

13 March 2019

Rental Arrangements for Communication Towers on Crown Land
Independent Pricing and Regulatory Tribunal
PO Box K 35
Haymarket Post-Shop NSW 1240

Via email Brett_Everett@ipart.nsw.gov.au

Dear Sir,

RE: Response to issues paper, review of rental arrangements for communication towers on Crown Land, IPART, February 2019.

Council appreciates the opportunity to provide a submission on the issues paper surrounding rental arrangements for communication towers on Crown land. Council notes and is familiar with the previous report of the Tribunal, dated July 2013 and notes further that with a rapidly changing landscape in the telecommunications area a review of that document is timely.

Council notes that while the term Crown land is limited to land that is owned by the state and managed by the three agencies of Land and Water, Office of Environment and Heritage, and the Forestry Corporation, the document also serves a valuable purpose for Local Government. Increasingly, Local Government is being approached by telecommunications providers in terms of site provisions. These include sites for (now conventional) mobile phone facilities, typically larger monopoles, but also for a range of other telecommunications infrastructure elements including not just provision of sites but also the use of existing structures and, at times, existing telecommunications assets held by local government.

While the Terms of Reference focus on communication tower sites, it is submitted that there would be benefit either through this or a subsequent enquiry in reviewing a broader range of rental issues as set out in this submission.

For convenience, this submission adopts the same numbering and headings as the issues paper.

2. Context for the Review

It is suggested that communication tower sites also include provision of broadband Internet services in addition to the types of broadcast and two-way communications identified at paragraph 2.1. In particular, this is because of the special characteristics of broadband Internet services, particularly in remote and rural areas, as compared to (for example) mobile phone tower infrastructure.

Mobile phone tower infrastructure as with broadcast services have much more of a general public function and also (with the exception of two-way radio networks) tend not to have restrictions on the number or type of users. By comparison, broadband Internet connections may be targeted at quite narrow segments of the market who are currently un or underserved by the NBN and are therefore reliant on niche providers.

The overall description as to what constitutes a communication tower site appears comprehensive noting that each of these elements has a degree of independence. For example, use of fibre optic cabling (extant) may not necessarily involve, for a particular “site” any of the other elements described apart from, perhaps, communications equipment.

It is noted that the terms of reference determined by the Premier are restricted to 3 agencies. In our submission considerable additional value (without necessarily imposing significant additional work) would be able to be gained from the report by looking more broadly at publicly owned land and facilities.

The categorisation into four location categories is generally considered appropriate noting that each still, and perhaps inevitably, will contain significant internal variation. An important consideration with respect to the low-density category is the observation that there are limited private alternatives as compared to metropolitan areas. This means that public providers may hold a semi-monopolistic position with respect to site availability and this needs to be weighed carefully against community and public benefit.

Looking at table 2.2, types of communication tower site user, it would be of assistance if the role of site provider was more explicitly delineated. For example, the site provider would provide the site, but may also include ancillary services such as access, power, or support structures for infrastructure.

The current rent schedule referred to in section 2.4 is noted and benefit is seen in avoiding the costs and time of individual site negotiations with sites of low value. A challenge with the rent schedule is the degree to which it reflects other costs of access including existing infrastructure, power, roadways and the like and the degree to which the costs of maintaining these are born by the site owner rather than the renter. This may result in anomalies in rent paid depending upon the services and facilities offered to individual sites.

It is noted that rebates are granted at the discretion of the relevant Minister. The principle of rebates for the eligible user groups identified is strongly supported noting that rebates are difficult to address by way of schedule unless a wider range of circumstances are taken into account. Even with the rebate schedule for a local service provider in a “low” area the overall rental amounts may still be uneconomic for small-scale and localised service provision. In some cases, for example, there may be only six or 10 users taking advantage of a particular tower site.

Within this context the legislative constraint of not discriminating against carriers is noted, however in our submission this does not mean that different sites cannot be treated in different ways. This is, in fact, the basis of the current rental arrangements. Of particular concern to Council is “the availability of accessible and affordable carriage services that enhance the welfare of Australians”. This suggests a somewhat higher weighting to community well-being and development than might be evidenced in the current rebate schedules.

3. Proposed approach

The acknowledgement of the changed communications landscape in particular the greater demands for mobile data is appreciated and appropriate. In addition, there are changes relating to fixed data services (predominantly wireless) where niche operators are attempting to fill the gaps between NBN’s land-based services and the SkyMuster satellites.

The approach based in efficient rents in economic terms is supported. An area of complexity relates to the opportunity cost particularly where there is no or limited market competition for the sites. In the case of a single operator servicing a very limited market the opportunity cost to the site owner would be close to zero. In this regard a standardised schedule minimises opportunity costs in that it minimises overheads involved in site access transactions. This also intersects with the community benefit aspects and the ways in which these can be reliably quantified.

One challenge from a methodological point of view is distinguishing between open access and closed access sites. Closed access largely relates to two-way based systems whether for voice or data communication where there is a fixed number of simultaneous communication paths occurring between the base and the service recipient. It may be necessary and appropriate to distinguish between sites given this difference. This may have significant implications for how community benefits are estimated in particular based on capacity to pay of the service recipients rather than (necessarily) the service provider directly. In the interests of transparency, cross subsidising a non—profitable site from profitable sites would introduce an unnecessary market distortion.

In our submission the methodology should reflect the difference between an open access and closed access site.

4. Estimate the range for efficient rents

One of the challenges with willingness to pay relates to the risk profile. Basically the smaller the carrier and the smaller the potential customer base the higher the risk profile. This has a significant impact on willingness to pay in particular given that many of the fixed infrastructure costs (such as building a tower) are relatively indifferent to the number of customers served by the facility. Site rental can represent a very significant proportion of overhead costs and, when combined with risk profiles, potentially would render numerous sites of social benefit as unviable.

As foreshadowed above, opportunity cost also has its complexities particularly in low value sites where there is little or no commercial competition nor readily available alternate uses. For instance, in the case of a Council owned water tower where there is only interest from one telecommunications provider there is no “next highest use” available. This is a methodological issue in terms of opportunity cost calculation where opportunity cost is not so much an alternate use but the “do nothing” option where the opportunity cost by default becomes the transactional cost of establishing the commercial arrangement plus an ongoing figure to represent administrative and other overheads associated with the site. Costs might also include additional electricity usage (which can be separately metered) and also, potentially, additional costs in access maintenance.

These would constitute the “base costs” of accessibility and the bottom end of the opportunity cost curve. A modest return above these costs would, however, generally be appropriate. Typically, in the case of this Council, a number of services (non-telecommunication) are priced at 25% above base costs including administration charges as representing a reasonable return on effort.

The principle of a shared economic surplus between land management agencies and users is supported however the difficulties in practical application are also acknowledged. In terms of willingness to pay, it is suggested that the lease a user would willing to pay would not only be influenced by the availability and cost of accessing an alternative site but also a decision as to whether to offer the service at all.

This is particularly relevant in the situation where there may be no economically viable alternative sites, and rather than generating a higher willingness to pay the commercial decision would be not to proceed with the service at all with the associated costs in terms of lack of community accessibility to a benefit.

Under section 4.2.2 various information is proposed to be collected. This is considered reasonable noting there needs to be some reliable measure of population density. Further, population density is a relatively crude simulacrum for the actual variable, potential number of customers. This is because the potential number of customers amongst a population will vary for a wide range of reasons. This includes the nature of the service and also the capacity to pay. A slightly better measure than population density may be dwelling density particularly for telecommunication services.

Referring to the box 4.1, and noting the complexities associated with the approach, we would strongly support a process which seeks to measure the economic value generated by communication tower sites to different types of user. As is correctly pointed out, the size and composition of audience/consumers is highly relevant to this question. As mentioned, for telecommunications carriers, dwelling density rather than population density may be a more appropriate measure.

With respect to opportunity costs, I refer to comments made earlier regarding what might be described as “base costs” surrounding making a site available and keeping it available as setting a lower bound to opportunity costs when associated with a modest “uplift for effort”.

5. Decide on and apply a rent setting methodology.

In terms of the fee schedule for standard sites, it is noted that the fee schedule has been adopted relatively widely. Of significant interest would be the approaches to these fees by a range of potential users and whether or not the fee levels were such as to lead to a non-provision of service.

Turning to discounts on the scheduled fee for co-users, as a site provider, Council’s main interest is ensuring a fair commercial return for the use of the site. In many respects arrangements between users and sub-users are secondary provided that the overall returns to Council represent fair value. That being said, there is probably some merit in co-users providing returns to the primary user that recognise the total costs of site establishment and maintenance including ground rent.

This would tend to lead to a more equitable approach where costs were shared relatively evenly amongst users noting there would still be a need to recognise the initiative and financial commitment of the provider of the tower in the first place.

Turning to rebate schedules for eligible users, this principle is very strongly supported. The current approach utilising Ministers discretion based on individual circumstances of the user has some merit in that there is the ability to examine the “special case”. However, if this approach is to be used, there needs to be some form of sliding scale around each user type depending upon the circumstances otherwise the value of discretion is diminished.

Regarding high-value sites, Council would note that some multi-user sites in the Shire currently contribute rental in excess of the current schedule for the actual type of site - which in all cases within the Shire would be “low”. In practice, there appears to be more capacity to negotiate with organisations such as Tier one telecommunications providers who are often subsidised in terms of providing mobile phone capacity in more remote areas. This issue is mainly relevant where there are a number of potential providers and where a market-based bidding process may be the best indicator of capacity and willingness to pay.

6. Transitioning impacts on users and adjusting rents over time

In general, Council would support the adjustments aligned with CPI however when there is a substantial change in the methodology of the calculation a “phase-in” period is supported. The five yearly methodological review is also supported.

A challenge is that some providers may be constantly facing “moving goalposts” in that if there were a five-year transition period, and there is a methodological review every five years, these providers may be constantly in transition. Noting this, this may still be the best economic outcome for those providers.

Should there be any points raised in this submission where additional commentary might be of value, please contact Council’s Director of Planning and Community Development, Angus Witherby, whose contact details are on this letter head.

Yours faithfully

A black rectangular redaction box covering the signature of Angus Witherby.

Angus Witherby
DIRECTOR PLANNING AND COMMUNITY DEVELOPMENT