



Submission in response to  
IPART Draft Report

**Review of Rental  
Arrangements for  
Communication Towers on  
Crown Land**

Public Version

September 2019

## INTRODUCTION

---

1. Optus welcomes the opportunity to provide feedback to IPART in response to the draft report on the review of rental arrangements for communication towers on Crown land.
2. The draft report proposes a rent schedule that aligns with recent market rents for communication towers on private land<sup>1</sup>. IPART utilises a “range of market evidence” including land rentals for commercial users of communication tower sites on private land and relevant land valuation.<sup>2</sup>
3. First and foremost, Optus is concerned that the draft report recommends a pricing approach that discriminates against carriers and as such, cannot be adopted by State agencies. The draft report does not contain sufficient evidence to explain how the use of market evidence is consistent with non-discrimination rules when recent court decisions have explicitly ruled against the use of market evidence to set carrier-specific rents on Crown land.
4. Optus, and industry, provided detailed reasons outlining that the use of market rent benchmarks to set Crown land rents is inconsistent with Commonwealth legislation. The draft report dismisses these concerns on the basis that non-carrier users of communications sites are charged in the same manner. Optus submits there appears to be little judicial support for the approach outlined in the draft report.
5. In order to set communication rentals on the basis of market rents, IPART needs to demonstrate that a “great majority of users of public spaces” are charged in the same manner.
6. Optus calls on IPART to provide evidence that market benchmarking is the basis on which Crown rents are set for the great majority of users of public spaces. Absent such evidence, the proposed approach in the draft report should not be finalised and IPART should reconsider its approach and adopt a methodology which can be implemented by State agencies.
7. Notwithstanding whether the methodology proposed by IPART is permissible under law, Optus further notes that there are material errors in the dataset used by IPART to set the rates, specifically IPART has:
  - (a) Not used recent rentals for communication towers for Sydney and High categories;
  - (b) Used inappropriate definitions for high and medium locations;
  - (c) Erred in the calculation of site size, leading to incorrect m2 pricing; and
  - (d) Erred in the calculation of small cells rents.

---

<sup>1</sup> IPART, Media Release, 8 July 2019.

<sup>2</sup> IPART, Public Hearing Transcript, p.2

## IPART RATES CANNOT BE RELIED UPON

---

8. IPART has been tasked with providing advice on the appropriate rents that should be adopted for communications towers located on Crown land. A key aspect is for any advice to be implementable by State agencies. It is not clear, however, that the draft report has given sufficient thought to whether the proposed rates are legally enforceable.
9. Optus, the Mobile Carrier's Forum, infrastructure owners and other carriers, all advised IPART prior to the draft report that due regard needed to be had to legal requirements for state agencies to not discriminate against carriers when setting rents on Crown lands – that is, to adopt rates which are applied to other occupiers of Crown land.
10. Optus advised that the issue whether rents on Crown lands can be set by reference to rents paid on private land has been directly addressed by the Federal Court. The Federal Court specifically rejected the legality of such an approach. That is, the use of private market benchmarks breaches the non-discrimination obligation in the *Telecommunications Act 1997* (Cth).
11. Notwithstanding this advice, the draft report utilised market rate data to set recommended rental rates on Crown land. This approach was confirmed in the public hearing with IPART stating that annual rents for communication tower sites on Crown land should reflect recent market rentals for similar sites on private land.<sup>3</sup>
12. Optus observes that little legal analysis or reasoning had been expressed by IPART during this process. As such, it remains difficult for interested parties to have a meaningful dialogue as IPART has not yet engaged on this very important issue.
13. To assist IPART, the relevant legal precedents are discussed in more detail below.

### **Market rates cannot be used to set Crown rates**

14. The *Telecommunications Act 1997* states that a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally.<sup>4</sup> This provision has been interpreted by both the High Court and the Federal Court. The Federal Court has stated that:
  - (a) Non-discrimination is broad and absolute. It does not allow an exception to the prohibition against the law of the State or Territory discriminating against carriers.<sup>5</sup>
  - (b) While individuals and corporations are allowed to discriminate against carriers, the Act expressly prohibits discrimination against carriers under State and Territory legislation. It is clear that the legislative intention is to treat individuals and corporations differently from State and Territory governments.<sup>6</sup>
  - (c) State and Territory governments charging carriers higher rents on the basis that carriers are charged more rent in the private market seems precisely the type of conduct that clause 44 is designed to prevent.<sup>7</sup>
15. As outlined previously to IPART by numerous interested parties, the effect of cl.44 is that it is not open to IPART to set market rents on the basis that carriers are charged more

---

<sup>3</sup> IPART, 2019, Transcript Public Hearings, p.4

<sup>4</sup> Schedule 3, cl.44

<sup>5</sup> *Telstra v Queensland* [2016] FCA 1213, para 142

<sup>6</sup> *Ibid.*, para. 146

<sup>7</sup> *Ibid.*, para. 147

rent in the private market. This would appear to rule the draft proposals invalid; and as a result, no State agency would be in a position to act on the recommended rates.

### Relevant comparator

16. The draft report addresses the concerns of industry by stating that it is the 'view' of IPART "that any relevant comparator would make similar use (in nature and extent) of Crown land to the use made by carriers."<sup>8</sup> And as such, the relevant comparison is between "treatment of carriers as lessees of communication towers and the treatment of other lessees of communication towers".
17. Optus submits that such a statement cannot be regarded as an accurate statement of the law, nor can it be supported by case law.
18. Optus observes that the draft report references the High Court decision in *Bayside City Council v Telstra Corporation Ltd*<sup>9</sup> (Bayside) in relation to 'relevant comparator'. The draft report asserts that it is precedent to support its contention that broadcasters are the relevant comparators to carriers.
19. While we agree with IPART that the Bayside decision is instructive, the draft report appears to use an interesting interpretation of the case. It is particularly instructive as it relates to the ability of local councils in NSW under the Local Government Act (LGA) to charge carriers rental to locate infrastructure in public places. The High Court held that the provisions did discriminate against carriers as the Crown, water, electricity, and railways were exempt from charges.
20. The High Court noted that the LGA does not in terms, identify the kind of comparison that is appropriate for the purpose of considering whether a State law discriminates against carriers generally, but an examination of the Explanatory Memorandum is capable of assisting.<sup>10</sup>
21. The Explanatory Memorandum provides two clear examples that make clear that other utilities are the relevant comparator. Specifically:
  - (a) laws that impose a burden on facilities of a carrier that is not imposed on similar facilities (for example a tax on 'street furniture' which is in effect discriminatory against carriers because other bodies owning such equipment such as electricity authorities would be exempt from paying that tax);
  - (b) laws which have the effect of giving powers or immunities to a person or body in relation to the installation, maintenance or operation of a facility which do not apply to carriers generally (for example, where a public utility may rely on general land access powers given to that utility under State or Territory law to install telecommunication facilities without obtaining the approvals which would ordinarily be required for that activity under the law of that State or Territory);<sup>11</sup>
22. The High Court relied on the above paragraphs to state that the relevant comparator intended by the LGA relates to public utilities – that is, water, electricity, etc. Furthermore, the Court stated that a carrier may be "discriminated against even if some other person is treated equally unfavourably".<sup>12</sup> The Court continued to note that if *many* other persons were also treated unfavourably, a question might arise whether it discriminates against carriers, but a "great majority of occupiers of public space in New

---

<sup>8</sup> IPART, 2019, Draft Report, p.23

<sup>9</sup> (2004) 216 CLR 5

<sup>10</sup> Ibid., para. 42

<sup>11</sup> Telecommunication Bill 11996, Explanatory Memorandum Volume 3, p.27

<sup>12</sup> Bayside, para. 80

South Wales are exempt from local government charges” so the fact that one non-carrier category of use is also treated unfavourably “does not alter the fact that carriers are treated less favourably than most comparable entities.”<sup>13</sup>

23. It is in this context that we query the statement in the draft report that the relevant comparator are broadcasters who may also rent land for their towers. The fact that IPART can only point to one other non-carrier user as being subject to market-based rents, supports the case that the draft report breaches the non-discrimination obligations under the *Telecommunications Act 1997*. The absence of evidence that a “great majority of users of public spaces” are charged in a manner consistent with that proposed in the draft report, proves that the draft report breaches the obligations in the *Telecommunications Act 1997*.
24. The statement in the draft report appears to be inconsistent with legislative construction and the approach confirmed by the High Court.
25. Optus also directs IPART to the *Telstra v Queensland* case,<sup>14</sup> where the relevant section in the Queensland regulation imposed a charging regime (based on the IPART approach) on carriers was deemed to be discriminatory. It is instructive to note the relevant provisions applied the same cost methodology to both carriers and broadcasters. In this case, the applicable leasing category applied to “relay or transmission of telephonic, **television, radio** or other electronic communication services for a non-community service activity”.<sup>15</sup> [emphasis added]
26. The Federal Court specifically rejected the use of market benchmarks to set rents for communications towers – even though market benchmarking was also used for broadcasting tower leases.
27. It is clear from these case that there is no case law support for the view adopted by IPART in the draft report.

### **Reasons should be fully explained**

28. The draft report addresses the concerns of industry in one paragraph, summarily dismissing these concerns. Optus submits that this level of analysis is not sufficient and gives rise to questions whether IPART has adequately put their mind to this issue.
29. Industry provided clear advice against this approach. As demonstrated through submissions and at the public hearings, there is a common understanding of the impact of the relevant Federal Court and High Court decisions on how cl.44 would apply to agencies setting rental rates for communications towers.
30. However, the draft report did not give sufficient consideration to these concerns. As such, Optus is limited in the information we can provide in addition to that provided prior to the draft report. In order to progress this matter, Optus requests that IPART provide a full explanation of its position on this issue – and provide further opportunity to consult on its views.
31. If IPART has a different view, this view needs to be fully explained. Ultimately, any legal implications of this report will fall on agencies trying to implement the recommendations. In order to enable agencies to assess the legal risk of adopting IPART’s recommendation, IPART should outline its position and explain clearly where *Bayside* and the *State of Queensland* cases do not apply to this inquiry.

---

<sup>13</sup> *Bayside*, para. 81

<sup>14</sup> *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213

<sup>15</sup> *Ibid.*, para.56

32. In order to set communication rentals on the basis of market rents, IPART needs to demonstrate that a “great majority of users of public spaces” are charged in the same manner. It is not clear on available evidence that this is the case.
33. Optus calls on IPART to provide evidence that market benchmarking is the basis on which Crown rents are set for the great majority of users of public spaces. Absent such evidence, the proposed approach in draft report should not be finalised and IPART should reconsider its approach and adopt a methodology which can be implemented by State agencies.

## RECOMMENDED RATES ARE INCORRECT ON THE FACTS

---

34. Notwithstanding whether the methodology proposed by IPART is permissible under law, Optus further notes that there are material errors in the dataset used by IPART to set the rates.
35. These are outlined below.

### Recommendation 2: proposed rents for primary users

36. Should IPART continue to use its published methodology to determine its new fee schedule, it should use data that is comparable and consistent with the Terms of Reference. We refer to “we consider recent rentals for commercial users of communication tower sites on private land are the best available indicator of efficient prices.”<sup>16</sup>
37. Optus submits that IPART has not used “recent rentals ... of communication tower sites on private land”. We have analysed the published rental data used by IPART for the highest rental examples in the Sydney and High categories. This is discussed below.
38. The data is primarily rooftop macro installations **not** telecommunications towers on land; as such the data is not comparable as no land is occupied. The primary purpose of the building rooftop has as no alternative highest and best use, and therefore the opportunity cost is \$1.
39. Most of the data is for existing sites, not recent, new “greenfields” locations where a new negotiation would have been done on an arms-length basis. The lessee therefore is a “captive” or “unwilling” tenant in valuation terms, as referenced in *Spencer v The Commonwealth of Australia*.<sup>17</sup> We disagree with the proposition that the recommended rents are consistent with *Spencer*, as outlined in Section 4.3 of the draft report. Carriers are reluctant to relocate infrastructure given the cost and time to do so. Carriers are continually adding sites to their network in high density, urban locations where, additionally, alternative locations are difficult to secure. Often a commercial decision is made in these circumstances to accept an “above market” rent to secure the site, to maintain network coverage.
40. In some cases, Optus has had working infrastructure in the locations noted for over 20 years. Often the commencing rents escalated annually at 5%, in some cases 7.5% per annum. At lease expiry these rents have escalated far in excess of the rents negotiated for new locations today.
41. We comment on the IPART “comparable” data table as follows:

---

<sup>16</sup> IPART, draft report, p.19

<sup>17</sup> (1907) 5 CLR 418

- (a) Of the 18 most expensive 2020-2021 rents, only 3 sites are communications towers on land.
  - (b) The most expensive site is for a rooftop macro and an IBC in a commercial tower in the Sydney CBD. This lease commenced in March 2002 and so will expire in 2022. It was an expensive site to begin, and with annual escalations, is now around 4 times the current market rent, in Optus's opinion. Optus has already commenced negotiations, which if unsuccessful are likely to result in Optus seeking to relocate its rooftop installation. This lease is not a comparable, recent negotiation and should be excluded.
  - (c) A similar scenario exists in the second most expensive site, at 275 George St Sydney. The lease commenced in 2003, expiring in 2021. This lease is not a comparable, recent negotiation and should be excluded.
  - (d) One of these towers is in a "Low" Category location – this site should be ignored. It is a former Optus owned tower now owned by Axicom, with all major carriers co-locating on the structure. In Optus's case it has been present on the site since 1999. It is therefore not a comparable, recent negotiation and should be excluded.
  - (e) 15 sites are rooftop macros (one of which is an IBC/DAS only) – rooftop installations are not telecommunications towers on land.
  - (f) Optus sites comprise most of this data (15). Our attached table shows the first date the site became "In Service", being the date the site was live on our network. 12 of these sites first entered the Optus network before 2010, the majority being in the late 1990's and early 2000's. We have previously described these rents typically escalated annual by a fixed 5%, resulting in current rents being substantially above what the telco market is prepared to pay for a new site today, negotiated on a competitive market basis. This data is not comparable and should be excluded.
  - (g) Please refer to the attached spreadsheet which shows the data used by IPART in determining its recommended rent. A detailed comment on each entry is provided in the "Optus Comment" Column.
  - (h) In Optus's opinion only one of the leases can be considered comparable (putting aside whether or not rooftop macro sites are comparable at all).
42. However, should IPART continue to use rooftop macro leases as the source of comparable data, we refer to the sworn valuation undertaken by IVPS Pty Ltd, attached, an experienced telecommunications valuer, which documents recent new, "greenfields" negotiations which are comparable. IVPS has sourced data from the 3 largest carriers, Telstra, Optus and VHA. Overall it has appraised a value of \$22,500 for a site in the Sydney category. This data is more recent and is more compelling, it has been negotiated on an arm's length basis, by a willing lessor and a willing lessee, not an anxious, captive tenant whose cost to relocate infrastructure is substantial, in both lost service to customers, and monetarily.
43. Included in the valuation report are 6 Optus sites. The table below summarises those registered leases. All are located in the "Sydney" location category. Copies of these registered leases can be provided on request, however the document registration numbers are included in the spreadsheet, and so are readily obtained via a Land Titles provider.

Figure 1 Optus comparable rents – Sydney category

Registration Number	ACMA Site ID	Site Address	Post Code	Renewal Rule	Tenure Type	Contract SubType	Comm Date	Contract End	Commencing Rent
AN566446V	9019368	1 RIVETT RD, NORTH RYDE	2113	15 years	ANNUAL LEASE	230 BUILDING - ROOFTOP BTS	15/12/2017	14/12/2032	25,000
AM553404L	9023289	HAROLD PARK PACEWAY, ROSS STREET, GLEBE	2037	3 further terms of 5 years each	ANNUAL LEASE	030 ROOFTOP LEASE	25/06/2016	24/06/2021	20,000
AN325589T	10000271	34-45 WENTWORTH AVENUE, SYDNEY	2000	20 years	ANNUAL LEASE	230 BUILDING - ROOFTOP BTS	11/05/2017	10/05/2037	20,000
AN67930X	10005589	61-101 PHILLIP STREET, SYDNEY	2000	17 years, 10 months, 6 days	LEASE	230 BUILDING - ROOFTOP BTS	29/08/2017	4/07/1935	20,000
AN679497W	10010127	104 ALICE STREET, NEWTOWN	2042	20 years	LEASE	230 BUILDING - ROOFTOP BTS	10/04/2018	9/04/2038	20,000
AN709035B	10011663	241-245 SYDNEY PARK ROAD, ERSKINEVILLE	2043	20 years	LEASE	230 BUILDING - ROOFTOP BTS	15/06/2018	14/06/2038	20,000

Source: Optus

44. Consequently, as demonstrated above, we disagree with the statement in Box 5. that “Rents that were negotiated prior to our last review (2013) were generally excluded from the sample”. IPART has used outdated and incomparable data in totality to calculate the “Sydney” category rents. Any lease where the original occupation occurred before 2013 should be excluded from the analysis, particularly because there is sufficient data available that is more relevant and comparable according to the hierarchy of valuation evidence.
45. Further, it is Optus’s view that only negotiations post-2016 reflect current rentals being agreed in the marketplace, given the rapidly changing environment wherein rentals are reducing. Additionally, IPART should only use rents at the commencement date of the lease as the reference, not the rent escalated to 2020-2021 – the rent agreed at commencement reflects the “market”, negotiated, rent agreed between the parties. As we have seen, fixed annual escalations at levels significantly higher than CPI has resulted in a distortion in rentals being paid where the lease has been in existence for some time.

### Recommendation 3: location definitions for High and Medium locations

46. We agree with the submission made by the MCF, consistent with our previous submission, that rentals should be based on the unimproved value of land occupied by the telco. This removes the obvious distortions that result from the lack of granularity in using a small number of categories. For example, it makes no sense that the value of the land occupied in the Eastern suburbs of Sydney is the same as in the City of Parramatta Local Government Area.
47. However, putting that aside, should IPART decide not to use the unimproved land value occupied as the basis for rental determination, Optus agree with the submission made by Commercial Radio Australia that the “Sydney” category should be limited to the Sydney CBD only. This change affects only 32 Crown Lands licences, or 1.8% of the total number of current licences for the 3 CLAs.
48. There does not appear to be any explanation of the choice to use a population density of 1,800 people per square kilometre as the basis for setting the boundary of the “Sydney” category. Whilst not significant to the CLAs in terms of the number of locations, or the revenue received, the rental determination for this category has significant consequences for the telecommunications carriers. We, and others, have described the inappropriate use of the IPART determination by private landlords, councils, and in some cases, State Government departments located outside of NSW, often using the “Sydney” category rent as the upper bound in negotiations with carriers. This change would assist efforts in correcting the incorrect use of the Determination.
49. Optus does not agree with the arbitrary 12.5km radius around “medium” density townships. This does not reflect the underlying value of land. Optus has experienced incidences with licences issued by Forestry Corporation of NSW, for example, for installations in bushland, land which has no alternative commercial highest and best use, which would otherwise be located in a “Low” category area, but falls within the 12.5km



radius boundary, thereby artificially inflating the rent paid. On no basis could the vacant bushland be valued on the same commercial basis as the land within the township itself.

#### **Recommendation 5: schedule of rents for new sites**

50. Following the point above, because these sites are rooftop installations, which typically are designed with a number of antennas located towards the edge of the building, distributed around the circumference of the rooftop, plus a small cabin, the leased areas occupied are small when compared with tower installations on land. Many of these in the IPART table are around 25 square metres, with a number less than 10 square metres. This has resulted in the “average site area” quoted in the IPART report, being 30 square metres in the Sydney category, for a “communications tower on land” as being far too low. The average site area for a tower site should be the same as that shown in the High category, being 60 m<sup>2</sup>. It makes no logical sense that the areas occupied would be any different given the built-up urban environment.
51. The consequence, we presume unintended, of the low median land size calculation such as in the Sydney category, could often be that the rent for a new site substantially exceeds the “grandfathered” rates set for existing sites, whose rents will be fixed to the IPART schedule. For example, a 50 m<sup>2</sup> site in Sydney would attract a rent of \$56,150 p.a., 66% greater than the fixed rent.
52. On our analysis, the average site area for rural locations in the Low category, is substantially smaller than typical installations. In our opinion the typical installations are 150 – 250 square metres but can be much greater. We therefore suggest, should IPART not determine the rents based on the unimproved value of land occupied, that the rental schedule be capped as the maximum payable.
53. Values are too high, the area occupied is too low. Since IPART has simply used one as the numerator and the other the denominator, the resultant rate per square metre calculation is excessive.

#### **Recommendation 8: co-user charges**

54. We agree however the rental should be determined at 6% of the unimproved land value.

#### **Recommendation 10: minimum annual rent**

55. Agreed, but the rental should be set at \$1.00 to reflect zero opportunity cost to the Crown for the co-user occupation wholly within the primary user’s compound. Further, any minimum annual rent must be consistent with non-discrimination obligations – namely, that other utilities are subject to the same minimum annual rent obligations.

#### **Recommendations 10 & 11: small cell rents**

56. Optus supports the principle that rents for these sites should be based on the land they occupy only, consistent with the legal non-discrimination obligations.
57. However, as noted above, the issue is the excessive rate per m<sup>2</sup> calculations, particularly for the “Sydney” category. If applied by other land owners or managers, that land that will in most cases be occupied will be a light pole, or transmission pole located on a road reserve managed by a council or RMS. The commercial value of that land is questionable, given it cannot be sold, cannot be developed, such that its “highest and best use” as a road reserve.
58. Note the minimum rent of \$504 p.a. would always be charged, equating to a rate per m<sup>2</sup> in “High” category locations of \$787 per m<sup>2</sup> not \$273 per m<sup>2</sup>, assuming the ground cabinet occupies an area of 800mm x 800mm, or 0.64 square metres (the current Optus

small cell design). The rent otherwise would be  $\$273 \text{ per m}^2 \times 0.64 \text{ m}^2 = \$174 \text{ p.a.}$  This is not acceptable, and we presume this is not intended. If the rate of  $\$273 \text{ per m}^2$  is adopted, a small cell installation is “penalised” by 288%. Until the land area occupied exceeded 1.8 square metres the calculation does not normalise.

59. We would point out, in the majority of instances, these installations will fall under the definition of “Low Impact” within the Telecommunications Act. As such, it could be, that carriers utilise their statutory powers to deploy such assets, to occupy the land, in which case no annual rent is payable.
60. We would also argue that unless all other utility occupiers of land pay this minimum fee, then such a charge could be deemed to be discriminatory to carriers. If no land is being occupied, it would appear the minimum rent represents a fee for “air space”. We argue that if no land is occupied, there is no need for a licence to be issued by the CLA – the carrier would deal with the infrastructure owner only.

#### **Recommendation 14: rents in national parks set higher**

61. Optus does not support this recommendation. We agree with the MCF’s view of this recommendation and refer IPART to their submission. The industry strongly disagrees with this recommendation.

# **VALUATION REPORT**

## **Review of IPART**

### **Sydney Zone**

### **NSW**

## Table of Contents

<b>INSTRUCTIONS.....</b>	<b>3</b>
<b>PURPOSE OF VALUATION.....</b>	<b>3</b>
<b>DATE OF INSPECTION.....</b>	<b>3</b>
<b>DATE OF VALUATION.....</b>	<b>3</b>
<b>LOCATION .....</b>	<b>3</b>
<b>MARKET RENTAL EVIDENCE .....</b>	<b>7</b>
<b>MARKET COMMENTARY .....</b>	<b>22</b>
<b>VALUATION RATIONALE.....</b>	<b>22</b>
<b>VALUATION.....</b>	<b>23</b>

**INSTRUCTIONS:**

We have been instructed by Bryan Ford, Property and Leasing Executive, on behalf of Optus to undertake a rental valuation of the proposed IPART Sydney Category as identified in the IPART Draft Report 2019. The review is to highlight the following points:

1. Typical 4x5 year registered telecommunications land lease for private freehold land in NSW
2. Current NSW Crown Land schedule

**PURPOSE OF VALUATION:**

The valuation is required for submission to the IPART review.

**DATE OF INSPECTION:**

5<sup>th</sup> August 2019

**DATE OF VALUATION:**

5<sup>th</sup> August 2019

**LOCATION:**

As highlighted in the IPART Draft Report Schedule 2019 “Review of Rental Arrangements for Communication Towers on Crown Land” the Sydney Category under the IPART review is defined and includes the following locations:

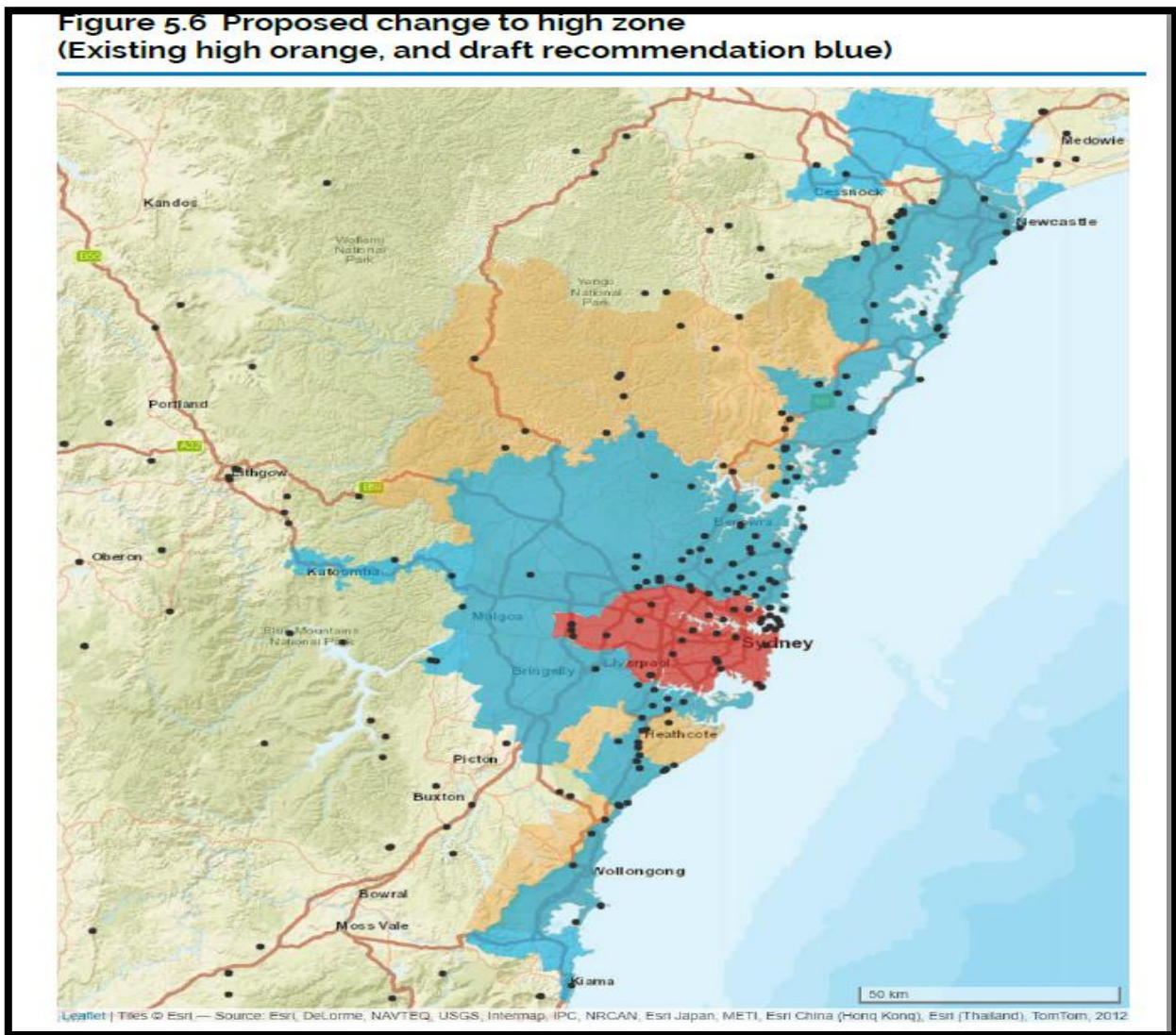
The following local council areas are defined as Sydney:

- ▼ Bayside (A)
- ▼ Burwood (A)
- ▼ Canada Bay (A)
- ▼ Canterbury-Bankstown (A)
- ▼ Cumberland (A)
- ▼ Fairfield (C)
- ▼ Georges River (A)
- ▼ Hunters Hill (A)
- ▼ Inner West (A)
- ▼ Lane Cove (A)
- ▼ Mosman (A)
- ▼ North Sydney (A)
- ▼ Parramatta (C)
- ▼ Randwick (C)
- ▼ Ryde (C)
- ▼ Strathfield (A)
- ▼ Sydney (C)
- ▼ Waverley (A)
- ▼ Willoughby (C)
- ▼ Woollahra (A)

The table below lists the latitude and longitude of the centre point of each Medium area.

**Source IPART Draft Report Page 79 Appendices B**

This is also further highlighted by Figure 5.6 on Page 36 of the IPART Draft document in red.



The IPART document also defines the various categories in more detail as listed below:

### Draft recommendations

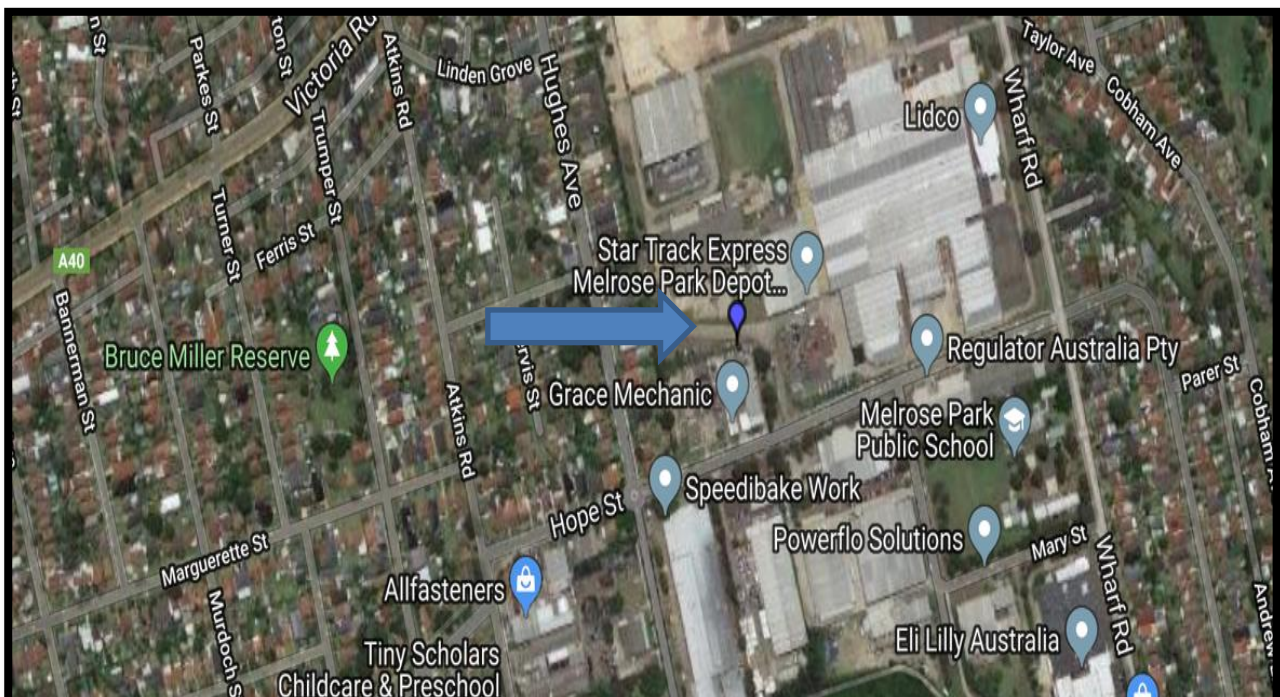
- 2 For existing sites, the land management agencies implement the schedule of rents for all primary users other than telephony service providers (SCAX) shown in Table 5.1, where rent per site varies by location.
- 3 Location definitions for High and Medium locations are refined. Locations are defined as:
  - Sydney: local council areas in metropolitan Sydney with a population density greater than 1,800 people per square kilometre (as listed in Appendix A)
  - High: ABS significant urban areas of Sydney (excluding local council areas included in the Sydney category above), Newcastle – Maitland, Wollongong, Central Coast and Morrisset – Cooranbong.
  - Medium: areas within 12.5 km of the centre of the urban centres and localities (UCLs) defined by the ABS as having a population of 10,000 or more based on the 2016 census (as listed in Appendix B).
  - Low: the rest of NSW.
- 4 The following services are included in the rents for new and existing primary users on Crown land:
  - All lessor costs of preparing and assessing lease applications
  - Use of existing tracks and roads at no additional cost. Where additional access roads are required the costs of building and maintaining these should be set with reference to a benchmark rate.

## IPART Draft Report Page 40



**MARKET RENTAL EVIDENCE SYDNEY IPART CATEGORY:**

The following rentals are considered representative or provide a guide of current market rates at the date of valuation. We also note that new sites are generally indicative of the market as primary evidence as opposed to site lease renewals and in the hierarchy of evidence schedule as provided under the guidelines of the Australia Property Institute and the Royal Institute of Chartered Surveyors greenfield sites are considered primary evidence.

**Rents:****1:****Address** 33 Hope Street Ermington**Lessee** Telstra**Lease Commencement** 1 June 2020**Term** 20 years**Current Rent** \$21,000 p.a.**Reviews** 3% p.a.**Comments:** Full CMTS site, cabin and pole in LGA of Parramatta \$12,000 p.a. below proposed amount by IPART. Lease Renewal.

2:

**Address** 67 Bourke Rd Alexandria

**Lessee** Telstra

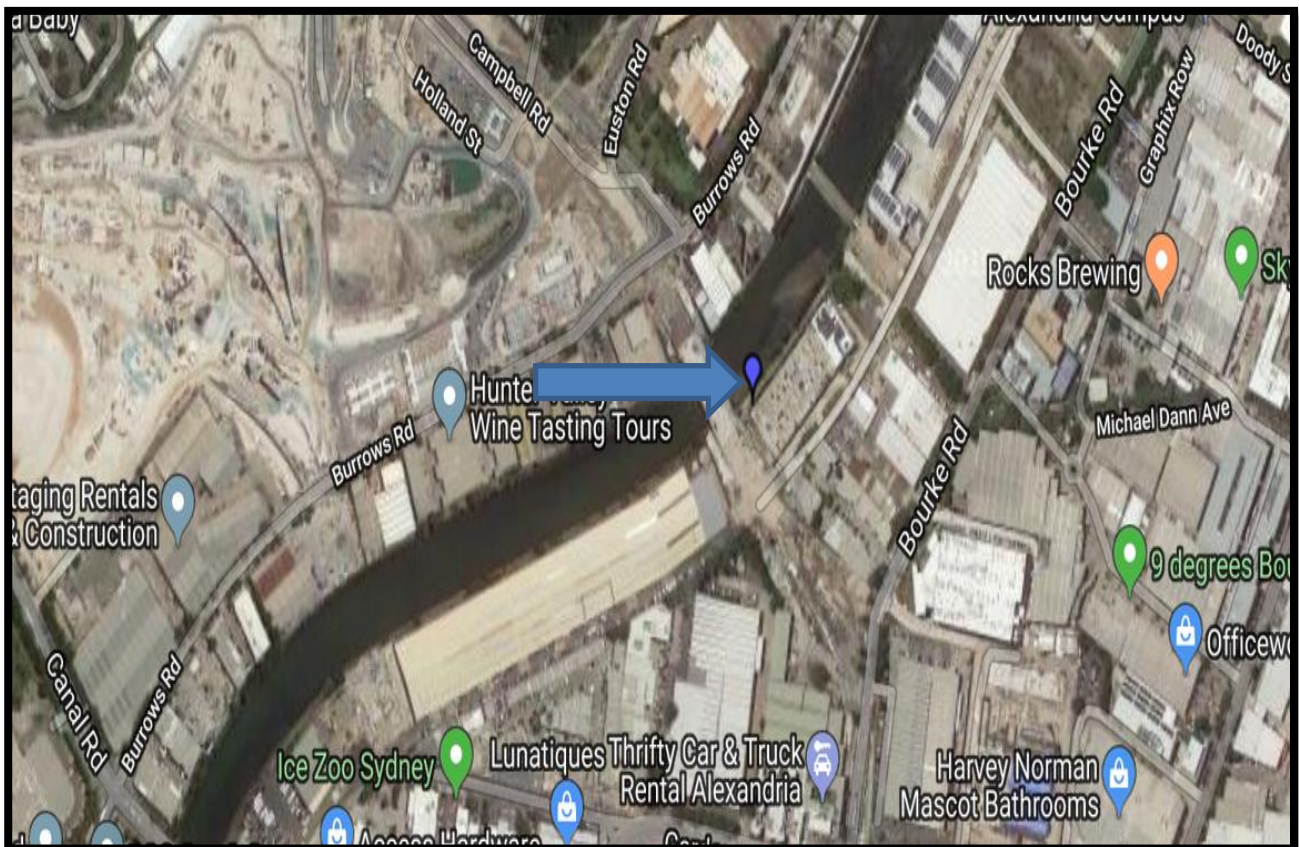
**Lease Commencement** 1 November 2018

**Term** 20 years

**Current Rent** \$25,000 p.a.

**Reviews** 3% p.a.

**Comments:** Full CMTS site, cabin and pole in LGA of Inner West \$8,000 p.a. below proposed amount by IPART. Greenfields site



3:

**Address** 767 Horsley Drive Smithfield

**Lessee** Vodafone

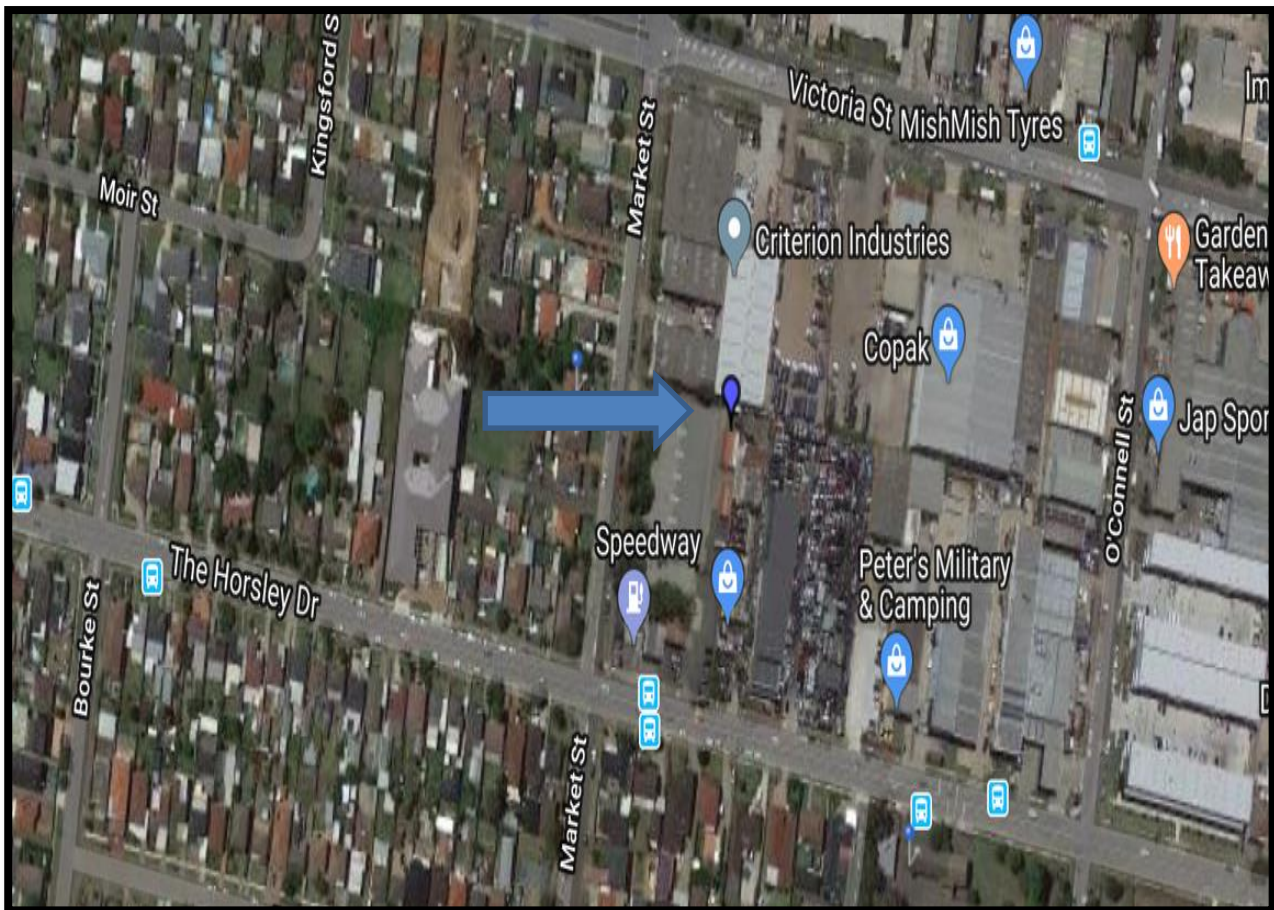
**Lease Commencement** 1 February 2018

**Term** 5 years

**Current Rent** \$20,000 p.a.

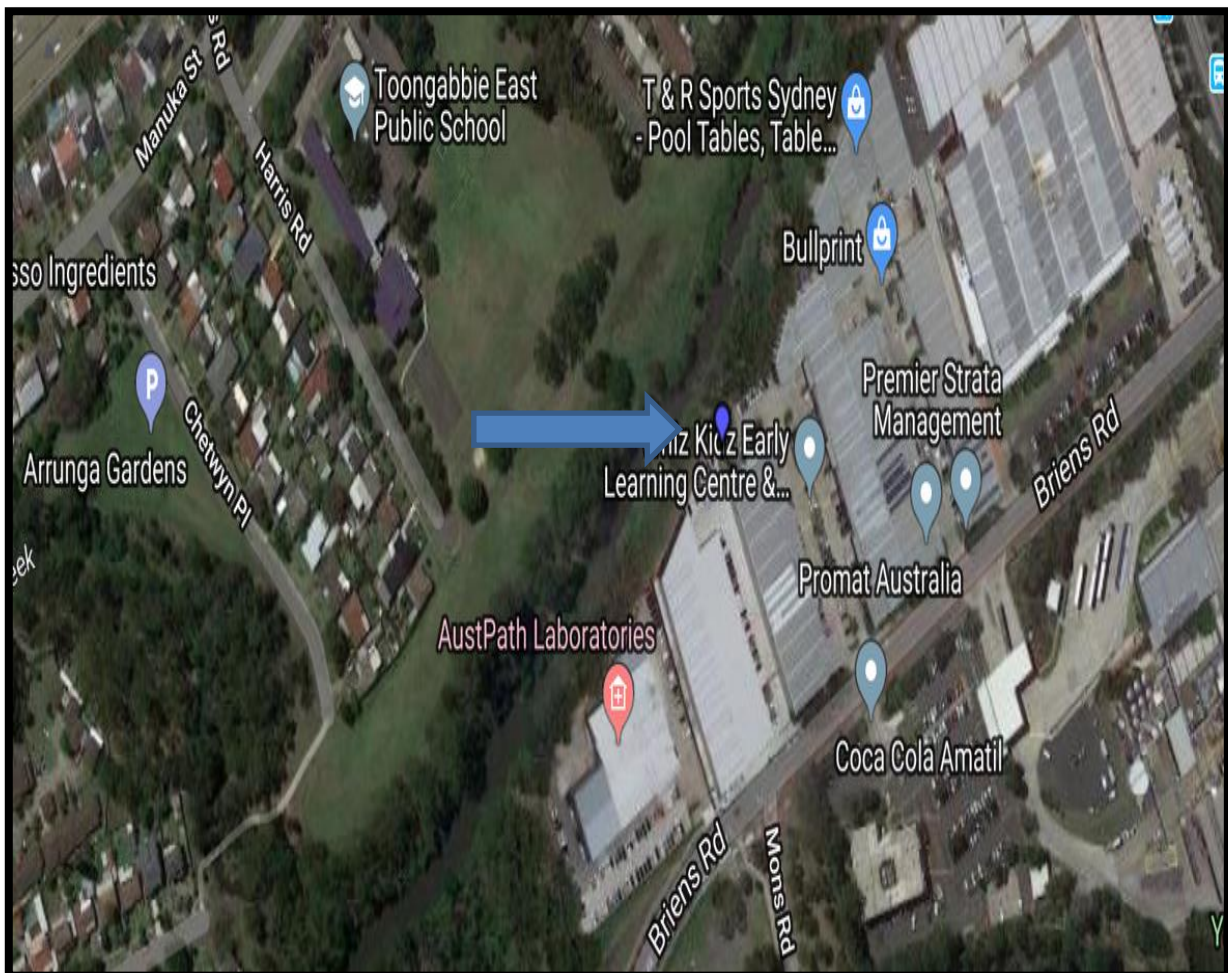
**Reviews** 3% p.a.

**Comments:** Full CMTS site, cabin and pole in LGA of Fairfield \$13,000 p.a. below proposed amount by IPART. Lease renewal.



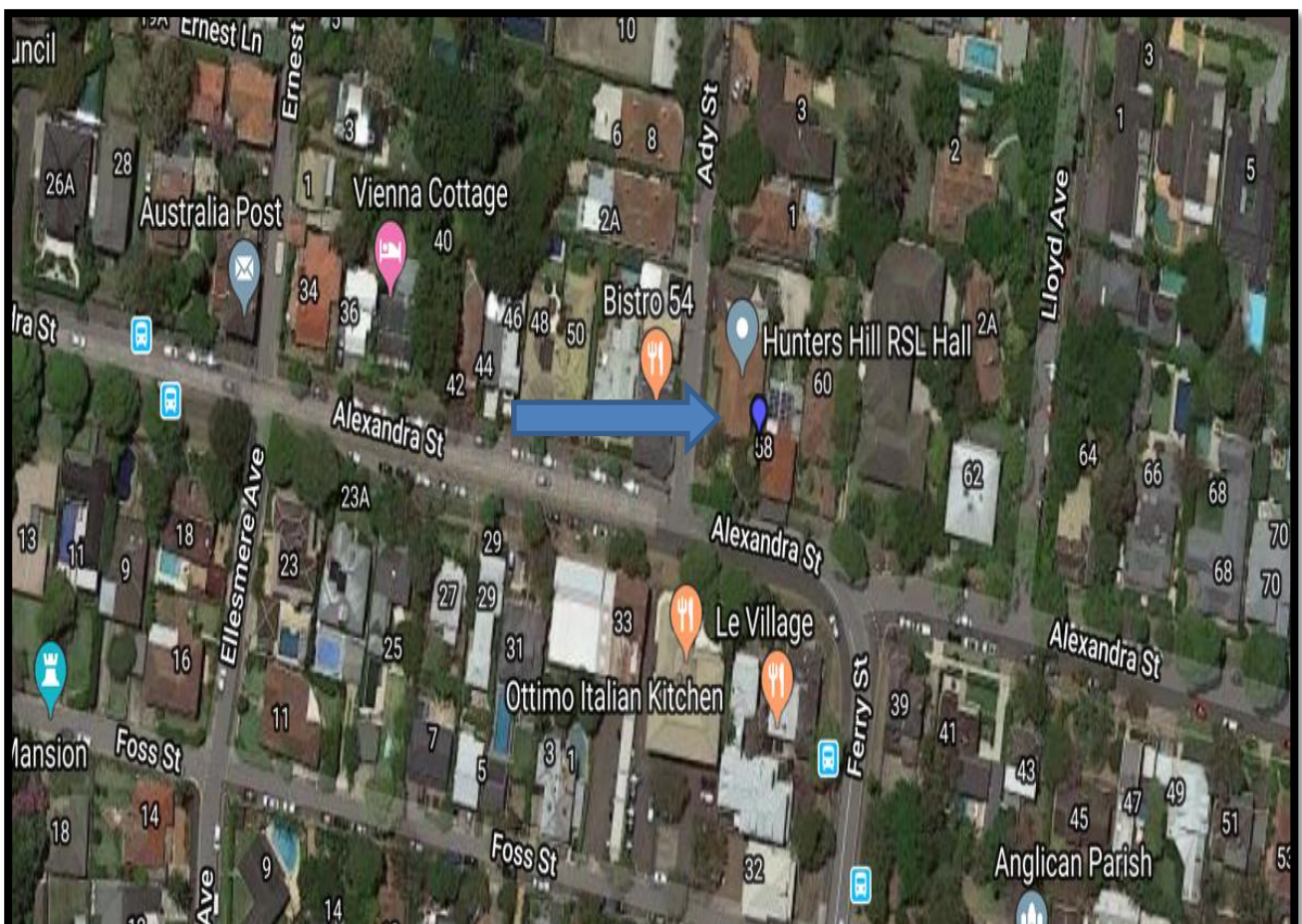
4:

<b>Address</b>	185 Briens Road Northmead
<b>Lessee</b>	Telstra
<b>Lease Commencement</b>	1 January 2018
<b>Term</b>	5 years
<b>Current Rent</b>	\$20,000 p.a.
<b>Reviews</b>	3% p.a.
<b>Comments:</b>	Full CMTS site, cabin and pole in LGA of Parramatta \$13,000 p.a. below proposed amount by IPART. Lease renewal.



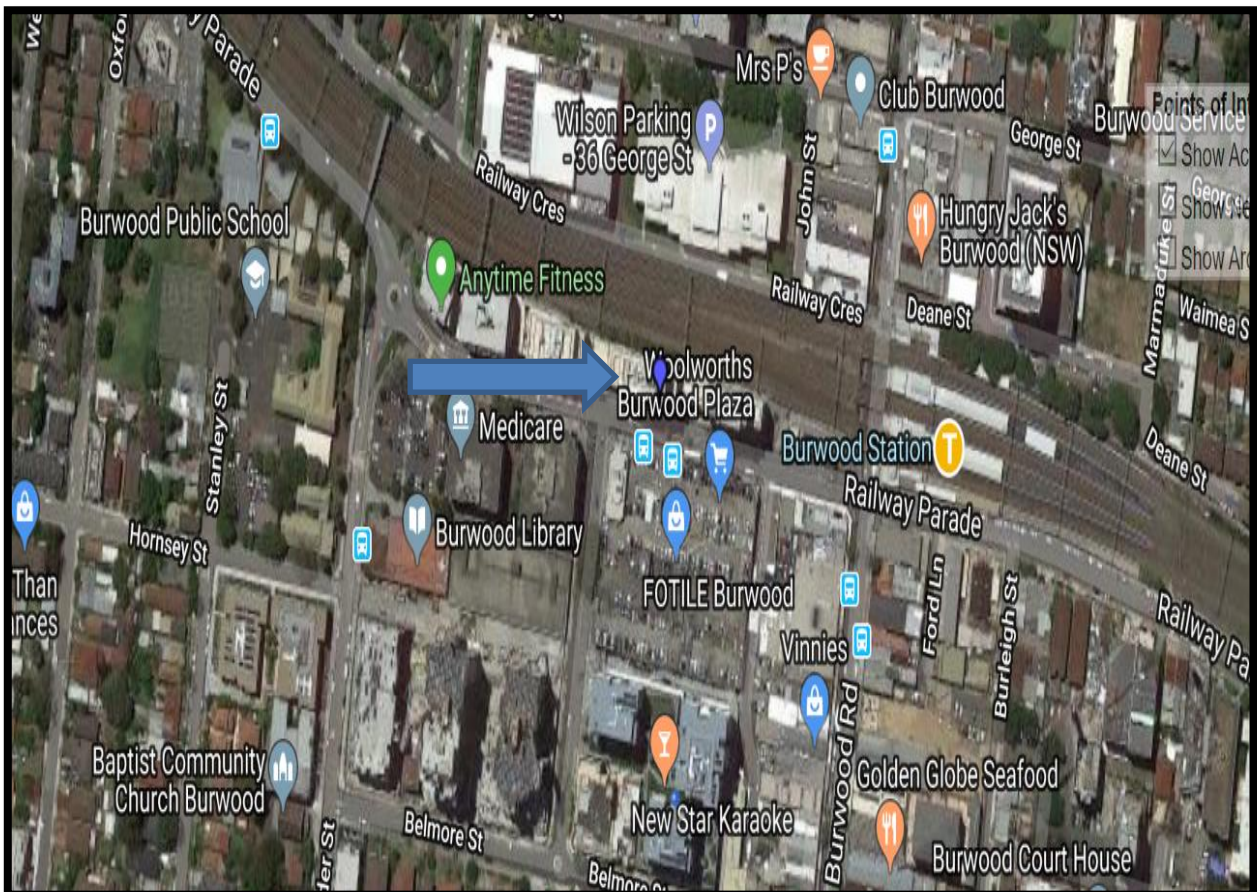
5:

<b>Address</b>	Ady Street Hunters Hill
<b>Lessee</b>	Vodafone
<b>Lease Commencement</b>	16 February 2016
<b>Term</b>	20 years
<b>Current Rent</b>	\$20,000 p.a.
<b>Reviews</b>	3% p.a.
<b>Comments:</b>	Full CMTS site, cabin and pole in LGA of Parramatta \$13,000 p.a. below proposed amount by IPART. Lease renewal.



**Rooftop Rentals:**

1.

**Address** 1 Railway Parade Burwood**Lessee** Telstra**Lease Commencement** 1 April 2017**Term** 20 years**Current Rent** \$26,000 p.a.**Reviews** 3% p.a.**Comments:** Full rooftop facility in LGA of Inner West \$7,000 p.a. below proposed amount by IPART. Lease renewal.

2:

**Address** 128 Bunnerong Rd East Gardens

**Lessee** Telstra

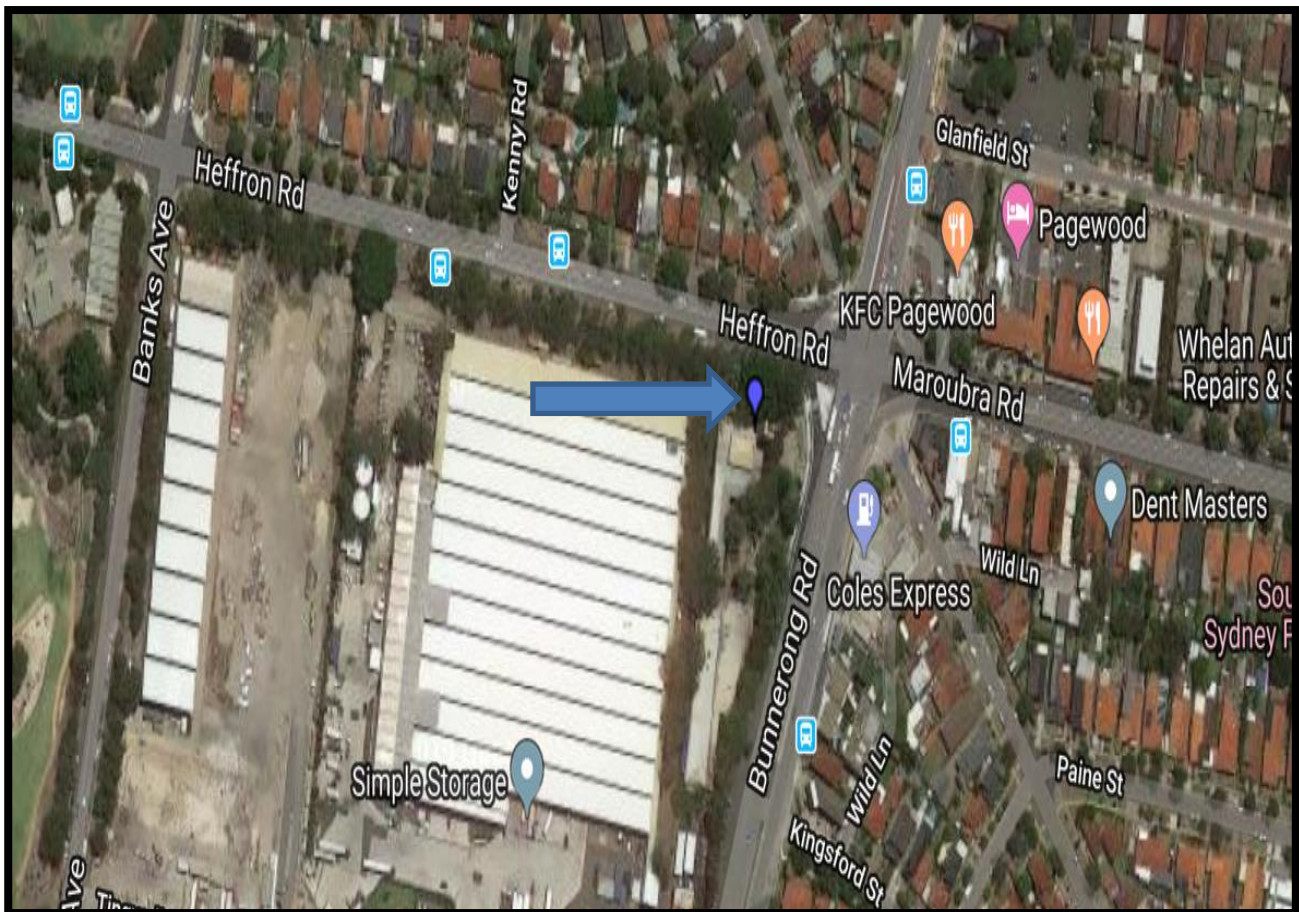
**Lease Commencement** 1 April 2019

**Term** 20 years

**Current Rent** \$22,500 p.a.

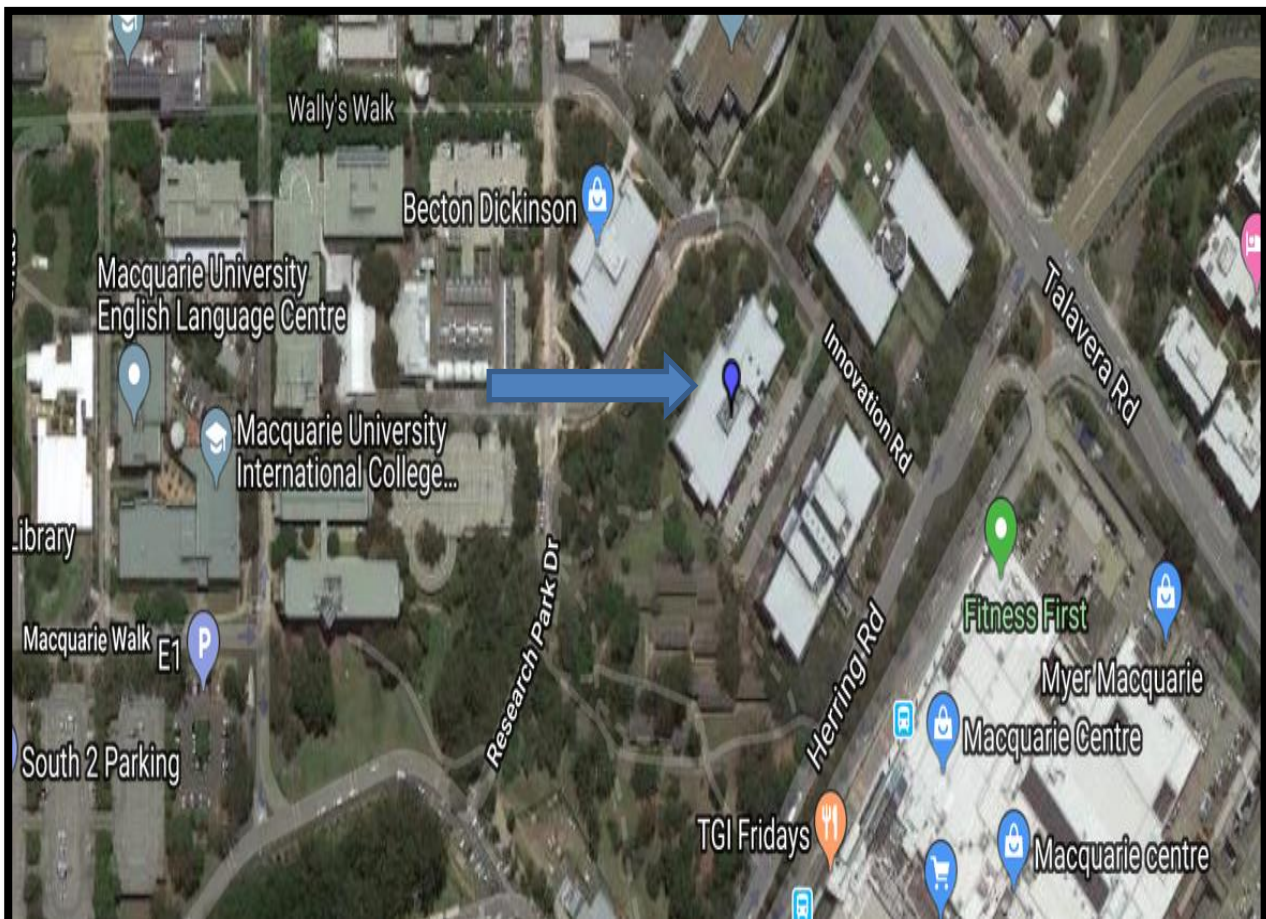
**Reviews** 3% p.a.

**Comments:** Full rooftop facility in LGA of Bayside \$11,000 p.a. below proposed amount by IPART. Greenfields



3:

<b>Address</b>	112 Talavera Road Macquarie Park
<b>Lessee</b>	Telstra
<b>Lease Commencement</b>	19 November 2018
<b>Term</b>	20 years
<b>Current Rent</b>	\$22,000 p.a.
<b>Reviews</b>	3% p.a.
<b>Comments:</b>	Full rooftop facility in LGA of Ryde \$11,000 p.a. below proposed amount by IPART. Greenfields





4:

**Address** 859 Bourke Street Waterloo

**Lessee** Telstra

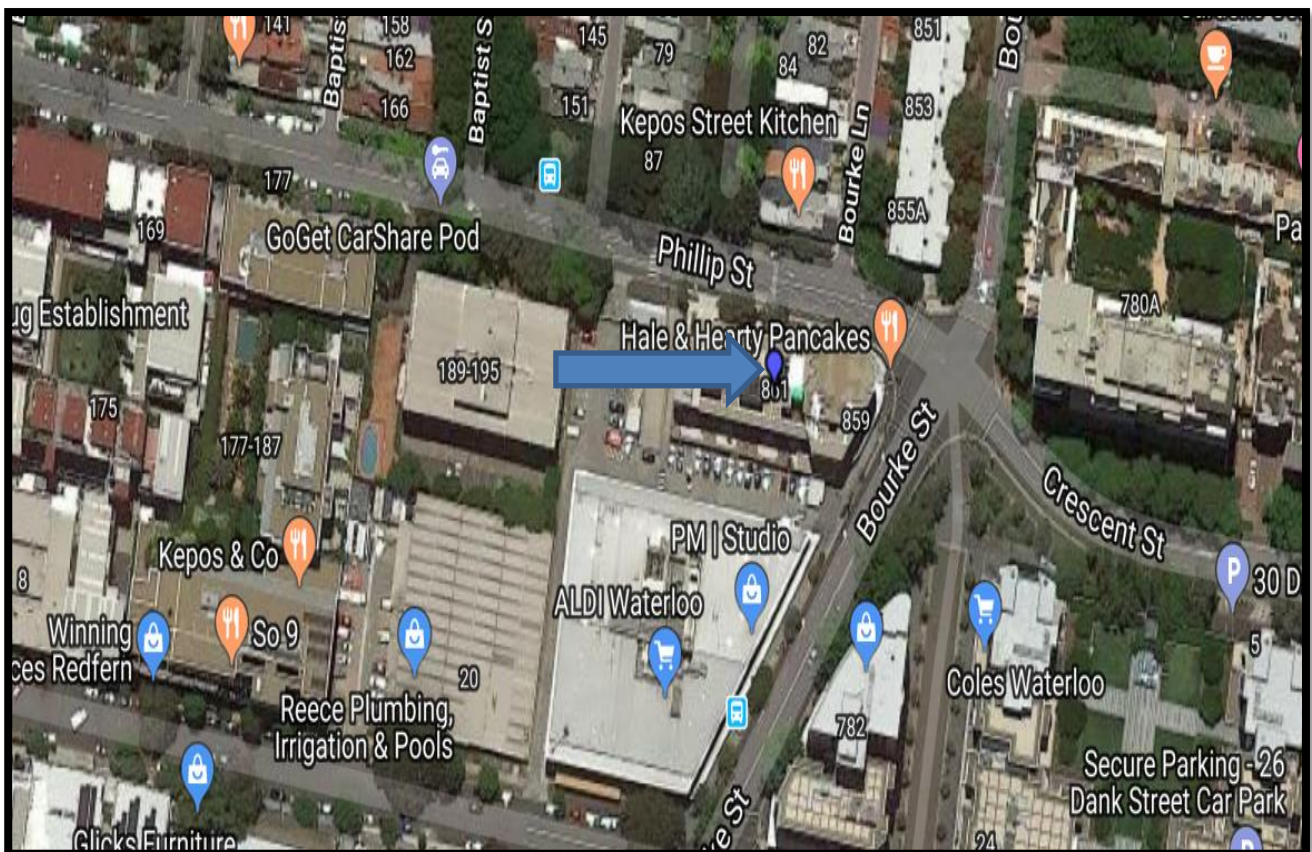
**Lease Commencement** 1 July 2018

**Term** 20 years

**Current Rent** 25,000 p.a.

**Reviews** 3% p.a.

**Comments:** Full rooftop facility in LGA of Sydney \$8,000 p.a. below proposed amount by IPART. Greenfields



5:

**Address** Minogue Crescent Forest Lodge

**Lessee** Optus

**Lease Commencement** 25 June 2016

**Term** 5 years

**Current Rent** 20,000 p.a.

**Reviews** 3% p.a.

**Comments:** Full rooftop facility in LGA of Sydney \$13,000 p.a. below proposed amount by IPART. Greenfields



6:

**Address** 34 – 45 Wentworth Ave Sydney

**Lessee** Optus

**Lease Commencement** 11 may 2017

**Term** 20 years

**Current Rent** 20,000 p.a.

**Reviews** 3% p.a.

**Comments:** Full rooftop facility in LGA of Sydney \$13,000 p.a. below proposed amount by IPART. Greenfields



7:

**Address** 61 Philip Street Sydney

**Lessee** Optus

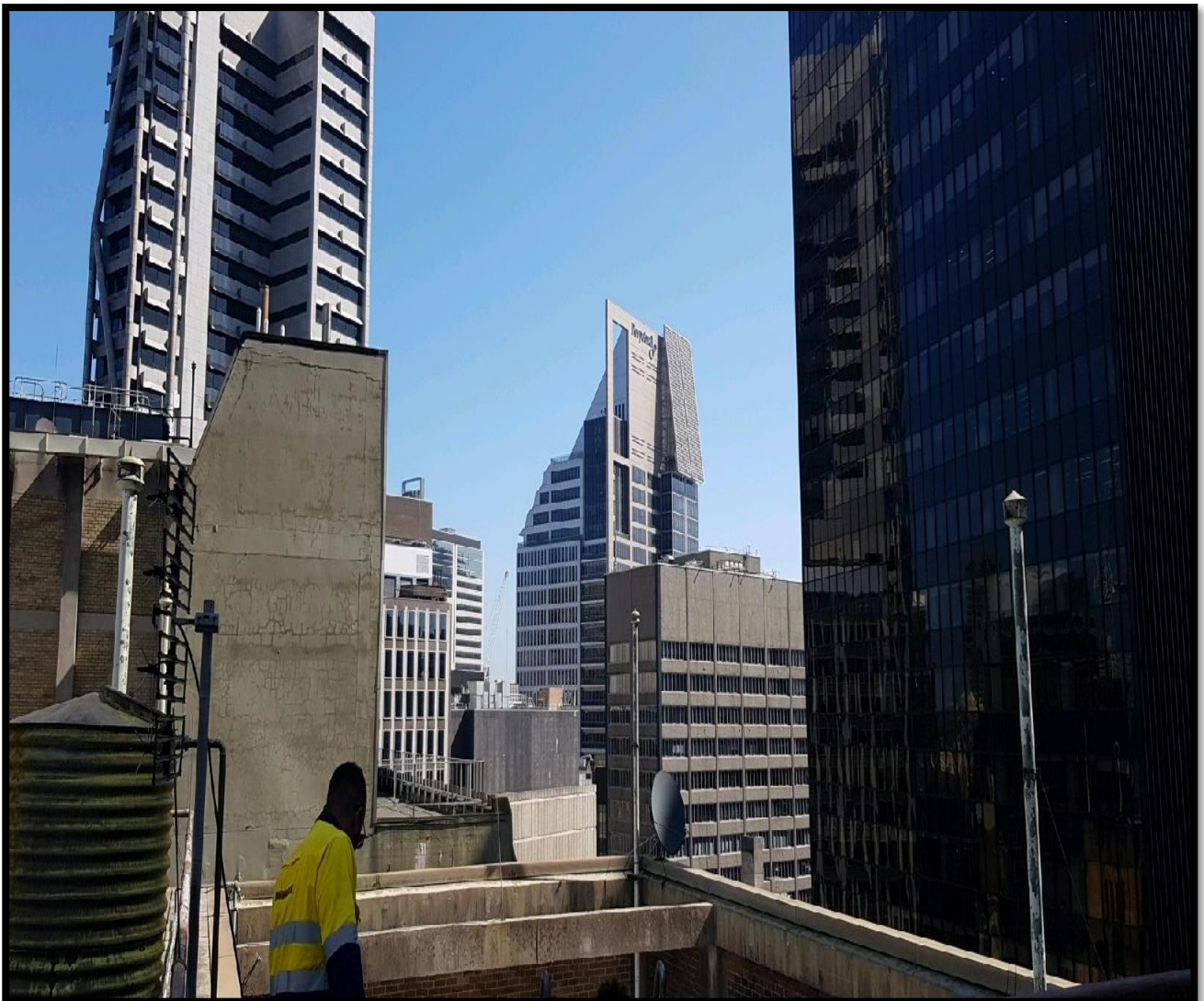
**Lease Commencement** 29 August 2017

**Term** 18 years (Approx).

**Current Rent** 20,600 p.a.

**Reviews** 3% p.a.

**Comments:** Full rooftop facility in LGA of Sydney \$12,000 p.a. below proposed amount by IPART. Greenfields



8:

**Address** 1 Rivett Road North Ryde

**Lessee** Optus

**Lease Commencement** 15 December 2017

**Term** 15 years

**Current Rent** 25,000 p.a.

**Reviews** 3% p.a.

**Comments:** Full rooftop facility in LGA of Ryde \$8,000 p.a. below proposed amount by IPART. Greenfields



9:

**Address** 104 Alice Street Newtown

**Lessee** Optus

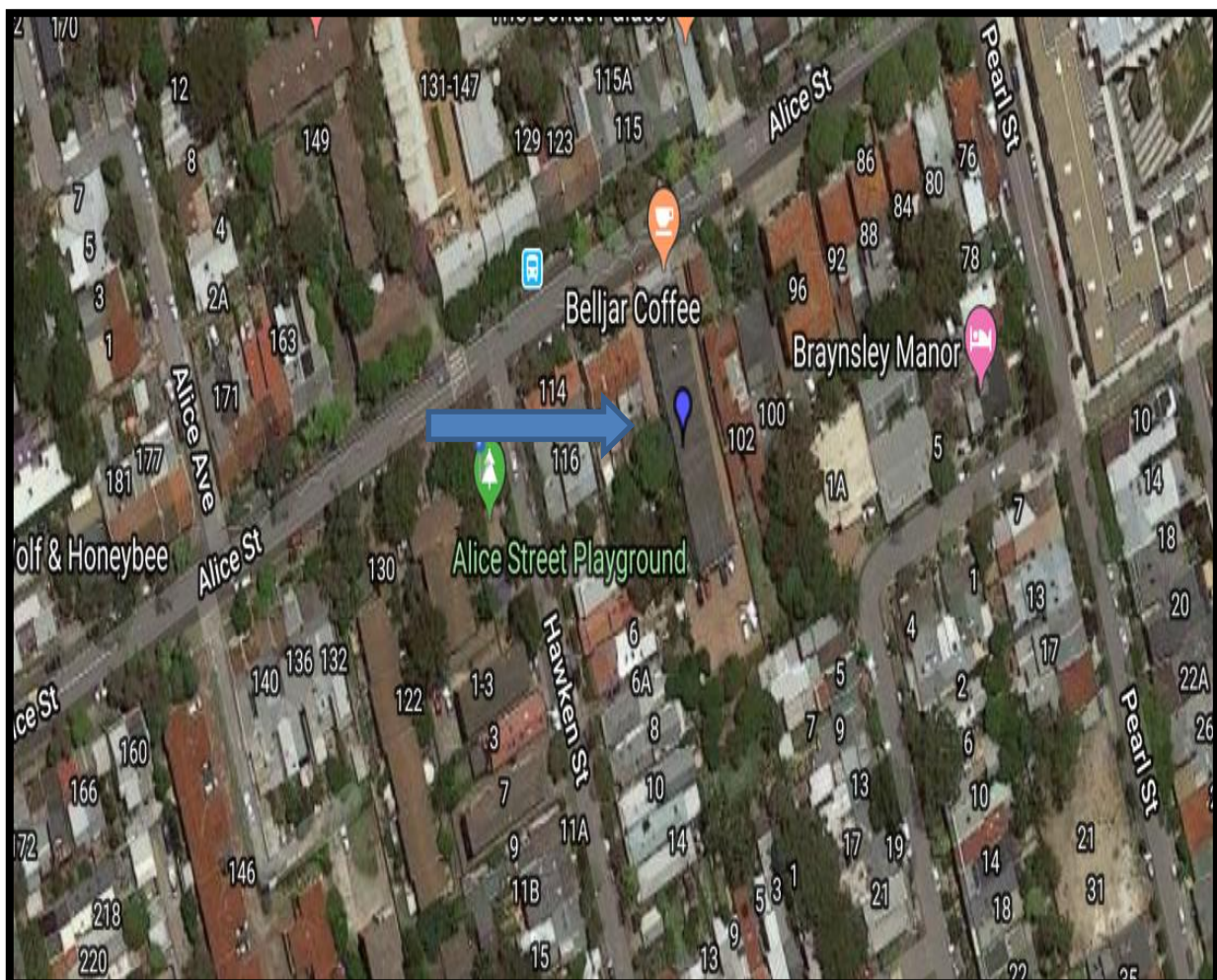
**Lease Commencement** 10 April 2018

**Term** 20 years

**Current Rent** 20,000 p.a.

**Reviews** 3% p.a.

**Comments:** Full rooftop facility in LGA of Sydney \$13,000 p.a. below proposed amount by IPART. Greenfields



10:

**Address** 241 Sydney Park Rd Erskinville

**Lessee** Optus

**Lease Commencement** 15 June 2018

**Term** 20 years

**Current Rent** 20,000 p.a.

**Reviews** 3% p.a.

**Comments:** Full rooftop facility in LGA of Sydney \$13,000 p.a. below proposed amount by IPART. Greenfields



**MARKET COMMENTARY:**

The Telecommunications sector has experienced a major downturn in recent years with higher levels of competition, increased costs and a burgeoning network that has evolved as a direct result of increases in data requirements, especially in relation to smart phones. Revenues have basically plateaued, however, costs have escalated due to increases in network size and requirements.

In the early years of the mobile phone industry rents were struck at rates which reflected an over anxious lessee and, in many cases, an unwilling lessor. The requirement at the time for the main telecommunication providers was to provide the roll out of infrastructure at a rapid pace with little attention directed towards the detail of leasing deals or cost. Subsequently, 20 years on, the industry is renegotiating a major proportion of leases to rectify a legacy of an unrealistic escalation of rents at 5% or more p.a, whereby, the compound effect of these increases has created a false and unsustainable market. The resulting reduction in comparable rents demonstrate the re-setting of the telco market.

As the market has matured there has been a focus by all three carriers to reduce their rental costs and this has initially been addressed with the closure of the 3gis network in 2012, whereby, approximately 4,000 sites were closed and decommissioned. Many leases were terminated early into their 20 year term which basically highlights the risk to any prospective investor of the uncertainty of owning a site with telecommunications facilities present. Ongoing changes in technology, network grid patterns, etc, are likely to see further consolidation in the short term as roll out plans have been shelved and joint ventures or sharing sites are now common place.

**VALUATION RATIONALE:**

In reviewing the general evidence the rental range for the Sydney Category as specified by IPART shows a variation of around \$20,000 - \$25,000 p.a . Strong evidence is present in both the ground and rooftop rentals. It is noted the availability of ground rents are somewhat limited in this geographical location as these areas are heavily developed, whereby, there is a tendency to favour rooftop sites.


In regard to the greenfield sites, which take precedence in the “Hierarchy of Evidence”, as noted earlier in the report, along with the considerations applied in the Spencer case it would appear the Sydney category is still way above the private market as demonstrated in the report.

**In light of the above a mid- point of \$22,500 p.a. would be a suitable rate for the Sydney IPART Category. We further note IPART has identified in their July 2019 report that private market rents are significantly less than the current and proposed IPART rates.**



## VALUATION:

In accordance with the foregoing, it is considered that the market rent for CMTS telecommunication facilities within the IPART Sydney Category NSW as at 5<sup>th</sup> August 2019 is \$22,500 p.a. **(Twenty Two Thousand Five Hundred Dollars per annum)**

A handwritten signature in black ink, appearing to read 'David Sullivan', is written over a light blue horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**David Sullivan BBlc, AAPI, MRICS, CPP, CPV  
Director**

The valuation is for the use of the party to whom it is addressed and for the purpose stated. No responsibility is accepted to any third party who may use or rely on the whole part of the contents of the valuation. Furthermore, neither the whole nor any part of this report may be included in any publication or document without prior consent.

The valuation is current as at the date of valuation only. The values assessed herein may change significantly, unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. We do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of three months from the date of valuation, or such earlier date if you become aware of any factors that have any effect on the valuation.

**Liability Limited by a Scheme Under Professional Standards Legislation**



Optus Site ID	Registration Number	ACMA Site ID	Site Address	IPART classification	State	Post Code	Renewal Rule	Tenure Type	Contract SubType	Comm Date	Contract End	Commencing Rent
S2842	AN566446V	9019368	1 RIVETT RD, NORTH RYDE	Sydney	NSW	2113	15 years	ANNUAL LEASE	230 BUILDING - ROOFTOP BT:	15/12/2017	14/12/2032	25,000
S7051	AM553404L	9023289	HAROLD PARK PACEWAY, ROSS STREET, GLEBE	Sydney	NSW	2037	3 further terms of 5 years each	ANNUAL LEASE	030 ROOFTOP LEASE	25/06/2016	24/06/2021	20,000
S8629	AN325589T	10000271	34-45 WENTWORTH AVENUE, SYDNEY	Sydney	NSW	2000	20 years	ANNUAL LEASE	230 BUILDING - ROOFTOP BT:	11/05/2017	10/05/2037	20,000
S3073	AN67930X	10005589	61-101 PHILLIP STREET, SYDNEY	Sydney	NSW	2000	17 years, 10 months, 6 days	LEASE	230 BUILDING - ROOFTOP BT:	29/08/2017	4/07/1935	20,000
S8694	AN679497W	10010127	104 ALICE STREET, NEW TOWN	Sydney	NSW	2042	20 years	LEASE	230 BUILDING - ROOFTOP BT:	10/04/2018	9/04/2038	20,000
S3062	AN709035B	10011663	241-245 SYDNEY PARK ROAD, ERSKINEVILLE	Sydney	NSW	2043	20 years	LEASE	230 BUILDING - ROOFTOP BT:	15/06/2018	14/06/2038	20,000