



# nbn submission to IPART Review of rental arrangements for communication towers on Crown land Draft Report

9 August 2019



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

Thank you for the opportunity to comment on the approach and draft recommendations as set out in the Independent Pricing and Regulatory Tribunal's (IPART) 'Review of rental arrangements for communication towers on Crown Land Draft Report, July 2019' (Draft Report). We set out our response below and would be happy to provide further information.

This submission is to be read in conjunction with **nbn's** submission responding to the IPART's 'Review of rental arrangements for communication towers on Crown Land Issues Paper, February 2019'.<sup>1</sup>

## Introduction

**nbn** submits that the IPART should reconsider the approach reflected in the Draft Report and consider the methodology proposed by **nbn** that NSW Crown Land rental arrangements be calculated as 6% of unimproved land value. This is 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's** view is that draft recommendation 4 regarding inclusion of services in rental arrangements, 8 and 10 regarding co-user arrangements could be implemented under **nbn's** proposed methodology with amendments. See the 'Draft Recommendations' section below for more detail.

The proposed methodology is informed by **nbn's** view 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.

**[C-i-C] [C-i-C]** **nbn** makes the following submissions below on some of the draft recommendations if IPART proceeds with the Draft Report's proposed approach.

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<sup>1</sup> Accessible at <https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Tower-Sites/Rental-arrangements-of-communication-towers-on-Crown-Lands-2018>



## IPART's Draft Recommendations

*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.*

- See **nbn**'s views in the 'Introduction' section.

*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 of the Draft Report, where rent per site varies by location.*

- **nbn** suggests that this recommendation be clarified so that it is clear that it applies to renewals for existing sites if IPART proceeds with the Draft Report's proposed approach. We note it was stated at IPART's public hearing that the definition of an existing site is a site that currently has an arrangement with a telco and the land management agencies.

*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 Morisset – 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.*

- **nbn** supports refining and clarifying the definition for medium locations by publishing a list of UCL centre points (defined by latitude and longitude) if IPART proceeds with the Draft Report's proposed approach.

*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.*

- **nbn** submits that this draft recommendation be expanded so that the specified services are included in the arrangements for new and existing co-users if IPART proceeds with the Draft Report's proposed approach.
- As discussed in the 'Introduction' section, **nbn** submits that the IPART consider implementing this draft recommendation with the suggested revisions as part of **nbn**'s proposed methodology.
- **[C-i-C] [C-i-C]**



*8 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 of the Draft Report.*

- **nbn** supports the implementation of this recommendation and proposes that the appropriate boundary be defined as the perimeter of the compound as at 1 July 2020 if IPART proceeds with the Draft Report's proposed approach.
- This would accommodate the common scenario in which perimeter fencing has changed over time to accommodate changes in the footprint of a primary user's site, the inclusion of a single or multiple co-users and / or changes in the footprint of co-user(s) sites. This would also recognise the improvements made by a primary user and / or co-user(s) such as fencing and earthing of the compound area (placing cabling under the ground). [C-i-C] [C-i-C]
- As discussed in the 'Introduction' section, **nbn** submits that the IPART consider implementing this draft recommendation as part of **nbn**'s proposed methodology with the relevant rate also calculated on a per metre squared basis.

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

- **nbn** supports the implementation of this recommendation if IPART proceeds with the Draft Report's proposed approach.

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

- **nbn** supports the implementation of this recommendation with amendments that the appropriate boundary be defined as the perimeter of the compound as at 1 July 2020 if IPART proceeds with the Draft Report's proposed approach.
- As discussed in the 'Introduction' section, **nbn** submits that the IPART consider implementing this draft recommendation as part of **nbn**'s proposed methodology.

*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.*

- **nbn** supports the negotiation of rent for high value sites not being permitted if IPART proceeds with the Draft Report's proposed approach.

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

- We note that the Draft Report states that this is appropriate to reflect the social, environmental and cultural values of national park land, noting that the recommended rent schedule has been based on recent market rents for similar sites on private land, and does not necessarily reflect these values.



- We note that a [Review of Environmental Factors](#) is generally required as part of an application for a site in national parks and that this would evaluate any potential environmental impact and identify any relevant mitigation steps. [C-i-C] [C-i-C]

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

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

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

- **nbn** supports this draft recommendation if IPART proceeds with the Draft Report's proposed approach.

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

- **nbn** supports this draft recommendation if IPART proceeds with the Draft Report's proposed approach.

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

- **nbn** suggests that a review of the methodology be included in an independent review if IPART proceeds with the Draft Report's proposed approach.