



Trade & Investment

Office of the Director General

DGDTIRIS13/34
DOC13/063722

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Chief Executive Officer
Independent Pricing & Regulatory Tribunal
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Dear Mr Cox

Review of rental arrangements for communication towers on Crown land

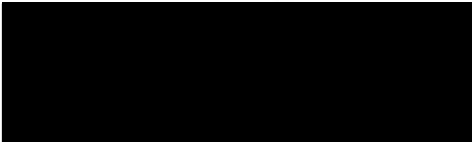
I am pleased to provide NSW Trade & Investment's response to the Draft Report released by IPART on the 30 April 2013. This review is a timely opportunity to gather and assess the market evidence and to build on the solid foundation established following the 2005 review.

The Draft Report includes recommendations that represent a significant shift in approach from the arrangements established since 2005.

The challenges faced by IPART in balancing the competing demands of market return, administrative efficiency and transparency are acknowledged. It is hoped that the Final IPART Report and recommendations achieves the balance between market evidence and administrative efficiency.

If you require any further information regarding this response please contact Donal O'Shea, Senior Manager Business Improvement, Crown Lands Division on (02) 4920 5078 or at Donal.oshea@lands.nsw.gov.au.

Yours sincerely



Mark I Paterson AO
Director General

11/6/13

NSW Trade & Investment Response

NSW Trade & Investment response to draft
IPART Report



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1. Executive Summary

The current IPART review into rental arrangements for communication towers on Crown Lands is an opportunity to clarify and resolve issues arising from the previous review in 2005 and update the fee schedule to reflect market rents.

The market evidence collected by BEM Property Consultants Pty Ltd (BEM) on behalf of IPART was intended to support any recommended changes. However the evidence gathered is dominated by the existing IPART fee schedule. The BEM report states ... *“Our enquiries to the major telecommunication carriers and infrastructure providers. have produced no new evidence. Each party contacted has stated it is unwilling to provide evidence of recently negotiated rental agreements.”*¹

The unwillingness of the major telecommunication carriers and infrastructure providers to disclose data for tower rental fees is disappointing but not surprising. The 2005 review faced a similar impediment and managed to introduce changes that have increased certainty, transparency and returns for the occupation of public land.

The Draft IPART Report and the BEM Consultancy Advice supports a two-tiered price structure for high –value and standard sites. NSW Trade and Investment contends that this two-tiered structure could be defined within the fee schedule as an alternative to direct negotiation. The option of establishing a ‘floor’ price for high value sites is an amendment that will be proposed to reduce complexity, uncertainty and costs.

The 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. The introduction of one fee for all classes of users poses a risk of misrepresenting the rents for Telecommunication Facilities for different purposes by determining all rents at ‘highest and best use’. NSW Trade and Investment will suggest that IPART reconsiders the consolidation of 9 users into one category.

The recommendation that rental rebates are 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 clients. 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. The recommendations relating to the phasing in of rent increases and decreases over 5 years requires further consideration as this appears to both inequitable and generous depending on the impact of the recommendations. A more judicious use of phase-in arrangements will be proposed.

The IPART recommendations have been analysed as follows:-

- Gross revenue may go from \$6,711,381 to \$11,926,654 a potential increase of \$5,215,273 or 77.7%;
- Nett revenue may go from \$6,711,381 to \$7,099,147 a potential increase of \$387,766 or 5.8%;
- Recommended rental concessions may be \$4,827,507 or 92.6% of the projected increase;
- Actual rental concessions may be \$5,258,763 or 100.8% of the projected increase (this assumes that rental decreases are applied from 01 July 2013);

The above analysis highlights the significance of the changes recommended by IPART and the efforts to use phase in waivers and rebates to moderate the rental impacts.

NSW Trade and Investment suggests that the recommended changes and proposed arrangements are not backed up by market evidence. The recommendation relating to joint ventures requires clarification so that the rents charged reflect the occupancy benefits derived by all users.

Our response will address each recommendation presenting the case for amendment where it is considered appropriate. Some recommendations are refinements that clarify areas of existing uncertainty however some recommendations represent a major shift in approach potentially increasing complexity and uncertainty.

¹ Page 15 Consultancy Advice BEM Property Consultants March 2013

2. High value sites (strategic sites)

NSW Trade and Investment will respond separately to each recommendation within the Draft IPART Report proposing amendments where it is considered appropriate.

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.”*
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.”²*

The case for a two tiered pricing schedule for high value (strategic sites) and standard sites is supported by the market evidence collected by BEM, the analysis conducted by IPART and the submissions made by the Government agencies. The recommendations relating to the identification and classification of sites are supported. NSW Trade and Investment has published a list of 36 sites satisfying the criteria suggested by IPART and reflecting other factors including the scale of the site and the number and variety of occupants (refer to attachment 1).

Recommendations 1 and 2 are supported in relation to the publishing of a list of existing sites considered to be high value and the factors to be considered in determining if a site is to be classified as high value.

Recommendation 1 is not supported in relation to the high value sites listed being subjected to a negotiation process. NSW Trade and Investment has proposed a ‘floor’ price for high sites based on all have a minimum medium density classification to avoid the need for expensive and protracted direct negotiations.

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.”³*

Recommendation 3 is not supported as the Minister nominating 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. This may increase costs and uncertainty. IPART could nominate a default position or ‘floor price’ based on the medium density classification within recommendation 3 so that direct negotiation was a position of last resort. The use of a medium density floor price for high-value sites is justified based on the market evidence, the importance of the sites within the network infrastructure of Broadcasters, Infrastructure Providers, Government Owned Enterprises and Telecommunications and Data Carriers. This would provide for a consistent pricing regime that was still ‘conservative’. The entities being charged the ‘floor’ price could potentially share their market evidence for that site to advocate for a reduction.

While the potential benefits of direct negotiation are acknowledged the costs are significant and may increase uncertainty and complexity. Past attempts to negotiate directly have been protracted and inconclusive. An impediment to the direct negotiation process is the reluctance of tower owners to disclose the rent’s they charge for co location. The disclosure of this information would inform the negotiation process and promote consistency and transparency. The cost of individual site valuations is estimated at between \$10,000 and \$15,000 and when the negotiations and potential arbitration are factored in the costs will escalate significantly. The IPART fee schedule has become a de facto standard in the absence of other comparative rental data including tower collocation fees. It is likely that the costs of direct negotiation will outweigh the benefits. The establishment of a minimum ‘floor price’ based on medium density location categories for major commercial users such as Mobile Carriers, Television and Radio Broadcasters, and Government Enterprises may resolve the need to engage in direct negotiations for all high value sites.

Market Rental has been defined by the International Valuation Standards Committee and adopted by the Australian Property Institute. “as the estimated amount for which premises should rent, as at the relevant date between a willing

² Page 20 Draft IPART Report April 2013

³ Page 21 Draft IPART Report April 2013

lessor and a willing lessee in an arm's length transaction, wherein the parties had each acted knowledgeably, prudently and without compulsion, and having regard to usual market terms and conditions for leases of similar properties" ⁴

BEM considers "a strategic or high value site, to a particular user, is one where the site and its use provide an important part of the user's operation and where there are few, if any viable alternatives" ⁵

The BEM Consultancy Advice provides the following commentary on high value site market evidence "The evidence available to this assignment is more plentiful in the Sydney metropolitan area and indicates such premiums range up to 50% and in some cases significantly higher. In non-metropolitan areas, the evidence appears to be less conclusive, however further and more specific investigation may reveal more. It is likely that such investigations would reveal a premium for more valuable sites" ⁶

The 36 sites selected by NSW Trade and Investment reflect a more conservative approach to classifying high value sites than was recommended in the 2005 IPART Report. Based on the 2005 criteria 76 sites would have been classed as high value. This more conservative approach to classifying high value sites reflects our desire to promote a two-tiered pricing structure that is still market based and defined within the fee schedule.

The 36 sites represent 8.5% of the 422 sites administered by Crown Lands. 25 of these 36 high value sites are within low density locations. NSW Trade and Investment suggests that high-value sites be allocated a 'floor' to reflect their strategic nature and scarcity of alternatives. This 'floor' could be established through a minimum classification of medium density.

What this may achieve is certainty around pricing reflecting the strategic nature of the site located on a hill top, close to a highway or population centre without the need for expensive negotiations. The recommended increase by IPART in the discount for low density sites to almost 80% will increase the pressure to engage in direct negotiations unless a 'floor price' is established

Our suggested amendment for recommendation 3 is:- *For existing sites that are the subject of ongoing rental reviews and that have characteristics of a high value site the medium density fee schedule will act as the 'floor price', the Minister could alternatively 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.*

4. *"The relevant land management agency should put out to tender any proposed new site which it considers to be of high value."* ⁷

Recommendation 4 that any new site considered to be of high value be put to tender may have little benefit. The application of this recommendation may pose issues in acknowledging and accommodating the different business models and infrastructure objectives of the major industry participants. The identification and classification of a 'green field' site as 'high value' would require the introduction of guidelines for defining high value sites that can be consistently applied. The calling of tenders for new sites may not receive a response from other parties and the application process to establish a new site may be unnecessarily complicated for limited benefits. The roll out of NBN infrastructure may be delayed due to the need to call tenders for sites that are of no interest to other industry participants. NSW Trade and Investment will consider the views of the major infrastructure providers and mobile carriers to this recommendation to better understand how this could operate to deliver positive outcomes without causing unnecessary delays.

Recommendation 4 is not supported in its current form an alternative wording could be to change "should" to "may" as follows -*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'."* ⁸

Recommendation 5 is supported subject to the proposed amendment for recommendations 3 and 4. The suggested amendment is - *Under the tender system, the medium density fee schedule should act as a minimum 'floor price'*

⁴ Page 6 Preston Rowe Paterson Rental Determinations 2012

⁵ Page 6 BEM Consultancy Advice to IPART April 2013

⁶ Page 38 BEM Consultancy Advice to IPART April 2013

⁷ Page 21 Draft IPART Report April 2013

⁸ Page 21 Draft IPART Report 2013

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.”*⁹

Recommendation 6 is supported subject to the resolution of matters relating to recommendation 4, 5 and 6.

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.”*¹⁰

Recommendation 7 is supported. The Australian Property Institute maybe an option to conduct both mediation and arbitration if necessary.

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.*

Recommendation 8 is not supported. The agencies should have the flexibility in determining the appropriate licence arrangements. There are existing arrangements in place that are working well. While the negotiation of individual head licences for high-value sites may be warranted in some circumstances the agencies should retain the flexibility to determine the most appropriate arrangements.

The recommendation of a separately negotiated head licence agreement for high value sites may have some limited application. The current practice of NSW Trade and Investment is to enter into one Head Licence with each organisation and individual occupancies are addressed through site appendices. The process is streamlined for adding new sites and for billing and payments. There is no case to at present to change the existing head licence arrangements.

IPART has considered 4 options for the Head Licence agreement 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.

⁹ Page 21 Draft IPART Report 2013

¹⁰ Page 21 Draft IPART Report 2013

*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)."*¹¹

Each option has merits. NSW Trade and Investment prefers Option1 as it reflects our existing arrangements and provides the flexibility to determine and apply rents in accordance with the actual purpose of the licence and the requirements of the *Crown Lands Act 1989*.

Option 2 is not supported as it applies the high value rent only to the Primary User and Infrastructure Provider. This is potentially inequitable as it may not apply the appropriate rents to other occupants that derive the benefits of the 'high value' location.

Option 3 while similar to Option 1 presumes that all co-users will be charged 50% of the fee agreed to the Primary User. NSW Trade and Investment is unable to support this at present as the available market evidence proposes different fees for different classes of users based on the permitted use specified in their licences.

Option 4 may apply in some scenarios where the Infrastructure Provider delivers managed services for co-users by transmitting or broadcasting services. This option appears more suited to a lease agreement where exclusive occupation is granted and a premium charged for this privilege.

Option1 is preferred by NSW Trade and Investment because of the flexibility it provides and it is supported by existing arrangements including billing and payment systems.

*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."*¹²

Recommendation 9 is not supported as it is directly related to recommendation 12 which advocates the use of rebates to move the 'standard rent' to a fair market rent for Community Groups, the Budget Funded Sector and Local Service Providers within low density locations. NSW Trade and Investment considers the use of rebates may be appropriate in some situations. However the extensive use recommendation by IPART may not be appropriate and will increase transaction costs while reducing transparency within the Local Service Provider and Budget Funded Sectors. The recommended introduction by IPART of one 'standard fee' for all users will pose significant challenges in implementing this change in an equitable manner that reflects market values for different classes of users.

3. Standard Sites

IPART proposes a two tiered fee schedule based on high –value and standard sites. NSW Trade and Investment 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.

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.¹³

¹¹ Pages 25 and 26 Draft IPART Report April 2013

¹² Page 21 Draft IPART Report 2013

¹³ Page 29 Draft IPART Report 2013

The introduction of Sydney density classification appears justified by the market evidence. The BEM Consultancy Advice states “The evidence available to this assignment is more plentiful in the Sydney metropolitan area and indicates such premiums could range up to 50% and in some cases significantly higher.”¹⁴

It further states “In non-metropolitan areas, the evidence is less conclusive,.It is likely that such investigation would reveal a premium for the more valuable sites.”¹⁵

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.

The major change proposed by recommendation 10 is that the current 9 scheduled fees are replaced by one scheduled fee. 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 (<i>Rebates are proposed for Community based organisations, Budget funded Sector and Local Service Providers in low density locations refer to page8</i>)	\$32,511	\$27,093	\$15,051	\$7,224
Existing Rents				
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.¹⁶

IPART has stated that competitive neutrality is the guiding principle for this major shift in approach. While this is a worthy objective the application of one standard fee may potentially misrepresent market conditions and adversely impact some businesses and community groups by classifying all occupants based on the ‘highest and best use’. This may lead to the incongruous situation whereby Tower Owners are charging variable rents for co locating on their towers based on the permitted use and the Government Agencies are charging one standard fee irrespective of the permitted use. This recommendation appears to conflict with Section 143 of the Crown Lands Act and Section 14i of the Valuation of Lands Act whereby the purpose or ‘restrictions’ of use must be considered in determining rents.

¹⁴ Page 38 BEM Consultancy Advice April 2013

¹⁵ Page 38 BEM Consultancy Advice April 2013

¹⁶ Page 29 Draft IPART Report 2013

The permitted use within the licence is a major consideration in determining the market rent. The licences granted by NSW Trade and Investment have the ability to specify the permitted use which is the basis for determining the rent and distinguishing between different classes of users.

A possible reason for the standard fee proposal by IPART is to avoid any potential conflict with Clause 44 of Schedule 3 of the Commonwealth Telecommunications Act. NSW Trade and Investment considers that the IPART fee schedule is a differential fee regime based on reasonable criteria and which is applied to organisations using similar facilities for a commercial benefit and does not breach cl. 44 of the Telecommunications Act 1997.

The application of permitted use clauses within licence agreements is considered a more appropriate instrument for avoiding potential conflict with cl.44 of the *Telecommunication Act*. The introduction of one standard fee based on highest and best use is not supported by NSW Trade and Investment as it fails to adequately determine rents for the actual 'permitted' use of the licences.

While there is merit in revisiting and updating the classification of users within the schedule moving from 9 classifications to one appears extreme and is likely to increase complexity.

NSW Trade and Investment considers that 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 (define more clearly what this class represents)
- Community based organisations – Volunteer Groups

The use of license agreements to clearly specify the permitted use would enable market rents to be applied through the IPART fee schedule without the need for prescribing and applying rebates. These categories reflect the shift in the market over the past 8 years specifically the convergence of uses at the top end of the scale. The groupings proposed appear more suitably aligned in terms of the value derived from the occupation, willingness to pay and areas of competitive differences to support a market based fee schedule.

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.* ¹⁷

This recommendation is generally supported. 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. NSW Trade and Investment 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. NSW Trade and Investment 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'*

¹⁷ Page 30 Draft IPART Report April 2013

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 recommended introduction of rebates for Community Groups, Budget Funded Sector and Local Service Providers within low density locations to compensate for the establishment of one standard fee may not satisfy the purpose of competitive neutrality. NSW Trade and Investment may be required to grant rebates for the value of \$3,635,450 annually representing 30% of Gross Revenue. While some of these rebates are broadly consistent with the *Crown Land Regulations* and the current Rental Concessions Policy, there are rebates proposed that are inconsistent with both the regulations and government policy. The proposed rebates schedule creates a differential fee regime where the decision making is discretionary and the transaction costs are higher. The potential breach of cl44 of the Telecommunication Act will require legal advice.

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) \$444	(\$26,650) \$444	(\$14,608) \$444	(\$6,781) \$443
Budget funded sector with recommended rebates in brackets and the proposed net rent to match the new standard rent	(\$26,875) \$5,419	(\$21,674) \$5,419	(\$11,439) \$3,612	(\$5,418) \$1,806
Local service providers with recommended rebates in brackets and the proposed net rent to match the new standard rent	(\$0) \$32,511	(\$0) \$27,093	(\$0) \$14,608	(\$4,227) \$2,937

Note: Co-users on standard sites should pay 50% of the above fee.¹⁸

¹⁸ Page 29 Draft IPART Report 2013

The table below illustrates that the proposed rebate arrangement suggested by IPART has the potential to affect up to 50% of Telecommunication licences.

Number of licences by user category - 2012

	Catchments and Lands	Forests NSW	Parks and Wildlife	Examples
1. Budget funded sector	453	180	19	Police, Ambulance councils
2. Commercial radio broadcaster	36	12	0	2UE, 2GB
3. Commercial television broadcaster	63	15	7	Channel 7, 9, 10
4. Community-based organisation	226	29	7	Salvation Army, local volunteers
5. Government business unit/other	157	95	25	Airservices Australia, TransGrid, NBN
6. Government radio broadcaster	2	0	2	ABC Radio
7. Government television broadcaster	62	10	9	ABC TV, SBS
8. Local service provider	102	27	4	Countrywide Communications, Auzcom
9. Telecommunications and data carrier	465	154	48	Telstra, Optus, Vodafone
TOTAL	1,566	522	121	

The category of Local Service Provider within the 2005 Report was the least explicit in terms of how it should be applied and what classes of users should be included in this category. The use of this category will require a clear definition of what types of businesses are included to reduce contention and disputes. NSW Trade and Investment would like to work with the other Agencies and IPART to develop a definition that can be more consistently applied.

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 applied at the discretion of the Minister.

Sections 149 to 152 of the Crown Lands Act provide the Minister with the discretionary power to grant reductions or postponement of the rent payable by lessees of Crown land. Section 151 deals with Rebates of Rent and states:- *"The Minister may, on such occasions as the Minister thinks fit, grant a rebate of rent in respect of a prescribed class of holder or in respect of a holding which is used for a prescribed purpose."*

If the draft IPART recommendations 10, 12 and 13 are introduced this will require changes to the Crown Land Regulations to add the prescribed classes of Budget Funded Sector and Local Service Providers proposed by IPART. This may conflict with the principle of competitive neutrality where classes of users are treated differently by Government regulations in applying rental rebates.

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 NSW Trade and Investment 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 not supported as it proposes the extensive use of rebates in a manner that exceeds current policy

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 5 year phasing in of this increase for SCAX is excessively generous as the Draft IPART Report highlights compensation has already been provided for this service obligation.

“The total payments .. for providing USO services should compensate it for any costs. Thus any discount below the fee schedule, or rebate of rental payment, could be seen as an unnecessary subsidy paid by the NSW Government to an Australian Government arrangement.

We recognise that SCAXs are located in extremely remote areas, and installed for a limited purpose. However, we consider there should be 1 level of rent for all users within each location category, regardless of the different operations and business models of the users. There is no compelling basis for treating SCAX sites differently to any other site. We recommend that the current (low density) fee should be applied to SCAXs sites without rebate.”¹⁹

There is no justifiable basis for delaying this increase as payments are already received for this service. NSW Trade and Investment consider the 5 year phase in to be unwarranted and will require the Minister to waive the market rent to phase in this increase.

The concept that the State Government should phase in market rental increases for a major corporation is contrary to Treasury Guidelines and the Crown Lands Act. For the 75 SCAX sites IPART is recommending that NSW Trade and Investment waive \$369,300 in 2013/14, \$275,250 in 2014/15, \$183,525 in 2015/16 and \$91,725 in 2016/17 a total of \$919,800.

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. This will require NSW Trade and Investment to raise waivers of \$1,175,857 for rental increases and \$447,456 for rental decreases. The concept of charging rents theoretically above market and deferring the application of lower market rents will be difficult to defend. The actual annual cost of rental waivers excluding the rental decreases is estimated at \$1,623,313 or 13.7% of Gross Revenue. The full impact of the rental concessions are \$5,258,763 or 44% of Gross Revenue in year 1.

It maybe more prudent to apply the following principles:-

- Rental decreases are applied from 01 July 2013;
- Rental increases are applied at 50% from 01 July 2013 and the full amount payable from 1 July 2014.

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.

¹⁹ Page 39 Draft IPART Report 2013

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.”*

Recommendation 20 is not supported.

NSW Trade and Investment considers that it has implemented the IPART recommendations in accordance with the Governments decisions in the past and will do so in the future. Recommendation 20 requiring a review by the Audit Office twice in every 5 years may be over prescriptive and unrelated to non-compliance or other risk related issues. While the idea of a review is supported that should be a matter for the Audit Office and their programme and not IPART.

4. Treatment of different occupancies

There are currently 3 categories of occupancy for the purpose of Telecommunications:-

- Primary User an owner of tower infrastructure primarily for broadcasting purposes;
- Infrastructure Providers an owner of tower infrastructure primarily for hosting co-users or providing managed services to third parties;
- Co-users co-locate their broadcasting equipment on towers managed by primary users or infrastructure providers or outsource the delivery of their broadcast services.

Infrastructure providers currently receive a 30% discount on the published fee schedule relative to primary users. Co-users receive a discount of 50% relative to the primary user fees in the published fee schedule. NSW Trade and Investment contends that the 30% rebate to Infrastructure Providers is not justified.

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

Recommendation 21 is supported

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. However if there is a joint venture where two co-users share equipment the discount should reduce to 25%.

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 01 July 2014.

The two major Infrastructure Providers own and operate 64 Telecommunication Towers on Crown Land managed by NSW Trade and Investment. The Infrastructure Providers promote their services as managed service providers to the Telecommunication and Broadcasting Industries. The role of both 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 recommendation that the elimination 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. The business models involve outsourcing, managed services, infrastructure consolidation and sharing of capacity. Each entity retains its own corporate identity and revenue stream. The sharing of infrastructure is as much about network capacity as cost containment and this recommendation is not supported.

5. Conclusion

TERMS OF REFERENCE

REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION TOWERS ON CROWN LANDS

I, Barry O'Farrell, Premier, approve the provision of services by the Independent Pricing and Regulatory Tribunal under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* to the Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS), the Office of Environment and Heritage and Forests NSW in accordance with these 'terms of reference'.

The services to be provided by the Tribunal are a review of the rental arrangements for communication towers on Crown Lands.

In particular, the Tribunal is to review the fee schedule published in its report *Review of Rental Arrangements for Crown Land Communication Tower Sites* (October 2005) and advise on any revisions or amendments to ensure that it reflects fair market-based commercial returns, including:

- the level of the current fees having regard to:
 - recent market rentals agreed for similar sites;
 - relevant land valuations; and
 - any additional requirements that the land management agency is required to take into account under relevant legislation (for example, principles in section 143(1) *Crown Lands Act 1989*);
- the definitions and applications of the high, medium and low density location categories;
- the types of use classifications; and
- the potential inclusion of an additional classification of use to cover National Broadband Network infrastructure.

In addition, the Tribunal is to recommend principles to guide rental rates for sites considered by the Tribunal to be of strategic or high value.

In providing these services, the Tribunal is to consider:

- the policy objective of the New South Wales Government to achieve fair market-based commercial returns on publicly owned land occupied for the purposes of telecommunications, data transmission or broadcasting;
- the Government's preference for a fee schedule that is as simple, transparent, and cost reflective as practicable; and
- any other relevant matters.

The Tribunal should consult with key stakeholders including agencies responsible for the management of Crown Land sites, owners of communication infrastructure that occupy Crown Land sites and access seekers (including other government agencies that purchase access).

The Tribunal is requested to present a final report to the Deputy Premier, Minister for Trade and Investment and Minister for Regional Infrastructure and

- **“market return:** *rentals should be based on the market’s willingness to pay for the site or facility, taking into account land values, terms and conditions of use*
- **administrative efficiency:** *arrangements for determining rentals should be simple to administer and cost effective*
- **transparency:** *rentals should be calculated in a manner that is clear and easily understood*
- **consistency:** *arrangements for determining rentals should be applied consistently across different land management agencies.”*²⁰

The above terms of reference and the proposed principles of the review may not be satisfied by the draft recommendations. The consolidation of 9 classes of users into one ‘standard fee’ may introduce risks for administrative efficiency and transparency that outweigh the benefits of competitive neutrality. While some consolidation of user classifications maybe possible and NSW Trade and Investment considers that a reduction from 9 to 5 is achievable.

The final report of IPART may need to refine the recommendations to build on the good work commenced in 2005. There is a risk that consolidation of this magnitude may increase complexity and contention rather than reduce it.

IPART could retain the existing user classifications while updating the rental schedule and introduce a two tiered fee schedule for high value sites with a medium density floor. These changes could be applied in a manner that minimises uncertainty and that generally reflects the available market advice.

The agencies would also need to ensure that the specified permitted use for all occupants was clear and unambiguous so that market rentals are determined based on the restrictions and conditions of the licence.

²⁰ Page 13 IPART Issues Paper December 2012

6. Attachment 1

High Value Sites
Bellevue Hill, Cowra
Bimmil Hill, Bega Valley
Blackjack Mountain, Gunnedah
Buckeridge Lookout, Eurobodalla
Cambewarra Mountain, Shoalhaven
Galore Hill, Lockhart
Gan Gan Hill, Port Stephens
Gundagai Trig, Gundagai
Gypsum Road, Broken Hill
Hill 60, Wollongong
Kincumber Mountain Reserve, Gosford
Middle Brother, Port Macquarie-Hastings
Mount Arthur, Muswellbrook
Mount Bingar
Mount Crawney, Tamworth Regional
Mount Denman, Muswellbrook
Mount Dowe, Narrabri
Mt Cairncross, Port Macquarie-Hastings
Mt Canemumbola, Boorowa
Mt Cenn Cruaich, Warrumbungle
Mt Flakney, Wagga Wagga
Mt Gillamatong, Palerang
Mt Gladstone, Snowy River
Mt Mackenzie, Tenterfield
Mt Sugarloaf, Lake Macquarie
Mt Ulandra, Junee
Mt Wandera, Eurobodalla
Mt Welman, Coolamon
One Tree Hill, Albury
Reservoir Hill, Lachlan
Russell Trig, Lake Macquarie
Saddleback Mountain, Kiama
Sappa Bulga Trig, Narromine
Square Head, Narrandera
Willians Hill, Wagga Wagga
Wolumla Peak, Bega Valley