



Trade & Investment

Office of the Director General

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Mr James Cox
Chief Executive Officer
Independent Pricing & Regulatory Tribunal
PO Box Q290
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Dear Mr Cox

Review of rental arrangements for communication towers on Crown land

I am pleased to provide NSW Trade & Investment's response to the issues paper released by IPART in December 2012.

This review is a timely opportunity to gather and assess the market evidence for rentals charged for communication towers within NSW. The 2005 review provided a foundation for improving the efficiency and effectiveness of rental arrangements across the agencies managing Crown land.

It is important that market evidence from both the commercial and Government sectors is now used to recalibrate the fee schedule ensuring both equity and a fair return to the NSW Government on behalf of the community. I understand that the Crown Lands Division has provided the data requested and that external valuation consultants have been engaged to conduct further market analysis.

It is hoped that industry groups cooperate fully with this review and disclose the rents charged for co-location on towers so that the findings and recommendations of IPART reflect true market conditions.

If you require any further information regarding our submission, please contact Donal O'Shea, Senior Manager, Business Improvement, Crown Lands Division on (02) 4920 5078 or at Donal.OShea@lands.nsw.gov.au.

Yours sincerely

Mark I Paterson AO
Director General

25.2.13

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1 Background

In NSW, communication infrastructure and equipment used for voice and data transmission are often located on Crown land or other publicly owned land.

This submission relates to the communication tower sites on Crown land that are administered by the following 3 government agencies:

- Crown Lands – a Division of the Department of Trade and Investment, Regional Infrastructure and Services
- Forests NSW - part of the Department of Primary Industries, a Division of the Department of Trade and Investment, Regional Infrastructure and Services
- NSW National Parks and Wildlife Service (Parks & Wildlife) – a part of the Office of the Environment and Heritage, a Division of the Department of Premier and Cabinet.

There are 4 main pieces of legislation relevant to Crown land in NSW:

- Crown Lands Act 1989 (NSW): provides for the NSW Government to manage Crown land, including to lease and license Crown land, to maximise the benefits of this resource for the people of NSW.
- Western Lands Act 1901 (NSW): governs the use and disposition of interests in Crown land in the western division of NSW.
- Forestry Act 1916 (NSW): governs the use and disposition of Crown land within State forests. It provides for the grant of licences, permits and forest leases, which may be transferred only with the written permission of the Forestry Commission of NSW. This Act will be replaced by the Forestry Act 2012 (NSW) when it commences.
- National Parks and Wildlife Act 1974 (NSW): provides for the Minister for the Environment to grant leases, licences or easements for the purpose of the erection, use or maintenance of broadcasting or telecommunication facilities on national parks in NSW subject to certain stringent environmental conditions.

The Independent Pricing and Regulatory Tribunal (IPART) reviewed rental arrangements for Crown land communication tower sites in 2005. Many of the recommendations were endorsed by the government and implemented by the agencies. However the recommendations for high-value sites have not been implemented by the agencies.

The agencies consider that the implementation of the 2005 IPART recommendations has generally improved the consistency, transparency and efficiency of administering rents on behalf of the NSW Government. However a number of IPART's recommendations are open to differing interpretations, creating some uncertainty as to how these recommendations should be implemented.

The agencies welcome the current IPART review to provide further certainty and guidance on how the rent determination method can be administered and updated in accordance with the objectives of market return, operational efficiency, consistency and equity to all stakeholders.

2 Introduction

Prior to implementation of the 2005 IPART recommendations, determination of rentals for telecommunication towers on crown land occupancies across the state was somewhat ad-hoc and largely based on agency and regional practices. In the absence of a consistent methodology telecommunication licence holders were paying different amounts for similar occupancies and entitlements. The administration of these occupancies was both inefficient and ineffective. While administration costs were high the return to the state was low and in many cases the rent payable was well below market rental value.

The absence of an effective pricing structure for the occupation of land for telecommunication purposes not only had negative impacts on revenue and costs it also failed to adequately price the use of valuable public land assets for commercial, government and community use.

The 2005 IPART review considered occupancy instruments and rental arrangements and provided advice and recommendations on an efficient and effective framework *“to obtain fair market-based commercial returns that reflect the benefits realised by all users of the sites”*¹ In addition IPART wanted to promote continued investment in above ground infrastructure and maximise the continued use of existing sites.

To balance the competing demands of introducing a market based rental schedule and an efficient administrative process, IPART differentiated between the majority of sites classified as low value and a smaller group classified as high strategic value. It was IPART’s view that the high value sites should have rentals and occupancy terms agreed by direct negotiation.

IPART adopted a ‘conservative view’ of market prices in determining the rental schedule for ‘low value’ sites. The rental schedule contains 9 user categories, 3 location categories and 3 occupancy types.

The implementation of the 2005 IPART recommendations was a significant change initiative across a diverse range of commercial, government and community stakeholders.

The key outcomes from the implementing the IPART recommendations are:-

- Revenue growth from \$4.4m in 2005 to \$9.9m in 2012
- Increase in licences from 783 in 2005 to 2209 in 2012
- Simplified billing and standardised processes

Overall the growth of revenue has not kept pace with the increase in the number of sites and licensed occupants this may indicate that the IPART rental schedule is not delivering market rents. The agencies contend that the conservative fee schedule maybe suppressing prices for some classes of use and in some locations that the return to the NSW Government on behalf of the community is not reflective of market rentals.

3 Developments since the 2005 Review

The IPART issues paper has requested a response to the following questions:-

What has driven the increase in the number of sites, leases or licences since 2005? Will the demand for sites, leases or licences continue to increase over the next 5 years?

¹ Page 2 (2005) Review of Rental Arrangements for Crown Land Communication Tower Sites

The implementation of the 2005 IPART recommendations involved a significant change program across commercial, government and community occupants of crown land for telecommunication purposes.

The elements of the program included:-

- Implementing 27 of the 28 recommendations (the recommendation limiting the Ministers discretion in classifying high value sites was not adopted by the Government), applying the 9 user classifications, 3 location density categories and the 3 occupancy types.
- Data capture and validation utilizing data sets from the Australian Communications and Media Authority (ACMA), Telecommunication Companies, Government Agencies, Local Councils and small businesses;
- Stakeholder communication including fact sheets, letters and meetings;
- Legal advice, head license negotiations;
- Resolving issues with user and density classification;
- Resolving issues with unapproved past occupation;
- Resolving negotiations regarding outstanding debts and market rent;
- Integrating agencies billing systems with the rental payments of large telecommunication providers property systems;

A key benefit of implementing the IPART recommendations is the improved quality of data regarding the use and occupation of crown land. Prior to 2006 the data of the agencies and the telecommunication providers regarding the occupation of crown land was incomplete and unreliable. The data is now being used to streamline both the billing and payment processes.

The data capture and validation from 2006 onwards has been a factor in the increase in the number of licensed sites from 225 in 2005 to 422 in 2012. While some of these sites were occupied prior to 2005 due to unresolved issues relating to license conditions and rents the occupancies were not authorised within the crown lands billing systems. Similarly the records within the Telecommunications Industry were incompatible for the purposes of billing and payment. The fee schedule and approach recommended by IPART was an opportunity for the agencies and Telecommunications Industry to engage in a structured manner and to resolve outstanding contentious issues around rent and licence conditions.

The increase in the number of Telecommunication sites also reflects the strong demand for new sites and increased co-location on existing sites. The improved certainty around licence terms and rental charges is attractive to the industry as a whole. The table below illustrates the growth by category of occupant. By far the most significant increase in the number of licences is due to the now standard practice of licensing co-users on a site. This has increased the number of licences especially for Crown Lands as the implementation of the IPART recommendations have been applied.

Growth in licences or leases by primary users, infrastructure providers and co-users: 2005 – 2012 (Crown Lands)

	2005	2012	% Growth
Primary Users	172	350	104%
Infrastructure Providers	53	72	36%
Co-users	86	1,144	1,230%
TOTAL	311	1,566	404%

Source: Data provided by Catchments and Lands, as at June 2005 and November 2012.²

Number of licences or leases by land management agency

NSW Government agency	No. of licences or leases		
	2005	2012	Growth
Crown Lands	311	1,566	404%
Forests NSW	412	522	27%
Parks and Wildlife	60	121	102%
Total	783	2,209	182%

Note: Data is as at June 2005 and November 2012. Crown Lands reported 69 SCAX licences in 2005 and 73 in 2012 which are not included in this table. Parks and Wildlife reported 27 grandfathered sites (ie, sites which have not been incorporated into the current arrangements) in 2012 which are not included in this table.

Source: NSW Government agencies.³

Technological change and consumer behaviour is also driving the growth in demand for sites. The use of hand held devices for mobile phones, internet browsing, online shopping, navigation and data storage is creating a strong demand for wireless technologies and increased bandwidth. The roll out of the National Broadband Network (NBN) is also increasing the demand for Crown Land sites and this will continue through to 2017.

² Page 25 table 6.5 –IPART Issues Paper December 2012

³ Page 11 Table 3.2 - IPART Issues Paper December 2012

Crown Lands licences have increased from 311 in 2005 to 1566 in 2012 a growth of 404%. While this is primarily due to an increase in the number of co-users from 86 to 1,144 it is also due to an increase in the number of sites from 225 to 422 an increase of 87%.

The indications are that demand will increase through the roll out of the NBN, deployments of new technologies and the growth in consumer use of hand held devices for social media, infotainment and online shopping.

4 IPART's proposed principles for this review

The IPART issues paper is seeking comments on :

Whether the proposed principles for this review are supported?

And are there other factors IPART should consider?

The agencies agree with the proposed principles for this review as they are consistent with the terms of reference used in 2005 and seek to balance administrative efficiency and market return.

The proposed principles of the review by IPART are:

- **“market return:** *rentals should be based on the market's willingness to pay for the site or facility, taking into account land values, terms and conditions of use*
- **administrative efficiency:** *arrangements for determining rentals should be simple to administer and cost effective*
- **transparency:** *rentals should be calculated in a manner that is clear and easily understood*
- **consistency:** *arrangements for determining rentals should be applied consistently across different land management agencies.”*⁴

IPART's intention to be informed by market evidence is supported. The past reluctance of tower owners to reveal their rental arrangements with Co-users may restrict the market evidence available to IPART. The reliance on using existing IPART rentals as evidence of market may contribute to sub market returns. The opportunity now exists for tower owners to disclose rental charges for co-location on their towers. This information would ensure that the market data used by IPART was balanced and that new fee schedule was not skewed through undue reliance on existing IPART rents.

The suggestion by IPART that land values will be taken into account is not supported by the agencies where the availability of market evidence is limited. The argument that rentals for telecommunication occupancies should reflect other land values in rural and remote parts of the state is without foundation in both the Crown Lands and Valuation of Lands Acts or in commercial valuation practice. The decision by tower owners to not disclose relevant market data indicates that there continues to be a gap in the rents charged by the agencies and the rents tower owners receive for co-location

Sections 143 of the Crown Lands Act and S14i of the Valuation of Lands Act clearly state that the market rent for a lease or licence will have regard to any restrictions, conditions or terms to which it is subject. The purpose of Telecommunication is clearly a key condition and this will not be reflected in using the land values of adjoining land that has been assessed for another purpose.

⁴ Page 13 IPART Issues Paper December 2012

5 Market rentals for strategic sites

The IPART issues paper is seeking comments on:

Does the current definition of a strategic site adequately identify sites that have strategic value? What are the characteristics of a strategic site that should be included in the definition? Please provide examples of sites that have strategic value but that do not meet the current definition of a strategic site.

In 2005 IPART recommended that *“for existing sites the following criteria should be used to identify high value sites for which rents should be determined through negotiations:-*

- *Sites with more than 8 users, or*
- *Sites where the total current annual rent for the site (being the aggregate of rental to the primary user and of any co-user fees charged to co-users of that site) exceeds the highest fee for any single user in the fee schedule.”⁵*

Of the existing 422 crown land sites 76 would qualify for high-value status based on the criteria specified by IPART in 2005. This is considered a reasonable proportion with more than 80% still classified within standard fee schedule.

The number of users on a site is a strong indicator of the relative importance, potential demand and possible scarcity of available alternative locations. The criterion of 8 users on a site should be retained as a determinant of a high value site. Geographic considerations such as proximity to major highways, location on hill tops are also relevant considerations.

The criterion whereby the aggregate rental for a site exceeds the highest fee for any single user in the published fee schedule continues to be a valid criterion. The provision of more specific market rental data by the industry may assist in refining the definition. There are some sites with multiple towers where individually the tower does not meet the criteria however when the overall site is considered the characteristics reflect high value or strategic sites. These sites are approximately 7 in total.

There is no evidence available to support changing the criteria at present.

The IPART issues paper is seeking comments on:

What are the costs of negotiating rental agreements? Do the benefits of rental rates agreed through a negotiation process outweigh the costs?

The focus for Crown Lands in implementing the IPART recommendations throughout 2006, 2007 and 2008 was to capture, validate, classify and licence all occupiers of Crown Land for telecommunication purposes. This significant undertaking also involved integrating billing systems with the rent rolls of Telecommunication Providers. The benefit of this exercise is now evident in the growth of licenses from 311 in 2005 to 1566 in 2012 an increase of 404%.

The negotiations with the major Telecommunication Providers including Telstra, Optus Vodafone and also with the Infrastructure Provider Broadcast Australia during this period were extensive and protracted.

The key issues to be resolved included:-

- Validating whether the occupation of the land was authorized,
- Reconciling and agreeing on account adjustments for licensed occupancies,

⁵ Page 3 (2005) IPART Review of Rental Arrangements for Crown Land Communication Tower Sites

- Negotiating a settlement for unapproved past occupancies;
- Agreeing the classification of occupancies;
- Negotiating and agreeing standard license conditions

The option of directly negotiating rental terms for high-value sites during this period of significant change was not practical. The bedding down of the low cost fee schedule was a priority and the negotiation of rentals for strategic or high – value sites deferred. It is now appropriate to review these rentals to ensure that market returns are achieved for sites of strategic value.

A possible impediment to the process of market rent determination maybe the reluctance of tower owners to disclose the rent’s they charge for co location. The availability of this information would inform the negotiation process. The costs of negotiating rental agreements can be excessive partially due to the absence of reliable and verifiable market evidence. Attempts to reach agreements that deviate from the IPART schedule can be challenged and an impasse reached without a clear resolution path

Market Rental has been defined by the International Valuation Standards Committee and adopted by the Australian Property Institute.

“as the estimated amount for which premises should rent, as at the relevant date between a willing lessor and a willing lessee in an arm’s length transaction, wherein the parties had each acted knowledgably, prudently and without compulsion, and having regard to usual market terms and conditions for leases of similar properties”⁶

As the direct negotiation of market rents can be constrained due to the lack of comparative market data an alternative mechanism through IPART has been requested.

The mediation arrangements for negotiation of strategic or high value sites could be specified by IPART through this review process.

The mediation arrangements should consider and address:-

- Establishing a panel of valuation experts;
- Agreeing a valuation methodology;
- Defining the mediation process, timeframes;

Currently in the absence of an agreed mediation process and comparative market data the costs of direct negotiation exceed the benefits.

Should the definition of strategic sites be revisited to reduce the number of sites that would be subject to negotiation? If so, should an additional category be introduced in the fee schedule to capture the majority of strategic sites?

There are 76 out of 422 Crown Land sites that satisfy one or both of the criteria specified by IPART for high value sites. Many of the sites are located on hill tops where the demand for co-location is high and the availability of alternative locations is scarce. There is no available market evidence to support changing the criteria. The introduction of additional categories can be considered as part of the IPART

⁶ Page 6 Preston Rowe Paterson Rental Determinations 2012

review the scale of the site maybe a factor that warrants consideration including the infrastructure that is located there however this maybe administratively unwieldy to collect and maintain the data.

What changes, if any, would you suggest to the factors to consider when negotiating strategic sites as recommended by IPART in 2005?

This review by IPART is an opportunity to consider a two tiered fee schedule for standard sites and high value sites. While all occupants may currently receive some discount to market rents the benefits appear to be greater for the tower owners. The introduction of a two tiered pricing structure for both high value and standard sites may be both administratively efficient and more equitable.

A two tiered pricing structure for strategic sites can be considered within the current fee schedule for both tower owners and classes of co-users that derive the greatest commercial benefit. User classifications can be used to moderate the impact on community or budget sector users. There is sufficient flexibility within the current classifications of density, users and discount factors for an adjustment that corrects existing anomalies while moderating the impacts.

One option for the two tiered price structure is that sites satisfying the strategic criteria will have a minimum medium density classification for the following users:-

- Infrastructure Provider
- Government business units
- Commercial radio broadcaster
- Government television broadcaster
- Telecommunication and data carrier
- Commercial television broadcaster

As the agencies license the tower owner and all collocated occupants the direct negotiation of rent would need to consider and address whether:-

- a total amount was charged to the tower owner and other occupants were excluded from the negotiations;
- the amount charged reflects the combined rents of all occupants and is charged separately to each occupant;
- licenses would need to be amended to reflect invoicing and payment arrangements;
- it was necessary to license co-users where the rent is directly negotiated with the tower owner;

6 Market rentals for standard sites – location categories

The IPART issues paper is seeking comments on:

What is the current market evidence on rentals by location? Does the market evidence still indicate that in general, higher rentals are charged for sites closer to metropolitan areas or population centres than regional and other areas?

The disparity between rates charged for locations classified as high medium and low is significant. High density is charged at the full rate with medium charged at 66.6% and low at 33.3%.

2012 fee schedule (\$ per site, annual, ex GST)

Use category	High density	Medium density	Low density
Community based organisations	432 ^a	432 ^a	432 ^a
Budget funded sector	5,287	3,524	1,762
Government radio broadcasters	7,048	4,699	2,349
Local service providers	8,222	5,873	2,937
Government business units / other	12,335	8,222	4,112
Commercial radio broadcaster	14,098	9,398	4,699
Government television broadcaster	17,622	11,748	5,873
Telecommunication and data carrier	26,432	14,684	8,810
Commercial television broadcaster	35,243	23,496	11,748

^a This is the statutory minimum rent prescribed by the *Crown Lands Act 1989 (NSW)*.⁷

There is little evidence to suggest that the current prices for High, Medium and Low density locations reflect market rates. Rents for Telecommunication Towers in the Sydney Metropolitan area were generally higher in 2005 than the current IPART rents. There is evidence that rates charged by some council's for towers currently exceed the IPART rates in metropolitan areas. The demand for sites and the relative prices paid appear to be higher in metropolitan areas than in less populated areas.

The price differentials of 33.3% and 66.6% between high, medium and low location categories are not based on market evidence and appear excessive. The figures are somewhat arbitrary and based on precedent rather than market data. Demand for sites continues to be high and there is no movement away from crown land sites which indicates that there is some room to reduce the gap between IPART ground rents and market rentals for co-location.

The telecommunication towers are part of a network that provides services to clients within NSW and nationally. If the service availability and reliability is not acceptable then clients may change provider. While there is a significant concentration of sites in the more densely populated areas of NSW this concentration represents the service demands of clients. In the less densely populated areas the sites are less concentrated but of equal importance in terms of service. People travelling on the Pacific Highway to Grafton or holidaying in Hawks Nest expect to receive a comparable mobile phone service to the metropolitan areas. The discounting of sites by 33.3% and 66.6% may not be based on the derived benefits of tower owners or Co-users but rather on historical practices rather than empirical evidence. The scarcity of tower sites in less populated areas means their relative value is high. Similarly the location of sites on hilltops and close to main thoroughfares further enhances their value. The agencies consider the extent of discounting from high density to low density maybe excessive. There is a case for modifying the density classifications as there is no evidence to support the significant rental price differences. An alternative pricing model might be 100%, 80% and 60% the availability of market evidence would identify what discounts if any should be applied.

What are the implementation issues with applying the definition of high, medium and low location categories as per the 2005 Review? What are implementation issues specifically associated with the definition of medium locations applied by Parks and Wildlife and Catchments and Lands?

⁷ Page 11 Table 3.1- IPART issues paper December 2012

The 2005 IPART review recommended using 3 location density categories high, medium and low. The definitions of the location categories within the fee schedule were:-

- High –greater metropolitan areas of Sydney (local council areas in the inner and outer Sydney area which includes Penrith and Camden local councils but excluding the Blue Mountains), Central Coast (local council areas of Gosford and Wyong), Newcastle (local council areas of Newcastle and Lake Macquarie) and Wollongong
- Medium – major regional centres with populations greater than 10,000 (as defined by the local council)
- Low – rest of NSW⁸

The interpretation and application of the Medium location category has been problematic for both the agencies and stakeholders. The agencies initially defined medium density as any Local Government Area with a population greater than 10,000. This interpretation was applied by the agencies and the Mobile Carriers Forum (MCF) the peak industry group representing the interests of Optus, Telstra and Vodafone refused to adopt this approach. Telstra on behalf of the MCF sought clarification from IPART.

In May 2009 IPART in response to a request from Telstra clarified the intention of the medium density category...*“was that the rent that should be paid for a site within a major regional centre such as Orange or within a rural area that is close to such a regional centre should be higher than the rent that is not close to a major population centre. We decided that for this purpose a town with a population over 10,000 would constitute a major regional centre.*

We used the words “as defined by the local council” to indicate that the council is in the best position to decide where the geographic limits of the town should be defined for the purpose of calculating its population. It was not our intent that the entire population of local government areas, especially those located at a considerable distance from a city or town, would always be included in the threshold calculation”⁹

Crown Lands worked with the MCF to agree an interim solution pending the review by IPART. In the absence of an interim agreement the licensing and billing of both Optus and Vodafone had stalled and it was considered prudent to negotiate an outcome that could be reviewed and refined in the future.

The solution proposed by Crown Land was based on the Australian Standard Geographical Classification (ASGC) areas, developed by the Australian Bureau of Statistics (ABS) providing definitive statistical area to derive both population data and the boundaries that make up a township. The Urban Centre/Locality boundary is a statistical area that is generally defined as a population cluster. Population clusters of 200 or more people are Localities, while those with 1000 or more people are Urban Centres. The proposal based on the 2006 census data was not accepted by the MCF they contended that the 7 urban centres of Sawtell, Singleton, Kurri Kurri-Weston, Bowral, Lithgow, Bateman’s Bay and Ulladulla were contrary to the intention of IPART as Urban Centre was not consistent with the definition of Major Regional Centre notwithstanding that the population threshold of 10,000 was exceeded. In the absence of authoritative advice from IPART and in the interests of progressing the other recommendations, Crown Land agreed to exclude these Urban Centres pending the IPART review.

⁸ Page 5 (2005) Review of Rental Arrangements for Crown Land Communication Tower Sites

⁹ Letter dated 20 May 2009 from James Cox CEO IPART to Mr. Bob Joice Telstra

The clarification by IPART that a major regional centre should constitute a 'town with a population over 10,000' did not suggest that a town should be excluded if a larger town is nearby. Therefore for example Sawtell and Coffs Harbour should be assessed on their own merit, as opposed to the introduced concept of Sawtell being inapplicable because it is 'serviced' by Coffs Harbour.

Are there alternative definitions for location categories that are better supported by market evidence or are simpler to administer? What would market evidence support as thresholds for high, medium and low location categories?

The Australian Standard Geographical Classification (ASGC) areas, developed by ABS, provide a definitive statistical area to derive both population data and the boundaries that make up a township. The Urban Centre/Locality boundary is a statistical area that is generally defined as a population cluster. Population clusters of 200 or more people are Localities, while those with 1000 or more people are Urban Centres.

Each Urban Centre/Locality has a clearly defined boundary that is publicly accessible on the ABS website. These boundaries are produced by the Public Sector Mapping Agencies (PSMA) in conjunction with the ABS.

Buffered Sydney, Central Coast, Newcastle and Wollongong Urban Centre boundaries could easily be used to classify high density instead of the LGAs.

We propose that these urban centres should be included in the definition of medium density locations and that the ABS data for urban centre's with populations greater than 10,000 is used to define medium density.

Attached is the current list of 40 Urban Centres greater than 10,000. As Sydney, Newcastle, Central Coast and Wollongong are already classified as high density, there are now 36 urban centres that satisfy the criterion proposed by IPART.

Place Name	Population
Sydney	3,908,642
Newcastle	308,307
Central Coast	297,713
Wollongong	245,943
Maitland	67,133
Gold Coast - Tweed Heads (Tweed Heads Part)	55,551
Wagga Wagga	46,913
Albury - Wodonga (Albury Part)	45,625
Coffs Harbour	45,580
Port Macquarie	41,493
Tamworth	36,131
Canberra - Queanbeyan (Queanbeyan Part)	35,880
Orange	34,991
Dubbo	32,325
Bathurst	31,292
Blue Mountains	28,770
Nowra - Bomaderry	27,986
Lismore	27,475
Goulburn	21,485

Cessnock	20,014
Armidale	19,817
Bowral - Mittagong	19,727
Forster - Tuncurry	18,902
Broken Hill	18,431
Taree	17,819
Griffith	17,617
Morisset - Cooranbong	16,921
Grafton	16,601
Ballina	15,965
Singleton	13,962
Raymond Terrace	13,217
Kurri Kurri - Weston	13,058
Kiama	12,815
Ulladulla	12,136
Batemans Bay	11,332
Lithgow	11,144
Nelson Bay - Corlette	11,058
Muswellbrook	11,045
Kempsey	10,375
Parkes	10,027

¹⁰

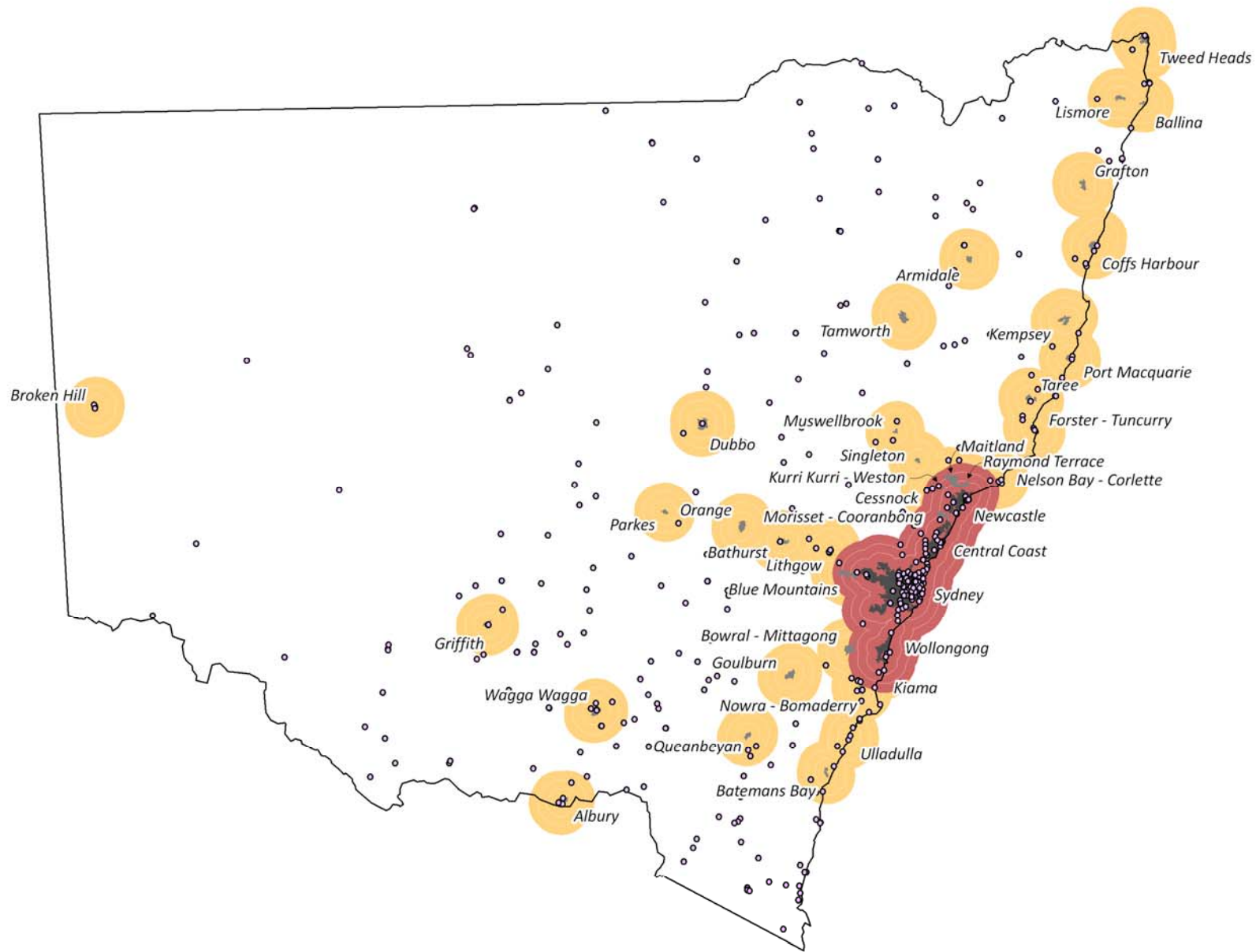
Outlined in the table below is the current breakdown by location category based on the interim agreement between Optus, Telstra, Vodafone and Crown Land. As Forests NSW and Parks and Wild Life were not party to the agreement between Crown Lands and the MCF their data is not used for analysis. Analysis of the Crown Land data based on the interim agreement highlights that 20.7% are classified as high, 10.2% as medium and 68.9% as low. This proportion of 10% sites in the medium classification appears to be low

Communication tower sites by location - 2012

	Catchments and Lands	Forests NSW	Parks and Wildlife	TOTAL
High	110	4	4	118
Medium	54	64	54	172
Low	365	74	16	455
TOTAL	529	142	74	745

¹⁰ Source: Australian Bureau of Statistics 2011, 'Usual Address and Internal Migration; Urban Centres and Localities Geographical Area Population Statistics', viewed 30 Jan 2013, <http://www.abs.gov.au/websitedbs/censushome.nsf/home/tablebuilder>

The diagram below represents the agencies views of how high, medium and low density should be classified that is both transparent, administratively easy and consistent with our understanding of the IPART guidelines. The opportunity to further enhance this would be to include buffer zones for Canberra, Gold Coast, Echuca and Mildura as the density of these urban areas contribute to the decisions of the tower owners and reflect the relative values. The diagram attached shows Medium and High density classifications based on 30km buffers around Urban Centres, showing licenced towers.



7 Market rentals for standard sites – user categories or occupancies

The IPART issues paper has requested a response to the following questions:-

Are there implementation issues with the current categories of users or occupancies in general?

There have been a number of implementation issues with the current categories of users and occupancies. While generally the categories have worked well the most significant issues relate to;

- Broadcast Australia provides a managed service for the government television and radio broadcasters. This service was not explicitly catered for in the IPART classification. The Government Broadcasters contended that as the equipment for managing and broadcasting their signals is owned and managed by their service provider they should be immune from any charges. Crown Lands contended that the Government Broadcasters owned the signal that was being transmitted and that this constituted occupation. IPART should affirm Crown Land opinion and include managed services within the classification table. This is an issue that requires clarification and consistent application. This issue may re-emerge with joint ventures sharing equipment while transmitting separate signals and having separate corporate identities.
- Narrowcast Radio Broadcasters challenged their classification as a Commercial Radio Broadcaster. The proposed concession of classification within the Local Service Provider was not acceptable. The Australian Narrowcast Radio Association (ANRA) have advocated for inclusion in the Community –based category. Their membership includes major commercial betting companies, religious broadcasters and other interest areas. There are 160 High Power Open Narrowcast operators and 550 Low Power Narrowcast Licenses. IPART should affirm its intent to classify Narrowcast Radio Broadcasters within the Commercial Radio Classification.
- There has been resistance from some budget funded sectors to the IPART rents. Some contend they should be granted a further concession or classified as Community based.

Can the categories of users be reduced, for example, into the 3 broad categories of commercial enterprises (including government businesses), budget funded sector and community based organisations? What user categories are used by other lessors of communication tower sites?

The categories of budget funded sector and community based organisations should be retained and are self explanatory. The bundling of all commercial enterprises into one category may pose issues of equity and market return. The major corporations whether in Telecommunications, Television or Government could potentially be grouped without major issues of equity, market return and ability. However for small to medium businesses operating within a regional rather than state wide context this bundling could cause issues. It is also important that in seeking simplicity that the relevant market segments are not distorted and categories of rent further discounted.

On what basis would we calculate the amount of community service obligation for government businesses or concessions for budget funded and community based organisations?

For Community based organisations there is provision to apply minimum rent where the organisation is a Community Volunteer Group that is appropriately incorporated and can demonstrate clearly that its activities are for the benefit of the community and activities are provided by volunteers. There is no specific provision within the Crown Lands Act to discount rents for budget funded agencies. The

concept that land can be occupied at a discount while all other costs of service delivery are at market is not supported. The premise that land use is a meaningful discount is flawed and without practical foundation.

What is the relevance of the development of new technologies for the user categories that were defined in the 2005 Review? What changes to user categories would better accommodate changing technologies?

There is a convergence in how technology is consumed through hand held devices including phones, tablets and PC's. This convergence is blurring the distinction between Data Carriers, Broadcasters and Content Providers. This convergence would suggest that distinctions between Telecommunication Providers and Television Broadcasters have narrowed.

Should the National Broadband Network be added as an additional user category or can it be accommodated within the current user categories? Why?

The National Broadband Network (NBN) can be grouped with the other major providers including Telecommunications Providers and Broadcasters. There is no clear distinction between the NBN and other major providers. Outlined below are the user categories it maybe possible to combine Telecommunications, Television and Government Businesses into one representing almost 50% of the occupants.

Number of licences by user category - 2012

	Catchments and Lands	Forests NSW	Parks and Wildlife	Examples
1. Budget funded sector	453	180	19	Police, Ambulance councils
2. Commercial radio broadcaster	36	12	0	2UE, 2GB
3. Commercial television broadcaster	63	15	7	Channel 7, 9, 10
4. Community-based organisation	226	29	7	Salvation Army, local volunteers
5. Government business unit/other	157	95	25	Airservices Australia, TransGrid, NBN
6. Government radio broadcaster	2	0	2	ABC Radio
7. Government television broadcaster	62	10	9	ABC TV, SBS
8. Local service provider	102	27	4	Countrywide Communications, Auzcom
9. Telecommunications and data carrier	465	154	48	Telstra, Optus, Vodafone
TOTAL	1,566	522	121	

Note: Catchments and Lands have 73 SCAX sites that have not been included in the above table. Parks and Wildlife have 27 grandfathered sites which have not yet been incorporated into the fee schedule and are not included in the above table. The 6 Catchment and Lands NBN sites are included under government business unit/other.

Source: Data provided by NSW Government agencies as at November 2012.¹¹

¹¹ page 21 Table 6.2 –IPART Issues Paper December 2012

8 Market rentals for standard sites – infrastructure providers and co-users

What are implementation issues from applying the 2005 fee structure for primary users, infrastructure providers and co-users?

The 2005 fee structure failed to clearly classify Infrastructure Providers and distinguish their services and roles from Primary Users. This is apparent within the 2005 report when it talks about site users and separately identifies Infrastructure Providers such as Broadcast Australia and Crown Castle as a category. However when the fee schedule is applied the Infrastructure Providers are not separately referenced. The separate classification of Primary Users, Infrastructure Providers and Co-Users is not difficult to apply.

However the application of the fee structure for Infrastructure Providers appears to lack clarity and maybe open to inconsistent rental charges for similar locations based on the profile of the highest value co-user. The 2005 IPART report recommends “*Where the primary user is an infrastructure provider, the rental should be based on the discounted fee that the highest value co-user on the site would pay if it were the primary user- that is the relevant fee for this co-user set out in the Tribunal’s recommended fee schedule but at a discount of 30 per cent.*”¹² What this means is that potentially in high density locations the rent could vary between \$24,670 and \$3701 and in low density locations the rental range could be \$8,223 and \$1,223 for Infrastructure Providers based on the highest value of the co-user. These potential price ranges of between \$24,670 and \$1,223 appear excessive and lack supporting market evidence.

What is the current market evidence on discounts being applied to infrastructure providers and co-users? What are the reasons for continuing to apply a discount to infrastructure providers and co-users? What would be the consequences of lowering or removing the discount for infrastructure providers and co-users from the current fee schedule?

There is no market evidence to support the 30% discount to Infrastructure Providers or to link the charge to the highest value of the co-user on the tower. The basis for the discount maybe linked to the provision of infrastructure by the tower owner and in attracting clients. However the charges are based not on rentals they receive rather on rentals charged based on IPART. There is no comparison of the disparity between rentals for co-location charged by the Infrastructure Provider and the rentals charged by the agency. A more common commercial approach would be to charge between 6 % and 8% of rental turnover on each site. This would obviate the need for discounts and linkages to users and base it on actual revenue. In summary the 30% discount is not based on market evidence. The market evidence gathered through this review may provide some insights into what the charges for Infrastructure Providers should be. Another option would be to levy a maximum and minimum charge Infrastructure Providers sites based on the criteria of the area, number of users etc. Infrastructure Providers and Tower Owners should be given the opportunity to offer to pay a percentage of turnover of between 6 and 8% as a possible settlement of any disputes. This approach would ensure that Infrastructure Providers had an option to pay a fee based on turnover or pay the IPART charges.

¹² Page 4 recommendation 8 – Review of Rental Arrangements for Crown Land Communication Tower Sites.

The application of a 50% discount for co-users is not based on any market evidence. In the BEM Consultancy Advice to IPART in 2005 they stated that “Ultimately we have recommended a 50% charge as being an ‘across the board’ compromise. Potentially this may be construed as too general and as an alternative it maybe worth considering a lesser discount of 25% for the mobile telephone category.”¹³

Growth in licences or leases by primary users, infrastructure providers and co-users: 2005 – 2012 (Crown Lands)

	2005	2012	% Growth
Primary Users	172	350	104%
Infrastructure Providers	53	72	36%
Co-users	86	1,144	1,230%
TOTAL	311	1,566	404%

Source: Data provided by Catchments and Lands, as at June 2005 and November 2012.¹⁴

The consequences of eliminating the 30% discount for Infrastructure Providers and reducing the 50% co-user discount for telecommunication providers lower, television broadcasters and government agencies would move the fee schedule closer to market rates. These adjustments would provide a more reasonable return to the NSW Government and the ability to pay would not be an issue. While the resistance and reaction of industry interests will be intense there is no market evidence available to contradict this suggestion.

¹³ Page 6 BEM- Consultancy Advice For Rental Arrangements of Communication Sites Within NSW

¹⁴ Page 25 table 6.5 –IPART Issues Paper December 2012

9 Other issues

Should rental rates for Small Country Automatic Exchange (SCAX) sites come under the fee schedule for standard sites? If so, on what basis should we determine appropriate rental rates? Should SCAXs be considered as a separate category in the fee schedule? Yes