



Your reference  
Our reference: DOC13/27529  
Contact Vince Rago 9585 6363

11 June 2013

Ms C Chou  
Program Manager  
Cross-Sector Research  
Independent Pricing and Regulatory Tribunal  
PO Box Q290  
QVB Post Office NSW 1230

Dear Ms Chou

### **IPART Draft Report on Review of Rental Arrangements for Communication Towers on Crown land**

The National Parks and Wildlife Service (NPWS) of the Office of Environment and Heritage, Department of Premier and Cabinet welcomes the opportunity to respond to IPART's draft report.

While the NPWS supports a number of the recommendations contained in the draft report the NPWS has considerable concerns with several others which we will address below in our response to each specific recommendation.

#### **1. High value sites (strategic sites)**

**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.**

The NPWS supports the introduction of a new category for "high value" sites. It is noted that the intention is that such sites are to be identified in the interests of facilitating negotiations and providing commercial certainty for both land management agencies and licensees/lessees. In responding to IPART's request to supply details of NPWS sites that are regarded to be "high value" (which are noted in the draft report) the NPWS advised the list should not be regarded as final. The NPWS has identified at least two other sites which demonstrably can be categorised as "high value" (at Bargo, Upper Nepean State Conservation Area and Cudmirrah Trig/Jerrawangala, Lake Conjola National Park) and the NPWS should be able to add other "high value" sites to the existing list before IPART's final report is released. The caveat on the list of "high value" sites being reviewed every 5 years by agencies should be conditional for sites that are currently licensed. Should new "greenfield" sites be established, or if lands are added to the NPWS' reserve system containing communication sites which meet the criteria suggested by IPART, then these sites should not be excluded from being able to be negotiated on the basis of the "high value" category.

IPART's recommendation to determine licence fees/rentals for "high value" sites by negotiation needs to be carefully considered in light of the agencies' past experience with such a process. It has been the NPWS' experience that carriers, broadcasters and infrastructure providers in particular will dispute valuations and protract negotiations when valuations are commissioned. Invariably negotiation of commercial terms has involved up to 3 valuations (one by the landlord, one by the tenant and a third party determination where agreement could not be reached) adding to the cost and time for completion of negotiations. The apparent lack of comparable market evidence and varying evidence across a broad spectrum of sites especially in country and regional centres has generally meant that valuers have relied on the IPART rates to determine site rentals. This has been the situation in the last three cases where the NPWS has been able to exercise a market review opportunity in the manner contemplated by IPART.

While the potential benefits of direct negotiation are acknowledged the costs are significant and may increase uncertainty and complexity for both parties. As evidenced in BEM's Consultancy Advice of 25 March 2013, a major impediment to the direct negotiation option has been the reluctance of the major tower owners (Carriers, Broadcasters and Infrastructure Providers) to disclose the commercial terms they apply for co location and site rents they pay on other locations. The disclosure of this information would have informed the negotiation process but in the absence of this important market evidence it appears that the 2005/2009 IPART Schedule has become the general standard for the setting of rentals for communication sites.

The cost of individual site valuations can be as high as \$15,000 and when the cost of negotiations and potential arbitration are factored in the costs will escalate significantly. In these circumstances it is likely that the costs of direct negotiation will outweigh any potential benefits.

The NPWS considers that the inclusion of a specified rate or rates in the IPART Rent/Fee Schedule that would apply to "high value" sites would assist in negotiating commercial terms with both primary users and co-users and provide better commercial certainty for both agencies and their tenants. In discussions between the NPWS, Crown Lands and Forests NSW the agencies propose that IPART consider placing a "floor" price for "high value" sites in regional and country areas with populations of less than 10,000 based on the medium location category. In the interests of administrative expediency and to avoid the need for expensive and protracted direct negotiations, the NPWS contends that the proposal to allow agencies to determine licence fees/rentals for "high value" sites by negotiation should be retained as an option when it is cost effective to do so rather than being mandatory. Additionally, IPART ought to set a minimum rent (floor price) that should apply to "high value" sites in country areas based on the medium density location.

**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.**

The NPWS supports the criteria suggested by IPART for determining "high value" sites. The NPWS suggests that the number of towers in a location and the number and nature of tenants (both primary and co-users) are also important characteristics of a "high value" site and should be included in the definition of a "high value" site.

- 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.**

The NPWS supports the recommendation provided that IPART nominates a default position or “floor price” based on the medium density classification as suggested in the NPWS’ response to question 1.

- 4 The relevant land management agency should put out to tender any proposed new site which it considers to be of high value.**

From the NPWS perspective this recommendation is not feasible due to the legislative constraints contained in the *National Parks and Wildlife Act 1974* (the Act). Lands reserved under the Act are set aside for nature conservation, cultural heritage and for public recreation purposes. The provisions of section 153 D of the Act enabling the grant of licences or leases for communication purposes generally discourages the installation of such sites on the NPWS reserve system. For a new site to be located on a NPWS administered reserve the proponent must demonstrate the absence of practical alternate sites outside of a park as a condition of a nine part assessment criteria. In this regard the NPWS is not in a position to proactively market or promote the availability of sites for tender and this factor alone provides a very compelling reason why a high percentage of communication sites on NPWS land should be viewed as “high value” in comparison to the other agencies.

As the ownership of improvements remain with the primary user the tendering of the site on expiry of a lease or licence is not considered to be a feasible option if the primary user intends to renew its tenure arrangement with the NPWS. The roll out of NBN infrastructure would also become problematic in a tender process.

While the concept that opening up an opportunity to the market can at times achieve an optimum return in a highly competitive market the reality is that the industry and governments support co-location of communication sites and it is very unlikely there would be competitive bidding for a communication site. Indeed, the scenario of a tender could well result in collusion to force the “market price” down.

- 5 Under the tender system, the fee schedule should act as a minimum ‘floor price.’**

Notwithstanding the NPWS’ circumstances outlined in our response to questions 3 and 4 the NPWS has no objections to IPART’s recommendation subject to the medium density fee schedule being prescribed as the minimum “floor price”.

- 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.”

Recommendation 6 is supported subject to the resolution of matters raised by the NPWS in relation to recommendations 3, 4, and 5.

- 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.**

Recommendation 7 is supported. Given the specialised nature of communication sites and the benefits that derive from the occupation of land for this purpose the Australian Property Institute, NSW Branch is probably best credentialed to conduct both mediation and arbitration as required.

- 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.**

In arriving at this recommendation IPART considered 4 options for tenure arrangements for high value sites as follows:-

“Option 1: grant separate licences to primary users and co-users and negotiate rentals for the licences with all such users.

Option 2: grant separate licences to primary users and co-users, negotiate rentals only with the primary user based on the primary user’s use of the land, and charge co-users according to the fee schedule.

Option 3: grant a licence to the primary user and negotiate rentals only with the primary user based on the primary user’s use of the land. Charge co-users a fee related to the rent agreed with the primary user (eg, 50%) under a separate licence with the co-users.

Option 4 (head licence arrangement): grant a ‘head licence’ to the primary user, who may in turn grant or sub-licence to co-users for a fee payable to the primary user. The rental payable by the primary user would be set at a higher level than the other options to reflect the ability of the primary user to derive income from co-users. Under this option, there is no need for the agency to grant licences to co-users or to collect co-user fees under a separate agreement (as would be the case under the other options).”

As IPART would be aware from the 2005/2006 review there was strong opposition from practically all communication site owners (primary users) to the notion of an all inclusive rent for the site. IPART subsequently recommended separate billing for primary users and co-users.

Apart from the Infrastructure Providers the NPWS believes all other primary users will continue to oppose IPART's preferred option of an all inclusive rent for primary users occupying "high value" sites. From the NPWS' perspective our systems and licensing regime can accommodate either a head licence arrangement or licensing primary users and co-users separately.

To date, the NPWS has negotiated several leases on the basis of the lessee being responsible for rental for the whole site (primary user and all co-users). There are certainly some administrative benefits and savings that can be achieved by a head lease/licence arrangement.

The NPWS considers a flexible approach to licensing "high value" sites is required as the head licence model may not suit or be acceptable to all primary users.

- 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.**

Recommendation 9 is not supported by the NPWS for the reasons set out in the NPWS' response to recommendations 10, 11 and 12.

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

IPART has introduced a new Sydney location category and proposes that the following fee schedule should apply for standard sites.

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.

IPART has recommended a significant change in the way in which the rent schedule is applied and the consolidation of user classifications. The introduction of the Sydney density classification appears to be justified by the market evidence contained in the BEM Consultancy Advice which confirms the Sydney metropolitan area can attract premiums in the order of 50% and, in some cases, significantly higher. The evidence appears to be less conclusive in non-metropolitan areas.

The proposal to reduce the Low density category fee by 20% is not supported, particularly when the BEM Consultancy Advice confirms the current rentals for standard sites are reflective of the market and there is no conclusive advice to depart from the current rates. Since the adoption of the IPART Rent Schedule in 2007 the NPWS has not received any representations to suggest the current rental for low density locations is excessive. The NPWS also notes that, in its initial 2005/2006 report, IPART determined rentals on the basis that they should reflect a conservative view of the market prices prevailing at that time.

Although there have been generalised and unsubstantiated suggestions particularly from the Carriers that the current rates are excessive it is noted that, despite being given the opportunity to substantiate their claims through this review, the major communication providers have failed to

provide any tangible evidence that the current commercial rents in the existing Schedule are excessive. Indeed, it is not unreasonable to assume that the failure to reveal their rental and commercial arrangements with co-users and landlords on private freehold land suggests there is no basis to their claims and confirms reducing the Low density rate is not commercially justified.

No market substantiation has also been provided to justify the reduction in rentals for Commercial Broadcasters.

The major change proposed by IPART is that the current nine (9) rental rates in the Schedule are replaced by one specified rate. This will result in the following changes for high and medium density locations for all users.

Comparison of recommended fee schedule with existing fee schedule

|   | Sydney   | High     | Medium   | Low      |
|---|----------|----------|----------|----------|
| Recommended Standard Rent for all users | \$32,511 | \$27,093 | \$15,051 | \$7,224  |
| <b>Existing Rents</b>                   |          |          |          |          |
| Community based organisations           | \$444    | \$444    | \$444    | \$444    |
| Budget funded sector                    | \$5,287  | \$5,287  | \$3,524  | \$1,762  |
| Government radio broadcasters           | \$7,048  | \$7,048  | \$4,699  | \$2,349  |
| Local service providers                 | \$8,222  | \$8,222  | \$5,873  | \$2,937  |
| Government business units/other         | \$12,335 | \$12,335 | \$8,222  | \$4,112  |
| Commercial radio broadcaster            | \$14,098 | \$14,098 | \$9,398  | \$4,699  |
| Government television broadcaster       | \$17,622 | \$17,622 | \$11,748 | \$5,873  |
| Telecommunication and data carrier      | \$26,432 | \$26,432 | \$14,684 | \$8,810  |
| Commercial television broadcaster       | \$35,243 | \$35,243 | \$23,496 | \$11,748 |

Note: Co-users on standard sites should pay 50% of the above fee.

IPART has stated that competitive neutrality is the principle rationale for recommending this approach. While the principle of competitive neutrality is understood the application of one standard fee may potentially misrepresent market conditions and adversely impact on some user groups by classifying all occupants based on the "highest and best use" and not properly recognising the commercial benefit that the use of the site confers onto the occupant. This recommendation appears to conflict with section 14i of the Valuation of Lands Act whereby the purpose or "restrictions" of use must be considered in determining rents.

The permitted use within the lease/licence and the benefit that the occupation of the site confers to the lessee/licensee is a major consideration in determining the market rent. It is understood that

IPART may have advocated for a single rent as a result of Telstra's proposed High Court action against the Queensland Government and issues surrounding the provision of clause 44 of Schedule 3 of the Commonwealth *Telecommunications Act* which prohibits discrimination against Carriers. The NPWS considers that differential pricing in the current Rent Schedule is not discriminatory if it is based on reasonable criteria which reflect the commercial benefits that the use of the site confers onto the occupant. Carriers are able to utilise the site for commercial telecommunication purposes while a government agency such as the Rural Fire Service occupies a communication sites for a non commercial purpose being fire management and public safety.

To require all users to pay the same fee irrespective of the benefit gained just because of clause 44 of the *Telecommunication Act* would appear to give telecommunications carriers an advantage rather than prevent discrimination.

While there may be some merit in reviewing and consolidating the classification of users within the Schedule the proposal to reduce the current nine (9) classifications to one (1) appears overly radical.

Crown Lands has proposed to the NPWS that five (5) user categories may adequately reflect the market place as follows:-

- Telecommunication data carriers, Television Broadcasters Commercial and Government, Infrastructure Providers, Government Business Enterprises:
- Commercial and Government Radio Broadcasters
- Government Budget Funded Sector – Emergency Services
- Local Service Providers
- Community based organisations – Volunteer Groups

The NPWS generally supports Crown Lands' position. The foregoing user category structure, accompanied with differential pricing based on the category of the user, appears to be a more workable model and would obviate the need for prescribing and applying rebates.

**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.**

This recommendation is generally supported by the NPWS subject to certain qualifications. 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 NPWS remains particularly concerned with the proposed definition of Medium density location and considers that the 12.5 km distance from the centre of an urban centre with a population greater than 10,000 is too restrictive and fails to reflect the market value of many sites in other regional locations.

The NPWS considers that IPART has ignored significant market evidence provided by both the NPWS and Forests, NSW going back in excess of 20 years in some cases which suggests that basing rent on an arbitrary population and distance factor is flawed and not reflective of the market. These agreements and commercial terms were negotiated between willing parties. The location of towers by communication providers is not dictated by population alone and a 12.5 km buffer distance from urban centres is far too restrictive and fails to adequately acknowledge other factors that are equally relevant such as elevation, distance from major highways, provision of services and ease of access etc. The NPWS is not aware of any other landlord or communication provider who bases rent on population alone.

The NPWS notes that IPART may contend that sites that demonstrate those characteristics can be classified as “high value” sites and be the subject of negotiation outside the prescribed Rent Schedule. However, it is the NPWS understanding that IPART would view the categorisation of “high value” sites as being the exception rather than the norm in terms of the three agencies’ portfolio of sites. This is evidenced in IPART’s recommendation that agencies be required to publish their “high value” sites as part of this review.

The failure on the part of the major communication providers to disclose their commercial terms with private landlords and their tenants adds further weight to the NPWS’ view that the current definition is flawed and requires further review.

In terms of a definition for Medium density sites, it is understood that Crown Lands will propose to IPART that a distance of 30 kilometres rather than 12.5 kilometres should apply. The NPWS’ preference is for the definition of the Medium location category to be revised to take into consideration factors other than population such as proximity to major highways. The NPWS also maintains that the distance from urban centres with populations greater than 10,000 should be extended from 12.5 km to 30 km as this would better reflect the location of significant infrastructure in the proximity or urban centres and highways and is supported by current market evidence.

**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 |



### 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.**

The table below is intended to highlight the scale of the rebates and also to draw attention to the fact that it may be inequitable specifically for Local Service Providers outside low density locations.

Comparison of recommended fee and rebate schedules

|   | Sydney                | High                  | Medium                | Low                  |
|---|-----------------------|-----------------------|-----------------------|----------------------|
| Recommended Standard Rent for all users   | \$32,511              | \$27,093              | \$15,051              | \$7,224              |
| Community based organisations with recommended rebates in brackets and the proposed net rent to match the new standard rent | (\$32,068)<br>\$444   | (\$26,650)<br>\$444   | (\$14,608)<br>\$444   | (\$6,781)<br>\$443   |
| Budget funded sector with recommended rebates in brackets and the proposed net rent to match the new standard rent          | (\$26,875)<br>\$5,419 | (\$21,674)<br>\$5,419 | (\$11,439)<br>\$3,612 | (\$5,418)<br>\$1,806 |
| Local service providers with recommended rebates in brackets and the proposed net rent to match the new standard rent       | (\$0)<br>\$32,511     | (\$0)<br>\$27,093     | (\$0)<br>\$14,608     | (\$4,227)<br>\$2,937 |

Note: Co-users on standard sites should pay 50% of the above fee.

The new fee may not reflect the market principles of willingness to pay and value of the tenure to all occupants. To address this disconnect with the existing market evidence IPART has recommended a set of rebates to be applied at the discretion of the Minister.

As indicated in the NPWS' response to recommendations 10 and 11 the NPWS considers the recommendation to have one rent apply to standard sites, accompanied by a rebate system, to be inconsistent with the principle that rent should reflect the rights that the use of the land confers to the occupant. In many commercial lease and licence arrangements Turnover rent applies. Major commercial operators who generate higher turnover than smaller businesses pay a higher rent and this is in keeping with the principle that the rent is reflective of the capacity of the tenant and the commercial benefits they accrue from the use of the land.

There may be an anomaly within the recommended rebate schedule relating to Local Service Providers. Local Service Providers in the low density locations are eligible to apply for a rebate unlike Local Service Providers in the medium, high and Sydney density classifications. This

recommendation may not be supported by any available market evidence and may generate conflict and representations to have this applied more generally.

It also introduces a precedent whereby a commercial interest in one area of the State receives a regulated rental rebate and similar commercial interests in other parts of the state don't receive a similar concession. Given the way in which medium and low density classifications are defined a local service provider could theoretically be charged \$4,214 in one location and \$15,051 within the same LGA for similar services.

Other operational impacts for agencies and clients of applying 'rebates' would be to raise invoices for the amount of the 'standard fee' and require clients to apply for rebates annually and for the agencies to approve the rental concessions. This process is administratively inefficient and introduces rental concessions that may be expected for other classes of tenures occupied by the Budget Funded sector and small to medium businesses.

- 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.”**

Recommendation 14 is supported in terms of the adjustment of the annual rent.

- 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.”**

The NPWS supports the recommendation but considers the 5 year phasing in of the new rent for SCAX sites to be overly generous particularly in light of the comments made in the draft report that highlights compensation has already been provided for this service obligation. The new rent should apply immediately following the adoption of IPART 's report.

- 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.”**

Recommendation 16 is not supported by the NPWS. It is understood that Crown Lands proposes that rental increases are applied at 50% from 1 July 2013 and the full amount payable from 1 July 2014. The NPWS concurs with this view.

- 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.”**

Recommendation 17 is supported by the NPWS. There are some Carriers who will specifically seek fixed increases and such requests should not be unreasonably withheld. The NPWS

practice has been to apply 5% increases where the licensee has specifically requested a fixed rate. At the review period the commencement rate has been brought into line with the CPI adjusted rate in the Schedule.

**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.**

Recommendation 18 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.**

Recommendation 19 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.**

The NPWS considers the recommendation requiring a review by the Audit Office twice in every 5 years to be overly prescriptive and unrelated to non-compliance or other risk related issues. The Audit Office already conducts regular reviews of the NPWS' property portfolio (including samplings of communication occupancies) and the programming of its work should be a matter for the Audit Office to determine based on existing commitments, risks and priorities.

**Treatment of different occupancies**

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

Recommendation 21 is supported but the NPWS reserves the right to negotiate a headlease/licence arrangement where it secures costs and administrative savings for the NPWS and improves property management and compliance.

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

Recommendation 22 to retain the 50% discount for individual co-users 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.**

The recommendation to remove the 30% discount is supported. However the phase in of the increase over 10 years is not supported. This would require the Minister to raise the new rents and apply scheduled waivers as rental concessions for 10 years to Infrastructure Providers. There is no evidence to suggest that this concession is warranted and sets precedents for other tenures that are re-determined as market rents. The 30% discount should be withdrawn from 1 July 2014.

The Infrastructure Providers promote their services as managed service providers to the Telecommunication and Broadcasting Industries. This role is more than the provision of infrastructure for co-location, there is a component of managed services that intrinsically links their services to their major customers in the Telecommunications and Broadcasting industries. The removal of the 30% discount over 10 years is unwarranted and represents a concession not supported by evidence of impact. This creates the situation where the next IPART review in 2018 will commence prior to the phase in of this reduction.

- 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.**

Recommendation 24 is not supported. Joint Venture (JV) entities will seek to operate under the host entity's licence but will have independent contractors and agents working separately in terms of maintenance, upgrade works and construction. The JV business models involve outsourcing, managed services, infrastructure consolidation and sharing of capacity. Where each entity retains its own corporate identity and revenue stream then each party should be licensed. The sharing of infrastructure is as much about network capacity as cost containment and this recommendation is not supported.

## **CONCLUSION**

In summary, pursuant to the Terms of Reference, IPART was commissioned to produce a report which would achieve for Government fair market based commercial returns for the use of Crown land for telecommunication, data transmission and broadcasting purposes in a simple, transparent and cost effective basis.

The terms of reference and the proposed principles of the review may not be satisfied by the recommendations contained in IPART's draft report. The consolidation of the current nine (9) user categories into one (1) group and the imposition of a single rental in standard sites for all users with a cumbersome "rebate" system may introduce risks for administrative efficiency and transparency. While some consolidation of user classifications may be feasible the NPWS considers that a reduction from nine 9 to 5 or is more appropriate.

Differential pricing is considered to be more appropriate than the single rental for standard sites across all users. The differential pricing structure in IPART's 2005/2006 Rent Schedule is based on the notion that setting rates for different users reflects the users' capacity to pay and factors in the commercial benefits that are realised by the users of the site. Subject to some modification the NPWS prefers the original concept of differential pricing and notes that BEM's Consultancy Advice also advocates for the retention of differential pricing for different user categories.

Carriers and the other major communication providers have had the opportunity, through this review, to provide market substantiation to support their contention that rental rates on Crown land have been excessive and they failed to produce any evidence. The onus should have clearly been on the part of the communication providers to justify any rental reductions based on the provision of comparable market evidence. In such circumstances, the NPWS does not consider there is any market evidence to justify IPART making a recommendation to reduce rent for commercial broadcasters or for discounting the Low density classification.

Similarly, the definition of Medium density location needs to be broadened to include a 30 km buffer zone from an urban centre with a population greater than 10,000 and the inclusion of alternate criteria such as proximity to a major highway (say within 5 km). To retain the definition contained in the draft report ignores the significant market evidence of rents that are being achieved in the marketplace that are not within a 12.5km distance of an urban centre with a 10,000 population.

Contrary to the information contained in the draft IPART report, the NPWS' existing revenue from communication sites will reduce significantly if the current recommendations stand. The NPWS has separately provided IPART with the estimated revenue reduction based on certain modelling assumptions. In all cases there will be a significant loss of revenue.

The final report of IPART will need to refine the recommendations to build on the productive initiatives that resulted from the 2005/2006 review. There is, in the NPWS' view, a risk that some of the more radical changes proposed by IPART in its draft report may serve to increase complexity and contention in commercial dealings with communication occupants rather than simplifying the process.

Yours sincerely

**Ann King**  
**Head - National Parks and Wildlife Service**