



nbn's submission to IPART: Review of rents for communication sites on certain Crown land, Issues Paper

2 April 2024

Final



Thank you for the opportunity to comment on the issues as set out in the Independent Pricing and Regulatory Tribunal's (IPART) 'Review of rental arrangements for communication towers on certain Crown Land, Issues Paper, February 2023' (Issues Paper).¹ We set out our response below and would be happy to discuss.

Introduction

nbn's purpose is to lift the digital capability of Australia. **nbn** was established in 2009 as a Government Business Enterprise, to provide fast, reliable and affordable connectivity and to enable Australia to seize the economic opportunities before it and service the best interests of consumers. It remains the principal responsibility of **nbn** to operate and continue to build, and upgrade, the **nbn** network in accordance with the expectations of the Government.

nbn's consideration of communications towers is focused on supplying wholesale fixed wireless (**FW**) broadband services, ensuring **nbn** meets the Federal Government's Statement of Expectations, and our obligations as the default Statutory Infrastructure Provider (**SIP**) across Australia.²

nbn is required by legislation to operate as a wholesale only, open access, non-discriminatory operator. In doing so, **nbn** has developed wholesale products that Retail Service Providers (**RSPs**) use as inputs to their own retail products. This approach seeks to help level the playing field in the Australian telecommunications industry, enhancing competition and innovation and providing greater choice for customers across the country.

nbn is currently undertaking work to deliver its Fixed Wireless and Satellite Upgrade Program, designed to benefit homes and businesses with the majority in regional areas. In 2022, we announced a \$750m investment in the **nbn** FW and satellite network, comprising a Federal Government contribution of \$480m and \$270m by **nbn**. This investment will allow **nbn** to fast-track an uplift of the performance of the FW network. **nbn** will use the latest 5G technology to vastly extend the range, speed and capacity of its existing FW network, while reducing latency, to deliver the best possible customer experience. Importantly, as a result of recent advances in 5G technology, and in particular **nbn**'s extensive testing and future implementation of 5G millimetre wave technology, the enhancements will be delivered primarily using the existing network of **nbn** FW towers.³

[C-i-C] [C-i-C]

nbn has also created a dedicated fund to co-invest with governments and local councils to continue to enhance broadband services for Australia's regional and remote communities.⁴ **nbn** has recently entered into a \$50 million agreement involving funding from the NSW Government's Gig State Project announced in March 2023.

This project will construct or co-locate **nbn** equipment on 56 new FW towers and deliver enhanced **nbn** broadband services to over 11,000 homes and businesses across 46 locations in regional NSW.⁵ NSW Crown land

¹ We have used the term NSW Crown land sites to encompass sites that are managed by the three NSW land management agencies that are within the scope of IPART's review: 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) – a state-owned corporation.

² NBN Co Limited Statement of Expectations, 19 December 2022.

³ [nbn Fixed Wireless and Satellite Upgrade Program | nbn \(nbnco.com.au\)](https://www.nbnco.com.au/nbn-fixed-wireless-and-satellite-upgrade-program)

⁴ NBN Co Corporate Plan 2024, page 22.

⁵ [NBN regional NSW fixed wireless project | NSW Government](https://www.nbnco.com.au/nbn-regional-nsw-fixed-wireless-project)

sites are likely to be evaluated as potential site locations for a number of these sites along with privately owned land.

Summary

In conducting this review, we believe that the IPART should consider several issues inherent in the current regime that have led to NSW Crown land licence fees becoming increasingly misaligned with 'fair market-based commercial returns' since the implementation of the IPART's 2013 Review recommendations. We note that a number of these issues were effectively addressed in the IPART's 2019 Review recommendations which were unfortunately not implemented. The key issues which the IPART should consider in recommending a new fee schedule are as follows:

- NSW Crown land lease arrangements represent lower 'value for money' when compared to private land lease arrangement. These differences mean that a direct comparison of headline rents paid for NSW Crown Land and those paid for private land can be misleading.
- The lower 'value for money' proposition in NSW Crown land leases is driven by factors including: the ability to increase rent during the term of a lease; the often unimproved nature of the land and consequential high variable cost components relating to permanent power and access; ongoing access track maintenance fees; onerous indemnities; early termination rights; limited exclusive use equipment areas; and the requirement for in-compound co-users to pay additional rent.
- The value proposition offered by NSW Crown land tenure arrangements is further diminished by significantly higher rents compared to **nbn**'s private leases in equivalent locations. (See discussion below under 'Proposal to use the remoteness categories in the ABS' Australian Statistical Geography Standard to set location categories'.)

These factors combine to form a considerable disincentive for **nbn** to select new FW sites on NSW Crown land where technically viable alternatives exist.

In order to mitigate one of the inferior aspects of NSW Crown Land tenure, we would support in principle the IPART making the same recommendations as made in its 2019 review as they relate to co-user fees (with minor amendments to enable ease of implementation). This would recognise the difference in footprint of the user and private land arrangements.⁶

However, as also recommended by the IPART in the 2019 Review generally, we anticipate that significant reductions in current NSW Crown land rents for both Primary User and Co-User arrangements will be required to reflect fair, market-based commercial returns and correct the current disincentives to select NSW Crown land for new FW sites.⁷

We have set out below more detail regarding **nbn**'s FW network and provided additional feedback on the issues that the IPART seeks feedback.

⁶ IPART 'Final Report - Review of rental arrangements for communication towers on Crown land - November 2019', recommendations 11, 12, 13 and 14.

⁷ IPART was of the view that the final recommendations would decrease the revenue that the land management agencies receive for the rental of communication tower sites on Crown land. They are also likely to decrease the rents payable for a large number of the users of these sites. Specifically, lower rents for primary users in existing Sydney, High and Medium, Remote and Very Remote locations, and co-users wholly within a primary user's site. IPART recommended the rents payable by primary users on existing Crown land sites in Sydney, high and medium, remote and very remote locations be reduced by 55%, 46%, 14%, 59% and 94% respectively, and increased by 32% in low density locations.



nbn's FW network

The supply of broadband services over **nbn's** FW network involves data transmitted by radio signals to premises connected to the **nbn** network. Data travels from **nbn's** radio frequency antennas located on a tower, to a **nbn** outdoor antenna fitted to end-users' premises. The operation and upgrade of **nbn's** FW network therefore relies on access to tower sites across **nbn's** FW footprint, which includes metro-fringe, regional and rural areas of Australia.

nbn's FW network currently comprises approximately 2,400 sites nationally in rural, regional and outer-metro fringe areas, with the initial build all but completed. [C-i-C] [C-i-C]

The upgrade paths for the FW network are regularly reviewed to improve the customer experience. This has implications for **nbn's** use of existing sites, with upgrades introducing new technology to improve performance generally every year or two.

Following the completion of the capital-intensive build phase of **nbn's** FW network, operating costs contribute an increasing proportion of overall expenses for the network, driven largely by site rental and maintenance costs.⁸

The Department of Communication's Bureau of Communications Research (**BCR**) determined that **nbn's** FW network is loss-making and non-commercial. In 2015, it estimated that the net present value (**NPV**) loss for FW and satellite services to FY2040 was approximately \$9.8 billion, using a post-tax nominal discount rate of 6.46%. In FY2015 real terms, this loss represented a per-month subsidy of approximately \$105 for each FW premises activated.⁹

In 2020, using BCR's financial model and methodology, the Australian Competition and Consumer Commission (**ACCC**) prepared updated estimates of the financial losses associated with **nbn's** FW and satellite networks. The revised estimated NPV of total expected losses (i.e. losses between 1 July 2009 and 30 June 2040) was \$12.949 billion.¹⁰

Given the loss-making and non-commercial nature of the FW network, it is unlikely that the services offered by **nbn** to bridge the digital divide using its FW network across the entire footprint, including rural, regional and outer-metro fringe areas, would be offered under a normal competitive environment.

We consider that the NSW Government should consider the role that **nbn's** loss-making FW network plays in bridging the digital divide for NSW residents in their homes and businesses in determining the rent that **nbn** pays for NSW Crown land.

IPART issues for feedback

We have provided responses to some of the issues for feedback below.

⁸ BCR, 'NBN non-commercial services funding options: Final report', March 2016, Figure 3: Fixed wireless opex breakdown, FY2011–18.

⁹ BCR, 'NBN non-commercial services funding options: Final report', March 2016.

¹⁰ ACCC, 'Report on modelling of the Regional Broadband Scheme levy initial base component', October 2020, page 15.



Proposal to use the remoteness categories in the ABS' Australian Statistical Geography Standard to set location categories

In considering the proposed market approach to setting rents and fees, **nbn** has undertaken a review of approximately [C-i-C] [C-i-C] NSW FW **nbn** tenure agreements including GIS mapping locations against ABS Australian Statistical Geography Standard (**ASGS**) areas as proposed in this review. Before comparing NSW Crown land and private rents in ASGS areas, it must be acknowledged that NSW Crown lands licence tenure does not provide **nbn** the same value for money as private leasehold tenure and this should be reflected in the IPART's recommended fees. (See further discussion below under 'Details of current rental arrangements for communication sites on private land'.)

nbn has FW sites located in three of the five ASGS areas only, with Remote and Very Remote areas serviced by **nbn**'s satellite network.

Within these three areas, there is considerable variance in site rents suggesting that the market for telecommunications site rents is not particularly well aligned within the ASGS areas. Therefore, **nbn** agrees with the ACCC's finding as part of its Regional Mobile Infrastructure Inquiry that land access costs are highly site specific, with considerable variance in costs across states and territories, areas of remoteness and private and government landlords.¹¹

In order to determine any potential correlation between ASGS areas and rents, we considered average rents in each area. Despite significant variances within each ASGS area, the average **nbn** rents in these areas are highest in Major Cities of Australia, followed by Inner Regional Australia and Outer Regional Australia.

However, the average **nbn** private rents in Major Cities of Australia and Inner Regional Australia are significantly lower than average NSW Crown land rents in those areas based on current rates. Specifically, in Major Cities of Australia and Inner Regional Australia, average NSW Crown land rents are 66% and 26% higher respectively than average private **nbn** rents in the same areas.

The proposed change in area classification to a methodology which uses ASGS areas would lead to a significant change in site specific licence fees. For example, there are a number of sites currently classified in the existing fee schedule as Low and Medium (with an approximate 50/50 split) which are located in Inner Regional ASGS areas. In one example for the **nbn** FW site at Menangle, the existing site licence density classification of 'Low' would change to 'Major Cities of Australia' and presumably the change in fee would be very significant.

Details of current rental arrangements for communication sites on private land

The tenure of **nbn**'s private land rental arrangements in NSW are generally 20 – 25 years with no provisions for a market review of the rent during this term. [C-i-C] [C-i-C]

The significantly different terms and conditions of access to NSW Crown Land (which are typically offered on a 'take or leave it' basis) when compared to **nbn**'s private land tenure arrangements mean that a direct comparison of headline rents paid for NSW Crown Land and those paid for private land can be misleading. The factors driving the lower 'value for money' proposition in NSW Crown land leases are set out below:

¹¹ Australian Competition and Consumer Commission, 'Regional mobile infrastructure inquiry', Final report, July 2023.



- Market reviews - the comparative uncertainty regarding rent payable over the full term of **nbn**'s intended occupation of the NSW Crown land with rent reviews every 5 years, with the rent for private land typically agreed for the total term of the leases or licence, generally 20 – 25 years.
- Significant differences in contract provisions include those relevant to the right to occupy the licensed area, maintenance of access track, indemnities, and termination which are detrimental to **nbn**.
- **[C-i-C]**
 - **[C-i-C]**

There are also often significant construction costs due to the undeveloped nature of Crown land, particularly high variable cost components relating to permanent power and access.

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

We note that the ACCC in its Regional Mobile Infrastructure Inquiry made a number of observations and findings in relation to infrastructure providers. This includes that while the divestments made commercial sense for the mobile network operators, the extent to which the new industry structure could lead to better access to towers, compared to pre-divestment structure, is unclear. In addition, the mutually dependent nature of the anchor tenant relationship means that the mobile network operator and their mobile network infrastructure provider could seek to protect each other's commercial and strategic interests in their commercial arrangements. This could have implications for other related markets.¹²

nbn's experience is that the infrastructure providers have different commercial incentives than the mobile network operators (**MNOs**) in respect of their tower assets, with the main focus on tower revenues. **[C-i-C]** **[C-i-C]**

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.

We understand that the IPART is considering how best to incorporate the social, cultural and environmental value of national park land in recommending rents. We note that in terms of providing a commercial disincentive, the current practice of pricing the sites one category higher than other land agencies does not have this impact given that a national park site cannot be used if there is a feasible alternative site available.¹³

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

We agree with IPART's views in the case of co-users that more than one set of fees may be appropriate to reflect the difference in footprint of the user.

In principle, we support the IPART making the 2019 review recommendations as part of its 2023 review.

- That no annual rent be payable for co-users wholly located within the primary user's site.

¹² ACCC, Final Report, page 63-65.

¹³ [Guidelines for Preparing a Review of Environmental Factors: How to assess the environmental impacts of activities within NSW national parks | NSW Environment and Heritage](#)



- That co-users on existing and new sites be charged for any additional Crown land they occupy outside the fenced perimeter of the primary user's communication tower site on a per metre squared basis.
- That the co-user rent for existing sites be capped at the flat rent per site for primary users on existing sites in the same location category.
- That new co-users of a site pay a one-off application fee equal to 50% of the primary user application fee.

We suggest clarifying that the delineation of the primary user's site be determined as the fenced area at a particular date in 2024 (potentially the same date of the final report).

Private land rental arrangements typically provide **nbn** with exclusive use of the entire compound and no additional payments are required by **nbn** to the land owner in circumstances where arrangements are entered into to enable co-users to use the area *inside the compound*.

In circumstances where a co-user requires use of an area *outside of the compound*, **nbn** considers that rent should be payable only in respect of this area. **nbn** notes that this methodology is applied in respect of Queensland Crown land with co-users not required to pay for the use of areas *inside existing carrier compounds* and that payment is only required for the use of areas *outside of the primary user's compound*.

In respect of primary users or infrastructure providers as relevant, **nbn** submits that the 'exclusive use' area be expanded to cover the entire compound area as opposed to being limited to the equipment footprint only. This would align with typical arrangements in **nbn's** private land arrangements and recognise the improvements generally made by **nbn** such as fencing and earthing of the compound area (placing cabling under the ground).

- On this basis, **nbn** submits that no rent be payable to the NSW Government in circumstances where the co-user is using land *within the compound area (i.e. the expanded 'exclusive use' area)*. [C-i-C] [C-i-C]
- The QLD Government obtains no monetary benefit when carriers sublease part of their compounds to another compound, excluding application fees for example. If a party wants to enter into a co-location agreement with another carrier on a site where the lease is with DNRME, it is permitted provided the parties enter into a formal sublease on DNRME approved terms and obtain the relevant Minister's approval.