



Review of rental arrangements for communication towers on Crown land

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Invitation for submissions

IPART invites written comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

Submissions are due by 12 April 2019

We would prefer to receive them electronically via our online submission form <www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission>.

You can also send comments by mail to:

Rental Arrangements for Communication Towers on Crown Land

Independent Pricing and Regulatory Tribunal

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Late submissions may not be accepted at the discretion of the Tribunal. Our normal practice is to make submissions publicly available on our website <www.ipart.nsw.gov.au> as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed above.

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If you would like further information on making a submission, IPART's submission policy is available on our website.

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1 Introduction

The Independent Pricing and Regulatory Tribunal of NSW (IPART) is currently reviewing the rental arrangements for communication tower sites located on Crown land. These sites are areas of land on which a tower and/or other infrastructure and equipment essential for broadcast and two-way¹ communications is situated.

We last reviewed the rental arrangements for communication tower sites on Crown land in 2013.² As a result of that review, the NSW Government established a framework that includes a fee schedule for determining the rents its land management agencies can charge users of ‘standard sites’ and a negotiation process for agreeing the rents for users of ‘high-value sites’. We also recommended that the fee schedule be independently reviewed every five years, in accordance with good regulatory practice.

In line with this recommendation, the NSW Government has asked us to conduct the current review. In September 2019 we will provide our advice to the Premier and relevant Ministers on the rental arrangements to apply from July 2020.

1.1 What has IPART been asked to do?

Our terms of reference ask us to review the rental arrangements for communication tower sites on Crown land managed by three government agencies – the Department of Industry’s Division of Lands and Water, the Office of Environment and Heritage, and Forestry Corporation NSW.³ In particular, we are to advise on a fee schedule that reflects “fair, market-based commercial returns”. In reaching our advice, we are to have regard to:

- ▼ Recent market rentals agreed for similar purposes and sites
- ▼ Recent land valuations
- ▼ The framework we established in the 2013 review
- ▼ The land management agencies’ legislative requirements.

We are also to consider a range of other matters, including the Government’s preference for a fee schedule that is as simple, transparent, and cost reflective as practicable and clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth) which prohibits discrimination against telecommunication carriers by State law.

¹ For example, two-way radio and mobile telephone calls.

² See IPART, *Review of rental arrangements for communication towers on Crown land* – Final Report, July 2013 at https://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/final_report_-_review_of_rental_arrangements_for_communication_towers_on_crown_land_-_july_13.pdf accessed on 13 February 2019.

³ Throughout this paper, we use the term Crown land to refer to land that is owned by the state and managed by the three government agencies - the Department of Industry’s Division of Lands and Water, the Office of Environment and Heritage, and Forestry Corporation NSW.

Our full terms of reference are provided in Appendix A.

1.2 How will we conduct this review?

For this review, we will conduct a public consultation process and our own research and analysis. We will consult with key stakeholders, including the government agencies that manage the Crown land concerned, and organisations that use communication tower sites on this land.

This Issues Paper is the first step in our public consultation. It describes and seeks comment on our proposed approach for the review. We invite all interested parties to make submissions in response to this paper by 12 April 2019. Details on how to make a submission are provided on page iii at the front of the paper.

We will release a Draft Report at the end of June 2019, and conduct further consultation before making our final recommendations and providing a Final Report to the Premier and the relevant Ministers in September 2019.

Table 1.1 provides an indicative timetable for the review. We will update this timetable on our website as the review progresses.

Table 1.1 Indicative timetable for the review

Key milestone	Proposed timing
Release Issues Paper	26 February 2019
Submissions to Issues Paper due	12 April 2019
Release Draft Report	End June 2019
Hold public hearing	July 2019
Submissions to Draft Report due	August 2019
Provide Final Report to Premier and Ministers	September 2019

1.3 How this paper is structured

The rest of this Issues Paper provides more information on the review and our proposed approach:

- ▼ Chapter 2 outlines key contextual information for this review
- ▼ Chapter 3 sets out our proposed approach for making our recommendations
- ▼ Chapters 4 to 6 discuss the key steps in this approach in more detail, including:
 - Estimating the range for efficient rents for communication tower sites on Crown land with different characteristics.
 - Deciding on an appropriate rent setting methodology and apply this method to decide on efficient rents (or a process for determining those rents) for all sites in 2019-20.
 - Considering the impact of these rents on current users and decide what, if any, transitional measures are needed to manage these impacts.

- Deciding how to adjust rents from year to year, and how often they should be periodically reviewed.

1.4 Issues on which we seek comment

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

Proposed approach

- 1 Do you agree with IPART's proposed approach for this review? Are there any alternative approaches that would better meet the terms of reference, or any other issues we should consider? 15

Estimate the range for efficient rents

- 2 Do you agree with our proposed definition of efficient rents for communication tower sites on Crown land as the range bounded by a user's willingness to pay and the opportunity cost to the land agency? 20
- 3 What information should we consider to estimate users' willingness to pay (for example market-based commercial rents paid to private land owners)? 21
- 4 Do market-based rents typically cover all services related to access, use and operation of the land or are there any additional fees charged to users (such as fees for maintenance of access roads)? 21
- 5 What characteristics of a communication tower site are users more willing to pay for? Are these different for users that provide services in different markets? 21
- 6 How should we estimate the land agency's opportunity cost? Does this vary for sites in different locations? 21
- 7 What do you consider to be a 'fair' sharing of any differences between a user's willingness to pay and the opportunity cost of a site? 21

Decide on and apply a rent setting methodology

- 8 Does the current market evidence support continuing the existing schedule of rental fees by location? Would there be benefits to increasing or decreasing the number of location categories? 26
- 9 Are the current location categories reflective of recent data on population density? 26
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| 12 | Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public? | 26 |
| 13 | Should the current rent arrangements based on site-by-site negotiation for high-value sites be continued? | 26 |
| 14 | Would a valuation formula based on observable site characteristics be a viable alternative for setting rents for high-value sites? If so, what site characteristics would need to be included in the formula to determine the rent? | 26 |

Transitioning impacts on users and adjusting rents over time

- | | | |
|----|---|----|
| 15 | Do you agree with our proposed approach for assessing the impact of our recommendations on users? | 28 |
| 16 | Is the current approach of adjusting rents annually by the CPI appropriate? | 28 |
| 17 | Should the fee schedule continue to be independently reviewed every five years? | 28 |

2 Context for this review

To undertake and provide input to this review of the rental arrangements for communication tower sites on Crown land in NSW, it is important to understand the context in which the land management agencies and site users operate. The sections below provide more information on the key context, including:

- ▼ What a communication tower site is
- ▼ What sites are covered by our review and where they are located
- ▼ Who uses these sites
- ▼ The current rental arrangements for these sites
- ▼ The relevant legislation to be taken into account.

2.1 What is a communication tower site?

To provide coverage, both broadcast communications (such as radio and television) and two-way communications (such as mobile phone and two-way radio networks) require a network of infrastructure to transmit signals.

A communication tower site may include (but is not limited to):

- ▼ A purpose built communications tower, with co-located communications equipment affixed
- ▼ Communications equipment co-located on third party infrastructure (water reservoir, light pole, building, road sign)
- ▼ Buildings where equipment is housed internally and/or affixed externally
- ▼ Generators and connection to the local electricity network
- ▼ Solar panel arrays
- ▼ Fibre optic cabling
- ▼ Access roads.

Communication tower sites can be on either public or private land.

2.2 Which sites does our review cover?

The Premier has requested we undertake a review of the rental arrangements for communication tower sites on Crown land that is managed by three NSW land management agencies:

- ▼ The Department of Industry – Division of Lands and Water (Department of Industry)

- ▼ NSW National Parks and Wildlife Service (NPWS), which is part of the Office of Environment and Heritage
- ▼ Forestry Corporation of NSW (Forestry Corporation) – a state-owned corporation.

Our review does not apply to communication tower sites on Crown land administered by other government agencies or businesses (including Roads and Maritime Services, Sydney Water and local councils).

Currently, there are 937 recorded communication tower sites and 1,789 associated licences on Crown land managed by the three relevant agencies.⁴ The number of licences administered by each agency is shown in Table 2.1.

Table 2.1 Number of licences by land management agency

	2019
Department of Industry	1,297
Forestry Corporation	368
NPWS	124
Total	1,789

Note: Data as at January 2019.

Source: Department of Industry, Office of Environment and Heritage and NSW Forestry Corporation.

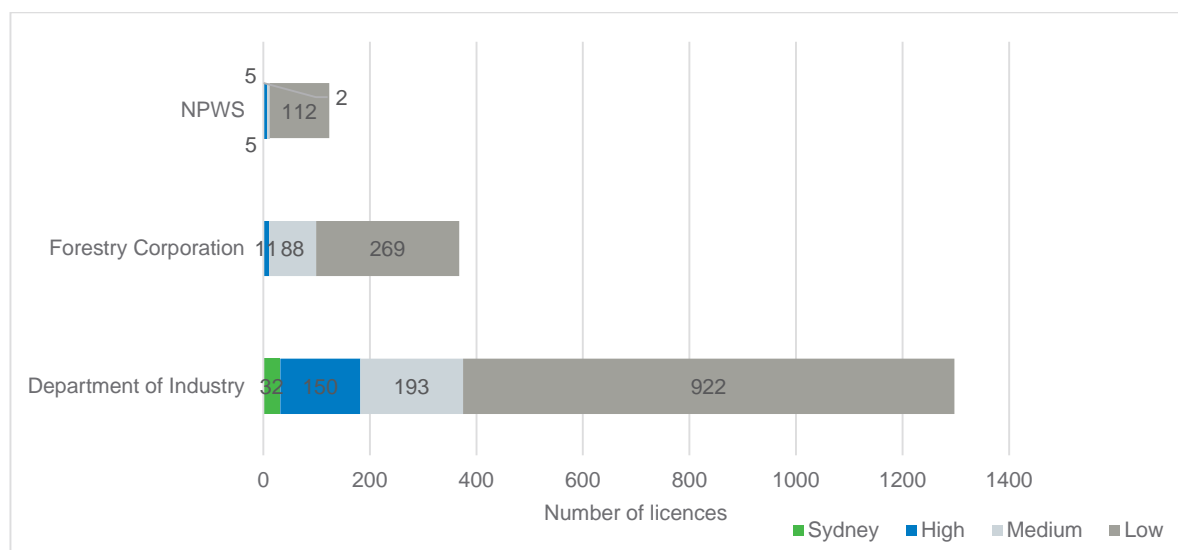
Under the current rental arrangements, the sites are categorised as either high value or standard. Standard sites are further categorised by their location. There are four location categories:

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

As Figure 2.1 shows, the majority of licences are for sites in the Low density category, partly because this is where much of the Crown land we are concerned with is located, and partly because in metropolitan areas there are many alternate sites for communication towers, for example on private buildings.

⁴ Each site may be licenced to more than one user.

Figure 2.1 Number of licences by location 2019



Data source: Department of Industry, Office of Environment and Heritage and NSW Forestry Corporation.

Crown land managed by the Department of Industry, the Forestry Corporation and NPWS is used for a range of activities, some of which are commercial. The installation of communications infrastructure on Crown land precludes its use for other activities. It may also result in increased road traffic in environmentally sensitive areas.

The income the three agencies receive from rental of communication tower sites represents only a small amount of their revenue from sale of good and services. We also note that much of the land managed by the agencies, such as national parks, has other uses that cannot be monetised.

2.3 Who uses communication tower sites on Crown land?

A wide range of organisations are licenced to use communication tower sites on Crown land, including:

- ▼ State budget agencies (for example, emergency service organisations)
- ▼ State-owned corporations (for example, Forestry Corporation)
- ▼ Commonwealth funded agencies (for example, Australian Federal Police, Border Protection)
- ▼ Community-based organisations and community radio
- ▼ Radio and television broadcasters (including public and commercial stations)
- ▼ Telecommunication and data carriers (for example, Telstra and Optus)
- ▼ Privately owned networks without carrier status (for example, Vertel)
- ▼ Communications infrastructure providers (for example, Broadcast Australia and Axicom (previously Crown Castle Australia)).

Under the current rental arrangements, these users are either primary users, infrastructure providers or co-users. Table 2.2 provides more information on each user type, including their functions, who they have a licence or contract with, and who they pay fees to.

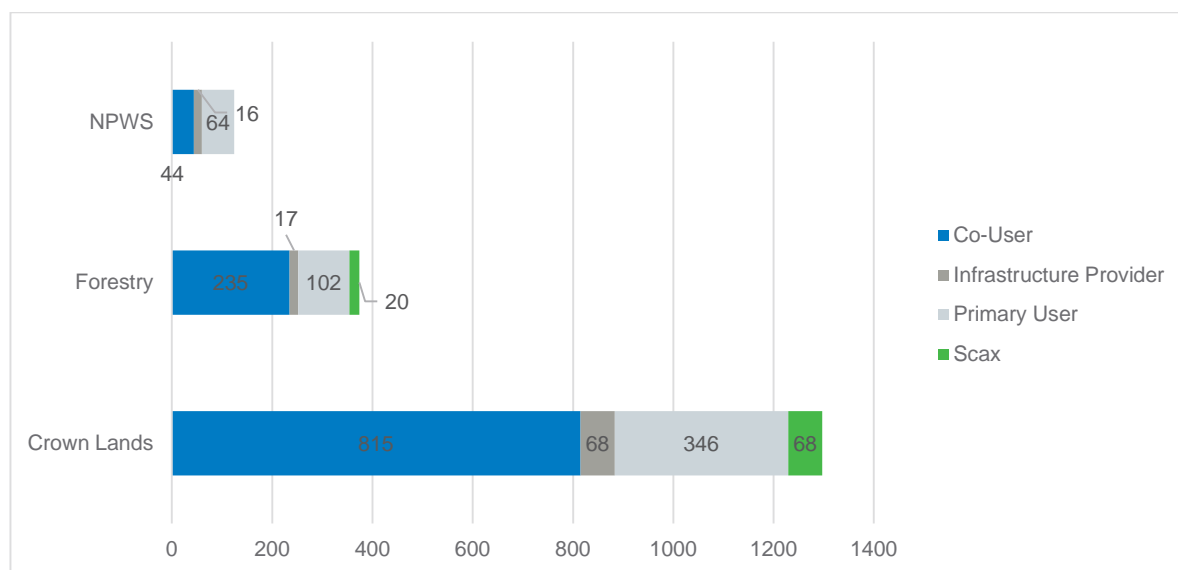
Throughout rural NSW there are also a number of Small Country Automatic Exchanges (SCAXs). These are facilities located in small huts, and deliver fixed wire telephony services to remote customers.

Co-users are the largest group of users (Figure 2.2).

Table 2.2 Types of communication tower site user

User	Function	Licence/contract with	Fees paid
Primary User	<ul style="list-style-type: none"> Constructs, owns and operates the tower (and associated infrastructure) on the site for its own transmission purposes Can host co-users on this tower (and infrastructure) 	<ul style="list-style-type: none"> Land management agency for access to site Co-users to provide access to tower 	<ul style="list-style-type: none"> To land management agency as determined under rental arrangements
Infrastructure Provider	<ul style="list-style-type: none"> Constructs and owns the tower (and associated infrastructure) at the site for the purpose of hosting co-users 	<ul style="list-style-type: none"> Land management agency for access to site Co-users to provide access to tower 	<ul style="list-style-type: none"> To land management agency as determined under rental arrangements
Co-user	<ul style="list-style-type: none"> Situates communication equipment on primary users' tower for transmission purposes 	<ul style="list-style-type: none"> Land management agency for access to site Primary User (or Infrastructure Provider) to provide access to tower 	<ul style="list-style-type: none"> To land management agency as determined under rental arrangements To Primary User (or Infrastructure Provider) as agreed between the parties

Figure 2.2 Number of licences by user type



Data source: Department of Industry, Office of Environment and Heritage and Forestry Corporation.

2.4 What are the current rental arrangements?

As noted above, under the current rental arrangements, communication tower sites are categorised as either high value or standard sites. Standard sites are further categorised according to their location (see section 2.2 above). The rent payable for standard sites is set according to a published⁵ rent schedule and rebate schedule, increased on an annual basis by the Consumer Price Index (CPI) (All Groups) for Sydney.

As recommended by our 2013 review, the rent payable to the land management agencies for access to a high value site is agreed through a negotiation process. However, preliminary feedback from the land agencies is that this approach has not been commonly adopted.⁶

2.4.1 Rent schedule for standard sites

The current rent schedule consists of one annual fee (or rent level) per location category, which applies to all users of sites in that category (Table 2.3). The aim of this rent schedule is to provide a commercial market return without the cost and time involved in negotiating the rent for every site. This is particularly important for sites in the Low category (the majority of sites) where the cost of negotiation is likely to exceed the benefits.

⁵ NSW Government, *Communication licence rent Fact Sheet* at https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/143536/Communication-licence-rent-fact-sheet.pdf accessed on 20 February 2019.

⁶ Information provided by Department of Industry, Office of Environment and Heritage and Forestry Corporation, January 2019.

Table 2.3 Rent for standard sites (\$2018/19, annual, ex GST)

Location category	Annual rent
Sydney	36,068
High	30,056
Medium	16,697
Low	8,014

Note: Under the current arrangements, fees are adjusted for inflation each year.

Source: NSW Government, Department of Industry, *Communication licence rent fact sheet* at https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/143536/Communication-licence-rent-fact-sheet.pdf accessed on 8 February 2019.

However, the rent payable varies by user type. In our 2013 reviews we recommended that both primary users and infrastructure providers be charged 100% of the scheduled rent, and co- users be charged 50% of the scheduled rent.⁷ New users who have entered into licences with the land management agencies after 1 July 2013 are currently paying rent in line with this recommendation. However, existing users may still be transitioning to the appropriate rent (see section 2.4.3 below).

2.4.2 Rebate schedule

The current rebate schedule applies to eligible users (Table 2.4), and rebates are granted at the discretion of the relevant Minister. The rationale for these rebates is that some users provide a social or community benefit in excess of their ability to generate revenue from the service they provide. These groups include community organisations, emergency services, local service providers and some telephony service providers required by law to offer services in low-density areas.

Table 2.4 Rebate schedule (\$2018/19, annual, ex GST)

Eligible user	Sydney	High	Medium	Low
Community group	35,577	29,565	16,206	7,523
Budget funded sector	28,854	24,044	13,357	6,411
Local service provider	-	-	10,018	4,808
Telephony service provider	-	-	-	4,808

Note: Rebates are adjusted for inflation each year. A standard rebate application form is available on the Department of Industry's website. Applicants are asked to provide evidence that they meet the requirements for each rebate category.

Source: NSW Government, Department of Industry, *Communication licence rent fact sheet* at https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/143536/Communication-licence-rent-fact-sheet.pdf accessed on 8 February 2019.

2.4.3 Transitional arrangements for existing users

When the current rental arrangements were introduced on 1 July 2013, the impact on existing licence holders was alleviated by phasing in the new rent levels over five years. Many existing licence holders are now paying rent that fully reflects these new levels. However, some licence

⁷ For Infrastructure providers with existing licence arrangements, the 30% discount was to be removed gradually over five years, starting after the end of the next rent review period.

holders, for example infrastructure providers, may still be transitioning, due to their licence terms and the date specified for their next licence review.

2.5 What legislation is relevant for our review?

In forming our advice, we need to have regard to requirements that the land management agencies affected by this review must take into account under relevant legislation (such as their governing legislation). This includes:

- ▼ ***Crown Land Management Act 2016 (NSW)***. This Act commenced 1 July 2018 and repealed a number of other Acts, including the *Crown Lands Act 1989 (NSW)* and the *Western Lands Act 1901 (NSW)*. The current Act allows for the granting of leases and licences over Crown land including to construct, operate or maintain telecommunications infrastructure.⁸
- ▼ ***Forestry Act 2012 (NSW)***, which dedicates Crown land for State forest purposes.⁹ It allows for the land manager of a forestry area to issue a forest permit authorising use of the forestry area for such (non-forestry) purposes (including recreational, sporting or commercial activities) as are specified in the permit.¹⁰
- ▼ ***National Parks and Wildlife Act 1974 (NSW)***, which allows the Minister to grant leases or licences to occupy land reserved under this Act for the purpose of the erection, use or maintenance of broadcasting or telecommunications facilities.¹¹

We also need to take into account two Commonwealth Acts, which are relevant to particular users.

The first is the *Telecommunications Act 1997 (Cth)*. The main object of this Act is to provide a regulatory framework that promotes:

- ▼ The long-term interests of end-users of carriage services or of services provided by means of carriage services
- ▼ The efficiency and international competitiveness of the Australian telecommunications industry
- ▼ The availability of accessible and affordable carriage services that enhance the welfare of Australians.¹²

It prohibits discrimination against telecommunications carriers by providing:

- ▼ State law has no effect to the extent that it discriminates, or would have the direct or indirect effect of discriminating, against a particular carrier, a particular class of carriers or carriers generally
- ▼ A person must not exercise a power under such a law to the extent that it discriminates, or would have the direct or indirect effect of discriminating, against a particular carrier, a particular class of carriers or carriers generally.¹³

⁸ *Crown Land Management Act 2016 (NSW)*, Part 5, Division 5.7, Section 5.30 (2)(c).


⁹ *Forestry Act 2012 (NSW)*, sections 13 and 14.

¹⁰ *Forestry Act 2012 (NSW)*, section 60.

¹¹ *National Parks and Wildlife Act 1974 (NSW)*, section 153D.

¹² *Telecommunications Act 1997 (Cth)*, section 3(1).

¹³ *Telecommunications Act 1997 (Cth)*, Schedule 3, clause 44.



The Act also exempts telecommunications carriers and their contractors from the requirements to obtain landowners' consent and planning and environmental approval from state, territory or local government authorities in certain circumstances for specified authorised activities (inspecting, installing and maintaining certain telecommunications facilities).¹⁴ In addition, it provides carriers with a right of access to other carriers' telecommunications transmissions towers for installing a facility for radio communications.¹⁵

The second is the *Broadcasting Services Act 1992 (Cth)*, which:

- ▼ Regulates broadcasting facilities used for providing broadcasting (television and radio) services
- ▼ Requires owners and operators of broadcasting transmission towers to give digital broadcasters and datacasters access to the towers for installing or maintaining digital transmitters.¹⁶

¹⁴ *Telecommunications Act 1997 (Cth)*, Schedule 3, clause 37. In practice, it is common for carriers to enter into an occupancy instrument with the landowner to determine the rental, terms and conditions for installing and maintaining telecommunications facilities on the landowner's land.

¹⁵ *Telecommunications Act 1997 (Cth)*, Schedule 1, clause 33.

¹⁶ *Broadcasting Services Act 1992 (Cth)*, Schedule 4, Part 5.

3 Proposed approach

Since our last review five years ago, the communications landscape has continued to evolve with technological innovations and greater demands for mobile data capacity. Therefore, we have developed a proposed approach that will allow us to reconsider the principles that underpin the rental arrangements we recommended at that review, and update the range and sources of data we analysed in that review. At the same time, this approach will ensure we have regard to all the matters specified in our terms of reference (see Box 3.1) and the contextual issues outlined in Chapter 2.

Box 3.1 Matters specified in our terms of reference

Our terms of reference ask us to advise on a fee schedule that reflects fair, market-based commercial returns, having regard to:

- ▼ Recent market rentals agreed for similar purposes and sites
- ▼ Relevant land valuations
- ▼ The current rental arrangements, and
- ▼ Requirements that the land management agencies must take into account under relevant legislation.

In providing these services, other matters we are to consider are:

- ▼ The Government's preference for a fee schedule that is as simple, transparent and cost reflective as practicable
- ▼ The costs and benefits associated with implementing our recommended fee schedule
- ▼ Whether a broader consideration of commercial rents would produce lower or higher rental rates than those in our recommended fee schedule and, if so, the context
- ▼ Clause 44 of Schedule 3 of the Telecommunications Act 1997 (Cth), and
- ▼ Any other relevant matters.

The sections below provide an overview of our proposed approach, and then outline what we propose to consider at each step. Chapters 4 to 6 explain each step in more detail and identify the issues on which we seek stakeholder comment.

3.1 Overview of our proposed approach

Our proposed approach comprises 4 main steps:

1. Estimate the range for efficient rents for communication tower sites on Crown land with different characteristics.
2. Decide on an appropriate rent setting methodology and apply this method to decide on efficient rents (or a process for determining those rents) for all sites in 2019-20.

3. Consider the impact of these rents on current users and decide what, if any, transitional measures are needed to manage these impacts.
4. Decide how to adjust rents from year to year, and how often they should be periodically reviewed.

3.2 Estimate the range for efficient rents

As Box 3.1 notes, our terms of reference indicate that rents for communication tower sites should reflect fair, market-based returns. We consider that in this context, this means they should reflect efficient prices.

In any market, a price is efficient at the point where both the buyer and the seller are better off than if they didn't make the transaction. In the communication tower site rental market, this point is likely to fall somewhere in the range between:

- ▼ The most a user would be prepared to pay to use the site for communication tower purposes. In economics, this upper bound is known as the users' **willingness to pay**.
- ▼ The least a land agency would be prepared to accept for allowing the site to be used for these purposes. This lower bound is known as the land agencies' **opportunity cost**.

As the first step in our approach, we propose to form a view on this range for different types of Crown land sites. This will involve collecting and analysing information and evidence on the range of factors likely to influence the willingness to pay and the opportunity cost – for example, site characteristics, types of users and the markets they operate in, availability of alternative sites, and the benefits of the next best alternative use of the sites.

3.3 Decide on and apply an appropriate rent charging methodology for all sites

In the second step, we propose to consider the information, analysis and estimates from Step 1 to decide on a rent charging methodology for all sites. We will then apply this method to set rents for all sites. As a starting point, we will compare how the rents derived using the current methodology (outlined in section 2.4) to our estimated range for efficient rents. We will also consider whether the outputs from Step 1 suggest that any part of the current methodology is no longer appropriate.

In deciding on the methodology, we will consider the range of matters listed in our terms of reference, including the method's simplicity, transparency and ease of implementation. We will also consider the impacts of Clause 44(1)(a) of Schedule 3 to the *Telecommunications Act 1997 (Cth)*. This clause provides that State and Territory laws have no effect if they discriminate or have the effect (whether direct or indirect) of discriminating against carriers. As part of the review, we will need to ensure that any proposed methodology would not have the effect of discriminating against carriers.

Chapter 5 contains further information on how we will develop a rent charging methodology.

3.4 Consider impacts on users and decide on transitional arrangements if required

The third step in our proposed approach involves assessing the impacts of the rental values set in Step 2 on existing users, to decide what if any transitional arrangement if required. For example, in our 2013 review we identified impacts on certain users of moving to a single user category for standard sites. We then recommended that impacts be managed by phasing in new rent levels over a 5-year period while also having regard to the next date for rent reviews under existing agreements.

3.5 Decide how to adjust fees from year to year and how often they should be periodically reviewed

The final step in our proposed approach involves deciding how to adjust fees from year to year, and when they should be periodically reviewed. In previous reviews, we recommended adjusting fees each year by CPI and independently reviewing the fee schedule every 5 years.

Chapter 6 contains further information on steps 4 and 5 of our proposed approach.

[IPART seeks comments on the following](#)

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

4 Estimate the range for efficient rents

The first step in our proposed approach is to estimate the range for efficient rents for Crown land sites with different characteristics. The sections below discuss the key components of this step, including the information we will collect and analyse and the issues we will consider. These components are:

- ▼ Defining efficient rents for communication tower sites on Crown land
- ▼ Estimating users' willingness to pay for using these sites
- ▼ Estimating land agencies' opportunity cost in making these sites available.

4.1 Defining efficient rents for communication tower sites

As Chapter 3 noted, in competitive markets any market price is efficient at the point where both the buyer and the seller are better off than if they didn't make the transaction. In the communication tower site rental market, this point is likely to fall somewhere in the range between:

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

In practice, prices can fall anywhere in this range, depending on factors such as differences between the buyer and seller's knowledge and understanding of the market. If a user pays rent that is below what it is willing to pay for using the site, it would obtain what is referred to in economics as a **consumer surplus**. On the other hand, if an agency charges rent that is higher than its opportunity cost, it would obtain a **producer surplus**. For each transaction, the sum of the consumer surplus and producer surplus represents the **total economic surplus** from the transaction.¹⁷

Where the user's willingness to pay is higher than the agency's opportunity cost, different allocations of the economic surplus are possible:

- ▼ Rents may be set at the land management agency's opportunity cost, in which case the user would retain the entire surplus from the transaction.
- ▼ Alternatively, rents may be set at the user's willingness to pay, which would mean the agency would retain the entire surplus from the transaction.

In previous reviews, we indicated that in principle, rents should reflect a fair sharing of the economic surplus between land management agencies and users. We consider that this

¹⁷ <https://pressbooks.bccampus.ca/uvicecon103/chapter/3-6-equilibrium-and-market-surplus/>

principle continues to be an appropriate objective for this review. This means that land management agencies should receive a share of:

- ▼ The economic value that primary users derive from using the site for transmission purposes, and
- ▼ The rent that primary users and infrastructure providers recover from co-users (after allowing for their costs of developing and maintaining the infrastructure used by co-users).

However, applying this principle in practice is difficult due to the difficulties of accurately estimating both the willingness to pay and the opportunity cost across different types of users and sites, and therefore the difference between them.

We note that some sites are more valuable than others because of their varying suitability to networked communication services. The higher rental price obtainable for these sites need not be reduced by regulation. It represents a Ricardian rent, meaning it is a reflection of a more valuable endowment than alternative sites, and it is not inefficient for land owners to earn Ricardian rents. To the extent that the supply of valuable sites is restricted, it is restricted by nature, and not by any action of the owner. In contrast, regulation is normally applied to monopoly rent, which is obtained by an owner who uses the ability to restrict supply to drive up the price.¹⁸

As the next sections discuss, we are seeking comment on how to estimate the upper and lower bounds of efficient rents and how these vary across sites in different locations. We are also seeking comment on how to ‘fairly’ share any differences between the bounds.

4.2 Estimating users’ willingness to pay for using sites

To estimate users’ willingness to pay for their use of a communication tower site on Crown land, we need to consider the factors that influence this, and the information and approach we will use for the estimation.

4.2.1 Factors that influence willingness to pay

The most a user would be willing to pay for its use of a communication tower site on Crown land will be influenced by the economic value it can obtain from this use. The least a user would be willing to pay will be influenced by the availability and cost of accessing an alternative site.

Economic value users can obtain from a site

The economic value users can obtain from a site depend on several factors. The first is the services they use the site to provide. For example, telecommunication service providers,

¹⁸ In economic terms, ‘resource’ or ‘Ricardian’ rents are those that accrue to the land owner due to the physical nature of the land and its scarcity. Ricardian rents are less likely to change behaviour than market-power rents where a monopolist is able charge higher rents by restricting supply. Therefore Ricardian rents tend not to be a focus of economic regulation. See Wills-Johnson, N. and Affleck, F., *A problem looking for a solution or a solution looking for a problem? Economic regulation of railways in logistics chains*, 2006, pp 3-5, at https://atrif.info/papers/2006/2006_WillsJohnson_Affleck.pdf accessed on 21 February 2019.

television and radio broadcasters, and infrastructure providers would all use the site to provide services they can sell. As the profitability of their services is likely to differ, the economic value they can obtain from the site also differs. On the other hand, emergency services agencies and community-based organisations use the site to provide services they provide at low or no cost to benefit the community, so obtain little or no economic value from the site.

Some users, such as telecommunication service providers and broadcasters, can also generate additional network benefits from the site. That is, the site contributes to a larger, interconnected network of communication facilities, and thus increases the economic value that can be obtained from that network. In addition, all primary users can obtain additional economic value by providing co-users with access to the site (after allowing for the costs of developing and maintaining infrastructure made available to these co-users).

The second main factor that drives value or benefits users can obtain is the site's characteristics. Previous reviews have indicated that in general, sites with easier access, higher elevation and line of site, better proximity to major highways and little availability of alternative sites are of greater value to communication tower site users.

Availability and cost of an alternative site

A user will not be prepared to pay more for a site than the cost of accessing an alternative site that provides the same (or similar) services. In some cases, there may be few alternatives for the site under negotiation, or the use of other sites may involve significant additional expenses. In these cases, the user will have a relatively high willingness to pay for a site, because the alternatives are unavailable or can only be developed at significant cost.

4.2.2 Information and approach for estimating willingness to pay

To estimate users' willingness to pay for communication tower sites on Crown land we propose to collect and analyse a range of information. First, as in previous reviews, we will collect updated market evidence on rents paid for communication tower sites on private land. This will provide guidance on willingness to pay for sites on Crown land. As part of this we will consider what types of services are included in these rents and whether there are any additional fees charged (for example fees for maintenance of access roads).

We acknowledge that the available market evidence on rents paid for sites on private land may have limitations because this market may not be active or transparent. In addition, some private landholders may have been using IPART's recommended fee schedule for Crown lands to set rents. This would introduce a degree of circularity. We also invite telecommunications service providers, infrastructure providers and other users to provide information on the rents they pay to private land owners and how these compare to the current fee schedule for Crown lands.

Second, we propose to collect information on site characteristics from land agencies' databases and publicly available sources. These characteristics include:

- ▼ location (including ease of access and population density)
- ▼ elevation and line of sight

- ▼ proximity to major highways, and
- ▼ proximity to alternative sites.

We will analyse this data to quantify the impact of different characteristics on users' willingness to pay.

Third, we propose to consider other possible approaches and sources of information for estimating the economic value of communication tower sites to users. For example, one possible approach is outlined in Box 4.1 below. We are seeking comments from stakeholders on other possible approaches and information sources.

Box 4.1 Possible approach for estimating economic value of communication tower sites to users

Communication tower sites share some similarities with wind turbine sites. In both cases, users pay the land owner for access to a parcel of land, on which they can build structures and install and operate equipment. In both cases, the location and topographical features of this land influence how much value it can generate for users. For wind turbine sites, the key determinants of this value are access to quality air flow (which is determined by factors like openness and altitude), proximity to electricity networks, and the availability of alternative sites. However, unlike wind turbine sites, communication tower sites can have multiple users.

With wind turbine sites, the economic value of the site to users can be easily measured in \$ per megawatt (MW) of installed capacity depending on the characteristics of the site. Land owners receive a share of this value from rents they receive from users.

While it would not be as straightforward, it may be possible to measure the economic value generated by communication tower sites to different types of user.

For example, commercial television and radio broadcasters generate revenue by selling on-air advertising. The price they can charge advertisers for air-time is dependent on the size and demographic composition of their audience. The size of the audience is a function of popularity and network reach (the audience of regional radio stations for example is limited to their distribution area). Therefore, the value of adding additional transmission sites to these users can be measured by the increase in potential audience and associated demand from advertisers (minus a provision for other costs for the broadcaster).

Similarly, telecommunication carriers generate revenue by selling phone and data services to customers. The potential number of customers that can be reached by each tower is a function of the technology they use and the population density of the area.

One challenge with this approach is that the network benefits (see section 4.2.1) a user obtains from a particular site would be difficult to quantify.

4.3 Estimating land agencies' opportunity cost in making sites available

To estimate land agencies' opportunity cost in making sites available for communication towers, we need to consider the factors that influence this cost, and the information and approach we will use for the estimation.

4.3.1 Factors that influence the opportunity cost

The opportunity cost to a land management agency of making Crown land available for use as a communication tower site depends on the economic value that could be derived from the next best alternative use for the land. For example:

- ▼ Where a site is of use to several alternative primary communication tower users, this value is the rent that could be collected from the alternative primary user.
- ▼ Where it could be of use for a commercial purpose other than communication towers (eg, wind turbines or forestry), it is the revenue that could be made from that use.

4.3.2 Information and approach for estimating the opportunity cost

We propose to consider other comparable benchmarks for the next best available use of the land. We are seeking information from the land management agencies on the revenue they derive from alternative sources which we will use to inform the opportunity cost for communication tower sites.

As noted above, one alternative commercial use for the land may include wind turbines. However, as is the case for communications towers, the level of income depends on the site's location (access to quality air flow as well as proximity to the electricity network to minimise losses), whether the soil can support the weight of a wind turbine and availability of suitable alternatives in the area.¹⁹

We will also consider land valuations. Some stakeholders have previously argued that the recommendations of our 2004 review of waterfront tenancies provides a precedent that we should adopt for communication towers. In that review, we recommended that rentals be set via a general formula that aligns the rental for a domestic waterfront occupancy with the market value of this occupancy. We also recommended that the 'precinct Statutory land value' be used as a proxy for the market value of an occupancy.

However, we note that the same relationship does not exist in relation to communication tower sites on Crown land. In some cases, the value of the surrounding or nearby private land (such as farm land) will bear no systematic relationship to the value of Crown land communication tower sites to users. In our last review, we noted that land value is not the sole determinant of market rent for communication tower sites. Rents in other markets such as land leased for renewable energy development or billboard hosting is likely to attract a market rent that reflects a combination of factors such as supply, demand, value of site to potential occupants and opportunity cost to the site owner. For these reasons, our previous reviews have not recommended a rent schedule based on land values alone.

IPART seeks comments on the following

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

¹⁹ LDC Infrastructure, Australia Wind Power – Wind Turbine Leases Explained, Available from : <https://ldcinfrastructure.com.au/wind-energy-lease-explained/> , Accessed 20 February 2019.

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- 3 What information should we consider to estimate users' willingness to pay (for example market-based commercial rents paid to private land owners)?
 - 4 Do market-based rents typically cover all services related to access, use and operation of the land or are there any additional fees charged to users (such as fees for maintenance of access roads)?
 - 5 What characteristics of a communication tower site are users more willing to pay for? Are these different for users that provide services in different markets?
 - 6 How should we estimate the land agency's opportunity cost? Does this vary for sites in different locations?
 - 7 What do you consider to be a 'fair' sharing of any differences between a user's willingness to pay and the opportunity cost of a site?

5 Decide on and apply a rent setting methodology

Once we have analysed the available evidence and estimated the range for efficient rents for communication tower sites on Crown land, the next step in our proposed approach is to decide on an appropriate rent setting methodology and apply this method to set rental values. As a starting point, we will compare the rental values derived using the methodology we recommended at our 2013 review to our estimated range for efficient rents, and reconsider each of the key elements of this methodology in light of the updated information and evidence. As Chapter 2 outlined, we previously recommended a separate method for standard sites and high-value sites:

- ▼ For standard sites, we recommended:
 - A fee schedule that includes four location categories and one annual fee for all sites within each category
 - A 50% fee discount for co-users
 - Eligible users be able to apply to the Minister for a rebate
- ▼ For high-value sites, we recommended a negotiation process where this is cost-effective.

The sections below discuss each of these elements, including their rationale, the issues we will consider and the questions on which we seek stakeholder comment.

5.1 Fee schedule for standard sites

Market evidence in 2013 indicated that generally rents paid for sites close to metropolitan areas or population centres were higher than for regional sites. To reflect the evidence, we recommended a fee schedule with four location categories – Sydney, High, Medium and Low – that are defined by location and population density (see Table 5.1).

Table 5.1 Current fee schedule (\$2018/19, annual, ex GST)

Location	Annual fee	Definition
Sydney	\$36,068	Local council areas in metropolitan Sydney with a population density of greater than 1,800 people per square kilometre
High	\$30,056	Local council areas in metropolitan Sydney with a population density of less than or equal to 1,800 people per square kilometre Greater metropolitan area of the Central Coast, Newcastle and Wollongong
Medium	\$16,697	Within 12.5 km of the centre of the 37 urban centres and localities defined by the ABS as having a population of 10,000 or more based on the 2011 census
Low	\$8,014	Rest of NSW

These categories were intended to capture the difference in market rents by location, while keeping the fee schedule simple, transparent and easy to implement. We understand that this fee schedule has been largely adopted by land management agencies.

For this review, we will consider the extent to which our updated market evidence and analysis continues to support rents that vary by these four location categories.

5.2 Discounts on schedule fee for co-users

Prior to our 2013 review, only primary users were charged the full fee applicable to a site. Co-users received a 50% discount, and infrastructure providers received a 30% discount based on similar practices observed in commercial markets. At that review, we recommended the 50% discount for co-users be maintained. However, we recommended that new infrastructure providers should be charged 100% of the applicable fee, and the 30% discount for existing infrastructure providers be phased out over time as their licences were reviewed. We understand that these recommendations have been largely adopted by the agencies, but that the process of phasing out discounts for infrastructure providers is not complete.

For this review, we will reconsider the fee discount arrangements. We note that there are arguments both for and against our recommended discounts, and are seeking feedback from stakeholders on the issues set out below.

5.2.1 Should co-users pay site rental fees?

In previous reviews, many stakeholders called for the complete abolition of co-user fees. They argued that these fees enable land management agencies to benefit from infrastructure provided by primary users, which is separate from the site, and thus constitutes ‘double-dipping’ by the agencies. They also argued that charging co-user fees contravenes standard head-letting and sub-letting practice.²⁰

Our view that co-users should continue to pay 50% of the site rental fee was informed by advice from BEM Property Consultants (BEM), which was that practices for obtaining a return from multiple site occupants vary. In many cases, a traditional head-lease arrangement will apply, where the owner grants a single lease to the primary user and the site rent will reflect the primary user’s ability to sub-lease and derive further income. In other words, the rent will be higher than for sites where there is only one user. However, in other cases, the land owner will require separate agreements with sub-tenants. Based on this advice, we considered that the co-user fees charged by land management agencies did not constitute ‘double-dipping’ and the arrangement reflected commercial practice.

This approach recognises that part of the value of a site should reflect demand for the site, including demand from co-users. We have recommended that the rent schedule sets fees for different users as opposed to setting fees site-by-site. As a result, we considered it appropriate that land agencies receive a share of the value from co-users.

BEM also advised that a range of discounts for sub-tenants applied in practice. In locations where the demand is higher (such as metropolitan Sydney), land owners charged co-users rentals that were closer to 100% of primary users’ fee. But in remote locations, where demand is lower, this is unlikely to be the case. BEM concluded that while market evidence suggests

²⁰ IPART, *Review of rental arrangement for communication towers on Crown land* - Draft Report, April 2013, p 51.

co-user discounts depend on site specific characteristics, it would be reasonable to maintain the current 50% discount available to all co-users.²¹

5.2.2 Should infrastructure providers receive a fee discount?

In previous reviews, we found there were arguments both for and against removing the 30% discount for infrastructure providers. On the one hand:

- ▼ Crown Castle (now Axicom) argued that, in the absence of the infrastructure discount, the land management agencies would receive 100% of the rental fee from the infrastructure provider and the 50% co-user fee from the primary user (ie, 150%). By contrast, if this primary user owned the tower, it would only receive 100% of the rental fee. In the first scenario, the land management agency would be overcompensated relative to the second (where the primary user owned the tower). Therefore, Crown Castle argued that the discount should be maintained. It further argued that this infrastructure discount should be increased to 50% so that a difference in ownership structure would make no difference to the agency.²²
- ▼ BEM also advised that the 30% discount should be maintained. Its reasons were that infrastructure providers do not derive the same benefit from a site as primary users, and that there is no compelling market evidence to suggest what discount, if any, should be provided to infrastructure providers.²³

On the other hand, if access to a site was determined through an open tender process, the land owner would choose to enter into a rental agreement with the highest bidder. It would make no difference whether the bidder is an infrastructure provider, whose business is based on renting this infrastructure to others, or a primary user whose business requires the site for transmission purposes.

In our 2013 review, we found that on balance, the fee discount for infrastructure providers should be removed. Our recommended fee schedule and discount arrangements were designed to provide the same level of rent for all primary users (which includes infrastructure providers), regardless of their operating or business model. We noted that arrangements providing a discount to one type of primary user may allow it to offer lower rents to potential co-users than another type, and that this was inconsistent with the competitive neutrality principle.²⁴

5.3 Rebate schedule for eligible users

Under the current arrangements, some types of user (in both the primary user and co-user category) are eligible for fee rebates. These rebates were designed to reflect the social and community benefits associated with these users' use of the communication tower site that

²¹ IPART, *Review of rental arrangement for communication towers on Crown land* - Draft Report, April 2013, p 52.

²² IPART, *Review of rental arrangement for communication towers on Crown land* - Draft Report, April 2013, p 53.

²³ Ibid

²⁴ IPART, *Review of rental arrangement for communication towers on Crown land* - Final Report, July 2013, pp 52-53.

exceed the users' ability to generate revenue. At the 2013 review, we recommended that any rebate should be granted explicitly at the relevant Minister's discretion based on the individual circumstance of the user, and the size of the rebate reflect the schedule shown on Table 5.2.²⁵

Table 5.2 Current rebate schedule

User type	Rebate (% of applicable fee)	Description and rationale for rebate
Community groups	~99%	Cater to special interests and are run on a not-for profit basis. The services they deliver offer social and community benefits. The level of rebate is designed such that the effective rent is generally sufficient to compensate the land management agencies for the administrative costs associated with the use of the site.
Budget funded sector	80%	Government agencies or authorities (eg Police, SES, Fire Services) that deliver core services to the public and typically cannot fully capture the value they create through user fees.
Local service providers	60%	These are commercial entities which solely or predominantly service communities in a limited number of low and/or medium locations. The intent of the rebate is to take account of external benefits provided by commercial entities that offer services in regional communities, in excess of their ability to generate revenue.
Regional telephony providers	60%	The universal service obligation (USO) placed on some telecommunication carriers requires the provision of services in regional areas that otherwise wouldn't be profitable. Recognising the unique and necessary nature of this service, telephony service providers, such as Telstra, are eligible to apply for a rebate for SCAX sites.

When applying to the relevant Minister to receive a rebate, these users are required to provide evidence that they provide a benefit to the community.

We are seeking feedback from stakeholders (including regional businesses) on the external benefits and costs associated with different sites and users. In particular we are interested in feedback on the nature of the activities and the level to which their operations would be affected in the absence of the rebate.

5.4 Negotiation process for high-value sites

Previous reviews have found that sites with characteristics such as good elevation, access and line of site could obtain a premium compared to standard sites. For these high-value sites, we recommended that it may be cost-effective for land agencies to negotiate rents rather than apply a standard fee schedule.

However, preliminary feedback from Forestry NSW and Department of Industry is that they have not negotiated rents for any high-value sites. We also note that there are a small number of Forestry NSW sites where users pay higher rents than the standard fee schedule and some where users pay less.

²⁵ IPART, *Review of rental arrangement for communication towers on Crown land* - Final Report, July 2013, pp 34-36 and p 40.

NPWS has advised all licensees that all sites on land reserved under the *National Parks and Wildlife Act 1974* (NPW Act) are high value. Land reserved under the NPW Act has been set aside by Parliament for the purposes of conservation, cultural heritage and public enjoyment and that telecommunications facilities are only permitted on reserved land under the Act where there is no feasible alternative site available. To streamline the fee negotiation process, NPWS's policy has been to set its fees on the basis of the IPART rate applicable to the standard site density category (ie, Low, Medium, High, Sydney) that is one level above the actual density category of the site.

We are seeking feedback from stakeholders on whether to maintain the previous approach to high-value sites or apply an alternative approach – such as that implemented by NPWS – to better balance the costs and benefits of site-by-site negotiation.

IPART seeks comments on the following

- 8 Does the current market evidence support continuing the existing schedule of rental fees by location? Would there be benefits to increasing or decreasing the number of location categories?
- 9 Are the current location categories reflective of recent data on population density?
- 10 What is the appropriate rent discount for co-users?
- 11 Should infrastructure providers receive a discount relative to primary users?
- 12 Does the current rebate system adequately address the benefits that community groups and government authorities provide to the public?
- 13 Should the current rent arrangements based on site-by-site negotiation for high-value sites be continued?
- 14 Would a valuation formula based on observable site characteristics be a viable alternative for setting rents for high-value sites? If so, what site characteristics would need to be included in the formula to determine the rent?

6 Transitioning impacts on users and adjusting rents over time

Once we have estimated the range of efficient rents and decided on a rent charging methodology for all sites, the final two steps in our proposed approach for the review are to:

- ▼ Consider the impact on users of our recommendations, and to recommend transitional measures if required
- ▼ Decide how to adjust fees from year to year and how often they should be periodically reviewed.

The sections below discuss how we propose to undertake these steps.

6.1 We will consider impacts on users and recommend transitional arrangements if required

The third step in our proposed approach involves assessing the impacts of our recommendations on users and recommending transitional arrangements if required.

In our 2013 Review, we recommended streamlining the number of user categories in the fee schedule to a single user. This resulted in some users paying lower fees, and some paying higher fees. To reduce the impact on users, particularly those moving to a higher fee, we recommended that the new fee schedule be phased in over five years from the next rent review date for existing users. All existing users should have transitioned to the 2013 fee schedule (adjusted for inflation) by 1 July 2018.

For this current review, as part of developing an appropriate rent charging methodology for all sites, we will consider the impact on users. For example, we will consider whether a proposed new fee schedule involves large changes in rent for users, or if it is likely to impact differently on different types of users. If necessary, we will consider recommending that any changes to the fee schedule be phased in to reduce the impact.

6.2 How should fees be adjusted from year to year and how often should they be reviewed?

Finally, we will decide how to adjust fees from year to year and when they should be periodically reviewed.

In our 2013 Review, we recommended that the fee schedule and accompanying schedule of rebates be adjusted annually on 1 July, by the change in the Consumer Price Index (CPI) (All Groups) for Sydney as published by the Australian Bureau of Statistics for the year ending 31 March. We also recommended that the published fee schedule be subject to an independent review every five years to ensure it reflects fair market based rental returns.

For this current review, we will consider whether annual CPI adjustments and independent review of the fee schedule every five years remain appropriate.

IPART seeks comments on the following

- 15 Do you agree with our proposed approach for assessing the impact of our recommendations on users?
- 16 Is the current approach of adjusting rents annually by the CPI appropriate?
- 17 Should the fee schedule continue to be independently reviewed every five years?

A Terms of reference



Gladys Berejiklian MP
Premier of New South Wales

Ref: A2746182

Dr Peter Boxall AO
Chair
Independent Pricing and Regulatory Tribunal
PO Box K35, Haymarket Post Shop
SYDNEY NSW 1240

Dear Dr Boxall,

I am writing to request that the Independent Pricing and Regulatory Tribunal (the Tribunal) undertake a review of rental arrangements for communication towers on Crown lands.

Please find enclosed Terms of Reference, under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992*, for the Tribunal to perform this service.

Yours faithfully,

Gladys Berejiklian MP
Premier

CC: The Hon. Paul Toole MP, Minister for Lands and Forestry

**TERMS OF REFERENCE
REVIEW OF RENTAL ARRANGEMENTS FOR COMMUNICATION
TOWERS ON CROWN LANDS**

I, Gladys Berejiklian, Premier, approve the provision of services by the Independent Pricing and Regulatory Tribunal (the Tribunal) under section 9 of the *Independent Pricing and Regulatory Tribunal Act 1992* to the Department of Industry - Division of Lands and Water, the Office of Environment and Heritage and Forestry Corporation 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 advise on a fee schedule that reflects fair, market-based commercial returns, having regard to:

- recent market rentals agreed for similar purposes and sites;
- relevant land valuations;
- the framework that IPART established in the 2013 review; and
- requirements that the land management agency must take into account under relevant legislation (which may include, for example, principles of the *Crown Lands Management Act 2016*, *National Parks and Wildlife Act 1974* and *Forestry Act 2012*).


The fee schedule is to cover rental arrangements for emerging technology for communications purposes. For the avoidance of doubt, the fee schedule may provide for rebates.

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 and broadcasting;
- the Government's preference for a fee schedule that is as simple, transparent, and cost reflective as practicable;
- the costs and benefits for Government and stakeholders to implement recommendations;
- whether a broader consideration of commercial rents would produce lower or higher rental rates than those set out in the Tribunal's recommended fee schedule and, if so, the context;
- clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth); and
- any other relevant matters.

The Tribunal is to consult with key stakeholders including agencies responsible for the management of Crown Land sites and key owners of communications infrastructure that occupy Crown land sites.

The Tribunal is requested to present a final report to the Minister for Lands and Forestry and the Minister for the Environment within ten months of receiving this terms of reference with a view to a revised fee schedule being applied by land management agencies from July 2020.


The Hon Gladys Berejiklian MP
Premier

Dated at Sydney 6 Nov 2018