



## **BAI Communication's submission to IPART Review of rental arrangements for communication towers on Crown land Draft report August 2024**

### **General Comments**

As we outlined in our submission in February 2024, we are of the firm view that any rent for broadcast or telecommunication facilities on Crown Land should be based on the unimproved value of the land rather than on any assessment of communications rents on private land.

If IPART considers it reasonable to value communications sites based on rents for similar sites on private land we are of the firm view that proper valuation principles should be adopted. It was concerning to note during the Public Hearing on 30 July 2024 that IPART employees were unaware of some of the basic principles of the International Valuation Standards and how they should be applied. Hence, we suggest that IPART seek to engage an Australian Property Institute (API) accredited valuer to provide some valuation rationale to the methodology adopted.

The general principles as set out in the International Valuation Standards should apply to:

- Comparable evidence and a hierarchy of evidence used in rental determinations
- The concept and adoption of co-use fees
- How rents for Small Cells should be established
- If/how density classifications are determined
- If/how premiums are applied for rooftops and National Parks sites

It is BAI's firm view that if proper valuation principles are not followed, any or all of the above points can have a compounding impact on the rent paid at a site. This is how we end up in the remarkable situation where annual rents can escalate above the value of the land.

### **The proposed primary user fees**

If IPART intend to play the role of valuer and establish a flat rate (across multiple density classifications) for the use of Crown Land for telecommunications and broadcast purposes, it has a responsibility to adhere to property valuation principles as set out by the API and the International Valuation Standards.

When establishing a market rent a valuer must consider the estimated amount for which a property would be leased on the valuation date between a willing lessor and a willing lessee, where the parties had each acted knowledgeably and without compulsion. With respect to telecommunications and broadcast leases this means comparing recent transactions (ideally no more than 2 years old) and disregarding renewed leases where a lessee will have to act with compulsion given the costs of relocating the existing facility.

We can see from the data analytical model provided IPART has tried to establish a "statistically significant sample of a minimum of 500 data points", however this has resulted in a list of data that does not meet valuation standards. For example, there are consecutive



leases where the rent is escalated from a historical rent agreed at least 5 years ago and there are new leases that have been entered into at existing sites. In relying on this poor and incorrect data set IPART has determined rental valuations that are well above those we would typically expect. We submit that the data sets used are inherently flawed and do not provide supporting evidence to the position that should be adopted.

BAI has not entered into any leases in NSW with private landowners for new sites in the last two years and therefore can't provide any comparables to IPART. However, we understand that at least one of the Telcos has provided details of recent transactions hence these should be used as the primary source of evidence should a market-based approach be adopted.

### **The proposed density classifications**

The existing density classification are arbitrary and result in valuations that are inaccurate. Valuing any site on such a subjective principle is not supported by the International Valuation Standards. However, if some kind of density classification is to be used having more than four classifications to address every type of land in NSW is essential. We would support the use of The Australian Statistical Geography Standard (ASGS) statistical areas. Failing that we note that the 2019 report removed the Sydney classification and added a low and very remote classification. This change makes the density classifications far more useable as the sites would be more evenly spread across more classifications.

### **The proposed premium for National Parks and Wildlife Service's land**

As stated above any determination should be based on good valuation principles. It appears that there are no valuation principles that would support increasing the rent based on environmental constraints. BAI are not aware of any premium paid on private land that has environmental significance (e.g. an environmental zoning). In response to IPART rationale for proposing this premium:

1. Visual amenity – It's unclear why the visual impact on a National Park should be considered more important than the impact on private land.
2. Damage the ecosystems – The damage to the ecosystem should be considered in the planning application. BAI is aware of no evidence of communications rentals being inflated to compensate a landowner for the impact on ecosystems.
3. Topography – Telcos and broadcasters do not deploy sites in areas that are not suitable, the topography of a national park does not make it more or less suitable than any other private land.

Additionally, we would contend that the presence of communications and broadcast facilities in national parks brings a net benefit to users of the parks and employees. Coverage is required irrespective of national park boundaries.

### **Co-user fees**

In keeping with IPART's proposition to base fees on the private market, any implementation of co-user fees should be in accordance with leasing and licencing arrangements at privately owned communication sites. To our knowledge there is no evidence of any co-use fees being paid to landowners where equipment is installed within an existing compound. However, in



instances where a carrier or broadcaster occupies space outside an existing compound, they would typically enter into a separate lease with the land owner. This is the case for both leased and licenced sites.

It's therefore BAI's view that co-use fees should not apply to any equipment located within the primary user's compound but should additional land be required by a collocating carer or broadcaster a licence should be entered into for that land. This is in line with IPART's 2019 report which states "For co-users wholly within the fenced area of the primary user's site, we recommend that no annual rent be charged." See page 77.

To justify co-use fees for equipment that is wholly within a primary user's compound IPART has used the following reasoning: (they) "do not agree that primary user fees always fully compensate land management agencies for the use of their land when there are co-users." This is to disregard the private market. We'd contest that it is not reasonable for IPART to take a market-based approach in some instances but to disregard it in others.

### **Co-user fee for small cell technology**

In the deployment of small cell technology across NSW carriers would enter into agreements with structure owners (power companies, Council's etc) for the use of their structures. It is not typical for carriers to enter into tenure agreements with landowners where they do not have ground-based equipment. In instances where ground-based equipment is deployed a licence agreement would be justified. There is no justification for a co-use fee where a small cell is deployed on a structure only.

### **Addressing those sections where IPART is seeking comment:**

#### **Should the current density classifications be updated to reflect changes in the ABS' Australian Geography Standard? Can stakeholders provide further evidence of the costs and benefits of this change?**

As above the greater the number of statistical areas used in establishing a rental the more likely that the rent will be accurate, we would support the use of ASGS areas.

#### **To what extent do communication sites on lands reserved for conservation, including in national parks, create higher environmental costs? For example, do they cause greater mitigation and conservation costs?**

The footprint of a communications site is typically very small when considered along side other infrastructure that is contained within a National Park (roads, fire roads, picnic areas etc.) BAI currently operates a number of decades-old facilities within conservation areas. Any future development within conservation areas on existing or greenfield sites would be subject to careful consideration of the community benefit versus the potential environmental impacts. These sites would be developed only to support a community need where a service cannot be provided from an alternative location. The developer would generally incur increased costs for the planning, development, and operation of such sites due to the need for increased environmental assessments and approval processes, field studies, revised installation methodologies (e.g. to limit vegetation disturbance, excavation, strict hygiene



protocols, access restrictions, and restricting introduction of foreign organic materials), and for ongoing monitoring and site management. Development within conservation areas would be unlikely to offer any strategic or higher value opportunity than a site outside of a conservation area. Therefore in our view an increased rental fee to operate from these locations is not warranted.

Sites located within conservation areas would generally have higher construction and operational costs in order to minimise any environmental impacts and to comply with lease and authority conditions. This could include environmental impact assessment and approval processes, the development and implementation of environmental management plans, restrictions on standard work methods, and strict requirements on decommissioning and remediation at the end of the facility operation. The intent of these increased costs (borne by the developer) is to minimise the risk of environmental impacts and to remove any subsequent authority costs to manage or remediate the disturbed area.

**Are stakeholders able to provide evidence of the size of these costs and how they directly relate to the communication sites?**

Actual environmental costs of communication sites within conservation areas are difficult to confirm given the complexity of managing large conservation areas with highly variable and localised matters that need consideration. The cost of any environmental impacts would need to be investigated on a case-by-case basis due to the number of variables that exist. BAI however can provide examples of the increased costs incurred by us for the planning and consideration of development options, and the ongoing management of sites located within conservation areas.

**What is the likely impact of our proposed pricing for small cell technology on the rollout of 5G networks? What evidence can stakeholders provide of this impact?**

Currently BAI is not involved in the rollout of 5G networks.

**Conclusion**

Should IPART chose to take a market-based approach to determining telecommunications and broadcast rents we submit that proper valuation principles are necessary. To this end we encourage IPART to seek input from an API accredited valuer so that the International Valuation Standards can be applied to the proposed determination. Having a valuer having a valuer co-author and sign off on the report would provide a legitimacy and confidence from the telecommunications and broadcast industry that the findings are in fact independent from the interests of Crown Lands.

Furthermore, in the 2019 report IPART proposed some changes that would be supported by an evidence-based approach to determining fair rents. Two of the most notable changes were the change to co-user fees to ensure that they would not apply to equipment wholly located within a primary user's compound, and the inclusion of more useable density classifications. We would encourage IPART not to abandon these proposed changes and if those changes are not adopted IPART should provide justification as to why they were included in the 2019 report and not in the 2024 report.