

15.0 EXTRACTIVE INDUSTRY

Background

There is a range of legislation that potentially impacts upon consideration of extractive industry applications. The two key legislative instruments, as far as local government is concerned are summarised below:

15.0.1 Town Planning and Development Act 1928/Shire of Waroona Town Planning Scheme 7:

The Town Planning and Development Act provides for the control of the subdivision of land, and for the preparation of Town Planning Schemes to control development (which includes changes in land-use, as well as the construction of buildings). The Shire of Waroona Town Planning Scheme 7 lists "Industry – Extractive" as a separate use class, defined as follows:

Industry – Extractive - means an industry which involves:

- A. The extraction of sand, gravel, clay, turf, soil, rock, stone, minerals, or similar substance from the land, and also the storage, treatment or manufacture of products from those materials when carried out on the land from which any of those materials is extracted or on land adjacent thereto;
- B. The production of salt by the evaporation of sea or salt lake water.

"Industry – Extractive" is listed as an "AA" use (i.e. a use approval of which is at the discretion of Council) in each of the following Zones-

1. Rural 1 – General Farming;
2. Rural 2 – Irrigated Agriculture;
3. Rural 3A – Coastal;
4. Rural 3B – Coastal Highway;
5. Rural 4 – Hills Face; and
6. Rural 5 – Darling Ranges.

"Industry – Extractive" cannot be approved in any other Zone.

15.0.2 Local Government Act 1995/Shire of Waroona Extractive Industries Local Law 1999:

The Local Government Act provides for the preparation of 'Local Laws' to regulate a range of activities. The Shire of Waroona has adopted a Local Law to regulate extractive industries, the purposes of which are stated to be-

- i. Prohibit the carrying on of an extractive industry unless by authority of a licence issued by the local government;
- ii. Regulate the carrying on of the extractive industry in order to minimise damage to the environment, thoroughfares and other persons health and property; and
- iii. Provide for the restoration and reinstatement of any excavation site.

SHIRE OF WAROONA
PLANNING & DEVELOPMENT SERVICES POLICY NO. 15.0

The Local Law establishes the process for assessing applications, including the types of conditions that may be imposed on an approval. The following types of conditions are provided for in the Local Law-

- (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) the hours during which trucks may enter or leave the site and equipment may operate;
- (g) 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;
- (h) the depths below which a person must not excavate;
- (i) distances from adjoining land or thoroughfares within which a person must not excavate;
- (j) the safety of persons employed at or visiting the excavation site;
- (k) the control of dust and wind-blown material;
- (l) requiring the excavation, plant and equipment and thoroughfares to be bunded, screened and landscaped prior to any excavation or construction works commencing or continuing;
- (m) 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;
- (n) the prevention of the spread of dieback or other disease;
- (o) the drainage of the excavation site and the disposal of water;
- (p) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
- (q) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
- (r) 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 program;
- (s) 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;
- (t) requiring the licensee to pay a secured sum in accordance with clause 15; and
- (u) any other matter for properly regulating the carrying on of an extractive industry.

In many cases, the imposition of specific conditions addressing all of the issues set out above is not necessary. This is especially the case where the applicant's themselves prepare good quality excavation management plans which should set out acceptable commitments with regard to the issues listed above. The focus of this policy is therefore on ensuring that applicants do provide supporting documentation to an acceptable standard, and that they are also required to provide a good standard of reporting on the progress of their activities, especially with regard to rehabilitation.

Notwithstanding the difficulties associated with the regulation of extractive industry, the extraction of sand, gravel and limestone is, and is likely to remain so for the foreseeable future, an important part of the economic life of the Shire.

Objective/s

1. Clarify respective roles of Town Planning Scheme and Extractive Industry Local Law in regulation of extractive industry.
2. Ensure that extractive industry activities are undertaken in an environmentally and socially sound manner.

Legal status/considerations

Policy adopted as a Town Planning Scheme Policy pursuant to clause 2.4 of Town Planning Scheme 7. Policy is also adopted as an operational policy with respect to the Shire of Waroona Extractive Industry Local Law.

Special Procedural Considerations

1. Where extraction activity has been the subject of a decision by the Environmental Protection Authority, applications shall be referred to that authority for comment prior to determination.
2. Where extraction activity may have the potential for significant environmental impact and the proposal has not already been referred to the Environmental Protection Authority, Council shall require referral of the proposal to that authority prior to giving consideration to the application.
3. Prior to lodging an application with Council, either for a new proposal, or for the expansion of an existing operation, the applicant should seek the advice of the Water and Rivers Commission with respect to groundwater issues.
4. All applications (other than applications for renewal and which do not involve an expansion of the extraction area) shall be referred to the Department of Environment, Water & Catchment Protection and the Department of Mineral & Petroleum Resources.

Policy Statement

1. Council's recognises that extractive industry is and will remain a necessary and important part of the economic life of the Shire.
2. Applications for planning consent for extractive industry and/or for an extractive industry licence, whether they are new applications or applications for renewal of previously granted approvals, must be accompanied by the following documentation:
 - (a) A clear, concise, well-presented excavation management plan addressing all of the issues outlined in Clause 10 (5) of the Local Law;
 - (b) A diagram prepared by a licensed surveyor indicating existing levels, proposed levels at the time when the approval being applied for will expire and proposed levels at the termination of extraction activity; and
 - (c) A rehabilitation plan that provides for clear and measurable outcomes, or, where a proposal has been assessed by the EPA, meets EPA requirements.
3. The primary role of the Town Planning Scheme is to determined whether the proposed extractive industry is consistent with the Zone in which is located, the amenity of adjoining or nearby properties and that the local road system is capable of supporting the demands that will be placed upon it by the transport of the extracted material. Other issues should generally be addressed via the Extractive Industry Local Law.
4. Planning consent for extractive industry and extractive industry licences shall be issued for a maximum period of five years.
5. Where extractive industry licences are issued for more than two years duration, a condition shall be applied requiring the submission of a progress report mid-way through the period of the licence. The progress report shall be prepared to the same standard as is required for applications and, in particular, must be accompanied by a diagram prepared by a licensed surveyor indicating the extent of excavation at the time of the progress report. If the progress report is not provided and endorsed prior to the time specified in the approval, then extraction must cease until such time as a satisfactory progress report is provided.
6. Where extractive industry is proposed the resultant increase in traffic is likely to have a significant impact on the local road system, the applicant shall, as a condition of planning consent, be required to make a proportionate contribution toward the upgrading and/or maintenance of the local road system.

Related considerations

Nil

Adoption/amendments

Draft: **22.04.03**
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Amendment/s: