Our Ref: IPART/12.2.25

12 February 2025

Matthew Tsikrikias
Independent Pricing and regulatory Tribunal I NSW
PO Box K35
Haymarket Post Shop
NSW 1240

Submitted by email to [redacted]

Dear Mr Tsikrikas,

DRAFT REPORT
REVIEW OF RENTS FOR COMUNICATIONS SITES ON CERTAIN LANDS OF THE CROWN – DECEMBER 2024

Thank you for providing Indara the opportunity to comment on the Independent Pricing and Regulatory Tribunal (IPART) review of the rents for communications sites on lands administered under the *Crown Land Management Act 2016*, the *National Parks and Wildlife Act 1974* and the *Forestry Act 2012*.

The purpose of this submission is to act as supplementary to previous Indara submissions to the evolving IPART report dated 28 March 2024 and 14 August 2024 and our letter to IPART dated 19 November 2024.

We respond to each recommendation below in the order they are presented in the December 2024 draft IPART report.

1. **That we continue to use the approach of benchmarking against private market for our recommended fee schedule.**

   We maintain our position that it is inappropriate for IPART to compare commercial rents charged by private landowners with the rents that the state is permitted to charge under a regulatory regime.

   Section 44 of the Telecommunications Act 1997 (Cth.) ("Telco Act") is specifically designed to protect against disadvantageous or discriminatory treatment by a state or government. Indara does not propose that the provisions of the Telco Act are intended to ensure consistency of approach between private and public land use. The resulting dichotomous nature of these markets means that using private commercial land rents as comparisons to determine rents for public or Crown land is inappropriate and erroneous. Public land is for public use and telecommunications services are in the public interest for the reasons mentioned above and Licensed Carriers ("Carrier") provide greater connectivity and access to the latest technologies to the community. NSW LMAs should not profit from this as it stifles investment and development in the modern digital economy. It is also contrary to the initiatives that the Federal Government has, such as the 'black spots programs' aimed at improving access to modern telecommunications services and technologies for all, in low revenue/return areas. As it becomes more costly to roll out infrastructure, companies like Indara will be unable to continue to invest in these markets.

2. **The existing density classifications continue to be used to minimise the costs of implementing the updated fee schedule.**

   If the density classifications are to remain, Indara supports the 2019 recommendation to introduce the Remote and Very Remote classifications, which would also be more aligned with the unimproved land value methodology (multiplied by 6%) that Indara and our peers have previously lobbied for.

   Indara does not agree with IPART's or the LMA's view that implementing the 6% of the unimproved land value as set by the Valuer General would result in additional costs to the LMA's or that it would be difficult to implement. The Valuer General sets the unimproved value for land already, which is recorded as part of the NSW State's land tax regime. Indara submits that this would be easier for the LMA's to administer as the Valuer General completes this exercise already and the exercise would simply be applying 6% against the unimproved land value for each site. In any event, the mere administrative 'difficulty' of implementing a change in the calculating process should not serve as a deterrent for rectifying what is essentially a malfeasant and discriminatory regime that has far-reaching implications for the sustainability of the communications industry.

3. **The category uplift to the standard rental schedule would apply to sites in national parks**

There is no basis for this additional charge, and we note that the current draft report addresses how this additional charge had been arrived at using established valuation principles. NPWS have provided no evidence to substantiate additional costs or indeed any costs.

We note that IPARTs recommendation 12 (c) and (d) specifically references that the LMA's need to improve their record keeping and that the next IPART review should have broader scope to include investigating the range of fees and charges imposed by the LMA's. The category uplift should be dropped immediately to allow NPWS the next 5 years to substantiate its claims in the next IPART review. If it is found that they can prove the administrative costs of hosting telecommunications infrastructure in national parks requires an additional uplift then moving back to the current arrangement could be reconsidered at the appropriate time, but the onus should be on the LMA to prove the additional financial burden.

4. **The NPWS rental fee approach not be adopted by other land management agencies**

Indara supports this recommendation.

5. **Co-users are no longer to pay a co-user fee where the land they licence is located wholly within the primary user's compound**

Indara support IPARTs updated recommendation regarding the application of co-user fees. LMA's costs and admin argument above. We expect the LMA's to respect that the industry has provided enough evidence to substantiate the change to IPARTs recommendation.

Further, and in line with our peers if this report is adopted, we would expect that co-user fees cease immediately and are back dated to 1 July 2023 in accordance with the tables in section 8.1 of the revised draft IPART report.

This is now the second time that IPART has recommendation that co-user fees be dropped (the first time being in the 2019 report). If IPART is to have any gravitas or relevance in this space - then the proposals and recommendations put forward must be adopted and enforced by the LMA's

The Telecommunications Act (Cth) 1997 replaced the 1991 Act because under the 1991 Act, there was no limitation on the proliferation of mobile towers being sited in close proximity to each other (and which did not even require a DA) – and this caused community backlash and outrage. The 1997 Act required carriers to collocate where possible and avoid the proliferation of infrastructure. What the LMA's are doing by promoting co-user fees is completely contrary to

what the federal government were trying to achieve via the change in the legislation.

The LMA's claim that they will lose $5.5m in revenue, again has not been substantiated. In the 2019 IPART review it was claimed that the LMA's would potentially lose approximately $3m in revenue. Even considering 4 or 5 years of yearly escalators at 3% or CPI - and the fact that the LMA's are hardly a partner of choice for either mobile carriers or neutral host providers when siting towers - it is difficult to comprehend how this figure has more than doubled. The LMA's certainly haven't put forward any compelling or in fact ANY evidence to support the claim despite hosting telecommunications facilities for 25 years+. Their claims about administrative costs associated with industries proposed unimproved land value methodology and dropping of co-user fees and specific costs around intensity of use has not been substantiated. If the impact of what the industry is proposing is so enormous to the operation of the LMA's then the LMA's should be able to provide facts and figures to back up their claims. It is somewhat worrying that the LMA's, despite being funded by the public purse is not able to or has been unwilling to provide any evidence - unlike the carriers and infrastructure providers that have provided IPART (via numerous rounds of information requests) an abundance of information. Crown Lands on the other hand provided a report that they had commissioned by Total Site Solutions (t/a SiteXcell), a wholly owned subsidiary of the foreign owned Everest Infrastructure which sought to provide some kind of substance to Crown Lands narrative (Indara has already voiced its concerns in this regard in previous submissions).

6. **Co-users are to pay a co-user fee that is set at 50% of the primary user's rental fee where they licence additional land outside of the primary user's compound.**

   This aligns with Indara's previous submission and follows a more common-sense approach.

7. **The co-user discount rate be considered as part of the next rental review**

   Indara supports a transparent review process every 5 years, following a fair market-based approach.

8. **Primary users deploying small cell and other similar technology on existing non-communications infrastructure are to pay rent of $2,000 per annum where:**

   a. **The infrastructure is owned by the land management agencies; or**
   b. **The small cell is deployed on another entity's infrastructure, but a small amount of additional land (not more than 7.5 square metres) is required**

Indara aligns with AMTA's industry submission in this regard.

9. **Communications sites located on rooftops are to pay:**

   a. **The relevant density category rental fee;**
   b. **Plus an additional charge of $3,380 per annum if they are in the Sydney density category**

Indara's position remains the same as previous submissions, we do not support this fee. From a valuation point of view, no market evidence has been provided for this strangely specific charge of $3,380, which appears to have been arbitrarily applied? It is a very specific figure; the draft report provides no viable rationale for this.

10. **The following primary user fees per annum be adopted for communications sites in each density classification**

Sydney	High	Medium	Low
$36,915	$31,012	$17,251	$8,793

Indara remains of the view that the most sensible, economical and administratively simple basis on which rents are set is by aligning with the state of Queensland where rents for the majority of Crown Lands are based on 6% of the unimproved land value set by the Valuer General.

11. **The published fee schedule is to be independently reviewed every 5 years to ensure it continues to reflect market conditions**

We support this but we highlight that the recommendations put forth in the last IPART review in 2019 were not adopted, and that discriminatory practice has continued, and Crown Lands continues to charge high rents and co-user fees despite IPART's previous recommendations – ultimately diminishing the review process. We question the value of completing an independent and time-consuming review process if government agencies are not obliged to comply with the findings and recommendations. This is supposed to be an independent, fair market review and the LMA's and the LMA's must respect and live with the decisions and recommendations put forth by IPART – as carriers and infrastructure providers have had to do for many years.

12. **If IPART is to be provided a future referral to recommend rents for communications towers on crown land the referral should:**

   a. **Explicitly state the reason for referring the review to IPART;**

b. **Be under section 12A of the IPART Act so that our information gathering powers are available;**
c. **Broaden the scope to include investigating the range of fees and charges imposed by the land management agencies;**
d. **That the 3 land management agencies improve their records, so they have information on whether co-users rent additional land and additional costs associated with telecommunications towers in national parks.**

Indara aligns with AMTA's 12 February 2025 submission that *'the Terms of Reference for any future review should seek to understand the methods for pricing that works well in other States – for example, how pricing in National Parks in other States has contributed to making provision of additional coverage and service economical in un underserved areas and adjacent communities".*

Indara believes that the next review should err in the side of the telecommunications industry who has provided large tranches of supporting information throughout this IPART review process and let the LMA's substantiate any and all costs they claim they are burdened with by the siting of communications infrastructure on their lands.

13. The rental fees set out in recommendation 10 are to be escalated by 3% per year in line with current private market practice. Existing licences are to adopt the escalator as they are negotiated.

3% aligns with Indara's own experience in the market so is supported. In line with our industry peers we support that the 3% is effective immediately, rather than at the end of (sometimes) long term licence agreements with the LMA's, as the rental review process is supposed to be a 5 yearly occurrence, no longer.

14. The rental escalator is to be reviewed s part of the next rental review

Indara supports a transparent review process every 5 years, following a fair market-based approach.

Summary

Indara feels that the proposed rental rates remain discriminatory under Section 44 of the Telco Act particularly in IPARTs approach to valuation and valuation methodologies which we believe remains deeply flawed. We are however glad to see that IPART has listened to and responded to industry submissions, particularly on co-user fees which do nothing more that stifle investment.

We have voiced our concerns previously about process flaws, conflicts of interest and the interactions between IPART and Crown Lands outside of the process for submissions and this concern remains.

Indara thanks IPART again for allowing Indara and the telecommunications industry in general, the opportunity to take part in the 2024 review. We trust our final submission will be of assistance and we believe it is vitally important that IPART uses this opportunity to make its mark and deliver final recommendations that benefit the telecommunications industry and the public and avoids discriminatory fees to encourage deployment of this essential infrastructure.

If you have any queries or would like further information about the issues raised in this submission, please do not hesitate to contact the undersigned.

Yours sincerely

[redacted]

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National Portfolio Manager

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