Department of Planning, Housing and Infrastructure

Our ref: DOC24/387875

Fiona towers

Independent Pricing and Regulatory Tribunal

Via email: [redacted]

11 November 2024

Subject: Factual check of embargoed final report on review of rents for communication sites

Dear Fiona,

Thank you for the opportunity to review the embargoed copy of your final report on rents for communications sites on Crown land (IPART report), for factual errors. The feedback below is from the three land management agencies and details 5 fundamental points we would like to draw to your attention.

1. Given the effects of the significant changes that have occurred in the industry are still unknown, removal or reconstruction of co-user fees is not substantiated by evidence.

As you are aware, significant changes have occurred in the telecommunications industry over recent years, including the divestment of tower infrastructure. These changes have altered the dynamics of co-location practices, pricing, and utilisation of strategic sites, particularly on Crown land. Given the effects of these changes are still unknown, removal or reconstruction of co-user fees irrespective of where equipment is located is not substantiated by evidence and is arguably premature.

Instead, the land management agencies concur with the conclusions drawn from the data analysis completed by siteXcell that were referenced in the embargoed final report. They state that there is sufficient and clear evidence that co-users are still paying rent to private landowners irrespective of whether their equipment is located within a primary user's leased area. They concluded that there is little to no meaningful evidence that the recent divestment of tower infrastructure has altered this practice.

Any changes to co-user fees should be considered in future reviews. This would allow time for the changes in the industry to bed down and enable the capture of the necessary information to substantiate any future changes to co-user agreements to reflect actual experiences in the market.

2. The land management agencies note that IPART's conclusion that they "..have not seen evidence of a co-user paying rent if they are wholly located within the primary user's compound", is incorrect.

The siteXcell evidence shows ***that co-users are willing to pay a significant proportion of the primary-user rent to private landowners via an adjoining sliver lease, even though their 'equipment' is wholly located within the primary users' compound.*** On page 7 of the siteXcell report, they state that:

> *'[Their evidence] shows that Carriers consistently enter commercial agreements with landlords for co-location, regardless of equipment placement. The evidence even shows that this form of co-user arrangement has even received a lower discount and resulting higher rent, of up to 86% of the primary rent, in the private market.'*

To clarify the function of sliver leases, page 16 of the siteXcell report notes a sliver lease is a practical way for co-users to:

> *'Protect their infrastructure, future step-up rights and the intensification of the tower's use whilst locating their equipment shelters within the primary lease boundary.'*

An example of non-operational intent of a sliver lease is provided on the same page:

> *'a small plot of land abutting the compound was leased to secure this direct relationship with the landowner, without the intent of constructing on it'.*

The only difference between a sliver lease and an equipment shelter lease is where the co-user equipment is located in relation to the primary leased area/compound and yet, the value is remarkably close. This shows that the greatest value of the rent paid to private landowners is not land use, but rather to establish a direct relationship with the landowner, to ensure protection over infrastructure and rights to tower use, should the primary user default.

3. Co-user benefits are not adequately considered in the IPART report

Co-users derive significant benefits from their use of Crown land, regardless of where their equipment is located. These advantages are not adequately reflected in the IPART report.

It is crucial to recognise that co-users receive tangible and direct benefits from utilising public land and resources. The report confuses benefits with compensation for land use and does not recognise that co-users are essentially paying for the advantages of using public land for commercial gain. The exclusive benefits derived from the use of public assets and resources are not sufficiently acknowledged in the report.

Eliminating rents based on the assumption that co-users do not occupy additional land overlooks the commercial advantages they gain from access and co-use of public land. These benefits include access rights, maintained roads and protections during bushfire events.

4. The IPART report does not adequately consider the costs or complexity of reviewing current co-user agreements. This does not comply with the terms of reference, which require recommendations that are straightforward to implement.

When suggesting changes to the co-user fee schedule, the IPART report has not fully considered the complexity or cost of implementing the recommendation.

4.1 Complex to implement given challenges with data availability

4.1.1 Our licence regime does not rely on a primary user compound definition

The current agency licencing regime does not require a 'primary user compound' to be defined, unlike most private landowner leases. IPART's assumption that land management agencies can simply implement their primary user compound concept to the existing licencing framework is incorrect. Licences do not merely cover the fenced areas; they also encompass Asset Protection Zones (APZs) and access roads. Some sites lack fenced areas or contain multiple towers, meaning that the fence is not always the boundary of the licence area or the primary user's operational area.

4.1.2 Historical records are not easily accessible

In conversations with IPART, Crown Lands explained that determining where licenced co-users locate their equipment in relation to a primary user compound would require a manual review of each licence. As a result, Crown Lands was unable to provide this information within the review timeframes.

To understand the actual impact of transitioning and implementing the proposed co-user framework, extensive historical site analysis of each co-user licence would be required to identify changes to site footprints over long periods of time. The information to conduct this analysis is not required to administer the current framework and is therefore, not currently available or easy to obtain. For Crown Lands, some of these tenures are up to 60 years old and most of the historical records necessary for this analysis are currently in archives. Some of the evidence required may no longer exist due to the age of some tenures, noting that this level of detail has not been required for the current administration of these tenures.

The situation is similar for NPWS, where millions of hectares over the past decades have been gazetted as national parks reserve. This expansion of reserved land has resulted in NPWS taking over the management of land from other agencies, councils, and private landowners, which contain communication sites governed by a range of permits, licences, or informal agreements. Like Crown Lands, NPWS records are dispersed across multiple locations depending on the original owner or manager of the land, and in some cases, original records may not exist at all.

4.1.3 The rapid advancements in the telecommunications industry are not fully captured in existing records.

Technological changes sometimes necessitate the rebuilding of towers and the expansion of compounds, especially following bushfire events. Additionally, fenced areas do not represent surveyed boundaries or a clear definition of the primary user's operational area, further complicating the implementation of the proposed recommendation regarding co-user fees.

4.2 Cost to implement the recommended change

It is estimated that the time required for data collection, analysis and determination of each licence would be on average 5 days, leading to a multi-year project.

Conservative estimates indicate the cost to Crown Lands alone would be over $5.5M and would take 8+ years (even with additional resources) to assess all co-user licences. NPWS and Forestry estimate a similar cost/time per licence for their estates.

Crown Lands Activity	Required	Cost
Analysis of 823 co-user licences @ 5 business days per licence = 8.23 years with 2 FTE	G9/10 - $138,510 pa G7/8 - $122,058 pa	($138,510 + $122,058) x 8.23= $2.21M (incl 3% wage increase)
Surveys for 60% of licences (493)	493 surveys	$5,000 x 493 = $2.47M
Archive costs	Archive requests for 823 licences (includes resourcing costs)	$1,000 x 823 = $.823M
Total		$5.5M

The cost and complexity of this task does not comply with the scope of the IPART report, which requires recommendations to be straightforward to implement.

5. Potential loss in revenue

IPART has not adequately acknowledged the financial impact to Government. If the land management agencies were to implement the proposed recommendation to change co-user fees, the total loss of revenue could be as high as $7.45m per annum (excluding implementation costs noted above):

- $6m for Crown Lands
- 650k for National Parks and Wildlife Service (NPWS)
- 800k for Forestry Corporation of NSW.

Next steps

As you are aware, the Premier's Office has granted IPART an extension to Thursday 21st November 2024 for submission of the final report. If you need more time, please do not hesitate to contact me to request a further extension.

The land management agencies are available to meet with you to discuss this feedback in more detail prior to the Tribunal meeting and the final submission.

Yours sincerely,

Claudia Huertas

Executive Director Customer & Systems
Crown Lands & Public Spaces