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

Review of rents for communication sites on certain Crown land

11 February 2025

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This submission is made by Amplitel Pty Ltd (**Amplitel**) in response to the "*Revised Draft Report– Review of rents for communication sites on certain Crown land*" issued by the Independent Pricing and Regulatory Tribunal, NSW (**IPART**) dated December 2024 (**Revised Draft Report**) and is supplementary to our Submission to IPART dated 2 April 2024, our Supplementary Submission dated 12 August 2024 and our letter submission dated 15 November 2024. We also refer to the Terms of Reference issued 12 December 2023 (**Terms of Reference**) and IPART's Issues Paper dated 26 February 2024 (**Issues Paper**).

Amplitel welcomes and appreciates the opportunity to participate in this review and to give feedback on the Revised Draft Report.

Executive Summary

Telecommunications and connectivity are critical drivers of development, wellbeing and equity across the State of NSW. Digital connectivity underpins all aspects of life in the 21st century and the importance and benefits of telecommunications to the people, businesses and communities of NSW cannot be overstated. It is critical that Crown rents for communications sites do not disincentivise investment in telecommunications across the State.

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 Crown rents with reasonable escalation rates. We reiterate the positions outlined in our previous submissions and state again that 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 across the State.

As a preliminary comment, while Amplitel acknowledges the expectation under the Terms of Reference that the fee schedule be simple and able to be easily implemented by the Crown land management agencies (**CLMAs**), we do not agree with the weight IPART has given to this requirement when considering the expectations under the Terms of Reference as a whole. It is disappointing to see that a number of IPART's most recent recommendations, including its approach to the density classifications and charging by the NSW National Parks and Wildlife Service (**NPWS**), have been made to reflect what appears to be the easiest way forward for the Crown when, in contrast, the industry has had to bear the burden of the current regime, without the benefit of a rent review since 2013 or implementation of the 2019 IPART recommendations. Certain aspects of the current recommendations perpetuate the status quo and the existing burdensome model.

In addition, we do not agree with the weight given by IPART to the various types of evidence it has considered as part of this review and, for example, it appears to have to given substantially greater weight to evidence of private market rents over other factors it must consider under the Terms of Reference, including the requirements and objectives under law, plans and policies and the output of consultation with key stakeholders.

We take this opportunity to refer IPART to our previous submissions which include detailed analysis of the matters raised in this submission, including various case studies and specific examples of the impact of excessive Crown rents.

In response to IPART's Revised Draft Report, we make the following submissions:

1. Amplitel welcomes that co-users should no longer pay a co-user fee where the land they licence is located wholly within the primary user's compound. We strongly urge the NSW Government and its agencies to adopt this recommendation. This is a welcome step towards a fair and reasonable NSW Crown rents regime to support investment in telecommunications across the State and we are

pleased to see that this recommendation reflects the position encouraged at the Commonwealth level[1].

However, we have serious concerns about the CLMAs' ability and willingness to adopt this recommendation given the content of the submission from the Department of Planning, Housing and Infrastructure, dated 11 November 2024 (**DPHI Submission**)[2]. This submission highlights that there is a high risk that there will be considerable delay and possible dispute associated with the implementation of this recommendation. We strongly suggest that the simplest way to ensure the quick adoption of this recommendation is for IPART to recommend the removal of all existing co-user fees and then, moving forward, only apply a new co-user fee when a co-user licences additional land. This could be implemented by July 2025.

The telecommunications industry is still operating under the 2013 IPART review, with CPI adjustments over 11 years and has been denied the implementation of the removal of co-user fees in 2019 even though it was recommended by IPART adopting an evidence-based approach. This has led to millions of dollars of additional revenue being paid to the NSW Government over 5 years[3]. It is imperative that this change be implemented immediately by the CLMAs upon adoption by the NSW Government.

2. IPART must specify the date from which the new rent rates are to apply. This must be 1 July 2023 in accordance with the tables in section 8.1 of the Revised Draft Report, with escalations due in July 2024 and July 2025 waived. The private market evidence provided demonstrates that rents have not escalated beyond these rates.

3. The Terms of Reference require IPART to make recommendations that consider the CLMAs' requirements under legislation and the Issues Paper refers to compliance with the Telecommunications Act 1997. For the reasons set out in our previous submissions, it is Amplitel's view that the current regime in NSW is discriminatory against communications tenants (including carriers) and we do not accept IPART's finding to the contrary.

4. Primary users and co-users should be refunded all amounts paid over and above what would have been payable had the 2019 IPART recommendations been adopted.

5. A new escalation rate of 3% should apply to all existing and new tenancies and all existing licences must be varied to reflect this change. This is with the exception of sites in the Low category (and if adopted, Remote and Very Remote categories) which should have an escalator applied of 2%.

6. Despite finding that there would be benefit in making changes to the density classifications, IPART has not recommended these changes as they would not be simple or easy for the CLMAs to implement. We acknowledge the Terms of Reference, but this is not a valid reason for not recommending changes. We note that an entire new rental regime was introduced in 2005 by the CLMAs and they were capable of setting up their systems to make the required changes at that time. It seems implausible that 20 years later in the digital age, there is not a streamlined way of introducing 2 new rental categories which better reflect the market identified and adopted by IPART itself. The absence of this recommendation results in rents being charged in the Low category which are well beyond those in the private market for Remote and Very Remote sites.

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[1] Connecting the country: Mission critical – Parliament of Australia (aph.gov.au) Recommendation 13 and Section 4.13 of the Telecommunications Code of Practice 2021 (made by the Minister under clause 15 of Schedule 3 of the Telecommunications Act 1997)

[2] Online-Submission-Department-of-Planning-Housing-and-Infrastructure-Crown-Lands-and-Public-Spaces-M.-Hawyes-11-Nov-2024-112440670.PDF

[3] IPART NSW Final Report - Review of rental arrangements for communication towers on Crown land - November 2019, pages 7, 109-110. IPART recognised a decrease revenue for the CLMAs by ~$3.1m a year from 2020-2021 including -$4.29m from changing co-user and SCAX fees

7. It is disappointing to see the continued recommendation that NPWS continue to charge rents which are one category higher than the applicable density classification. This is despite the fact that there has been no quantitative evidence produced by NPWS, which, although IPART accepted NPWS's case as plausible, was recognised by IPART[4]. This perpetuates the issue that the industry has a minimum charge on NPWS land of $17,251 even for the most remote corners of NSW. This approach gives the appearance of double standards where the industry is required to produce 500 points of reference of market rentals, yet NPWS produces no evidence of any additional costs and a recommendation is made to continue with an unjustified charge. NPWS also seeks to justify the increase in rent by reference to matters such as maintenance of fire trails when, in many instances, these additional costs are already passed on to the users through the licence documentation.

Amplitel's response to the revised draft recommendations

In response to each of IPART's recommendations under the Revised Draft Report:

1. Recommendation: That we continue to use the approach of benchmarking against the private market for our recommended fee schedule

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. 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%.

IPART's draft recommendation does not align with recognised land valuation principles and results in rents that:

- far exceed rentals charged to other users of Crown land.[5] We particularly reiterate the difference in treatment by the Crown of other similar utility users of the land[6];
- on many occasions, far exceed the value of the land occupied[7]; and
- exceed rentals achieved recently in the private market[8].

When comparing rents by way of benchmarking, it is critical that the terms of the underlying leases are taken into consideration. Established valuation principles dictate that adjustments must be made to reflect the terms on which different leases are entered into. Consequently, if IPART considers private market rents, further downward adjustment must be made to reflect the more onerous Crown conditions of occupancy.

2. The existing density classifications continue to be used to minimise the costs of implementing the updated fee schedule

We refer to our comments in paragraph 6 of the Executive Summary above.

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. However, If the ABS ASGS

[4] IPART Review of rents for communication sites on certain Crown land - December 2024 Draft revised report, page 30

[5] Section 10 of our 2 April 2024 Submission for examples

[6] Section 11 of our 2 April 2024 Submission for examples

[7] Section 8 of our 2 April 2024 Submission for examples

[8] Email from Amplitel to IPART dated 7 June 2024 and section 13 of our 2 April 2024 Submission

is used to inform the fee schedule, the schedule must be adjusted to reflect the categories recommended by IPART in 2019 (High, Medium, Low, Remote and Very Remote).

By not introducing Remote and Very Remote categories (and thereby charging these sites under the Low category) rents at remote sites can materially outweigh the underlying freehold value of the land licenced.

This is compounded at NPWS sites by the application of the National Parks uplift charge with the result that Remote and Very Remote sites will be charged at the Medium rate of $17,251 which does not have a correlation with the value of the land, is not comparable with the private market and is vastly in excess of such rates.

3. The category uplift to the standard rental schedule would apply to sites in national parks

We refer to our comments in paragraph 7 of the Executive Summary above.

We reiterate that the industry has been asked to produce 500 points of reference in order to justify a market rent review and yet the NPWS has put forward a position with no supporting evidence and IPART has accepted that position. As a result, there is no commercial or equitable relativity between any potential additional costs to NPWS and an annual charge amounting to between $6,000 and $13,000 per site.

We do not agree with NPWS's specific contention that additional rent is justified due to maintenance costs associated with fire trails. As acknowledged by IPART[9], additional charges are already applied by NPWS and in our case, incurred by Amplitel to comply with its NPWS licence to support this maintenance and to include this as justification to charge one density classification category higher amounts to double dipping.

In any event, the increased costs purported by NPWS in relation to these sites do not justify increased rents. Planning considerations such as visual amenity and potential damage to ecological systems are not valid reasons to support additional rent payments. These aspects are considered in detail in each site planning review.

We are also concerned with NPWS's position that the IPART recommendations should amount to a deterrent/barrier to new sites on NPWS land. This is at odds with the existing legislative framework which already has built-in protections. We acknowledge that IPART did not accept this argument.

4. The NPWS rental fee approach not be adopted by other land management agencies

We agree with IPART's recommendation.

5. Co-users are no longer to pay a co-user fee where the land they licence is located wholly within the primary user's compound

We refer to our comments in paragraph 1 of the Executive Summary above.

Whilst we fully support this recommendation, we note that it is important for it to be implemented quickly by the CLMAs.

The DPHI Submission in response to the 'embargoed final report' suggests that the CLMAs are planning a detailed review of all historical records and are proposing to undertake surveys of the sites. The fact that the CLMAs are seeking to survey the sites could suggest the intent to carve out the primary user area and to then keep the existing co-user arrangements in place. This is likely to be disputed by the

[9] Revised Draft Report page 48

relevant parties as in most cases, the carrier equipment will all be located within an existing fenced compound. It would not be an acceptable outcome for the industry if implementation of this recommendation was delayed by 8 plus years by the CLMAs[10] and even then, only partially implemented, especially since the recommendation has been delayed since the last review in 2019.

As outlined above, a simpler solution, which is easy to implement, would be for all existing co-user fees to be removed and then, moving forward, a co-user fee would only be applied when a co-user licences additional land. This could be implemented by July 2025.

6. Co-users are to pay a co-user fee that is set at 50% of the primary user's rental fee where they licence additional land outside the primary user's compound

We reiterate the need for all rents to be based upon the unimproved value of the freehold land, including additional land outside the primary user's compound. A 50% arbitrary charge does not align with property valuation principles and has no precedence with other Crown tenants or in the private market. We support the 2019 recommendation of a per square metre rate for any additional land required.

We are concerned that in response to a removal of co-user fees for co-user's located in the primary user's compound, CLMAs may start licencing much smaller parcels of land to primary users pushing co-users into additional compounds for huts and other ancillary infrastructure. Infrastructure providers in the private market seek compounds of at least 150m2 as our business model is to develop multi carrier communication facilities. If the CLMAs were to require infrastructure providers only to develop small compounds for only one user, in an attempt to gain future co-user fees, this would be contrary to Commonwealth government policy and requirements where multi tenanted outcomes are encouraged.

The current private market rates are for land parcels that include ample area for co-location. If Crown licence areas are reduced, then rents must also be reduced.

7. The co-user discount rate be considered as part the next rental review

We object to the phrase "co-user discount" in this context. We reiterate the need for all rents to be based on the unimproved value of the freehold land, including additional land outside the primary user's compound. To categorise this charge as a "discount" is misleading and not useful.

8. Primary users deploying small cell and other similar technology on existing, non-communication infrastructure are to pay rent of $2,000 per annum where:

a. the infrastructure is owned by the land management agencies; or

b. the small cell is deployed on another entity's infrastructure, but a small amount of additional land (not more than 7.5 square meters) is required.

Amplitel supports the position put forward by the mobile carriers in relation to this recommendation.

9. Communication sites located on a rooftop are to pay:

a. the relevant density category rental fee

b. plus an additional charge of $3,380 per annum if they are in the Sydney density category.

[10] DPHI Submission page 4

It appears that IPART is suggesting that the first co-locator on a rooftop would pay the primary user fee in the relevant density category, and a premium on top of this in the Sydney category, instead of the existing practice of each co-locator on a rooftop paying a co-user fee in the relevant density category.

We do not agree that an arbitrary additional charge should be applied in any category. We note the comment in the Revised Draft Report that an additional charge is applied as rooftop sites are 'valuable to users'[11]. This is not a recommendation based on land valuation principles and value to the tenant should not be a relevant consideration when setting rents. We remind IPART that the IPART rent schedule is often applied by private landlords, councils and other government agencies, including outside of NSW and so, even though rooftops are rare on Crown land, the approach may be adopted elsewhere. IPART needs to be cognisant of this fact and should remove this arbitrary premium.

10. The following primary user fees per annum be adopted for communication sites in each density classification:

Sydney	High	Medium	Low
$36,915	$31,012	$17,251	$8,793

Amplitel is of the view that these rates are still too high when compared to the unimproved freehold value of the land and recent private market evidence and that IPART has given insufficient weight to the recently agreed market evidence for new sites provided by Amplitel. We acknowledge the requirement in the Terms of Reference for a minimum of 500 points of reference and understand why IPART has decided to consider the renewal lease evidence. However, it was not apparent from the Revised Draft Report that sufficient weight was given to the recently agreed new site evidence. Contrary to IPART's finding, it is Amplitel's view that the renewal evidence is 'holdup' lease evidence and, to align with recognised land valuation principles, this should have had less weighting due to the investment in the site by the lessee.

Use of renewal and sequential lease data

We refer to section 2.3 of the Revised Draft Report (***Industry recommends excluding renewed and sequential leases***). The Australian Property Institute and International Valuation Standards hierarchy of evidence 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.

We note IPART's findings on the availability of non-confidential new lease data.[12] Amplitel maintains there is sufficient true recent market evidence available to determine a fair current market rate. We accept that older sequential leases can be used if further evidence is required, however, valuation standards dictate that these rentals must be adjusted and weighted accordingly, with a downward adjustment. It does not appear that IPART has taken this approach and as a result, rents remain at unreasonably high rates. We again put forward the recent new lease data we have previously provided to IPART as evidence of appropriate rent rates.

11. The published fee schedule is to be independently reviewed every 5 years to ensure it continues to reflect market conditions.

[11] Revised Draft Report page 5

[12] Revised Draft Report page 21-22

We agree with this recommendation.

12. If IPART is to be provided a future referral to recommend rents for communication towers on crown land the referral should:

a. Explicitly state the reason for referring the review to IPART

b. Be under section 12A of the IPART Act so that our information gathering powers are available

c. Broaden the scope to include investigating the range of fees and charges imposed by the land management agencies

d. That the 3 land management agencies improve their records, so they have information on whether co-users rent additional land and the additional costs associated with telecommunications towers in national parks.

We agree with this recommendation.

In any review, it is critical that IPART has the authority to take into account all relevant evidence, including the benefits generated by telecommunications. CLMAs must maintain accurate records of leases and co-users and to that end, we agree with IPART's statement that the Crown should have accurate records. We note the submission from the Crown that it would take $5.5M and 8 years plus to implement removal of co-user fees. We point out that at a practical administrative level, CLMAs have access to their own financial records and these are an indication of current co-users present on a site. As stated above, we recommend a simple implementation of IPART's recommendation relating to co-user fees under which the Crown removes of all existing co-user fees and then, moving forward, new co-user fees are only applied in circumstances where additional land is licenced. We are concerned by the CLMAs' submissions and the appearance that they will look at every opportunity to delay implementation of removal of co-user fees due to claims of administrative burden and records failures.

The NSW Government should consider the future approach for determining rents on communications sites. The members of IPART are not property valuers and, in our view, have not given sufficient weight to recognised land valuations principles and the recent market evidence provided by the industry. IPART itself points out that the Terms of Reference do not set out the policy intent of engaging an independent regulator to recommend fees. The Revised Draft Report acknowledges that an IPART review in fact provides protections to the CLMAs due to the fact that the communications industry has no ability to object to the rent determinations,[13] a right granted to other users of Crown land. It is Amplitel's view that continued IPART review under the current framework is the perpetuation of this discriminatory regime.

13. The rental fees set out in recommendation 10 are to be escalated by 3% per year in line with current private market practice. Existing licences are to adopt the escalator as they are renegotiated.

We note that IPART's analysis of the current market rates has taken place in 2024/2025 and yet the rate is to apply from 1 July 2023. This means that the rate will have had 2 escalations at 3% before it applies in July 2025. It is Amplitel's view that this rate should be effective from 1 July 2023 but the escalations in July 2024 and July 2025 should be waived. The industry has been denied a market rent review for 11 years and it is clear in the Final Report issued under the 2019 IPART review that the rates exceeded market at that time. Since then, the CLMAs have had the benefit of high CPI escalations which have been out of line with the 3% now recommended.

[13] Revised Draft Report page 3

We note that IPART acknowledges that Low density sites in the private market have escalated less than 3%[14] and yet there is no recommendation for a lower escalator in this category. This is in addition to the lack of adoption of the split of density categories into Remote and Very Remote which has a material impact on rents paid in the most remote locations in the State. On that basis, sites in the Low category (and if adopted, Remote and Very Remote) should have an escalator applied of 2%.

We also note that the proposal is only to apply the rent escalator change on renegotiation of the agreements. Given the recent restructures in the industry, it is highly likely that the carriers and infrastructure providers will have recently agreed long term licences with the CLMAs, being up to 20 years. Waiting until licence renegotiation is not an acceptable outcome and IPART should instead recommend that all existing agreements be varied to apply the new escalation rate and that CPI should no longer be adopted. CLMAs may claim this represents an administrative burden, however, in our view, this can be achieved quickly and simply by varying the relevant head licence.

14. The rental escalator is to be reviewed as part of the next rental review.

We agree with this recommendation.

[14] Revised Draft Report page 40