

LOCAL GOVERNMENT ACT 1995

City of Rockingham

EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2011

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Rockingham resolved on 22 November 2011 to make the following local law.

1. Citation

This local law may be cited as the *City of Rockingham Extractive Industries Amendment Local Law 2011*.

2. Commencement

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

3. Principal local law

In this local law, the *City of Rockingham Extractive Industries Local Law 2000* published in the *Government Gazette* on 21 March 2001, is referred to as the principal local law. The principal local law is amended.

4. Clause 1.1 amended

In clause 1.1 insert in alphabetical order—

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;

5. Clause 2.3 amended

In clause 2.3(1)—

(a) after “of the land” insert “and any occupier of the land”;

(b) in paragraph (c)—

(i) in subparagraph (v) delete “and”

(ii) at the end of subparagraph (vi) insert “and”

(iii) after subparagraph (vi) insert—

(vii) how any face is to be made safe and batters sloped;

(c) in paragraph (i) delete “and”;

(d) in paragraph (j) delete “time.” and insert “time; and”

(e) after paragraph (j) insert—

(k) copies of any geotechnical information relating to the excavation site;
and

(l) written notification from the local government of planning approval to conduct the extractive industry.

6. Clause 3.1 amended

(1) In clause 3.1(1) delete “may refuse to consider” and insert “will not consider”.

(2) In clause 3.1(4)—

(a) in paragraph (a) delete “31st December” and insert “30 June”;

(b) in paragraph (b) delete “and”;

(c) in paragraph (c) delete “CEO,” and insert “CEO; and”;

(d) after paragraph (c) insert—

(d) a copy of the public liability insurance policy required under clause 7.1(1).

(3) In subclause (5) delete paragraphs (q) and (r) and insert—

(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.

7. Clause 3.2 amended

In clause 3.2 delete “31 December” and insert, “30 June”.

8. Clause 5.2 amended

In clause 5.2(1) delete “then” and insert—

then subject to the local government giving the licensee 14 days notice of its intention to do so—

9. Clause 6.1 amended

In clause 6.1—

- (a) in paragraph (c) delete “or”
- (b) in paragraph (d) delete “watercourse.” and insert “watercourse;”
- (c) after paragraph (d) insert—
- (e) the minimum clearance to the estimated water table stipulated by the Department of Water or otherwise as adopted by the local government.

10. Clause 6.2 amended

Delete clause 6.2 and insert—

6.2 Obligations of the licensee

A licensee shall—

- (a) 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;
- (b) erect and maintain warning signs along each of the 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”;
- (c) 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;
- (d) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government;
- (e) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site; and
- (f) otherwise comply with conditions imposed by the local government in accordance with clause 3.1.

Penalty \$5,000 for each offence, and if an 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.

11. Clause 6.3 amended

Renumber clause 6.3 as clause 6.4

12. Clause 6.3 inserted

After clause 6.2 insert—

6.3 Prohibitions

A licensee shall not—

- (a) 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 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 3.1;
- (b) 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; or
- (c) fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government.

Penalty \$5,000 for each offence, and if an 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.

13. Clause 7.1 amended

In clause 7.1(1) delete “\$10,000,000” and insert, “\$20,000,000”.

14. Clause 8.1 amended

In clause 8.1 delete “regulations 33 and 34” and insert, “regulation 33”.

15. Part 9 inserted

After clause 8.1 insert—

Part 9—Modified Penalties**9.1 Modified penalties**

- (1) An offence against a clause specified in the Schedule is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in the Schedule.

9.2 Forms

For the purposes of this local law—

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

16. Schedule inserted

After clause 9.2 insert—

Schedule—Prescribed Offences

Clause	Description	Modified Daily Penalty (\$)
2.1(a)	Excavate without a licence	500.00
2.1(b)	Carry on Extractive Industry without a licence or in breach of terms and conditions	500.00
6.1	Excavate not within boundary limits	500.00
6.2(a)	Gateways not kept locked where required	500.00
6.2(b)	Warning signs not erected or maintained as required	500.00
6.2(c)	Excavation area not drained of water adequately	500.00
6.2(d)	In breach of terms and conditions of licence	500.00
6.2(e)	Did not take reasonable steps to prevent the emission of dust , noise, vibration and other forms of nuisance on excavation site	500.00
6.2(f)	Did not comply with conditions in accordance to clause 3.1	500.00
6.3(a)	Remove trees or shrubs near boundary without approval	500.00
6.3(b)	Store without required approval explosive or explosive devices	500.00
6.3(c)	Fill or excavate in breach of licence	500.00
6.4(1)(a)	Blasting without approval of the local government	500.00
6.4(1)(b)	Blasting outside times authorised	500.00
6.4(1)(c)	Blasting in breach of AS2187 SAA Explosives Code, the <i>Mines Safety and Inspection Act 1994</i> , the <i>Environmental Protection Act 1986</i> and all relevant local laws of the local government	500.00
6.4(1)(d)	Blasting in breach of conditions imposed by the local government	500.00
6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	200.00
7.4(a)	Does not restore and reinstate excavated site in accordance with the local government or a manner local government may agree in writing	500.00
7.4(b)	Any face permitted to remain on excavation site is not left safe with all loose materials removed	500.00
7.4(c)	Agreed floor level of the excavation site is not graded to an even surface as approved by the local government	500.00
7.4(d)	Stockpiles of materials are left so that portions of material can escape onto other land, stream, watercourse or drain	500.00

Clause	Description	Modified Daily Penalty (\$)
7.4(e)	Retaining walls not erected where necessary to prevent subsidence of land	500.00
7.4(f)	Buildings, plant, equipment erected, installed or used and all holes remaining from the site are not removed or filled.	500.00
7.4(g)	Does not break up, scarify, cover with topsoil and plant with grass, trees and shrubs all parts of the site where buildings, plant and equipment erected or installed and all areas of site which were used for stockpiling	500.00

Dated: 28 November 2011.

The Common Seal of the City of Rockingham was affixed by authority of a resolution of the Council in the presence of—

BARRY SAMMELS, Mayor.

ANDREW HAMMOND, Chief Executive Officer.