



TELSTRA GROUP LIMITED

Telstra submission to IPART "Review of rents for communication sites on certain Crown land"

Public Version

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Executive Summary

Telstra welcomes the opportunity to comment on the Review of rents for communication sites on certain Crown land Draft Report (Draft Report).

We note that headline rents have been reduced by 9-13%. While this is a welcome reduction in costs to telecommunications companies, we are disappointed that IPART has chosen not to implement suggestions presented in our April submission¹ to the IPART issues paper.² We are concerned that the Draft Report uses skewed and inflated rental recommendations which will result in an overall increase in site rental for Telstra of up to ~50%. This is out of step with the actual value of other Crown rentals, as well as private rentals (and is primarily attributable to the imposition of higher co-user fees).

We are concerned that IPART's draft decision will worsen the current Crown rental position for carriers, because it:

- Values annual rentals on Crown land in regional and remote areas at metropolitan rates based on the classification of those sites.
- Values annual rentals in national parks above the price of buying the land in many cases (as Telstra identifies in Annexure 1, in some cases the annual rental would allow the same land to be bought 8 times each year).
- Relies on a poor data set, out of step with valuation practices, in that it heavily relies on successive lease data (i.e. renewals) which valuation principles do not regard as being reliable evidence of current market rents.
- Increases co-user fees by 50% which are not charged for other utilities or users of Crown land and which will represent a regressive step in the telecommunications rental market. This increase will impede carriers from adopting a best practice approach in co-locating telecommunications facilities, which is a cornerstone policy of the telecommunications policy framework nationally. In addition to this, co-user fees are not common industry practice, they are unique to the NSW Government. In the private sector co-user fees would not be levied as additional rental fees would only be applied for co-location if additional land was to be occupied.
- Discriminates against carriers, imposing far higher rents on carriers than on other relevant types of users of NSW Crown land, including utilities.
- Adds costs for the business case to deploy in regional and rural areas in NSW and may deter the delivery of much-needed services in these areas.

Telecommunications companies require access to public and private land to provide the critical infrastructure necessary to deliver telecommunications services to the people of NSW. Telecommunications infrastructure provides many benefits to communities throughout NSW. These benefits include:

- Providing essential infrastructure for the provision of telecommunications services
- Enabling digitisation of the economy; and
- Communications to support communities in emergencies and disasters.

The recommendations in the Draft Report will potentially impact the ability of Telstra to invest in the deployment of infrastructure for this purpose.

¹ Telstra, April 2024, *Telstra submission IPART Review of rents for communication sites on certain Crown Land*, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-Telstra-Group-Limited-D.-Hunt-12-Apr-2024-101224228.PDF

² IPART, 2024, *Issues paper - Review of rents for communication sites on certain Crown land*, available at https://www.ipart.nsw.gov.au/documents/issues-paper/issues-paper-review-rents-communication-sites-certain-crown-land-26-february-2024?timeline_id=16818



1 Introduction

Telstra is deeply concerned by the position taken by the Independent Pricing and Review Tribunal (IPART) in its draft report regarding rents for communications sites on NSW Crown land. Telstra considers that the approach set out in the draft report to rental prices is based on poor valuation methodology, and will directly disincentivise:

- Carrier colocation and the associated benefits to communities (in direct contrast to Commonwealth and State/Territory government policies)
- Deployment of infrastructure in regional and remote areas (and certainly deployment on NSW Crown land, unless unavoidable), as well as resulting in:
 - more limited consumer access and choice in relation to telecommunications services.
 - price pressure on telecommunications services, and
 - the discriminatory treatment of mobile carriers as tenants on Crown land.

The current situation reflects a market that in some categories is 40%-80% above true market rates which is a direct result of:³

- High levels of fixed annual increases.
- A skewed prevalence “overanxious lessee and unwilling landlord” situations (a key issue when considering value).
- Ratchet clauses within leases that prevent any true market rent reviews with no provision for actual downturns in the market, and
- The previous IPART fee schedule set in 2005 and 2013 (noting the 2019 recommendations were not implemented).

For telecommunications carriers, this situation has resulted in:

- **Unsustainable rents:** Current rent levels are unsustainable and above market rates.
- **High fixed price increases:** Fixed annual rent increases over 5%, which is above CPI.
- **Legacy deals:** Many leases from 30 years ago are based on outdated and unsustainable commercial terms.

As a result of the above, many telecommunications carriers are in the process of renegotiating arrangements with landlords to adjust commercial terms to a more sustainable level, in line with current market rents.⁴

³ [REDACTED]

⁴ Ibid



2 IPART needs to reconsider its dismissal of its proposed rental arrangements for communications sites as being discriminatory.

IPART has put forward the view that the rentals proposed in the Draft Report do not discriminate against carriers in breach of section 44(1) of Schedule 3 the *Telecommunications Act 1997* (Cth), on the basis that the relevant comparator when assessing discrimination is between the rent being charged to carriers and that being charged to other communications users. Telstra disagrees that this is how discrimination is to be assessed. We consider this an incorrect characterisation of the *Bayside City Council v Telstra* decision. While the treatment of other users of communications leases is not wholly irrelevant, the relevant question is not how other communications users are treated but:

... the subjection of carriers, in that capacity, to a burden of a kind to which others in a similar situation are generally not subject, and that a similar situation includes the use of public space for the installation and maintenance of facilities ...

This requires specific consideration of the position of other utilities using Crown land to install facilities:

In cases like the present, the allegedly discriminatory law itself provides the comparator for the purpose of cl 44(1). The New South Wales and Victorian Acts confer a power to levy charges or rates on the owners or occupiers of public land, that is, land used for a public purpose. This indicates that the Full Court was correct in comparing the position of carriers with that of other owners or occupiers of public land. In turn, this invites a comparison with electricity suppliers, water suppliers, gas suppliers and other pipeline users. These entities resemble Telstra and Optus in their ownership and/or occupation and use of public land ...⁵

The most recent decision we have in this space is that of the Federal Court in the DERM⁶ case, which also did not limit the comparison to other communications users. We would particularly like to draw IPART's attention to the following excerpt from the DERM decision [at 141]. We believe it has direct parallels with the situation that would prevail in NSW if IPART's recommendations in the Draft Report in relation to rentals for communications sites were to proceed:

There is also a risk that State and Territory governments will jeopardise the availability and affordability of carriage services by taking undue advantage of the particular needs of carriers for the use of government-owned land to the detriment of the wider Australian community. To address this problem, cl 44(1) provides protection for carriers against the effects of discriminatory laws, including protection against the imposition of discriminatory taxes, rents and charges. In Telstra Corporation Ltd v Hurstville City Council (2002) 118 FCR 198 at [24], the Full Court described the object of cl 44 as "to prevent State or Territory legislatures from enacting potentially unfairly discriminatory legislation which would burden the activities of a carrier". More specifically, cl 44(1) can be seen as a legislative mechanism to promote and protect the long-term interests of end-users of carriage services and promote accessible and affordable carriage services, including the provision of standard telephone services and payphones to all Australians. This purpose is particularly evident when viewed against Telstra's universal service obligation and the fact that the bulk of rural and remote land, at least in Queensland, is government-owned.

If IPART's recommendations are adopted, NSW will charge carriers overall significantly higher rentals (particularly when co-user fees are taken into account) than that of other users of NSW Crown land. In some cases, the annual rent will be 8 times the cost of purchasing the land. Meanwhile, electricity and other utilities remain able to access NSW Crown land for nominal fees or by way of easement, and other users will continue to access NSW Crown land for lower rents. This outcome clearly demonstrates that rental arrangements for Crown land in NSW will discriminate against carriers.

Perhaps much more importantly, this will fundamentally prejudice the long term interests of end users (LTIE) of telecommunications in NSW. It's they that will suffer the burden, ultimately, if telecommunications deployments are constrained or services are less available or more costly.

Telstra urges IPART to resolve the discrimination so that the treatment of carriers and other utilities and/or other users of NSW Crown land is comparable, and so that the availability of telecommunications infrastructure and services in NSW are not artificially impeded.

⁵ *Bayside City Council v Telstra Corporation Limited* [2004] HCA 19 at [43]-[44] (Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ).

⁶ *Telstra Corporation Ltd v State of Queensland* [2016] FCA 1213.



3 Private market evidence should not be used as a comparator, notably the use of evidence from consecutive leases and renewals on expiry.

To meet the objective of using private market evidence as a comparator for rental fees on Crown land, Telstra urges IPART to adopt a new approach to rent for communications sites. Telstra considers that the approach adopted by IPART is inappropriate, most notably in the use of evidence from consecutive leases and renewals on expiry. A review of the data on which the Draft Report and its recommendations are based suggests that an error has been made in the selection and adoption of accurate, market reflective rental data.

A high percentage of the lease particulars quoted in the Draft Report⁷ on which the recommendations are based, reference dated sequential leases whereby the lease data incorrectly cites option renewal dates rather than original commencement dates. The errors relate to commencement dates incorrectly cited as 2021/22 when in fact, commencement dates were 2016/17 or even 2011/12.

This statement supports our view that the IPART Draft Report incorrectly references sequential leases (citing option renewal dates as original commencement dates) which, by definition, are not current market rental data as the commercial agreements originally commenced 5, 10 or even 15 years earlier.

At the very least, the priority of this data must be treated with less weight according to the Guidance Paper AVGP 301 - Assessing Rent and Rent Determinations, published by The Australian Property Institute, dated July 2021⁸ which states the following in relation to a hierarchy of evidence:

In assessing market rent the Valuer should consider the most appropriate evidence in the marketplace. The circumstances where the lease was entered into are also relevant. There is a hierarchy to weight that is placed on evidence. That priority is:

- a) *New lease to a new tenant.*
- b) *Where current market rent is agreed between the lessor and lessee at a mid-term review or exercise of option specifically, where the rent is to be the market rent and, if not agreed, can be set by determination.*
- c) *Where current market rent is set by determination at a mid-term review or exercise of option. In this case the evidence used by the determining Valuer may have more relevance; and*
- d) *New lease to a sitting tenant on expiry of an existing lease where the tenant has no right of continuing tenure. In this circumstance consideration must be given as to whether a premium rent was agreed rather than lose the goodwill and benefit of an existing fit out.*

The deliberate utilisation of rental data exhibiting lower priority on the hierarchy of evidence (per the API's Guidance Paper AVGP 301) has resulted in skewed and inflated rental recommendations within the Draft Report.

Annexure 1 provides a letter from David Sullivan of International Valuation and Property Services, reviewing the data on which the Draft Report and its recommendations are based. Their letter outlines their analysis of the data and indicates that a fundamental error has been made in the selection and adoption of accurate, market reflective rental data.

⁷ IPART, July 2024, p29, s4.1, *Review of rents for communication sites on certain Crown land Draft Report*, available at <https://www.ipart.nsw.gov.au/documents/draft-report/draft-report-review-rents-communication-sites-certain-crown-land-july-2024>

⁸ Australian Property Institute, 2024, *Guidance Papers*, available at <https://www.api.org.au/standards/standards-resources/>



4 NPWS should not charge rent which is one category higher in their fee rate.

As per our April submission,⁹ Telstra disagrees with IPART's recommendation for the NSW National Parks and Wildlife Service (NPWS) to charge communications users a fee rate on the basis that National Parks sites are one category higher than their actual classification.

4.1 The community benefit of telecommunications services in National Parks.

Telecommunications infrastructure in National Parks makes telecommunications services available to the community using those areas, including to enable communication with family, friends and emergency services in the event of a natural disaster or emergency situation. Given the nature of land uses (and population density) in and around National Parks, mobile telecommunications infrastructure in these locations has relatively low levels of demand, and would often not meet a business case for deployment; Telstra supplies these sites to provide critical services to the public.

Charging fees one category higher for telecommunications sites in NPWS land penalises the industry for providing this service, when it is already contributing significant capital investment, for little commercial return, to provide critical services.

The net community benefit of telecommunications services needs to be a key consideration for IPART when it makes rental recommendations.

4.2 Location as the basis for higher fees (including on higher ground).

The IPART draft report suggests that the location of telecommunications facilities in places where network coverage is poor is an additional consideration for NPWS land, which may 'require adjustments to any proposed rental schedule, including higher fees'. As discussed above, the installation of telecommunications facilities provides critical services for communities, more so in areas with little to no existing coverage.

We submit that IPART should be recommending incentives for carriers to install telecommunications facilities in these areas, rather than considering higher fees, to support the provision of appropriate services for communities in and around NPWS land and NPWS staff themselves.

Telstra disputes the argument in the draft report that placing towers on high ground in National Parks would require additional considerations that are not present in the private market;¹⁰ this does not reflect carriers' experience of mobile network site deployments or the consideration on which decisions as to the location of facilities are based. Telstra has a network of sites linking over 15,000 mobile cells; to make that network function optimally individual sites are not considered in isolation, but as part of the broader network.

4.3 Protecting the social, cultural and environmental value of National Parks.

Telstra strongly supports the need to protect the social, cultural and environmental value of National Parks. In the context of our role in delivering a critical service, and one which is requested and relied on by governments and communities in and around National Parks, it does not stand up to scrutiny that a higher classification of rent for communications sites is the right or a required means of protection.

⁹ Telstra, 2024, p8, *Telstra submission IPART Review of rents for communication sites on certain Crown Land*, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-Telstra-Group-Limited-D.-Hunt-12-Apr-2024-101224228.PDF

¹⁰ IPART, July 2024, p23, s3, *Review of rents for communication sites on certain Crown land Draft Report*, available at <https://www.ipart.nsw.gov.au/documents/draft-report/draft-report-review-rents-communication-sites-certain-crown-land-july-2024>



Telstra again notes that significant mechanisms already exist to protect and enhance National Parks and consider their environmental and visual sensitivity with respect to new development. Among other things:

- Facilities in Areas of Environmental Significance are exempt from the definition of low impact facilities¹¹ and relevant environmental protections are granted under State legislation.
- Installations of new telecommunications facilities on NPWS land generally require a Development Application (DA). The DA process includes specific consideration of visual amenity and environmental impacts. The extent of any such impact will be a key consideration in a Responsible Authority's decision making with respect to such an application.

4.4 Inconsistency with Victoria.

IPART also needs to consider that the Valuer General of Victoria is currently reviewing fees for National Parks in that state and is proposing significantly reduced fees compared to those being proposed for NSW. In Victoria, National Parks sites for various telecommunications facilities are currently being assessed in mid to distant remote areas for rental fees between \$2,000 - \$5,000 p.a. By contrast, under the proposed IPART regime these would equate to between \$8,000 - \$15,000 including NSW Crown land and the NPWS.¹² The reasons for this disparate assessment of the value of National Parks sites is unclear.

5 The retention of co-user fees, including their application to small cell technologies, are not appropriate.

5.1 Small cells.

Telstra confirms that it has yet to deploy a small cell on NSW Crown land as part of its mobile deployment and coverage strategy. As advised in our April submission, Telstra would be amenable to pay a single one-off, low value fee to IPART for small cell installation in all settings on NSW Crown land. To clarify our position, this would cover all instances where Telstra decides to deploy a new small cell pole on NSW Crown land and/or utilise Crown land infrastructure to deploy a small cell.

The primary purpose of small cells is to provide urban infill coverage and congestion relief in localised areas without the need to deploy a large macro cell base station. Due to their low output power levels and smaller physical footprint on a utility pole, which aids in reducing the visual impact, small cells typically have a coverage range of around 400 meters.¹³ IPART should be aware that Telstra typically installs small cells on utility poles in the urban context. For rural and remote areas, Telstra may install a small cell on its own infrastructure, e.g. Small Country Automatic Exchange (SCAX), an existing pole/tower or on purpose-built poles to deliver better coverage and mobile performance outcomes for the community.

In terms of the current commercial arrangements Telstra has with infrastructure owners for the installation of small cells:

- Telstra will generally execute a master access agreement with a utility owner and compensate that utility owner for the real-estate Telstra uses on the utility's poles.
- Telstra does not compensate the landowner on whose land an existing utility pole/SCAX/tower is sited (i.e., by way of co-payments or additional fees).

¹¹ *Telecommunications (Low-impact Facilities) Determination 2018*, available at <https://www.legislation.gov.au/F2018L00170/2018-03-02/text>

¹² Annexure 1: *Valuers letter: IPART Draft Report – July 2024*

¹³ Please see also: [Small cells and EME](#).



5.2 Co-user fees.

The proposed co-user fee construct is a significant regression in the telecommunications market, and will impede carriers from adopting a best practice approach in co-locating telecommunications facilities which is a cornerstone policy of Australian telecommunications regulation and policy. It's also unique to the NSW IPART draft report, and does not exist in any other evaluation or fee setting.

Telstra submits that the concept of co-user fees:

- Penalises carriers, requiring them to pay twice for one facility.
- Increases the cost for providers and is burdensome.
- Reduces the potential for infrastructure sharing as the co-user fees serves as a disincentive to co-locate.
- Directly contradicts Australian Government regulation that carriers take all reasonable steps to co-locate telecommunications infrastructure.
- Deters new entrants from entering the market due to the additional financial burden, artificially reducing competition among infrastructure owners and in the wider telecommunications market.

Telstra also notes that to the extent fees apply to small cells they are at odds with existing powers under Schedule 3 of the *Telecommunications Act 1997 (Cth)*¹⁴. Schedule 3 enables carriers to enter land to install and maintain a limited range of telecommunications facilities (including small cells) without paying rent. Among other things, it was the specific intention of that legislation to provide licenced telecommunications carriers with the appropriate statutory rights to undertake telecommunications activities without needing landowner consent or lease agreements.

6 The recommendation that communication sites located on a rooftop should pay a rent of \$3,821 is not appropriate.

The use of Crown land rooftops for the installation of telecommunications facilities is extremely rare. As highlighted by the IPART draft report itself, only 12 rooftop facilities currently exist on Crown land across NSW.

Given their ad hoc nature, it is Telstra's recommendation that rooftop sites be excluded from the IPART draft report's recommendations. It is Telstra's view that rooftop sites should be considered on an individual site basis utilising a land valuation approach.

To set a rental fee for rooftop sites, with limited data against which to benchmark, may set an unreasonable precedent in the broader context.

Telstra considers that it would be unreasonable for IPART to set a recommendation that impacts only 12 sites in their current portfolio, but which could have much larger scale impacts on the telecommunications industry more broadly.

IPART should adopt land valuation that is consistent with accepted land valuation methods. Telstra's position is that IPART should reconsider the use of density classifications, and instead adopt a land valuation approach, whereby the unimproved value of the freehold land is used as the basis for assessment of rent for communications sites on Crown land.

¹⁴ Available at www.legislation.gov.au.



6.1 Retention of density classifications.

Telstra is disappointed with the recommendations in the draft report for the retention of density classifications from the IPART 2013 review.¹⁵ Telstra understands that the density classifications, listed below in Box 1, were continued to minimise the costs of implementing the updated fee schedule.¹⁶ However, Telstra is of the view that there should be a single category with a single mechanism for determining rental fees for all users based on recognised land valuation methods.¹⁷

Box 1: IPART current density classifications¹⁸

Sydney: local council areas in metropolitan Sydney with a population density of greater than 1,800 people per square kilometre.

High: local council areas in metropolitan Sydney with a population density of less than or equal to 1,800 people per square kilometre as well as the greater metropolitan area of the Central Coast, Newcastle and Wollongong.

Medium: 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: rest of NSW

6.2 Established land valuation methods would generate a fair market-based return for NSW.

We reiterate the position from our April submission that:

- the proposed fee schedule should align with recognised land valuation methods used by the NSW Valuer General (which consider a range of factors in the valuation of land)¹⁹, and
- IPART should adopt a fair market-based returns rental regime for communications towers on Crown lands²⁰.

We believe that this approach would better comply with the Terms of Reference²¹ and property valuation principles as it would:

- Have regard to market rentals agreed for similar purposes and sites with a substantially identical landowner (i.e. aligned with how Crown rent is charged to other users of Crown land).
- Have regard to relevant land valuations by tying rents directly to the value of the underlying land, disregarding improvements made by the tenant.
- Achieve a fair market based commercial return on the land and provide a return to the government over and above its Weighted Average Cost of Capital (WACC).

¹⁵ IPART, July 2024, p19, s2.5, *Review of rents for communication sites on certain Crown land Draft Report*, available at <https://www.ipart.nsw.gov.au/documents/draft-report/draft-report-review-rents-communication-sites-certain-crown-land-july-2024>

¹⁶ Ibid, p21 s2.6

¹⁷ NSW Valuer General, 2023, *Valuation method*, available at

<https://www.valuergeneral.nsw.gov.au/land-values/how-do-we-value-land/valuation-method>

¹⁸ IPART, 2024 p4 *Review of rents for communication sites on certain Crown land Draft Report July 2024*, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Draft-report-Review-of-rents-for-communication-sites-on-certain-crown-land-july-2024.PDF

¹⁹ Telstra, 2024, p9, *Telstra submission IPART Review of rents for communication sites on certain Crown land*, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-Telstra-Group-Limited-D.-Hunt-12-Apr-2024-101224228.PDF

²⁰ Ibid, p6

²¹ IPART, 2023, *Terms of reference - Review of rents for communication sites on certain lands of the Crown - 12 December 2023*, available at https://www.ipart.nsw.gov.au/documents/terms-reference/terms-reference-review-rents-communication-sites-certain-lands-crown-12-december-2023?timeline_id=16682



- Be simple, transparent, and cost effective and reflective of the location of the land, without a need for different location categories; and
- Reflect a non-discriminatory approach as envisaged by the *Telecommunications Act 1997* (Cth).

Telstra would like IPART to reconsider the recommendation made in our April submission that rental fees for telecommunications sites should be based on the unimproved value of the freehold land, plus a percentage rate of return (e.g. of 6%).²²

7 Answers to specific issues paper seeking comment questions.

This section of our submission contains answers to the four questions raised in the IPART Draft Report.²³

7.1 Should the current density classifications be updated to reflect changes in the ABS' Australian Geography Standard? Can stakeholders provide further evidence of the costs and benefits of this change?

As outlined in this submission and our April submission, it is Telstra's position that IPART should adopt a land valuation approach, whereby the unimproved value of the freehold land is used as the basis for assessment of rent for communications sites on Crown Land.

As per our previous submission²⁴, we note that the ABS defines the Remoteness Areas as 'dynamic' and notes that 'changes may occur over time.' A dynamic system of categorisation may impact a carrier's ability to forecast, plan for rental costs and accurately consider the viability of Crown land sites.

7.2 To what extent do communication sites on lands reserved for conservation, including in national parks, create higher environmental costs? For example, do they cause greater mitigation and conservation costs? Are stakeholders able to provide evidence of the size of these costs and how they directly relate to the communication sites?

It should be noted that telecommunications sites occupy a small footprint in the context of a National Park as a whole. A typical facility will comprise of an approximate 10m x 10m fenced area, housing a monopole or tower and equipment shelter. Access and power will then be sought from the closest viable point.

Any proposal for a new telecommunications facility is prepared in consultation with the applicable landowner/land manager, e.g. NPWS. Land Management agencies have ample opportunity to flag issues associated with impacts on the subject land, and to work with the infrastructure provider to ensure the most appropriate outcome for the specific nature of the site. As per section 4 of this report, consideration of use of land reserved for conservation and other matters are also heavily considered as part of the planning approvals process.

With respect to IPART's question regarding possible 'greater mitigation and conservation costs', we note that once operational, telecommunications sites are infrequently visited for maintenance and upgrade purposes. Given sites are unmanned and visited infrequently, they are not considered to be a high

²² Telstra, 2024, p6, *Telstra submission IPART Review of rents for communication sites on certain Crown Land*, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-Telstra-Group-Limited-D.-Hunt-12-Apr-2024-101224228.PDF

²³ IPART, 2024 p17, *Review of rents for communication sites on certain Crown land Draft Report July 2024*, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Draft-report-Review-of-rents-for-communication-sites-on-certain-Crown-land-July-2024.PDF

²⁴ Telstra, 2024, p9, *Telstra submission IPART Review of rents for communication sites on certain Crown Land*, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-Telstra-Group-Limited-D.-Hunt-12-Apr-2024-101224228.PDF



generator of vehicle traffic. It is therefore submitted that impact is limited to the construction phase, which is generally managed by site specific construction and environmental management plans to protect and conserve the value of National Parks.

Considering the above and the additional detail noted in section 4 of this submission, Telstra considers that all the potential risks and impacts highlighted by IPART are manageable through the relevant planning process and in consultation with NPWS. The implementation of a fee one category higher is not the optimal solution for these issues and will only impact the viability of deploying infrastructure in National Parks.

We also refer IPART again to the community benefits of installing telecommunications facilities in National Parks. One such example is Telstra's telecommunications site at Gray's Point. This facility alone provides critical services to the Gray's Point community, The National Parks Office and Audley Weir, as well as a large area of the National Park itself.

7.3 What is the likely impact of our proposed pricing for small cell technology on the rollout of 5G networks? What evidence can stakeholders provide of this impact?

Small cells

Please refer to section 5 of our submission concerning the issue of small cells.

5G networks

As submitted in our April submission, Telstra does not expect to see any material effect on rental arrangements as a result of phasing out our 3G network.

The reason is because 3G enabled sites are being upgraded to 4G and 5G mobile technology. This involves recovering 3G infrastructure from a pole/tower - which includes antennas, cabling and radio units typically installed within an equipment compound - and installing new 4G/5G antennas and ancillary equipment. In some cases, this may result in a net reduction of infrastructure installed on a pole/tower, reducing pole/tower real estate enabling other users to co-locate on such infrastructure.

In any case, ordinary commercial considerations and market forces provide an appropriate incentive for carriers and other radio operator to vacate a site should there no longer be an operational need to host infrastructure on a pole/tower.



Appendix

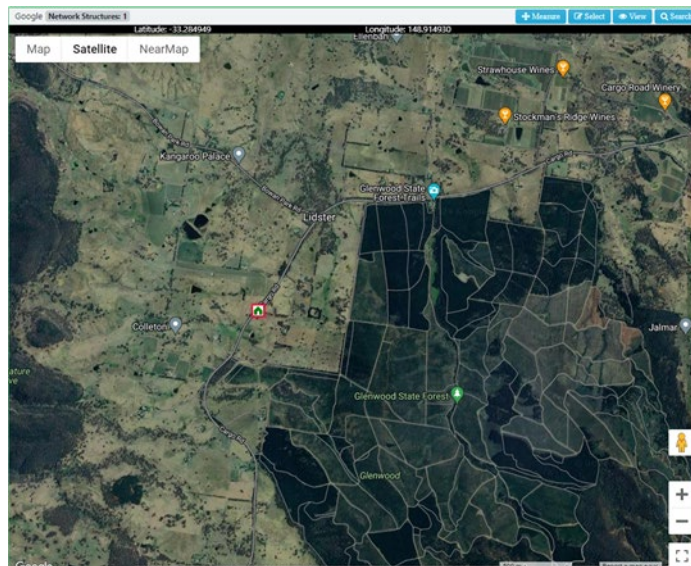
Appendix A: Lidster SCAX.

We provide the following example from the Lidster SCAX in regional NSW (refer figure 1), located next to Glenwood State Forest, to highlight the problems with the approach to NPWS land rentals proposed by IPART.²⁵ To recap, IPART is proposing that telecommunications infrastructure located on NPWS land is charged at the next higher price category than the one that would apply if infrastructure were not located in a National Park.

- The Lidster SCAX (located on private land) has a current rental of \$1,020 p.a.
- The Issued Land Value of the parent land (being a 20ha rural parcel) is \$1,100,000 which equates to a rate of \$5/sqm of land area (approximately).
- The capital value for the land on which the SCAX cabin is erected would be nominal; say \$2,000.
- For the purposes of this example, the freehold value of the land on which the SCAX site is erected is taken to be \$2,000.
- The Draft Report recommends a rental of \$8,545 p.a. for a site categorised as Low.
- Further, noting the Draft Report recommends “that National Parks and Wildlife Service’s approach of setting rental fees one category higher should continue” (page 5), this would result in a rental of \$17,012 p.a. (Medium).

This example highlights the fact, under the approach proposed for NPWS in the Draft Report, the proposed annual rent is equivalent to over **eight times** the Unimproved Land Value **every year**.

Figure 1: Lidster SCAX site.



²⁵ IPART, 2024 p23, *Review of rents for communication sites on certain Crown land Draft Report July 2024*, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Draft-report-Review-of-rents-for-communication-sites-on-certain-Crown-land-July-2024.PDF



Annexure 1: Valuers letter: IPART Draft Report – July 2024

9 August 2024

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Telstra Corporation

Dear [REDACTED]

RE: IPART DRAFT REPORT – July 2024

A review of the data on which the Draft Report and its recommendations are based suggests that a fundamental error has been made in the selection and adoption of accurate, market reflective rental data.

A high percentage of the lease particulars quoted in the review, on which the recommendations are based, in fact appear to reference dated sequential leases, whereby, the lease data incorrectly cites option renewal dates rather than original commencement dates. The apparent errors relate to commencement dates incorrectly cited as 2021/22 when in fact, commencement dates were 2016/17 or even 2011/12.

It is noted that page 14 of the Draft Report, under the heading 'Approach to Setting Rents', states the review aims to set "*rents through benchmarking against the private market ... [having] regard to a recent sample of private market rents for communication sites that are representative of different site locations and conditions*". We would contend that the use of dated sequential leases, masked by incorrectly citing the option renewal date rather than the original commencement date, is not consistent with the obligations within the Terms of Reference which state "recent" market evidence is to be used.

It is noted that page 18 of the Draft Report, under the same heading, states "*the recommended fee schedule has been updated to reflect fair, market-based commercial returns; [and] is based on a sample of more than 500 recent and representative market rentals for comparable communication sites*". Again, we would contend that the use of dated sequential leases is not consistent with the statement above regarding the use of "recent and representative market rentals".

It is noted that page 28 of the Draft Report, under the heading 'How we Measured Market Rents', states IPART "*obtained copies of leases from public data sources and extracted rental price and other pertinent data from them. In doing this, we noticed that a significant number of leases did not contain prices. In most cases, that was because the lease price field referred to a previous lease*." We would contend that this very statement appears to confirm the argument that the IPART Draft Report incorrectly references sequential leases (citing option renewal dates as original commencement dates) which, by definition, are not current market rental data as the commercial agreements originally commenced 5, 10 or even 15 years earlier. At the very least, the priority of this data must be treated with less weight according to the Guidance Paper AVGP 301 - Assessing Rent and Rent Determinations, published by The Australian Property Institute, dated July 2021 which states the following in relation to a hierarchy of evidence:

5.4 Comparable Evidence

In assessing market rent the Valuer should consider the most appropriate evidence in the marketplace. The circumstances where the lease was entered into are also relevant.

There is a hierarchy to weight that is placed on evidence. That priority is:

- a) New lease to a new tenant.*
- b) Where current market rent is agreed between the lessor and lessee at a mid-term review or exercise of option specifically, where the rent is to be the market rent and, if not agreed, can be set by determination.*
- c) Where current market rent is set by determination at a mid-term review or exercise of option. In this case the evidence used by the determining Valuer may have more relevance; and*
- d) New lease to a sitting tenant on expiry of an existing lease where the tenant has no right of continuing tenure. In this circumstance consideration must be given as to whether a premium rent was agreed rather than lose the goodwill and benefit of an existing fit out.*

The API's Guidance Paper clearly outlines the merit of order when using evidence to determine market rents. On this basis, we would contend that the apparently deliberate utilisation of rental data exhibiting lower priority on the hierarchy of evidence (per the API's Guidance Paper AVGP 301) has resulted in skewed and inflated rental recommendations within the Draft Report. This sentiment was further echoed by Amplitel in their submission which is included on page 33 of the Draft Report.

... Any evidence used must satisfy established valuation principles of "recent evidence". IPART, or any consultant valuer, should not rely on rentals that were established many years ago and that have now, through annual fixed increases, escalated well beyond the current market. Nor should IPART, or any consultant valuer, rely on rentals established for renewals of expired communications tower leases ... Established valuation principles, including the concept of a hierarchy of evidence, are clear on this point. Fresh market evidence must be used where it is available.

It is noted that page 34 of the Draft Report, under the heading 'Lease Data Obtained from Communication Companies' states *"the price samples submitted by the communication companies had lower medians in all density categories than the expected prices based on our market sample, which was based on a randomly selected market sample of sites. For some of these companies, the medians were well below the expected prices".* We would contend that this is due to the issue the IPART Draft Report appears to incorrectly rely on sequential leases as the main source of market data (despite the lower position on the hierarchy of evidence) and taking the median of the skewed data. Had the Draft Report been primarily based on rental data of new leases (the highest ranked data on the hierarchy of evidence), with appropriate (and lesser) weight applied to the use of renewals etc (lower tiered evidence), the median would have been lower than that recommended in the Draft Report. The statement under 4.2 above acknowledges and confirms this argument.

The Terms of Reference, signed by the Minister for Lands and Property, includes an undertaking to recommend a fee schedule having *"regard to recent and representative market rentals"*. It must be noted that the apparently deliberate utilisation of rental data exhibiting lower priority on the hierarchy of evidence (per the API's Guidance Paper AVGP 301) results in skewed and inflated rental recommendations. The prioritisation of lease renewals over new lease data is not consistent with the Terms of Reference above.

Lastly, it is noted that page 23 of the Draft Report, under the heading “Approach to National Parks and Environmentally Sensitive Land”, states “*National Parks and Wildlife Services (NPWS) has adopted the approach of increasing the rents for communication sites on land they manage by one density classification. For example, a site in a low location managed by NPWS would pay the rental fee of a site in a medium location. We understand this approach was adopted to reflect the unique environmental, social and cultural characteristics of the land they manage*”. We provide the following example which highlights the issue with this approach.

- An example site, say, the Lidster SCAX, has a current rental of \$1,020 p.a.
- The Issued Land Value of the parent land (being a 20ha rural parcel) is \$1,100,000 which equates to a rate of \$5/sqm of land area (approximately).
- The capital value for the land on which the SCAX cabin is erected would be nominal; say \$2,000.
- For the purposes of this example, the freehold value of the land on which the SCAX site is erected is taken to be \$2,000.
- The Draft Report recommends a rental of \$8,545 p.a. for a site categorised as Low.
- Further, noting the Draft Report recommends “that National Parks and Wildlife Service’s approach of setting rental fees one category higher should continue” (page 5), this would result in a rental of \$17,012 p.a. (Medium).
- This example highlights the fact, under the approach outlined on page 23 of the Draft Report, the annual rent is equivalent to over eight times the Unimproved Land Value every year.

It is further noted Victorian National Parks sites are currently being assessed by the Valuer General of Victoria in remote areas for around say \$2,000 - \$5,000 p.a. in mid to distant remote locations for various facilities, whereas, under the IPART regime these would equate to between \$8,000 - \$15,000 for IPART sites including NSW Crown Lands and the NPWS.

Kind regards

[Redacted signature block]