

10/04/2019

Review of Rental Arrangements for Communication Towers on Crown Land
Independent Pricing and Regulatory Tribunal
C/- Brett Everett
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Dear Mr Everett

2019 IPART REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION TOWERS ON CROWN LAND

TransGrid appreciates the opportunity to make a submission on the *2019 IPART Review of Rental Arrangements for Communications Towers on Crown Land (2019 IPART Review)*.

(a) Executive Summary

TransGrid's priority is the safe, reliable supply of electricity to NSW and ACT in the most cost-effective way.

In general, TransGrid supports rental arrangements for Crown Land sites that is as **simple as possible for all users**, as well as **fair and transparent**.

For its **Prescribed Activities**, TransGrid's ability to absorb costs is limited, and costs are typically passed onto the public – this includes the costs of prescribed telecommunications facilities and licences.

For **Non-Prescribed Activities**, TransGrid supports rentals based on fair, market-based returns, taking into account the limitations on use of Crown Land.

TransGrid requests that the 2019 IPART Review take in to account the following submissions:

1. As simple as practicable:

- a. Enable arrangements where the Primary User holds a head licence for the site, coordinates all co-users and is responsible for co-use rentals as well as transparent reporting, so that co-users do not need to enter into separate co-location agreements or access arrangements for use of the site;
- b. Enable fee discounts as part of the annual licence payments based on use (prescribed etc), rather than requiring applications for rebates;

2. **Fair and cost reflective:** Take into account the need for TransGrid to pass on cost increases to its customers and ultimately the users of electricity in NSW, by providing for "at cost" licence fees for prescribed activities.

Overall, a simple, transparent and fair system benefits both users, and the government agencies administering Crown land.

(b) TransGrid

TransGrid is the operator and manager of one of the largest high voltage electricity transmission networks in Australia, connecting generators, distributors and major end users in New South Wales (NSW) and the Australian Capital Territory (ACT). TransGrid's network includes around 13,000 kilometres of overhead transmission line and underground cable throughout NSW and ACT, and connects to networks in Queensland and Victoria.

In December 2015, the NSW State Government entered into a 99 year transmission network lease (TNL) for the electricity transmission network. The transmission network is still owned by the State Government, and existing (and new) licence arrangements on Crown land are executed by the Electricity Transmission Ministerial Holding Company (ETMHC). TransGrid remains responsible for the operation and maintenance of the transmission network throughout the 99 year lease, and has the benefit and burden of rights and obligations under property transactions (such as licences) executed by ETMHC, in order for it to fulfil its obligations to operate and maintain the transmission network.

The following legal rights and responsibilities are relevant to TransGrid's communication towers licencing arrangements:

- TransGrid is a network operator under the *Electricity Supply Act 1995* (NSW) (**ES Act**), and is legally obligated to provide a safe, reliable supply of electricity to NSW. TransGrid is also required to meet the Australian Energy Market Operator's requirements for power system data and communications across the entire transmission network in NSW.
- Under the ES Act, TransGrid and other electricity network providers have the right to undertake electricity works (including all ancillary works) on "public land" without the need for a lease, licence or easement. "Public land" is defined to include Crown Land.
- Specific to communications towers, under the *Telecommunications Act 1997* (Cth) (**TC Act**), TransGrid is required to provide access for other carriers to its communications towers, for installing facilities for radio communications.
- TransGrid's network revenues are set by the Australian Energy Regulator (AER), which regulates the energy network and promotes efficient investment in, and operation and use of, electricity services in the long term interests of consumers.

(c) TransGrid's Communication Tower Sites

TransGrid (via ETMHC) occupies and owns 49 communications towers over Crown Lands for the purposes of communication and protection of the transmission network.

Essentially, TransGrid telecommunications infrastructure is divided into two functions:

- **Prescribed** – where telecommunication assets and infrastructure are used to provide support and protect NSW's essential high voltage transmission network and meet TransGrid's statutory functions and obligations;
- **Non-Prescribed** – where TransGrid provides telecommunications assets and infrastructure for commercial purposes.

In terms of TransGrid's **Prescribed** functions, TransGrid's communication tower sites support the following functions, which are critical to its statutory obligations:

(i) Microwave Backbone:

- provides communications links for the transmission of the protection and monitoring signals of the high voltage transmission lines and plant;
- provides communications links for the remote operation and monitoring of Substations via SCADA; and
- provides communications links for the transmission of data for the operation of the National Electricity Market.

(ii) Private Mobile Radio Network:

- essential for two-way communication between staff involved in the construction, operation and maintenance of the high voltage network; and
- is designed to be the last form of two-way communication during emergencies or major system failures.

Costs associated with TransGrid's Prescribed Functions, including access licence costs on Crown Land, are ultimately passed through to electricity consumers – i.e. – NSW homes and businesses.

(d) TransGrid's Crown Land sites

In terms of Crown Land, TransGrid's communication sites have increased over time as follows:

- **2005** - 22 sites on Crown Land as either a primary or co-user
- **2013** - 41 sites on Crown Land as either a primary or co-user
- **2019** – 49 Sites on Crown Land as either a primary or co-user

Where TransGrid is the infrastructure owner, TransGrid enters into co-use arrangements with a variety of communications providers, including government.

Table 1 below sets out the Crown land sites TransGrid utilises for its communications/radio repeater functions.

Table 1: TransGrid Crown Land Sites (Primary and Co-User)

Density	User	Site Name	Total
High	Primary User	Mt Sugarloaf	1
		Somersby	1
	High Total		2
Medium	Co-User	Boambee	1
		Cambewarra Mountain	1
		Mt Coramba 2nd tower (West)	1
	Primary User	Mt Arthur	1
		Mt Coramba 1st Tower (East)	1
		Mt Canobolas	1
	Medium Total		6
Low	Co-User	Bingar	1
		Mt Bobbara	1
		Mt Bodangora	1
		Cabramurra	1
		Clarkes Hill	1
		Mt Douglas	1
		Mt Ganghat	1
		Mt Mackenzie	1
		Mt Topper	1
		Mt Yarrahapinni	1
		Red Hill	1

		Wambo Brook Trig	1
		Mt Berrico	1
	Primary User	Ben Lomond	1
		Botobolar	1
		Boyne Trig	1
		Bugong Gap	1
		Coonambro	1
		Cabbage Tree	1
		Finley	1
		Girard	1
		Goombargana Hill	1
		Loka	1
		Middle Brother	1
		Mt Coonambro	1
		Mt Crawney	1
		Mt Darling	1
		Mt Kaputar	1
		Mt Macquarie	1
		Mt Meehan/Mullions Creek	1
		Mt Spring	1
		Mt Yarrahapinni	1
		Nerriga	1
		Saddleback	1
		Square Head	1
		Wereboldera	1
		Wollar	1
		Banyabba	1
		Clouds Creek: Sheas Knob	1
		Shooters Hill	1
		Snubba	1
Low Total			41
Grand Total			49

In addition to the Crown land sites identified above, TransGrid owns and leases many more Radio Repeater Stations sites. TransGrid's preferred tenure arrangements involve freehold or long-term leasehold (approximately 20 years) with one year termination to provide certainty of tenure in the operation of the high voltage electricity network.

(e) IPART 2019 Review

IPART reviewed the rental arrangements for communication tower sites on Crown land in 2013, and as a result of that review, the NSW Government established a framework that includes a fee schedule for determining the rents its land management agencies can charge users of 'standard sites' and a negotiation process for agreeing the rents for users of 'high-value sites'. That fee schedule is now subject of IPART's five-yearly review.

IPART's 2019 terms of reference include:

- review the rental arrangements for communication tower sites on Crown land managed by the Department of Industry Division of Lands and Water, the Office of Environment and Heritage, and Forestry Corporation;
- advise on a fee schedule that reflects "fair, market based commercial returns", having regard to recent market rentals for similar purposes and sites; recent land valuations; the current framework; and the land management agencies' legislative requirements;
- the Government's preference for a fee schedule that is as simple, transparent, and cost reflective as practicable and clause 44 of Schedule 3 of the *Telecommunications Act 1997 (Cth)* which prohibits discrimination against telecommunication carriers by State law.

(f) Principles for the 2019 IPART Review

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?

TransGrid generally supports the proposed approach undertaken in this review. TransGrid raises the following additional points for consideration:

1. Where communications tower sites are used for a Prescribed purpose and not as a commercial carrier, the licence fees on Crown land should be nominal or a rebate between 60-80% be applied (at a maximum, to cover the Crown land agency costs) in order to minimise pass through costs to electricity consumers.
2. An "accessibility factor" for Crown land sites should be assessed or included as a fundamental part of the valuation. For example, while some sites may hold "value" in terms of topography, proximity to infrastructure/population areas, they may present challenges for third party access (for example, some sites can only be accessed via over private land, which require additional access arrangements, adding to the complexity for users). If the Crown land entity managing the site could secure the necessary access from public road to the site, it would provide added value to the site and enable a higher rental to be charged.
3. TransGrid considers that one way to encourage maximisation of co-use opportunities, would be for the relevant Crown land entities to provide optional flexibility in their head licences, so that a primary user or infrastructure owner could take responsibility for arrangements with co-users of sites. The primary user would be responsible for the payment of co-use fees and reporting of co-use numbers. This would significantly simplify the arrangements for co-users, and potentially increase uptake of Crown land sites.

(g) Estimate the Range for Efficient Rents

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?

In general terms, TransGrid agrees with the definition of efficient rents for communication tower sites on Crown land (subject to its submissions below), which is considered similar to the valuation principles of a willing buyer and willing seller approach.

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

TransGrid requests that the following information should be taken into account to estimate user's willingness to pay:

1. **Purpose of the site:** Where the site is used for a statutory purpose as opposed to a commercial purpose, it will impact the amount a user is willing or able to pay for a site. TransGrid, for example, has variable drivers for assessing the value of sites due to the split between the prescribed and non-prescribed (commercial) sections of the business. TransGrid considers that it is fair to pay commercial rates for sites providing commercial returns. However the majority of TransGrid sites are used to meet statutory obligations and protect the transmission network. Subsequently, rental charged for these sites is passed onto electricity consumers. Therefore, all prescribed sites should be subject to the nominated rebates.

2. **Accessibility:** As noted above, a fundamental constraint/challenge for some Crown land sites is accessibility – especially for co-users. An example is where the primary user has existing arrangements in place to cross other land (including privately owned land) to access the Crown land site. We suggest that wherever possible, the relevant Crown lands entity should seek to secure or assist in obtaining sufficient access rights for co-users. This would add to the attraction and convenience of the Crown site and would allow the maximisation of the site's value. In terms of whether it is appropriate to consider commercial rents paid to private landholders, TransGrid has no issue with this approach as it provides a broader view of the market rates being achieved. However, TransGrid requests that the Crown land entities should acknowledge that drivers are different for commercial operators compared to authorities using sites to meet statutory obligations. Also when considering market rents, these rates should include a discount for the provision of infrastructure and the rental should reflect a value of ground lease only.

IPART considers that wind turbine sites could prove an appropriate comparison for rental purposes. TransGrid considers this approach will significantly over-complicate Crown land licence fees, and would be difficult to quantify and align with rates for communications sites.

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)?

Typically, rentals for communication site rentals do not cover all charges for the use and operation of the site. In the case of maintaining access tracks TransGrid's typically maintain tracks only to a four wheel drive access standard. Where sites have co-users, negotiations are usually entered into between all parties and contributions are apportioned respectively. For services such as electricity, each user is metered individually.

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?

For commercial users, the main characteristics users are willing to pay for communication tower sites include: location, ease of access, proximity to services, population density, elevation, line of site, free of environmental limitations and proximity to the user's own existing network.

The main characteristics for non-commercial users are similar, however the key requirement is the need for the authority to meet its statutory obligations.

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

TransGrid considers the opportunity cost is a difficult component to assess, as a site's value is dependent on demand. For example Crown land could have a communication sites that meet all the criteria however if there are no users for the site, then its value is just land value.

Also, there are a number of variables to consider when determining opportunity costs such as whether sites will be subject to a single or multiple users as well as the location of the sites.

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?

TransGrid considers that such a "fair sharing" principle would not meet the criteria of "simplicity" for either the land management agencies, or users. Instead the sharing should be based on a fair market basis where negotiations are undertaken between a willing landowner and willing user. It should be noted that primary users and infrastructure providers bring value to the sites by the installation of their infrastructure which contributes to encouraging co-use of the site.

Alternatively a simplistic approach to fair sharing may be to simply agree at the mid-point between the two rates.

(h) Decide on and apply a rent setting methodology

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?

TransGrid supports the existing schedule of rental fees by location, and considers that it is fair to charge higher fees to sites closer to metropolitan areas. TransGrid's schedule of rentals for commercial co-users also reflects these principles.

TransGrid supports the number of location categories currently in use, however requests that some consideration or rebate be provided to non-commercial users on single user sites – especially in the high category.

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

TransGrid agrees with the current location categories.

What is the appropriate rent discount for co-users?

Overall, IPART appears to recommend that it would be reasonable to maintain the 50% discount. TransGrid supports this approach and this rate should be maintained along with a discount for infrastructure providers.

As noted above however, co-use opportunities would potentially increase if “head licence” arrangements enabled the primary user or infrastructure owner to take responsibility for co-use arrangements.

Should infrastructure providers receive a discount relative to primary users? Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public?

IPART has previously recommended removal of the 30% discount for infrastructure providers.

TransGrid supports the retention of a discount for infrastructure providers. From a Prescribed activities perspective, any rebates applicable to TransGrid will benefit the essential public services of supporting communications infrastructure for the protection and safety of the state's high voltage transmission network.

For simplicity, transparency, ease of implementation and to reduce the administrative burden (and budget uncertainty) for users, this categorisation and discounting should occur up front as a fee discount, rather than as a rebate mechanism. It is acknowledged that this would require evidence up front as to the use of the site (i.e., whether the user is using the site for commercial gain or not, or providing an essential public service).

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

As noted in the 2019 IPART Review, site-by-site negotiation for high value sites is not routinely carried out, given the time and complexity it potentially requires.

Alternatively TransGrid considers that the current schedule of rental arrangements for standard sites can be extended and utilised for “high value” sites as well (with the “high value” amount being

utilised), however the relevant criteria will need to be established to formulate an appropriate rate such as value to network, accessibility and customer demand for services.

(i) Transitioning impacts on users and adjusting rents over time

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

TransGrid supports the phasing of any increases to rental rates over time, to smooth the transition for cost increases. TransGrid's prescribed revenue is set every five years by the regulator, and current revenue (based on expected expenses, including fees and assuming CPI increases) has already been set for the period of 2019 – 2023. A phased approach will enable TransGrid to plan and account for the changes.

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

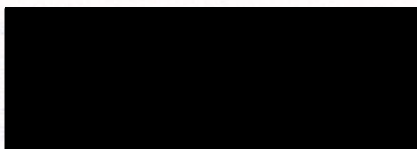
TransGrid considers that the current approach of adjusting rents annually by the CPI is appropriate and provides sufficient certainty, transparency and ease for users to properly budget for Crown land licence fees both in the short and medium term.

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

Yes – five yearly reviews are appropriate, and supported by TransGrid.

Please do not hesitate to contact us if you have any questions, or require any further information in relation to this submission.

Yours faithfully



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TransGrid