

**REVIEW OF**  
RENTAL ARRANGEMENTS FOR  
COMMUNICATION TOWERS ON CROWN LAND

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# IPART WILL RECOMMEND RENTS FOR COMMUNICATION TOWERS ON CROWN LAND

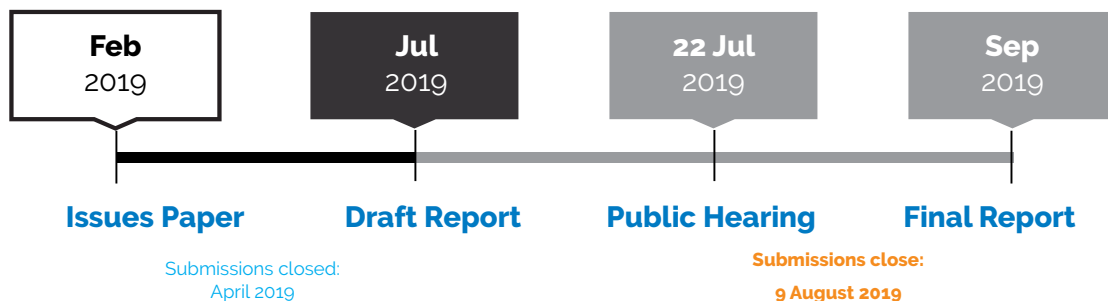
TO APPLY FROM 1 JULY 2020

The NSW Government has asked the Independent Pricing and Regulatory Tribunal (IPART) to review the **rental arrangements for communication tower sites located on Crown land** managed by three government agencies – the Department of Industry's Division of Lands and Water, the Office of Environment and Heritage, and Forestry Corporation NSW (the land management agencies).



Our review process to date has involved the collection of information as well as detailed analysis and public consultation. In February 2019 we released an Issues Paper that set out our proposed approach for the review. We received 26 submissions.

We are **seeking feedback** by **9 August 2019** on our draft report which sets out our draft recommendations.



## What have we been asked to do?



We have also been asked to make recommendations on arrangements for emerging technology

Our terms of reference for this review ask us to provide advice on a fee schedule that reflects "fair, market-based commercial returns". In forming this advice, we are to have regard to:

- Recent market rentals agreed for similar purposes and sites
- Relevant land valuations
- The framework we established in the 2013 review
- The land management agencies' legislative requirements.

We must also consider a range of other matters, including the Government's preference for a fee schedule that is as simple, transparent, and cost-reflective as practicable, and clause 44 of Schedule 3 of the Telecommunications Act 1997 (Cth) (Telecommunications Act) which prohibits discrimination against telecommunication carriers by State law. Our full terms of reference are provided in Appendix A.

# 1. Executive Summary

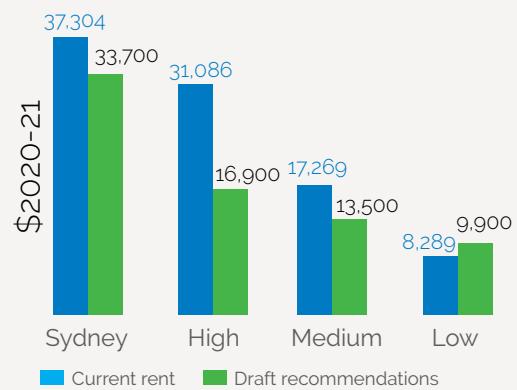
Setting rents using a fee schedule that reflects **efficient prices in a workably competitive market** is the most appropriate and practical approach for ensuring that government land management agencies receive "fair, market-based commercial returns".

Key elements of the current rental arrangements should 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.

## Rent for primary users on existing sites updated to reflect recent market prices

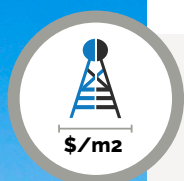
Four categories continue to reasonably reflect the variation by location in market rents for sites on private land, while keeping the fee schedule simple, transparent and easy to implement.

Rent levels should decrease for sites in the Sydney, High and Medium categories and increase for those in the Low category.



## Definitions of the High and Medium location density categories refined and clarified.

- ▼ High density locations to be defined as those in the Australian Bureau of Statistics' (ABS) significant urban areas of Sydney (excluding those local council areas captured in the Sydney category), Newcastle-Maitland, Central Coast and Morisset-Cooranbong.
- ▼ A list of UCL centre points for Medium density locations to be published.



## New arrangements for new sites and Small Country Automated Exchanges (SCAX)

Rents for primary users of **new communication tower** sites on Crown land should vary by land size as well as by location. We consider it reasonable that users pay for the land area they use, and have an incentive to minimise this area.

The same arrangement is reasonable for both new and existing SCAX sites to reflect the different nature and extent of the use of the land. These exchanges are generally located in rural and remote areas and service a small number of customers.

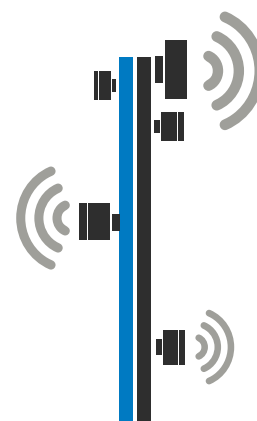




## New arrangements for co-users and small cell technology

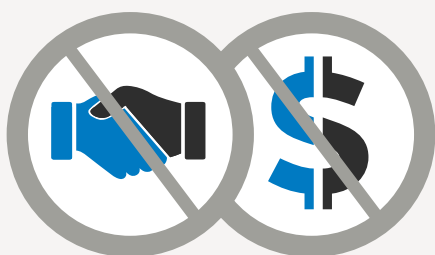
We are recommending that rents for co-users of existing and new sites be more consistent with private market practices:

- ▼ Be based on their additional land footprint, and be calculated using the same per metre squared basis and rates as rents for primary users of new sites
- ▼ Be capped at the flat rate for primary users on existing sites in the same location category
- ▼ For co-users wholly within the primary user's site, only the minimum annual rent to occupy Crown land be charged.



The same arrangement is reasonable for sites used by **emerging communication technologies**, such as 5G mobile telecommunications. This technology requires more sites than traditional communication technologies, and uses less land area per site.

Therefore, we are recommending that rent for these sites be based on additional footprint on a \$/m<sup>2</sup> basis. Where there is no additional footprint (eg, small cells are installed on existing poles or structures) the minimum annual rent to occupy Crown land should be payable.



## Negotiation for High value sites to be removed.

Rents for sites in national parks to continue to be set one location category higher than the site's actual location to reflect social, cultural and environmental value of land

## Rental rebates currently provided to community groups, local services providers and other users should be removed.

While many of these users of communication towers undertake activities that generate positive externalities, we consider it is more appropriate for the Government to account for these positive externalities in deciding whether and how much to fund these users (for example, through Government subsidies) rather than in setting the rents they pay the Government for their use of Crown land.



## Impacts of our draft recommendations

**For many users, our draft recommendations would mean lower rents.** These include primary users in Sydney, High and Medium locations, and most co-users (particularly those wholly within a primary user's site).

In some cases, **the impact of our draft recommendation to remove rental rebates would be offset by other draft recommendations.** For example, many co-users would pay only the minimum annual rent to occupy Crown land under our draft recommendation to charge co-users on per metre squared basis for additional land only. In addition, **telephony service providers** would pay on average, about \$1,024 more in \$2020-21 under our recommended rate per square metre without the rebate they currently receive.

But for local service providers and community groups that are primary users, the removal of these rebates would mean they pay higher effective rents.

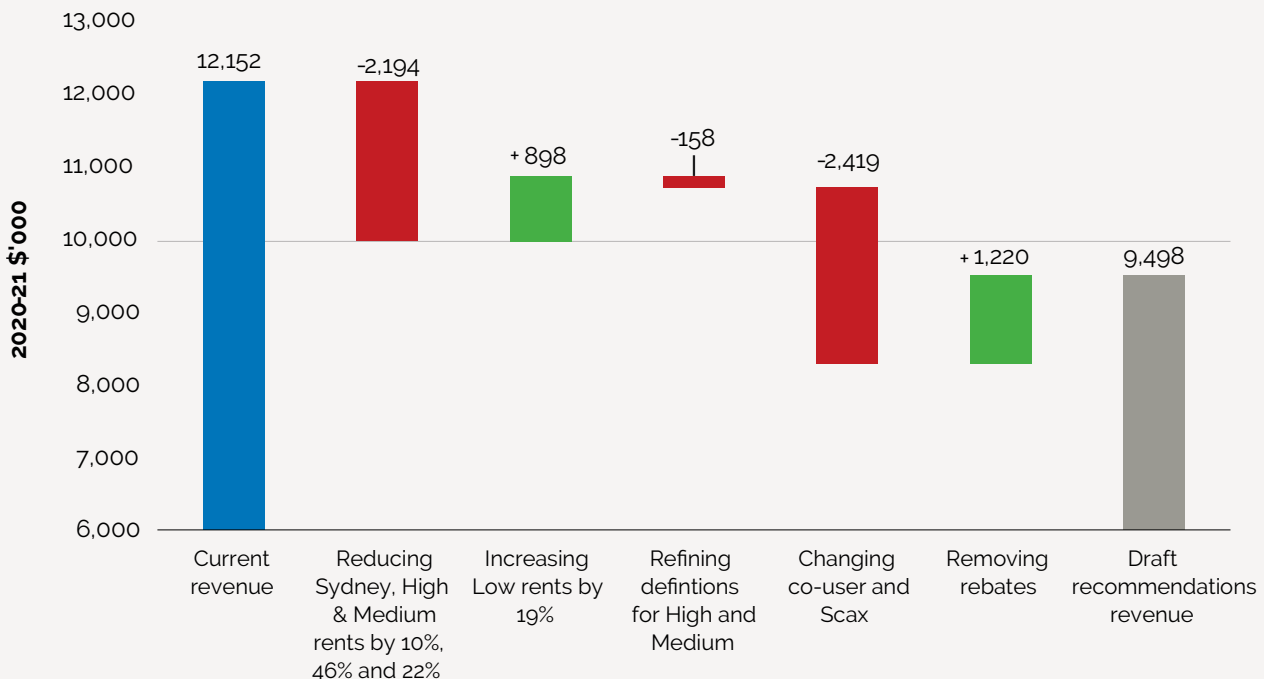
### For those that are adversely impacts we are recommending:

- ▼ **Local service providers** be able to apply for transitional financial assistance from the NSW Small Business Commissioner for a period of three years.
- ▼ **Community groups** receive additional Government subsidies to fund their activities where their revenues do not cover their costs.



### Decrease in revenue for land management agencies

We estimate that our draft recommendations would decrease revenue for the land management agencies by around \$2.7 million a year from \$2020-21





## How this report is structured

The rest of this Draft Report provides more information on this review, our approach and our draft recommendations:



- ▼ **Chapter 2** outlines the key contextual information for this review.
- ▼ **Chapter 3** sets out the approach we have used to make our draft recommendations.
- ▼ **Chapter 4** discusses the basis we have used for setting rents on Crown land
- ▼ **Chapter 5** explains our draft recommendations on a rent schedule for existing communication tower sites on Crown land
- ▼ **Chapter 6** explains our draft recommendations for new sites and SCAX sites
- ▼ **Chapter 7** sets out our recommendations regarding co-users and small cell technology
- ▼ **Chapter 8** explains why we are recommending negotiation of rental fees for high value sites no longer be permitted, also why we consider the infrastructure provider discount should not be reinstated
- ▼ **Chapter 9** discusses why we are recommending that rebates no longer be available for different user categories
- ▼ **Chapter 10** discusses the impacts of our recommendations on users and the transitional arrangements we are recommending to manage these impacts. It also discusses our draft recommendations for the annual rent adjustments and 5-yearly reviews.

# DRAFT RECOMMENDATIONS

- 1 That the appropriate basis for setting rents for communication tower sites on Crown land is rents agreed in a workably competitive market - that is rents paid by commercial users of communication tower sites on private land are the best-available indicator of efficient prices.
- 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.

**Table 5.1 Draft recommendations on annual rents for primary users on existing sites from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per site	33,700	16,900	13,500	9,900

- 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 at no additional cost. Where additional access roads are required the costs of building and maintaining should be set with reference to a benchmark rate.
- 5 For new sites, the land management agencies implement the schedule of rents shown in Table 6.1, where rent per site varies by location and land size.

**Table 6.1 Draft recommendations on annual rents for primary users on new sites and SCAX sites from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per m <sup>2</sup>	1,123	273	203	124
Rent per site varies depending on land size	For a median land size of 30 m <sup>2</sup> for Sydney sites, rent would be \$33,690	For a median land size of 60 m <sup>2</sup> for High sites, rent would be \$16,380	For a median land size of 65 m <sup>2</sup> for Medium sites, rent would be \$13,195	For a median land size of 80 m <sup>2</sup> for Low sites, rent would be \$9,920

- 6 That the rent for Small Country Automatic Exchange (SCAX) sites be set on a per metre squared basis as shown in Table 6.1.
- 7 That the rent for SCAX sites be capped at the flat rent per site for primary users on existing sites in the same location category.
- 8 That co-users on existing and new sites be charged for any additional land they occupy outside the perimeter of the primary user's communication tower site on the per metre squared basis as shown in Table 7.1.

**Table 7.1 Draft recommendations on annual rents for co-users and small cell technology from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per m <sup>2</sup>	1,123	273	203	124

- 9 That the co-user rent be capped at the flat rent per site for primary users on existing sites in the same location category.
- 10 That the minimum annual rent to occupy Crown land be payable for co-users wholly located within the primary user's site.
- 11 That the rent for small cell technology occupying additional Crown land be set on the per metre squared basis as shown in Table 7.1.
- 12 That the minimum annual rent to occupy Crown land be payable for small cell technology installed on existing poles or structures with no additional footprint.
- 13 That the rents for all communication sites on Crown land be set according to the rent schedule for the relevant location category, and negotiation of rent for high value sites not be permitted.
- 14 That the Office of Environment and Heritage continue to set the rent for sites in national parks one location category higher than the site's actual category.
- 15 That infrastructure providers not receive a rental discount for communication sites on Crown land.
- 16 That the current rebates for Community Groups, Budget Funded Sector, Local Service Providers, and Telephony Service Providers be removed.



- 17 That the new rent schedule apply to all communication tower sites on Crown land from 1 July 2020.
- 18 Those local service providers adversely impacted by our recommendations be able to apply for transitional financial and business advisory assistance from the NSW Small Business Commissioner for a period of three years.
- 19 That the NSW Government provide on-going financial assistance to those Community groups adversely impacted by our recommendations.
- 20 That the published rent schedule be updated annually by the change in the consumer price index (CPI).
- 21 That the published rent schedule be subject to an independent review every five years to ensure it reflects fair market based rental returns.



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Independent Pricing and Regulatory Tribunal  
New South Wales

The Independent Pricing and Regulatory Tribunal (IPART) provides independent regulatory decisions and advice to protect and promote the ongoing interests of the consumers, taxpayers and citizens of NSW. IPART's independence is underpinned by an [Act of Parliament](#).

## The Tribunal Members for this review

Mr Ed Willett

Ms Deborah Cope

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## Invitation for submissions

IPART invites written comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

### Submissions are due by 9 August 2019

We would prefer to receive them electronically via our online submission form

<[www.ipart.nsw.gov.au/Home/Consumer\\_Information/Lodge\\_a\\_submission](http://www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission)>.

You can also send comments by mail to:

**Rental Arrangements for Communication Towers on Crown Land**  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
Haymarket Post Shop NSW 1240

Late submissions may not be accepted at the discretion of the Tribunal. Our normal practice is to make submissions publicly available on our website <[www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)> as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed above.

We may choose not to publish a submission - for example, if it contains confidential or commercially sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. However, it could be disclosed under the *Government Information (Public Access) Act 2009* (NSW) or the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW), or where otherwise required by law.

If you would like further information on making a submission, IPART's submission policy is available on our website.

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## 2 Context for this review

To undertake and provide input to this review of the rental arrangements for communication tower sites on Crown land in NSW, it is important to understand the context in which the land management agencies and site users operate. The sections below provide more information on the key context, including:

- ▼ What a communication tower site is
- ▼ What sites are covered by our review and where they are located
- ▼ Who uses these sites
- ▼ The current rental arrangements for these sites
- ▼ The relevant legislation to be taken into account.

### 2.1 What is a communication tower site?

To provide coverage, both broadcast communications (such as radio and television) and two-way communications (such as mobile phone and two-way radio networks) require a network of infrastructure to transmit signals.

A communication tower site may include (but is not limited to):

- ▼ A purpose built communication tower, with co-located communications equipment affixed
- ▼ Buildings where equipment is housed
- ▼ Generators and connection to the local electricity network
- ▼ Solar panel arrays
- ▼ Fibre optic cabling
- ▼ Access roads.

Communication tower sites can be on either public or private land.

### 2.2 Which sites does our review cover?

The Premier has requested we undertake a review of the rental arrangements for communication tower sites on Crown land that is managed by three NSW land management agencies:

- ▼ The Department of Planning, Industry and Environment – Division of Lands and Water (Department of Industry)

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Communication tower sites provide a network of infrastructure to transmit and receive signals.

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- ▼ NSW National Parks and Wildlife Service (NPWS), which is part of the Office of Environment and Heritage
- ▼ Forestry Corporation of NSW (Forestry Corporation) – a state-owned corporation.

Our review does not apply to communication tower sites on Crown land administered by other government agencies or businesses (including Roads and Maritime Services, Sydney Water and local councils).

Currently, there are 937 recorded communication tower sites and 1,789 associated licences on Crown land managed by the three relevant agencies.<sup>1</sup> The number of licences administered by each agency is shown in Table 2.1.

**Table 2.1 Number of licences by land management agency**

Agency	2019
Department of Industry	1,297
Forestry Corporation	368
NPWS	124
<b>Total</b>	<b>1,789</b>

**Note:** Data as at January 2019.

**Source:** Department of Industry, Office of Environment and Heritage and NSW Forestry Corporation.

Under the current rental arrangements, the sites are categorised as either high value or standard.<sup>2</sup> Standard sites are further categorised by their location based on population density. There are four location categories:

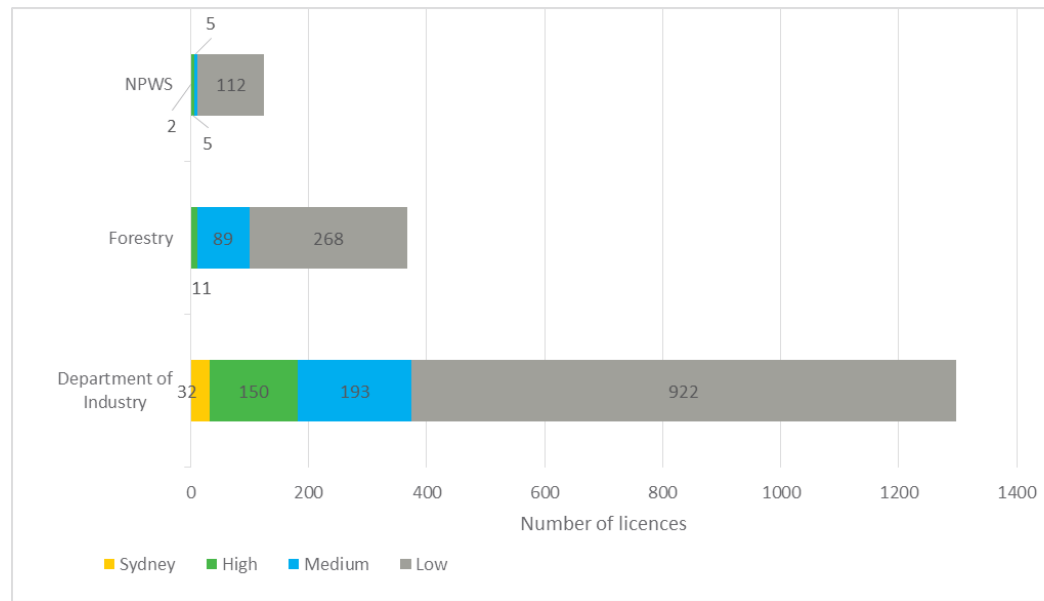
- ▼ **Sydney**, which includes local council areas in metropolitan Sydney with a population density of greater than 1,800 people per square kilometre
- ▼ **High**, which includes local council areas in metropolitan Sydney with a population density of less than or equal to 1,800 people per square kilometre, and the greater metropolitan areas of the Central Coast, Newcastle and Wollongong
- ▼ **Medium**, which includes areas within 12.5 kilometre of the centre of the 37 Urban Centres and Localities (UCLs) defined by the Australian Bureau of Statistics (ABS) as having a population of 10,000 or more based on the 2011 census
- ▼ **Low**, which includes all other areas of NSW.

As Figure 2.1 shows, the majority of licences are for sites in the low density location category, partly because this is where much of the Crown land we are concerned with is located, and partly because in metropolitan areas there are many alternate sites for communication towers, for example on private buildings.

<sup>1</sup> Each site may be licensed to more than one user.

<sup>2</sup> IPART, *Review of rental arrangements for communication towers on Crown Land – Final Report*, July 2013.

**Figure 2.1 Number of licences by location category 2019**



**Data source:** Department of Industry, Office of Environment and Heritage and NSW Forestry Corporation.

Crown land managed by the Department of Industry, the Forestry Corporation and NPWS is used for a range of activities, some of which are commercial. The installation of communications infrastructure on Crown land precludes its use for other activities. It may also result in increased road traffic in environmentally sensitive areas.

The income the three agencies receive from rental of communication tower sites represents only a small amount of their revenue from the sale of good and services. We also note that much of the land managed by the agencies, such as national parks, has other uses that cannot be monetised.

### 2.3 Who uses communication tower sites on Crown land?

A wide range of organisations are licensed to use communication tower sites on Crown land, including:

- ▼ State budget agencies (for example, emergency service organisations)
- ▼ State-owned corporations (for example, Forestry Corporation)
- ▼ Commonwealth funded agencies (for example, Australian Federal Police)



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Sites are used by a range of organisations including telecommunication and data carriers, broadcasters, community-based organisations (such as surf lifesaving and marine rescue) and state budget agencies.

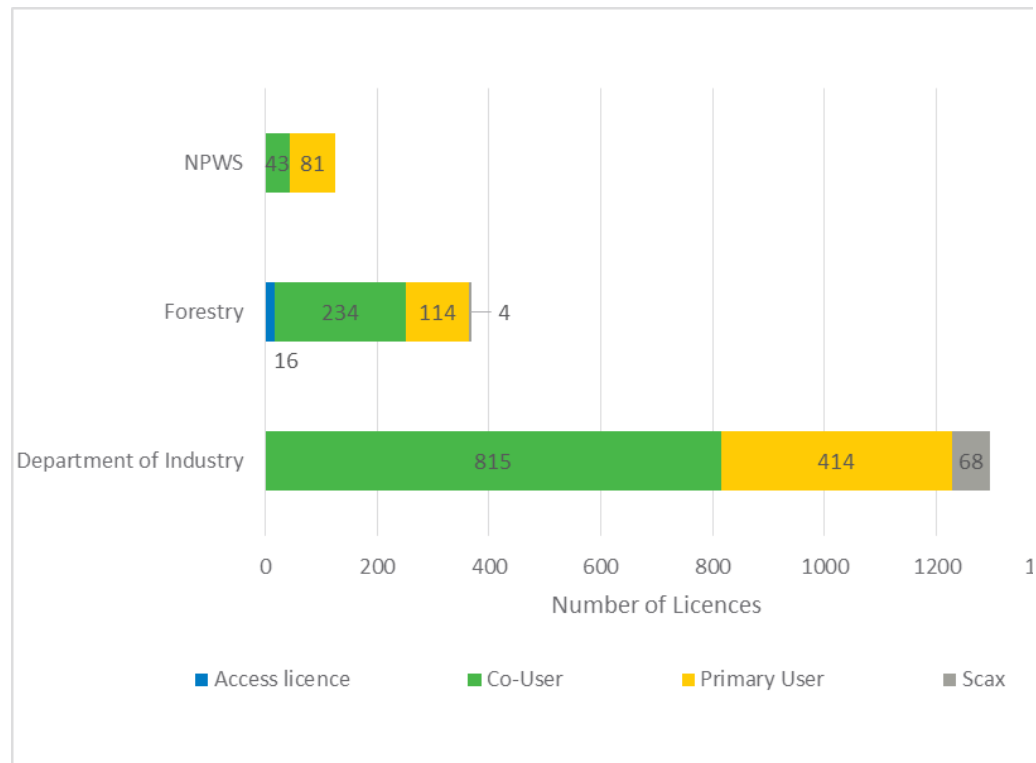
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- ▼ Community-based organisations (such as surf lifesaving and marine rescue) and community radio
- ▼ Radio and television broadcasters (including public and commercial stations)
- ▼ Telecommunication and data carriers (for example, Telstra and Optus)
- ▼ Privately owned networks without carrier status (for example, Vertel)
- ▼ Communications infrastructure providers (for example, Broadcast Australia and Axicom (previously Crown Castle Australia)).

Under the current rental arrangements, these users are either primary users (which includes infrastructure providers) or co-users. Co-users are the largest group of users (Figure 2.2).

There are also a number of Small Country Automatic Exchanges (SCAXs) throughout rural and remote NSW. These exchanges are owned and operated by Telstra, and provided as part of its Universal Service Obligation to deliver fixed line telephone services to customers where it would otherwise be uneconomic to do so. Most of these sites do not have a communication tower and generally have a smaller land footprint than other communication tower sites.

**Figure 2.2 Number of licences by user type**



**Note:** Forestry Corporation has 16 access only licences for facilities not on State Forest land, but which can only be accessed through State Forest.

**Data source:** Department of Industry, Office of Environment and Heritage and Forestry Corporation.

## 2.4 What are the current rental arrangements?

As noted above, under the current rental arrangements, communication tower sites are categorised as either high value or standard sites. Standard sites are further categorised according to their location (see section 2.2 above). The rent payable for standard sites is set according to a published<sup>3</sup> rent schedule and rebate schedule, increased on an annual basis by the Consumer Price Index (CPI) (All Groups) for Sydney.

As recommended by our 2013 review, the rent payable to the land management agencies for access to a high value site is agreed through a negotiation process. We note that NPWS has classified all its sites as high value. The Department of Industry and the Forestry Corporation have not classified any sites as high value.

<sup>3</sup> NSW Government, *Communication licence rent Fact Sheet* at [https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0004/143536/Communication-licence-rent-fact-sheet.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0004/143536/Communication-licence-rent-fact-sheet.pdf) accessed on 20 February 2019.

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Current schedule has one rent level per location category – Sydney, high, medium and low.

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Community organisations, emergency services, local service providers and some telephony service providers currently receive rebates.

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### 2.4.1 Rent schedule for standard sites

The current rent schedule consists of one annual rent (or rent level) per location category, which applies to all users of sites in that category (Table 2.2). The aim of this rent schedule is to provide a commercial market return without the cost and time involved in negotiating the rent for every site. This is particularly important for sites in the low category (the majority of sites) where the cost of negotiation is likely to exceed the benefits.

**Table 2.2 Rent for standard sites (\$2018-19, annual, ex GST)**

Location category	Annual rent
Sydney	36,068
High	30,056
Medium	16,697
Low	8,014

**Note:** Under the current arrangements, rents are adjusted for inflation each year.

**Source:** NSW Government, Department of Industry, *Communication licence rent Fact Sheet* at [https://www.industry.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/143536/Communication-licence-rent-fact-sheet.pdf](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/143536/Communication-licence-rent-fact-sheet.pdf) accessed on 8 February 2019.

However, the rent payable varies by user type. In our 2013 review we recommended that both primary users and infrastructure providers be charged 100% of the scheduled rent, and co-users be charged 50% of the scheduled rent.<sup>4</sup> New users who have entered into licences with the land management agencies after 1 July 2013 are currently paying rent in line with this recommendation. However, existing users may still be transitioning to the appropriate rent (see section 2.4.3 below).

### 2.4.2 Rebate schedule

The current rebate schedule applies to eligible users (Table 2.3), and rebates are granted at the discretion of the relevant Minister. These groups include community organisations, emergency services, local service providers and some telephony service providers required by law to offer services in low-density areas.

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<sup>4</sup> For Infrastructure providers with existing licence arrangements, the 30% discount was to be removed gradually over five years, starting after the end of the next rent review period.

**Table 2.3 Rebate schedule (\$2018-19, annual, ex GST)**

Eligible user	Sydney	High	Medium	Low
Community group	35,577	29,565	16,206	7,523
Budget funded sector	28,854	24,044	13,357	6,411
Local service provider	-	-	10,018	4,808
Telephony service provider	-	-	-	4,808

**Note:** Rebates are adjusted for inflation each year. A standard rebate application form is available on the Department of Industry's website. Applicants are asked to provide evidence that they meet the requirements for each rebate category.

**Source:** NSW Government, Department of Industry, *Communication licence rent Fact Sheet* at [https://www.industry.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/143536/Communication-licence-rent-fact-sheet.pdf](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/143536/Communication-licence-rent-fact-sheet.pdf) accessed on 8 February 2019.

### 2.4.3 Transitional arrangements for existing users

When the current rental arrangements were introduced on 1 July 2013, the impact on existing licence holders was alleviated by phasing in the new rent levels over five years. Many existing licence holders are now paying rent that fully reflects these new levels. However, some licence holders, for example infrastructure providers, may still be transitioning, due to their licence terms and the date specified for their next licence review.

## 2.5 What legislation is relevant for our review?

In forming our advice, we need to have regard to requirements that the land management agencies affected by this review must take into account under relevant legislation (such as their governing legislation). This includes:

- ▼ *Crown Land Management Act 2016 (NSW)*. This Act commenced 1 July 2018 and repealed a number of other Acts, including the *Crown Lands Act 1989 (NSW)* and the *Western Lands Act 1901 (NSW)*. The current Act allows for the granting of leases and licences over Crown land including to construct, operate or maintain telecommunications infrastructure.<sup>5</sup>
- ▼ *Forestry Act 2012 (NSW)*, which dedicates Crown land for State forest purposes.<sup>6</sup> It allows for the land manager of a forestry area to issue a forest permit authorising non-forestry use of the forestry area for such purposes (including recreational, sporting or commercial activities) as are specified in the permit.<sup>7</sup>
- ▼ *National Parks and Wildlife Act 1974 (NSW)*, which allows the Minister to grant leases or licences to occupy land reserved under this Act for the purpose of the erection, use or maintenance of broadcasting or telecommunications facilities.<sup>8</sup>

<sup>5</sup> *Crown Land Management Act 2016 (NSW)*, Part 5, Division 5.7, Section 5.30 (2)(c).

<sup>6</sup> *Forestry Act 2012 (NSW)*, sections 13 and 14.

<sup>7</sup> *Forestry Act 2012 (NSW)*, section 60.

<sup>8</sup> *National Parks and Wildlife Act 1974 (NSW)*, section 153D.

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We also need to take into account two Commonwealth Acts, which are relevant to particular users.

The first is the *Telecommunications Act 1997 (Cth)*. The main object of this Act is to provide a regulatory framework that promotes:

- ▼ The long-term interests of end-users of carriage services or of services provided by means of carriage services
- ▼ The efficiency and international competitiveness of the Australian telecommunications industry
- ▼ The availability of accessible and affordable carriage services that enhance the welfare of Australians.<sup>9</sup>

It prohibits discrimination against telecommunications carriers by providing:

- ▼ State law has no effect to the extent that it discriminates, or would have the direct or indirect effect of discriminating, against a particular carrier, a particular class of carriers or carriers generally
- ▼ A person must not exercise a power under a state law to the extent that it discriminates, or would have the direct or indirect effect of discriminating, against a particular carrier, a particular class of carriers or carriers generally.<sup>10</sup>

The Act also exempts telecommunications carriers and their contractors from the requirements to obtain landowners' consent and planning and environmental approval from state, territory or local government authorities in certain circumstances for specified authorised activities (inspecting, installing and maintaining certain telecommunications facilities).<sup>11</sup> In addition, it provides carriers with a right of access to other carriers' telecommunications transmissions towers for installing a facility for radio communications.<sup>12</sup>

The second is the *Broadcasting Services Act 1992 (Cth)*, which:

- ▼ Regulates broadcasting facilities used for providing broadcasting (television and radio) services
- ▼ Requires owners and operators of broadcasting transmission towers to give digital broadcasters and datacasters access to the towers for installing or maintaining digital transmitters.<sup>13</sup>

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<sup>9</sup> *Telecommunications Act 1997 (Cth)*, section 3(1).

<sup>10</sup> *Telecommunications Act 1997 (Cth)*, Schedule 3, clause 44.

<sup>11</sup> *Telecommunications Act 1997 (Cth)*, Schedule 3, clause 37. In practice, it is common for carriers to enter into an occupancy instrument with the landowner to determine the rental, terms and conditions for installing and maintaining telecommunications facilities on the landowner's land.

<sup>12</sup> *Telecommunications Act 1997 (Cth)*, Schedule 1, clause 33.

<sup>13</sup> *Broadcasting Services Act 1992 (Cth)*, Schedule 4, Part 5.

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## 3 Our approach for the review

Since our last review six years ago, the communications landscape has continued to evolve with technological innovations and greater demands for mobile data capacity. Therefore, we developed an approach that allowed us to reconsider the principles that underpin the rental arrangements we recommended at that review, and update the range and sources of data we analysed in that review. This approach involved four key steps:

1. Decide on an appropriate basis for setting rents having regard to the matters required by our terms of reference.
2. Decide on an appropriate rent setting methodology and apply this method to decide on rents (or a process for determining those rents) for all sites in 2020-21.
3. Consider the impact of these rents on current users and decide what, if any, transitional measures are needed to manage these impacts.
4. Decide how to adjust rents from year to year, and how often they should be periodically reviewed.

This approach takes account of all of the factors we are required to consider for this review as specified in our terms of reference (see Box 3.1) and the contextual issues outlined in Chapter 2. It differs slightly from the approach we proposed in our Issues Paper, reflecting our consideration of stakeholder comments in response to the Issues Paper.

### 3.1 Decide on appropriate basis for setting rents

As the first step in our approach, we decided on an appropriate basis for setting rents, given the requirements in the terms of reference – particularly for a rent schedule that reflects fair, market-based commercial returns, and is as simple, transparent and cost-reflective as practicable. To make this decision, we analysed two main options:

- ▼ Setting rents to reflect economically efficient prices, defined as prices that would leave both the buyer and the seller better off than if they didn't make the transaction, in line with the preliminary view set out in our Issues Paper
- ▼ Setting rents to reflect the unimproved land value of the site, as proposed by some stakeholders.

We used a range of market evidence for this analysis, including data on recent land rentals for commercial users of communication tower sites on private land, and relevant land valuations. We examined the relationship between these land rentals and the range of factors that can influence the buyer's

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Our approach takes account of all of the factors specified in our terms of reference.

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willingness to pay and the seller's opportunity cost in the communication tower site rental market. We also considered land values for these sites published by the NSW Valuer General.

**Box 3.1 Matters specified in our terms of reference**

Our terms of reference (see Appendix A) ask us to advise on a rent schedule that reflects fair, market-based commercial returns, having regard to:

- ▼ Recent market rentals agreed for similar purposes and sites
- ▼ Relevant land valuations
- ▼ The current rental arrangements
- ▼ Requirements that the land management agencies must take into account under relevant legislation.

In providing these services, other matters we are to consider are:

- ▼ The policy objective of the New South Wales Government to achieve fair market-based commercial returns on publicly owned land occupied for the purposes of telecommunications, data transmission and broadcasting
- ▼ The Government's preference for a fee schedule that is as simple, transparent and cost reflective as practicable
- ▼ The costs and benefits associated with implementing our recommended rent schedule
- ▼ Whether a broader consideration of commercial rents would produce lower or higher rental rates than those in our recommended rent schedule and, if so, the context
- ▼ Clause 44 of Schedule 3 of the *Telecommunications Act 1997 (Cth)*
- ▼ Any other relevant matters.

We also considered implications of Clause 44(1)(a) of Schedule 3 of the *Telecommunications Act (Cth)* (Telecommunications Act) for the basis for setting rents, which provides that State and Territory laws have no effect if they discriminate or have the effect (whether direct or indirect) of discriminating against carriers.<sup>14</sup>

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<sup>14</sup> Telecommunications Act 1997 (Cth)

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## **3.2 Decide on an appropriate rent charging methodology for all sites**

In the second step, we decided on a rent charging methodology for all sites – both existing and new sites - on Crown land.

As a starting point, we compared the rents derived using the current methodology (outlined in section 2.4) to updated market evidence using the appropriate basis we decided on in Step 1. We then considered the following key components of the rent methodology:

- ▼ Whether to maintain a rent schedule for existing primary users with four location categories and if so whether the levels of these rents remain appropriate
- ▼ What arrangements to apply to new communication tower sites and all SCAX sites
- ▼ How rents should be set for co-users and small cell technology
- ▼ Whether the existing arrangements for high value sites continued to be appropriate
- ▼ Whether rebates should continue for certain types of users.

In deciding on the methodology, we considered the range of matters listed in our terms of reference, including the method’s simplicity, transparency and ease of implementation. We also considered the impacts of Clause 44(1)(a) of Schedule 3 to the Telecommunications Act.

Chapters 5 to 9 contain further information on the key components of our rent charging methodology.

## **3.3 Consider impacts on users and decide on transitional arrangements if required**

The third step in our approach involved assessing the impacts of the rents set in Step 2 on existing users, to establish any transitional arrangement if required. For example, in our 2013 review we identified impacts on certain users of moving to a single user category for standard sites. We then recommended that impacts be managed by phasing in new rent levels over a 5-year period while also having regard to the next date for rent reviews under existing agreements.

Chapter 10 discusses our draft findings and recommendations on the impacts on users and transitional arrangements.



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### **3.4 Decide how to adjust rents from year to year and how often they should be periodically reviewed**

The final step in our proposed approach involved deciding how to adjust rents from year to year, and when they should be periodically reviewed. In previous reviews, we recommended adjusting rents each year by CPI and independently reviewing the rent schedule every 5 years.

Our draft findings and recommendations on this final step in our process are discussed in Chapter 10.

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## 4 Appropriate basis for setting rents

As Chapter 3 indicated, we consider that the appropriate basis for setting rents for communication tower sites on Crown land is one that best meets the requirements in our terms of reference for rents – particularly for a rent schedule that reflects fair, market-based commercial returns, and is as simple, transparent and cost-reflective as practicable. We used a range of market information and evidence to analyse the relative appropriateness of setting rents to reflect:

- ▼ Economically efficient prices, defined as prices that would leave both the buyer and the seller better off than if they didn't make the transaction (in line with the current arrangements and our proposed basis outlined in the Issues Paper).
- ▼ A certain percentage of unimproved land values (such as 6%, as proposed by several primary users of communication towers).

We also considered implications of the Telecommunications Act for the basis for setting rents. The sections below provide an overview of our draft recommendations, and then discuss these findings in more detail.

### 4.1 Overview of draft recommendations on appropriate basis for setting rents

Our draft recommendation is that the appropriate basis for setting rents for communication tower sites on Crown land is rents agreed in a workably competitive market, that is, rents paid by commercial users of communication tower sites on private land are the best-available indicator of efficient prices. Our analysis indicates that setting rents on this basis:

- ▼ Is efficient
- ▼ Meets our terms of reference
- ▼ Better meets our terms of reference than setting rents based on a percentage of the unimproved land value (eg, 6%), as this would not reflect fair, market-based returns or be simpler to implement, and
- ▼ Is consistent with the Telecommunications Act.

#### Draft recommendation

- 1 That the appropriate basis for setting rents for communication tower sites on Crown land is rents agreed in a workably competitive market - that is rents paid by commercial users of communication tower sites on private land are the best-available indicator of efficient prices.

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Rents paid by users of communication tower sites on private land are the best-available indicator of efficient prices.

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Our approach ensures “fair market-based commercial returns”, reflects up-to-date market information and complies with the Telecommunications Act.

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## 4.2 Basing rents on prices in a workably competitive market is efficient

In the Issues Paper we described efficient prices as falling somewhere in the range between:

- ▼ The most a user would be prepared to pay to use the site for communication tower purposes. In economics, this upper bound is known as the users’ **willingness to pay**.
- ▼ The least a land agency would be prepared to accept for allowing the site to be used for these purposes. This lower bound is known as the land agencies’ **opportunity cost**.

We stated that we would form a view on a range for efficient rents by estimating this range, then use this view to recommend rents.

In submissions to our Issues Paper, land management agencies and other land owners supported our proposal to use efficient prices as the basis for setting rents, and our definition of these prices as ‘the point at which both buyer and seller are better off than if they didn’t make the transaction’. The agencies noted that the concepts of willingness to pay (WTP) and willingness to accept (WTA) are widely accepted in economics as the determinants of market value.<sup>15</sup> TransGrid noted that this definition is similar to the valuation principle of a willing buyer and a willing seller.<sup>16</sup>

However, several users questioned the economics underpinning this approach.<sup>17</sup> Their main arguments were that:

- ▼ The availability of alternative sites is limited where the three crown land agencies control 53.5% of all land in the State, effectively creating a monopoly in many areas.<sup>18</sup>
- ▼ Is not easy to estimate the opportunity cost or willingness to pay for these sites, nor appropriate for rents to reflect a fair sharing of the difference between them.<sup>19</sup>
- ▼ Efficient prices should be defined as the point where social welfare is maximised, which means rents should be based on the agencies’ opportunity cost.<sup>20</sup>

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<sup>15</sup> Department of Industry, Submission to Issues Paper, April 2019, p 4.

<sup>16</sup> TransGrid, Submission to Issues Paper, April 2019, p 5.

<sup>17</sup> For example see Commercial Radio Australia, Submission to Issues Paper, April 2019, p 3. Optus, Submission to Issues Paper, April 2019, p 3.

<sup>18</sup> Mobile Carriers Forum, Submission to issues Paper, April 2019, pp 10-11.

<sup>19</sup> Free TV Australia, Submission to Issues Paper, April 2019, p 3.

<sup>20</sup> Australian Radio Communications Industry Association (ARCI), Submission to Issues Paper, April 2019, p 3.

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- ▼ The approach does not adequately take into account the positive externalities generated by some users or differentiate between those providers who are able to capture the economic value of the service they provide (like mobile telephony providers) and users like free-to-air broadcasters that cannot.<sup>21</sup>

Having considered these arguments, we maintain that an approach based on efficient prices is theoretically sound. However we agree that estimating willingness to pay using an economic valuation approach, estimating opportunity cost, then sharing any differences to set prices would not be straightforward. We consider that recent rentals for commercial users of communication tower sites on private land are the best-available indicator of efficient prices. The following sections discuss our considerations in further detail.

#### **4.2.1 Prices in workably competitive markets do not include monopoly rents**

In response to our Issues Paper, several stakeholders argued that the land management agencies are monopoly suppliers of the only suitable communication tower site in many regional areas. ARCIA's consultant, WPC, argued that the appropriate way to describe the market for land for communication towers is as a series of monopolistic or quasi-monopolistic geographically separated markets within which there is only one or only a few appropriate sites for communication towers.<sup>22</sup>

We agree that the appropriate way to describe the market for land for communication towers is as a series of geographically separated markets. However we do not consider that the land agencies have monopoly power in all of these markets.

As outlined in Chapter 2, the current rent schedule classifies sites into four location categories – Sydney, High, Medium and Low. We consider that the main factor that impacts on the degree of market power held by the land management agencies is the availability of alternative sites. That is – are there any sites that could be used to deliver the same service on nearby private (or non-Crown) land?

We have examined the location, elevation and availability of alternative sites within 5-10 km of Crown land sites in each location category using information from the Australian Communications and Media Authority (ACMA) (see Table 4.1). Based on this evidence, it is our view that the land management agency's market power is lowest for Sydney and High sites and increases for some Medium and Low sites.

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<sup>21</sup> Free TV Australia, Submission to Issues Paper, April 2019, p 2.

<sup>22</sup> ARCIA, Submission to Issues Paper, April 2019, Appendix B p 4.

**Table 4.1 Characteristics of Crown land sites by location category**

	Sydney	High	Medium	Low
Median no. of ACMA sites within 5 km of Crown land site	399	74	34	4
Median no. of ACMA sites within 10 km of Crown land site	2,102	263	60	6
Elevation difference between Crown land site and median ACMA sites within 5 km (m)	-2	8	44	8
Average elevation difference between ACMA sites within 10 km and Crown land sites (m)	6	43	68	25

**Note:** Not all ACMA sites correspond to a communication tower site.

**Source:** IPART Analysis using ACMA (data downloaded 19 June 2019).

In the case of Crown land sites in the Sydney and High categories, typically there are many ACMA sites within a 5 km radius of Crown land sites. Similarly for some Medium sites there are many suitable sites available, typically within a 5-10 km radius of the Crown land sites. For Sydney, typically there is very little difference in elevation between Crown land sites and surrounding ACMA sites while for high locations, Crown land sites tend to be in more elevated positions. We consider the degree of market power for Sydney and High sites to be low.

However for some Medium and most Low sites on Crown land there may not be any alternative sites within a 5-10 km radius of the Crown land site.<sup>23</sup> In some locations, Crown land may occupy all of the land within 5-10 km while in others, the highest point of elevation in the area tends to be on Crown land. Typically, Crown land sites tend to be higher than other ACMA sites within 5-10 km. Given this, we consider that for some Medium and Low density sites, the land management agencies hold a higher degree of market power. We also note section 153D of the *National Parks and Wildlife Act 1974 (NSW)* prevents the use of national parks for broadcasting and telecommunications facilities if there are feasible alternative sites available.

While we acknowledge that market power may be higher for some Low sites, this does not mean that our recommended rents include monopoly rents. We have used rentals for communication towers on private land in each location category as the basis for setting rents. These rents have been agreed in a workably competitive market and so are the best indicator of efficient prices that do not include monopoly rents.

It is our view that the higher value of communication tower sites compared to other commercial uses of land comes from characteristics of the site which are of value to communication tower sites such as greater elevation, line of sight and ease of access. We consider prices for these sites include Ricardian rents, meaning they are a reflection of a more valuable endowment than

<sup>23</sup> In our analysis we considered a site within 100 m of elevation to be comparable.

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alternative sites rather than monopoly rent, which is obtained by an owner who uses the ability to restrict supply to drive up the price.

Some stakeholders such as Broadcast Australia argued that factors such as greater elevation, line of sight and ease of access are no longer important to the value of a communication tower site. However our analysis shows that communication towers tend to be located in areas of higher elevation and are not built in low-lying locations.<sup>24</sup> We also note that several stakeholders agreed that sites with higher elevation are of greater value to users.<sup>25</sup> We estimate that additional elevation could add up to around \$23,000 per annum to the value of land (see Box 4.1).

#### **Box 4.1 Additional value of higher elevation sites**

One way of considering the additional value that higher elevation sites generate is to look at how a user would choose between two sites of differing elevation.

Consider two sites – one located on flat land, the other on a hill at an elevation of 90 m. To achieve the same transmission capability, the user can either install a transmitter on the top of the hill or construct a 90 m tower on flat land.

Assuming construction costs of a 90 m guyed mast tower are around \$400,000 and converting this capital cost into an annual amount at a discount rate of 6.4%, we estimate that the user may be willing to pay up to \$23,459 per year for the land on the top of the hill and avoid the construction costs associated with flat land.

**Source:** IPART analysis

**Note:** For illustrative purposes we used a discount rate based on a real pre-tax WACC, estimated using IPART's standard methodology.

#### **4.2.2 Market rents are observable but estimating willingness to pay and opportunity cost has practical difficulties**

We further considered an economic value approach and found that while it is theoretically sound, it raises several practical difficulties in estimating the revenue for different types of users. For example it would require a more detailed understanding of the technical requirements, customer base and revenue sources of different types of users. Instead, we have made a draft recommendation to use market data on communication tower rents on private land as the best available measure of the efficient price. These prices are observable and reflect a level that has been negotiated in a workably competitive market for land.

Several stakeholders raised practical difficulties with estimating willingness to pay and opportunity cost as part of an economic valuation approach (see Box 4.2 for an overview of the approach set out in our Issues Paper). For

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<sup>24</sup> We note however that emerging technologies such as 5G are different and require transmitters and receivers to be closer together than 3G or 4G technology.

<sup>25</sup> For example TX Australia, Submission to Issues Paper, April 2019, p 4.

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example, Commercial Radio Australia (CRA) submitted there is likely to be significant scope for disagreement on the opportunity cost and willingness to pay as these are difficult to measure objectively, particularly in the absence of a market-based process to reveal that value (such as an auction process).<sup>26</sup> It also noted that willingness to pay will not be the same between users and be influenced by a range of other factors, such as the extent of a user's regulatory obligations, the availability of alternative sites and costs of decommissioning and relocation.

**Box 4.2 Possible approach for estimating economic value of communication tower sites to users**

In the Issues Paper, we discussed an alternative approach to estimating users' willingness to pay based on the economic value users can obtain from a site. We noted that while it would not be straightforward, it may be possible to measure the economic value generated by communication tower sites to different types of user.

For example, commercial television and radio broadcasters generate revenue by selling on-air advertising. The price they can charge advertisers for air-time is dependent on the size and demographic composition of their audience. The size of the audience is a function of popularity and network reach (the audience of regional radio stations for example is limited to their distribution area). Therefore, the value of adding additional transmission sites to these users can be measured by the increase in potential audience and associated demand from advertisers (minus a provision for other costs for the broadcaster).

Similarly, telecommunication carriers generate revenue by selling phone and data services to customers. The potential number of customers that can be reached by each tower is a function of the technology they use and the population density of the area.

**Source:** IPART Issues Paper

Several stakeholders also argued that prices should not be set above the land management agencies' opportunity cost and that this would be close to zero. The basis of this argument seemed to be that these sites are not part of a workably competitive market – because, for example, the agencies are monopoly suppliers of the only suitable sites in many regional areas, and they could not derive any return from the site other than that from a communication tower user. As noted above, we do not agree with these arguments. Rather, in a workably competitive market, a buyer would not accept a price higher than its willingness to pay, however they would accept one that is lower. Similarly, a seller would not accept a price that is lower than its opportunity cost, but it would accept one that is higher. We also note that even if there is an argument that pricing at opportunity cost may improve output in downstream markets, we consider the impact of this is likely to be minor.

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<sup>26</sup> CRA, Submission to Issues Paper, April 2019, pp 4-5.

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### 4.2.3 Positive externalities are best accounted for by funding activities rather than lower prices for land rentals

While many users of communication towers undertake activities that generate positive externalities, we consider it is more appropriate for the Government to account for these positive externalities in deciding whether and how much to fund these users (for example, through Government subsidies) rather than by setting lower rents for their use of Crown land.

Several stakeholders raised concerns that our approach did not adequately take account of the positive externalities generated by users. For example:

- ▼ Free TV Australia considered that unless the opportunity cost pricing model adequately takes into account the positive externalities created by free-to-air broadcasting, there is a significant risk that the rents charged will mean that some transmitters will become uneconomic.<sup>27</sup>
- ▼ Optus noted that many of the society and wider productive benefits that flow from increased use of communications services would be considered to be positive externalities – and under efficient pricing could justify setting prices below a strictly cost basis. This is because wider society benefit from increasing the supply of communications – be it either increased coverage or increased throughput. It suggested that we consider rates below the opportunity cost of the land to ensure that the NSW economy and residents can receive the significant economic, social and safety benefits that flow from mobile services.<sup>28</sup>

We acknowledge that the activities of some users generate positive externalities for the broader community (for example the rural fire service and surf lifesaving associations). However, many activities throughout the economy give rise to external benefits where the parties undertaking a transaction provide benefits to third parties. In most cases, the transacting parties do not receive compensation from third-party beneficiaries.

It is our view that any subsidies that are provided should be targeted at the point in a transaction where the externality is generated. In most cases, communication towers are one of several inputs that are used to provide activities that generate positive externalities. We consider it is more appropriate for the Government to account for these positive externalities in deciding whether and how much to fund these users (for example, through Government subsidies) rather than by setting lower rents for their use of Crown land.

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<sup>27</sup> Free TV Australia, Submission to Issues Paper, April 2019, p 5.

<sup>28</sup> Optus, Submission to Issues Paper, April 2019, pp 6-7.



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### 4.3 Basing rents on efficient prices in a workably competitive market meets our terms of reference

Telstra argued that estimating efficient rents would be a departure from the requirements of the terms of reference and also from the principles for rent determination set out in the *Crown Lands Management Act 2016* (CLMA) section 6.5, read in light of the High Court’s seminal decision regarding land valuation in *Spencer v The Commonwealth*.<sup>29</sup> It argued that “market-based commercial returns” and “efficient rents” may differ.<sup>30</sup> For example, the CLMA s 6.5 sets out the general principles for determining the rent for Crown land managed under that Act. The central principle for rent setting in the CLMA is in s 6.5(2)(a): “rent is to be the market rent for the land under the holding having regard to any restrictions, conditions or terms to which it is subject”.

We do not agree that our proposed approach is a departure from the terms of reference or the principles for rent determination set out in section 6.5 of the *Crown Lands Management Act 2016* (CLMA 2016). Section 6.5(2) of the CLMA 2016 sets out the following principles for rent determinations:

- (a) the rent is to be the market rent for the land under the holding having regard to any restrictions, conditions or terms to which it is subject,
- (b) any improvements on the land that were made by the holder of the holding, or are owned or in the course of being purchased from the Crown by the holder, are to be disregarded,
- (c) regard may be had to any additional value that, because of the holding, has accrued (or may reasonably be expected to accrue) to other land held by the holder of the holding,
- (d) regard may be had to the duration of the time for which the rent will be payable.

We consider that our approach is consistent with these principles as it specifically looks to set rents by considering market rents achieved by private land owners for communication towers. For completeness, we note that section 6.5(4) of the CLMA 2016 has the effect that rents reflecting our recommendation may be imposed **despite** the principles set out above.

We also consider that our approach is consistent with *Spencer*. *Spencer* establishes the general principle that the “market value” of land is the amount which a willing and knowledgeable, but not anxious, purchaser

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<sup>29</sup> (1907) 5 CLR 418.

<sup>30</sup> Telstra, Submission to Issues Paper, April 2019, p 5.

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would pay a willing and knowledgeable, but not anxious, vendor.<sup>31</sup> Justice Isaacs described the necessary analysis to determining the market price as being directed to determining the price that would be set by “voluntary bargaining between [a vendor] and a purchaser willing to trade, but neither of them so anxious to do so that he would overlook any ordinary business consideration”.<sup>32</sup> We consider that our approach for determining the efficient rents for communication tower sites – which focuses on an assessment of the lessee’s willingness to pay and the lessor’s willingness to lease (opportunity cost) – is consistent with this analysis.

#### **4.4 Basing rents on a land valuation approach would not reflect fair, market-based returns or be simpler to implement**

Communication tower users generally submitted that a recognised land valuation approach – such as 6% of unimproved land value – would be simpler and more appropriate than using efficient prices.

There were several views on exactly how a land valuation approach could be applied. The most common view referred to the approach implemented in Queensland following the 1990 Wolfe Committee review of land regulation. The Wolfe Committee considered the way rents for State leases should be fixed, and concluded that the preferred mechanism was to apply a percentage to the unimproved capital value of land. The Committee suggested that the rental percentage should vary within the range of 3% (for residential land) to 6% (for commercial and industrial land).<sup>33</sup> Several stakeholders argued for a rental percentage of 6%.<sup>34</sup>

Commercial Radio Australia supported rents calculated on a geographically averaged rental charge for each relevant location category. The geographically averaged rental charge could be determined by reference to the relevant local council area or a broader geographic banding where there are similarities in land values between comparable local councils.<sup>35</sup>

We consider that using an approach based on unimproved land valuations would not reflect fair, market-based returns. As noted above, we consider that rents paid by commercial users of communication tower sites on private land are the best available indicator of efficient prices and reflect market-based returns given the nature and extent of the use of the land. Unimproved land valuations are typically generic and do not reflect the nature and extent of the use of communication towers.

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<sup>31</sup> *International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea* [2015] NSWCA 363 at [2].

<sup>32</sup> *Spencer* at 432.

<sup>33</sup> *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213, 39-40.

<sup>34</sup> For example TX Australia, Submission to Issues Paper, p 3 and Broadcast Australia, Submission to Issues Paper, April 2019, p 10.

<sup>35</sup> Commercial Radio Australia, Submission to Issues Paper, April 2019, p 5.

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We note that the NSW Valuer-General's policy is that valuers must "value land subject to a telecommunications' lease separately from the adjoining land."<sup>36</sup> While in theory these valuations could be used as part of setting rents, in practice we found very few instances where there is a separate valuation for the communication tower lease. Even if rents were to have regard to land values of the lease area, land agencies could not implement this approach without undertaking a significant number of additional valuations prior to 1 July 2020.

#### 4.5 Basing rents on efficient prices in workably competitive market is consistent with Telecommunications Act

Several stakeholders argued that an approach based on efficient rent discriminates against carriers and so is not consistent with clause 44 of Schedule 3 to the Telecommunications Act.<sup>37</sup> They generally argued that in light of the Federal Court's findings in *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213, IPART should consider an approach where land valuations alone form the basis for a rent schedule.<sup>38</sup>

Telstra considered that our review is inherently discriminatory in nature because of the terms of reference. It noted that the terms of reference oblige IPART to undertake "a review of the rental arrangements for communication towers on Crown Lands". Telstra submitted that this direction is discriminatory because it requires IPART to review rental arrangements for Crown land on which communication towers are (or may be) situated, as opposed to Crown land used for any other purpose.<sup>39</sup>

Optus argued that the Federal Court decision means that IPART is not permitted to use market benchmarks when setting rents.<sup>40</sup> Similarly, the Mobile Carriers Forum considered that the concept of an efficient rent based on market prices is discriminatory and predatory.<sup>41</sup>

We consider that our approach does not discriminate against carriers. For our approach to be discriminatory in the sense prohibited by clause 44 of Schedule 3 to the *Telecommunications Act*, it would need to result in a carrier, or carriers generally, being adversely affected **relative to a relevant comparator**. Our view is that any relevant comparator would make similar use (in nature and extent) of Crown land to the use made by carriers.<sup>42</sup> We

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<sup>36</sup> NSW Valuer General, *Valuation of land leased as a telecommunications site*, Valuer General's Policy, May 2017, p 3. We note that the Valuer General is reviewing this policy.

<sup>37</sup> See Optus, Submission to Issues Paper, April 2019, p 4, Telstra, Submission to Issues Paper, April 2019, p1, nbn, Submission to Issues Paper, April 2019, p 10, Axicom, Submission to Issues Paper, April 2019, p 2.

<sup>38</sup> nbn, Submission to Issues Paper, April 2019, p 10.

<sup>39</sup> Telstra, Submission to Issues Paper, April 2019, p 3.

<sup>40</sup> Optus, Submission to Issues Paper, April 2019, p 2.

<sup>41</sup> Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 8.

<sup>42</sup> *Bayside City Council v Telstra Corporation Ltd* [2004] HCA 19.

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consider that a comparison between the treatment of carriers as lessees of communication towers and the treatment of other lessees of communication towers would generally be relevant for the purposes of the *Telecommunications Act* prohibition against discrimination.<sup>43</sup>

Under our proposed approach, all lessees who use Crown land as a communication tower site will pay the same fees. Our approach therefore does not discriminate against carriers as compared to these other lessees.

While other commercial users of Crown land may pay different fees than carriers (for example, agricultural users, bee keeping, kiosks in national parks), our view is that their use is sufficiently different in nature and extent that they are not a relevant comparator for the purposes of clause 44 of Schedule 3 to the *Telecommunications Act*.

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<sup>43</sup> Although within this group of lessees, there may be some that are not relevant comparators. For example, community groups that do not generate income from their use of communication tower sites would not be relevant comparators.

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## 5 Rent schedule for primary users on existing sites

The second step in our review involved deciding on a rent charging methodology for all sites – both existing and new sites - on Crown land. To do this, we compared the rents derived using the current methodology (outlined in section 2.4) to updated market evidence using the appropriate basis we decided on in Step 1. Next we considered whether to maintain a rent schedule for primary users on existing sites with four location categories and if so whether the levels of these rents remain appropriate. We also looked at how the location categories and the services provided under the rent schedule should be defined.

The sections below summarise our draft findings and recommendations on rents for primary users on existing sites, then discuss these in more detail.

### 5.1 Overview of draft findings and recommendations

Our analysis of market data found that the four existing categories – Sydney, High, Medium and Low - continue to reasonably reflect the variation in market rents for sites on private land by location, while keeping the rent schedule simple, transparent and easy to implement. Other factors – including the site’s land size and elevation – do not provide a better predictor of market rent than the existing location categories.

However, our analysis also found that the rents for primary users determined by the existing rent schedule can be better aligned with market rents for sites on private land in the same category. We found that rents for sites on Crown land in the Sydney, high and medium categories are generally higher than rents on private land, by varying degrees, while those in the low category are generally lower.

In line with these findings, we are recommending that rents for primary users of existing Crown land sites in 2020-21:

- ▼ Decrease by 10% in the Sydney category, 46% in the high category and 22% in the medium category (\$2020-21)
- ▼ Increase by 19% in the low category (\$2020-21).

Our draft recommendations on annual rents are shown in Table 5.1.

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For existing sites, we recommend maintaining 4 location categories but updating rents to align with up-to-date market evidence

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**Table 5.1 Draft recommendations on annual rents for primary users on existing sites from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per site	33,700	16,900	13,500	9,900

While our analysis of market data supports retaining the existing location categories, the definition of the high and medium categories need to be refined and clarified. We are recommending that

- ▼ High locations be defined as those in the Australian Bureau of Statistics' (ABS) significant urban areas of Sydney (excluding those local council areas already captured in the Sydney category), Newcastle-Maitland, Central Coast and Morisset – Cooranbong.
- ▼ A list of UCL centre points (defined by latitude and longitude) be published for medium locations, and the list of relevant UCLs be updated to reflect population information from the 2016 census.

Under the current arrangements, the services covered by the rent schedule are not explicitly defined. As a result, the land management agencies may charge a range of fees in addition to the schedule, for costs such as road maintenance, access permits and legal and administration costs related to licence preparation. Our analysis of private leases found that most leases do not charge additional fees. Given that we have used these private leases to inform our recommended rent levels, we are recommending that to avoid double-counting, rents for new and existing users on Crown land include all lessor costs of preparing and assessing lease applications and use of existing roads and tracks at no extra cost.

Where additional access roads are required, the costs of building and maintaining them should be set with reference to a benchmark rate, with the lessee responsible for these costs. We are seeking further information from the land management agencies to establish this benchmark rate, and will make recommendations in our Final Report.

## **5.2 Updated market data supports a rent schedule with four location categories**

Our analysis of updated market data shows that rents paid by primary users for locations close to metropolitan areas or population centres are generally higher than for regional locations. Whilst there is some variation of rent within the existing four categories, these categories reasonably capture the difference in market rents by location, while keeping a rent schedule simple, transparent and easy to implement. Box 5.1 outlines the sources of recent market data used in our analysis.

Definitions of high and medium locations categories need to be refined and clarified

No additional fees to be charged for costs of preparing leases or using existing roads and tracks

### Box 5.1 Sources of recent market data

We have undertaken analysis on the structure and level of rents using recent market rentals for similar communication tower sites on private land. Our analysis is based on a sample of more than 160 publicly available leases registered with NSW Land Registry Services (NSW LRS). To ensure that rents reflect recent market data we:

- ▼ Identified communication tower sites on private land sites with registered leases that are located within 10-20 km of Crown land sites using information from the Australian Communications and Media Authority (ACMA). Rents that were negotiated prior to our last review (2013) were generally excluded from the sample.
- ▼ Sought information from users that made submissions to our Issues Paper on rents paid for communication towers on private land. We did not include any sites where we were unable to verify the rents provided.

The table provides a breakdown of the number of sites in our sample by location category. A full list of the sites and the data we have used is available from our website in Excel (this list does not contain sites that were provided as part of confidential submissions).

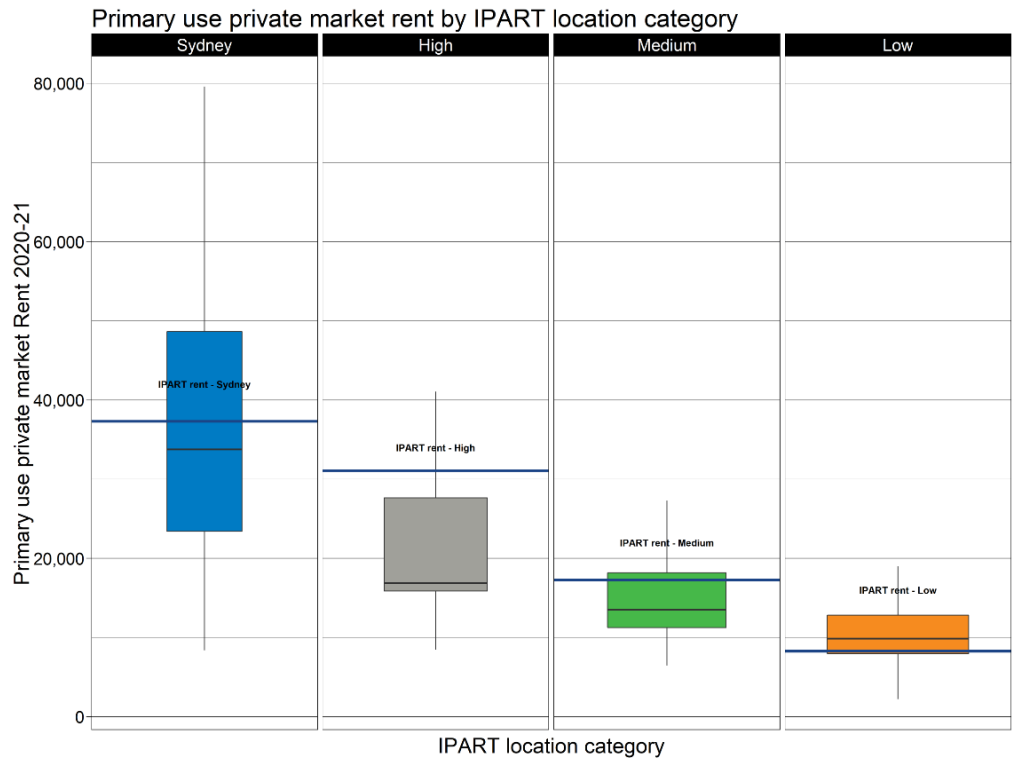
#### Number sites in IPART sample of private market data and number of Crown land sites

	Sydney	High	Medium	Low
Private market sample	18	34	45	64
Crown land sites	28	75	100	531

Source: IPART analysis and Information provided by stakeholders

Figure 5.1 shows a box and whisker plot of the rent for primary users on private land in our sample of sites for Sydney, high, medium and low locations and compares them to the existing rents on Crown land (labelled as IPART rent and shown with a dark blue line). We found that while there are a range of rents for each location, the median rent increases from \$9,855 for Low sites to, \$13,506 for Medium, \$16,883 for High and \$33,749 for Sydney sites (\$2020-21).

**Figure 5.1 Box and whisker plot comparing private market rentals to IPART rents for primary users (\$2020-21)**



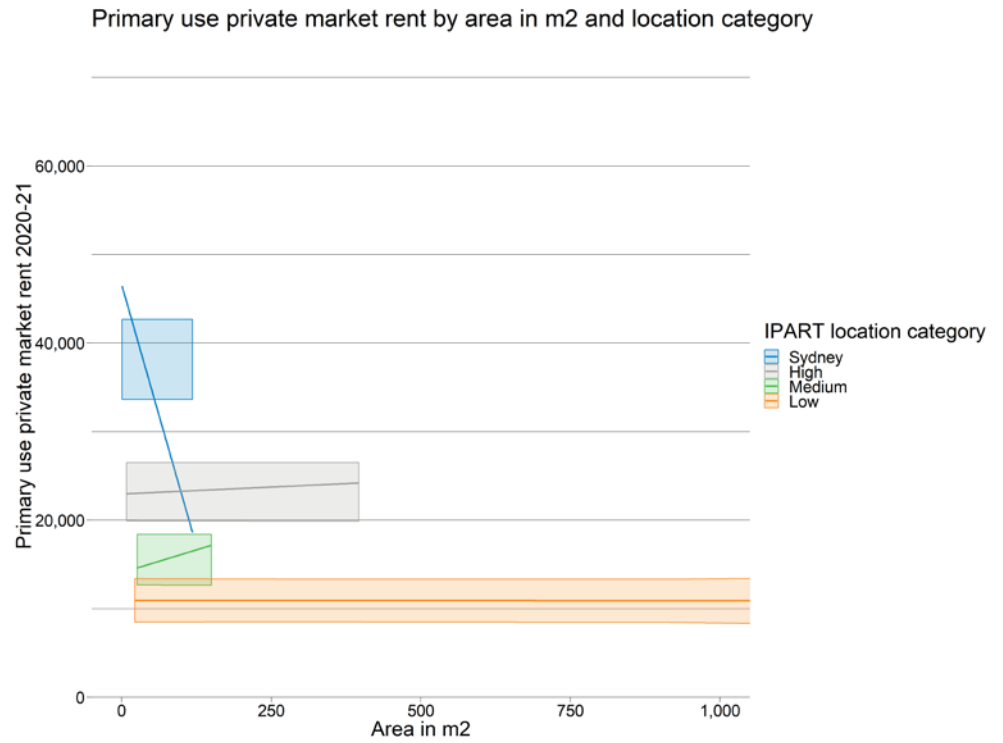
We also considered whether we should include other factors such as land size and elevation by examining the relationship between these factors and private rents and by using decision tree analysis.

Figure 5.2 shows the relationship between land size and rent for sites in different locations. We found that there is no relationship between land size and rent for Medium and Low sites in our sample. While our analysis also indicates that there may be a positive relationship for High and Sydney sites, the shaded areas of the figure illustrate that confidence in this result is low. We have measured our confidence in this result using a 95% confidence interval shown by the light shaded areas in Figure 5.2.<sup>44</sup>

<sup>44</sup> A confidence interval of the prediction is a range that likely contains the mean value of the dependent variable given specific values of the independent variables. These intervals provide a range for the population average, where the particular population is defined by the values of the independent variables. Note that these ranges do not tell you anything about the spread of the individual data points around the population mean. Thus in our example, a 95% confidence interval of the prediction of the dependent variable, Primary Rent, is a range that contains the mean value of the Primary Rent given specific values of the independent variable, Area in m<sup>2</sup>, with 95% likelihood.



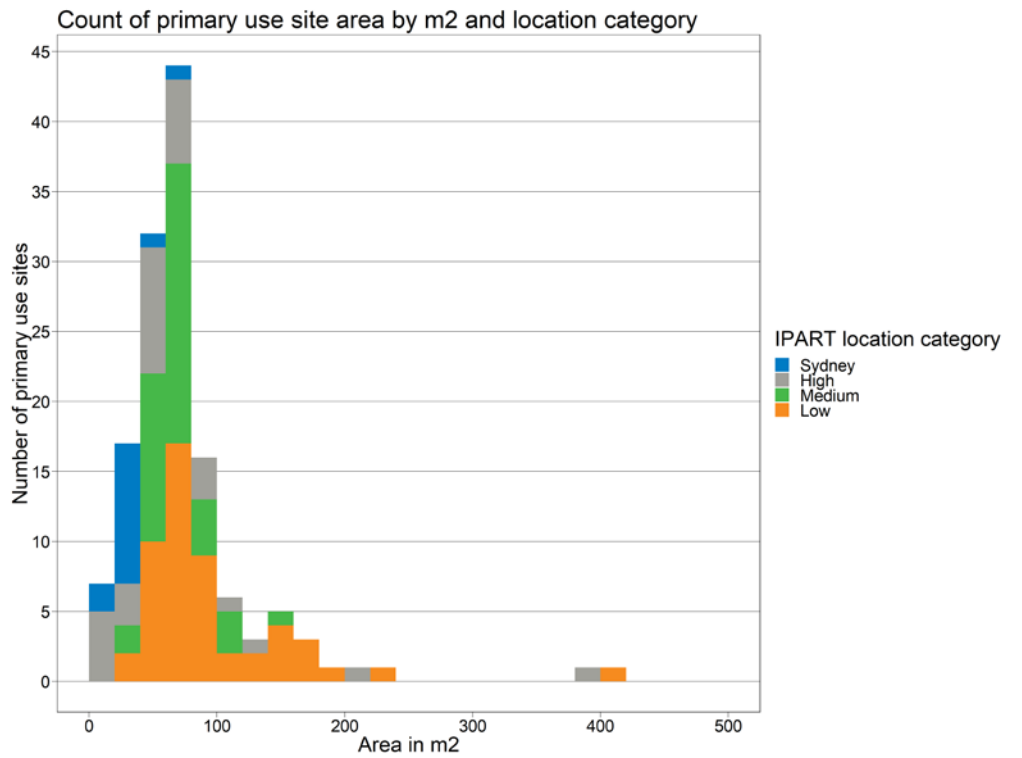
**Figure 5.2 Rent and land size for primary users on private land (\$2020-21 ex-GST)**



**Note:** Shaded areas are based on a 95% confidence interval.  
**Data source:** IPART analysis.

We note that Sydney sites tend to have smaller land sizes, with medians of 30 m<sup>2</sup> compared to High, Medium and Low sites, with medians of 62 m<sup>2</sup>, 67 m<sup>2</sup> and 80 m<sup>2</sup> respectively (Figure 5.3). We consider that this reflects greater scarcity of land in Sydney locations.

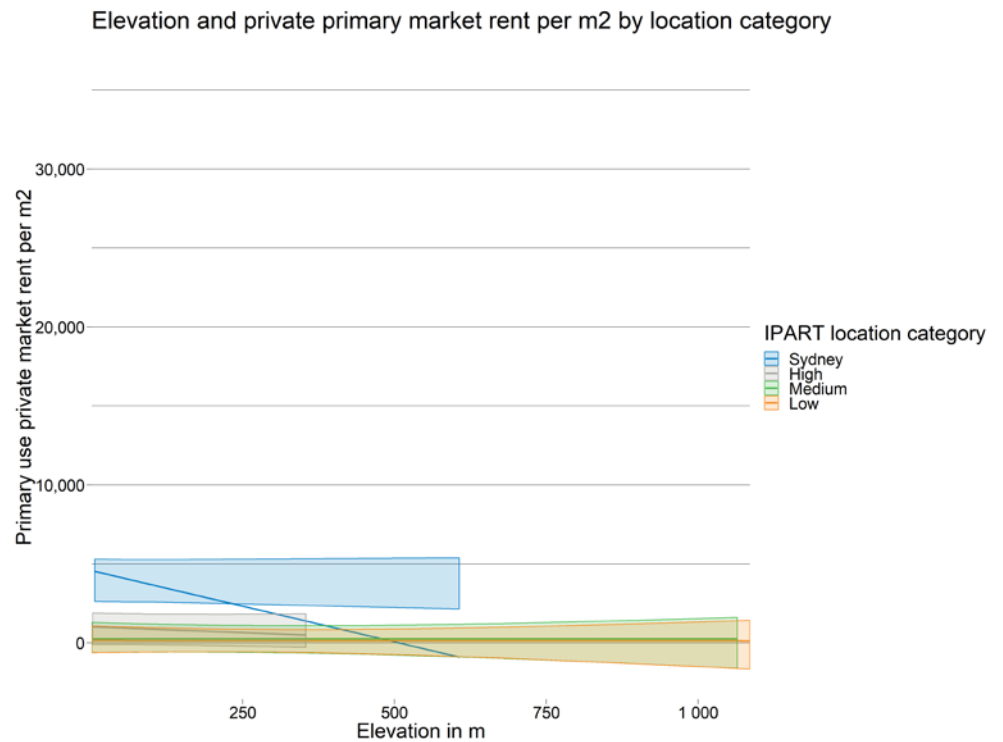
**Figure 5.3 Distribution of land size in private market**



**Data source:** IPART analysis

Similarly, we did not find rent increasing with elevation within any of our location categories (see Figure 5.4). However, we note that it is likely that the elevation of a site relative to its surrounding area is more likely to impact on rent.

**Figure 5.4 Rent and elevation for primary users on private land (\$2020-21 ex-GST)**



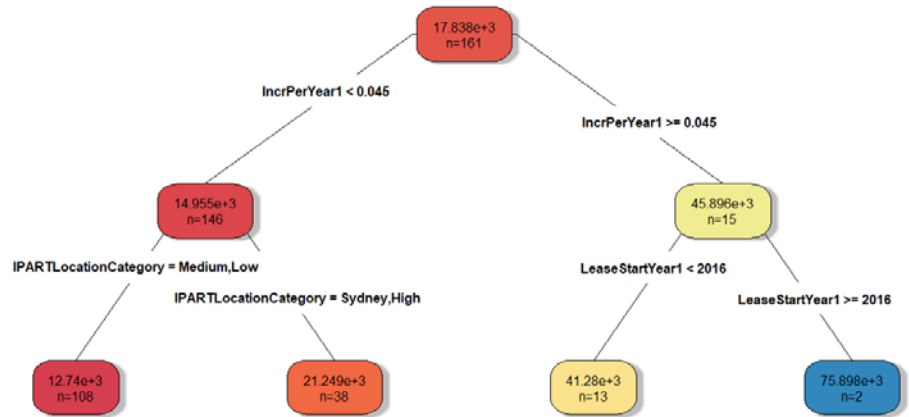
**Note:** Shaded areas are based on a 95% confidence interval.  
**Data source:** IPART analysis.

Decision tree analysis works by repeatedly splitting data by independent variables to identify the variable that results in the largest possible reduction in heterogeneity of the dependent variable. Splitting of the dataset continues until a predetermined termination criterion is reached.

We analysed independent variables of latitude, longitude, IPART rent location category, annual increase, size of site, elevation of site, number of users, lease start year, Valuer General (VG) land values and area, and elevation of nearby Crown land. We found that incorporating these factors does not provide a better predictor of rent than the existing location categories.

Figure 5.5 presents the most common pruned tree after running multiple iterations of the decision tree algorithm. Although the tree first splits based on whether the annual increase is greater than or equal to 4.5%, we consider this was largely a proxy for Sydney and High locations as all but one of the sites with an increase greater than 4.5% were in the Sydney and high locations.

**Figure 5.5 Decision tree of primary user rent on private land (\$2020-21 ex-GST)**



### 5.3 Sydney, High and Medium rents to be reduced and Low rents increased

Figure 5.1 shows that rent for sites on private land in the Sydney, high and medium categories are generally lower than Crown land, by varying degrees, while those in the low category are generally higher. We found that:

- ▼ Rents on private land in the Sydney, high and medium categories are generally lower than Crown land (50%, 76% and 71% respectively).
- ▼ The majority of rents on private land in the low category are higher than Crown land (72%).

We consider that rents on Crown land in each of these categories should change to better align with market rents on private land. We have made a draft recommendation to set the rents equal to the median of the market rent in each category. While there is some variation of rents within each category and the terms and conditions of different agreements, setting Crown land rents at the median will ensure that they generally align rents on private land while at the same time allowing for a rent schedule that is simple, transparent and easy to implement

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## 5.4 Definitions of Medium and High categories should be refined

Medium locations are currently defined as any site within 12.5 km of the centre (meaning post office or main council building) of ABS defined urban centres with populations greater than 10,000. In some cases it is difficult to identify which building is the centre point of the urban centre. We are making a draft recommendation to maintain the 12.5km radius from the centre point, but publishing a list of the centre points to make it simpler to implement.

The current high definition includes a large amount of low density areas. We recommend adopting the ABS definition of significant urban areas (SUA) and excluding low density areas in the in the greater metropolitan areas of the Central Coast, Newcastle and Wollongong that are captured by the current High definition. The following SUAs would be high:

- ▼ Sydney (other than areas included in the Sydney location category)
- ▼ Newcastle – Maitland
- ▼ Wollongong
- ▼ Central Coast
- ▼ Morisset – Cooranbong.

### 5.4.1 Current definitions of Medium and High categories

In 2013, we refined our definitions of the location categories used to set rents. We defined regional centres based on the Australian Bureau of Statistics' Urban Centre or Locality measure (for more information see Box 5.2) and introduced the Sydney category:

- ▼ **Sydney** - Local council areas in Sydney with a population density of greater than 1,800 people per km.<sup>2</sup>
- ▼ **High** - Newcastle, Wollongong, Central Coast, and the remaining local council areas in Sydney (including Penrith, Camden, Hawkesbury, but excluding Blue Mountains).
- ▼ **Medium** - Within 12.5km of centre (meaning post office or main council building) of ABS defined urban centres with populations greater than 10,000.
- ▼ **Low** - The rest of NSW.

We adopted a 12.5km radius for Medium sites that was used by Catchments and Lands and Telstra at the time. Prior to this, Medium sites were defined as regional centres of over 10,000 customers, with the expectation that councils would define the borders of a regional centre.

Our existing and proposed definitions rely (in part) on the Australian Bureau of Statistics' (ABS) Australian Statistical Geography Standards. The key terms of these standards are set out in Box 5.2.

## **Box 5.2 ABS statistical geography**

### **Urban Centre or Locality (UCL)**

UCLs are area of concentrated development with populations of at least 200 people. A UCL is a grouping of urban Statistical Area 1s (SA1s). An SA1 is urban if it has:

- ▼ An urban mesh block greater than or equal to 45% of the SA1 population and dwelling density of at least 45 dwellings/km<sup>2</sup>, or
- ▼ a population density of at least 100 people/km<sup>2</sup> and dwelling density of at least 50 dwellings/km<sup>2</sup>, or
- ▼ a population density of least 200 people/km<sup>2</sup>.

Land with an urban character that is adjacent to an urban SA1 it is included in the UCL, whereas land without an urban character is only included if it is surrounded by urban SA1s.

### **Significant Urban Area (SUA)**

A SUA is a grouping of SA2s that include one or more UCLs based on the following criteria:

- ▼ At least one UCL with urban population of 7,000
- ▼ A total population of at least 10,000
- ▼ Urban Centres that are less than 5km apart measured along the most direct sealed road
- ▼ The SA2 should be in the same labour market.

### **Statistical Area 1 (SA1)**

There are 57,523 SA1s in Australia. SA1s have a population of between 200 and 800 people, and are designed to be either predominantly rural or urban.

### **Statistical Area 2 (SA2)**

There are 2,310 SA2s in Australia. SA2s have a population of 3,000 to 25,000 people, and are designed:

- ▼ Based on functional areas for which people come to access services at a centre
- ▼ To include areas of likely growth in the next 10-20 years at the edges of cities or towns
- ▼ To reflect gazetted suburbs and council areas.

**Source:** 1270.0.55.004 - Australian Statistical Geography Standard (ASGS): Volume 4 - Significant Urban Areas, Urban Centres and Localities, Section of State, July 2016

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Stakeholder submissions that called for IPART to set rents as a function of land value argued that their proposed approach would make the zones unnecessary. Other stakeholders raised the following issues:

- ▼ The agencies supported the current approach, updated with the most recent population data, in particular including Mudgee within the medium zone.<sup>45</sup> The agencies also requested clarification of the medium category.<sup>46</sup>
- ▼ Commercial Radio Australia raised concern that the Sydney location category is excessively wide, indicating it should not include Fairfield, Parramatta or Cumberland Councils. Commercial Radio Australia recommended we adopt the bands applied by the ACCC to regulate fixed telecommunication towers with three bands; CBD, non-CBD metropolitan areas, regional areas and remote areas.<sup>47</sup>
- ▼ Broadcast Australia submits that population density isn't a major driver in their site preferences.<sup>48</sup>

#### 5.4.2 The existing high zone includes large low density areas

In particular, there are two issues that we consider need review in the 2013 definition:

- ▼ There are large areas, particularly in Hawkesbury Council, of low density land, primarily bushland.
- ▼ The existing definition does not reflect the growth of Greater Newcastle into Maitland and Cessnock or the growth of Wollongong into Shellharbour and Kiama.

We recommend adopting the Australian Bureau of Statistics' significant urban areas that fall predominantly within the current high value area:

- ▼ Sydney,
- ▼ Newcastle – Maitland
- ▼ Wollongong
- ▼ Central Coast
- ▼ Morisset – Cooranbong.

The resulting area is shown below in Figure 5.6. The existing High zone is in orange, with the recommended High zone in blue. It shows that the high zone area would cover urban areas in the Blue Mountains, Maitland, Cessnock, Shellharbour and Kiama, and no longer cover forested land west of the

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<sup>45</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 10.

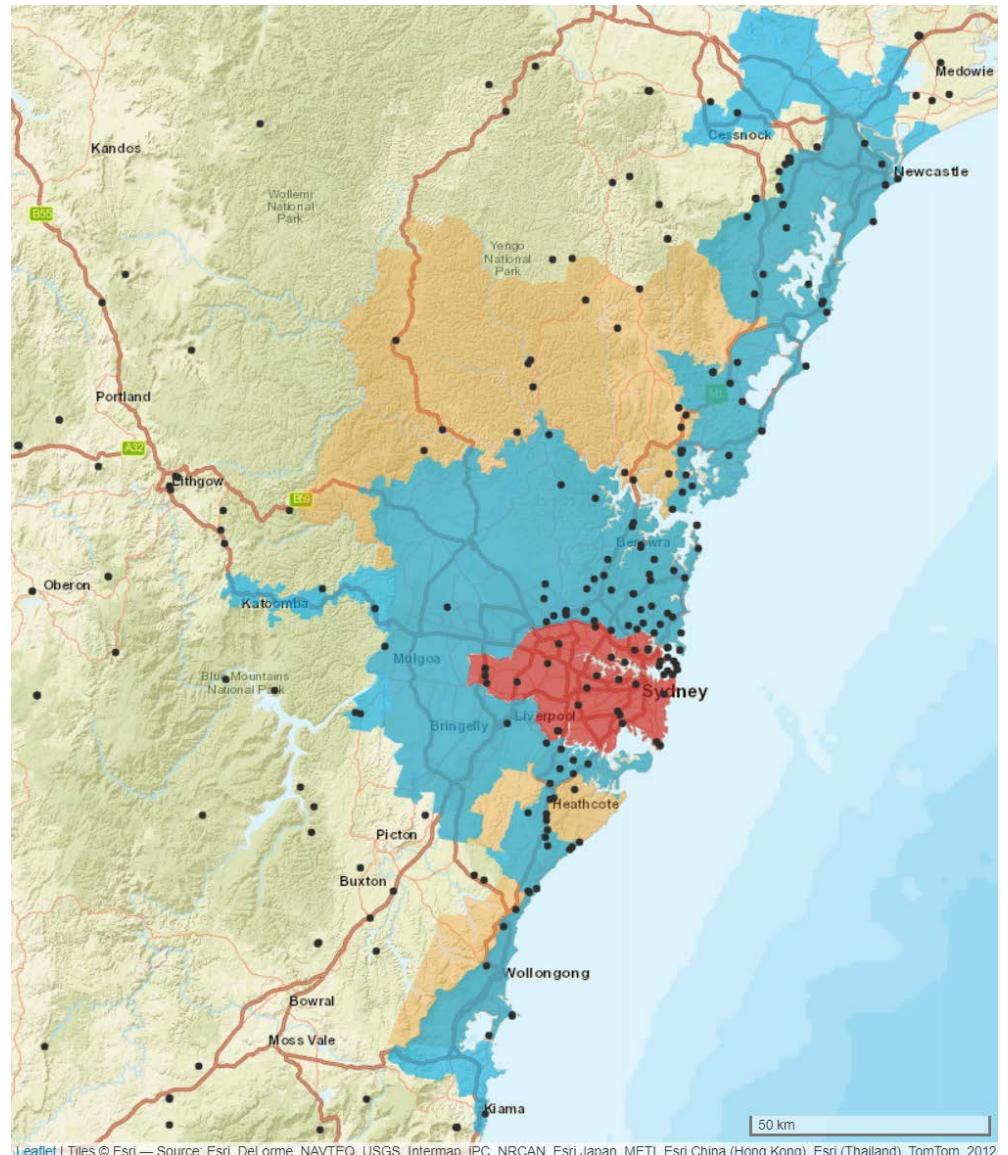
<sup>46</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, pp 9-10.

<sup>47</sup> Commercial Radio Australia, Submission to Issues Paper, April 2019, p 2.

<sup>48</sup> Broadcast Australia, Submission to Issues Paper, April 2019, p 17.

Central Coast. We recommend including the Morisset – Cooranbong significant urban area in our High zone as it is currently within our High zone, is the main road and rail corridor between Newcastle and Sydney runs through this area, and many parts of the SUA are outlying suburbs of Central Coast and Newcastle.

**Figure 5.6 Proposed change to high zone  
(Existing high orange, and draft recommendation blue)**



**Data source:** Australian Bureau of Statistics, 1270.0.55.004 Australian Statistical Geography Standard (ASGS): Volume 4 – Significant Urban Areas, Urban Centres and Localities, Section of State, July 2016; Australian Bureau of Statistics, 1270.0.55.004 Australian Statistical Geography Standard (ASGS): Volume 3 – Non ABS Structures, July 2018; ACMA database of radio communications licenses.

If adopted this change would reclassify 28 regulated sites on Crown land:<sup>49</sup>

- ▼ 4 low sites become high

<sup>49</sup> That is National Parks and Wildlife Service, Crown Lands and Forestry Corporation.



- ▼ 2 medium sites become high, and
- ▼ 22 high sites become low.

We also considered, but have decided not to recommend, including Tweed Heads and Queanbeyan in the High category. They are within 'Major Urban' areas according to the ABS definition (i.e part of a large city). If the whole significant urban area were within NSW, we consider that both Gold Coast – Tweed Heads and Canberra – Queanbeyan would be categorised as High.

**Table 5.2 Canberra – Queanbeyan and Gold Coast – Tweed Heads are major cities**

Significant Urban Area	Population
Sydney	4,835,206
Newcastle – Maitland	486,704
Central Coast	333,627
Wollongong	302,739
Morisset – Cooranbong <sup>a</sup>	25,309
<i>Gold Coast – Tweed Heads</i>	<i>679,127</i>
<i>Canberra - Queanbeyan</i>	<i>457,563</i>

<sup>a</sup> We have only included the Morisset – Cooranbong significant urban area in our high density zone as it is currently within our high density zone, the main road and rail corridor between Newcastle and Sydney runs through this area, and many parts of the SUA are outlying suburbs of Central Coast and Newcastle.

**Source:** ABS, *3218.0 Regional Population Growth, Australia, Table 1. Estimated Resident Population, Significant Urban Areas, Australia, 27 March 2019*

However, we do not consider this to be a major issue. It would only affect:

- ▼ Two existing sites within Tweed Heads (one existing Medium Crown Lands site in central Tweed Heads and one existing Low National Parks site in the Cudgera Creek Nature Reserve).
- ▼ Zero existing sites within Queanbeyan.

No stakeholders identified this as a concern.

### **The existing medium zone does not reflect the variety of cities covered**

We identified two main issues with the current approach to the medium category:

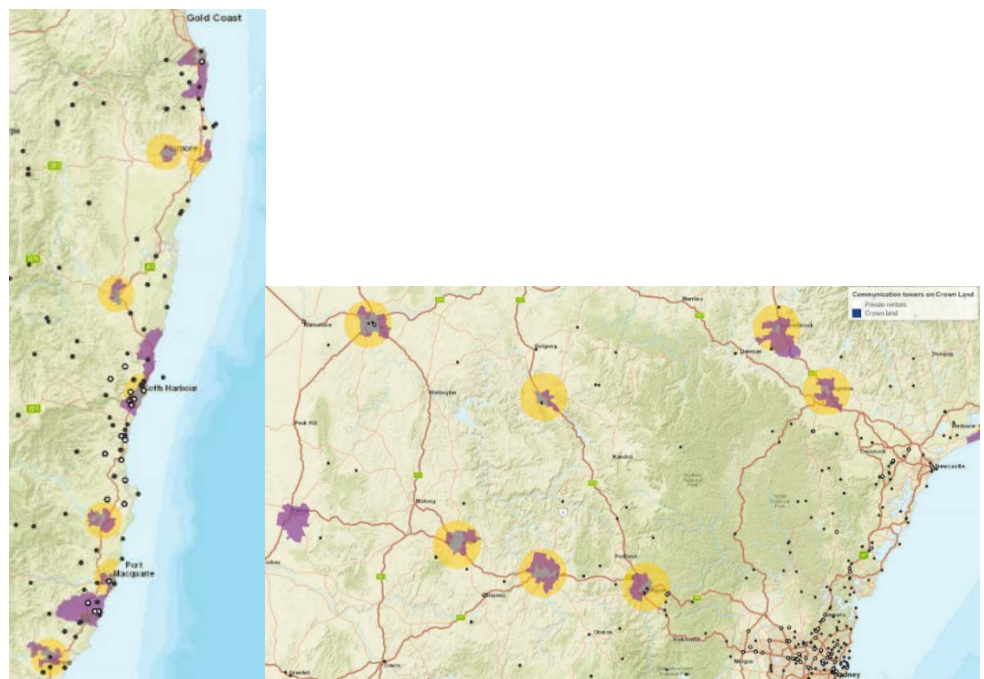
- ▼ It is not simple, in all cases, to identify which post office is the main post office.
- ▼ The 12.5km radius does not reflect the size and shape of the cities and towns in the medium zone.

We considered three approaches to improve the definition of the medium category:

1. Maintaining the 12.5km radius from the centre point, but publishing a list of the centre points. (see Appendix B).<sup>50</sup>
2. Setting the medium zone as the land area covered by the ABS defined Urban Centres (with populations over 10,000). The Urban Centres are narrowly defined and cover the urban area of each city or town reflecting its growth. However, we consider that they do not cover enough land adjacent to Urban areas that have a higher land value.
3. Setting the medium zone as the land area covered by the ABS defined Significant Urban Areas. The Significant Urban Areas cover urban area and adjacent areas (the ABS aims to include likely areas of growth). These cover a larger area than option 1 but a smaller area than option 2. However, adopting the Significant Urban Areas would lead to more sites needing to be reclassified from medium to low and vice versa.

Figure 5.7 below compares the three options:

**Figure 5.7 The North Coast and Central West under the three options  
(Option 1 – yellow, Option 2 – grey, Option 3 – Purple)**



**Note:** For option 1 it assumes no change to the High zone, therefore it maintains coverage of the Blue Mountains, Cessnock, Kurri Kurri and Maitland. Parkes had a urban centre population of 9,964 in the 2016 census so it did not meet the criteria of population over 10,000, however the SUA definition includes satellite towns which results in Parkes SUA having a population over 10,000, therefore Parkes only appears in option 3.

**Data source:** Australian Bureau of Statistics, *1270.0.55.004 Australian Statistical Geography Standard (ASGS): Volume 4 – Significant Urban Areas, Urban Centres and Localities, Section of State*, July 2016; ACMA database of radiocommunications licenses.

<sup>50</sup> In 2013 we used populations and UCLs based on the 2011 census. We have updated them to use the 2016 census. Accordingly Mudgee is now within the medium category.

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We consider that there may be benefits in adopting Significant Urban Areas as the boundaries for the medium zone. However, we do not have sufficient market evidence to justify such a change given the number of sites that it would affect. Our draft recommendation is to maintain the 12.5km radius from the centre point, but publishing a list of the centre points (see Appendix B for a full list).

## 5.5 Definitions of what is covered by the rent schedule

In previous reviews we did not explicitly define the services that are covered by the recommended rent schedule. As part of this review, we found that the land management agencies charge other fees in addition to rents. For example:

- ▼ Department of Industry charges a minimum \$547.80 for access to the site and \$438 licence application fee.
- ▼ National Parks and Wildlife Service charges additional fees for legal and administrative costs of preparing the lease. National Parks and Wildlife Services' leases may require users to contribute to track maintenance and weed control costs.
- ▼ Forestry Corporation charges an additional 10% of rent to cover road maintenance. In limited circumstances, Forestry Corporation may charge rents for investigation into environment and cultural heritage issues.<sup>51</sup>

Most stakeholders submitted that there are rarely additional fees, beyond the rental payments in the private market. The examples of additional rents provided by stakeholders include:

- ▼ Setting up electricity and ongoing electricity costs.<sup>52</sup>
- ▼ Where there is shared use access tracks, lessees may contribute to maintenance costs.<sup>53</sup>

Our analysis of commercial leases on private land found that most leases do not charge additional fees. We have used these leases to inform our recommended rents, therefore charging additional fees would be inconsistent with market evidence.

We consider that a standard lease, under our recommended rent schedule should include:

- ▼ All lessor costs of preparing and assessing lease applications.

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<sup>51</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 7.

<sup>52</sup> Commercial Radio Australia, Submission to Issues Paper, April 2019, p 6.

<sup>53</sup> Telstra, Submission to Issues Paper, April 2019, p 8; Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 10; Broadcast Australia, Submission to Issues Paper, April 2019, p 13.

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- ▼ Use of existing tracks and roads at no additional cost. Where additional access roads are required the costs of building and maintaining them should be set with reference to a benchmark rate. We consider that the maintenance costs for existing tracks would likely be minimal given the low level of traffic.

Where additional access roads are required, the costs of building and maintaining them should be set with reference to a benchmark rate, with the lessee responsible for these costs. We are seeking further information from the land management agencies to establish this benchmark rate, and will make recommendations in our Final Report

#### 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.

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## 6 Rental arrangements for new sites and SCAX sites

After deciding on a rent schedule for existing sites, next we considered what arrangements to apply to new communication tower sites and SCAX sites. Under current arrangements, telephony service providers operating SCAX sites are treated as primary users, paying the same flat rent as for a communication tower site. However, in recognition of the unique and necessary nature of the service provided in remote and regional areas, telephony service providers such as Telstra, are currently eligible to apply for a rebate for these sites in low locations.

The sections below outline our draft recommendations regarding new sites and SCAX sites, and then discuss stakeholder submissions and our analysis in more detail.

### 6.1 Overview of draft recommendations

We consider that rents for primary users of new communication tower sites on Crown land should vary by land size as well as by location. We consider it reasonable that users pay for the land area they use, and have an incentive to minimise this area. Therefore, we are recommending that:

- ▼ These rents be charged on a per metre squared basis
- ▼ The rate per metre squared vary by location category.

We calculated the recommended rates per metre squared by converting the recommended rent for primary users of existing sites using the median of land size from our sample of private market data for each location.

We consider the same arrangement is reasonable for both new and existing SCAX sites. In recognition of the different nature and extent of land use by SCAX sites, we are recommending that rents for these sites:

- ▼ Be charged on the same basis and at the same rates as primary users of new sites
- ▼ Be capped at the flat rate for primary users of existing sites in the same location category.

#### Draft recommendations

- 5 For new sites, the land management agencies implement the schedule of rents shown in Table 6.1, where rent per site varies by location and land size.

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Rent for new sites and SCAX sites should vary by land size and location and reflect updated market evidence

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**Table 6.1 Draft recommendations on annual rents for primary users on new sites and SCAX sites from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per m <sup>2</sup>	1,123	273	203	124
Rent per site varies by land size.	For a median land size of 30 m <sup>2</sup> for Sydney sites, rent would be \$33,690	For a median land size of 60 m <sup>2</sup> for High sites, rent would be \$16,380	For a median land size of 65 m <sup>2</sup> for Medium sites, rent would be \$13,195	For a median land size of 80 m <sup>2</sup> for Low sites, rent would be \$9,920

- 6 That the rent for Small Country Automatic Exchange (SCAX) sites be set on a per metre squared basis as shown in Table 6.1.
- 7 That the rent for SCAX sites be capped at the flat rent per site for primary users on existing sites in the same location category.

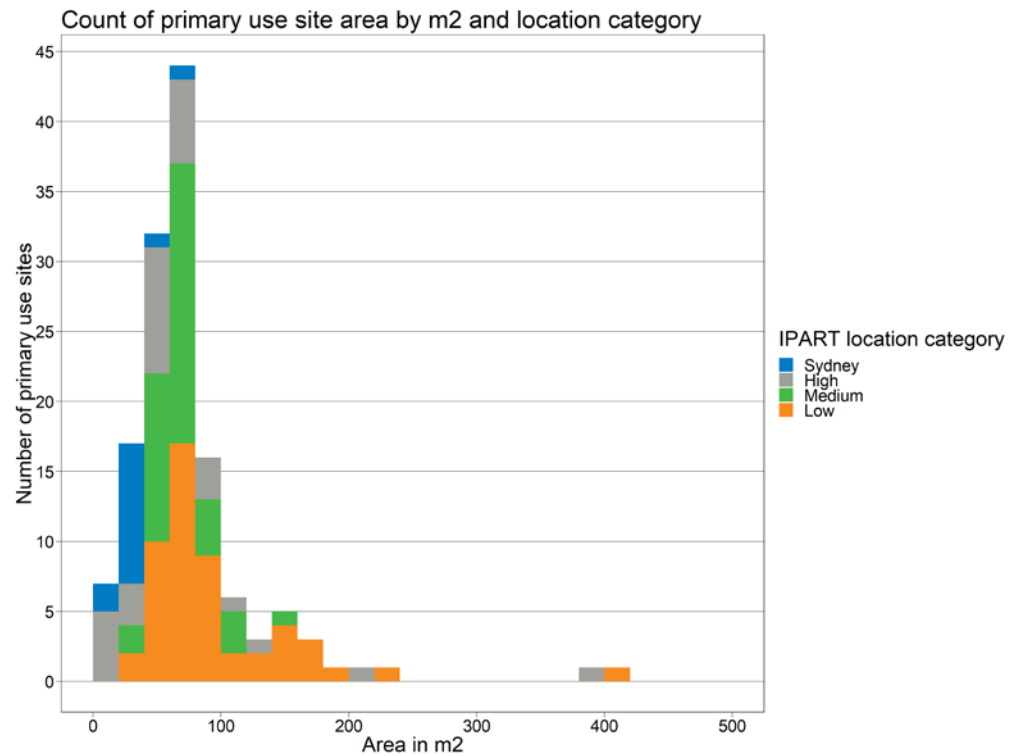
## 6.2 Rent for new communication tower sites to vary by size and location

We consider that rents for any new sites should vary with land size as well as location so that users provided with an incentive to minimise land size. It would allow for a consistent \$ per m<sup>2</sup> to be applied to primary users and co-users at the same site as well as emerging small cell technology (Chapter 7 contains further information on our recommendations for co-users and emerging technology).

Current rental arrangements on Crown land do not provide an incentive for users to minimise the land size of their communication tower sites. Our analysis of land size for both Crown land and private market sites found that Crown land sites are generally larger than sites on private land.

Figure 6.1 shows the land size for sites in our private market sample. Sydney and High sites have smaller areas, and Medium and High have much larger areas for primary use. Median plot size is: 30 m<sup>2</sup> for Sydney, 62 m<sup>2</sup> for High, 67 m<sup>2</sup> for Medium and 80 m<sup>2</sup> for Low.

**Figure 6.1 Site area for primary users in private market sample**



Data source: IPART analysis

DoI does not stipulate the area of a tenure, as the proponent will determine site requirements as part of their proposal.

We requested approximate estimates of land size from DoI for its Sydney and High sites. These indicate a median land size of around 55 m<sup>2</sup> for Sydney and around 140 m<sup>2</sup> for High locations which are around double the land sizes on private land.<sup>54</sup>

We recommend setting rent per m<sup>2</sup> for new sites so that users pay for the land they use and have an incentive to reduce land size. Table 6.1 above sets out our recommended rates which are based on the converting the recommended rent per site to a dollar per m<sup>2</sup> using the median of the land size m<sup>2</sup> from our private market sample.

### 6.3 Annual rent for SCAX sites to be charged on per metre squared basis

SCAX sites are generally located in rural and remote areas servicing a small number of customers. They are owned and operated by Telstra and are provided as part of Telstra’s Universal Service Obligation which requires it to deliver standard telephone services to every premise in Australia. There are currently 72 SCAX sites on Crown land (68 on Department of Industry’s

<sup>54</sup> Information provided by DoI, 4 June 2019.

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land, 4 in NSW Forests). While some sites have towers, most do not. Sites without towers typically have a smaller land footprint than those with towers.

As discussed in Chapter 2, telephony service providers are currently eligible for a rebate in Low locations. There are also a very small number of SCAX sites in medium and high locations which are not eligible for a rebate. For these sites, Department of Industry has applied a rent waiver so that the rent payable is equivalent to SCAX sites in low locations after the rebate.

In response to our Issues Paper, the Mobile Carriers Forum considered SCAX sites should be removed from the schedule.<sup>55</sup> Similarly, in its submission to our 2013 review, Telstra argued that SCAX sites were outside IPART's terms of reference as they are not communication towers.<sup>56</sup>

Recognising the different nature and extent of the use of the land by SCAX sites, we are recommending that the rents for these sites (both existing and new SCAX sites) be set on a metres squared basis; with the applicable rate for low locations in 2020-21 being \$124/m<sup>2</sup>.

Based on the sample data requested by IPART, the area for SCAX sites on Crown land managed by the Department of Industry varies significantly, with an average area of 35m<sup>2</sup>. Therefore the average rents for SCAX sites would be \$4,340 in \$2020-21. This is about \$1,024 more than the current rent after the rebate is applied.<sup>57</sup>

We are also recommending that SCAX rents be capped at the flat rate for primary users on existing sites in the same location category, with the result that lessees of SCAX sites will never be worse off as a result of existing SCAX sites being charged on a per metre squared basis.

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<sup>55</sup> Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 7.

<sup>56</sup> Telstra submission to IPART Draft Report, June 2013, pp 9-10.

<sup>57</sup> Current fee net of the rebate is \$3,206 in 2018-19 which is equivalent to \$3,316 in \$2020 - 21.



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## 7 Co-user rents and small cell technology

After deciding on a rent schedule for primary users on communication tower and SCAX sites, we next considered how to set rents for co-users and emerging technology (such as small cells).

Since our first review in 2004, co-users have been charged 50% of the rent charged to primary users. Stakeholders have consistently argued that these rents enable land management agencies to benefit from infrastructure provided by primary users, which is separate from the site, and thus constitutes 'double-dipping' by the agencies.<sup>58</sup> In our Issues Paper, we noted that there are a range of discounts for sub-tenants on private land and sought feedback from stakeholders on whether to maintain the current arrangements.

Our terms of reference also require us to consider rental arrangements for emerging technology for communications purposes. This includes small cell technology as required for 5G mobile telecommunications.

The sections below outline our draft recommendations on co-user rents and small cell technology, and then discuss stakeholder submissions and our analysis in more detail.

### 7.1 Overview of draft recommendations

Our analysis of updated market data found that co-users of sites on private land generally only pay rent to the land owner for any additional land they occupy. We consider similar arrangements for co-users of communication tower sites on Crown land would reflect market rents and are reasonable. Therefore, we are recommending that rents for co-users of existing and new sites:

- ▼ Be based only on their additional land footprint, and be calculated using the same dollar per square metre as rents for primary users of new sites
- ▼ Be capped at the flat rate for primary users on existing sites in the same location category.

For co-users located wholly with the primary user's site, we are recommending that only the minimum annual rent to occupy Crown land be charged.

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Co-users should only pay rent for any additional land they occupy. Co-users within a primary user's site to pay the minimum annual rent

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<sup>58</sup> IPART, *Review of rental arrangement for communication towers on Crown land - Draft Report*, April 2013, p 51.

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Emerging technology should only pay for their land footprint. This will help facilitate the rollout of small cell 5G technology.

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Emerging communication technologies, such as 5G mobile telecommunications, require many small cells to be deployed in high density locations. Therefore, it needs many more sites than traditional communication technologies, and uses less land area per site. In recognition of the different nature and extent of land use by small cell sites, we are recommending that:

- ▼ Rents for these sites be based on their additional land footprint only, and be calculated on the same per metre squared basis and at the same rates as rents for primary users of new sites
- ▼ Where these sites have no additional land footprint (eg, where small cells are installed on existing poles or structures) the minimum annual rent to occupy Crown land be payable for sites.

We consider that these arrangements provide a clear rent structure that appropriately reflects the costs of such sites to the landowner, and will not hinder the deployment of small cell technology.

#### Draft recommendations

- 8 That co-users on existing and new sites be charged for any additional land they occupy outside the perimeter of the primary user's communication tower site on the per metre squared basis as shown in Table 7.1.
- 9 That the co-user rent be capped at the flat rent per site for primary users on existing sites in the same location category.
- 10 That the minimum annual rent to occupy Crown land be payable for co-users wholly located within the primary user's site.
- 11 That the rent for small cell technology occupying additional Crown land be set on the per metre squared basis as shown in Table 7.1.
- 12 That the minimum annual rent to occupy Crown land be payable for small cell technology installed on existing poles or structures with no additional footprint.

## 7.2 Most stakeholders considered co-user rents should be abolished

In submissions to our Issues Paper, many stakeholders continued to strongly oppose co-user rents, and considered that it amounts to double dipping.<sup>59</sup> They argued that it was out of step with commercial practice and inconsistent with Commonwealth legislation which encourages co-location. However, the Crown land management agencies consider that co-user rents appropriately reflect the management costs and land-use intensity of co-users.

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<sup>59</sup> Commercial Radio Australia, Submission to Issues Paper, April 2019, p 9; and TX Australia, Submission to Issues Paper, April 2019, p 5.

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### **7.2.1 Most users argued that co-user rents are not common commercial practice**

Several submissions considered that only the primary user should be required to pay rent for the land, with co-users only contracting with the primary user for tower access. For example, Free TV submitted that co-user rents are not reflective of common commercial practice, and that for sites located on private land the usual practice is for the infrastructure owner only to contract with the landowner and pay a site rent. The infrastructure owner is then free to deal with third parties in relation to access and use of the site, sometimes with the obligation to notify the landlord of such arrangements.<sup>60</sup>

The Mobile Carriers Forum submit co-users should be charged only for the additional land occupied by their own infrastructure, noting that the co-users expanded occupation of the Crown land is relatively insignificant (for eg, an air-conditioned shelter of 7.5 m<sup>2</sup>) but for which it is currently charged 50% of the rental paid by the primary user.<sup>61</sup>

### **7.2.2 Stakeholders argued that co-user rents are inconsistent with Commonwealth legislation which encourages co-location**

Stakeholders also raised concerns regarding potential inconsistency between the *Facilities Access Code* (Cth) which encourages co-location (or the sharing of infrastructure by competitors), and the NSW rental schedule imposing rents for co-location.<sup>62</sup> We consider this is unlikely to be the case as co-user rents are lower than the alternative of establishing a separate site, installing a tower and paying primary user rents. Our recommended changes to co-user rents should further encourage the sharing of sites.

### **7.2.3 Land management agencies consider current co-user rents to be fair and reflective of land use intensity**

The land management agencies considered the existing co-user discount of 50% to be fair and reasonable and ensures that the total rent charged reflects the intensity of land use by all the users on the site. The willingness to pay of a co-user is likely to be lower than a primary user as they will have to pay rents to the primary user for use of its structure (although not significantly lower the agencies argue). Similarly, the agencies' willingness to accept a co-user is slightly lower than a primary user because it does not involve the construction of new infrastructure (but not significantly lower the agencies argue, as it would still involve access to the site and increased management burden).<sup>63</sup>

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<sup>60</sup> Free TV Australia, Submission to Issues Paper, April 2019, pp 6-7.

<sup>61</sup> Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 11 and pp 13-14.

<sup>62</sup> Telstra, Submission to Issues Paper, April 2019, pp 7-8.

<sup>63</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 10.

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The agencies also requested, that as part of this review, we consider the rents applicable where co-location involves construction of a new cabin outside of a site's existing compound.<sup>64</sup>

## 7.3 Options for co-use rents

Similar to the private market, we consider co-user rents should be charged only for additional land at communication sites. When the co-user is located fully within the primary user's site, we are recommending they be charged the minimum annual rent to occupy Crown land. The sections below discuss arrangements in the private market and options we have considered for setting rents for co-users of communication tower sites.

### 7.3.1 Co-users pay rent for additional land in the private market

Private market rental arrangements for additional users on communication sites vary. Below are examples of clauses from private leases between lessors (landlord) and lessees (primary user) for communication sites which cover a range of subletting arrangements:

- ▼ Subletting is permitted without requiring the consent of the landlord
- ▼ Subletting permitted on written notice to the lessor
- ▼ Subletting is permitted on approval from lessor, which is not to be unreasonably withheld
- ▼ Subletting permitted subject to third party entering into an agreement with the landlord.

Under many of these arrangements the lessor would not collect additional rent from the sub-lessee (co-user). However, where a separate contract is entered into between the lessor and the sub-lessee, particularly for additional land, rent is generally payable. Typically these sites are where users install equipment on the same tower but the co-user(s) rent additional land adjacent to the site, for example, to install an equipment shed.

Our analysis of private rental contracts, where subsequent lessees rent additional land adjacent to a tower site, found that on average these subsequent lessees (ie, co-users) pay between 39% and 156% more than the applicable co-user schedule rent for Crown land, and this is generally more than 50% of the primary user's rent in the private market.<sup>65</sup> We also found there was no observable relationship between rent payable and the size of the leased area.

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<sup>64</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 10.

<sup>65</sup> In \$2020-21.

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### 7.3.2 Co-users on Crown land should pay for additional land, but should otherwise pay only the minimum rent

Currently the primary and co-user rents for communication sites on Crown land are flat rents set by location category. The rents allow for equipment on the tower and associated equipment on the ground and do not vary with the size of the land occupied by the tower and associated equipment huts.

The land management agencies have advised that the arrangements vary from site to site. For example, in some cases the co-user's equipment shelters are able to be accommodated within the perimeter of the primary user's site, and at other sites the co-user has had to expand the site to install equipment. In either case, the co-user is charged the applicable co-user rent for the location category of their facility.

Users will generally try to install equipment within the existing compound if possible, as it is cheaper for them and is much simpler to approve, as it is unlikely to create any ecological or cultural heritage issues due to the ground having already been cleared.<sup>66</sup>

The Department of Industry also advised that the size of a site may be defined by a number of parameters including, but not limited to, the fenced compound area, area included in a bushfire Asset Protection Zone or an access track leading to the communication site. The proponent will determine the size of a site in their proposal. A Co-User seeking to collocate typically locates within this fenced compound. This may include the establishment of a new shelter within the existing fenced compound or they may co-occupy an existing shelter. Matters such as Aboriginal Land Claims and Native Title, and where land is reserved as a Travelling Stock Route, may limit the opportunity for expansion of an existing fenced compound.<sup>67</sup>

Based on our analysis of Crown land and private market sites, we estimated that around 75% of sites with co-users do not involve any additional land footprint.

In line with commercial practice, we are recommending that co-users only be charged rent for additional land required outside the perimeter of the primary user's site, and not for equipment mounted on the primary user's tower or within the perimeter of the primary user's site. For co-users wholly within the existing primary user's site, we are recommending they be charged the minimum annual rent to occupy Crown land, estimated at \$508 in 2020-21.<sup>68</sup>

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<sup>66</sup> Information provided by Forestry Corporation to IPART, 9 May 2019.

<sup>67</sup> Information provided by Department of Industry to IPART, 15 May 2019.

<sup>68</sup> Under the *Crown Land Management Act 2016*, Part 6, Division 6.2, Section 6.4, annual rent cannot generally be less than the minimum rent. The *Crown Land Management Regulation 2018* Part 4, Clause 38, set this minimum at \$490 (31 Jan 2018). Escalated to \$2020-21 is \$508.

### 7.3.3 Co-users should be charged on per metre squared basis for additional land

For co-users with additional land outside the perimeter of the primary user's site we are recommending the rent be levied on a per metre squared basis, at the same rate as we are recommending for primary users on new sites from 1 July 2020 (Table 7.1).

**Table 7.1 Draft recommendations on annual rents for co-users and small cell technology from 1 July 2020 (\$2020-21, ex-GST)**

	Sydney	High	Medium	Low
Rent per m <sup>2</sup>	1,123	273	203	124

The co-user rent for additional land should be capped at the primary user rent for existing sites. To reach this cap, the co-user would need to be occupying the same or greater land size than the primary user. We do not anticipate this would be the case for many (if any) sites.

As discussed in Chapter 5, we are recommending that primary users on existing communication sites be charged a flat rent by location, regardless of land size. Charging different users on a different basis could create some unintended outcomes.<sup>69</sup> However, we do not consider this would occur for existing sites as it would be likely to involve moving fences and equipment huts.

As we are recommending that the rents for primary users for new sites be set on the same per metre squared basis, the land management agency would receive revenue based on the size of the site, regardless of user type. This would appropriately balance the costs and risks between user types and the land manager.

In developing our draft recommendations for co-user rents we also considered setting the dollar per metre squared rate on a site-by-site basis (that is, by dividing the flat rent payable by the primary user by the size of the primary user's site). However this option would be complicated to implement and could result in co-users paying a higher rate per metre squared, the smaller the primary user's site.

<sup>69</sup> For example, the primary user could be motivated to expand their site to accommodate the co-user's equipment without an increased rental fee. As the co-user would then only pay the land management agency the minimum rental fee, the primary user may be able to extract a higher payment from the co-user.

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## 7.4 Small cell technology should be changed on a per metre squared basis for additional footprint only

Small cells are low-powered mobile base stations that give coverage to highly populated areas. They strengthen mobile coverage providing faster and more reliable connection. Small cells are expected to play an important role in providing 5G mobile telecommunications.<sup>70</sup>

Small cells are generally made up of one or two small antennas and a small equipment cabinet, typically installed on existing infrastructure such as light poles, bus shelters, advertising billboards or payphone cabinets.<sup>71</sup>

The current rental arrangements do not allow for different rates to be charged for different technology or usage of sites. However, as mentioned above, our terms of reference require the rent schedule to cover rental arrangements for emerging technology for communication purposes. Therefore, we have considered how best to provide a clear rent structure that appropriately reflects the costs of such sites to the landowner, and will not hinder the deployment of small cell technology.

Along these lines, Optus submits that we should assess the extent to which our recommendations would apply to all types of communication towers, not just large macro-cell towers. Optus states this is of particular importance due to the current investment in new 5G networks which require a fundamentally different architecture than required under previous mobile generations. To provide 5G services in dense metro areas, a mobile operator would need to deploy up to 1,500 small cells to cover an area of less than 300 square kilometres. This is a fundamental re-design of current networks, which provide services for the same area with around 400 sites.<sup>72</sup>

In its submission, ARCIA highlights that the charging precedents in the IPART rent schedule, will likely, if they applied to future 5G deployments (using 3.5 GHz and future mmWave spectrum) on poles and towers on Crown land, undermine both sector competition and the Commonwealth Government's broader policy objectives.<sup>73</sup>

The land management agencies also consider we should further refine the rent schedule to account for different technologies, including emerging technologies such as 5G cells.<sup>74</sup>

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<sup>70</sup> ACMA, *A Guide to small cells*, at <https://www.acma.gov.au/theACMA/a-guide-to-small-cells> accessed 4 June 2019.

<sup>71</sup> Telstra Exchange, *Small cells bringing fast mobile coverage to where it's needed most* <https://exchange.telstra.com.au/small-cells-bringing-fast-mobile-coverage-needed/> accessed 4 June 2019.

<sup>72</sup> Optus, Submission to Issues Paper, April 2019, pp 8-9.

<sup>73</sup> ARCIA, Submission to Issues Paper, April 2019, p 2.

<sup>74</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 1.

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Having regard to these arguments, and the fact that in densely urban areas there are likely to be alternative sites on which to install small cell technology, we are recommending that rents for these sites be based on their additional footprint only, calculated on the metres squared basis for the applicable location category. For 2020-21 this would be \$1,123/m<sup>2</sup> in Sydney and \$273/m<sup>2</sup> in High locations; or the minimum annual rent to occupy Crown land whichever is higher.

For small cells installed on existing poles or structures with no additional footprint, we are recommending that the minimum annual rent to occupy Crown land be payable, estimated at \$508 in 2020-21.<sup>75</sup>

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<sup>75</sup> Under the *Crown Land Management Act 2016*, Part 6, Division 6.2, Section 6.4, annual rent cannot generally be less than the minimum rent. The *Crown Land Management Regulation 2018* Part 4, Clause 38, set this minimum at \$490 (31 Jan 2018). Escalated to \$2020-21 is \$508.



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## 8 High value sites and infrastructure providers

Our 2013 review recommended that land management agencies have the option to negotiate rents for high value sites if certain criteria were met, including that the characteristics of the site contributed significantly to its value. The benefits of negotiating also had to outweigh the costs. We also recommended that the 30% discount for existing infrastructure providers be phased out when licences were reviewed, and that new infrastructure providers be charged 100% of the applicable rent.

In our Issues Paper we sought feedback from stakeholders on whether to maintain the current arrangements for site-by-site negotiation of high value sites, and also whether infrastructure providers should receive a discount relative to primary users. The sections below outline our draft recommendations on these issues, then discuss stakeholder submissions and our analysis in more detail.

### 8.1 Overview of draft recommendations

We recommend that the rent for all communication sites on Crown land be set according to the rent schedule, removing the current arrangements which allow for site-by-site negotiation of high value sites. We are making this recommendation as the arrangements have not been widely adopted, and where they have, they have not been used as intended. The Department of Industry and NSW Forestry Corporation have not negotiated rent for any sites.

NPWS currently sets rents for all its sites using the rent schedule, but applying the rent for one location category higher than the site's actual category. We consider this is appropriate to reflect the social, environmental and cultural values of national park land, noting that our recommended rent schedule has been based on recent market rents for similar sites on private land, and does not necessarily reflect these values.

The discount for infrastructure providers was removed in our 2013 review but is still being transitioned out as rental arrangements come up for review. We do not propose reinstating the discount as primary users, including infrastructure providers, should not be treated differently based on their business model.

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Negotiation for higher value sites to be removed. Fees for sites in national parks to be set based on one location category higher than site to reflect social, cultural and environmental value of land.

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### Draft recommendations

- 13 That the rents for all communication sites on Crown land be set according to the rent schedule for the relevant location category, and negotiation of rent for high value sites not be permitted.
- 14 That the Office of Environment and Heritage continue to set the rent for sites in national parks one location category higher than the site's actual category.
- 15 That infrastructure providers not receive a rental discount for communication sites on Crown land.

## 8.2 Stakeholders considered that site-by-site negotiation is not working

On the whole, stakeholders do not support the current arrangements which allow for negotiation of the rent for high value sites. While some considered the arrangements should be removed altogether, others considered that further guidance should be provided to establish the rents for high value sites. These views are discussed in more detail below.

### 8.2.1 Users argued arrangement for high value sites should be removed as they have not been used as intended

A number of stakeholders considered the arrangement should be removed altogether, noting the land management agencies have not sought to negotiate on high value sites. For example, the Mobile Carriers Forum states:

With the exception of the NPWS's unilateral decision to determine ALL its land to be "strategically" important, and as such deserving of a step increase in density category, no agency has sought to undertake a separate site by site negotiation for a site with two or more users. NPWS's classification of its own land to its own advantage without independent assessment does not appear to be based on any accepted land valuation methodology and appears to indicate the arrangement is open to exploitation. It is not expected that application of the high value site definition in this way was intended by IPART when it was first implemented.<sup>76</sup>

Other stakeholders opposed the concept of negotiating high-value sites, including:

- ▼ Digital Distribution Australia, which considered site-by-site negotiations to be a cumbersome process for all parties concerned, and that all parties should have an up-front methodology in valuing sites.<sup>77</sup>

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<sup>76</sup> For example, Mobile Carriers Forum, Submission to Issues Paper, April 2019, pp 14-15; and Axicom, Submission to Issues Paper, April 2019, p 19.

<sup>77</sup> Digital Distribution Australia, Submission to Issues Paper, April 2019, p 4.

- ▼ TXA, which is strongly opposed to the definition of “high value” sites, stated there should be one method of determining rental for all sites, being “unimproved land value”, which provides fairness and certainty.<sup>78</sup>
- ▼ Telstra, which submitted that there should be a single consistent methodology for determining rents for Crown land.<sup>79</sup>
- ▼ nbn, which considered that continuation of an arrangement where site-by-site negotiations can occur for high-value sites contravenes clause 44 of Schedule 3 to the Telco Act and should not continue.<sup>80</sup>

Some stakeholders considered that the land management agencies lack the commercial experience to be able to negotiate rental arrangements for high value sites. For example, Broadcast Australia consider that the land management agencies do not appear to have the understanding or the experience to deal with rental negotiation, or determine if a site is high value, and consider it hard to justify the approach of NPWS determining that every site is a high value site.

They also consider that “if the concept of high value sites is intuitive and a relevant consideration in determining market rents, it is reasonable to expect that evidence of premiums for strategic sites would be readily available and examples easily provided. The concept would also be reflected in all circumstances where the inherent characteristics are present...” and that “IPART has in the past failed to demonstrate that higher rentals are paid for sites with the characteristics it has identified for high value sites. As such, a standard schedule of rents should apply to all sites.”<sup>81</sup>

### **8.2.2 Several users supported the concept of high value sites with more guidance**

Whilst some stakeholders considered that the only characteristics that should be used to set a non-discriminatory rent is the land value,<sup>82</sup> others supported the concept of high value sites, but considered that there should be greater guidance for establishing the rents for these sites. For example:

- ▼ TransGrid suggests extending current schedule of rental arrangements for standard sites for "high value" sites, however the relevant criteria will need to be established to formulate an appropriate rate such as value to network, accessibility and customer demand for services.<sup>83</sup>

<sup>78</sup> TX Australia, Submission to Issues Paper, April 2019, p 6.

<sup>79</sup> Telstra, Submission to Issues Paper, April 2019, p 10.

<sup>80</sup> nbn, Submission to Issues Paper, April 2019, pp 12-13.

<sup>81</sup> Broadcast Australia, Submission to Issues Paper, April 2019, p 18.

<sup>82</sup> For example, Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 15; Axicom, Submission to Issues Paper, April 2019, p 20; and TX Australia, Submission to Issues Paper, April 2019, p 5.

<sup>83</sup> Transgrid, Submission to Issues Paper, April 2019, pp 7-8.

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- ▼ ARCIA considered that all rent arrangements should be based on a site by site negotiation but that the land management agencies should aim for a price equal to opportunity cost not a price that reflects the monopoly power associated with scarce sites for which there are no close substitutes. For example, the opportunity cost for a unique hilltop in remote NSW would be relatively low whereas the potential rent that could be extracted by monopoly pricing would be relatively high.<sup>84</sup>
  - ▼ Commercial Radio Australia suggested removing the Sydney sites from the rent schedule and allowing these sites to be subject to negotiation, noting that it is likely there will be alternatives and rental charges for access to private land will be easier to ascertain.<sup>85</sup>

The land management agencies supported the current arrangements for high-value sites subject to clarification that this category include sites that are high value to either or both the user and the agency. The agencies considered it is necessary to have a mechanism that enables the agencies to depart from the rent schedule if its application would not achieve fair, market-based commercial returns on Crown land.<sup>86</sup> They also argued that to achieve the objectives of establishing a fair, market-based commercial return, it will be necessary for us to assess the economic value of communication tower sites, not only their next best alternative. The value should incorporate social, environmental and cultural values of the land (e.g. ecosystem services, recreation, resource extraction and intergenerational equity).<sup>87</sup>

### **8.3 Site-by-site negotiation for high value sites should not be permitted**

We consider that the rental arrangements should not allow for site-by-site negotiation for high value sites, given that the arrangements have not been utilised.

However, we recommend that NPWS should be able to continue their practice of setting rent for communication towers in national parks one location category higher than the site's actual category. We consider this is appropriate to reflect the social, environmental and cultural values of national park land, noting that our recommended rent schedule has been based on recent market rents for similar sites on private land, and does not necessarily reflect these values.

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<sup>84</sup> ARCIA, Submission to Issues Paper, April 2019, p 6.

<sup>85</sup> Commercial Radio Australia, Submission to Issues Paper, April 2019, p 11.

<sup>86</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 11.

<sup>87</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 8

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The *National Parks and Wildlife Act 1974* (NPW Act) requires that national park land cannot be used for communication facilities if there is a feasible alternative site available.<sup>88</sup>

## **8.4 Submitters supported or opposed a discount for infrastructure providers depending on their business model**

Broadly, infrastructure providers consider that the discount should not have been removed. In addition, some co-users also support the discount, stating its removal results in higher costs being passed through. However, other primary users such as telecommunication carriers and broadcasters, as well as the land management agencies, do not consider that infrastructure providers should be treated differently.

### **8.4.1 Some stakeholders support the infrastructure provider discount**

Axicom, an infrastructure provider, did not agree with the removal of the infrastructure provider discount. It considered that its removal creates:

- ▼ An unjustified windfall gain to the Land Management Agencies,
- ▼ A barrier to entry for co-users, contrary to the government's aim of facilitating efficient use of infrastructure in Australia,
- ▼ Reduced investment by infrastructure providers on Crown land sites.<sup>89</sup>

The other main infrastructure provider, Broadcast Australia, considered that removal of the discount acts as a disincentive to develop infrastructure. It submitted that a 30 per cent discount is low and that IPART should consider granting the infrastructure providers the same discount level as the co-users.<sup>90</sup> Commercial Radio Australia also generally supported the use of a discount to infrastructure providers on the basis that this is likely to drive economic efficiencies downstream and encourage higher levels of co-location at sites by co-users.<sup>91</sup>

### **8.4.2 Other stakeholders consider there should be no distinction between infrastructure providers and other primary users**

However other users considered there should be no distinction between primary users and infrastructure providers as they both utilise the site for the

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<sup>88</sup> *National Parks and Wildlife Act 1974* (NSW) s153D 4(a).

<sup>89</sup> Axicom, *Submission to Issues Paper*, April 2019, p 17.

<sup>90</sup> Broadcast Australia, *Submission to Issues Paper*, April 2019, p 18.

<sup>91</sup> Commercial Radio Australia, *Submission to Issues Paper*, April 2019, p 10.

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same purpose – to construct, own and operate towers – and both are permitted to host co-users on the site.<sup>92</sup>

Telstra also considered infrastructure providers should not receive a discount relative to a primary user as it creates price discrimination between carriers and non-carriers. Telstra considers such a discount targets characteristics of the lessee rather than of the land being leased.<sup>93</sup>

The land management agencies support infrastructure providers paying the full primary user rent. From the agencies' perspective of willingness to accept, there is no practical difference if a tower is owned by a carrier or an infrastructure provider. They also consider that an infrastructure providers' willingness to pay is not lower than for a primary user. Infrastructure Providers own and operate towers for the sole purpose of hosting co-users on these towers and have the ability to make profit from co-users co-locating on their tower and in their cabin.<sup>94</sup>

## 8.5 We do not propose reintroducing the infrastructure provider discount

Removing the discount meant that all primary users (which include infrastructure providers) were charged the same rent, regardless of their operating or business model. In our previous review we noted that providing a discount to one type of primary user may allow it to offer lower rents to potential co-users than another type, and that this was inconsistent with the competitive neutrality principle.<sup>95</sup>

If access to a site was determined through an open tender process, the land owner would choose to enter into a rental agreement with the highest bidder. It would make no difference whether the bidder is an infrastructure provider, whose business is based on renting this infrastructure to others, or a primary user whose business requires the site for transmission purposes.

Although it can be argued the discount gives an advantage to infrastructure providers over other primary users, the only revenue available to infrastructure providers is through renting their tower to co-users whereas other primary users also receive revenue from their own use of the tower (broadcasting or communications).

Nevertheless, our view is that the infrastructure discount should not be reinstated. Given our proposed changes to the co-user rent, there may be opportunities for infrastructure providers to increase their revenue from co-users.

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<sup>92</sup> TX Australia, Submission to Issues Paper, April 2019, p 5.

<sup>93</sup> Telstra, Submission to Issues Paper, April 2019, p 10.

<sup>94</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, pp 10-11.

<sup>95</sup> IPART, *Review of rental arrangement for communication towers on Crown land* - Final Report, July 2013, pp 52-53.

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Our 2013 Review recommended that for infrastructure providers with existing licence arrangements, the discount of 30 per cent be gradually removed over five years, starting after the end of the next rent review period. Therefore, the earliest that the discount would not begin to be removed would be July 2018. That is, for infrastructure providers with a rental review in July 2013, the discount would start to be removed on a straight-line basis from July 2018-July 2023. As a result, the full impact of removing the discount of infrastructure providers in our 2013 Review has not yet been realised.

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## 9 Rebates

After deciding on a rent schedule to apply for primary users and co-users on communication tower and SCAX sites, and how it should be applied to emerging technology (such as small cells), we next considered whether there should continue to be rebates available for certain user groups. As outlined in Chapter 2, the current arrangements provide for rental rebates for community groups, local service providers, users in the budget funded sector and telephony service providers.

The sections below outline our draft recommendation regarding rebates for eligible users, and then discuss stakeholder submissions and our analysis in more detail.

### 9.1 Overview of draft recommendations

While many of these users of communication towers undertake activities that may generate positive externalities, we consider it is more appropriate for the Government to account for these positive externalities in deciding whether and how much to fund these users (for example, through Government subsidies) rather than in setting the rents they pay the Government for their use of Crown land.

Therefore, we are recommending that the current rental rebates be removed. This recommendation would also ensure that all users of communication towers on Crown land whose use of the land is of a similar nature and extent would pay the same effective price.

Removing the current rebate would result in rent increases for some community groups, the budget funded sector and local service providers that are primary users on Crown land sites. We are proposing transitional arrangements for these users as discussed further in Chapter 10.

However, for many users removal of their rebate would be offset by our draft recommendations on co-user rents discussed in Chapter 7. In addition, charging telephony service providers for SCAX sites on a metres squared basis would reduce the impact of removing their current rebate.

#### Draft recommendation

- 16 That the current rebates for Community Groups, Budget Funded Sector, Local Service Providers, and Telephony Service Providers be removed.

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Rent rebates to be removed. This ensures all users whose use of the land is of a similar nature and extent would pay the same price.

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## 9.2 Stakeholders had mixed views regarding rebates

There were a range of stakeholder views regarding rebates. These views included:

- ▼ The fact carriers are not able to receive rebates, regardless of any external benefits a particular site may generate, amounts to discrimination.<sup>96</sup>
- ▼ That the current rebates are fair. For example TX Australia<sup>97</sup> considered the current system is fair, whereby rebates are applicable to certain users who provide social and community benefits, particularly to those users that have little or no ability to generate revenue.<sup>98</sup>
- ▼ That the categories and eligibility should be widened, particularly to reflect the positive externalities generated by different users.<sup>99</sup>

### 9.2.1 Some carriers consider the external benefits they generate should be reflected in their rent

Optus argued that many of the social and wider productive benefits that flow from increased use of communications services would be considered to be positive externalities, and under efficient pricing could justify setting prices below a strictly cost basis. This is because of the wider social benefits from increasing the supply of communications – be it either increased coverage or increased throughput. Optus suggested that the rental arrangements be set to promote the deployment of infrastructure on Crown land in order to ensure that the NSW economy and residents can receive the significant economic, social and safety benefits that flow from mobile services, and consider rates below the opportunity cost of the land.<sup>100</sup>

Several stakeholders raised concerns about which users qualified for a rebate under the community group category. For example, Free TV Australia submitted that the community group discount rate should be applied to free-to-air broadcasters as a proxy for the value of the positive social externalities stemming from the provision of broadcasting services.<sup>101</sup>

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<sup>96</sup> For example, Vodafone, Submission to Issues Paper, April 2019, p 1.

<sup>97</sup> TX Australia Pty Limited (TXA) is a joint venture company owned equally by the three commercial metropolitan television networks, Seven, Nine and Ten. It owns, operate and manages transmission facilities, provides television transmission for broadcasters and markets its infrastructure facilities to access seekers.

<sup>98</sup> TX Australia, Submission to Issues Paper, April 2019, p 5.

<sup>99</sup> For example, Commercial Radio Australia, Submission to Issues Paper, April 2019, p 10; and Free TV Australia, Submission to Issues Paper, April 2019, p 2.

<sup>100</sup> Optus, Submission to Issues Paper, April 2019, pp 6-7.

<sup>101</sup> Free TV Australia, Submission to Issues Paper, April 2019, p 2.

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### **9.2.2 Other stakeholders argued the eligible user categories should be expanded**

Digital Distribution Australia<sup>102</sup> considered that the “local service providers” rebate category should be extended to “regional carriers” as they are providing a similar service but are excluded from the rebate as they are servicing more than a limited number of sites.<sup>103</sup>

The Australian Narrowcast Radio Association argued that there should be a separate user category for high powered open narrowcast services (HPONs) users given the restrictions on the programs and how they are permitted to broadcast, and that low power open narrowcast services (LPONs) should not be required to pay rents.<sup>104</sup>

The land management agencies support the current rebate scheme, noting it has required significant work to implement. They raise several anomalies with the current scheme – such as: primary users gaining a rebate whilst being able to charge rents to co-users; and no rebate for local service providers in High locations and for SCAX sites in Medium and High locations.<sup>105</sup>

### **9.3 Rebates should be removed so that all primary users of communication sites pay the same rent in a location**

As discussed above, a large number of stakeholders argued that many different users of communication towers generate positive externalities. We note also that many activities throughout the economy give rise to external benefits where the parties undertaking a transaction provide benefits to third parties. In most cases, the transacting parties do not receive compensation from third-party beneficiaries.

We acknowledge that there are some transactions that would not be undertaken at all if the third parties (or government on their behalf) did not provide some funding to reflect the benefit they receive. That is, some users provide a social or community benefits in excess of their ability to generate revenue from the service provided.

However, as discussed in Chapter 4, we consider that while there may be positive externalities associated with the activities of some users of communication towers, we consider it is more appropriate for the Government to account for these positive externalities in deciding whether

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<sup>102</sup> Digital Distribution Australia is a regional telecommunications service provider with a network delivering services to underserved rural and regional towns in NSW.

<sup>103</sup> Digital Distribution Australia, Submission to Issues Paper, April 2019, p 4.

<sup>104</sup> Australian Narrowcast Radio Association, Submission to Issues Paper, April 2019, pp 4 - 5.

<sup>105</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 11.

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and how much to fund these users (for example, through Government subsidies) rather than in setting the rents they pay the Government for their use of Crown land.

We note that some users of telecommunication tower sites on Crown land already receive Government subsidies in recognition of the external benefits they create. For example, the Commonwealth Government partially compensates Telstra in meeting its Universal Service Obligations.

Our draft recommendation for SCAX sites (discussed in Chapter 6) is for rents to be based on a per metre squared basis. This would reduce the impact of removing the rebate for telephony service providers which typically have a smaller land footprint.

#### **9.4 For many users the impact of removing rebates would be reduced by other draft recommendations we are making**

Removing the rebates that community groups, the budget funded sector and local service providers currently receive would impact on these groups. However this impact would be offset for many users by our draft recommendations on co-user rents.

Currently there are 45 different users receiving the community groups rebate. Between them they hold 18 primary use licences and 149 co-use licences. However, as the majority of community group users are co-users of communication sites, our draft recommendation for co-user rents to only apply for additional land outside the primary user's site is likely to lessen this impact. In effect, many community group would continue to only pay the minimum annual rent to occupy Crown land, estimated at \$508 in 2020-21.

There are currently 20 different users receiving a local service provider rebate. Between them they hold 12 primary use licences and 26 co-use licences. As with community groups, removing the rebate would impact on these users, and for some it may also become uneconomic to access a communication tower on Crown land. However, as for Community Groups, our draft recommendation that co-user rents only apply for additional land outside the primary user's site is likely to lessen this impact. In effect, many local service providers may end up paying less in rent than currently, despite no longer receiving a rebate. The impact of our draft recommendations is further discussed in Chapter 10, including our recommendations for transitioning or reducing these impacts.

Removing the rebate available to budget funded agencies (such as police, and other emergency services) would not change the net NSW budget position but would affect the budgets of individual agencies unless equivalent adjustments are made to their budget appropriations. Again, our draft recommendation regarding co-user rents would be likely to lessen the impact

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of removing the rebate as many of these budget funded agencies may no longer be required to pay rent beyond the minimum rent. Of the 391 licences held by budget funded agencies receiving a rebate, 284 are co-users.

As noted above, the impact on telephony service providers is also likely to be reduced by our draft recommendation to set rents for SCAX sites on a per metre squared basis.

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## 10 User impacts and transitional arrangements

The final two steps in our proposed approach for this review involved:

- ▼ Considering the impact of these rents on current users and decide what, if any, transitional measures are needed to manage these impacts
- ▼ Deciding how to adjust rents from year to year, and how often they should be periodically reviewed.

The sections below outline our draft recommendations regarding user impacts and transitional arrangements, annual adjustments and how often the rental arrangements should be reviewed, and then discuss stakeholder submissions and our analysis in more detail.

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New rents to apply from 1 July 2020

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Financial assistance and transitional arrangements for groups adversely impacted by rent increases

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### 10.1 Overview of draft recommendations

As a package, our draft recommendations are expected to decrease the revenue that the land management agencies receive for the rental of communication tower sites on Crown land. They are also likely to decrease the rents payable for a large number of the users of these sites. However, particular groups of users would face rent increases. For these groups, we are recommending that the NSW Government provide financial assistance and transitional arrangements to manage this impact.

We are recommending that the new rental arrangements apply from 1 July 2020, rather than being transitioned in over several years.

We are also recommending that the rent schedule be updated annually by the change in the consumer price index (CPI) and independently reviewed every five years.

#### Draft recommendations

- 17 That the new rent schedule apply to all communication tower sites on Crown land from 1 July 2020.
- 18 Those local service providers adversely impacted by our recommendations be able to apply for transitional financial and business advisory assistance from the NSW Small Business Commissioner for a period of three years.
- 19 That the NSW Government provide on-going financial assistance to those Community groups adversely impacted by our recommendations.
- 20 That the published rent schedule be updated annually by the change in the consumer price index (CPI).

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21 That the published rent schedule be subject to an independent review every five years to ensure it reflects fair market based rental returns.

## 10.2 Transitioning to new rents

In our Issues Paper we asked stakeholders whether they agreed with our proposal for assessing the impact of our recommendations on users, and whether changes to the rent schedule should be phased in to reduce any impacts.

Several stakeholders considered that such an approach presupposed the outcome of the review, that is an increase in rental fees and hence the need for transitional period.<sup>106</sup> Others considered a phased implementation of any changes was desirable even if they did not support an efficient rents model.<sup>107</sup>

Telstra submitted that we should consider whether:

- ▼ A carrier (such as Telstra) pays more or less to obtain a Crown lease than other public utilities such as water, sewage, power, and gas (and whether private or public)
- ▼ A carrier (such as Telstra) pay more or less to obtain a Crown lease than a typical lessee of a Crown lease.

Telstra states this is likely to be relevant to any assessment of whether or not IPART is recommending rents which are impermissible due to the effect of the *Telecommunications Act* (Cmth).<sup>108</sup>

Axicom noted that its experience in Queensland was quick and efficient, without the need for transitional arrangements. In addition, it has the expectation that (in NSW):

- ▼ A lowering of rents would be implemented immediately
- ▼ Appropriate refunds from the Land Management Agencies will be applied for the period in which discriminatory pricing has been incorrectly imposed (as occurred in Queensland without the need for a transition period).<sup>109</sup>

TXA note that while a 5-year transitional arrangement seems fair at face value, the majority of agreements between TXA and its third party customers have a 15-year term, and not all agreements allow for an increase to recoup co-user fees. This is likely to be the case with other communication tower site users. TXA suggests that any changes to the rental arrangements for

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<sup>106</sup> Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 16; Axicom, Submission to Issues Paper, April 2019, p 6; and Broadcast Australia, Submission to Issues Paper, April 2019, p 20.

<sup>107</sup> For example, nbn, Submission to Issues Paper, April 2019, p 13.

<sup>108</sup> Telstra, Submission to Issues Paper, April 2019, p 11.

<sup>109</sup> Axicom, Submission to Issues Paper, April 2019, pp 6, 20.

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communication towers on Crown land should only be imposed on the creation of new sites, with existing site agreements being grandfathered to protect the significant investment already made.<sup>110</sup>

The land management agencies note that transitional arrangements impose a significant administrative burden on agencies. They only support transitional arrangements where absolutely necessary, for example where licensees' fees will significantly increase because entitlement to a rebate is significantly reduced or removed. In all other cases transitional arrangements are not supported due to the significant administrative costs.<sup>111</sup>

### **10.3 Impacts on different users would vary**

For some users, our draft recommendations would mean lower rents. These include primary users on Sydney, High and Medium locations, and co-users wholly within a primary user's site. In some cases, the impact of our draft recommendation to remove rental rebates would be offset by other draft recommendations. However, depending on the size of the site and its location, some users may face higher rent once the rebate is removed. We are recommending measures to assist community groups and local service providers. The sections below discuss these issues on more detail.

#### **10.3.1 Primary users would pay less in Sydney, High and Medium locations, but more in Low locations**

As discussed in Chapter 5, we are recommending that the rents payable by primary users in the Sydney, high and medium locations be reduced by 10 per cent, 46 per cent and 22 per cent respectively, and increased by 19 per cent in low density locations. Table 10.1 shows the rents payable by primary users on existing and new sites, compared to rents payable under the current arrangements in \$2020-21. Figure 10.1 illustrates these changes.

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<sup>110</sup> TX Australia, Submission to Issues Paper, April 2019, p 6.

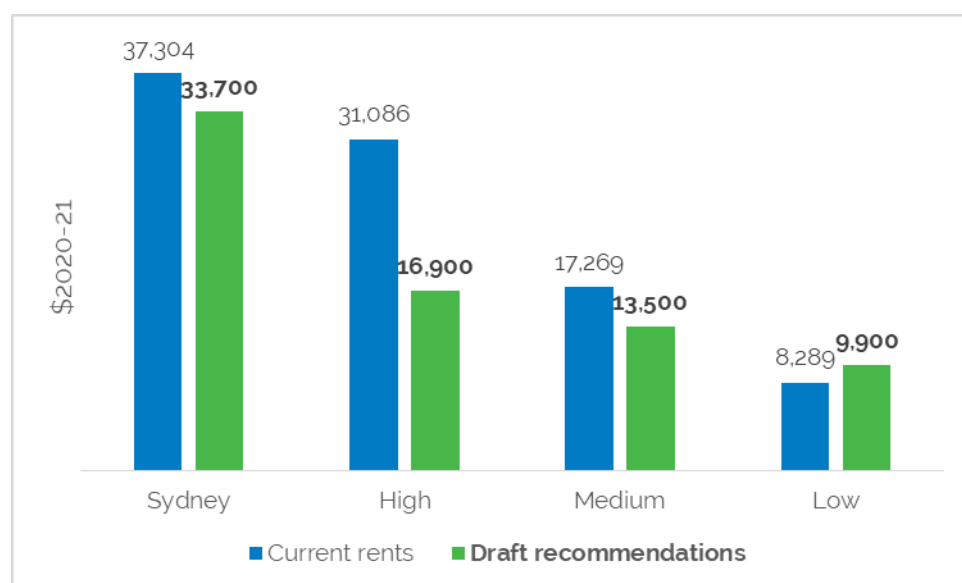
<sup>111</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 12.

**Table 10.1 Impact on primary users of recommended rates for existing and new sites from 1 July 2020 (\$2020- 21, ex-GST)**

	Sydney	High	Medium	Low
Current rent schedule	37,304	31,086	17,269	8,289
<b>Recommendations for existing sites</b>				
Rent per existing site	33,700	16,900	13,500	9,900
Change in rent per site	-3,604	-14,186	-3,769	1,611
Change in rent per site (%)	-10%	-46%	-22%	19%
<b>Recommendations for new sites</b>				
Rent per m <sup>2</sup>	1,123	273	203	124
Median size per site (m <sup>2</sup> )	30	62	67	80
Rent per median size site	33,700	16,900	13,500	9,900

Source: IPART analysis, figures may not add due to rounding

**Figure 10.1 Impact on primary users of recommended rents for existing and median sized new sites from 1 July 2020 (\$2020- 21, ex GST)**



Data source: IPART analysis

### 10.3.2 Co-users with no additional footprint would pay the minimum rent, impacts would vary for those with additional land

Under our draft recommendations we estimate that a high proportion of co-users would only be required to pay the minimum annual rent to occupy Crown land.



Table 10.2 compares the rents payable by co-users under the current arrangements, with our recommended rents for co-users with:

- ▼ No additional land
- ▼ Additional land based on the median sized site for co-users with additional land.

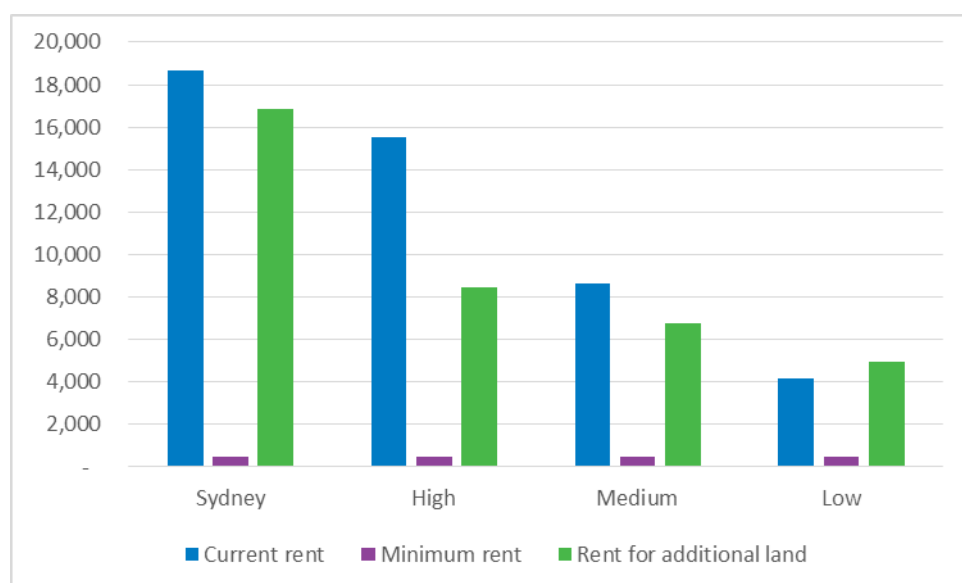
Figure 10.2 illustrates these changes.

**Table 10.2 Impact on co-users of recommended rates from 1 July 2020 (\$2020- 21, ex-GST)**

	Sydney	High	Medium	Low
Current co-user rent (50% of primary rent)	18,652	15,543	8,635	4,144
<b>Draft recommendation for co-users with no additional land</b>				
Rent payable	508	508	508	508
Change in rent per site	-18,144	-15,035	-8,127	-3,637
Change in rent per site (%)	-97%	-97%	-94%	-88%
<b>Draft recommendation for co-users with median additional land</b>				
Median additional land (m <sup>2</sup> )	15	31	33	40
Rent payable	16,850	8,450	6,750	4,950
Change in rent per site	-1,802	-7,093	-1,885	806
Change in rent per site (%)	-10%	-46%	-22%	19%

Source: IPART Analysis

**Figure 10.2 Impact on co-users of recommended rates from 1 July 2020 (\$2020- 21, ex-GST)**



Data source: IPART Analysis

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### 10.3.3 Managing the impact of removing rebates

As discussed in chapter 9, our draft recommendation to remove the current rebates for some users would be offset by other draft recommendations on rent levels and co-user fees. For example, as noted above, many co-users would pay only the minimum annual rent to occupy Crown land under our draft recommendations to charge co-users on per metre squared basis for additional land only. In addition, telephony service providers would pay on average about \$1,024 more in \$2020-21 under our recommended rate per square metre without the rebate they currently receive.<sup>112</sup>

The impact is also likely to vary from user to user depending on how many Crown land sites they lease, the location of these sites, and whether they are a primary user or co-user. A user with many sites may be able to defray rent increases for some sites with reductions in rent at other sites. However for some users with only a few sites, this may not be possible.

For local service providers and community groups that are primary users, the removal of these rebates would mean they pay higher rents. In some cases, these users may be able to defray these higher rents with income from co-users. These users may over time be able to change how they access communication services – so for example they are not the primary user but rather are a co-user or contract services. We are recommending where these users are adversely impacted by our recommendations that:

- ▼ Local service providers be able to apply for transitional financial assistance and business advisory assistance from the NSW Small Business Commissioner for a period of three years.
- ▼ That the NSW Government provide on-going financial assistance to those Community groups adversely impacted by our recommendations

The reason that ongoing financial assistance for community groups adversely affected by our recommendations is necessary is that community groups do not generate income from their use of communication tower sites. This places these groups in a different position to commercial users of communication tower sites. Both commercial users and community groups generate social benefits from their use of communication tower sites, but, unlike community groups, commercial users' use of such sites also generates income which sustains their use of the site. Therefore, in the absence of financial assistance, community groups' use of the site, and the consequent social benefits, would be likely to cease.

For budget-funded agencies, such as police and other emergency service providers removing the rebate would not change the net NSW budget position. However, it would affect the budgets of the individual agencies unless equivalent adjustments were made to their budget appropriations. Again, our draft recommendation on rents for co-users would likely lessen

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<sup>112</sup> Based on an average SCAX site of 35m<sup>2</sup>.

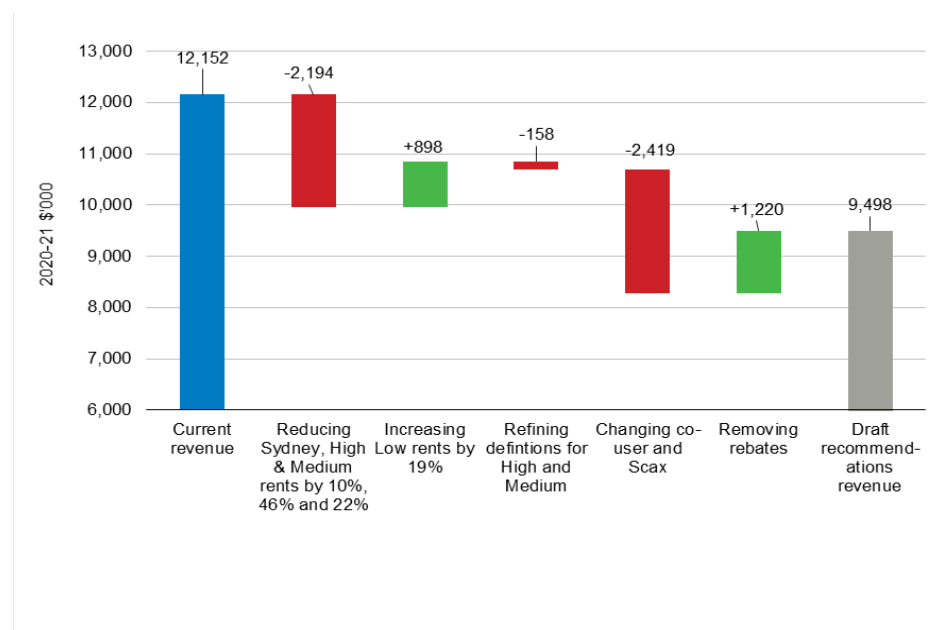
the impact of removing the rebates, as many of these budget-funded agencies may no longer be required to pay a rental fee beyond the minimum fee.

### 10.3.4 Decrease in revenue for land management agencies

We have modelled the impact on the overall revenue of the land management agencies. Our impact analysis assumes that 75% of co-users locate their equipment within the land area of the primary user and so would only pay the minimum rent (currently they pay 50% of the primary user rent). For the remaining 25% of co-users we have modelled the impact using a typical land size for co-users, by location.

We estimate that our draft recommendations would decrease revenue for the land management agencies by around \$2.7 million a year from \$2020-21, as shown in Figure 10.3.

**Figure 10.3 Impact on revenue of land management agencies (\$2020-21)**



Data source: IPART analysis

## 10.4 Rents should be adjusted annually by CPI

In our 2013 Review, we recommended that the fee schedule and accompanying schedule of rebates be adjusted annually on 1 July, by the change in the CPI (All Groups) for Sydney as published by the Australian Bureau of Statistics for the year ending 31 March.

We are recommending that rents continue to be adjusted annually by CPI.

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#### **10.4.1 Stakeholder generally support annual CPI adjustments**

Stakeholders responding to this question generally agreed that rents should be adjusted annually by CPI.<sup>113</sup> However a number of stakeholders stated this was subject to rents being based on land values. Axicom also noted that if the rent is directly related to the unimproved land value, rents would increase or decrease in line with the property market.<sup>114</sup>

Digital Distribution Australia considered there should be no annual increase unless the land management agencies can show real value added to a site year to year.<sup>115</sup>

In line with their comments regarding the rental methodology, Telstra considered CPI increases may be appropriate if they are a typical feature of Crown leases and notes that CPI increases with periodic adjustments do feature in private telecommunications leases.<sup>116</sup>

ARCIA considered that CPI is not particularly relevant and that pricing should be based on rental prices achieved for comparable private land in competitive environments.<sup>117</sup>

Rather than making annual CPI adjustments, nbn considered that its proposed methodology (using unimproved land value as the basis to calculate the rent) could be implemented annually in calculating the appropriate rent using the relevant land value averaged over a rolling 3-year period.<sup>118</sup>

We consider the rent should continue to be adjusted annually by CPI.

### **10.5 The rent schedule should continue to be independently reviewed every five years**

This is IPART's third review of the rental arrangements for communication towers on Crown land, with previous reviews being undertaken in 2005 and 2013. In 2013 we recommended that the fee schedule be independently reviewed every five years.

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<sup>113</sup> For example, Commercial Radio Australia, Submission to Issues Paper, April 2019, p 11; TX Australia, Submission to Issues Paper, April 2019, p 6; Transgrid, Submission to Issues Paper, April 2019, p 8; and NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 12.

<sup>114</sup> For example, Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 16 and Axicom, Submission to Issues Paper, April 2019, p 6.

<sup>115</sup> Digital Distribution Australia, Submission to Issues Paper, April 2019, p 5.

<sup>116</sup> Telstra, Submission to Issues Paper, April 2019, p 11.

<sup>117</sup> ARCIA, Submission to Issues Paper, April 2019, p 6.

<sup>118</sup> nbn, Submission to Issues Paper, April 2019, pp 13-14.

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### 10.5.1 Stakeholders support five-yearly review although not necessarily by IPART

Some stakeholders considered that five-yearly review is appropriate, although not necessarily conducted by IPART.<sup>119</sup> A number of stakeholders supported periodic review if rent is set with reference to land value.<sup>120</sup>

Extending this, several stakeholders argued that setting rent with regard to the Valuer General's assessment of land value could remove the need for periodic rental reviews. For example, Telstra submits that we could consider recommending a methodology that does not require reviews every five years by IPART.<sup>121</sup> Similarly, Axicom believes that there should be no need for an independent review of rent every five years if the NSW government introduces a regime that is uniform for all commercial users in NSW, and if rent is related to unimproved land value and adjusts in line with the property market.<sup>122</sup>

Moree Plains Shire Council note that with a five-year transition period, and a methodological review every five years, some providers may be constantly in transition.<sup>123</sup>

Broadcast Australia agrees that there should be an independent review every five years, however, the comparative rental evidence utilised by IPART or IPART's property consultant must be transparent. They further suggest that IPART's property consultant should have extensive experience in the area of telecommunications site valuations.<sup>124</sup>

The land management agencies consider that the level of fees should be subject to independent market valuation every five years, consistent with the agencies' practice in their other leases and licences. They note however, subject to the outcome of this review, there may not be a need to review the entire fee schedule framework on a five-yearly basis; stating this is disruptive and time consuming, both to facilitate and to implement.<sup>125</sup>

We consider that periodic review of the rental arrangements to ensure rental arrangements reflect market outcomes remains appropriate.

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<sup>119</sup> Commercial Radio Australia, Submission to Issues Paper, April 2019, p 12; ARCIA, Submission to Issues Paper, April 2019, p 6; Transgrid, Submission to Issues Paper, April 2019, p 8; and Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 16.

<sup>120</sup> For example, TX Australia, Submission to Issues Paper, April 2019, p 6; Digital Distribution Australia, Submission to Issues Paper, April 2019, p 5.

<sup>121</sup> Telstra, Submission to Issues Paper, April 2019, p 11.

<sup>122</sup> Axicom, Submission to Issues Paper, April 2019, p 6 and p 21.

<sup>123</sup> Moree Plains Shire Council, Submission to Issues Paper, April 2019, p 5.

<sup>124</sup> Broadcast Australia, Submission to Issues Paper, April 2019, p 20.

<sup>125</sup> NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 12.



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## Appendices

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## A Terms of reference





Ref: A2746182

Dr Peter Boxall AO  
Chair  
Independent Pricing and Regulatory Tribunal  
PO Box K35, Haymarket Post Shop  
SYDNEY NSW 1240

Dear Dr Boxall,

I am writing to request that the Independent Pricing and Regulatory Tribunal (the Tribunal) undertake a review of rental arrangements for communication towers on Crown lands.

Please find enclosed Terms of Reference, under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*, for the Tribunal to perform this service.

Yours faithfully,

**Gladys Berejiklian MP**  
Premier

CC: The Hon. Paul Toole MP, Minister for Lands and Forestry

**TERMS OF REFERENCE  
REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION  
TOWERS ON CROWN LANDS**

I, Gladys Berejiklian, Premier, approve the provision of services by the Independent Pricing and Regulatory Tribunal (the Tribunal) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* to the Department of Industry - Division of Lands and Water, the Office of Environment and Heritage and Forestry Corporation NSW in accordance with these 'terms of reference'.

The services to be provided by the Tribunal are a review of the rental arrangements for communication towers on Crown Lands.

In particular, the Tribunal is to advise on a fee schedule that reflects fair, market-based commercial returns, having regard to:

- recent market rentals agreed for similar purposes and sites;
- relevant land valuations;
- the framework that IPART established in the 2013 review; and
- requirements that the land management agency must take into account under relevant legislation (which may include, for example, principles of the *Crown Lands Management Act 2016*, *National Parks and Wildlife Act 1974* and *Forestry Act 2012*).

The fee schedule is to cover rental arrangements for emerging technology for communications purposes. For the avoidance of doubt, the fee schedule may provide for rebates.

In providing these services, the Tribunal is to consider:

- the policy objective of the New South Wales Government to achieve fair market-based commercial returns on publicly owned land occupied for the purposes of telecommunications, data transmission and broadcasting;
- the Government's preference for a fee schedule that is as simple, transparent, and cost reflective as practicable;
- the costs and benefits for Government and stakeholders to implement recommendations;
- whether a broader consideration of commercial rents would produce lower or higher rental rates than those set out in the Tribunal's recommended fee schedule and, if so, the context;
- clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth); and
- any other relevant matters.

The Tribunal is to consult with key stakeholders including agencies responsible for the management of Crown Land sites and key owners of communications infrastructure that occupy Crown land sites.

The Tribunal is requested to present a final report to the Minister for Lands and Forestry and the Minister for the Environment within ten months of receiving this terms of reference with a view to a revised fee schedule being applied by land management agencies from July 2020.

  
The Hon Gladys Berejiklian MP  
Premier

Dated at Sydney ..... 6 Nov ..... 2018

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## B Location categories

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.

## Centre points of medium locations

Urban centre	Latitude	Longitude	Urban Centre	Latitude	Longitude
Queanbeyan	-35.3498	149.232	Ballina	-28.8686	153.5597
Tweed Heads	-28.1725	153.5438	Batemans Bay	-35.7069	150.1782
Albury	-36.0805	146.9159	Broken Hill	-31.9581	141.4655
Maitland	-32.7334	151.5572	Moama	-36.1127	144.7559
Armidale	-30.5138	151.667	Forster - Tuncurry	-32.1806	152.5118
Bathurst	-33.4165	149.5804	Grafton	-29.6926	152.9329
Blue Mountains	-33.7164	150.3106	Griffith	-34.2878	146.0468
Bowral - Mittagong	-34.478	150.4182	Kempsey	-31.0802	152.842
Cessnock	-32.8332	151.3551	Kiama	-34.6718	150.8564
Coffs Harbour	-30.297	153.1159	Kurri Kurri	-32.8181	151.4812
Dubbo	-32.2452	148.6032	Lithgow	-33.4811	150.157
Goulburn	-34.7552	149.7181	Mudgee	-32.5905	149.5857
Lismore	-28.8109	153.2748	Muswellbrook	-32.2649	150.8887
Buronga	-34.1713	142.1824	Nelson Bay	-32.7214	152.1438
Nowra - Bomaderry	-34.8741	150.6004	Raymond Terrace	-32.7633	151.7426
Orange	-33.2838	149.1001	Singleton	-32.5646	151.1676
Port Macquarie	-31.4309	152.9073	St Georges Basin - Sanctuary Point	-35.0907	150.5983
Tamworth	-31.0918	150.9311	Taree	-31.9115	152.4597
Wagga Wagga	-35.1144	147.3712	Ulladulla	-35.3573	150.4741

**Note:** We have used best endeavours to find the most central post office in each urban centre. We have used the first city named where two cities are included.

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