NSW GOVERNMENT

Our ref: DOC24/175220

Mr Andrew Nicholls
Chief Executive Officer
Independent Pricing and Regulatory Tribunal

Via email: [redacted]

21 August 2024

Subject: Submission to IPART's 2023 Review of rents for communication sites on certain Crown land

Dear Mr Nicholls

Thank you for the opportunity to make a submission in response to the IPART Draft Report for the above review, released on 15 July 2024. This is a whole of government submission, based on input from the following NSW Government agencies:

- NSW Department of Planning, Housing and Infrastructure — Crown Lands & Public Spaces (Crown Lands)
- NSW Department of Climate Change, Energy, the Environment and Water — National Parks and Wildlife Service (NPWS)
- Forestry Corporation of NSW (Forestry Corporation)
- NSW Government Telecommunications Authority (NSW Telco Authority)

Information about these agencies is provided below.

NSW Government agencies represented by this submission

Land Management Agencies

Crown Lands, NPWS and Forestry Corporation manage the Crown lands subject to this IPART review. This document collectively refers to them as 'land management agencies'.

The land management agencies each manage different categories of Crown land for the specific purposes set out in their respective governing legislation – the *Crown Land Management Act 2016*, *Forestry Act 2012*, *National Parks and Wildlife Act 1974* and, for a small number of communication sites that Crown Lands administers, the *Roads Act 1993*.

Each agency hosts communication sites on that Crown land, sharing the policy objective of achieving a fair market-based commercial return. However, the unique legislative schemes under which they operate impose different management considerations on each agency.

NSW Telco Authority

The NSW Telco Authority delivers critical radio communications to first responders and essential services across NSW. The agency is constituted under the *Government Telecommunications Act 2018*, which also lays out the various functions of the agency including a focus on developing and maintaining the NSW Government telecommunications network.

Comments on IPART's draft recommendations and questions

Draft Recommendation 1: The existing density classifications continue to be used to minimise the costs of implementing the updated fee schedule.

The existing density classifications are a simple and effective way of aligning communication rent with market-based values, factoring in commercial revenues in high-density areas and ensuring that lower density areas remain commercially viable for communications sites.

Question: Should the current density classifications be updated to reflect changes in the ABS' Australian Geography Standard?

IPART has asked for evidence of the costs and benefits of updating the classifications to reflect changes in the ABS' Australian Geographic Standard.

The existing density categories are defined under old ABS standards with demographic data that is over 10 years old. As well as general population growth over the decade, additional population movements to regional areas during COVID have likely resulted in changes to urban population centres. Updating the Urban Centre Localities (UCLs) to align with the current ABS demographic data would be straightforward for the land management agencies to implement. There are no objections to the proposed update.

In its 2018 review of communication sites on Crown land, IPART recommended the removal of the 'Sydney' density category and the addition of two new 'remote' and 'very remote' categories. These recommendations would increase the complexity of the density category classification, which was a contributing factor in the non-acceptance of the 2018 recommendations by the NSW Government.

In relation to the current review, complex changes and additional categories would necessitate system enhancements and create an increased administrative burden for agencies during implementation, which are contrary to the review's terms of reference for this review and not supported.

Draft Recommendation 2: That National Parks and Wildlife Service's approach of setting rental fees one category higher should continue.

National parks contribute positive environmental, economic and cultural outcomes for the people of NSW. Limiting the impact of built assets and unnecessary human intervention in these parks is vital to retain the positive outcomes they deliver and ensure the objects of the *National Parks and Wildlife Act 1974* are upheld.

The management of telecommunications sites within environmentally sensitive areas, such as national parks, presents a multifaceted and demanding challenge. While environmental assessments can mitigate the impact of these sites, they cannot eliminate all adverse effects. The oversight responsibilities range from ensuring adherence to environmental safeguards, maintaining the integrity of restricted-access fire trails, which are essential for emergency and firefighting vehicles, and the critical management of invasive weeds. It is essential that many trails remain uncompromised despite the increased vehicle traffic associated with the communications sites. Concurrently, effective weed management is essential to prevent the spread of invasive species that can threaten the biodiversity and health of ecosystems around these sites and along the access trails.

Given this, land management agencies are of the view that communications sites should not be placed within national parks, except where no viable alternative is available. Where this does occur, the value of the land is automatically decreased, and and it is reasonable to increase the associated rental fees to help offset this.

NSW valuation principles recommend land valuations account for the '*highest and best use'*[1] of the land. For most land on the Crown estate and in the private market, development or improvement on the land results in a higher valuation, as does the lands' potential for development for certain purposes.

The objects of the *National Parks and Wildlife Act 1974* legislate the highest and best use of national park land is through the conservation of nature and cultural value within the landscape. The value of national parks lies in their untouched and pristine state.

From a conservation perspective, national park land is more valuable *without* a communication site present. The higher rent accounts for the devaluation of national park land, simply by virtue of the communication site being present within the park.

Question: To what extent do communication sites on lands reserved for conservation, including in national parks, create higher environmental costs? For example, do they cause greater mitigation and conservation costs?

There are additional costs associated with maintaining critical fire trails and additional pest and weed management due to increased human incursion. However, these do not form the basis for the policy used to set rents higher in national parks.

Draft Recommendation 3: Co-users continue to pay a co-user fee that is set at 50% of the primary user's rental fee.

A co-user fee reflects the higher usage intensity of a telecommunication site while acknowledging that co-users are lower impact than the primary user, particularly from a construction and maintenance perspective.

Under the *Crown Land Management Act 2016*, *National Parks and Wildlife Act 1974* and *Forestry Act 2012*, all entities operating on Crown lands are required to have authorisation to occupy and utilise the land. Land management agencies issue licences for telecommunications sites. Applying a co-user fee for these tenures that is 50% of the primary user fee reflects the lesser impact of the additional tenure compared to that of the primary user, but also accounts for the increase in the land use intensity for the site as a whole.

In 2021, a general review of telecommunications sites on Crown land was undertaken by the land management agencies that indicated co-user agreements also exist in the private telecommunications market. IPART should undertake its own investigations to satisfy themselves on this point before submission of the final report of the review.

Draft Recommendation 4: Co-user fee be extended to primary users deploying small cell and other similar technology in recognition of their similar land use.

In instances where small cells are placed on primarily non-communication sites, such as light poles, it is appropriate to charge only a co-user fee. However, where there is no supporting structure in place and an organisation must establish the structure (such as a lattice tower, monopole, or other structure), to attach 'small cell' technologies, the organisation would be charged a primary user fee.

Clarification is needed regarding the intent of this recommendation and how 'small cell' technology is defined.

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[1] https://www.nsw.gov.au/housing-and-construction/land-values-nsw/why-land-values/how-land-valued-nsw

Question: What is the likely impact of IPART's proposed pricing for small cell technology on the rollout of 5G networks?

Due to the limited range of small cell technology, the technology is likely used more often in urban and highly populated areas. NSW Government land agencies have a much smaller footprint in densely populated regions in comparison to their estates at large. It is unlikely the proposed pricing method for small cells on Crown lands would materially affect the roll out of 5G networks, as only a small portion of these 5G networks will be based on Crown land.

Draft Recommendation 5: Communication sites located on a rooftop are to pay $3,821 in addition to the fee for the relevant density category.

Clarification is needed on when and how to apply this proposed rooftop fee.

The NSW Telco Authority has concerns around the definition of rooftop sites. For example, a radio broadcast antenna located towards the top of a building, but on a vertical wall, is functionally the same as one on the roof of the building. Clarification is needed around whether IPART defines both these sites as 'rooftop' sites.

Guidance is also needed as to the impact of this additional fee on the current charging practice of land management agencies for roof top sites. These agencies charge rooftop sites a co-user fee, which is 50% of the fee for the relevant density category. It is unclear whether draft recommendation 5 would see this practice replaced entirely, or whether IPART envisages that the new fee of $3,821 would also be subject to a 50% co-user fee reduction, making the fee $1,910.

Draft Recommendation 6: The following primary user fees be adopted for communication sites in each density classification:

Sydney	High	Medium	Low
$36,340	$30,156	$17,012	$8,545

The dataset used to calculate the proposed primary user fee schedule appears to be consistent with the review's terms of reference request that IPART use a statistically significant dataset. However, the proposed fee schedule represents a substantial reduction in the overall rents received by the land management agencies. Applying these rents to the FY23/24 licence portfolio of the land management agencies results in a reduction in gross rents of $2.2 million across the three agencies. Land management agencies are required to charge a fair return for the State for the use of public lands and assets and the revenue generated is reinvested in critical land management activities.

The land management agencies seek further explanation and detailed information about what IPART is relying on to set these fees and what factors, in IPART's view, are driving the changes in market conditions that would warrant a reduction in rent.

Draft Recommendation 7: The published fee schedule to be independently reviewed every 5 years to ensure it continues to reflect market conditions

Since 2005, the NSW Government has engaged IPART to conduct reviews of rents for communication sites on Crown land to ensure they reflect market conditions.

Draft Recommendation 8: Rental fees set out in draft recommendation 6 are to be escalated by 3% per year in line with current private market practice

Land management agencies, and particularly Crown Lands, have significant concerns about this draft recommendation.

The agencies use CPI as a fair and accepted method of adjusting rents annually. Changing to a fixed 3% annual adjustment, instead of CPI creates administrative challenges without a clear benefit.

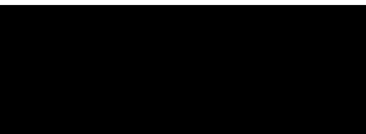
The *Crown Land Management Act 2016* requires Crown Lands to obtain the consent of the licence holder to alter conditions of an agreement. This is built into communication licence terms and conditions, which stipulate that any changes to an agreement must be accepted by both parties.

Existing agreements stipulate that rents are to be increased annually by CPI. Renegotiating approximately 1,400 agreements concurrently would create a significant administrative burden for Crown Lands. If licence holders resist accepting the change, negotiations are likely to be protracted, leading to major backlogs in processing communications licences.

Contact for this submission

If you have any questions or would like to discuss this submission, I would ask that you contact .

Yours sincerely



Melanie Hawyes

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Crown Lands and Public Spaces