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BROADCAST AUSTRALIA

a bai communications company

Rental Arrangements for Communication Towers on Crown Land
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Submitted electronically

Dear Sir/Madam

Review of rental arrangements for communication towers on Crown land
Response to Issues Paper

Please find attached a submission from Broadcast Australia in response to the *Review of rental arrangements for communications towers on Crown land– Issues Paper, February 2019*.

Thank you for the opportunity to provide comments on this paper. Should you have any questions relating to our submission, please don't hesitate to contact Gary Chao on [REDACTED] or email gary.chao@broadcastaustralia.com.au

Yours sincerely



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Broadcast Australia's submission to IPART
Review of rental arrangements for communication towers on Crown land
Issues Paper
February 2019

Broadcast Australia (BA) welcomes the opportunity to respond to the Independent Pricing and Regulatory Tribunal (IPART) *Review of rental arrangements for communications towers on Crown land – Issues Paper, February 2019* (the Issues Paper).

BA owns and operates the most extensive terrestrial broadcast transmission network in Australia and acts as a “neutral host” for a range of customers across a range of technologies. BA provides managed transmission services for radio and television (analogue and digital) broadcasters and offers site sharing, co-hosting and infrastructure services to the telecommunications, emergency services and broadcasting industries.

BA's network covers over 620 transmission sites located across Australia, providing opportunities for sharing in metropolitan, regional and remote locations. BA has an existence on over 150 sites in New South Wales (NSW). BA is the facility provider of 25 sites situated on Crown land. BA's relationships with the relevant land management agencies (LMAs) are as follows:

- 16 sites with the Department of Industry - Division of Lands and Water;
- 5 sites with the NSW National Parks and Wildlife Service of the Office of Environment and Heritage; and
- 4 sites with Forestry Corporation of NSW.

In 2013 IPART released its final report titled *Review of Rental Arrangements for Communication Towers on Crown Land July 2013*. BA disagrees with IPART on key features of the scheme, namely the concept of high value sites and the related issue of “strategic value” and the imposition of co-user fees. BA remains of the view that the only appropriate methodology for determining rentals is applying an agreed method to the land's unimproved value. This position is consistent with the requirements of the previous *Crown Lands Act 1989* (NSW) (the Crown Lands Act), in particular section 143(1)(d) and which continues unchanged in section 6.5 (2)(b) of the *Crown Lands Management Act 2016* (NSW) (the Crown Lands Management Act).

Notwithstanding the foregoing, BA acknowledges that the scheme instigated in previous IPART reviews has now been applied to determine rentals applying to many agreements relating to the use of Crown land.

IPART's proposal within the Issues Paper gives BA concerns that the current review process could lead to the possibility of higher rentals through changes to location and/or user classification categories.

BA makes the following submissions with respect to the matters and references that are included in IPART's Issues Paper. BA trusts that IPART will give these appraisals very serious consideration and consider various impacts and potential risks affecting not only BA, but also the wider communication site users and essential service providers. It is important to note that historically parties had not been able to agree on a mutual format/formula to set realistic reference points to determine the communication site rentals. Moving forward we hope that all parties can work together on a mutually agreeable rental structure which will be adopted in the final version of the report.

General comments on the use of the 2013 BEM report

BA is concerned with the continued references in the Issues Paper to, and continued reliance on, the previous reports by BEM Property Consultants (BEM). BA has noted their deficiencies in prior reviews.

BA is dissatisfied that nowhere in BEM's reports were their views supported by comparative market data. Stakeholders have been advised that the evidence that BEM put forward to IPART cannot be provided due to confidentiality reasons (even though it has been provided to IPART). BA disputes this as there is a significant proportion of tenure agreements in place in NSW that are documented by way of a lease. Such leases are registered on title and are not confidential and are available to any member of the general public through searches.

At a minimum, BEM, or any other selected consultant, should provide comparable market data that is not confidential. Without this market evidence, stakeholders are unable to draw conclusions on the relevance or comparability of the assessments that have been proposed.

With the provision of market-based evidence, the consultant report will be more plausible and verifiable. IPART should request that the selected consultant provides the report including market rental evidence. All information should be provided on a non-confidential basis so that the industry can form its own views on the accuracy of the conclusions reached by the consultant.

With respect to co-user fees and high value sites the previous BEM report reached conclusions that were disputed by many industry contributors. BA is interested to know how many leases and licences are intended to be reviewed by the consultant and how many of these will include co-user fee arrangements (other than those subject to IPART).

Additionally, BA would prefer the IPART's expert consultant to be rotated and selected on a joint basis with the industry. The property industry body, namely the Australian Property

Institute (API), has a panel for specialist telecommunication property valuers with expertise in this area which IPART could consider in its selection process. BA encourages IPART to work with API on this matter to enable a transparent and impartial assessment process.

BA owns and operates infrastructure facilities and has other users sharing the infrastructure. Whilst there is a sharing fee payable by other users, the resulting revenue is used to pay for the security, upkeep and maintenance of the infrastructure amongst other costs. LMAs do not contribute in any way to these ongoing site costs that support the infrastructure or its ongoing use.

Moving forward BA's preference would be to enter a lease with LMAs as this form of tenure provides exclusive possession and certainty for the users who have made significant investments on Crown land.

IPART findings with respect to the Principles for the Review

On more general matters underlying IPART's consideration of this Review, BA notes that IPART has noted the relevance of clause 44, Schedule 3 of the *Telecommunications Act 1997* (Cth) which prohibits discrimination against carriers.

IPART should be aware that by reason of section 20 of the *National Transmission Network Sale Act 1998* (Cth), BA (there referred to as NTC) is given the protection of clause 44(1) (and other parts of Schedule 3) as if it was a carrier as defined under the *Telecommunications Act 1997*.

IPART has asked for Stakeholders to comment accordingly on the Proposed approach:

ISSUES ON WHICH IPART SEEK COMMENT

The questions on which IPART seek stakeholder comment are set out in the chapters that follow. Stakeholders may address all or some of these issues and are also free to raise and discuss any other issues relevant to the terms of reference. For convenience, these questions are also listed below:

PROPOSED APPROACH

1. Do you agree with IPART'S proposed approach for this review? Are there any alternative approaches that would better meet the terms of reference, or any other issues we should consider?

With respect to the question of IPARTs proposed approach for the review, there are numerous issues that need to be considered and addressed. This would include considering and exploring different approaches which might better meet the terms of the current situation rather than incremental variations on the previous schemes.

We are aware in the last 25 years of what has transpired in the telecommunications industry, where it has experienced dramatic changes. Not only within the market, but also in how consumers use and regard the supply of these services, the technology deployed, and the way in which suppliers charge for these essential services.

In the early years, the industry saw multiple operators enter the marketplace with a focus on building a dependable network, concentrating on speed to market over cost considerations to build the network which resulted in initial high rentals with escalations of 5% p.a., leading to highly inflated and unsustainable costs. IPART must appreciate that during this period the negotiations centred around an overly willing lessee and an unwilling lessor.

This is highlighted by the following example, where a tower lease was entered into in 1994 for \$15,000 pa, and the fee escalated by 5%, the rental figure currently being paid on this site is now \$48,376.60 - a 200% increase of rent from the original starting point.

This early period led to an inflated rental market where there was a focus on building sites that would establish a network, which at that time did not exist. As providers established their networks and, with the introduction of fibre and other technologies, any particular single site has become less important and allowed site users to adopt a more holistic method to their networks and re-evaluate how sites are rated.

From an infrastructure provider or site user's point of view, the current rent categories provided by IPART are unrealistic and do not relate to any definition that would be used by these parties.

The issues paper categorises a site as, either High Value or standard, with four separate location categories – Sydney, High, Medium and Low.

The details of each category being -

- Sydney, which comprises local council areas in metropolitan Sydney with a population mass greater than 17-18,500 people per square kilometre
- High, which includes local council areas in metropolitan Sydney with a population density of less than or equal to 1,800 people per square kilometre, and the greater metropolitan areas of the Central Coast, Newcastle and Wollongong
- Medium, which includes areas within 12.5 kilometres of the centre of the 37 Urban Centres and Localities (UCLs) defined by the Australian Bureau of Statistics (ABS) findings having a population of 10,000 or more based on the 2011 census
- Low, which includes all other areas of NSW.

Infrastructure providers and site users have never categorised sites using this technique and while there are many elements that influence the value of a site, population has never been a key factor. This is particularly so in the broadcast sector where coverage is over a very wide area and the population within the transmission area has no impact on the investment.

Simply put, the same infrastructure and investment is required to broadcast television over, say, a 1,000 square kilometre area whether there are 100,000 or 2 million residents in that area as the technology is receive only. This is not at all like mobile communications where the more users in a given area, the more infrastructure is required and the more potential revenue earned with greater population density.

There are numerous factors that BA looks at to determine the worth of the broadcast site, such as, will the rental cost and location accommodate the users or service providers' requirements?

Deliberation is given to deployment costs, RF appropriateness, technical standards and transmission planning determined by the regulator, network connectivity and continuation of OPEX requirements and site sustainability.

To rate a site in the manner IPART has suggested is not realistic or relevant to BA as a user and needs to be reviewed in much further detail.

The delivery of a communications network is now as important as the supply of water, electricity and gas. As such, the CAPEX costs to, deploy, maintain and upgrade sites, along with the service provided, particularly in emergency situations, needs to be considered.

While normal commercial and retail leases are for shorter terms and include market reviews, BA and the site users seek to be in occupation of a site for as long as possible, the normal practice is for a term of 20 years. BA normally seeks a longer period if legislation permits. Broadcast technologies have long life spans and are rarely shut down, even when new technologies emerge. For example, AM radio has been in operation for nearly a century largely on its original sites, television for 70 years (while the technology changed, the transmission sites, their locations and their core tower infrastructure did not).

This tenure period is essential to BA as it allows for the recovery of the capex cost spent acquiring the site, and also for forward budgetary projections. This is also the preference for the users or services providers as it is critical for them to have secure tenure and structure of rental expectations in order for these parties to remain on site and meet their network objective to provide ongoing services to their end users, whether it is their customers or the wider community who depend on the communication services.

In reference to discrimination, the disproportionate rents negotiated for sites, not only between BA, site users and essential services providers, but also related to other 3rd party users/fees and the commercial property market, has been an issue for some time. The disparate rents negotiated across the market seems to be the result of historical negotiations which were based on unclear property principles used by landlords to increase rents.

There are many examples on Crown land sites which are well above the general market place and equivalent privately owned sites. An equitable system, such as the Queensland Crown land rates, needs to be introduced.

There have been historical questions raised when negotiating sites with the various Government and Local Government Authorities, in that there seems to be no standard procedure or documentation. This has, in numerous cases, led to a site by site negotiation process, which in some settings has seen further discrimination between types of users. These problems have a flow on effect to the Infrastructure providers and to the users, in that the additional costs associated with any delay to the deployment of a site has resulted in terms and conditions being accepted unwillingly.

Recently negotiated site rents need to be investigated to ensure that the current state of the market is measured. After reviewing several valuations, it seems that a view is taken to provide valuations at the higher value end of the scale, thus taking benefit of the misperception and historical issues discussed above, leading to higher valuations being presented and higher rents being reluctantly agreed by BA.

The proposed terms implied by IPART are discriminatory to Infrastructure providers, such as BA, and by implication to its users, and will also impact heavily on other facility users i.e. Airservices Australia, Fire and Rescue, NSW Government Telecommunications Authority, NSW Police and Local Communities.

The proposed changes do not consider the rapid decline in the commercial market for broadcast sites that have occurred in the last 10 years, more so in particular the last 5 years.

BA is an Infrastructure provider, who enter into agreements with the LMA for an area to lease. There is no guarantee for BA that, after committing the significant investment including deployment, and construction of access tracks that users or essential services will commit to occupancy on their site. As a result, an element of commercial uncertainty is created regarding the cost of hosting other users on BA's developed site.

Our view is that if BA takes out a lease with LMA for an area they own, the lease area should cover all existing and potential users on site. By levying a co-user fee, it allows the LMA to double dip on rents for an area in which they are already receiving an income.

If LMAs believe that they are entitled to co-user fees they logically ought to be accountable for contributing to the maintenance of the site and the facility. The co-user utilises the site, not because of its intrinsic land value but because of the built infrastructure created by the site user. The capital expenditure on building, maintaining and operating the infrastructure is borne by BA or like businesses but co-user fees simply capture a share of the revenue derived from that investment while adding nothing to the site.

As discussed earlier, BA remains of the view that the only appropriate methodology for determining rentals is applying an agreed method to the land's unimproved value.

Realistic fees are reflected in rentals that have been agreed in the last 2 - 3 years, for comparable sites and locations.

ESTIMATE THE RANGE FOR EFFICIENT RENTAL

2. Do you agree with our proposed definition of efficient rents for communication towers sites on Crown land as the range bounded by a user's willingness to pay and the opportunity cost to the land agency?

BA does not agree. The approach is inconsistent with numerous unsupported assumptions being taken into account.

Regarding the three mechanisms –

1. Defining efficient rents for communication tower sites on Crown land
2. Estimating users' willingness to pay for using these sites; and
3. Estimating land agencies' opportunity cost in making these sites available.

It is hard to determine if the lower end of the scale has any realistic meaning. For most Crown lands sites used by BA, for example in hilltops, in forests or national parks, the undeveloped land has only one alternate use, which is simply to remain undeveloped land. If the land is not used, the LMA has no meaningful costs associated with holding it and no alternate means of earning revenue from it.

This leaves BA in an unrealistic position to try to use the financial value derived from the infrastructure, independent from a site's inherent value in order to determine its market value. As previously mentioned there are many varying factors that control the value of a site to the provider/users.

These are defined as –

- The willingness to pay. The maximum a user would be prepared to pay to use the site for communication tower purposes, or the economic value it could derive from this use.
- The opportunity cost. This is the minimum a land management agency would be prepared to accept for allowing the site to be used for communication tower purposes, or the economic value it could derive from the site's next best alternative use.

It seems that the minimum rent a LMA is prepared to accept is much higher than the value derived from the sites next best land use, which in most environments would be minimal on remote undeveloped land.

The assessment of the user's readiness to pay for a site is also fraught with difficulty. In reality, a user's willingness is determined by several factors and would be hard to define and varies between types of potential users. The requirements of mobile operators are not the same as broadcasters or emergency service providers due to their technical requirements, the nature of their customer or user base, the audience they address, amongst other factors.

The willingness to pay may not simply be driven by the commercial imperatives of the site user and matters such as competitive alternative sites or landlords. The user may be constrained by regulation that distorts their ability to make commercial decisions. Once established, technical regulation controlling broadcast transmission may make moving a site unlawful or unfeasible. For example, co-ordination of AM radio sites makes moving location almost impossible. Having been established in the 1950s, television transmission sites cannot now be moved without requiring almost every viewer to re-point their antenna - practically and politically impossible.

The paper notes that when defining efficient rents for communication tower sites, that in competitive markets any market price is efficient at the point where both the buyer and seller are better off than if they did not make the transaction.

However, it is hard to establish the "competitive market" for a telecommunication or a broadcast site, where the market is in fact created by the users. In most cases there would be no competition for a rural or conservation land use which could drive up the rental level.

For example, BA is currently aware of a greenfield site on the Central Coast that was established within very close proximity to a Crown lands telco lease area. The new site is owned by a private landlord who accepted a level of rent well below that levied by Crown lands. This has driven at least one of the Crown land occupants to relocate with potentially the whole compound to follow. This exemplifies the above-market rents that have developed under the IPART formula.

With regards to the opportunity cost, it would be considered by most users that the opportunity is created by the infrastructure provider. Is this being considered as part of the opportunity? These opportunity costs need to be defined so that consideration is given to the Infrastructure providers' creation of the communication site market.

BA submits that the economic value derived by primary users from using the site for transmission purposes, and the rent that primary users and infrastructure providers recover from co-users comes from the capital investment in the site and it would be fair to suggest that LMAs seem to be taking advantage of the opportunity and the improvements provided by the Infrastructure providers and users. The determination of the appropriate site rents

must disregard any economic value and/or goodwill generated from the infrastructure providers investment on the land.

The proposal to determine a new "efficient rent" based on site user willingness (based on their particular circumstances) may be discriminatory in BA's view. It can be argued that the existence of separate rental arrangements for different users on Crown land is discriminatory and may be in breach of clause 44 of Schedule 3 of the *Telecommunications Act 1997* if it binds carriers and BA.

A guideline of rental proposition that could be adopted is as follows;

1. The site rental should be determined based on 6% of the unimproved land value, i.e. if the land was valued at \$125,000 then 6% of this is \$7,816 which would be the annual rental. The [Telstra Corporation Ltd v State of Queensland](#) court case was based upon discrimination of rental levels in regard to communication users and carriers, whereby, the judgement saw a significant reduction in rents based on the above methodology. Comparable sites on Queensland Crown land are now well below rental levels in NSW.
2. Alternatively, if the geographic categorisation is maintained, the BA recommended annual fee schedule would be:
 - Sydney \$20,000-\$25,000
 - Metro \$15,000-\$20,000
 - Regional \$7,000-\$10,000
 - Rural/Remote \$3,000 - \$6,000.

BA does agree with IPART's recommendation of yearly rental escalations being based on CPI calculations as per the State. In addition, BA would consider a market review every 5 years, with no ratchet clause, so that it captures relevant market movements.

BA is no different to any other infrastructure provider, for example NSW Police, who hold the lease with the State of NSW, and provide various users with space on their towers to install their equipment. There is only one fee, which goes to NSW Police - the users do not pay an additional fee to the State of NSW. Alternatively, as mentioned before, where there is not sufficient space within the infrastructure's compound (i.e. NSW Police) then the lessee will enter into a separate agreement for the shelter, for example with the Minister for Lands.

IPART's references to Ricardian Rents (resource rents) is not relevant to this submission.

The supply and demand for valuable sites is not restricted and has never existed in the industry. The term has never been utilised within the communications industry other than IPART. In BA's view, other factors that have been considered by the draft IPART report

referencing high value sites such as elevation, line of sight, and ease of access are no longer special qualities for the telecommunications industry. The most important factor is the economic sustainability.

As noted above, once the infrastructure is established, the site's value may be derived from the existence of the infrastructure and regulatory constraints preventing it from being moved, rather than from some perceived inherent characteristic of the land itself.

IPART's reference to compare windfarms with towers is inappropriate and not an apt comparison. A windfarm could be established across a region while telecommunications, particularly broadcast sites were established only once (and were set in the past by technical planning considerations that do not permit duplication). Mobile and communications coverage is an essential infrastructure service, whereby, the majority of sites would dictate no other alternative use.

The broadcaster site expansion example in Box 4.1 is flawed. Coverage was determined by regulation rather than by the broadcasters, and populations below a determined size are serviced by satellite.

Practically there are no areas of non-reception to be exploited and technical regulation means that expansion of terrestrial broadcast services to smaller communities will never occur.

In the case of national broadcasters, extension of coverage (had it been funded by government) represents no increase in revenue. In the case of commercial broadcasters, it is highly unlikely that expansion to some theoretical unserved community (almost of necessity given existing coverage of small populations) would generate any revenue to justify that expansion. In reality, commercial broadcasters have sought to limit, not expand transmission sites.

3. What information should we consider estimating user's willingness to pay (for example market-based commercial rents paid to private land owners)?

There are several factors that need to be considered to determine the user's willingness to pay for a telecommunications site. There needs to be the implementation of some recognised property and land valuation principles adopted to assess the market. Presently there seems to be a "get what you can" attitude adopted throughout the industry with no real principles in place. The value of determining a procedure where telecommunications sites can be properly market assessed cannot be underestimated and would minimise much of the speculation that surrounds negotiations.

In the first instance of establishing a site, essentially, we are talking about a property transaction. In establishing a communication site, considerations should be given to the unimproved land value of the site as well as the highest and best use for the property.

While the consideration of the unimproved value of the land does change once a site is deployed, the Infrastructure providers should not be disadvantaged by the perceived revenue opportunity that they have brought to the landlord. Again, the unimproved value of the land should be the main consideration.

Consideration also needs to be given to the “unwillingness” to pay and the impact of a termination of tenure issued by the landlord, resulting in the closure of the service to the local area.

The paper also suggests access being a consideration for a user’s readiness to pay. With many sites, the Infrastructure providers have been responsible for establishing access to the LMA. There may be cases where there was limited access, by way of fire trails or tracks. Usually, it was the Infrastructure providers that established the access or upgraded the access to allow for the construction and on-going maintenance of the site.

It is also common that the Infrastructure providers pay a maintenance fee for the access paths and/or undertake maintenance at their own expense and that the establishment or upgrading of access, has in fact assisted with emergency service access that may have been limited prior to the Infrastructure providers occupation. Again, the proposition is that the Infrastructure providers are to be financially disadvantaged by their provision of reliable access to a site. It would also be relevant to gauge the importance of these tracks to the Crown and other departments and to determine if there is any extra income that these access tracks provide for the Crown, or where there are savings in costs to the LMA as a result of the site user carrying the maintenance burden. If there is a situation where there is additional income, cost reduction or opportunity to the Crown due to the Infrastructure providers access track, should this not be considered in any fee charged to the Infrastructure providers?

While there does need to be some consideration given to comparable rents, there needs to be care taken in what and how these sites are considered comparable. In several instances, it seems that there is no consistency in what is presented as comparable sites. The method of valuing a site should compare like with like, however, when it comes to telecommunications sites it seems that any comparable that may suit the valuation is used, which, in some cases, has seen some asking rents double as a result. Can the Infrastructure providers willingness to pay, be double what they are presently paying? As such, a more even approach to the comparable rents presented as part of any valuation needs to be justified.

There also needs to be an investigation of site rents established over the last 2 – 3 years as the Infrastructure providers have rolled out new sites. By understanding these recent negotiations, it will allow for market changes that we have previously discussed. A site established 18 years ago, at a time when the Infrastructure providers were concerned with speed to market to enable users and essential services to come onto their sites, with an

escalation rate that allows the rent to double every 10 years, should not be a comparable site used in a valuation of today's market.

Nationally the comparable market rentals with private owners have decreased by an average of 25 to 35% in the last 5 years. Evidence of rents will be made available to support this statement upon request.

4. Do market-based rents typically cover all services related to access, use and operation of the land or are there any additional fees charged to users (such as fees for maintenance of access roads)?

Generally yes, it is all inclusive in the agreed rental. There may be some instances where the Infrastructure provider or user, will agree on a site by site basis to contribute for the access, use and operation of the land.

It should be noted that there are many examples of where market based rents cover all facilities relating to access, use and operation of the land, however, there are circumstances where there are additional fees paid by the infrastructure providers for the maintenance of the access routes or an undertaking that if maintenance is required that the infrastructure providers then will contribute their share. This is more prevalent when the site is located away from a standard access route and has been created especially for the users use.

It must also be noted that in most cases it is Government Departments that charge fees for maintenance tracks, which the users are forced to accept as part of any agreement and there is no visibility of how many users are contributing to the access track and what the strategic maintenance programme would be. This needs to be established to acknowledge that any fees paid are used appropriately and at the site in question.

If it is the case that public funding is granted to the departments for maintenance of these tracks, then any maintenance charge is unjustified and the market-based rent should cover all services including access.

Another impost is that Councils are now charging the Infrastructure providers (and/or the users) a separate Council Rate (in addition to what the lessor is paying). The Infrastructure provider and the users will agree to pay these rate notices if the site is separately levied on the property.

5. What characteristics of a communication tower sites are users more willing to pay for? Are these different for users that provided services in different markets?

BA on several occasions has been compelled to accept high market rents as the sitting tenant due to the impracticalities of relocating. It is suggested that BA would be willing to accept a fair and practical rental, that is sustainable over the anticipated whole of life of the tenure (and not simply the immediate term).

BA has adopted rental strategies which have been established for some time and are used to negotiate new site rents in line with what BA believes is fair market value as a market reference and negotiation point.

Telecommunications sites are unlike traditional property markets and are constrained by strict regulations and include compliance with the various Acts that govern the deployment of sites. These limitations need to be well-thought-out and BA should not be disadvantaged by a property valuation that does not take these constraints into account.

It also needs to be recognised that formulation of a market rent depends, at least to an extent on the ability to sustain that rent over the long term that will dictate a willingness to pay. Genuine market rents exist in markets that have well-understood valuation and market appraisal criteria that dictate a commercial rate in an area which allows the parties a clear and straight forward negotiation with common perceptions of value.

If BA were to consider the property market in general, it is unusual that in the LMA environment BA is not provided with the same savings and incentives that other major leaseholders are afforded in broader commercial property markets.

The constant in commercial property markets is that the negotiation centres around the property value of a site. This is a property transaction and property valuation principles should be adopted as they relate to the unimproved land value of a site.

All sites are regarded the same and form part of the user's network, or essential services requirements. The typical commercial property markets do not separate sites into categories, only IPART and the agencies propose this model.

At the end of the day whether it be an infrastructure owner, primary user or essential service provider; they are seeking to provide communication services to the general public. The interdependent relationships amongst the infrastructure providers, the site users and the customers are vital to ensure the organisations such as the ABC and Ambulance NSW are able to continue to deliver essential services to the local communities.

Without these critical communication services it would put the public at a great risk.

6. How should we estimate the land agency's opportunity cost? Does this vary for sites in different locations?

In respect to how BA estimates the land agency's opportunity costs, it would be relevant to determine the alternate opportunity that the land agency believes exist.

This has been a significant issue in that there seems to be very minimal if any commercial value attached to this land in its undeveloped state (given it is generally unoccupied, often in regional or remote areas and limited for development as it is a forest or national park). However, it has been the case that the land agency has opportunistically taken advantage of BA's requirements and see this as the opportunity to secure elevated rents despite no other feasible commercial opportunities for the site.

The investment made by BA for the installation, in most cases, then allows other users to utilise the infrastructure subject to a separate and direct agreement with the land agency that provides the LMA additional income. This income would not be possible if not for the opportunity provided by BA in the first instance. The BA investment often provides essential services and community users a means of accessing infrastructure that they could not develop in their own right with minimal cost to the community.

7. What do you consider to be a "fair" sharing of any differences between a user's willingness to pay and the opportunity cost of a site?

The concept of a "fair" sharing of any differences between a user's willingness to pay and the LMA's opportunity costs, seems to rely on the premise that the users must share the benefits of the investment they make despite bearing the whole cost and risk of the capital expenditure as well as committing to ongoing maintenance and operating costs without any guarantee of revenues over the asset life.

Any property valuation would determine the highest and best use for the land and include an investigation of its best commercial use and any opportunity costs. It would be assumed that the current use of the land by the users is the only viable commercial and legal opportunity for the land.

In any property-based negotiation there are informal "guidelines" that are provided in the form of appraisals and valuations that provide a guide for the parties that aids the negotiation process. A fair price is established when a willing purchaser negotiates an agreed price with a willing seller. However, guidelines and ranges, set by using property principles determine a range.

Another option would be to adopt the auction or tender process as a price setter. This can be seen by the industry, in the absence of being able to determine true market value with certainty as the most accurate way to determine a property's value at any one time.

Taking into consideration the opportunity costs that have been suggested, an auction or tender process would determine the users', whoever they may be, willingness to pay and provide a real indication of the true commercial value of the site. Such a process would account for any competition that may be attracted by the commercial opportunities and viability of the site while determining the true opportunity costs in an open market.

Other than following an auction process the only fair way that these differences can be resolved would be for an understanding of the principles that have been adopted by the users and to understand the market in which they operate.

There should be recognition that the negotiation of a telecommunication site should be like any other property transaction. The process where a range is set by a professional, who considers the advice of industry experts and adopts various property principles, to set a range, required by law, to provide a guide to the purchaser so they can make their decision on their willingness to pay.

DECIDE ON AND APPLY A RENT SETTING METHODOLOGY

8. Does the current market evidence support continuing the existing schedule of rental fees by location, would there be benefits to increasing or decreasing the number of location categories?

No, private rents have been diminishing for some time now and hence the fee categories need to be reviewed and reduced to reflect the current market.

The methodology used for the 2013 review is flawed and discriminates against Infrastructure providers, carriers, radio and TV broadcast users.

The proposal of low, medium, high and Sydney method does not work as the site could be in the middle of a remote forest yet attract a Sydney location (for example if dealing with NPWS) and the NPWS interpretation of the IPART criteria chooses to treat all sites as high value based on criteria unrelated to telecommunications uses.

9. Are the current location categories reflective of recent data on population density?

BA would submit that population density, to the extent it is even appropriate as a criteria is largely drawing an arbitrary division at given points. This is particularly so in the broadcast sector. As noted above, the size and investment made in broadcast infrastructure is a function of the size of the area served, not the population in that space. A large high-powered site can equally serve all of Sydney, or a large section of western NSW with the same capital investment and power requirements.

10. What is the appropriate rent discount for co-users?

BA does not agree with a 50% discount for co-users, not because it is the wrong percentage but as BA believes that there should be no co-user fee, as LMAs are already receiving a rental fee for an area that is leased to an individual tenant. By imposing a co-user fee the site becomes quite expensive for the users or essential service providers, as they will not only have to pay BA rent for the tower, but additionally pay the LMA 50% co-user fee for no additional benefit. In addition, should the users and essential service providers not be able to install their equipment shelter in the BA compound due to space constraints then they would have to enter into an additional agreement for the shelter with either the LMA or individual landowner, which can be anywhere between \$5,000-\$10,000. Even more alarming is that they then may have to enter into additional access agreements. This could potentially put the cost of a site up to around \$30-\$40k. The users are paying \$20-\$25k for rooftop sites in the Sydney metro area. It is not justifiable to have a site with LMA in a State Forest and pay this type of rental. LMA should not impose a co-user charge for rental for equipment that is on BA's infrastructure.

11. Should infrastructure providers receive a discount relative to primary users?

BA does not agree with the complexities provided in the IPART system, rather, it is our view the rent should be determined based on a certain percentage of the unimproved land value. This particular rent valuation methodology is consistent with the recent legal precedent and has been adopted by one of the LMAs in Queensland.

Furthermore, it is our view that the current 30% discount set for the infrastructure provider is low given the co-users implications at these sites. The proposition in the 2013 review to phase out the infrastructure provider discount acts as a disincentive to develop infrastructure. We suggest IPART should consider granting the infrastructure providers the same discount level as the co-users.

12. Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public”?

BA has no objections to rebates to community groups. BA takes this opportunity to acknowledge that many sites in rural and remote locations are operated more for community benefit than profit.

13. Should the current rental arrangements based on site-by-site negotiation for high-value sites be continued?

The rental negotiations for high value sites have not been instigated by LMAs over the last 5 years. It would be BA’s view that LMAs do not appear to have the understanding or the experience to deal with this concept. How would one of the LMAs determine if a site is high value to start with, or justify the approach of NPWS who have determined that every site is a high value site to maximise the income received.

If the concept of high value sites is intuitive and a relevant consideration in determining market rents, it is reasonable to expect that evidence of premiums for strategic sites would be readily available and examples easily provided. The concept would also be reflected in all circumstances where the inherent characteristics are present, no more so in metropolitan areas than elsewhere. The fact that evidence is less conclusive in non-metropolitan areas seriously weakens the concept from a logical and practical point of view.

IPART has in the past failed to demonstrate that higher rentals are paid for sites with the characteristics it has identified for high value sites. As such, a standard schedule of fees should apply to all sites.

14. Would a valuation formula based on observable site characteristics be a viable alternative for setting rents for high-valued sites” if so what site characteristics would need to be included in the formula to determine the rents’

High value sites do not exist and the concept is not recognised within the industry. The model adopted by IPART is based on arbitrary criteria not regarded as relevant in the wider property market place. BA considers the rental valuation precedent from the Telstra v State of Queensland case to be the benchmark. This particular case highlighted the way which site rent should be determined, ie. 6% of the unimproved land value as assessed by the Valuer General .

The suggestion by IPART to identify the characteristics of high value sites without reference to existing users is an improvement to the concept, however to be persuasive as a valuation concept, the contribution that these characteristics have on the rentals paid for radiocommunications sites must be reflected generally in the market.

TRANSITIONING IMPACTS OF USERS AND ADJUSTING RENTS OVER TIME

15. Do you agree with our proposed approaches for assessing the impact of our recommendations on users?

No, BA does not agree with IPART's approach as it implies IPART have already decided to set the bench mark for rentals. It would be best practice for IPART to review and consider all submissions by the Infrastructure providers, users and essential service providers and not approach the matter with an approach or mindset before receiving submissions.

BA would estimate that the combined portfolio of Department of Industry, the Forestry Corporation and NPWS would be around 550-700 sites. By comparison the infrastructure providers, users and essential service providers who would have a combined portfolio of around 25,000-28,000 lease, licence, access deeds and permits nationwide. It would not be unreasonable to suggest that the users have a broader and more realistic understanding of the current market than the LMAs. IPART should consider this knowledge and available information would greatly assist in determining appropriate rentals that apply in the existing market.

16. Is the current approach of adjusting rentals annually by the CPI appropriate?

Yes, BA agrees with the CPI review yearly, however, with a percentage cap as well.

17. Should the fee schedule continue to be independently reviewed every five years?

Yes, BA agrees that there should be an independent review every five years, however, the comparative rental evidence utilised by IPART or IPART's property consultant must be transparent. We further suggest that IPART's property consultant should have extensive experience in the area of telecommunications site valuations.