

Leasing land for Telecommunication Carriers, including for aerial pole routes PUX/952/053

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Version History

Version	Date	Description/Comments
1	01/03/1997	First Edition
2	20/12/2000	Content updated
3	27/08/2004	MOG changes and minor content
4	01/02/2005	Updated to include changes to reserve land
4.1	29/06/2005	Conversion Project – New WORD/XML template
5	13/02/2009	Updated to include Aerial Telecommunication Pole Routes
5.1	08/02/2011	Updated to DERM
5.2	13/06/2013	MOG changes to DNRM
5.3	9/09/2013	Minor changes to update links, rearrange document and convert to new template
5.04	17/06/2016	Minor amendment to review and insert text on new template

Approval

Position	Name	Date
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Background

The *Telecommunications Act 1997* (Telecommunications Act) provides for:

The Crown in the right of the State to be bound by the provisions of that Act;

- Licensing of Carriers permitting the provision of carriage services to the public; and
- Exempt Activities undertaken by Carriers which are limited to the activities referred to in Divisions 2 (inspection of land), 3 (installation of facilities) and 4 (maintenance of facilities) of Schedule 3 of that Act. In addition, laws from which carriers are exempt are found at clause 36 of Schedule 3.

NOTE: Authority to install facilities that are exempt is limited under clause 6 of Schedule 3 of that Act.

Generally only those facilities identified under the Telecommunications (Low-impact Facilities) Determination 1997 can be installed when relying on clause 6 exemptions.

An up to date list of licensed carriers can be found at


<http://www.acma.gov.au/Industry/Telco/Carriers-and-service-providers/Licensing/register-of-licensed-carriers-licensing-i-acma>

Procedures

In relation to proposals by a Carrier to undertake 'Exempt Activities' on Unallocated State Land or Reserve, the Department of Natural Resources and Mines (DNRM) has (previously) agreed with Carriers to provide DNRM with notice of the intention to undertake exempt activities 28 business days prior to the activity commencing [in terms of the Telecommunications Act and the Telecommunications Code of Practice 1997, a carrier is to provide notice of the intention to undertake exempt activities by giving at least 10 business days prior to the activity commencing].

Further, the Carrier is to –

1. Obtain and provide DNRM with the views of:
 - The Department of Environment and Heritage Protection, if the proposal is:
 - a. on or near a protected area under the *Nature Conservation Act 1992* e.g. National Park; or
 - b. on or near a place or structure listed on a Heritage Register; and
 - The Department of Aboriginal and Torres Strait Islander and Multicultural Affairs if the proposal is on or near a place or structure of particular significance to Aboriginal Persons or Torres Strait Islanders; and

- 
- 2 Consider an alteration to the proposal if in the opinion of the Executive Director, or Regional Manager DNRM, the present permitted use or the future planning for the area will be adversely affected and DNRM objects. DNRM is to forward its objection to the Carrier within the previously mentioned 28 day period. [The Code provides for an objection procedure that includes a requirement for carriers to consult with objectors and endeavour to resolve objections which must be received by the carrier **at least 5 business days** prior to the date notified for the activity to commence and must be for reasons of the nature set out in the Code. If an objection is duly given in accordance with the Code and it is not resolved, the objector may require that the objection be referred to the Telecommunications Industry Ombudsman for review].

FOR OTHER THAN EXEMPT ACTIVITIES, TENURE MAY ISSUE AS FOLLOWS:

Once the usual investigations of DNRM have been completed in relation to an application under the *Land Act 1994* (Land Act), the following apply -

Unallocated State Land:

A term lease is to issue in terms of Section 15(2) and 121(1) of the Land Act.

The term of the lease is to be a maximum of 30 years and the purpose of the lease will be Purpose Code 3005 Communication in the electronic Land and Vegetation Administration System (eLVAS).

The lease category for rental purposes will be subject to the Land Regulation.

A plan of subdivision for the land is required.

The preferred option is for the proposed lease to have dedicated access, however, in accordance with Policy [Criteria and Method for Disposal of Unallocated State Land PUX/901/315](#) if dedicated access is not possible or feasible, easement access is acceptable if arranged over adjoining freehold, perpetual lease or freeholding lease (or a reserve, when there is a high level of certainty of the reserve remaining in existence, however, consideration must be given to [Easement Policy PUX/901/527](#)

Unless access is only by air - the conditions of lease then are to include that the provision of access to the lease will not be the responsibility of the local government or the State.



Reserve Land:

Under [Secondary Use of Trust Land Policy PUX/901/209](#)

1. Development of telecommunications facilities on community purposes trust land will be discouraged unless a direct public benefit to the surrounding community can be demonstrated and the siting of the facility is required due to technical or planning grounds;
2. In considering applications for the establishment of telecommunications facilities on community purposes trust land by way of a trustee lease, the trustee may require the proponent to demonstrate that such facilities meet a community need and that their placement represents a superior siting option on technical or planning grounds to other alternatives considered in the locality;
3. A land management plan for the reserve will be required; and
4. A condition to be included in the trustee lease is to stipulate that the site is to be returned to its original condition following the decommissioning of the facility or if a further trustee lease is not issued.

The above are extracts only from the abovementioned Policy, and reference needs to be made to that Policy prior to approval of any trustee lease for a telecommunications facility.

A trustee lease may also be issued in strata if a Carrier requires to locate a facility on a building on trust land, other than for a chattel installation (e.g. antenna, microwave dish) that is allowed under the terms of a trustee lease issued for a equipment shed/shelter.

Leasing of an area already held under a leasehold tenure:

Under Commonwealth requirements, carriers must take all reasonable steps to co locate i.e. share facilities.

Therefore, a Carrier may approach DNRM for a sublease of a lease held for telecommunication purposes by another Carrier.

For leases other than for telecommunication purposes e.g. a term lease for pastoral purposes, the Carrier is to arrange:

- Survey and lodgement of a partial surrender of the area required;
- Prescribed correction of lease fee;

The area will then be excised from the lease.

A Term Lease is to subsequently issue as above for Unallocated State Land - if the area does not have dedicated access, then an Easement Agreement for access must be entered into between the parties i.e. the lessee of the lease from which the area was excluded and the Carrier. (Unless access is only by air, and then the conditions of lease to the Carrier are then to include that the provision of access to the lease will not be the responsibility of the local government or the State).

NOTE: the following advice relating to roads only applies where the local government for a local road (i.e. a road under the control of the local government) is unable to authorise the use on the road for example under a local law for public utilities (see section 60 of the *Local Government Act 2009*).

Further, the Carrier needs to approach and deal with the Department of Transport and Main Roads for any proposal on a State controlled road.

Road:

The issue of a lease or permit to occupy for the laying of cables on roadways is not required, however the Carrier is required to deal with the local government for a local road and the Department of Transport and Main Roads for a State controlled road.

(Please see Policy [Permit to Occupy](#) PUX/901/386).

Where an area of road is to be utilised for a telecommunications tower etc the issue of a lease is required.

Under section 99(1) of the Land Act, a public utility provider, which includes telecommunication carriers, may apply for a permanent road closure.

If a road closure application proceeds under section 100 of the Land Act, the application must be advertised etc.

If approval is given to the closure following advertisement and investigation etc, the issue of a Term Lease, in terms of Section 109 of the Land Act may proceed i.e. the closed road area may be dealt with as unallocated State land, and the requirements outlined above for **Unallocated State Land** apply.

Volumetric Leasing (Road):

If a lease in strata is required to be issued in respect of the establishment of a facility extending out over a road and proposed on an existing building, the term of the lease should not exceed the 30 years as outlined above for Unallocated State Land.

The area the subject of the proposal will need to be brought to the status of unallocated State land by road closure in strata.

A Term Lease will issue as outlined above for Unallocated State Land with additional standard conditions relating to Public Liability Insurance.



Aerial telecommunication pole routes

Aerial Telecommunication Pole Route facilities are essential community services that are required to be provided to telecommunication carriers' clients as soon as possible, sometimes for urgent reasons (eg: illness, etc).

Where telecommunication carriers can, they avoid the construction of overhead telecommunication pole routes on road areas, but unfortunately some landscape terrains give them no other choice (eg: a composition of granite).

If the local government for a local road is unable to authorise the use under the *Local Government Act 2009*, telecommunication carriers are required to obtain a tenure (i.e. term lease) under the Land Act to authorise their occupation and use of the (closed) road area.

Therefore, prior to commencing construction of these aerial pole routes, the application and issue of the required term lease to the telecommunication carrier, needs to be finalised.

Consideration should be given to the permanent closure of the road areas, sufficient to cover the area of each pole.

Following approval to the road closure, approval will be sought for the issue of a term lease (TL) to the telecommunication carrier. Only one (1) lease needs to be issued over a number of poles. PLEASE NOTE: It is not intended for the lease to include the overhead cables strung between the poles.


As the services being provided by these aerial pole routes are essential services, DNRM's attention to the time taken in processing these applications internally, needs to be considered and expedited where possible.

NOTE: Also as mentioned, for State controlled roads, telecommunication carriers are required to contact the Department of Transport and Main Roads for any necessary authority to carry out works and activities required to construct aerial pole routes i.e. for a State controlled road, tenure under the Land Act is not to be considered.

PROCESS

As mentioned above, under section 99(1) of the Land Act, a public utility provider, which includes telecommunication carriers, may apply for a permanent road closure.

If a road closure application proceeds under section 100 of the Land Act, the application must be advertised etc.



The process for the application for a road closure that relates to an aerial telecommunication pole route is as follows:

- The telecommunication carrier will make application to DNRM for the permanent road closure and subsequent issue of a TL to authorise the construction of the subject aerial pole route, as soon as possible after the pole route is known;
- If the telecommunication carrier hasn't already lodged the views of the local government and other interested parties with their application (e.g. public utility providers and all adjoining owners), they need to be advised that they should obtain these views as soon as possible;
- The public notice (usual advertising road closure process) is to proceed as a matter of priority - there is no need for the DNRM to obtain the views of the adjoining owners though if the telecommunications carrier satisfactorily provides these views.
- Once the application and views have been lodged with DNRM, and at the end of the objection period for the road closure application, the Native Title assessment; and the Valuation/Inspection of the area should be commenced simultaneously. NOTE: Valuation reports can be provided within an 'as agreed' timeframe as agreed to in the State Valuation Services (SVS) Service Level Agreement;
- Once the Native Title assessment and the Valuation/Inspection report have been finalised, the delegated officer must consider the facts and make the decision whether or not to approve the permanent closure and subsequent offer of the TL to the telecommunication carrier over the subject areas; and
- If an offer is made to the telecommunication carrier and has subsequently been accepted, the registration of a plan of subdivision to permanently close the road, and the Issue of the TL must be finalised expeditiously;

By following the above process the application processing timeframe will be reduced, enabling the telecommunication carrier to gain the quickest possible access to the site to begin construction.

Responsibilities

Implementation by staff in relation to leasing land for the purposes of the Telecommunications Act

Legislation

- *Land Act 1994*
- *Telecommunications Act 1997*
- Telecommunications Code of Practice