

DRAFT REGULATIONS ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES, 2026

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Overall Position



The City of Cape Town's Wayleave By-law and ICASA's Draft Regulations are broadly aligned in principle, with both aiming to:

- Facilitate infrastructure deployment
- Establish procedural certainty
- Protect infrastructure and property
- Improve coordination
- Reduce unnecessary delays

The Draft Regulations require approvals from relevant authorities but do not clearly preserve:

- Municipal discretion,
- Municipal technical standards,
- Municipal construction conditions,
- Municipal supervision powers, or
- Municipal enforcement authority.

Regulations



4(1)(Page 9): PROCESS AND PROCEDURE FOR ENTRY ONTO LAND OR PROPERTY

A Licensee must obtain all necessary approvals from the relevant local authorities, national authorities, and affected parties, including but not limited to:

wayleave certificate obtained following the by-laws of the relevant authority.

Should include “must obtain to all necessary approvals AND ADHERE TO ALL RELATED CONDITIONS THEREOF”

4(7) (Page 10): NOTICE OF ENTRY FOR DEPLOYMENT AND CONSTRUCTION

A Licensee must give at least thirty (30) days' notice, in writing, of its proposed access activity to the landowner and/or affected parties, specifying:

...[list provided in (a) to (f)].

It could be assumed that this is an exhaustive list of documents/information required whereas each municipality has specific requirements for wayleave and permits.

4(8) (Page 10 & 11): NOTICE OF ENTRY FOR DEPLOYMENT AND CONSTRUCTION

If a Licensee changes the planned location of the electronic communications networks and facilities, a Licensee must:

(a) update the location of its electronic communications network on its plans; and (b) notify the affected land/property owner of the changes within fourteen (14) days.

A change in the planned location necessitates a re-application for the wayleave or at a minimum a request for review of existing wayleave. It is highly risky to assume that conditions of wayleave or permit-to-work will not be affected. Notification within 14 days would not suffice. What is required is to cease work, notify AND await approval (to avoid damaging essential services). This clause in its current form is vague.

4(9) (Page 11): NOTICE OF ENTRY FOR SCHEDULED MAINTENANCE, OR ALTERATION OF AN ELECTRONIC COMMUNICATIONS NETWORK AND FACILITIES

A Licensee must provide fourteen (14) days' written notice for maintenance, repair or alteration of the electronic communications network and facilities.

Scheduled maintenance requires new wayleave. *Conditions on ground may have changed since original wayleave conditions. Applications to be submitted 30 days in advance. Emergency maintenance to follow an expedited process. Priority cannot be granted for scheduled maintenance.*

4(10) (Page 11): NOTICE OF ENTRY FOR SCHEDULED MAINTENANCE, OR ALTERATION OF AN ELECTRONIC COMMUNICATIONS NETWORK AND FACILITIES

Where the land/property belongs to a local authority or utility providers' prior written notice must include: (a) Detailed plans of proposed works (e.g. location, depth, duration); (b) Traffic management plans; (c) Emergency contact information; and (d) Proposed restoration methods.

Include “additional information as required by the municipality/authority”.

4(14) (Page 11): NOTICE OF ENTRY FOR SCHEDULED MAINTENANCE, OR ALTERATION OF AN ELECTRONIC COMMUNICATIONS NETWORK AND FACILITIES

The Licensee must ensure that all employees and/or contractors entering the premises have:
(a) a letter of authorisation from the Licensee; and (b) valid identification.

Include “Contractor/representative must also keep a copy of wayleave and permit on site at all times”.

5 (Page 12): REMOVAL OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES

Cost Recovery for Alterations or Deviations

Note: *Where services were not installed in accordance with agreed plans or in agreed location, costs are to be carried by licensee. This must be explicitly stated. See extract from CCT Roads Infrastructure Management Wayleave Standards (below).*

3.13 Relocation of services

Where services were not installed in accordance with approved plans, the relocation of such services (to correct positions) must be done by the Permit Holder at their cost.

Where telecommunication services/infrastructure (cables, ducts, manholes, etc.) are installed outside the 1.0m space (directly next to the road reserve boundary, as detailed in Section 3.8.1 above), any relocation required to install/construct municipal services must be done by the Permit Holder within a reasonable time and for their account, on written request by the municipality.

5(5) (Page 13): REMOVAL OF ELECTRONIC COMMUNICATIONS NETWORKS AND FACILITIES

Cost Recovery for Alterations or Deviations

(5) A Licensee must decommission and remove electronic communications networks or facilities that have been formally decommissioned and removed from its operational network records, within sixty (60) days of such decommissioning.

Add - Wayleave, permit and final as-builts required.

Explanatory Memorandum



1.5 (Page 25): RESEARCH UNDERTAKEN TO IDENTIFY BARRIERS

The findings highlighted several recurring challenges:

1.5.1. inconsistent and unpredictable municipal wayleave processes;

1.5.2. excessive, non-cost-based application fees and deposits;

1.5.3. long approval timelines across state entities;

1.5.4. difficulties accessing state-owned servitudes and infrastructure;

1.5.6. lack of visibility of existing infrastructure, contributing to duplication and accidental damage;

And

Regulation 3.2.3.1. delays caused by inconsistent municipal and governmental approvals,

1.5 (Page 25)

These clauses frame municipalities primarily as regulatory obstacles rather than infrastructure custodians, constitutional authorities and engineering risk managers.

There is insufficient balancing language recognising that municipal controls exist to protect critical public infrastructure; metropolitan infrastructure environments are highly complex; and technical reviews safeguard public safety and service continuity.

This framing may later influence:

- *judicial interpretation,*
- *future amendments,*
- *industry expectations,*
- *pressure for reduced municipal authority.*

3.3 (Page 29): REGULATION 3: RESPONSIBILITIES OF LICENSEES

3.3.1 Regulation 3 provides for the general duty of care that accompanies the statutory right of entry under section 22 of the ECA.

3.3.2. The responsibilities of licensees while deploying electronic communication networks and facilities include licensees exercising due diligence, care, and taking reasonable measures to prevent and mitigate damage to land and property during deployment, maintenance, alteration or removal activities, and to restore property and repair damages after such activities.

These obligations are principle-based only. The regulations must provide that the municipality will prescribe and operationalise infrastructure protection through considerations such as supervision, inspection, security deposits and repair obligations (to municipal standards).

Without explicit municipal technical authority, infrastructure quality control may weaken, and disputes over acceptable reinstatement standards may arise.

3.4 (pg. 29 & 30): REGULATION 4: THE PROCESS AND PROCEDURE FOR ENTRY ONTO LAND OR PROPERTY

3.4.1 ...challenges raised in stakeholder consultations relating to inconsistent notice periods, fragmented municipal processes, and uncertainty in engagements.

3.4.4 The notice periods reflect a balance between operational needs and the legitimate expectations of affected parties. These timeframes are consistent with international experience showing that predictable and standardised approval processes are essential to reducing deployment delays.

3.4 (pg. 29 & 30): REGULATION 4: THE PROCESS AND PROCEDURE FOR ENTRY ONTO LAND OR PROPERTY

The clauses strongly frame municipalities primarily as potential sources of delay. This does not equally recognise that:

- *municipal review processes protect critical infrastructure,*
- *complex metropolitan environments require technical scrutiny,*
- *infrastructure risk management sometimes necessitates longer review periods.*

This framing may later support pressure for:

- *deemed approvals (this carries a high risk consequences),*
- *reduced municipal discretion,*
- *constrained review periods,*
- *weakened technical review.*

The clause lacks balancing language around infrastructure protection.

3.6 (Page 32): REGULATION 6: COMPENSATION

3.6.4 This regulation requires the parties to determine compensation through good-faith negotiations aimed at achieving a just and equitable balance of interests

The Regulations focus primarily on landowner compensation and property rights. They do not clearly address:

- *municipal infrastructure reinstatement costs,*
- *supervision cost recovery,*
- *municipal asset deterioration risks.*

3.7 (Page 33): REGULATION 7: RAPID DEPLOYMENT GIS DATABASE

3.7.2. Regulation 7 requires licensees to submit accurate and complete GIS data to the Authority on a bi-annual basis, or as requested, in accordance with the technical specifications set out in the Draft Regulations and Appendix A.

The GIS obligations are directed primarily toward ICASA. The Regulations do not expressly require:

- direct sharing with municipalities***
- integration into municipal GIS systems***
- submission of as-built records to municipalities***

This is a major omission because municipalities are custodians of road reserves, operators of underground services and first responders to infrastructure failures.

Obligating the licensees to provide GIS data and as-builts to the municipality, establishes a means to provide expediated decision on wayleave and permit applications.

3.8 (Page 34): REGULATION 8: DISPUTE RESOLUTION

3.8.1. Regulation 8 gives effect to section 21 (2)(b) of the ECA by establishing a structured dispute-resolution pathway for disputes arising during the exercise of section 22 rights.

Municipalities may enforce conditions/restrictions to access.

Section 156 of the South African Constitution gives local governments executive and legislative authority over municipal roads, traffic and public places. It empowers council to manage, maintain and regulate activities within these reserves.

3.9 (Page 34): REGULATION 9: CONTRAVENTION AND PENALTIES

The penalties framework is generic and nationally administered. It does not expressly support municipal powers to:

- *suspend works (due to non-compliance or unsafe works)*
- *issue compliance notices,*
- *recover repair costs directly.*

These powers are central to the CCT operational enforcement model.

There could be mention, in this section, to the validity/applicability of municipal by-laws in this regard.



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THANK YOU
