CONSULTANCY ADVICE

A Review of the Current Schedule of Rentals for Telecommunication Sites Located in NSW

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Under Instructions From:

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1. EXECUTIVE SUMMARY

- BEM Property Consultants were selected by IPART via a tender process to undertake a review of rentals for Telecommunication facilities on Crown Land in NSW. The conclusions and recommendations of this report have been made with reference to rental obtained from Lessors and Lessees, field research, stakeholder submissions and the Round Table Stakeholders forum conducted on March 18, 2013 at IPART's Sydney offices.

- To follow is BEM Property Consultants (BEM)'s recommended schedule:

User 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 and other commercial	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)*

- The above schedule is unchanged from the current schedule, previously recommended by IPART ('the Schedule') which has been escalated annually by CPI, since initially set in 2005. The market evidence obtained broadly supports the 'the Schedule' and there is no compelling evidence to warrant a change to 'the Schedule.'

- The mobile Carriers comprise the largest user of both Crown Land and private land in NSW. The industry has now only three major providers. The supply or take up of mobile phones in Australia has reached saturation with over 30 million mobile phone subscriptions for a population of about 23 million.

- The National Broadband Network (NBN Co.) is a major new infrastructure provider of high speed broadband services. A small part of the network will comprise a wireless service to be located in more remote and less populated areas.

  NBN Co. will require up to 800 sites in NSW. We note that it has been provisionally agreed between all the relevant Government agencies that the NBN Co. has been classified under 'the Schedule' as a Government Business Unit.

  The evidence available to us, all of which is not documented, suggests the NBN Co. has some flexibility in its site locations, possibly because it is still early in its rollout phase, and is able to secure sites at below the rates paid by the Telecommunications and Data Carrier rates. The anecdotal market evidence to date is indicating that the NBN Co. should reasonably fit into the Government Business Unit Category.

- Due to the fact that NBN Co. has only recently commenced negotiating rentals on sites, there is little documented rental evidence of NBN Co. sites.

- Advances in technology are likely to see the following trends emerge:
  - More sharing of facilities/equipment by lessees which are non-related entities i.e. the joint venture between Optus and Vodafone and use of the same transmitters/receiving equipment by different State Emergency Services
  - Reduction in the number of users on sites required in long established metropolitan areas
  - Expansion of the 4G Network
  - The impact of smartphones and the variety and amount of data they can transmit is likely to impact on the revenues of traditional radio broadcasters
  - The streaming of television programs and movies through the internet will impact on the revenues for the traditional television networks

- The schedule of rentals that was recommended by IPART in the 2005 review has been adopted as the basis for setting rentals by a significant number of other Government agencies apart from Catchment and Lands, NSW National Parks and Wildlife, and Forests NSW.

- The implementation of 'the Schedule' has led to the following issues/complaints from the various parties:

1. The Medium and Low Density categories do not suit some locations with high value real estate but small populations i.e. coastal towns, where rents could be higher.
2. It is apparent that there are quite divergent opinions from both the Lessors and the Lessees as to how the Medium and Low Density classifications could be modified in order to more accurately reflect the rental value of the property in certain locations. It is apparent to us that in attempting to change the existing definition of the Medium Density Category, it will no doubt please some who are advantaged by a review of the classification criteria and anger those who would be financially disadvantaged by any changes.
3. Some small Low Density data carriers and infrastructure providers resent that since the introduction of 'the Schedule', co-user rentals have to be paid to Crown Lands and other Government agencies that have followed the IPART guidelines. These payments did not exist before the IPART review in 2006.
4. Some of the organisations which are nominated as either the Budget Funded and Local Service Providers, and particularly those in the Low Density classification, have stated that the rentals are too onerous relative to their income generating capacity.
5. Some organisations within the Budget Funded sector have questioned the benefit of charging land rentals for essential and emergency services. The need to charge fees for infrastructure is accepted due to the high cost of erecting towers.

- The three (3) main carriers being Telstra, Optus & Vodafone contend that site rental levels within the Schedule are too high given the demand on their network to provide increased capacity within a difficult financial environment. No evidence has been provided to BEM in support of this contention.

- Recently negotiated market evidence is relatively scarce and is variable in quality

- Relatively few market rent reviews are negotiated. In the Government sector, 'the Schedule' is widely used and in the private sector, rental increases are commonly achieved by the agreed fixed rate increases contained in each lease or license agreement.

- Fixed annual rental increases have been declining in percentage terms due to:
  - Pushback from the major mobile providers
  - Low inflation since 2008

- Rentals that have been sourced from other Government agencies generally indicate that market rentals are in line with or above 'the Schedule'. However, there is also evidence of 'private' owner rents below 'the Schedule'.

- The suitability of the nine (9) user group categories and three (3) density categories has been questioned and our comments are provided in this report. Our conclusion is that the existing number of categories and the three classifications cannot realistically be expected to suit the circumstances for each particular lessor and lessee, however, it does provide a framework that appears to be working reasonably well.

  We do consider though that is potential to merge some User groups i.e. government and commercial radio into a single group, and government and commercial television into a single group. Further we consider there is some potential to adjust the density classifications.

- Strategic or high value sites are difficult to categorise and there are a variety of opposing views from both lessors and lessees as to what particular characteristics define a strategic site. BEM considers a strategic or high value site, to a particular user, is one where the site and its use provide an important part of the user's operation and where there are few, if any, viable alternatives.

  Such sites are of more variable value and a schedule of rents cannot adequately address their rental value.

  BEM recommends there should not be a strategic site category and that the rentals for such sites should be left to be negotiated by the parties. All leases and licenses should contain appropriate clauses to allow the parties to enter into a negotiation/independent determination process if the parties do not consider 'the Schedule' applies to a particular site.

2. OUTLINE OF THE CONSULTANCY REQUIRED

2.1 Introduction

The Independent Pricing and Regulatory Tribunal (IPART) conducted a review in 2005 of rentals for telecommunication sites located on Crown Lands throughout NSW. The report provided a number of recommendations with one of the principal outcomes being to establish uniformity in the rentals being obtained for these sites by the various administrators of Crown Land, essentially;

- Crown Lands Office
- Office of Environment and Heritage
- Forests NSW

The report recommended the introduction of a set schedule of rentals for a variety of telecommunication providers. Nine separate user categories together with three different density classifications representing differences in geographical location were provided. The rentals were based upon the rental evidence available at the time. The current rental rates, based upon these categories and density locations, have been reproduced below for reference purposes.

Table 2.1 – 2012 Category and rental fee schedule ($ per site, annual, ex GST)

User 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
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The recommended rental fee schedule was introduced in 2006 and the rentals have been indexed annually by CPI to provide the rental rates as shown in the table. 'The Schedule' has also been utilised by a number of other NSW Government Business Enterprises and Local Government organisations to assist in market rental reviews or negotiate new leases.

IPART is currently conducting a review of these rentals with its report to be completed by July 2013. BEM Property Consultants Pty Limited (BEM) has been commissioned to provide current market rental evidence together with additional consultancy in relation to rentals of Telecommunication sites situated on Crown Lands.

2.2 Matters to be reported on by the Consultant

The two main objectives of the review are to:

1. Review the fee schedule for low value sites to ensure it reflects fair market value based upon commercial return for the government.

2. Recommend principles to guide rental rates for sites considered by the Tribunal to be of strategic or high value.

The consultant will be required to:

1. Collect and analyse information on market rentals and land valuations from various sources including existing databases, other reviews, government agencies and the private sector.

2. Provide advice on market rentals in the fee schedule, taking into account recent market rentals for similar sites, land valuations, legislative requirements and emerging and converging communications technologies.

3. Provide advice on the fees paid by primary users, infrastructure providers and co-users relative to the benefits they derive from their occupancy.

4. Provide advice on the definition of location and user categories in the fee schedule, including whether to add a new user category for National Broadband Network infrastructure.

5. Provide recommendations on principles to guide rental rates for sites considered to be high value and/or strategic based analysis of comparative market data, including defining what is a high value or strategic site.

In conducting the review, BEM has interviewed and obtained a wide range of rental information from Government agencies and some rental information from the private sector.

Our rental evidence, which has been largely provided in confidence, has been summarised in a separate annexure. Our findings and observations in relation to the leasing of land for telecommunication sites and the other matters specified in IPART brief to the consultant are contained in Section 8 of this report.

3. OVERVIEW OF THE TELECOMMUNICATION INDUSTRY

3.1 Statistical information

The following statistical information has been obtained from the Australian Communications and Media Authority (A.C.M.A.) website and its annual report which was completed in June 2012. The selected statistics highlight the fastest growing sectors of the Telecommunications Industry. Only the services which have achieved double digit market growth have been listed in this summary. (The report also referred to other sectors of the industry.)

Service		User numbers	Year on year growth
Total mobile phone services (voice and data)	-	30.2 million	+3.11%
Total Internet subscribers	-	28.23 million	+16.5%
Mobile Internet subscribers (incl. mobiles phones and wireless subscribers)	-	22.05 million	+21.8%
VOIP Services (Voice and Internet Provider)	-		
Home services	-	4.34 million	+20.6%
Mobile services	-	0.616 million	+133.3%
Internet services (all subscribers	-	12.4 million	+10.4%
Fixed Line Broadband	-	389,130 Terabytes	+52.6%
Wireless Broadband	-	25,301 Terabytes	+32.1%
Mobile Handset Broadband	-	6.610 Terabytes	+78.9%
Total volume of data downloaded	-	421,147 Terabytes	+51.5%
Internet user online activity	-		
Communication	-		+11%
Buying, selling, shopping	-		+27%
Accessing Broadcasting content online	-		
Streamed T.V. programs	-		+47%
Downloaded T.V. programs	-		+19%
Streamed radio online	-		+34%

3.2 Industry trends

The following observations of the Telecommunications market have been obtained through a number of industry websites and our industry enquiries.

- There are 7 million more mobile phones than there are people in Australia with 30 million phones and a total population of 22.85 million. This represents a saturation of 131% and is amongst the highest in the world.
- There are now three major Mobile National Operators (M.N.O); Telstra, SingTel Optus and Vodafone Hutchinson.
- The M.N.Os have been continually upgrading and improving their infrastructure in order to respond to increasing consumer demand, handset saturation and demand for faster speed fixed broadband services.
- The strong competition in the mobile sector is resulting in a lower dollar return on a per user basis. This is being compensated by the downloading of more data on a variety of mobile devices i.e. smartphones.
- Subscriber growth on the mobile phone market is likely to continue at slower growth rates than in previous years due to market saturation. Subscriber numbers are predicted to grow by around 2% which will be achieved through the increased take up of smartphones.
- Telstra is still the market leader with 13 million mobile phone subscribers.
- Overall, mobile services revenue growth has essentially remained static on a year by year basis over the last several financial years.
- Vodafone has experienced negative growth due to problems with its network which caused many subscribers to switch to Telstra or Optus.

- Discussions with Telstra, Optus and Vodafone highlight their concern as to the increased cost of providing infrastructure and service to customers whilst maintaining profit levels. All carriers advise the rental cost of sites is too high and they are actively negotiating lower site rentals and rental increases.

- Optus and Vodafone have entered into a site sharing joint venture with the aim of reducing site rental and infrastructure costs. Both Optus and Vodafone will maintain their individual services; however will share equipment huts and towers. This will likely place pressure on land owners and infrastructure providers to maintain current income levels.

- With the rationalisation of the industry, it is likely that many co-location sites will see the number of main users reduce to two (2).

- The roll out of the National Broadband Network continues but the take up rate by subscribers is lower than projected. The network is due for completion in 2021 under the present timetable.

- The A.C.M.A statistics confirm the growing use of wireless networks to download television, movies and other media. The growth in these forms of transmission will impact on the viability and revenue of the free-to-air television networks. Recently, both the Nine and Ten Networks have indicated falling advertising revenues due to the ever increasing variety of options to view media through wireless and to a lesser extent, at present, broadband cable.

- Our enquiries with the television sector confirm the pressures of maintaining revenues as a result of increased viewer options and changing preferences. We also note the potential impact on the value of elevated transmission sites in the medium term with NBN likely to assist in the various networks' transmission capabilities.

4. METHODOLOGY & RESEARCH

In undertaking the review the following process has been utilised:

1. Review of all rental material provided to The Tribunal by NSW Government Land Management agencies, although additional material may be provided in IPART's call for submissions.

2. IPART has provided contact details for approximately 150 telecommunication site owners and occupiers. Of these, many have been contacted by telephone in an effort to obtain 'fresh' market evidence as well as comment in relation to market trends and issues.

3. Conducting interviews with Crown Land managers, including Catchments and Lands (Lands), NSW National Parks and Wildlife (NPWS), and Forests NSW.

4. Discussions with Government Business Units, including Sydney Water, Roads and Maritime Services (RMS), Airservices Australia, Ausgrid, NSW Rural Fire Service, Endeavour Energy and Essential Energy and an analysis of rentals charged and paid by these and similar organisations.

5. Discussions with private telecommunication companies, including Telstra, Optus, and Vodafone; and infrastructure/service providers and broadcasters including Crown Castle and Broadcast Australia.

6. Discussion with NBN.

7. We have made extensive enquiry to local governments throughout NSW.

8. We have undertaken additional enquiries with other government and non-government landowners.

All of this data and information has been analysed to form an opinion of market rental to critically review 'the Schedule' and its structure, and to provide our recommendations in relation to the Schedule of Fees and Charges.

4.1 Research Sources

To follow is a list of organisations where contact has resulted in discussion and/or provision of information:

- Catchments and Lands
- Forests NSW
- National Parks and Wildlife Service NSW
- Airservices Australia
- Ausgrid
- Bathurst City Council
- Bega Valley Shire Council
- Bellingen Shire Council
- Bland Shire Council
- Bogan Shire Council
- Broadcast Australia
- Carathool Shire Council
- City of Lithgow Council
- Clarence Valley Council
- Coolamon Shire Council
- Cowra Shire Council
- Crown Castle
- Digital Distribution Australia
- Dubbo City Council
- Fire & Rescue NSW
- Forbes Shire Council
- Gosford City Council
- Hunter Water Corporation
- Narromine Shire Council
- Narrowcast Broadcasters Association
- NBN Co.
- NSW Department of Industry & Investment – Primary Industries & Energy
- NSW Police Force
- NSW Rural Fire Service
- O'Brien Electrics
- Office of Environment and Heritage
- Optus

- Port Macquarie Hastings Council
- Rail Corporation NSW
- Roads and Maritime NSW
- Snowy Hydro
- St Johns Ambulance
- State Emergency Services
- Sydney Ports Corporation
- Sydney Water
- Telstra Corporation
- Thiess
- Total Site Solutions
- Upper Hunter Shire Council
- Uralla Shire Council
- Vertel
- Win TV

4.2 Disclosure of Rental Information

The extent of BEM's brief has been to review available rental information provided by the three (3) Government agencies and to undertake additional research within the available time frame.

Our research has been extensive however this search for 'fresh' evidence has been hampered by:

- The rental information available within the portfolios of the three (3) government agencies are, with some exceptions, based on IPART rates.

- The influence of the IPART scale on the broader NSW site rental market has been significant with many government agencies and occupiers using IPART as a basis of rental payment.

- Our enquiries to the major telecommunication carriers and infrastructure providers i.e. Telstra, Vodafone, Optus, Crown Castle and Broadcast Australia have produced no new evidence. Each party contacted has stated it is unwilling to provide evidence of recently negotiated rental agreements.

BEM noted within the 2005 IPART review that the establishment of a communication site rental marketplace is reliant upon disclosure of rental information. Since 2005, we consider the market to have become more informed; however there is still a lack of broad disclosure.

Whilst we believe our advice is accurate in the context of the available information, it can be made more substantial and reliable with access to a broader availability of market evidence.

5. TENURE ISSUES

Issues affecting occupancy agreements between the Government land owners and the various occupiers and tenants include:

- Form of occupancy, i.e. lease or licence
- Application of primary and co-user fees
- Term of occupancy, and
- Rent review mechanism

5.1 Tenure Options

Occupancy agreements between the Government agencies and the communication occupiers are either by way of a:

- Permissive occupancy (PO)
- Licence, or
- Lease.

Licences and leases are both common. Licenses are often preferred by landowners in that they provide the landowner with greater flexibility to access co-users given a license does not provide the licensee with site exclusivity.

Conversely, occupiers tend to prefer leases because leases provide greater security of tenure. For many occupiers, a lease of land being larger than their specific requirements, also provides them with exclusive possession and therefore the ability to sub-let and generate greater rental income.

5.2 Primary User / Co-User Rentals

It is a desire of government that site co-location occurs where possible, the main purpose being to reduce the visual and environmental impact of towers. A policy of co-use has evolved where the primary user, the first carrier or occupier of a site and the provider of site infrastructure (typically a tower), sub-lets the facility to other communication companies, the co-users. The sub-occupancy can either be wholly within the primary user's occupancy or partly within the occupancy, i.e. sharing the primary user's tower, but having a separate hut for their own particular equipment.

The release of 'the Schedule' in 2006, and its subsequent use has reinforced the practice of primary use and co-use arrangements and fees.

Of relevance, 'the Schedule' provides for a co-user fee of 50% of the relevant fee which is justified on the basis it is an encouragement to co-users.

Outside of IPART's schedule, the market is less restrictive. In many circumstances, a traditional Head lease arrangement will apply. Under this arrangement, a land owner will grant a single site lease agreement to a primary user. The primary user will sub lease or sub license the site and facilities to, sometimes, multiple users. The Lessor will have no relationship with the sub lessee. In this situation, the site rent should reflect the lessee's ability to sub lease and derive further income from the site. Of relevance, the Head lease rental will be higher than a lease for similar site (as per 'the Schedule') where the rent reflects only the primary user's use of the site. Examples of the traditional Head lease include some agreements between National Parks and Broadcast Australia.

In other circumstances, the land owner will allow the primary user to use the site for his single purpose only and will require that he obtain the lessor's approval for subsequent uses or sub tenancies. Further, the land owner/lessor may require a separate tenancy agreement with the subsequent sub tenancies. This can be achieved by providing the primary user with only sufficient space for its tower and equipment hut, with additional users necessarily requiring agreements with the land owner to accommodate their equipment huts. Alternatively, the land owner may grant licences with non-exclusive use of the site available to the licensee. Examples of this include land owned by Sydney Water, Ausgrid and RMS.

It is evident from BEM's discussion with industry participants that there is a perception of many site users that government land owners are charging more than they are entitled to and are ‘double dipping’ by charging co-user fees as well as primary user fees.

The principle of co-user fee charges is however quite different.

It is relevant to note that the rental value of a site should reflect, among other things, the highest and best use of that site. In the case of telecommunication sites, the highest and best use is the potential of the site to be utilised by a single user or multiple users.

Further to our earlier comment, under a traditional head lease arrangement, the primary user would pay a rent reflecting not only its use, but also the potential to sub lease the site to other users. Such an arrangement can be beneficial or disadvantageous to a lessor and lessee given the agreed rent may not fully reflect a circumstance where there are either few or many users.

The co-user fee arrangement aims to more accurately reflect the use of a site at a particular point in time by charging a rental for only the primary and co-users.

By comparison with the head lease arrangement, the co-user arrangement provides a reduced rental to the primary user given it only reflects the primary user’s use of the site. Theoretically, because the primary user pays a reduced site rental, the savings achieved (compared to a head lease rental) would be passed onto a co-user. The reality is that many co-users may not receive a reduction in rent from the primary user/infrastructure provider and simply see the co-user site rental as an additional fee.

It is relevant to note that the 50% co-user discount provides a significant saving to co-users. Alternatively, if a co-user was to establish its own site, it would necessarily need to pay a full market site rental, and would also need to establish its own infrastructure at significant cost.

The concept of a co-user rental for the land is essentially no different to any other rental payment for real estate. However there are very few examples where land is leased from a third party and then the Lessee erects a building on the land.

Such arrangements are rare in residential and all forms of commercial real estate because the preferred Australian Real Estate model, is that investors and financiers always prefer to purchase the land and then erect the building on the land, and own both land and building by means of a freehold title. In the relatively few examples where a rental is paid for the land it will always reflect the highest and best use of the land. As an example, if the land has the potential for say a twenty storey office tower, the land owner would not agree to a rental which only reflected the potential to erect a single storey building on the land. The rental would be negotiated on the expectation that the lessee would seek to maximise the potential of the land

The concept of co user payments for land is essentially the same principle but with a very fair and important distinction. The distinction is that the rent paid by the primary user is negotiated on the basis of a single user and not on the highest and best use or maximum potential of the land. In cases where a tower is erected by the primary user, which maximises the potential of the land, additional land rental is then paid. However the additional rental is paid at 50% of the primary user rate and the additional rental is only paid if and when the maximum potential of the land is realised by the primary user obtaining additional revenue from the infrastructure erected on the land

Ultimately, we consider the 50% co-user discount to be appropriate. We are aware of numerous examples, particularly in metropolitan Sydney, where co-user discounts are less than 50%, however for the purpose of ‘the Schedule’ covering a large number and broad range of sites across NSW, we consider it to be an appropriate rate to encourage co-location. The fee discount to infrastructure providers is currently 30% and is based upon an infrastructure provider only deriving income from sub-users, unlike a primary user which also derives income from its own use. We note the argument that the discount should be 50% so as to provide government with the same site rental income as it would otherwise receive if there was a primary user. The reverse argument is that an infrastructure provider is a proactive site participant and should pay a similar non discounted rent to a primary user. We are not aware of any compelling market evidence which indicates what discount, if any, should apply to a primary user rent. Ultimately, we consider the 30% discount applied to infrastructure providers to be appropriate.

5.3 Term of Occupancy

Our comments in relation to lease/license length of term are largely unchanged from our comments in 2005.

As a general rule, landowners are agreeable to lease/licence terms containing periods of a minimum of five (5) years and a series of options (or a series of consecutive leases), usually to provide a total tenure term on of 20 years.

This structure e.g. 5 year lease plus 3 x 5 year options (4 x consecutive 5 years times), provides the occupiers with the benefits of a 20 year term, being a sufficient period to amortise the cost of infrastructure.

However, directly opposed to this preferred lease structure on the part of the carriers is the requirements of the landlords who wish to maintain some degree of control over their land. At one end of the scale, some utility owners seek to maximise their control and future use of the land for its primary intended utility use, e.g. water or road infrastructure. Rental agreements with these owner organisations are generally more restrictive in order to ensure:

- Access to the site for future expansion of the facility is not compromised by a lease to a communication company, and

- The day to day operations undertaken by the lessor on the site are not compromised or interfered with by the lessee.

Conversely, many lessors with large land holdings often view a telecommunications site lease as a growing source of income and are more receptive to lessees.

Landowners typically want to commit themselves for minimum periods although they also want to enjoy rental streams for as long as possible. Shorter commitments allow the landowner the flexibility to 'take back' the land should it be needed for another purpose or even offer it to another occupier.

5.4 Rent Review Mechanisms

Rent reviews typically range from annual CPI increases to 3%, 4% or 5%.

Our investigations reveal there are currently few agreements with higher rental escalation rates in contrast to the situation when the mobile phone networks were being established, where agreements with some owners included 7% annual increases.

Of relevance, most agreements between telecommunications companies and land owners provide for a series of consecutive leases with pre-set increases rather than market reviews at consecutive lease commencements. It is our understanding that telecommunication companies prefer the certainty of known increases rather than the uncertainty of market reviews.

6. MARKET RENT

During our research and discussions with landowners and occupiers, we were advised by all parties that they are willing to pay market rental for sites, however it is apparent that there are a very differing views held as to what constitutes market rent.

The view of some occupiers, including carriers and infrastructure providers, is that market rental should be based upon land value, and that the land value should not reflect the telecommunication use of the site. It is the view of some government owners that whilst 'the Schedule' has been helpful in formalising rental agreements with site owners, 'the Schedule' is not necessarily reflective of market. Accordingly, the Government agencies are seeking evidence of 'fresh' market negotiations to provide current day relevance.

BEM considers the market rental should be based upon accepted valuation methodology, whereby market transactions are negotiated by willing, prudent and equally informed market participants.

Further to our earlier comments, BEM has actively sought out evidence of recent agreements in relation to various IPART user categories across NSW.

We highlight however that recent negotiated evidence is somewhat limited and is difficult to source given the following:

- The large majority of the three (3) government agencies evidence is tied to 'the Schedule'.
- 'The Schedule' has been influential across other state and local government owned land.
- Enquiries to the major carriers i.e. Telstra, Vodafone and Optus and to Crown Castle and Broadcast Australia, has resulted in no evidence being provided.

Nevertheless, we have undertaken sufficiently extensive investigation to form a view as to current market rent levels. However, our knowledge and views as to market rent would certainly be enhanced with the benefit of additional market data.

6.1 Market rent reviews in determinations by third party valuers

Very few non-strategic, lower value sites have rentals which are determined by a third party valuer. There are a number of reasons as to why this situation has arisen.

The cost that will be incurred by both parties usually can't be justified in terms of the likely rental increases that may be achieved i.e. the total cost of the determination process to both parties would be in the vicinity of $9,000 to $11,000. The potential range of rental increases for such sites is typically between $3,000 and $5,000 per annum; naturally there are some exceptional cases where large increases can be achieved, but this is not normally the case. Due to the lower rental base outside of Sydney, the costs of a rental determination cannot be justified for both Medium and Low Density sites.

A significant number of lease and license agreements contain automatic annual rental increases which range between 4% - 5% per annum. The lessors are typically prepared to accept this level of annual rental increase as it is well above the typical rate of inflation that has been experienced since late 2008, after the Global Financial Crisis, which has been in the vicinity of 3% p.a. or less.

The IPART recommended schedule of rentals, from the 2005 review of Crown Land sites, has been broadly accepted by the Government sector as a whole. The existence of the rental schedule eliminates the need for the process of negotiation between the parties that would otherwise be required. One of the key benefits of the use of 'the Schedule' is the certainty of the outcome as compared with the relatively small quantum of rental increase that may be achieved by the rent review process, which cannot be justified in terms of the administration time involved or the cost/benefit of a rental negotiation.

Some license/lease agreements do not have a satisfactory rent determination mechanism. One major Telco provider has a market rent review clause in some of its leases which stipulates that both the lessor's and the lessee's valuers are to mutually agree on a market rental, however has no provision for a third party determination.

In many cases, this mechanism will provide a reasonable outcome, however, where there are large differences between the rentals put forward by both parties, a compromise rental cannot be achieved, and this highlights the need for an independent third party to make a determination.

6.2 Market rental negotiation between the Parties

Market rentals are not often negotiated between the parties for essentially the same reasons that apply to the rental determination process, i.e. it is essentially uneconomic to utilise administration time relative to the small quantum of the rental involved for essentially all sites except for those that are regarded as being of a high value or strategic nature.

- The agreed annual rate of rental increase is likely to provide a higher rental than would otherwise be obtained through negotiation, particularly if the agreed rate of increase is between 5% and 7.5%. These rates of annual increase were common for the earlier lease/licenses that were agreed to in the earlier 1990s.

- The adoption of 'the Schedule' after 2005, by many government businesses in addition to Crown Lands, eliminated the need to become involved in the rental negotiation process.

The telecommunications companies interviewed by BEM have all stated that annual rental increases of above 4% are unsustainable. The reasons supporting this view are:

- Low rates of inflation that have prevailed since 2008, i.e.
  (Australian CPI)

2008	+ 3.85%
2009	+ 1.95%
2010	+ 1.92%
2011	+ 1.75%
2012	+ 2.0%

Both Lessors and Lessees are generally in agreement that an increase within a range of between 3% to 4% p.a. is an acceptable rate to be applied to new lease/license agreements in the current low inflation environment. The NBN Co. is the prime example of this, which has a target annual rate of increase of 2.5% for all of its leases.

6.3 Effect of the introduction of the IPART Recommended Schedule of fees on rental reviews for telecommunication leases.

The major effects that have emerged since the introduction of various categories and recommended rental rates for Crown Land after the IPART review of 2005 have been the following.

'The schedule' has been widely accepted by the Government and Local Government sector as a base for setting their own schedule, which has led to a more consistent approach to rentals and market rental reviews.

One quite noticeable effect is that in the Government sector at least, the schedule of fees has essentially replaced the market rental negotiation process, for the majority of sites and particularly the lower rental value sites outside the Sydney metropolitan area and the large regional centres.

A number of the Government authorities that were interviewed indicated that in certain high value rental areas or in some of the smaller country towns, the application of the Medium and Low Density categories does not give the lessor a satisfactory rental. This is due to the fact that the current Medium Density classification is defined by major regional centres with populations greater than 10,000.

It was stated that in some applications i.e. small coastal towns, which are designated as a low classification by virtue of the population criteria; have higher land values than the surrounding rural areas and this value is not reflected by the current low rental found in the Low Density classification of the various categories.

We also note that there is some inconsistency as to how the three (3) agencies define the medium and low categories. BEM's understanding of the Medium Density category is that the 10,000 population threshold relates to LGA population. We further understand that Catchment and Lands have softened its interpretation of Medium Density by classifying all sites outside a 12.5 km radius of a Medium Density Township as being Low Density.

BEM's view of the categories is that:

- High Density is clearly understood and logical.
- Medium Density for much of New South Wales should logically apply to a township population of 10,000 and extend for reasonable radius distance from the township. We note that Catchment and Lands uses 12.5km criteria in differentiating low density from medium density and this would seem a reasonable approach.
- However, for more heavily populated coastal regions, where townships are smaller and closer together, it may be reasonable that the Medium Density category extend further. Arguably, some areas may need to be handcrafted.
- Low Density, being the remainder of NSW, would appear to be appropriate and relevant to both owners and land users.
- There are quite opposing views as to how the criteria for the Medium Density category could be altered. It is apparent that any changes to either the population of the Local Government Area or the distance from a regional town will disadvantage one party and improve the financial position of the other. Under these circumstances it would appear best practice to leave the current criteria in place.

6.4 Rentals based upon Land Values

Our enquiries and investigations have revealed that some telecommunication companies consider that rentals should be based on land value rather than market evidence. We would make the following comments.

Land values vary considerably. We have obtained a sample of valuations of land owned by Forests NSW throughout NSW. The land area also provides a wide range i.e. from 211 ha up to 3,076 ha. These properties are generally timber plantations. The values have been assessed by the Valuer General for asset purposes and indicate rates varying from $880 per ha up to $1,716 per ha.

This type and location of Crown Land has been selected as it would tend to indicate the lowest value land on which Telecommunication sites would be situated.

The values of agricultural land would be higher and would depend upon a wide variety of factors including land use, location, land area, rainfall, topography and proximity to a regional or local town.

Land values for residential, commercial and industrially zoned land in the large regional centres and the Sydney metropolitan area would naturally be considerably higher again. For example, industrial land could have a general average value of $2,500,000 per ha.

Due to the extremely wide range of land values that exists for potential communications sites, as illustrated by the different examples below, we would not recommend that land values or valuations be considered as an alternative method to obtain a rental/license fee, as we believe it would unnecessarily complicate the market.

'The Schedule' already provides an extensive range of rentals that can be applied to the various sites. Admittedly, it is a 'one size fits all' approach that provides three different rental rates for each of the existing nine user categories. It is not as wide in scope as the rentals that would be obtained if being derived from land valuations. However, as the land area required for telecommunication sites is typically 100m^2 or less, individual valuations would be required for these individually leased areas. In our opinion, this process would involve additional cost and add a layer of complexity to the task of assessing rentals. It would also more than likely provide a wider rental range than the current scale due to variation in land value and land use.

To illustrate this point, the highest value of Forests NSW Timber Plantation and the generic value of Sydney metropolitan industrial land will be utilised.

Forests NSW land

Land value	$1716/Ha (10,000m^2)
Value of 100m^2 site	$17.16
Annual rental @ 5% p.a.	$0.85 p.a.
Lowest 'Schedule' rental	$432 p.a. (community based organisation on IPART scale)

Generic Sydney metropolitan industrial land

Land value	\$2,500,000/Ha
Value of 100m^2 site	\$25,000
Annual rental @ 5% p.a.	\$1,250 p.a.
High density rental on 'the Schedule'	\$26,432 p.a.

We would argue that the values assessed for much larger sites don't reflect the value of a very small Telco site and the use to which the land is put i.e. they don't reflect highest and best use. However, it is also our opinion that it would be both cumbersome and unnecessarily costly to obtain valuations of telecommunication sites and then devise a rental based on the land value. The use of an alternative rental structure based on land value would be unnecessary because an accepted and long standing range of rentals for a wide variety of sites and telecommunication leases already exists and forms the basis for all new rental agreements. The market has developed since the late 1980's and some uniformity in relation to rentals on Crown Land and other Government land came into effect in 2006 with the introduction of "the Schedule".

7. NATIONAL BROADBAND NETWORK (N.B.N. CO)

7.1 Introduction

The National Broadband Network is being constructed by the Federal Government. It will provide both fixed cable and wireless internet and telephone services throughout Australia. NBN is a very large and relatively new telecommunications service provider. The NBN Network did not exist when IPART conducted its first review into market rentals for telecommunications facilities on Crown Land. To follow is a brief background into the NBN and its impact upon the rentals of Crown Lands for telecommunications to date.

7.2 Background

The NBN Co. is a Federal Government Business Enterprise which will, upon completion of the network, be a wholesale monopoly provider of infrastructure which will facilitate a range of broadband internet and fixed line telephone services to be sold on retail basis by a range of different businesses. The network will comprise 93% fibre optic cable, which utilises the existing Telstra underground conduits and infrastructure. The cable network will supply all the capital cities and metropolitan areas together with the majority of rural communities, with the exception of very small and remote locations which will be serviced by either wireless or satellite technology.

The wireless network, being located in remote areas, requires the building of new infrastructure i.e. monopoles or lattice tower transmitters. There is generally no existing telecommunication infrastructure in these areas as it has not been profitable for other Telecommunication providers, i.e. mobile phone networks, generally, to service remote locations.

The NBN Co. will provide a broadband service to a range of telecommunication businesses in the remote areas at wholesale prices; these companies will then resell their services at retail rates. The service will also include fixed landlines but will not include mobile phone services. These services could be provided in the remote locations once the NBN network is completed, by Telstra, Optus etc. using the NBN Co. wireless network.

The availability of mobile services in these remote areas will be dependent on the service being economically viable for the individual telecommunication companies.

This aspect of profitability and service are two fundamental differences which set the NBN Co. apart from the major mobile phone providers. The NBN's charter is to create a network throughout Australia which is to provide an essentially identical service to all its clients. This means that:

1. The network will be designed initially to provide a service to the community rather than a profit to its owner.

2. Therefore the wireless network in remote locations is likely to require the construction of new infrastructure i.e. towers, etc. as it has not been economically viable for the private sector to provide mobile and internet services in the remote locations.

3. The nature of the terrain will dictate both the number and design of the towers or poles required, i.e. flat terrain requires fewer towers, and hilly terrain requires a larger number of towers due to interference with transmission from the landform.

NBN Co. has advised that under the present Federal Labor government the following timetable for completion of the network will apply:

1. Cable Network – to be completed by 2021.

2. Wireless and satellite network to be completed by 2015.

In NSW the wireless network will require in the vicinity of 750 – 800 sites, approximately 50% of those have been selected and negotiations to lease the land have begun and some leases have been signed.

7.3 Site requirements

The NBN Co. wireless network will require essentially the same type of infrastructure and equipment as the large Telco companies. Due to the remote locations of the NBN wireless network all sites will require some form of monopole or larger lattice tower. The largest towers will require a 10m x 10m footprint i.e. $100m^2$ with an additional $3m^2$ to $5m^2$ for an equipment kiosk.

Site selection will be influenced by a number of criteria which include:

- Proximity to existing roads.
- Availability of any available transmitter tower within the area.
- Natural elevation.
- Proximity to a small town for maintenance.
- The number of sites required to service each region will be determined by the terrain.
- Sites which border onto the closest reasonably sized communities will have more strategic value as the wireless network has to be connected to the cable network at some point in order to be able to give wireless clients access to the faster optic fibre (i.e. cable) broadband.
- NBN Co. has no interest in Crown Land sites that may be subject to a native title claim, due to the uncertainty associated with negotiating a lease or license over the land.

7.4 Rental Evidence

NBN Co. has been provisionally classified by Catchment and Lands as a Government Business Unit, under the 2006 IPART rental category schedule.

The location of the NBN Co. wireless network will ensure that essentially all rentals will fall into either the Medium or Low Density categories. NBN Co. have advised the following overall trends and rental levels have emerged in its negotiations with both private and public sector land owners in leasing sites for its wireless network:

- NBN Co. has contracted out virtually all of its responsibility to obtain, negotiate and document the leasing of its sites to the private sector. In NSW the majority of the work to date has been undertaken by Ericsson.

- As at January 2013, approximately 50% of the wireless network sites have been either leased or are in the process of being negotiated. The large number of sites and the relatively short time period since the commencement of the roll out of the wireless network have meant that few leases have been documented to date.

- NBN Co. have advised that due to the relatively remote location, the large number of sites involved and being provisionally classified as a Government Business Unit, the rental rates that have been negotiated to date have tendered to within a narrow band and fall within the following general range. It is noted that two distinct and different rental rates apply i.e. Government land owners and Private land owners.

  Government land - $3,500 p.a. to $4,000 p.a. (plus GST)

  Private land - $3,000 p.a. to $6,000 p.a. (plus GST)

- NBN Co. stated that they would not pay more than $10,000 p.a. for any sites within these locations, including “strategic” sites located on the edge of the towns where the connection into the fibre network is required.

- Lease terms are generally 5 years with further tenure for additional 15 years by way of options.

- Rental increases of 2.5% p.a. have generally been achieved for the majority of the leases.

- The capital cost of erecting tall lattice towers or monopoles i.e. more than 40 metres is in a general range of between $250,000 and $350,000 per site.

8. IPART RENTAL CATEGORIES

8.1 Community Based Organisations

Research indicates rent paid by community groups are quite variable and often nominal or nil. Some groups have a greater capacity to pay more rent than others and we highlight that there are some groups in other categories which are community oriented and are potentially incorrectly categorised e.g. Low Power Narrowcast radio (LPON).

'The Schedule' rate of $432 p.a. for all three densities is effectively a nominal rent and we would propose no change assuming compliance with minimum rentals as directed under relevant legislation and subject to revision from time to time.

8.2 Budget Funded Sector

Our research has revealed a relatively extensive amount of evidence which broadly supports the current schedule and accordingly we propose no change.

In the High and medium Density Categories we note a number of rents both below and above 'the Schedule' but believe there to be no compelling body of evidence to support a change.

8.3 Government Radio Broadcasters

No evidence was obtained for this user group given many sites are government owned and therefore are subject to the IPART scale of rentals or are on other Broadcast Australia sites. Broadcast Australia provided no information in relation to site rentals.

'The Schedule' places Government Radio at 50% of the Commercial Radio rate and we have no evidence to propose a change to this.

8.4 Local Service Providers

We have limited market evidence for local service providers. Subject to receiving more evidence for the category, we have no reason to propose any change to the existing schedule of rents.

8.5 Government Business Units and Other Commercial

We have obtained a limited amount of 'non NBN' evidence for this user group in the Medium Density Category.

For the High Density Category we have minimal evidence, however, that evidence supports the current 'Schedule' rent of $12,335.

For the Medium Density Category the available evidence suggests the current 'Schedule' rent of $8,222 could be higher than market, however the evidence is not conclusive. We note the NBN anecdotal evidence of typically $4,000 to $6,000 with some instances of up to $10,000 also suggest the 'Schedule' rent to be high however, requests for firm evidence has not been forthcoming and we do not consider there is enough substantiated evidence to warrant a change.

For the Low Density Category, the available evidence broadly supports the current 'Schedule' rent $4,112.

8.6 Commercial Radio Broadcaster

In the Medium Density Category available evidence is from a viable section of the narrowcast radio network which is indicating a typical rent of c. $5,000 p.a. This is below the current 'Schedule' rent of $9,298 however narrowcast is restricted to a particular purpose. Further, our enquiries to the broader radio market have failed to produce any evidence and we recommend the current rate be unchanged subject to a review of a broader range of evidence.

8.7 Commercial and Government Television Broadcasters

Available evidence includes Head lease arrangements between National Parks and Broadcast Australia whereby Broadcast Australia pays a head lease rental for the site and sub-leases the site and towers to various television and telecommunication user groups.

The Broadcast Australia evidence, when analysed having regard to the different user groups, closely matches the primary and co-user charges within 'the Schedule' and therefore supports the current 'Schedule' rates. We have also had discussions with regional television operators who have also indicated rents paid for various categories of transmission and translation sites, and these also largely support the current 'Schedule' rates.

We have ultimately concluded the market evidence supports the current 'Schedule' rates.

For Government Television Broadcasters, the IPART schedule provides for a rent of 50% of the Commercial Rate.

8.8 Telecommunication and Data Carriers

We have sourced a broad range of evidence within the three (3) density categories. Notwithstanding some resistance by the telecommunications companies in relation to rental increases we are aware of market evidence reflecting rental increases for sites which are at rent levels consistent with 'the Schedule'. We do note however there is also market evidence at lower levels and evidence at higher rates, some which are significantly higher.

The evidence considered includes a mixture of recent rental agreements, rentals from government authorities such as Sydney Water, RMS and Ausgrid where rents are subject to portfolio or 'package' agreements or based upon a fee schedule, and we have also considered older rentals which have escalated over time but where telecommunication companies have accepted ongoing increases. We also note lease renewals which have occurred at slight increases, typically at the level of fixed percentages used during the lease term.

We note from our discussions with the major telecommunications companies that some contend there has been a reduction in rent levels in recent times, although no information has been supplied in support of this.

We are aware of some recently negotiated rents in metropolitan and rural areas, at lower rental levels than indicated in 'the Schedule, however, further to our earlier comments, research reveals telecommunication companies are also agreeable to rent increases for lease renewals where these increases reflect the annual adjustment or are reasonably modest. Such increases are on top of existing rents which are above 'the Schedule'.

It is clear that the knowledge and stance of a site owner plays a significant role in a rent negotiation. As a consequence, the range of rental evidence is extremely broad. In Metropolitan Sydney, we are aware of recent suburban tower sites (which allow sub leasing), as low as $15,000 p.a. whilst there is also evidence for standard single use sites at $30,000 p.a. and higher quality arterial road sites at $40,000 p.a.

For the High Density Category, there is significant variation in rent levels, but overall, we consider the current 'Schedule' rent of $26,432 to be reasonable for the majority of sites.

For the Medium Density Category, this evidence also provides a broad range including many sites in the order of $15,000 p.a. There are some higher rent examples and also some private owner sites at $10,000 pa to $15,000 p.a. with unrestricted sub-letting. Overall, however, we consider the current 'Schedule' rent of $14,684 to be reasonable.

There is also variation in the Low Density Category, with rents of $10,000 to $15,000 not uncommon but also private owner sites as low as $6,000 to $7,000 p.a. with unrestricted sub-letting. We are aware of a number of examples of rents below 'the Schedule' but also note rental evidence above 'the Schedule'. The evidence is clearly variable and reflective of the broad range of sites that exist and individual negotiations that occur. We ultimately consider the current 'Schedule' rent of $8,810 to be a reasonable reflection of rents in this category.

8.9 NBN Co.

We have considered the rents applicable to the NBN in 'the Schedule' being provisionally classified as a Government Business Unit. Our anecdotal evidence of the rents agreed with both private owners and government appears to confirm the current 'Schedule' rentals for this category. Accordingly, we consider the rental rates in this category of $12,335, $8,222 and $4,112 (High, Medium and Low Density) to be appropriate. It is our view that NBN should sit within the Government Business Unit user group and not be put into its own category.

9. STRATEGIC OR HIGH VALUE SITES

Within the 2005 IPART Report, Strategic or High Value sites were defined as being sites where there were 8 or more users. The reasoning for having a definition was to allow for the parties to depart from the IPART schedule, and arrive at a rental through a process of negotiation. However, the general consensus from our research is that negotiation of a successful outcome for all parties is difficult and potentially expensive.

The current IPART Review is seeking advice on the definition of strategic or high value sites and a means for guiding rental rates.

Our discussion with some of the major telecommunications companies highlights a commonly held view that there are no strategic sites, given it is the infrastructure that is brought to the site which makes the site valuable and attracts other users.

In our view, the value of all sites results from a combination of the contributions of both landowner and primary user/infrastructure provider. The landowner provides the land together with its natural features e.g. topography, line of sight attributes and proximity to potential customer base. The land may also offer access and power. The primary user can enhance the site by improving or creating accessibility and power, for example, and for other users, provides a tower structure which reduces costs for co-locaters.

The relative contribution by the landowner and primary user will vary from situation to situation.

In many cases, from a co-user’s perspective, the primary user’s infrastructure/tower will provide a greater contribution than the land, given the significant initial cost of site establishment.

In some cases, the contribution by the land owner may also be significant. For example; a site with good accessibility, scarcity, topography, power and line of sight to a fixed and moving customer base and/or to other sites may make it a site of high value or strategic value.

In more succinct terms, we consider a high value site for a particular use or user to be a site where:

a) the site provides an important part of the user's operation,
b) there are few viable alternatives, and
c) to relocate to one or more alternative sites would be significantly more costly.

In relation to what premium might apply (to the Schedule) to a particular high value site, it is impossible to accurately quantify. Each site is different, has different users, has attributes which differ in relative importance, and sits within varying markets.

The evidence available to this assignment is more plentiful in the Sydney metropolitan area and indicates such premiums could range up to 50% and in some cases, significantly higher. In non-metropolitan areas, the evidence appears to be less conclusive, however further and more specific investigation may reveal more. It is likely that such investigation would reveal a premium for more valuable sites.

We refer to the 2005 IPART report which defines a strategic site as one which has 8 or more users. In reviewing this definition, we would agree this is still relevant however such a site would not necessarily be of strategic value to all 8 or more users and further, a site with less than 8 users may also be strategic or high value to certain users.

The purpose of having a definition of a high value site is to allow for the parties to depart from 'the Schedule' for low value sites. In our opinion, departure from 'the Schedule' should not require compliance with a predetermined rental scale applicable to such a definition.

We would propose that either party, should it disagree with the schedule, be able to initiate a rental negotiation. Typically, this would only apply to high value sites, however there may be occasional circumstances where the rental value could be negotiated below the schedule.

9.1 Negotiation of High Value Sites

Further to the above, we are to address the means by which the rental value of a high value site be negotiated.

Firstly, we do not believe a schedule of rents can accurately or adequately reflect the value of higher value sites and accordingly do not propose a separate fee schedule or value category. The relative value difference between different sites is too great.

Secondly, where the parties cannot agree on the rent, we would propose that the parties adopt the rent review procedure commonly used in rental disputes for most real estate assets. In effect, such a procedure includes a number of steps commencing with notification of a proposed rent by a lessor, a response by a lessee to agree or dispute the proposed rent; and if no agreement is reached, a date by which a determining valuer is appointed.

The appointed determining valuer must assess the rental value in accordance with a detailed criteria, the basis of which would be the Australian Property Institute's definition of market rental value.

In our opinion, this process provides the only reasonable means of resolving a rental dispute.

Of importance, the lease or licence clauses surrounding the procedure, timing and appointment of the determining valuer, if ultimately required, must be sufficiently sound to ensure the procedure proceeds as proposed and is not delayed.

We would also refer to the 2005 Report and its Negotiation Guidelines which recommended that the land management agencies should follow a consistent set of guidelines. In particular, they should; identify the strategic sites having regard to their relevant attributes, consider recent market rentals agreed for similar sites, consider the potential for co-use, consider relevant land valuations, and consider any additional requirements the land management agency is required to take into account.

We consider these guidelines to still be mostly relevant today.

10. CONCLUSIONS AND RECOMMENDATIONS

10.1 Introduction and Consultant's instructions

BEM Property Consultants have been specifically instructed to provide the following services as per the consultant's brief.

- Collect and analyse information on market rentals and land valuations from various sources including existing databases, other reviews, government agencies and the private sector.

- Provide advice on market rentals in the fee schedule, taking into account recent market rentals for similar sites, land valuations, legislative requirements and emerging and converging communications technologies.

- Provide advice on the fees paid by primary users, infrastructure providers and co-users relative to the benefits they derive from their occupancy.

- Provide advice on the definition of location and user categories in the fee schedule, including whether to add a new user category for National Broadband Network infrastructure.

- Provide recommendations on principles to guide rental rates for sites considered to be high value and/or strategic based on analysis of comparative market data, including defining what a high value strategic site is.

10.2 Conclusions and Recommendations

Based on our investigations and research, we consider the 2005 IPART recommended schedule, which has increased by CPI and summarised as follows, 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.

User 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 and other commercial	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)*

- BEM's investigation of market evidence has been extensive and has included investigation of government databases and sources and enquiry with the private sector. Availability of relevant negotiated market evidence has been restricted due to much of the government evidence reflecting the current IPART scale and because major telecommunication companies have not assisted with BEM's request for market evidence.

- Our market investigations confirm 'the Schedule' to be broadly reflective of market. Arguably, this is because the original schedule was reflective of market and possibly because the 'Schedule' is widely utilised as the basis for rental charges by other NSW Government Authorities, even between parties not bound to it, and has therefore become self-fulfilling.

  Notwithstanding the above comment, market rental rates for different users and uses, and in different localities vary enormously. Rentals for similar uses can vary significantly given different supply and demand characteristics. Simply put, occupiers with specific locational and site requirements and with limited choice will pay more than those where site options are broader. As such, there will be many instances where there is evidence of rents paid at both above and below 'the Schedule' rents.

Broadly speaking, telecommunications companies are negotiating hard to reduce increases and in some cases, reduce rentals.

We are aware of recently negotiated rents in metropolitan and rural areas, at lower rental levels than indicated in 'the Schedule', however, at the same time, research reveals telecommunication companies have also agreed to rent increases at lease renewal where these increases reflect the annual adjustment or are reasonably modest. Many of these rents are above 'the Schedule'.

It is clear that the knowledge and stance of a site owner plays a significant role in a rent negotiation. As a consequence, the range of rental evidence is extremely broad. In Metropolitan Sydney, we are aware of recent suburban tower sites, which allow sub leasing, at $15,000 p.a. whilst there is also evidence for standard single use sites at $30,000 p.a. and higher quality arterial road sites at $40,000 p.a.

- The role of primary users and co-users and the rents payable have become more established since the introduction of the IPART schedule and structure, although many co-users resent the payment of two (2) rentals. There appears to be considerable misunderstanding as to the basis for primary and co-user fees, particularly in relation to a primary user's fee being less than the rent otherwise payable under a 'head lease' arrangement.

  General knowledge of rentals charged by primary users and infrastructure providers is limited, given these companies do not typically disclose rental information. Available evidence indicates primary user charges to co-users for use of infrastructure are typically higher than the site charges by government to the same users. The basis of the argument relates to who is contributing most to a user, the infrastructure provider or site owner. In our opinion, the contribution varies depending upon the characteristics of the site. Ultimately however, the primary user is entitled to a reasonable return on its infrastructure and in many cases is saving the occupiers significant capital costs in not having to replicate the same infrastructure on another site.

Further to the above, and noted in this advice we consider the 50% fee discount to co users to be reasonable given it is provided as an incentive to co-location, and given it is to apply across NSW and across a wide variety of sites. 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 some dissatisfaction by users in relation to IPART user and density categories. This is understandable given it is arguably an impossible task to satisfactorily accommodate all users. Accordingly, the rental rates at the lower end of user value ranges need to be able to accommodate the large majority of users. Otherwise, the rental rates become unaffordable for many.

  More specifically, the question as to whether the existing nine separate categories currently making up the Schedule could be reduced in number was considered and our opinion the argument to either increase or decrease the number of categories is a philosophical one. Fewer categories could potentially streamline the fee charging process but could exacerbate the issues of certain users who believe their use does not match the category. However, even with more categories, we believe a rent schedule would still not accurately reflect the value of all sites and users.

  Notwithstanding the above, areas where government could potentially consider change include merging Government and Commercial radio into a single User group and merging Government and Commercial television into a single User group given these separate categories essentially reflect the same uses.

  In relation to user categories, there are some government funded groups who believe they should be in a cheaper category, e.g. low budget community groups. In addition, some groups e.g. Narrowcast Radio, low-powered broadcast band appear to be closer to community group status, however they are currently categorised as commercial radio use.

The National Broadband Network (NBN) has been considered and the question raised as to whether it should have its own category. Evidence in the marketplace, in Medium and Low Density locations, has confirmed rental rates to be consistent with or slightly above the current Government Business Unit fee scale. We note that it has been provisionally agreed between all the relevant Government agencies that the NBN Co. has been classified under 'the Schedule' as a Government Business Unit. The evidence available to us, all of which is not documented, suggests the NBN Co. has some flexibility in its site locations, possibly because it is still early in its rollout phase, and is able to secure sites at below the rates paid by the Telecommunications and Data Carrier rates. The market evidence to date is indicating that the NBN Co. could reasonably fit into the Government Business Unit Category.

In relation to the density categories, i.e. high, medium and low, there are inequalities given the broad nature of 'the Schedule'.

For example, sites located in remote parts of LGA's in the Medium Density category could arguably be in the Low Density category and conversely, sites close to townships just below the Medium Density threshold could arguably be redesignated as medium density. In our opinion, the Medium Density category should relate to the town population, not the LGA population and there should be a distance from this town whereby site category drops to low density. Ultimately, however, a fee schedule will generally create some inconsistencies and inequalities as indicated by the desire for reclassification of specific sites by both Lessors and Lessees.

Overall we consider the current Schedule categories and User groups to appear to be workable notwithstanding concerns in some areas. Our recommendation would be to leave the number of categories in the Schedule as is, however, ideally there should be some flexibility 'handcraft' some areas.

- Further to our detailed comment with this report, we consider that the rental value of strategic and high value sites cannot adequately be reflected within 'the Schedule' which IPART instructs to be prepared for low value sites.

In our opinion, given the large differences between higher value sites, these can only be assessed by negotiation and if negotiation fails to produce an agreement, then by the determination by an independent valuer. Our recommendation is that the government agencies commission and produces a substantial agreement to accommodate an efficient and binding market review procedure.

Disclaimer

This report has been prepared on specific instructions from The Independent Pricing and Regulatory Tribunal for the purpose of providing indicative rental estimates of Government owned communication sites within NSW. The report is not to be relied upon for any other purpose. We accept no liability to third parties nor do we contemplate that this report will be relied upon by third parties. We invite other parties who may come into possession of this report to seek our written consent to them relying on this report. We reserve the right to withhold consent or to review the contents of this report in the event that our consent is sought.

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