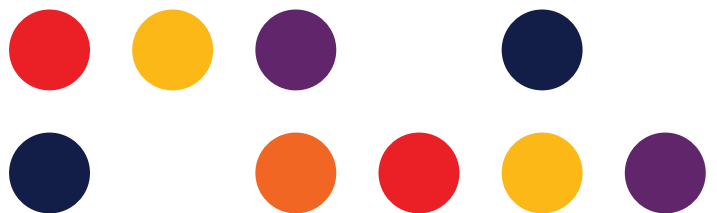


Review of rents for communication sites on certain Crown land – supplementary submission

IPART

November 2024

Public Submission



Submission

TPG Telecom refers to the submission made by the NSW Department of Planning, Housing and Infrastructure (16 October 2024) to IPART's Draft Report in relation to its review of rents charged for communication sites on certain Crown lands (**Draft Report**).

We note the NSW Department of Planning, Housing and Infrastructure has included a report by siteXcell titled '*Co-User Practices in the Private Sector*' (30 September 2024), commissioned by the land management agencies.

This submission comments on the siteXcell report, given we believe it presents an overall inaccurate view of the landscape for private market leases for communications infrastructure. This submission focusses on the key claims that we consider are inaccurate for the purposes of IPART's consideration.

The report provided by siteXcell (similar to evidence provided by the Department of Planning, Housing and Infrastructure) conflates co-user fees with rent paid for additional land for equipment and rare instances of sliver leases. The siteXcell report did not identify a single example of a genuine co-user fee (that is, one not tied to some form of ground lease).

If IPART is to take heed of its terms of reference, it must recommend the removal of co-user fees.

Ground leases and sliver leases are not equivalent to co-user fees

Ground leases and sliver leases are not analogous to, or comparable to, co-user fees. Sliver leases, as siteXcell itself acknowledges, provide mobile network operators (**MNOs**) with step-up rights to take over the site where the primary leaseholder abandons the site, and some protection over their infrastructure.¹ Ground leases for additional land beyond the primary site gives the MNO a land lease to situate their equipment, in addition to the above rights bestowed by a sliver lease.

TPG Telecom acknowledged in our response to the Draft Report that leasing additional land for an equipment shelter imposes a real cost upon the land agencies, which they are entitled to price for. This is reflective of private market practice and is very different to the imposition of co-user fees.²

Further, siteXcell claims co-user fees paid to landlords (which it misclassifies as ground leases for additional equipment and sliver leases) are significantly higher than the 50 per cent co-user fee charged by Crown lands.³ However, co-user fees do not provide the general benefits and protections of a lease arrangement, including the step-up rights of a sliver lease, or the physical land of a ground lease for an equipment shelter. To claim either are representative of co-user fees is inaccurate.

Co-user fees grant no rights beyond the right to occupy the site. If the land agencies deem licensing of co-users necessary, this could be achieved via a nominal one-off application fee as recommended in

¹ siteXcell, *Intelligence Report on Co-User Practices in the Private Sector*, p. 11.

² TPG Telecom, Review of rents for communication sites on certain Crown land - Draft Report submission, p. 6.

³ siteXcell, *Intelligence Report on Co-User Practices in the Private Sector*, p. 25.

the 2019 IPART Review of rental arrangements for communication towers on Crown land.⁴

Sliver leases and separate ground leases are not common commercial practice

In its report, siteXcell claimed “[t]he vast majority of mobile towers supporting more than one Carrier on private land have separate leases in place with the landowner as Co-locating Carriers prioritised direct legal tenure, commonly through separate adjoining leases”.⁵

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siteXcell further stated “co-locating mobile Carriers had always sought to establish secondary “Co-location ground tenure agreements” directly with landowners for their ground-based equipment shelters”.⁶ These claims are not consistent with TPG Telecom’s experience in securing tower space.

This is in part because siteXcell identified only 18 sliver leases from a sample size of 610 registered leases.⁷ This in itself suggests they are not common commercial practice. This number is likely to reduce over time given the emergence of third-party tower companies, meaning step-up rights are of diminishing importance.

The terms of reference require IPART to recommend a fee structure representing “fair, market-based commercial returns” and “recent and representative market rentals agreed for similar communication sites, reflective of different site conditions and locations across the State”. Where the vast majority of sites on private land do not have any sort of co-user fee or ground lease, a rental regime reflecting a ‘market-based commercial return’ and a ‘market rental’ must offer leases on equivalent terms.

Rents charged by Crown Land agencies price for intensity of land use

The Draft Report found rents for communications sites in the private market have decreased compared to Crown rents, and recommended rent reductions as a result.⁸

siteXcell’s report acknowledged the vast majority of private tenure agreements allow subletting and sharing of possession.⁹ Given private market sites overwhelmingly include the right to co-locate without additional charge, and their rents are lower for equivalent sites (according to IPART’s analysis), it cannot be said the impact of co-users is not priced for at present. This contrasts with the view of siteXcell that removal of co-user fees would result in a shortfall in fair compensation to the Crown land agencies.¹⁰

⁴ IPART, 2019 Review of rents for communication sites on certain Crown land Final Report, p. 5. 2019 Report recommended co-users entirely within the primary user’s site pay a one-off application fee of 50% of the primary user application fee (\$493 in 2019-20).

⁵ siteXcell, Intelligence Report on Co-User Practices in the Private Sector, p. 5.

⁶ siteXcell, Intelligence Report on Co-User Practices in the Private Sector, p. 11.

⁷ siteXcell, Intelligence Report on Co-User Practices in the Private Sector, p. 24.

⁸ IPART, Review of rents for communication sites on certain Crown land Draft Report, p. 49.

⁹ siteXcell, Intelligence Report on Co-User Practices in the Private Sector, p. 11.

¹⁰ siteXcell, Intelligence Report on Co-User Practices in the Private Sector, p. 10.

Any fair comparison of lease costs must account for the terms and conditions of the lease. The site costs are priced for in the primary user lease, which co-users contribute to via leasing tower space.

As stated in TPG Telecom's response to the Draft Report, under the current arrangements a physically identical tower can be levied different rents depending on whether the primary occupant is an MNO occupying their tower, or a tower company with a co-user fee.¹¹ This cannot be justified by any fair assessment.

Many parties are advocating for the removal of co-user fees

There remains wide-ranging support for the removal of co-user fees. TPG Telecom therefore disagrees with siteXcell's claim the push to remove co-user fees stems primarily from infrastructure companies.¹²

TPG Telecom notes submissions supportive of removing co-user fees were provided to the current inquiry by all MNOs, NBN Co, and Free TV Australia.

TPG Telecom reiterates its response to the Draft Report that "the 2019 Review Consultation included submissions from diverse bodies including the Australian Narrowcast Radio Association, Australian Radio Communications Industry Association, Axicom, Broadcast Australia, Commercial Radio Australia, Community Broadcasting Association of Australia, Digital Distribution Australia, Free TV Australia, Mobile Carriers Forum, NBN Co, NSW Rural Fire Service, Optus, Telstra, TX Australia and Vodafone Hutchison Australia supportive of the proposal to reduce co-user fees and/or confirming co-user fees are not common commercial practice."¹³

The Federal Parliamentary Inquiry 'Connecting the country: Mission critical' recommended prohibiting Commonwealth Government agencies from charging co-user fees.¹⁴

As siteXcell noted in its report, the ACCC found site-sharing costs to access tower infrastructure have the potential to negatively influence investment decisions.¹⁵ Given widespread acknowledgement of the benefits of communications infrastructure, the imposition of co-user fees cannot be seen as a positive outcome.

¹¹ TPG Telecom, Review of rents for communication sites on certain Crown land - Draft Report submission, p. 3.

¹² siteXcell, Intelligence Report on Co-User Practices in the Private Sector, p. 19.

¹³ TPG Telecom, Review of rents for communication sites on certain Crown land - Draft Report submission, p. 6.

¹⁴ Inquiry into co-investment in multi-carrier regional mobile infrastructure, House of Representatives Standing Committee on Communications and the Arts, Connecting the country: Mission critical (November 2023), page xvii.

¹⁵ siteXcell, Intelligence Report on Co-User Practices in the Private Sector, p. 15.