

Ms Carmel Donnelly PSM
Chair
Independent Pricing and Regulatory Tribunal
Via: ipart@ipart.nsw.gov.au and [REDACTED]

6 December 2024

Subject: Response to Indara's letter to IPART dated 19 November 2024

Dear Ms Donnelly,

We refer to your letter of 25 November 2024 and the enclosed letter from Indara Digital Infrastructure (Indara) dated 19 November 2024.

Indara's letter raises concerns in relation to the engagement of siteXcell by the State. The Department of Planning, Housing and Infrastructure (the Department) takes these concerns seriously.

Procurement process

The Department rejects any suggestion there has been misconduct in its engagement of siteXcell. The Probity branch within the Department's Governance division conducted an independent review of the procurement of siteXcell and found the Department followed sound procurement practice, in line with Government procurement requirements. The Department undertook the required steps to identify any reasonably perceived or actual conflict of interest that may exist, noting no conflicts were disclosed.

Conflicts of interest

The Department sought information from siteXcell to inform its consideration of Indara's letter. Copies of siteXcell's response letter and a further email are enclosed. The Department has reviewed the information provided by siteXcell and is satisfied an actual conflict of interest does not exist and that appropriate controls were in place to manage any perceived conflicts of interest.

In the Department's view, the information provided by siteXcell regarding its relationship with Everest Infrastructure ANZ is sufficient to satisfy the Tribunal that the Intelligence Report on Co-User Practices in the Private Sector (the Intelligence Report) and its conclusions should be afforded full weight in the IPART determination. The Intelligence Report provided by siteXcell is based on publicly available datasets provided by IPART, using an open methodology, as requested by IPART. The Intelligence Report and its conclusions are replicable by any party. Nothing in the relationship between siteXcell and Everest Infrastructure ANZ has bearing on those findings. We believe IPART should consider the findings in the Intelligence Report as sound evidence to include as part of its deliberations.

Responses to specific questions raised by Indara

1. Did siteXcell approach the agencies to conduct the 'Intelligence Report' or did the agencies approach siteXcell?

The Department approached siteXcell to prepare the Intelligence Report.

2. Did SiteXcell disclose to the agencies that it is owned by the foreign owned lease aggregator Everest?

SiteXcell did not disclose that it is owned by Everest Infrastructure ANZ Pty Ltd.

3. Has SiteXcell/Everest ever approached or ever had discussions with Crown Lands, the National Parks and Wildlife Service or any other agencies about managing their sites, purchasing the rights to income from their sites or purchasing future management rights, or provided any other reports for a fee for the agencies?

In 2015, the Department declined an unsolicited offer from SiteXcell to review Crown Land communication site tenures. The Department is not in a position to comment on whether any other NSW agencies have been approached by siteXcell or had dealings with them.

The Department understands Everest Infrastructure ANZ Pty Ltd purchased siteXcell in 2023.

Since 2015, the Department has engaged siteXcell to provide services on four occasions.

- In 2016, the Department engaged siteXcell to provide management services in relation to new and existing occupancies.
- Once in 2021 and twice in 2024, the Department engaged siteXcell to provide professional services in the form of market intelligence reports.

The Department has not procured any services or engaged in any discussions with siteXcell or Everest Infrastructure ANZ Pty Ltd in relation to purchasing the rights to income from the agency sites or purchasing future management rights.

IPART request to interrogate the report data and methodology

The engagement of siteXcell and provision of the report to IPART was conducted to maximise transparency. SiteXcell's analysis was conducted following IPART's invitation to provide evidence in response to comments made in the public hearing by industry on co-user fees.

The request for quote sent to siteXcell contained requirements that any report must:

- Seek to interrogate IPART's existing dataset of 610 sites for any additional user/co-user agreements on those sites and provide details of the value of those agreements, and
- Source supplementary data to detail a representative view of co-user agreements in the private market.

These requirements were included to reduce any risk of bias and to ensure supplementary data is representative of the market and is publishable by IPART.

There is no evidence to dispute the market intelligence report

The Department's view is that open, complete and transparent data should be given to IPART from all parties to demonstrate accurate market activity. The Department has provided its data in full to IPART.

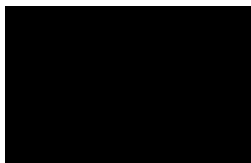
Indara has not highlighted any issues with the data or methodology used in the report.

Next steps

The Department understands the Premier's Office has granted an extension to 7 February 2025 for IPART to enable further consultation with stakeholders ahead of delivering the final report.

If you have any questions, please contact Melanie Hawyes, Deputy Secretary, Crown Land and Public Spaces at [REDACTED]

Yours sincerely,



Kiersten Fishburn
Secretary

Encl: siteXcell correspondence to the Department.