

WESTERN CAPE GOVERNMENT COMMENTS:
DRAFT REGULATIONS ON RAPID DEPLOYMENT OF ELECTRONIC COMMUNICATIONS NETWORKS
AND FACILITIES, 2026

Clause	Comment	Suggestion
<u>Part A</u> <u>General comments</u>		
GENERAL	The Western Cape Government ("WCG") has reviewed the draft Regulations on the rapid deployment of electronic communications networks and facilities, 2026 (draft Regulations) and welcomes the opportunity to comment. The WCG does not support the proposed Regulations in its current format.	
	The Regulations hinge on a formal authorisation process which include the issuing of wayleave certificates "following the by-laws of the relevant authority". This requirement places an obligation on municipalities to promulgate by-laws to the additional financial expense of municipalities.	
Installation of telecommunication infrastructure within the road reserve of the Proclaimed Provincial Road Network	The installation of services within the road reserve can only be permitted in instances where there is certainty that it will not affect any road infrastructure and that those (additional) road reserve spaces will not be required for future roads infrastructure. The Provincial Department of Infrastructure (DoI) in the Western Cape has developed and applies a system of processing	

	telecommunication infrastructure applications that is applicable to all ICASA Licensees.	
Impact of Complete Applications on Project Programme	Detailed construction drawings and specifications need to be compiled and approved prior to the commencement of any construction activity. Detailed design needs to be undertaken by a suitably registered engineering professional (registered with ECSA) and the corresponding detailed design drawings and specifications need to be prepared taking into account the findings of a detailed site inspection. Design proposals developed without due process do not contain the sufficient detail for the meaningful assessment of a wayleave application. The applicant will be required to provide missing information before an application can be assessed. The submission of incomplete applications therefore increases the risk of project delays.	
Compliance with the National Environmental Management Act (NEMA) of 1998	The Applicant (and their consultant) is responsible for ensuring that wayleave applications comply with the provisions of the National Environmental Management Act (NEMA) of 1998.	
Microtrenching	It is important to note that the WCG does not support microtrenching.	

Shared Trench	Where viable, the DoI permits third party service owners to install their services within its road reserves (within a maximum of 1000mm from a road reserve boundary). It is important to note that one telecommunications infrastructure construction/installation is permitted along a section of a road. The first ICASA applicant to a route is issued with the wayleave approval. The condition to this is that the applicant is required to ensure that all other ICASA telecommunication Licensees are informed of that approval and are offered the opportunity to share in the construction of that approved route. The sharing an underground route, which must have at least 1500mm cover within the road reserve of the Proclaimed Provincial Road Network, will require bundling of the various ICASA Licensees' ducts. The sharing of an overhead route will require all ICASA Licensees to be accommodated on a single pole network.	
Use of 5m Building Line	DoI will always recommend that the 5m Building Lines must be used to install all third-party services. The installation of public sector infrastructure within the road reserve of the proclaimed provincial road network is a priority.	
General drafting comments	The following general drafting practices are proposed: Headings are not added to subregulations, only to the main regulations. If the headings	To improve the text, it is recommended that a legislative drafter review the text using generally accepted Commonwealth

	must be retained then each of the provisions that follow must be separate regulations not consequential subregulations. For example in draft Regulation 4, sub-regulations (3) – (6) under the heading “Mandatory consultation” should be a standalone regulation 5(1) to (4). Consider inserting an em dash (—) following introductory sentences to indicate items listed in paragraphs, for example in draft regulation 2(1): “(1) The purpose of these Regulations is to:—” Paragraphs are numbered alphabetically and by using italics, for example (a), (b) or (c).	legislative drafting practices as well as enlist the support of a language practitioner familiar with these practices.
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Part B

Comments on specific provisions

Draft regulation 1	The definition of "wayleave certificate" refers to a “formal authorisation issued by a relevant authority (municipal, provincial, or national) permitting a Licensee to deploy, maintain, or alter electronic communications infrastructure on or beneath public or private land, <u>subject to compliance with applicable bylaws and conditions.</u>” (own emphasis) The definition contains substantive parts which should be in the body of the regulations. It is noted that the terms “Wayleave”, “Permit”, “Approval” and “Site Handover” have different meaning in different industries and contexts and it will be beneficial to have these all defined.	Reconsider amending the definition by deleting “subject to compliance with applicable bylaws and conditions”. This is substantive in nature and should be included in the substantive provisions dealing with formal authorisations. The definition should cross-reference to the relevant regulations / sections in the Act that provide for the authorisation. Consider including definitions for “Permit”, “Approval” and “Site Handover”.
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Draft regulation 2	The right to entry given in Section 22 of the Electronic Communications Act, 2005 (Act 36 of 2005) is subject to a condition: “In taking any action in terms of subsection (1), due regard must be had to applicable law and the environmental policy of the Republic”. The WCG's applicable legislation and mandate may not be ignored or overruled in exercising this right.	The comment is for noting.
Draft regulation 3	Regulation 3(1)(d) reads that a Licensee must submit GIS data to the Authority in accordance with regulation 6. Regulation 6 deals with “Compensation” while regulation 7 deals with the “Rapid Deployment GIS Database”, therefore the correct cross reference in regulation 3(1)(d) should be regulation 7. For applications adjacent to and within the road reserves of the Proclaimed Provincial Road Network, the standards set by the Transport Infrastructure Branch in DoI are applicable. Damages are frequently only evident beyond the standard 12-month defects liability period. It is recommended that a period of 24 months be included. It is suggested that GIS data should be submitted to the municipal, provincial or national authority that issued the wayleave certificate.	Correct the cross referencing and include a CIDB grading requirement. The Licensee must also ensure that all necessary standards set out by the Relevant Authorities are adhere to as part of their application.

	It is proposed that an additional requirement be included for the Licensee to appoint a contractor with a valid Construction Industry Development Board (CIDB) grading for work being executed within the road reserves.	
Draft regulation 4(1)	The DoI in the WCG is the Approving Authority in terms of Roads Ordinance 19 of 1976. Wayleaves are issued in terms of Section 17 of the Roads Ordinance 19 of 1976. The Department is responsible for the issue of wayleaves within the road reserve of the Proclaimed Provincial Road Network. Regulation 4(1)(a) provides that "A Licensee must obtain all necessary approvals from the local authorities, national authorities, and affected parties, including but not limited to – (a) environmental impact assessment approvals, where required by law." It is unclear why reference is made only to local and national authorities, with no mention of provincial authorities. In many instances, the provincial authority is the competent authority responsible for considering applications for environmental authorisation submitted in terms of the National Environmental Management Act, 1998 ("NEMA") and Environmental Impact Assessment ("EIA") Regulations, 2014.	It is suggested that regulation 4(1) includes a reference to provincial authorities. It is recommended that the definition of "wayleave certificate" include a reference the relevant legislation applicable to the relevant authority"
Draft regulation 4(3)	Draft regulation 4(3) reads: "A Licensee intending to deploy electronic communications networks and facilities must consult the landowner and affected person(s)	The Regulations must be consistent and clear in terms of the terminology used and the terms defined.

	and/or communities before the commencement of any deployment activity." It is not clear why regulation 4(3) refers to "affected person(s)" while a definition is included for "affected parties". Is there a difference between "affected parties" and "affected person(s)"? The Regulations must be consistent and clear in terms of the terminology used and the terms defined. The consultation process must not override the rights conferred to the Department in terms of applicable legislation, such as but not limited to the Roads Ordinance, 19 of 1976 and the Ribbon Development Act, 21 of 1940. The rights of the landowners and Dol need to be respected, especially their right to refuse access to the installation of private telecommunication infrastructure within their property. A Licensee must consider alternative proposals should the landowner not agree to the Licensee's proposal. A landowner should not be subjected to an unnecessary dispute resolution process when the Licensee's proposal is not supported on a sound technical basis.	The Dol and landowners should be consulted in terms of the relevant Acts.
Draft regulation 4(4)	In regulation 4(4) please insert "the" before Licensee. It is not clear what would constitute a "reasonable notice". And "expected impacts" needs to be clearly defined.	The term "reasonable" and "expected impacts" need to be defined. The Licensee must be

	The Licensee must be required to include the outcomes of a mandatory site inspection (undertaken by a suitably qualified Engineering professional registered with the Engineering Council of South Africa) as part of the application to support the achievement of rapid deployment. Dol frequently receives applications that are based on desktop studies that fail to identify potential negative impacts that are only evident when departmental officials undertake their own site inspections. The delay to the process due to incomplete applications is easily avoidable. Dol does not currently charge for the installation of services within the road reserve. It is therefore more expedient for Licensees to approach Dol for a single free wayleave instead of extensive liaison and costly agreements with numerous private landowners which results in a less attractive implementation alternative. All applications should be supported by a sound reasoning why the 5m Building Lines (Roads Ordinance 19 of 1976) adjacent properties cannot be used.	required to include the outcomes of a mandatory site inspection as part of the application to support the achievement of rapid deployment.
Draft regulation 4(7)	This assumes that the licensee's application is to a standard that Dol can assess and no outstanding information is required. The notice period does not take into account the varied nature of authorities. Dol, for	60 days is proposed. The location of the electronic communication network and facilities must be identified with specific coordinates,

	instance, is responsible for the entire Western Cape Province (proclaimed provincial road network is over 32 000 km) which is significant different from the extent of network that a local municipality is responsible for. The 30 day period is not supported. Sixty days is supported. It is important to recognise that while this is the desired period, not all applications are equal and provision needs to be made for an extension in instances where applications are complex and non-routine. The capacity of authorities to handle applications also needs to be taken into account and respected. It is recommended that a desired period be defined, and not a mandatory period. It is important that the location of the electronic communication network and facilities must be identified with specific coordinates, and such a route must be pre-marked on site with a chalk line or similar method. Construction is to only commence once the route, as marked out on site, is approved. It is vital that the landowner's right to refuse access and/or entry to the Licensee is respected. A Licensee must consider alternative proposals should the landowner not agree to the Licensee's proposal. A landowner should not be subjected to a potentially expensive dispute resolution due to	and such a route must be pre-marked on site. The requirement of a mandatory site inspection, as outlined above in comments regarding Regulation 4 (4) will assist in identification of site-specific conditions and limitations and reduce the extent of subsequent changes.
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	a Licensee's desire to utilise their land. The need for clear, detailed drawings is vital. These are to be provided in a clear and professional manner, at an acceptable scale and contain all relevant information. Approvals by all required authorities are required prior to the commencement of work. If an unforeseen circumstance is encountered on site it is important that the landowner and relevant authorities endorse any change that may be required to permit the continuation of the works.	
Draft regulation 4(8)	This is not supported. Changes to approvals granted need to be processed via a new wayleave approval. Regulation 4(8) pertains to <u>changes to the planned location</u> of the electronic networks and facilities. The approvals referred to in draft regulation 4 and the conditions to approvals, for example environmental impact assessment approvals, are <u>site or location</u> specific and changes to the planned location will result in having to amend the application for authorisation and possibly also consulting the interested and affected parties (I&APs) on the changes.	If the change to the planned location is substantial, the authorities should be notified and interested and affected parties should be consulted on the planned location changes. A new wayleave approval must be processed.
Draft regulation 4(9)	It is suggested that the 14 days in draft regulation 4(9) may be extended to 30 days as planned maintenance is known to the Licensee well in advance and should be	Extend the 14 days to 30 days. Development of an emergency protocol is

	communicated earlier. This is considered applicable for routine maintenance. It is recommended that an emergency communication protocol be developed.	proposed.
Draft regulation 4(10)	Regulation 4(10) is silent on the wayleave application process and conditions where a local authority is the owner of land or property. It is important for the Licensee to also be subjected to a wayleave application for any works relating to scheduled maintenance or alteration of an electronic communications network and facilities, even if an original wayleave certificate is issued. The work must be re-assessed and subjected to a wayleave application for approval to ensure all parties are aligned as per the scheduled maintenance and alteration works and to avoid the potential risk of disrupting local authority services. It is recommended that the term "relevant authority" replace "local authority" to recognise that there are instances where national and provincial authorities are the relevant entity.	Regulation 4 must include a requirement for the licensee to re-submit a new wayleave application in terms of regulation 4(1) for any works relating to scheduled maintenance or alteration of an electronic communications network and facilities. Replace the term "relevant authority" with "local authority".
Draft regulation 4(11)	Regulation 4(11) requires rewording to make it clear that a joint site inspection with the local authority is compulsory and not dependent on the authority to call for an inspection.	Regulation 4(11) must clearly indicate that a Licensee must ensure that a joint site inspection is undertaken before commencement of works.
4(16)	Draft regulation 4(16) is supported and the emphasis on trench sharing is encouraged	Trench sharing is encouraged with each wayleave

	with each wayleave approval. ICASA must be made responsible for ensuring agreement between respective Licensees.	approval.
Draft regulation 5	The principle of cost recovery is not supported. Road reserves are expropriated for road purposes only. The installation of third-party services within the road reserve is not to be considered a right. The conditions attached to departmental approvals clearly state that the third-party service owner must relocate their service within 12 months when DoI (through the Transport Infrastructure Branch) needs to utilise the road reserve space for road purposes. This condition requires the service owner to relocate their service at their own cost, at no expense to DoI. The term "local authority" should be revised to read "relevant authority". This will include provincial and national authorities as applicable. There is a need for revision of existing telecommunication infrastructure (i.e. Telkom and /or Post Office) that was installed prior to the establishment of the Electronic Communication Act (Act 36 of 2005). It is recommended that the wording be revised:	The term "local authority" should be revised to read "relevant authority". It is recommended that the wording be revised: "The Authority may require" to read "The Authority must require"

	"The Authority may require" to read "The Authority must require" The consideration should also be revised to include existing disused infrastructure.	
Draft regulation 6	Sub-regulations (7), (8) and (9) should be separate and independent full sentences each ended with a full stop.	Remove the semi-colons and "and" at the end of draft regulation 6(8) and replace with full stops.
Draft regulation 7	The establishment of common standards to ensure optimal outcome from GIS Data base is recommended. It is important that this information is captured by suitably qualified professionals. Draft regulation 7(1) should specify to which relevant authority or authorities (municipal, provincial or national) the "system (GIS) data" must be submitted to. ICASA to ensure compliance with this requirement.	Specify the relevant authority to whom GIS data must be submitted to. The following amendment to draft regulation 7(1) is proposed: "to the Authority and any other relevant authority" Wording changes proposed to include reference to "relevant authorities".
Draft regulation 8	Dol operates in a fair and consistent manner to all ICASA Licensees as per the prescribed process in the delivery of its mandate. Although it may not be the case in other provinces, Dol and the WCG have mechanisms in place for dispute and appeals.	The dispute mechanism outlined in Regulation 8 is therefore not supported unless it is qualified to state that it applies in the absence of a dispute mechanism provided for in provincial legislation.
Draft regulation 9	The penalty clause in draft regulation 9 is incomplete and the phrase "shall be guilty of an offence and upon conviction" must be inserted before "is liable to a fine".	Delete the reference to regulation 6 in draft regulation 9(2).

	Draft regulation 6 deals with the payment of compensation following a consultative process between the landowner and the Licensee. A penalty clause is therefore not relevant in respect of regulation 6.	
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