

## LOCAL GOVERNMENT ACT 1995

Shire of Wagin

### EXTRACTIVE INDUSTRIES LOCAL LAW 2015

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it, the local government of the Shire of Wagin resolved on 28th June 2016 to make the following local law.

#### PART 1—PRELIMINARY

##### 1.1 Citation

This local law may be cited as the Shire of Wagin *Extractive Industries Local Law 2015*.

##### 1.2 Commencement

This local law will come into operation fourteen (14) days after the day on which it is published in the *Government Gazette*.

##### 1.3 Application

- (1) The provisions of this local law—
  - (a) subject to paragraphs (b), (c), (d) and (e)—
    - (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;
  - (d) do not affect the validity of any licence issued under any previous *Extractive Industries local law* applicable to the district; and
  - (e) 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 subclause (1)(e) land includes adjoining lots or locations in the same occupation or ownership of the owner and occupier referred to in subclause (1)(e).

##### 1.4 Definitions

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;

“**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 Wagin;

“**occupier**” has the meaning given to it in the Act;

“**owner**” has the meaning given to it in the Act;

“**person**” does not include the local government;

“**secured**” sum means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1; and

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

## **PART 2—LICENCING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY**

### **2.1 Extractive Industries Prohibited Without Licence**

A person must not carry on an extractive industry—

- (a) unless the person is the holder of a valid and current licence; and
- (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.

### **2.2 Application for Licence**

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

- (a) the application fee as prescribed by the local government;
- (b) three (3) copies of a detailed plan of the excavation site to a scale of between 1:500 and 1:2000 showing—
  - (i) the location, area, depth and volume of extraction (existing and proposed final contours at 1 metre intervals);
  - (ii) the 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 nearby and surrounding land uses;
  - (v) existing vegetation, wetlands, and watercourses, and distance to the proposed area of extraction;
  - (vi) areas of extracted materials, top soil and overburden stockpiles; and
  - (vii) the location of any buildings associated with the proposal;
- (c) a report accompanying the above plans, detailing—
  - (i) the type of material to be excavated;
  - (ii) the method(s) of extraction, including blasting, crushing and other on-site processing works;
  - (iii) a description of the methods by which vegetation is to be cleared and extracted material, overburden and top soil stockpiled and/or removed;
  - (iv) the hours of operation (including blasting, crushing and excavation);
  - (v) the anticipated overall lifespan of the extractive industry;
  - (vi) the type, volume, location and method of storage of any chemicals;
  - (vii) the type of equipment to be used, including size of trucks and machinery;
  - (viii) any on-site maintenance and/or refuelling of trucks or machinery;
  - (ix) the number and type of truck movements per day/week;
  - (x) the stages and the timing of the stages in which it is proposed to carry out the excavation;
  - (xi) proposed haulage routes and destinations; and

- (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) acid sulphate soil risks (if any) and appropriate management measures;
  - (v) proposed end use of site;
  - (vi) 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);
  - (vii) assessment of the risk of spreading *Phytophthora* dieback and management techniques appropriate to that level of risk;
  - (viii) management techniques to address potential conflict with surrounding land uses and protection of environmental attributes; and
  - (ix) any other assessment that the local government may require, including but not limited to Aboriginal and Heritage considerations.

### **PART 3—DETERMINATION OF APPLICATION**

#### **3.1 Determination of Application**

- (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 the 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 subclause (2).
- (4) 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) Without limiting subclause (4), the local government may impose conditions in respect of the following matters—
  - (a) the orientation of the excavation to reduce visibility from other land;
  - (b) the appropriate siting of access thoroughfares, buildings and plant;
  - (c) the stockpiling of material;
  - (d) the hours during which any excavation work may be carried out;
  - (e) the hours during which any processing plant associated with, or located on, the site may be operated;
  - (f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;

- (g) the depths below which a person must not excavate;
  - (h) distances from adjoining land or roads within which a person must not excavate;
  - (i) the safety of persons employed at or visiting the excavation site;
  - (j) the control of dust and wind-blown material;
  - (k) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
  - (l) the prevention of the spread of dieback or other disease;
  - (m) the drainage of the excavation site and the disposal of water;
  - (n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
  - (o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
  - (p) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;
  - (q) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence;'
  - (r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
  - (s) any other matter for properly regulating the carrying on of an extractive industry.
- (6) Where the local government approves an application for a licence, it must—
- (a) determine the licence period, which must not exceed 21 years from the date of issue of the licence; and
  - (b) approve the issue of a licence in the form determined by the local government from time to time.

### **3.2 Payment of Annual Licence Fee**

On or before 31 December in each year, a licensee must pay to the local government the annual licence fee determined by the local government from time to time.

## **PART 4—TRANSFER AND CANCELLATION OF LICENCE**

### **4.1 Transfer of Licence**

- (1) An application for the transfer of a licence must—
- (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.

#### **4.2 Cancellation of Licence**

- (1) The local government may cancel a licence where the licensee has—
  - (a) ceased to substantially carry on the extractive industry for a period in excess of 12 consecutive months;
  - (b) been convicted of an offence against—
    - (i) this local law; or
    - (ii) any other law relating to carrying on an extractive industry; or
  - (c) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
  - (d) 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;
  - (e) failed to pay the annual licence fee under clause 3.2; or
  - (f) failed to have a current public liability insurance policy under clause 7.1(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 7.1(2).
- (2) Where the local government cancels a licence under this clause—
  - (a) it 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;
  - (c) it shall require the licensee to restore and reinstate the excavated site in accordance with the proposals approved by the local government or in such other manner as it may subsequently agree in writing with the licensee; and
  - (d) the local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

#### **4.3 Variation of Licence**

- (1) An application to vary a licence must—
  - (a) be made in writing;
  - (b) be signed by the licensee and the owner of the excavation site (if different to the licensee);
  - (c) be accompanied by the current licence;
  - (d) include any information that the local government may reasonably require; and
  - (e) be forwarded to the CEO together with the fee determined by the local government from time to time.
- (2) Upon receipt of any application to vary 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 a licence variation, it shall notify the licensee and owner of the excavation site in a written form determined by the local government from time to time and signed by the CEO.

## **PART 5—SECURED SUM AND APPLICATION THEREOF**

### **5.1 Security for Restoration and Reinstatement**

- (1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that—
- (a) as a condition of a licence; or
  - (b) before the issue of a licence,
- the licensee must give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government from time to time.
- (2) Prior to the commencement of an extractive industry, a bond required under subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.

### **5.2 Use by the Local Government of Secured Sum**

- (1) If a licensee fails to carry out or complete the restoration and reinstatement works required by the licence conditions either—
- (a) within the time specified in those conditions; or
  - (b) where no such time has been specified, within a reasonable period of time from the completion of the excavation or portion of the excavation specified in the licence conditions,
- then—
- (c) the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone; and
  - (d) the licensee must pay to the local government on demand all costs incurred by the local government or which the local government may be required to pay under this clause.
- (2) Subclauses 5.2(1)(c) and (d) also apply if a licensee fails to carry out or complete restoration and reinstatement works as required by the local government as a result of cancelling the licence.
- (3) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 5.1 towards its costs under this clause.
- (3) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 5.1.

## **PART 6—LIMITATIONS AND PROHIBITIONS**

### **6.1 Blasting**

- (1) A person must 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 subclause (2), the blasting takes place only between the hours of 8.00am and 5.00pm, 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 \$5,000 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 must 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 \$2,000

## **PART 7—MISCELLANEOUS PROVISIONS**

### **7.1 Public Liability**

- (1) A licensee must 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 subclause (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.

### **7.2 Mines Safety and Inspection Act and Environmental Protection Act**

- (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 must—
  - (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 8—OBJECTIONS AND APPEALS**

### **8.1 Local Government Act**

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

- (a) grant a person a licence under this local law; or

(b) transfer, cancel or vary a licence that a person has under this local law, the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.

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Dated this 6<sup>th</sup> day of July, 2016.

The Common Seal of the Shire of Wagin was affixed by authority of a resolution of the Council in the presence of—

Cr PHILLIP BLIGHT, Shire President.  
Mr PETER WEBSTER, Chief Executive Officer.