

# Operational policy

## Infrastructure and Equipment

### Communications facilities on QPWS managed areas

*Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment and Science. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.*

#### Purpose

This policy considers the authorisation of communications facilities on QPWS managed areas.

#### Background

All works and infrastructure within a Queensland Parks and Wildlife Service (QPWS) managed area must be authorised under the legislation used to manage that area. The Department of Environment and Science (DES) would prefer not to have communications facilities on QPWS managed areas, as it often conflicts with the purpose for which the area was set aside. However, there are circumstances when locating communications facilities on QPWS managed areas is appropriate. In such cases, DES has adopted standards for management of communications facilities that are consistent with the recommendations made by the New South Wales Independent Pricing and Regulatory Tribunal (*Review of Rental Arrangements for Crown Land Communications Tower Sites - Final Report, 2006, [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)*).

#### Policy statement

The management standards adopted by DES are described below in two sections.

1. General principles for communications facilities.
2. Fees for communications facilities.

#### 1. General principles for authorising communications facilities

##### Land will not be alienated from the estate for communications purposes

DES will manage communications facilities by issuing rights of occupation to the owners of the infrastructure.

##### Type of authority

There are a range of authority types that may be granted over QPWS managed areas. The type of authority granted will depend on the land tenure, but generally the authority will have the characteristics of a licence. The most commonly used authorities for telecommunications facilities are:

- occupation permits under section 35 of the *Forestry Act 1959*; or
- authorities under section 34, 35 or 35A of the *Nature Conservation Act 1992*.

### **Strata authorities for multiple users on a single site**

Each site user will require an authority from DES that grants them the right to access and occupy land within the QPWS managed area. Where there are more than two users on a site, these authorities will overlay each other in strata. Within this strata, there are two forms of authority (primary and co-user).

#### **1. Primary user authority**

- The primary user is typically the party that established the site and owns the major infrastructure on it.
- Each site will have a primary user and there will be only one primary user per site.
- The primary user is responsible for the general upkeep of the site and interaction between all other users on the site.
- The primary user may enter into a Facilities Access Agreement (FAA) with any other communications provider (but cannot activate such an agreement until the other party obtains an authority from DES).
- A FAA may contain charges or fees.
- DES will charge a fee to the primary user.

#### **2. Co-user authority**

- Any number of co-users may operate on a site.
- A co-user cannot use a site without first obtaining both:
  - an authority from DES; and
  - a FAA from the primary user.
- The co-user may be subject to fees under the FAA to be paid to the primary user.
- The co-user will be subject to fees under the authority to be paid to DES.

### **Authorities will apply to individual sites not networks**

Where a communications provider occupies numerous sites within QPWS managed areas, each site will be managed under a separate authority. A head agreement, which overarches separate and severable authorities, may be used to streamline administration and business processes.

Authorities will not contain any clauses obligating DES to renew the authority with the existing holder.

In order to maintain continuity of site management, and to avoid unnecessary alienation of infrastructure from the property owner, the incumbent primary user will have first right of refusal when an expiring authority is being replaced with a new authority.

If the incumbent decides not to accept the new authority, then any existing site co-users will be offered the primary user role ahead of any parties. In such circumstances the successful co-user must reach an agreement with the departing primary user regarding the transfer of the ownership of infrastructure on the site.

Where no agreement can be reached regarding the transfer of infrastructure to a new primary user, each co-user will be responsible for removing their own infrastructure as stated in their co-user authority and FAA.

### **All existing authorities will continue for their natural term**

DES will implement this policy and seek to establish consistent practices across the State. However, there will not be any program to amend existing authorities to incorporate the policy changes. Rather, existing authorities will be allowed to run their natural term and the changes will be incorporated as part of the renewal offer.

## **Standard terms to be used**

Subject to legislative restrictions, standard conditions will be adopted for all communications authorities over QPWS managed areas. The following standards will be applied.

### *Term*

- The standard term will be:
  - 20 years for authorities issued under the *Nature Conservation Act 1992* (NC Act)
  - 7 years for authorities issued under the *Forestry Act 1959*
- The term may include a 5 yearly review.

### *Transferable*

- Authorities may be transferred to related corporate bodies.
- Other transfers can be undertaken but must first have the consent of DES, which will not be unreasonably withheld.

### *Will meet insurance and indemnity requirements*

- Authority holders will be required to indemnify DES and hold insurance as per departmental policy (refer *Operational policy: Insurance and indemnity requirements for QPWS authorities*).

### *Site occupiers to pay DES costs*

- The authority holder may be asked to pay the costs incurred by DES for such things as negotiation, supervising or administering the authority. These costs will be additional to any rental fees. The discretion to pass on these costs will rest with DES.

### *Environmental management plans*

- Each site will require a management or operational plan that is adequate to ensure the site is well maintained and any potential impacts to the surrounding lands are identified and contained.

## **2. Fees for communications facilities**

### **Fees are set except for high value sites and greenfield sites**

DES fees for all communications facility sites, except high value sites and greenfield sites, are listed on the DES website at [www.des.qld.gov.au](http://www.des.qld.gov.au). Fees are based on location and user category. For details of user categories and high, medium and low density locations see Appendix A.

Fees for high value sites and greenfield sites will be negotiated on a case by case basis, until such time as a fee policy for these sites has been approved.

### **Negotiation of fees for high value sites and greenfield sites**

The criteria for identifying high-value sites where fees will be negotiated are:

- sites with more than 8 users; or
- sites where the total current annual rental for the site (being the aggregate of rental to the primary user and of any co-user fees charged to co-users of that site) exceeds the highest fee for any single user in the published fees.

In negotiating site fees, DES will consider:

- the strategic value of the site (including such things as the location, coverage and available alternatives);
- recent agreed market rentals;
- the potential for co-use; and
- any relevant land valuations.

#### **Calculation of fees for co-users**

Co-users will be required to pay the fees as listed on the DES website with a discount of 50%.

#### **Government Approved Annual index**

Authority fees will be subject to increases each year, following appropriate approvals.

#### **Calculation of fees for primary users that are infrastructure providers**

Infrastructure providers are those organisations that own and operate infrastructure on communications sites but do not themselves provide communications services. The fees for primary users that are infrastructure providers will be calculated as the fee for the highest value user (other than the infrastructure provider) on the site discounted by 30%.

#### **The fees will be reviewed on a five yearly cycle**

Every five years the fees will be reviewed. In the review DES will consider changes in the communications site market place. If appropriate, DES will appoint an independent valuer experienced in the communications industry to review the fees to ensure that it reflects fair market-based commercial returns.

#### **Authorities will remain current with the fees**

An authority will provide for rentals to be updated by applying the most recent update to the fees, except if agreed otherwise in a specific fee negotiation.

#### **Native title**

Native title rights and interests are assumed to exist over QPWS managed areas, regardless of the native title claim or determination status of the area. Queensland Parks and Wildlife Service and Partnerships (QPWS&P) apply the Queensland Government's Native Title Work Procedures (NTWP) to the assessment of applications for authorities. The NTWP seek to ensure that State government dealings over land, water and natural resources may proceed validly with respect to native title rights and interests under the *Native Title Act 1993* (Cth).

#### **Aboriginal and Torres Strait Islander Cultural Heritage**

Aboriginal and Torres Strait Islander cultural heritage is protected on all land tenures in Queensland under the *Aboriginal Cultural Heritage Act 2003* (ACH Act) and the *Torres Strait Islander Cultural Heritage Act 2003*. Under the ACH Act anyone who carries out a land-use activity must take all reasonable and practicable measures to ensure that the activity does not harm Aboriginal cultural heritage.<sup>1</sup> The duty of care applies to any activity where Aboriginal cultural heritage is located, regardless of whether or not it has been identified or recorded in a database or register. Where Aboriginal cultural heritage has been harmed offence provisions and penalties may apply under the ACH Act, or the NC Act where applicable.

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<sup>1</sup> The same principles apply for Torres Strait Islander cultural heritage.

Specific recognition, protection and conservation measures may be required to protect Aboriginal cultural heritage from the impacts of a proposed activity on QPWS managed land. The duty of care at the minimum requires a risk assessment to be carried out. Any risk of harm to Aboriginal cultural heritage depends on various factors including the nature of the proposed activity and its level of surface disturbance, and the nature of any past uses and previous disturbance in the area.

The cultural heritage duty of care can be met in various ways, for example under a Cultural Heritage Management Plan, a native title agreement or other agreement with the relevant Aboriginal party, and by complying with gazetted cultural heritage duty of care guidelines. The gazetted cultural heritage duty of care guidelines are available from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) website. Records of some but not all significant sites are kept in the Aboriginal and Torres Strait Islander Cultural Heritage Database and Register, which are each administered by DATSIP. Search request forms are available from the DSDSDATSIP website at [www.dsdsatsip.qld.gov.au](http://www.dsdsatsip.qld.gov.au).

#### **Human Rights Act 2019 compatibility**

The department is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision under this operational policy, officers must comply with that obligation (refer to [Comply with Human Rights Act](#)).

#### **Disclaimer**

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

#### **Approved By**

Andrea Leverington

Signature

14 April 2011

Date

Assistant Director-General  
Queensland Parks and Wildlife Service

**Enquiries:**  
Major Projects and Estate Management Unit  
Email: [qpws.estate@des.qld.gov.au](mailto:qpws.estate@des.qld.gov.au)

## Appendix A: Communication facility user categories and location types

### A. User Categories

- Community based organisation and community radio (*for example - Salvation Army, local volunteers and rescue associations*)
- Budget-funded sector (*for example - Police, Ambulance, Fire and local councils*)
- Government radio broadcasters
- Local service providers that provide services in one regional area only (*for example - Black and White Taxi*)
- Government business units and other commercial (*for example - Airservices Australia and Powerlink*)
- Commercial radio broadcasters (*for example - 4KQ and 4IP*)
- Government television broadcasters
- Telecommunications and data carriers (*for example - Telstra, Optus, Vodafone and Hutchison*)
- Commercial television broadcasters (*for example - Channels 7, 9 and 10*)

### B. Definition of locations

#### 1. High density

High density locations are those within South East Queensland as defined by the following local council areas.

Brisbane City Council	Moreton Bay Regional Council
Gold Coast City Council	Redlands City Council
Ipswich City Council	Sunshine Coast Regional Council
Logan City Council	

#### 2. Medium density

Medium density locations are major regional centres with populations greater than 10,000. According to the Australian Bureau of Statistics, the following local authorities currently meet the criteria.

Banana Shire Council	Lockyer Valley Regional Council
Bundaberg Regional Council	Mackay Regional Council
Burdekin Shire Council	Mount Isa City Council
Cairns Regional Council	Rockhampton Regional Council
Cassowary Coast Regional Council	Scenic Rim Regional Council
Central Highlands Regional Council	Somerset Regional Council
Dalby Regional Council	South Burnett Regional Council
Fraser Coast Regional Council	Southern Downs Regional Council
Gladstone Regional Council	Tablelands Regional Council
Gympie Regional Council	Toowoomba Regional Council
Hinchinbrook Shire Council	Townsville City Council
Isaac Regional Council	Whitsunday Regional Council

**3. Low density**

The low density locations are all remaining areas of the State.