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11/06/2013

Dr Peter J Boxall AO  
Chairman  
Independent Pricing & Regulatory Tribunal  
PO Box Q290  
QVB Post Office NSW 1230

**RE: DRAFT REPORT – REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION  
TOWERS ON CROWN LAND – FORESTRY CORPORATION RESPONSE**

Dear Sir,

Thank you for your invitation to present written comments in respect to the above Report.

Forestry Corporation of NSW wishes to present the attached Response to the draft IPART Report for the Tribunal's consideration.

Yours faithfully

  
**Ross Dickson**  
Acting Chief Executive Officer  
Forestry Corporation of NSW

# **Forestry Corporation of NSW Response to draft IPART Report**

**Review of Rental Arrangements for Communication  
Towers on Crown Land**

**Dated: 11<sup>th</sup> June 2013**

## 1. Executive Summary

Forestry Corporation of NSW ('Corporation') wishes to present this Report providing its comments in respect to IPART's Draft Report (April 2013) for the Review of rental arrangements for communication towers on Crown land. The Corporation issues this report independently of the other Land Management Agencies (Office of Environment & Heritage and Catchment & Lands-DPI) however a majority of the comments made in respect to the IPART recommendations align with the views of the other Land Management Agencies.

The IPART Draft Report and the BEM Consultancy Advice supports a two-tiered rental fee structure for high – value and standard sites. It is considered feasible that this two-tiered structure could be defined within the fee schedule as an alternative to direct negotiation. The Corporation supports the view of the Land Management Agencies that a 'floor' price for high value sites be introduced as a means to reduce the need to always rely on the direct negotiation process. Such a measure is expected to lead to a more 'common sense' position between the Agencies and the users and reduce complexity, uncertainty and costs for the industry.

IPART's recommendation of replacing the existing fees for the 9 user classifications with one standard fee is a major shift in approach and is not supported by the market evidence presented within the BEM Consultancy Advice. It is uncertain as to the justifications taken by IPART in introducing this measure. It poses a risk of misrepresenting the rents for Telecommunication Facilities for different purposes by determining that all rents reflect 'highest and best use'.

IPART's recommendation that rental rebates should be applied by the Agencies to the 'new standard fee' for Community Groups, the Budget Funded Government Sector and Local Service Providers (in low density locations) will increase transaction costs for both the agencies and the users. The extensive use of rental rebates may not be as transparent as the previous IPART fee schedule and may increase discretionary decision-making and inconsistency.

As well, IPART's recommendations relating to the phasing-in of rent increases and decreases over 5 years is not supported as this arrangement appears to be both inequitable and generous to the existing users. A more judicious use of phase-in arrangements has been proposed.

The financial impacts of IPART's recommendations have been analysed to indicate a potential reduction in rental revenue to the Corporation in the sum of approximately \$250,000 per annum.

IPART's recommendation relating to joint ventures requires modification so that the rents charged reflect the occupancy benefits derived by all users.

The following section addresses each of the 24 recommendations and provides some commentary and /or recommendations for amendment, as appropriate.

Under Section 3, the Corporation comments in respect to the list of high value sites.

## 2. Response to IPART's Recommendations

1. *"The land management agencies should publish a list of existing sites that they consider are high value sites and would be subject to a negotiation process at the next rent review date. The land management agencies should review and update the list of high value sites every 5 years."*

**Response to Recommendation 1** - The concept of a published list is supported however, the list should be able to be amended at intervals of not more than 2 years or whenever additional standard sites or new Greenfield sites are determined to be high value sites based on the criteria set out in recommendation 2.

The appropriate fees for the high value sites should be established by reference to a floor price. The floor price would act as a base level above which the Land Management Agencies could use discretion to either seek to negotiate a higher fee or leave as is. Such discretion would be based on available market evidence and the ability for the land management Agency to justify the cost/benefit outcome.

The suggested floor price should be based on the prescribed rental rate applicable to the density location immediately higher. In this way, the floor price for sites which are in a low density location would be the medium density rental while for those that are in a medium density location, the high density rate would apply. For each high density site, a 50% premium over the standard high density site rate should represent the floor price.

2. *Factors considered in determining if a site is high value include: elevation, ease of transport access, good line of sight, proximity to major highways, and availability of alternative sites."*<sup>1</sup>

**Response to Recommendation 2** – The recommendation is supported subject to the following amendments:

- i. Add - *more than 6 users.*  
More than 6 users demonstrates that the site is in demand and possesses features likely to be considered 'strategic'
  - ii. Add - *minimum of 1 telecommunications carrier or broadcaster.*  
If there are no telecommunications carriers or broadcasters at the site, the site cannot be considered high value.
  - iii. Delete - *ease of transport access.*  
Many sites that would be considered high value do not necessarily have good access.
3. *"For existing sites that are subject to ongoing rental reviews and that have characteristics of a high value site, the Minister could nominate an amount that reflects their view of the market value of the site and which takes into account the characteristics that make the site high value. The parties may seek an independent expert valuation to support the re-determined amount."*<sup>2</sup>

**Response to Recommendation 3** - Recommendation 3 is not supported by the Corporation as the requirement for the Minister to nominate an amount to reflect market rent (or the engagement of independent valuers) is unlikely to lead to a positive outcome for the occupants or the agencies. There is evidence among the three

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<sup>1</sup> Page 20 Draft IPART Report April 2013

<sup>2</sup> Page 21 Draft IPART Report April 2013

Agencies to suggest that such a negotiation process has demonstrated, in the past, an outcome which is protracted, costly and results in a rental fee almost identical to the previously established guideline fee. It is the Corporation's view that the Agencies would be better served if IPART could nominate a 'floor price' (based on the suggested methods outlined within our response to Recommendation 1) so that direct negotiation would only need to proceed where there were some indications that market levels are well in excess of the 'floor price' and that the Land Management Agencies consider the negotiation process to be cost effective.

4. *"The relevant land management agency should put out to tender any proposed new site which it considers to be of high value."*<sup>3</sup>

**Response to Recommendation 4** - The Corporation contends that, for any new site considered to be of high value to be put to tender, is not practical and will significantly add to the Agencies' cost in administering these sites. Rarely has there been any evidence of competition between prospective users for new sites. The Corporation has difficulty foreseeing a situation where the tendering of a site would be of any practical benefit to the land agency or the prospective land user. New Greenfield sites will be identified by the users rather than the land agencies and the status of the site as a high value site may not be determined until the site is established and other users confirm interest. It may later become a high value site by having met the criteria established under Recommendation 2. The new high value rates could then be applied at the next available rent review. If this provision must remain, the Corporation will accept the wording that ...'The relevant land management agency may put out to tender any proposed new site which it considers to be of high value'.

5. *"Under the tender system, the fee schedule should act as a minimum 'floor price'."*<sup>4</sup>

**Response to Recommendation 5** - Recommendation 5 is supported subject to the Corporation's proposed amendment suggested for Recommendations 1 and 3.

6. *"Land management agencies should consider the following when entering into negotiations or an open tender process for licences over high value sites:*
- *the characteristics of a site, such as ease of access, topography, line of sight, proximity to major highways and availability of alternative sites*
  - *recent market rentals agreed for similar sites*
  - *relative costs and benefits from negotiations*
  - *any additional requirements that the land management agency should take into account under applicable legislations."*<sup>5</sup>

**Response to Recommendation 6** - The Corporation supports this recommendation subject to the resolution of matters relating to its preferred position on IPART's Recommendations 1, 4 and 5

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<sup>3</sup> Page 21 Draft IPART Report April 2013

<sup>4</sup> Page 21 Draft IPART Report 2013

<sup>5</sup> Page 21 Draft IPART Report 2013

7. *"In the event that disputes over the rent amount occur for high value sites, the matter should be referred to a third party independent valuer in the first instance as discussed in recommendation 3. If the parties cannot agree on the rent amount following an independent valuation process, then the parties should seek to resolve their dispute through mediation or arbitration."*<sup>6</sup>

**Response to Recommendation 7** – Whilst Recommendation 7 is generally supported, the Corporation emphasises that, by implementing a floor price, most disputes can be avoided with regard to fee value. Use of the Australian Property Institute may be an option to conduct both mediation and arbitration, if necessary, where the evidence of the site, as a high value site, is in dispute. That is, where the valuer is of the view that the rental value of the site should be at a premium compared to that of a standard site.

8. *"We recommend land management agencies adopt a head licence arrangement for high value sites going forward. However, if a head licence arrangement is excessively costly to negotiate, land management agencies should negotiate with individual co-users or charge co-users 50% of the rent agreed between the land management agency and the primary user".*

**Response to Recommendation 8** - Recommendation 8 is not generally supported by the Corporation. There are existing Licence arrangements in place that are working well and the negotiation of individual head licences for high-value sites are seen as an unnecessary administrative burden on the Land Management Agencies. The Corporation does not want to be bound to adopt a head licence arrangement for all high value sites going forward.

9. *"Users eligible for a rebate from the standard site fee schedule should also be eligible for a rebate at high value sites, to be granted at the relevant Minister's discretion, based on the individual circumstances of the particular user. The effect of the rebate should be that eligible users would pay the same rent as for a standard site."*

**Response to Recommendation 9** – The principle that these users, eligible for a rebate under the IPART Draft Report, will pay a standard site rate for a high value site is supported. The method of applying rebates in lieu of retaining a broader number of User Categories with respective fee schedules is not supported by the Corporation.

10. *"The following fee schedule should apply for standard sites, subject to Recommendation 16:*

**Recommended fee schedule (\$2013/14, annual, ex GST)**

	Sydney	High	Medium	Low
Rent	\$32,511	\$27,093	\$15,051	\$7,224

Note: Co-users on standard sites should pay 50% of the above fee.<sup>8</sup>

**Response to Recommendation 10** - IPART proposes a two tiered fee schedule based on high –value and standard sites. The Corporation supports this position. This approach is consistent with findings of the 2005 review. However IPART has recommended a significant departure from the way in which the fee schedule is applied and how user classifications are consolidated.

<sup>6</sup> Page 21 Draft IPART Report 2013

<sup>7</sup> Page 21 Draft IPART Report 2013

<sup>8</sup> Page 29 Draft IPART Report 2013

The proposal to now have a low density category that is discounted by 78% of the Sydney category, 73% of the High Density and by 53% of the Medium Density is not supported by market evidence and appears excessive.

**11** *“Location categories are defined as:*

- *Sydney greater metropolitan area of Sydney.*
- *High: greater metropolitan area of the Central Coast, Newcastle and Wollongong*
- *Medium: within 12.5 km of the centre of the 37 Urban Centres (UCLs) defined by the Australian Bureau of Statistics as having a population of 10,000 or more based on the 2011 census.*
- *Low: rest of NSW”<sup>9</sup>*

**Response to Recommendation 11** - This recommendation is generally supported by the Corporation. The definition of the Greater Metropolitan Area of Sydney will require clarification to avoid contention and potential disputes. The inclusion of the Hawkesbury and the exclusion of the Blue Mountains appear anomalous.

The 12.5 km distance from the centre of UCL’s appears too restrictive and fails to adequately acknowledge that there are towers on hill tops within reasonable proximity to these Urban Centres and roads. The Agencies has consistently held the position that a distance of 30 kilometres is reasonable and better reflects the location of significant infrastructure on hill tops close to urban centres and highways. The Agencies propose the following amendment:

– ‘medium within 30 km of the 37 Urban Centres (UCLs) defined by the Australian Bureau of Statistics as having a population of 10,000 or more based on the 2011 census’.

**12** *“The following users are eligible to apply to the Minister for a rebate as outlined below:”*

**Recommended rebates (\$2013/14, annual, ex GST)**

	Sydney	High	Medium	Low
Community groups	\$32,069	\$26,650	\$14,608	\$6,781
Budget funded sector	\$26,009	\$21,674	\$12,041	\$5,779
Local service providers	-	-	-	\$4,214

**Response to Recommendation 12** – The use of rebates to subsidise certain user groups rather than the application of a set fee schedule recognises the different types of user, is not supported by the Corporation.

The application of rebates for Local Services Providers, in low density areas only, is not considered fair and equitable to these Providers in higher density areas. If a rebate is to be applied it should be in all density categories.

The existing user categories (or perhaps revision of the categories with minor consolidation of some user groups) should be retained with prescribed minimum rents having consideration of the submissions from most stakeholders and the BEM report findings. We see no evidence to indicate a reason to depart from this arrangement.

Notwithstanding the fundamental objections to the principles of IPART’s single category proposal, the Corporation also has significant financial disadvantage under this proposed change. Coupled with the change

<sup>9</sup> Page 30 Draft IPART Report April 2013

to the 'medium density' definition, the potential financial impact to the Corporation represents a rental reduction in the sum of approximately \$250,000 per annum.

**13** *"Users eligible for rebates are defined as:*

- *Community groups: special community interest groups that are run on a not for profit basis.*
- *Budget funded: NSW Government agencies or authorities that deliver core services to the public and typically cannot fully recover the value they create through user fees.*
- *Local service providers: users that operate or provide a service to communities in the low location category as defined in this review:*

**Response to Recommendation 13** – Noting that the use of rebates is not supported by the Corporation the definition for users eligible for rebates are acceptable.

**14** *"The fee schedule and accompanying schedule of rebates should be adjusted annually on 1 July, by the change in the Consumer Price Index (All Group Index number) for Sydney as published by the Australia Bureau of Statistics for the year ending the March quarter of each year."*

**Response to Recommendation 14** – Noting that the use of rebates is not supported by the Corporation, the principle of an annual adjustment to the minimum rentals by the change in the CPI is acceptable.

**15** *"For small country automatic exchanges sites, apply the current rent for the low density location category. The new rent should be phased in over the next 5 years beginning July 2013".*

**Response to Recommendation 15** – The Corporation has no facilities licenses under this use.

**16** *"For users with existing licence agreements, the new fee schedule should be phased in over 5 years from the next rent review date. Taking into account the impact of inflation, this means rents will increase by 20% of the difference between the inflation adjusted 2012/13 fee schedule and the new fee schedule each year, on a cumulative basis."*

**Response to Recommendation 16** – This recommendation 16 is not supported by the Corporation.

It is may be considered more prudent to apply the following principles :-

- Rental decreases are applied from the next review date after 01 July 2013;
- Rental increases are applied at a rate of 50% of the rental increase from the next review date after 01 July 2013 and the full increase will apply at the next annual review date.

**17** *"The fees and rebates recommended above should be adjusted each year (beginning 1 July 2014) by the change in the Consumer Price Index (All Groups Index number) for Sydney as published by the Australian Bureau of Statistics for the year ending the March quarter of each year."*

**Response to Recommendation 17** – Noting that the use of rebates is not supported by the Corporation, the principle of an annual adjustment to the minimum rentals by the change in the CPI is acceptable.

**18** *"In the case of disputes between users and land management agencies on implementation of the fee schedule for standard sites, the land management agency should seek the services of a mediator or an arbitrator."*

**Response to Recommendation 18** – This recommendation is supported



- 19 *"The published fee schedule should be subject to an independent review every 5 years to ensure it reflects fair market-based rental returns."*

**Response to Recommendation 19** – This recommendation is supported.

- 20 *"The implementation of the rental arrangement should be subject to a review by the Audit Office of NSW twice in every 5 years. The review by the Audit Office of NSW should be to report on whether the rental arrangements have been implemented in accordance with the Government's decisions in response to this review."*

**Response to Recommendation 20** – This recommendation is not supported. The Corporation considered imposition of an audit twice every 5 years to be onerous.

- 21 *For standard sites, land management agencies should continue to grant separate licences to primary users and co-users.*

**Response to Recommendation 21** – This recommendation is supported. This principal should also extend to licences granted in respect to high value sites.

- 22 *Co-users should continue to receive a discount of 50% from the fee schedule relative to primary users.*

**Response to Recommendation 22** – This recommendation is supported.

- 23 *Infrastructure providers should pay the same rent under the fee schedule as primary users. For infrastructure providers with existing licence agreements, the current discount of 30% should be gradually removed over 5 years, to start after the end of the next rent review period. For instance, for infrastructure providers with licences that have July 2013 as the next rent review date, the 30% discount will be gradually removed on a straight line basis from July 2018 to July 2023.*

**Response to Recommendation 23** - The recommendation to remove the 30% discount to Infrastructure Providers is supported. However the phasing-in of the increase over 10 years is not supported. This would require the Corporation to raise the new rents and apply scheduled waivers as rental concessions for 10 years to Infrastructure Providers. The 30% discount should be withdrawn from the next market review opportunity after 01 July 2014 for existing agreements. The new arrangements would apply to any new agreements entered into after this date.

- 24 *"Where multiple users share the same equipment located on a tower, these users will be considered as 1 co-user and pay 1 rent."*

**Response to Recommendation 24** – This recommendation is not supported. Our definition of multiple users sharing the same equipment located on a tower refers to a Joint Venture (JV) arrangement between Carriers. Under this arrangement it is the Corporation's contention that, whilst the JV entities will seek to operate under the host entity's Licence, contractors and agents for each entity (acting independently) will be attending the site for the purpose of construction, maintenance and upgrade works. So, in effect, the Corporation contends that use of the site by the JV entities is no different to the use of the site by two separate users.

### **3. List of high value sites**

The Corporation notes the inclusion of a list (Table C.1) in its draft Report specifying locations nominated by the Land Management Agencies as 'high value sites'.

As the basis for nomination of such sites is as yet unclear, the Corporation wishes to reserve its rights to amend this list prior to the final Report by IPART. (Note: the Corporation's response to Recommendation 1 in relation to a review being undertaken not more than every 2 years on additional or new Greenfield sites is relevant).

As well, given some doubt on matters of land tenure involving two of the nominated sites, the Corporation points out that the following two sites might rightfully be under the jurisdiction of Catchment & Lands:

- Boyne Trig, Shoalhaven
- Mt Burngoogie, Wagga Wagga