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Independent Pricing and Regulatory Tribunal
PO BOX Q290
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Dear Members of the Tribunal,

Review of Rental Arrangements for Communication Towers on Crown Land

We take this opportunity to respond to the draft report IPART has issued in relation to this review process.

Crown Castle is disappointed in the changes IPART has recommended be made to the land access fee schedule. Our analysis demonstrates IPART's recommendations would deliver an extreme adverse outcome for Crown Castle. These fees are not market based, and taken together would likely increase our site rental costs by at least 50% on the 66 sites we licence or lease from the NSW Land Management Agencies (**LMAs**). Our tower related revenue would also decline given that our customers will actively avoid sites with these additional costs.

These arrangements are simply a punitive tax on our business and will prevent Crown Castle from making any further investment in this market segment. The new regime will not increase returns on Crown Lands but reduce them as the proposed changes will see industry participants, like Crown Castle, move away from sites on Crown Land.

We do not believe that outcome is in the best interests of the industry, LMAs or the NSW public. Further, IPART does not have the power to impose this form of tax and we are confident we will establish this at the appropriate time. We respectfully request IPART reconsiders this draft report as the recommendations simply cannot be implemented as proposed.

Executive Summary

- **Beyond Powers**: IPART has not acted in accordance with its terms of reference in arriving at the fee schedule. In particular:
    - the proposed fee schedule strays from setting rentals for the relevant market - access to land;
    - there is no market evidence to support the proposed fee schedule and IPART's very own consultants, BEM, did not recommend making changes to the existing fee schedule.
- **Breach of Crown Lands Act**: Section 143(b) of the Crown Lands Act expressly provides that in determining or redetermining rent "any improvements on the land which were made by the holder, or are owned…by the holder, shall be disregarded." IPART should take account of section 143(b).
- **Discriminatory:** Our analysis suggests Crown Castle will incur a minimum 50% increase in site costs over a 20 year period. This excludes any further impact associated with 15 of our sites now becoming "high value sites". Rents for the affected Crown Castle sites will be 4 x the rent on similar private land parcels.
- **Punitive Tax**: For the "High Value Sites", it is not reasonable or realistic for IPART to expect Crown Castle to be responsible for millions in co-user fees that we cannot pass on and/or are unlikely to be paid by the end user.

- **Contrary to Well Established Public Policy**: The removal of the 30% discount available to Infrastructure Providers is wrong from a policy perspective, further discriminates against Crown Castle and would also amount to a breach of our current licence terms with the LMAs. BEM also recommended against this change. A 50% discount is required to deliver a level playing field.

- **Sovereign risk of investing in NSW**: resetting the rules after an investment has been made makes it impossible to confidently invest in NSW.

- **Unworkable**: Crown Castle will not be entering into arrangements based on the proposed regime. It would simply transfer the value associated with our tower business to the NSW Government (without compensation). We will consider all avenues, including the removal of the tower infrastructure and/or any legal and regulatory rights available to Crown Castle and its tower customers.

Analysis

We would like to expand on the above:

1. **Proposed Rents are 4 x market**

   Here's a simple comparison for Sydney leases:

	Crown Castle Lease on Private Land in Sydney	Crown Castle lease estimate from LMA in Sydney under new IPART recommended regime
Typical rent	$27,000	$32,511
Co-user Fees (3 carriers)	$0	$48,766
Total Rent to Landowner	**$27,000**	**$81,277**

   This should demonstrate why the rental structure proposed by IPART is completely and fundamentally out of step with the market.

   It is unclear how IPART could recommend the increase in rents given it does not reflect "***fair market-based commercial returns***" (see Terms of Reference dated 5 October 2012). It should be noted that we are talking about the lease of very small parcels of undeveloped land – 80sqm on average. That land is typically unable to be used for any other commercial use and will have no value if we are forced to pull our infrastructure down as a result of this regime.

   BEM advised IPART that the current existing fee schedule should remain unchanged as it already reflects market rent for leases of Crown land. It also advised IPART that the current infrastructure provider's discount of 30% should appropriately remain in place.

   BEM noted:

   > *"Based on our investigations and research, we consider the 2005 IPART recommended schedule…to be reasonably reflective of market rental value and consider there to be no compelling body of evidence to warrant a change. Accordingly, BEM proposes that "the Schedule" remains unchanged."*

   Commenting on the discount for infrastructure providers, BEM noted:

"*In relation to the status within the "Schedule" of infrastructure providers, who receive 30% discount to the highest co-user rate, we consider this to be appropriate*".

There is ***no evidence*** IPART has relied upon to link the proposed changes to "fair market-based commercial returns" and as such, IPART's report exceeds the mandate described in its own terms of reference.

IPART has plainly and simply recommended a punitive new tax on infrastructure owners and the telecommunications industry in NSW. IPART does not have the factual basis on which to make such a recommendation and does not have the power to recommend such a tax.

It necessarily follows that, if these changes are implemented, Crown Castle will withdraw from the market to construct new telecommunications towers on land owned by the LMAs in NSW. Ultimately, this is not in the best interests of the industry, government or residents of NSW. As an open access tower provider, we reduce barriers to entry in the market and facilitate consumer choice. NSW will simply end up with lower quality access to competitive mobile voice services.

The industry will also likely do whatever it can to avoid use of these sites and may move from existing LMA sites. The prohibitive cost proposed by IPART is much higher than moving and duplicating existing sites. .

2. Creating a False Market = Punitive and Unfair Tax

We once again confirm there are 3 markets:

1. access to land;
2. access to towers;
3. access to telecommunication networks.

IPART has strayed beyond 1 above - in clear breach of s.143(b) of the Crown Lands Act. This is transparently encouraged in the DTI's submission cover letter which states the industry should "disclose the rents charged for co-location on towers" so that IPART's findings can reflect true market conditions. This is a transparent attempt to tax a business the Crown has made no investment in. We are also surprised that a NSW Government Department would openly encourage Crown Castle to knowingly breach confidential arrangements we have in place with our customers.

3. Inclusion of new "High Value Sites"

There are 15 Crown Castle sites that have been identified as "High Value Sites", which are recommended to be the subject of new rental arrangements.

The proposal is for the rent for the High Value Sites to be based on a head licence agreement which:

(a) has a floor of the "standard rentals";
(b) will make the primary user (i.e. Crown Castle) liable to pay all the co-users fees direct. Crown Castle then have to somehow pass that cost on to our customers (even though Crown Castle have no right to do so under our agreements). In other words, Crown Castle will become both an unpaid bank and an unpaid debt collection agency for the LMAs;

(c) ignores s143(1)(b) of the *Crown Land Act* and the principle there stated that improvements on the land should be disregarded; and
(d) has a material adverse financial impact on Crown Castle estimated in the millions.

The suggested changes are unworkable, unfair and, in our view, unlawful. These are also sites where we have an existing long term licence and Crown Castle is surprised and concerned that a NSW Government agency would try and undo a contract it had entered into, particularly when Crown Castle had invested on the basis of that licence.

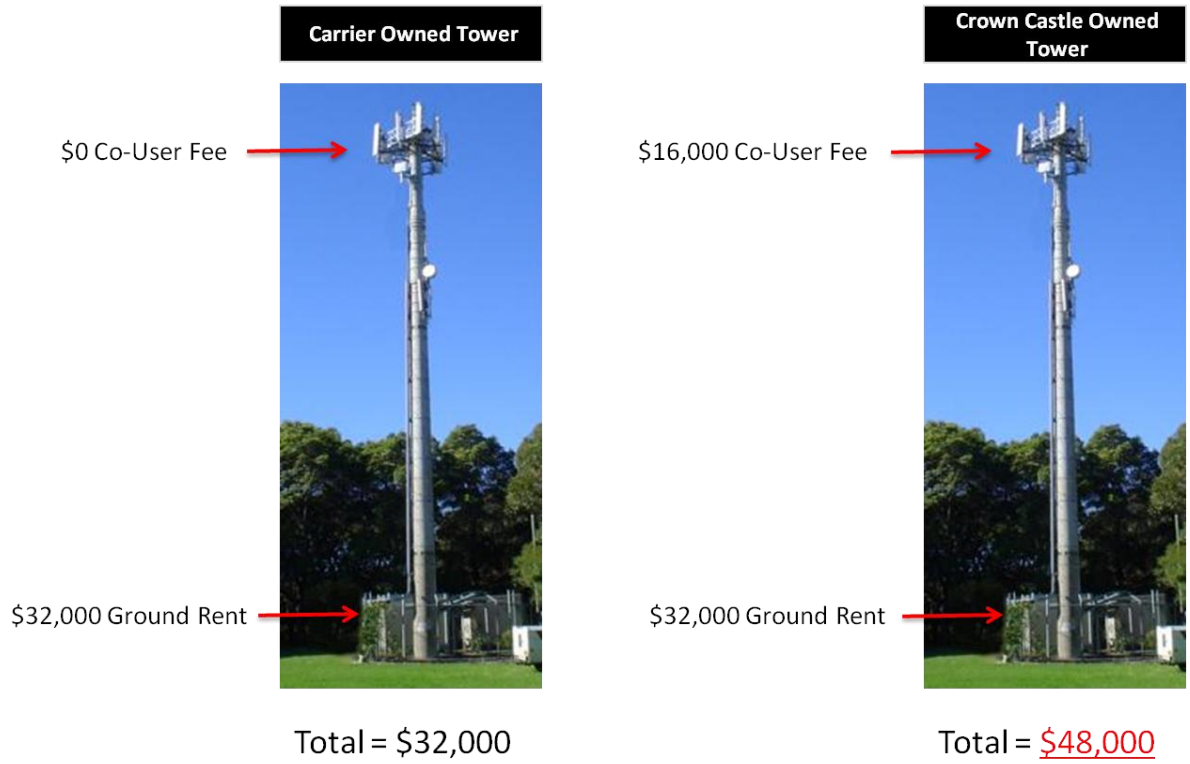
Again, we suggest IPART consider that the telecommunication industry has made investments in infrastructure based on a risk and return model (including the tenure for the sites). IPART should recognise that the telecommunications industry, including Crown Castle, has made a substantial investment and the effective expropriation of assets without due compensation is simply unlawful and we will respond to that accordingly.

4. Removal of 30% discount to infrastructure providers is a disincentive to co-location in NSW

IPART has stated that the reason for retaining the 50% discount on co-user fees is to encourage colocation, yet it proposes removing the 30% discount for infrastructure providers. The removal of the 30% discount for infrastructure providers:

- clearly contradicts the well established policy objective (across all arms of Government) of colocation of infrastructure in the community;
- is inconsistent with the principles of crown land management set out in section 11 of the Crown Lands Act 1989 (NSW);
- means it is cheaper for a single user to build a new tower rather than outsourcing to a third party such as Crown Castle; and
- is anticompetitive and discriminatory.

This is not complicated and perhaps best described in picture form (see over page).



There is no evidence based policy reason for IPART to remove the discount for infrastructure providers. The discount regime (a) encourages the reuse of existing infrastructure; (b) enables competitively neutral infrastructure providers to operate in the market; and (c) ultimately leads to more products and services offered in the market. A network provider (say Vertel) will inherently turn their mind to who is using the tower and what impact that will have on their radio business.

Only a genuinely competitively neutral operator is truly open access to all access seekers. This is a globally recognised principle.

5. Revising IPART pricing every 5 years will limit future investment on Crown land

Investment in infrastructure requires a long term stable operating cost line. The reworking of IPART principles and the suggestion they be revisited every 5 years means it is simply not possible to invest in the construction of infrastructure on Crown land.

IPART's rental regime is essentially a retrospective tax on a sunk investment, and creates a sovereign risk for potential investors dealing with Crown land in NSW.

6. IPART's disregard of the Crown Land Act 1989 & IPART's Terms of Reference

As part of its Terms of Reference, IPART must consider the provisions of s. 143(1) of the Crown Land Act.

Under section 143(1) (a) of the Act, the Minister must apply rent that is market rent for the land comprised in the lease. Further, section 143(1)(b) states that any rent considered by the Minister must ***exclude any improvements*** made to the land by the leaseholder. The fee schedule recommended by IPART is inconsistent with the principles in s 143(1) of the Act as the NSW Government is not entitled to

investment returns by way of a punitive tax from infrastructure improvements on crown land. The investment improvements made by infrastructure providers and carriers to crown land sites (such as the tower, access tracks, shelters and provision of utilities to the site) must not be taken into account by IPART in setting its fee schedule. LMAs are not entitled to a return from such investments.

The market rent for leases of crown land in NSW should be based on the unimproved value of the land then calculated by the size of the leased area of the land. This is consistent with the Terms of Reference which required IPART to have regard to and consider relevant land valuations in its determination of "fair market-based commercial returns".

7. IPART's disregard for the US – Australia Free Trade Agreement

Crown Castle is a US majority owned entity and is surprised that IPART has recommended a fee schedule that is not only discriminatory and anticompetitive but also inconsistent with the principles of the US–Australian Free Trade Agreement (**FTA**). Crown Castle's operations support the Federal and NSW Government's aim of encouraging efficient colocation of tower infrastructure in Australia and reducing duplication of towers within the community. However, as illustrated in our table 6.1 below, IPART's recommended fee structure clearly discriminates against infrastructure providers such as Crown Castle (who are the larger of only 2 independent infrastructure providers in Australia). It illustrates that LMAs are able to collect 50% more fees from a Crown Castle owned tower than a telecommunication carrier owned tower. This is clearly discriminatory.

The discriminatory fee structure is inconsistent with the FTA to ensure major suppliers provide *"...co-location of equipment on reasonable, non-discriminatory terms and conditions*". It also contradicts the Federal government's aim under the FTA to encourage investment by US entities in the Australian markets (including the telecommunications sector).

Table 6.1 : Example of single tenant tower

Category	Ground rent	Co-user fees	Fees collected by land management agencies
Telecommunication carrier using its own towers	100% of ground rent	Nil	100%
Towers acquired by Crown Castle and used by the same carrier	100% of ground rent	50% of ground rent	150%

This is also demonstrated in pictorial form in section 2 above.

We would also add that the FTA requires that both governments should embrace a "*hands-off regulatory approach where markets are functioning competitively*".

8. Impact Assessment for IPART's proposed recommendations

Should the LMAs implement IPART's proposed fee schedule, users will likely:

(a) ***Build new sites on non-crown land***: either in preference to co-locating on existing crown land sites or when undertaking new tower builds to increase wireless coverage. This will result in the

construction of more tower sites which both compete with public land (reducing public revenue) and involve the environmentally undesirable (and economically inefficient) duplication of tower sites.

(b) ***Relocate from existing crown land sites:*** to alternative sites where economically viable secure tenure can be obtained. Given the long term nature of telecommunications infrastructure deployments, and the cumulative effect of rent rises over these timeframes, infrastructure providers and carriers are prepared to, and do, incur the expense of relocating sites.

(c) ***Access sites using statutory powers:*** to install or maintain low impact facilities. Carriers have this power under the Telecommunications Act 1997 (Cth), the exercise of which at the very least complicates (if not compromises) the recovery of rent by land management agencies.

(d) ***Abandon sites altogether:*** in that area, creating mobile "black spots" in network coverage and denying affected residents access to essential wireless communications services.

(e) ***Pass through higher costs to NSW consumers:*** where relocation is impractical.

The implementation of IPART's recommended regime will only result in jeopardising a fair market based rental return for the NSW government in the future. This will also ultimately lead to degradation in radio network coverage and performance in NSW.

Thank you for considering the further submissions we have set out above.

Yours sincerely

[redacted]

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Crown Castle Australia