

**RADIO SPECTRUM
MANAGEMENT**



Managed Spectrum Park Rules

March 2015



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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New Zealand Government

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Context

The Crown acting by and through the Chief Executive of the Ministry of Business, Innovation, and Employment (the Ministry) is the Manager of the frequency band 2575-2620 MHz. This band is operated as a managed spectrum park.

Managed spectrum parks are intended to allow access to a number of users in a common band of spectrum on a shared and, as far as possible, self-managed basis. The objective of the managed spectrum parks is to encourage the efficient use of spectrum, innovation and flexibility, and provide for low-cost compliance and administration.

The Manager has granted spectrum licences to Licensees subject to Licence Agreements, which require compliance with these park rules. These park rules are intended to be enforceable by all Licensees and may be changed from time to time.

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1. Effect of these Park Rules

1.1. Park rules enforceable by Licensees

These park rules are for the benefit of and enforceable by the Manager and all Licensees for the purposes of the Contracts (Privity) Act 1982. Rule 4 is for the benefit of and enforceable by Applicants for the purposes of the Contract (Privity) Act 1982.

1.2. Park Rules subject to Licence Agreements

The Licence Agreements must be interpreted in a manner consistent with these park rules wherever possible, but prevail over these park rules in the event of a direct conflict. Any Manager's allocation rules referred to in rule 4.1 prevails over these park rules.

2. Changes to these park rules

2.1. Manager may cancel, amend or replace these rules by notice

These park rules may be cancelled, amended or replaced by the Manager from time to time provided that the Manager gives at least six (6) months' notice in writing to every Licensee.

2.2. Licensees may amend by special majority if the Manager agrees

These park rules may be amended from time to time by written approval of at least 2/3 of all Licensees at the relevant time and the written approval of the Manager. The Managers approval may be withheld at the Manager's absolute discretion.

3. Licensees must be good park users

3.1. Licensees promote the purpose of the Managed Spectrum Park

Licensees must in any matter connected with these park rules, act in a matter which promotes the following purposes of the Managed Spectrum Park:

- a) facilitating access to a number of users in a common band of spectrum on a shared and, as far as possible, self-managed basis to deploy radiocommunication services; and
- b) encouraging the efficient use of spectrum, innovation and flexibility.

3.2. Licensees to maintain records

Licensees must maintain records of all transmitters operated under the authority of the Licences, and will make such records available to other Licensees or their agents on written or electronic request.

3.3. Coordination likely to be required

Each Licensee acknowledges that coordination with Proximal Licensees at both the frequency and geographic boundary is very likely to be required before the Licensee may provide a radiocommunications service or exercise any other rights under a Licence.

3.4. Interference mitigation techniques to be employed

At both the design and implementation stages for establishing a radiocommunications service, each Licensee must fully employ interference mitigation techniques such as (without limit) antenna discrimination, polarization, frequency offset, shielding, site selection, and power control, to maximise co-existence with systems of other Licensees.

3.5. Licensees must negotiate

Each Licensee must use its best endeavours to negotiate agreements with Proximal Licensees to coordinate frequencies to maximise technical efficiency and minimise interference risks in a fair and objective spirit by discussion. Where the Licensee and a Proximal Licensee are unable to agree, the Licensee must:

- a) for disputes other than those relating to interference risks, submit the dispute to an agreed alternative method of dispute resolution, such as mediation, or where the parties cannot agree such method, to a method nominated by the Manager; and
- b) where such dispute is not resolved by the agreed alternative method of dispute resolution or for a dispute relating to interference risks (whether such risk arises under the Licence or under a Licence of the Proximal Licensee), submit the dispute to such dispute resolution procedures as are from time to time nominated by the Manager (which may include arbitration procedures outlined in sections 106-109C of the Act or by an arbitrator nominated by the Manager).

3.6. Licensee not to claim interference unless service implemented

Notwithstanding section 107 of the Act, a Licensee may not to serve a notice of harmful interference under section 108 of the Act unless and until it has taken significant steps towards implementing a radiocommunications service under its Licence.

4. Accommodating Changes to Licences

4.1. Park rules to apply where new entry or changes to Licences

This park rule applies to Licensees when the Manager considers applications from persons who wish to be granted a spectrum licence in the Managed Spectrum Park or applications from Licensees to extend services by amending a Licence (“Applicants”), whether under allocation rules that are issued by the Manager or otherwise.

4.2. Applicants may send Licensees interference risk notices

Applicants may, as part of the Manager’s application process, be entitled to send an interference risk notice under these park rules to a Licensee if there is a risk of interference between the Applicant’s proposed spectrum licence and the Licensee’s Licence. Interference risk notices will state:

- a) the name and contact details of the Applicant and full details of its application;

- b) the nature of the risk of interference between the Applicant and the Licensee; and
- c) how the Applicant wishes the Licensee to modify or amend its existing Licences to remedy the potential interference; and
- d) any other matters that may be required by the Manager.

4.3. Applicants may refer matter to arbitration

If a Licensee who receives an interference risk notice referred to in rule 4.2 does not agree to modify or amend its Licences as requested within 30 Working Days of the notice being given to the Licensee, the Applicant may refer the matter to arbitration, and the provisions of the Arbitration Act 1996 will apply as though the Applicant and the Licensee had agreed to refer the matter to arbitration.

4.4. Arbitration tribunal to balance rights

Article 28(4) of Schedule 1 of the Arbitration Act 1996 does not apply to matters referred to arbitration under this clause; instead, the arbitral tribunal's decision must seek to balance the reasonable expectations of the Applicant and the Licensee, having regard to:

- a) the desirability of achieving the most efficient use of the Managed Spectrum Park;
- b) whether the Licensee is making sufficient use (or has viable plans to make sufficient use) of the Licences, taking into consideration:
 - i. the use of the Licences in light of their terms, conditions and restrictions (for example, the actual power of transmissions compared with the maximum power specified in the Licences);
 - ii. the amount and pattern of the use of the Licences compared to licences that authorise similar types of transmissions, or the use of similar types of transmitting equipment;
 - iii. whether the Licensee is able to provide the same or equivalent service as the Services that are being provided under the Licence using another radio licence or spectrum licence held by the Licensee or an Associate of the Licensee, or a telecommunications network available to the Licensee or an associate of the Licensee;
 - iv. any other relevant considerations or any other special circumstances justifying the continuation or cancellation of the Licences.
- c) the likelihood of the Applicant making sufficient use of the proposed Licence in the near future;
- d) the costs and effects of possible alternative solutions;
- e) the desirability of the Applicant meeting any direct technical costs or expenses incurred by the Licensee to accommodate the radiocommunications services being proposed by the Applicant;
- f) the potential use of interference mitigation techniques such as (without limit) antenna discrimination, polarisation, frequency offset, shielding, site selection, and power control; and
- g) the principle of not materially adversely affecting the technical provision of radiocommunications services being provided by a Licensee within the terms of its Licence.

4.5. Tribunal may direct amendment to Licence

In addition to the powers given to the arbitral tribunal by section 12 of the Arbitration Act 1996, the arbitral tribunal has the power to direct that a Licence be modified or amended, and the Licensee must apply to the Manager to modify or amend a Licence as directed by an arbitral tribunal under these park rules.

5. Communications and Notices

- a) Any notice to be given under these park rules to a Licensee must be in writing and must be delivered or sent by registered post to the Licensee's address as set out in Register of Radio Frequencies.
- b) Any notice will be deemed to be served on the date of delivery or the second Working Day next following the date of posting as the case may be. In proving the giving of a notice it is sufficient to prove that the envelope containing such notice was properly addressed and posted.

6. Interpretation

6.1. In these park rules, unless the context otherwise requires:

- a) **“Applicant”** has the meaning in rule 4.1.
- b) **“Associate”** has the meaning in the relevant Licensee’s Licence Agreement, or, if the Licence Agreement does not define associates, in the rules for initial allocation of the Managed Spectrum Park.
- c) **“Licence Agreement”** means an agreement entered into between the Manager and the Licensee which (among other things) requires compliance with these park rules.
- d) **“Licensee”** means the rightholder of a spectrum licence in the Managed Spectrum Park who is bound to comply with these park rules as a condition of an agreement with the Manager, and **“Licence”** has a corresponding meaning.
- e) **“Managed Spectrum Park”** means management right numbers 241 (with a commencement date 1 January 2009 and expiry date 31 December 2014) and 258 (with a commencement date 1 January 2015 and expiry date 31 December 2028), and any replacement management right registered in respect of the same range of frequencies under sections 45 or 47 of the Act.
- f) **“Manager”** means the Manager from time to time of the Managed Spectrum Park as recorded on the Register maintained under the Radiocommunications Act 1989.
- g) **“Proximal Licensees”** means an adjacent, adjoining, and neighbouring Licensee (in frequency or geography) whose spectrum rights would be affected as a result of the exercise of rights under the Licence.
- h) **“Working Day”** means between the hours of 8.30am to 5.00pm on any day that is not a Saturday or a Sunday or a public holiday within the meaning of section 44 of the Holidays Act 2003 (including, in relation to section 44(1)(k), Wellington Anniversary Day).
- i) a reference to **“including”** or similar phrases does not imply any limitation;

- j) a reference to a person includes an individual, body corporate or unincorporated body of persons;
- k) the singular includes the plural, and vice versa;
- l) the headings, and rule and sub-rule headings, in these park rules are for convenience only and have no legal effect; and
- m) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.