



**WESTERN
AUSTRALIAN
GOVERNMENT**
Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041



PERTH, TUESDAY, 5 AUGUST 2014 No. 119 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 12.30 PM

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LOCAL GOVERNMENT ACT 1995

**SHIRE OF
AUGUSTA-MARGARET RIVER**

**EXTRACTIVE INDUSTRIES
LOCAL LAW 2014**

LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA-MARGARET RIVER

EXTRACTIVE INDUSTRIES LOCAL LAW 2014

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LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA-MARGARET RIVER

EXTRACTIVE INDUSTRIES LOCAL LAW 2014

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the local government of the Shire of Augusta Margaret River resolved on 9 April 2014 to adopt the following local law.

PART 1—PRELIMINARY

Citation

1.1 This local law may be cited as the *Shire of Augusta Margaret River Extractive Industries Local Law 2014*.

Commencement

1.2 This Local Law will come into operation 14 days after the day on which it is published in the *Government Gazette*.

Application

1.3 (1) The provisions of this local law—

- (a) subject to paragraphs (b), (c) and (d);
 - (i) apply and have force and effect throughout the whole of the district; and
 - (ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law;
- (b) do not apply to the extraction of minerals under the *Mining Act 1978*;
- (c) do not apply to the carrying on of an extractive industry on Crown land; and
- (d) do not apply to the carrying on of an extractive industry on land by the owner or occupier of that land for use on that land.

(2) In sub-clause (1)(d) land includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in sub-clause (1)(d).

Definitions

1.4 In this local law, unless the context otherwise requires—

Act means the *Local Government Act 1995*;

carry on an extractive industry means quarrying and excavating for stone, gravel, sand, and other material;

CEO means the Chief Executive Officer of the local government;

district means the district of the local government;

excavation includes quarry;

land, unless the context otherwise requires, means the land on which the applicant proposes carrying on the extractive industry to which the licence application relates;

licence means a licence issued under this local law;

licensee means the person named in the licence as the licensee;

local government means the Shire of Augusta Margaret River;

local planning scheme has the meaning given to it in the *Planning and Development Act 2005*;

occupier has the meaning given to it in the Act;

owner has the meaning given to it in the Act;

planning approval means an approval for a development and/or a land use that is issued under a local planning scheme administered by the local government;

person does not include the local government;

Schedule means a schedule to this local law; and

site means the land specified by the local government in a licence.

PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

Extractive Industries Prohibited Without Licence

2.1 A person must not carry on an extractive industry—

- (a) unless the person is the holder of a valid and current licence; or
- (b) unless the person is the holder of a current planning approval for that extractive industry granted by the local government under the relevant local planning scheme; and
- (c) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

Penalty \$5000 and a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which an offence has continued.

Application for Licence

2.2 (1) A person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and must forward the application duly completed and signed by each of the applicant, the owner of the land and any occupier of the land to the CEO together with—

- (a) The prescribed application fee as prescribed by the local government.
- (b) A site plan, including a plan of the area of extraction at a scale of not less than 1:1000, and including the following will be required—
 - (i) area depth and volume of extraction (existing and proposed final contours at 1 metre intervals);
 - (ii) distances from lot boundaries and all dwellings and other sensitive uses within a 1km radius of the extraction site;
 - (iii) road frontages and property access;
 - (iv) details of existing and surrounding land uses;
 - (v) existing vegetation, wetlands and watercourses, and distance to the proposed area of extraction;
 - (vi) area, height and volume of material and top soil stockpiles; and
 - (vii) the location of any buildings associated with the proposal.
- (c) A report will also be required to accompany the above plans, detailing the following—
 - (i) type of material to be excavated;
 - (ii) details of methods of extraction, including any crushing or blasting, or whether extraction only;
 - (iii) hours of operation (including crushing, blasting and excavation);
 - (iv) storage of chemicals;
 - (v) estimated completion date;
 - (vi) type of equipment to be used including size of trucks and machinery;
 - (vii) maintenance and any refueling of trucks on site;
 - (viii) number of truck movements per day/week;
 - (ix) details of staging;
 - (x) proposed haulage routes and destinations; and
 - (xi) proposed road warning signage.
- (d) The required report will also address the following environmental considerations—
 - (i) noise, dust and vibration abatement measures;
 - (ii) visual impact assessment, with particular reference to major roads, tourist routes and interest points, and surrounding properties and structures;
 - (iii) drainage implications including surface and ground water impacts;
 - (iv) proposed end use of site;
 - (v) a detailed rehabilitation plan including types of materials, staging, source of materials, re-contouring, replacement of topsoil, screen planting and revegetation (vegetation species and densities);
 - (vi) assessment of the risk of spreading *Phytophthora* dieback and management techniques appropriate to that level of risk;
 - (vii) management techniques to address potential conflict with surrounding landuses and protection of environmental attributes; and
 - (viii) any other assessment the local government may require, including Aboriginal and European Heritage considerations if within a known area of significance.

PART 3—DETERMINATION OF APPLICATION

Determination of Application

3.1 (1) The local government may refuse to consider an application for a licence that is not accompanied by the fees, information and documents required by clause 2.2.

(2) The local government may undertake consultation with surrounding land owners prior to determining an application.

- (3) The applicant will be responsible for paying a consultation fee to the local government, as determined by the local government, to meet expenses for the local government undertaking any consultation under sub-clause (2).
- (4) Subject to sub-clause (5) the local government may, in respect of an application for a licence—
- (a) refuse the application; or
 - (b) approve the application—
 - (i) over the whole or part of the land in respect of which the application is made; and
 - (ii) on such terms and conditions, if any, as it sees fit.
- (5) The local government shall not refuse an application where—
- (a) the prescribed fee is paid;
 - (b) the application contains the information and documentation required by clause 2.2; and
 - (c) the report required by clause 2.2(1)(d) demonstrates how the listed environmental considerations will be satisfactorily addressed.

PART 4—TRANSFER AND CANCELLATION OF LICENCE

Transfer of Licence

- 4.1 (1) An application for the transfer of a licence shall—
- (a) be made in writing;
 - (b) be signed by the licensee and the proposed transferee of the licence;
 - (c) be accompanied by the current licence;
 - (d) be accompanied by the consent in writing to the transfer from the owner of the excavation site;
 - (e) include any information that the local government may reasonably require; and
 - (f) be forwarded to the CEO together with the fee determined by the local government from time to time.
- (2) Upon receipt of any application for the transfer of a licence, the local government may—
- (a) refuse the application; or
 - (b) approve the application on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for the transfer of a licence, the local government shall transfer the licence by an endorsement on the licence in the form determined by the local government from time to time, signed by the CEO.
- (4) Where the local government approves the transfer of a licence it shall not be required to refund any part of the fees paid by the former licensee in respect of the transferred licence.

Cancellation of Licence

- 4.2 (1) The local government may cancel a licence where the licensee has—
- (a) been convicted of an offence against—
 - (i) this local law; or
 - (ii) any other law relating to carrying on an extractive industry; or
 - (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
 - (c) permitted another person to carry on an extractive industry otherwise than in accordance with the terms and conditions of the licence and of the provisions of this local law;
 - (d) failed to have a current public liability insurance policy under clause 6.1(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 6.1(2).
- (2) Where the local government cancels a licence under this clause—
- (a) the local government shall advise the licensee in writing of the cancellation;
 - (b) the cancellation takes effect on and from the day on which the licensee is served with the cancellation advice; and
 - (c) the local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

PART 5—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

Blasting

- 5.1 (1) A person shall not carry out or permit to be carried out any blasting in the course of excavating unless—
- (a) the local government has otherwise given approval in respect of blasting generally or in the case of each blast;
 - (b) subject to sub-clause (2), the blasting takes place only between the hours of 8.00 am and 5.00 pm, or as determined by the local government, on Mondays to Fridays inclusive;

- (c) the blasting is carried out in strict accordance with the AS2187 SAA Explosives Code, the *Mines Safety and Inspection Act 1994*, the *Environmental Protection Act 1986*, and all relevant local laws of the local government; and
- (d) in compliance with any other conditions imposed by the local government concerning—
 - (i) the time and duration of blasting;
 - (ii) the purposes for which the blasting may be used; and
 - (iii) such other matters as the local government may reasonably require in the interests of the safety and protection of members of the public and of property within the district.

Penalty \$5000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

(2) A person shall not carry out or permit to be carried out any blasting on a Saturday, Sunday or Public Holiday except with the prior approval of the local government.

Penalty \$2000

PART 6—MISCELLANEOUS PROVISIONS

Public Liability

6.1 (1) A licensee shall have at all times a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of not less than \$10,000,000 in respect of any one claim relating to any of the excavation operations.

(2) The licensee shall provide to the local government a copy of the policy taken out under sub-clause (1), within 14 days after the issue of that policy and shall provide to the local government evidence of renewal within 14 days of each renewal date.

Mines Safety and Inspection Act and Environmental Protection Act

6.2 (1) In any case where the *Mines Safety and Inspection Act 1994* or the *Environmental Protection Act 1986* applies to any excavation carried on or proposed to be carried on at a site, the licensee in respect of that site shall—

- (a) comply with all applicable provisions of that Act or those Acts; and
- (b) provide to the local government within 14 days full particulars of any inspection or report made under that Act or those Acts.

(2) In this clause, the *Mines Safety and Inspection Act 1994* and the *Environmental Protection Act 1986* include all subsidiary legislation made under those Acts.

PART 7—OBJECTIONS & APPEALS

7.1 Where the local government makes a decision as to whether it will—

- (a) grant a person a licence under this local law; or
- (b) vary, or cancel a licence that a person has under this local law,

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.

PART 8—MODIFIED PENALTIES

8.1 An offence against a clause specified in the Schedule is a prescribed offence for the purposes of section 9.16(1) of the Act.

8.2 The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in the Schedule.

Forms

8.3 For the purposes of this local law—

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
 - (b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.
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SCHEDULE—PRESCRIBED OFFENCES

| Item | Clause | Description | Modified Penalty \$ |
|-------------|---------------|---|------------------------------------|
| 1 | 2.1 | Carry on extractive Industry without licence or in breach of terms and conditions | 350 |
| 2 | 5.1(1)(a) | Blasting without approval of the local government | 250 |
| 3 | 5.1(1)(b) | Blasting outside times authorised | 350 |
| 4 | 5.1(1)(d) | Blasting in breach of conditions imposed by the local government | 350 |
| 5 | 5.1(2) | Blasting without approval on Saturday, Sunday or public holiday | 250 |

Dated: 9 April 2014.

The Common Seal of the Shire of Augusta Margaret River was affixed under the authority of a resolution of the Council in the presence of—

MICHAEL SMART, Shire President.
ANNETTE RIORDAN, Acting Chief Executive Officer.
