NSW GOVERNMENT | Planning, Industry & Environment

DOC19/202739

Dr Paul Paterson
Chair
Independent Pricing and Regulatory Tribunal
PO Box K35
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Dear Dr Paterson

Submission to IPART's draft report on the Review of rental arrangements for communication towers on Crown land

Thank you for the opportunity to make a submission to IPART's Draft Report for the above review.

This is a joint submission from the NSW Department of Planning, Industry and Environment – Crown Lands (CL), National Parks and Wildlife Service (NPWS) and Forestry Corporation of NSW (Forestry Corporation). Information about the agencies and their unique statutory frameworks has been provided to IPART in the agencies previous submission of 30 April 2019.

The joint submission is detailed in the attachment document. The agencies responses to the recommendations are aligned with the following:

- The agencies have significant concerns that key data relied upon by IPART is limited and not representative and should not be relied upon as a basis for significant changes to rental fees and co-user arrangements.
- The proposed scheme does not meet the Government's stated preference in the review terms of reference for a fee schedule that is as simple and transparent as practicable. In particular:
    - The proposed recommendations require the agencies to establish two parallel systems for calculating rental fees. This significantly increases the administrative burden on the agencies and the agencies dispute that it would have compensating benefits.
    - The recommendations to establish fee structures based on land size used are impractical for both the agencies and users and produce potential incentive for perverse outcomes.
- The proposed changes to rebates in the recommendations are unclear, will impact tenure holders and will place significant burden on the agencies to develop and implement.

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Thank you again for the opportunity to provide comments in response to the Draft Report. The detailed responses to IPART's recommendations are attached to this letter.

Yours sincerely

[redacted] 6·9·2019

Ms Alison Frame
Deputy Secretary, Housing and Property
Department of Planning, Industry and Environment

Joint submission from the NSW Department of Planning, Industry & Environment – Crown Lands, National Parks and Wildlife Service and Forestry Corporation of NSW

General

The agencies support IPART's approach that setting rents based on a percentage of the unimproved land value (e.g. 6%), would not reflect fair, market-based returns or be simpler to implement. Rents paid by commercial users of communication tower sites on private land are a better indicator of efficient prices and reflect fair, market-based returns given the nature and extent of the use of the land. Assessed land valuations are typically generic and do not necessarily reflect the nature and extent of the use of the land for communication tower sites. As a result, an approach based on land valuations alone does not reflect fair, market-based returns.

The agencies also support the approach taken by IPART on the application of clause 44 of Schedule 3 to the Telecommunications Act 1997 (Cth).

IPART Recommendation 1
That the appropriate basis for setting rents for communication tower sites on Crown land is rents agreed in a workably competitive market - that is rents paid by commercial users of communication tower sites on private land are the best available indicator of efficient prices.

Response: Supported in principle subject to the concerns as noted below.

The agencies broadly support IPART's principle of using market data to recommend fair market based rents in the draft report. However, the agencies have concerns about the data used and suggest that IPART address these before finalising the recommendations.

The approach of using rents in a workably competitive market is valid only if the data from the benchmarked market are representative of all users in the market. However the agencies have concerns with the data used as discussed below.

Issues with the sample used to make the recommendations

There are a number of limitations with the sample data used by IPART which affect the validity of the recommended rents. The issues with the sample released publicly by IPART include:

i) Representativeness of the sample data: The sample data must be representative of rents paid in the private market before the findings can validly be extrapolated to the entire market. The sample data used by IPART may be biased because the data:

- is primarily from major carriers and does not include data from non-carriers (infrastructure providers), broadcasters or not-for-profit carriers
- is a limited data set (23 leases) raising concerns that it may only represent leases with lower than average rents
- is from registered leases only and does not include other forms of agreements between private landowners and site users such as contractual agreements and licences

- is limited to only 11 different carriers which doesn't represent the diversity of carriers who use the sites. Data obtained from ACMA[1] shows that there are over 3,384 different carriers using communications sites throughout NSW.
- is limited to leases relating to those of Telstra, Optus, Vodafone and NBN.
- is limited to only 6 sites that are used by an entity other than Telstra, Vodafone, Optus, NBN, BKAL or AKAL – those entities are RFS, Police, NSWTA, My Metals Pty Ltd and Vicinity Centres Pty Ltd.
- indicates that 4 of the 11 carriers in IPART's dataset have a legal relationship and are likely to present to landowners as a single entity – BKAL Pty Ltd and AKAL Pty Ltd are wholly owned subsidiaries of Optus. Vodafone and Optus also operate as a joint venture.

These features of the data indicate that the sample may not represent the wider population of users and commercial leases and licences. Therefore any conclusion based on this sample could be biased and should not be used to benchmark the rents for the wider market.

ii) Sample size: There were 57,627 individual communication sites in Australia registered with ACMA, of these 29% (16,826) were located in NSW. Less than 6% of the sites located in NSW (or 937 sites) were on Crown land. It appears that IPART's sample included only primary users on private land and assuming that each primary user represents a single site then the sample is less than 1% (or 161 sites) of the total number of all registered communication towers sites in NSW. This implies a high level of uncertainty when drawing conclusions even if the sample was representative of the population.

The data in Table 1 further illustrates this point. The medians calculated using both the full sample (n=161 cases) and the publicly available sample (n=138 cases) are different. This implies that the median is sensitive to the sample size and outliers or extreme values, indicating that these extreme values are more common in the population than what is observed in the sample. This indicates that the sample is too small and biased and does not capture the full range of values present in the private market.

Table 1: Sample sizes for the location categories

Location category	**Sample size** (no. of cases)	**Median** (calculated from publicly available sample n=138)	**Median** (presented in the draft report n=161)
Sydney	14	31,184	33,700
High	30	15,000	16,900
Medium	42	12,000	13,500
Low	52	9,000	9,900
Confidential data	23	--------	--------
Total	161	--------	----------

iii) Sample variance: Sample data demonstrates that the variation in market rents is large and there is evidence of a significant overlap in rents between categories. This is demonstrated by figure 5.1 in the draft report. Table 2 shows that the mean (average) for the Sydney category is close to the median implying a symmetrical distribution of data points.

[1] Data downloaded from the ACMA website and correct as at 30 July 2019, 3 pm (Data file: device_details.csv)

However the variance and spread of data around the mean is very large. High variability in the data indicates that the data are more dissimilar and extreme values become more likely. With a small sample it is difficult to understand how frequently these extreme values occur in the population. This means that the rent recommended by IPART does not represent the wider market and hence cannot be used to benchmark rents.

Table 2: Sample means and standard deviation

Location category	Sample size	Average rent (n=138)	Min rent	Max rent	Standard Deviation of rent
Sydney	14	31,700	8000	65,486	15,717
High	30	19,305	7,500	46,058	8,781
Medium	42	12,897	6,000	25,000	4,249
Low	52	9,906	4,286	35,000	4,601

iv) Classification errors: Location classification errors exist in the sample data released by IPART (e.g. Panuara was misclassified as Sydney/Westmead). This reduced the cases in the Sydney location category from 14 to 13. The variance in the Sydney sample is now slightly smaller with the minimum rent higher at 15,592 (standard deviation of 14,737).

Recommendation to IPART on sample data: The agencies suggest that IPART:

I. use a larger more representative sample to draw conclusions and recommend a fee structure that can be applied to the wider market
II. provide 95% confidence intervals for the median rents recommended
III. cross-check findings using alternate methods including the willingness to pay and accept method proposed in the 2019 Issues Paper and the method used in the 2013 determination.

These measures will ensure that the agencies and the public have confidence that the fee structure recommended reflects fair market rents that apply to the wider population.

IPART Recommendation 2

For existing sites, the land management agencies implement the schedule of rents for all primary users other than telephony service providers (SCAX) shown in Table 5.1, where rent per site varies by location.

Table 5.1 Draft recommendations on annual rents for primary users on existing sites from 1 July 2020 ($2020-21, ex-GST)

	Sydney	High	Medium	Low
Rent per site	33,700	16,900	13,500	9,900

Response: The agencies support the rent per site approach, based on location categories but for the reasons set out above do not support the rates set out in table 5.1

IPART Recommendation 3

Location definitions for High and Medium locations are refined. Locations are defined as:
Sydney: local council areas in metropolitan Sydney with a population density greater than 1,800 people per square kilometre (as listed in Appendix A)

High: ABS significant urban areas of Sydney (excluding local council areas included in the Sydney category above), Newcastle – Maitland, Wollongong, Central Coast and Morrisset – Cooranbong.

Medium: areas within 12.5 km of the centre of the urban centres and localities (UCLs) defined by the ABS as having a population of 10,000 or more based on the 2016 census (as listed in Appendix B).

Low: the rest of NSW.

Response: Supported subject to a change to the wording for 'Medium Category' definition to provide greater clarity. Wording changes recommended below:

"Anywhere in NSW that is within 12.5km of the centre of any Urban Centre Locality (UCL) that is listed in Appendix B, being the UCL's that were identified by the ABS as having a population of 10,000 or more based on the 2016 census."

IPART Recommendation 4

The following services are included in the rents for new and existing primary users on Crown land:

- All lessor costs of preparing and assessing lease applications
- Use of existing tracks at no additional cost. Where additional access roads are required the costs of building and maintaining should be set with reference to a benchmark rate.

Response: Not supported for reasons set out below.

a) **It is not supported by IPART's dataset**
   - The agencies' review of the leases in IPART's published dataset indicates that in many cases the lease is prepared using the lessee's standard lease template. This indicates that there is likely to be little negotiation of the terms and no lease preparation fees incurred by the landowner.
   - By contrast, the agencies licence and not lease, for use of their land and set terms to provide appropriate protection and fulfil their specific statutory obligations.
   - There is no evidence in IPART's dataset of the nature and extent of access required over the landowner's property to get to these sites. Many of these sites are likely to be accessed by sealed public roads or otherwise over cleared farmland.

b) **It does not achieve the Terms of Reference of developing a fee schedule that reflects fair market-based commercial returns**
   - The rent charged must represent a commercial return to the agencies, not cost-recovery only. There is no benefit to the agencies in hosting communications towers if the rent must be used to cover their costs.

c) **It does not achieve the Terms of Reference of developing a fee schedule that is as cost reflective as possible**.
   IPART's draft report does not include any discussion about costs faced by land management agencies to provide the services required by their respective statutory schemes. The costs to land management agencies are significantly different to those faced by private and commercial land managers in the market.

   i. *Cost to agencies*:

      - Licence negotiations, which are often protracted as users often seek to renegotiate or update their licence terms at option despite only being entitled to a further licence on the same terms and conditions.

- General administration such as account management , financial management including overdue invoices and reconciling invoices, especially from larger operators using automated systems
- Reconciling accounting records to correct incorrect and/or unidentifiable payments – these issues commonly arise in the case of larger operators who use automatic payment systems and make payments before invoices are issued or when there is no current licence in place.
- Call-outs due to issues such as gates being incorrectly locked resulting in other users being locked out.

Removing the ability of agencies to recover their administrative, management and operational costs means that the fee schedule does not reflect the costs incurred by agencies in hosting towers.

ii. *Different cost structures*

The agencies have complex and resource-intensive statutory obligations. For example, monitoring to ensure that the restricted-access fire trails required by emergency and fire fighting vehicles are not compromised by increased vehicle traffic from communications site users. Private and commercial land managers in the market do not have these obligations and hence do not incur these additional costs. This means that the agencies face higher costs in renting the land (due to statutory requirements) compared to private landholders as well as holding higher value land, both of which would lead to higher rents.

It may be true that some private and commercial land managers provide additional services such as free use of utilities (electricity, water etc.) as part of their leases. These cannot be compared to the statutory and legislative obligations of managing environmentally sensitive and world heritage sites or other statutory obligations. In addition, the costs in the private market do not adequately reflect the maintaining social, environmental and cultural values of Crown land. Hence it is appropriate to assume that the agencies that manage Crown land will have higher costs compared to landowners in the private market.

d) Costs of implementation

IPART has recommended a two tier fee structure (existing and new sites) to be administered concurrently, which will be complex and difficult to administer, increasing the costs of implementation and the chances of possible discrimination. It may also result in perverse outcomes where licences are cancelled and new applications made under the new structure. This is not consistent with the criteria set out in the Terms of Reference for this review which specify that the recommended "fee schedule that is as simple, transparent and cost reflective as practicable".

e) **It does not achieve IPART's stated objective of efficient pricing (4.1 of the Issues Paper), where rents reflect a fair sharing of the economic surplus between land management agencies and users.**

Primary users have the capacity to cover their operational and maintenance costs by increasing the fees they charge co-users. This recommendation would result in agencies being unable to recover management costs (including operational and maintenance) from users.

f) **It does not take into account the agencies' statutory obligations including:**

i. *Rural Fires Act* 1997 (NSW)
   a. Many of the tracks used to access tower sites are unsealed fire trails that are closed to the public and accessible only by the agencies, emergency service providers and licensees. For example, NPWS manages 27,700km of fire trails, which is 68% of all roads and trails managed by NPWS.

b. Management and maintenance of fire trails is complex and technical – they must be maintained to a standard that is accessible to standard firefighting vehicles and can be used safely by firefighters during emergencies. They must also be built in a way that minimises the environmental impacts caused by soil erosion and sediment runoff.[2]
c. The *Rural Fires Act* was amended in 2016[3][2] to require agencies to classify and maintain all fire trails on their land in accordance with a new set of standards developed by the Rural Fire Service(RFS). RFS is overseeing landowner implementation of this legislation, which involves a comprehensive audit and classification of all fire trails and construction/maintenance works to bring them in line with the corresponding condition standards. Implementation began in 2017 and is likely to take several more years to be finalised. This is a complex and technical exercise but will, once completed, enable the agencies to accurately determine the costs of fire trail maintenance.
d. IPART's proposal attempts to pre-empt this complex work by undertaking a generic cost assessment of track maintenance, which varies significantly in terms of nature and frequency depending on a wide range of factors including soil type, climate, rainfall and intensity of use.

ii. *Environmental Planning and Assessment Act* 1997 (NSW)
As Determining Authorities under Part 5 of the EP&A Act the agencies are responsible for assessing the environmental impact of all activities conducted on their land. This is in contrast to the private market, where the local council undertakes this assessment by way of development approval. In the private market it can be expected that landowners would not bear the costs of the site user obtaining development approval so these costs would not be contemplated in the rent negotiations.

iii. *Native Title Act 1993* (Cth) and *Aboriginal Land Rights Act 1983.*

g) **The recommendation goes beyond the fee schedule as the broader effect is that agencies would be restricted from determining the terms and conditions associated with the grant of a lease or licence.**
- The licence fee is a defined term under the licence with an allocated fee in the fee schedule. However the costs for the recovery of reasonable administrative or those associated with maintenance or damage, arise as a result of the terms and conditions of the licence, and are not part of the fee schedule.
- Charges to the licensee for maintenance of roads or tracks are generated by the operation of the licence provisions. These terms and conditions are separate to the licence fee schedule and are included as safeguard for the lessor against damage caused by the licensee's use of the access roads.
- The agencies require legal safeguards in the licences that stipulate the terms and conditions of tenure, such as "The Licensee accepts the Access Road in its present condition and state of repair and subject to all defects, if any, whether latent or patent.", or, "the Licensee agrees to make good any damage to the Access Road caused by the Licensee". The NPW Act specifically states that the grant of tenure for broadcasting or telecommunications is "subject to such terms and conditions as the Minister may determine" (s153D(2) NPW Act).
- This recommendation may result in agencies being compelled to rectify damage caused by the lessees/licensees to its tracks, or that agencies are required to prepare a track to be suitable for use for the licensee's purposes. This right of the agencies to impose such safeguards in the terms and conditions of its licences is one which is in line with standard commercial practice.

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[2] Fire Trail Design, Construction and Maintenance Manual, Rural Fire Service, 2017, p.4
[3] *Rural Fires Amendment (Fire Trails) Act 2016*

IPART Recommendation 5

For new sites, the land management agencies implement the schedule of rents shown in Table 6.1, where rent per site varies by location and land size.

Table 6.1 Draft recommendations on annual rents for primary users on new sites and SCAX sites from 1 July 2020 ($2020-21, ex-GST)

	Sydney	High	Medium	Low
Rent per m²	1,123	273	203	124
Rent per site varies depending on land size	For a median land size of 30 m² for Sydney sites, rent would be $33,690	For a median land size of 60 m² for High sites, rent would be $16,380	For a median land size of 65 m² for Medium sites, rent would be $13,195	For a median land size of 80 m² for Low sites, rent would be $9,920

Response: Not supported for reasons set out below.

a) **It does not achieve the Terms of Reference of developing a fee schedule that reflects fair market-based commercial returns.**
IPART stated in the Draft Report that there is no observable correlation in the private market between land size and the rent paid for a site. Setting fees on the basis of land size will not achieve market-based returns for the agencies.

b) **It does not achieve the Terms of Reference of developing a fee schedule that is as cost reflective as possible.**
Introducing a different rent calculation for new sites and expansions of existing sites means that there are two different fee schedules to administer – those with flat fees and those to be determined on the basis of land size. This unnecessarily increases the complexity of the existing fee schedule rather than simplifying it.

c) **Any resulting reduction in land use size as a result of this recommendation is anticipated to be minimal.**
- To the agencies' knowledge, communications providers typically construct sites on an as-needs basis and do not construct sites that are larger than their needs. The agencies' review of IPART's data indicates that the size of a compound may correlate with the type and size of the structure, for example tower, mast or monopole.
- The demand for additional land is driven by co-location. Marginal rent savings made by minimising compound size will not affect this demand from co-users for additional land adjacent to existing sites, as the alternative of constructing a brand new site is far more costly.

d) **There is no benefit to the agencies of slightly reduced footprints.**
The presence of a tower site on the agencies' land precludes the use of the immediate and potentially surrounding land, for other uses. Erection of other structures may interfere with transmission from the site and electromagnetic radiation also makes it unsafe for occupation. The scenic amenity is also drastically impacted by communications towers, which significantly compromises the conservation and recreation values of the surrounding area.

e) **The recommendation may incentivise the construction of taller equipment shelters in order to accommodate more equipment without incurring increased fees**.
This would increase the visual impact of such sites.

f) **Implementation of the recommendation poses practical challenges for agencies and users.**
For example, in bushfire prone areas, RFS Practice Note 1/11 requires that an Asset Protection Zone be established to provide a zone for emergencies services to combat bushfire threats. Other fire reduction requirements may include land clearing. This land must be included as part of the site as it is not available for other uses. This results in the footprint of sites in such zones always being larger than in other areas. A single fee structure for each location category would mean that users are not disadvantaged by fire management requirements.

IPART Recommendations 6 & 7
That the rent for Small Country Automatic Exchange (SCAX) sites be set on a per metre squared basis as shown in Table 6.1.

That the rent for SCAX sites be capped at the flat rent per site for primary users on existing sites in the same location category.

Response: Not supported. The agencies do not support the calculation of any rents based on land size for reasons set out earlier in the submission.

Additionally both SCAX sites vary in size and are not universally smaller than tower sites. The agencies consider that the only relevant basis for differentiating SCAX sites from tower sites is the nature of the services they provide – that is, fulfilment of Universal Service Obligations.

If, notwithstanding the agencies concerns, a fee structure based on land size is adopted is adopted the agencies do not support any method that caps rents. It is not commercial market practice to cap rents if a Licensee is paying on a per square metre rate.

IPART Recommendations 8, 9 & 10
That co-users on existing and new sites be charged for any additional land they occupy outside the perimeter of the primary user's communication tower site on the per metre squared basis as shown in Table 7.1.

Table 7.1 Draft recommendations on annual rents for co-users and small cell technology from 1 July 2020 ($2020-21, ex-GST)

	Sydney	High	Medium	Low
Rent per m²	1,123	273	203	124

That the co-user rent be capped at the flat rent per site for primary users on existing sites in the same location category.

That the minimum annual rent to occupy Crown land be payable for co-users wholly located within the primary user's site.

Response: Not supported for the reasons set out below.

There is insufficient market evidence in IPART's published dataset to justify this recommendation, which is a significant departure from the long-standing practice, initiated by IPART, of charging co-users 50% of primary user fees.

IPART's published sample included data limited to primary users. It is unclear how many site arrangements have been reviewed in relation to co-users and how IPART have determined

that it is not commercial practice to charge co-user fees, except where there is additional land use. It is unclear as to what data was used to support the change in position.

In addition, the agencies analysis of the impacts of the proposed changes to co-user fees varies significantly from IPART's analysis. This raises further concerns about the validity of IPART's analysis of co-user fee arrangements. For example for Crown Lands setting co-user fees at the statutory minimum ($508 per co-user) will reduce the co-user revenue by up to 92% or $4.98 million alone. This decrease is significantly larger than the reduction estimated by IPART in its draft report. Although this figure does not take into account the potential offset from charges for co-users with an additional land footprint it raises concerns that there is an issue with the modelling undertaken for this part of IPART's analysis.

a) **The evidence relating to co-use arrangements in the dataset is weak.** It is unclear as to the steps to determine whether there are any unregistered legal instruments for the sites in its dataset between co-users and landholders. In this regard, the agencies note:

   - The Land Registry Services' (LRS) registration rules relating to plans of sublease and subdivision of lease areas are likely to make it difficult if not impossible to register a sublease over part of a telecommunications site.[4]
   - Licences do not align with land so they cannot be registered with LRS. Any licence agreements entered into between co-users and landowners would not be recorded in LRS.

b) **It does not achieve the Terms of Reference of developing a fee schedule that is as cost reflective as possible.**
   i. The minimum statutory rent is not cost reflective of the expenses incurred by the agencies in hosting co-users. Managing co-users is administratively and operationally costly for a number of reasons:
      - Each user typically engages a range of contractors in operating their sites, so the agencies are required to deal not only with users but numerous contractors with varying levels of understanding of the licence terms, site conditions and operational protocols.
      - Managing site access by multiple entities and their various contractors is resource-intensive. Examples such as users leaving gates open or inadvertently locking other users out is a common issue that the agencies must respond to. This can be particularly time consuming in remote locations where sites are located considerable distances from agency offices.
      - Each new co-user and facility upgrade at a site requires an environmental assessment under the EP&A Act, as well as operational oversight and management by the agencies. As examples NPWS estimates it receives on average between 1 and 3 requests for facility upgrades or new co-user proposals each week while CL estimates it receives 10-15 enquiries per week from tenure holders for access, maintenance and upgrades.

c) **Charging co-users the minimum statutory rent is inefficient pricing, contrary to the objectives set out in IPART's issues paper –** there is no relationship with the consumer surplus generated by co-users operating a commercial business, without paying commercial rent to landowners. This recommendation will result in the surplus being shared between co-users and primary users or infrastructure providers, with the agencies receiving none.

d) **It is inconsistent with the principle in *Spencer*[5] that market rent is what a willing and knowledgeable but not anxious parties would negotiate.**

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[4] Registrar General's Guidelines – Sublease
[5] *Spencer v The Commonwealth* (1907) 5 CLR 418

- A knowledgeable landowner who was aware of the colocation requirements in the *Telecommunications Act* would not agree to lease terms that enabled a site user to host other carriers without paying any fee to the landowner.
- The agencies should not be expected to adopt the less favourable terms of a lease than those negotiated by uninformed landowners.

As noted by IPART on page 45 of the draft report, other stakeholders have consistently argued against co-user fees. IPART has rejected those arguments and the agencies consider that IPART should continue to do so, as there has been no significant change in the market and therefore IPART's earlier reasoning remains valid.

For the reasons set out earlier in this submission, the agencies have concerns that the data relied on by IPART is not representative. In particular the data is not representative of the variety of co-user arrangements. It is not clear how many site arrangements have been reviewed and there is insufficient information about sub-letting arrangements in the draft report to draw robust conclusions. It is unclear whether sufficient and compelling data was available to IPART to support the change in position.

In the absence of strong market evidence to the contrary, the agencies maintain that co-user fees of 50% are appropriate to reflect:

- intensity of land use by all users (primary and co-users)
- obligations on the agencies under their respective legislation to manage the use of the land sustainably
- the attractiveness of the site – including any distinctive characteristics and that it is already used for telecommunications infrastructure. The agencies contend that this attractiveness is not driven purely by the primary user's infrastructure.

e) **Small cell technology should be distinguished from co-use.**

The agencies consider the small cell technology to be quite different in character from traditional co-user arrangements. As noted on page 51 of the draft report "Small cells are generally made up of one or two small antennas and a small equipment cabinet, typically installed on existing infrastructure such as light poles, bus shelters, advertising billboards or payphone cabinets."[6] As such it would be uncommon for small cells to be located on telecommunications infrastructure. Additionally, by definition, a 'small cell' could not exceed the footprint of a primary use site. The agencies recommend that the tribunal reconsider its recommendations on co-user fee to specifically disregard or significantly limit inclusion of small cell technology as a category of co-use.

Additional response to Recommendation 8

- For the reasons set out in relation to recommendations 5 and 6 the agencies do not support a pricing framework that involves calculation of licence fees by reference to the area occupied.
- The proposed arrangement is not consistent with the Terms of Reference as it does not meet the objective of a fee schedule as simple and transparent as possible. The proposed arrangement will be resource intensive and difficult to administer for both the agencies and users as the agencies will need to collect and record detailed information, potentially through surveys, about the land size occupied.

Additional response to Recommendation 9

- Further, although the scenario seems unlikely, the agencies query the reference to 'existing sites'. The draft report is not clear as to whether the intention is to cap

[6] IPART's footnote: Telstra Exchange, Small cells bringing fast mobile coverage to where it's needed most https://exchange.telstra.com.au/small-cells-bringing-fast-mobile-coverage-needed/ accessed 4 June 2019.

the co-user's rental to that of sites licenced pre-July 2020. If this is the intention then effectively co-users footprint based fees will be capped at just over 30 square meters in addition to the land licensed to the primary user. If the co-user fee is intended to capture the co-user's additional footprint there is no market based justification for any cap.

IPART Recommendations 11 & 12

That the rent for small cell technology occupying additional Crown land be set on the per metre squared basis as shown in Table 7.1.

That the minimum annual rent to occupy Crown land be payable for small cell technology installed on existing poles or structures with no additional footprint.

Response: Not supported for the reasons set out below.

The agencies do not support a fee schedule based on land size nor on minimum annual rent to occupy Crown land. The agencies agree that lower fees for small cell technology is appropriate as the range of such cells is significantly smaller than 4G sites. It is expected that small cells will typically be erected on street/light poles, buildings and advertising structures rather than on towers or masts. However the nature and extent of the use of land for such sites is not well understood – such as the need for supporting equipment, power connections.

Because of these concerns and the lack of a clear market rent basis the agencies do not support a fee based on the minimum rent. The agencies consider that for small cell technology only a flat rate fee per location area may be appropriate but requires this further examination of market data.

IPART Recommendation 13

That the rents for all communication sites on Crown land be set according to the rent schedule for the relevant location category, and negotiation of rent for high value sites not be permitted.

Response: Not supported for the reasons set out below.

The ability to negotiate high value sites is inherent in a competitive environment and should continue to be available.

In the 2005 IPART review it was recommended that both rentals and the occupancy terms and conditions should continue to be negotiated between the parties for high value sites. In the 2013 IPART review it was again recommended that negotiation be available for high value sites where negotiation was cost effective and where the site had characteristics that support a higher rental than other sites in the same location. The same characteristics that make a site of higher value may increase the likelihood that there will be co-users at the site. IPART identified in the 2005 report that the current number of users were a criteria to identify which sites are high value.

In both the 2005 and 2013 IPART final reports it was recommended that co-user fees be set at 50% of the primary user fee for the site. With this simple and transparent scheme in place there was less imperative to undertake the work necessary for negotiation of high value sites. However, if the co-user arrangements are changed as proposed in IPART's draft report there is greater need to negotiate on high value sites for the reasons previously set out by IPART.

The only justification that IPART provided in the draft report to remove 'site-by-site negotiation for high value site' is that these arrangements have not been utilised. Although not widely utilised it remains a possibility that an iconic site or a site with highly sensitive environmental or commercial values may require specific negotiation to allow the agencies to protect and sustainably manage Crown land to the benefit of the entire NSW community.

IPART Recommendation 14
That the Office of Environment and Heritage continue to set the rent for sites in national parks one location category higher that the site's actual category.

Response: Supported. The agencies appreciate this as a mechanism to keep the fee structure as simple and transparent as possible, and reflects the economic developments over the past decade in modelling the economic value of environmental assets. In the absence of market evidence or carrying out a detailed assessment of the Total Economic Value, the one-up approach is an appropriate approximation given the objective of achieving a fee schedule that is simple to apply.

The key market data relied upon by IPART is not representative of land that is reserved for the purpose of environmental protection and the conservation of nature, cultural values, and public enjoyment. As IPART has not provided a comparable benchmark market for telecommunications infrastructure on land that is reserved for these purposes, conservation land managed by NPWS remains outside of the results of the benchmark market of this review.

IPART Recommendation 15
That infrastructure providers not receive a rental discount for communication sites on Crown land.

Response: Supported. The agencies support the recommendation as consistent with a market rental approach.

IPART Recommendation 16, 18 & 19
That the current rebates for Community Groups, Budget Funded Sector, Local Service Providers, and Telephony Service Providers be removed.

Those local service providers adversely impacted by our recommendations be able to apply for transitional financial and business advisory assistance from the NSW Small Business Commissioner for a period of three years.

That the NSW Government provide on-going financial assistance to those Community groups adversely impacted by our recommendations.

Response: Not supported for the reasons set out below.

The Terms of Reference for the review specifically note that the fee schedule may provide for rebates. The alternatives proposed by IPART in the draft report remain unclear and will be a significant burden on the agencies to develop and implement. Given that the fees recommended by IPART are largely based on the rents paid by the major commercial operators, the agencies consider that it is not appropriate to abolish the existing rebates.

While the agencies recognise the value to the community of having access to broadcasting, internet and telecommunications services, this is not the same as the provision of emergency communications services on a not-for-profit basis. Those who provide communications services to the community for a fee have the ability to set their prices to cover their operating costs; those in the Community Groups and Budget Funded Sector rebate categories do not.

Not for profit community groups play a vital role in ensuring the safety of our community. For example, NSW Volunteer Rescue association have a number of radio facilities on Crown land, and is often primary responders for road crash, land and vertical rescue. Similarly Marine Rescue NSW has multiple radio facilities supporting 44 rescue units along the coastline as well as the Snowy River and Murray River. Whilst the agencies note that IPART has recommended that alternative support for these organisations, alternative arrangement will significantly increase administration, with potential to negatively impact services.

The agencies also support the continued rebate for SCAX sites, as opposed to adopting a per square metre approach, on the basis that this infrastructure provides essential telephony services under their Universal Services Obligation. It should not be distinguished from other rebate categories, particularly given that SCAX sites vary significantly in size.

IPART Recommendation 17
That the new rent schedule apply to all communication tower sites on Crown land from 1 July 2020.

Response: The agencies ask IPART to clarify this recommendation further.

The agencies recommend that IPART specify in this recommendation that the new rates apply for agreements entered into or renewed after 1 July 2020, or at the next market review opportunity on or after 1 July 2020.

The agencies presently enter into long term arrangements with telecommunications providers and other customers who have equipment installed on the telecommunication towers. Whilst there is some variation in the terms of the licence agreements entered into by the different agencies, they all provide for annual increases to CPI with reviews to market or some other mechanism on a periodic basis (most commonly every five years). As such, the terms of these agreements will not generally permit a change to licence fees outside of a CPI adjustment except at the specified market review opportunity.

IPART Recommendation 20
That the published rent schedule be updated annually by the change in the consumer price index (CPI)

Response: Supported.

This contributes to the objective that the fee schedule is simple and transparent. The agencies currently have licence management systems that have been developed and tailored to suit the requirements of the two previous IPART reviews into charges for telecommunication towers. This includes allowing for annual increases in line with CPI. In the interests of simplicity, the agencies therefore support annual increases in line with CPI.

Notwithstanding the above however, the agencies note that this approach departs from the market data provided by IPART where only 11 of the 138 sites applied an annual CPI adjustment, with 127 sites on a fixed annual percentage adjustment.

IPART Recommendation 21

That the published rent schedule be subject to an independent review every five years to ensure it reflects fair market based rental returns.

Response: The agencies support the periodic review of the fee schedule to ensure it reflects market rents and technological changes.

However, the agencies remain concerned that the current proposed scheme and the schemes recommended in 2005 and 2013 each involved significant changes in fee structures and methodologies. This imposes a significant burden on both the agencies and users and should only be required where there are significant changes in the marketplace.