

Department of Planning, Housing and Infrastructure

Our ref: DOC24/053979

Mr Andrew Nicholls
Chief Executive Officer
Independent Pricing and Regulatory Tribunal
Via email: [REDACTED]

28 March 2024

Subject: Submission to IPART's review of rental arrangements for communication sites on certain Crown land

Dear Mr Nicholls

Thank you for the opportunity to make a submission to IPART's Issues Paper for the above review.

The terms for this review request that IPART recommend a fee schedule which:

- is simple and able to be easily implemented by the responsible land management agencies, and
- results in a dollars per site charge that varies by location.

The terms identify matters that IPART is to have regard to, like updating current rents, and matters that are outside the scope of this review, like rebates and area-based schedules. This submission identifies some areas where it appears that IPART's approach goes beyond that remit. Where that is the case IPART will need to adjust its approach to align better with the terms of reference.

This is a joint submission from the NSW Department of Planning, Housing and Infrastructure – Crown Lands & Public Spaces (DPHI), the NSW Department of Climate Change, Energy, the Environment and Water – National Parks and Wildlife Service (NPWS) and Forestry Corporation of NSW (Forestry Corporation), collectively referred to in this document as the '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 tower sites that are administered by DPHI, the *Roads Act 1993*.

Each agency hosts communication towers 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.

As access for communication sites is not always authorised under leases, the land management agencies request that moving forward IPART selects another term (like 'tenure') to capture the range of instruments that can be used to authorise communications sites.

IPART's proposed approach to recommending rents for communication sites

IPART has proposed to recommend rents using a schedule that reflects efficient prices in a workably competitive market. If the term 'efficient' equates to 'fair', and if a workably competitive market means the prices reflect market-based commercial returns, then the land management agencies have no objection to this proposal.

IPART has proposed also that the fee schedule would vary by geographic remoteness (e.g., by using categories in the Australian Bureau of Statistics' (ABS) Australian Statistical Geography Standard). The land management agencies would like further details to understand why IPART is recommending this change.

IPART also proposes that fees would be based upon benchmarking of commercial sites that are like those on Crown land as well as any relevant existing leases for other sites on Crown land (i.e., not communication sites). This is outside the scope of the terms of reference for this review. Other uses, like windfarms, are very different to communication sites and IPART would need to prove how this line of enquiry is relevant.

IPART has also suggested that more than one set of fees may be appropriate to reflect the difference in footprint of the user. The terms of reference for this review are for IPART to recommend a fee schedule that is easy and straight forward to implement. A schedule that is based on area footprint calculations to determine rental values could be costly to implement, both for the land management agencies who would need to establish new systems and processes to administer the schedule (which would also take time to develop and implement), and to telecommunications licences holders who would need to organise land surveys to support applications for licences.

Finally, IPART has suggested that other key elements of the current rental arrangements may be able to be refined or changed to better reflect up to date information on market prices and practices, improve simplicity and transparency, and ensure compliance with the *Telecommunications Act 1997* (Cth). The land management agencies currently use the IPART 2013 fee schedule – a flat rate schedule based on geographic location (density). The agencies consider these arrangements to be simple, transparent and equitable, and question whether alternative approaches would introduce any improvements in this regard.

Interested stakeholders identified by IPART in the paper

IPART has asked to hear from all interested stakeholders such as those who lease land to providers of communication towers, telecommunications carriers, and users of radio communications services.

In addition to those there are other stakeholders who lease Crown land for communication sites such as fixed line Telstra Small Country Automatic Exchange (SCAX) that are also within the scope of this review.

Specific topics identified for stakeholder feedback

1. Data sources

IPART has asked stakeholders whether there are any additional sources of data on rental prices for private land, beyond the NSW Land Registry Services data that they relied upon last time.

It is important for this review that IPART draws on a statistically significant sample size of recent and representative market rentals. The land management agencies believe that engagement with data brokers and analysts with expertise in the telecommunications industry could provide more relevant data from both NSW Land Registry Services and other sources.

The land management agencies encourage IPART to seek tenure information from telecommunication organisations, including infrastructure providers, to cross-reference against data provided by other parties. To achieve the objective of transparency, the agencies expect that IPART will make available the following data in relation to the sites for which comparative rents have been obtained:

- number of sites
- location of those sites
- type of landowner (e.g., private individual, corporate entity, industrial entity).

Any data procured by IPART should be made available for review by all stakeholders.

2. Current rental arrangements

IPART has also asked stakeholders for details of current rental arrangements for communication sites on private land.

The land management agencies support IPART including the private rental market for communication sites in its review to determine a whole-of-market view. IPART should consider that land management agencies do not have access to information about what fees are being paid under similar private agreements and are limited in their ability to negotiate by their governing legislation and budget constraints.

The framework for this review should seek to compare 'like-for-like' sites to determine the state of the competitive market in the telecommunications sphere. As per the terms of reference for IPART's engagement, comparable sites should be limited to telecommunication sites, both on Crown land and private land.

It is important to note that outside of a few legacy leases that are not subject to an IPART fee schedule, the land management agencies do not issue leases for communications sites, preferring instead to issue licences. All licences issued by the land management agencies are done so under the 2013 IPART fee schedule.

As per the terms of reference, IPART should seek to obtain a statistically significant dataset of comparable agreements on private land to ensure that the recommendations are based on up-to-date market intelligence.

3. Treatment of rooftop communication sites

IPART has asked whether rooftop communication sites should be treated differently to other Crown land sites.

It is the land management agencies view that the fee schedule should set rates for rooftop communication sites on Crown land. Currently, there are very few rooftop communications sites on Crown land. Due to the small number, they are charged under a co-user rent but this is likely not reflective of how the broader market prices rooftop communication sites. The land management agencies feel the co-user rent may not be the most appropriate classification for these sites. The appropriate classification of these sites should be determined by analysis of existing sites on private land.

4. Recent changes in ownership arrangements for mobile network towers

IPART has asked whether recent changes in ownership arrangements for mobile network towers has influenced rents.

The major telecommunications companies recently took steps to separate their tower ownership from their core business, either by divesting their towers to third parties through ongoing commercial leasing agreements, or by creating separate entities under the same corporate umbrella to manage towers separately from their other infrastructure, such as radio cells. As a result of these changes, many towers that were previously held by the large telecommunications companies have recently transferred to separate legal entities. These changes are not limited to 'mobile network towers' as TV/Radio broadcaster towers were also divested as well.

Due to the recent nature of these changes, the large-scale effect is still unknown to the land management agencies. However, early indications suggest there may be a necessity for more co-user licences being issued under the new ownership agreements.

As the land management agencies charge rents based on the 2013 IPART schedule, the effect these changes have had on rents in the private sector is unknown.

5. Phasing out of the 3G network

IPART has asked what effect the phasing out of the 3G network may have on rental arrangements.

The land management agencies consider that the phasing out of the 3G network may necessitate changes to rental arrangements to reflect the roll out of further 4G and 5G infrastructure to cover areas previously only serviced by 3G. Due to the more limited range of 5G infrastructure, this will mean more infrastructure to service the same area. Small cell technology may reduce the overall size and land footprint of the infrastructure, but more cells may require licencing. Land management agencies cannot forecast the strategic roll out of mobile networks based on commercial decisions, however it is possible that additional agreements for communication sites may be required. As the increase in 5G technology progresses, it is important that the fee schedule considers the deployment of physically smaller infrastructure on a larger scale.

6. Incorporating the social, cultural, and environmental value of national parks

IPART has asked how best to incorporate the social, cultural, and environmental value of national park land in recommending rents for communication towers in national parks.

Currently NPWS sets the price of their sites one category higher than other land management agencies. Section 153D(4) of 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.

In relation to significant sites, the unique legislative schemes under which the land management agencies operate impose different management considerations. These differences can impact a user's willingness to pay (where, for example, a national park site is the only option available) and can affect a land management agency's willingness to accept a rental arrangement (given such sites often have unique social, environmental, or cultural values that require a higher level of management or consideration).

IPART should consider expanding this consideration to include:

- DPHI-administered Crown land that is reserved for environmental conservation purposes, and
- State forest land that is set aside for conservation and classified under the Forest Management Zoning system with a zone that is similar, in usage, to national parks.

Such lands also hold social, cultural, or environmental value that means a rental price higher than IPART's standard fee schedule could potentially be called for.

7. Market approach to setting rents and fees for co-users and small cell technology

IPART has asked for stakeholder views about the market approach to setting rents and fees for co-users and small cell technology on communication sites on private land.

The land management agencies believe that co-users and small cell technology should be categorised separately in any proposed fee schedule due to the operational differences between them (i.e., small-cells may not be co-located with other infrastructure and co-user equipment may not necessarily be small-cell).

The land management agencies have investigated this relatively recently and found that co-users commonly pay between 75% and 83% of the primary use charge in the private market. On this basis the existing co-user discount of 50% may be lower than it should be. This discount ensures that the total rent charged reflects the intensity of land use by all users on the site. As noted in IPART's 2013 report, the 50% discount was reflective of market subletting practices at that point in time. It is timely for the co-user charge to be updated to reflect current market rates for sites with subletting arrangements.

Previous market intelligence collected by the land management agencies suggests that rents charged for small cell technology on private land may be between \$2,000 to \$5,000 per installation.

The land management agencies' governing legislation generally encourages a 'user-pays' model, and this should be one of the primary considerations when setting fees relating to these sites.

8. Remoteness categories

Finally, IPART has asked for stakeholder views about whether there are any practical implications of using the remoteness categories in the ABS' Australian Statistical Geography Standard to set location categories for fees for communication sites on Crown land.

The land management agencies continue to support a fee schedule based on the existing density model (low, medium, high and Sydney). It provides an easy and straight forward way to reflect the impact of different geographic locations on site value. Significant departures from the location categories (by, for instance, adding or removing categories) could impose a significant administrative burden on the land management agencies in reassessing the applicable category for each site. The land management agencies support IPART using population density figures from the Australian Bureau of Statistics' Australian Statistical Geography Standard as a tool to help determine the value of telecommunication sites on Crown land, with a few caveats and observations:

- The 'Sydney' density category should continue to be used.
- Land managed by NPWS (and potentially some DPPI- and Forestry Corporation-managed land) will differ slightly in its valuation due to legislative requirements referred to above in Question 6.
- Using ABS density figures only considers population and not significant infrastructure or projects that the communication sites are servicing. This may result in high value sites being classified as low value due to population density statistics.
- Introduction of distributed renewable energy sites in non-populous areas may be considered potentially high-value but won't necessarily be captured as such under this modelling.
- Clear definitions will be required for how each category is applied.

These caveats would need to be addressed when applying a density model based on the ABS ASGS.

Contact for this submission

If IPART has any questions or would like to discuss this response, please contact [REDACTED]

Yours sincerely,

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Crown Lands and Public Spaces