

Information for Organisations Seeking to Co-locate on Communications Facilities on Crown Land

July 2015

Communication infrastructure located on Crown Land

NSW Department of Primary Industries - Lands (the Department) makes Crown land available under licence to a variety of organisations to construct and operate communication infrastructure. In many circumstances the owners of these facilities make them available to other organisations to use (co-location).

Organisations seeking to co-locate on facilities located on Crown land administered by the Department require consent from both the tower owner and the landowner being the Minister administering the *Crown Lands Act 1989* (Minister), in order to:

- i. Occupy that land
- ii. Lodge any required development or other applications to relevant approval authorities

Co-user applicants will be required to apply direct to the Department for consent to occupy Crown land and enter into a licence agreement.

Co-user organisations are expected to have a separate agreement with the tower owner to utilise the tower. 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 the consent of both the tower owner and the Minister, co-user applicants are likely to require planning permission to locate equipment on the tower. It is the responsibility of the co-user applicant to ascertain and obtain the required planning permissions. Depending on the infrastructure being installed this may be via:

- A Development Application (DA) for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979 (EP&A)* (which requires the consent of the Minister, as landowner, to enable lodgement with Council);
- The proposed activity is contained within the Commonwealth (Cth) *Telecommunications (Low Impact Facilities) Determination 1997* and is to be undertaken at the site under the *Telecommunications Act 1997* and *Telecommunications Code of Practice 1997*, and no further planning approval under the *EP&A Act* is required; or
- An environmental assessment under Part 5 of the *EP&A Act* will be required where the proposal is for a matter that does not require development consent (and is not 'exempt or complying development').

Regardless of the path taken the co-user applicant must enter into a licence agreement with the Minister to occupy Crown land.

Licence Rental

The Department charges an annual rental for co- users to occupy Crown land. The fee is based on a 50% discount of the published Independent Pricing and Regulatory Tribunal (IPART) fee schedule. The rental is based on the location of the facility. For more information refer to the fact sheet '[Information for communication organisations occupying Crown land](#)'.

Process for Applying to Co-locate on Crown Land

A co-user should negotiate with the tower owner, gaining conditional approval to locate on the tower prior to submitting an application to the Department. 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 utilise its facilities without the Minister's consent.

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

Development Applications

If the co-user is intending on submitting a DA to local council, the written consent from the Minister as landowner of Crown land must be obtained to lodge the DA. Applicants should refer to the fact sheet '[Development on Crown land](#)' for the full requirements and procedures for seeking landowners consent from Crown land. The documentation required for assessment by the Department includes:

- Communication Tower Sites Co-User Application Form ;
- The completed Development Application form to be submitted to Council;
- Location, plan & elevation drawings of proposed works, including tower, compound, associated building and access tracks;
- Documentation to be submitted to Council, covering sections outlined in fact sheet '[Documentation requirements for communication facility proponents on Crown land](#)';
- Statement of Environmental Effects (SEE) to be submitted with the DA;
- Tower owner's conditional approval to locate on structure.

Should Council require plans to be modified during the assessment process the amended plans and drawings will need to be reassessed by the Department, and the landowner's consent reissued by the Minister. Failure to advise the Department of any changes to the proposed development during the DA process may result in a refusal of a licence to occupy the Crown land if the approved development differs significantly from the original proposal.

Should development consent be granted, the applicant is required to provide the Department with a copy of the approved development plans bearing the consent authority's stamp of approval and the development consent document. At this point the applicant may seek the Minister's consent to apply for a construction certificate. Licensing will commence from the date DA approval is granted.

Low Impact Facilities

The proposed activity must be contained within the Cth *Telecommunications (Low-Impact Facilities) Determination 1997*.

The necessary processes associated with carrying out the activity under the Cth *Telecommunications Act 1997* and Cth *Telecommunications Code of Practice 1997* should be adhered to at all times.

The documentation required by the Department to assess the applicant's request for a licence to occupy Crown land include:

- Communication Tower Sites Co-User Application Form;
- Location, plan & elevation drawings of proposed works, including infrastructure, compound, associated building and access tracks;

- Documentation covering sections outlined in fact sheet '[Documentation requirements for communication facility proponents on Crown Land](#)';
- Respective notices under *Cth Telecommunications Act 1997* and *Cth Telecommunications Code of Practice 1997*.

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

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

Division 21 of the ISEPP permits certain telecommunications and other communication facilities to be carried out:

- without consent (s.114),
- with consent (s.115); and as
- exempt development (s.116).

Development listed in section 115 'development permitted with consent' will require a DA to be lodged with the relevant consent authority.

Development listed in section 116 'exempt development' does not require any planning permissions (although a licence to occupy Crown land is still required).

Developments listed in section 114 'development permitted without consent' are considered an 'activity' under Part 5 of the *EP&A Act* and the proponent is required to submit an environmental assessment (commonly referred to as a review of environmental factors) that addresses the provisions of Part 5 to the Department for determination.

Where a communication facility is permitted without consent by the provisions of the ISEPP and the proponent is another public authority, the proponent is responsible for satisfying the environmental assessment provisions of Part 5 of the *EP&A Act*. Evidence that a Part 5 environmental assessment has been completed is required to be submitted with any licence application.

Approval to proceed with works will not be granted until a licence has been executed between the applicant and the Minister. When seeking consent of the Minister to occupy Crown land, the Department will need to review:

- Communication Tower Sites Co-User Application Form;
- Location, plan & elevation drawings of the proposed works, including tower, compound, associated buildings and access tracks;
- The environmental assessment under Part 5 [Review of Environmental Factors (REF)] or Environmental Impact Statement (EIS).

Application fees

The following application fees apply (inclusive of GST):

- Land Status Search: \$71.20
- Landowners consent to lodge Development Application: \$65.70
- Application for new site licence: \$383.60

All fees apart from the application for a new site licence are required to be paid in advance via cheque to the Department and mailed with the accompanying documentation to the Telecommunications Team.

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

Fees are correct at the time of publication and may be subject to change.

More information

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (July 2015). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the NSW Department of Primary Industries – Lands or the user's independent advisor.

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