



Western Australia

Local Government (Uniform Local Provisions) Regulations 1996

Compare between:

[07 May 2004, 01-a0-04] and [01 Feb 2013, 01-b0-01]



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at 7 May 2004**

Western Australia

Local Government Act 1995

Local Government (Uniform Local Provisions) Regulations 1996

1. Citation

These regulations may be cited as the *Local Government (Uniform Local Provisions) Regulations 1996*¹.

2. Commencement

These regulations come into operation on 1 July 1996.

3. These regulations operate as local laws

Under section 9.60 of the Act, these regulations apply as if they were local laws made by each local government.

4. Interpretation

In these regulations, unless the contrary intention appears — *lawful authority* means —

- (a) the consent in writing of the local government; or
- (b) authority conferred by an Act.

5. Disturbing local government land or anything on it — Sch. 9.1 cl. 2

A person who, without lawful authority —

- (a) interferes with the soil of, or anything on, land that is local government property; or
- (b) takes anything from land that is local government property,

commits an offence the penalty for which is a fine of \$1 000.

6. Obstructing public thoroughfare — Sch. 9.1 cl. 3(1)

- (1) A person who, without lawful authority, places on a public thoroughfare anything that obstructs it commits an offence if the person fails to remove the obstruction when requested by the local government to do so.
- (2) If anything falls from land, or from anything on land, onto a public thoroughfare and obstructs it, a person who is the owner or occupier of the land commits an offence if the person fails to remove the obstruction when requested by the local government to do so.
- (3) The penalty for an offence against subregulation (1) or (2) is a fine of \$1 000.

[Note: This regulation is of a kind prescribed in Schedule 3.1, Division 2, item 1. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.]

7. Encroaching on public thoroughfare — Sch. 9.1 cl. 3(2)

- (1) A person who is the owner or occupier of land and, without lawful authority —
 - (a) erects on the land a structure that encroaches upon a public thoroughfare; or

- (b) permits a tree or other plant growing on the land to encroach upon a public thoroughfare,

commits an offence if the person fails to remove the structure or plant, to the extent that it is encroaching, when requested by the local government to do so.

- (2) The penalty for an offence against subregulation (1) is a fine of \$1 000 and a further \$50 for each day or part of a day during which the offence continues.

[Note: This regulation is of a kind prescribed in Schedule 3.1, Division 2, item 1. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

See also Schedule 3.1, Division 1, items 7, 8, and 9 which may allow a similar notice relating to vegetation to be given even when no offence has been committed.

Schedule 3.2, item 7, could also be relevant.]

8. Separating land from public thoroughfare — Sch. 9.1 cl. 4

- (1) A person who is the owner or occupier of land commits an offence if any fence or gate that separates the land from a public thoroughfare is not kept in good repair.
- (2) The penalty for an offence against subregulation (1) is \$1 000.

[Note: See also Schedule 3.1, Division 1, item 4, which, for related reasons, allows a person to be given a notice under section 3.25(1)(a) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the person.]

9. Permission to have gate across public thoroughfare — Sch. 9.1 cl. 5(1)

- (1) A person may apply to the local government for permission to have across a public thoroughfare under the control or

management of the local government a gate or other device that enables motor traffic to pass across the public thoroughfare and prevents livestock from straying.

- (2) The local government may, before dealing with the application, require the applicant to publish notice of the application in such manner as the local government thinks fit.
- (3) Permission granted by the local government under this regulation is required to specify the period for which it is granted and may be renewed from time to time.
- (4) The local government may impose such conditions as it thinks fit on the construction, placement and maintenance of the gate or other device across the public thoroughfare and may, when renewing the permission or at any other time, vary any condition.
- (5) The local government may at any time withdraw permission granted under this regulation and request the person responsible for the gate or other device to remove it within a time specified in the request.
- (6) A person to whom a request is made under subregulation (5) commits an offence if the person fails to comply with the request.
- (7) The penalty for an offence under subregulation (6) is \$1 000.
- (8) A local government is required to keep a register of gates and other devices constructed under this regulation.

[Note: Subregulation (6) is of a kind prescribed in Schedule 3.1, Division 2, item 1A. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.]

10. Gate across thoroughfare not to be left open — Sch. 9.1 cl. 5(2)

- (1) A person who leaves open a gate registered under regulation 9(8) commits an offence.
- (2) The penalty for an offence against subregulation (1) is \$1 000.

11. Dangerous excavation in or near public thoroughfare — Sch. 9.1 cl. 6

- (1) If there is, in a public thoroughfare or land adjoining a public thoroughfare, an excavation that the local government considers to be dangerous, the local government may —
 - (a) fill in or fence the excavation; or
 - (b) in writing request the owner or occupier of the land to fill in or securely fence the excavation.
- (2) If a person who is the owner or occupier of land in which there is a dangerous excavation fails to fill in or securely fence the excavation when requested under subregulation (1) to do so, the person commits an offence.
- (3) The penalty for an offence against subregulation (2) is \$1 000.

[Note: This regulation is of a kind prescribed in Schedule 3.1, Division 2, item 2. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.]

12. Crossing from public thoroughfare to private land or private thoroughfare — Sch. 9.1 cl. 7(2)

- (1) Upon the application of the sole owner, or a majority of the owners, of private land the local government may, subject to regulation 14(2) —
 - (a) approve the construction, under the supervision of, and to the satisfaction of, the local government, of a crossing giving access from a public thoroughfare to —
 - (i) the land; or

- (ii) a private thoroughfare serving the land;
 - or
 - (b) agree to construct for the applicant a crossing giving access from a public thoroughfare to —
 - (i) the land; or
 - (ii) a private thoroughfare serving the land.
- (2) A person is not to construct a crossing for vehicles from a public thoroughfare that is a Government road as defined in section 5(1) of the *Road Traffic Act 1974* to —
 - (a) land on which premises have been or are about to be constructed; or
 - (b) a private thoroughfare serving the land,

unless the construction of the crossing has been approved by the local government under subregulation (1) and the crossing is constructed in accordance with the approval.

Penalty: \$1 000.

[Note: Subregulation (2) is of a kind prescribed in Schedule 3.1, Division 2, item 2A(a). This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.]

13. Requirement to construct or repair crossing — Sch. 9.1 cl. 7(3)

- (1) A local government may, subject to regulation 14(2), give a person who is the owner or occupier of private land a notice in writing requiring the person to construct or repair a crossing from a public thoroughfare to the land or a private thoroughfare serving the land.
- (2) If the person fails to comply with the notice, the local government may construct or repair the crossing as the notice

required and recover 50% of the cost of doing so as a debt due from the person.

- (3) A person to whom a notice is given under subregulation (1) commits an offence if the person fails to comply with the notice.
- (4) The penalty for an offence under subregulation (3) is \$1 000.

**14. Role of Commissioner of Main Roads in some cases —
Sch. 9.1 cl. 7(2)**

- (1) This regulation applies to a crossing for vehicles from a public thoroughfare that is a Government road as defined in section 5(1) of the *Road Traffic Act 1974* to —
 - (a) land on which premises have been or are about to be constructed; or
 - (b) a private thoroughfare serving the land.
- (2) A local government cannot —
 - (a) under regulation 12 construct or approve the construction of; or
 - (b) under regulation 13(1) require the construction of,a crossing to which this regulation applies unless the local government has consulted with the Commissioner and the Commissioner has approved the construction of the crossing.
- (3) If a person —
 - (a) constructs a crossing to which this regulation applies other than in accordance with approval given by the Commissioner under this regulation; or
 - (b) modifies a crossing to which this regulation applies in such a way that it is not in accordance with approval given by the Commissioner under this regulation,the Commissioner may, by notice in writing, require the person to bring the crossing into accordance with the approval, if

approval was given, or remove the crossing and restore the place where the crossing was to its former condition.

- (4) If the person fails to comply with the notice, the Commissioner may do anything required by the notice to be done and recover the cost of doing it as a debt due from the person.
- (5) A person to whom a notice is given under subregulation (3) commits an offence if the person fails to comply with the notice.
- (6) The penalty for an offence under subregulation (5) is \$1 000.
- (7) In this regulation —

Commissioner means the Commissioner of Main Roads.

[Note: Subregulation (5) is of a kind prescribed in Schedule 3.1, Division 2, item 2A(b). This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.]

15. Contribution to cost of crossing — Sch. 9.1 cl. 7(4)

- (1) Where —
 - (a) a local government —
 - (i) under regulation 12 constructs or approves the construction of; or
 - (ii) under regulation 13(1) requires the construction of,
a crossing giving access from a public thoroughfare to private land or a private thoroughfare serving the land;
 - (b) the crossing is the first crossing in respect of the land; and
 - (c) the crossing is a standard crossing or is of a type that is superior to a standard crossing,

the local government is obliged to bear 50% of the cost, as estimated by the local government, of a standard crossing, but otherwise the local government is not obliged to bear, nor prevented from bearing, any of the cost.

(2) In subregulation (1) —

first crossing, in respect of land, means the first crossing to the land or a private thoroughfare serving the land constructed under regulation 12 or section 358² of the *Local Government Act 1960* as in force at any time before 1 July 1996;

standard crossing means, subject to any local law as to what is or is not a standard crossing, a crossing of a kind that the local government, by resolution, decides is a standard crossing.

16. **Objections and appeals against decisions about crossings**

Part 9, Division 9.1, applies to —

- (a) a decision of a local government made upon an application under regulation 12 or a decision by the Commissioner of Main Roads under regulation 14(2) relating to the application;
- (b) a notice given by a local government under regulation 13(1); or
- (c) a notice given by the Commissioner of Main Roads under regulation 14(3),

and the applicant or person to whom the notice was given, as the case requires, is an affected person for the purposes of applying that Division.

17. **Private works on, over, or under public places — Sch. 9.1 cl. 8**

- (1) A person who constructs anything on, over, or under a public thoroughfare or other public place that is local government property without first obtaining written permission from the local government commits an offence.

- (2) A local government may —
 - (a) grant permission to construct anything on, over, or under a public thoroughfare or other public place that is local government property; and
 - (b) impose conditions in respect of the permission, which may include a condition imposing a charge for any damage to the public thoroughfare or public place resulting from the construction.
- (3) It is a condition of the permission that the ordinary and reasonable use of the public thoroughfare or public place for the purpose to which it is dedicated is not to be permanently or unreasonably obstructed.
- (4) A person who fails to comply with a condition of the permission commits an offence.
- (5) A person who constructs anything in accordance with permission under this section is required to —
 - (a) maintain it; and
 - (b) obtain from an insurance company approved by the local government an insurance policy, in the joint names of the local government and the person, indemnifying the local government against any claim for damages which may arise in, or out of, its construction, maintenance or use.
- (6) A person who fails to comply with subregulation (5) commits an offence.
- (7) The penalty for an offence under subregulation (1), (4), or (6) is \$1 000.

[Note: Subregulations (1) and (4) are of the kind prescribed in Schedule 3.1, Division 2, item 3. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender. Schedule 9.1, item 8(4) is relevant.]

See also Schedule 3.1, Division 1, item 3 which allows a similar notice to be given even when no offence has been committed.]

18. Protection of watercourses, drains, tunnels and bridges — Sch. 9.1 cl. 9

- (1) A person who, without lawful authority, alters, obstructs, or interferes with, any watercourse, drain, tunnel, or bridge that is local government property, commits an offence.
- (2) A person who, wilfully or negligently, causes or permits tree material that is, or has been, growing on land occupied by that person, to fall into a watercourse that is local government property commits an offence.
- (3) The penalty for an offence under subregulation (1) or (2) is \$1 000.
- (4) In this regulation —
tree material means leaves, timber, logs, and brushwood.

[Note: This regulation is of a kind prescribed in Schedule 3.1, Division 2, item 4. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.]

19. Protection of thoroughfares from water damage — Sch. 9.1 cl. 10

- (1) A person who, without lawful authority, alters, obstructs, or interferes with the natural flow of surface water across any thoroughfare or other land in such a way as is likely to damage any thoroughfare that is local government property commits an offence.
- (2) The penalty for an offence under subregulation (1) is \$1 000.

[Note: This regulation is of a kind prescribed in Schedule 3.1, Division 2, item 5. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with

the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.]

20. Works required for supply of gas or water — Sch. 9.1 cl. 11

- (1) A local government that is responsible for supplying water or gas may carry out any works that are necessary for the purpose of providing, maintaining, or modifying the supply system.
- (2) Before a local government carries out works under this regulation in a public thoroughfare or other public place that is not local government property, it is required to give at least 3 days' notice of its intention to carry out the works to the local government or other person having the management or control of the place.
- (3) Notice is not required to be given under subregulation (2) if it is not practicable to give it because of exceptional circumstances and in that case notice of the works is required to be given as soon as is practicable after deciding to carry them out, but the works may be commenced before the notice is given.
- (4) This regulation —
 - (a) does not authorise a local government to interfere with a supply system that is not local government property without the consent of a person who has authority to consent; and
 - (b) does not authorise a local government to carry out works in a public thoroughfare or other public place that is not local government property unless the person having the management or control of the place, or a representative of that person, is present while the work is being carried out.

21. Wind erosion and sand drifts — Sch. 9.1 cl. 12

- (1) A local government may give a notice under this regulation to a person who is the owner or occupier of land (in this regulation called *the person's land*) if the local government considers that

clearing the person's land might cause land having a common boundary with it that is local government property to be adversely affected by wind erosion or sand drift.

- (2) The notice may forbid the person, to the extent specified in the notice, to clear the person's land of vegetation without the consent of the local government.
- (3) The notice cannot forbid the clearing of land that is more than 60 metres from the common boundary of the person's land with the land that is local government property.
- (4) A person who is given a notice under subregulation (1) and contravenes the notice commits an offence the penalty for which is a fine of \$1 000.
- (5) A person who is given a notice under subregulation (1) may object or appeal against the notice in accordance with Part 9.1, Division 1, of the Act, as if —
 - (a) the person were an "affected person" as defined in that Division; and
 - (b) the giving of the notice were the making of a "decision" as defined in that Division,

and the provisions of that Division are adopted accordingly.

[Note: This regulation is of a kind prescribed in Schedule 3.1, Division 2, item 6. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

See also Schedule 3.1, Division 1, item 6 which allows a similar notice to be given even when no offence has been committed.]

Notes

- ¹ This is a ~~reprint as at 7 May 2004~~ [compilation](#) of the *Local Government (Uniform Local Provisions) Regulations 1996* ^{1a}. The following table contains information about those regulations and any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Local Government (Uniform Local Provisions) Regulations 1996</i>	24 Jun 1996 p. 2833-46	1 Jul 1996 (see r. 2)
Reprint 1: The <i>Local Government (Uniform Local Provisions) Regulations 1996</i> as at 7 May 2004		

- ^{1a} [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

Provisions that have not come into operation

<u>Citation</u>	<u>Gazettal</u>	<u>Commencement</u>
Local Government (Uniform Local Provisions) Regulations 2013 r. 3-21 ³	1 Feb 2013 p. 417-443	2 Apr 2013 (see r. 2(b))

- ² Repealed by the *Local Government Act 1995*.

- ³ [On the date as at which this compilation was prepared, the *Local Government \(Uniform Local Provisions\) Regulations 2013* r. 3-21 had not come into operation. They read as follows:](#)

3. Regulations amended

[These regulations amend the *Local Government \(Uniform Local Provisions\) Regulations 1996*.](#)

4. Regulation 4 replaced

[Delete regulation 4 and insert:](#)

4. Terms used

[In these regulations, unless the contrary intention appears —](#)
[goods has the meaning that it has in section 3.38 of the Act;](#)
[Government road means —](#)

(a) a road declared by Order in Council under the *Public Works Act 1902* section 86(2) to be a Government road; or

(b) a highway or main road as those terms are defined in the *Main Roads Act 1930* section 6;

lawful authority, in relation to the doing of a thing, means —

(a) the authority under a provision of a written law to do the thing; or

(b) an authorisation, approval, licence, permit or other right, granted by the local government or any other person, under another written law, to do the thing; or

(c) if neither paragraph (a) nor (b) applies, the written permission of the local government to do the thing;

local government in relation to land, a public thoroughfare, a public place or local government property, means the local government in whose district the land, thoroughfare, place or property is located;

specified, in relation to an application for a local government's permission, means specified in the application.

5A. Notes not part of regulations

Notes in these regulations are provided to assist understanding and do not form part of the regulations.

5. Regulations 5 and 6 replaced

Delete regulations 5 and 6 and insert:

5. Interfering with, or taking from, local government land

(1) A person must not, without lawful authority —

(a) interfere with the soil of, or anything on, land that is local government property; or

(b) take anything from land that is local government property.

Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the offence continues.

(2) A local government may, by written notice served on a person who is carrying out plastering, painting or decorating operations (the *work*) over or near a footpath on land that is local government property, require the person to cover the footpath during the period specified in the notice so as to —

- (a) prevent damage to the footpath; or
 - (b) prevent inconvenience to the public or danger from falling materials.
- (3) A person given a notice under subregulation (2) must not continue to do the work in respect of which the notice was given unless the person complies with the notice.
Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the offence continues.

6. Obstruction of public thoroughfare by things placed and left — Sch. 9.1 cl. 3(1)(a)

- (1) A person must not, without lawful authority, place on a public thoroughfare anything that obstructs it.
Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the obstruction continues.
- (2) A person may apply to the local government for permission to place on a specified part of public thoroughfare one or more specified things that may obstruct the public thoroughfare.
- (3) Permission granted by the local government under this regulation —
 - (a) must be in writing; and
 - (b) must specify the period for which it is granted; and
 - (c) must specify each condition imposed under subregulation (4); and
 - (d) may be renewed from time to time; and
 - (e) may be cancelled by giving written notice to the person to whom the permission was granted.
- (4) The local government may impose such conditions as it thinks fit on granting permission under this regulation including, but not limited to, any of the following —
 - (a) conditions relating to the erection of hoardings, fences, walkways or other structures for the protection of the public thoroughfare or public safety (*protective structures*);
 - (b) conditions about the placement of things in the public thoroughfare including conditions about the depositing of building materials or waste, or storage or other facilities in the public thoroughfare;
 - (c) a condition imposing a charge for any damage to the public thoroughfare resulting from the placement of a thing on the public thoroughfare;

- (d) a condition requiring the applicant to deposit with the local government a sum sufficient in the opinion of the CEO of the local government to cover the cost of repairing damage to the public thoroughfare resulting from the placement of a thing or a protective structure, on the basis that the local government may retain from that sum the amount required for the cost of repairs by the local government if the damage is not made good by the applicant.
- (5) It is a condition of the permission granted under this regulation that —
 - (a) placed things and protective structures are sufficiently illuminated every night from sunset to sunrise to prevent mishaps; and
 - (b) protective structures are kept and maintained in good condition, to the satisfaction of the CEO of the local government, during such time as the CEO thinks necessary for the public safety and convenience; and
 - (c) placed things or protective structures are removed within a reasonable time after the person granted the permission is required in writing to do so by the local government; and
 - (d) damage to the public thoroughfare resulting from the placement of a thing or a protective structure is repaired to the satisfaction of the CEO of the local government within a reasonable time after the person granted the permission is required in writing to do so by the local government.
- (6) The local government may, when renewing permission granted under this regulation or at any other time, vary any condition imposed by it under subregulation (4) and the variation takes effect when written notice of it is given to the person to whom the permission was granted.
- (7) A person granted permission under this regulation must comply with each condition of the permission.

Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the offence continues.
- (8) The local government may charge a person granted permission under this regulation a fee of not more than \$1.00 for each month or part of a month for each m² of public thoroughfare that is enclosed by a hoarding or fence in accordance with the permission.

(9) For the purposes of section 3.37 of the Act, a contravention of subregulation (1) or (7) is a contravention that can lead to impounding of goods comprising a placed and left thing or structure.

The note to inserted regulation 6 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 1. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

6. Regulation 7 replaced

Delete regulation 7 and insert:

7A. Obstruction of public thoroughfare by fallen things — Sch. 9.1 cl. 3(1)(b)

A person who is the owner or occupier of land must, when requested by the local government to do so, remove any thing that —

(a) has fallen from the land, or from anything on the land; and

(b) is obstructing a public thoroughfare.

Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the offence continues.

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 1. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

7. Encroaching on public thoroughfare — Sch. 9.1 cl. 3(2)

A person who is the owner or occupier of land on which a structure is erected or a tree or other plant is growing must, when requested by the local government to do so, remove any part of the structure, tree or plant that is encroaching, without lawful authority, on a public thoroughfare.

Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the offence continues.

The note to inserted regulation 7 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 1. This means that an offender might be given a

notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

See also Schedule 3.1 Division 1 items 7, 8, and 9 which may allow a similar notice relating to vegetation to be given even when no offence has been committed.

Schedule 3.2, item 7, could also be relevant.

7. Regulation 8 replaced

Delete regulation 8 and insert:

8. Separating land from public thoroughfare — Sch. 9.1 cl. 4

A person who is the owner or occupier of land must keep in good repair any fence or gate that separates the land from a public thoroughfare.

Penalty: a fine of \$5 000.

The note to inserted regulation 8 is to read:

Note: See also the *Local Government Act 1995* Schedule 3.1 Division 1 item 4, which, for related reasons, allows a person to be given a notice under section 3.25(1)(a) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the person.

8. Regulation 9 amended

Delete regulation 9(3) to (8) and insert:

(3) Permission granted by the local government under this regulation —

(a) must be in writing; and

(b) must specify the period for which it is granted; and

(c) must specify each condition imposed under subregulation (4); and

(d) may be renewed from time to time; and

(e) may be cancelled by giving written notice to the person to whom the permission was granted.

(4) The local government may impose such conditions as it thinks fit on granting permission under this regulation including, but not limited to, conditions on the construction, placement and maintenance of the gate or other device across the public thoroughfare.

(5) The local government may, when renewing permission granted under this regulation or at any other time, vary any condition imposed by it under subregulation (4) and the variation takes

effect when written notice of it is given to the person to whom the permission was granted.

(6) The local government may at any time, by written notice given to the person to whom permission was granted under this regulation, cancel the permission and request the person responsible for the gate or other device to remove it within a time specified in the request.

(7) A person to whom a request is made under subregulation (6) must comply with the request.

Penalty: a fine of \$5 000.

(8) A local government must keep a register of gates and other devices constructed in accordance with a permission granted under this regulation.

The note to amended regulation 9 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 1A. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

9. Regulation 10 replaced

Delete regulation 10 and insert:

10. Gate across thoroughfare not to be left open — Sch. 9.1 cl. 5(2)

A person who is responsible for a gate registered under regulation 9(8) must ensure that the gate is not left open.

Penalty: a fine of \$1 000.

10. Regulation 11 amended

Delete regulation 11(2) and (3) and insert:

(2) A person to whom a request is made under subregulation (1)(b) must comply with the request.

Penalty: a fine of \$5 000.

(3) A person must not, without lawful authority, make or make and leave an excavation in a public thoroughfare or land adjoining a public thoroughfare.

Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the offence continues.

- (4) A person may apply to the local government for permission to make or make and leave an excavation of specified dimensions and in a specified way in a specified part of a public thoroughfare or on a specified part of land adjoining a public thoroughfare.
- (5) Permission granted by the local government under this regulation —

 - (a) must be in writing; and
 - (b) must specify the period for which it is granted; and
 - (c) must specify each condition imposed under subregulation (6); and
 - (d) may be renewed from time to time; and
 - (e) may be cancelled by giving written notice to the person to whom the permission was granted.
- (6) The local government may impose such conditions as it thinks fit on granting permission under this regulation including, but not limited to, any of the following —

 - (a) conditions relating to the erection of hoardings, fences, walkways or other structures for the protection of the public thoroughfare, adjoining land or public safety (*protective structures*);
 - (b) a condition imposing a charge for any damage to the public thoroughfare or adjoining land resulting from the excavation;
 - (c) a condition requiring the applicant to deposit with the local government a sum sufficient in the opinion of the CEO of the local government to cover the cost of repairing damage to the public thoroughfare or adjoining land resulting from the excavation or a protective structure, on the basis that the local government may retain from that sum the amount required for the cost of repairs by the local government if the damage is not made good by the applicant.
- (7) It is a condition of the permission granted under this regulation that —

 - (a) the excavation is securely fenced off from the public thoroughfare or adjoining land; and
 - (b) protective structures are sufficiently illuminated every night from sunset to sunrise to prevent mishaps; and
 - (c) protective structures are kept and maintained in good condition, to the satisfaction of the CEO of the local

government, during such time as the CEO thinks necessary for the public safety and convenience; and

(d) the excavation is filled in or protective structures are removed within a reasonable time after the person granted the permission is required in writing to do so by the local government; and

(e) damage to the public thoroughfare or adjoining land resulting from the excavation or a protective structure is repaired to the satisfaction of the CEO of the local government within a reasonable time after the person granted the permission is required in writing to do so by the local government.

(8) The local government may, when renewing permission granted under this regulation or at any other time, vary any condition imposed by it under subregulation (6) and the variation takes effect when written notice of it is given to the person to whom the permission was granted.

(9) A person granted permission under this regulation must comply with each condition of the permission.

Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the offence continues.

(10) The local government may charge a person granted permission under this regulation a fee of not more than \$1.00 for each month or part of a month for each m² of public thoroughfare that is enclosed by a hoarding or fence in accordance with the permission.

(11) For the purposes of section 3.37 of the Act, a contravention of subregulation (3) or (9) is a contravention that can lead to impounding of goods comprising a protective structure or other thing placed in or near the excavation.

The note to amended regulation 11 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 2. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

11. Regulation 12 amended

(1) In regulation 12(1) after “may,” insert:

in writing and

(2) In regulation 12(2):

(a) delete “as defined in section 5(1) of the *Road Traffic Act 1974*”;

(b) delete the penalty and insert:

Penalty: a fine of \$5 000.

The note to amended regulation 12 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 2A(a). This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

12. Regulation 13 amended

Delete regulation 13(3) and (4) and insert:

(3) A person given a notice under subregulation (1) must comply with the notice.

Penalty: a fine of \$5 000.

13. Regulation 14 amended

(1) In regulation 14(1) delete “as defined in section 5(1) of the *Road Traffic Act 1974*”.

(2) In regulation 14(2) after “approved” insert:

in writing

(3) Delete regulation 14(5) and (6) and insert:

(5) A person given a notice under subregulation (3) must comply with the notice.

Penalty: a fine of \$5 000.

The note to amended regulation 14 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 2A(b). This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

14. Regulation 16 deleted

Delete regulation 16.

15. Regulation 17 replaced

Delete regulation 17 and insert:

17. Private works on, over, or under public places — Sch. 9.1 cl. 8

(1) A person must not, without lawful authority, construct anything on, over, or under a public thoroughfare or other public place that is local government property.

Penalty: a fine of \$5 000.

(2) Subregulation (1) does not apply to the construction of things by or on behalf of the Crown.

(3) A person may apply to the local government for permission to construct a specified thing on, over, or under a specified public thoroughfare or public place that is local government property.

(4) Permission granted by the local government under this regulation —

(a) must be in writing; and

(b) must specify the period for which it is granted; and

(c) must specify each condition imposed under subregulation (5); and

(d) may be renewed from time to time; and

(e) may be cancelled by giving written notice to the person to whom the permission was granted.

(5) The local government may impose such conditions as it thinks fit on granting permission under this regulation including, but not limited to, any of the following —

(a) a condition imposing a charge for any damage to the public thoroughfare or public place resulting from the construction;

(b) a condition requiring the applicant to deposit with the local government a sum sufficient in the opinion of the CEO of the local government to cover the cost of repairing damage to the public thoroughfare or public place resulting from the construction, on the basis that the local government may retain from that sum the amount required for the cost of repairs by the local government if the damage is not made good by the applicant.

(6) It is a condition of the permission granted under this regulation that —

- (a) the ordinary and reasonable use of the public thoroughfare or public place for the purpose to which it is dedicated is not to be permanently or unreasonably obstructed; and
 - (b) the person carrying out the construction work ensures that a footpath of a public thoroughfare or other public place that is local government property is covered during the period specified in writing by the local government so as to —
 - (i) prevent damage to the footpath; or
 - (ii) prevent inconvenience to the public or danger from falling materials;and
 - (c) damage to the public thoroughfare or public place resulting from the construction is repaired to the satisfaction of the CEO of the local government.
- (7) A person granted permission under this regulation must comply with each condition of the permission.
Penalty: a fine of \$5 000 and a daily penalty of \$500 for each day during which the offence continues.
- (8) A person who constructs anything in accordance with permission granted under this regulation must —
 - (a) maintain it; and
 - (b) obtain from an insurance company approved by the local government an insurance policy, in the joint names of the local government and the person, indemnifying the local government against any claim for damages which may arise in, or out of, its construction, maintenance or use.Penalty: a fine of \$5 000.
- (9) For the purposes of section 3.37 of the Act, a contravention of subregulation (1) or (7) is a contravention that can lead to impounding of goods comprising a thing constructed on, over, or under a public thoroughfare or other public place that is local government property.

The note to inserted regulation 17 is to read:

Note: This regulation is of the kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 3. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender. Schedule 9.1 item 8(4) is relevant.

See also Schedule 3.1 Division 1 item 3 which allows a similar notice to be given even when no offence has been committed.

16. Regulation 18 replaced

Delete regulation 18 and insert:

18. Protection of watercourses, drains, tunnels and bridges — Sch. 9.1 cl. 9

(1) A person must not, without lawful authority, alter, obstruct, or interfere with, any watercourse, drain, tunnel, or bridge that is local government property.

Penalty: a fine of \$5 000.

(2) A person must not, wilfully or negligently, cause or permit leaves, timber, logs or brushwood that is, or has been, growing on land occupied by that person, to fall into a watercourse that is local government property.

Penalty: a fine of \$5 000.

The note to inserted regulation 18 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 4. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

17. Regulation 19 replaced

Delete regulation 19 and insert:

19. Protection of thoroughfares from water damage — Sch. 9.1 cl. 10

A person must not, without lawful authority, alter, obstruct, or interfere with the natural flow of surface water across any thoroughfare or other land in such a way as is likely to damage any thoroughfare that is local government property.

Penalty: a fine of \$5 000.

The note to inserted regulation 19 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 5. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

18. Regulation 20 amended

In regulation 20(2) and (3) delete “is required to” and insert:

must

19. Regulation 21 amended

(1) In regulation 21(2) delete “consent” and insert:

permission

(2) Delete regulation 21(4) and (5) and insert:

(4) A person given a notice under subregulation (1) must comply with the notice.

Penalty: a fine of \$5 000.

The note to amended regulation 21 is to read:

Note: This regulation is of a kind prescribed in the *Local Government Act 1995* Schedule 3.1 Division 2 item 6. This means that an offender might be given a notice under section 3.25(1)(b) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the offender.

See also Schedule 3.1 Division 1 item 6 which allows a similar notice to be given even when no offence has been committed.

20. Regulations 22 to 25 inserted

After regulation 21 insert:

22. Persons with lawful authority under other written laws to notify local government of proposed action

(1) In this regulation —

do a thing means do any of the following things —

- (a) interfere with the soil of, or anything on, land that is local government property;
- (b) take anything from land that is local government property;
- (c) place on a public thoroughfare anything that obstructs it;
- (d) make or make and leave an excavation in a public thoroughfare or land adjoining a public thoroughfare;

- (e) construct anything on, over, or under a public thoroughfare or other public place that is local government property;
- (f) alter, obstruct, or interfere with, any watercourse, drain, tunnel, or bridge that is local government property;
- (g) alter, obstruct, or interfere with the natural flow of surface water across any thoroughfare or other land in such a way as is likely to damage any thoroughfare that is local government property;

lawful authority under another written law, in relation to doing a thing, means —

- (a) the authority under a provision of another written law to do the thing; or
 - (b) an authorisation, approval, licence, permit or other right, granted under another written law by a person other than the local government, to do the thing.
- (2) A person who has lawful authority under another written law to do a thing must ensure that at least 7 days before doing the thing, the local government is given written notice of the lawful authority and the intention to do the thing.

Penalty: a fine of \$5 000.

23. Objections and review

Part 9 Division 1 of the Act applies to —

- (a) the decision of a local government to give a notice under regulation 5(2); or
- (b) a decision of a local government made upon an application under regulation 12 or a decision by the Commissioner of Main Roads under regulation 14(2) relating to the application; or
- (c) the decision of a local government to give a notice under regulation 13(1); or
- (d) the decision of the Commissioner of Main Roads to give a notice under regulation 14(3); or
- (e) the decision of a local government to give a notice under regulation 21(1).

and the applicant or person to whom the notice was given, as the case requires, is an affected person for the purposes of applying that Division.

Note: The Local Government Act 1995 section 9.1(1) provides that Part 9 Division 1 applies when a local government makes a decision under the Act as to whether it will grant,

renew, vary, or cancel an authorisation, as defined in section 9.2, under a regulation that operates as if it were a local law.

24. Infringement notice offences

- (1) An offence described in Schedule 1 column 1 is prescribed for the purposes of section 9.16(1) of the Act.
- (2) The amount specified in Schedule 1 column 2 for the offence is the modified penalty that is to be specified in an infringement notice given for that offence.

25. Transitional and savings provisions

- (1) In this regulation —
expiry day means the day on which the *Building Regulations 2012* Part 9 expires;
expired Part 9 means the *Building Regulations 2012* Part 9 as in force immediately before it expired.

- (2) A licence that was —
 - (a) granted under the expired Part 9 regulation 64; and
 - (b) in effect immediately before expiry day; and
 - (c) for the purpose of authorising a person to deposit materials on a street, way or other public place,is, on and from expiry day, to be taken to be permission granted by the local government under regulation 6 of these regulations and subject to the conditions applying to the licence immediately before expiry day.

- (3) An application for a licence mentioned in subregulation (2) that had been made, but not decided, by a local government, before expiry day is, on and from expiry day, to be taken to be an application under regulation 6(2) of these regulations for which the application fee, if any, has been paid.

- (4) A review under the expired Part 9 regulation 64(7) —
 - (a) of the refusal to grant a licence under the expired Part 9 regulation 64 for the purpose of authorising a person to deposit materials on a street, way or other public place; or
 - (b) of the conditions imposed on a licence mentioned in subregulation (2),

that was started, but not finalised, before expiry day must be dealt with as if the expired Part 9 had not expired, and a licence that is granted or varied as a result of such a review is to be taken to be permission granted by the local government under regulation 6 of

these regulations subject to the conditions applying to the licence on its grant or variation.

(5) A licence that was —

- (a) granted under the expired Part 9 regulation 64; and
- (b) in effect immediately before expiry day; and
- (c) for the purpose of authorising a person to make an excavation on land abutting or adjoining a street, way or other public place,

is, on and from expiry day, to be taken to be permission granted by the local government under regulation 11 of these regulations and subject to the conditions applying to the licence immediately before expiry day.

(6) An application for a licence mentioned in subregulation (5) that had been made, but not decided, by a local government, before expiry day is, on and from expiry day, to be taken to be an application under regulation 11(4) of these regulations for which the application fee, if any, has been paid.

(7) A review under the expired Part 9 regulation 64(7) —

- (a) of the refusal to grant a licence under the expired Part 9 regulation 64 for the purpose of authorising a person to make an excavation on land abutting or adjoining a street, way or other public place; or
- (b) of the conditions imposed on a licence mentioned in subregulation (5),

that was started, but not finalised, before expiry day must be dealt with as if the expired Part 9 had not expired, and a licence that is granted or varied as a result of such a review is to be taken to be permission granted by the local government under regulation 11 of these regulations subject to the conditions applying to the licence on its grant or variation.

(8) Subregulations (2) to (7) do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the expiry of the *Building Regulations 2012* Part 9 concerning —

- (a) the enforcement of any notice under the expired Part 9 regulation 65(h) or 66(2)(b); or
- (b) the institution, continuation or enforcement of any legal proceeding for an offence under the expired Part 9 regulation 63, 64 or 67; or
- (c) the institution, continuation or enforcement of any review under the expired Part 9 regulation 67(3).

21. Schedule 1 inserted

At the end of the regulations insert:

Schedule 1 — Infringement notice offences and modified penalties

[r. 24]

<u>Column 1</u>	<u>Column 2</u>
<u>Description of offence</u>	<u>£</u>
<u>Interfering with, or taking anything from, land that is local government property without lawful authority (in contravention of r. 5(1))</u>	<u>500</u>
<u>Placing on a public thoroughfare anything that obstructs it without lawful authority (in contravention of r. 6(1))</u>	<u>500</u>
<u>Leaving open a gate registered under regulation 9(8) (in contravention of r. 10)</u>	<u>100</u>
<u>Making an excavation in a public thoroughfare or land adjoining a public thoroughfare without lawful authority (in contravention of r. 11(3))</u>	<u>500</u>
<u>Constructing anything on, over, or under a public thoroughfare or other public place that is local government property without lawful authority (in contravention of r. 17(1))</u>	<u>500</u>

<u>Column 1</u>	<u>Column 2</u>
<u>Not giving a local government at least 7 days' written notice of lawful authority under another written law to do a thing and the intention to do the thing (in contravention of r. 22(2))</u>	<u>500</u>