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8 August 2024

Subject: Submission to IPART's review of rental arrangements for communication sites on certain Crown Land – NSW National Parks & Wildlife Service response to statements made at the IPART Public Hearing on 30 July 2024

Dear Mr Nicholls

Thank you for the opportunity to make a submission on the IPART Draft Report for the above review.

The National Parks and Wildlife Services (NPWS) manages reserved land in accordance with the National Parks and Wildlife Act 1974 (NPW Act). The National Parks and Wildlife Act (Act) mandates NPWS manage these reserves in the public interest, focusing on three key objectives:

- a) Conservation of ecosystems, landscapes, and Aboriginal cultural heritage
- b) Providing opportunities for recreation and enjoyment of nature
- c) Enhancing our understanding of the natural world and our place in it.

While these objectives are paramount, Parliament has also acknowledged the need to balance them with essential public services such as electricity, water, and telecommunications.

NPWS license the use of telecommunication facilities on reserved Crown land, sharing the Crown Lands policy objective of achieving a fair market-based commercial return. However, the unique legislative schemes under which NPWS operate impose different management considerations on the agency.

This is a submission from NSW Department of Climate Change, Energy, the Environment and Water – National Parks and Wildlife Service, specifically in response to the statements made at the Public Hearing held by IPART on 30 July 2024.

Biodiversity impact and Uplift in NPWS Fees

A claim was made by a representative of a telecommunication company at the Public Hearing that '*...We wouldn't be able to proceed if there was something of detriment that couldn't be mitigated in the DA*'.

1. Environmental assessment

The *Environmental Assessment and Planning Act 1979* and *State Environmental Planning Policy (Transport and Infrastructure) 2021* dictate the planning approval and assessment pathway that

must be adhered to. For proposed telecommunication facilities on NPWS reserved land this planning pathway requires an environmental assessment in the form of a Review of Environmental Factors (REF) to be prepared and submitted as part of the application. Environmental assessments, such as a REF, identify and mitigate impacts on biodiversity and the environment, but do not eliminate them. The presence of a telecommunication facility on NPWS reserved land will have ongoing effects on biodiversity and the environment, and no assessment or mitigation measures can eliminate these impacts.

NPWS reserved land has distinct and unique environmental characteristics that set it apart from Crown Land in general. The purpose of reserving land as a national park is to identify, protect and conserve areas containing outstanding or representative ecosystems, natural or cultural features or landscapes or phenomena that provide opportunities for public appreciation and inspiration and sustainable visitor or tourist use and enjoyment (s30E NPW Act). The installation of a telecommunication facility will impact the stated purpose. While an environmental assessment will ensure no significant impact, long-term impacts such as edge effect, weed infestations, erosion and runoff from the facilities and access roads will occur.

2. Uplift in NPWS Licence Fees

NPWS policy is to apply the rate for one location category above the site's actual category, minus any rebate. This 'uplift' has been consistently applied to account for the fact that NPWS reserved land is an 'environmentally sensitive area' set aside for conservation and protection, and the impacts of telecommunication facilities should be managed and compensated.

In 2003, Parliament amended the NPW Act to give NPWS the power to authorise telecommunications sites on reserved land. However, Parliament made its intention clear that this would need to confer a net financial benefit in favour of NPWS, stating in its Second Reading speech:

- a) *“National Parks should not be seen as a soft option relative to land outside the estate... NPWS [will] negotiate a rental or fee agreement that reflects the commercial nature of the proposal.*
- b) *This is consistent with the whole-of-government review of the licensing and pricing regime for telecommunications sites on Crown lands, and reflects the current practice of government land management agencies with respect to the administration of telecommunications facilities.*

- c) *The receipt of revenue will also benefit the management of national parks as such funds would be dedicated for a range of conservation works”.¹*

Under the NPW Act, all fees and rents must be paid into the NPWS Fund, which is used to fund the NPWS’s statutory functions. As such, the revenue from telecommunications towers goes directly back into the NPWS reserved land.

Managing communications sites located in sensitive natural environments is a complex and resource-intensive task – from monitoring compliance with environmental safeguards, to ensuring that the NPWS’s restricted-access fire trails required by emergency and fire fighting vehicles are not compromised by increased vehicle traffic from communications site users.

If these matters are not appropriately managed the consequences may be serious. NPWS’s ability to host these sites is only feasible where:

- a) its management costs are covered by the site users and
- b) there is a net financial benefit that off-sets the environmental, social and cultural impacts of communications sites.

The ‘uplift’ policy applied by NPWS allows for these matters to be managed and ensures that the NSW taxpayer is not paying for impacts caused by telecommunication companies.

3. Damage done to NPWS land by telecommunications companies and contractors

In response to damage done to NPWS reserved land and non-compliance by telecommunications companies and their contractors, NPWS has increased compliance activities, engaging staff outside normal hours to monitor and report on issues. The costs are covered by NPWS.

These measures are implemented in response to damage occurring during construction and other works by telecommunications companies and their contractors.

Examples of damage caused include clearing vegetation without approval and beyond the powers issued under the *Telecommunications Act 1997* (Cth), widening or modifying access tracks without approval, damaging access tracks and fire trails during wet weather, and damaging NPWS towers without reporting it.

¹ Second Reading Speech, National Parks and Wildlife (Telecommunications Facilities) Bill, NSW Hansard Articles : LA : 17/06/2003 : #44 – page 2

Installation of towers on Crown Land

During the Public Hearing, a telecommunications representative raised a concern that the IPART Report creates barriers to installing towers on Crown Land.

The NPWS seeks to clarify that, from its perspective, the IPART Report should be a mechanism that deters and provides barriers to such installations on NPWS reserved land. Any approval for telecommunication installations must comply with the objectives (Section 2A), management principles (Section 30E), and licensing mechanism (Section 153D) of the NPW Act. This Act specifies that telecommunication infrastructure cannot be constructed and licensed on NPWS reserved land if there is a feasible alternative location. Any infrastructure installed must contribute to the better management and improvement of the NPWS reserved land. Therefore, if NPWS reserved land is the only feasible option, compensation should be provided to offset the long-term impacts. The IPART Report offers a mechanism to protect environmentally sensitive areas and allows for compensation when no feasible alternative exists.

Telecommunication Companies vs Utility Companies

During the Public Hearing, it was noted by telecommunications representative that telecommunications companies are perceived to be treated differently from other utility companies. However, all companies operating on NPWS reserved land are treated equally. Utility companies such as Sydney Water, Essential Energy, and Transgrid are treated the same as telecommunications companies. The installation of powerlines or water pipelines follows a similar planning approval pathway and environmental assessment process, requiring the preparation and submission of an environmental assessment (i.e. REF). If successful in their application, utility companies are issued an easement and pay a one-off fee based on the fair market value of the land. Additionally, NPWS policy applies a multiplier to the one-off fee to compensate for the long-term environmental impacts of the infrastructure's presence and operation on NPWS reserved land.

Co-User Licence Fees

During the public hearing the telecommunication companies provided the following comments:

- Co-User fee being 50% of the Primary User fee is 'a simple misuse of market power';
- Charging of additional fees by land management agencies 'is a widespread practice to bung on fees and charges without transparency';
- Co-User fees 'penalises co-siting, which has enormous benefits'.

NSW National Parks & Wildlife Service

NPWS is entitled to recompense for use of its land. According to the Direct Negotiations Guidelines (ICAC 2018), *“obtaining value for money is a probity principle and a sound commercial practice... The whole-of-life costs and benefits of the transaction should be the agency’s primary consideration.”*

NPWS is transparent in its dealings with telecommunications and other licensees, equitably applying fees adopted by the agency for all lease and licence arrangements. Although NPWS is not obliged to adopt the IPART Fee Schedule, it has historically done so to align with other government land management agencies and provide a transparent fee schedule.

The application of a Co-User fee, which discounts the Primary User rate by 50%, is an appropriate charge by NPWS for access to and co-use of its reserved land. NPWS does not discourage co-location by telecommunications companies, however, all users of reserved land must be licensed in accordance with the NPW Act to provide legal access, tenure and to compensate for impacts.

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