



Our ref. BN19/731
Your ref.

Rental Arrangements for Communication Towers on Crown Land
Independent Pricing and Regulatory Tribunal

By online submission: www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission

Review of rental arrangements for communication towers on Crown land

Dear IPART Members

I am pleased to provide comment, on behalf of the NSW Government Telecommunications Authority (NSW Telco Authority), on the Issues Paper for the Independent Pricing and Regulatory Tribunal's (IPART) 'Review of rental arrangements for communication towers on Crown land', released in February 2019.

The NSW Telco Authority is constituted by, and functions under, the *Government Telecommunications Act 2018* to operate and maintain the Government Radio Network (GRN), providing mission-critical operational communications services for public safety and government agencies within New South Wales.

The GRN includes communications infrastructure located on Crown land sites, in addition to that on private property. The NSW Telco Authority is expanding the coverage and capacity of the GRN through its Critical Communications Enhancement Program (CCEP) and plans to increase the number of Crown land sites used to achieve its network requirements. As a Budget Funded Sector agency, delivering core services to emergency, public safety and other government agencies, the Authority is eligible for Crown land rental fee rebates in accordance with the Rebate Schedule. These rebates remain important to the CCEP's roll-out and the future operation of the GRN.

The NSW Telco Authority is of the view that the current rental arrangements established following the 2013 IPART Review have generally functioned effectively and achieved their purpose in most circumstances. However, some refinement of these arrangements would benefit stakeholders.

Towards this, please find the attached submission from the NSW Telco Authority, including responses to the questions raised in the discussion paper.

Should you wish to discuss this submission, please contact me by phone on [REDACTED] or email at kate.foy@finance.nsw.gov.au.

Yours sincerely



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Telco
Authority

Submission to IPART Issues Paper – Review of rental arrangements for communication towers on Crown land

April 2019



IPART Issues Paper

The NSW Telco Authority has reviewed the IPART ‘Review of rental arrangements for communication towers on Crown land’ Issues Paper (February 2019) and is pleased to make this submission for consideration of the Tribunal members.

The Authority welcomes the opportunity for further discussion of the related issues as the review progresses.

General comment

The Authority’s general experience is that the current rental arrangements for communications towers on Crown land, established following a similar IPART review in 2013, have been, in the main, effective and appropriate in their application.

The schedule of rent fees for standard sites provides surety for Crown land management agencies about their revenue while enabling entities locating infrastructure on those sites to plan and manage their investments with the required level of confidence. This occurs at rental fees and with annual rent increases which have proven fair, and through a process which is demonstrably efficient. For these reasons, the principles and framework for the arrangements are generally sound and should continue without significant change.

The rebates available to the NSW Telco Authority, as a Budget Funded Sector agency, continue to support the provision of mission-critical operational communications for public safety and emergency management purposes and are an important factor in its infrastructure planning decisions, particularly as it rolls-out the Critical Communications Enhancement Program (CCEP) to expand the Government Radio Network (GRN) across New South Wales. Accordingly, provision for these rebates should be retained at the current proportion of fees in the public interest.

Recommendations from IPART’s 2013 Review sought to provide a workable solution to the issue of negotiating ‘high-value’ sites. However, due to a combination of factors including process inefficiency, the complexity of any such negotiations and subjectivity in the individual assessment of the characteristics of such sites, this element of the rental arrangements appears ineffective. It is noted that the Issues Paper states that none of the three Crown land management agencies has sought to negotiate a site as being of high-value against the IPART criteria and individual site characteristics, thereby making the category redundant over the past five years. For these reasons, the value of retaining of a ‘high-value’ site category and related processes is questionable when the more efficient site rental schedule has proven effective.

The current arrangements were established by IPART for the purposes of fairness, consistency and efficiency when dealing with land management agencies in establishing rent for Crown land sites. However, IPART's recommendations have not always been applied consistently in the way they were intended. According to the Issues Paper, the NSW National Parks and Wildlife Service (NPWS) currently applies its own policy for rental fees, based on the standard site schedule but charging renters fees at one level above the applicable population density base fee for the site. This reflects NPWS's view that all its sights are of 'high-value' due to them being reserved land under the *National Parks and Wildlife Act 1974*. Such a position on fee setting may be contentious in this current IPART review as it does not reflect the 'fair market-based commercial returns' sought by its terms of reference. While it appears to be consistent, and therefore efficient, this approach does not apply an opportunity cost valuation nor consider the communications-based site characteristics by which high-value sights were intended to be assessed by past IPART recommendations.

Issues Paper questions for comment

In response to the Issues Paper's specific issue questions, the NSW Telco Authority provides the following responses.

- 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 proposed review approach is appropriate to its terms of reference.

- 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?**

A potential land user's willingness to pay and the opportunity cost to the land management agency are valid considerations and, in an efficient market, would generally function effectively in defining efficient rents for communication tower sites. However, there are factors affecting these inputs which could complicate a fair market-based valuation. In some circumstances, such as the establishment of communications towers for public safety networks, a potential site might be the only viable location in an area capable of delivering adequate communications coverage. As this coverage area footprint may be essential to support the functions of public safety and emergency service agencies, this could increase the willingness to pay rent beyond what would normally be considered a reasonable threshold. This introduces a 'requirement to pay' rather than a 'willingness to pay' and would not be a commercial decision, but one made in the public interest.

Significantly, there may also be difficulty in determining a true revenue-based opportunity cost for potential sites. Telecommunications sites have unique requirements and characteristics, including geographical and topographical factors. For example, they may be required in remote or difficult-to-access locations. It may often be the case that there is no realistically-viable or appealing (to other users) alternative land use to a communications tower on a potential site.

Additionally, a land management agency itself may not support or reasonably permit an alternative land use, such as in conservation and heritage areas. Therefore, the real opportunity cost of some sites may only relate to an alternative user's communication tower (upon which co-location may then be likely) or could otherwise be zero in terms of potential alternative revenue.

The valuation of sites may also consider and balance alternative economic or social factors. For example, in a national park there is the desire to preserve and protect the natural amenity for conservation, cultural heritage and public enjoyment purposes. While, on face value, the physical prospect of a communication tower may not appear consistent with these purposes, it would deliver significant public safety and environmental protection benefits. For example, communications are essential to support emergency services when dealing with public safety incidents and natural disasters such as rescuing lost or injured bushwalkers, fighting bush fires or responding to major floods. In these scenarios, public safety communications networks support the functions of the land management agency responsible for stewardship of that Crown land, while those agencies concurrently charge rent to accommodate this service. It should also be noted that private mobile networks may also have a role to play in these environments when members of the public need to contact agencies to seek critical assistance or report emergencies.

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

Market-based commercial rents will affect users' willingness to pay. In circumstances where there are similar alternative communication tower site options on both private and Crown land, consideration of the available market-based commercial rent against the scheduled Crown land fee may be the only factor affecting the final site selection decision.

As stated above, there are factors affecting users' willingness to pay, such as meeting mission-critical operational communications coverage requirements for public safety and emergency service agencies, that should not result in fees being driven-up, particularly when one government agency is charging another.

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)?

Rents negotiated by the NSW Telco Authority are generally all-inclusive.

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?

Sites either meet the requirements to host communications infrastructure or they do not, however they may be ranked or prioritised on the basis of their attractiveness due to their individual characteristics, including those identified in previous IPART reviews for their potential identification as 'high-value' sites. Sites which overcome black spots or coverage gaps are of particular significance to public safety networks, where rental cost is of less concern than ensuring the availability of communications.

The characteristics of communications sites are unique to communications infrastructure, generally with no directly comparable alternative use.

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

As noted above, there may be difficulties in determining a true revenue-based opportunity cost for potential communication tower sites on Crown land on the basis that there often may not be any real prospect of an alternative use and revenue source.

For example, while similarities have been drawn between the land uses, a site suitable for a communication tower may not be appropriate (or desirable) for a wind turbine, being a use for which a direct economic return may be determined based on its output.

The case where no viable alternative site use exists for Crown land may even occur when a potential Crown land site is 'in competition' with a nearby potential alternative private site. Market-based commercial rents would provide some guidance in these circumstances.

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 has already been raised, in many cases there is no true opportunity cost that can be identified as there is no real income-generating alternative for these sites other than rental income from being communications sites. Communication tower sites are selected in consideration of a range of factors, with infrastructure owners willing to pay a reasonable rental fee, but it would commonly be the case that these fees could not be established against an identifiable opportunity cost.

In this regard, as each of these sites would therefore technically yield a producer surplus, the question of fair sharing of the total economic surplus is challenging if achievable. This is further complicated when the site user is not generating revenue, such as budget funded sector agencies including the NSW Telco Authority.

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 classification of sites by location and population density remains an effective and efficient method of establishing rental fees, and the current four categories within the existing schedule of fees are appropriate to cover the range of communication tower locations across New South Wales.

It is noted in the Issues Paper that the schedule of fees has not been applied by all land management agencies in the manner intended by IPART, with some rental prices being established by using the site density category one level above the actual density of the site. While this is described as occurring on the basis of an agency deeming all of its sites as of 'high-value', this policy by-passes the purpose and principles of the IPART schedule.

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

This may be determined through the analysis of Australian Bureau of Statistics data.

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

The current 50 per cent rent discount is appropriate, noting that the land management agencies are often licensing several parties on each communication tower site. Proportional rebates to the relevant co-user groups should also be available.

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

Infrastructure providers support both commercial and public interest networks and, by hosting these services, may positively contribute to limiting the proliferation of communication towers. A discount for infrastructure providers could allow them to pass-on part of those savings to their customers, however this is not guaranteed. Regardless, the attractiveness of a site would increase with reduced net expenditure requirements, which could encourage co-location and thereby yield additional revenue per site for the land management agencies through co-user rents.

However, primary users who are not (solely) infrastructure providers may also provide the equivalent hosting service to co-users. Therefore, there could be further questions as to whether it is appropriate to distinguish between infrastructure providers and primary users. This also raises the competitive neutrality question included in the Issues Paper. Further consideration of the economics of an infrastructure provider discount is required in addition to an analysis of the effect of the recommended withdrawal of the discount from the 2013 IPART review.

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

The current rebate system is appropriate. The NSW Telco Authority, as a budget funded sector agency providing core operational communications services to emergency and public safety agencies, is subject to the rebate schedule, equating to an 80 per cent discount on the standard fee. This enables more-efficient government investment in the public interest in circumstances where no commercial advantage is applicable. The rebate enables the Authority to obtain licences at fees consistent with those it may achieve through agreements with private land owners.

While not the reason for the rebate, there is additional benefit to the hosting land management agencies (and to private land owners) from having a Government Radio Network presence, thereby enabling the coordination of emergency service activities to protect lives and property, including the Crown land itself.

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

In the current framework, 'high-value site' negotiations may occur at the discretion of land management agencies. However, the Issues Paper indicates IPART's understanding that no high-value sites have been negotiated since the framework's implementation. This may be attributed to the difficulty, and subjectivity, in assessing sites as being of high-value. Even once this has occurred, there is the further difficulty of agreeing what fair value should be placed on the site's individual high-value characteristics. There is also inefficiency and uncertainty in the outcome of any negotiation process, which may include no final agreement.

In contrast, the consistent application of a standard fee schedule enables expenditure and revenue certainty for both parties. Importantly, this also supports further investment planning through enabling predictability.

The Issues Paper describes that NPWS has applied an alternative approach to the identification of high-value sites, not based on the site characteristics established by IPART in 2013, but rather from a perspective that all NPWS sites are of high-value regardless of their individual attributes. While the NPWS approach of utilising one level above the applicable 'standard site' density category to determine the rental fee provides efficiency, it by-passes IPART's intent of assessing high-value sites based on telecommunications-relevant characteristics which were intended to more-closely reflect commercial market-based valuations. Instead, NPSW has established a position that the Crown land it manages is of greater value than other Crown land, however this is not structured on a 'fair, market-based commercial' assessment or revenue-based opportunity cost basis.

For these reasons, there appears to be no current benefit in retaining a redundant high-value site category within the framework. Instead, the consistent application of the schedule's density-based site categories provides the efficiency and certainty sought by both parties as well as delivering economic benefits through supporting investment.

However, should it be determined to retain a high-value site category, the expectation should be that the land management agency justifies its position to identify individual sites as being of high-value on a case-by-case basis against telecommunications site characteristics criteria or on an opportunity cost basis, with both options being supported by factual, market-based data.

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 2013 IPART provisions for the identification and valuation of high-value sites against a fair market value based on individual site characteristics have been redundant since the 2013 IPART review, with no site being so identified on this basis. It is difficult to see how these could be refined through formula-based valuations, based on characteristics such as elevation, accessibility, availability of alternative sites or number of users (and other examples previously considered by IPART reviews in 2005 and 2013). There may also

remain the potential for subjectivity in any assessments. Additionally, such a formula-based approach would not address the value placed on the undeveloped land by the land management agency, or its opportunity cost, both of which may differ considerably from that for a communications site assessed against set criteria.

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

The approach of considering the impact on users and the potential implementation of transitional measures is appropriate.

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

The annual CPI-based rental increase is a sound and consistent approach to ensure established prices remain aligned with changing economic conditions.

Should alternative options be considered, this could include a fixed annual percentage increase, set at a maximum of 2.5 per cent and reviewed by IPART after five years. This would remove the annual requirement to calculate, acknowledge and apply the new fee as it would already be factored by both parties in their agreements over the five-year period. This would support forecasting and budgeting for both revenue and expenditure.

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

Investment in communications infrastructure is for the long-term due to its cost and life-cycle. A five-year review provides a level of peace-of-mind for this investment.