

12th August 2024

**IPART Submissions
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240**

To whom it may concern

Re- Rental Price for Communication Sites

Fettell Communications Provides Telecommunication / Communication Services to the Mid North Coast NSW Region.

We are under pressure like all independent Small Communication Businesses to provide cost effective services to our customers.

As a local service provider we don't have the Large customer base to warrant the excessive costs of Site Rental, That some Government Departments are seeking, in order to provide cost effective communication solutions to remote locations the sites must be economically affordable.

Based on the 2005/2006 IPART agreement Govt site rentals were capped set at \$2500 per year and a CPI of 3% for our area which is classed as Low Density.

We would like the Current IPART Agreement renewed for Local Service Providers as per the original agreement.

I.e.. Current Rates for 2024 Capped at \$4256.08 Per Year for Low Density Sites.

ACMA Carrier Licence 399

Master Licence 000108693



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**Ultimate Communication
Solutions Pty Ltd**

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We provide services for Remote Clients where other service providers are unable to provide services, we also provide services for not for Profit Community Organisations, and should not be penalised for doing so.

Over the last Few Years we have lost majority of our site rental customers from our Radio Sites due to the NSW Telco Authority moving operations to the Government Radio Network.

Without our Local services many small communities would be stranded without Communications Services.

Our Sites are often the only sites in Operation in times of Flood or Natural Disaster, and when the Major Telco's have Network outages we provide the use of UHF CB Repeaters and internet in some of these locations.

We are looking forward to Providing Communications to our Local Area in the future.

If you require any further information please don't hesitate to contact me.

Thank You

R.Fettell

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Blackall Eccleston McBurnie Montague

CONSULTANCY ADVICE

***For* Rental Arrangements of Communication Sites Within NSW**

Date of Report: 8th August, 2005

**Under Instructions
From:**



**[REDACTED]
Independent Pricing & Regulatory
Tribunal
Level 2, 44 Market Street
Sydney NSW 2000**

Reference Number: 05/1129

Prepared by: BEM Property Consultants Pty Ltd

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1. EXECUTIVE SUMMARY

A summary of our research and recommendations to The Independent Pricing and Regulatory Tribunal (The Tribunal) is as follows.

- In an overall sense, the schedule of rentals as proposed by The Tribunal is considered reasonable by BEM Property Consultants Pty Limited (BEM), however some variation is recommended:
 - Categorisation by use should be expanded to more accurately reflect the different uses and their capacity to pay rent. Our schedule is detailed below.
 - Categorisation by location should be altered in accordance with the Department of Lands' proposal, i.e.
 - High: Sydney, Wollongong, Newcastle.
 - Medium: Major regional Centres.
 - Low: Minor country centres and rural locations.
 - The rental rates are broadly similar and are as follows:

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Rental Schedule recommended by BEM Property Consultants

User Group	High	Medium	Low
Community Based Organisation and Community Radio	100	100	100
Government Business Units and Other Commercial	10,500	7,000	3,500
Local Service Providers	7,000	5,000	2,500
Commercial Radio	12,000	8,000	4,000
Government Radio	6,000	4,000	2,000
Commercial Television	30,000	20,000	10,000
Government Television	15,000	10,000	5,000
Budget Funded Sector	4,500	3,000	1,500
Mobile Carriers & Data Carriers	22,500	12,500	7,500

- We agree with The Tribunal's proposal that the criteria for determining which sites should be subject to rent negotiation should be triggered by way of a threshold of \$50,000 or 8 users

However, we consider this framework will not be appropriate for all sites and recommend that either lessor or lessee should be able to initiate a rent negotiation if they consider a particular site warrants specific consideration.

- We do not agree with the Tribunal's proposal to charge co-users a rental through the primary user, and we recommend that landowners enter into separate agreements with primary and co-users. It is unreasonable and impractical to expect primary users to effectively become agents or property managers for the landowners. Benefits of our recommendation are that:-
 - users will have a uniform rental structure,
 - it will take a link out of the negotiation process,
 - it removes the potential for co-users being over charged by the primary user, and
 - the landlord will achieve greater control through improved disclosure of occupancies

- The principle of the payment of a co-user fee equivalent to 50% of the primary user fee is recommended. The applicable discount in the marketplace is variable with many owners in the mobile telephone industry particularly charging full rates whilst there are a multitude of government owned sites throughout NSW with a variety of communication co-users charging no co-user fees. Ultimately we have recommended a 50% charge as being an 'across the board' compromise. Potentially this may be construed as too general and as an alternative it may be worth considering a lesser discount of 25% for the mobile telephone category.

- A common form of licence or lease agreement should be offered by Government agencies. Both lessors and lessees will benefit from a common approach to essential tenure issues, including:

- Terms of agreements should discriminate between smaller and larger facilities. For smaller facilities we recommend initial terms of 5 to 10 years with 5 year option periods providing total terms of up to 20 years. For larger facilities such as major television transmission sites we recommend initial terms of 10 to 20 years with 5 year option periods providing total terms of up to 40 years.

- Annual rental adjustment should reflect the wider real estate industry standard being the greater of CPI or 3%.

- A market rent review procedure should be introduced at 5 yearly intervals and which will allow rentals to increase or decrease, according to prevailing market conditions.

- Create a true market review process which is not in operation at present.

- Available market based rental evidence for this consultancy has been limited by time constraints and reluctance by the majority of occupiers in the telecommunications industry to fully disclose rental information due to commercial sensitivity.

This executive summary should be read in conjunction with the entire report.

2. INTRODUCTION

The Independent Pricing and Regulatory Tribunal (The Tribunal) has compiled a draft schedule of rental arrangements for communication tower sites on Crown land within NSW. This has been prepared so as to provide land management agencies with a consistent and workable framework. The Tribunal has instructed BEM Property Consultants Pty Limited (BEM) to review its draft fee schedule to ensure the rentals reflect:

- The Tribunal's framework, and
- Current market rentals (consistent with that framework).

The Tribunal also requires the consultant to:

- Develop criteria for the agencies to use in determining which sites should be subject to market rental negotiations.

A brief overview of the issues and objectives as specified in the terms of reference is as follows:

- The recommended rentals are to be essentially utilised on Crown land sites throughout NSW.

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- The NSW Government is to obtain fair market based returns that reflect the benefits realised by all areas of the site.
- A common and efficient framework of rents and charges is to be established for all custodians of Crown land.
- The pricing should provide incentives for the primary user and co-users alike so that co-location on sites is encouraged.
- A rental regime is to be developed for co-location sites so that all income from the land is obtained from the primary user but recognising the existence of several co-users of the facility and their obligation to also pay a rental for use of the land.
- The fee schedule is to differentiate between service providers, i.e. from major television networks and mobile phone carriers, to local radio and emergency services.
- The pricing schedule is to provide regular market review of strategic sites which satisfy pre-determined criteria, and
- The review is to also provide a recommendation to standardise the following:
 - Lease or licence tenure.
 - Terms and conditions of the agreement.
 - Length of agreement, and
 - Rent review mechanisms.

2.1 The Tribunal Table of Recommended Fees and Charges for Communication Facilities situated on Crown Land

The draft Schedule of fees and charges recommended by The Tribunal and to be levied by Government agencies for communication facilities on Crown land, are scheduled in the Table over the page - The Tribunal Recommendations

The schedule of rentals has been derived from licence fees and rents currently being obtained for Crown land sites by Government agencies, including Forest NSW, National Parks and Wildlife Service, and Department of Lands. The schedule prescribes the various types of different rentals for communication facilities and users, encompassing both the public and the private sector. The strategic importance of market coverage of a location has been classified or graded into three (3) sub-categories:

- High
- Medium
- Low

These categories have been based upon the Australian Communications and Media Authority (ACMA) classification.

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Draft Price Schedule (\$ per annum) - prepared by The Tribunal

<i>User category (example)</i>	High density	Medium density	Low density
Community based organisations and community radio <i>(eg Salvation Army, local volunteer and rescue associations)</i>	100	100	100
Data carriers and other commercial <i>(eg TWT, Macrocom, TransGrid)</i>	13,500	10,000	7,500
Local service providers <i>(eg Countrywide, Auzcom, Manning Communications, Fettell)</i>	7,000	5,000	2,500
Commercial radio broadcasters <i>(eg 2UE, 2GB)</i>	12,000	8,000	4,000
Budget-funded sector <i>(eg Police, SES, Ambulance, ABC and SBS TV and radio, RFS, NSW Fire Brigade, TAFE and Universities, and local councils)</i>	6,500	4,250	2,000
Commercial television broadcasters and telecommunications carriers <i>(eg Channels 7, 9, 10, Prime, WIN and Telstra, Optus, Vodafone, Hutchison)</i>	20,000	14,000	8,000

3. METHODOLOGY & RESEARCH

In undertaking the review the following process has been utilised:

1. Review of all rental material provided to The Tribunal by NSW Government Land Management agencies.
2. Conducting interviews with Crown land managers, including National Parks and Wildlife, Department of Lands, and State Forests of NSW.
3. Discussions with Government Business Units, including Sydney Water, Roads and Traffic Authority and an analysis of rentals charged by these and similar organisations.
4. Discussions with private telecommunication companies, including Telstra, Optus, and Vodafone through the Mobile Carriers Forum; and infrastructure/service providers and broadcasters including Crown Castle and Broadcast Australia.
5. We have undertaken additional enquiries with other government and non-government landowners.

All of this data and information has been analysed to form an opinion of market rental, a set of occupancy tenure guidelines including rent review mechanisms, and to provide a recommendation in relation to the Draft Schedule of Fees and Charges.

3.1 Research Sources

The Tribunal has received submissions from a number of Government Agencies as part of the review process. Direct contact was also made with these agencies to discuss the information provided. Additional information was also obtained from other Government corporations and the private sector. A list of these organisations follows:

- Forest NSW
- Department of Lands
- National Parks and Wildlife Service (NPWS)
- Roads and Traffic Authority (RTA)
- Sydney Water
- Crown Castle
- Broadcast Australia
- Mobile Phone Users Forum
- Telstra
- Optus
- Vodafone / TCI
- TXA Australia, and
- WIN Corporation.

3.2 Disclosure of Rental Information

The extent of BEM's brief has been to review available rental information provided by the Government owners and to undertake additional research within the time frame.

We highlight our research has been extensive however our analysis of the provided Government rentals, has produced a limited amount of market based rental evidence, and the telecommunication industry (with some exceptions) has been unwilling to provide evidence of market based transactions.

It is important to note that the establishment of a communication site rental market place is reliant upon disclosure of rental information. At this point in time a fully informed market place does not exist because there is a lack of disclosure.

Whilst we believe our advice is accurate in the context of the available information, it can be made more substantial and reliable given the benefit of greater disclosure by the telecommunication groups and through additional research time.

4. TENURE ISSUES

The most significant issues affecting occupancy agreements between the Government land owners and the various occupiers and tenants include:

- Form of occupancy, i.e. lease or licence
- Application of co-user fees
- Term of occupancy
- Right to sub-lease
- Rent review mechanism, and
- Ownership of communication equipment at lease expiry.

4.1 Tenure Options

Occupancy agreements between the Government agencies and the communication occupiers are either by way of a:

- Permissive occupancy (PO)
- Licence, or
- Lease.

By way of general background, we provide the following commentary in relation to each.

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- a) Permissive Occupancy - this form of occupancy was the preferred structure for most Government sites. It is an occupancy which is renewed annually and can be terminated annually by either party. We understand POs are no longer used.

- b) Licence - can be for a fixed term or not; is an agreement between the licensor and licensee; is not registered on title and does not transfer with the sale of the land; can be non exclusive; can operate for a part of a surveyed Lot.

- c) Lease - stronger tenure than a licence and transfers with the sale of the land; it can be registered on title; must have its own surveyed lot; and provides exclusive occupancy.

As a general view the majority of Government landowners prefer to offer occupiers a licence and in fact, it is The Tribunal's draft recommendation that a licence is offered. We understand the primary reason for this is because it provides the owner with greater control of the site and greater ability to secure co-location rental income.

Conversely, virtually all occupiers prefer leases because it gives them greater security of tenure, particularly if the land was sold. For many occupiers, a lease of land being larger than their specific requirements also provides them with exclusive possession and therefore the ability to sub-let and generate greater rental income.

4.2 Primary User / Co-User Rentals

As the communications industry has matured, and particularly the mobile phone network, the industry and Government have recognised the need for communication sites to be utilised by more than one carrier. A policy of co-use has evolved where the primary user, the first carrier or occupier of a site, sub-lets the facility to other communication companies, the co-users. The sub-occupancy can either be wholly within the primary user's occupancy or partly within the occupancy, i.e. sharing the primary user's tower, but having a separate hut for their own particular equipment.

All Government land agencies have recognised the requirements to differentiate between primary users and co-users in a lease or licence and the need to have a rental structure in place which encourages the practice of co-users sharing the use of existing communication facilities on sites.

The Tribunal has proposed a rental structure whereby only the primary user or occupier pays a rental to the landowner. However, the primary user rental shall be increased by a pre-determined rent structure which reflects a rental for its own occupation and for additional rents for each co-user.

This structure differs from existing practice where either:

1. A single head tenancy operates only, and the quantum of rent typically only reflects the occupancy of the primary user. This situation usually exists where an occupier has a lease or licence for its own use, but sub-lets space on its tower and on the

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leased land to one or numerous co-users for television, radio or general communication/transmission purposes. This is the common situation for most Department of Lands occupancies where the primary user rent does not discriminate between a site which has none or multiple co-users.

2. Multiple tenancies operate with the co-users separately entering into licence or lease agreements with the landowner. This situation typically exists where Government landowners licence or lease to mobile telephone carriers, i.e. they licence or lease a site to the primary user to accommodate a tower and hut, and licence or lease smaller adjoining sites to co-users for a separate hut whilst the co-user separately pays the primary user for the right to occupy space on the tower.

Our research indicates that currently, primary and co-user licence or lease structures (and charges) vary considerably. Examples of the various lease structures and application of discounts are scheduled in the following Table:

Summary of Co-User Rental Arrangements

Sydney Water	Sydney Water separately charge primary and co-users at the same rental rates.
Parks and Wildlife Services	Until the National Parks and Wildlife Act 1974 was amended in 2003, the service could not negotiate with telecommunications businesses. The Act was modified some 18 months ago, and consequently there are few firm policy guidelines in place, i.e. some sites attract co-user fees while others don't.
Department of Lands	Occupancy structures vary. Many older agreements allow for a

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	primary use charge only. Newer agreements provide for separate charges to primary and co-users.
Forest NSW	<p>There is no current practice or overall consistent policy approach in relation to the rentals paid by co-users. Examples of the different applications of primary and co-user rentals are as follows:-</p> <ol style="list-style-type: none">1. Where the primary user is a mobile phone carrier and the co-users are community providers. (location Dorrigo National Park and Mt Moonbil).<ul style="list-style-type: none">• No co-user rental is paid.2. Corporate primary user and several small corporate co-users. (location Biamarge National Park, Mt Mumbulla).<ul style="list-style-type: none">• Full primary user rental and full co-user rental, i.e. no discount applied for co-user.
Crown Castle	Crown Castle advised that they only pay a single primary user fee per site, they do not pay any co-user fees.
Broadcast Australia	Broadcast Australia advised they only pay a single primary user fee per site, they do not pay any co-user fees. They do have a small number of non exclusive licences, however, where the landowner also separately charges their co-users.
Mobile Carriers Users Forum	Representatives of the Forum (Optus, Telstra and TCI) advise that lease structures vary from primary user charge only to separate primary and co-user charges. The Forum's clear preference is for a single charge, i.e. a primary user rental and no co-user rental.

4.3 Rights to Sub Lease

Further to 4.2 above, there is a fundamental difference of opinion between landowners and the communication companies regarding the right to sublease without the consent of the landowner.

Land Management agencies argue that licencees and lessees should be obliged to notify them, notwithstanding that consent shall not be unreasonably withheld. This process will enable the agencies to properly monitor occupation of their land, obtain notification and knowledge of sub-tenants, and provide greater opportunity to secure market rentals from primary and co-users.

Many occupiers argue they should have the right to sub-lease without consent because they essentially lease the land only, and that they have provided the infrastructure which encourages and facilitates co-use. Some occupiers simply desire complete control of the leased land whilst for others the benefit includes the opportunity to maximise sub-letting income without landlord interference.

Whilst not preferred, the mobile carriers have generally agreed to the landowner's requirement for sub-lease or sub-licence consent, particularly in the case of the RTA and Sydney Water which have established clear policies and rental structures for co-use of their land. We believe that this has largely been achieved because the primary users have only been granted sufficient land for their own use and the lease or licence structure requires them to seek landlord consent for co-use.

4.4 Term of Occupancy

As a general rule, landowners are agreeable to lease/licence terms containing periods of a minimum of five (5) years and a series of options, usually to provide a total maximum tenure on the land of 20 years.

This structure, e.g. 5 year lease plus 3 x 5 year options, provides the occupiers with the benefits of:

- Minimum lease commitment (only 5 years)
- Maximum tenure (up to 20 years), and
- Flexibility (ability to terminate or relocate after 5, 10 or 15 years).

However, directly opposed to this preferred lease structure on the part of the carriers is the requirements of the landlord who wish to maintain some degree of control over their land. At one end of the scale Sydney Water and the RTA seek to maximise their control and future use of the land for its primary intended utility use, i.e. water or road infrastructure. Rental agreements with these organisations are generally restrictive in order to ensure:-

- Access to the site for future expansion of the utility facility is not compromised by a lease to a communication company, and
- The day to day operations undertaken by the lessor on the site are not compromised or interfered with by the lease.

At the other end of the scale, less sensitive and little utilised areas in remote locations such as State Forests do not require such a restrictive lease.

Other lessors with large land holdings view a communication lease as a growing source of income and are more receptive to lessees.

Landowners want to commit themselves for minimum periods although they also want to enjoy rental streams for as long as possible. Shorter commitments allow the landowner the flexibility to 'take back' the land should it be needed for another purpose or even offer it to another occupier.

Occupiers typically desire to hold a site for as long as possible but they also want the ability to hand it back if they find it no longer suits their need. This could result through technology change. Accordingly, mobile telecommunication carriers prefer the length and flexibility of a 5+5+5+5 year agreement. Owners of more significant infrastructure would prefer larger initial terms of 10 or even 20 years.

As an example, Sydney Water only offers a maximum of 10 years by way of a 5+5 year lease. Brisbane City Council have recently increased their initial terms to 10 years from 5 years, arguing they require a greater tenant commitment in exchange for the multiple option periods they offer the tenant.

4.5 Market Rent

During our research and discussions with landowners and occupiers, we were advised by all parties that they are willing to pay market rental for sites, however it became apparent that there are a very differing views held as to what constitutes market rent.

The commonly held view of occupiers, particularly infrastructure providers, is that market rental should be based upon land value, and that the land value should not reflect the communication use of this site. The mobile carriers and the landowners are generally in agreement that market rents are based upon freely negotiated market transactions. Some Government owners do not recognise market transaction as they have a set schedule of fees which escalate by a fixed priority.

BEM considers market rental should be based upon accepted valuation methodology, whereby market transactions are negotiated by willing, prudent and equally informed market participants. Accordingly, BEM has sought to obtain from all the parties noted above recent, market based transactions.

However, only limited examples of recently negotiated rental evidence were provided. This response was clearly understandable in the context of the Mobile Phone Users Forum when several competing companies were represented at the same meeting, and rental information for licenced or leased land had to be received in confidence. Rental

information was therefore provided on an individual basis by each company after the meeting, however the information lacked detail overall.

The major private infrastructure companies such as Broadcast Australia and Crown Castle, both of whom have made substantial investments in infrastructure, also tended to be guarded as to how much information to provide. Crown Castle provided no information, and Broadcast Australia provided no specific information.

Government landowners provided a large body of evidence however much of this tended to be historic with very little recent, market based rental evidence.

Our research identified the following in relation to the overall market.

- A virtual two (2) tier market exists especially in regard to the mobile phone networks with essentially two (2) categories of landowners or lessors:
 - Government sites, and
 - Non-Government sites.

- The Government sector is regarded as being difficult to deal with by the private communication companies and is often only considered as a last resort, after all other alternatives have been exhausted.

- The mobile phone carriers recognise the need for an annual rental adjustment, however, there is a marked difference between the percentages paid to

Government departments and private landowners. They also highlighted that there is a quite a variance in the percentages utilised between Government agencies.

- All users are opposed to the concept of a 'ratchet' (not less than) market review clause which prevents the rental from being reduced if that is the prevailing market condition at the time of review.
- The rental evidence did not indicate that premiums were being paid for roof top sites which do not involve the expense of any tower installation by the carrier.
- The lessors, particularly Sydney Water, held firm views as to the strategic nature of their sites. The carriers, not surprisingly, held the opposite view whereby they regard the coverage of the entire network as being of most importance. Broadcast Australia who have different requirements, agreed that some sites were more valuable than others.

4.6 Rent Review Mechanisms

The NSW Government Land agencies control a large number of available sites, and these organisations tend to act collectively and share information. As a result, rental rates are more or less uniform, however there is quite a degree of variation in the percentages used for the annual rental adjustment. The current range of these adjustments varies from the CPI, which has generally been within a range from 2.5% to 3% , and up to 7.5% in the case of Sydney Water and the RTA.

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- **Sydney Water** - CPI or 7.5% whichever is the greater.
 - Market at option (with ratchet).

- **RTA** - 7% adjustment from October, 2005 was previously 7.5%.

- **Department of Lands** - 5% or CPI, whichever is the greater.

- **Forests of NSW** - CPI or 5%. The adjustment varies with each lease. However, the most recent leased have 5% annual adjustment.

- **National Parks & Wildlife Services** - CPI or 5%.

- **Private Landowners** - Generally CPI or 3%, whichever is the greater.

Our comment in relation to the annual percentage increase utilised at the upper end of the range, i.e. 7.5% p.a., is that it is significantly above the level of percentage increase used in commercial, industrial or retail leases in the broader general property. The percentage adjustment in these leases is typically CPI and/or 3% to 4%, whichever is the greater. However, leases to telecommunication carriers generally tend to have a minimum 5% increase. The compounding effect of an annual 7.5% rental adjustment could lead to the situation where rentals of Government communication sites could move

considerably above market rental, while communication sites, which are leased from the private sector, and which are not compounded at the same rate of increase, maintain rentals which are considerably below the Government sector.

Based upon our research, it is apparent that sites are not subject to the usual market review practice where the rent is freely regulated by market forces. The main reason being that there are fewer alternatives available, in contrast to most other real estate markets. Therefore, owners tend to have the upper hand at the lease expiry and simply apply the agreed rental increase to the rental being paid immediately prior to the review.

The RTA is the prime example whereby a rental schedule has been calculated, being based upon an annual 7.0% increase, to provide pre-determined rentals up to the year 2012 for mobile phone sites within the metropolitan Sydney area.

The leases which have an automatic annual rental adjustment of 7% to 7.5% represents a lucrative benefit from the landowner's point of view and are in the vicinity of 3% to 3.5% above the typical level of annual increase generally found in industrial or commercial leases.

A significant number of commercial leases within the wider corporate and commercial real estate market have market review provisions whereby the rental can be reduced at the market review if weak market conditions prevail at the time. A market rental review obtained by means of the application of an automatic rental increase does not promote the use of the market based rent reviews, as this mechanism could result in rental reductions in some areas and or market circumstances where demand is weak. Therefore, it is clearly in the land owner's interest to maintain the current status quo.

4.7 Criteria for Sites to be Selected for Rental Negotiation

Our research indicated there are also very divergent opinions in relation to whether particular sites may be regarded as strategic. The main opposing views were:

- The mobile phone networks expressed the viewpoint that few sites could be regarded as strategic as the overall coverage of the network was more important.
- The television broadcaster networks did concede that some sites were of more value than others.
- The lessors, particularly Sydney Water, regard many of their sites, particularly reservoirs, as being strategic, due to their natural elevation required for this use.
- A number of sites owned by either NPWS or the Department of Lands, such as Mt Sugarloaf and Mt Conobolos. are regarded as strategic due to their natural elevation.

In recognition of this range of opinions BEM agrees that those sites have either:

1. in excess of 8 co-users or a potential total rental of above \$50,000 p.a. agrees with The Tribunal's criteria, or
2. have the rental be freely negotiated by both parties in preference to a rental calculated by means of a set rental scale.

Either party should be able to initiate the process and a rental determination procedure be agreed upon in the event that negotiation cannot be mutually agreed.

5. CATEGORISATION OF SITES

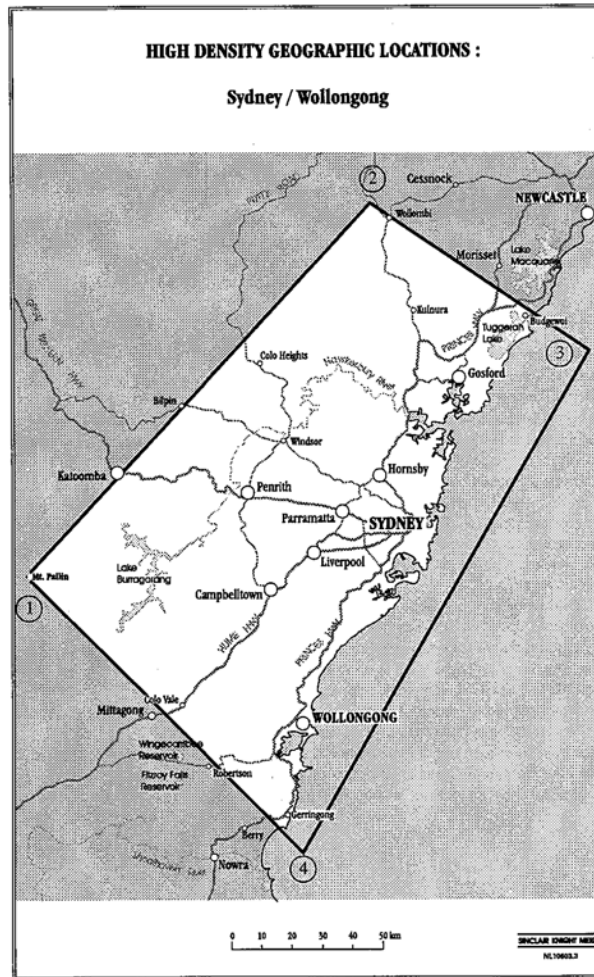
As part of its proposed pricing structures, The Tribunal has categorised the Crown sites by both location and by use.

5.1 Categorisation by Location

The Tribunal has proposed three (3) categories, being:

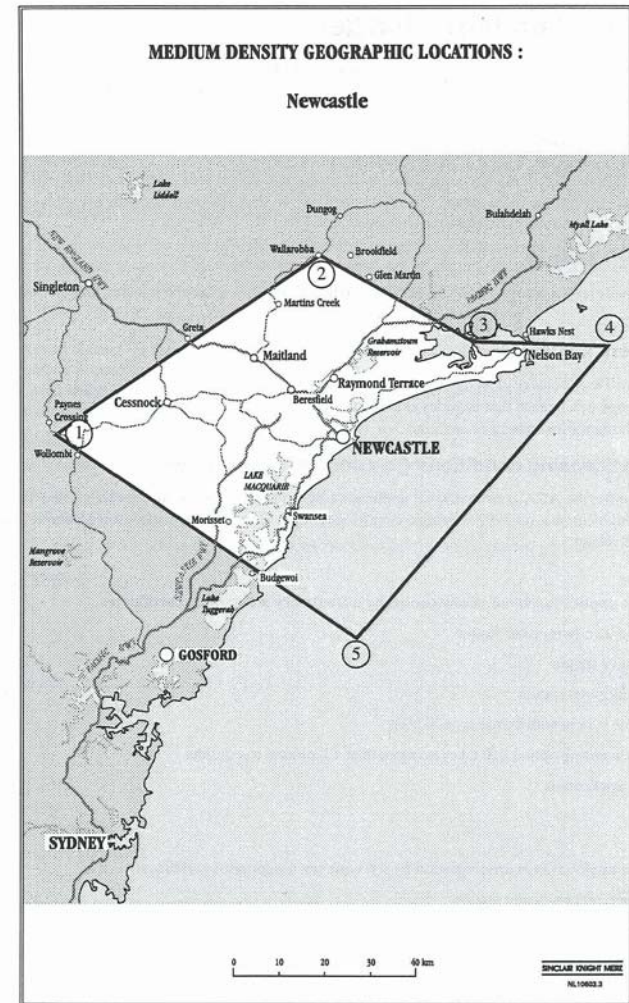
- High density
- Medium density, and
- Low density.

These gradings are taken from The Australian Communications & Media Authority (ACMA) classification of sites, formerly the Australian Communications Authority. This classifies Sydney and Wollongong as being 'high density', Newcastle and surrounds as 'medium density', and elsewhere in NSW as being low density. These areas are highlighted on the maps shown on the following page.



Coordinates

Point number	Zone	Easting	Northing
1	56	230000	6230000
2	56	325000	6355000
3	56	391000	6307000
4	56	300000	6150000



Coordinates

Point number	Zone	Easting	Northing
1	56	325000	6355000
2	56	378000	6403000
3	56	410000	6381000
4	56	441000	6381000
5	56	391000	6307000

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There are difficulties in applying 'blanket' criteria for grading a large volume of sites and we note the views/practices of the following land owners and occupiers.

Department of Lands & National Parks & Wildlife <ul style="list-style-type: none">▪ High Strategic - Metropolitan area, Newcastle to Wollongong and surrounding regions. Hub site in regional areas. Site playing significant network function.▪ Moderate Strategic - Regional Towns and major highways Moderate value site network▪ Minor Strategic - Local small town and minor roads Minor value network site	
Sydney Water <ul style="list-style-type: none">▪ Not categorised - Assessed site by site	
Brisbane City Council <ul style="list-style-type: none">▪ Low Impact - Co location on blighted sites▪ High Impact (Code Assessable) - DA required▪ High Impact (Impact assessable) - DA required with community consultation	
Optus <ul style="list-style-type: none">▪ Regional - Self explanatory▪ Metropolitan -	

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Vodafone <ul style="list-style-type: none">▪ CBD -▪ Metropolitan -▪ Rural -	Self explanatory
Telstra <ul style="list-style-type: none">▪ CBD -▪ Suburban -▪ Metropolitan -▪ Regional -▪ Rural -	Self explanatory

Further to our discussion with the Mobile Carriers Forum, we understand there is a general acceptance that the Department of Lands' site categorisation is appropriate for their occupancies. This categorisation is broadly based upon differences in relative underlying land values of metropolitan, regional and outlying areas. The Forum argues that within a category, each site is of equal importance and value given that it forms part of the overall network.

Broadcast Australia does not agree with categorising its sites because there are relatively few compared to the mobile carriers and each site is more or less valuable, depending upon the line of sight access to metropolitan areas, requisite size of tower, and the remoteness of tower for maintenance.

BEM generally agrees with the Department of Lands categorisation which differs to The Tribunal's proposed classification. The Tribunal's proposal differentiates between Wollongong and Newcastle and doesn't differentiate between provincial towns and more remote rural locations.

5.2 Categorisation by Use

The Tribunal's fee schedule also proposes to further categorise each site by reference to the different users recognising that the private sector, Government and community groups have varying capacity to pay rent.

Tribunal Draft Use Category

<i>User category (example)</i>
Community based organisations and community radio (<i>eg Salvation Army, local volunteer and rescue associations</i>)
Data carriers and other commercial (<i>eg TWT, Macrocom, TransGrid</i>)
Local service providers (<i>eg Countrywide, Auzcom, Manning Communications, Fettell</i>)
Commercial radio broadcasters (<i>eg 2UE, 2GB</i>)
Budget-funded sector (<i>eg Police, SES, Ambulance, ABC and SBS TV and radio, RFS, NSW Fire Brigade, TAFE and Universities, and local councils</i>)
Commercial television broadcasters and telecommunications carriers (<i>eg Channels 7, 9, 10, Prime, WIN and Telstra, Optus, Vodafone, Hutchison</i>)

Clearly, it is difficult to establish a set of use categories to adequately cover the range of users but yet still provide a simple and workable system.

The Tribunal Proposal provides 6 categories. We note the Department of Lands has 10 categories and sub-categories. Differences include:

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- Mobile phone carriers are a separate category
- Radio is separated into the ABC, Commercial, and Community
- TV is separated into the ABC/SBS and commercial, and
- Fixed Network providers.

NPWS has 13 categories. It is essentially similar to the Department of Lands but additionally includes:

- Data carriers, and
- Telecommunication Facility Providers.

We understand it is The Tribunal's aim to simplify the process of invoicing and securing rent for the majority of sites. The downside of reducing the number of categories is that different uses are bracketed together and therefore are expected to pay the same rent. An example of this is television transmission, translation and repeater sites. Each of these has varying importance and therefore varying value.

We consider an appropriate categorisation to be:

- Community Based Organisations and Community Radio
- Government Business Units, other Commercial
- Local Service Providers
- Commercial Radio
- Government Radio – ABC
- Commercial Television

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- Government Television – ABC / SBS
- Budget Funded Sector, and
- Mobile Carriers and Data Carriers.

6. REVIEW OF MARKET EVIDENCE

6.1 Background

Our research indicates there is limited evidence of a negotiated market based rental at the beginning of a new lease or licence. There are a number of contributing factors which give rise to this situation.

Many agreements have been in place for in excess of 10 years, and some exceed 20 years, such as agreements that are typically for television and radio facilities. These leases tend to be continually renewed by the same party, given their investment in the infrastructure.

In relation to these agreements, prior to deregulation of the industry there was essentially no competition or market place for these sites, as they were generally regarded as public utilities and attracted nominal rental amounts. This situation has changed, following:

- Sale of the Government owned NTA to the privately owned NTL and more recently to Broadcast Australia
- The opening up of the telephone network to competition which has meant demand from a number of companies for land or buildings which are suitable for their industry, and

- The requirement for Government to obtain market returns for public assets.

As a general observation, there is a lack of widely reported market rental evidence for communication facilities by comparison with other long established and much larger commercial real estate markets such as retail, office and industrial sectors. The communications market has, up until the mid nineties, been regarded as a small submarket with relatively few lessors and lessees. The market was then essentially restricted to Optus and existing Government infrastructure sites. This situation has changed significantly during the last decade.

Due to the lack of depth in the market, in particular on the part of the lessee, a market evolved whereby the lessor was able to dictate lease terms. This is best illustrated by the acceptance that rents are adjusted on an annual basis by means of a pre-determined percentage increase. The size of the rental increase is not found in other commercial real estate leases. All Government agreements have a ratchet clause which prevents the rental from being received downwards if the market is in decline.

Our market comments and recommended rents are as follows.

6.2 Community Organisations

Research indicates rents paid by community groups are quite variable and often nominal. We acknowledge some groups have a greater capacity to pay more rent than others but note The Tribunal's draft recommendations for each to pay a nominal rent of \$100 p.a. and we concur with this approach and have adopted same.

6.3 Government Business Units and Other Commercial

We have limited market evidence for Government Business Units and other commercial users. The Tribunal does not have a specific category for Government Units but we note the Department of Lands does and categorises these at approximately \$10,500, \$7,000 and \$3,500 for high, medium and low. Subject to further investigation we consider these rates to be suitable.

6.4 Local Service Providers

We have limited market evidence for local service providers. Subject to undertaking more research for this category we consider the Tribunal's proposed rents to be reasonable, i.e. \$7,000, \$5,000 and \$2,500.

6.5 Commercial Radio Transmission

The majority of commercial radio operators transmit from other towers and do not typically lease a site and erect a tower. Based on our research we consider the rental rates for high, medium and low of \$12,000, \$8,000 and \$4,000 p.a. as per the Tribunal's draft recommendations to be reasonable.

6.6 Government Radio

As opposed to Government radio being categorised within the State Budget Sector we consider it should relate to commercial radio, albeit at a discount. We have adopted a 50% discount, i.e. \$6,000, \$4,000 and \$2,000.

6.7 State Budget Sector

Based on our research we have adopted lower rentals than in the Tribunal's draft fee schedule. Our recommended rents are \$4,500, \$3,000, and \$1,500 p.a.

6.8 Television Transmission Sites

The information provided to us and our additional research has not produced extensive market evidence from which we can provide firm value conclusions. Difficulties include:

- Department of Lands rental evidence does include market based agreement, and
- Broadcast Australia has been unwilling to provide specific market based site rental information.

Some rental information has been provided to us in confidence, however, more meaningful market evidence can only be obtained through more extensive market research. Given that television transmission sites can vary significantly within the adopted brackets, we have assessed \$30,000, \$20,000 and \$10,000 p.a. for high, medium, and low.

6.9 Mobile Carriers and Data Carriers

Mobile telephone site rentals represent the largest amount of available evidence. Information has been made available by the landowners including Sydney Water, RTA,

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State Forests, NPWS and Department of Lands, and occupiers including Optus, Vodafone and Telstra.

The majority of evidence falls within a generally tight band however it should be noted there are numerous examples of primary and co-location rents outside of the band. Examples result from particular situations where a landlord may be less than prudent or a landowner has been less than willing and the carriers have identified the site as important for the network.

Our analysis of evidence indicates the following rental ranges:

- Sydney Metropolitan - \$20,000 to \$25,000
- Regional (provincial towns) - \$10,000 to \$15,000
- Rural (smaller towns and country) - Limited evidence indicates \$5,000 to \$10,000.

We have no evidence in relation to Newcastle and Wollongong but estimate rents similar to metropolitan Sydney.

In relation to Primary / Co-location rentals the results are variable. Government agencies advise that co-location rents are the same as primary user charges. Mobile carriers advise although some sites attract both, many attract primary user charges only. We have also included data carriers within this category, and have adopted \$22,500, \$12,500 and \$7,500 p.a.

7. FACTORS WHICH WILL IMPACT UPON THE RENTAL MARKET FOR COMMUNICATION SITES

Introduction

There are a number of factors and issues which all contribute to and impact upon the dynamics of this market. Each of these is to be discussed within this section of this report.

7.1 The Emergence of New Telecommunication Companies and Networks

The growth and diversification within the telecommunication industry will provide the main driver of the demand for additional sites. Since the deregulation of the Australian phone market in 1992, and the rapid expansion of mobile phones networks, demand for communication sites has risen steadily as illustrated by a sample of NSW Government agencies in the following table. Mobile telephone networks now provide coverage for 95% of the Australian population but only represent a 5% geographical coverage. 80% of Australians have a mobile telephone.

The strong growth in demand has been caused by two (2) factors:

1. The continual expansion of new mobile phone networks in Australia. The major companies within the industry at present comprise:

- Telstra
- Optus
- Vodafone
- Hutchinson
- Motorola, and
- Virgin.

2. The growth and range of the telecommunication services including:

- Wireless broadband internet
- Telco infrastructure companies such as Crown Castle, and
- Sector specific telecommunication service providers.

The following table provides an indication of the number of sites involved in the telecommunication sector.

Number of Communication Sites in NSW

<i>Agency</i>	<i>Total No. of Facilities</i>
Sydney Water	250
RTA	145
Forests of NSW	140
Department of Lands	550
National Parks and Wildlife Services	60
Crown Castle	1,400 (Australia wide)
Broadcast Australia	600 (Australia wide)

Note: Many of the Crown Castle and Broadcast Australia sites are licenced from the Government Sector.

7.2 Infrastructure Providers - Crown Castle

In contrast to the steady growth of Government communication sites throughout NSW, Crown Castle – a communication infrastructure provider (this company purchased the

Optus and Vodafone facilities and leases), have not negotiated any new licence or leases. Company representatives stated several reasons for this:

- a) The opportunity to expand services through co-location of several carriers on existing sites. This is very cost effective as Crown Castle leases do not recognise the principle of additional co-location payments to land owners.
- b) The continually escalating rentals for Government serviced facilities.
- c) The difficulty in negotiating satisfactory terms with Government agencies.
- d) The restriction on sub-letting the requirement to pay additional rental for co-use on Government lands.

7.3 Infrastructure Providers - Broadcast Australia

BA is a provider of infrastructure and a provider of ABC and SBS television transmission. BA advise us they have sufficient sites for its Australia wide coverage and is not actively seeking new sites.

As is the view expressed by Crown Castle, BA has strongly voiced its objection to increasing site rentals and the introduction of co-user rentals given these additional costs will:

- Reduce profitability, and

- Cause sub-tenants to consider alternative infrastructure providers such as the 'commercial' television tower in each regional area.

7.4 New Technology

The demand for additional sites will be influenced and possibly tempered by the impact of new technology. As a general rule, transmitting and receiving equipment have become smaller and more powerful which may ultimately put a ceiling on the number of sites required for mobile phone use. In addition, new technology will be able to make use of existing infrastructure which has, up until the present, deemed to be unsuitable. The RTA for example, has advised that traffic signals are now being utilised as part of communication networks.

However, outweighing the impact of technology in relation to the utilisation of existing sites, is the growth of services such as wireless internet capacity and specific rate carriers, and consumer services that will become available as the industry continues to evolve. These service providers all require additional sites.

One example of how communication can be applied to retailing is that Coca Cola vending machines can now monitor and order new stock as the machine is selling to the consumer. This process is pre-empted by the consumer, who can now purchase a can of coke without money by using EFTPOS via the mobile phone, as the stock is removed

and an electronic message is sent advising of the make up and number of the remaining stock. This technology no doubt has many other similar applications for retailing.

The television industry is another example which demonstrates the impact that technology has on how an industry operates and its requirements for transmission sites. Traditionally, from 1956 to the early 1990's, television signals were transmitted by radio signal from very high transmission towers. Since then the method of signal transmission has changed dramatically and initially led to a demand for new repeater stations with the introduction of U.H.F. Technology has since been challenged by:-

1. Cable television, which relies on either underground or above ground cabling, and
2. Satellite television which requires a receiving dish on each individual property utilising the service.

In relation to television transmission digital technology is resulting in the decommissioning of some microwave link sites. We understand this is due to the characteristics of digital signalling and therefore requires less relay.

8. RECOMMENDATIONS

Introduction

In this section of the report we have provided recommendations on the specific issues requested by The Tribunal. These include site rentals, categorisation by location and by use, and the implementation of co-users' rentals. In addition, we have also provided further advice on other relevant matters.

8.1 Primary Recommendations

8.1.1 Rental Schedule recommended by BEM Property Consultants

User Group	High	Medium	Low
Community Based Organisation and Community Radio	100	100	100
Government Business Units and Other Commercial	10,500	7,000	3,500
Local Service Providers	7,000	5,000	2,500
Commercial Radio	12,000	8,000	4,000
Government Radio	6,000	4,000	2,000
Commercial Television	30,000	20,000	10,000
Government Television	15,000	10,000	5,000

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Budget Funded Sector	4,500	3,000	1,500
Mobile Carriers & Data Carriers	22,500	12,500	7,500

8.1.2 Categorisation by Location

We agree with the principle of categorising by location but do not agree with the ACMA classification of high, medium and low.

We agree with the Department of Lands/National Parks high/medium/low categories subject to the following comments:

Television

High is a major transmission location where reception includes a main provincial location such as Newcastle and Wollongong, or multiple regional areas such as Bathurst and Orange from Mt Conobolos.

Medium includes transmission into a single regional town.

Low includes transmission into a small regional town (say below 10,000 population), a translator into a larger town, or a microwave link site.

8.1.3 Categorisation by Use

Our recommended categorisation of uses is as per our table on page 52.

By comparison with the Tribunal's recommended categories in its draft report we consider greater differentiation of use is required if a schedule of rents is to be implemented.

- Government television and radio are related to commercial television and radio, and as such deserve their own categories albeit at a discount to the commercial operations.

- Mobile telecommunication carriers have different characteristics to Commercial Television Broadcasters and should have their own category.

8.1.4 Primary and Co-User Fees

Co-user fees are appropriate and are accepted by the majority of mobile phone carriers, however, they are accepted only on the basis that co – users have direct occupancy agreements with the landowners. Therefore, we do not agree with the Tribunal's proposal to charge co-users a rental through the primary user.

We consider the landowners should enter into separate agreements with primary and co-users and believe it is unreasonable to expect primary users to effectively become agents or property managers for the landowners. With the exception of Crown Castle

and Broadcast Australia, most primary users simply wish to operate their own communication businesses and are not set up or motivated to charge market site rentals or monitor market rental rates. Whilst the great majority of primary users would charge co-users a rental for using their infrastructure not all would charge market rates.

We are not aware of the practice of primary users passing on a co-user site rental to the landlord. To enforce this practice would not be practical as we believe many primary users would have difficulty in passing on the full co-user rental to the co-user. Further there would be a greater likelihood that the rentals the primary users receive for their infrastructure would be diminished over time.

Other benefits of our recommendation are that

- co-users will have a uniform rental structure,
- it will take a link out of the negotiation process,
- it removes the potential for co-users being over charged by the primary user, and
- the landlord will achieve greater control through improved disclosure of occupancies

It is not possible, given the very different requirements and attitudes of the parties to provide a lease clause that would completely satisfy everyone. Therefore, it is recommended that the following essential considerations be incorporated within the licence or lease relating to co-users:

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1. The licensee or lessee must be obliged to submit a separate application for each new co-user on site.

- This is in order to ensure the future use of the public utility is not compromised by the co-user.

2. All co-users' sub-letting agreements will have the same or earlier lease expiry date as the primary user.

3. The lessor will be entitled to a co-user fee equivalent to 50% of the primary user fee.

This payment recognises the following issues:

- If the co-user was not permitted on the site the co-user would have to pay the full market rental on another site as a primary user.
- The landlord is not obtaining full market value of the land if a co user rental is not paid.
- The document encourages co-location and maximises the use of existing sites.
- We note the applicable discount in the marketplace is quite variable with many government and private organisations providing no discount and the co users willing to accept full payments. This is particularly the case in the mobile telephone industry. On the other hand there are a multitude of government owned sites throughout NSW with a variety of communication co-users where no

co-user fee is paid and we believe it would be a disincentive and difficult to charge full fees. Ultimately we have recommended a 50% charge as being an 'across the board' compromise. Potentially this may be construed as too general and as an alternative it may be worth considering a lesser discount of 25% for the mobile telephone category.

8.2 Further Recommendations

Additional recommendations have been discussed in this section of the report as they are also considered relevant to the future management of communication sites on Crown land.

8.2.1 Tenure Issues

Discussions with the various Carriers, Broadcasters, infrastructure providers and Government agencies clearly indicate that opinions are polarised and may have reached the point where unless some form of consensus approach is agreed, that Government owned sites will become the last choice for occupiers due to the long and drawn out process of negotiation.

This scenario would have the following implications:

- a) The opportunity for co-location on existing sites will be minimised.

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- b) Government land, in some instances, being utilised for public purposes.

- c) The Government will be denied the rental income being derived from the communication industry and is not likely to be replaced.

The communications industry would prefer a common licence or lease agreement that would be standardised in terms of:

- Length of tenure
- The conditions of occupation and access
- Right to co-locate
- Rental payment to co-locate
- Rental rate reflective of a standard service in a given geographical area, i.e. Sydney, regional and country
- Agreed rate of annual adjustment, and
- A market review mechanism whereby the rent could be reduced subject to the prevailing market conditions, and not be automatically increased.

A common licence or lease agreement would have advantages to both parties, including:

- Elimination of a wasteful negotiation regulation process

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- An industry standard lease which is recognised and adopted by all parties

- Common rental rates for like facilities and common annual adjustment percentages, and

- A market review clause which will be able to reflect both upward and downward movement in the market.

However, standardisation of lease and licences would not appear to be preferred by some Government agencies essentially for two (2) reasons:

1. Such a document may undermine the ability to effectively utilise the land for the original purpose, i.e. supply of water or electricity, etc, and

2. The terms and conditions of a standard lease will no doubt eradicate or water down some hard fought clauses which are unique to that public utility.

8.2.2 Lease or Licence

Although not asked specifically to provide comment on the relative merits of a lease or a licence, this is clearly an important issue.

The Tribunal proposes to offer a licence but also wishes to maximise rentals. Occupiers clearly require leases and are more likely to agree to market based agreements if they are provided with the security of a lease.

We believe Government can provide lease and still maintain adequate control. Sydney Water has achieved this through the granting of leases for only the area of land required by the primary users.

Going forward we would recommend that leases be offered to occupiers subject to Government having the right to monitor consent to co-location and to secure rental income for co-location.

We are not expert in the legal implication of licences / leases and recommend this be further considered, but highlight that more than one form of agreement may be required to accommodate all circumstances.

8.2.3 Lease Term

Among other things, lease terms should reflect the cost of infrastructure expended by the occupier. A longer agreement should be provided for a substantial television tower than for a less expensive mobile telecommunication pole or mast.

For the majority of sites we consider it appropriate that 5 year agreements with 5 year option periods providing a total term of up to 20 years.

For more substantial facilities, e.g. television transmission towers, we recommend initial terms of 10 and 20 years with 10 year option periods providing a total term of up to 40 years.

Where Government agencies are concerned a site may be required for its original public purpose, the agreement term should be separately determined.

8.2.4 Annual Rent Review

We consider annual reviews should be in line with the broader property market and consider an appropriate annual escalation rate to be the greater of CPI or 3%.

It may be appropriate to review the annual escalation rate at each five (5) year period.

8.2.5 Market Rent Review

The market rental is to be agreed at the beginning of the new term. The market rental can rise or fall in accordance with the market at the time. This rental is to be negotiated between the two (2) parties and if not, the rental should be determined by an independent valuer experienced in the communication industry.

By adopting this process a transparent, fair and more widely reported body of rental evidence for these sites will evolve and create a market which displays the willing but not

over anxious principle as laid out in the Spencer case and is the basis upon which all other real estate transactions are based.

8.2.6 Ownership of Infrastructure at Lease Expiry

This process would also focus on an issue which has not been raised by any of the users within this research, which is the question of ownership of the infrastructure, primarily significant structures such as radio and television transmitting towers, upon lease expiry. Under normal lease provisions the lessee would have to remove all improvements to the land unless the lessor directs otherwise.

At the end of the lease, agreement must be reached between both parties as to whether the infrastructure is to be removed or it is to remain. This has important implications when the property is being put to tender, i.e.

- a) will the land be vacant, or
- b) will it contain infrastructure.

It would be expected that the site would be more valuable with the infrastructure in place and this would reflect upon the market rental that could be offered, and therefore it would be advantageous to the lessor for the infrastructure to remain.

However the lessee, who has paid for the infrastructure, should be compensated by the lessor if the improvements are to remain on the land after the lease expiry.

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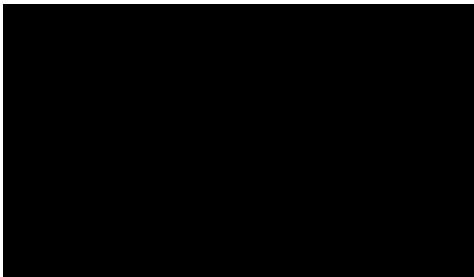
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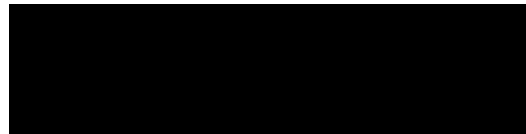
Therefore, both parties need to fully address all aspects of their respective obligations in relation to any significant improvements that may be erected on the land and the question of their removal or transfer of ownership at the end of the agreement.

This report has been prepared on specific instructions from **The Independent Pricing and Regulatory Tribunal** for the purpose of providing indicative rental estimates of Government owned communication sites within NSW. The report is not to be relied upon for any other purpose. We accept no liability to third parties nor do we contemplate that this report will be relied upon by third parties. We invite other parties who may come into possession of this report to seek our written consent to them relying on this report. We reserve the right to withhold consent or to review the contents of this report in the event that our consent is sought.

BEM Property Consultants Pty Limited



Director



Director