COMMUNICATION INSTALLATIONS

on Elevated CaLM Sites (The Story Continues)

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ABOUT THE AUTHOR

ROBERT COLE graduated with a Bachelor of Surveying Degree in 1966. After training under articles, he became Registered in 1968.

Surveyors employed by the then Department of Lands were obliged to carry out land valuation work and Robert became Registered as a practising Real Estate Valuer in 1978. He completed the Associate Diploma in Environmental Control in 1985 from the then Mitchell College of Advanced Education.

He is a corporate member of the Institution of Surveyors, Australia and the Royal Australian Planning Institute.

He is present employed under the title of Specialist, Crown Estate, working from the Goulburn Office of the Southern Region. He works specifically in the area of land use planning and management giving advice to District staff in program areas including environment, real estate valuation, development and forward planning.

INTRODUCTION

I prepared a paper on this matter for the May 1991 Annual Conference of this association which was held at Bathurst. It was then a subject that District offices of the organisation had clearly given inadequate time and energies. The use of elevated sites administered by this Department requires input from a number of the sections namely the Crown Lands Service, The Land Information Centre, Soil Conservation Service and Valuer General's Office.

The use of the sites for the subject purpose raises environmental, planning and income generating issues. This paper addresses the progress that has been made in responding to those issues.

BACKGROUND

My previous paper presented a number of principles for adoption. The major principles being:

(1) that individual users pay and a economic rent should apply unless special rebate arrangements are decided upon on a policy basis.

(2) occupations be formalised by way of lease or licence depending upon whether or not the specific occupier is classified as a major or minor user of a particular site.

(3) Wherever possible to minimise visual and other environmental damage users should co-locate ie. minimise structures by sharing the tower and building installations on the site.

There has been limited progress on these matters in the last four years although the above principles have been informally endorsed by the executive. In addition a small project team has been established on a statewide basis to identify the issues, the manner by which they should be addressed and the most appropriate policies to apply when dealing with this classification of land occupation.

Inquiry has taken place into the manner by which the Crown Lands Service administers on a district level communication installations on elevated sites across the state. It was found that procedures were generally adhoc with little to no liaison or communication between districts and regions. In addition there was no formal data base identifying the resource and there was an absence of even locally developed policies to be applied.

CURRENT SITUATION

Agressive Expanding Industry

The communication industry has been identified as an aggressive expanding and competitive one. It has been found that a number of the major users establish networks of stations and within these networks there is often a hierarchy of interrelationship between them. It has been found also that the users can operate either on a national, state, regional or local level. Diagram A shows the network of sites through NSW for Pacific Power. Table 1 identifies a hierarchy of some of the major users.

Elevated Sites for Communication Purposes

It has been found that "line of sight" which is readily available from the network of elevated sites (trigonometrical stations) administered by the Crown Land Service and the Land Information Centre continued to play an essential role in many forms of radio and telecommunications. It should be noted that not all Trigonometrical stations and communication installations on elevated places are on lands administered by this department with a good number falling under the administration of other government agencies such as State Forests and National Parks and Wildlife Service while many are on freehold land. In addition of course a number of the major users such as Telecom and The Civil Aviation Authority have over time acquired their own sites and both operate from and lease or licence other operators from these places.

Rents and Occupiers

As an introductory comment to this section it is necessary to clearly understand that CaLM as the administrators of the land has a right and an obligation to seek and obtain an economic market rent from each and every user of the sites. The rent should reflect the benefit the occupation of the site brings to the user. The rent normally reflects the site value and excludes any improvements (on site) established by the users such as towers and buildings.

Currently in accordance with policy and direction, District offices employ the services of the Valuer General's office to carry out rental assessments for communication installations on sites administered by them. Extensive discussions have taken place with Valuers from the Valuer General's office and their reports have been perused. It is obvious that there is no consistent approach being applied by that office and rather each valuer on their own regional or district level carry out work without any real consultation with their colleagues in other offices. Not only is there a large variation in rents being assessed by that office but in general they have been found to be conservative and not fully appreciating the real value of the site to the user.

As a general comment it has been ascertained that there are many users on Crown elevated sites that have not been authorised in accordance with the Crown Lands Act 1989. It has been found in general that the first occupier on a site seeks consent from the Department and is issued with either a permissive occupancy or lease under legislation prior to the Crown Lands Act 1989 or a lease or licence under that Act. As other potential users in the industry identify a particular elevated site as suitable for their communication needs, they will generally approach in the first instance the party who are established on the site and will negotiate occupation with them. It has been found in an alarmingly high number of cases that the first legal occupier does not request the second and later parties to seek formal consent from the Crown Lands Service. What has been found is that the later occupiers will enter into loose arrangements with the first legal occupier and payment may be made by an uneconomic fee or in-kind by either maintaining access, power or the buildings on the site.

Accordingly the Department is finding that a substantial source of income is being lost to the government because all occupiers are not known and the rents that are being levied are generally below an appropriate economic level.

Other Government Agencies as Landlords

Inquiry has indicated that on an adhoc basis State Forests are commencing the same process as the Crown Lands Service in endeavouring to identify the extent of their resource in this area and to seek economic rental returns for them. State Forests are in a different situation to the Crown Lands Service as income from this resource managed by them stays within their organisation and is not transferred directly to treasury. State Forests appear enthusiastic to fully develop the opportunities for income from this source. Whether their charter is sufficiently broad to support this specific commercial activity requires clarification.

The National Parks and Wildlife Service have a fairly narrow charter and they generally support only those communication installations that are on sites that they inherited when the land was transferred to their administration. Generally communication installations and the various infrastructure such as roads and power associated with them, are not compatible with the principles of nature conservation.

Commonwealth agencies and instrumentalities such as Telecom and the CAA tend not to favour other user groups becoming established on their sites. The endeavour to take a similar position when they are the head lessee on Crown land.

Mobile Telephone Carriers

The new group of boys on the block incorporate Telstra (Telecom), Optus and Vodafone. These three carriers are in very strong competition with each other and are aggressively extending their network of communication towers and buildings through the metropolitan area and into the rural landscape generally along major road corridors. Being aggressive competitors they require a high degree of secrecy in the extension of their networks and are therefore not enthusiastic about sharing the details and timing of their extensions with their competitors. This situations leads to the possible proliferation of towers on hills and other legal problems which are discussed below.

RELEVANT LEGISLATION

The first Act that staff of the Crown Lands Service of the Department of Conservation and Land Management refer to is the Crown Lands Act 1989. That Act establishes a framework for the administration of communication installations on Crown land. Hand in hand with this state legislation is the Environmental, Planning and Assessment Act of 1979. Generally this latter Act establishes parameters to control development with the state.

The NSW Telecommunication of 1991 has powers that have gone unnoticed within a number of state agencies associated with communication installations. It has been found to be a very strong Act giving the relevant Minister power to vest infrastructure and designated land in the NSW Telecommunication Authority (TELCO) called the Authority. This vesting in control may be carried out without payment of compensation. The Telecommunications Unit (TCU) supports the authority and their charter, role and structure permits them to have a dominant position in the telecommunication industry in NSW. This unit operates within the Commercial Services Group (CSG) which in turn is within the State Department of Administrative Services.

TCU have drawn up a Schedule of fees that have been informally adopted by their authority and recommended for use of various state agencies. The schedule of rents are not directly based on any valuation precedence or principles and have certainly not been tested by appeal to the judiciary. The rents are intended to reflect only the opportunity of the site and not a rental on improvements thereon. TCU have the power to acquire and manage the full network of elevated sites on state owned land throughout NSW. The unit has not been given adequate staffing or funds to perform this broader function and from a very small staff base are containing their association with the telecommunication industry substantially to an advisory role. They see as appropriate, Crown Land Service of CaLM and other government agencies, continuing to play the same decentralised role that they can do so well. Currently they oversee the establishment of the NSW Government Radio Network (GRN) giving technical advice with a view to major government rationalisation.

The Commonwealth Telecommunication Act of 1991 gives the Federal Government a major role to play in the national control of telecommunication. This particular legislation has provisions overseeing the spread of the mobile telephone network discussed above. The telecommunication national code of 30 June 1994 specifically addresses the extension of communication networks throughout the nation and addresses environmental issues that should be addressed, in particular identifying procedures and safeguards.

The Commonwealth Department of Environment, Sport and Territories (DEST) administers the code and the extension of the national telecommunication network. They refer to Austel any breaches of the code by the carriers. It is then the role of Austel to take any legal action which may include deregulation of the carrier.

Unfortunately the Commonwealth Telecommunication Act 1991 does not require the various carriers to have direct regard to state legislation. The code requires them to address all environmental issues and to prepare an environmental planning report which may be subject to study and submissions by effected parties including local government and state agencies. It is the specific role of DEST to be satisfied that the carriers have adequately addressed all concerns raised.

The Commonwealth Native Titles Act 1993 has a direct impact upon the Crown Lands Services' administration of government land in the state. Unless there is certainty that all native title interests have been extinguished on a particular land parcel, the Service can not give consent to the establishment of structures such as towers and buildings. In the initial stages of a proposal therefore the Departments role is restricted to negotiations to minimise adverse environmental impact and to maximise co-location with other existing or potential users of the site. It is then the task of the Department to expedite the identification of Native Title interest in the land usually by way of the lodgement of a non claimant application to the responsible tribunal.

There is a secondary level of legislation that impacts upon the Departments dealings that are not elaborated upon within this paper.

SCALE OF THE MATTER

The Land Information Centre has identified about 1,100 trigonometrical stations on Crown land in the state. This information at date of paper preparation is available on disc in a simple form indicating Reserve number, name of locality and date of gazettal. The additional information required are co-ordinates to permit matching up with other information. Advice has been given that this additional information will be available in the near future.

The District offices of the Crown Lands Service have no data base identifying communication installations on Crown lands. At present the only way of gathering this information is for individual District offices to go through their permissive occupancy/licence/lease cards or individually study each Parish map. Either process at best will identify only the legal occupiers.

The spectrum management agency (SMA) of the Commonwealth Department of transport and communication have available on a CD-ROM the 167,000 different facilities in Australia giving frequency, location in AMG locality name and elevated place name, name of owner or operator of the facilities together with a range of other helpful information but excluding land ownership.

The task at present is to match occupiers of these sites from the SMA CD-ROM into the single category of State Crown land administered by the Crown Lands Service of CaLM. As can be appreciated once this is known all users without authority can be identified and properly leased or licensed. Limited investigation to date has indicated that there are significant numbers of occupiers on Crown elevated sites that are unauthorised. An example is Cambewarra just out of Nowra where an information gathering letter to Council who is presently the only legal occupier on the hill has identified 15 additional occupiers. The rent being paid by Council to the Department was $3,500 per annum yet they were collecting rents from the other occupiers to the sum $44,940.

As you are aware the Department has subdivided the state for administrative and management purposes in 5 regions. The Southern Region, as an example, has supplied figures as a result of the 5 Districts within that region fairly meticulously searching their records. Those figures indicate that there are 141 authorised occupiers spread over 86 different sites. As one would expect the majority of these sites are located on the coast and tablelands. Table 2 indicate estimates of the numbers of authorised and unauthorised installations with existing, economic and projected rents for sample areas of the state.

PROPOSED ACTION

1. To prepare an inventory on an appropriate data base on a district/regional basis of both authorised and unauthorised occupiers of communication installations on land administered by CaLM.

   - this inventory shall be realised with the advice and assistance of LIC Bathurst and the district offices of the Crown Lands Service.

   - The information gathered shall both be identified on map form and texturally include all occupiers names, nature of the installation and rent amounts where being charged.

2. The collated inventory shall form part of a submission at a head office level for the release of adequate funds to have the Valuer General's office carry out a major valuation/market rental exercise on a state wide basis.

   - It is anticipated that this approach would be the most cost effective having regard to economics of scale.

   - In the communication industry there is considered a relativity of market rental values of sites of similar potential throughout the state.

   - this approach should realise a consistent and sound rental basis.

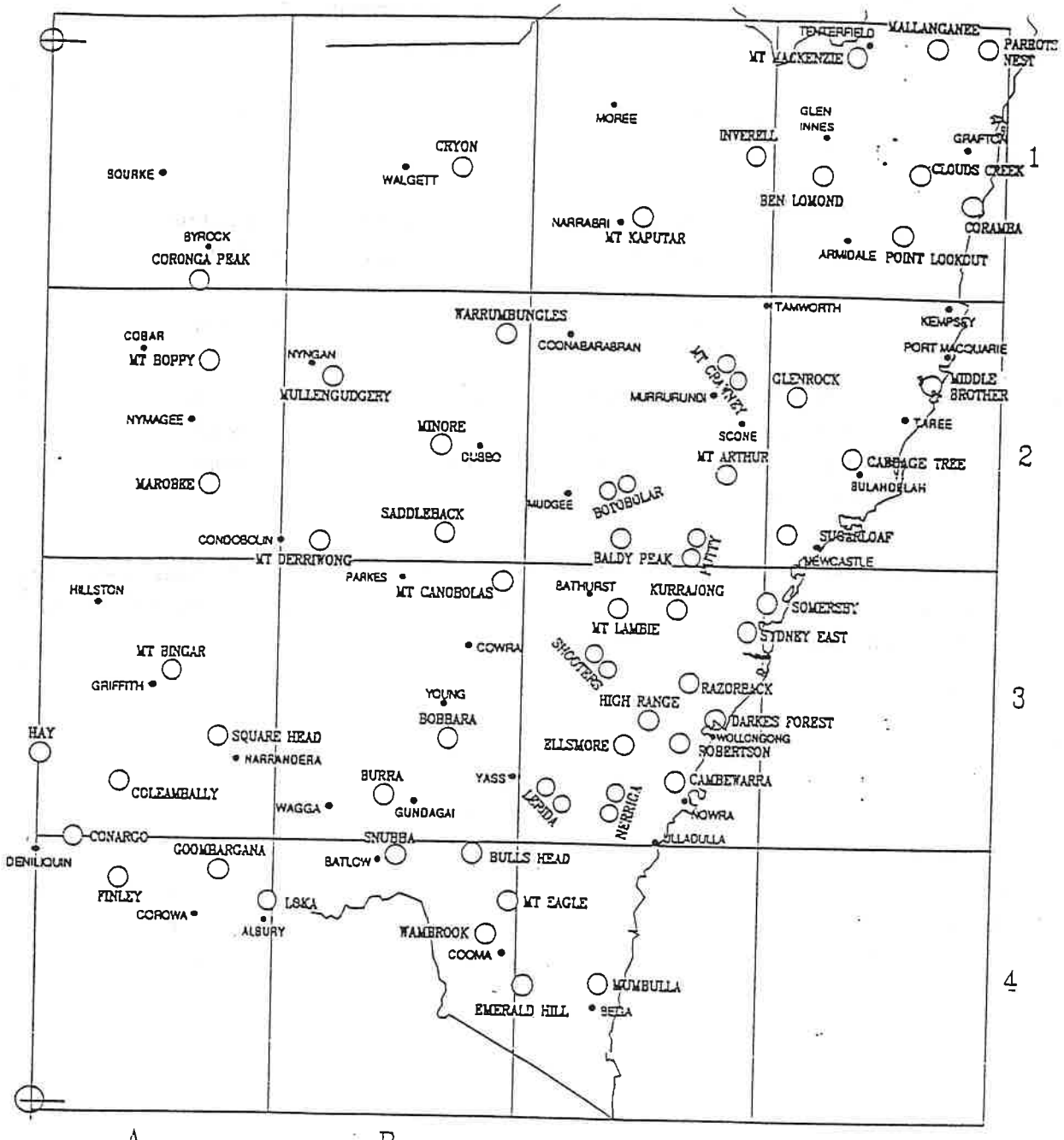
3. State wide policies and procedures need to be established for the guidance of District offices permitting a consistent and soundly based approach to be taken. The Department will be guided by advice received from the Valuer General as to the manner by which rentals should be applied.

4. District offices will then implement through the preparation of lease/licence as appropriate and in the process gather all additional information required for the proper and ongoing administration of the sites.

CONCLUDING REMARKS

Staff of the Crown Lands Service and Land Information Centre of the Department must remain diligent when dealing with communication installations on elevated sites. The primary purpose of the site as trigonometrical stations must always be considered paramount when dealing with other potential occupiers. Maximising the economic return to the state while at the same time minimising environmental degradation are the additional major issues.

Diagram A: Electricity Commission of NSW, VHF Mobile Radio System



BALDY PEAK ... C2
BEN LOMOND .. D1
BOBBARA B3
BOTOBOLAR C2
BULLS HEAD ... B4
BURRA B3
CABBAGE TREE..D2
CAMBEWARRA .. C3
CLOUDS CREEK..D1
COLEAMBALLY ... A3
CONARGO A4
CORAMBA D1
CORONGA PEAK.. A1
CRYON B1
DARKES FOREST..C3
ELLSMORE C3
EMERALD HILL .. C4
FINLEY A4
GLENROCK D2
GOOMBARGANA... A4
HAY A3
HIGH RANGE C3
INVERELL C1
KURRAJONG C3
LERIDA C3
LOKA A4
MALLANGANEE ... D1
MAROBEE A2
MIDDLE BROTHER.D2
MINORE B2
MT ARTHUR C2
MT BINGAR A3
MT BOPPY A2
MT CANOBOLAS . B3
MT CRAWNEY C2
MT DERRIWONG B2
MT EAGLE B4
MT KAPUTAR C1
MT LAMBIE C3
MT MACKENZIE D1
MULLENGUDGERY B2
MUMBULLA C4
NERRIGA C3
PARROTS NEST D1
POINT LOOKOUT D1
PUTTY C2
RAZORBACK C3
ROBERTSON C3
SADDLEBACK B2
SHOOTERS C3
SNUBBA B4
SOMERSBY D3
SQUARE HEAD A3
SUGARLOAF D2
SYDNEY EAST C3
WAMBROOK B4
WARRUMBUNGLES .B2

ALBURY ___ A4
ARMIDALE ___ D1
BATHURST ___ C3
BATLOW ___ B4
BEGA ___ C4
BOURKE ___ A1
BULAHDELAH ___ D2
BYROCK ___ A1
COBAR ___ A2
CONDOBOLIN ___ B2
COOMA ___ B4
COONABARABRAN C2
COROWA ___ A4
COWRA ___ B3
DENILIQUIN ___ A4
DUBBO ___ B2
GLEN INNES ___ D1
GRAFTON ___ D1
GRIFFITH ___ A3
GUNDAGAI ___ B3
HILLSTON ___ A3
KEMPSEY ___ D2
MOREE ___ C1
MUDGEE ___ C2
MURRURUNDI ___ C2
NARRABRI ___ C1
NARRANDERA ___ A3
NEWCASTLE ___ D2
NOWRA ___ C3
NYMAGEE ___ A2
NYNGAN ___ B2
PARKES ___ B3
PORT MACQUARIE D2
SCONE ___ C2
TAMWORTH ___ C2
TAREE ___ D2
TENTERFIELD ___ D1
ULLADULLA ___ C3
WAGGA ___ B3
WALGETT ___ B1
WOLLONGONG ___ C3
YASS ___ B3
YOUNG ___ B3

Diagram B: Agencies/Occupiers of Communication Installations on Crown Elevated Sites

State Level

NSW Department of Police
Federal Police Department
Department of Bush Fire Services
State Rail Authority
Road and Traffic Authority
State Forests of NSW
Pacific Power
Civil Aviation Authority
Telecom Australia
National Transmission Authority
Optus Mobile
National Parks & Wildlife Service

Regional Level

NSW Ambulance
County Councils (Electricity)

District Level

Local Government Councils
Private Commercial Users
Radio - Commercial
Radio - Civil
Trusts
Bush Fire Brigade