



DOC19/3195

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Dear Dr Paterson

**Submission to IPART's review of rental arrangements for communication towers on Crown land**

Thank you for the opportunity to make a submission to IPART's Issues Paper for the above review.

This is a joint submission from the NSW Department of Industry – Lands and Water Division (DoI), NSW Office of Environment and Heritage – National Parks and Wildlife Service (NPWS) and Forestry Corporation of NSW (Forestry Corporation).

These NSW government agencies each manage different categories of Crown land for the specific purposes set out in their respective governing legislation – the *Crown Lands Management Act 2016*, *National Parks and Wildlife Act 1974*, *Forestry Act 2012* and, for a small number of communication tower sites that are administered by DOI, the *Roads Act 1993*.

Each agency hosts communication towers on that Crown land, sharing the policy objective of achieving a fair market-based commercial return. However, the unique legislative schemes under which they operate impose different management considerations on each agency.

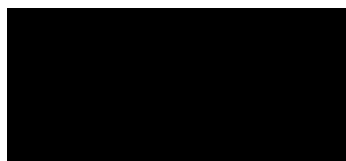
The agencies support IPART continuing to make fee recommendations using the framework IPART established in the 2013 review. This framework of 'high value' and 'standard' sites (incorporating four location categories), provides an appropriate balance between fair market-based commercial returns, and simplicity, transparency and ease of implementation for stakeholders. To provide further certainty and guidance on how this framework can be administered, the agencies consider the focus of IPART's review should be:

1. reviewing the level of fees by reference to up-to-date data about the willingness to pay of users and willingness to accept of agencies
2. taking into account the different statutory land management frameworks of the agencies
3. further refining the fee schedule to account for different technologies, including emerging technologies such as 5G cells.

The agencies broadly support IPART's proposed approach to the review of rental arrangements to estimate the range for efficient rents. To facilitate this approach the agencies will provide IPART with the data they hold to enable an accurate estimate of the minimum rent they would be willing to accept. For greater transparency IPART should also source data that users hold to enable an accurate estimate of the maximum amount that users would be prepared to pay to use the site.

Thank you again for the opportunity to provide comments in response to the Issues Paper. The detailed responses to IPART's consultation questions are attached to this letter.

Yours sincerely



**CHRIS REYNOLDS**  
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**DEPARTMENT OF INDUSTRY – CROWN LANDS**  
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## **1. Background**

In NSW, communication infrastructure and equipment regulated by the Commonwealth *Telecommunications Act 1997* and *Broadcasting Services Act 1992* is often located on Crown land or other publicly owned land in order to provide communications services, including mobile telecommunications, wireless broadband, TV/radio broadcasts and two-way radio, to surrounding areas.

This submission relates to communication tower sites, and emerging technologies for communication purposes, that are located on Crown land administered by the following three government agencies:

- NSW Department of Industry – Lands and Water Division (Dol)
- NSW National Parks and Wildlife Service (NPWS)
- Forestry Corporation of NSW (Forestry Corporation).

There are 4 main pieces of legislation relevant to Crown land in NSW that are or can be administered by these agencies:

- *Crown Lands Management Act 2016* (CLM Act)
- *Forestry Act 2012* (Forestry Act)
- *National Parks and Wildlife Act 1974* (NPW Act)
- *Roads Act 1993* (Roads Act).

The unique legislative schemes under which the agencies operate impose different management considerations for significant sites. These differences can impact a user's willingness to pay (where for example a national park site is the only option available) and can affect a land management agency's willingness to accept a rental arrangement. This is because such sites often have unique social, environmental or cultural values that require a higher level of management or consideration.

The agencies welcome the current IPART review. It provides an opportunity to provide more certainty and guidance on how the rent determination method can be administered and updated to accommodate these unique legislative considerations while meeting the objectives of realising a fair, market-based commercial return in a way that is as simple, transparent and cost reflective as possible.

## **2. Response to issues for stakeholder 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?**

The agencies broadly support IPART's proposed four step approach to the review, namely:

1. Estimate the range for efficient rents for communication tower sites on Crown land with different characteristics.
2. Decide on an appropriate rent setting methodology and apply this method to decide on efficient rents (or a process for determining those rents) for all sites in 2019-20.

3. Consider the impact of these rents on current users and decide what, if any, transitional measures are needed to manage these impacts.
4. Decide how to adjust rents from year to year, and how often they should be periodically reviewed.

IPART's proposed approach relies on the ability to access appropriate data such as direct financial details from carriers to enable it to estimate a range for efficient rents with reasonable accuracy. Other sources such as publicly available revenue figures for carriers could be considered if required.

The agencies consider that alternative approaches, for example considering the supply and demand for communications services at each site or using a percentage of user's revenue from the network, would likely have similar data requirements and not improve the ability to meet IPART's terms of reference.

To better meet the terms of reference the agencies would like more explicit consideration in IPART's approach of how different types of technology and emerging technology for communication purposes will be/is incorporated into the fee schedule.

The fee schedule has not distinguished between the different types of communication tower sites and technologies that form a communications network. This includes macro-scale base stations such as towers, which deliver the majority of network coverage and capacity. It also includes smaller radio base stations, repeaters and microcells (usually mounted on poles and buildings), which supplement and extend network coverage and/or capacity.<sup>1</sup> The emerging 5G network to be rolled out will be characterised by a large number of small cells, many of which will be co-sited with existing 4G base stations as well as mounted on other existing structures such as light poles and buildings.<sup>2</sup>

Users have often disputed the fees applicable to these small sites due to their lower capacity and network value.

## **Estimating 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?**

IPART's definition of 'efficient rent' as the point at which "both the buyer and seller are better off than if they didn't make the transaction" is supported. The agencies note that the concepts of willingness to pay (WTP) and willingness to accept (WTA) are widely accepted in economics as the determinants of market value.<sup>3</sup>

The agencies agree that the upper range for efficient rent is generally bounded by the user's willingness to pay (WTP). The agencies' business is the management of public lands on behalf of the State for the public's benefit. An ancillary aspect of this

<sup>1</sup> <http://www.emfexplained.info/?ID=24905> and <http://www.emfexplained.info/?ID=24503>

<sup>2</sup> [http://www.emfexplained.info/?ID=25914#What types of base stations are used for 5G](http://www.emfexplained.info/?ID=25914#What%20types%20of%20base%20stations%20are%20used%20for%205G)

<sup>3</sup> Hon Justice Brian J Preston SC (2015), *Economic Valuation of the Environment*, <http://www.leg.justice.nsw.gov.au/Documents/Speeches%20and%20Papers/PrestonCJ/PrestonCJ%20Economic%20valuation%20of%20the%20environment.pdf>

*Economic Valuation of the Environment*, Hon Justice Brian J Preston SC, 28 May 2015, Sydney

is facilitating the commercial use of such lands in particular circumstances. As publicly funded bodies, the agencies do not have the means that a commercial enterprise would to negotiate with users. In this context, it is critical that WTP reflect the actual maximum amount that users are willing to pay for a site – i.e. the figure above which a user would reject a site on an agency’s land in favour of another site or no site.

IPART’s Issues Paper notes that the lower bound of the range for efficient rent is the opportunity cost; the minimum a land management agency would be willing to accept for allowing the site to be used for communication tower purposes, or the economic value it could derive from the site’s next best alternative use. The agencies understand the concept of opportunity cost to be a component of the broader concept of WTA, which also includes management costs and other non-economic considerations such as legislative and policy objectives.

The agencies submit that IPART’s lower bound be WTA and incorporate non-financial considerations, for example and particularly in the case of NPWS, the conservation or environmental value of land as well as the direct management costs of overseeing the use of sites.

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

It is critical that WTP reflect the actual maximum amount that users are willing to pay for a site – i.e. the figure above which a user would reject a site in favour of another site or no site. A users’ WTP for a site will be influenced by the cost and availability of alternative sites, the current profitability of a site as well as its potential capacity and future value to the network.

To determine the WTP, IPART will need to consider:

#### Alternative sites

- Rents paid for communication sites on land owned by other parties including Councils, other government or statutory bodies, corporate or commercial entities and private landowners. This information will be required within each of the location categories.
- As noted in the Issues Paper (p.18), where there are few alternative sites “the user will have a relatively high willingness to pay for a site”. Under section 153D(4) of the NPW Act, NPWS can only licence communication facilities in cases where there are no alternative sites available on non-reserved land. As such, NPWS sites can only be pursued and can only be used where there are no alternative sites available. In these circumstances a user’s WTP for such a site should logically be identified in the fee schedule as having a higher value than a standard site.

#### Profitability

- The profit from users’ radio communications networks such as:
  - For sites supplying fixed communications services
    - the capacity and customer-base of individual sites,
    - profit from users’ communications, and
  - For sites supplying mobile communications services:

- number of sites in network,
  - average number of customers of communications services, and
  - profit from users' communications networks.
- Emerging communications technology that will make use of these sites in the near future.
- The profitability of communication tower sites in the low density category should also take into account the availability of government funding for new sites in regional areas as part of the Federal Government's Mobile Blackspot Program.
  - IPART should also consider the wider financial benefit to users of having coverage in a particular area. While revenue generated from a particular facility may not be significant, the benefit to customers of having uninterrupted coverage, together with a marketing benefit to the carrier, should be considered.

### Potential capacity and future value

- Consideration should be given to the developing communications landscape and emerging technologies that will make use of these sites in the near future. This is especially relevant when assessing WTP for Primary Sites, as their capacity and hence value can be increased through additional communications equipment, provided the supporting infrastructure (power, equipment hut, tower) is adequate.
- The primary development is the emergence of the 5G network, which is scheduled to be launched commercially from 2020 and should be available for widespread use from 2025.<sup>4</sup> Telstra notes that the "exponential growth of data consumption" presents new opportunities for growth, "particularly as 5G mobile technology develops and the Internet of Things (IoT) becomes a standard part of our homes, our businesses and our communities".<sup>5</sup>
- In evaluating the future capacity and value of these sites, IPART may require expert advice (e.g. from radio engineers).

The agencies support the provision of commercial information to IPART on a commercial-in-confidence basis where necessary. However, to achieve the objective of transparency, the agencies expect that IPART will make available the following data in relation to the sites for which comparative rents have been obtained:

- the number of sites
- the location of those sites
- the type of landowner (e.g. private individual, corporate entity, industrial entity).

### **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)?**

<sup>4</sup> [http://www.emfexplained.info/?ID=25916#When will 5G be ready](http://www.emfexplained.info/?ID=25916#When%20will%205G%20be%20ready)

[http://www.emfexplained.info/?ID=25916#When will 5G be ready](http://www.emfexplained.info/?ID=25916#When%20will%205G%20be%20ready)

<sup>5</sup> Telstra Annual Report 2018, p.8 and 13, <https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf%20F/2018-Annual-Report.pdf> (p.8 and 13)

Each of the agencies capture fees in a different way for access and land use as summarised below.

- Dol – a telecommunications licence is issued for occupation, operation, and access to the site. However, if the proponent requires access over a parcel of Crown land to access a communications site on adjoining freehold land, the proponent is required to apply for a licence from Dol to access the portion of the Crown land parcel that is needed to access the site. The fee for the access licence is not linked to the IPART Fee Schedule. The 2018/19 minimum fee for a licence for access is \$547.80. DOI also charges a licence application fee of \$438 (GST incl.) for all telecommunication licences.
- NPWS - charges annual licence fees for communications sites in accordance with the IPART fee schedule. The only additional fees charged are for legal and administrative fees related to licence preparation. NPWS does not generally provide any additional services, such as power connections to site users. However, virtually all communications sites on NPWS lands are accessible by NPWS's existing park management trails (locked trails used by NPWS operational staff and not accessible by the public) and use of these trails is authorised under licences. At present, NPWS does not charge users additional licence fees for access to and use of these tracks. Licence conditions obligate users to contribute to track maintenance and weed control costs as well as other ground area maintenance activities. NPWS also does not currently charge call-out or service fees when specific or unusual access arrangements are required (such as issues with gate locks or access by heavy machinery). NPWS reserves the right to charge for these activities in the future if they impose an administrative burden.
- Forestry Corporation – charges annual licence fees for communication tower sites in accordance with the IPART fee schedule. The only regular additional fee charged is an annual contribution towards maintenance of roads which is charged at 10% of the IPART fee for the site. Permits for access only across state forests are charged at 10% of the applicable IPART rate for the site. In very limited circumstances Forestry Corporation may charge a fee for additional investigation into any potential environmental and cultural heritage issues at the time of construction.

## **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?**

To the agencies' knowledge, the communication tower site characteristics that users are willing to pay more for include:

- existing and/or easier access
- higher elevation and line of site (geographical reach)
- better proximity to major highways and services (e.g. power)
- limited availability of alternative sites
- higher traffic sites
- filling black spots, and
- strategic value e.g. in a competitive market.

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

As noted at Q.2, the agencies submit that IPART's lower bound should be WTA and incorporate both financial and non-financial considerations, for example the social, conservation, cultural or environmental value of land, as well as direct management costs of overseeing the use of sites which vary by agency.

To achieve the objectives of establishing a fair, market-based commercial return, it will be necessary for IPART to assess the Total Economic Value (TEV) of communication tower sites, not only their next best alternative. The TEV framework incorporates social, environmental and cultural values and is a well-established way of quantifying the 'use' values (e.g. ecosystem services, recreation, resource extraction) and 'non-use' values (e.g. intergenerational equity) of an environmental resource.<sup>6</sup>

Comparable economic value is not relevant in many instances as the land is used for cultural, social and environmental purposes.

The agencies submit that WTA must be assessed separately in the context of each agency's governing legislation (i.e. land managed under the CLM Act, Forestry Act NPW Act, and Roads Act). These unique legislative schemes impose different management considerations on each agency to effect. For example, the objects of the NPW Act are:

- conservation of nature and cultural values
- fostering public appreciation of nature and cultural heritage
- providing for the management of reserved land in accordance with the Act's management principles.

When assessing WTA, it is critical to bear in mind the fundamental principle of efficient rent is that both parties should be better off by entering into the transaction than not. The environmental and social impacts, and on-going management and administrative costs, while difficult to quantify, will negate the financial benefit of the fee schedule if the WTA is not accurately determined. TEV is a common framework for quantifying use and non-use values of an environmental resource.

NPWS has commissioned studies assessing the TEV of NSW national parks and will make these available to IPART.

## **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?**

As noted at Q.2, the agencies understand the concept of opportunity cost to be a component of the broader concept of WTA, which also includes management costs and other non-economic considerations such as legislative and policy objectives.

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<sup>6</sup> See for example Marsden Jacob Associates (2012). *Literature Review of the Economic Value of Ecosystem Services that Wetlands Provide: Final Report prepared for the Department of Sustainability, Environment, Water, Population and Communities*.  
<https://environment.gov.au/system/files/resources/fb918be6-fd56-43a5-9e61-f4e63d455e0c/files/review-ecosystem-services-report.pdf>; Department of Prime Minister and Cabinet, Office of Best Practice Regulation (2014). *Research Report: Environmental valuation and uncertainty*.  
[https://www.pmc.gov.au/sites/default/files/publications/012a\\_Research\\_Report\\_Environment.pdf](https://www.pmc.gov.au/sites/default/files/publications/012a_Research_Report_Environment.pdf)



In determining a fair sharing, IPART should consider that agencies do not have access to information about what fees are being paid under similar private agreements and are limited in their ability to negotiate by their governing legislation and budget constraints.

The agencies' business is the management of public lands on behalf of the State. An ancillary aspect of this is facilitating the commercial use of such lands in particular circumstances. As publicly funded bodies, the agencies do not have the means that a commercial enterprise has to negotiate with users. IPART has an important role in recommending a fee schedule that reflect 'fair, market based commercial returns' given the important wider community benefits that rental arrangements for telecommunication towers can provide if the sharing of benefits is fair. For example:

- In the case of DoI, revenue received from telecommunication tenures is directed to the Crown Reserves Improvement Fund that provides financial support for maintenance projects, pest and weed control, new recreational infrastructure and environmental initiatives. The funding benefits the community, boosts the economy and contributes to the cultural and sporting life of NSW.
- In the case of NPWS, the power to authorise broadcasting or telecommunications facilities on NPWS land was legislated on the understanding that NPWS would negotiate commercial fees, which would benefit parks by contributing funds to conservation works.<sup>7</sup>
- In the case of Forestry Corporation, revenue obtained from communication tower sites is used for the management of the land and any profits are returned to the State as a dividend, which is then used by the Government for the benefit of the wider community.

## **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?**

The agencies submit that differentiating the fees for communication sites on the basis of geographic location and density needs to be supported by current market evidence. "Market evidence" requires the availability of evidence of all rents or licence fees paid by users. The existing categories of Low, Medium, High and Sydney appear appropriate and sufficient to reflect the impact of different geographic locations on site value. Changing the location categories by adding or removing categories will impose a significant administrative burden on the agencies in reassessing the applicable category for each site.

IPART should also consider that site location is not the only or necessarily the primary factor that influences fees - the type of communication infrastructure and the type of land are equally important. The agencies request that IPART considers these factors in the review and ensure that the fees reflect these variables.

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<sup>7</sup> Second Reading Speech, *National Parks and Wildlife (Telecommunications Facilities) Bill 2003*, NSW Hansard Articles : LA : 17/06/2003 : #44

The definition of the Medium Density category would also benefit from clarification as the current definition has resulted in some debate about where the 12.5km boundary falls. The agencies request that IPART:

- Confirms that the criteria is the distance of a site from the centre of the closest urban centre and locality (i.e. 12.5km from the centre of any urban centre and locality) and that the LGA within which a site is located is not relevant, and
- Produces a set of maps showing the centre of each urban centre and locality and the corresponding 12.5km radius.

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

The agencies suggest that IPART could obtain the latest figures on population density from the Australian Bureau of Statistics to verify whether the location category definitions are reflective of current population density throughout NSW. For example, Mudgee should be included in the list of Medium density locations given it has a population greater than 10,000 and a density greater than 100 people per square kilometre.

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

The agencies consider the existing co-user discount of 50% is fair and reasonable and ensures that the total rent charged reflects the intensity of land use by all the users on the site. As noted in IPART's 2013 report, the 50% discount is reflective of market subletting practice.

The WTP of a co-user is likely to be lower than a primary user as they will have to pay fees to the primary user for use of its structure. However, it would not be significantly lower as co-users would not have a network, and hence no business, without use of these sites.

Similarly, the agencies' WTA for a co-user is slightly lower than a primary user because it does not involve the construction of new infrastructure. However, the WTA is not significantly lower as the land use still involves having another entity accessing the site, undertaking works and requiring compliance oversight. Additional users also increase the management burden on agencies.

The agencies also request IPART's consideration of the fees applicable where colocation involves construction of a new cabin outside of a site's existing compound, noting that:

- WTA of agencies is higher in such cases as more land is required for the co-users to operate, including possible removal of vegetation, and
- WTP of co-users would also be slightly higher as the co-user will have the capacity to host other co-users within its cabin.

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

The agencies support infrastructure providers paying the full primary user fee. From the agencies' perspective of WTA, there is no practical difference if a tower is owned by a carrier or an infrastructure provider. Infrastructure providers need to access the

site, sometimes with machinery, to maintain infrastructure and each co user will also need to access the site to maintain their radio equipment.

Infrastructure Providers' WTP is also not lower than for a primary user. Infrastructure Providers own and operate towers for the sole purpose of hosting co-users on these towers and have the ability to make profit from co-users co-locating on their tower and in their cabin.

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

The agencies support retaining the current rebate scheme. The rebate scheme developed by IPART in 2013 required significant work on the part of the agencies to implement. The agencies worked together to develop an assessment process for determining eligibility, which involved developing fact sheets, application forms and approval guidelines. The agencies consider that this process is effective and fair and adequately addresses the benefits that community groups and government authorities provide to the public. For these reasons the agencies support retaining the current scheme.

In some instances it is noted that a primary user that falls into a rebate category may be entitled to a rebate even where they charge rent from co-locating users. IPART may wish to consider this. IPART may also wish to consider the application of the rebate to particular sites. DoI administers 52 small country automatic exchange (SCAX) and local service provider sites of which 11 are not eligible for a rebate because of their location. Three local service provider sites fall within a High density location – which is not eligible for a rebate. A further eight SCAX sites as used by a regional telephony provider fall within Medium or High density locations – which are also not eligible for a rebate.

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

The agencies support the current arrangements for high-value sites subject to clarification that this category include sites that are high value to either or both the user and the agency. It is necessary to have a mechanism that enables the agencies to depart from the fee schedule if its application would not achieve fair, market-based commercial returns on Crown land.

## **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?**

The agencies consider that a valuation based formula that takes into account site characteristics could be used as an alternative option to accompany negotiations for high-value sites. The valuation formula would need to adequately address site complexities and their relative values, including:

- metropolitan or rural locations
- strategic value of site
- availability of services (access and utilities)
- lack of alternative sites/options.

## **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?**

Transitional arrangements impose a significant administrative burden on agencies. Agencies support transitional arrangements where absolutely necessary, for example where licensees' fees will significantly increase because entitlement to a rebate is significantly reduced or removed. However, in all other cases transitional arrangements are not supported due to the significant administrative costs. In addition any changes would directly impact the agency's ability to maintain high levels of customer service.

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

The agencies support continuing to adjust rents annually by the change in CPI. This approach is easy to understand and implement for stakeholders. It is also consistent with the agencies' practice in adjusting fees and rent for other types of leases and licences over their land.

Despite a small number of site users previously expressing a preference for annual fee increases to be a fixed percentage, CPI is accepted universally by lessees and licensees (across all property agreements, not just communication tower sites) for annual increases in rents and licence fees.

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

The agencies consider that the level of fees should be subject to independent market valuation every 5 years. This is consistent with the agencies' practice in their other leases and licences. However, subject to the outcome of this review, there may not be a need to review the entire fee schedule framework on a 5-yearly basis as this is disruptive and time consuming, both to facilitate and to implement.