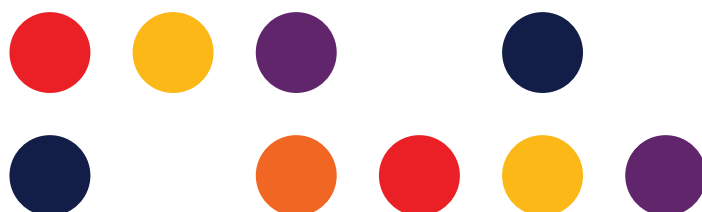


# **Review of rents for communication sites on certain Crown land – Revised Draft Report**

IPART

February 2025

Public submission



## Submission

TPG Telecom welcomes the opportunity to comment on IPART's Revised Draft Report. We welcome the revised determination regarding the abolition of co-user fees. However, we retain some residual concern over the approach to fees where additional land is required. Furthermore, we request some further clarity over the approach to sites located on rooftops.

## Co-user fees and licensing of additional land

TPG Telecom welcomes the recommendation to remove co-user fees where no additional land is required. This is reflective of private market practice, and Commonwealth Government requirements to co-locate. We agree with IPART's conclusion that the revised Draft Report creates stronger incentives for co-location than the previous approach.

We believe the proposed co-user regime largely satisfies the terms of reference regarding creating a fee structure reflecting "...fair, market-based commercial returns", and "recent and representative market rentals agreed for comparable communications sites".<sup>1</sup>

TPG Telecom has some outstanding concerns over aspects of the proposed regime. There is no codification of the area of a primary user site, which creates economic incentive for Crown Lands to shrink primary sites to force mobile network operators (**MNOs**) co-locating on a third-party tower to take out an equipment shelter lease. The flat 50 per cent co-user fee for additional land could also prove excessive where minimal land is required.

We reiterate our feedback provided in earlier submissions that in the vast majority of cases, TPG Telecom does not have a ground lease of any sort where we have our infrastructure situated on towers located on private sites. This was confirmed by data provided by other MNOs. The revised rental regime should be constructed to ensure that on the majority of Crown land sites, the primary user fee is the only fee charged for the site, as per comparable private market rentals.

We are also concerned over the expectation co-users be licensed by Crown land agencies, and the potential for fees to recover discrete costs. We believe additional fees should only be able to be charged where they reflect the efficient costs of providing any services.

To mitigate the risk of the above issues, TPG Telecom recommends:

- Area for new primary user sites to be specified to provide sufficient space for all three MNOs plus NBN Co (in areas covered by NBN fixed wireless services) to locate equipment within primary user compound.
- Existing leases to be based on their current area as per the 2019 Review's recommendation.<sup>2</sup> Primary user area to incorporate equipment shelters in line with private market practice.

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<sup>1</sup> IPART, *Revised Draft Report*, December 2024, page 65

<sup>2</sup> IPART, *2019 review of rental arrangements for communication towers on Crown land*, page 85

- Additional land to be charged on a per-square metre basis as per recommendations of 2019 Review.
- One-off application fee equivalent to 50% of the primary user application fee to recover administrative costs of licensing co-users, with additional fees charged only where they reflect efficient costs as per 2019 Review recommendation.<sup>3</sup>

## Approach to Rooftops

TPG Telecom requests further clarification over the framework for leasing of rooftop sites. We note the Draft report is "...not proposing to recommend extending the co-user discount to rooftop sites". It is unclear what fee, if any, an MNO located on third-party infrastructure on a rooftop site would be levied.

TPG Telecom recommends the co-user fee structure be extended to rooftop sites. A situation where both the infrastructure provider and MNO are levied a full primary user fee would mean the total rent for a rooftop site would be double an equivalent ground site (and greater still where the Sydney density category charge is applied), or the equivalent rooftop site prior to tower divestment by that MNO.

A similar scenario was described in TPG Telecom's submission to the initial Draft Report. Under the current fee structure for ground sites, a physically identical tower is levied differing total rents depending on its ownership structure.<sup>4</sup>

If the infrastructure provider and MNO were both charged for location on a rooftop site, the total rent would potentially be \$80,590 per annum (accounting for both the Sydney density fee and rooftop fee).

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Such a charge would be exorbitant and render deployment of mobile infrastructure on Crown rooftops unviable. Rooftops are often well-located for mobile infrastructure and have few alternative uses. To charge exorbitant rates for such sites would not be in line with market-based commercial returns or representative market rentals for comparable communications sites.

Extending the co-user discount to rooftop sites would ensure total fees charged for rooftop sites are equivalent to comparable sites on privately owned buildings.

## Industry changes

The Department of Planning, Housing and Infrastructure (**The Department**) claims the effects of industry changes (i.e. divestment of tower infrastructure) is unknown, and therefore changes to co-user fees should not be made.<sup>5</sup> TPG Telecom's August 2024 submission showed the most prominent effect of tower divestment under the current fee structure was to necessitate payment of an additional co-user

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<sup>3</sup> IPART, *2019 review of rental arrangements for communication towers on Crown land*, page 46

<sup>4</sup> TPG Telecom, *Review of rents for communication sites on certain Crown land - Draft Report Submission*, August 2024, page 3

<sup>5</sup> Department of Planning, Housing and Infrastructure, *Factual check of embargoed final report*, pages 1, 2

fee.<sup>6</sup> This means Crown Land is charging more for a physically identical tower than under the previous situation where MNOs owned the majority of towers.

The Department has produced no evidence of any impact (actual or potential) of tower divestment that would support the retention of co-user fees. IPART's 2019 Review recommended removal of co-user fees prior to tower divestments.<sup>7</sup> The increase in co-user fees driven by tower divestment strengthens the case for their removal.

## Co-users located wholly in primary user compounds

The Department claims the siteXcell report as providing evidence of co-users paying a significant portion of primary user rent even when located wholly in the primary user's compound.<sup>8</sup> We reiterate our feedback in our November 2024 submission:<sup>9</sup>

- SiteXcell could not identify a single example of a co-user fee not tied to some form of ground lease.
- Sliver leases convey valuable property rights co-user fees do not, and as such are not analogous to co-user fees.
- In the overwhelming majority of TPG Telecom's sites located on private land, there is no ground lease of any kind in place.

## Co-User Benefits

The Department claims the Draft Report does not recognise co-users are paying for the advantages of using public land for commercial gain.<sup>10</sup> This claim is erroneous. IPART's analysis showed market prices for communications sites on private land were lower than Crown fees in all density categories.<sup>11</sup> TPG Telecom's lease data showed its sites located on private land overwhelmingly have no ground lease or co-user fee payable.<sup>12</sup>

As the report acknowledges, the Terms of Reference prevent IPART from considering the benefits to the wider public of communications sites.<sup>13</sup> It likewise should exclude IPART from factoring in the purported benefits to MNOs of providing communications sites.

TPG Telecom concurs with IPART's conclusion that their approach to estimating rents likely captures the benefits of subletting in the primary user fee in any case.<sup>14</sup> Sites located on private land

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<sup>6</sup> TPG Telecom, *Review of rents for communication sites on certain Crown land - Draft Report Submission*, August 2024, page 3

<sup>7</sup> IPART, *2019 review of rental arrangements for communication towers on Crown land*, page 11

<sup>8</sup> Department of Planning, Housing and Infrastructure, *Factual check of embargoed final report*, page 2

<sup>9</sup> TPG Telecom, *Review of rents for communication sites on certain Crown land - Supplementary Submission*, November 2024

<sup>10</sup> Department of Planning, Housing and Infrastructure, *Factual check of embargoed final report*, page 2

<sup>11</sup> IPART, *Revised Draft Report*, December 2024, page 4

<sup>12</sup> TPG Telecom, *Review of rents for communication sites on certain Crown land - Draft Report Submission*, August 2024, page 4

<sup>13</sup> IPART, *Revised Draft Report*, December 2024, page 22

<sup>14</sup> IPART, *Revised Draft Report*, December 2024, page 46

overwhelmingly include the ability to sub-let tower space without additional fees. Setting a price in line with the private market hence prices for the ability to, and benefit of sub-letting tower space.

## Implementation of proposed changes

TPG Telecom queries the Department's claim implementation of the changes would take greater than 8 years.<sup>15</sup> We note the land management agencies suggested similar changes could be implemented for new or renewed leases by 1 July 2020, following the November 2019 release of the previous report.<sup>16</sup> The land management agencies were similarly able to accommodate changes in fees driven by recent divestment of tower assets by MNOs.

## Potential loss of revenue

The fee structure proposed in the Revised Draft Report will make locating on Crown Land increasingly financially viable for tower companies and MNOs. Any estimate of the costs to the land agencies should account for the potential increase in revenue driven by hosting additional tower sites on Crown Land, compared to the current situation where the fee structure acts as a significant disincentive to locate on Crown land where alternative sites exist.

IPART's analysis comprehensively showed sites located on private land were cheaper on average and overwhelmingly did not charge for co-users located within the primary user compound. Accounting for the land agencies' loss of revenue from the proposed changes would as such not be in line with the Terms of Reference of the review to regard market-based commercial returns or representative market rentals for comparable communications sites.

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<sup>15</sup> Department of Planning, Housing and Infrastructure, *Factual check of embargoed final report*, page 3

<sup>16</sup> IPART, *2019 review of rental arrangements for communication towers on crown land*, page 106