



New Zealand Telecommunications Forum

Co-siting Code

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Purpose

To encourage a co-operative approach to Co-siting in New Zealand to promote competition for the long term benefit of end users of Telecommunications Services within New Zealand, and address environmental and community concerns relating to Telecommunications infrastructure development.

Overview

- 1 In seeking to meet these objectives Co-siting needs to be technically feasible.
- 2 The Code is intended to provide the framework for Co-siting and outlines the process to be followed in the event a Co-siting Party wishes to Co-site.

Interpretation

- 3 In this Code, capitalised terms have the meanings given in Annexure 1, and 'person' means a legal person and includes a company and any other legal entity. Unless stated otherwise, 'Clause' refers to a clause in this Code.

Scope of Code

- 4 The Code applies where the Landlord requires the consent of the Original Party before granting rights to the Co-Siting Party. This Code is binding on parties who sign up to it. The Code is not intended to impact on parties who have not signed up to it. For the avoidance of doubt, this Code does not apply to any arrangement that is not a Co-siting arrangement.

Notice of construction

- 5 The Co-siting Party shall notify the Original Party of its intention to Co-site. The notification shall be in the form attached at Annexure 2 and shall include the information required in that form and include plans and specifications describing the Co-siting Party's proposed installation of Radiocommunications Equipment on the site.
- 6 The Original Party will either:
 - 6.1 provide written consent to the proposed plans and specifications; or
 - 6.2 recommend specific changes to the proposed co-siting installation.

If such consent or recommendations are not provided within 15 Business Days of receipt of the notice, the co-siting proposal shall be deemed to be approved.

- 7 The parties acknowledge that it is their intention that the Original Party would only recommend specific changes where it reasonably believes the proposed installation of the Co-siting Party's site will result in Physical Interference or radiofrequency interference with the Original Party's site and also acknowledge that such interference should be reasonably avoided wherever possible.
- 8 In the event the Original Party requests changes to the plans and specifications, the Co-siting Party shall either:

- 8.1 undertake the Original Party's requested changes to its plans and specifications and confirm to the Original Party that it has done so, in which event the Original Party shall be deemed to have granted its approval; or
 - 8.2 discuss alternative options for the modification or alteration of their plans and specifications with the Original Party, it being understood that the Co-siting Party shall have no obligation to modify its plans or specifications.
- 9 If the Original Party and the Co-siting Party have not reached agreement on any alterations to the plans and specifications requested by the Original Party within 5 Business Days of the receipt of the Original Party's request for such changes made pursuant to clause 6.2, then the parties will perform in situ testing to determine whether interference as set out in clause 7 will result. The parties shall meet within 10 Business days of the receipt of the Original Party's request for such changes made pursuant to clause 6.2 and agree a methodology and program for the in situ testing. If the parties are unable to agree a methodology and program for the testing then such disagreement will be deemed a dispute for the purposes of clauses 25 to 32 (inclusive) (Dispute Resolution).
- 10 After the completion of the testing the parties shall meet to determine whether any interference has occurred. Agreement that no interference has occurred will constitute the Original Party's consent as set out in clause 6.1. If the parties cannot agree whether interference has occurred clause 13.4 shall apply.
- 11 The Co-siting Party may (except where it will result in Physical Interference) construct and install its Radiocommunications Equipment on the site prior to receipt of the Original Party's written consent provided that:
 - 11.1 The Co-siting Party first advises the Original Party of the times and dates it will be constructing and installing Radiocommunications Equipment on the site; and
 - 11.2 The Co-siting Party undertakes to immediately remove any Radiocommunications Equipment that causes Physical Interference.
- 12 The Co-siting Party is to obtain all necessary resource consents and building consents before commencing work.
- 13 The Co-siting Party undertakes and agrees not to commence operation of the radiocommunications equipment installed in accordance with this Code unless and until:
 - 13.1 The Original Party has consented to the installation of the equipment pursuant to clause 6; or
 - 13.2 The Co-siting party has undertaken changes to plans and specifications as set out in clause 8.1; or
 - 13.3 The in-situ testing has been completed and the parties have determined that no interference has resulted; or
 - 13.4 The in-situ testing has been completed and the Original Party reasonably believes that interference has resulted, in which event the following shall apply:
 - 13.4.1 The parties shall use reasonable efforts to agree a reasonable solution to the interference;
 - 13.4.2 The Co-siting Party shall only commence operation of its equipment after implementation of any changes agreed with the Original Party under clause 13.4.1; and

- 13.4.3 Where the parties are not able to agree a solution, such disagreement shall constitute a Dispute for the purposes of clauses 25 to 32 (inclusive)(Dispute Resolution).

Interference

- 14 The Co-siting Party and the Original Party acknowledge and agree that they each must operate their Radiocommunications Equipment installed on the property in compliance with the Radiocommunications Act, and that nothing herein, including but not limited to clauses 11 and 13, shall constitute a waiver of their rights under the Radiocommunications Act.
- 15 In the event interference occurs as set out in the Radiocommunications Act, the parties acknowledge that the provisions of the Act shall apply.
- 16 The parties agree that where interference occurs they shall work together in good faith to develop a solution that rectifies interference and minimises costs to both parties.

Waiver of Exclusive Use

- 17
- 17.1 No party shall seek to secure or enforce exclusive rights of use over areas of a property not necessary for the reasonable operation of the party's business.
- 17.2 The Original Party agrees that, upon expiry of the 15 Business Day notice period set out in clause 6, a copy of this Code and proof of delivery of the notice required under clause 5, provided to Landlord by the Co-Siting Party, shall constitute the Original Party's consent to the installation and shall be deemed as fulfilling any requirement in any agreement that a Landlord obtain that Original Party's consent prior to entering into an agreement with any other party. The Original Party shall supply to any Landlord upon the request of that Landlord a letter of consent confirming its consent.

Confidentiality

- 18 Promptly upon submission of the notice referred to in clause 5 regarding a potential Co-siting, the parties may, if they have not already done so, execute a mutual confidentiality agreement, the terms of which may be agreed between the parties. Unless and until those parties otherwise agree in writing, the following shall apply:
- 18.1 All Confidential Information shall be, and shall remain, the property of the party that discloses it (**Disclosing Party**). This includes information which is derived from or generated about a Disclosing Party's network or facilities as a result of, or in connection with, the provision of access to the site.
- 18.2 Confidential Information provided by the Disclosing Party to the other party (**Receiving Party**) is provided only for the benefit of the Receiving Party, which acknowledges that no warranty is given by the Disclosing Party that the Confidential Information is or will be correct.
- 18.3 Subject to clause 20 and any statutory duties, the Receiving Party must:

- 18.3.1 preserve the confidentiality of the Disclosing Party's Confidential Information;
 - 18.3.2 keep confidential all the Disclosing Party's Confidential Information which:
 - (a) is disclosed, communicated or delivered to it in connection with a notification relating to the requirement to Co-site; or
 - (b) comes to its knowledge or into its possession in connection with the notification of a requirement to Co-site.
 - 18.3.3 establish and observe procedures adequate to protect the Confidential Information of the Disclosing Party;
 - 18.3.4 ensure that each of its directors, officers, employees, agents, representatives and professional advisors to whom that Confidential Information is disclosed is subject to and maintain the confidentiality obligations of this clause; and
 - 18.3.5 take all necessary action to prevent an unauthorised person obtaining access to the Confidential Information by direct or indirect exposure thereto or otherwise.
- 19 The Disclosing Party and the Receiving Party must cooperate to:
- 19.1 protect the confidentiality of the Disclosing Party's Confidential Information; and
 - 19.2 enforce rights in relation to the Disclosing Party's Confidential Information.
- 20 Subject to clause 22, the Disclosing Parties Confidential Information may only be used by the Receiving Party:
- 20.1 for the technical purpose of undertaking work necessary to allow for Co-siting by the Receiving Party to the relevant site; and
 - 20.2 as far as is reasonably practical, by technical and related personnel directly involved in that Co-siting or in accordance with clause 20.
- 21 Subject to clause 20 and any statutory duties, the Receiving Party must not:
- 21.1 use or copy such Confidential Information except for the purposes of this Code; or
 - 21.2 disclose or communicate, cause to be disclosed or communicated, or otherwise make available such Confidential Information to any third person.
- 22 The Receiving Party may only disclose the Confidential Information of the Disclosing Party in the following circumstances:
- 22.1 to those of its directors, officers, employees, agents, representatives and professional advisors to whom the Confidential Information is reasonably required to be disclosed for the purposes of an actual or proposed Co-siting;
 - 22.2 in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms relating thereto;
 - 22.3 as required by law, provided that the Receiving Party has first notified the Disclosing Party that it is required to disclose the Confidential Information and the Receiving Party has had a reasonable opportunity to object to such

- disclosure on reasonable grounds and/or consult with the Disclosing Party as to the timing or content of such disclosure and to protect the confidentiality of its Confidential Information;
- 22.4 as required by the listing rules of any stock exchange where a Receiving Party's securities are listed or quoted;
 - 22.5 with the consent of the Disclosing Party to whom the Confidential Information relates; or
 - 22.6 if reasonably required to protect the safety of personnel or equipment; or
 - 22.7 as required by this Code.
- 23 Unless disclosure is made to a third party which is a government or statutory authority in compliance with a requirement imposed by statute, pursuant to subclause 22.3, the Disclosing Party may require the Receiving Party, prior to the disclosure of the Confidential Information to a third person (**disclosee**) to:
- 23.1 impose an obligation upon the disclosee:
 - 23.1.1 to use the Confidential Information disclosed solely for the purposes for which the disclosure is made and to observe appropriate confidentiality requirements in relation to such information; and
 - 23.1.2 not to disclose the Confidential Information without the prior written consent of the Disclosing Party; and
 - 23.2 obtain an acknowledgment from the disclosee that:
 - 23.2.1 the Confidential Information is, and at all times remains, proprietary to the Disclosing Party; and
 - 23.2.2 misuse or unauthorised disclosure of the Confidential Information will cause serious harm to the Disclosing Party;
- and the Receiving Party must comply with that requirement.
- 24 The Receiving Party shall ensure that each of the Receiving Party's representatives in receipt of the Disclosing Party's Confidential Information shall return to the Disclosing Party or destroy all of the Disclosing Party's Confidential Information which is included in any writing or any other tangible form in his or her possession, including any and all excerpts and copies thereof and any Confidential Information stored on any storage device or live server used by him or her, and shall provide written confirmation to the Disclosing Party that this obligation has been fulfilled:
- 24.1 in relation to each site, within 20 Business Days of the expiry of application of this Code to that site; or
 - 24.2 within a timeframe agreed by the Disclosing Party,
- whichever is the latter.

Dispute Resolution

- 25 For the purposes of these dispute resolution procedures, a “dispute” is any matter relating to this Code about which any of the parties to this Code disagree or are unable to agree where a matter requires their agreement and which:
- 25.1 is a dispute (**Technical Dispute**) that:
- (a) relates to clauses 5 to 16 (inclusive) of the Code; or
 - (b) is substantially a dispute of fact of a technical nature, but is not a Complex Dispute as defined in 25.2; or
- 25.2 is a dispute (**Complex Dispute**) that:
- (a) may, in the opinion of a party to the dispute have a material commercial implication for that party; or
 - (b) includes an issue of fact of a non-technical nature or an issue of law.
- 26 Except as provided in clause 25.1(a), if it is not agreed by the parties that a dispute is a Technical Dispute, then it is to be resolved as if it is a Complex Dispute.

Telecommunications Act

- 27 No party to the Code is prevented by these dispute resolution procedures from exercising any rights under the Telecommunications Act, including but not limited to:
- 27.1 applications for determinations, price reviews, clarifications, reconsiderations to the Commerce Commission under Part 2 of the Telecommunications Act;
- 27.2 appeals against Commerce Commission determinations and proceedings for enforcement of Commerce Commission determinations to the High Court under subpart 5 of Part 2 of the Telecommunications Act; and
- 27.3 investigations by the Commission under subpart 6 of Part 2 and Schedule 3 of the Telecommunications Act.
- 28 If there is a dispute about the extent of a party’s rights under the Telecommunications Act, then that dispute may be resolved in accordance with the procedures in the Telecommunications Act and these dispute resolution procedures will not apply to such a dispute.
- 29 If a dispute has not been resolved by the end of the Negotiation Period as defined below (and, if applicable, the Mediation Period as defined below), a party to the dispute may choose to resolve the dispute by pursuing any applicable rights under the Telecommunications Act or, in the alternative, by submitting a Technical Dispute for expert determination under clause 36 or by submitting a Complex Dispute for arbitration under clause 41.
- 30 Once a party (the “**Initiator**”):
- 30.1 has commenced a process under the Telecommunications Act; or

30.2 has submitted a dispute for expert determination or arbitration,

then, subject to clause 31, the Initiator cannot commence an alternative process, unless the process that has been commenced is held by the decision maker of that process not to apply to the resolution of the dispute in question.

- 31 If the Initiator submits a dispute for expert determination or arbitration, that will not preclude the other parties to the dispute from pursuing any rights they may have under the Telecommunications Act.

Good faith negotiation

- 32 Any party to this Code may at any time give notice describing a dispute to the other party to this Code.
- 33 If a party gives notice of a dispute, then during a period of 10 Business Days from the date notice of the dispute was given (**Negotiation Period**), the authorised representatives of the parties must attempt in good faith to negotiate a resolution of the dispute.
- 34 If the authorised representatives are unable to resolve the dispute within the Negotiation Period, the parties may agree to each refer the dispute to their respective Chief Executive (or equivalent officer, or his or her nominee), in the case of a Complex Dispute, or operational manager, in the case of a Technical Dispute, who must attempt in good faith to resolve the dispute within a further 10 Business Days. If the parties agree to this further negotiation period, then for the purposes of this clause 34, and for clauses 35 to 41 (inclusive) the "Negotiation Period" includes this further 10 Business Day period.

Mediation

- 35 At any time during the Negotiation Period, the parties may agree to refer the dispute to mediation. The mediator will be appointed by agreement between the parties, but failing agreement within 5 Business Days of the parties agreeing to refer the dispute to mediation, either party may (by written notice copied to the other party) request the Chairperson of LEADR (Lawyers Engaged in Alternative Dispute Resolution) New Zealand Inc (or his or her nominee) to select a mediator. Unless otherwise agreed in writing, the then current model mediation agreement issued by LEADR New Zealand Inc must be used and the mediation must be completed within 20 Business Days of the mediator's appointment (**Mediation Period**). The costs of the mediator will be paid by the parties equally.

Determination of Technical Disputes by an independent expert

- 36 If a Technical Dispute has not been resolved by the end of the Negotiation Period (and, if applicable, the Mediation Period), a party may give written notice to the relevant parties requiring the dispute to be determined by an independent expert.
- 37 The independent expert will be appointed by agreement between the parties, but failing agreement within 5 Business Days from the date the notice was given under this clause, will, at the request of the Initiator, be nominated by the Chairperson of the Board of the Telecommunications Carriers' Forum.
- 38 To be eligible for appointment, the expert must be independent and impartial, must be experienced in telecommunications and will preferably be experienced in dispute resolution procedures. He or she must not have performed any duties, whether as an employee, consultant or contractor, for either of the parties or any related party during a 12-month period prior to the date the notice of the dispute was given.
- 39 The expert will act as an independent expert and not as an arbitrator. The dispute will be resolved as soon as possible in accordance with the procedure determined by the expert, but in accordance with the principles of natural justice. Where the independent expert has primarily technical qualifications, he or she may seek independent legal advice regarding the appropriate procedures for resolution of the dispute.
- 40 The parties agree to be bound by the decision of the independent expert, in the absence of manifest error. The costs of the independent expert (including the costs of any independent legal advice sought by the expert in accordance with these dispute resolution procedures) will be shared equally by the parties. Reference to the independent expert will not be a submission to arbitration for the purposes of the Arbitration Act 1996 and that Act will not apply to or govern resolution of the dispute.

Arbitration of complex disputes

- 41 If a Complex Dispute has not been resolved by the end of the Negotiation Period (and, if applicable, the Mediation Period), then a party may then give written notice referring any part of the dispute to arbitration. The notice will, subject to clause 27 to 31, be a submission by the parties of the dispute to arbitration and each party to the dispute agrees to confirm this submission if requested by any other party to the dispute. Unless otherwise agreed in writing:
- 41.1 The arbitration will be subject to the Arbitration Act 1996 and its Schedules;
- 41.2 The parties to the dispute will endeavour to appoint a single arbitrator within 10 Business Days of notice being given;
- 41.3 The arbitrator must have experience and expertise in telecommunications and competition issues;
- 41.4 If the parties to the dispute fail to agree on a single arbitrator within the 10 Business Day period, then the President of the New Zealand Law Society (or

his or her nominee) may be requested by either party in writing (copied to the other parties) to appoint the arbitrator;

- 41.5 The arbitrator must adopt a procedure which, in the arbitrator's opinion, is expeditious. If feasible in the circumstances the arbitrator will endeavour to complete the arbitration within 2 months of the arbitrator's appointment (or such lesser period as is appropriate);
- 41.6 The arbitrator may determine the dispute without a hearing unless any party gives notice requiring one, in which case the arbitrator must treat that as a material consideration in assessing costs;
- 41.7 The arbitrator must not adopt inquisitorial processes;
- 41.8 The arbitration must take place in Wellington or Auckland (at the arbitrator's discretion);
- 41.9 The arbitrator must determine the dispute under New Zealand law;
- 41.10 Any party may appeal to the High Court on any question of law arising from an award; and
- 41.11 The arbitrator may commission assistance or any reports from any expert or other person which, in his or her opinion, would assist him or her in making the award. The cost of this assistance or report is:
 - 41.11.1 to be a cost of the arbitration; and
 - 41.11.2 unless the arbitrator orders otherwise, to be shared equally between the parties.
- 41.12 The arbitrator must:
 - 41.12.1 provide copies of any assistance or report to the parties;
 - 41.12.2 allow each party to make submissions in response to that assistance or report;
 - 41.12.3 allow each party to produce evidence on any issue raised in that assistance or report; and
 - 41.12.4 allow each party to make submissions in response to any evidence produced by any party.

Court proceedings

- 42 Notwithstanding the above dispute resolution procedures, a party may at any time commence court proceedings relating to any dispute if that party seeks urgent interlocutory or interim relief. Otherwise, and except where a party chooses to pursue any rights it may have under the Telecommunications Act as contemplated by clauses 27 to 31, the dispute resolution procedures under this Code are mandatory. If court proceedings other than proceedings contemplated by clauses 27 to 31 are commenced, a relevant party shall be entitled to seek a stay of court proceedings in favour of an appropriate dispute resolution procedure under this Code. All the provisions in clauses 25 to 42 as to dispute resolution shall apply, irrespective of whether any party to the determination of which they form part has

filed the determination in the High Court as provided for in section 61 of the Telecommunications Act.

Notices

- 43 Any notice or other communication to be given under this Code may be in writing and delivered by hand, registered mail or facsimile to the Co-Siting Party or Original Party (as the case may be) at the respective addresses provided by each party. Where no addresses have been provided and the party is a company registered under the Companies Act 1993 the registered address of that company will be deemed to be the address provided by that party for the purposes of this clause. Receipt will be deemed upon delivery by hand, 3 Business Days after posting, or upon receipt of facsimile confirmation (whichever is applicable).

Expiry, Revocation and Amendment of the Code

- 44 The Expiry, Revocation or Amendment of this Code is subject to the TCF Rules. For the avoidance of doubt any Forum Member may put a Project Proposal to the Forum Board (at any time) for the amendment or revocation of the Code in accordance with the TCF Rules and TCF Operating Procedures Manual,

ANNEXURES

Annexure 1: Definitions

Business Day	Means a day on which registered banks are open for normal banking business, excluding Saturdays, Sundays and nation-wide public holidays. Regional public holidays are considered to be Business Days.
Code	Means this Code for Co-siting of Radiocommunications Equipment.
Co-Siting and Co-site has the corresponding meaning.	Means the location of a Co-Siting Party's Equipment or infrastructure on the same property or premises as that on which the Original Party's existing equipment is installed. For clarification co-siting does not include any instance where the Co-Siting Party's Equipment or installation is installed wholly or partially within the Original Party's freehold property, lease or licence area, area over which the Original Party has an easement or installed on or within the Original Party's Equipment.
Co-Siting Code	Means this Code and any annexures or schedules.
Communication	Means communications in writing, including by email.
Confidential Information	Means all proprietary information whether of a business, financial, technical or non-technical nature and whether existing in hard copy form, on computer disk or otherwise, which is disclosed by a party, or on either party's behalf relating to the business or affairs of the party disclosing such information (the Disclosing Party) for the purposes of obtaining consent to Co-site under this Code, but does not include any such information which is: (a) at the date of receipt by either party: (i) in the public domain or which subsequently enters the public domain without any breach of an obligation of confidentiality; or (ii) already known to that party, unless it has come into that party's knowledge only by reason of the discussions referred to in clause 18; (b) at any time after the date of receipt by either party received in good faith by that party from a third party without obligation of confidentiality; or c) agreed by the parties in writing to be information to which the confidentiality clauses contained in this Code do not apply.
Co-siting Party	means a party to this Code (or any related company to such a

	party) (as defined by the Companies Act 1993) looking to install, modify, replace, or operate equipment on or about a Co-site pursuant to the provisions of this Code
Equipment	Includes: (a) Antennas or microwave dishes; associated transmission equipment, power plant (including standby power) and air conditioning plant; associated feeders, waveguides and waveguide pressuring equipment; and cabling and cable gantries; (b) Relevant tools and test equipment; (c) Enclosures, risers or other structures housing any of the above; and (d) Such other facilities as may be specified from time to time and agreed to by the parties pursuant to the Telecommunications Act.
Landlord	Means any owner, operator, lessor, or sublessor of a Co-site who has the right and/or obligation to request and/or require a Co-siting Party to obtain the prior consent or approval of an Original Party.
Original Party	Means a party with a pre-existing right, whether or not exercised by the Original Party, to construct, install, and operate radiocommunications equipment at a Co-site, and any related company (as defined by the Companies Act 1993).
Physical Interference	Means any performance degradation, misinterpretation, or loss of information to a radio communications system caused by physical obstructions including, but not limited to, walls, signage, metal frames, electrical equipment, or other structures abutting the effected radio communications system.
Radiocommunications	Any transmission or reception of signs, signals, writing, images, sounds, or intelligence of any nature by radio waves (being electromagnetic waves of frequencies less than 3000 gigahertz, propagated in space without artificial guide); but excluding any conveyance that constitutes Broadcasting for the purpose of the Code.
Radiocommunications Act	Means the Radiocommunications Act 1989 as amended from time to time.
Telecommunications	The conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but excluding any conveyance that constitutes Broadcasting.
Telecommunications Act	Means the Telecommunications Act, 2001 as amended from time to time.

Telecommunications Carriers' Forum or TCF	means the Telecommunications Carriers' Forum Incorporated Society of New Zealand.
Telecommunications Service	Any goods, services, Equipment, and facilities that enable or facilitate Telecommunication.

Annexure 2: Co-siting Request Notice

Note the following before submitting a co-siting request:

1. Co-siting applications must be made by completing this form and attaching the appropriate plans and maps. These plans must include a site plan indicating the proposed equipment locations including details of antenna position, feeder run and cabinet positioning.
2. Co-siting applications must include the provision of diagrams that define the areas where radio frequency exposure at the general public level as described in NZ Standard 2772.1: 1999.
3. In cases where the Co-Siting Party's staff need to work near the Original Party's antenna system the applicant must propose a suitable work plan that minimises disruption to the Original Party's service
4. All co-siting applications from must define the intended service, operating frequency, bandwidth, power level and mode of modulation. Applications must also include information on the type, model and manufacturer of the proposed antenna system.
5. The Original Party will not be able to process any co-siting requests unless all relevant information listed on this page is provided. If all information is not provided at the outset the Original Party reserves the right to request this information before applications can be processed.

GENERAL CO-SITING NOTIFICATION FORM

Name of applicant	
Purpose/Use of co-site	
Timeframe of co-siting installation	
Contact Name (for applicant):	
Contact Details (for applicant): (include phone number and email address.)	

Site Name:	Date of request:
Map Reference:	
Required cutover date of installation:	
<i>Attach detailed plan of site marking out requirements</i>	
Technical Details	
Intended service	
Operating frequency	
Bandwidth	
Power level	
Mode of Modulation	