

**LOCAL GOVERNMENT ACT 1995**

*Shire of Jerramungup*

**DUST AND SAND LOCAL LAW 2011**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Jerramungup resolved on 16 November 2011 to make the following local law.

**PART 1 — PRELIMINARY**

**1.1 Citation**

This Local Law may be cited as the *Shire of Jerramungup Dust and Sand Local Law 2011*.

**1.2 Commencement**

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

**1.3 Purpose and effect**

(1) The purpose of this local law is to provide for the regulation, control and management of sand and dust on land within the district so as to protect the amenity of the area.

(2) The effect of this local law is to establish requirements for the management and control of sand and dust on land within the district.

**1.4 Application**

This local law applies throughout the district.

**1.5 Interpretation**

(1) In this local law, unless the context otherwise requires—

**Act** means the *Local Government Act 1995*;

**AQMP** means an air quality management plan, being a written strategy for minimising the negative impact of dust and smoke upon local air quality, incorporating the principles within the latest version of the publication 'Land Development Sites and Impacts on Air Quality—A guideline for the prevention of dust and smoke pollution from land development sites in Western Australia', published by the Western Australian Department of Environmental Protection;

**AS** means an Australian Standard published by Standards Australia;

**authorised person** means a person appointed by the Council, pursuant to the provisions of Section 9.10(1) of the Act to perform all or any of the functions of an authorised person under this local law;

**builder** means

- (a) any person who holds, or will hold, a building licence issued in respect of building works on a building site, or
- (b) any person who has, or will have, effective control of a building site;

**building code** means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with the Code;

**building site** means any lot of land for which a building licence is current, but does not include a lot upon which there exists a commercial, industrial or residential building and—

- (a) the current building licence is issued in respect only of a pergola, patio, shed or other Class 10 building as classified by the Building Code; and
- (b) means of collection and removal of rubbish, satisfactory to the Council but other than that specified within these local laws, is in place;

**bush** has the same meaning as is given to it in the *Bush Fires Act 1954*;

**CEO** means the Chief Executive Officer or an acting Chief Executive Officer of the local government;

**construction work** means any work involving the placement, fitting together, manufacture or erection of the components of a building, and includes pouring of footings and slabs and placement of stumps or other floor supports;

**Council** means the Council of the local government;

**development site** means any lot of land upon which there is currently a development or subdivision approval, and any lot upon which construction

work, earthworks, clearing of scrub, trees or overgrowth or any other site works are taking or have taken place;

**district** means the district of the local government and includes any area placed under the jurisdiction of the local government pursuant to any written law;

**dust and sand** means granules or particles of rock, earth, clay, loam, silt and any other granular, or airborne particulate or like material, and includes gravel;

**erosion management plan** means a written strategy for minimising the likelihood of carriage by water or sand off any lot of land, incorporating the principles within the latest version of the publication '*Erosion and Sediment Control Manual for the Darling Range, Perth, Western Australia*', published by the Upper Canning/Southern Wungong Catchment Team;

**General Regulations** means the *Local Government (Functions and General) Regulations 1996*;

**land** includes any building or structures on the land;

**local government** means the Shire of Jerramungup;

**nuisance** means —

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

**occupier** means any person who, at the time the notice is served, is in control of any place or part of any place or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to a place to perform any work in relation to any place and includes a builder or contractor;

**person** includes persons, businesses, companies, firms, corporations and other commercial entities; and

**Street** means any highway or thoroughfare which the public are entitled to use, and includes the verge and other things including bridges and culverts appurtenant to it;

(2) Any other expression used in this local law and not defined shall have the meaning given to it in the Act.

(3) Where, under this local law a duty, obligation or liability is imposed on an 'owner or occupier' the duty shall be deemed to be imposed jointly and severally on each of the owner and occupier.

(4) Where, under this local law, an act is required to be done or forbidden to be done in relation to any land, the owner or occupier of the land has the duty of causing to be done the act so required to be done, or preventing from being done the act forbidden to be done.

(5) Where under this local law the local government is empowered to carry out actions or cause to be undertaken works as a consequence of the failure of any person to comply with the terms of a notice or other conduct, the right to enter land is at all times subject to the provisions of Part 3, Division 3 of the Act.

## **PART 2 — SAND DRIFT AND DUST**

### **2.1 Air quality management plans**

(1) When on any land, any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust are intended, the owner or occupier shall submit to the local government for its approval an AQMP.

(2) The AQMP shall be accompanied by a face sheet in the form of Schedule 1 and shall include information on the following areas —

- (a) introduction (program scope and objectives);
- (b) background (contextual information);
- (c) proposed work and potential impacts;
- (d) controls, triggers and contingencies; and
- (e) monitoring program and design.

(3) When deemed appropriate by the local government, a bond, to fund the cost of rectification, shall be lodged prior to approval of an AQMP.

(4) The local government may —

- (a) approve the AQMP;
- (b) approve the AQMP subject to such conditions as it considers appropriate; or

- (c) if it appears that the Plan is not adequate to effectively manage air quality issues and cannot easily be made to do so, or the detail required by Schedule 1 is not provided, refuse to approve the AQMP.
- (5) An owner or occupier shall not commence any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust or sand without the local government having approved an AQMP.
- (6) An owner or occupier who undertakes any earthworks, clearing of scrub, trees or overgrowth or any other site works when the local government has approved an AQMP shall comply with the provisions of that Plan and any conditions imposed.

## **2.2 Prevention of erosion and the escape of sand and dust**

An owner or occupier of any land shall take all practicable measures to ensure that—

- (a) no sand or dust is carried by water —
  - (i) off the particular lot or lots of land; or
  - (ii) directly or indirectly into any creek, stream, river or any other natural water course; and
- (b) no sand or dust is released from or escapes from the particular lot or lots, whether by means of wind or any other cause.

## **2.3 Notice may require specified action to prevent erosion and the escape of dust or sand**

- (1) Where it appears to an authorised person that sand or dust is escaping, being released or being carried, or is likely to escape, be released or be carried, from any land, the authorised person may, by notice in writing, direct the owner or occupier to, within a time specified in the notice—
  - (a) submit to the local government for its approval an Air Quality and/or Erosion Management Plan; or
  - (b) take such other actions as the authorised person considers necessary to prevent or minimise the escape, release or carriage of sand or dust from the land.
- (2) The Air Quality and/or Erosion Management Plans to which reference is made in subclause (1)(a) shall be accompanied by a face sheet in the form of Schedule 1.
- (3) The local government may—
  - (a) approve the Air Quality and/or Erosion Management Plan;
  - (b) approve the Air Quality and/or Erosion Management Plan subject to such conditions as it considers appropriate; or,
  - (c) if it appears that the Plan is not adequate to effectively manage air quality or erosion issues, whichever may be the case, and cannot easily be made to do so, or the detail required by Schedule 1 is not provided, refuse to approve the Air Quality and/or Erosion Management Plan.
- (4) A person who has been required to submit to the local government an Air Quality and/or Erosion Management Plan pursuant to sub clause (1)(a) shall not continue or commence any works on the land without the local government having approved the Air Quality and/or Erosion Management Plan.

## **2.4 Sand or dust which has escaped to be cleaned up**

When any sand and dust has been released, escaped or been carried from any land onto or through another person's land, an authorised person may, by notice in writing, direct the owner or occupier of the land from which the sand or dust has been released, escaped or been carried, within a time specified in the notice, clean up the sand and dust and make good any damage resulting from that release or escape.

# **PART 3—MISCELLANEOUS PROVISIONS**

## **3.1 Notices**

- (1) Where a notice, other than an infringement notice, is given under this local law, the notice must be in writing and set out—
  - (a) details of the offence committed;
  - (b) measures required to be taken;
  - (c) conditions which must be followed; and
  - (d) any deadline for compliance.
- (2) Where an authorised person serves a notice based on an opinion held by that person, the notice must also be accompanied by a written memorandum that—
  - (a) is signed by the authorised person;
  - (b) sets out the opinion reached by the authorised person; and
  - (c) includes the reasons for why the opinion is held.
- (3) Where an authorised person serves a notice based on an opinion or decision of the Council, the notice should also be accompanied by an extract of the minutes of the Council meeting at which the opinion or decision was formed.

(4) An extract provided under subclause (3) must show a sufficient record of the forming of the opinion or decision on which the notice is based.

(5) An extract provided under subclause (3) must be certified as a true and accurate copy by—

- (a) the CEO; or
- (b) another officer of the local government who has been delegated or authorised to do so.

## **PART 4—OBJECTIONS AND REVIEW**

### **4.1 Objections and review**

When the Council makes a decision under this local law and/or gives a person notice, the provisions of Division 1 of Part 9 of the Act and regulation 33 of the General Regulations shall apply.

## **PART 5—OFFENCES AND PENALTIES**

### **5.1 Offences**

(1) Any person who fails to comply with a notice, or 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) Any person who commits an offence under this local law is 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 for each day or part of a day during which the offence had continued.

### **5.2 Prescribed offences**

(1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

## **SCHEDULE 1—FACE SHEET**

[clause 2.1(2)]

<b>AIR QUALITY / EROSION MANAGEMENT PLAN</b> (Delete whichever is not applicable)				
<b>DETAILS OF LAND</b>				
Street		Lot No.		
Locality				
<b>OWNER DETAILS</b>				
Name				
Address				
Telephone No.	Office/Home		Mobile	
<b>CONTRACTOR/S DETAILS</b>				
Contractor Name				
Address				
Office Telephone No.		Fax No.		Email
<b>Supervisor Name</b>				
Mobile Telephone No.		Fax No.		Email
<b>After Hours Contact Details (for rectification works if necessary)</b>				
Name				
Telephone No.	Home		Mobile	
<b>Complaints Contact Details</b>				
Name				
Mobile Telephone No.			Email	

## **SCHEDULE 2 — Prescribed offences**

[clause. 5.2]

<b>Item</b>	<b>Clause</b>	<b>Description</b>	<b>Modified Penalty (\$)</b>
1	2.1(5)	Commencement of site works without the local government having approved an Air Quality Management Plan	300
2	2.1(6)	Failure to comply with the approved Air Quality Management Plan and or related approval conditions	300
3	5.1(1)	Failure to comply with a notice served by an authorised officer	300
4		All other offences not specified	250

Dated: 16 November 2011.

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

B. TREVASKIS, Shire President.  
W. PARKER, Chief Executive Officer.