

Co-locating on communication facilities on Crown land

Where an organisation is co-locating their infrastructure on another organisations' communication facilities located on Crown land, they are required to hold a co-user licence with Crown Lands

A licence is a right granted by the NSW Department of Planning and Environment – Crown Lands (the department) under the *Crown Land Management Act 2016*, which at law, gives permission to occupy and use Crown land for a specified purpose and term.

The department makes Crown land available under licence to a variety of organisations to construct and operate communication infrastructure. In many cases the owners of communication towers make the infrastructure available to other organisations to use (co-location).

Organisations seeking to co-locate on communication facilities located on Crown land administered by the department (co-users) must have consent from the tower owner and the department to:

- occupy the land, and
- lodge any required development or other applications to relevant approval authorities.

Co-users are required to apply directly to the department for a co-user licence to occupy the land.

Co-users are expected to have a separate agreement with the tower owner to utilise the tower infrastructure. The co-user rental charged by the department is separate and in addition to any negotiated rental paid to the tower owner.

Planning approvals

In addition to obtaining the consent of both the tower owner and the department, co-user applicants are likely to require planning permission regarding their proposal. The co-user applicant must determine and obtain the required planning permissions. Depending on the infrastructure being installed, this may be via:

- a **development application** for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), which requires the consent of the department, as landowner, to enable lodgement with council, or
- a **complying development certificate** under Part 4 of the EP&A Act, which requires consent of the department, as landowner, to enable lodgement with council or an accredited certifier, or
- the **proposed activity is contained within the Commonwealth (Cwlth) Telecommunications (Low Impact Facilities) Determination 2018** and is to be undertaken at the site under the *Cwlth Telecommunications Act 1997* and Cwlth Telecommunications Code of Practice 2018, and no further planning approval under the EP&A Act is required, or

- an **environmental assessment** under Part 5 of the EP&A Act where the proposal is for a matter that does not require development consent (and is not 'exempt or complying development').

Regardless of the planning approvals required, the co-user applicant must enter into a licence agreement with the department to occupy Crown land.

Development applications & complying developments

For proposals that require a development application or complying development certificate, the written consent of the department is required to lodge a development application with a consent authority (for example, local council or an accredited certifier). Applicants will need to apply for landowners' consent by submitting the following to the department for consideration:

- **Communication Tower Sites Co-User Application Form**
- the **completed development application** that will be submitted to council
- **location, plan & elevation drawings** of proposed works, including tower, compound, associated building, and access tracks
- a response to the **site identification and description** information outlined in Annexure A
- a **Statement of Environmental Effects (SEE)** that will be submitted with the development application
- **tower owners' conditional approval** to locate on structure
- **payment for landowners' consent** to lodge a development application.

Modifications to plans

Should the approving consent authority require plans to be modified during the assessment process, the amended plans and drawings must be reassessed by the department and landowners' consent re-issued.

Applicants must advise the department of any changes to the proposed development during the development application process, otherwise a licence to occupy Crown land may be refused if the approved development differs significantly from the original proposal.

Proof of approval

Providing the development application is granted development consent by the relevant authority, the applicant must provide the department with a copy of the approved development plans bearing the consent authority stamp of approval and the development consent document. At that point, the applicant may seek the departments' consent to apply for a construction certificate.

Licensing will commence from the date development consent is granted.

Low-impact facilities

For proposals within the Cwlth Telecommunications (Low-Impact Facilities) Determination 2018, the processes associated with carrying out the activity under the *Cwlth Telecommunications Act 1997* and Cwlth Telecommunications Code of Practice 2018 must be adhered to.

Applicants must, however, still apply to the department for a licence by submitting:

- **Communication Tower Sites Co-User Application Form**
- **location, plan & elevation drawings** of proposed works, including infrastructure, compound, associated building, and access tracks
- a response to the **site identification and description** information outlined in Annexure A
- **respective notices** under *Telecommunications Act 1997* and Telecommunications Code of Practice 1997.

Licensing will commence from the effective start date of the activity described in the notice served by the applicant.

State Environmental Planning Policy (Transport & Infrastructure) 2021

Division 21 of the State Environmental Planning Policy (Transport & Infrastructure) 2021 (TISEPP) permits certain communication facility proposals to be carried out:

- without consent (section 2.141), or
- with consent (section 2.143), or
- as exempt development (section 2.144), or
- as complying development (section 2.145).

Development type under TISEPP	Requirements
Section 2.141 – Development permitted without consent (Considered an ‘activity’ under Part 5 of EP&A Act)	<ul style="list-style-type: none"> • Organisation must submit an environmental assessment that addresses the provisions of Part 5 of the EP&A Act to the department for determination. See below for further detail.
Section 2.143 – Development permitted with consent	<ul style="list-style-type: none"> • Organisation to lodge a development application with the relevant consent authority
Section 2.144 – Exempt development	<ul style="list-style-type: none"> • Does not require any planning permissions • A licence to occupy Crown land is still required
Section 2.145 – Complying development	<ul style="list-style-type: none"> • Organisation to lodge a complying development certificate with council or an accredited certifier

Development permitted without consent

Where a communication facility is permitted without consent by the provisions of the TISEPP and the applicant is another public authority, the applicant must satisfy the environmental assessment provisions of Part 5 of the EP&A Act.

When submitting any licence application, the applicant must submit evidence that a Part 5 environmental assessment has been completed. Approval to proceed with works will not be granted until a licence has been executed between the applicant and the department.

When seeking consent of the department to occupy the Crown land, applicants must submit for the departments' review:

- **location, plan & elevation drawings** of the proposed works, including towers, compound, associated buildings, and access tracks
- an **up-to-date identification survey**, including the proposed tower, compound, associated buildings, and access track
- the **environmental assessment** under Part 5 [Review of Environmental Factors (REF)] or **Environmental Impact Statement (EIS)**.

Process for applying to co-locate on Crown land

A co-user should negotiate with the tower owner and gain conditional approval to locate on the tower infrastructure prior to applying to the department for a licence. The department cannot grant a licence to a co-user without sighting the conditional approval from the tower owner. Similarly, the tower owner is unable to allow another organisation to use its facilities without the departments' consent.

A tower owner will have a licence in place with the department and will be able to inform the co-user applicant that the facility is located on Crown land.

Rent

The rent for communication licences on standard sites is presently based on the Independent Pricing and Regulatory Tribunal (IPART) fee schedule. Please refer to the [Communication licence rent Fact Sheet](#) on the departments' website for further information.

Application fees

Please refer to the [Crown Lands website](#) for current fees relating to applications seeking consent to construct and operate communication facilities on Crown land.

Relevant fees may include:

- General licence application (for new communication site licences)
- Short-term licence application (for temporary geotechnical investigation works)
- Granting of owner's consent to lodge a development application

All fees (excluding the application for a new site licence) must be paid in advance to the department.

The fee for an application for a new site licence will be charged to the applicants account and is payable when the first annual rent is due.

Further information

For further information, please contact the Crown Lands Telecommunications team via:

- Phone: 02 4920 5057, or
- Email: telecommunications@crowland.nsw.gov.au

Annexure A: Site identification and description

The applicant must address the following areas as part of the documentation submitted to the department.

Section A: Site identification and description

<p>Address of property that the proposed work will affect</p>	
<p>Lot/DP</p>	
<p>Locality; Parish</p>	
<p>Local Government Area</p>	
<p>Current use of the property that the proposed work will affect</p>	
<p>Current use of land adjoining the proposed work</p>	
<p>Vegetation within proposed works areas</p>	<p><i>For example: Provide the vegetation type, e.g. scrub, timbered land, grassland and the like, and if known, species type; and note any vegetation identified as being part of a SEPP 26 (Coastal Management) 2018 littoral rainforest (now SEPP (Resilience and Hazards) 2021) or SEPP 44 (Koala Habitat Protection) 2019 (now SEPP (Biodiversity and Conservation) 2021).</i></p> <p><i>Describe the condition of the existing vegetation, including weed infestation, previous clearing, or bushfire.</i></p> <p><i>Describe the density of vegetation for the entire length of the proposed work, particularly if some parts have been cleared and other parts are intact.</i></p> <p><i>Identify flora and fauna of conservation significance, including endangered ecological communities and critical habitat if known to occur on the site.</i></p>
<p>Fauna within proposed works areas</p>	<p><i>For example: Identify any fauna or habitats of fauna known to be on the site or sighted in recent times. Habitats can include nests located in trees or on the ground, dead trees and trees with hollows, burrows in the ground, aquatic habitats, as well as man-made structures that may be occupied.</i></p> <p><i>Note any pest species of fauna (such as feral cats, dogs or pigs) if they affect the site.</i></p>

<p>Water bodies that may be affected by the proposed works areas or are in close proximity</p>	<p><i>For example: Identify any creeks, rivers or flood-prone areas existing on the site and record any wetland communities occurring on the site or in the vicinity, including any SEPP (Coastal Management) 2018 coastal wetlands (now SEPP (Resilience and Hazards) 2021).</i></p> <p><i>Provide the distance of the activity to the foreshore of the coast or river, if relevant to the site.</i></p>
<p>Topography</p>	<p><i>Provide a general description of the topography of the site, sourced from visual observations and topographical maps.</i></p> <p><i>Provide descriptions of landforms occurring on the site, such as cliffs, valleys, rock outcrops and the like. Steeply sloping land is considered to generally have a slope greater than 18 degrees from the horizontal.</i></p>
<p>Soil type</p>	<p><i>Provide basic soil and geological information of the site, available from mapping resources.</i></p> <p><i>Acid sulphate soil risk maps may be available from NSW Department of Planning & Environment.</i></p>
<p>Soil stability/erosion</p>	<p><i>NSW Department of Planning & Environment can provide information regarding the erodibility of soils and measures to be implemented to reduce or eliminate the potential for soil erosion. An initial indication of erodibility can be made by checking for evidence of existing erosion surrounding the proposed works area and in rural areas for gully erosion on adjoining land.</i></p>
<p>Cultural heritage</p>	<p><i>Identify any items of cultural or natural heritage. This includes items listed in:</i></p> <ul style="list-style-type: none"> <i>• local councils' Local Environmental Plan (LEP) or on the State Heritage Register (SHR)</i> <i>• NPWS Heritage and Conservation Register on the NPWS Historic Heritage Information Management System (HHIMS)</i> <i>• NPWS Regional Cultural Heritage Management Strategy</i>
<p>Aboriginal heritage</p>	<p><i>Identify any known Aboriginal artefacts or sites of significance, or areas of high potential for these. Areas of high potential for Aboriginal heritage may be identified based on previously recorded sites and when development:</i></p> <ul style="list-style-type: none"> <i>• is within 100 metres of a stream, river, lake, or lagoon</i> <i>• will impact on areas with landscape features such as sandstone, outcrops, rock shelf/overhangs, old growth trees, sand bodies and dunes and water holes</i> <i>• will impact upon bushland and undisturbed ground.</i>

Other features

Include any other features relevant to the proposed activity or locality not covered by the above sections.

This can include recreational, scientific or educational values, scenic and visually prominent features, interests of other stakeholders (e.g., other land users or beneficiaries of easements).

Section B: Description of proposed activities

Provide a **detailed description of the proposed activity**. The description of the proposed activity work methods must include the following information:

- removal of trees, including the number of trees, size, and species
- clearing of vegetation, such as shrubs, grasses, or other ground covers
- any excavation required, including the depth of excavation and the area of excavation
- any fill proposed to be imported and used in the proposed activity, including the volume, depth, and type of fill
- installation of any drainage structures, such as open channels and the like
- the proposed working hours during which the proposed activity will be conducted
- plant and equipment to be used in the project
- disposal methods of any waste generated, excavated material or vegetation felled
- name and contact details of the person who will be undertaking the works, if known.

Attach maps, photographs, diagrams, and a site plan to assist with the description. The site plan should show the proposed activity area, including dimensions and alignments, existing structures, sectional elevations if necessary and a contour plan.

Specify environmental protection measures that will be implemented to reduce the impacts of the proposed activity on the surrounding environment. These measures will vary depending on the site characteristics, and could include but may not be limited to:

- erosion control measures such as silt fences and barriers to prevent sediment laden runoff from leaving the construction area, sedimentation basins or traps (include details of size, location and how often they would be cleaned out if available), and progressive revegetation proposals for all exposed areas
- measures to protect trees and areas of vegetation that will not be cleared as part of the proposal
- dust suppression measures if significant excavation is proposed and there are nearby residences
- weed control measures, such as ongoing spraying or mechanical weed removal of weeds throughout the proposed works area, to prevent the spread of weeds onto adjoining lands