



Spectrum Management and Telecommunications

Client Procedures Circular

# **[Excerpt from] Radiocommunication and Broadcasting Antenna Systems**

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## **4. Land-use authority and public consultation**

### **Contacting the land-use authority**

Proponents must always contact the applicable land-use authorities to determine the local consultation requirements and to discuss local preferences regarding antenna system siting and/or design, unless their proposal falls within the exclusion criteria outlined in section 6. If the land-use authority has designated an official to deal with antenna systems, then proponents are to engage the authority through that person. If not, proponents must submit their plans directly to the council, elected local official or executive. The **120-day** consultation period commences only once proponents have formally submitted, in writing, all plans required by the land-use authority, and does not include preliminary discussions with land-use authority representatives.

Proponents should note that there may be more than one land-use authority with an interest in the proposal. Where no established agreement exists between such land-use authorities, proponents must, as a minimum, contact the land-use authority(ies) and/or neighbouring land-use authorities located within a radius of three times the tower height, measured from the tower base or the outside perimeter of the supporting structure, whichever is greater. As well, in cases where proponents are aware that a potential Aboriginal or treaty right or land claim may be affected by the proposed installation, they must contact ISED in order to ensure that the requirements for consultation are met. Proponents are encouraged to refer to local community and online resources (for example, the Aboriginal and Treaty Rights Information System (ATRIS)) as applicable.

### **Following the land-use authority process**

Proponents must follow the land-use consultation process for the siting of antenna systems, established by the land-use authority, where one exists. In the event that a land-use authority's existing process has no public consultation requirement, proponents must then fulfill the public consultation requirements contained in ISED's default public consultation process (see section 4.2). Proponents are not required to follow this requirement if the land-use authority's established process explicitly excludes their type of proposal from consultation or it is excluded by ISED's criteria. In all cases, telecommunications carriers, broadcasting undertakings and third party tower owners must notify and consult with the local public when proposing a new antenna tower, either by following ISED's default public consultation process or, where one exists, the land-use authority's public consultation process. Where proponents believe the local consultation requirements are unreasonable, they may contact the local ISED office in writing for guidance.

### **Broadcasting undertakings**

Applicants for broadcasting undertakings are subject to Canadian Radio-television and Telecommunications (CRTC) licensing processes in addition to ISED requirements. Although ISED encourages applicants to consult as early as practical in the application process, in some cases it may not be prudent for applicants to initiate public and municipal/land-use consultation before receiving CRTC approval, as application denial by the CRTC would have resulted in unnecessary work for all parties involved. Therefore, assuming that the proposal is not otherwise excluded, broadcasting applicants may opt to commence land-use consultation after having received CRTC approval. However,

broadcasting applicants choosing this approach are required, at the time of the CRTC application, to notify the land-use authority with a Letter of Intent outlining a commitment to conduct consultation after receiving CRTC approval. If the land-use authority raises concerns with the proposal as described in the Letter of Intent, applicants are encouraged to engage in discussions with the land-use authority regarding their concerns and attempt to resolve any issues. Refer to Broadcasting Procedures and Rules, Part 1 (BPR-1), for further details.

#### **4.1 Land-use authority consultation**

ISED believes that any concerns or suggestions expressed by land-use authorities are important elements to be considered by proponents regarding proposals to install, or make changes to, antenna systems. As part of their community planning processes, land-use authorities should facilitate the implementation of local radiocommunication services by establishing consultation processes for the siting of antenna systems. Municipalities may also wish to refer to the Antenna System Siting Protocol Template developed in partnership between the Federation of Canadian Municipalities (FCM) and the Canadian Wireless Telecommunications Association (CWTA).

Unless the proposal meets the exclusion criteria outlined in section 6, proponents must consult with the local land-use authority(ies) on any proposed antenna system prior to any construction. The aim of this consultation is to:

- discuss site options
- ensure that local processes related to antenna systems are respected
- address reasonable and relevant concerns (see section 4.2) from both the land-use authority and the community they represent
- obtain land-use authority concurrence in writing

Land-use authorities are encouraged to establish reasonable, relevant, and predictable consultation processes specific to antenna systems that consider such things as:

- the designation of suitable contacts or responsible officials
- proposal submission requirements
- public consultation
- documentation of the concurrence process
- the establishment of milestones to ensure consultation process completion within **120 days**

ISED is available to assist land-use authorities in the development of local processes. In addition, land-use authorities may wish to consult ISED's guide for the development of local consultation processes.

Where they have specific concerns regarding a proposed antenna system, land-use authorities are expected to discuss reasonable alternatives and/or mitigation measures with proponents.

Under their processes, land-use authorities may exclude from consultation any antenna system installation in addition to those identified by ISED's own consultation exclusion criteria (section 6). For example, an authority may wish to exclude from consultation those installations located within industrial areas removed from residential areas, low visual impact installations, or certain types of structures located within residential areas such as personal antenna systems (e.g. used for over the air and satellite television reception or amateur radio operation).

#### **4.2 ISED's default public consultation process**

Proponents must follow ISED's default public consultation process where the local land-use authority does not have an established and documented public consultation process applicable to antenna siting. ISED's default process has three steps whereby the proponent:

1. provides written notification to the public, the land-use authority and ISED of the proposed antenna system installation or modification (i.e. public notification)
2. engages the public and the land-use authority in order to address relevant questions, comments and concerns regarding the proposal (i.e. responding to the public)
3. provides an opportunity to the public and the land-use authority to formally respond in writing to the proponent regarding measures taken to address reasonable and relevant concerns (i.e. public reply comment)

#### **Public notification**

1. Proponents must ensure that the local public, the land-use authority and ISED are notified of the proposed antenna system. As a minimum, proponents must provide a notification package (see annex A) to the local public (including nearby residences, community gathering areas, public institutions, schools, etc.), neighbouring land-use authorities, businesses, and property owners, etc. located within a radius of three times the tower height (proponents are advised that municipalities may set reasonable public notification distances appropriate for their communities when establishing their own protocols). The radius is measured from the outside perimeter of the supporting structure. For the purpose of this requirement, the outside perimeter begins at the furthest point of the supporting mechanism, be it the outermost guy line, building edge, face of the self-supporting tower, etc. Public notification of an upcoming consultation must be clearly marked, making reference to the proposed antenna system, so that it is not misinterpreted as junk mail. The notice must be sent by mail or be hand delivered. The face of the package must clearly reference that the recipient is within the prescribed notification radius of the proposed antenna system.
2. It is the proponent's responsibility to ensure that the notification provides at least **30 days** for written public comment.

3. In addition to the minimum notification distance noted above, in areas of seasonal residence, the proponent, in consultation with the land-use authority, is responsible for determining the best manner to notify such residents to ensure their engagement.
4. In addition to the public notification requirements noted above, proponents of an antenna system proposed to be 30 metres or more in height must place a notice in a local community newspaper circulating in the proposed area. Height is measured from the lowest ground level at the base, including the foundation, to the tallest point of the antenna system. Depending on the particular installation, the tallest point may be an antenna, lightning rod, aviation obstruction lighting, or some other appurtenance. Any attempt to artificially reduce the height (addition of soil, aggregate, etc.) will not be included in the calculation or measurement of the height of the antenna system.

The notice must be synchronized with the distribution of the public notification package. It must be legible and placed in the public notice section of the newspaper. The notice must include:

- a description of the proposed installation
- its location and street address
- proponent contact information and mailing address
- an invitation to provide public comments to the proponent within **30 days** of the notice

In areas without a local newspaper, other effective means of public notification must be implemented. Proponents may contact the local ISED office for guidance.

### Responding to the public

Proponents are to address all reasonable and relevant concerns, make all reasonable efforts to resolve them in a mutually acceptable manner and must keep a record of all associated communications. If the local public or land-use authority raises a question, comment or concern relating to the antenna system as a result of the public notification process, then the proponent is required to:

1. respond to the party in writing within **14 days** acknowledging receipt of the question, comment or concern, and keep a record of the communication
2. address in writing all reasonable and relevant concerns within **60 days** of receipt or explain why the question, comment or concern is not, in the view of the proponent, reasonable or relevant
3. in the written communication referred to in the preceding point, clearly indicate that the party has **21 days** from the date of the correspondence to reply to the proponent's response (the proponent must provide a copy of all public reply comments to the local ISED office)

Responding to reasonable and relevant concerns may include contacting a party by telephone,

engaging in a community meeting or having an informal, personal discussion. Between steps 1 and 2 above, the proponent is expected to engage the public in a manner it deems most appropriate. Therefore, the letter at step 2 above may be a record of how the proponent and the other party addressed the concern at hand.

### Public reply comments

As indicated in step 3 above, the proponent must clearly indicate that the party has **21 days** from the date of the correspondence to reply to the response. The proponent must also keep a record of all correspondence/discussions that occurred within the **21-day** public reply comment period. This includes records of any agreements that may have been reached and/or any concerns that remain outstanding.

The factors that will determine whether a concern is reasonable or relevant according to this process will vary but will generally be considered if they relate to the requirements of this document and to the particular amenities or important characteristics of the area surrounding the proposed antenna system.

Examples of concerns that proponents are to address may include:

- Why is the use of an existing antenna system or structure not possible?
- Why is an alternate site not possible?
- What is the proponent doing to ensure that the antenna system is not accessible to the general public?
- How is the proponent trying to integrate the antenna into the local surroundings?
- What options are available to satisfy aeronautical obstruction marking requirements at this site?
- What are the steps the proponent took to ensure compliance with the general requirements of this document, including the *Impact Assessment Act*, Safety Code 6, etc.?

Concerns that are not relevant include:

- disputes with members of the public relating to the proponent's service, but unrelated to antenna installations
- potential effects that a proposed antenna system will have on property values or municipal taxes
- questions whether the *Radiocommunication Act*, this document, Safety Code 6, locally established by-laws, other legislation, procedures or processes are valid or should be reformed in some manner

### 4.3 Concluding consultation

The proponent may only commence installation/modification of an antenna system after the consultation process has been completed by the land-use authority, or ISED confirms concurrence with the consultation portion of this process, and after all other requirements under this process have been met. Consultation responsibilities will normally be considered complete when the proponent has:

1. concluded consultation requirements (section 4.1) with the land-use authority
2. carried out public consultation either through the process established by the land-use authority or ISED's default public consultation process where required
3. addressed all reasonable and relevant concerns

#### Concluding land-use authority consultation

ISED expects that land-use consultation will be completed within **120 days** from the proponent's initial formal contact with the local land-use authority. Where unavoidable delays may be encountered, the land-use authority is expected to indicate when the proponent can expect a response to the proposal. If the authority is not responsive, the proponent may contact ISED. Depending on individual circumstances, ISED may support additional time or consider the land-use authority consultation process concluded.

Depending on the land-use authority's own process, conclusion of local consultation may include such steps as obtaining final concurrence for the proposal via the relevant committee, a letter or report acknowledging that the relevant municipal process or other requirements have been satisfied, or other valid indication, such as the minutes of a town council meeting indicating land-use authority approval. Compliance with informal city staff procedures, or grants of approval strictly related to zoning, construction, etc., will not normally be sufficient.

ISED recognizes that approvals for construction (e.g. building permits) are used by some land-use authorities as evidence of consultation being concluded. Proponents should note that ISED does not consider the fact a permit was issued as confirmation of concurrence, as different land-use authorities have different approaches. As such, ISED will only consider such approvals as valid when the proponent can demonstrate that the land-use authority's process was followed and that the land-use authority's preferred method of concluding land-use authority consultation is through such an approval.

#### Concluding ISED's default public consultation process

ISED's default public consultation process will be considered concluded when the proponent has either:

- received no written questions, comments or concerns to the formal notification within the **30-day** public comment period or

- if written questions, comments or concerns were received, the proponent has addressed and resolved all reasonable and relevant concerns and the public has not provided further comment within the **21-day** reply comment period

In the case where the public responds within the **21-day** reply comment period, the proponent has the option of making further attempts to address the concern on its own, or can request ISED engagement. If a request for engagement is made at this stage, ISED will review the relevant material, request any further information it deems pertinent from any party, and may then decide that:

- the proponent has met the consultation requirements of this process and that ISED concurs that installation or modification may proceed, or
- the parties should participate in further attempts to mitigate or resolve any outstanding concerns

#### **4.4 Communicating in both official languages**

The following requirements will apply to all proponents for all public consultation processes commenced on or after August 1, 2023:

- Whether the proponent follows the land-use authority's consultation process or ISED's default public consultation process, initial communications with the public (including but not limited to notification packages and public notices) must be made in both official languages in communities located in census subdivisions that have a minority official language population of any size. A list of the census subdivisions where this requirement applies is published on ISED's website, and ISED will update the list from time to time.
- If, in the context of the public consultation process, a member of the public in any of these communities provides written or verbal questions, comments, relevant concerns, or reply comments, the proponent must respond in the official language in which the questions, comments, relevant concerns, or reply comments were made.
- Proponents must follow the consultation process established by the land-use authority, where one exists. In the event that a land-use authority's existing process requires bilingual communications with the public, proponents must follow those public consultation requirements.

For the purposes of determining the date a public consultation is commenced and the applicability of this section, a public consultation is commenced as soon as the proponent makes any initial consultation with the public, such as through sending a notification package, posting signs or publishing an announcement in local media.



Prior to August 1, 2023, proponents must follow the official language requirements set out by a land-use authority when consulting with the general public using the land-use authority's process; when using ISED's default consultation process, proponents should contact the land-use authority to determine the best manner of notifying the public to ensure their engagement.

#### **4.5 Post-consultation**

Whether the proponent followed a land-use authority's consultation process or ISED's default public consultation process, construction of an antenna system must be completed within three years of the conclusion of consultation. After three years, consultations will no longer be deemed valid except in the case where a proponent secures the agreement of the relevant land-use authority to an extension for a specified time period in writing. A copy of the agreement must be provided to the local ISED office.

**Annex A: ISED's default public consultation process – Public notification package**

The proponent must ensure that at least **30 days** are provided for public comment. Notification must provide all information on how to submit comments to the proponent in writing. Notices must be clearly marked, making reference to the proposed antenna system, so that it is not misinterpreted as junk mail. The notice must be sent by mail or be hand delivered. The face of the package must clearly indicate that the recipient is within the prescribed notification radius of the proposed antenna system. The proponent must also provide a copy of the notification package to the land-use authority and the local ISED office at the same time as the package is provided to the public. Notification must include, but need not be limited to:

1. the proposed antenna system's purpose, the reasons why existing antenna systems or other infrastructure cannot be used, a list of other structures that were considered unsuitable and future sharing possibilities for the proposal
2. the proposed location within the community, the geographic coordinates and the specific property or rooftop
3. an attestation that the general public will be protected in compliance with Health Canada's Safety Code 6, including combined effects within the local radio environment at all times; for example:

I, *(name of individual or representative of company)* attest that the radio installation described in this notification package will be installed and operated on an ongoing basis so as to comply with Health Canada's Safety Code 6, as may be amended from time to time, for the protection of the general public, including any combined effects of nearby installations within the local radio environment.

4. identification of areas accessible to the general public and the access/demarcation measures to control public access
5. information on the environmental status of the project, including any requirements under the *Impact Assessment Act*
6. a description of the proposed antenna system including its height and dimensions, a description of any antenna that may be mounted on the supporting structure and simulated images of the proposal
7. Transport Canada's aeronautical obstruction marking/lighting requirements (whether painting, lighting or both) if available; if not available, the proponent's expectation of Transport Canada's requirements together with an undertaking to provide Transport Canada's requirements once they become available

8. an attestation that the installation will respect good engineering practices including structural adequacy
9. reference to any applicable local land-use requirements such as local processes, protocols, etc.
10. notice that general information relating to antenna systems is available on ISED's Spectrum Management and Telecommunications website
11. contact information for the proponent, land-use authorities and the local ISED office
12. closing date for submission of written public comments (not less than **30 days** from receipt of notification)