

11 June 2013

Review of rental arrangements for communications towers on Crown land  
Independent Pricing and Regulatory Tribunal  
PO Box Q290  
QVB Post Office NSW 1230

Submitted electronically

Dear Sir/Madam,

**Review of rental arrangements for communications towers on Crown land –  
Draft Report**

NBN Co welcomes the opportunity to comment on the Independent Pricing and Regulatory Tribunal's (IPART's) Draft Report on its Review of rental arrangements for communications towers on Crown land.

The fixed wireless portion of the NBN is currently under construction and, when complete in 2015, is expected to cover approximately 4% of premises across Australia.

As part of the network rollout, NBN Co has been negotiating rental arrangements for communications towers across all States and Territories on private land, on Crown land, on a greenfields basis, and on a co-location basis.

In principle, given that communications tower sites are not subject to the same economic issues of scarcity or congestion as natural resources such as radiofrequency spectrum, NBN Co considers that rental arrangements for communications towers should essentially reflect the unimproved value of the land concerned.

In practice, this is what results from NBN Co's negotiations with private land owners. Moreover, NBN Co's rental arrangements with private land owners lock-in rental amounts for a longer term than the 5 yearly market reviews required by, NSW land management agencies in their licence arrangements with NBN Co.

NBN Co has considered IPART's Draft Recommendations in light of this experience, and is concerned that a number of the Draft Recommendations may lead to rental arrangements for communications towers on Crown land in NSW that provide for higher than "fair market-based commercial returns on publicly owned land occupied for the purpose of telecommunications,



data transmission or broadcasting"<sup>1</sup> and may also introduce considerable uncertainty as to future rental arrangements.

If the Draft Recommendations were to be implemented they may lead variously to:

- inefficiently low usage of Crown land for communications towers in NSW (because private land will be preferred by users wherever feasible);
- inefficiently high prices for telecommunication services (because the higher rental fees on Crown land must ultimately be passed on to end-users); and
- potentially, a higher proportion than would otherwise be the case of premises in NSW being covered by NBN Co's satellite network rather than its fixed wireless network (because the boundaries between the coverage areas for NBN Co's fixed wireless and satellite networks are still taking shape, and a key factor in this regard is the cost of deploying each network to particular locations).

NBN Co requests that IPART reconsider its Draft Recommendations in two main areas:

- medium location category – NBN Co requests that this category be redefined to reduce the extent to which sites that are low density by nature will be arbitrarily treated as being in a medium density location; and
- high value sites (strategic sites) – NBN Co requests that rental arrangements for all sites be based on the standard site fee schedule.

These requests are discussed in more detail below.

### **Redefining the medium location category**

NBN Co requests that the approach used for the medium location category be changed from one that measures a 12.5km radius from the "centre" of each of the 37 medium location UCLs to one that uses the boundaries of those UCLs. This is for two reasons.

First, due to the irregular shape of UCLs, it is more accurate to rely on the ABS's work in identifying UCLs and their associated boundaries than to proxy areas of medium density with regard to a set radial distance from a specific landmark (ie a post office or a council chamber). As discussed above, NBN Co considers that rental arrangements should essentially reflect the unimproved value of the land concerned and it would be unwarranted to treat a site in a low density area as being in the medium location category just because it was within an arbitrary radial distance from any point inside a UCL.

The ABS's work in identifying UCLs involves a very detailed assessment of the population density and other urban characteristics of each Statistical Area making up each UCL<sup>2</sup>, and therefore results in the precise delineation of the physical boundary of the geographic area that should properly be regarded as urban (including, for example, associated open areas like airports, caravan parks, community parks and reserves, golf courses, industrial areas, parks, reserve areas and sports facilities). NBN Co understands that the criteria used by the ABS will include some areas on the urban fringe within the UCL boundaries.

The Maitland UCL provides a useful demonstration of how the radial distance approach can lead to somewhat random and imprecise outcomes. Almost all land extending out to a radius of

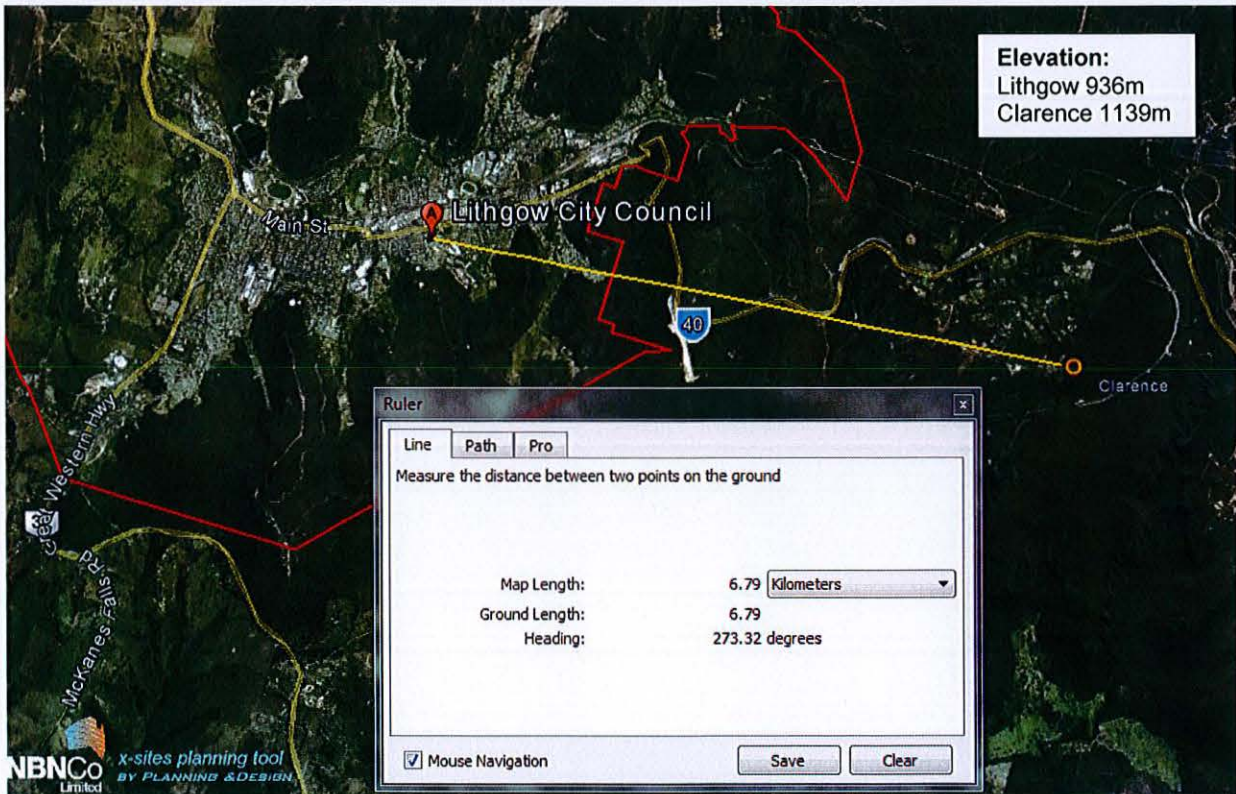
<sup>1</sup> Terms of Reference for Review of rental arrangements for communications towers on Crown lands, 5 October 2012.

<sup>2</sup> See, for example, <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/05773C1D8C9F2022CA257A98001399F7?opendocument>



12.5km on the western side of the Maitland post office is assessed by the ABS to be rural, while all land 12.5km (and further) south east of the Maitland PO is assessed by the ABS to be urban. In this case, the arbitrary 12.5km radius therefore includes land that it shouldn't and does not include land that it should.

Second, the 12.5km radius can in some cases conflict with the boundaries of other towns that are not part of the relevant UCL and would otherwise be treated as in the low location category. This is evident, for example, in NBN Co's rollout of its fixed wireless network to serve 160 premises in the town of Clarence NSW, near which NBN Co has identified a suitable site on NSW Crown land to build a 40m monopole. The site is in a low density area but would be classified as being in the medium location category because it is 6.8km from the centre of the Lithgow UCL (see the satellite map below). The proximity to the centre of the Lithgow UCL is just a coincidence, but leads in this case to an aberrant outcome that is demonstrably inconsistent with providing "fair market-based commercial returns on publicly owned land occupied for the purpose of telecommunications, data transmission or broadcasting". Basing the medium location category on the ABS UCL boundaries would avoid an aberrant outcome in this case by avoiding conflict with the Clarence town boundary.



### Removing the high value (strategic value) category

NBN Co does not agree with the concept of high value (strategic value) sites and requests that rental arrangements for all sites be based on the standard site fee schedule. As noted at the outset, NBN Co considers that rental arrangements for communications towers should essentially reflect the unimproved value of the land concerned and should not expose users to the prospect of significant changes in rents over time (indeed, it would be preferable to be able to lock-in rental amounts for longer periods than 5 years, consistent with arrangements in respect of private land). The fact that a site may serve the needs of multiple users (now or in



the future) or be located on top of a hill or close to a highway is not relevant to the question of what rental arrangements are appropriate.

NBN Co is concerned that, in addition to being inconsistent with providing "fair market-based commercial returns on publicly owned land occupied for the purpose of telecommunications, data transmission or broadcasting", the high value site approach in the Draft Recommendations, with its requirement for site-specific negotiation, may:

- be administratively inefficient (requiring significant negotiation, legal and other advisory costs);
- place undue reliance on independent valuation experts whose approach to valuation in this context many users (including NBN Co) may not agree with;
- lead to uncertain and arbitrary outcomes during 5 yearly market reviews because users cannot just walk away from the significant, long-lived investments that they have made in a given site as either the primary user or a co-located user;
- create significant uncertainty for existing users in regard to whether a particular site may at some point in the future be redesignated as a high value site (and hence become subject to site specific negotiation of rental arrangements); and
- in regard to new sites designated as high value, provide for an inefficient and unnecessary tender process (noting that there is no apparent scarcity or congestion issue in regard to communications tower sites).

If it would assist IPART, we would be pleased to meet and discuss any aspect of this submission. To arrange for this, or if you have any questions about our submission, please contact Matthew Cole on 03 9601 5231 or [matthewcole@nbnco.com.au](mailto:matthewcole@nbnco.com.au).

Yours sincerely,



Caroline Lovell  
Head of Regulatory Affairs & Industry Analysis