

POLICY STATEMENT NO. 49
RADIO/TELE COMMUNICATIONS FACILITIES POLICY
September 1998

Briefing note for staff.

A brief background to the development of this amended policy.

CALM's earlier policy relating to communication facilities was suspended in July 1994. The policy's structure of charges hampered negotiations with commercial carriers (eg. Telecom, Optus) to obtain a reasonable monetary benefit. In one case the amount offered in negotiation was \$4000 per annum, compared with the maximum of \$900 per annum as prescribed in the schedule of charges under the Policy at that time.

In April 1996 Suzanne Curry was seconded to the position of Acting External Funding Coordinator under the management of Colin Ingram, Park Policy and Tourism Branch. In July 1996 Ms Curry was asked to review the suspended policy with the assistance of Malcolm Briggs, Senior Leasing Officer. CALM currently has approximately 60 communication facilities on its estate, which need to be formalised by the issuing of lease agreements.

In amending the policy and developing a new structure of charges several important factors needed to be taken into account. They are as follows:

Telecommunication infrastructure.

Up until July 1997 the development of telecommunications infrastructure was controlled by the Commonwealth *Telecommunications Act 1991* and the *Telecommunications National Code 1996*. These provided telecommunication carriers with certain powers and immunities which included exemption from complying with State planning and environmental legislation.

With effect from 1 July 1997 the *Telecommunications Act 1997* and a new *Telecommunications National Code* came into force. The major effect of the new Act on planning processes is that the installation of telecommunication facilities, other than low impact facilities as defined in a Ministerial determination, will now have to comply with State planning and environmental legislation.

July 1997 also saw the deregulation of the industry and that other telecommunication carriers (other than Telstra, Optus and Vodaphone) have entered the market.

Planning control for telecommunication installations.

Western Australia has taken steps to ensure that by 1 July 1997 processes were in place for handling applications from carriers. A State Working Group (which includes a CALM representative) was established under the auspices of the Ministry of Premier and Cabinet.

Of particular importance to CALM has been the determination of the definition of 'low impact'. The Communications Minister's determination power under Schedule 3 of the *Telecommunications Bill 1996* includes a power to identify 'low-impact facilities' by referring to a class or classes of facilities. In effect, this gives the Minister power to

determine which classes of facilities will *not* be subject to State or Territory planning and environment laws.

Earlier in 1997 AUSTEL (Australian Telecommunications Authority), under the direction of the Communications Minister, conducted a public inquiry into matters including the declaration of 'low impact facilities'. W.A.'s submission was forwarded in April 1997 and the *Telecommunications (Low-impact Facilities) Determination 1997* has since come into force.

One effect of this determination is that a new facility in an area of environmental significance cannot be a low-impact facility. This is a pleasing outcome as it covers the CALM estate under the CALM Act 1984 and our statutory responsibilities under the Wildlife Conservation Act 1950.

Amendment of CALM Policy 49 to take account of the above.

CALM's Policy has been amended to take into account the above statutory changes.

1. New definitions have been developed to clearly identify the difference between Communication Facilities and CALM Facilities (refer to Clause 2 of the earlier policy).
 - A Communication Facility is a defined area of CALM land together with an external organisation's radio/tele communications infrastructure (tower/mast/associated buildings).
 - A CALM Facility is a CALM owned tower/mast (including associated buildings) on which an external organisation is permitted to place its own radio/tele communications equipment.
2. The requirement for co-location of sites is identified (refer to Clauses 3 and 5).
3. Fees for application and fees for rental has been identified and separated (refer to Clauses 7 and 8).
4. Clause 10 relating to the implementation of the Policy has been extensively re-worked.

Attachments to assist in understanding CALM Policy 49.

Several attachments have been prepared to assist in understanding or implementing the Policy. They are as follows:

- Attachment 1. Application to occupy CALM managed estate for communication purposes.
- Attachment 2. Application to share CALM Facilities.
- Attachment 3. Planning Bulletin No. 22, Ministry of Planning.
- Attachment 4. Lease agreement proforma for Communication Facilities.

Cost recovery analysis.

It is now a legislative requirement under the *Financial Administration and Audit Act* for Government agencies including CALM to review fees and charges on a regular basis. The principles for review, which include a basis for charges, cost recovery and several other factors) are exhaustive (see *A User's Guide to the Consolidated Fund Budget Process* published by the Western Australian Treasury for use by government agencies). As no such exercise had been done for the suspended policy, considerable effort has therefore had to be put into developing, as a starting point, a full cost recovery analysis for a major component of the Policy - the fee for telecommunication carriers wishing to establish a facility on the CALM estate. Assistance was provided by Finance Branch, Radio Communication Section, CALMfire and Dwellingup and Manjimup Districts and Kelmscott regional offices. From this analysis, a set non-refundable fee has been established.

Annual rental fees.

The earlier policy was suspended due to the inadequate structure of charges, in relation to annual rental fees for commercial telecommunication carriers (maximum annual rental under the earlier policy was \$900). After lengthy consideration and discussions with other organisations the evaluation of the annual rental is now based on market value and additional environmental values associated with the sites. Rentals for sites associated with mobile telephone networks are expected to be well in excess of the maximum rental under the earlier policy.

I would appreciate any comments or concerns you may have in relation to this Policy before it is taken to Corporate Executive. Comments may be directed to this office by COB 18 December 1998.

Colin Ingram
Manager
Park Policy and Tourism

4 November 1998

DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT

POLICY STATEMENT NO. 49

RADIO/TELE COMMUNICATIONS FACILITIES POLICY **18 November 1997**

Note: The Policy supercedes Policy Statement 49 entitled "Radio Communications Facilities Policy" of July 1993

1. POLICY SUBJECT:

Use of radio/tele communication facilities on the Department of Conservation and Land Management (CALM) estate by external organisations.

2. INTERPRETATION:

In this policy, unless the contrary intention appears:

"Communication Facility" means:

A defined area of CALM land together with an external organisation's radio/tele communications infrastructure.

"CALM Facility" means:

A CALM owned tower/mast (including associated buildings) on which an external organisation is permitted to place its own radio/tele communications equipment.

3. INTRODUCTION AND GENERAL CONDITIONS:

CALM is responsible for the management of W.A.'s national parks, conservation parks, marine parks, State forests and timber reserves, nature and marine reserves. Services provided by CALM include licensing and lease management of activities which include wildlife-based industries, commercial tourism, recreation and Communication Facilities.

CALM also operates its own radio communication system to manage and control its activities throughout the State. This system is vital to the safety of personnel and the operational integrity of the Department. One component of this system is a CALM Facility.

The establishment and use of Communication and CALM Facilities may be allowed when they:

- * assist in the development of the State telecommunications network;
- * reduce environmental disturbance;
- * improve communication service associated with community services and public safety;
- * allow for future co-location (where appropriate) with other external organisations;
- * cannot be co-located on existing sites for either technical or environmental reasons

or

- * assist with minimising national expenditure on communication facilities by avoiding duplication.

The availability of Communication and CALM Facilities will be subject to the following general conditions:

- * The user must meet both CALM and Spectrum Management Agency (SMA)¹ requirements, and any other agencies who may have a legitimate role in assessment of the Communication or CALM Facility;
- * Any user causing interference to CALM and/or other co-users will be required to immediately cease operations on the Communication or CALM Facility until the problem has been rectified by that user at their cost to the satisfaction of CALM and the SMA.

Particular conditions will be covered in detail in a formal agreement between CALM and the users.

4. OBJECTIVES:

- 4.1 To provide a co-ordinated approach with which all future applications to establish a Communication Facility or use a CALM Facility can be assessed.
- 4.2 To provide an equitable user pay system.
- 4.3 To ensure that the installation and management of Communication and CALM Facilities result in minimal impact on nature conservation and other environmental values.

5. GENERAL

5.1 Communication Facilities on CALM Land:

The establishment of new Communication Facilities by external organisations on CALM land will be minimised. Sharing of sites on CALM land will be strongly encouraged.

New Communication Facilities will only be established when:

- (a) they are in accordance with the relevant sections (33, 97, 99 and 100) of the CALM Act;
- (b) all environmental and technical criteria are satisfied.
- (c) they satisfy the requirements under clause 3 of this policy.

5.2 CALM Facilities:

The Department encourages other organisations to share its own facilities. CALM will give preference to sharing of its CALM Facilities with essential emergency services. Other external organisations will then be considered providing they satisfy the requirements under clause 3 of this policy.

¹Spectrum Management Agency (SMA) means the Commonwealth agency, for the time being, responsible for the licensing of parties to operate communication facilities from a specified location of a specified transmission frequency, and includes its successor or any future statutory authority having the same authority.

6. STRATEGIES:

- 6.1 Applications for use of Communication and CALM Facilities must be evaluated against CALM's anticipated communication requirements.
- 6.2 Applications to establish new Communication Facilities on CALM land will be subject to environmental, technical and visual assessment.
- 6.3 All external use of Communication and CALM Facilities will be subject to a written formal agreement (lease or licence) between CALM and the user.
- 6.4 The sub-lease of any Communication Facility by external organisations will normally be subject to approval by CALM. All CALM's cost which may be associated with the sub-lease will be met by the proponent.
- 6.5 The construction of site masting, buildings and the installation of communication equipment will be subject to conditions prescribed by CALM.

7. FEES:

- 7.1 Applicants wishing to establish a Communication Facility or use a CALM Facility will be required to pay:
 - * A non-refundable application fee at the time of the application will be levied to cover CALM's costs in the **preliminary evaluation**¹ of the application. This evaluation does not include a detailed field inspection. Where such an inspection and investigation is required and the applicant wishes to proceed, the cost of this assessment will be borne by the applicant.
 - * An annual rental. The evaluation of the annual rental of a Communication Facility is based on market value.
 - * Environmental loading. Annual rental x % in recognition of the degree of nature conservation values at that site.
- 7.2 The schedule of fees will be reviewed annually by Park Policy and Tourism Branch .

8. FEE CONCESSIONS (RENTAL ONLY):

Concessions may be given for:

- 8.1 Emergency services.
- 8.2 Community Service Organisations.
- 8.3 Non-commercial organisations.
- 8.4 Shared use of a Facility by CALM.
If CALM shares user's own facility on CALM land there will be no annual rental.

¹ A cost recovery analysis conducted by CALM in March 1997 established the cost of a **preliminary evaluation** for a Communication Facility could be as much as \$2000. This evaluation is based on a routine inspection of the site, referral to relevant branches, and related administrative processes.

CALM may arrange to share an external organisation's own communication facility on non-CALM land, in return for which CALM may allow that organisation to use a Communication or CALM Facility at reduced charges. The extent of the reduction will be subject to negotiation.

9. ALLOCATION OF REVENUE:

Funds derived from the charges will be allocated thus:

- | | | |
|---|-------------------------------------|---|
| * | Application Charges: | Proportional basis - District 50%, Park Policy and Tourism Branch 50%. |
| * | Communication Facility annual rent: | Proportional basis - District 80%, Park Policy and Tourism Branch 20%. |
| * | CALM Facilities annual rent: | Proportional basis - Radio Communications Section 40%, District 40% and Park Policy and Tourism Branch 20%. |

10. IMPLEMENTING THE POLICY:

10.1. Applications for establishing Communication or CALM Facilities:

The applicant must submit on the prescribed CALM form full details of the proposed Communication Facility[¶] (refer to Attachment 1 - *Application to occupy CALM Managed estate for communication purposes*) or use of a CALM Facility (refer to Attachment 2 - *Application to share CALM facilities*). Details include full information on equipment type, operating frequency, transmitter power, antenna type, power requirements, plans of the proposed installation, access requirements and, tower and the equipment housing.

10.2 Queries on technical matters are to be referred to the Radio Communications Manager.

10.3 Queries on Operational matters are to be referred to the appropriate District and Regional Manager for comment.

10.4 For Communication Facilities, the applicant must submit evidence of seeking opportunities for site co-location with other appropriate communication carriers.

10.5 Queries on environmental impact assessment are to be referred to Environmental Protection Branch. The applicant may then be required to provide a more detailed assessment when and where necessary.

10.6 Queries on visual impact assessment are to be referred to the Landscape Management Section of Planning and Visitor Services Branch. The applicant may then be required to provide a more detailed assessment when and where necessary.

10.7 The approval from manager of CALMfire is obtained.

10.8 Approval of the National Parks and Nature Conservation Authority (NPNC) and the Lands and Forest Commission (LFC) are obtained before any new

[¶]Communication Facilities cannot be established on Nature Reserves as they cannot be viewed as a 'necessary operation' (refer to Section 33 of the CALM Act). Communication Facilities in National and Conservation Parks may be approved in accordance with a management plan, and in the absence of such a plan will need to be approved as a 'compatible operation'. In the case of the latter, the approval of the Minister for the Environment is required, after a public consultation process (refer to Sections 33(2) and 33(3) of the CALM Act).

communication facilities are established on land vested in the them. Approval is then required from the Minister for the Environment.

- 10.9 In relation to local government involvement it may be necessary to consult and advise the relevant local authority. For further advice contact the Manager of Park Policy and Tourism Branch. *Planning Bulletin 22, published by the W.A. Ministry of Planning provides general information on State planning issues and Telecommunications (refer to Attachment 3).*
- 10.10 A copy of the approved Communications Facility agreement will be kept in the appropriate District office.
- 10.11 A copy of the approved communications certificate from the Spectrum Management Agency (SMA) must be received before any site construction or equipment installation can commence.
- 10.12 Park Policy and Tourism Branch will issue and hold CALM's official copies of all communication leases/licences (refer to Attachment 4 - *Lease agreement proforma for Communication Facilities*).
- 10.13 Park Policy and Tourism Branch will arrange for invoices to be issued for annual rentals.

Syd Shea
EXECUTIVE DIRECTOR

6. PURPOSE OF INSTALLATION
(provide full details of purpose of station)

[] Radiocommunications (eg : Base, Fixed station, etc)

.....

[] Other (please describe)

.....

7. TICK APPROPRIATE BOX IF

[] New installation

[] Variation to an existing installation

8. PROVIDE THE AVERAGE HOURS PER WEEK OF EQUIPMENT OPERATION

.....

9. FACILITIES TO BE ESTABLISHED ON SITE

Tower - Height:

Type :

Capacity for co-location :

Equipment Shelter - Size :

Material/Type :

Colour :

10. EQUIPMENT TO BE INSTALLED

(Provide details or attach equipment brochure where applicable).

If insufficient space, attach separate sheet.

11. POWER SUPPLY ARRANGEMENTS

Provide details of proposed power supply arrangements including requirements for emergency power supply.

.....
.....
.....

12. MAINTENANCE OF INSTALLED EQUIPMENT

Provide details of arrangements proposed for maintenance of equipment including frequency of maintenance visits and name of person(s)/ organisation proposed to undertake maintenance.

.....
.....
.....

I hereby apply for the use of the site described herein.

.....
Signature

.....
Date

.....
Print Name

.....
Position held in organisation

Please return form to :

Attention : Manager
Park Policy and Tourism Branch
CALM
50 Hayman Road
COMO WA 6152

Telephone : 9334 0333

Fax :

9334 0253

ATTACHMENT 2

**DEPARTMENT OF CONSERVATION AND
LAND MANAGEMENT**

APPLICATION TO SHARE CALM FACILITIES

NOTE: Please provide answers to all questions (include 'nil' response where applicable).

1. NAME OF APPLICANT

.....
Surname

.....
Other Names

.....
Name of Organisation

.....
Trading name (if applicable)

2. BUSINESS ADDRESS

.....
Number and Street

2b. POSTAL ADDRESS

.....

.....
Suburb/Town Postcode

.....
Suburb/Town Postcode

3. BUSINESS OR PROFESSION

.....

4. TELEPHONE/FACSIMILE

.....
STD Business Hours STD After Hours STD Fax no.

5. LOCATION OF PROPOSED INSTALLATION

Identify CALM site:

.....
.....
.....

6. PURPOSE OF INSTALLATION
(provide full details of purpose of station)

[] Radiocommunications (eg : Base, Fixed station, etc)

.....

[] Other (please describe)

.....

7. TICK APPROPRIATE BOX IF

[] New Service

[] Variation to an existing service

8. PROVIDE THE AVERAGE HOURS PER WEEK OF EQUIPMENT OPERATION

.....

9. FACILITIES TO BE SHARED

(Where more than one building or tower exists, clearly indicate which one is to be shared.)

Building:

* CALM

* Other

Mast/Tower:

* CALM

* Other

Power

Standby

Other

10. PROPOSED NEW FACILITIES TO BE ESTABLISHED ON SITE
(Provide detailed specifications and exact location proposed).

New Equipment Shelter

.....

Other

.....

11. EQUIPMENT TO BE INSTALLED
 (Provide details or attach equipment brochure where applicable).
 If insufficient space, attach separate sheet.

a. Transmitter(s)	1	2	3	4
Make Model Power Consumption Power Output Frequency				
b. Receivers				
Make Model Power Consumption Power Output Frequency				
c. Transceiver(s):				
Make Model Power Consumption Power Output Frequency				
d. Antenna(s):				
Make Model Tower face and size Height (Metres above ground) Weight (Kg) Wind loading Gain				

11. EQUIPMENT TO BE INSTALLED (Continued)

e. Antenna feed arrangements (including cable type, size, filtering units).
Provide a sketch if possible

.....
.....

f. Equipment Isotropically Radiated Power (EIRP) of services and description of radiation patter (Horizontal and Vertical)

.....
.....

g. Floor space required. Provide a floor plan if possible and advise if racks are free standing or wall mounted.

.....
.....

h. Heat dissipation of equipment

.....
.....

i. Other equipment

.....
.....

12. POWER SUPPLY ARRANGEMENTS

Provide details of proposed power supply arrangements including requirements for emergency supply.

.....
.....
.....
.....

13. MAINTENANCE OF INSTALLED EQUIPMENT

Provide details of arrangements proposed for maintenance of equipment including frequency of maintenance visits and name of person(s) / organisation proposed to undertake maintenance.

.....
.....
.....
.....

14. INSTALLATION ARRANGEMENTS

a. on tower / mast

() by CALM

() by contractor / agency under CALM supervision

() Other (NOTE: Only the above options will normally be considered).

b. on the 'ground'

() by CALM

() by contractor / agency

() Other

If installation is proposed to be carried out other than by CALM, provide full details:

.....
.....
.....
.....

15. ACCESS ARRANGEMENTS OF THE SITE:

Provide details of preferred access arrangements to the site and equipment.

.....
.....
.....
.....

I hereby apply for the shared use of the CALM's site facilities described herein.

.....
Signature

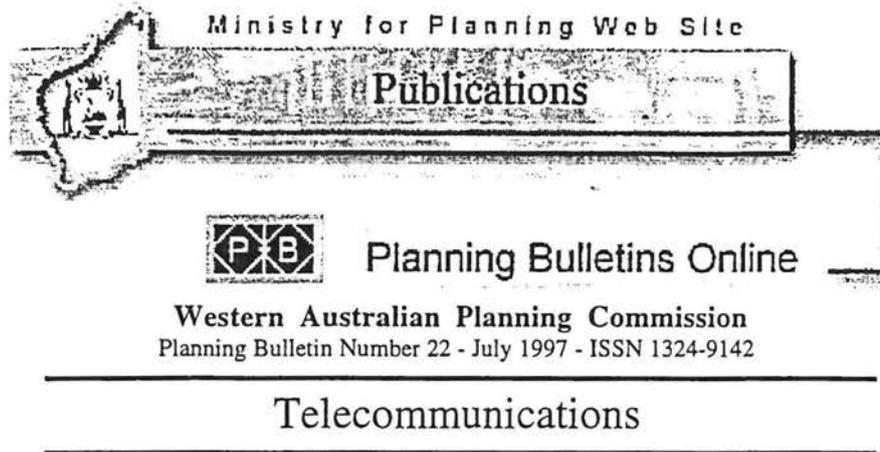
.....
Date

.....
Print Name

.....
Position held in organisation

Please return form to :

Attention : The Manager
Radio Communications Section
CALM
50 Hayman Road
COMO WA 6152
Telephone : (08) 9334 0443
Fax : (08) 9367 8202



1. Telecommunications Infrastructure

The development of telecommunications infrastructure is currently controlled by the Commonwealth Telecommunications Act 1991 and the Telecommunications National Code 1996. These provide certain powers and immunities for telecommunications carriers including exemption from complying with State planning and environmental legislation.

With effect from 1 July 1997 the Telecommunications Act 1997 and a new Telecommunications National Code will come into force. The major effect of the new Act on planning processes will be that the installation of telecommunication facilities, other than low impact facilities as defined in a Ministerial determination, will have to comply with State planning and environmental legislation.

The new Telecommunications National Code is not yet finalised. The Western Australian Planning Commission, however, considered it appropriate to release this Bulletin to advise on the present position and the planning approval process which will take effect from 1 July 1997.

2. Issues in the Provision of Telecommunications Facilities

Modern telecommunications are an essential and beneficial element in life of the local community, and in the State and national economy. New communications technology is rapidly spreading to meet the growing demand for better communications at home, in business and in public services. Investment in new technology and the maintenance and improvement of the established network can, however, entail the physical development of land which can have impacts on the local environment and amenity.

There have been concerns raised in the community and by local government about the operation of telecommunications carriers in providing services using their exemption from State planning legislation. These concerns mainly relate to the construction of mobile phone towers and provision of broadband networks using overhead cabling.

The main concern with respect to mobile phone towers relates to visual and amenity impacts. There are, however, also reservations in the community about whether exposure to towers causes adverse health effects. Advice from the EME (electromagnetic energy) Public Health Committee is that the weight of national and international scientific opinion says there is no substantiated evidence to suggest that living near a mobile phone tower causes adverse health effects. The continuing development of communications technology and improved scientific methods means that ongoing research ensures that public health policies continue to be based on the most up-to-date information. Fact sheets on this topic are available from the Commonwealth Department for Communications and the Arts.

Overhead cabling has not yet proved to be an issue of contention in Western Australia. Difficulties have, however, been experienced in other States where telecommunications carriers have used their exemptions to provide overhead distribution of broadband cables. There has been a strong public response against such proposals in some cases.

The State Government's policy on overhead power lines is to place all power distribution lines in new developments underground and to retrospectively place existing overhead power distribution lines. This undergrounding policy applies equally to electricity power cables and telecommunications cables as the service provided by both are essential to the economic and social well-being of the community. Nonetheless, there are likely to be exceptions where overhead cabling is necessary due to ground limitations or where there are long-term benefits to the community of greater value than the disadvantages of overhead cabling. Proposals will

need to be considered on their merits by the local community. Where approval to overhead cables is granted it will be for a limited period and conditional on undergoing when electricity power cables are undergrounded.

3. Planning Control for Telecommunications Installations

Western Australia, as with other States, is taking steps to ensure that by 1 July 1997 a process is in place of handling applications from carriers in respect of facilities which are other than low impact. A State Working Group has been established under the auspices of the Ministry of the Premier and Cabinet and includes membership from the WA Municipal Association together with the Ministry for Planning, the Department of Land Administration, the Department of Environmental Protection, the Health Department, the Department of Conservation and Land Management, the Heritage Council, Main Roads WA, and the Office of Energy.

The Commonwealth Minister responsible for the Telecommunications Act has not yet determined what will be low impact under the National Code. It is already known, however, that overhead cabling and mobile phone towers (other than those which are less than 5 metres high and attached to buildings) will not be low impact and will be subject to State planning and environmental legislation.

The Commonwealth Department of Communications and the Arts has commissioned consultants to examine the scope for establishing a national framework for regulating the installation of telecommunications infrastructure, having regard to the current legislation and non-legislative arrangements in each of the States and relevant Commonwealth Government law and policies.

In the meantime, for Western Australia, the provisions set out below will apply.

Legal advice has confirmed that telecommunications facilities constitute 'development' for the purposes of the Town Planning and Development Act 1928 (as amended) and planning approval will generally be required from the relevant planning authority before development can be commenced. In most cases local government will be the responsible authority because local government town planning schemes provide the basis for planning controls within a local area.

Because telecommunications has not previously been subject to State planning legislation, the use is currently not recognised in town planning schemes. Most schemes, however, provide a general discretionary power to the Council to approve uses that cannot reasonably be determined to fit into any of the listed use categories.

Land use is distinct from development. Control over the development of telecommunications infrastructure will be exercised through development control provisions in the Council's scheme. Applications to commence development for telecommunications infrastructure must be lodged with Council which will determine the application. An audit of town planning schemes has confirmed that most schemes contain these general development control provisions.

In the Perth Metropolitan Region, development is also subject to the provisions of the Metropolitan Region Scheme, and approval to commence development may also be required from the Commission in accordance with current development control arrangements. Similar provisions are likely to be included in the statutory region schemes currently being prepared for Peel and Bunbury.

An application to commence development should be submitted to Council on the relevant form and countersigned by the owner of the land or of the infrastructure upon which the facility is to be installed. Where the development is on Crown Land or on most road reserves, the application should be countersigned by the Department of Land Administration as the owner.

4. Matters to be Taken into Account in Considering Proposals for Telecommunications Installations

In considering applications from telecommunications carriers, the following matters will need to be taken into account,

- the social and economic benefits of affordable and convenient access to modern telecommunications-based services for people and businesses throughout the State;
- continuity of supply of telecommunications services;
- protection of the environment;
- safeguarding visual amenity and streetscape;
- protection of heritage places;
- public safety; and
- coordination with other services.

The overall aim should be to find the appropriate balance between sometimes conflicting objectives by the application of sound planning principles.

5. Future Advice

Western Australian in conjunction with the Commonwealth and the other States is participating in a study to develop consistent or comparable definitions for the various types of telecommunications infrastructure and to prepare guidelines or criteria to assist with the consideration of applications for planning approval. While the results of this study may not be available by 1 July 1997, advice in this regard will be provided as soon as it becomes available.

6. Comments and Suggestions

Any comments or suggestions concerning policy practice or procedure in relation to the control of telecommunications through town planning schemes may be directed to:

Senior Manager
Policy and Legislation
Ministry for Planning
Albert Facey House
469 Wellington Street
PERTH WA 6000
Tel (08) 9264 7777
Fax (08) 9321 1617

ATTACHMENT 4

THE EXECUTIVE DIRECTOR of the DEPARTMENT OF CONSERVATION
AND LAND MANAGEMENT

and

LEASE NO.

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14.0 MISCELLANEOUS

15.0 OPTION OF A FURTHER TERM(S)

'**Lessee's Covenants**' means the covenants and agreements contained or implied in the lease to be observed and performed by the Lessee;

'**Lessor**' means the Lessor described on page two of the Lease and its successors and assigns and its employees, agents and contractors; -

'**Month**' means calendar month;

'**Premises**' means the Premises described in **Item 1** of the Reference Schedule;

'**Reference Schedule**' means the schedule so described which is included in this document;

'**Rent**' means the amount state in **Item 5** of the Reference Schedule;

'**Spectrum Management Agency**' means the Commonwealth agency, for the time being, responsible for the licensing of parties to operate communication facilities from a specified location on a specified transmission frequency, and includes its successor or any future statutory authority having the same authority.

'**State**' means the State of Australia in which the Premises and adjoining land area situated;

'**Statute**' means any statute, regulation, proclamation, ordinance or by-law of the Commonwealth of Australia or the State, and includes all statutes, regulations, proclamation, ordinances or by-laws varying consolidating or replacing them and all regulations, proclamations, ordinances and by-laws issued under that statute;

'**Term**' means the term of the Lease set out in **Item 4** of the Reference Schedule.

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) where an association, body or authority, statutory or not, ceases to exist or is reconstituted, renamed, or replaced or its powers and functions are transferred to any other association, body or authority, a reference to that association, body or authority means the association, body or authority (as the case may be) established or constituted in its place or assuming its powers and functions;
- (f) a reference to any thing includes a part of that thing;
- (g) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of and a party, annexure, exhibit and schedule to the Lease;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;

- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (j) a covenant or agreement on the part of two or more persons binds them jointly and severally.

2.0 **EXCLUSION OF IMPLIED COVENANTS AND CONTRAVENTION OF STATUTE**

2.1 **Inclusion of Implied Covenants**

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease and not excluded by law.

2.2 **Contravention of Statute - Severance**

Any provision of the Lease which is void, voidable, unenforceable or invalid because of any Statute must in any such case and to such extent be severed from the Lease, and the Lease must be read as though such provision did not form part of the Lease at that time.

3.0 **TERM OF LEASE AND HOLDING OVER**

3.1 **Term of Lease**

The Term commences on the Date of Commencement as detailed in **Item 2** of the Reference Schedule and expires on the Date of Expiration as detailed in **Item 3** of the Reference Schedule subject to the provisions of the Lease.

3.2 **Holding Over**

If the Lessee occupies the Premises after the Date of Expiration (other than pursuant to the grant of a further lease) the Lessee must do so as a six-monthly tenant for six monthly terms thereafter on the same terms and conditions as the Lease as far as they apply to a six-monthly tenancy.

4.0 **PAYMENT**

4.1 **Lessee's Covenant**

The Lessee must pay the Rent as detailed in **Item 5** of the Reference Schedule clear of all deductions to the Lessor during the Term.

4.2 **Payment of Rent**

The Rent will be paid annually in advance to the Lessor or to any other person the Lessor nominates in writing to the Lessee. Any nomination must be at least 30 days prior to the date for payment of Rent.

5.0 **USE OF PREMISES**

5.1 **Permitted Use**

The Lessee will use the Premises for the purpose of constructing, maintaining and operating a telecommunications network and telecommunications service and uses incidental thereto (non-residential). In doing so the Lessee will satisfy all technical requirements of the Lessor and hold a current certificate issued by the Spectrum Management Agency to operate at the Premises.

5.2 Adjoining Land

The Lessor grants to the Lessee the right to use the Adjoining Land in accordance with any stipulations by the Lessor during the installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the Lessee's telecommunications network and the telecommunications service. After using the Adjoining Land on any specific occasion, the Lessee will restore the surface of the Adjoining Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor. The provisions of **clause 7.3** will apply to the exercise by the Lessee of its rights pursuant to this **clause 5.2**.

5.3 Requirements of Government Agencies

The Lessee must comply promptly with any Statute in respect of the Lessee's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises

5.4 Fire Prevention

- (a) The Lessee will duly and faithfully observe perform and comply with the provisions of the Bush Fires Act, 1954 and amendments thereof and the regulations thereunder and any proclamations and orders made under the provisions thereof so far as the same apply to the Premises. Any breach of the said Act and/or Regulations shall be regarded as a breach of the conditions of this lease.
- (b) The Lessee will not light or cause to be lit or permit any person to light any fire on the Premises except to the extent necessary for the purpose referred to in **clause 5.4(a)** hereof and then only with the prior written approval of the Executive Director or any other person duly authorised by him to give such approval.
- (c) If the Lessee or its agents or workmen causes a fire to be lit on or at the Premises other than with permission granted in accordance with the provisions of this Lease, the Lessee shall, immediately upon becoming aware of the fire, take all reasonable measures at the Lessee's own expense to extinguish such fire and the Lessee shall be liable to reimburse to the Lessor any expenses incurred by the Lessor in taking measures to extinguish the fire in the event of the Lessee failing to do so.
- (d) The Lessee will clear firebreaks as directed and to the satisfaction of the Lessor.

5.5 Interference

- (a) The Lessee covenants and agrees with the Lessor that it will take all necessary steps to ensure that the operation of its equipment on the Premises does not result in radio communications interference to any installation or use of radio or telecommunications equipment by the Lessor or other users of the Adjoining Land in existence at the date of the Lease and that it will indemnify the Lessor against any loss suffered by it as a direct result of the Lessee's equipment causing any such interference.
- (b) The Lessee covenants and agrees with the Lessor that it will carry out a radio frequency test within 28 days of commencing use of its equipment on the Premises to assess whether the operation of its equipment causes radio communications interference to any installation or use of radio or telecommunications equipment by the Lessor or other users of the Adjoining Land in existence at the date of the Lease and, subject to the test confirming that the Lessee's equipment is not causing such interference, the Lessor shall provide that Lessee with a written acknowledgment signed on behalf of the Lessor and the other users of the Adjoining Land to that effect.

- (c) The Lessor covenants and agrees with the Lessee that it will take all necessary action to ensure that its installation or use of radio or telecommunication equipment does not result in radio communications interference to the facility of the Lessee and to ensure that any structure or installation which it erects or installs within or upon the Adjoining Land does not interfere with the Lessee's use or enjoyment of the Premises.
- (d) The Lessor covenants and agrees with the Lessee that it will ensure that all radio and telecommunications equipment on the Adjoining Land ('other equipment') will be turned off during servicing of the Lessee's equipment if the radio frequency level of the other equipment exceeds recommended occupational health and safety standards as published from time to time.

5.6 Other

The Lessee will not :-

- (a) do anything in or about the Premises (notwithstanding any other consent given by the Lessor under this Lease) which in the reasonable opinion of the Lessor is noxious, offensive or audibly or visually a nuisance;
- (b) behave in a riotous, disorderly, offensive or improper manner or to perform any illegal act in or on the Premises;
- (c) fix or place signs, notices or advertisements either inside or outside the Premises unless it is consistent with the purpose of this Lease and acceptable to the Lessor; or
- (d) plant in or otherwise introduce to the Premises or the Forest any plant not indigenous to the Forest.

6.0 ACCESS TO THE PREMISES

6.1 Access

The Lessor consents to the Lessee and persons authorised by the Lessee with or without materials, plant and other apparatus and vehicles entering the Land for the purpose of using the Premises and exercising its rights under the Lease at all times of the day and night during the Term.

- 6.2 Notwithstanding **clause 6.1** the Lessee shall observe all instructions issued by the Lessor or his nominee regarding the prevention or spread of plant disease, in particular *Phytophthora* species. This shall include the washing down of vehicles and equipment and such other measures as may be required from time to time. Any cost involved in the carrying out of such measures shall be borne by the Lessee.
- 6.3 The Lessee shall permit the Lessor and its agents at all reasonable times (subject to giving the Lessee not less than 48 hours prior written notice) to enter upon the Premises to view the condition of any buildings erected on them.
- 6.4 The Lessee shall permit the Lessor and its agents and workman at all times to enter upon and carry out such duties and exercises such powers upon the Premises as it may be necessary or expedient to carry out or exercise in the administration or for the purposes of the Conservation and Land Management Act, 1984 or any other enactment or any regulation made thereunder and the Lessee shall not be entitled to any compensation by reason of any inconvenience or disturbance or loss occasioned by such action on the part of the Lessor.

7.0 INSURANCE, INDEMNITIES AND RELEASE

7.1 Obligation to Insure

The Lessee will insure against any loss or damage which could be covered by public risk or liability insurance in respect of the Premises with a reputable and substantial insurance office and pay the premiums necessary for the above purposes on or before the days on which the same respectively become due and whenever so requested produce to the Lessor or its agents the policy or several policies of such insurance and the receipts for the current year's premiums.

7.2 Indemnity

The Lessee shall at all times release indemnify and keep indemnified the Lessor and its employees and agents and the Government of the State of Western Australia from and against:

- (a) all damage to any property of the Lessor arising from or in connection with the use by the Lessee or any of its employees, agents, workmen or licensees of the Premises or the adjoining land and any rights granted under **clause 5.2**; and
- (b) all actions suits demands claims costs and expenses which may be made at any time by any person arising from or in connection with the use by the Lessee or any of its employees, agents, workmen or licensees of the Premises or the adjoining land and any rights granted under **clause 5.2**.

EXCEPT TO THE EXTENT that the same may be caused or contributed to by negligent or other wrongful act or omission of the Lessor, or any of its employees agents or contractors.

7.3 Lessee's Assumption of Responsibilities

The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it was the owner or occupier of the freehold of the Premises.

- 7.4 The Lessee will take adequate precautions to ensure that equipment installed on the Premises is protected against theft or damage and the Lessor shall not be held responsible for any removal or damage which may occur to such equipment during the term other than removal or damage caused by an act or omission of the Lessor.

8.0 INSTALLATION AND MAINTENANCE

8.1 Repair and Maintenance

The Lessee must maintain the Premises in good repair, order and condition during the Term.

8.2 Construction and Alterations

- 8.2.1 The Lessee may at the Lessee's expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law with the prior consent of the Lessor install, erect, construct, dismantle, repair, replace, renew and maintain upon the Premises any building or buildings as necessary now or in the future to shelter telecommunications equipment and a free standing monopole, guy tower or three-sided antenna structure or other antenna support structure or sufficient height now or in the future to meet the Lessee's telecommunications requirements and all necessary connecting appurtenances provided that any

such building to be erected or constructed shall be of a similar quality to and not incompatible with other buildings on the land.

8.2.2 The Lessee will not without obtaining the prior written consent of the Lessor on each occasion and then only in accordance with such conditions as the Lessor shall reasonably impose:-

- (i) bulldoze, clear or remove any trees, shrubs or other vegetation growing on the Premises; or
- (ii) remove rocks, earth or soil from the Premises; or
- (iii) alter the contour of the surface of the Premises; or
- (iv) deposit any earth, fill or material on the Premises; or
- (v) construct outlets for surface drainage on the Premises; or
- (vi) erect or install any improvements on the Premises.

8.3 **Fence**

The Lessee may at the Lessee's option and expense with the prior consent of the Lessor (which must not be unreasonably withheld) and having complied with the requirements of any relevant Government Agency having jurisdiction in the matter to the extent required by law erect around the perimeter of the Premises a security fence using materials as may be legally required and approved by the Lessor.

9.0 **ELECTRICITY SUPPLY**

9.1 **Electricity Connection**

For the purposes of carrying out the Lessee's use of the Premises the Lessee must arrange at its cost and if required to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of the Lessee's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter so that the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it on the Premises.

10.0 **TERMINATION**

10.1 **Events of Termination**

If:

- (a) the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Lessee or inaccessible by any means of access;
- (b) the Lessee commits a material breach of any of the Lessee's Covenants and has not remedied that breach within a reasonable period having regard to the nature of the breach;
- (c) any application for a required consent to a permit for the installation and use of the Premises as part of a telecommunications network and telecommunications service is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (d) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant radio-communications interference;

then the Lease may be terminated immediately by written notice by the Lessee in the case of subclauses (a), (c) and (d) and by the Lessor in the case of subclause (b).

10.2 Effect on Rights or Liabilities

Termination of the Lease does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to termination.

10.3 Lessee to Yield Up

The Lessee must at the expiration or sooner termination of the Term yield up the Premises in good repair and clean condition.

10.4 Removal of Lessee's Fixtures and Chattels

The Lessee must at or prior to the Date of Expiration (unless there is in place after this Lease a further lease between the Lessor and the Lessee, and in any event subject to **clause 14.3**), earlier termination of the Lease or such other date as the Lessor and the Lessee agree in writing, remove from the Premises and the Adjoining Land all above-ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises and the Adjoining Land and rehabilitate the Premises and the Adjoining Land as near as reasonably practicable to their condition as at the Date of Commencement, such rehabilitation to commence within 60 days of the Date of Expiration or earlier termination, as the case may be.

10.5 Termination of Holding Over

Either the Lessor or the Lessee may terminate the six monthly tenancy under **clause 3.2** by giving the other 30 days prior written notice.

11.0 NOTICES

11.1 Method of Service

Any notice to be given under this Lease by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by facsimile addressed to the receiving party at the address set out in Item 6 of the Reference Schedule in the case of the Lessor and in Item 7 of the Reference Schedule in the case of the Lessee.

11.2 Time of Service

Any notice given in accordance with this Lease will be deemed to have been duly served in the case of posting at the expiration of 2 business days after the date of posting and in the case of facsimile, on the first business day after the date of transmission (providing the sending party received a facsimile machine verification report indicating that the notice has been transmitted).

11.3 Change of Address

A party may at any time change its address, postal address or facsimile number by giving written notice to the other party.

12 ASSIGNMENT AND SUBLEASING

Not without the prior written consent of the Lessor assign mortgage charge sublet dispose of part with the possession of or grant any licence in respect of the leased premises or any part thereof or procure allow or suffer either voluntarily or involuntarily the same to be assigned mortgaged charged sublet disposed or the possession thereof parted with or licences for all or any part of the term hereby created AND the Lessor may condition its consent upon the execution of an agreement to be prepared by or on behalf of the Lessor and executed by the proposed assignee mortgagee chargee sublessee or licensee binding such assignee mortgage chargee sublessee or licensee to observe and comply with the covenants conditions and

stipulations herein contained and such further covenants and conditions as the Lessor shall deem fit PROVIDED THAT that sublessee pays to the Lessor a portion of the rent payable to the Lessee (as sublessor under the sublease) or other monies as stipulated by the Lessor, and notwithstanding anything contained in or anything done under or pursuant to the preceding provisions of this subclause the Lessee shall at all times during the currency of this lease be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part herein contained or implied AND the provisions of Section 80 and 82 of the Property Law Act 1969 are hereby expressly excluded from this lease

13.0 LESSOR'S COVENANTS

13.1 Quiet Enjoyment

The Lessor covenants that the Lessee may peaceably hold and enjoy the Premises during the Term without any interruption by the Lessor or any person rightfully claiming through the Lessor.

13.2 Restriction on Lessor's Use of the Adjoining Land

The Lessor must not itself knowingly nor will it knowingly permit any third party to do anything on the Adjoining Land which is likely to cause radio frequency interference which obstructs, interrupts or impedes the use or operation of the Lessee's telecommunications network and telecommunications service and in the event of the Lessee advising the Lessor of any breach of this clause, the Lessor will, in good faith, use its reasonable endeavours to cause removal of such interference, to the extent that it is within its power to do so.

13.3 Lessor's Covenant

The Lessor covenants that the Lessor will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on or transport to or over the Adjoining Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises provided that if the Lessee advises the Lessor of any breach by the Lessor of its covenant the Lessor will, to the extent that it is within its power to do so, use its reasonable endeavours at its expense to forthwith remedy such breach.

14.0 MISCELLANEOUS

14.1 Lessee to Pay Costs and Disbursements

The Lessee must pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) and all the Lessor's reasonable legal and other costs charges and expenses or which the Lessor may reasonably suffer or incur in consequence of and incidental to the preparation, completion, stamping and registration of the Lease, and costs of surveying and pegging the Premises.

14.2 Costs on Default

The Lessee will pay all reasonable costs, charges and expenses (including solicitor's costs and surveyors' and valuers' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice or notices under section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach of any of the Lessee's Covenants notwithstanding that forfeiture for any such breach is waived by the Lessor or is avoided otherwise than by relief granted by the courts or from which the Lessee shall be relieved under the provisions of the *Property Law Act 1969* and all reasonable costs, charges and expenses (including fees for architects and clerks of works) incurred by the Lessor for supervising, inspecting and approving any works or repairs carried out to the Premises by or on behalf of or in consequence of the default of the Lessee under any of the Lessee's Covenants.

14.3 Without Prejudice

This Lease is without prejudice to the Lessee's rights under Part VII of the Telecommunications Act, 1991 (Cth).

14.4 Governing Law

This Lease is governed by the law in force in Western Australia.

Each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts of Western Australia and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under **clause 11.1**

14.5 Rates and Taxes

The Lessee must pay all rates, expenses recoverable as taxes charges outgoings duties assessments impositions and penalties whatsoever which shall be charged upon or in respect to the Premises

14.6 Arbitration

If at any time any dispute or difference arises between the parties in respect of any matters arising under or pursuant to the Lease or the meaning or construction of any of the provisions contained in it, such dispute or difference shall be referred to a single arbitrator to be appointed in accordance with the provisions of the *Commercial Arbitration Act 1985 (as amended)*. On any such arbitration, a party may, if it chooses, be represented by a duly qualified legal practitioner or other representative. The costs of the arbitration are to be borne equally by the parties regardless of the outcome but each party shall bear their own legal costs.

15.0 OPTION OF A FURTHER TERM(S)

15.1 If the Lessee shall at least (3) months prior to the end of term but not earlier than six (6) months prior to the end of the term give to the Lessor written notice of the desire of the Lessee to renew the term hereby created provided that the Lessee shall not at the time of giving such notice be in default in performing and observing the covenants and conditions to be performed and observed by the Lessee hereunder and provided specifically that the Lessee shall not at the time of giving such notice be in rental arrears then the Lessor shall extend and renew this lease of the leased premises and the term hereby created for a further term from the expiration of the original term for a further term as specified in Item 9 of the Reference Schedule hereto.

15.2 The renewed Lease shall:

- (a) commence on the day after the Lease expires;
- (b) be at a rent equal to the rent for the last year of the Lease or further term increased by the percentage specified in **Item 5** of the Reference Schedule; and
- (c) be on the terms and conditions contained in the Lease but not including any provision for renewal in the case of the last of the further terms.

REFERENCE SCHEDULE

- Item 1** (a) Premises (clause 1.1). The area delineated and outlined green on the attached plan comprising an area of square metres and being a portion of
- Item 2** **Date of Commencement** (clause 1.1)
First day of 19
- Item 3** **Date of Expiration** (clause 1.1)
day of 20
- Item 4** **Term** (clause 1.1)
5 years
- Item 5** **Rent** (clause 1.1)
\$ during the first year of the Term, increased thereafter on each anniversary of the Date of Commencement by the greater:
(a) 5% compounding annually for the balance of the Term; or
(b) the amount which bears the same proportion to the rental reserved by this Lease for the first year of the Term as the Consumer Price Index for the quarter last preceding the respective date of review bears to the Consumer Price Index for the quarter last preceding the Date of Commencement.
- Item 6** **Contact at Lessor** (clause 11.1(b))
Name: Manager, Park Policy and Tourism Branch
Address: 50 Hayman Road, Como WA 6152
Telephone number: (08) 9334 0333
Facsimile number : (08) 9334 0466
- Item 7** **Contact at Lessee** (clause 11.1(c))
Name:

Address:
Telephone number:
Facsimile number :
- Item 8** **Lessee's Solicitors** (clause 11.3.1)

Telephone number:
Facsimile number :
- Item 9** **Option** (clause 15)
Three further terms of five years each

AS WITNESS the execution of this Deed the day and year first hereinbefore written.

THE COMMON SEAL of EXECUTIVE)
DIRECTOR OF THE DEPARTMENT OF)
CONSERVATION AND LAND)
MANAGEMENT was hereunto affixed by)

EXECUTIVE DIRECTOR

in the presence of:

THE COMMON SEAL OF)
was hereunto affixed in accordance with)
its Articles of Association in the presence)
of:)

_____ Director

_____ Secretary