

15 November 2024

Mike Smart
Chief Economist
Independent Pricing and Regulatory Tribunal
Level 16, 2-24 Rawson Place
SYDNEY NSW 2000

Dear Mr Smart,

Re: IPART's Review of rents for communication sites on certain Crown land – response to recent Submissions

Amplitel has recently become aware of two additional submissions to IPART which have raised some concerns:

1. Department of Planning, Housing and Infrastructure (the Department) submission, dated 16 October 2024 (**Department Submission**); and
2. NSW National Parks & Wildlife submission, dated 15 October 2024 (**NPWS Submission**).

Department Submission

The Department Submission and the attached "Intelligence Report on Co-User Practices in the Private Sector" (**the Report**):

- seek to justify retention of co-user fees by relying on outdated practices;
- recommend reliance on stale, decades old, evidence in contravention of accepted valuation principles;
- compare private market evidence with unfettered lease rights to share the land, with the NSW Crown land regime where co-user fees must be paid by each user of the land; and
- confuse leases for additional land (out of compound leases) with co-user fees.

In addition, the Report is written by a party whose sole shareholder is reliant on maximising telecommunications rentals and therefore has a conflict of interest.

Sliver Leases are NOT Evidence of Co-User Fees in the Private Market

- Sliver leases were a historical arrangement which arose as a result of commercial arrangements between the carriers and the industry competitive landscape at the time, not as a result of a demand from a landowner for a direct arrangement with every party on site. The carrier that owned the tower did not want to take on liability for the co-locating carriers and the co-locating carriers put sliver leases in place to secure registerable rights on the title and step up rights to the tower.
- As IPART is aware, the structure of the industry, together with the competitive landscape has changed in recent years and as a result, carriers can now satisfy commercial and competitive requirements via access arrangements with the infrastructure owner. Amplitel is not aware of any carriers entering into new sliver leases for many years. Whilst some sliver leases remain on foot, these have been retained to maintain good relationships with private landowners.
- Amplitel is aware that the carriers have programmes in place to terminate remaining sliver leases.
- As an example of the historic nature of these sliver leases, the sliver leases with Optus and Vodafone at Widgiewa (Appendix 3 Example 4 in the Report) originally commenced in July 2001. Rents have compounded on these sites over 23 years and in no way represent current market evidence or current industry practice and consideration of such is in complete contradiction of valuation principles. These sliver leases are legacy arrangements which are NOT repeated in the current market (as demonstrated by the recent market evidence Amplitel supplied). A historic title search is available on request as proof of the above.
- The conclusion in the Report (page 5) that "*modifying long-standing Co-User fee structures would be premature without first understanding how the private market will adapt*" misrepresents the current market dynamics. The private market has "*adapted*" and this has included abandonment of the sliver lease approach.
- The Department and the author of the Report should refrain from suggesting decades old evidence is an appropriate comparator.

Out of Compound Leases for Additional Land are NOT Evidence of Co-User Fees in the Private Market

- Out of compound leases do not represent co-user fees.
- Out of compound leases are for additional land outside of the leased area. We repeat the fundamental property principle that the same land cannot be leased twice.
- No additional rental (co-user fee) is payable for users located within the tower lease compound on private land.

These conclusions were correctly identified and articulated in IPART's 2019 Final Report.

Notably, no additional rental or co-user fees are payable by the anchor tenant in the private market e.g. Telstra as the co-locator on an Amplitel tower. Applying co-user fees on a single carrier infrastructure site has resulted in a 50% windfall gain to the Crown Land Management Agencies (**CLMAs**) with no physical change on site.

The ample recent private market evidence provided by Amplitel to IPART clearly demonstrates that co-user fees are not payable for colocation within the primary user's leased area.

Valuation hierarchy of evidence

We note the Department's submission that older agreements are "*perfectly valid for consideration... provided they are still current*" and "*using older agreements or rollover leases is especially valid where there is an insufficient number of new agreements to create a statistically significant dataset that represents the entire market.*"

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 direct IPART to Amplitel's submissions in relation to the relevance of new site data for IPART's benchmarking purposes. The new site data provided by Amplitel via the IPART process, together with new site data provided by other industry parties would represent a significant and reliable body of new site evidence.

Renewal and rollover lease evidence, which in this case is decades old, must be ignored as newer evidence is available. Importantly, in terms of its reliability as a valid comparator, the lessee cannot act without compulsion given its existing investment in the site and the cost and disruption associated with moving from the tenancy.

There would seem little benefit in using "older agreements" given the significant downward adjustments that would be required to ensure these are directly comparable to the new site evidence.

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 these rents, further downward adjustment must be made to reflect the more onerous Crown conditions of occupancy.

These concepts are clearly explained in the paper headed "Determining Market Rent" which was Annexure A to Amplitel's Submission in response to the Draft Report. A copy is attached for convenience (**Attachment A**).

Total Site Solutions trading as siteXcell is not an Independent Expert

- siteXcell is a wholly owned subsidiary of Everest Infrastructure ANZ, as evidenced by the attached ASIC Current Company Extract dated 14 November 2024 (**Attachment B**). Everest Infrastructure ANZ [Home - Everest Infrastructure Partners AU](#) acquires land rights under existing telecommunications towers and as a result, it relies on maximising communications site rentals. This relationship has not been disclosed in the Report.
- Amplitel notes the following statement on Page 24 of the Report:

"IPART has indicated that they are considering lowering or abolishing the Co-User rent fees. siteXcell has been tasked with producing evidence of Co-User agreements to support Crown Land's position on the retention of Co-User licences for co-locating parties sharing a Primary Licence compound."

IPART appears to have shared some information with the CLMAs about its intentions to remove co-user fees and provided another opportunity to the CLMAs to comment on this. By its own admission, the Report is written in an attempt to justify "retention of Co-User licences" rather than to independently source and comment on current market evidence and practices and report on that.

- In any case, the Report fails to justify the retention of co-user fees or demonstrate that co-user fees exist in the private market. As explained above, neither sliver leases nor out of compound leases represent evidence of co-user fees in the private market.

On the basis of the above, IPART should disregard the Report in its entirety.

NPWS Submission

Amplitel notes that the NPWS Submission focuses on cost coverage, a concern that the public would be subsidising private telecommunication company activities and the inherent value of NPWS land. NPWS has failed to recognise in any way the public benefit provided by critical infrastructure in national parks and surrounding areas particularly in light of the digital connectivity and disaster related benefits that mobile telecommunications services bring to these locations.

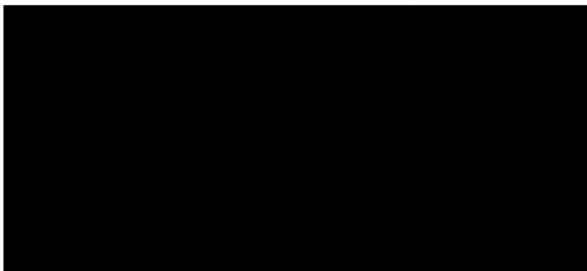
Amplitel encourages IPART to impartially review the current market evidence and deliver a finding which will not leverage the monopoly landowner position enjoyed by



the CLMAs and which recognises the tangible benefits connectivity and telecommunications bring to the State of NSW.

Amplitel remains available to provide any assistance to IPART and to provide any further information required.

Your sincerely,



Jane Pollard
GM Property
Amplitel



8 August 2024

██████████
National Property Manager
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:

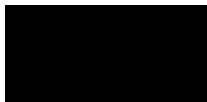
In assessing market rent the valuer should consider the most appropriate evidence in the marketplace. The circumstances where the lease was entered into are also relevant. There is a hierarchy to weight that is placed on evidence. That priority is:

- 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



David Sullivan BBlec, MRICS, AAPI, CPP, CPV
API Member Number 68400
WA Registered Valuer No 44761
QLD Registered Valuer No 3795MR
Director



ASIC

Australian Securities & Investments Commission

Current Company Extract

Name: TOTAL SITE SOLUTIONS PTY. LTD.

ACN: 112 332 359

Date/Time: 14 November 2024 AEST 12:37:19 PM

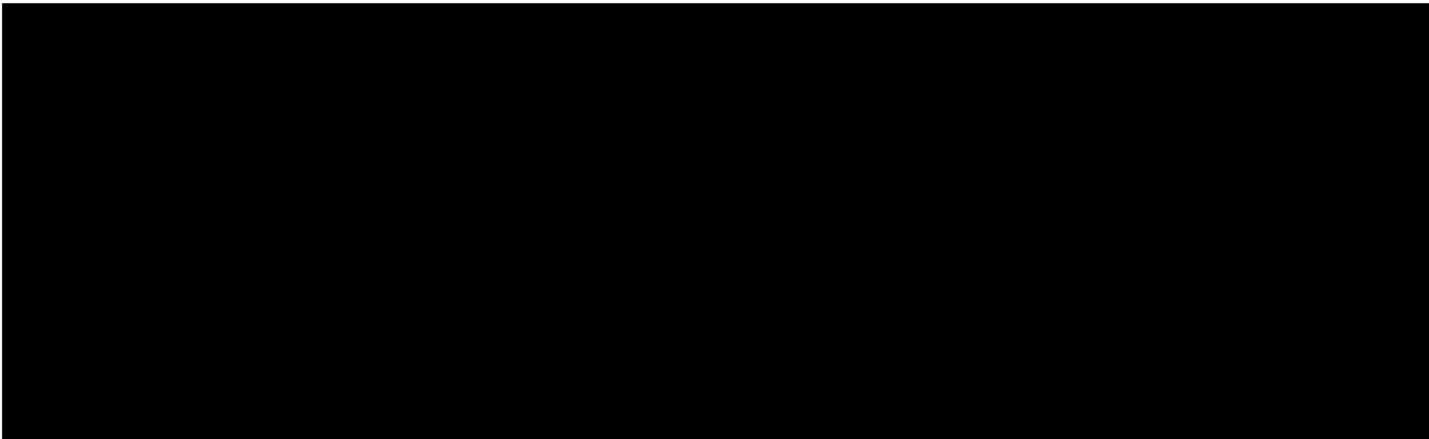
This extract contains information derived from the Australian Securities and Investments Commission's (ASIC) database under section 1274A of the Corporations Act 2001.

Please advise ASIC of any error or omission which you may identify.

EXTRACT

| Organisation Details | Document Number |
|-------------------------------------|--|
| Current Organisation Details | |
| Name: | TOTAL SITE SOLUTIONS PTY. LTD. 1E0553542 |
| ACN: | 112 332 359 |
| ABN: | 46112332359 |
| Registered in: | New South Wales |
| Registration date: | 25/12/2004 |
| Next review date: | 25/12/2024 |
| Name start date: | 25/12/2004 |
| Status: | Registered |
| Company type: | Australian Proprietary Company |
| Class: | Limited By Shares |
| Subclass: | Proprietary Company |

| Address Details | Document Number |
|--------------------------------------|--|
| Current | |
| Registered address: | Suite 801, 203 Robina Town Centre Drive, ROBINA QLD 4226 6ECK64106 |
| Start date: | 09/06/2023 |
| Principal Place Of Business address: | Suite 801, 203 Robina Town Centre Drive, ROBINA QLD 4226 6ECK64106 |
| Start date: | 31/05/2023 |



Note: For each class of shares issued by a proprietary company, ASIC records the details of the top twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the top twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

Name: EVEREST INFRASTRUCTURE ANZ PTY LTD
 ACN: 646 516 761
 Address: Suite 801, 203 Robina Town Centre Drive, ROBINA QLD 4226

| Class | Number held | Beneficially held | Paid | Document number |
|-------|-------------|-------------------|-------|-----------------|
| A | 33 | yes | FULLY | 6ECK64106 |

Name: EVEREST INFRASTRUCTURE ANZ PTY LTD
 ACN: 646 516 761
 Address: Suite 801, 203 Robina Town Centre Drive, ROBINA QLD 4226

| Class | Number held | Beneficially held | Paid | Document number |
|-------|-------------|-------------------|-------|-----------------|
| ORD | 100 | yes | FULLY | 6ECK64106 |



| Class | Number held | Beneficially held | Paid | Document number |
|------------|-------------|-------------------|------------|-----------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| | | | | | |
|------------|------------|------------|------------|------------|------------|
| | [REDACTED] | | | | |
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[REDACTED]