



nbn submission to IPART Review of rental arrangements for communication towers on Crown land Issues Paper



Submission on IPART Review of rental arrangements for communication towers on Crown land

Thank you for the opportunity to comment on the issues as set out in the Independent Pricing and Regulatory Tribunal's (IPART) 'Review of rental arrangements for communication towers on Crown Land Issues Paper, February 2019' (Issues Paper) and other issues relevant to the terms of reference. We set out our response below, followed by a summary of our responses as relevant to the specific issues that IPART seeks comment, and would be happy to provide further information.

Introduction

nbn's consideration of rental arrangements for communication towers on the relevant NSW Crown land¹ is focused on ensuring that it meets the Government's expectation that all Australians have access to very fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers, and that nbn will ensure upgrade paths are available as required. To help achieve these objectives, the Government expects that nbn should roll out a multi-technology mix network and build the network in a cost effective way using the technology best matched to each area of Australia.²

As such, nbn's consideration of rental arrangements for communication towers on NSW Crown Land is relevant to the services delivered by nbn over its fixed wireless (FW) network. nbn's FW network covers regional and remote areas of Australia, and is essential in helping to bridge the digital divide for Australian homes and businesses.

The Department of Communication's Bureau of Communications and Arts Research determined that nbn's FW network is loss-making and non-commercial, and estimated that the net present value loss for FW and satellite services to FY2040 is approximately \$9.8 billion, using a post-tax nominal discount rate of 6.46 per cent. In FY2015 real terms, this loss represents a per-month subsidy of approximately \$105 for each FW premises activated.³ Given the loss-making and non-commercial nature of the FW network, nbn's view is that the services offered by nbn using its FW network across the entire footprint including rural and regional areas would not be offered under a normal competitive environment.

¹ Crown land that is managed by the following NSW land management agencies: Department of Industry, NSW National Parks and Wildlife Service, Forestry Corporation of NSW (referred to as **NSW Crown Land**)

² Australian Government, NBN Co Ltd, Statement of Expectations, 24 August 2016.

³ Department of Communication's Bureau of Communications and Arts Research 'NBN non-commercial services funding options, Final report' March 2016, p7.



Summary

nbn submits that the rental arrangements for NSW Crown Land should reflect a rental yield that is appropriate with reference to the below considerations:

- The characteristics of each particular site noting the diverse nature of sites, geographies and markets across NSW that would inform, among other things, the land management agency's opportunity cost.
- The fundamentally different nature of NSW Crown Land licences when compared to **nbn**'s arrangements for private land generally.
- The operation of clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth) which prohibits discrimination in the setting of rents for the use of Crown land for telecommunication purposes.
- The likelihood that adopting a rent-setting methodology based on the willingness of a land user to pay is likely to result in rental outcomes which contravene clause 44 and is also an inappropriate measure when dealing with **nbn**, as **nbn** effectively has an obligation to acquire sites in order to meet its rollout and coverage objectives.

On this basis, **nbn** submits that rental arrangements for NSW Crown Land be calculated as 6% of unimproved land value with the area of land calculated according to the size of the entire compound area (with the 'exclusive use' area expanded to cover the entire compound area). Further, rent be calculated annually using the relevant land value averaged over a rolling 3-year period.

- **nbn** submits that the 'exclusive use' area in respect of primary user and infrastructure provider arrangements be expanded to cover the entire compound area as opposed to being limited to the equipment footprint only. This would align with typical arrangements in **nbn**'s private land arrangements and recognise the improvements generally made by **nbn** such as fencing and earthing of the compound area (placing cabling under the ground).
- In respect of co-users, **nbn** submits that no rent be payable to the NSW Government in circumstances where the co-user is using land *within the compound area (noting nbn's view that the 'exclusive use' area be expanded to cover the entire compound)*. Alternatively, where rent is payable by co-users to the NSW Government in these circumstances, the primary user as relevant should be provided a discount to the same amount. This is noting that the primary user is already making rental payments in respect of the land in use and that the co-user makes no further encumbrance of the land.

nbn does not consider that the current methodology of determining rent (as recommended by IPART in its 2013 review) is appropriate given the considerations listed above. However, if the current methodology forms part of IPART's recommendations, **nbn** makes the following additional submissions:

- In respect of co-users, **nbn** submits that no rent be payable to the NSW Government in circumstances where the co-user is using land *inside the compound area*. Alternatively, where rent is payable by co-users to the NSW Government in these circumstances, the primary user as relevant should be provided a discount to the same amount. This is noting that the primary user as relevant is already making rental payments in respect of *the entire compound area* (encompassing the areas of exclusive use and non-exclusive use).
- **nbn** considers that the economic, social and public benefits associated with **nbn**'s FW network in conjunction with the loss-making and non-commercial FW network would support **nbn** being provided with the rebate afforded to the budget funded sector user and **nbn** should be accommodated in this manner if the rebate system continues to be applied.



The role of communication towers in nbn's FW network

The supply of broadband over **nbn's** FW network involves data transmitted by radio signals to premises connected to services over the **nbn** network. Data travels from **nbn** radio frequency antennas located on a tower to an **nbn** outdoor antenna that has been fitted to the relevant end users' premises.

The rollout, and operation, of **nbn's** FW network therefore relies on access to communication tower sites across **nbn's** FW footprint that includes metro-fringe, regional and remote areas of Australia. **nbn's** FW network is close to completion, with the **nbn** access network nationally expected to be completed by June 2020, with 8.6 million Australian homes and businesses currently able to connect to the **nbn** access network (as at Feb 2019)⁴ including over 600,000 premises using **nbn's** FW network⁵.

[C-i-C] [C-i-C].

The selection of a tower site generally incorporates a range of considerations:

- **Cost**, including associated costs such as power.
- **Estimated time frames**, including those associated with relevant contractual arrangements, any development applications, activities specific to NSW Crown Land sites including site licences for design activities such as geotech investigations.
- **Technical**, including network design thresholds, customer experience, coverage of premises in the relevant area, network design with linked 'chains' of facilities with each base station connected to other base stations in the chain⁶, and the need to link sites to a fixed line hub and backhaul, access.
- **Town planning** - for example, zoning.
- **Stakeholder consultation**, including councils and local communities.

In respect to **nbn's** use as a co-user, the potential for co-location is considered as part of initial site selection. **nbn** seeks to co-locate wherever possible noting that there are a number of benefits, including shorter timeframes for deployment where existing infrastructure is used.

However, as a primary user, any co-location revenue received by **nbn** is incidental noting **nbn's** focus on completing the network and ensuring upgrade paths are available as required. **nbn** notes that payment is required as part of co-location noting that it is surrendering structural and aperture capacity on facilities.

Following the completion of the capital-intensive build phase, operating costs contribute an increasing proportion of overall expenses for **nbn's** FW network, driven largely by site rental (approximately a third of costs) and maintenance costs.⁷

In respect of minimising operating costs, **nbn** has extremely limited, and practically no, ability to relocate a tower and is a captive tenant in respect of the sites that it has chosen to use in constructing its network at the lowest cost. Relevant factors include significant sunk costs, the interdependent nature of **nbn's** FW network, and the

⁴ <https://www.nbnco.com.au/corporate-information/about-nbn-co/updates/dashboard-february-2019>

⁵ <https://www.nbnco.com.au/content/dam/nbnco2/2018/documents/weekly-progress-reports/21032019.pdf>

⁶ The implication of this design is that any delays to upstream sites are reflected in all dependent sites below the affected site.

⁷ Figure 3: Fixed wireless opex breakdown, FY2011–18: Department of Communication's Bureau of Communications and Arts Research 'NBN non-commercial services funding options, Final report' March 2016.



need to have line-of-sight between a tower and the outdoor antenna at each relevant premises served by that particular tower.

NSW Crown Land

The nature of NSW Crown Land

The NSW Government holds over 50% of the geographical mass in the state, therefore holding a significant amount of land on which access is required by **nbn** to roll out a national network. With respect to **nbn**'s FW network, the considerations involved in selecting a site limit the number of available options. **nbn** notes, for example, that NSW Crown Land encompasses a significant amount of land that due to its geographic features makes it non-arable and less attractive for development therefore limiting the range of land use options, with the same features making it more attractive to **nbn** (for example, containing high peaks, hills, ridges, and escarpments).

Therefore, **nbn** requires access to NSW Crown Land sites to ensure that the Government meet its commitment that all Australians have access to very fast broadband at least cost to taxpayers where **nbn** has determined that the FW network is the appropriate technology to service the homes and businesses in particular areas of NSW. As **nbn** has an obligation to provide connectivity, it is effectively compelled to acquire NSW Crown land sites and so its decision to do so does not reflect the usual range of commercial considerations that drive many other parties seeking access to such land.

The fundamentally different nature of NSW Crown Land rental arrangements

nbn notes the significantly different terms and conditions of access to NSW Crown Land (which are typically offered on a 'take or leave it' basis) when compared to private land. These differences include:

- The comparative uncertainty regarding rent payable over the full term of **nbn**'s intended occupation of the NSW Crown Land, with the rent for private land typically agreed for the total term of the leases or licence, usually 20 years.
- Significant differences in contract provisions include those relevant to the right to occupy the licenced area, maintenance of access track, indemnities, and termination.
- [C-i-C]
 - [C-i-C]

These differences mean that a direct comparison of headline rents paid for NSW Crown Land and those paid for private land can be misleading. The rights **nbn** acquires under private leasing arrangements are generally "stronger" than it gains in relation to NSW Crown Land. These factors need to be considered in setting the rent for NSW Crown Land.

Proposed methodology for NSW Crown Land rental arrangements

nbn submits that the rental arrangements for NSW Crown Land reflect a rental yield that is appropriate with reference to all of the below considerations:

- The characteristics of each particular site noting the diverse nature of sites, geographies and markets across NSW.
- The fundamentally different nature of NSW Crown Land licences when compared to those for private land generally.



- The use of particular NSW Crown Land by tenants for communication towers should not be used as a basis for discrimination resulting in higher rental payments than those that would otherwise be paid, noting among other things the captive nature of those tenants.

IPART's proposal that rents should be set having regard to users' willingness to pay for using sites is likely to arrive at a situation where different rents are paid by different users. IPART notes at 4.2.1 of its Issues Paper that the most a user would be willing to pay would be influenced by the economic value users can obtain from a site. Unless it is expressly acknowledged by the NSW Government that **nbn**'s FW network is loss-making and non-commercial, meaning that **nbn** obtains little or no economic value from a site with FW tower, the adoption of a "willingness to pay" model is likely to arrive at rents which are unreasonably high for **nbn**, having regard to the critical community service it provides.

In *Telstra Corporation Ltd v State of Queensland*, the Queensland Government's practice of charging telecommunications carriers higher rents than other businesses was found to have contravened clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth). In response to this, the Queensland Government moved away from a model that charged telecommunications carriers a higher rate, and now sets its commercial rentals for Crown land at 6% of the unimproved land value.

nbn notes that IPART has discussed whether rentals be set based on land valuations in 4.3.2 of its Issues Paper. IPART noted in its last review that land value is not the sole determinant of market rent for communication tower sites, and notes that rents in other markets is likely to attract market rent that reflects supply, demand, value of the site to potential occupants and opportunity cost to the site owner. IPART has listed these as reasons why previous reviews have not recommended a rent schedule based on land value alone. **nbn** notes that IPART's previous reviews occurred prior to *Telstra Corporation Ltd v State of Queensland*, and the Federal Court has since held that market rent is not a relevant, appropriate or permissible distinction in charging telecommunications carriers higher rent.⁸

In light of this, **nbn** submits that IPART reconsider that having a rent schedule for communications towers based solely on unimproved land value is entirely appropriate and consistent with the methodology currently applied in Queensland.

nbn's view is that the use of particular NSW Crown Land by tenants for communication towers should not be used as a basis for discrimination resulting in higher rental payments than those that would otherwise be paid, noting among other things the captive nature of those tenants.

In *Telstra Corporation Ltd v State of Queensland*, the Federal Court held that:

... the purpose of cl 44(1) [of schedule 3], namely to promote and protect the long-term interests of end-users of carriage services and to promote accessible and affordable carriage services, is inconsistent with the submission that State and Territory governments are permitted to charge carriers higher rents on the basis that carriers are charged more rent in the private market. In fact, price-gouging of this type by State and Territory governments seems precisely the type of conduct that cl 44(1) is designed to prevent.⁹

⁸ [2016] FCA 1213 at [148]

⁹ [2016] FCA 1213 at [147]



Further, **nbn** notes that the Federal Court held that the rationale for the higher charge related to private land owners charging higher rentals was not relevant, appropriate or permissible as the *Telecommunications Act 1997* (Cth) does not restrict discrimination from individuals or corporations and does restrict discrimination from State and Territory Governments.¹⁰ IPART notes in the matters specified in its terms of reference that it has been asked to have regard to recent market rentals agreed for similar purposes and sites. This is contrary to the Federal Court's findings in *Telstra Corporation Ltd v State of Queensland*.

nbn's proposed methodology for rental arrangements

nbn submits that rental arrangements for NSW Crown Land be calculated as 6% of unimproved land value with the area of land calculated according to the size of the entire compound area (with the 'exclusive use' area expanded to cover the entire compound area). Further, rent be calculated annually using the relevant land value averaged over a rolling 3-year period.

- This approach would take into account the characteristics of each particular site including zoning of land, and potential land use options as relevant noting the diverse nature of sites, geographies and markets across NSW.
- This approach would ensure that the changes in the characteristics of each particular site are reflected in the rent in a more timely manner, noting the annual rent is proposed to be based on updated land value assessments.
- **nbn** notes that this approach would be consistent with the methodology applied in QLD in which telecommunication carriers are not discriminated against when compared to other businesses in determining the relevant rent.
- This approach removes the arbitrary results that arise from the current methodology under which 'location categories' are defined with reference to a specific population density figure, the inclusion of particular local government areas and / or in the case of the medium category - areas falling within 12.5km as measured from the centre of the relevant Urban Centre Locality.

Further, **nbn** considers that to ensure the rigour and impartiality of the proposed methodology, the land value used to calculate the relevant rent be able to be appropriately objected to. **nbn** notes, for example, that it receives annual land valuation notices from the QLD Department of Natural Resources, Mines and Energy (**DNRME**) relevant to the sites on which it has rental arrangements. The annual valuations are conducted by the State Valuation Service and are able to be objected to with grounds explaining why the valuation is incorrect to be provided as part of this process.

Payments for co-users

In respect of primary users or infrastructure providers as relevant, **nbn** submits that the 'exclusive use' area be expanded to cover the entire compound area as opposed to being limited to the equipment footprint only. This would align with typical arrangements in **nbn's** private land arrangements and recognise the improvements generally made by **nbn** such as fencing and earthing of the compound area (placing cabling under the ground).

On this basis, **nbn** submits that no rent be payable to the NSW Government in circumstances where the co-user is using land *within the compound area* (i.e. the expanded 'exclusive use' area). Alternatively, where rent is payable by co-users to the NSW Government in these circumstances, the primary user as relevant should be provided a

¹⁰ [2016] FCA 1213 at [148]



discount to the same amount. This is noting that the primary user is already making rental payments in respect of the land in use and that the co-user makes no further encumbrance of the land.

nbn notes that private land rental arrangements typically provide **nbn** with exclusive use of the entire compound and no additional payments by **nbn** to the land owner are required in circumstances where arrangements are entered into to enable co-users to use the area *inside the compound*.

In circumstances where a co-user requires use of an area *outside of the compound*, **nbn** considers that rent should be payable only in respect of this area. **nbn** notes that this methodology is applied in respect of Queensland Crown land with co-users not required to pay for the use of areas *inside existing carrier compounds* and that payment is only required for the use of areas *outside of the primary user's compound*.

- [C-i-C] [C-i-C]
- The QLD Government obtains no monetary benefit when carriers sublease part of their compounds to another compound, excluding application fees for example. If a party wants to enter into a co-location agreement with another carrier on a site where the lease is with DNRME, it is permitted provided the parties enter into a formal sublease on DNRME approved terms and obtain the relevant Minister's approval.

Current methodology

nbn does not consider that the current methodology of determining rent (as recommended by IPART in its 2013 review) is appropriate given the considerations relevant to calculating an appropriate rental yield (extracted below for ease of reference):

- The characteristics of each particular site, noting the diverse nature of sites, geographies and markets across NSW.
- The fundamentally different nature of NSW Crown Land leases or licences when compared to those for private land generally.
- The use of particular NSW Crown Land by tenants for communication towers should not be used as a basis for discrimination resulting in higher rental payments than those that would otherwise be paid, noting among other things the captive nature of those tenants.

However, **nbn** submits the below if the current methodology forms part of IPART's recommendations:

- In respect of co-users, **nbn** submits that no rent be payable to the NSW Government in circumstances where the co-user is using land *inside the compound area*. Alternatively, where rent is payable by co-users to the NSW Government in these circumstances, the primary user as relevant should be provided a discount to the same amount. This is noting that the primary user as relevant is already making rental payments in respect of *the entire compound area (encompassing the areas of exclusive use and non-exclusive use)*.
- The current rebate system does not address the economic, social and public benefits associated with the broadband provided by **nbn** to NSW homes and businesses, noting the loss-making and non-commercial nature of **nbn**'s FW network. These considerations would support **nbn** being provided with the rebate afforded to the budget funded sector and **nbn** should be accommodated in this manner if the current rebate system continues to be applied. (discussed further below).



Discounted rental arrangements for nbn's loss-making FW network

As noted, **nbn** require access to NSW Crown Land sites to provide Australians with access to fast broadband services in a cost effective manner, including relevantly **nbn**'s loss-making and non-commercial FW network. **nbn** notes the rationale for the budget funded sector as 'Government agencies or authorities that deliver core services to the public and typically cannot fully capture the value they create through user fees' and submits that **nbn**'s FW network be similarly accommodated for the following reasons.

- **The broadband services offering by nbn using its FW network across the entire FW footprint encompassing metro fringe, rural, and regional areas would not be offered in a normal competitive environment given the loss-making and non-commercial nature of the FW network and a discounted rent would not provide nbn with an unfair competitive advantage.**
 - o Telstra and Optus have both expressed views that competition in fixed wireless is unlikely and undesirable. Further, Optus stated that it would be unrealistic to expect there to be interest from an alternative operator to provide non-commercial services, given the very large costs that would be sunk to provide relevantly the services delivered over the **nbn** FW network.¹¹
- **nbn optimises the deployment of its network so that it builds the network in a cost effective way using the technology best matched to each area of Australia.** Therefore, in areas where **nbn** requires access to NSW Crown Land for communication towers, this is on the basis that FW is the most cost effective technology to offer homes and businesses in that area.
- **The economic, social and public benefits provided by the nbn network.**
 - o AlphaBeta estimate that the **nbn** access network helped drive an additional \$1.2 billion in economic activity in 2017 alone, helped create new jobs and businesses, and improved productivity. If this continues, the GDP impact is estimated to increase to \$10.4 billion per year in 2021¹², with the network expected to generate an additional \$5.3 billion a year in regional areas by the end of the rollout in 2020¹³. In **nbn**'s view, if a conservative approach is adopted and an assumption made that just 10% of this additional economic activity is driven by connections to the FW network, this results in an estimated annual GDP increase of \$530m per year due to the FW network. Note this economic activity is in addition to other social and public benefits that are harder to quantify.
- **The rent payable by nbn for rental of NSW Crown Land ultimately flows through to the price paid by RSPs, which may ultimately flow through to the price paid by end users.**

Specific Site Examples – Galston East & Kangy Angy

As an example of the implementation of the proposed methodology, **nbn** notes International Valuation & Property Services's valuation report in respect of a site at East Galston currently under consideration and an existing site at the Kangy Angy (with the relevant **nbn** site name being Tangy Dangy) (see Attachment C).

¹¹ Department of Communication's Bureau of Communications and Arts Research 'NBN non-commercial services funding options, Final report' March 2016, p79.

¹² <https://www.nbnco.com.au/content/dam/nbnco2/documents/connecting-australia-report.pdf>, methodology detailed at <http://www.alphabeta.com/wp-content/uploads/2018/04/AlphaBeta-Connecting-Australia-Project-Summary-methodology.pdf>

¹³ <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/regional-nbn-rollout-on-the-home-stretch>



The valuation indicates in respect of the East Galston site the following:

- Rent of \$15,000 p.a. would be suitable under a typical 4x5 year registered telecommunications land lease for private freehold land in NSW
- Rent would be \$29,083 p.a. under the current NSW Crown Land pricing arrangements.
- Under the proposed methodology, the rent would be calculated at 6% of the land value, approximately \$95,973 with 6% of this amount equating to \$5,758 p.a.

The valuation indicates in respect of the Kangy Angy site the following:

- Rent of \$7,000 p.a. would be suitable under a typical 4x5 year registered telecommunications land lease for private freehold land in NSW
- Rent is \$15,771 p.a. under the current NSW Crown Land pricing arrangements.
- Under the proposed methodology, the rent would be calculated at 6% of the land value, \$52,044, with 6% of this amount equating to \$3,122 p.a.

The valuation indicates that the rent calculated using the existing NSW Crown Land pricing arrangements is significantly higher than that payable for comparable private freehold land in surrounding areas, that is in turn significantly higher than that payable under **nbn**'s proposed methodology consistent with the current approach adopted in Queensland.

nbn submits that the rent that would be payable under the proposed methodology of \$5,758 and \$3,122 p.a. for East Galston and Kangy Angy respectively would provide a rental yield that is appropriate with reference to: the characteristics of the relevant site; the nature of NSW Crown Land licences; and appropriately does not discriminate against **nbn** by charging a higher rate given the use of the land for communication towers.

Issue for comment

Proposed approach

1 Do you agree with IPART's proposed approach for this review? Are there any alternative approaches that would better meet the terms of reference, or any other issues we should consider?

nbn does not agree with IPART's proposed approach for this review. See **nbn**'s view in the 'Summary' box, and the 'Proposed methodology for NSW Crown Land rental arrangements' section.

nbn does not consider that IPART's proposed approach to determining efficient rents for communication towers to be appropriate or consistent with clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth).

In light of the Federal Court's findings in *Telstra Corporation Ltd v State of Queensland*, IPART should consider an approach where land valuations alone form the basis for a rent schedule. This is consistent with the current approach adopted in Queensland.

Estimate the range for efficient rents

2 Do you agree with our proposed definition of efficient rents for communication tower sites on Crown land as the range bounded by a user's willingness to pay and the opportunity cost to the land agency?

See **nbn**'s view in the 'Summary' box, and the 'Proposed methodology for NSW Crown Land rental arrangements' section.



As noted, **nbn**'s view is that the use of particular NSW Crown Land by tenants for communication towers should not be used as a basis for discrimination resulting in higher rental payments than those that would otherwise be paid, noting among other things the captive nature of those tenants. The proposed definition of efficient rents being the range bounded by a user's willingness to pay and the opportunity cost to the land agency runs the risk of discriminating against tenants who use NSW Crown Land as communication tower sites. This may contravene clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth).

Further, unless it is expressly acknowledged by the NSW Government that **nbn**'s FW network is loss-making and non-commercial, meaning that **nbn** obtains little or no economic value from a site with FW tower, the adoption of a "willingness to pay" model is likely to arrive at rents which are unreasonably high for **nbn**, having regard to the critical community service it provides.

In respect of opportunity cost, **nbn** notes its proposed methodology with the rent calculated with reference to the relevant land value. The land value would be informed by potential land use options as relevant for particular sites.

3 What information should we consider to estimate users' willingness to pay (for example market-based commercial rents paid to private land owners)?

As noted, **nbn**'s view is that the use of particular NSW Crown Land by tenants for communication towers should not be used as a basis for discrimination resulting in higher rental payments than those that would otherwise be paid, noting among other things the captive nature of those tenants. **nbn** again notes the Federal Court's finding that market-based commercial rents paid to private land owners by telecommunications carriers is not a relevant, appropriate or permissible distinction when deciding that higher rents are chargeable to telecommunications carriers for Crown land.

Further, **nbn** notes the significantly different nature of NSW Crown Land rental arrangements generally under the relevant NSW Crown land agencies standard contract terms (typically offered on a 'take or leave it' basis) when compared to private land rentals also needs to be considered. See 'The fundamentally different nature of NSW Crown Land rental arrangements' section above.

4 Do market-based rents typically cover all services related to access, use and operation of the land or are there any additional fees charged to users (such as fees for maintenance of access roads)?

[C-i-C] [C-i-C] See 'The fundamentally different nature of NSW Crown Land rental arrangements' section above.

5 What characteristics of a communication tower site are users more willing to pay for? Are these different for users that provide services in different markets?

See answer to Q2 above.

6 How should we estimate the land agency's opportunity cost? Does this vary for sites in different locations?

See answer to Q2 above.

7 What do you consider to be a 'fair' sharing of any differences between a user's willingness to pay and the opportunity cost of a site?

See answer to Q2 above.



Decide on and apply a rent setting methodology

8 Does the current market evidence support continuing the existing schedule of rental fees by location? Would there be benefits to increasing or decreasing the number of location categories?

nbn's proposed methodology of calculating the rent for a site with reference to the particular unimproved land value removes the arbitrary results that result from the current methodology. The unimproved land value is calculated for each particular site and removes the need for location categories. The response of the Queensland Government to *Telstra Corporation Ltd v State of Queensland* supports this model and is consistent with clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth).

nbn submits, as an example of **nbn**'s proposed methodology, that the rent that would be payable of \$5,758 and \$3,122 p.a. for East Galston and Kangy Angy respectively would provide a rental yield that is appropriate with reference to: the characteristics of the relevant site; the nature of NSW Crown Land licences; and appropriately does not discriminate against **nbn** by charging a higher rate given the use of the land for communication towers.

9 Are the current location categories reflective of recent data on population density?

nbn notes its answer to Q8.

10 What is the appropriate rent discount for co-users?

See **nbn**'s view in the 'Payments for co-users' and 'Current methodology' section.

11 Should infrastructure providers receive a discount relative to primary users?

[C-i-C] [C-i-C]

12 Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public?

nbn does not consider that the current methodology of determining rent (as recommended by IPART in its 2013 review) is appropriate. See **nbn**'s view in the 'Summary' box, and the '**nbn**'s proposed methodology for NSW Crown Land rental arrangements' and 'Current methodology' section.

nbn notes that the current rebate system does not address the economic, social and public benefits associated with the broadband provided by **nbn** to NSW homes and businesses, noting the loss-making and non-commercial nature of **nbn**'s FW network. These considerations would support **nbn** being provided with the rebate afforded to the budget funded sector and **nbn** should be accommodated in this manner if the current rebate system continues to be applied.

13 Should the current rent arrangements based on site-by-site negotiation for high-value sites be continued?

As noted, **nbn**'s view is that the use of particular NSW Crown Land by tenants for communication towers should not be used as a basis for discrimination resulting in higher rental payments than those that would otherwise be paid, noting among other things the captive nature of those tenants.

The Federal Court held that clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth) is inconsistent with State and Territory Governments being free to charge businesses whatever rent they are able to extract.¹⁴ This

¹⁴ [2016] FCA 1213 at [146]



suggests that a continuation of an arrangement where site-by-site negotiations can occur for high-value sites contravenes clause 44 and **nbn** submits they should not continue.

14 Would a valuation formula based on observable site characteristics be a viable alternative for setting rents for high-value sites? If so, what site characteristics would need to be included in the formula to determine the rent?

See answer to Q13 above. **nbn** notes that its proposed approach of calculating rent with reference to the land value would take into account observable site characteristics to the extent that they are relevant in determining the unimproved land value.

Transitioning impacts on users and adjusting rents over time

15 Do you agree with our proposed approach for assessing the impact of our recommendations on users?

nbn agrees with the proposed approach of assessing the impacts of IPART's recommendations on users and recommending transitional arrangements if required.

16 Is the current approach of adjusting rents annually by the CPI appropriate?

nbn considers that its proposed methodology could be implemented annually in calculating the appropriate rent using the relevant land value averaged over a rolling 3-year period, noting that the land value be able to be objected to where there are appropriate grounds. This approach would ensure that rent would be adjusted in a more timely manner as appropriate.

17 Should the fee schedule continue to be independently reviewed every five years?

On the current information available, **nbn** considers that the fee schedule should continue to be independently reviewed every five years.

nbn notes in respect of its proposed methodology that to ensure the rigour and impartiality of the proposed methodology, the land value used to calculate the relevant rent be able to be appropriately objected to.



Client:

Client:

Project:

NATIONAL BROADBAND NETWORK
SITE No.2DBB-51-15-WONR
WONGARBON
LOT 188 DP 754321
"KILLARNEY" RED HILL ROAD
WONGARBON,NSW 2831

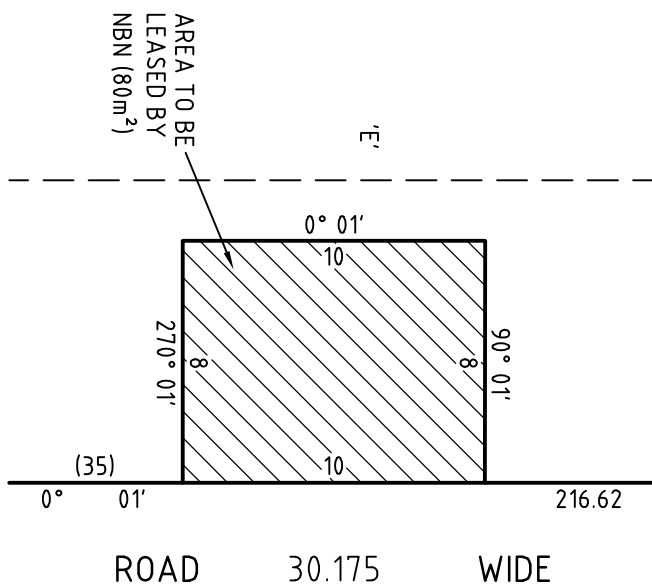
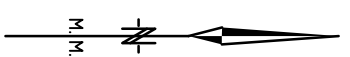
2 30/07/18 SITE RELAXATION
1 06/10/17 INITIAL ISSUE
Rev Date Revision Details



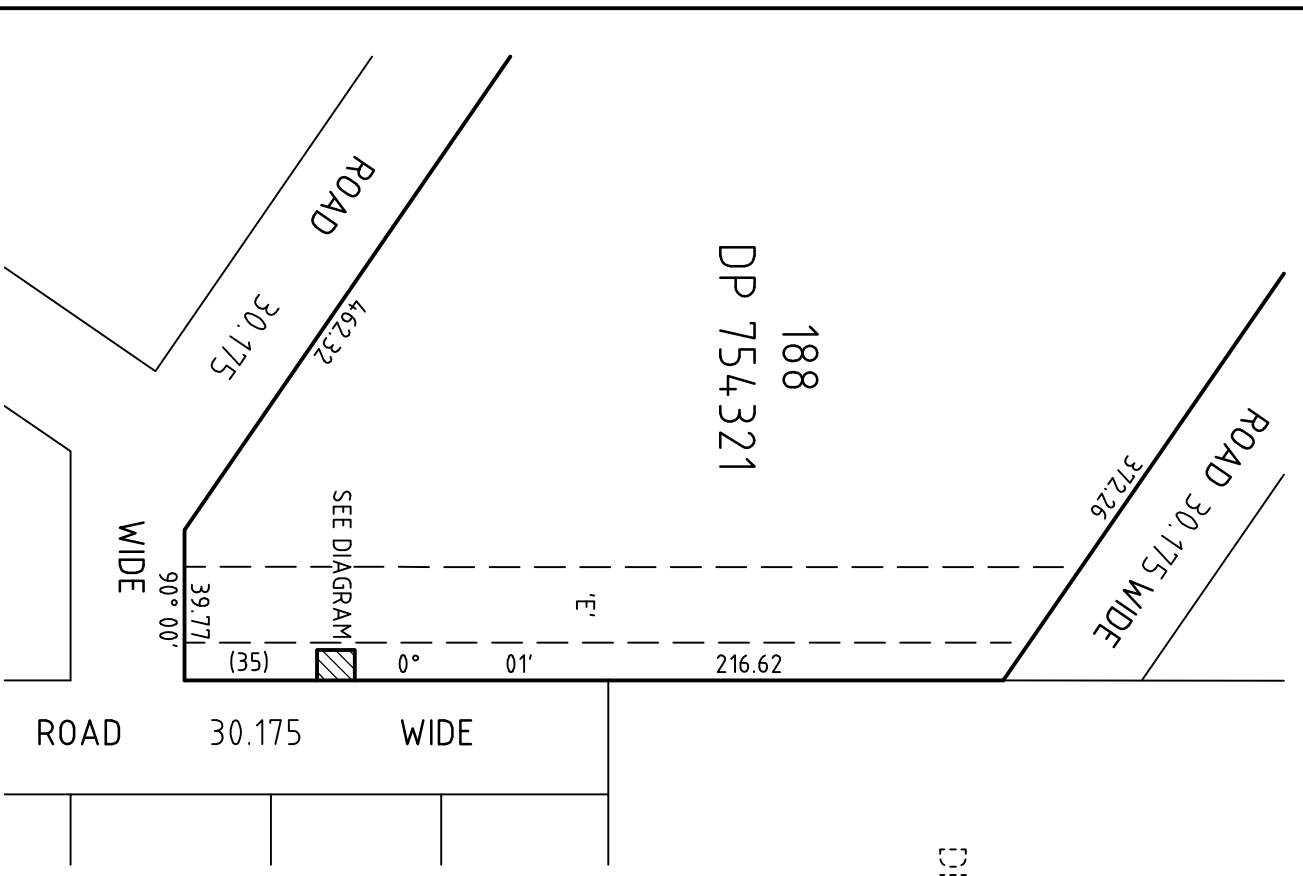
Aurecon Australia Pty Ltd ABN 54 005 139 873

CAD: WBJ
CHECKED: RLS
APPROVED: AB

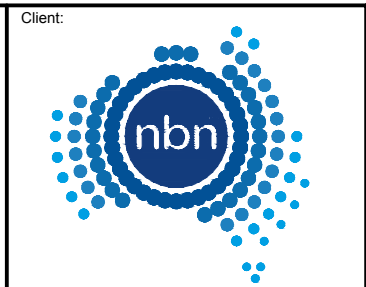
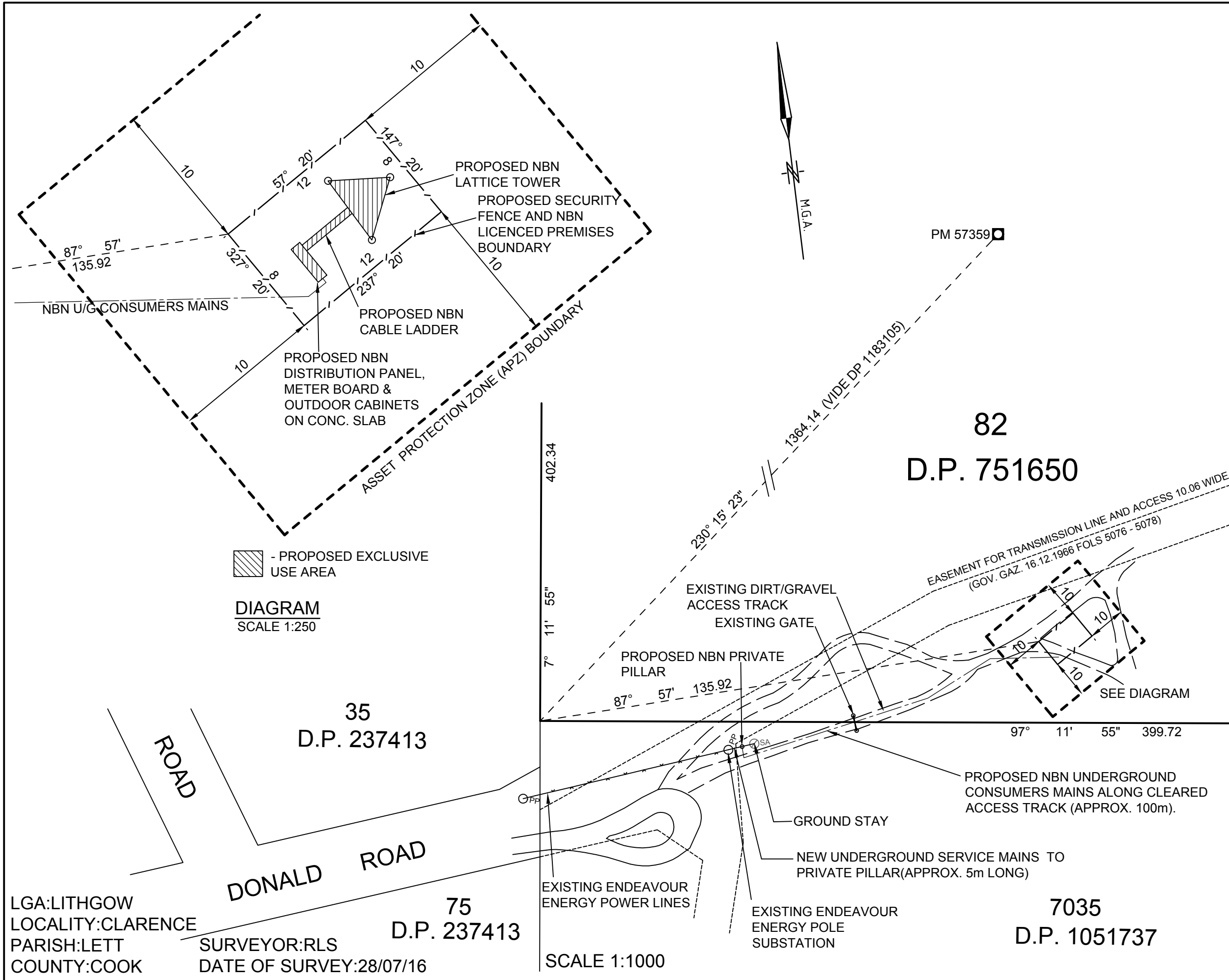
Drawing Title:
PLAN OF PROPOSED LEASE
FOR TELECOMMUNICATION
PURPOSES WITHIN LOT 188 DP 754321
Drawing No:
2DBB-51-15-WONR-1 02
Revision



'E' - EASEMENT FOR OVERHEAD POWERLINES 20 WIDE (AH4,94,300)



LGA: DUBBO REGIONAL
Locality: WONGARBON
Parish: MURRUMBIDGEREE
County: LINCOLN
SURVEYOR: RLS
DATE OF SURVEY: 25/07/18



Client:

Project:

NATIONAL BROADBAND NETWORK
 SITE No: 2BTH-51-20-CLRR
CLARENCE
 LOT 82 DP 751650
 DONALD ROAD, CLARENCE
 NSW 2790

02	18.12.17	PROPOSED NBN PRIVATE PILLAR RELOCATED
01	08.06.17	INITIAL ISSUE
Rev	Date	Revision Details



CAD: WJ

CHECKED: RLS

APPROVED: AB

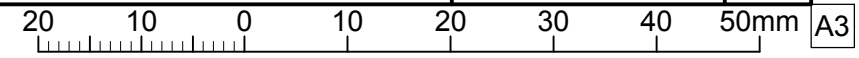
Drawing Title:
 PLAN OF PROPOSED LICENCE FOR TELECOMMUNICATION PURPOSES WITHIN LOT 82 DP 751650

Drawing No.	Revision
2BTH-51-20-CLRR-L1	02

LGA:LITHGOW
 LOCALITY:CLARENCE
 PARISH:LETT
 COUNTY:COOK

SURVEYOR:RLS
 DATE OF SURVEY:28/07/16

SCALE 1:1000



VALUATION REPORT

Lot 85 DP755263 Pacific Hwy

Kangy Angy

and

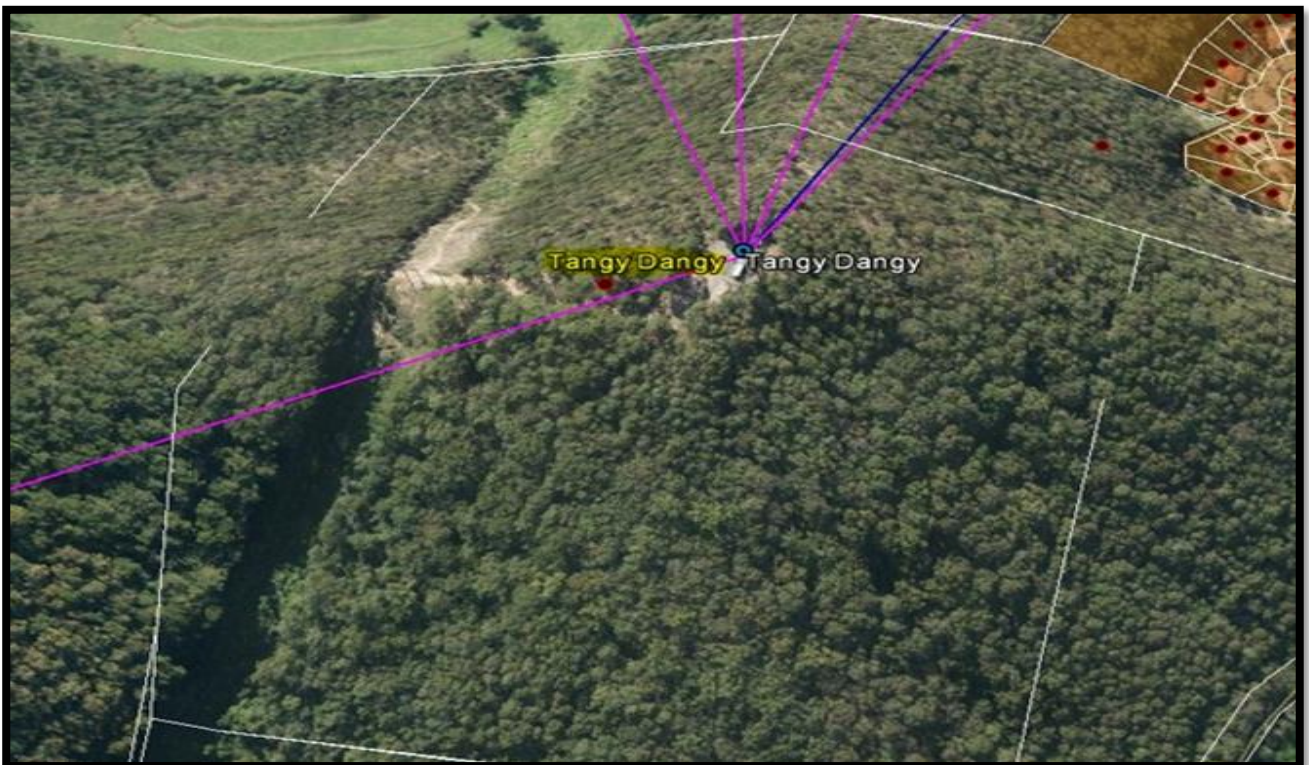
22 Radnor Road

Galston East

NSW



Galston East



Tangy Dangy

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INSTRUCTIONS:

We have been instructed by [REDACTED] on behalf of NBN Co to undertake a rental valuation of the proposed NBN facility 2DUR-51-13-GALT located at 22 Radnor Road Galston and 2WYO-51-08-TANG to be located at Lot 85 DP755263 Pacific Hwy Kangy Angy NSW on the basis of its use as a communications facility. The three scenarios include:

1. Typical 4x5 year registered telecommunications land lease for private freehold land in NSW
2. Current NSW Crown Land schedule
3. QLD Crown Land methodology

PURPOSE OF VALUATION:

The valuation is required for submission to the IPART review.

DATE OF INSPECTION:

2nd April 2019

DATE OF VALUATION:

2nd April 2019

LOCATION:**Galston:**

The subject property is located on the northern side of Radnor Road, east of the intersection with Treelands Close within Berowra Valley National Park. It is situated 5km east of Galston, 15km north of Hornsby, 37km south west of Brooklyn and 42km north-west of the Sydney CBD.

The surrounding development generally comprises a mixture of open space and Crown Land, with rural residential development further west towards Galston. Nearby facilities include Galston Gorge, Galston shopping village, a Public School and the Aquatic Centre.

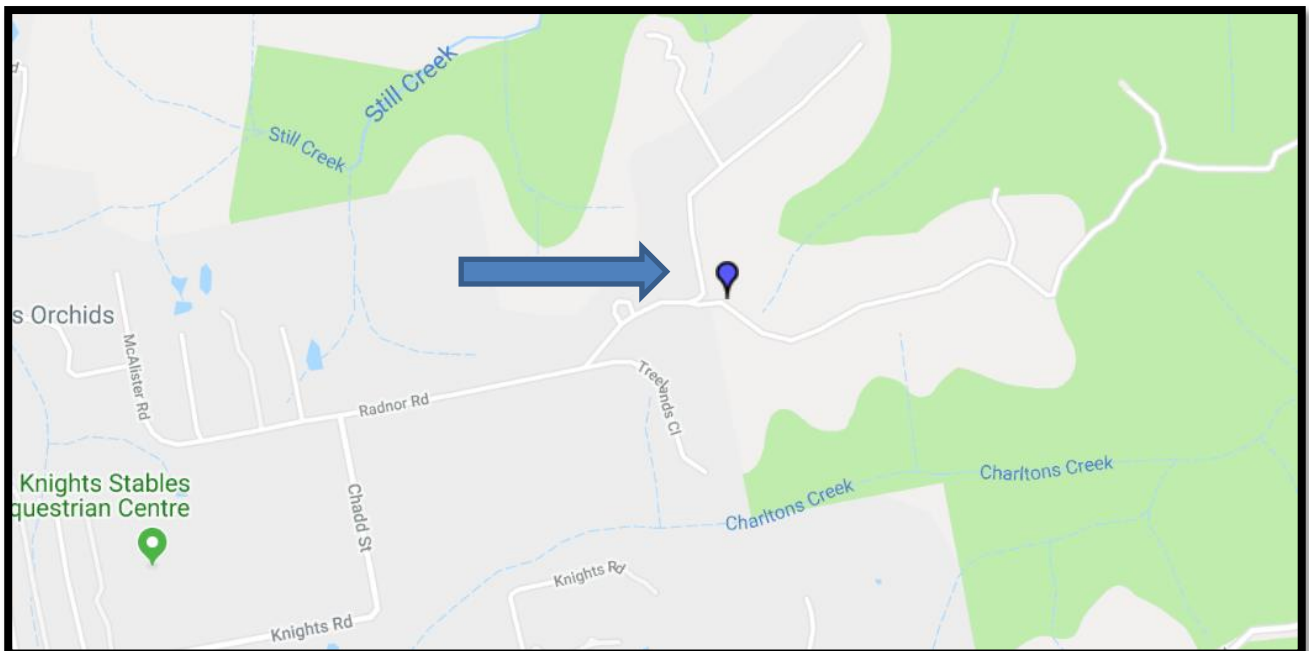
Regular bus services are present within the local area at Galston while the closest rail line is located at Asquith. Nearby major access roads include Galston Road, Mid Dural Road and Old Northern Road.

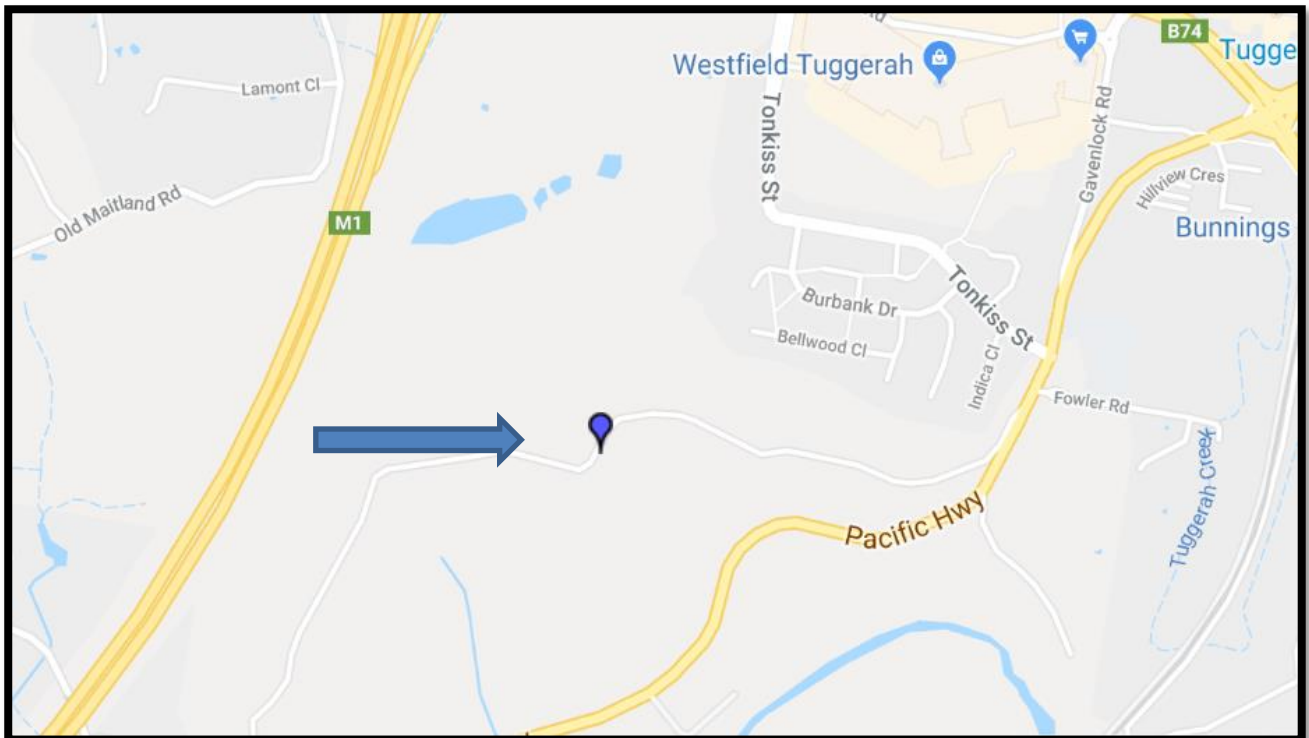
Tangy Dangy:

The subject property is located on the western side of the Pacific Highway south of the intersection with Wyong Road nearby Ourimbah Creek. It is situated 2km south of Tuggerah, 30km south of Morriston, 18km north-east of Gosford and 90km north of the Sydney CBD.

The surrounding development generally comprises a mixture of open space, Crown Land, with residential development and retail further north towards Tuggerah. Nearby facilities and points of note include Westfield shopping centre, Tuggerah Public School and Ourimbah Creek.

Regular bus services are present within the local area of Tuggerah while the closest rail line is also located within this area. Nearby major access roads include the Pacific Highway, Wyong Road and the M1 Pacific Motorway.

**Galston**



Tangy Dangy

SITE DESCRIPTION:

Galston:

The subject lease area is located within a 34.242 ha site of Crown Land. The proposal by NBN Co is for a full site, whereby, the improvements from the drawings include a 45m lattice tower, lattice tower footings, cable ladder, NBN fibre pit, NBN power distribution board and cabinet on a concrete slab and underground fibre and cabling.

Tangy Dangy:

The subject lease area is located within a site comprising 17.24 Hectares of Crown Land. The occupation by NBN Co via the drawings include an existing Axicom lattice tower, NBN outdoor cabinet on a concrete slab, NBN cable ladder, underground fibre and cabling.

TOWN PLANNING:

We understand the uses are permitted within the zones of both sites.

ENVIRONMENTAL CONSTRAINTS:

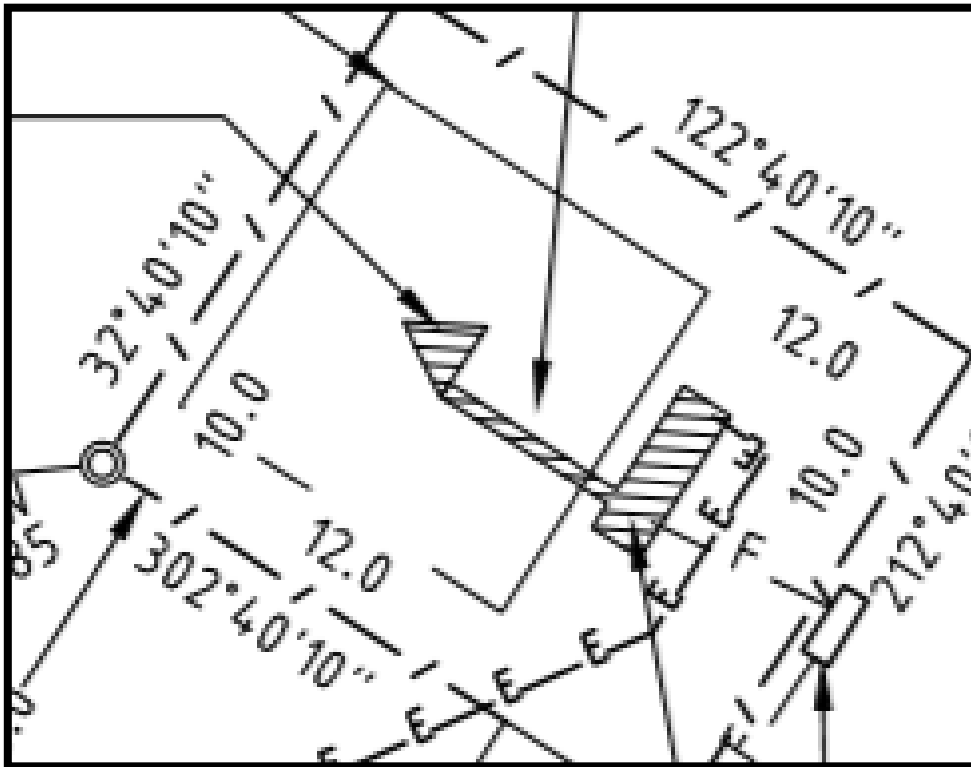
At the time of inspection we have not been made aware of any environmental factors or issues regarding potential site contamination, however, if such factors are raised at a later date then we reserve the right to review the valuation.

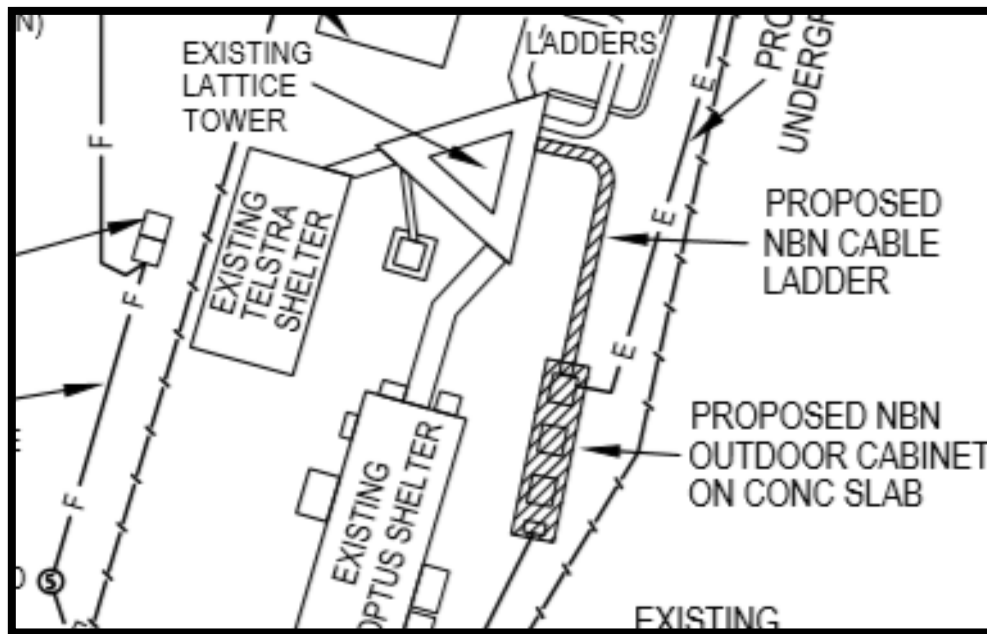
SERVICES:

Services available to the sites include all standard communication services.

AREA:

The area of occupation is as per the lease plan.

Galston:

Tangy Dangy:**TENANCY DETAILS:****Galston:**

This is a proposed new agreement with no previous lease existing at the site, however, we understand the rent is expected to be \$29,447 p.a. (as per IPART schedule high density) in the FY18 year.

Tangy Dangy:

This agreement is for approximately 5m² as an existing in compound site, we understand the rent is \$15,771 pa.

MARKET RENTAL EVIDENCE:

The following rentals are considered representative or provide a guide of current market rates at the date of valuation. We also note that new sites are generally indicative of the market as primary evidence as opposed to site lease renewals.

Rents:**Galston:****1:**

Address	127 Arcadia Road, Arcadia North
Lessee	NBN Co (Site No. 2ROU-51-02-ARCA)
Lease Commencement	20 February 2018
Term	██████████
Current Rent	████████████████████
Reviews	██████████
Comments:	Lease area 80m2, 45m monopole 7km north west of subject provides strong guide.



2:

Address 2 Scheyville Road OAKVILLE

Lessee NBN Co (Site No. 2PIT-51-12-SCHE)

Lease Commencement 29 June 2018

Term [REDACTED]

Current Rent [REDACTED]

Reviews [REDACTED]

Comments: Lease area 120m2, 45m monopole 28km west of subject provides good guide.



3:

Address 167 Annangrove Rd Annangrove
Lessee NBN Co (Site No. 2ROU-51-01-ANNN)
Lease Commencement 15 March 2017
Term [REDACTED]
Current Rent [REDACTED]
Reviews [REDACTED]

Comments: Lease area 80m2, 40m monopole 20km west of subject provides strong guide.



4:

Address 1 West Portland Road Sackville

Lessee NBN Co (Site No. 2WFC-51-08-SACL)

Lease Commencement 19 February 2016

Term [REDACTED]

Current Rent [REDACTED]

Reviews [REDACTED]

Comments: Lease area 80m2, 45m monopole, 50km north west of subject provides strong guide.



5:

Address 39 Greens Road Lower Portland

Lessee NBN Co (Site No. 2WFC-51-12-LOWP)

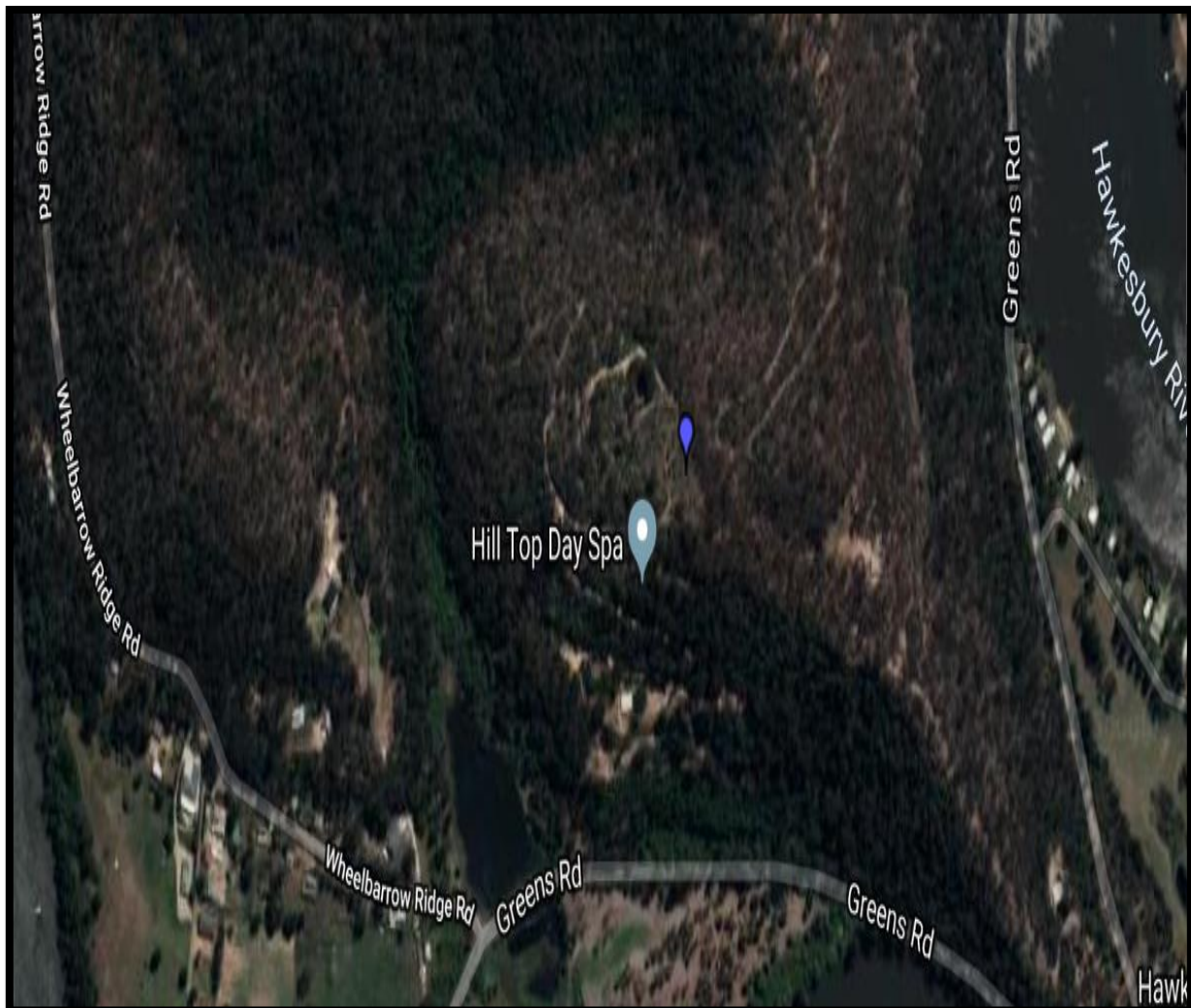
Lease Commencement 13 July 2018

Term [REDACTED]

Current Rent [REDACTED]

Reviews [REDACTED]

Comments: Lease area 120m2, 45m lattice, 50km north west of subject provides strong guide.



6:

Address Forest Glen Central - 2957 Old Northern Road Glenorie

Lessee NBN Co (Site No. 2WFC-51-18-FORG)

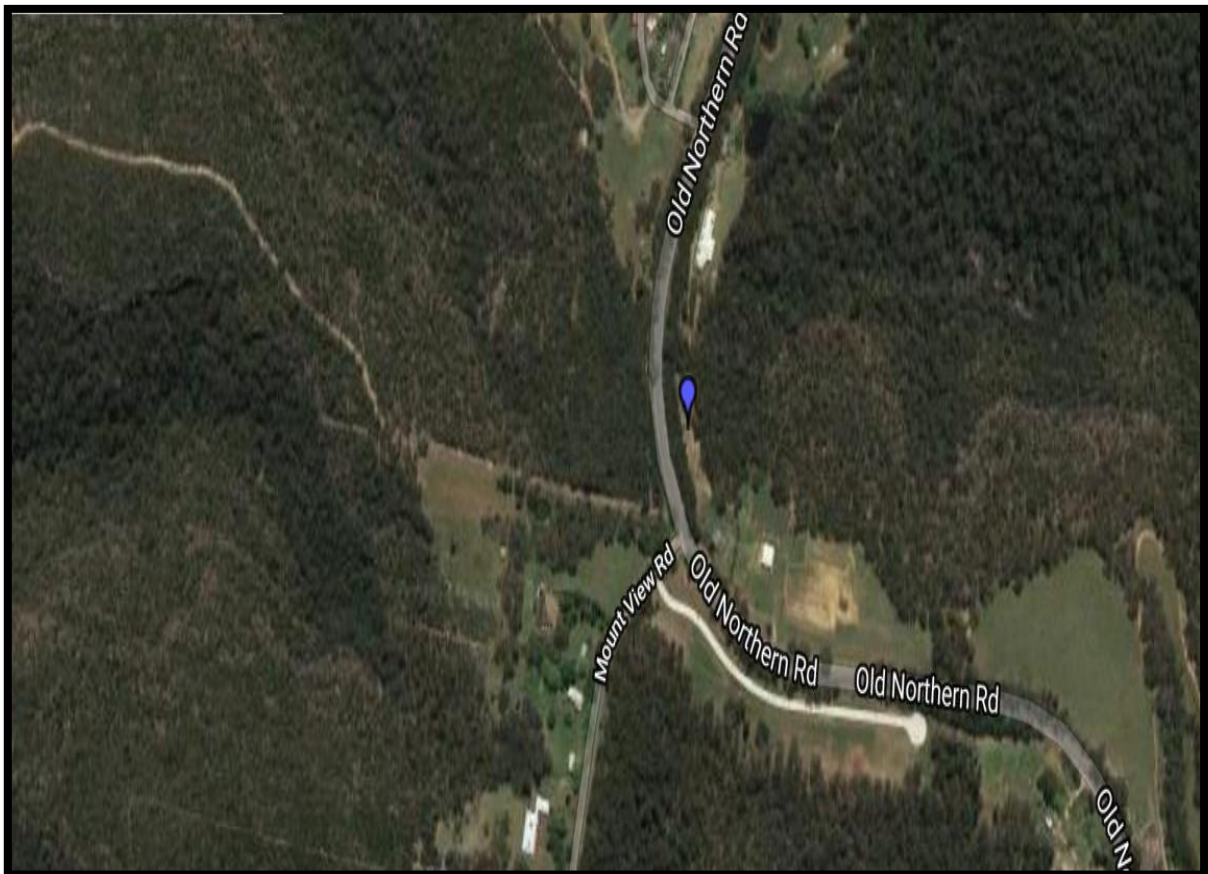
Lease Commencement 7 May 2018

Term [REDACTED]

Current Rent [REDACTED]

Reviews [REDACTED]

Comments: Lease area 120m2, 45m monopole, 15km north west of subject provides strong guide.



Tangy Dangy:

1:

Address 14 Dog Trap Road, Ourimbah West

Lessee NBN Co (Site No. 2WYO-51-17-OURI)

Lease Commencement TBA

Term [REDACTED]

Current Rent [REDACTED]

Reviews [REDACTED]

Comments: Co-location, Lease area 20m2, 10km south west of subject provides strong guide.



2:

Address Bumble Hill 1698 Yarramalong, Yarramalong

Lessee NBN Co (Site No. 2WYO-51-15-BUMB)

Lease Commencement 2 August 2018

Term [REDACTED]

Current Rent [REDACTED]

Reviews [REDACTED]

Comments: Lease area 21m2, co – location, 20km north west of subject provides guide. Provides strong guide.



3:

Address 155 Wye Farms Rd Wye

Lessee NBN Co (Site No. 2WYO-51-07-WYEE)

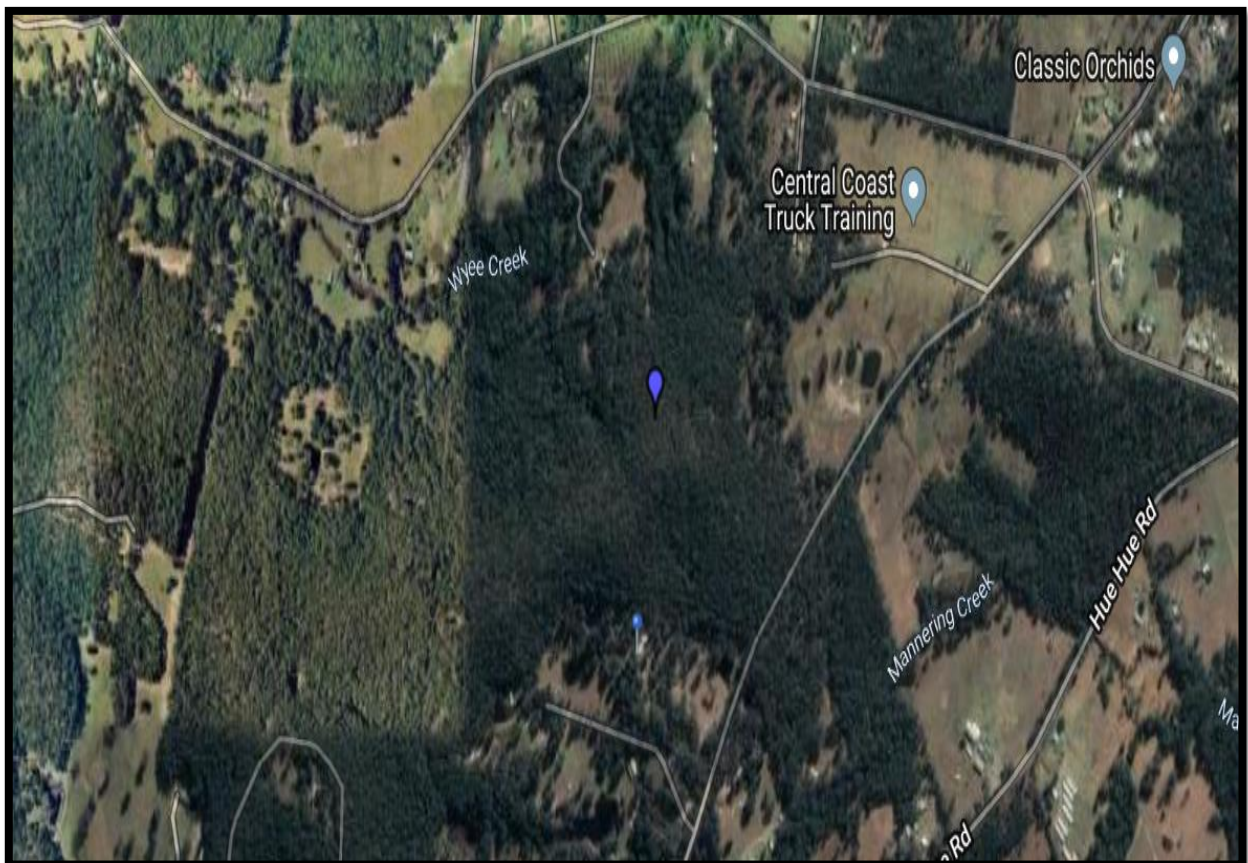
Lease Commencement 30/3/2018

Term [REDACTED]

Current Rent [REDACTED]

Reviews [REDACTED]

Comments: Lease area 120m2, Lattice 55m, 21km north of subject, far superior full site.



4:

Address 32 Dakara Crescent, Wallarah

Lessee NBN Co (Site No. 2WYO-51-06-WALR)

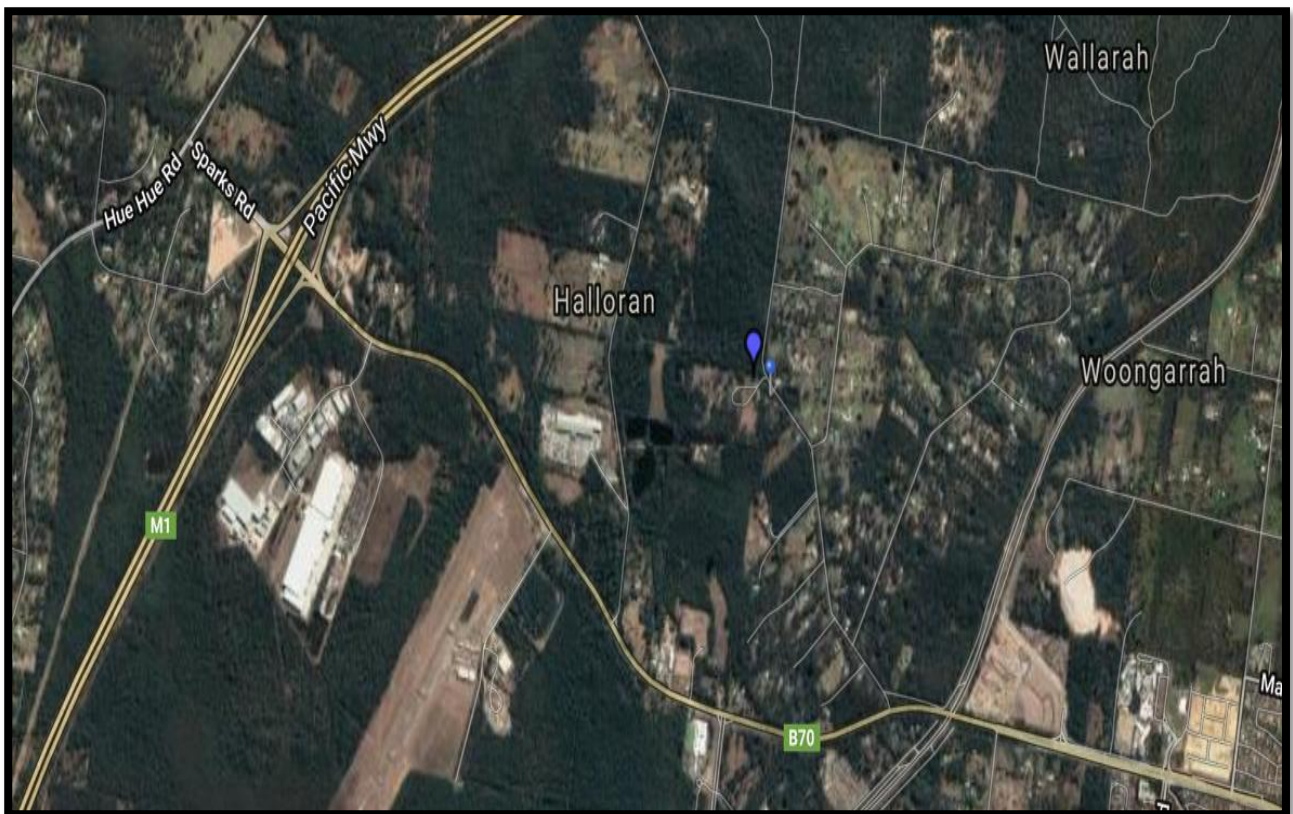
Lease Commencement 10 April 2017

Term [REDACTED]

Current Rent [REDACTED]

Reviews [REDACTED]

Comments: Lease area 120m2, Lattice 55m, 16km north of subject, full site far superior.



5:

Address Forest Road, Kulnura
Lessee NBN Co (Site No. 2WYO-51-16-KULU)
Lease Commencement TBA
Term [REDACTED]
Current Rent [REDACTED]
Reviews [REDACTED]

Comments: Lease area 120m2, 40m monopole, 26km west of subject, far superior full site.



MARKET COMMENTARY:

In the early years of the communication industry rents were struck at rates which reflected an over anxious lessee and, in many cases, an unwilling lessor. The requirement at the time for the main communication groups was to provide the roll out of infrastructure at a rapid pace with little attention directed towards the detail of leasing deals or cost. Subsequently, 20 years on, the industry is renegotiating a major proportion of leases to rectify a legacy of an unrealistic escalation of rents at 5% or more p.a, whereby, the compound effect of these increases has created a false and unsustainable market. The resulting reduction in comparable rents demonstrate the re-setting of the telco market.

VALUATION RATIONALE:

In reviewing the general evidence the rental range for the Galston site shows a variation of around \$10,000 - \$15,000 p.a . Strong evidence is present at nearby sites at Glenorie and Arcadia North while the remaining evidence further afield is as low as \$6,000 p.a.

The rental range for the Tang Dangy site shows a variation of around \$4,000 - \$8,000 p.a for a co-location facility. Strong evidence is present at nearby sites at Ourimbah West and Yarramalong, while the remaining evidence is for full sites which are far superior.

In terms of the three different methodologies we note the following:

Galston:

1. As a general market rent \$15,000 p.a. would be suitable.
2. Under the NSW IPART pricing arrangements it would appear to amount to \$29,083 p.a.
3. Under the Qld Crown Land Policy it would be calculated at 6% of the LV, approximately \$95,973 with 6% of this amount equating to \$5,758 p.a. (Based on capitalising rents at IPART levels. This will be less at general market levels).

Tangy Dangy:

1. As a general market rent \$7,000 p.a. would be suitable.
2. Under the NSW IPART pricing arrangements it would appear to amount to \$15,771 p.a.
3. Under the Qld Crown Land Policy it would be calculated at 6% of the LV, approximately \$52,044, with 6% of this amount equating to \$3,122 p.a. (Based on capitalising rents at IPART levels. This will be less at general market levels).

VALUATION:

In accordance with the foregoing, it is considered that the assessed rental levels as a communications facility of the proposed NBN Co Site ID 2DUR-51-13-GALT at 22 Radnor Road Galston East, NSW as at 2nd April 2019 is as follows:

- | | |
|---|---------------|
| 1. Private freehold 4 x 5 year lease in NSW | \$15,000 p.a. |
| 2. Current NSW Crown Land Schedule | \$29,083 p.a. |
| 3. Qld Crown Land Methodology | \$5,758 p.a. |

The NBN Co Site ID 2WYO-51-08-TANG at Lot 85 DP755263 Pacific Hwy Kangy Angy NSW as at 2nd April 2019 is as follows:

- | | |
|---|---------------|
| 1. Private freehold 4 x 5 year lease in NSW | \$7,000 p.a. |
| 2. Current NSW Crown Land Schedule | \$15,771 p.a. |
| 3. Qld Crown Land Methodology | \$3,122 p.a. |

David Sullivan BBlec, AAPI, MRICS, CPP, CPV
WA Registered Valuer No 44761
NSW Registered Valuer No 2781
Qld Registered Valuer No. 3795MR
Director

The valuation is for the use of the party to whom it is addressed and for the purpose stated. No responsibility is accepted to any third party who may use or rely on the whole part of the contents of the valuation. Furthermore, neither the whole nor any part of this report may be included in any publication or document without prior consent.

The valuation is current as at the date of valuation only. The values assessed herein may change significantly, unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. We do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of three months from the date of valuation, or such earlier date if you become aware of any factors that have any effect on the valuation.

Liability Limited by a Scheme Under Professional Standards Legislation



Galston



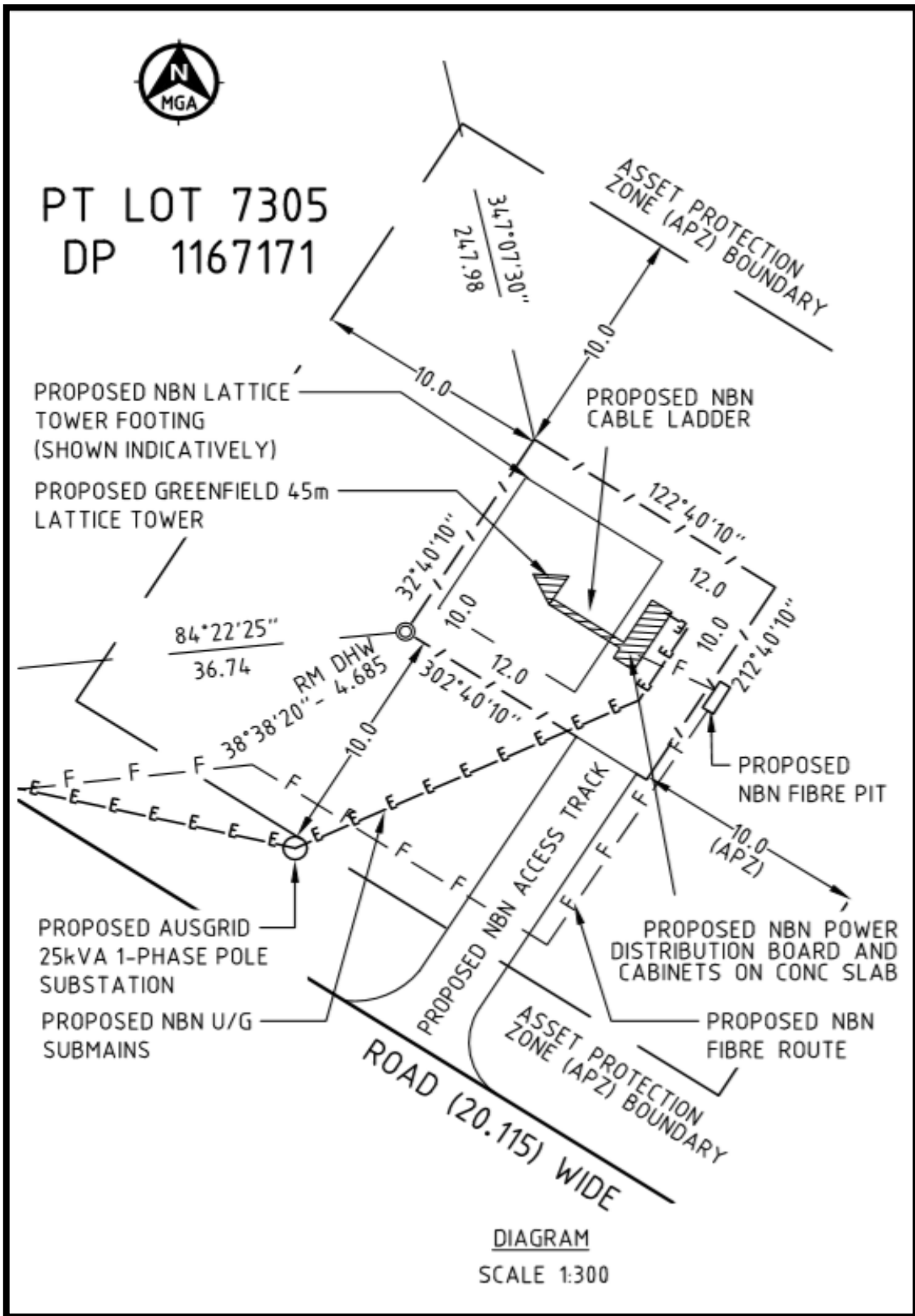


Tang Dangy

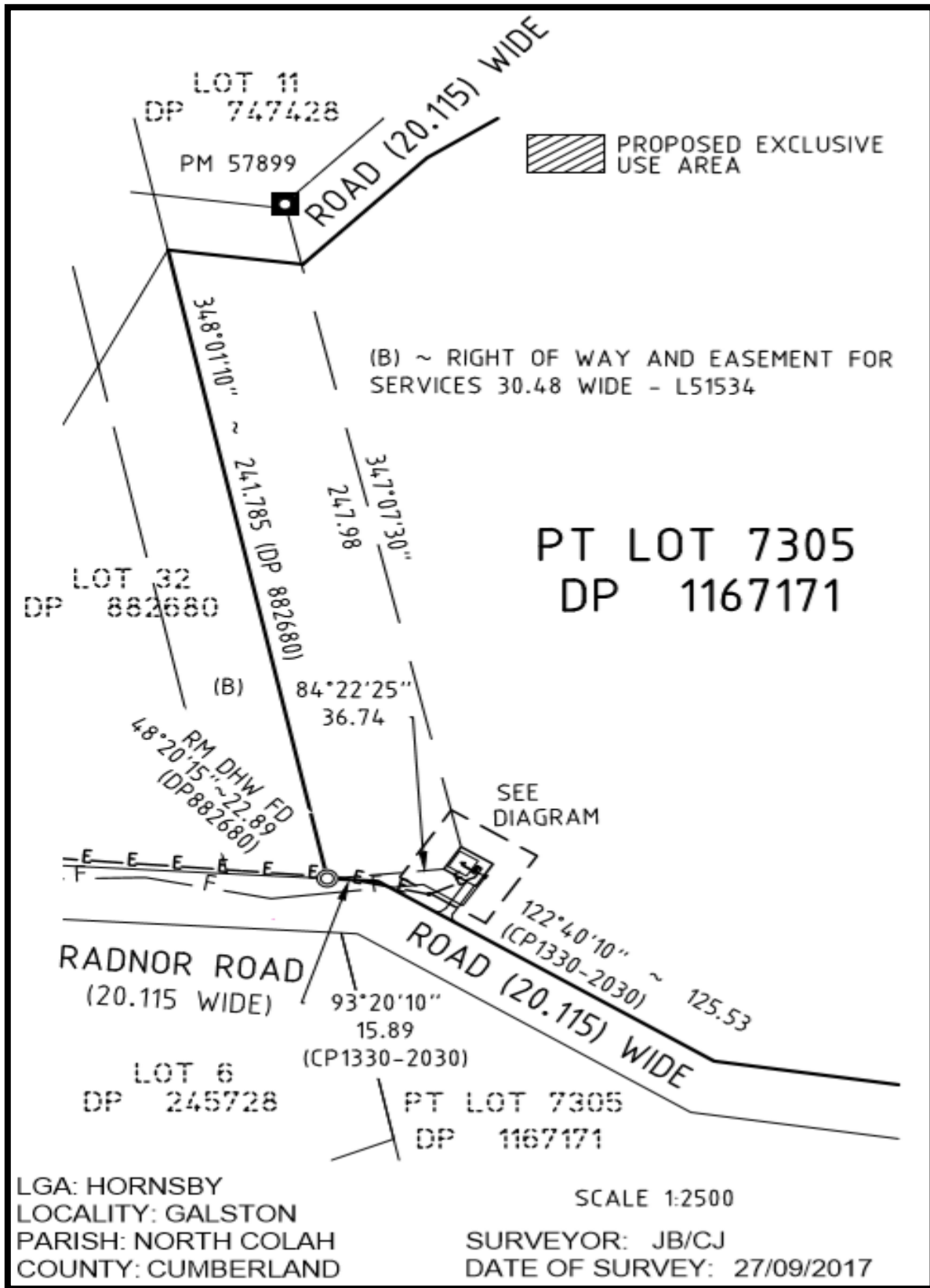




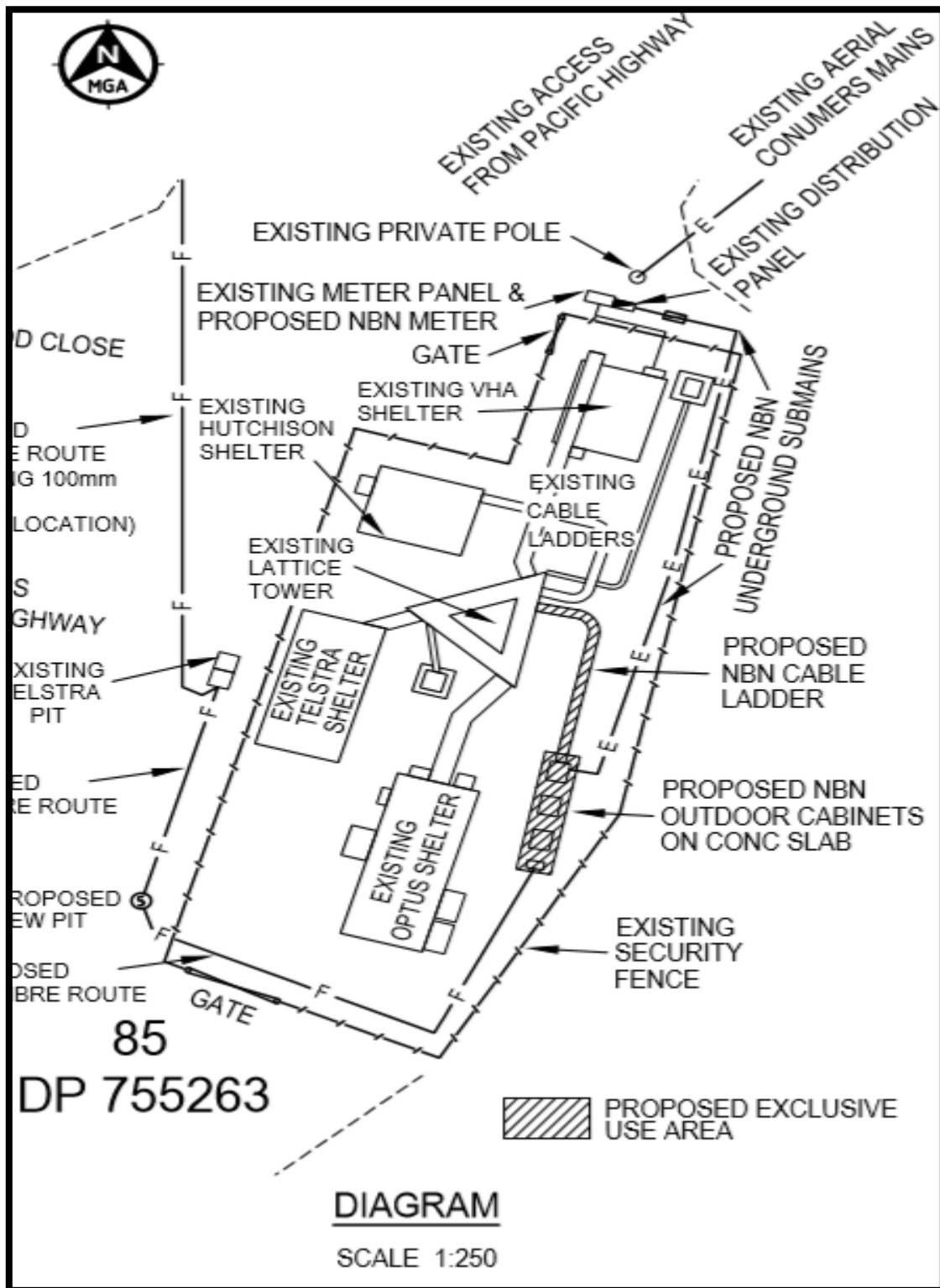
Cabinets



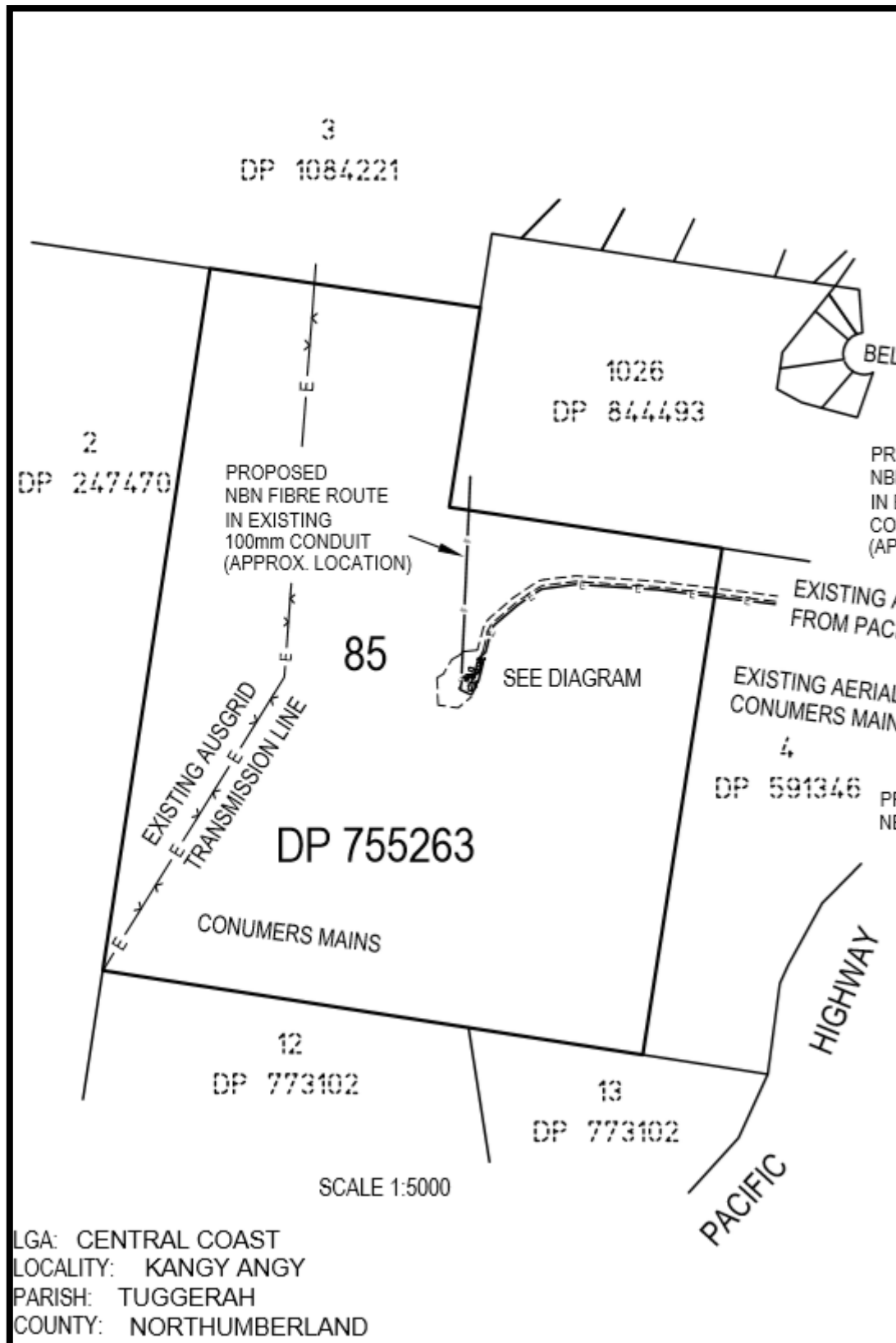
Galston Site Plan



Galston Location Plan



Tang Dangy Site Plan



Tangy Dangy Location Plan