculated by having reference to any other factor such as a willingness to pay or a perceived ability to pay based on the opportunity to earn money from the tenant's investment in the site bears no relationship to a fair market rent.

CLMAs provide access to Crown land. Amplitel and other primary users provide third parties with access to telecommunications infrastructure on this land. Amplitel has invested millions of dollars in acquiring, operating and maintaining infrastructure and making it available for


¹⁶ Sections 14A and 14B

the deployment of communication services, providing wide ranging community benefits. It has accepted a myriad of risks associated with the infrastructure. CLMAs make no investment in the provision of this infrastructure and take on no risk associated with it. On that basis, it is inequitable and inconsistent with the Terms of Reference that CLMAs should gain an economic benefit as a result of the economic value that primary users derive from the site or from investments made on site by the tenant or its customers.

Importantly, this approach also aligns with the Crown’s approach to other Crown tenancies where the Crown does not consider the improvements made by the land holder for a market rent review¹⁷.


Figure 2 Perisher Valley land value and rent analysis

Perisher Land Value Analysis	Ambulance Station	Church	Fire Station	Communications Facility
2023 Land Value Excluding Improvements	\$133,000	\$141,000	\$158,000	\$12,508
Area (sqm)	1123	1998	2238	106
Land Value /sqm	\$118.43	\$70.57	\$70.60	\$118
Rent Per Annum	-	-	-	\$29,258
Proportion of Land Value Paid as Annual Rent	-	-	-	234%




Property Address: AMBULANCE STATION, 9909 KOSCIUSZKO RD, KOSCIUSZKO NATIONAL PARK NSW 2627
Property Number: 3523889
***Zone:** C1 - National Parks & Nature Reserves
Area: 1123 square metres
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$133,000



Property Address: ROMAN CATHOLIC CHURCH, 9907 KOSCIUSZKO RD, KOSCIUSZKO NATIONAL PARK NSW 2627
Property Number: 2667856
***Zone:** C1 - National Parks & Nature Reserves
Area: 1998 square metres
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$141,000



Property Address: FIRE STATION, 9913 KOSCIUSZKO RD, PERISHER VALLEY NSW 2624
Property Number: 2667871
***Zone:** C1 - National Parks & Nature Reserves
Area: 2238 square metres
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$158,000

There are recent examples of communications industry participants purchasing freehold land to use for deployment of communications infrastructure. In line with the valuation standards¹⁸, the value of the land as reflected in the purchase price, should demonstrate the value of vacant land ignoring the tenant’s business, prior to the investment being made, and where both parties can act without compulsion.¹⁹

In the case of sites used for communications facilities, these sites either host or are suitable to host such facilities and have appropriate zoning and/or development consent.

By way of further example of the disconnection between the unimproved freehold value of the land and rents under the current regime, Figure 3 sets out a comparison between the purchase price paid (or to be paid) for communications sites at Camelia, Port Kembla and

¹⁷ Crown Land Management Act 2016, section 6.5(2)(b) which states that “any improvements on the land that were made by the holder of the holding, or are owned or in the course of being purchased from the Crown by the holder, are to be disregarded”

¹⁸ See also Valuation of Land Act 1916, section 6A

¹⁹ Spencer v Commonwealth of Australia (1907) 5 CLR 418

Chittering (WA) and the rent that would otherwise be charged by a CLMA under a Crown tenancy for sites of these sizes. Comparison and analysis of these prices and indicative rents indicate that the current regime would result in communications rents far exceeding the freehold value of the land.

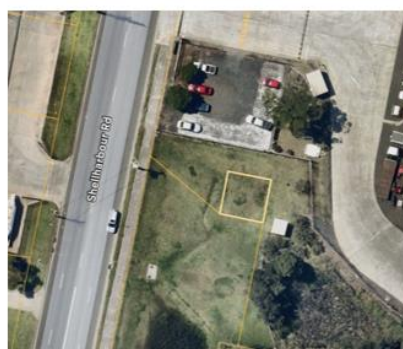
If a communications tenant was paying rent to a CLMA instead of buying the site outright, the Crown rent charged would be between 47% and 263% of the proven land value. Put another way, if Amplitel was renting the Port Kembla land set out in Figure 3 from a CLMA, it would be paying the full value of the land every 20 weeks and effectively paying to buy the land every 20 weeks. Amplitel is not aware of any examples in either the public or private market where tenants pay annual rents that exceed the freehold value of the property.

Figure 3 Examples of Crown rent that would be paid at Camellia, Port Kembla and Chittering (WA) sites

Site	Purchaser	Equivalent IPART Location Category	Area (sqm)	Purchase Year	Purchase Price	Equivalent '23/24 Crown Lands Rent (with 1 Co-User)	Rent as % of Freehold	Comment
Grand Ave, Camelia, NSW	Waveconn	Sydney	63	2019	\$44,000	\$63,185	144%	Vacant industrial land, DA for tower
Shellharbour Rd, Port Kembla, NSW	Amplitel	High	84	2024	\$20,000	\$52,664	263%	Vacant industrial land. Future site. Under contract.
Hereford Way, Chittering WA	Indara	Low	156	2021	\$30,000	\$14,043	47%	Communications tower site including communications tower



Camelia, NSW. 63sqm
Purchased 2019 - \$44,000 Freehold



Port Kembla, NSW. 84sqm
Purchased 2024 - \$20,000 Freehold



Chittering, WA 156sqm
Purchased 2021 - \$30,000 Freehold

Analysis of the rents paid under the current Crown rents geographic categories (ie: Sydney, High, Medium and Low) show that rent for communications primary users and co-users are calculated far in excess of the freehold value of the land.

Figures 4 to 7 sets out four examples of telecommunications sites licenced by Amplitel from the Crown at Artarmon, Awaba, Tenambit and Nabitac, with a comparison of the freehold land value and annual rent paid.



Analysis across each of the four Crown rents categories shows that some current rents are assessed at a rate equivalent to amounts that would enable Amplitel and the co-user to purchase the underlying freehold land every 146 days (in the case of Nabitac), every 65 days (in the case of Artarmon), every 7 days (in the case of Tenambit) and 4 times a day (in the case of Awaba)..

Amplitel submits that this is excessive and does not represent a fair, market-based


commercial return for the Crown nor efficient prices in a workably competitive market. Rents must reflect the unimproved value of the land, without taking into account the tenant's business or improvements. These examples show that these rents do not reflect nor have a connection to the unimproved value of the land.

Figure 4 Sydney Category Case Study (Artarmon) land value and rent analysis

Sydney Category Case Study - Artarmon
Industry Pays to Buy the Site every 65 days

Property Valuation



Property Address : PARKES RD, ARTARMON
NSW 2064
Property Number: 3593176
***Zone:** RE1 - Public Recreation
Area: 1.167 hectares
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date Land Value	
1 July	\$1,450,000
2023	

- **Amplitel monopole - Artarmon**
- **Telco Rent \$105,330 p.a.**
- **Amplitel Site with Telstra, Optus and Vodafone Co-Users**

Suburb	Artarmon
Location Category	Sydney
Land Value	\$1,450,000
Land Area	11,670
Land Value/sqm	\$124
Telco Area (sqm)	150
Freehold Value of Telco Area	\$18,638
Amplitel (Primary User)	\$42,132
Telstra (Co-User)	\$21,066
Cost to Telstra Group	\$63,198
Optus (Co-User)	\$21,066
Vodafone (Co-User)	\$21,066
nbn (Co-User)	-
Total Industry Rent P.A	\$105,330
Freehold Land Value/sqm	\$124
Industry pays annually/sqm	\$702
Days Purchase (time taken to pay for freehold)	65

Figure 5 High Category Case Study (Awaba) land value and rent analysis

High Category Case Study - Awaba
Industry Pays to Buy the Site Every 6 Hours




Property Valuation



Property Address : 7 FASSIFERN RD,
FASSIFERN NSW 2283
Property Number: 4016402
***Zone:** C2 - Environmental Conservation
Area: 346.472 hectares
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date Land Value	
1 July	\$1,930,000
2023	

- **Amplitel Monopole, Telstra and Optus Co-Users**
- **Total Annual rental of \$70k**

Suburb	Awaba
Location Category	High
Land Value	\$1,930,000
Land Area	3,464,720
Land Value/sqm	\$0.6
Telco Area (sqm)	82
Freehold Value of Telco Area	\$46
Amplitel (Primary User)	\$35,109
Telstra (Co-User)	\$17,555
Cost to Telstra Group	\$52,664
Optus (Co-User)	\$17,555
Vodafone (Co-User)	-
nbn (Co-User)	-
Total Industry Rent P.A	\$70,218
Freehold Land Value/sqm	\$0.6
Industry pays annually/sqm	\$856
Days Purchase (time taken to pay for freehold)	0.24

Figure 6 Medium Category Case Study (Tenambit) land value and rent analysis

Medium Category Case Study - Tenambit
Telstra Group Pays to Buy the Site Every Week



Property Valuation

Property Address : TENAMBIT OVAL,
 MAIZE ST, TENAMBIT NSW 2323
 Property Number: 3414839
 *Zone: RE1 - Public Recreation
 Area: 3.545 hectares
 Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$311,000



- Tenambit – Medium Category
- Amplitel Site with Telstra Co-User

Suburb	Tenambit
Location Category	Medium
Land Value	\$311,000
Land Area	35,450
Land Value/sqm	\$9
Telco Area (sqm)	65
Freehold Value of Telco Area	\$570
Amplitel (Primary User)	\$19,505
Telstra (Co-User)	\$9,753
Cost to Telstra Group	\$29,258
Optus (Co-User)	-
Vodafone (Co-User)	-
nbn (Co-User)	-
Total Industry Rent P.A	\$29,258
Freehold Land Value/sqm	\$9
Industry pays annually/sqm	\$450
Days Purchase (time taken to pay for freehold)	7

Figure 7 Low Category Case Study (Nabiac) land value and rent analysis

Low Category Case Study - Nabiac
Telstra Group Pays to Buy the Site 2.5 Time a Year



Property Valuation

Property Address : POLICE STATION, 70
 CLARKSON ST, NABIAC NSW 2312
 Property Number: 325855
 *Zone: RE1 - Public Recreation
 Area: 9308 square metres
 Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$350,000

- 10m Timber Pole in Nabiac (Nabiac SCAX)
- Non-Mobile Site – Land Line Only

Suburb	Nabiac
Location Category	Low
Land Value	\$350,000
Land Area	9,308
Land Value/sqm	\$38
Telco Area (sqm)	149
Freehold Value of Telco Area	\$5,603
Amplitel (Primary User)	\$9,362
Telstra (Co-User)	\$4,681
Cost to Telstra Group	\$14,043
Optus (Co-User)	
Vodafone (Co-User)	
nbn (Co-User)	
Total Industry Rent	\$14,043
Freehold Land Value/sqm	\$38
Industry pays annually	\$94
Days Purchase (time taken to pay for freehold)	146

9. Determining fair rent

In determining rent that would deliver fair, market-based returns to the Crown, the most appropriate methodology is a “rate of return” methodology under which the unimproved value of the land is multiplied by a percentage factor rate of return. Amplitel recommends a rate of return of 6%.

This methodology is consistent with the Crown’s approach to charging for domestic waterfront tenancies, as recommended by IPART. We note the 2022/23 rate of return applied for those properties is between 1.01% and 2.05%²⁰. It is also consistent with the approach in Queensland, as reflected in the Telstra Case²¹, and delivers simplicity, transparency and is cost effective to the CLMA.

Such Crown rents regime would comply with the Terms of Reference and valuation principles in that it:

- has regard to market rents agreed for similar purposes and sites with an identical landowner;
- has regard to relevant land valuations by tying rents directly to the value of the underlying land, disregarding improvements made by the tenant;
- achieves a fair market based commercial return on the land of 6% and provides a return to the government over and above its weighted average cost of capital (WACC)²²;
- is simple, transparent, and cost effective and is reflective of the location of the land, thereby negating the need for different location categories;
- reflects a non discriminatory approach; and
- aligns with other users of Crown Land (for example, see section 10 of this submission and 2023 examples of leases granted at Batemans Bay waterfront retail site and Moruya Bowling Club with rates of return of 5.6% and 5.9% respectively).

10. Rents paid by other commercial users of Crown land

To comply with the Terms of Reference, any rent regime recommended by IPART must reflect fair, market-based commercial returns for the Crown.

As a result, rents paid by other Crown tenants are an important and relevant consideration as IPART makes its recommendations.

Significant disparity exists between the rents paid by communications tenants and other commercial users of Crown land. Currently, there are different methods for determining rents for different users of Crown lands. As a result, this approach does not result in fair, market-based commercial returns for the Crown and, to the contrary, results in a discriminatory charging regime. This is evident from the rents section of the Crown Lands website. This page sets out the fact that there are different methodologies in place for determining rent on Crown land, depending on the user of the land. The annual minimum rent is specified on that page as \$590 from 31 January 2024²³.

The following recent rental transactions on Crown land exhibit the disparity that exists between the approaches to rents for communications sites versus non communications sites.

²⁰NSW Government Domestic waterfront rent calculations Fact Sheet - Table 1 2022-2023 rent calculation per precinct

²¹ Telstra Case, paragraph 160

²² IPART Fact sheet – WACC Biannual Update 22 February 2024

²³ [Application fees and rents | Crown Lands \(nsw.gov.au\)](https://www.crownlands.nsw.gov.au/application-fees-and-rents)

In Figure 8, comparisons of the following non communications sites rents have been made against nearby communications Crown land rent.




At Bateman's Bay, a waterfront café was granted a lease in 2022 for \$103/m²p/a.

At Moruya, a bowling club was granted a lease in 2023 for \$47,000 p/a (equivalent to \$2.25/m²p/a.)

By contrast, at nearby South Durras, (taking into account Amplitel's rent and Telstra's co-user fee) total Telstra Group rent is calculated at \$29,258 p/a or \$610/m²p/a for vacant bushland.

This rate is more representative of rents achieved for Sydney CBD office space, clearly demonstrating the excessive nature of rents charged to communications tenants. The Knight Frank Sydney Office Report February 2024²⁴ suggests the average net effective rents for prime office space is \$772/m²p/a and \$543/m²p/a for secondary office space. To achieve these office rents, the lessor must own the valuable CBD land and own and maintain a high-rise office building. By comparison, the communications industry is expected to pay \$702/m²p/a for vacant land at Artarmon and \$610/m²p/a for vacant bushland at South Durras.

Figure 8 South Coast sites recent rental comparisons (communications v non communications)

Location Description	Batemens Bay Waterfront	Moruya Waterfront	South Durras, Bushland
Region	NSW South Coast	NSW South Coast	NSW South Coast
Use	Café	Bowling Club	Communications Tower
Lessor	DPI	DPI	DPI
Lease Commencement	15/06/2023	30/10/2023	1/7/2007 (last review 2013)
Area	179	20928	48
Rent	\$18,600	\$47,000	\$29,258
Value	\$330,000	\$800,000	-
Community Benefit	Yes	Yes	Yes
Critical to Community & Emergency Service	No	No	Yes
Alternate Use / Opportunity Cost	Yes	Yes	No
			
Rent/sqmpa	\$103.91	\$2.25	\$610
Rent as % of NSW VG Value	5.6%	5.9%	-

Note: Communications tower rents based on Tower Owner/Infrastructure hosting only 1 Co-User. Land value based on 2023 VG's assessment

11. Rents paid by other users of Crown land (public service authorities and organisations)

There are many utilities and other organisations that provide essential services to the communities of NSW. Likewise, services provided by the communications industry are

²⁴ [KFA Sydney CBD Office Market H1 2024 \(knightfrank.com\)](https://www.knightfrank.com/au/insights/research/sydney-cbd-office-market-h1-2024)

essential to the communities of NSW, enhancing the wellbeing and safety of all.

For this reason, the Crown rents and charging approaches applying to other public services utilities and organisations are an informative comparator that should be considered by IPART.

CLMAs grant other infrastructure providers, such as electricity and water utilities, access to their land via Easements in Gross (EIG) for consideration substantially less than the rates currently being charged under the communications rent regime.

Amplitel is a Prescribed Authority²⁵ and has statutory standing to enter into an EIG where appropriate and agreed.

Amplitel, and the communications industry more generally, plays a critical role across the State as a provider of infrastructure essential to support the wellbeing, prosperity and safety of communities. A fair and transparent outcome would be for the Crown to charge communications tenants in line with utilities which also have similar critical roles in communities. The current charging regime exposes the difference in the Crown's approach to these service providers critical to the prosperity and wellbeing of the State.

By way of example, NPWS has granted an EIG to Endeavour Energy for approximately 150,000 m² of land at Wollongong for a \$4,700 one off payment. A communications site of approximately 100m² at the same location with one co-user would attract a rent of \$63,198 per annum. Figures 9 and 10 set out this detail.

In its 2019 report, IPART sought to justify charging communications towers differently from electricity and distribution towers on the basis that the communications towers are fenced.²⁶ Amplitel does not accept this argument. The fencing is ancillary and not strictly necessary for the operation of a communications tower. Subject to appropriate risk and ongoing infrastructure resilience assessment, Amplitel remains open to removing any fencing. Many sites are already unfenced, including on Crown Land.

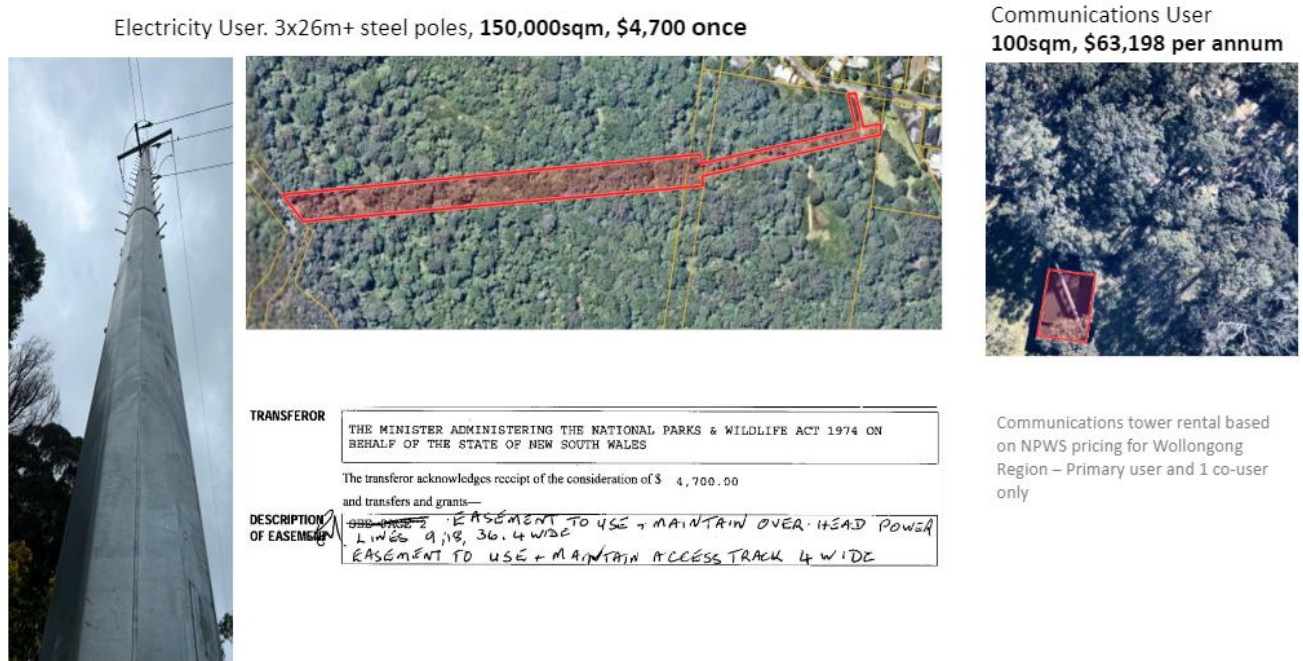
²⁵ Conveyancing (General) Regulation 2018, Schedule 3 Clause 3(1AA)

²⁶ 2019 report, page 32

Figure 9 Wollongong EIG – example of how a communications site would be charged under the current rent regime as a comparison to an actual utility EIG charge

	Electricity Towers Wollongong NSW	Communications Tower Wollongong NSW
Crown Entity	NPWS	NPWS
Occupier	Endeavour Energy	Amplitel + 1 co-user
Entities with an interest	<ul style="list-style-type: none"> • Epsilon Distribution Ministerial Holding Corporation • Endeavour Energy Network Asset Partnership • Endeavour Energy Network Operator Partnership 	<ul style="list-style-type: none"> • Amplitel • Telstra
Separate Payments for Each Entity	No	Yes (via co-user fees)
Prescribed Authority Status	Yes	Yes
Easement Granted	Yes	No
Number of poles	3x 26-30m monopoles	1 monopole
Annual Fee Payable	No	Yes
Consideration	\$4,700 (once only payment)	\$63,198 (p/a escalating by CPI)
Area burdened (m²)	~150,000	100
Area Description	700m x varying width of 9m, 18m & 36m	10mx10m

Figure 10 Visual representation of Wollongong EIG vs communications site



By way of another comparator, Amplitel understands that at Perisher Valley, the Ambulance Station pays a peppercorn rent of \$1p/a. Amplitel supports this rent given the critical importance of the facility to the local community. By comparison, 750 metres away, the Perisher Valley communications tower attracts a rent of \$29,000 p/a, with one co-user, for 106m² of vacant land. This is equivalent to \$270/m²p/a. Without this tower, the ability to make emergency phone calls for an ambulance would not be possible.

12. Rent Reviews

The Crown Land Management Act 2016 (NSW) (**CLM Act**) sets out the principles for market rent review determinations for Crown land in NSW. Any improvements that those tenants make to the land are disregarded.²⁷

The CLM Act is the result of a substantial consultation process which saw a number of Acts amalgamated into one single approach. The regulated approach to the valuation of land, disregarding any tenant improvements, was clearly considered critical for inclusion in the CLM Act. However, the principles for rent determinations set out in the CLM Act are ignored for communications sites and a separate regime and policy approach have been adopted, with communications tenants being denied the benefits that valuation and rent review under the CLM Act could bring.

The impact of the current regime and a failure of the Crown to adopt the 2019 IPART recommendations, has resulted in the communications industry not getting the benefit of a rent review since 2013. This has had a direct financial impact on Amplitel and the business decisions it makes. More information on the impact of the current regime is set out in Part D of this submission.

²⁷ Crown Land Management Act 2016, section 6.5(2)(b)

To ensure a fair, market-based approach to communications sites rents, it is critical that the industry receives the opportunity to participate in rent reviews. If the rate of return methodology is not adopted, any recommendation made by IPART must include a rent review every 5 years as per other Crown tenancies.

13. Private Market Comparable Evidence

In assessing Crown rents, private market rents are not the correct comparator and should not be considered by IPART.

This is supported by the findings in the Telstra Case²⁸ under which the Federal Court specifically determined that:

"If State or Territory governments were intended to be free to charge carriers different rents on the basis that carriers are charged more rent in the private market, the exception would have been directly expressed [in the Telecommunications Act]."

"...the purpose of cl 44(1), namely to promote and protect the long-term interests of end-users of carriage services and to promote accessible and affordable carriage services, is inconsistent with the submission that State and territory governments are permitted to charge carriers higher rents on the basis that carriers are charged more rent in the private market. In fact, price-gouging of this type by State and Territory governments seems precisely the type of conduct that cl 44(1) is designed to prevent".

On this basis, Amplitel objects to providing private market rent information, however, Amplitel confirms that:

- rents charged to Amplitel and its customers to occupy Crown land in NSW exceeds rents charged on private land;
- there is little evidence of co-user fees being charged in the private market as confirmed in IPART's 2019 report; and
- the terms of the tenure arrangements to occupy Crown land are more onerous than those endured in the private market.

Notwithstanding the above, if IPART does consider private market rents as an appropriate comparator, the Australian Property Institute and International Valuation Standards direct valuers to utilise a hierarchy of evidence in assessing market rents.²⁹ The hierarchy states that the most reliable/best evidence is a "new lease to a new tenant". Evidence of renewal leases to sitting tenants and rents paid by sitting tenants should not be used where there is sufficient "new lease to new tenant" evidence.

On this basis, renewal evidence must be ignored as the lessee cannot act without compulsion given its existing investment in the site and cost and disruption associated with moving from the tenancy.

Figure 11 sets out data relating to new tenures to a new tenant achieved by Amplitel in the private market. Although private market evidence should not be used as a comparator to determine rents on Crown land, this data demonstrates the premium imposed on communications tenants if they were to deploy on Crown land (see last column of Figure 11).

²⁸ Telstra Case, paragraphs 146 and 147.

²⁹ Australian Property Institute Guidance Paper – Rental Valuations and Advice [AVGP-301-Rental-Valuations-and-Advice-v2.0-eff.-1-July-2023.pdf](https://www.api.org.au/AVGP-301-Rental-Valuations-and-Advice-v2.0-eff.-1-July-2023.pdf) (api.org.au)

In addition to the rent premium charged by the Crown, tenures in the private market are less onerous in terms of site sharing and other qualitative and quantitative factors. Consequently, if IPART considers private market rents, further downward adjustment must be made to reflect the more onerous Crown conditions of occupancy.

Figure 11 Data relating to new tenures under Amplitel’s greenfield (new tower) program

IPART Location Category	Private Esc	Private Lease Start Year	Private Co-User Fees Imposed	% Premium to Deploy On Crown Land <small>(Primary User + 1 Co-User)</small>
Low	3.0%	2023	No	40%
Low	2.0%	2023	No	181%
Low	3.5%	2023	No	22%
Low	2.5%	2022	No	76%
Low	2.0%	2023	No	134%
Low	2.0%	2023	No	17%
Low	2.5%	2023	No	17%
Low	3.0%	2023	No	65%
Low	3.0%	2022	No	40%
Low	2.0%	2023	No	181%
Low	2.0%	2023	No	368%
Low	2.5%	2022	No	181%
Low	2.0%	2022	No	181%
Medium	2.0%	2023	No	95%
Medium	2.5%	2020	No	125%
Medium	3.0%	2022	No	193%
High	3.0%	2023	No	251%
High	3.0%	2022	No	111%
High	2.5%	2023	No	276%

14. Use of geographic based categories for rent assessment

The unimproved value of the freehold land should be the starting point for any rent assessment of Crown land, with a rate of return applied to arrive at fair, market-based commercial returns. Amplitel recommends a rate of return of 6%.

IPART should recommend a multiplier that reflects commercial returns for the unimproved value of the land actually leased by the Crown tenant, without reference to any categories of land.

Amplitel does not support adoption of the existing ABS categories, which are too limited. Any categories used to assess rent should correlate more closely with the underlying land value. There are many factors, other than population density that influence land values, including zoning and alternate uses for the land. Again, for the avoidance of doubt, any value brought to the land by the tenant's business and investment must be ignored.

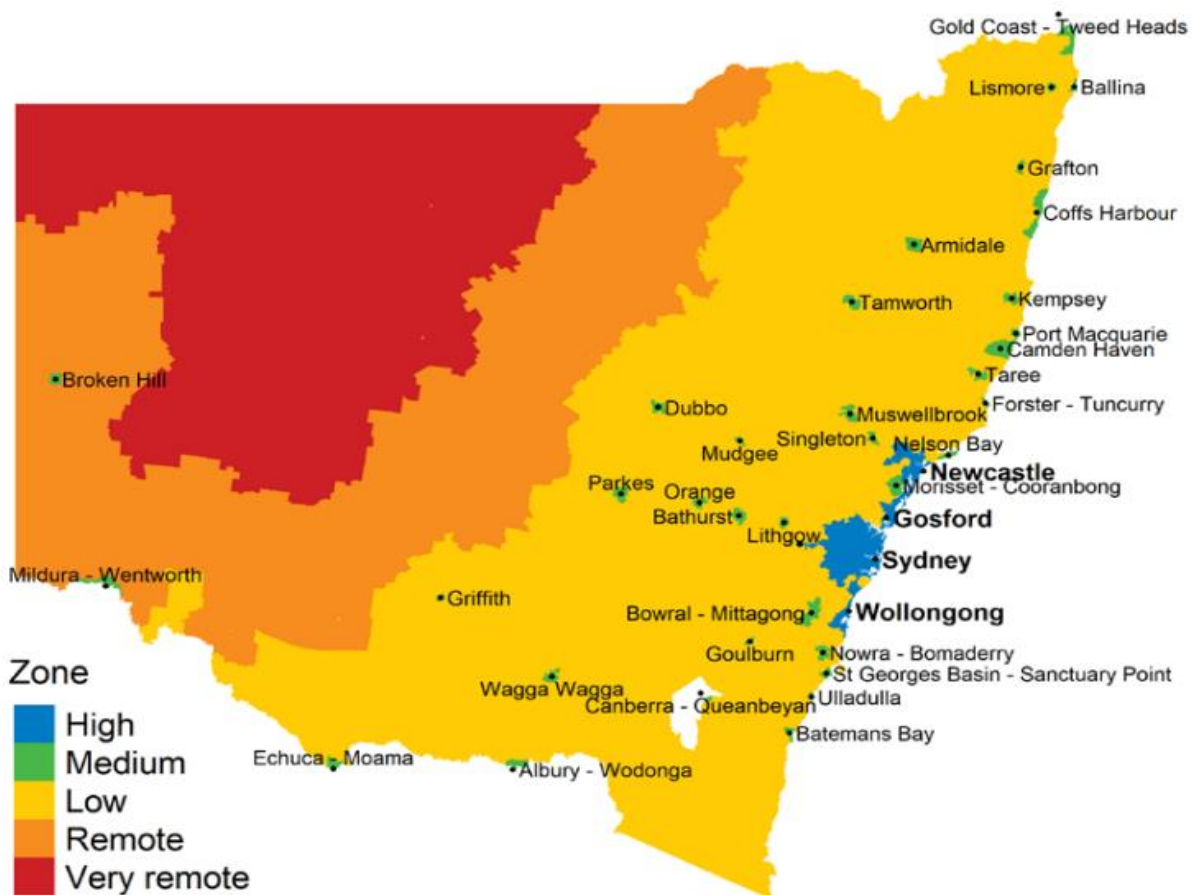
However, if IPART was to use the ABS ASGS to inform a fee schedule, Amplitel supports the recommendations made by IPART in its 2019 report that the current categories be

adjusted.

In its 2019 report, IPART recommended categorising land for the purpose of setting rents on Crown land in the following manner:

- **High:** metropolitan areas located in the ABS Significant Urban Areas (SUAs) of Sydney, Newcastle – Maitland, Wollongong, and the Central Coast.
- **Medium:** areas located in the remaining 35 NSW ABS SUAs. SUAs represent significant towns and cities of 10,000 people or more and cover urban and adjacent areas (the ABS aims to include likely areas of growth).
- **Low:** rest of NSW not located in the High and Medium categories and excluding areas located in the Remote and Very remote categories.
- **Remote:** areas located in Remote ABS Remoteness Areas (RAs).
- **Very Remote:** areas located in Very remote ABS RAs.³⁰

Figure 12 Map of 2019 IPART recommendations Location Categories.³¹



³⁰ 2019 report, page 47

³¹ 2019 report, page 117

IPART's 2019 review found that the appropriate basis for setting rents for communication tower sites on Crown land is rents agreed in a workably competitive market – that is, rents paid by commercial users of communication tower sites on private land are the best-available indicators of efficient prices.³²

Accordingly, IPART recommended that a new rent schedule should be released for communication tower sites on Crown land. The rent schedule recommended that primary users in High, Medium, Remote and Very Remote locations should pay lower rents to government land agencies.³³ IPART also recommended that co-users should only pay rent to government land agencies for the additional land they occupy, so for co-users wholly within the fenced areas of the primary user's site, IPART recommended that the government land agency charge no annual rent. ³⁴If IPART was to adopt the ABS ASGS, Amplitel welcomes these recommendations.

However, by contrast, in 2019, IPART's proposed rent schedule recommended increasing rents by 32% for primary users of existing crown land sites in the Low category.³⁵ This is concerning given the numbers of mobile towers on Crown land that are in the Low category and Amplitel does not support this outcome. Much of Crown land sits in the Low category and unlike the situation in metropolitan areas, there are few alternate sites for communications towers in Low category locations. ³⁶

In relation to the recommendations from the last IPART review, if IPART does not change the approach to rents on Crown land as recommended by Amplitel in this submission, Amplitel submits that:

- IPART's recommendations that primary users in High, Medium, Remote and Very Remote locations should pay lower rents to CLMAs should be adopted;
- IPART's recommendation that co-users should only pay rent to government land agencies for the additional land they occupy should be adopted. Co-user rents are inconsistent with Commonwealth legislation which encourages co-location, such as the Telco Act; and
- IPART's recommendation to increase rent for primary users in Low locations should not be adopted.

³² 2019 report, page 9

³³ 2019 report, page 66

³⁴ 2019 report at page 77

³⁵ 2019 report at page 46

³⁶ 2019 report at page 17 -18

Part C - Co-User Fees

Co-user fees as they are currently applied should be abolished. Co-users should only pay fees, rents or charges for additional land they occupy.

There are clear efficiencies with sharing infrastructure and maximising utilisation of existing assets for Amplitel, its customers and communities across the State. Co-location (where multiple carriers install their own equipment on a single tower) is often more economical than self-supplying new infrastructure, reduces duplication and, as set out in section 5 of this submission, is supported by legislation and government policy which recognise the efficiencies and benefits that multi-carrier outcomes bring to consumers.

Co-location should be encouraged as it has a range of benefits including more efficient use of land, expanded coverage, and increasing the uptake of emerging technology for communication purposes such as small cell technology as required for 5G mobile telecommunications.

In 2005, the Crown introduced the practice of charging co-user fees to third parties co-locating with the primary user on communications infrastructure.

In 2013, IPART recommended no change to the policy of charging co-users 50% of the rents as per the fee schedule.³⁷ As a result, co-user fees continue to be charged by CLMAs in circumstances where no additional land is utilised by the co-user.

The impact of co-user fees is particularly acute in regional, rural and remote areas where commercial incentives to invest can be challenging. In the case of regional, rural and remote areas, this may be compounded as CLMAs are often monopoly suppliers of the only suitable communication tower sites. In NSW, the availability of mobile tower sites is limited and the CLMAs control approximately half of all land in the State, effectively creating a monopoly in many areas.

Amplitel is not aware of any examples of co-user fees being charged to non-communications tenants on Crown land and it is not a recognised practice in the private market.³⁸

Amplitel has observed at least one example of a customer choosing not to co-locate on an Amplitel tower due to the financial impact of the Crown co-user fee on the customer's business case supporting the roll out of services in that location.

Co-user fees have a disproportionate and arguably unintended impact on telecommunications groups where the group's infrastructure assets and active equipment are owned or operated by different entities. As described in section 4 of this submission, there have been wholesale structural changes in asset ownership across the industry since the last IPART review. In the case of the Telstra Group, as the towers, active mobile equipment and other types of passive assets are owned or operated by three different group entities, the group has gone from being charged one primary user rent (prior to the creation of Amplitel and the 2023 restructure of the Telstra Group) to calculations of up to 200% of that rent. This is without considering the additional co-user fees charged if one or more of Amplitel's other customers are co-locating on the tower.

This is without any physical change or usage at the site. Such gains to the Crown are contrary to public policy and can disincentivise investment particularly where business cases for telecommunications rollouts are marginal.

Amplitel also recognises the expectations set out in the State Strategic Plan for Crown Land, issued in June 2021,³⁹ which represents the 10 year vision for Crown Land in NSW. The Crown has identified the

³⁷ IPART Review of rental arrangements for communication towers on Crown land Final Report July 2013, page 6

³⁸ 2019 report, page 84

³⁹ [Crown Lands 2031 State Strategic Plan for Crown land - June 2021 \(nsw.gov.au\)](https://www.nsw.gov.au/crown-lands-2031-state-strategic-plan)

need to *accelerate economic progress in regional and rural NSW*, with goals in this priority stream including:

- (i) increase in community benefit from investment on Crown land;
- (ii) regional tourism diversifies through activation of Crown land; and
- (iii) innovative industries prosper in the regions.

Communications and connectivity will be key drivers supporting these goals and any Crown rents regime must not disincentivise such investment. CLMAs must work collaboratively with the communications industry to explore opportunities to realise these goals.

Cottage Point case study – impact of excessive rents, co-user fees and NPWS site charging

The small community of Cottage Point was a long term mobile “black spot”. In 2023, Amplitel deployed a new tower on NPWS managed land at this location.

As a result of the land being managed by NPWS, the High rent rate is uplifted to the Sydney rate and the communications site (of approximately 110m²) attracts total rent and co-user fees of \$84,264 p/a, with Amplitel as the primary user and Telstra and Optus as co-users.

The Valuer-General has valued the unimproved freehold interest in nearby superior and larger parcels at \$287,000 each. On this valuation, these nearby parcels are valued at \$282/m².

By comparison, Amplitel’s rent and the co-users fees are calculated at a total of \$766/m²p/a for the communications site.

Using the value of the nearby superior parcels of land as an indicator, the total rents and co-user fees calculated for this site mean that Amplitel and the co-users are effectively purchasing the freehold land every 134 days or nearly 3 times each year.

The total rents and co-user fees charged by the Crown for this site are example of excessive rents calculated for communications sites, when compared to the unimproved value of the land.

Figure 13 Aerial photo of Cottage Point with sites marked



Property Address : 6 NOTTING LANE, COTTAGE POINT NSW 2084
Property Number: 928516
***Zone:** C1 - National Parks & Nature Reserves
Area: 1018 square metres
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$287,000
1 July 2022	\$287,000
1 July 2021	\$287,000
1 July 2020	\$275,000
1 July 2019	\$275,000

Property Address : 8 NOTTING LANE, COTTAGE POINT NSW 2084
Property Number: 928514
***Zone:** C1 - National Parks & Nature Reserves
Area: 1062 square metres
Valuation Basis: 6A(1) - The land value is the freehold value of the land excluding any structural improvements.

Land Value	
Base Date	Land Value
1 July 2023	\$287,000
1 July 2022	\$287,000
1 July 2021	\$287,000
1 July 2020	\$275,000
1 July 2019	\$275,000

Amptitel has also observed that the practice of the CLMAs charging co-user fees has an effect on tenure negotiations beyond CLMA tenancies with local governments and other government agencies (including outside NSW). As such, the practice of charging these fees can have unintended wide reaching financial

and other consequences that can disincentivise investment in communications infrastructure beyond land managed by the CLMAs.

The Crown charging a fee to co-users located within the primary user's compound without any additional land leased, does not meet the expectations of the Terms of Reference on the basis that:

- the primary user is already paying rent for using this land;
- the primary user is the key contracting party responsible for the site and already provides the Crown with the relevant protections, obligations and indemnities;
- the Crown is receiving the benefit of investment made by the primary user as tenant, contrary to the recognised valuation principles, as described in sections 8 and 9 of this submission;
- a fee from a co-user located in the compound is “double dipping”, contrary to public policy;
- it creates an additional administrative step for all parties where an additional licence must be agreed and executed, slowing down deployment contrary to both the community and government expectations of efficient and cost effective rollouts;
- there is no identifiable economic justification for the fee; and
- as the fee is charged only on communications sites (and not to other types of co-users of Crown land), it is discriminatory against carriers and other communications co-users.

In 2019, IPART recommended that co-users should only pay rent to CLMAs for the additional land they occupy.⁴⁰ Amplitel welcomes this recommendation and supports IPART’s 2019 findings in relation to co-user fees.⁴¹

⁴⁰ 2019 report, page 77

⁴¹ 2019 report, pages 77-78

PART D – Adoption of IPART’s 2019 Recommendations

The Crown did not adopt the recommendations made by IPART in its 2019 report. As a result, the 2013 IPART recommendations form the current charging regime for communications sites on Crown land. Communications tenants and co-users have not had the benefit of a rent review since 2013.

Figures 14 to 17 show the impact on Amplitel of continued application by the Crown of the 2013 regime (as compared to adoption of IPART’s 2019 recommendations.) In summary:

- For sites currently charged under the Sydney category, Amplitel has or will be charged an additional \$545,000 between 1 September 2021⁴² and 30 June 2024;
- For sites currently charged under the High category, Amplitel has or will be charged an additional \$219,000 between 1 September 2021 and 30 June 2024;
- For sites currently charged under the Medium category, Amplitel has or will be charged an additional \$48,000 between 1 September 2021 and 30 June 2024;
- For sites currently charged under the Low category, Amplitel has or will be charged an additional \$738,000 between 1 September 2021 and 30 June 2024.

In total, for the period between 1 September 2021 and 30 June 2024 Amplitel is required to pay an additional amount exceeding \$1,550,000.

Figures 14 to 17 also show the combined charges for Amplitel plus one co-user per site. Since 1 September 2021, these total additional rents and fees as calculated under the current regime exceed \$4.3m.

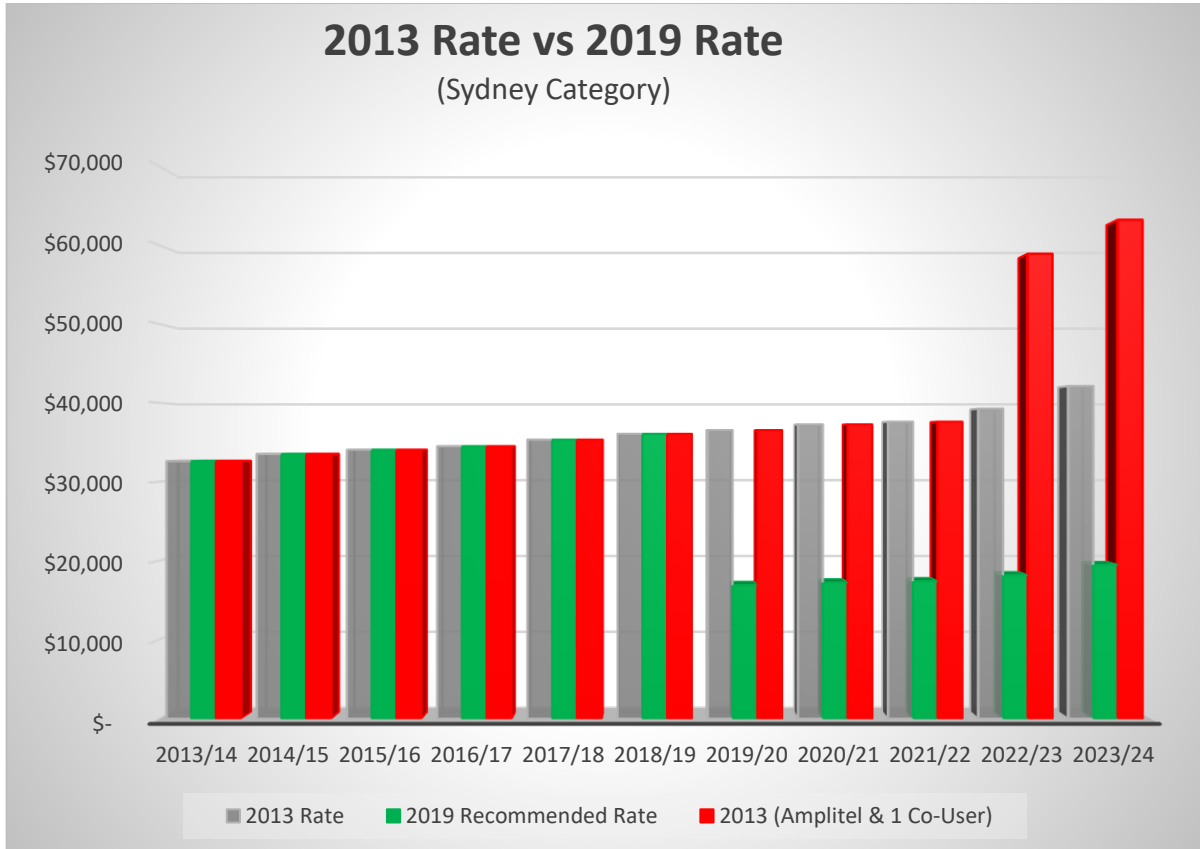
⁴² Date of establishment of Amplitel

Sydney Category

The current rate⁴³ charged pursuant to the 2013 regime is more than double the recommended rate for primary users under the 2019 recommendations (\$42,000 vs \$19,000⁴⁴).

With one co-user on the site, the combined current calculations for the primary user and co-user are more than triple the 2019 recommended rate (\$63,000 vs \$19,000).

Figure 14 Impact on Sydney Category



⁴³ 2023/24 rates are reflected across calculations

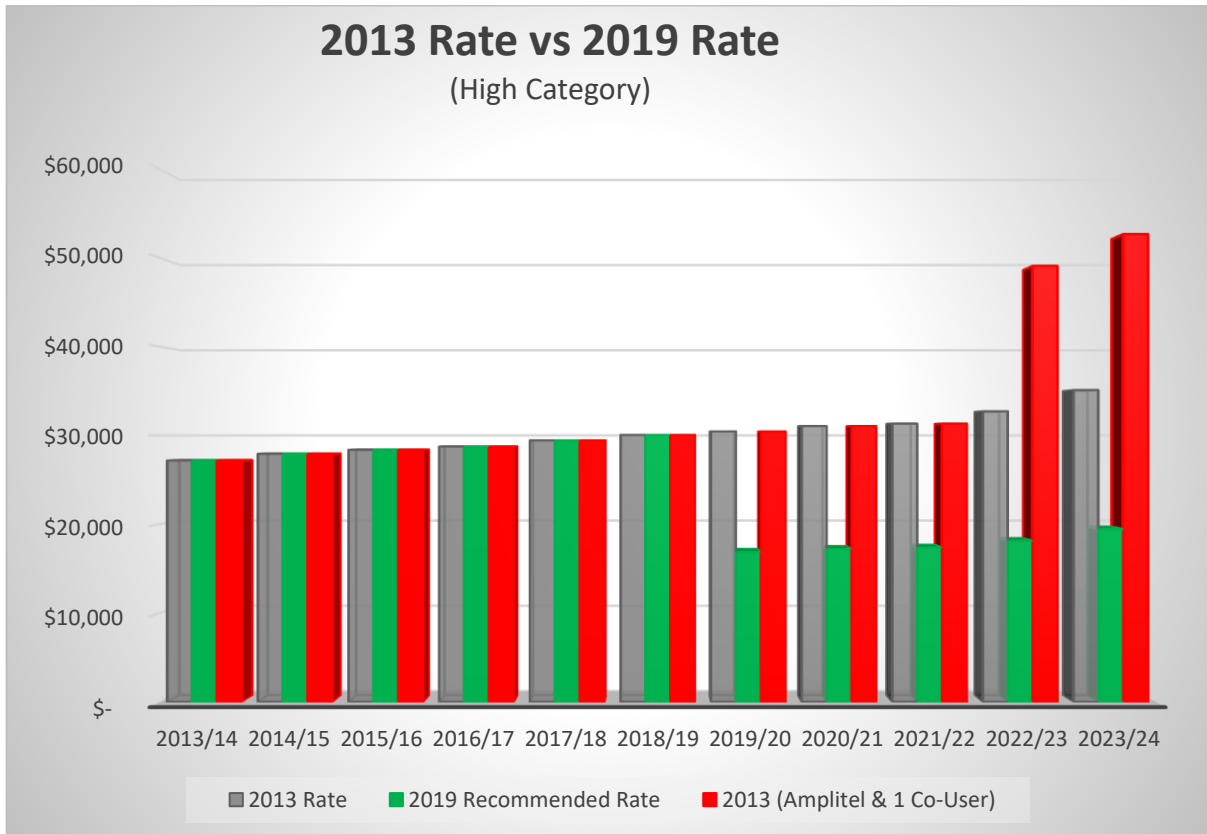
⁴⁴ 2019 rental schedule has been adjusted for inflation across all calculations

High Category

The current rate charged pursuant to the 2013 regime is close to double the recommended rate for primary users under the 2019 recommendations (\$35,000 vs \$19,000).

With one co-user on the site, the combined current calculations for the primary user and co-user are 2.7 times the 2019 recommended rate (\$53,000 vs \$19,000).

Figure 15 Impact on High Category

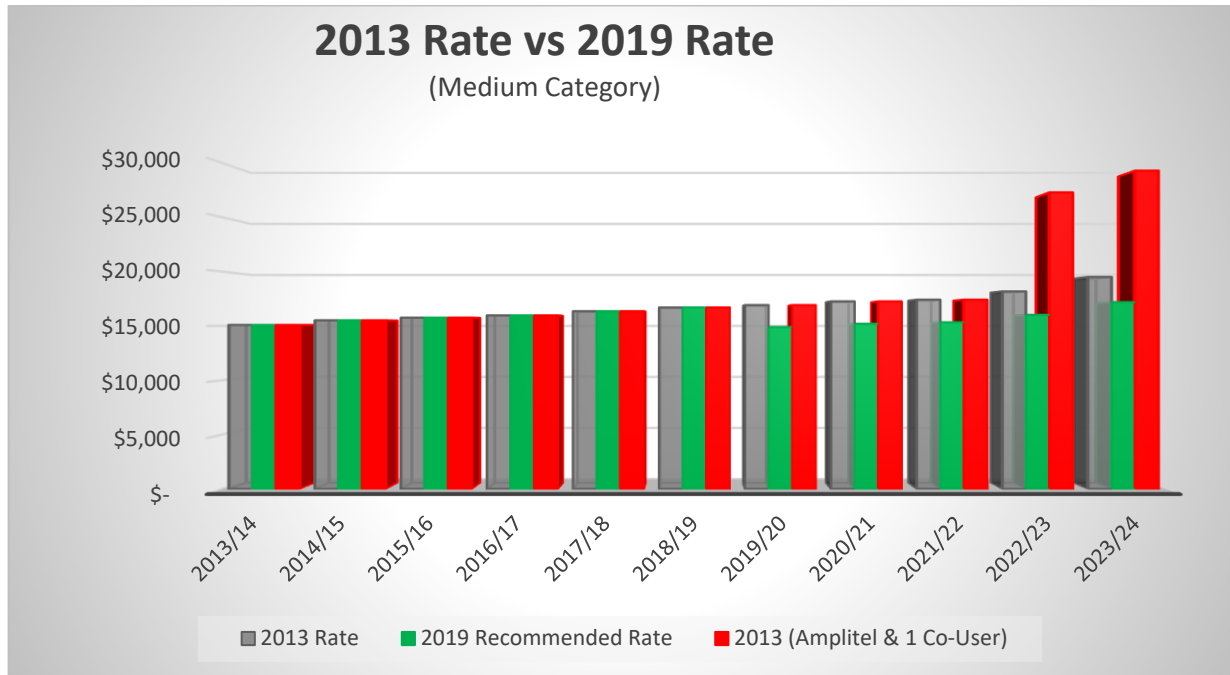


Medium Category

The current rate charged pursuant to the 2013 regime exceeds the recommended rate for primary users under the 2019 recommendations (\$19,000 vs \$17,000).

With one co-user on the site, the combined current calculations for the primary user and co-user are 1.7 times the 2019 recommended rate (\$29,000 vs \$17,000).

Figure 16 Impact on Medium Category



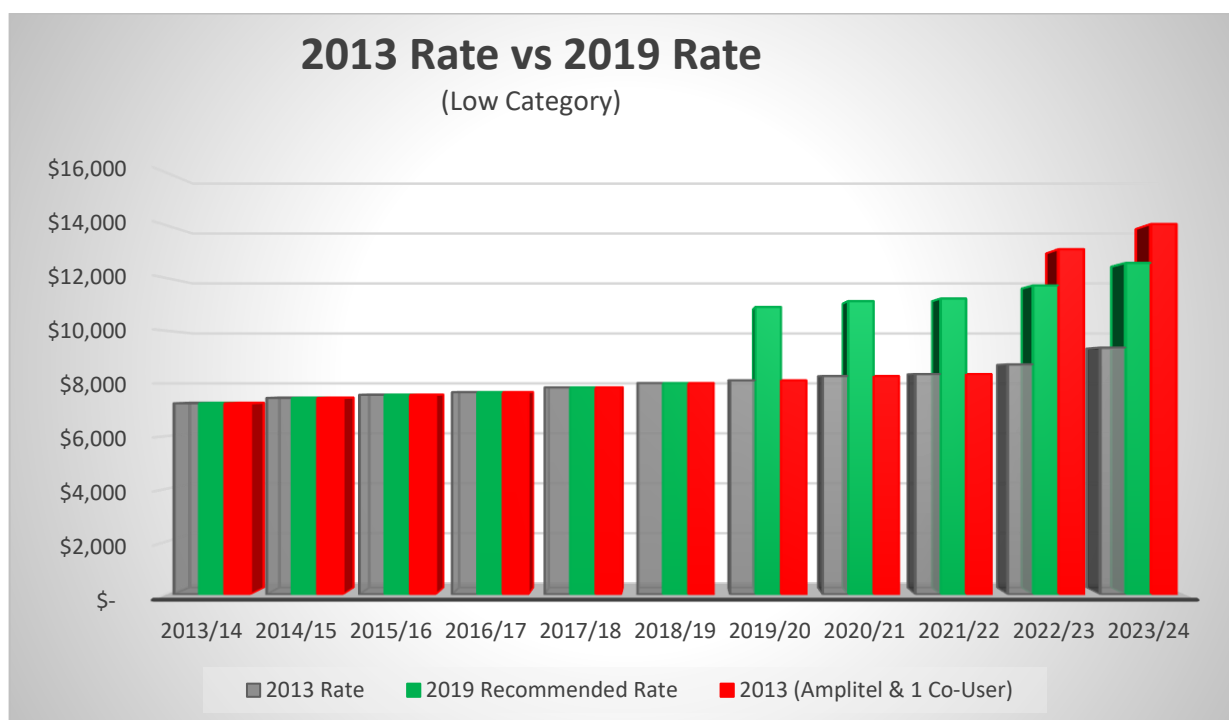
Low Category

The 2019 report recommended an increase in rent for the Low category, as depicted in Figure 17.

Additionally, under the 2019 report recommendations, in Amplitel's case, 52 sites would benefit from reclassification as Remote or Very Remote, with charges reducing to \$3,400p/a and \$508p/a.

The impact of the 2013 charging for sites in this category is exaggerated as a number of these sites are within NPWS managed lands, with one category higher being charged. As a result, currently the Low category charging does not apply at NPWS sites and so the difference between the 2013 and 2019 rates is even greater.

Figure 17 Impact on Low Category



The comparisons above highlight the significant gains due to the Crown as a result of the Crown's decision to not adopt IPART's 2019 recommendations, which, for the reasons outlined in this submission, have a direct impact on investment decisions made by communications providers, which in turn can directly impact communities across the State.

In addition to making recommendations for a future rent regime, IPART should make the following recommendations:

- that the recommendations of the 2019 report be adopted for the period from 1 July 2020 to the start date of IPART recommendations made under this review; and
- that primary users and co-users be refunded all amounts paid over and above what would have been payable had the 2019 report been adopted for the same period.

Amplitel will seek confirmation from the Crown that the 2019 report recommendations will be applied.

Part E – Response to request for information from IPART

IPART has asked for feedback to assist IPART’s understanding of the following topics. Amplitel’s comments are as follows:

Q1: Whether there are any additional sources of data on rental prices for private land. For example, we previously relied upon data from the NSW Land Registry Services.

As set out in section 13 of this submission, private market rents are not an appropriate comparator for communication sites Crown rents. If IPART is to consider such rents, the NSW Land Registry Services is the appropriate source of data.

Q2: Details of current rental arrangements for communication sites on private land.

See Amplitel’s response to Q1.

Crown rents for non-communications sites are the best comparator. Amplitel has provided further information in section 10 of this submission.

Importantly, the Crown must provide transparency on rents charged for non-communications sites on Crown land. It is difficult to find current Crown rents information to make assessments as to the Crown’s methodologies in assessing rents for these other tenancies. In the interests of transparency, the Crown should publish details of all CLMA tenancies, including leases, licences and Easements in Gross granted to users of Crown Land

Q3: Whether rooftop communication sites should be treated differently to other Crown land sites.

Rooftop tenancies should be negotiated on a site by site basis with accepted valuation standards applied.

Q4: Whether recent changes in ownership arrangements for mobile network towers has influenced rents.

There have been wholesale structural changes in asset ownership across the telecommunications industry since the last IPART review. In the case of the Telstra Group, as the towers, active mobile equipment and other types of passive assets are owned or operated by three different Group entities, the Group has gone from being charged one primary user rent (prior to the creation of Amplitel and the 2023 restructure of the Telstra Group) to calculations of up to 200% of that rent. This is without considering the additional co-user fees charged if one or more of Amplitel’s other customers are co-locating on the tower.

This is without any physical change or usage at the site. Such gains to the Crown is contrary to public policy and can disincentivise investment particularly where business cases for telecommunications rollouts are marginal.

Q5: What effect the phasing out of the 3G network may have on rental arrangements.

The unimproved value of the freehold land should be the basis of any Crown rent assessment, with a rate of return applied to arrive at fair, market-based returns. Amplitel recommends a rate of return of 6%.

Australian Property Institute and International Valuation Standards dictate that valuation of land should ignore the value of the tenant’s business and improvements when assessing a fair market rent and as such, the improvements or type of technology on site is irrelevant to the Crown rent calculation.

Amplitel notes that more CLMA sites may be required by the communications industry as 4G and 5G technologies are rolled out across the State. It is critical that excessive Crown rents and co-user fees do not disincentive investment in future roll outs.

Q6: How best to incorporate the social, cultural and environmental value of national park land in recommending rents for communication towers in national parks. Currently National Parks sets

the price of their sites one category higher than other land agencies. The National Parks and Wildlife Act 1974 states that national park land cannot be used for communication facilities if there is a feasible alternative site available.

Due to the location and the percentage of NSW land managed by CLMAs, Amplitel often has no choice but to licence land from NPWS as no other options exist for tenancies in these areas. As required by the National Parks and Wildlife Act 1974, it is a last option when locating infrastructure on NPWS land.

Amplitel does not support NPWS setting rents for their sites one category higher than other CLMAs. This does not result in fair, market-based commercial returns for the Crown as a blanket “one category higher” approach means that the rent is even further disconnected from the unimproved value of the land.

The unimproved value of the freehold land should be the basis of any Crown rent assessment, with a rate of return applied (Amplitel recommends 6%) to arrive at fair, market-based commercial returns. If this methodology is adopted, then any special characteristics of the land including the social, cultural and environmental value of national park land will be recognised in the land valuation.

NPWS’s current approach means that Low category charging does not apply at any NPWS sites. A fair and market-based outcome is not achieved when all Low category sites are charged at the Medium rate, particularly taking into account that some sites were re-categorised as Remote or Very Remote under the 2019 IPART recommendations.

Much of the NPWS land licenced by Amplitel is subject to bush fire and other natural disaster risk. This makes the presence of communications facilities in these locations a valuable asset to communities, emergency service organisations and the Crown in the context of disaster preparedness and recovery. Mobile services at these locations bring an increased level of safety and wellbeing to all visitors to these sites. Amplitel does not agree that communications tenants should be charged at increased rates when investing in critical services at these varied and often remote locations (where cost of deployment can be high).

The Cottage Point case study set out in Part C of this submission shows that the current approach has a disproportionate and arguably unintended financial impact on rent calculations for NPWS sites.

Additionally, when calculating rents for NPWS sites, the valuation concept of “betterment” should be applied. This concept dictates that, when assessing value, consideration should be given to any increase in the value of adjoining land due to the existence of, in this case, the communications infrastructure. This increase in value of the adjoining land must then be deducted from any consideration payable for the land used to host the communications infrastructure.

Amplitel asserts that there is a significant increase in the value of the remainder of any National Park that hosts and enjoys the benefit of the communications infrastructure. This increase in value to the National Park comes from the benefit of mobile phone/wireless coverage comes from:

- availability of communications for workers in the park;
- the social benefits afforded to visitors via the ability to connect to social media which results in increased visitation and associated revenue for NPWS; and
- the ability for users of the park to make calls in emergency situations.

Amplitel asserts that, in the case of NPWS land, the increase in value to the remainder of the National Park would clearly exceed the value of the land occupied. Consequently, rent for communications towers in National Parks should be set at \$1 if requested.

Q7: The market approach to setting rents and fees for co-users and small cell technology on communication sites on private land.

As set out section 13 of this submission, private market rents are not an appropriate comparator for communications sites Crown rents.

The unimproved value of the freehold land should be the basis of any Crown rent assessment, with a rate of return applied (Amplitel recommends 6%) to arrive at fair, market-based returns.

Valuation principles dictate that valuation of land should ignore the value of the tenant's business and improvements when assessing a fair market rent and as such, the improvements or type of technology on site is irrelevant to the Crown rent calculation.

Q8: The practical implications of using the remoteness categories in the ABS' Australian Statistical Geography Standard (ASGS) to set location categories for fees for communication sites on Crown land.

The ABS ASGS is not an appropriate guide. Amplitel's position is set out in section 14 of this submission.