

Our ref: DOC25/005723

Mr Andrew Nicholls

Chief Executive Officer

Independent Pricing and Regulatory Tribunal

Via email: [REDACTED]

11 February 2025

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**Subject:** Submission to the Independent Pricing and Regulatory Tribunal (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 revised IPART Draft Report for the above review, released on 13 December 2024. This is a whole of Government submission, based on input from the following NSW Government land management agencies (LMAs):

- NSW Department of Planning, Housing and Infrastructure – Crown Lands (Crown Lands),
- NSW Department of Climate Change, Energy, the Environment and Water – National Parks and Wildlife Service (NPWS), and
- Forestry Corporation of NSW (Forestry Corporation).

Information about these agencies was provided in the submission made to IPART on 21 August 2024.

#### Comments on IPART's revised draft recommendations

##### Revised draft recommendation 4: The NPWS rental fee approach is not to be adopted by the other land management agencies.

Communication sites are also located on some environmentally sensitive land managed by both Crown Lands and Forestry Corporation. At present, Crown Lands administers 28 communication licences on land reserved for the protection of flora and fauna, 8 licences on land reserved for cultural heritage, and 9 licences on land reserved for environmental protection. Around 1.2% (27,500 hectares) of State Forest land is declared as a flora reserve, providing a similar level of legal protection as a national park designation and contributing towards the National Reserve system.

The LMAs recognise that further analysis is needed to accurately determine and quantify the additional costs of managing licences on these sites (including the costs of additional land management efforts needed to preserve their environmental and cultural values). The next rent review could consider extending the NPWS approach to communication sites located on other environmentally sensitive land in the Crown Lands and Forestry Corporation estates, supported by relevant and more detailed cost analyses.

Revised draft recommendations 5 & 6: 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 (5) and 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 of the primary user's compound (6).

Revised draft recommendations 5 and 6 represent significant changes to the current co-user framework and rental fees. Evidence, in the form of a market intelligence report by siteXcell, has previously been submitted to demonstrate the ongoing practice of co-users entering into agreements with landowners to co-locate with a primary user. The LMAs engaged siteXcell to produce the market intelligence report on co-user practices in the private communications market and have concerns about the Tribunal's decision to treat siteXcell's report as a submission by an interested party, rather than a subject matter expert. Considerations that support recognising the siteXcell report as expert evidence are as follows:

- SiteXcell was selected due to their expertise in the communication site rental market, understanding of co-user practices and knowledge of industry trends.
- The siteXcell report is based on analysis of an independent dataset selected and held by IPART. The analysis applied subject matter expertise of the communication site rental market. The datasets are publicly available and the report is transparent on the methodology used, making this a replicable analysis.
- To our knowledge, the data, methodology and analysis provided in the report have not been challenged, nor have any errors or issues been identified with the report's analysis.
- In response to IPART and industry questions regarding potential interests derived by siteXcell from completing this analysis, the agencies and siteXcell have provided information to IPART to demonstrate there are no benefits derived by siteXcell from the conclusions reached in the report (in fact the converse would apply).
- Following a review of additional information provided by siteXcell and an independent review of the procurement process by the Governance division of the Department of Planning, Housing and Infrastructure (DPHI), no conflict of interest was identified and any perceived conflict of interest has been managed appropriately.
- DPHI also took steps to ensure siteXcell's analysis of data and reports was transparent and within the required protocols advised by IPART.

The revised draft recommendations would have significant implications for the LMAs, which would be adversely impacted by the proposed changes in terms of a significantly greater administrative burden and concurrent loss of revenue. The change would result in a significant and immediate revenue loss to Government, estimated at up to \$7.45 million gross per annum (representing a 41% reduction in gross communication licence revenue across all 3 LMAs). Revenue generated from communications licence rental fees provides a fair return to the State for the use and enjoyment of public land and assets by Telco providers. A significant proportion of the revenue generated is reinvested back into public land management activity.

Under these recommendations, rent paid by co-users for the benefit of using public land would no longer be received by the LMAs. In the private market, co-users pay substantial rent to private landholders for in-compound co-location. It would create inequity and market distortion if land management agencies were prevented from implementing equivalent arrangements. The LMAs consider that such significant changes must be validated by market intelligence to evidence how co-users are operating in the current NSW market, including the rent they pay to private landowners, before being adopted and implemented.

The evidence submitted by LMAs from the siteXcell analysis and market intelligence report clearly demonstrates that co-users enter into separate agreements with private landlords (including where their equipment is located wholly within the primary user's lease area / compound) and pay higher rents (than the current 50% rent recommended by IPART) for those co-user arrangements.

Page 39 of the siteXcell report provided to IPART demonstrates that:

- when co-locating equipment inside the primary user compound, sliver leases are used by co-users to 'establish direct tenure rights and as recognition for the intensification of the facility';
- sliver leases are often 1m x 1m and are not used for operational purposes; and
- the median rent paid by co-users for these sliver leases is 86.8% of the primary user's rent.

This evidence supports LMAs continuing to charge co-user fees for the licences they also grant directly to co-users. On that basis, there should be no change to the existing co-user framework without transparent evidence that demonstrates the case for change and parity in arrangements for private/public land.

The LMAs propose that if IPART is not satisfied with adopting the siteXcell report as independent evidence of current market conditions with respect to co-user fees, then IPART should consider commissioning its own analysis to provide evidence to support the change.

**Revised draft recommendation 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.**

The LMAs adjust rents for all tenures annually, including for communications sites, using the Consumer Price Index, and would prefer to retain this approach as it is standard practice across other forms of tenure. A common indexation figure maintains consistency and supports efficient tenure administration. The revised draft recommendation 13 would result in the LMAs administering 2 separate indexation schedules, leading to duplication of systems and resources, and increasing the risk of inconsistent processes being applied across all tenures.

### Additional commentary

The LMAs would like to provide additional commentary in relation to comments contained in the revised draft report for IPART's consideration.

#### Agency data

- Page 3 – *“The review was also constrained by limitations in the records of the land management agencies, who advised they were unable to provide records of the parcels of land licensed to each customer”*
- Page 48 – *“We would expect a land management agency would have records of land usage by its licensees”*

LMAs agencies do not hold data on the precise location of equipment contained on tenured land. While primary user licences will generally have a non-surveyed plan that approximately describes the land subject to the licence, there is no requirement for co-user licences to have such a plan (surveyed or otherwise) included.

#### Costs estimates

- Page 6-IPART comment in relation to the estimates on the revenue reduction for agencies, arising from revised draft recommendations 5 & 6-*“This appears to be an upper-bound estimate based on the assumption that all co-users do not rent additional land”*.

As stated above, the agencies do not hold information around the location of co-user equipment relative to primary user compounds. The estimated reduction in revenue arising from revised recommendations 5 and 6 assumed that all co-users will claim that they are located within the primary user compound and will not need to pay rent. For the reasons provided above, the LMAs have no way of validating this because the framework does not require this information to be captured, held or shared.

Given the current framework administered for co-user rents does not require any distinction between in-compound or out-of-compound location, the following would be required to implement the recommendations:

- more than 800 communication licences would need to be manually reviewed by an employee experienced in historical land status and communication licences;
- many sites would require surveys to accurately determine compound boundaries and equipment location. The assumption used to estimate costs was that 50% of sites would require a survey; and
- document retrieval from State Records NSW and NSW Land Registry Services would be necessary for most sites.

As previously advised, the above activities are estimated to cost more than \$5.5 million for Crown Lands alone.

### Next steps

We appreciate IPART conducting further consultation as part of this review. If you have any questions, please contact [REDACTED]

Yours sincerely,

[REDACTED]

Deputy Secretary, Crown Lands and Public Spaces  
Department of Planning, Housing and Infrastructure