

REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION TOWERS ON CROWN LAND



IPART HAS RECOMMENDED RENTS FOR COMMUNICATION TOWERS ON CROWN LAND

FROM 1 JULY 2020

The NSW Government 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 land management agencies)

- ▼ Department of Planning, Industry and Environment (DPIE) – Property and Housing (Crown Lands)
- ▼ NSW National Parks and Wildlife Service (NPWS), which is part of the Environment, Energy and Science Group in DPIE
- ▼ Forestry Corporation of NSW (Forestry NSW).



What have we been asked to do?

Our terms of reference asked us to provide advice on rents that reflect “fair, market-based commercial returns”. In forming this advice, we were 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 also considered 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.

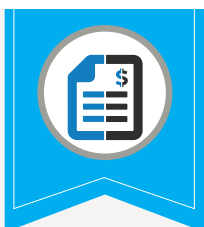
We have also been asked to make recommendations for emerging technology.

Our full terms of reference are provided in Appendix A.

Basis for setting rents

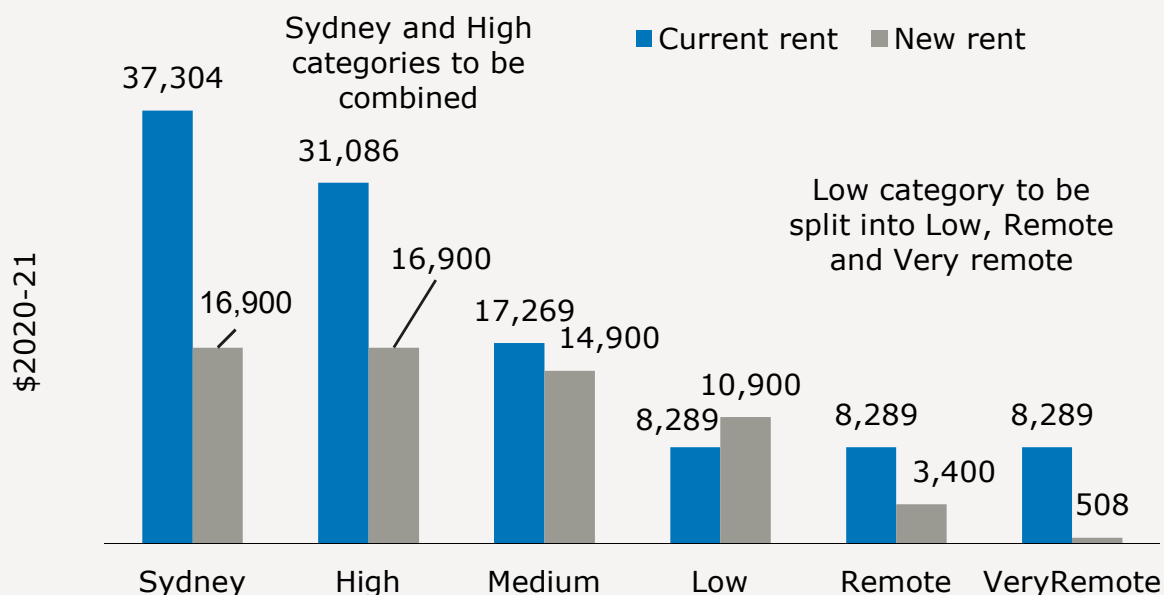
Setting rents using a schedule that reflects **efficient prices in a workably competitive market** is the most appropriate and practical approach for ensuring that government land management agencies receive “fair, market-based commercial returns”.

Key elements of the current rental arrangements should be refined or changed to better reflect up-to-date information on recent market prices and practices, improve simplicity and transparency, and ensure compliance with the Telecommunications Act.



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

Our analysis found that the number of **location categories, definitions** and rent **levels** need to be updated to reflect recent market prices for sites on private land. We recommend a rent schedule with five location categories - High, Medium, Low, Remote and Very Remote







5 location categories based on ABS definitions

High: metropolitan areas located in the ABS Significant Urban Areas (SUAs) of Sydney, Newcastle – Maitland, Wollongong, and the Central Coast. Combines the existing Sydney and High categories and removes some low density areas included in the existing High category.

Medium: areas located in the remaining 35 NSW ABS SUAs. SUAs represent significant towns and cities of 10,000 people or more and cover urban and adjacent areas (the ABS aims to include likely areas of growth).

Low: rest of NSW not located in the High and Medium categories and excluding areas located in the Remote and Very remote categories.

Remote: areas located in Remote ABS Remoteness Areas (RAs)

Very remote: areas located in Very remote ABS RAs.

Any additional fees need to reflect efficient costs

Under the current arrangements, the services covered by the rent schedule are not explicitly defined. As a result, the land management agencies have previously charged a range of fees in addition to the schedule, for costs such as road maintenance and legal and administration costs related to licence preparation.

To ensure any additional fees reflect efficient costs we recommend that:

- ▼ Land management agencies may only charge additional fees for road maintenance where users have been provided with the option of maintaining the road to the required standard at their own cost. For roads with more than one user, the land management agencies need to develop a cost reflective approach to estimating and allocating costs in consultation with users.
- ▼ The land management agencies may continue to charge primary users a one-off application fee of up to \$493 (2019-20) to reflect administration and legal costs of providing licence assessment and preparation for new sites.



Our approach **does not** discriminate against carriers

Throughout the review, several stakeholders argued that an approach based on efficient market rents discriminates against carriers and so is inconsistent with clause 44 of Schedule 3 to the Telecommunications Act. They generally argued that in light of the Federal Court's decision in *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213 (*Telstra v Queensland*), carriers should pay the same rent as other commercial users of Crown land.

For our approach to be discriminatory, it would need to result in a carrier, a class of carriers, or carriers generally, being adversely affected relative to a relevant comparator. Under our approach, all lessees who use Crown land as a communication tower site will pay the same rent. Because our recommended rents are the same for all users of such sites, both carriers and non-carriers, they do not discriminate against carriers.

As part of the review, we asked the land management agencies to identify the types of land use by tenure holders on Crown land (eg, lessees, licensees, permit-holders). We asked for this information to identify whether there are other types of use of Crown land which are similar to using Crown land as a communication tower site. A user of Crown land whose use is similar to that of carriers will be a relevant comparator for the purposes of assessing whether rents are discriminatory.

The land management agencies identified a wide ranges of land uses including but not limited to cafes and restaurants, golf courses, sporting facilities, caravan parks, depots, marinas, oyster leases, residences, grazing, electricity transmission and distribution towers, wind farms and solar farms.

Most of these land uses are clearly dissimilar to using land for a telecommunications tower. In some cases such as grazing and tree-planting, the use of the land does not involve installation of any structures. In other cases, the use of the land involves structures but these structures are not towers and do not resemble towers (such as cafes and commercial and residential buildings).

Some tenures (such as easements for electricity transmission and distribution towers) share a characteristic with using Crown land for a telecommunications tower: that is, they involve the construction of a tower. However we consider that there are fundamental differences between these uses that led us to conclude that they are not "similar" in the sense that word is used in assessing discrimination.





New arrangements for new sites

Rent for new towers to vary by size and location.
We consider it reasonable that users pay for the land area they use, and have an incentive to minimise this area.



New arrangements for SCAX sites

Rent schedule only to apply to SCAX sites with a communication tower, and not the majority of SCAX sites that do not have a tower.

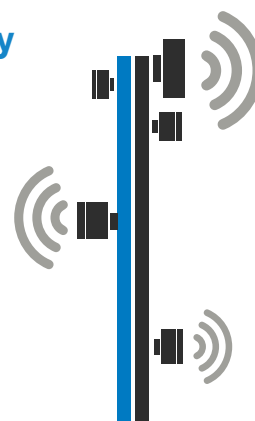
For SCAX sites with a tower, we recommend the same rent as for existing primary users (\$10,900 in Low, \$3,400 in Remote and \$508 in Very remote). If a new SCAX site with a tower is established we recommend the same rent per square metre as for new sites.

SCAX sites without a tower are to be considered as part of an independent review of all commercial tenures on Crown land, and in the interim maintained at at no more than current levels.

New arrangements for co-users and small cell technology

We recommend 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
- ▼ Co-users wholly within the primary user's site to pay no annual rent and a one-off application fee equal to 50% of the primary user application fee.



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.

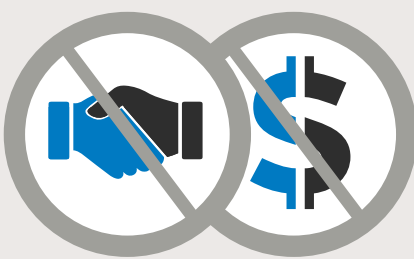
Therefore, we are recommending that rent for these sites be based on additional footprint on a per square metre basis. Where there is no additional footprint no annual rent would be payable and users would only be subject to a one-off application fee of \$493 (2019-20).



Negotiation for site rents

Negotiation of 'High value sites' to be removed except for those located on rooftops.

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.





Rent rebates for 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 the activities of these users

Impacts of our final recommendations

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

In some cases, **the impact of our recommendation to remove rental rebates would be offset by other recommendations.** For example, co-users with no additional land would not pay rent.

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

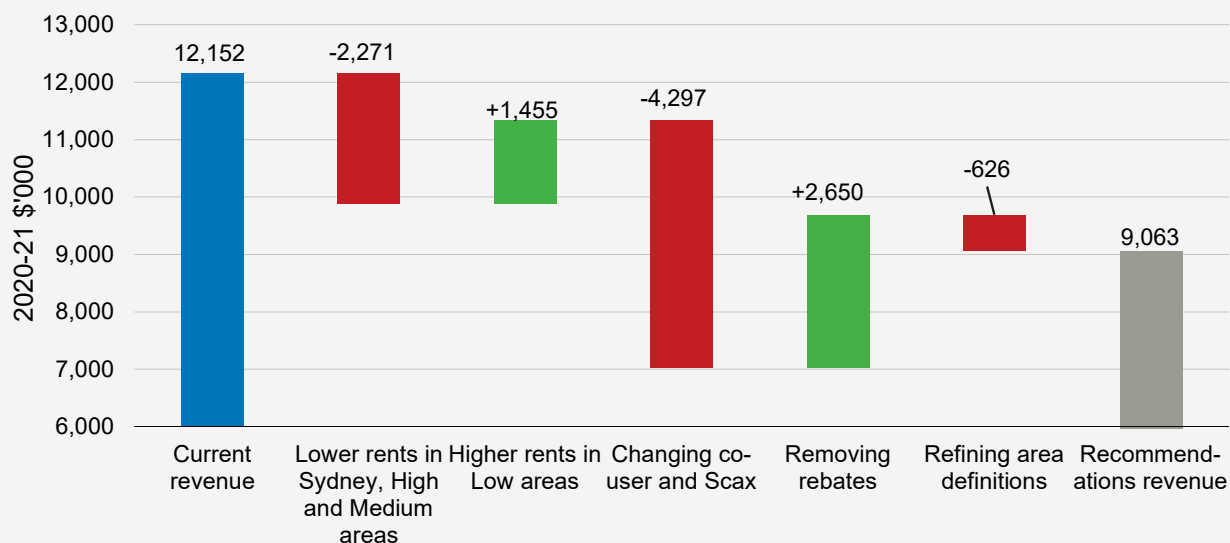
For those that are adversely impacted we are recommending:

- ▼ **Community groups** receive additional Government subsidies to assist with funding their activities where their revenues do not cover their costs. This should initially be administered and funded by the land management agencies
- ▼ **Local service providers** be able to apply for transitional financial assistance from the NSW Small Business Commissioner for a period of three years.



Decrease in revenue for land management agencies

We estimate that our final recommendations would decrease revenue for the land management agencies by around \$3.1 million a year from \$2020-21



We consulted with stakeholders to reach our final recommendations

For this review, we conducted public consultation as well as detailed analysis. We:

- ▼ Released an **Issues Paper** in **February 2019** outlining our proposed approach to the review and invited comment,
- ▼ Considered all submissions to our Issues Paper and undertook analysis to develop our **Draft Report**,
- ▼ Held a public forum in **Sydney on 22 July** to provide the opportunity for interested persons to comment on our draft recommendations, and
- ▼ Considered all submissions to our Draft Report and comments at the public forum in preparing our **Final Report** and recommendations for the Premier in **November 2019**.



How this report is structured

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

- ▼ **Chapter 2** outlines the key contextual information for this review.
- ▼ **Chapter 3** sets out the approach we have used to make our recommendations.
- ▼ **Chapter 4** discusses the basis we have used for setting rents on Crown land.
- ▼ **Chapter 5** explains our recommendations on a rent schedule for existing communication tower sites on Crown land.
- ▼ **Chapter 6** explains our recommendations for new sites.
- ▼ **Chapter 7** sets out our recommendations regarding SCAX sites.
- ▼ **Chapter 8** sets out our recommendations regarding co-users and small cell technology
- ▼ **Chapter 9** explains our recommendations on negotiation of rental fees for high value sites and also why we consider the infrastructure provider discount should not be reinstated.
- ▼ **Chapter 10** discusses why we are recommending that rebates no longer be available for different user categories and the financial assistance we are recommending to manage these impacts.
- ▼ **Chapter 11** discusses the impacts of our recommendations on users. It also discusses our recommendations for the annual rent adjustments and 5-yearly reviews.



FINAL FINDINGS & RECOMMENDATIONS

Finding

- 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.

Recommendations

- 1 For existing communication towers sites on Crown land, the land management agencies implement the schedule of rents for all primary users shown in Table 5.1, where rent per site varies by location.

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

	High	Medium	Low	Remote	Very remote
Rent per site	16,900	14,900	10,900	3,400	508

- 2 Existing sites are those that are occupied by communication tower users as at 1 July 2020.
- 3 Locations are defined as:
 - ▼ **High:** metropolitan areas located in the ABS Significant Urban Areas (SUAs) of Sydney, Newcastle – Maitland, Wollongong and Central Coast. This category largely combines the existing Sydney and High categories. However it removes some low density areas included in the existing High category.
 - ▼ **Medium:** areas located in the remaining 35 NSW ABS SUAs. SUAs represent significant towns and cities of 10,000 people or more and cover urban and adjacent areas (the ABS aims to include likely areas of growth). This definition covers areas that are smaller than the existing Medium definition within 12.5 km of the centre of ABS Urban Centres and Localities (UCLs).
 - ▼ **Low:** rest of NSW not located in the High and Medium categories and excluding areas located in the Remote and Very remote category.
 - ▼ **Remote:** areas located in the Remote ABS Remoteness Areas.
 - ▼ **Very remote:** areas located in the Very remote ABS Remoteness Area.

- 4 The schedule of rent does not apply to rooftop sites on Crown land. Rent for these sites (existing and new) should be negotiated on a site-by-site-basis.
- 5 The land management agencies should only charge cost reflective fees that reflect commercial practices. That is:
 - ▼ For roads that are used by one user only, the land management agencies may only charge additional fees for road maintenance where the user has been provided with the option of maintaining the road to the required standard at their own cost.
 - ▼ For roads that are used by more than one user, land management agencies may only charge additional fees for road maintenance where they have developed an approach to estimating and allocating costs of road maintenance to all road users. Users need to be provided with the opportunity to comment on the approach and resulting fees
 - ▼ The land management agencies continue to charge primary users a one-off application fee of up to \$493 to reflect administration costs of providing licence assessment and preparation for new sites.
- 6 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 Final recommendations on annual rents for primary users on new sites from 1 July 2020 (\$2020-21, ex-GST)

	High	Medium	Low	Remote	Very remote
Rent per m ²	282	224	131	12	na
Rent per site varies depending on land size	For a land size of 60 m ² for High sites, rent would be \$16,920	For a land size of 65 m ² for Medium sites, rent would be \$14,560	For a land size of 85 m ² for Low sites, rent would be \$11,135	For a land size of 300 m ² for Remote sites, rent would be \$3,600	Minimum rate \$508

- 7 That for existing Small Country Automatic Exchange (SCAX) sites with a tower, the land management agencies implement the schedule of rents for all primary users on existing sites shown in Table 5.1, where rent per site varies by location.
- 8 That the NSW Government undertake an independent review of all commercial tenures on Crown land to ensure that they generate commercial, market-based returns.
- 9 That the rent for existing SCAX sites without a tower be considered as part of the independent review of all commercial tenures on Crown land. In the interim:
 - ▼ rent for existing SCAX sites without a tower should be no more than current levels, and
 - ▼ rent for SCAX sites without a tower in Very Remote locations should be the minimum rent to occupy Crown land.

- 10 That if a new SCAX site with a communication tower is established, the land management agencies implement the schedule of rents shown in Table 6.1, where rent per site varies by location and land size.
- 11 That no annual rent be payable for co-users wholly located within the primary user's site.
- 12 That co-users on existing and new sites be charged for any additional Crown land they occupy outside the fenced perimeter of the primary user's communication tower site on the per metre squared basis as shown in Table 8.1.

Table 8.1 Final recommendations on annual rents for co-users and small cell technology with additional land footprint from 1 July 2020 (\$2020-21, ex-GST)

	Sydney	High	Medium	Low	Very remote
Rent per m ²	282	224	131	12	na
Rent per site	Varies with additional footprint	Varies with additional footprint	Varies with additional footprint	Varies with additional footprint	Minimum rate \$508

- 13 That the co-user rent for existing sites be capped at the flat rent per site for primary users on existing sites in the same location category.
- 14 That new co-users of a site pay a one-off application fee equal to 50% of the primary user application fee.
- 15 That the rent for small cell technology occupying additional Crown land be set on the per metre squared basis as shown in Table 8.1.
- 16 That no annual rent be payable for small cell technology installed on existing poles or structures on Crown land and which have no additional footprint.
- 17 That a one-off application fee equal to 50% of the primary user application fee be payable for small cell technology installed on Crown land.
- 18 That the rents for all communication tower sites on Crown land be set according to the rent schedule for the relevant location category.
- 19 That the NSW National Parks and Wildlife Service (NPWS) continue to set the rent for sites in national parks one location category higher than the site's actual category.
- 20 That the rent for communication sites on rooftops be set by negotiation between the land management agency and the site user.
- 21 That infrastructure providers not receive a rental discount for communication sites on Crown land.
- 22 That the current rebates for Community Groups, Budget Funded Sector, Local Service Providers, and Telephony Service Providers be removed.

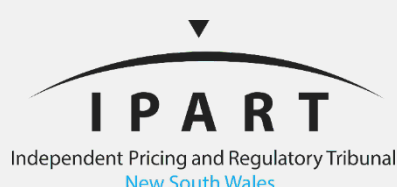
- 23 That the NSW Government provide on-going financial assistance to those community groups adversely impacted by our recommendations. Initially this financial assistance should be administered and funded by the respective land management agency for a period of up to three years. Beyond this period, subsidies to access communication sites on Crown land should form part of the total Government assistance that the community group receives, and be funded as an additional grant by the applicable Government agency responsible for this assistance.
- 24 Those local service providers adversely impacted by our recommendations should be able to apply for transitional financial and business advisory assistance from the NSW Small Business Commissioner for a period of three years.
- 25 That the new rents in Table 5.1 apply to all existing communication tower sites on Crown land from the next renewal or review on or after 1 July 2020.
- 26 That the new rents in Table 6.1 apply to all agreements for new communication tower sites on Crown land from 1 July 2020.
- 27 That the published rent schedule be updated annually by the change in the consumer price index (CPI).
- 28 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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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

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Ms Deborah Cope

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2 Context for this review

To make recommendations for the rental arrangements for communication tower sites on Crown land in NSW, we needed to understand the context in which the land management agencies and site users operate. The sections below outline 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 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 (DPIE) – Property and Housing (Crown Lands)¹

¹ At the commencement of our review Crown Lands was part of the DPIE's Division of Lands and Water (Department of Industry), and referred to in our Issues Paper and Draft Report as the Department of Industry.

- ▼ NSW National Parks and Wildlife Service (NPWS), which is part of the Environment, Energy and Science Group in DPIE²
- ▼ 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 around 750 recorded communication tower sites and 1,789 associated licences on Crown land managed by the three relevant agencies.³ 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
Crown Lands	1,297
Forestry Corporation	368
NPWS	124
Total	1,789

Note: Data as at January 2019.

Source: Crown Lands, NPWS and NSW Forestry Corporation.

Under the current rental arrangements, the sites are categorised as either high value or standard.⁴ 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 category, partly because this is where much of the Crown land we are concerned with

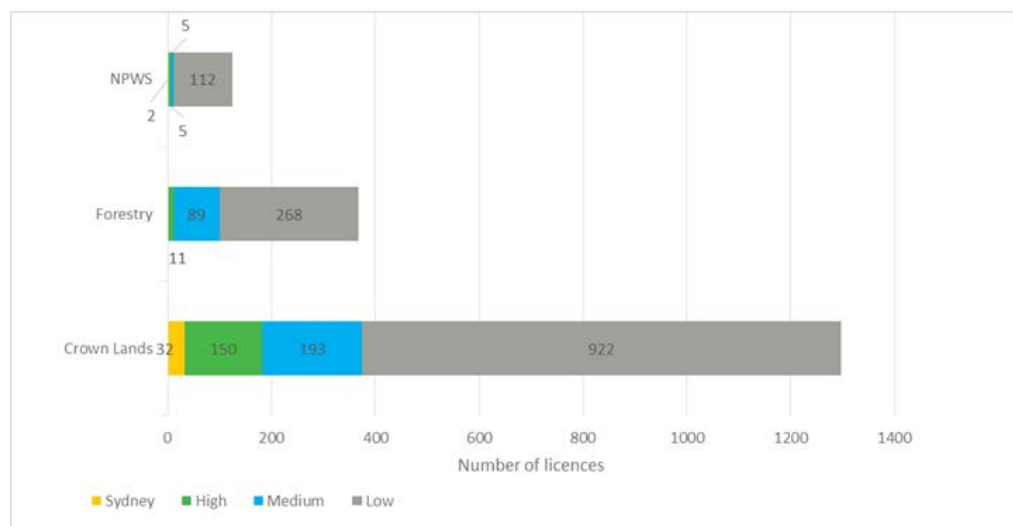
² At the commencement of our review, NPWS was part of the Office of Environment and Heritage.

³ Each site may be licensed to more than one user.

⁴ IPART, *Review of rental arrangements for communication towers on Crown Land – Final Report*, July 2013.

is located, and partly because in metropolitan areas there are many alternate sites for communication towers, for example on private buildings.

Figure 2.1 Number of licences by location category 2019



Data source: Crown Lands, NPWS and NSW Forestry Corporation.

Crown land managed by Crown Lands, 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)

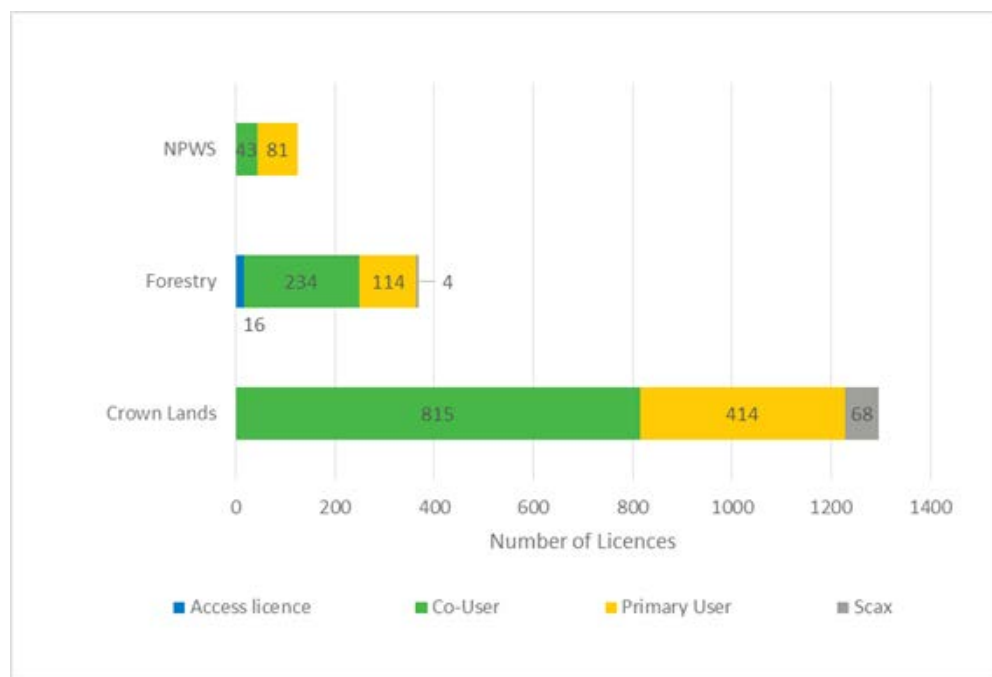
Sites are used by a range of organisations including telecommunication and data carriers, broadcasters, community-based organisations (such as surf lifesaving and marine rescue) and state budget agencies.

- ▼ 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.

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: Crown Lands, NPWS 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 published⁵ 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. Crown Lands and the Forestry Corporation have not classified any sites as high value.

⁵ 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 accessed on 20 February 2019.

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

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

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 (\$2019-20, annual, ex GST)

Location category	Annual rent
Sydney	36,544
High	30,453
Medium	16,918
Low	8,120

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 accessed on 31 October 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.⁶ 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.

⁶ 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 (\$2019-20, annual, ex GST)

Eligible user	Sydney	High	Medium	Low
Community group	36,047	29,954	16,419	7,622
Budget funded sector	29,237	24,362	13,534	6,496
Local service provider	-	-	10,151	4,872
Telephony service provider	-	-	-	4,872

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 accessed on 31 October 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.⁷
- ▼ ***Forestry Act 2012 (NSW)***, which dedicates Crown land for State forest purposes.⁸ 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.⁹
- ▼ ***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.¹⁰

⁷ *Crown Land Management Act 2016 (NSW)*, Part 5, Division 5.7, Section 5.30 (2)(c).

⁸ *Forestry Act 2012 (NSW)*, sections 13 and 14.

⁹ *Forestry Act 2012 (NSW)*, section 60.

¹⁰ *National Parks and Wildlife Act 1974 (NSW)*, section 153D.

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.¹¹

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.¹²

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).¹³ In addition, it provides carriers with a right of access to other carriers' telecommunications transmissions towers for installing a facility for radio communications.¹⁴

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.¹⁵

¹¹ *Telecommunications Act 1997 (Cth)*, section 3(1).

¹² *Telecommunications Act 1997 (Cth)*, Schedule 3, clause 44.

¹³ *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.

¹⁴ *Telecommunications Act 1997 (Cth)*, Schedule 1, clause 33.

¹⁵ *Broadcasting Services Act 1992 (Cth)*, Schedule 4, Part 5.

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.

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 willingness to pay and the seller's opportunity cost in the communication

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

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 to the extent they discriminate or have the effect (whether direct or indirect) of discriminating against carriers.¹⁶

¹⁶ Telecommunications Act 1997 (Cth)

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 10 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 11 discusses our findings and recommendations on the impacts on users and transitional arrangements.

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 findings and recommendations on this final step in our process are discussed in Chapter 11.

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 – particularly for a rent schedule that reflects fair, market-based commercial returns, and is as simple, transparent and cost-reflective as practicable. We also need to ensure that our recommendations are consistent with the Telecommunications Act.

The sections below provide an overview of our findings and recommendations, and then discuss them in more detail.

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

4.1 Overview of findings on appropriate basis for setting rents

We found 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 consistent with the Telecommunications Act
- ▼ Is efficient
- ▼ Meets our terms of reference, and
- ▼ Better meets our terms of reference than setting rents based on a percentage of the unimproved land value (eg, 6%).

Final finding

- 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.

4.2 Using efficient market rents is consistent with the Telecommunications Act

Throughout the review, several stakeholders argued that an approach based on efficient market rents discriminates against carriers and so is inconsistent with clause 44 of Schedule 3 to the Telecommunications Act. They generally argued that in light of the Federal Court's decision in *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213 (*Telstra v Queensland*), carriers should pay the same rent as other commercial users of Crown land.

We consider that our approach does not discriminate against carriers and so is consistent with the Telecommunications Act. The following sections set out further information on why we consider this to be the case.

4.2.1 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, a class of carriers, or carriers generally, being adversely affected **relative to a relevant comparator**. Under our approach, all lessees who use Crown land as a communication tower site will pay the same rent. Our approach therefore does not discriminate against carriers as compared to these other lessees.

The key difference between our view of discrimination and the views of other stakeholders is the choice of **relevant comparator**. Several users including Axicom, nbn and Optus argued that carriers should pay the same rent as *any* other user of Crown land.¹⁷ In its submission to the Issues Paper, Telstra referred to other bodies which make similar use of public places, such as electricity, gas or water utilities, which were found to be a relevant comparator group in the High Court's decision in *Bayside City Council v Telstra Corporation Ltd* [2004] HCA 19 (*Bayside*).¹⁸

In *Bayside*, the High Court found that, in assessing whether the State laws in question in that case discriminated against carriers, the Full Court of the Federal Court of Australia was correct to compare the position of carriers with the position of other bodies which make a similar use of public places. *Bayside* concerned State laws regulating local government rates charged to carriers for the use of public places. That is analogous to regulating the rents charged to carriers for the use of Crown land. We have adopted the comparison identified in *Bayside* for the purpose of assessing whether our recommended rents discriminate against carriers. That is, we have compared the rents we recommend for carriers using Crown land for communication tower sites with the rents payable by others whose use of Crown land is similar.

We do not consider our approach to be inconsistent with the decision in *Telstra v Queensland*. In *Telstra v Queensland*, Rangiah J considered whether the *Land Regulation 2009* (Qld) impermissibly discriminated against carriers by imposing higher rents for State leases on carriers than on other businesses. Justice Rangiah held that the “allegedly discriminatory law itself provide[d] the comparator”.¹⁹ His Honour held that:

¹⁷ Axicom, Comments at IPART public hearing, July 2019, p 11; nbn, Submission to Draft Report, September 2019, pp 2-3; Optus, Submission to Draft Report, September 2019, p 5.

¹⁸ Telstra, Submission to IPART Issues Paper, July 2019, p 3.

¹⁹ *Telstra v Queensland* at [153].

If State land is leased by a carrier for the purposes of providing carriage services the lease will fall into category 15; if leased by another business, it will fall into category 13. This dichotomy makes it appropriate to compare the treatment of carriers with leases in category 15 with the treatment of other businesses with leases in category 13.²⁰

However, the State of Queensland did not argue that the relevant comparator in that case was non-carrier Category 15 leaseholders of communications towers (such as commercial broadcasters). Consistent with the principles in *Bayside*, such users would have been an obvious comparator because their use of Crown land would have been of a similar nature and extent to that of the carriers. Given that the State did not plead or argue that such non-carrier users had any relevance to the question of discrimination for the purposes of clause 44 of Schedule 3, Rangiah J held that that comparison could be “left aside for the purpose of the comparison exercise”.²¹

In this way, *Telstra v Queensland* did not consider whether clause 44 of Schedule 3 would be offended in circumstances where there were both non-carrier and carrier users of communications towers, whose use of Crown land was relevantly of the same nature and extent, and who were treated in the same way for purposes of fixing their rents for Crown land.

For the reasons below, we consider that, under our proposed pricing framework, non-carrier users of communications towers are the appropriate comparator group for the purposes of the Telecommunications Act and that there is no discrimination in the treatment of those two groups.

4.2.2 Fundamental features of carriers’ use of Crown land for a communication tower

Whether carriers’ use of Crown land for a communication tower is “similar” to another person’s use of Crown land, such that the other person’s position should be compared with that of carriers for the purposes of assessing discrimination, is a question of **fact and degree**. In our view, *Bayside* does not require that another’s use of Crown land is precisely the same as that of carriers in order to be “similar” in the requisite sense. Rather, a use of land is “similar” to a use by carriers if the uses share **fundamental characteristics**. The carriers’ use of public land considered in *Bayside* was the installation and use of underground and overhead cables. The High Court found that use was similar to the installation of “facilities such as cables, pipes, ducts and

²⁰ *Telstra v Queensland* at [153]. The *Land Regulation* prescribed thirteen “rental categories” for leases of unallocated Crown Land. Category 15.4 and 15.5 leases were leases in rural and urban areas respectively for electronic communication services that are a “non-community service activity”. Category 13 leases were leases used for business, commercial or industrial purposes that do not meet the requirements of another category. The annual rent for category 13 leases was 6% of the rental valuation for the particular lease (determined under the *Land Valuation Act 2010* (Qld) and the annual rent for category 15.4 and 15.5 leases was a fixed annual rent, which usually resulted in higher rents for telecommunications carriers than for other businesses.

²¹ *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213 at [153].

conduits” by NSW and Victorian utilities, including electricity, water and gas utilities.²²

We have reviewed a large number of communication tower sites in NSW and identified the following fundamental characteristics of using Crown land for a communication tower.

1. There is a tower on the Crown land.
2. The tower houses equipment for the wireless receipt and transmission of radiofrequency signals.
3. The Crown land houses other equipment and/or gear which enables or facilitates the use of the site for the wireless receipt and transmission of radiofrequency signals, which is secured against intruders by some means (such as a fence or a secure, lockable container or box).

Our report recommends rents for all sites on Crown land which have the above characteristics. Because our recommended rents are the same for all users of such sites, both carriers and non-carriers, they do not discriminate against carriers.

4.2.3 Other uses of Crown land are dissimilar to the use of Crown land for a telecommunications site

As part of the review, we asked the land management agencies to identify the types of land use by tenure holders on Crown land (eg, lessees, licensees, permit-holders).

The land management agencies identified a wide ranges of land uses including but not limited to cafes and restaurants, golf courses, sporting facilities, caravan parks, depots, marinas, oyster leases, residences, grazing, electricity transmission and distribution towers, wind farms and solar farms.

Most of these land uses are clearly dissimilar to using land for a communication tower. In some cases such as grazing and tree-planting, the use of the land does not involve installation of any structures. In other cases, the use of the land involves structures but these structures are not towers and do not resemble towers (such as cafes and commercial and residential buildings).

Some tenures (such as easements for electricity transmission and distribution towers) share a fundamental characteristic with using Crown land for a communication tower: that is, they involve the construction of a tower. However we consider that there are fundamental differences between these

²² *Bayside* at [43] (Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ). In McHugh J's judgment in *Bayside* at [79] his Honour described the use of public land by rail authorities, road traffic authorities and public transport authorities as “perhaps less directly comparable” to the use of public land by carriers for cabling, but did not need to decide whether it was appropriate to compare those uses in order to decide the case.

uses that led us to conclude that they are not “similar” in the sense that word is used in *Bayside*.

Electricity transmission and distribution towers

All three Crown land management agencies have tenure arrangements for land use for electricity transmission or distribution towers. However the following fundamental differences between those two uses led us to conclude that they are not “similar” in the sense that word is used in *Bayside*.

1. Electricity transmission and distribution towers on Crown land are used to move electricity across corridors of Crown land by means of **overhead wires strung between towers**. In contrast, communication towers communicate wirelessly, and do not involve corridors of overhead wires.
2. Electricity transmission and distribution towers and the wires that connect them form a linear asset which requires vegetation clearing along a corridor. In contrast, using Crown land for a communication tower requires clearing only around the tower site itself, and not along a corridor of wires.
3. Using Crown land for a communication tower involves excluding the public from all or part of a site, in order to secure against intruders equipment and gear which enables or facilitates the use of the site for the wireless receipt and transmission of radiofrequency signals. In contrast, the public is generally not fenced out, or otherwise physically excluded, from electricity transmission and distribution tower corridors on Crown land.

Wind turbines

We considered whether using Crown land for a wind turbine is “similar” (in the sense in which that word is used in *Bayside*) to using Crown land for a communication tower. The two uses share one fundamental characteristic in that both involve the construction of a tower. However, despite that shared characteristic, we consider the two uses are not “similar” due to the following fundamental differences.

1. The tower on a wind turbine site has blades affixed to it for generating electricity, while a communication tower does not. These blades make a wind turbine fundamentally different from a communication towers structurally, visually, and in terms of noise and other environmental impacts.
2. Wind turbines are often grouped together into wind farms to efficiently produce and transport large volumes of electricity to customers via the electricity network.²³ This is different from

²³ <https://www.energyaustralia.com.au/blog/better-energy/renewables-explained-how-wind-power-works>

communication towers where it is generally more efficient for towers to be located further apart.

3. Using land for wind turbines necessitates the construction and operation of related facilities nearby, such as wind monitoring stations, control buildings, electricity substations and storage rooms. In contrast, these facilities are not typically required in order to use land for a communications tower.

Stakeholders also raised several other arguments in relation to discrimination under the Telecommunications Act. Our responses to these issues are set out in Box 4.1.

Box 4.1 Responses to other submissions in relation to discrimination under clause 44 of Schedule 3 to the Telecommunications Act

The relevant comparator

Our Final Report recommends rents for all lessees of communication tower sites on Crown land. Telstra's submission suggested that this approach discriminates indirectly against carriers, as carriers are likely to form the largest category in this group.

There are in fact several categories of non-carrier users of communications towers on Crown land. These include radio and television broadcasters as well as local service providers. These non-carrier users account for around half of all licences on Crown land.

Land use irrelevant to clause 44 of the Telecommunications Act

Mobile Carriers Forum submitted that "The occupier's use of the land (as long as it is not destructive) is irrelevant or should be irrelevant in compliance with the Telecommunications Act."

The High Court in *Bayside City Council v Telstra Corporation Limited* (2004) 216 CLR 595 (Bayside) indicated that the use of land is integral to determining the relevant comparator group for the purpose of clause 44 of the Telecommunications Act. Discrimination for purposes of clause 44 is assessed having regard to the treatment of relevant comparators whose use of land is of a similar nature and extent to that of carriers.

Great majority of users of public spaces

Optus, referring to *Bayside*, submitted that in order to set rentals for carriers on the basis of market rentals, IPART needs to demonstrate that a "great majority of users of public spaces" are charged in the same manner.

However, the Court in *Bayside* was not suggesting that "the great majority of users of public space" is the relevant comparator for the purposes of clause 44. Rather, the court referred to "the great majority of users of public space" in the context that discrimination may arise where the great majority of comparable users are subject to differential treatment. In *Bayside*, the relevant comparator was identified by looking to users whose use of the land was of a similar nature and extent, and not the "great majority of users of public spaces".

Using private market rents is discriminatory

Axicom submitted that determining rents based on private market rents is discriminatory for the purpose of clause 44 of the Telecommunications Act. We do not agree. We consider that our rents would only be discriminatory if they led to differential treatment of a carrier, a class of carriers, or carriers generally, on the one hand, and a relevant comparator on the other hand.

IPART's recommended rents apply to all users of communications towers on Crown land. There is no differential treatment of carriers in terms of rents payable, and therefore no discrimination under clause 44 of the Telecommunications Act.

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

4.3 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.²⁴ TransGrid noted that this definition is similar to the valuation principle of a willing buyer and a willing seller.²⁵

However, several users questioned the economics underpinning this approach.²⁶ 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.²⁷
- ▼ It 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.²⁸

²⁴ Department of Industry, Submission to Issues Paper, April 2019, p 4.

²⁵ TransGrid, Submission to Issues Paper, April 2019, p 5.

²⁶ For example see Commercial Radio Australia, Submission to Issues Paper, April 2019, p 3. Optus, Submission to Issues Paper, April 2019, p 3.

²⁷ Mobile Carriers Forum, Submission to issues Paper, April 2019, pp 10-11.

²⁸ Free TV Australia, Submission to Issues Paper, April 2019, p 3.

- ▼ Efficient prices should be defined as the point where social welfare is maximised, which means rents should be based on the agencies' opportunity cost.²⁹
- ▼ 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.³⁰

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.

4.3.1 Prices in workably competitive markets do not include monopoly rents

Several stakeholders argued that the land management agencies are monopoly suppliers of the only suitable communication tower site in many regional areas. ARCIA argued that Crown lands sites suitable for towers, particularly in low population density areas, have few alternatives and therefore Crown land agencies have significant market or even monopoly power. These agencies could be seen to be using this monopoly power to capture monopoly rents, not Ricardian rents.³¹

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?

As noted in Chapter 1, we recommend that the existing location categories be updated to better reflect recent market evidence. We have examined the location, elevation and availability of alternative sites within 5 to 10 km of

²⁹ Australian Radio Communications Industry Association (ARCIA), Submission to Issues Paper, April 2019, p 3.

³⁰ Free TV Australia, Submission to Issues Paper, April 2019, p 2.

³¹ ARCIA, Submission to Draft Report, August 2019, p 1.

Crown land sites our recommended location categories – High, Medium, Low, Remote and Very remote - 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 High sites and increases for some Medium, Low, Remote and Very remote sites.

Table 4.1 Characteristics of Crown land sites by location category

	High	Medium	Low	Remote & Very remote
Median no. of ACMA sites within 5 km of Crown land site	114	41	4	2
Median no. of ACMA sites within 10 km of Crown land site	429	73	7	2
Median elevation difference between Crown land site and ACMA sites within 5 km (m)	1.8	62.4	9.0	0.0
Median elevation difference between Crown land site and ACMA sites within 10 km (m)	23.7	66.7	32.7	1.0

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 High category, 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 to 10 km radius of the Crown land sites. We consider the degree of market power for High and most Medium sites to be low.

However for some Medium, Low and most Remote and Very remote sites on Crown land there may not be any alternative sites within a 5 to 10 km radius of the Crown land site.³² In some locations, Crown land may occupy all of the land within 5 to 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 to 10 km. Given this, we consider that for some Medium, Low, Remote and Very remote 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, Remote and Very remote sites, this does not mean that our recommended rents include monopoly rents. For High, Medium, Low and Remote sites, 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 do not include monopoly rents. For

³² In our analysis we considered a site within 100 metres of elevation to be comparable.

Very remote sites, we have set rent at the minimum rent that applies to all Crown land tenures.³³

We analysed the number and characteristics of alternative sites within five km of the private land sites in our sample to assess the degree of market power for private land owners (See Table 4.2). We found that there are fewer alternatives available in Low and Remote locations compared to Medium and High. However, we consider that there is sufficient availability of alternative sites within 5 km of the sites to limit the market power of private land owners in our sample and their ability to capture monopoly rents.

Table 4.2 Characteristics of private land sites in our sample by location category

	High	Medium	Low	Remote
Median no. of ACMA sites within 5 km of private land site	48	43	3	1
Median no. of ACMA sites within 10 km of private land site	223	98	18	3
Median elevation difference between Crown land site and ACMA sites within 5 km (m)	-4.9	-0.2	2.0	-0.3
Median elevation difference between Crown land site and ACMA sites within 10 km (m)	-7.0	2.8	0.4	-0.1

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

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

We consider 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 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.³⁴ We also note that several stakeholders agreed that sites with higher elevation are of greater value to users.³⁵ We

³³ Almost all the land in the Western Division of NSW is held under Western Lands Leases for the purposes of grazing and pastoral production. See NSW Department of Planning and Environment, Draft Far West Regional Plan 2036, p 4, Available from <https://apo.org.au/sites/default/files/resource-files/2016/12/apo-nid74232-1220481.pdf>

³⁴ 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.

³⁵ For example TX Australia, Submission to Issues Paper, April 2019, p 4.

estimate that additional elevation could add up to around \$23,000 per annum to the value of land (see Box 4.2).

Box 4.2 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.

4.3.2 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 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 4.3 for an overview of the approach set out in our Issues Paper). For 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).³⁶ 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.

³⁶ CRA, Submission to Issues Paper, April 2019, pp 4-5.

Box 4.3 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.

4.3.3 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 for their activities) 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.³⁷
- ▼ 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.³⁸

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). 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.

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.

³⁷ Free TV Australia, Submission to Issues Paper, April 2019, p 5.

³⁸ Optus, Submission to Issues Paper, April 2019, pp 6-7.

4.4 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*.³⁹ It argued that “market-based commercial returns” and “efficient rents” may differ.⁴⁰ 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

³⁹ (1907) 5 CLR 418.

⁴⁰ Telstra, Submission to Issues Paper, April 2019, p 5.

would pay a willing and knowledgeable, but not anxious, vendor.⁴¹ 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”.⁴² 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.

4.5 Basing rents on a land valuation approach would not reflect fair, market-based returns

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).⁴³ Several stakeholders argued for a rental percentage of 6%.⁴⁴

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.⁴⁵

Telstra and Axicom considered that we had not provided sufficient explanation for disregarding an approach based on unimproved land value.⁴⁶

We consider that using an approach based on unimproved land valuations, such as the approach adopted in Queensland, would not reflect fair, market-

⁴¹ *International Petroleum Investment Company v Independent Public Business Corporation of Papua New Guinea* [2015] NSWCA 363 at [2].

⁴² *Spencer* at 432.

⁴³ *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213, 39-40.

⁴⁴ For example TX Australia, Submission to Issues Paper, p 3, Broadcast Australia, Submission to Issues Paper, April 2019, p 10 and nbn, Submission to Draft Report, August 2019, p 2.

⁴⁵ Commercial Radio Australia, Submission to Draft Report, August 2019, pp 1-2.

⁴⁶ Telstra Corporation Ltd, Submission to Draft Report, September 2019, p 9, Axicom, Submission to Draft Report, September 2019, p 10.

based returns. As noted above, it is our view 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. The alternative land valuation approaches suggested by stakeholders, including the approach adopted in Queensland, would result in rents that less accurately reflect the rents we have observed in the private market for land used for communication tower purposes.

5 Rent schedule for primary users on existing sites

For the second step in our review, we decided on a rent charging methodology for existing 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 and considered the number of location categories and how they should be defined. Next we considered whether the levels of rent were appropriate. We also looked at what services should be provided under the rent schedule and whether any additional fees should be charged by the land management agencies.

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

5.1 Overview of recommendations

Our analysis found that the number of location categories, location definitions and rent levels need to be updated to better reflect recent market evidence for sites on private land. We recommend a rent schedule with five location categories – High, Medium, Low, Remote and Very remote – based on Australian Bureau of Statistics (ABS) definitions of Significant Urban Areas (SUAs) and Remoteness Areas (RAs).

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

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

	High	Medium	Low	Remote	Very remote
Rent per site	16,900	14,900	10,900	3,400	508

Compared to the existing rent schedule, our final recommendations:

- ▼ Combine the existing Sydney and High location categories into one new High category covering ABS SUAs of Sydney, Newcastle – Maitland, Wollongong and Central Coast.
- ▼ Introduce two additional categories for Remote and Very remote sites based on ABS RAs.
- ▼ Reduce rent levels by around 45-55% for primary users of existing Crown land sites in the Sydney and High categories (\$2020-21).

For existing sites, we recommend 5 location categories – High, Medium, Low Remote and Very remote – with rents aligned to recent market evidence

- ▼ Reduce rents by 14% for primary users of existing Crown land sites in the Medium Category. In addition, some sites that were previously included in the Medium category will now fall into the Low category resulting in further reductions for these users.
- ▼ Increase rents by 32% for primary users of existing Crown land sites in the Low category.
- ▼ Reduce rents by more than 59% for primary users of existing Crown land sites in the new Remote category. These users are currently paying rents in the Low category.
- ▼ Reduce rents to the minimum rent (\$508 in 2020-21) for primary users of existing Crown land sites in the new Very remote category. These users are currently paying rents in the Low category.

The rent schedule would apply to existing sites that are occupied as at 1 July 2020. It would not apply to rooftop sites which should be negotiated on a site-by-site basis.

Under the current arrangements, the services covered by the rent schedule are not explicitly defined. As a result, the land management agencies have previously charged a range of fees in addition to the schedule, for costs such as road maintenance and legal and administration costs related to licence preparation.

We consider that the land management agencies should only charge additional fees where they reflect efficient costs. To ensure this, we recommend that:

- ▼ For roads that are used by one user only, the land management agencies may only charge additional fees for road maintenance where the user has been provided with the option of maintaining the road to the required standard at their own cost.
- ▼ For roads that are used by more than one user, land management agencies may only charge additional fees for road maintenance where they have developed an approach to estimating and allocating costs of road maintenance to all road users. Users need to be provided with the opportunity to comment on the approach and resulting fees.
- ▼ The land management agencies may continue to charge primary users a one-off application fee of up to \$493 to reflect administration and legal costs of providing licence assessment and preparation for new sites.

Given these recommendations, Forestry NSW should not continue charging an additional 10% road maintenance fee to all users. We also note that these recommendations do not prevent the land management agencies from exercising existing contractual arrangements where a user would be required to pay additional costs if it damages a site or access road.

5.2 Updated definitions of location categories

Our analysis of updated market data found that rents paid by primary users for locations close to metropolitan areas or population centres are generally higher than for regional and remote locations. While the existing rent schedule is intended to capture these differences, we consider that it should be updated to better reflect recent, comparable market evidence while at the same time keeping a rent schedule that is simple, transparent and easy to implement.

We recommend a rent schedule with five location categories defined as follows:

- ▼ **High:** metropolitan areas located in the ABS SUAs of Sydney, Newcastle – Maitland, Wollongong and Central Coast. This category largely combines the existing Sydney and High categories. However it removes some low density areas included in the existing High category.
- ▼ **Medium:** areas located in the remaining 35 NSW ABS SUAs. SUAs represent significant towns and cities of 10,000 people or more and cover urban and adjacent areas (the ABS aims to include likely areas of growth).⁴⁷ This definition covers areas that are smaller than the existing Medium definition within 12.5 km of the centre of ABS Urban Centres and Localities (UCLs).
- ▼ **Low:** rest of NSW not located in the High and Medium categories and excluding areas located in the Remote and Very remote categories.
- ▼ **Remote:** areas located in Remote ABS RAs.
- ▼ **Very remote:** areas located in Very remote ABS RAs.

5.2.1 High category to cover existing Sydney and High areas

We recommend using the ABS definition of significant urban areas (SUA) for our both our High and Medium categories (for more information on ABS Statistical Geographies see Box 5.1). The following SUAs would be high:

- ▼ Sydney
- ▼ Newcastle – Maitland
- ▼ Wollongong
- ▼ Central Coast.

⁴⁷ 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, Available from : [https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1270.0.55.004~July%202016~Main%20Features~Significant%20Urban%20Area%20\(SUA\)~5](https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1270.0.55.004~July%202016~Main%20Features~Significant%20Urban%20Area%20(SUA)~5) , Accessed 23 October 2019.

This approach addresses three main issues identified as part of our review:

- ▼ The existing Sydney category largely covers areas of the Sydney CBD where there are very few towers located on Crown land. Available market data in this category was primarily rooftop macro installations not communication towers on land and so does not provide a comparable benchmark for Crown land sites.⁴⁸
- ▼ There are large areas of low density land, primarily bushland, particularly in Hawkesbury Council.
- ▼ The existing definition does not reflect the growth of Greater Newcastle into Maitland and Cessnock or the growth of Wollongong into Shellharbour and Kiama.

⁴⁸ Optus, Submission to Draft Report, September 2019, pp 7-8.

Box 5.1 ABS statistical geography

Urban Centre or Locality (UCL)

UCLs are areas 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/km², or
- ▼ a population density of at least 100 people/km² and dwelling density of at least 50 dwellings/km², or
- ▼ a population density of at least 200 people/km².

Land with an urban character that is adjacent to an urban SA1 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:

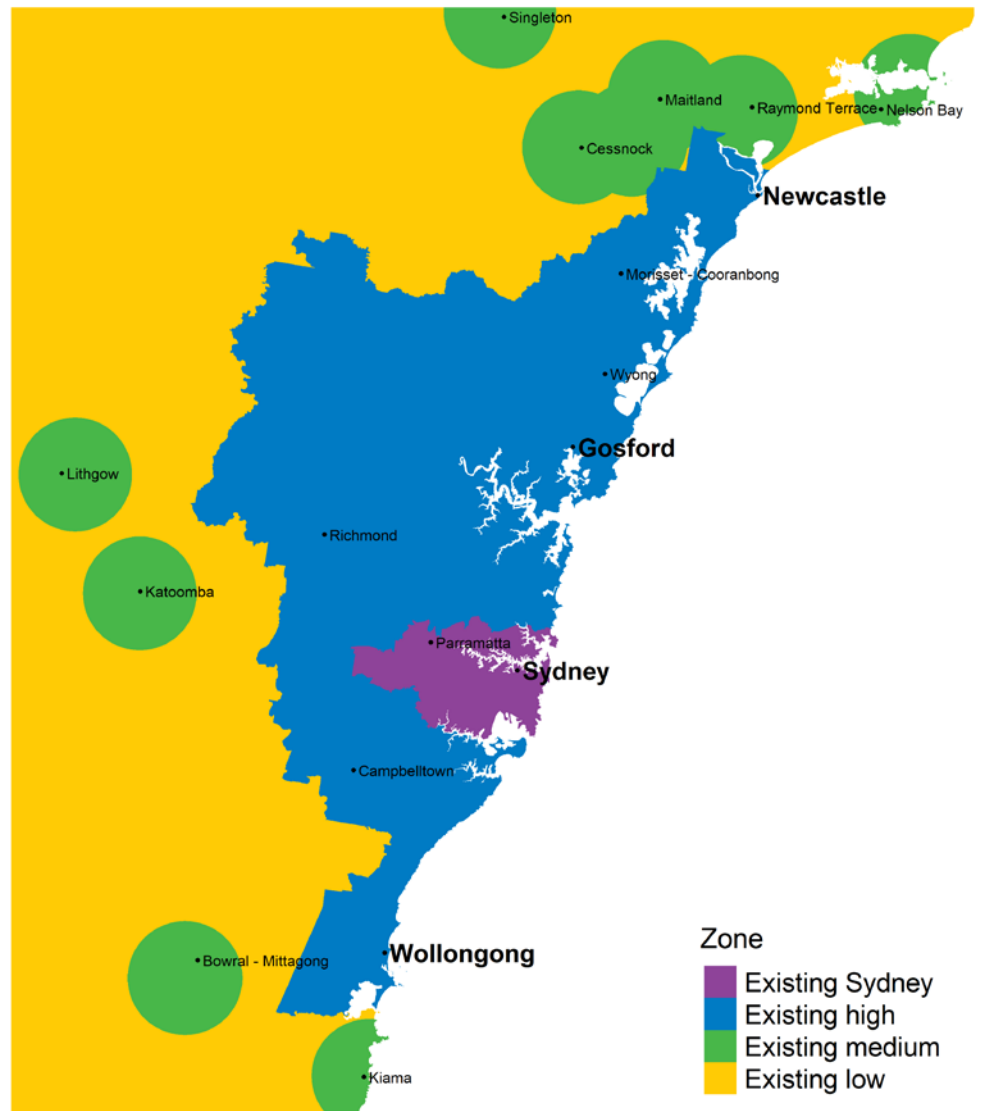
- ▼ Based on functional areas for which people come to access services at a centre
- ▼ To include areas of likely growth in the next 10-20 years at the edges of cities or towns
- ▼ To reflect gazetted suburbs and council areas.

Source: 1270.0.55.004 - Australian Statistical Geography Standard (ASGS): Volume 4 - Significant Urban Areas, Urban Centres and Localities, Section of State, July 2016; 1270.0.55.001 - Australian Statistical Geography Standard (ASGS): Volume 1 – Main Structure and Greater Capital City Statistical Areas, July 2016

Figure 5.1 and Figure 5.2 compare the existing and recommended categories. The existing High and Sydney categories are in blue and purple respectively in Figure 5.1. The recommended High category is in blue in Figure 5.2. It shows that the High category would cover urban areas in the

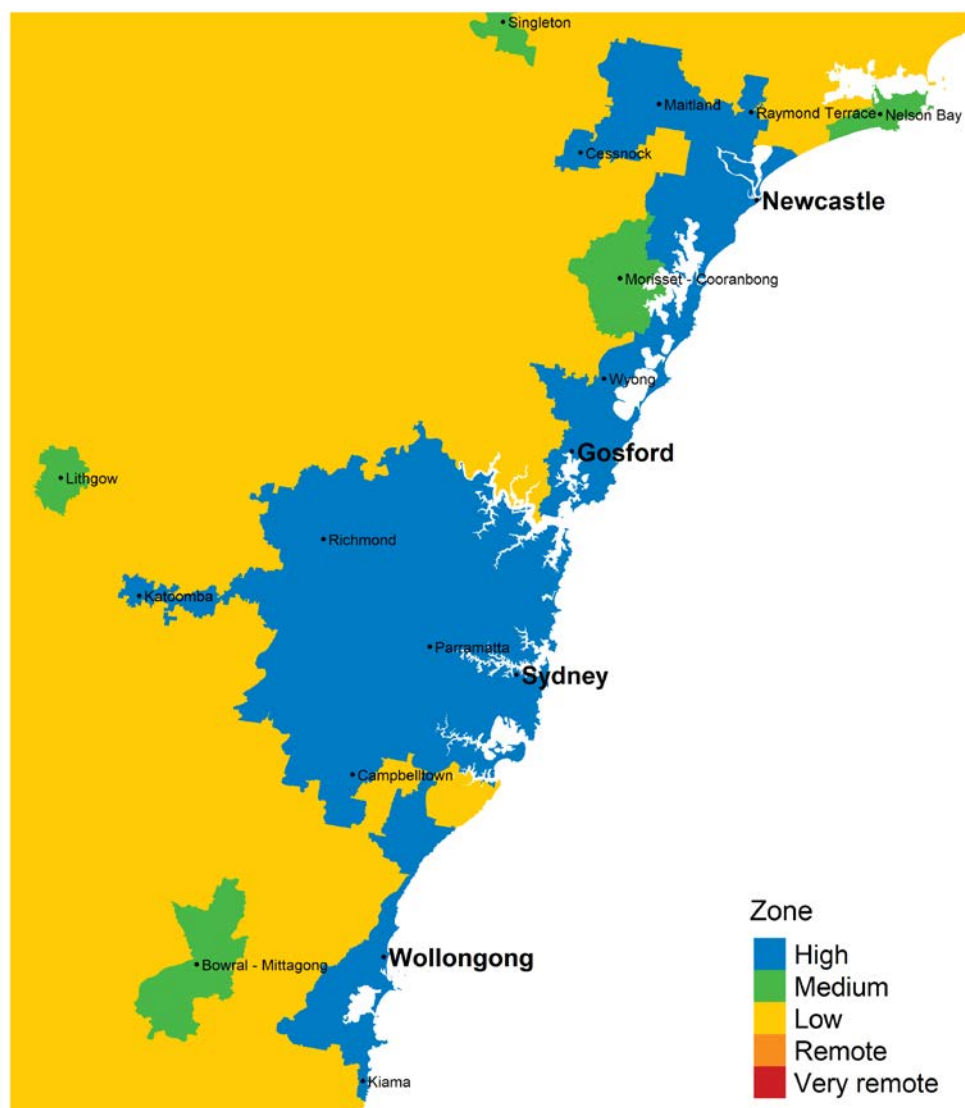
Blue Mountains, Maitland, Cessnock, Shellharbour and Kiama, and no longer cover forested land west of the Central Coast.

Figure 5.1 Existing location categories



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.

Figure 5.2 Recommended location categories



Note: See Appendix B for map of recommended zones for whole of NSW.

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.

Our recommended changes would reclassify 43 sites on Crown land:⁴⁹

- ▼ 27 Sydney sites become High
- ▼ 3 Low sites become High
- ▼ 4 Medium sites become High,
- ▼ 6 High sites become low,
- ▼ 2 High sites become Medium, and

⁴⁹ That is National Parks and Wildlife Service, Crown Lands and Forestry Corporation.

- ▼ 1 Sydney site becomes low.⁵⁰

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 ^a	25,309
Gold Coast – Tweed Heads	679,127
Canberra - Queanbeyan	457,563

^a In our Draft Report we included the Morisset – Cooranbong significant urban area in our draft recommendation for the high density zone as it is currently classed as high density, 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, no stakeholders identified this as a concern and we do not consider it to be a major issue. It would only affect two existing sites within Tweed Heads (one existing Medium site in central Tweed Heads and one existing Low National Parks site in the Cudgera Creek Nature Reserve).

In our Draft Report we included Morisset-Cooranbong in the High category as it is currently within the 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. MCF argued that this was unsupportable based on comparative land values.⁵¹ Given its low population relative to other high SUAs, we have now decided to exclude Morisset-Cooranbong from High and include in the Medium category.

5.2.2 Medium category to be refined

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

- ▼ It is not simple, in all cases, to identify which post office is the main post office.

⁵⁰ Excluding SCAX sites. For more information on our recommendations for SCAX site see Chapter 7.

⁵¹ Mobile Carriers Forum, Submission to Draft Report, September 2019, p 4.

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- ▼ The 12.5km radius does not reflect the size and shape of the cities and towns in the medium zone.

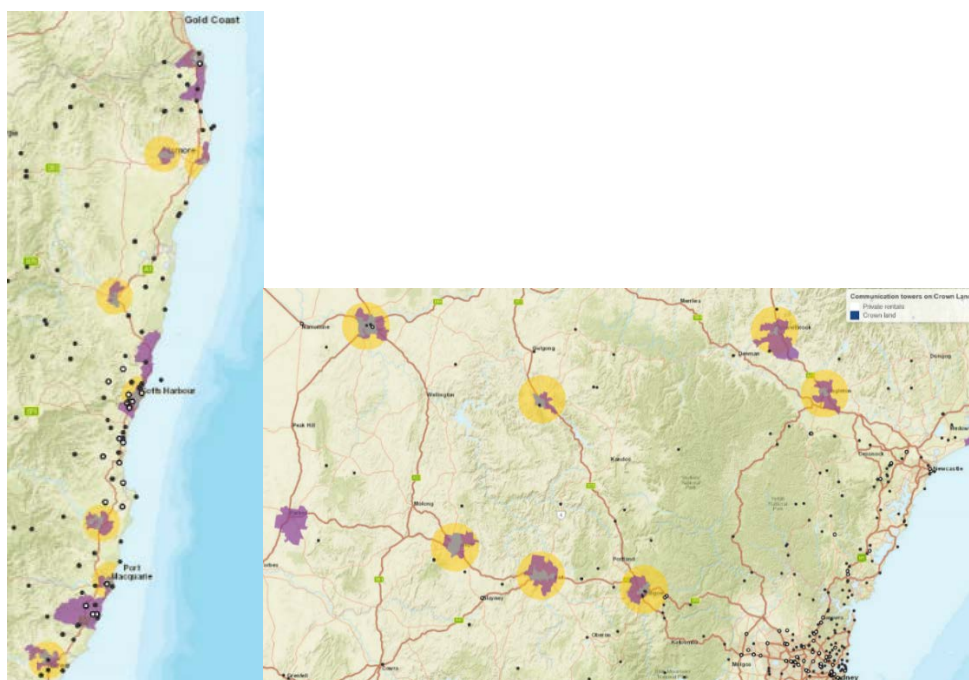
We considered three approaches to improve the definition of the medium category:

1. Maintaining the 12.5km radius from the centre point, but publishing a list of the centre points.⁵²
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.
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 2 but a smaller area than option 1.

Figure 5.3 compares the three options:

⁵² 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.

Figure 5.3 The North Coast and Central West under possible Medium definitions (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.

In our draft report we recommended option 1. While nbn supported option 1, other stakeholders raised concerns with the approach.⁵³ For example:

- ▼ MCF argued that a 12.5 km radius around all Medium density townships or an area of 491 km² per township was an unjustified burden on the industry and its customers.⁵⁴
- ▼ Optus did not agree with the 12.5km radius around Medium density townships and argued that there was no basis for valuing vacant bushland on the same commercial basis as the land within the township itself.⁵⁵

We agree that a 12.5 km radius results in a large area being covered by the Medium category. However, we consider that using ABS Urban Centres would result in a category that does not cover enough land to adjacent to urban areas to capture the differences in market rents in these locations.. Therefore we recommend option 3 based on ABS defined Significant Urban

⁵³ nbn, Submission to Draft Report, August 2019, p 3.

⁵⁴ Mobile Carriers Forum, Submission to Draft Report, September 2019, p 4.

⁵⁵ Optus, Submission to Draft Report, September 2019, pp 8-9.

Areas. A list of SUAs included in our medium category is contained in Appendix B.

5.2.3 Remote and Very remote categories introduced

In response to our Draft Report, several stakeholders raised concerns about the Low category being applied to all remaining areas of the state. For example, ARCIA was concerned about increasing rents in remote areas of the state.⁵⁶ Similarly the RFS, considered that the Low category covered too broad of an area, and recommended it be divided into two categories: Low and Remote.⁵⁷

We agree that the Low category in our Draft Report covered too broad an area, in particular capturing some remote and very remote areas of north western NSW. Therefore, we recommend introducing two additional categories that covers those areas included in the Remote and Very Remote ABS RA.

This change would result in reclassify 45 sites on Crown land:

- ▼ 33 Low sites would become Remote
- ▼ 12 sites would become Very remote.

5.3 Updated rent levels

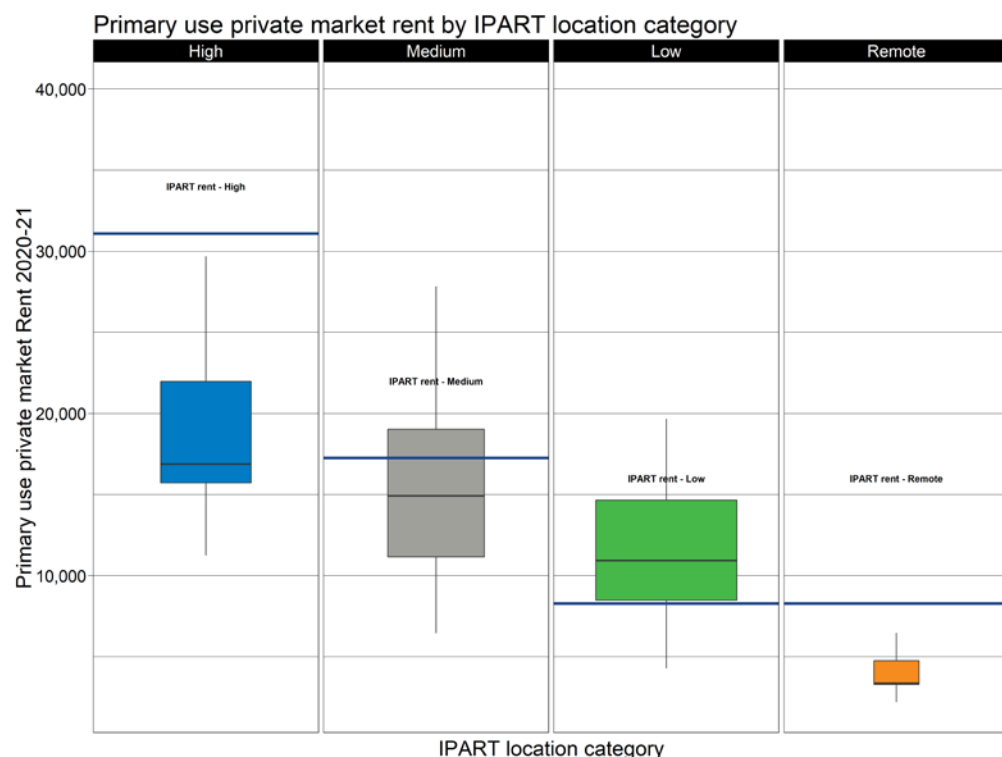
Our analysis of recent market data shows that rents paid by primary users for locations close to metropolitan areas or population centres are generally higher than for regional locations.

Figure 5.4 shows a box and whisker plot of the rent for primary users on private land in our sample of recent market data for High, Medium, Low and Remote 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 \$3,377 for Remote sites, to \$10,927 for Low, \$14,926 for Medium and \$16,883 for High sites (\$2020-21). We were not able to obtain recent market evidence for Very Remote locations. As noted in Chapter 4, almost all the land in the Western Division of NSW is held under Western Lands Leases for the purposes of grazing and pastoral production.

⁵⁶ ARCIA, Submission to Draft Report, August 2019, p 1.

⁵⁷ NSW Rural Fire Service, Submission to Draft Report, September 2019, p 2.

Figure 5.4 Box and whisker plot comparing private market rentals to IPART rents for primary users (\$2020-21)



In response to our Draft Report, several stakeholders raised concerns about the data we had used to recommend rents. For example

- ▼ The land management agencies supported the rent per site approach, based on location categories but did not support the rates recommended in the Draft Report. It considered that our market data was not sufficiently representative of all sites on private land.⁵⁸
- ▼ Optus argued that the data for Sydney and High was primarily rooftop macro installations not communication towers on land; as such the data is not comparable as no land is occupied. It also raised concerns that most of the data was for existing sites, not recent, new “greenfields” locations where a new negotiation would have been done on an arms-length basis.⁵⁹

To ensure that rents reflect recent market data, we made two changes to the data for our Final Report.

⁵⁸ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 5.

⁵⁹ Optus, Submission to Draft Report, September 2019, pp 7-8.

- ▼ Firstly, we excluded any rents that commenced prior to 2015-16. This means that our data is as recent as possible while still maintaining a sufficiently representative sample size. We note that the land management agencies argued that our sample size is too small given the total number of communication tower sites in NSW. However, many of the sites they referred to were negotiated prior to 2015-16 and in addition do not have leases that are publicly available and therefore not easily verified.
- ▼ Secondly, we excluded data from rooftop installations as these are less comparable to Crown land sites which are generally not located on rooftops. Box 5.2 outlines the sources of recent market data used in our analysis.

We also received additional data from several stakeholders following the release of our Draft Report.

Box 5.2 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 130 sites, mainly from publicly available leases registered with NSW Land Registry Services (NSW LRS). To do this 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).
- ▼ Sought information from users 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 below 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 a small number of sites where we verified the rents using information in confidential submissions).

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

	High	Medium	Low	Remote	Very remote
Private market sample	28	32	68	7	0
Crown land sites	99	75	519	31	10

Source: IPART analysis and Information provided by stakeholders

Much of the difference in the range of prices between Sydney and High categories in our Draft Report was driven by the including rooftop sites in our sample. Once these were removed from the sample, there was considerable overlap between rents in these two categories (although we note

the sample size for Sydney is low). Given this, we recommend combining the Sydney and High location categories.

This change also means that it would be not be appropriate to apply the schedule to any new rooftop sites, either on Crown land or private land. We understand that the IPART rent schedule is often applied by private landlords, councils and other government agencies, including outside NSW.⁶⁰

We consider that rents for rooftop sites on Crown land (for example in the Sydney CBD) should be negotiated between the land management agencies and users. In these circumstances there are generally other alternative sites available (either on rooftops or other sites) which means that negotiated rents can better reflect competitive market outcomes. We note that recent market evidence for rooftop sites in Sydney indicate rents may be double those in the High category.

We note that several stakeholders were concerned about the increase in rent for sites in Low locations. For example, Countrytell raised concerns about the impact on the small regional and remote operators.⁶¹

While our final recommendations maintains an increase for Low locations, these rent levels reflect recent market evidence. We have also introduced a remote category with lower rents reflecting market evidence in these areas.

5.3.1 Rents to be set at the median of market data in each category

We consider that rents on Crown land in each of these categories should change to better align with market rents on private land.

For High, Medium, Low and Remote sites, we recommend that the rents be set 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 with rents on private land while at the same time allowing for a rent schedule that is simple, transparent and easy to implement.

For Very Remote sites, we have set rent at the minimum rent that applies to all Crown land tenures.

5.3.2 Other factors do not provide a better predictor of rent

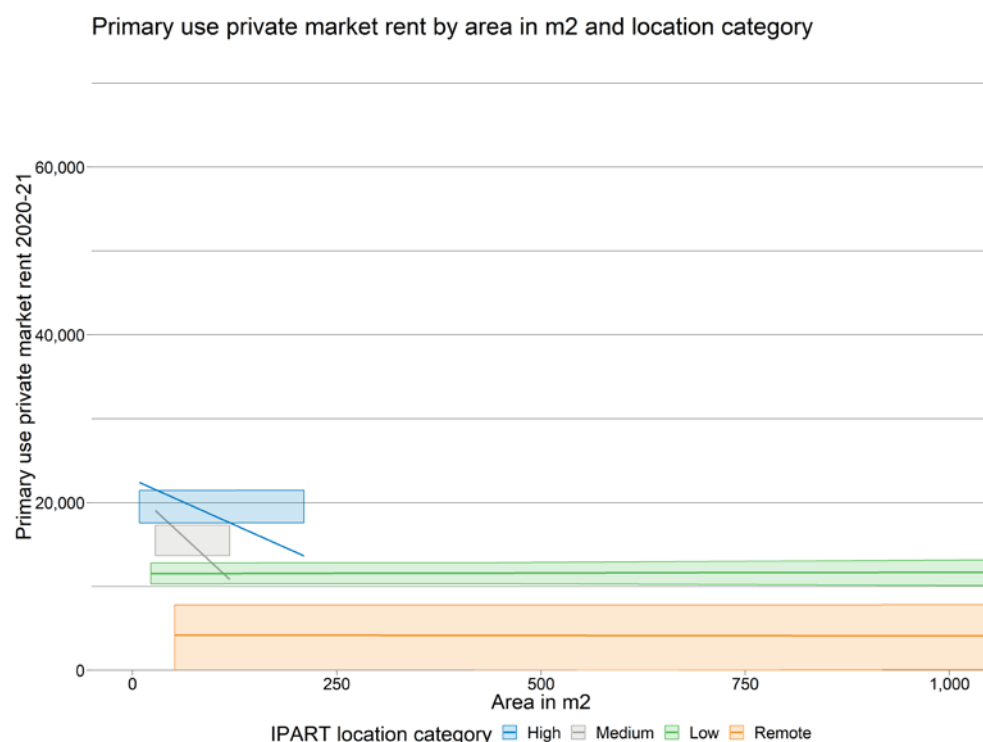
We also considered whether we should include other factors such as land size and elevation by examining the relationship between these factors and private rents and by using decision tree analysis.

⁶⁰ Optus, Submission to Draft Report, September 2019, p 8.

⁶¹ Countrytell, Submission to Draft Report, September 2019, p 2.

Figure 5.5 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 sites in our sample. We have measured our confidence in this result using a 95% confidence interval shown by the light shaded areas in Figure 5.5.⁶²

Figure 5.5 Rent and land size for primary users on private land (\$2020-21 ex-GST)



Note: Shaded areas are based on a 95% confidence interval.

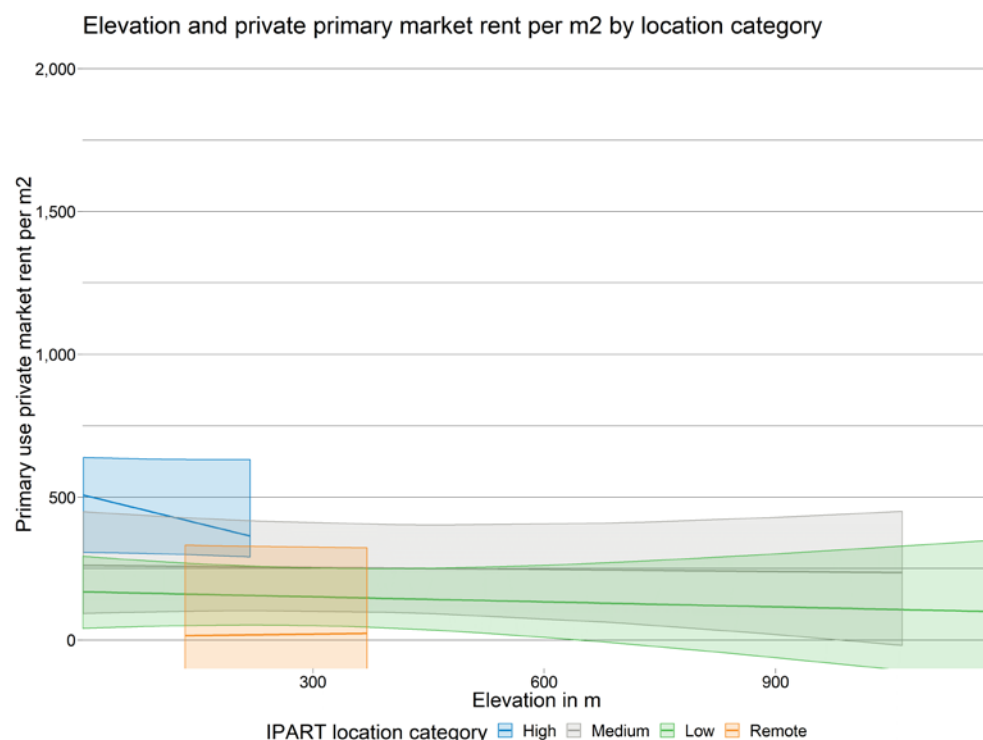
Data source: IPART analysis.

This analysis confirmed that we should not set rent for *existing* sites based on a \$ per m². Using such an approach would result in unintended outcomes where users that were not previously incentivised to minimise their land footprint and occupy large land areas would pay higher rents. Several stakeholders argued that this analysis means that we should not set rent for *new* sites based on a \$ per m². We do not agree with these arguments and consider that for new sites, users should be incentivised to minimise their land footprint. Further information on our recommendations for new sites is set out in Chapter 6.

⁶² 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 m2, with 95% likelihood.

Similarly, we did not find rent increasing with elevation within any of our location categories (see Figure 5.6). 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 5.6 Rent and elevation for primary users on private land (\$2020-21 ex-GST)



Note: Shaded areas are based on a 95% confidence interval.

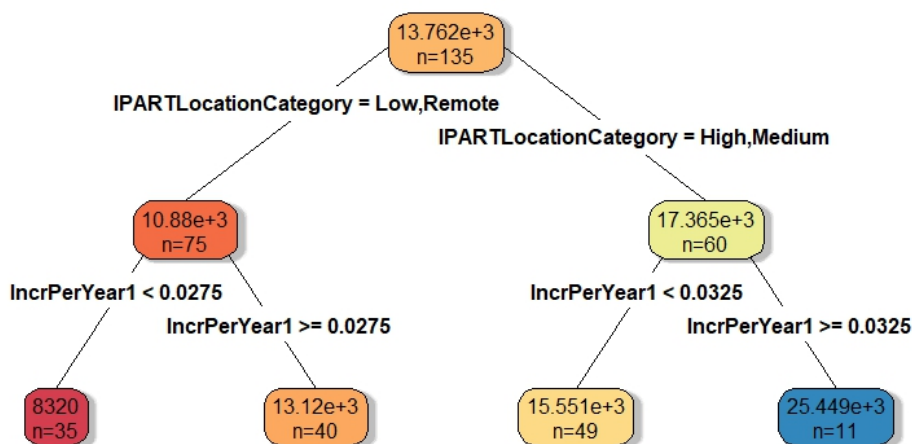
Data source: IPART analysis.

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 5.7 presents the most common pruned tree after running multiple iterations of the decision tree algorithm. The tree first splits based on location categories of Low/Remote and High/Medium rather than any of the other independent variables we analysed. This aligns with our recommendation to set rent for Crown land using location category.

Figure 5.7 Decision tree of primary user rent on private land (\$2020-21 ex-GST)



5.3.3 Existing sites are those that are currently occupied by communication towers

We recommend that the rent schedule for existing sites apply to all sites on Crown land occupied by communication tower users as at 1 July 2020. This will ensure that site renewals are not captured as new sites and subject to a \$ per m² rent.

In response to our Draft Report, several stakeholders questioned which sites would be classified as existing sites and which would be classified as new sites.⁶³ In addition, the NSW Telco Authority noted that it will take control of various existing sites currently operated by other NSW government agencies for inclusion in its communications network. It questioned whether these will constitute existing or new sites for fee calculation purposes.⁶⁴

Our draft recommendations on new sites were not intended to capture site renewals and we have now clarified this as part of our final recommendations. We also consider that existing sites that are acquired by other users (eg, the NSW Telco Authority) would also be treated as existing sites. This approach would also ensure that a small number of sites where licences may have lapsed are not captured by the new site arrangements.

⁶³ For example see Telstra Corporation Ltd, Submission to Draft Report, September 2019, pp 7-8.

⁶⁴ NSW Telco Authority, Submission to Draft Report, September 2019, pp 2-3.

5.4 Definitions of what is covered by the rent schedule

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

- ▼ 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.⁶⁵
- ▼ Crown Lands charges a minimum \$547.80 for access over a parcel of Crown land to a communication site on adjoining freehold land⁶⁶ and \$498 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.⁶⁷

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.⁶⁸
- ▼ Where there is shared use access tracks, lessees may contribute to maintenance costs.⁶⁹

We consider that the land management agencies should only charge additional fees where they reflect efficient costs and are consistent with commercial practices.

5.4.1 Any road maintenance fees need to be cost reflective

The existing arrangements for recovering road maintenance costs vary between the three land management agencies and in some cases between sites. While Forestry Corporation charge an additional 10% of rent to cover road maintenance, Crown Land do not charge additional road maintenance

⁶⁵ NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 7.

⁶⁶ We have not considered the fees for these access licences as part of this review as they do not relate to communication towers on Crown land.

⁶⁷ NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 7.

⁶⁸ Commercial Radio Australia, Submission to Issues Paper, April 2019, p 6.

⁶⁹ 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.

costs. NPWS leases may require users to contribute to track maintenance and weed control costs.⁷⁰

In our Draft Report, we recommended that the rent schedule would include 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, with the lessee responsible for these costs.

In response to our Draft Report, DPI and NPWS advised that some users are responsible for maintaining access tracks to their sites. The land management agencies do not contribute to these works and all costs are borne by the user. They were concerned that under our draft recommendations, these users may cease maintaining roads and look to the land management agencies to recover their costs. In addition, they noted that many of the sites (in IPART's private market dataset) are likely to be accessed by sealed public roads or otherwise over cleared farmland.⁷¹

The NSW Rural Fire Service is currently developing comprehensive classification and maintenance standards for all fire trails throughout NSW, following amendments to the Rural Fires Act in 2016. All of the agencies will be required to classify and maintain their fire trails in accordance with these standards and the RFS's detailed 2017 maintenance manual. This data may be an appropriate basis on which to determine user contributions to access road maintenance.⁷²

We have further considered feedback from stakeholders and recommend a change to how road maintenance costs should be recovered. Our draft recommendation was intended to prevent non-cost reflective fees being charged by the land management agencies. However, we did not intend for efficient costs currently being borne by users to be shifted to the land management agencies. In addition, we note that in some instances for private leases, where there is shared use access tracks, lessees may contribute to maintenance costs.⁷³

To ensure that road maintenance fees reflect efficient costs we are recommending the following arrangements:

- ▼ For roads that are used by one user only, the land management agencies may only charge additional fees for road maintenance where the user has been provided with the option of maintaining the road to the required standard at their own cost.

⁷⁰ NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 7.

⁷¹ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, pp 6-8.

⁷² Information provided by NPWS.

⁷³ 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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- ▼ For roads that are used by more than one user, land management agencies may only charge additional fees for road maintenance where they have developed an approach to estimating and allocating costs of road maintenance to all road users. Users need to be provided with the opportunity to comment on the approach and resulting fees.

These recommendations would allow current arrangements where users are maintaining their own access roads to continue as well as prevent the land management agencies from requiring users to pay excessive fees. That is, if a user considered a road maintenance fee to be too high for their access road, they could choose not to pay it and maintain the road themselves. This would also mean that Forestry NSW should not continue charging an additional 10% road maintenance fee to all users until they have developed and consulted on an approach to allocating road maintenance costs to all users.

We also note that these recommendations do not prevent the land management agencies from determining the terms and conditions of the lease or licence with the communication site user. For example, agencies would still be able to set the terms and conditions to allow for the recovery of costs associated with damage to the site or access roads.

5.4.2 Land management agencies to charge application fee up to \$493

In our Draft Report, we recommended that the rent schedule would include all lessor costs of preparing and assessing licence applications. This draft recommendation was supported by users such as NSW Telco Authority and Broadcast Australia.⁷⁴ However, the land management agencies argued that they face different costs to the private market including statutory obligations and consider all-inclusive rents restrict them in setting the terms and conditions of the lease or licence.

The NSW Government *Communication Licence Fact Sheet* (see Box 5.3) sets out the requirements for organisations seeking to develop communication tower facilities or associated infrastructure on Crown land. This states that responsibility for obtaining the necessary environmental assessment and planning approvals sits with the applicant, not with the land management agencies.

⁷⁴ For example see NSW Telco Authority, Submission to Draft Report, September 2019, p 3, Broadcast Australia, Submission to Draft Report, September 2019, p 4.

Box 5.3 Communications Licence Fact Sheet

Organisations seeking to develop communication tower facilities or associated infrastructure on Crown land administered by the Department of Planning, Industry and Environment (DPIE or the Department) must have consent to:

- ▼ Occupy the land
- ▼ Lodge any required development or other applications to relevant approval authorities.

In addition to obtaining a licence issued by the Department to occupy Crown land must ascertain and obtain the required planning permissions. Depending on the proposal, this may include:

- ▼ A development application for development consent under Part 4 of the EP&A Act, which requires the consent of the Department, as landowner, to enable lodgement with council; or
- ▼ A complying development certificate under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), which requires the consent of the Department, as landowner, to enable lodgement with council or an accredited certifier; or
- ▼ An environmental assessment under Part 5 of the EP&A Act where the proposal is for a matter that does not require development consent (and is not an 'exempt or complying development').

Regardless of the planning approvals required, the applicant must enter into a licence agreement with the Department to occupy Crown land.

When submitting any licence application, the proponent must submit evidence that a Part 5 environmental assessment has been completed. Approval to proceed with works will not be granted until a licence has been executed between the applicant and the Department. When seeking the consent of the Department to occupy the Crown land, proponents must submit for the Department's review:

- ▼ Location, plan & elevation drawings of the proposed works, including towers, compound, associated buildings and access tracks
- ▼ An up-to-date identification survey, including the proposed tower, compound, associated buildings and access track
- ▼ The environmental assessment under Part 5 [Review of Environmental Factors (REF)] or Environmental Impact Statement (EIS).

Source: NSW Government, *Communications licence fact sheet*, June 2019, at https://www.industry.nsw.gov.au/_data/assets/pdf_file/0016/143521/Developing-communication-facilities-on-Crown-land-fact-sheet.pdf accessed on 26 September 2019.

We also note that arrangements on private land can differ, where in some cases the lessee is responsible for paying up to around \$1,200 for administrative and legal costs while in others each party bears their own costs.

Given this, we consider it appropriate that the land management agencies charge an application fee of up to \$493 for primary users establishing new communication sites on Crown land. This is consistent with the current application fee charged by Crown Lands of \$493 for a new site licence.⁷⁵ This would be a one-off fee to cover the efficient costs of assessing and establishing the tenure arrangement for the site.

5.4.3 Other costs to be set on a site-by-site basis

In response to our Draft Report, some stakeholders submitted that the recommendation relating to additional costs be expanded to include other services such as cabling for power, optical fibre for transmission at no additional cost and solar arrays in remote locations based upon the value of the land occupied for these facilities.⁷⁶

We do not agree that the costs for cabling power and solar arrays should be included in rents. These costs vary from site to site and so it is difficult to include them in a schedule in a cost-reflective way. We also note that in response to our Issues Paper, stakeholders indicated that additional rents are sometimes charged on private land for setting up electricity and ongoing electricity costs.⁷⁷

Final recommendations

- 1 For existing communication tower sites on Crown land, the land management agencies implement the schedule of rents for all primary users shown in Table 5.1, where rent per site varies by location.

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

	High	Medium	Low	Remote	Very remote
Rent per site	16,900	14,900	10,900	3,400	508

- 2 Existing sites are those that are occupied by communication towers users as at 1 July 2020.
- 3 Locations are defined as:
 - **High:** metropolitan areas located in the ABS Significant Urban Areas (SUAs) of Sydney, Newcastle – Maitland, Wollongong and Central Coast. This category largely combines the existing Sydney and High categories. However it removes some low density areas included in the existing High category.

⁷⁵ NSW Government, *Communications licence fact sheet*, June 2019, at https://www.industry.nsw.gov.au/data/assets/pdf_file/0016/143521/Developing-communication-facilities-on-Crown-land-fact-sheet.pdf accessed on 26 September 2019.

⁷⁶ Mobile Carriers Forum, Submission to Draft Report, September 2019, pp 4-5.

⁷⁷ Commercial Radio Australia, Submission to Issues Paper, April 2019, p 6.

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- **Medium:** areas located in the remaining 35 NSW ABS SUAs. SUAs represent significant towns and cities of 10,000 people or more and cover urban and adjacent areas (the ABS aims to include likely areas of growth). This definition covers areas that are smaller than the existing Medium definition within 12.5 km of the centre of ABS Urban Centres and Localities (UCLs).
 - **Low:** rest of NSW not located in the High and Medium categories and excluding areas located in the Remote and Very remote category.
 - **Remote:** areas located in the Remote ABS Remoteness Areas.
 - **Very remote:** areas located in the Very remote ABS Remoteness Area.
- 4 The schedule of rent does not apply to rooftop sites on Crown land. Rent for these sites (existing and new) should be negotiated on a site-by-site-basis.
- 5 The land management agencies should only charge cost reflective fees that reflect commercial practices That is:
- For roads that are used by one user only, the land management agencies may only charge additional fees for road maintenance where the user has been provided with the option of maintaining the road to the required standard at their own cost.
 - For roads that are used by more than one user, land management agencies may only charge additional fees for road maintenance where they have developed an approach to estimating and allocating costs of road maintenance to all road users. Users need to be provided with the opportunity to comment on the approach and resulting fees.
 - The land management agencies continue to charge primary users a one-off application fee of up to \$493 to reflect administration costs of providing licence assessment and preparation for new sites.

6 Rental arrangements for new sites

After deciding on a rent schedule for existing sites, next we considered what arrangements to apply to new communication tower sites.

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

6.1 Overview of final 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 square metre basis
- ▼ The rate per square metre vary by location category.

We calculated the recommended rates per square metre 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.

Our final recommendations for annual rents for primary users on new sites from 1 July 2020 are shown in Table 6.1.

Final recommendation

- 6 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 Recommendation on annual rents for primary users on new sites from 1 July 2020 (\$2020-21, ex-GST)

	High	Medium	Low	Remote	Very Remote
Rent per m ²	282	224	131	12	na
Rent per site varies by land size.	For a land size of 60 m ² for High sites, rent would be \$16,920	For a land size of 65 m ² for Medium sites, rent would be \$14,560	For a land size of 85 m ² for Low sites, rent would be \$11,135	For a land size of 300 m ² for Remote sites, rent would be \$3,600	Minimum rate \$508

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

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 are provided with an incentive to minimise land size. It would allow for a consistent rent per square metre to be applied to primary users and co-users at the same site as well as emerging small cell technology (Chapter 8 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.

6.2.1 Users questioned the proposed rates per square metre and median site sizes

In response to our draft recommendations, users raised concerns that the rate per square metre, particularly for Sydney, would result in excessive rents and potentially higher rents for new sites compared to existing sites of the same size. A number of stakeholders raised concerns that there was no cap on primary user rents on new sites. Stakeholders also sought greater clarity on the calculation of the size of the primary user's site.⁷⁸

Several users argued that the median sizes of sites in the Draft Report were too low. For example, Axicom submitted that the average sizes of its sites are High 311 m², Medium 188 m², Low 410 m².⁷⁹ Broadcast Australia also noted that if it were to establish a new communications facility on Crown land, the minimum land area required would be approximately 400 m².⁸⁰

Similarly, the NSW Rural Fire Service (NSWRFS) argued that particularly in the low category, with flat terrain and large distances to cover, communication towers are large with a significant footprint – a 90-120m guyed mast tower requiring upwards of 300m² land. In addition, the NSWRFS argued that the track or Asset Protection Zone (APZ) around the site (usually outside the fenced area) should not be included in the calculation of the site rental, as it does not afford the use of exclusive rights to the land in the APZ.⁸¹

Optus noted the inclusion of rooftops in our sample of Sydney private rentals has resulted in a low median site size and high rent per square metre.⁸²

⁷⁸ For example, Axicom, Submission to Draft Report, September 2019, pp 12-13; Optus, Submission to Draft Report, September 2019, p 9; and Mobile Carriers Forum, Submission to Draft Report, September 2019, pp 5-6.

⁷⁹ Axicom, Submission to Draft Report, September 2019, pp 11-12.

⁸⁰ Broadcast Australia, Submission to Draft Report, September 2019, p 5.

⁸¹ NSW Rural Fire Service, Submission to Draft Report, September 2019, p 3.

⁸² Optus, Submission to Draft Report, September 2019, p 9.

Both infrastructure providers considered there should be a cap on the rent payable by primary users. Axicom argued that not having a cap for new sites this could result in either:

- ▼ Primary users paying more for a new site than it currently pays for existing sites of similar size
- ▼ Primary users seeking to minimise the size of the initial compound and each co-user having to acquire additional land at a per square metre rate; or
- ▼ Primary users choosing not to provide communications coverage to the area because the penal rental charges do not allow an ability to generate a commercial return.⁸³

6.2.2 The land management agencies considered rents based on land size for new sites does not achieve our terms of reference

The land management agencies considered that rents based on dollars per square metre do not achieve our terms of reference for fair market based commercial returns and a simple, cost reflective fee schedule, arguing:

- ▼ Setting fees on the basis of land size will not achieve market-based returns for the agencies.
- ▼ Two different rent schedules – for existing and new sites – will increase complexity.

The land management agencies expected that any reduction in land size as a result of setting rents per square metre will be minimal, and that there is no benefit to the agencies from slightly smaller footprints. They noted that the presence of a tower site on the agencies' land precludes the use of the immediate and potentially surrounding land, for other uses. The scenic amenity is also drastically impacted by communications towers, which significantly compromises the conservation and recreation values of the surrounding area. The land management agencies also noted that the recommendation poses practical challenges, for example with the APZ.⁸⁴

6.2.3 Final recommendations reflect recent market data and provide appropriate incentives for new sites

As discussed in Chapter 5, we recommend that the Sydney and High categories be combined, and have removed rooftops from our private market data. These two changes reduced the rent per square metre for sites currently in 'Sydney' and increased the median site size. In addition we are recommending the introduction of Remote and Very Remote categories.

⁸³ Axicom, Submission to Draft Report, September 2019, pp 12-13.

⁸⁴ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, pp 9-10.

This also allows the rents for all new sites – for existing technology as well as emerging technologies such as 5G mobile telecommunications - to be set according to the same rent schedule. However rent for rooftops should be able to be negotiated (this is discussed further in Chapter 9).

As mentioned, several stakeholders raised concerns regarding APZ around sites. The NSW RFS Practice Note on *Telecommunication Towers in Bush Fire Prone Areas* recommends a 10 metre APZ from the tower/ building/ infrastructure associated with the tower. The APZ must be free of surface fuel and elevated fuel and should have minimum canopy.⁸⁵

We consider that the APZ should **not** be included in the calculation of the primary user's site. While the APZ is required due to the tower (impactor), and serves to protect the tower as well as the wider area (beneficiaries), access is not restricted. That is, the users of the tower do not have exclusive rights to the APZ as they generally do for a fenced compound.

Furthermore, the median land sizes used to calculate the rent per square metre for each location category are based on the area leased in our private market data sample, and do not include a buffer or APZ.

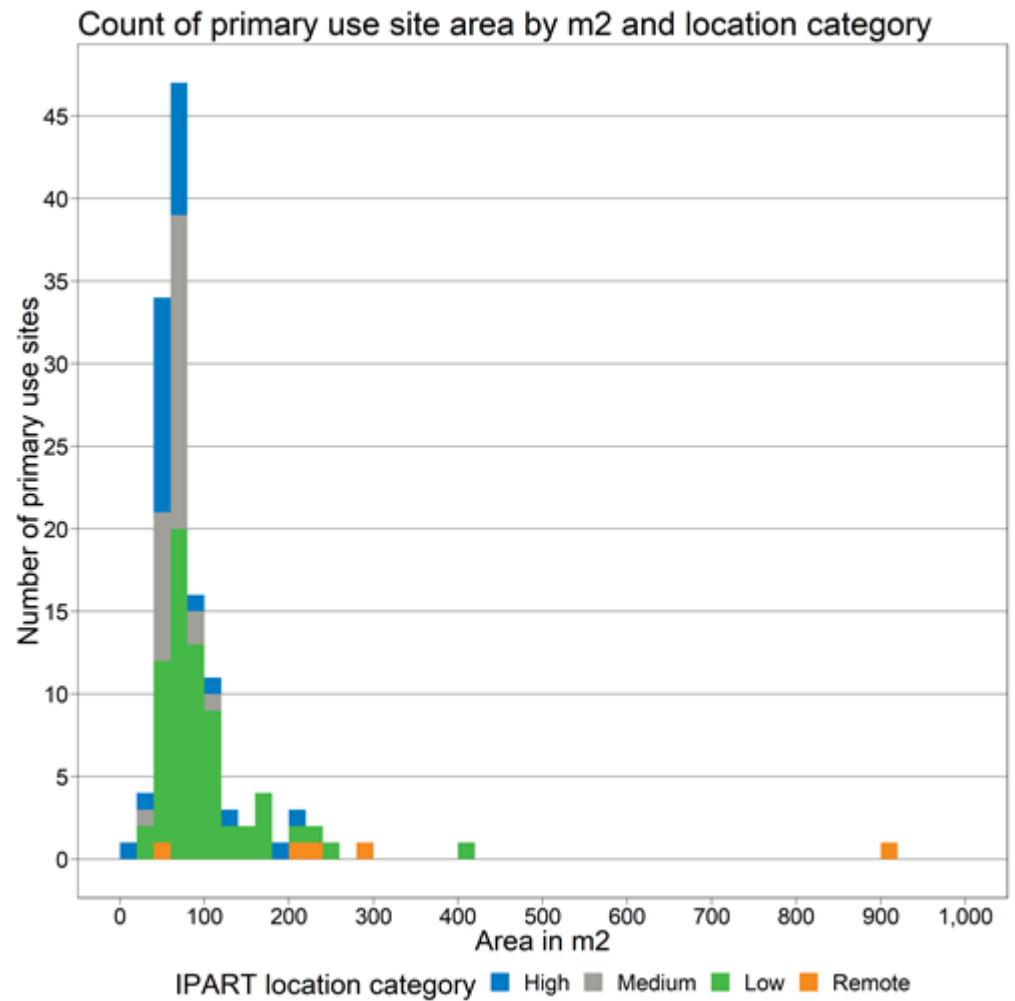
Figure 6.1 shows the land size for sites in our private market sample. The median plot sizes are:

- ▼ High 60 m²
- ▼ Medium or 67 m²
- ▼ Low 83 m²
- ▼ Remote 294 m².

We calculated the recommended rates shown in Table 6.1 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. As mentioned in Chapter 5, for Very Remote sites we have set the rent at the minimum annual rent to occupy Crown land. This would apply to both existing and new sites in Very Remote locations.

⁸⁵ NSW Rural Fire Service, Community Resilience Practice Notes 1/1, Telecommunication Towers in Bush Fire Prone Areas, at https://www.rfs.nsw.gov.au/_data/assets/pdf_file/0012/4314/Practice-Note-1-11-Telecommunications-Towers-in-Bush-Fire-Prone-Areas.pdf accessed on 27 September 2019.

Figure 6.1 Site area for primary users in private market sample



Note: There are three sites larger than 1,000m² not shown. These include one low site and two remote sites.

Data source: IPART analysis

We do not consider it appropriate to set a cap on the rent for new sites as suggested by Axicom. We recommend setting rent per square metre 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 square metre using the median of the land size m² from our private market sample. As discussed in Chapter 5, primary users on existing sites would continue to be charged a flat rate for their site regardless of size and are therefore not affected by the change in rent setting methodology.

7 Rental arrangements for SCAX sites

After deciding on a rent schedule for existing and new sites, next we considered what arrangements to apply to 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 recommendations regarding SCAX sites, and then discuss stakeholder submissions and our analysis in more detail.

7.1 Overview of final recommendations

We recommend that the rent schedule only apply to SCAX sites with a communication tower, and not the majority of SCAX sites that do not have a tower. This is a change from what we recommended in our Draft Report.

For SCAX sites with a tower, we recommend the same rent as for existing primary users, as shown in Table 5.1 (\$10,900 in Low, \$3,400 in Remote, and the minimum rent to occupy Crown land in Very Remote locations). If a new SCAX site with a tower is established we recommend the same rent per square metre as for new sites be payable, as shown in Table 6.1.

The rent for SCAX sites which do not have a communication tower should be considered as part of an independent review of all commercial tenures on Crown land. We found that the rents for many of the alternative uses of Crown land reflect historical arrangements and do not necessarily provide market-based, commercial returns. In the interim, we recommend they be charged no more than currently, and for Very Remote locations the minimum rent to occupy Crown land be payable in line with recommendation 1.

Final recommendations

- 7 That for existing Small Country Automatic Exchange (SCAX) sites with a tower, the land management agencies implement the schedule of rents for all primary users on existing sites shown in Table 5.1, where rent per site varies by location.
- 8 That the NSW Government undertake an independent review of all commercial tenures on Crown land to ensure that they generate commercial, market-based returns.

Only SCAX sites with a tower should be subject to the rental arrangements for communication towers on Crown land

-
- 9 That the rent for existing SCAX sites without a tower be considered as part of the independent review of all commercial tenures on Crown land. In the interim:
 - rent for existing SCAX sites in without a tower should be no more than current levels, and
 - rent for SCAX sites without a tower in Very Remote locations should be the minimum rent to occupy Crown land.
 - 10 That if a new SCAX site with a communication tower is established, the land management agencies implement the schedule of rents shown in Table 6.1, where rent per site varies by location and land size.

7.2 Rent schedule to only apply to SCAX sites with a tower

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 land managed by Crown Lands, and four managed by Forestry Corporation). 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, Crown Lands has applied a rent waiver so that the rent payable is equivalent to SCAX sites in low locations after the rebate.

7.2.1 Stakeholders did not support our Draft Recommendations for SCAX sites

In our Draft Report we recommended that the rent for all SCAX sites be set on the same rent per square metre as new sites; capped at the flat rate for primary users on existing sites in the same location category. In the Draft Report we estimated SCAX sites on Crown land were on average 35m² which would result in average rents of \$4,340 in \$2020-21, about \$1,024 more than the current rent after the rebate is applied.

In response to the Draft Report, Telstra provided further information on the size of its SCAX sites. It estimated that average SCAX site occupies over 200 m². It submitted that if the rent for SCAX sites is calculated based on land size, the impact will be much greater than we estimated.⁸⁶

⁸⁶ Telstra Corporation Ltd, Submission to Draft Report, September 2019, p 8.

The Mobile Carriers Forum has consistently argued that the inclusion of SCAX sites in this review (and the last IPART review) is inappropriate. While they are part of the ‘fixed’ network and in most cases necessary under Telstra’s Universal Service Obligation (USO), they do not usually have a tower or monopole. As such, it was argued SCAX sites should not be included in this review.⁸⁷

The land management agencies do not support the calculation of any rents based on land size. The agencies consider that the only relevant basis for differentiating SCAX sites from tower sites is the nature of the services they provide - that is, fulfilment of USOs. However, if a fee structure based on land size is adopted, the agencies do not support any method that caps rents, noting “it is not commercial market practice to cap rents if a Licensee is paying on a per square metre rate”.⁸⁸

7.2.2 Only SCAX sites with a tower should be subject to the communication towers rent schedule

In response to further information on the size of SCAX sites, and having considered the nature and extent of the use of the land on these sites, we have modified our draft recommendations.

A small number of SCAX sites have a tower. The remaining sites generally consist of a shed with equipment connecting remote customers with the local exchange via cable or optical fibre.

To reflect the different nature and extent of the use of the land for these sites, we are recommending that the rent schedule only apply to SCAX sites with a tower, and not SCAX sites that do not have a communication tower.

As noted in Chapter 4, the land management agencies provide tenures for a wide ranges of uses of Crown land in addition to communication towers. We found that the rents for many of these alternative uses reflect historical arrangements and do not necessarily provide market-based, commercial returns. In some cases users pay more rent than communication tower sites while in many others they pay the minimum rent set under the *Crown Land Management Regulation 2018*.

We recommend an independent review of all of the land management agency’s commercial tenures to ensure that these uses generate commercial, market-based returns for the State. We consider that the rent for non-tower SCAX sites should be included in this independent review. In the interim, the rent for these non-tower SCAX sites should be no more than existing rents

⁸⁷ Mobile Carriers Forum, Submission to Draft Report, September 2019, p 6.

⁸⁸ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 10.

after the current rebate is applied,⁸⁹ and for SCAX sites in Very Remote locations, we recommend that the minimum rent to occupy Crown land be payable.

For the SCAX sites with a tower, we are recommending they pay the same rent as existing primary users (in \$2020-21 this is \$10,900 in low density locations, \$3,400 in remote, and \$508 in very remote locations).⁹⁰ The current rent for a SCAX site net of the telephony service provider rebate is \$3,248 in \$2019-20 (\$3,316 in \$2020-21), payable for all 72 SCAX sites.

Given the rollout of the nbn, and increased mobile phone coverage, it is unlikely that new SCAX sites will be required. However, in the event a new SCAX site with a tower was established, we recommend that they be charged on the same \$/m² by location basis as new primary user sites (Table 6.1).

⁸⁹ The current fee net of the rebate is \$3,248 (\$2019-20) which is equivalent to \$3,316 in \$2020-21.

⁹⁰ We note that there are some SCAX sites in High and Medium density locations, however our analysis indicates that these are non-tower SCAX sites.

8 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.⁹¹

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

Co-users should only pay rent for any additional land they occupy. Co-users within a primary user's site pay no annual rent

8.1 Overview of final 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 wholly within the fenced area of the primary user's site, we recommend that no annual rent be charged. This is a change from our Draft

⁹¹ IPART, *Review of rental arrangement for communication towers on Crown land* - Draft Report, April 2013, p 51.

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

Report where we made a draft recommendation that these co-users pay the minimum rent to occupy Crown land, estimated at \$508 in 2020-21.⁹²

To cover the land management agencies' costs of approving each new co-user at a site we consider it is reasonable that a one-off application fee be payable, and that this should be set at 50% of the current primary user application fee.⁹³

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 anticipated 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 square metre 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) no annual rent be payable for sites. Similar to our recommendation for co-users, this is a change from our Draft Report.

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.

Final recommendations

- 11 That no annual rent be payable for co-users wholly located within the primary user's site.
- 12 That co-users on existing and new sites be charged for any additional Crown land they occupy outside the fenced perimeter of the primary user's communication tower site on the per square metre basis as shown in Table 8.1.

⁹² 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.

⁹³ The current application fee is \$493, NSW Government, Communications licence fact sheet, June 2019, at https://www.industry.nsw.gov.au/_data/assets/pdf_file/0016/143521/Developing-communication-facilities-on-Crown-land-fact-sheet.pdf accessed on 26 September 2019.

Table 8.1 Recommendation on annual rents for co-users and small cell technology with additional land footprint from 1 July 2020 (\$2020-21, ex-GST)

	High	Medium	Low	Remote	Very Remote
Rent per m ²	282	224	131	12	na
Co-user rent per site	Varies with additional footprint	Varies with additional footprint	Varies with additional footprint	Varies with additional footprint	Minimum rate \$508

- 13 That the co-user rent for existing sites be capped at the flat rent per site for primary users on existing sites in the same location category.
- 14 That new co-users of a site pay a one-off application fee equal to 50% of the primary user application fee.
- 15 That the rent for small cell technology occupying additional Crown land be set on the per square metre basis as shown in Table 8.1.
- 16 That no annual rent be payable for small cell technology installed on existing poles or structures on Crown land and which have no additional footprint.
- 17 That a one-off application fee equal to 50% of the primary user application fee be payable for small cell technology installed on Crown land.

8.2 Most users considered co-user rents should be abolished

In this and our previous reviews, users have strongly opposed co-user rents, and considered that it amounts to double dipping.⁹⁴ They have 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.

Users generally supported the approach to co-user rents proposed in our Draft Report, albeit with qualifications. However the land management agencies opposed our draft recommendations regarding co-user rents.

The sections below discuss the issues raised by stakeholders.

8.2.1 Most users argued that co-user rents are not common commercial practice

In this and our previous reviews, stakeholders have argued 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, in its

⁹⁴ Commercial Radio Australia, Submission to Issues Paper, April 2019, p 9; and TX Australia, Submission to Issues Paper, April 2019, p 5.

submission to our Issues Paper, 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.⁹⁵

Also in response to our Issues Paper, the Mobile Carriers Forum submitted 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.⁹⁶

The recommendations in our Draft Report aimed to better reflect commercial market practice and users were generally supportive of our proposed approach to co-user rents.⁹⁷ The NSW Telco Authority supported co-users being charged for additional land on new sites, but noted its market experience suggests rates lower than those proposed may be appropriate.⁹⁸

However a number of users queried the requirement for co-users located wholly within the primary user's site to pay the minimum rent. For example, CRA stated

The primary user already pays the Crown the full rent and no additional rent should be charged to co-users, who are in effect sub-lessees of the primary user.

While CRA appreciates that the Crown Land Management Act 2016 requires that annual rent cannot be less than the minimum rent, CRA's view is that this requirement is met by the provision of rent to the Crown by the primary user and therefore no additional rent is needed from co-users.⁹⁹

Similarly the MCF and Optus considered the (minimum) rental should be set at \$1.00 to reflect zero opportunity cost to the Crown for the co-user occupation wholly within the primary user's compound.¹⁰⁰ Broadcast Australia also considered there should be no charge for co-user and that it is standard market practice in the property sector that a co-user (sub tenant) does not pay rent to the head lessor if they do not have an exclusive lease area.¹⁰¹

A number of stakeholders supported capping co-use rents at the flat rate per site for primary users on existing sites in the same location category.¹⁰²

⁹⁵ Free TV Australia, Submission to Issues Paper, April 2019, pp 6-7.

⁹⁶ Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 11 and pp 13-14.

⁹⁷ For example, Free TV, Submission to Draft Report, August 2019, p 1; Commercial Radio Australia, Submission to Draft Report, August 2019, p 4; and ARCIA, Submission to Draft Report, August 2019, p 1.

⁹⁸ NSW Telco Authority, Submission to Draft Report, September 2019, p 4.

⁹⁹ Commercial Radio Australia, Submission to Draft Report, August 2019, p 4.

¹⁰⁰ Mobile Carriers Forum, Submission to Draft Report, September 2019, p 7; and Optus, Submission to Draft Report, September 2019, p 9.

¹⁰¹ Broadcast Australia, Submission to Draft Report, September 2019, p 7.

¹⁰² For example, nbn, Submission to Draft Report, August 2019, p 4; and Community Broadcasting Association of Australia, Submission to Draft Report, September 2019, p 2.

Others, while supporting proposed changes to co-user fees, sought greater clarification on defining the perimeter of the primary user's site and co-users' footprint.¹⁰³

8.2.2 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.¹⁰⁴ We consider this is unlikely to be the case as our recommended changes to co-user rents should further encourage the sharing of sites.

8.2.3 Land management agencies considered current co-user rents to be fair and reflective of land use intensity and oppose the recommended changes in co-user rents

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).¹⁰⁵

The land management agencies opposed the recommended changes in co-user rents and consider there is insufficient market evidence in our published dataset to justify this recommendation, "which is a significant departure from the long-standing practice, initiated by IPART, of charging co-users 50% of primary user fees".

The land management agencies also considered that our recommendations on co-user rents do not achieve the terms of reference to develop a fee schedule that is as cost reflective as possible. The minimum statutory rent is not cost reflective of the expenses incurred by the agencies in hosting co-users. Managing co-users is administratively and operationally costly for a number of reasons:

- ▼ Agencies have to deal with additional users, as well as contractors for these users.

¹⁰³ For example, NSW Rural Fire Service, Submission to Draft Report, September 2019, pp 1-2; and nbn, Submission to Draft Report, August 2019, p 4.

¹⁰⁴ Telstra, Submission to Issues Paper, April 2019, pp 7-8.

¹⁰⁵ NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, p 10.

- ▼ Managing site access by multiple entities and their various contractors is resource-intensive – especially when gates are left open or locked and the agency has to respond.
- ▼ Each new co-user and facility upgrade at a site requires an environmental assessment under the EP&A Act, as well as operational oversight and management by the agencies.¹⁰⁶

In the absence of strong market evidence to the contrary, the agencies maintained that co-user fees of 50% are appropriate to reflect:

- ▼ Intensity of land use by all users (primary and co-users)
- ▼ Obligations on the agencies under their respective legislation to manage the use of the land sustainably
- ▼ The attractiveness of the site - including any distinctive characteristics and that it is already used for telecommunications infrastructure. The agencies contend that this attractiveness is not driven purely by the primary user's infrastructure.¹⁰⁷

The land management agencies did not support a pricing framework that involves calculation of licence fees by reference to the land occupied. They considered the proposed arrangement is not consistent with the terms of reference as it does not meet the objective of a fee schedule as simple and transparent as possible. They argued that the proposed arrangement will be resource intensive and difficult to administer for both the agencies and users as the agencies will need to collect and record detailed information, potentially through surveys, about the land size occupied.¹⁰⁸

The land management agencies also queried the intent of our recommendation to cap co-use rents at the flat rate per site for primary users on existing sites, and considered there is no market justification for any cap.¹⁰⁹

8.3 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. The sections below discuss

¹⁰⁶ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, pp 10-12.

¹⁰⁷ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, pp 10-12.

¹⁰⁸ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, pp 10-12.

¹⁰⁹ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, pp 12-13.

arrangements in the private market and options we considered for setting rents for co-users of communication tower sites.

8.3.1 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 more than the applicable current co-user schedule rent for Crown land, and this is generally more than 50% of the primary user's rent in the private market.¹¹⁰

8.3.2 Co-users on Crown land should pay for additional land, but should not otherwise pay annual 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 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.

¹¹⁰ In \$2020-21.

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.¹¹¹

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.

We agree with arguments that the minimum rent should not be payable when there is already rent paid to the land management agencies for the same land; that is when co-users are located wholly within the primary user's site. In these cases the rent paid by the primary user meets the requirements of the *Crown Land Management Act 2016* for a minimum rent.

As such, for co-users wholly within the primary user's site, we recommend that no annual rent be charged. This is a change from our Draft Report where we made a draft recommendation that these co-users pay the minimum rent to occupy Crown land, estimated at \$508 in 2020-21.¹¹²

To cover the costs for the land management agencies of approving each new co-user at a site we consider it is reasonable that a one-off application fee be payable, and that this should be set at 50% of the current primary user application fee.¹¹³

8.3.3 Co-users should be charged on per square metre basis for additional land

For co-users with additional land outside the fenced perimeter of the primary user's site we are recommending the rent be levied on a per square metre basis, at the same rate as we are recommending for primary users on new sites from 1 July 2020 (Table 8.1).

The rent for co-users with additional land on existing sites should be capped at the primary user rent for existing sites. To reach this cap, the co-user would

¹¹¹ Information provided by Forestry Corporation to IPART, 9 May 2019.

¹¹² 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.

¹¹³ The current application fee is \$493, NSW Government, Communications licence fact sheet, June 2019, at https://www.industry.nsw.gov.au/__data/assets/pdf_file/0016/143521/Developing-communication-facilities-on-Crown-land-fact-sheet.pdf accessed on 26 September 2019.

need to be occupying the same or greater land size than the median land size used to set rents. We do not anticipate this would be the case for many (if any) sites, however are recommending capping co-user fees to prevent outcomes such as co-user paying more in rent than the primary user which could occur as a result of charging different types of users on different bases. (Namely, existing primary users paying a flat rate and co-users paying rent based on additional land occupied).

On the other hand, charging different users on a different basis could create incentives for the existing primary user to expand their site to accommodate the co-user's equipment without an increased rental fee. As the co-user would then not pay rent to the land management agency, the primary user may be able to extract a higher payment from the co-user. However, we do not consider this would occur for existing sites as it would be likely to involve moving fences and equipment huts. For the avoidance of doubt, for existing sites, the primary user's compound should be defined as its fenced area as at 1 July 2020. Areas outside the primary user's perimeter fence occupied by co-user assets define the co-user's footprint.

As we are recommending that the rents for primary users and co-users for *new* sites be set on the same 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.

For co-users with additional land on Very Remote sites we recommend the minimum annual rent to occupy Crown land be payable.

To clarify the above point, the infrastructure provider's rent (as with any primary user) is limited to the area occupied by their fenced compound. As discussed in Chapter 8, for existing sites, these areas will need to be defined (by the land management agencies and the relevant users) before the new rent schedule is implemented so that it is clear whether the co-users are accommodated wholly within the primary user's site or not.

In developing our recommendations for co-user rents we also considered setting the dollar per square metre 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 square metre, the smaller the primary user's site.

8.4 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.¹¹⁴

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.¹¹⁵

In its submission to our Issues Paper, Optus argued that our review should consider the extent to which our recommendations would apply to all types of communication towers, not just large macro-cell towers, noting the particular importance due to the current investment in new 5G networks which require a fundamentally different architecture than required under previous mobile generations. For example, 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.¹¹⁶

The existing 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.

In our Draft Report we recommended that:

- ▼ Rents for small cell technology be based on their additional land footprint only, and be calculated on the same per square metre 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.

In the sections below we discuss the stakeholders' responses to these draft recommendations, and our final recommendations for small cell technology.

8.4.1 Users generally supported the approach for small cell technology, but were concerned about the rate in Sydney

Optus supported the principle that rents for these sites should be based on the land they occupy only, consistent with the legal non-discrimination

¹¹⁴ ACMA, *A Guide to small cells*, at <https://www.acma.gov.au/theACMA/a-guide-to-small-cells> accessed 4 June 2019.

¹¹⁵ 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.

¹¹⁶ Optus, Submission to Issues Paper, April 2019, pp 8-9.

obligations. However they considered the rate per square metre excessive, particularly for the 'Sydney' category, and were concerned that it would set the precedent for other land owners or managers, for land that will in most cases be occupied will be a light pole, or transmission pole located on a road reserve managed by a council or RMS. Optus questioned the commercial value of that land, given it cannot be sold, cannot be developed, such that its 'highest and best use' as a road reserve.¹¹⁷

The NSW Telco Authority also noted the concerns raised by carriers who will be required to make significant investment in small cell infrastructure, and cautioned the proposed fees require further consideration in regard to the 'implied benchmark' they may incidentally establish for non-Crown land sites.¹¹⁸

8.4.2 Users suggested there should be no minimum rent for sites with no footprint

Similar to the arguments regarding co-users with no additional footprint, Optus suggested that unless all other utility occupiers of land pay this minimum fee, then such a charge could be deemed to be discriminatory to carriers. "If no land is being occupied, it would appear the minimum rent represents a fee for 'air space'." If no land is being occupied, Optus considers that the carrier should only deal with the infrastructure owner.¹¹⁹ Similarly, Broadcast Australia suggests no charge should be levied.¹²⁰

The Mobile Carriers Forum agrees with the approach for small cell technology with no additional footprint, but that the minimum rental should be set at \$1.00 to reflect zero opportunity cost to the Crown.¹²¹

8.4.3 The land management agencies agreed that small cells should be charged less, but rent should not be based on land size or the minimum rent

The agencies agreed that lower fees for small cell technology is appropriate as the range of such cells is significantly smaller than 4G sites. It is expected that small cells will typically be erected on street/light poles, buildings and advertising structures rather than on towers or masts. However the nature and extent of the use of land for such sites is not well understood - such as the need for supporting equipment and power connections. Due to this, and the lack of a clear market rent basis, the agencies did not support a fee based on the minimum rent. The agencies considered that for small cell technology

¹¹⁷ Optus, Submission to Draft Report, September 2019, p 9.

¹¹⁸ NSW Telco Authority, Submission to Draft Report, September 2019, p 5.

¹¹⁹ Optus, Submission to Draft Report, September 2019, p 10.

¹²⁰ Broadcast Australia, Submission to Draft Report, September 2019, p 7.

¹²¹ Mobile Carriers Forum, Submission to Draft Report, September 2019, p 7.

only a flat rate fee per location area may be appropriate but this requires further examination of market data.¹²²

8.4.4 Rent for small cells should be payable for additional land only

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 square metres basis for the applicable location category. For 2020-21 this would be \$282/m² in High density locations; or the minimum annual rent to occupy Crown land whichever is higher. The reduced rate per square metre from the Draft Report is the result of additional data, the removal of rooftop sites and the merging of the Sydney and High density locations.

For small cells installed on existing poles or structures with no additional footprint, we are recommending that no annual rent be payable. Similar to our recommendation for co-users, this is a change from our Draft Report. Rather the owner of the structure (for example, the light pole) would charge the user a fee to install their equipment on the structure. In many cases the owner of the structure would also be the landowner/manager.

As with co-users, we consider a one-off application fee should be payable to cover the costs for the land management agencies of approving the installation of small cell technology on Crown land. Consistent with our recommendation for co-users we recommend this application fee should be set at 50% of the current primary user application fee.

It's likely that small cells are more likely to be installed on land managed by councils or the RMS rather than the three land management agencies subject to our review. Therefore, we anticipate the impact of our recommendations will mostly be as a benchmark for small cell technology.

¹²² Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 13.

9 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 Draft Report we recommended that the rent for all communication sites on Crown land be set according to the rent schedule, as the current arrangements for site-by-site negotiation have not been widely adopted, and where they have, they have not been used as intended. We did recommend however, that NPWS's practice of setting its rents one location category higher than the site's actual location, to reflect the social, environmental and cultural values of national park land be allowed to continue.

Our Draft Report also recommended that the discount for infrastructure providers not be reinstated.

The sections below outline our final recommendations on these issues, then discuss stakeholder submissions and our analysis in more detail.

9.1 Overview of final recommendations

We recommend that the rent for all communication tower 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 Crown Lands 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.

However, we are recommending a change to our Draft Report to allow for the site-by-site negotiation of rent for rooftop communication sites. As discussed in Chapter 5, we have removed rooftop sites from the calculation

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.

of the rents. In locations where rooftop communication sites exist there are alternative sites available, and thus workable competition for such sites.

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.

Final recommendations

- 18 That the rents for all communication tower sites on Crown land be set according to the rent schedule for the relevant location category.
- 19 That the NSW National Parks and Wildlife Service (NPWS), continue to set the rent for sites in national parks one location category higher than the site's actual category.
- 20 That the rent for communication sites on rooftops be set by negotiation between the land management agency and the site user.
- 21 That infrastructure providers not receive a rental discount for communication sites on Crown land.

9.2 Rents for communication towers should be set according to the schedule

On the whole, users do not support the current arrangements which allow for negotiation of the rent for high value sites. This includes the practice by NPWS to set its rent one location category higher than the site's actual location.

These views are discussed in more detail below.

9.2.1 Users agreed 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.¹²³ 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.¹²⁴

¹²³ For example, Mobile Carriers Forum, Submission to Issues Paper, April 2019, pp 14-15; and Axicom, Submission to Issues Paper, April 2019, p 19.

¹²⁴ 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.¹²⁵
- ▼ Telstra, which submitted that there should be a single consistent methodology for determining rents for Crown land.¹²⁶
- ▼ 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 Telecommunications Act and should not continue.¹²⁷

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 considered 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.”¹²⁸

These views were reflected in users’ responses to our draft recommendations, which were consistent in supporting the removal of the option for rent to be negotiated for high-value sites.¹²⁹ As the NSW Telco Authority noted, this has been an unused, and therefore redundant category since IPART's previous review.¹³⁰

9.2.2 Users disagreed with NPWS policy to set rents one location category higher

However, users were also consistent in their disagreement with our draft recommendation for NPWS to continue to set its rents one location category higher.

¹²⁵ TX Australia, Submission to Issues Paper, April 2019, p 6.

¹²⁶ Telstra, Submission to Issues Paper, April 2019, p 10.

¹²⁷ nbn, Submission to Issues Paper, April 2019, pp 12-13.

¹²⁸ Broadcast Australia, Submission to Issues Paper, April 2019, p 18.

¹²⁹ For example, nbn, Submission to Draft Report, August 2019, p 4; Mobile Carriers Forum, Submission to Draft Report, September 2019, p 7; and Broadcast Australia, Submission to Draft Report, September 2019, p 8.

¹³⁰ NSW Telco Authority, Submission to Draft Report, September 2019, p 5.

For example, ARCIA states:

“We fail to see any factors that provide justification for either the initial decision by NPWS to do this, or for the tribunal to give tacit approval for this to continue. There is no reason for there to be any difference in rental charges for NPWS locations than any other Crown Lands, the justification is simply based on a determination without evidence or method of appeal.

There are no factors involved that would bring concerns to the utilisation of the area by the public, nor that would diminish the recreational enjoyment of the areas involved, in fact the opposite is the case as utilisation of the lands for communications facilities will add to the control and management of the lands and to the safety of users. The provision under the relevant NPWS legislation that any alternate site outside of NPWS land must be used if available by default indicates that any sites on NPWS Land are the only sites available. This then leads to rentals being set in a quasi-monopoly situation, this is not the intent of the relevant legislation.¹³¹

Both Telstra and the NSW Telco Authority considered that our draft recommendation is at odds with our terms of reference, as it doesn’t reflect fair, market-based commercial returns, rather values not included in our terms of reference.¹³² Telstra also argued that we had not assessed the impact of NPWS’ approach under the Telecommunications Act sch 3 cl 44.¹³³

Axicom consider that “the unilateral decision by the NPWS to increase all of its rents by one category higher is a clear example of discrimination against the owners of communication sites unless it can be established that a similar increase exists for other commercial users of land owned by NPWS, and that IPART should be asking whether all commercial users of National Parks land pay an increased rate of rent (in some cases double) to reflect the 'social, cultural and environmental values' of National Park land.”¹³⁴

9.2.3 The land management agencies considered that the ability to negotiate high value sites should be available

The land management agencies considered that the same characteristics that make a site of higher value may increase the likelihood that there will be co-users at the site, noting that in IPART’s 2005 report the current number of users were a criteria to identify which sites are high value. As co-users fees have previously been set at 50% of the primary user fee for the site, the land management agencies argued there was less imperative to negotiate the rent for high value sites. “Although not widely utilised it remains a possibility that an iconic site or a site with highly sensitive environmental or commercial values may require specific negotiation to allow the agencies to protect and

¹³¹ ARCIA, Submission to Draft Report, August 2019, p 2.

¹³² NSW Telco Authority, Submission to Draft Report, September 2019, pp 5-6; and Telstra Corporation Ltd, Submission to Draft Report, September 2019, pp 9-10.

¹³³ Telstra Corporation Ltd, Submission to Draft Report, September 2019, pp 9-10.

¹³⁴ Axicom, Submission to Draft Report, September 2019, p 15.

sustainably manage Crown land to the benefit of the entire NSW community”.¹³⁵

Regarding NPWS’s approach, the land management agencies argued that in the absence of market evidence for telecommunications infrastructure on conservation land or a detailed assessment of the Total Economic Value, the one-up approach is an appropriate approximation given the objective of achieving a fee schedule that is simple to apply.¹³⁶

9.2.4 Rooftop sites should be set by negotiation

We continue to 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, as discussed in Chapter 5, we are recommending that the Sydney and High density location categories be combined; and have removed rooftop sites from our dataset and the calculation of the rents. We are not recommending rents for rooftop sites, and we note that there are very few rooftop sites on Crown land administered by the three land management agencies subject to our review.

We recommend that the rent for rooftop sites be set by negotiation. In many locations where rooftop communication sites exist, there are alternative sites available and thus workable competition to host communication sites.

We maintain our recommendation that NPWS 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. Further, we do not consider that our recommendation discriminates against carriers, because it applies **equally** to all users of Crown land for communications towers. See Chapter 4 for more detail.

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.¹³⁷

However, as there is no longer a ‘Sydney’ category, the maximum rent that could be applied to any site would be the rate for high density locations. As

¹³⁵ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 13.

¹³⁶ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 14.

¹³⁷ *National Parks and Wildlife Act 1974* (NSW) s153D 4(a).

such, low density NPWS sites would pay the 'medium' rent; and medium and high density locations would pay the 'high' rent.¹³⁸

9.3 The infrastructure provider discount should not be reinstated

Infrastructure providers considered that the discount should not have been removed, and have some particular concerns with the recommended rent schedule. In addition, some co-users also supported 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, did not consider that infrastructure providers should be treated differently.

9.3.1 Infrastructure providers support the discount and seek clarification regarding the proposed rent schedule

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.¹³⁹

In response our Draft Report, Axicom submitted that its position regarding the infrastructure provider discount varied for new and existing sites, *if there was a cap on the primary user rent for new sites*.¹⁴⁰ However, we are **not** proposing there be a cap on the rent payable by primary users for new sites. They would pay for the land occupied at the applicable rate. Co-users at new sites would be charged for additional footprint only.

Also in response to our Draft Report, Broadcast Australia sought clarification whether rent would be charged for the tower, the entire fenced compound or other co-user assets. They continue to consider that the decision in the 2013 review to phase out the infrastructure provider discount acts as a disincentive to develop infrastructure, and suggest IPART should consider granting the infrastructure providers the same discount level as the co-users.¹⁴¹

To clarify the above point, the infrastructure provider's rent (as with any primary user) is limited to the area occupied by their fenced compound and does not include additional areas outside the perimeter fence occupied by co-

¹³⁸ There are currently no NPWS sites in Remote or Very Remote locations.

¹³⁹ Axicom, Submission to Issues Paper, April 2019, p 17.

¹⁴⁰ Axicom, Submission to Draft Report, September 2019, pp 13-14.

¹⁴¹ Broadcast Australia, Submission to Draft Report, September 2019, pp 8-9.

users' assets. As discussed in Chapter 8, for existing sites, these areas will need to be defined (by the land management agencies and the relevant users) before the new rent schedule is implemented so that it is clear whether the co-users are accommodated wholly within the primary user's site or not.

9.3.2 Other stakeholders considered 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 same purpose – to construct, own and operate towers – and both are permitted to host co-users on the site.¹⁴²

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 considered such a discount targets characteristics of the lessee rather than of the land being leased.¹⁴³

The land management agencies supported 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 considered 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.¹⁴⁴

9.3.3 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.¹⁴⁵

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.

¹⁴² TX Australia, Submission to Issues Paper, April 2019, p 5.

¹⁴³ Telstra, Submission to Issues Paper, April 2019, p 10.

¹⁴⁴ NSW Department of Industry, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Issues Paper, April 2019, pp 10-11.

¹⁴⁵ IPART, *Review of rental arrangement for communication towers on Crown land* - Final Report, July 2013, pp 52-53.

Discount for infrastructure providers should not be reinstated

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.

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 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.

10 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 final recommendations regarding rebates for eligible users, and then discuss stakeholder submissions and our analysis in more detail.

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.

10.1 Overview of final recommendations

While many 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 the activities of 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 recommend financial assistance and transitional arrangements for these users.

However, for many users removal of their rebate would be offset by our recommendations on co-user rents discussed in Chapter 8.

Final recommendations

- 22 That the current rebates for Community Groups, Budget Funded Sector, Local Service Providers, and Telephony Service Providers be removed.
- 23 That the NSW Government provide on-going financial assistance to those community groups adversely impacted by our recommendations. Initially this financial assistance should be administered and funded by the respective land management agency for a period of up to three years. Beyond this period, subsidies to access communication sites on Crown

land should form part of the total Government assistance that the community group receives, and be funded as an additional grant by the applicable Government agency responsible for this assistance.

- 24 Those local service providers adversely impacted by our recommendations should be able to apply for transitional financial and business advisory assistance from the NSW Small Business Commissioner for a period of three years.

10.2 Stakeholders previously had mixed views regarding rebates

Some stakeholders have previously argued that the fact carriers are not able to receive rebates, regardless of any external benefits a particular site may generate, amounts to discrimination.¹⁴⁶ And other stakeholders have argued that the categories and eligibility should be widened, particularly to reflect the positive externalities generated by different users.¹⁴⁷ Others 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.¹⁴⁸

In our Draft Report we recommended that the current rental rebates be removed to 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.

The removal of rebates was strongly opposed by stakeholders, including the land management agencies. The following sections discuss these arguments in further detail.

10.2.1 Some carriers considered the external benefits they generate should be reflected in their rent

In response to our Issues Paper, 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

¹⁴⁶ For example, Vodafone, Submission to Issues Paper, April 2019, p 1.

¹⁴⁷ 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.

¹⁴⁸ TX Australia, Submission to Issues Paper, April 2019, p 5.

flow from mobile services, and consider rates below the opportunity cost of the land.¹⁴⁹

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.¹⁵⁰

10.2.2 Other stakeholders argued the eligible user categories should be expanded

Digital Distribution Australia¹⁵¹ 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.¹⁵²

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.¹⁵³

10.2.3 Community Groups strongly opposed the removal of the rent rebate

Community Groups such as the NSW Volunteer Rescue Association (NSW VRA), Marine Rescue (MRNSW), the NSW Rural Fire Service (NSW RFS), and several amateur radio cooperatives strongly opposed our draft recommendation to remove the rebate they currently receive and considered that the potential of financial assistance was not an appropriate and secure alternative. For example:

- ▼ MRNSW and NSW VRA both considered that removing the rebate would impact on their ability to maintain their communications network, particularly for sites where they are the primary user.¹⁵⁴ Similarly, the Citizens Radio Emergency Services Team (CREST) considered that charging them, as a not-for-profit organisation, full rent would mean repeaters would have to be removed.¹⁵⁵

¹⁴⁹ Optus, Submission to Issues Paper, April 2019, pp 6-7.

¹⁵⁰ Free TV Australia, Submission to Issues Paper, April 2019, p 2.

¹⁵¹ Digital Distribution Australia is a regional telecommunications service provider with a network delivering services to underserved rural and regional towns in NSW.

¹⁵² Digital Distribution Australia, Submission to Issues Paper, April 2019, p 4.

¹⁵³ Australian Narrowcast Radio Association, Submission to Issues Paper, April 2019, pp 4 - 5.

¹⁵⁴ Marine Rescue NSW, Submission to Draft Report, September 2019, p 3; and NSW Volunteer Rescue Association Inc, Submission to Draft Report, September 2019, p 2.

¹⁵⁵ Citizens Radio Emergency Service Teams (CREST) Australia, Submission to Draft Report, August 2019, p 2.

- ▼ The NSW RFS and Free TV both opposed the removal of the rebate and maintained that it is an appropriate public policy response to apply a rebate for services that provide a community service.¹⁵⁶
- ▼ A number of users considered that the recommendation for financial assistance did not provide funding certainty and would mean an increased administrative burden.¹⁵⁷
- ▼ The NSW Telco Authority noted the benchmark impact of the IPART rents in establishing private market rents. While removing the rebate for the NSW Budget Funded Sector will not impact the net NSW budget for rents paid on Crown land, it will impact the 'benchmarked' private rentals that they enter into, resulting in considerable increases across the budget funded agencies.¹⁵⁸

The Authority noted that the financial impact of this recommendation on the Critical Communications Enhancement Program (CCEP), which is increasing its number of primary sites, has not been forecasted in the budget out years. Therefore, the Authority considered, this recommendation would require the Government to re-prioritise funding for its communications infrastructure projects to accommodate the increases.¹⁵⁹

The land management agencies also supported continuation of the rebates

The land management agencies pointed out that the terms of reference for the review specifically note that the fee schedule may provide for rebates. Given that the fees recommended by IPART are largely based on the rents paid by the major commercial operators, the agencies considered that it is not appropriate to abolish the existing rebates.

The agencies argued that those who provide communications services to the community for a fee have the ability to set their prices to cover their operating costs; those in the Community Groups and Budget Funded Sector rebate categories do not. Non-profit community groups play a vital role in ensuring the safety of our community. The agencies noted the recommendations for alternative support for these organisations, but considered that these alternative arrangements remain unclear and will be a significant burden on the agencies to develop and implement, with potential to negatively impact services.

¹⁵⁶ NSW Rural Fire Service, Submission to Draft Report, September 2019, p 2; and Free TV, Submission to Draft Report, August 2019, p 2.

¹⁵⁷ For example, St George Amateur Radio Society, Submission to Draft Report, September 2019, p 2; and Community Broadcasting Association of Australia, Submission to Draft Report, September 2019, p 3.

¹⁵⁸ NSW Telco Authority, Submission to Draft Report, September 2019, pp 1-2, p 6.

¹⁵⁹ NSW Telco Authority, Submission to Draft Report, September 2019, pp 1-2, p 6.

The agencies also supported the continued rebate for SCAX sites, on the basis that this infrastructure provides essential telephony services under their Universal Services Obligation.¹⁶⁰

10.3 Rebates to be removed so that all primary users of communication sites pay the same rent in a location

We maintain our view that it is more appropriate for the Government to provide funding for activities which generate positive social or community benefits in excess of their ability to generate revenue from the service provided, rather than to provide rebates.

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

10.4 The impact on users of removing rebates would vary

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 final recommendations on co-user rents discussed in Chapter 8. For others, we are proposing financial assistance and transitional arrangements.

¹⁶⁰ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 15.

10.4.1 For many users the impact of removing rebates would be reduced by our other recommendations

Currently there are 45 different users receiving the community groups rebate. Between them they hold 18 primary use licences and 149 co-use licences. As the majority of community group users are co-users of communication sites, our final recommendation for co-user rents to only apply for additional land outside the primary user's site would lessen the impact of removing their rebate. In effect, community groups with no additional footprint would not pay rent to occupy Crown land.

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 for Community Groups, our final recommendation that co-user rents only apply for additional land outside the primary user's site, is likely to lessen the impact of removing their rebate. 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 final recommendations is further discussed in Chapter 11.

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.

In any case, our final recommendation regarding co-user rents would be likely to lessen the impact of removing the rebate as many of these budget funded agencies may no longer be required to pay rent. Of the 391 licences held by budget funded agencies receiving a rebate, 284 are co-users.

10.4.2 Managing the impact of removing rebates

As discussed above, for some users our recommendation to remove the current rebates would be offset by other recommendations on rent levels and co-user rents. As noted above, many co-users would not pay annual rent to occupy Crown land under our final recommendations to charge co-users on per metre squared basis for additional land only.

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. Also, 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. However, where these users are adversely impacted by our recommendations, we recommended in our Draft Report that:

- ▼ That the NSW Government provide on-going financial assistance to those Community groups adversely impacted by our recommendations.
- ▼ 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.

Ongoing financial assistance for community groups adversely affected by our recommendations is necessary as 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.

However as discussed in section 10.2.3, many users, particularly those currently receiving the community group rebate, do not consider that the proposed financial assistance would be an appropriate alternative.

Therefore, to provide greater certainty and minimal disruption, we are recommending that this financial assistance should be initially administered, and funded by the respective land management agency, for a period of up to three years. Beyond this period, subsidies for the activities of community groups would more appropriately form part of the total Government assistance that the group receives and be funded by the applicable Government agency responsible for this assistance (eg, the Stronger Communities Cluster which provides grants to Marine Rescue NSW, the Volunteer Rescue Association and Surf Life Association NSW¹⁶¹).

As discussed in Chapter 4, it is our view that any subsidies that are provided should be targeted at the point in a transaction where the externality is generated. This is best achieved through increasing the funding to the community group to undertake its activities, rather than reducing its rent.

In response to our recommendation for transitional assistance for local service providers, the NSW Small Business Commissioner estimated that the fully absorbed cost of administering such a program might be in the region of \$5,000 to \$10,000 per applicant, and considered that it may be more

¹⁶¹ NSW Government, Budget Paper 3, 2019-20. For example, in 2019-20 \$9.4 million in 2019-20 (\$37.6 million over four years) to support Marine Rescue NSW to expand its radio network and provide 38 new rescue vessels to improve safety on the State's waterways.

efficient for the land management agencies to remit to the tenant directly an amount that approximately offsets the forecast increase.¹⁶²

However, this would in effect be a continuation of the current rebate for local service providers. We consider that the NSW Small Business Commissioner is best placed to assist local service providers assess different options for accessing communication services (for example, whether a communication tower remains necessary for their local communications, and if so, whether it may be possible to access a tower as a co-user rather than as a primary user).

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 recommendation on rents for co-users would likely lessen the impact of removing the rebates, as many of these budget-funded agencies may no longer be required to pay a rental fee.

¹⁶² NSW Small Business Commission, submission to Draft Report, September 2019.

11 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 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.

New rents to apply from 1 July 2020

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

11.1 Overview of final recommendations

As a package, our 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 for existing contracts from their next renewal or review on or after 1 July 2020. Existing primary user agreements where the lease is renewed would continue to be treated as an existing site for the purposes of the rent schedule.

The new rental arrangements should apply for any new sites or agreements entered into on or after 1 July 2020.

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.

Final recommendations

- 25 That the rents in Table 5.1 apply to all existing communication tower sites on Crown land from the next renewal or review on or after 1 July 2020.
- 26 That the rents in Table 6.1 apply to all agreements for new communication tower sites on Crown land from 1 July 2020.

-
- 27 That the published rent schedule be updated annually by the change in the consumer price index (CPI).
 - 28 That the published rent schedule be subject to an independent review every five years to ensure it reflects fair market based rental returns.

11.2 Transitioning to new rent schedule

In our Draft Report we recommended that the new rent schedule apply to all communication tower sites on Crown land from 1 July 2020.

Most of the stakeholders commenting on this draft recommendation were supportive of changes being implemented on 1 July 2020.¹⁶³ However the land management agencies suggested that the new rates should apply for agreements entered into or renewed after 1 July 2020, or at the next market review opportunity on or after 1 July 2020.

The agencies noted that while the terms of the licence agreements provide for reviews to market or some other mechanism on a periodic basis (most commonly every five years) they do not generally permit a change to licence fees outside of a CPI adjustment except at this specified market review opportunity.¹⁶⁴

In response, we have amended our recommendation to allow for changes in the rent schedule to apply for existing contracts from the next renewal or review on or after 1 July 2020. For clarity, existing primary user agreements where the lease is renewed would continue to be treated as an existing site for the purposes of the rent schedule.

The new schedule should apply for any new sites or agreements entered into on or after 1 July 2020.

11.3 Impacts on different users would vary

For some users, our final recommendations would mean lower rents. These include primary users in existing Sydney, High and Medium, Remote and Very Remote locations, and co-users wholly within a primary user's site. In some cases, the impact of our recommendation to remove rental rebates would be offset by other 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.

¹⁶³ For example, nbn, Submission to Draft Report, August 2019, p 5; Broadcast Australia, Submission to Draft Report, September 2019, p 9; and NSW Telco Authority, Submission to Draft Report, September 2019, p 7.

¹⁶⁴ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 15.

11.3.1 Primary users would pay less in Sydney, High and Medium and Remote locations, but more in Low locations

As discussed in Chapter 5, we are recommending that the rents payable by primary users on existing Crown land sites in Sydney, high and medium, remote and very remote locations be reduced by 55%, 46%, 14%, 59% and 94% respectively, and increased by 32% in low density locations. Table 11.1 shows the rents payable by primary users on existing and new sites, compared to rents payable under the current arrangements in \$2020-21. Figure 11.1 illustrates these changes.

Table 11.1 Impact on primary users of recommended rates for existing and new sites from 1 July 2020 (\$2020-21, ex-GST)

	Sydney ^a	High	Medium	Low	Remote ^b	Very ^b Remote
Current rent schedule	37,304	31,086	17,269	8,289	8,289	8,289
Recommendations for existing sites						
Rent per existing site	16,900	16,900	14,900	10,900	3,400	508
Change in rent per site	-20,404	-14,186	-2,369	2,611	-4,889	-7,781
Change in rent per site	-55%	-46%	-14%	32%	-59%	-94%
Recommendations for new sites						
Rent per m2	282	282	224	131	12	na
Example site size (m2)	60	60	65	85	300	na
Example rent per site	16,920	16,920	14,560	11,135	3,600	508

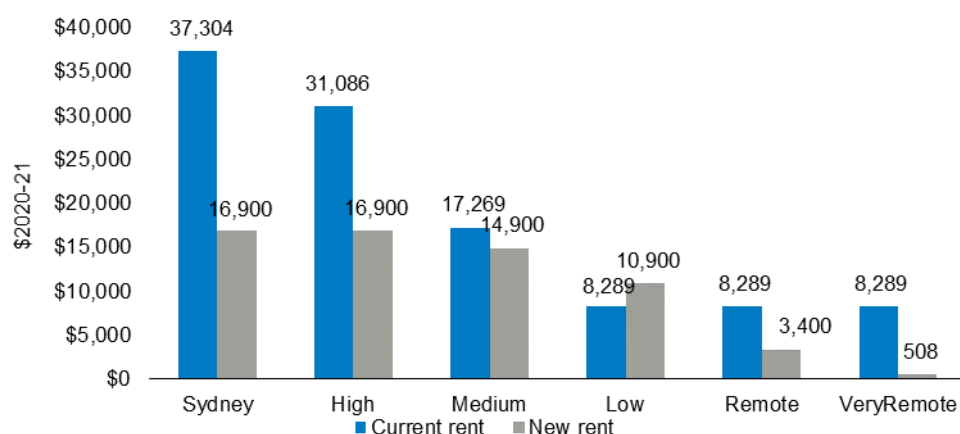
a Sites currently in Sydney will become part of High

b Remote and Very Remote sites are currently classed as Low.

Note: Figures may not add due to rounding.

Source: IPART analysis

Figure 11.1 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

11.3.2 Co-users with no additional footprint would not pay rent, impacts would vary for co-users with additional land

Under our final recommendations we estimate that a high proportion of co-users would not pay annual rent to occupy Crown land.

Table 11.2 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 11.2 illustrates these changes.

The impact on co-users with additional land would vary with the amount of land they occupy.

Table 11.2 Impact on co-users of recommended rates for existing and new sites from 1 July 2020 (\$2020- 21, ex-GST)

	Sydney ^a	High	Medium	Low	Remote ^b	Very ^b Remote
Current rent schedule	18,652	15,543	8,635	4,144	4,144	4,144
Recommendation for co-users with no additional land						
Rent per existing site	0	0	0	0	0	0
Change in rent per site	-18,652	-15,543	-8,635	-4,144	-4,144	-4,144
Change in rent per site	-100%	-100%	-100%	-100%	-100%	-100%
Recommendation for co-users with median additional land						
Example size of additional land (m ²)	30	30	33	43	150	na
Example rent payable	8,460	8,460	7,392	5,633	1,800	254
Change in rent per site	-10,192	-7,083	-1,243	1,489	-2,344	-3,890
Change in rent per site	-55%	-46%	-14%	36%	-57%	-94%

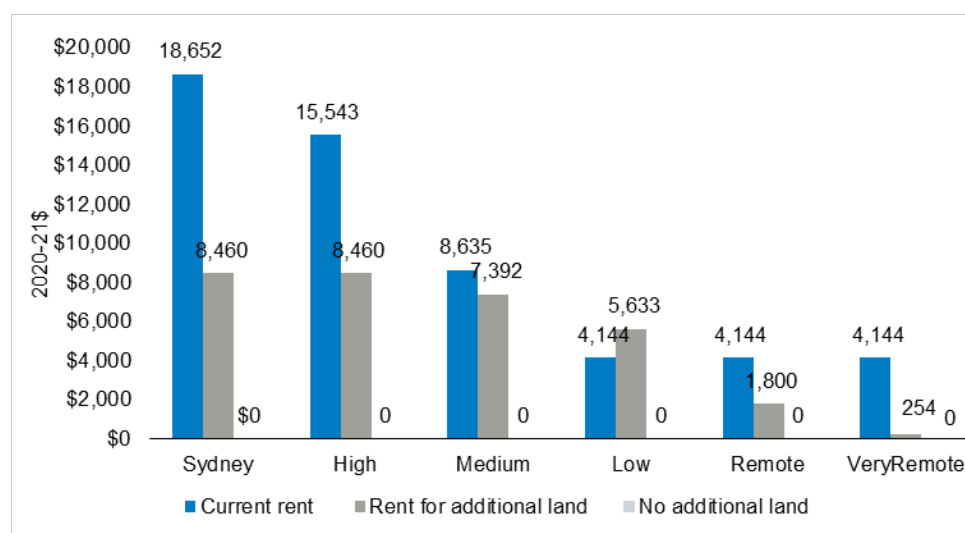
a Sites currently in Sydney will become part of High.

b Remote and Very Remote sites are currently classed as Low.

Note: Figures may not add due to rounding.

Source: IPART analysis

Figure 11.2 Impact on co-users of recommended rates from 1 July 2020 (\$2020- 21, ex-GST)



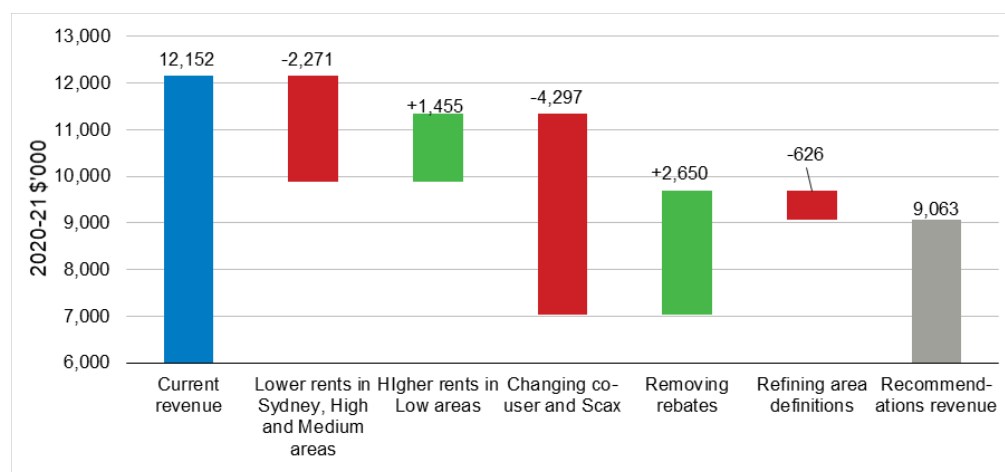
Data source: IPART Analysis

11.3.3 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 not pay any 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 recommendations would decrease revenue for the land management agencies by around \$3.1 million a year from \$2020-21, as shown in Figure 11.3.

Figure 11.3 Impact on revenue of land management agencies (\$2020-21)



Notes: (i) 'Lower rents in Sydney, Medium and High areas' captures the re-definition of Sydney as High.
(ii) 'Refining area definitions' captures the SUA changes and the introduction of Remote and Very Remote.
(iii) 'Changing co-user and Scax' assumes that the rebate schedule applies to co-users, Scax and primary users.
(iv) 'Removing rebates' therefore captures the elimination of rebates for all users.

Data source: IPART analysis

11.4 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 recommend that rents continue to be adjusted annually by CPI.

11.4.1 Stakeholder generally support annual CPI adjustments

Stakeholders responding to our Issues Paper and Draft Report generally agreed that rents should be adjusted annually by CPI.^{165, 166}

¹⁶⁵ 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.

¹⁶⁶ For example, nbn, Submission to Draft Report, August 2019, p 5; and Broadcast Australia, Submission to Draft Report, September 2019, p 10.

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.¹⁶⁷

The Mobile Carriers Forum suggested that rents should maintain relativity to the unimproved value of the land. As the NSW Valuer General undertakes a General Valuation of all land on a 3-yearly cycle, it is suggested that the CPI apply only for the intervening 2 years.¹⁶⁸

The land management agencies supported annual CPI adjustments, but noted that the leases for the vast majority of sites in our private market sample allowed a fixed percentage rental adjustment rather than CPI.¹⁶⁹

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

11.5 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.

11.5.1 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.¹⁷⁰ A number of stakeholders supported periodic review if rent is set with reference to land value.¹⁷¹

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.¹⁷² 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

¹⁶⁷ For example, Mobile Carriers Forum, Submission to Issues Paper, April 2019, p 16 and Axicom, Submission to Issues Paper, April 2019, p 6.

¹⁶⁸ Mobile Carriers Forum, Submission to Draft Report, September 2019, p 9.

¹⁶⁹ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 15.

¹⁷⁰ 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.

¹⁷¹ For example, TX Australia, Submission to Issues Paper, April 2019, p 6; Digital Distribution Australia, Submission to Issues Paper, April 2019, p 5.

¹⁷² Telstra, Submission to Issues Paper, April 2019, p 11.

rent is related to unimproved land value and adjusts in line with the property market.¹⁷³

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.¹⁷⁴

Whilst some stakeholders remained supportive of a periodic review of the rent methodology and schedule,¹⁷⁵ the Mobile Carriers Forum considered the current review process lacks true accountability with no appeal right to the Crown land occupiers, short of commencing legal proceeding in the Federal Court.¹⁷⁶

The land management agencies supported the periodic review of the fee schedule to ensure it reflects market rents and technological changes. However, the agencies remain concerned that the current proposed scheme and the schemes recommended in 2005 and 2013 each involved significant changes in fee structures and methodologies. As these changes imposed a significant burden on both the agencies and users, the land management agencies considered such changes should only be required where there are significant changes in the marketplace.¹⁷⁷

We consider that periodic review of the rental arrangements to ensure rental arrangements reflect market outcomes remains appropriate as the communications landscape is continually evolving with technological innovations and greater demands for mobile data capacity.

¹⁷³ Axicom, Submission to Issues Paper, April 2019, p 6 and p 21.

¹⁷⁴ Moree Plains Shire Council, Submission to Issues Paper, April 2019, p 5.

¹⁷⁵ For example, nbn, Submission to Draft Report, August 2019, p 5; and NSW Telco Authority, Submission to Draft Report, September 2019, p 7.

¹⁷⁶ Mobile Carriers Forum, Submission to Draft Report, September 2019, p 9.

¹⁷⁷ Department of Planning Industry and Environment - Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW, Submission to Draft Report, September 2019, p 15.

Appendices

A Terms of reference



Gladys Berejiklian MP
Premier of New South Wales

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.

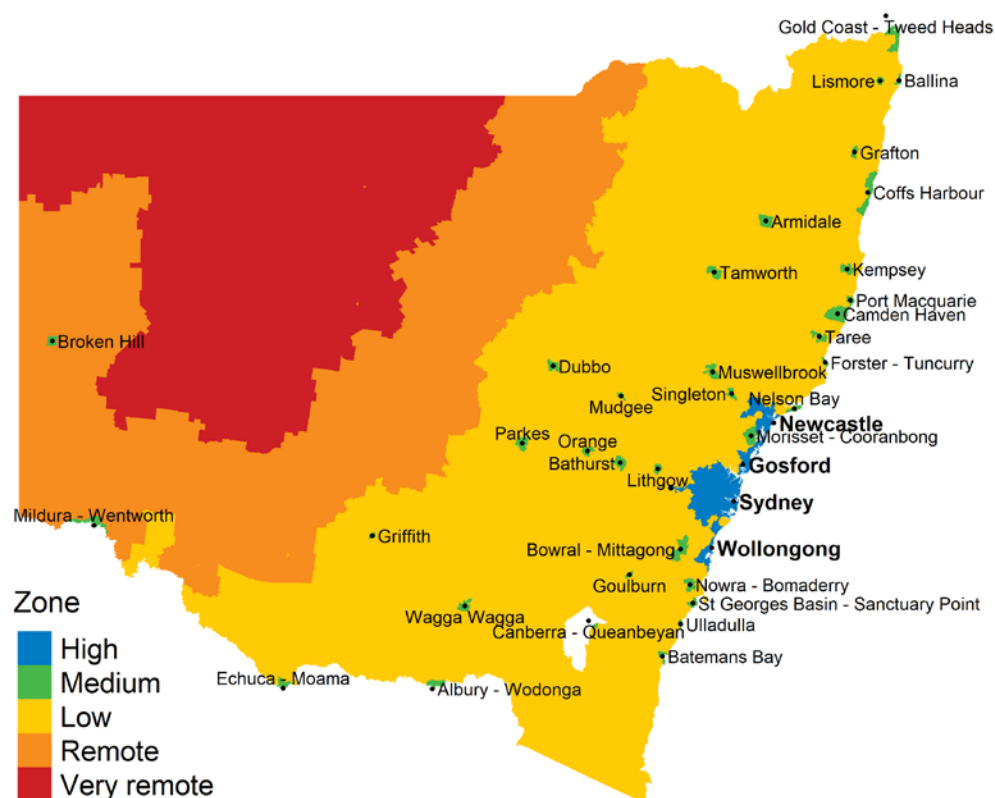
The Tribunal is to consult with key stakeholders including agencies responsible for the management of Crown Land sites and key owners of communications infrastructure that occupy Crown land sites.

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

B Location categories



The following local council areas are defined as medium:

- ▼ Echuca-Moama
- ▼ Mildura-Wentworth
- ▼ Gold Coast-Tweed Heads
- ▼ Canberra-Queanbeyan
- ▼ Albury - Wodonga
- ▼ Armidale
- ▼ Ballina
- ▼ Batemans Bay
- ▼ Bathurst
- ▼ Bowral - Mittagong
- ▼ Broken Hill
- ▼ Camden Haven

-
- ▼ Coffs Harbour
 - ▼ Dubbo
 - ▼ Forster - Tuncurry
 - ▼ Goulburn
 - ▼ Grafton
 - ▼ Griffith
 - ▼ Kempsey
 - ▼ Lismore
 - ▼ Lithgow
 - ▼ Morisset – Cooranbong
 - ▼ Mudgee
 - ▼ Muswellbrook
 - ▼ Nelson Bay
 - ▼ Nowra - Bomaderry
 - ▼ Orange
 - ▼ Parkes
 - ▼ Port Macquarie
 - ▼ Singleton
 - ▼ St Georges Basin - Sanctuary Point
 - ▼ Tamworth
 - ▼ Taree
 - ▼ Ulladulla
 - ▼ Wagga Wagga

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