

LOCAL GOVERNMENT ACT 1995

Shire of Waroona

EXTRACTIVE INDUSTRIES LOCAL LAW 1999

Under the powers of the Local Government Act 1995 and by all other powers, the Council of the Shire of Waroona resolved to make the following local law on the 27 July 1999.

ARRANGEMENT

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SCHEDULE 1	

PART 1 - PRELIMINARY

Title

1 This local law may be referred to as the Shire of Waroona Extractive Industries Local Law 1999.

Commencement

2 This local law comes into operation 14 days after the date of its publication in the Government Gazette.

Purpose and Intent

- 3 (1) The purpose of this local law is to:
- (a) prohibit the carrying on of an extractive industry unless by authority of a licence issued by the local government;
 - (b) regulate the carrying on of the extractive industry in order to minimise damage to the environment, thoroughfares and other persons health and property; and
 - (c) provide for the restoration and reinstatement of any excavation site.
- (2) The effect of this local law is to require that any person wanting to carry on an extractive industry will need to be licensed and will need to comply with the provisions of this local law.

Repeal

4 The Draft Model By-Laws (Extractive Industries) No. 9 published in the *Government Gazette* on 9 November 1962 being the whole of the By-Laws and the amendments published in the *Gazette* of 8 February 1965 and 21 June 1974 as adopted by the Shire of Waroona and published in the *Gazette* of 9 November 1979, including any subsequent amendments, are repealed on the day this local law comes into operation.

Definitions

5 In this local law, unless the context otherwise requires:-

“Act” means the Local Government Act 1995;

“authorised person” means a person authorised by the local government under section 9.10 of the Act, to carry into effect the provisions of this local law;

“carry on an extractive industry” means quarrying and excavating for stone, gravel, sand and other material and without limiting the generality includes stripping vegetation and top soil, stockpiling, excavating and earthworks, loading of trucks and vehicle movements associated with an extractive industry, blasting rehabilitation and includes all of the time from commencement to the satisfactory completion of the works as required by a condition of a licence or as directed by the local government;

“CEO” means “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 or company named in the licence as the licensee;

“local government” means the Shire of Waroona “person” means any person, company, employer and includes the owner, licensee and previous licensee;

“secured sum” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 15;

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

“Stop Work Order” means an order issued under clause 22.

Application of this Local Law

6 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 the local law repealed by clause 4 if that licence is currently in force at the date of gazettal of this local law; and
- (e) do not apply where the works are approved by and carried out in accordance with:
 - (i) a condition of a subdivision approved by the Western Australian Planning Commission;
 - (ii) a development approval issued by the local government under a town planning scheme and the works are incidental to that approval;
 - (iii) building licence issued by the local government under the Local Government (Miscellaneous Provisions) Act 1960.

PART 2 - LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

Extractive Industries Prohibited Without Licence

7 A person must not carry on an extractive industry:-

- (a) unless the person is the holder of a valid and current licence; and
- (b) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

Application for Licence

8 (1) Unless the CEO waives any particular requirement a person seeking the issue of a licence in respect of any land must apply on the form provided or approved by the local government for

the purpose and must forward the application duly completed and signed by both the applicant and the owner of the land to the CEO together with:-

- (a) 3 copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing:
 - (i) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
 - (ii) the land on which the excavation site is to be located;
 - (iii) the external surface dimensions of the land;
 - (iv) the location and depth of the existing and proposed excavation of the land;
 - (v) the location of existing and proposed thoroughfares or other means of vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;
 - (vi) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
 - (vii) the location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;
 - (viii) the location of all existing dams, swamps, lakes, watercourses, drains or sumps on or adjacent to the land;
 - (ix) the location and description of existing and proposed fences, gates and warning signs around the land;
 - (x) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;
 - (xi) brief description of uses of adjoining and nearby land;
 - (xii) other details as the local government may require.
- (b) 3 copies of a works and excavation program containing:-
 - (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
 - (ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;
 - (iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
 - (iv) details of the depth and extent of the existing and proposed excavation of the site;
 - (v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
 - (vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;

- (vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
 - (viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;
 - (ix) a description of any proposed buildings, treatment plant, tanks and other improvements;
 - (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
 - (xi) a description of the measures to be taken to minimise dust nuisance, erosion, watercourse siltation and dangers to the general public;
 - (xii) a report of an acoustic consultant verifying that the various plant, machinery and operational noise levels will comply with the requirements of the Environmental Protection (Noise) Regulations 1997;
 - (xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land;
 - (xiv) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation; and
 - (xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;
- (c) 3 copies of a rehabilitation and decommissioning program indicating:-
- (i) the objectives of the program, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
 - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
 - (iii) how each face is to be made safe and batters sloped;
 - (iv) the method by which topsoil is to be replaced and revegetated;
 - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
 - (vi) how rehabilitated areas are to be maintained; and
 - (vii) the program for the removal of buildings, plant, waste and final site clean up.
- (d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfares or such other land in the vicinity;
- (e) a certificate from a licensed surveyor certifying the correctness of:-
- (i) the plan referred to in paragraph (a); and

- (ii) the datum peg and related point referred to in paragraph (d);
 - (f) evidence that the requirements of clause 9 (a) and (b) have been carried out;
 - (g) copies of all land use planning approvals required under any planning legislation;
 - (h) the consent in writing to the application from the owner of the excavation site;
 - (i) an overall staging and management plan and report which by a matrix indicates the progressive stages of construction, excavation, rehabilitation, landscaping and the like together with obvious milestones of progress upon which the staging and management of the extractive industry can be measured and reviewed prior to renewal or at other nominated times;
 - (j) evidence that a notice of clearing has been given to the Commissioner of Soil and Land Conservation if that is required under regulation 4 of the Soil and Land Conservation Regulations 1992.
- (2) All survey data supplied by an applicant for the purpose of sub clause (1) must comply with Australian Height Datum and Australian Map Grid standards.

Applicant to Advertise Proposal

- 9 (1) A person or company seeking the issue of a licence shall within 60 days after having complied with clause 8, advertise and give notice of their intention, as follows:
- (a) forward by registered mail a notice and summary of the proposal in the form provided or approved by the local government for the purpose, to:
 - (i) the owners and occupiers of all land adjoining the land upon which it is proposed to excavate, or within an area determined by the local government as likely to be affected by the granting of a licence;
 - (ii) every relevant statutory authority including, but not limited to, the Water & Rivers Commission, the Department of Environmental Protection, the Department of Minerals & Energy and person having control or jurisdiction over any of the things referred to in clause 8(1)(a)(vii) or (viii) within 500 metres from the boundaries of the land, or within an area determined by the local government as likely to be affected by the granting of a licence;
 - (iii) the CEO; and
 - (b) publish a notice [notice to be in the form provided or approved by the local government for the purpose], in a newspaper circulating in the area in which the proposed excavation is located:-
 - (c) display, in a prominent position on the land one or more notices:
 - (i) in the form provided or approved by the local government for the purpose;
 - (ii) the content, size and construction of which have been approved by the CEO;
 - (iii) specifying particulars of the proposed excavation; and inviting objections or comments within 21 days from the placement of the notice.

- (2) All notices referred to in clause 9 (1) must advise that the proposal may be inspected at the office of the local government and that submissions on the proposal may be lodged with the local government for a period of 21 days from the date of the last notice.

PART 3 - DETERMINATION OF APPLICATION

Determination of Application

- 10 (1) The local government may refuse an application for a licence:
- (a) that does not comply with the requirements of clause 8;
 - (b) for which the processes required by clause 9 have not been completed;
 - (c) after considering any submissions received within the specified period in accordance with clause 9(2);
 - (d) where planning approval for an extractive industry use of the land has not first been obtained under any relevant town planning scheme.
- (2) 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.
- (3) Where the local government approves an application for a licence, it must:
- (a) determine the licence period, not exceeding 21 years from the date of issue; and
 - (b) approve the issue of a licence in the form provided or approved by the local government for the purpose;
- (4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of:
- (a) payment of the annual licence fee, or the relevant proportion thereof of the annual licence fee;
 - (b) the payment of any outstanding licence or administration fees;
 - (c) payment of the secured sum if any, imposed under clause 15; and
 - (d) the documents, if any, executed to the satisfaction of the CEO, under clause 15, shall issue the licence to the applicant.
- (5) Without limiting sub clause (2), the local government may impose conditions, including 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) 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.

Fees

- 11 (1) A licensee must pay to the local government the licence fee.

- (2) Where an extractive industry is being carried on and the local government has not issued a licence, the owner shall pay to the local government the administration fee.
- (3) An application for the transfer of a licence shall incur a fee to be paid to the local government.
- (4) The fees to be paid shall be as determined by the local government in accordance with the fees and charges approved from time to time.

PART 4 - TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

Transfer of Licence

- 12 (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) be accompanied by a stamped copy of a deed of agreement between the owner, transferor and transferee detailing the terms and conditions relating to the transfer of responsibility for the state of the excavation, the level of compliance with any conditions, that may have been imposed on the licence the subject of the transfer, and any rehabilitation works which may be necessary to remedy the situation.
 - (f) include any information that the local government may reasonably require; and
 - (g) be forwarded to the CEO with the transfer fee together with any outstanding administration and licence fees.
- (2) Upon receipt of any application for the transfer of a licence, and the transfer fee, 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 provided or approved by the local government for the purpose.
- (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.
- (5) The local government may refuse to transfer a licence until all outstanding fees and charges have been paid.

Cancellation of Licence

- 13 (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;
 - (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government; or
 - (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.
- (2) Where the local government cancels a licence under clause 13(1):-
- (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;
- (3) The licence shall lapse where the licensee has:
- (a) failed to pay the annual licence fee under clause 11; or
 - (b) failed to have a current public liability insurance policy under clause 18(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 18(2);
- (4) The local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

Renewal of Licence

- 14 (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 42 days before the date of expiry of the licence and must submit with the application for renewal:-
- (a) the fee determined by the local government;
 - (b) a copy of the current licence;
 - (c) a plan showing the contours of the excavation carried out to the date of that application;
 - (d) details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 8(1) (b) and (c); and
 - (e) any other things referred to in clauses 8 and 10.
- (2) The local government may waive any of the requirements specified in clause 14(1) (d) or (e).
- (3) If:-
- (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
 - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application.

then the applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 8 and 10.

- (4) Upon receipt of an application for the renewal 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; and
 - (c) may require the proposal to be advertised in the manner set out in clause 9.

PART 5 - SECURED SUM

Security for Restoration and Reinstatement

- 15 (1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that:-
- (a) the licensee -
 - (i) as a condition of a licence; or
 - (ii) before the issue of a licence; or
 - (iii) before the renewal of a licence; or
 - (b) the owner when required by the local government;
- 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) A bond required under sub clause (1) is to be paid into an account established by the local government for the purposes of this clause.

Use by the Local Government of Secured Sum

- 16 (1) If a person fails to carry out or complete the restoration and reinstatement works required by the licence conditions or by a notice served by the local government; either:-
- (a) within the time specified in those conditions;
 - (b) where no such time has been specified, a reasonable period of time from the completion of the excavation or portion of the excavation specified in the licence conditions; or
 - (c) within 60 days of a notice given by the local government to the licensee or owner:-
- then:-
- (d) 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
 - (e) the licensee must pay to the local government on demand all administrative, legal, contractor and other costs, estimated or incurred by the local government, to rehabilitate the site or which the local government may be required to pay under this clause.

- (2) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 15 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 15.
- (4) A person, owner, occupier or licensee is not entitled to make any claim by way of damages or otherwise, against an authorised person, local government employee, local government appointed sub-contractor or other person authorised by the local government, to enter the land and carry out all or part of the works and do all things necessary that the owner, occupier or licensee was required to do to comply with this local law.

PART 6 - PROHIBITIONS

Prohibitions

- 17 Subject to any licence conditions imposed by the local government with respect to carrying on an extractive industry, a person:
- (1) must not without the written approval of the local government, excavate within:-
 - (a) 20 metres of the boundary of any land on which the excavation site is located;
 - (b) 20 metres of any land affected by a registered grant of easement;
 - (c) 40 metres of any thoroughfare;
 - (d) 50 metres of any watercourse, wetland, swamp or other water reserve; or
 - (e) 3 metres of the estimated maximum water table level as determined from time to time by the Water & Rivers Commission or otherwise as adopted by the local government.
 - (2) must:
 - (a) not remove any trees or shrubs within 40 metres (or such lesser distance as may be allowed, in writing, by the local government) of the boundary of any thoroughfare reserve on land in respect of which a licence has been granted, except for the purpose of constructing access thoroughfares, erecting buildings or installing plant for use in connection with the excavation and then only with the express approval of the local government and subject to any conditions which the local government may impose in accordance with clause 10;
 - (b) where the local government so requires, securely fence the excavation to a standard determined by the local government and keep the gateways locked when not actually in use in order to prevent unauthorised entry;
 - (c) erect and maintain warning signs along each of the road boundaries of the area excavated under the licence so that each sign:
 - (i) is not more than 200 metres apart;
 - (ii) is not less than 1.8 metres high and not less than 1 metre wide; and
 - (iii) bears the words 'DANGER EXCAVATIONS - KEEP OUT';

- (d) except where the local government approves otherwise, drain and keep drained to the local government's satisfaction any excavation to which the licence applies so as to prevent the accumulation of water;
 - (e) not store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies other than with the approval of the local government and the Department of Minerals and Energy;
 - (f) not fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation program approved by the local government;
 - (g) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation program approved by the local government;
 - (h) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site;
 - (i) otherwise comply with the conditions imposed by the local government in accordance with clause 10; and
 - (j) cease excavating and undertake the restoration and reinstatement of the site and comply with notices issued by the local government.
- (3) 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 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;
 - (iii) the methods of detonation and blasting;
 - (iv) the types of explosives to be used; and
 - (v) 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.
- (4) 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.

PART 7 - MISCELLANEOUS PROVISIONS

Public Liability

- 18 (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 or such other sum as is approved by the local government 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

- 19 (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 comply with all applicable provisions of that Act or those Acts; and
- (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.

Notice of Cessation of Operations

- 20 (1) Where a licensee intends to cease carrying on an extractive industry:-
- (a) temporarily for a period in excess of 12 months; or
 - (b) permanently;
- the licensee must, as well as complying with clause 21 give the local government written notice of the cessation not later than 1 week after those operations have ceased.
- (2) Where a licensee has given written notice to the local government of the intention to permanently cease carrying on an extractive industry on the site to which the licence applies the licence is deemed to have expired on the date such cessation is so notified.
- (3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or the deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

Works to be Carried out prior to Cessation of Operation

- 21 (1) Where the carrying on of an extractive industry on the site is proposed to permanently cease or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, the licensee of the owner must, as well as complying with the provisions of clause 20:-
- (a) restore and reinstate the excavated site in accordance with the proposals approved by the local government or in such other manner as the local government may subsequently in writing require;
 - (b) ensure that any face permitted to remain upon the excavation site is left in a safe condition with all loose materials removed and where the excavation site is -
 - (i) sand, the sides are sloped to a batter of not more than 1:3 (vertical:horizontal); and
 - (ii) limestone or material other than sand, the sides are sloped to a batter which, in the opinion of the local government, would enable the site to be left in a stable condition;

- (c) ensure that the agreed floor level of the excavation is graded to an even surface or is otherwise in accordance with the rehabilitation and decommissioning program approved by the local government;
 - (d) ensure that all stockpiles or dumps of stone, sand or other materials are left so that no portion of that material can escape onto land not owned or occupied by the licensee nor into any stream, watercourse, lake, wetland or drain that is not wholly situated within the land owned or occupied by the licensee;
 - (e) erect retaining walls where necessary to prevent subsidence of land in the vicinity of any excavation;
 - (f) remove from the site all buildings, plant and equipment erected, installed or used for or in relation to the carrying on of an extractive industry on the site and fill all holes remaining after such removal to the level of the surrounding ground and compact such filled holes sufficiently to prevent settling; and
 - (g) break up, scarify, cover with topsoil and plant with grass, trees and shrubs all parts of the site used for the extractive industry where buildings, plant and equipment were erected or installed and all areas which were used for stockpiling unless otherwise specified under this local law.
- (2) Notwithstanding any other provision of this local law where a licensee is required to comply with this local law or a condition of a licence and that licence has been cancelled, not renewed, or expired the aforementioned obligations become the responsibility jointly and severally of the owner and the previous licensee notwithstanding that he is not or is no longer the licensee.

PART 8 - ENFORCEMENT AND PENALTIES

Stop Work Orders

- 22 (1) Where a person is carrying on an extractive industry in contravention of this local law, the local government may issue an order to stop all work specified in the notice as being done in contravention of this local law - in this Part referred to as "Stop Work Order".
- (2) Where a copy of a Stop Work Order:
- (a) is affixed in a prominent position on the place to which it relates; or
 - (b) is served on a person carrying on the extractive industry, or causing to be carried on, at that place any works or other activity,

a person who carries on, or authorises, causes or permits to be carried on, in relation to that place the extractive industry commits an offence.

Penalty: \$5,000

Daily Penalty: \$500

Stop Work Orders Not To Affect Certain Works

- 23 It shall be a defence in proceedings for a contravention of a provision of a Stop Work Order to show that any works, being works appropriate to the purpose:
- (a) were urgently necessary:

- (i) to avoid an imminent danger to life or health; or
- (ii) for the immediate preservation of a building or the prevention of immediately impending damage to neighbouring property,

whether or not those works were the subject of a specific prohibition contained in a Stop Work Order, where notice in writing of the proposed carrying out of the works was given, as soon as practicable after the necessity for the works arose, to the local government and no written objection was served by the local government on the person so giving notice prior to the carrying out of the work; or

- (b) were required by an Act or law, and were of such a degree of urgency that prior reference to the local government and the application for and issue of a licence under this local law would not have been practicable.

Offences

- 24 (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) An offence under clauses 7, 11 and 17 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500.00 for each day or part of a day during which the offence has continued.

Offences By Bodies Corporate, Defences Etc

- 25 (1) Where a contravention of this local law which has been committed by a body corporate is proved:
- (a) to have been committed with the consent or connivance of; or
 - (b) to be attributable to any failure to take all reasonable precautions to secure that this local law should not be contravened by the body corporate on the part of,
- any director, manager, executive officer, secretary or other person concerned in the management of the body corporate, or any person purporting to act in that capacity, that person as well as the body corporate is guilty of the contravention.
- (2) Where the affairs of a body corporate are managed by its members, subclause (1) applies in relation to the acts and defaults of a member in connection with the functions of management of that member as if the member were a director of the body corporate.
- (3) Where proceedings are taken against a person under this local law it is no defence for that person to prove:
- (a) that the person was the agent or employee of any other person; or
 - (b) that the person was acting in pursuance of an order or direction given by any other person,

unless the court is satisfied that the person had acted without the knowledge, and could not reasonably be expected to have known, that this local law would be contravened.

- (4) Where the employee or agent of a person is found liable in respect of a contravention of this local law, each person who, at the time of the commission of the contravention, was the employer of that employee or the principal of that agent is also liable in respect of the contravention, unless that employer or principal proves that he or she could not by the exercise of reasonable diligence have prevented the commission of the contravention by the employee or agent.
- (5) Subject to this clause, it shall be a defence for any person who would otherwise be liable under this local law to prove that:
- (a) the contravention occurred without the consent or connivance of that person;
 - (b) the person had taken all reasonable precautions to secure that this local law should not be contravened; and
 - (c) that the person could not by the exercise of reasonable diligence have prevented the contravention.
- (6) Where, in proceedings under this local law, it is necessary to establish the state of mind of a body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.
- (7) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,
- shall be deemed, for the purposes of this local law, to have been engaged in also by the body corporate.
- (8) Where, in proceedings under this local law, it is necessary to establish the state of mind of a person other than a body corporate, it is sufficient to show that an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.
- (9) Conduct engaged in on behalf of a person other than a body corporate:
- (a) by an employee or agent of the person, within the scope of the actual or apparent authority of the employee or agent; or
 - (b) by any other person, at the direction or with the consent or agreement (whether express or implied) of any employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed, for the purposes of this local law, to have been engaged in also by the first-mentioned person.

- (10) A reference in this clause to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.
- (11) If a defence to proceedings under this local law involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.

Infringement and Infringement Withdrawal Notices

26 For the purposes of this local law:

- (a) the form of the infringement notice referred to in section 9.17 of the Act is Form 2 of the First Schedule of the Local Government (Functions and General) Regulations 1996;
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 of the First Schedule of the Local Government (Functions and General) Regulations 1996.

Offence Description and Modified Penalty

- 27 The amount appearing in the final column of the First Schedule directly opposite an offence described in that Schedule is the modified penalty for that offence.

Prosecution for Offences

- 28 A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in a Court of Petty Sessions.

Records to be Kept

- 29 The local government shall cause adequate records to be kept of all infringement notices served and modified penalties received.

Footnote:

1 Appeal

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

- (a) grant a person a licence under this local law; or
- (b) renew, 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 regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 shall apply to that decision.

2 Appointment of Authorised Persons, and Certificate of Appointment for Authorised Persons

Both the appointment of authorised persons and issue of a certificate of appointment detailing what duties and responsibilities the person is authorised to perform shall be in accordance with Section 9.10 of the Local Government Act 1995.

First Schedule

SHIRE OF WAROONA
EXTRACTIVE INDUSTRIES LOCAL LAW 1999**Offences and Modified Penalties**

Item No	Clause No	Nature of Offence	Modified Penalty \$
1	7(a)	Excavate without a licence	500
2	7(b)	Carry on an extractive industry not in accordance with conditions	500
3	11(2)	Failure to pay the administration fee	400
4	17(1)(a)	Excavate without approval, within 20 metres of adjacent property boundary	400
5	17(1)(b)	Excavate without approval, within 20 metres of any land affected by a registered grant of easement	400
6	17(1)(c)	Excavate without approval, within 40 metres of any thoroughfare	400
7	17(1)(d)	Excavate without approval within 50 metres of any watercourse, wetland, swamp or other water reserve	400
8	17(1)(e)	Excavate without approval, within 3 metres of the estimated maximum water table level	400
9	17(2)(a)	Removal of trees or shrubs within 40 metres of the boundary of any thoroughfare reserve	400
10	17(2)(b)	Failure to securely fence and/or keep gateways locked	400
11	17(2)(c)	Failure erect and maintain warning signs	400
12	17(2)(d)	Failure to drain and keep drained any excavation to which the licence applies	400
13	17(2)(e)	Store or permit to store explosives or explosive devices without approval	400
14	17(2)(f)	Not fill or excavate, contrary to the terms and conditions of the licence	400
15	17(2)(g)	Failure to restore and reinstate the excavation site in accordance with conditions of the licence	400
16	17(2)(h)	Failure to take all reasonable steps to prevent the emission of dust, noise, vibration, and other forms of nuisance from the excavation site	400
17	17(2)(i)	failure to comply with conditions of licence imposed by the local government	400
18	17(2)(j)	Failure to cease excavating and undertake restoration and reinstatement as required by notice issued by the local government	500
19	17(3)(a)	Carry out or permit to be carried out blasting without approval	400
20	17(3)(b)	Carry out or permit to be carried out blasting outside hours approved by the local government	400
21	17(3)(d)	Failure to comply with conditions imposed by the local government relating to blasting	400
22	17(4)	Carry out or permit to be carried out any blasting on Saturday, Sunday or Public Holiday, without approval	400
23		Other offences not specified	200

Local Government Act 1995

SHIRE OF WAROONA
Form 1

**APPLICATION
FOR AN EXTRACTIVE INDUSTRY LICENCE**

1. Name(Applicant)

2. Address
.....

3. Telephone Fax

4. Address and locality of proposed excavation site
.....

5. Lot No 6. Location No

7. Plan or Diagram No

8. Certificate of Title Volume Folio

9. Owner of the land
.....

10. Address of owner of the land
.....

11. Material to be excavated

12. If the application covers land that is the subject of an existing licence:

Date of Issue of that licence

Date of expiration of that licence

Conditions applicable to that licence

.....

13. Term of licence sought

14. Submitted with this application are:

- (a) 3 copies of excavation site plans and supporting information in accordance with Clause 8(1)(a);
- (b) 3 copies of works and excavation program in accordance with Clause 8(1)(b);

- (c) 3 copies of rehabilitation and decommissioning program in accordance with Clause 8(1)(c);
- (d) datum peg evidence
- (e) licensed surveyor's certificate certifying the correctness of 8(1) (a) and (d) above
- (f) evidence of compliance with Clause 9 (1) and (2)
- (g) copies of all land use planning approvals
- (h) written consent of the owner of the excavation site
- (i) any other information that the local government has required
- (j) licence application fee of \$.....

The applicant applies for a licence in respect of the proposed excavation site in accordance with and subject to the Shire of Waroona Local Law relating to Extractive Industries.

Dated this day of 20

.....
Signature of Applicant

.....
Signature of Owner of the land

.....
Signature of existing licensee
(if applicable)

Local Government Act 1995

**SHIRE OF WAROONA
Form 2**

(Mail, Newspaper and Site Notice)

**NOTICE OF APPLICATION
FOR AN EXTRACTIVE INDUSTRY LICENCE**

Take notice that [1]

intends to apply to the Shire of Waroona for an extractive industry licence to excavate

[2]

on land situated at [3]

being [4]

Any person who wishes to object or otherwise comment upon this proposal, should do so in writing to the Chief Executive Officer, Shire of Waroona, P O Box 20, Waroona, WA 6215 not later than [5]

- [1] Insert the name of the applicant
- [2] Insert the material(s) proposed to be excavated
- [3] Insert the postal address of the land subject of the application
- [4] Insert the title description of the land subject of the application
- [5] Insert the date which should not be less than 21 days from the date when the advertisement is to first appear in the newspaper

Local Government Act 1995

**SHIRE OF WAROONA
Form 3**

EXTRACTIVE INDUSTRY LICENCE

Licensee

Address

.....

Land Description

.....

Material to be Excavated

Term of Licence

Date of Expiry

This licence is issued in accordance with the Shire of Waroona Local Law relating to Extractive Industries subject to the following conditions:

.....

.....

.....

.....

Dated this day of 20

.....
Chief Executive Officer

Local Government Act 1995

SHIRE OF WAROONA
Form 4

**TRANSFER ENDORSEMENT
EXTRACTIVE INDUSTRY LICENCE**

This licence is transferred to
of

.....
from the date of the endorsement until

subject to each of the above conditions and the following additional conditions -

Dated this day of 20

.....
Chief Executive Officer
Shire of Waroona

Dated this day of 20.....

The Common Seal of the)
Shire of Waroona was)
affixed by authority of a)
resolution of the Council)
in the presence of:)

* Chairman

Chief Executive Officer

* Chairman or President

