

LG301*

LOCAL GOVERNMENT ACT 1995

City of Fremantle

ALFRESCO DINING LOCAL LAW 2014

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Fremantle resolved on 18 December 2013 to make the following Local Law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Fremantle Alfresco Dining Local Law 2014*.

1.2 Commencement

(1) 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 the local law is to provide for the regulation, control and management of alfresco dining areas in any public place within the district.

(2) The effect of this local law is to control alfresco areas so that they do not interfere with the safe and reasonable movement of pedestrians and vehicles as well as to encourage high quality alfresco dining to enhance amenity, vitality and ambience of the city.

1.4 Repeal

The following local laws are repealed on the day that this local law comes into operation—

- (1) *City of Fremantle Local Laws Relating to Outdoor Eating Areas* as published in the *Government Gazette* on 6 May 1998.

1.5 Transitional

A licence issued in accordance with the *City of Fremantle Local Laws Relating to Outdoor Eating Areas*—

- (a) is to be taken to be a licence granted under this local law;
- (b) is to be valid for the period specified in the license; and
- (c) may be earlier cancelled or suspended under this local law.

1.6 Application

This local law applies throughout the district

1.7 Interpretations

In this local law, unless the context otherwise requires—

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

“alfresco dining area” means an area in which tables, chairs and other structures are provided for the purpose of the supply of food or beverages or both to the public or the consumption of food or beverages or both by the public;

“alfresco dining” means outdoor dining or drinking or both in a public place;

“authorised person” means the CEO or any other person authorised by the City under section 9.10 of the Act to be an authorised person for the purposes of enforcing the provisions of this local law;

“CEO” means the Chief Executive Officer of the City;

“City” means the City of Fremantle;

“City property” means anything except a thoroughfare—

- (a) which belongs to the City;
- (b) of which the City is the management body under the *Land Administration Act 1997*; or
- (c) which is an “otherwise unvested facility” within section 3.53 of the Act;

“Council” means the Council of the City of Fremantle;

“district” means the district of the City of Fremantle;

“food business” has the same meaning as the *Food Act 2008*;

“fee” means a fee or charge imposed under sections 6.16 to 6.19 of the Act;

“furniture” means chairs, tables, waiter’s stations, planter boxes, umbrellas, screens, barriers, awnings, portable gas heaters and any other structure set up in the alfresco dining area;

“**Health Act**” means the *Health Act 1911*;

“**licence**” means a licence issued by the City under this local law to set up and conduct an alfresco dining area;

“**licence period**” means the period referred to in clause 2.9;

“**licence plan**” means a plan attached to and forming part of a licence depicting the parts of a street or public place within which an alfresco dining area may be set up and conducted;

“**licensee**” means a proprietor of a food business who holds a valid licence;

“**Liquor Control Act**” means the *Liquor Control Act 1988*;

“**local public notice**” has the meaning given to it in section 1.7 of the Act;

“**month**” means calendar month;

“**public place**” means any thoroughfare, pedestrian mall or City property;

“**proprietor**” has the same meaning as the *Food Act 2008*;

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

“**utility**” means any public or private body which provides an essential service, such as electricity, gas, water, drainage, sewerage, telecommunications or traffic control, and has equipment on, in or under a public place for that purpose;

“**valid**”, in relation to a licence issued under this local law, means current and for which all the associated fees have been paid in full; and

“**vehicle crossing**” means a crossing used by vehicles to allow access from a thoroughfare to private land or a private thoroughfare.

PART 2—LICENCE

2.1 Licence required

Unless exempt under clause 2.2, a person shall not set up or conduct an alfresco dining area in any public place—

- (a) other than in a portion of a public place adjoining a food business;
- (b) unless the person is the proprietor of a food business or is acting on behalf of the proprietor of a food business referred to in paragraph (a);
- (c) unless the person is the holder of a valid licence issued under this local law; and
- (d) other than in accordance with the licence plan and any terms and conditions set out in, or applying in respect of, the licence.

2.2 Exemptions

- (1) The city may exempt a person or class of persons in writing from the requirement to have a licence.
- (2) Any exemption in subclause (1) may be exercised—
 - (a) on the application of a person; or
 - (b) at the City’s discretion.
- (3) An exemption in subclause (1) may be given subject to any conditions the City sees fit.
- (4) An exemption may apply to, or in respect of—
 - (a) a particular event, street festival, carnival or activity approved by the City;
 - (b) particular goods or services; or
 - (c) a period of time.

2.3 Application for a licence

- (1) A person who is required to obtain a licence under this local law shall apply for the licence in accordance with subclause (2).
- (2) An application for a licence under this local law shall—
 - (a) be in the form determined by the City;
 - (b) be signed by the proprietor of a food business adjacent to the portion of the public place to which the application relates;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the City.
- (3) The City may require an applicant to provide additional information reasonably related to an application before determining the application.
- (4) The City may require an applicant to give local public notice of the application for a licence.

(5) The City may refuse to consider an application for a licence which is not in accordance with subclause (2) or where the applicant has not complied with subclauses (3) or (4).

2.4 Relevant considerations in determining application for licence

In determining an application for a licence, the City is to have regard to—

- (a) relevant policies of the City; and
- (b) any other matters that it considers to be relevant.

2.5 Decision on application for licence

(1) The City may, in respect of an application for a licence—

- (a) approve the application unconditionally or subject to any conditions; or
- (b) refuse to approve the application.

(2) Without limiting the scope of the City's discretion under subclause 1(b), the City may refuse an application for a licence if, in its opinion—

- (a) the proposed alfresco dining area does not conform with the requirements of the Health Act or any other written law;
- (b) the proposed alfresco dining area is undesirable;
- (c) the proposed furniture is unsuitable, in any respect, to the location in which the licence is to operate;
- (d) the proposed licensee has been convicted during the preceding five years of an offence against—
 - (i) this local law;
 - (ii) the City of Fremantle Local Laws Relating to Outdoor Eating Areas;
 - (iii) the Health Act;
 - (iv) the Liquor Control Act; or
 - (v) any other written law which affects alfresco dining; or
- (e) the proposed licensee is not a fit and proper person to hold a licence.

(3) If the City approves an application for a licence, it is to issue to the applicant a licence in the form determined by the City.

(4) If the City refuses to approve an application for a licence, it is, as soon as practicable after the decision is made—

- (a) to give the applicant written notice of, and written reasons for, the refusal; and
- (b) inform the applicant of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision.

(5) Where a clause of this local law refers to conditions which may be imposed on a licence of which are to be taken to be imposed on a licence, the clause does not limit the power of the City to impose other conditions on the licence under subclause (1)(a).

(6) Where a clause of this local law refers to the grounds on which an application for a licence may be refused, the clause does not limit the power of the City to refuse, the application for a licence on other grounds under subclause (1)(b).

2.6 Conditions which may be imposed on a licence

The City may approve an application for a licence subject to conditions relating to—

- (a) the area or location to which the licence applies;
- (b) the number, type, form and construction, as the case may be, of any furniture which may be used in the alfresco dining area;
- (c) the care, maintenance and cleaning of any furniture used in the alfresco dining area;
- (d) The removal and storage of furniture used in the alfresco dining area prior to the closure of the adjacent food business;
- (e) The requirement to maintain pedestrian access between the alfresco dining area and the adjacent food business;
- (f) The alfresco dining area not impeding or obstructing a public place used by either pedestrians or vehicles;
- (g) The requirement to maintain clear sight lines for vehicles entering or leaving a thoroughfare or a vehicle crossing;
- (h) The obtaining of public risk insurance in an amount and on the terms reasonably required by the City;
- (i) The grant of another approval, permit, licence or authorisation which may be required under any written law;
- (j) The duration and commencement of the licence;
- (k) The placement of advertising on furniture within the alfresco dining area;

- (l) The payment of all fees, charges, rates and taxes levied or incurred as a result of the establishment and operation of the alfresco dining area;
- (m) The payment of costs associated with the City preparing the public place for the use as an alfresco dining area including but not limited to the reshaping of footpaths and marking the boundaries of the alfresco dining area.

2.7 Compliance with conditions

Where—

- (a) an application for a licence has been approved subject to conditions; or
- (b) a licence is to be taken to be subject to conditions under this local law, the licensee shall comply with each of those conditions.

2.8 Amendment of licence conditions

- (1) A licensee may apply in writing to the City to amend any of the terms of conditions of the licence.
- (2) The City may, in respect of an application under subclause (1)—
 - (i) amend the licence, either in accordance with the application or otherwise as it sees fit; or
 - (ii) decline to amend the licence.
- (3) The City may, at any time, amend any of the terms and conditions of the licence.
- (4) If the City amends a licence under this clause, it is to notify the licensee in writing of the amendment as soon as practicable after the amendment is made and, unless otherwise specified in the amendment, the amended term or condition, or both, of the licence apply from the date of the notification
- (5) If the City amends a licence otherwise than in accordance with an application from the licensee, it is, as soon as practicable after the decision to amend is made—
 - (i) to give the licensee written notice of, and written reasons for, its decision to amend; and
 - (ii) inform the licensee of his or her rights, under part 9, Division 1 of the Act, to object to, and apply for a review of, the decision.

2.9 Duration of licence

A licence is valid for twelve months from the date on which it is issued, unless it is—

- (a) otherwise stated in this local law or in the licence; or
- (b) cancelled under clause 2.12

2.10 Renewal of licence

- (1) A licensee may renew the licence by paying the fee imposed and determined by the City.
- (2) The provisions of the local law relevant to the licence which is to be renewed shall apply, with such modifications as are required, to an application for the renewal of a licence.

2.11 Transfer of licence

- (1) An application for the transfer of a valid licence is to—
 - (a) be in the form determined by the City;
 - (b) provide the information required by the form or by any other clause of this local law;
 - (c) be signed by the licensee and the proposed transferee of the licence; and
 - (d) be forwarded to the City together with any transfer fee imposed and determined by the City.
- (2) The City may refuse to consider or determine an application for the transfer of a licence, which is not in accordance with subclause (1).
- (3) The City may approve an application for the transfer of a licence, refuse to approve it or approve it subject to such terms and conditions as it sees fit, and if it is approved, the proposed transferee shall become the licensee from the date of the approval.

2.12 Cancellation of suspension of licence

- (1) A licence may be cancelled by the City on any one or more of the following grounds—
 - (a) the licensee has not complied with—
 - (i) a condition of the licence; or
 - (ii) a provision of this local law or any other written law which may relate to the activity regulated by the licence;
 - (b) if it is relevant to the activity regulated by the licence—
 - (i) the licensee is an undischarged bankrupt, or is in liquidation;

- (ii) the licensee has entered into a composition arrangement with creditors; or
 - (iii) a manager, administrator, trustee, receiver, or receiver and manager, is appointed in relation to any part of the licensee's undertakings or property;
- (c) the proprietor of the food business changes;
 - (d) the setting up or conduct of the alfresco dining area, or the behaviour of customers within the alfresco dining area, is causing a nuisance.
- (2) The City may cancel or suspend a licence if the City or a utility requires access to or near the place to which a licence applies, for the purposes of the carrying out works in or near the vicinity of that place.
- (3) If the City cancels or suspends a licence under this clause, it is, as soon as practicable after the decision is made—
- (a) to give the licensee written notice of, and reasons for, the decision; and
 - (b) inform the licensee of his or her rights, under part 9, Division 1 of the Act, to object to, and apply for review of, the decision; and
 - (c) the cancellation or suspension takes effect from the date on which the licensee is served with the cancellation or suspension notice.
- (4) On the cancellation of a licence, the licensee shall return the licence as soon as practicable to the City.
- (5) On the cancellation or suspension of a licence, the licensee is, subject to subclause (6), to be taken to have forfeited any fees paid in respect of the licence.
- (6) Where a licence is cancelled or suspended through no fault of the licensee, the City may refund to the licensee all or part of the licence fee in respect of what would otherwise have been the balance of the terms of the licence.

2.13 Display and production of licence

- (1) A licensee shall produce to an authorised person his or her valid licence immediately on being required to do so by an authorised person.
- (2) A licensee shall display his or her valid licence in accordance with the conditions set out in the licence.

PART 3—OBJECTIONS AND APPEALS

3.1 Application of Part 9 Division 1 of the Act

- (1) Where the City makes a decision as to whether it will—
 - (a) grant an application for a licence;
 - (b) vary cancel or suspend a licence; or
 - (c) impose or amend a condition to which a licence is subject,
 the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply to that decision.
- (2) Under these provisions, an affected person may have the right to object to, or to appeal against, a decision of the City.

PART 4—ENFORCEMENT

4.1 Direction of authorised person to be obeyed

- (1) A licensee who is given a lawful direction by an authorised person or a member of the W.A. Police shall comply with that direction.
- (2) A licensee shall not obstruct or hinder an authorised person in the performance of that person's duties.

4.2 Notice to repair damage to public place

Where any portion of a public place has been damaged as a result of the use of that public place as an alfresco dining area, the City may, by notice to the licensee, order the licensee to repair or replace that portion of the public place to the satisfaction of the City.

4.3 City may undertake requirements of notice

If a person fails to comply with a notice under clause 4.2, the City may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

4.4 Removal and impounding of goods

Where an alfresco dining area is conducted without a licence or in contravention of a condition of a licence, any furniture may be removed and impounded by an authorised person under regulation 29 of the Regulations.

4.5 Public access

No person shall set up or conduct an alfresco dining area that prohibits public access to that area unless that area is located on private land.

4.6 Offences

(1) A 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 against a clause specified in the First Schedule of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.

(3) A person who commits an offence under this local law shall be liable, on conviction—

- (a) 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 of part of a day during which the offence has continued.

4.7 Infringement and infringement withdrawal notice

For the purposes of this local law—

- (a) the form of the infringement notice referred to in section 9.17 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

4.8 Offence description and Modified Penalty

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.

4.9 Authorised persons

Unless expressly state otherwise by the City, a person appointed by the City to be an authorised person for the purposes of this local law is taken to have also been appointed by the city to be an authorised person for the purposes of sections 9.13 and 9.16 of the Act in relation to offences against this local law.

First Schedule

City of Fremantle

ALFRESCO DINING LOCAL LAW 2014

OFFENCES AND MODIFIED PENALTIES

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
1	2.1	Set up or conduct an alfresco dining area without a valid licence	300
2	2.7	Failure to comply with a condition of licence	100
3	2.13 (1)	Failure to produce to an authorised person a valid licence when requested to do so	100
4		Other offences not specified	100

Dated: 14 July 2014.

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

GLEN DOUGALL, Acting Chief Executive Officer.
BRAD PETTITT, Mayor.

LG301*

LOCAL GOVERNMENT ACT 1995

City of Nedlands

SITE EROSION AND SAND DRIFT LOCAL LAW 2014

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Nedlands resolved on *22 July 2014* to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Nedlands Site Erosion and Sand Drift Local Law 2014*.

1.2 Commencement

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

1.3 Purpose

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

1.4 Application

This local law shall apply throughout the district.

1.5 Repeal

The *City of Nedlands Local Law Relating to Site Erosion and Sand Drift*, as published in the *Government Gazette* on 21 February 2000, is repealed.

1.6 Interpretation

(1) 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 perform any of the functions of an authorised person under this local law;

builder means—

(a) Any person who holds, or will hold, a building permit 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 by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published within the code;

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

(a) the current building permit 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 local government but other than that specified within these local laws, is in place;

CEO means the 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 or incidental structure, and includes pouring of footings and slabs and placement of stumps or other floor supports;

Council means the council of the local government;

district means the district of the local government;

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

Erosion Management Plan means a written strategy for minimising the likelihood of carriage by water or wind of 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;

land includes any building or structures on the land;

local government means the City of Nedlands;

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;

- (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 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, an 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, undertake 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—SITE EROSION AND DUST

2.1 Prevention of erosion and the escape of sand and dust

An owner or occupier of land must take practicable measures to—

- (a) stabilise sand on the land; and
- (b) ensure no sand or dust is released from or escapes from the land, whether by means of wind, water or any other cause.

2.2 Notice may require specified action to prevent erosion and the escape of dust or sand

- (1) Where the local government or an authorised person is satisfied that—
 - (a) an owner or occupier of land has not complied with cl. 2.1; or
 - (b) sand or dust is escaping, being released or being carried, or is likely to escape, be released or be carried, from any land,the local government or an authorised person may, by notice in writing, direct the owner or occupier to, within a time specified in the notice—
 - (c) comply with subclause 2.1;
 - (d) clean up and make good any damage resulting from the release or escape of dust or sand from the land; or
 - (e) take such other actions or comply with such other conditions as the local government or authorised person considers necessary to prevent or stop the escape, release or carriage of sand or dust from the land, as stipulated in the notice.
- (2) An owner or occupier of land to whom a notice is issued under subclause (1) shall comply with the requirements of the notice within the time specified in the notice.

PART 3—MISCELLANEOUS PROVISIONS

3.1 Authorised person

- (1) A person must not prevent or impede a duly authorised officer or employee of the local government from carrying out his or her duties under this local law.
- (2) The local government may delegate any of its powers, functions and duties under this local law to the CEO or an authorised person, not including its powers of delegation.

PART 4—OBJECTIONS AND REVIEW

4.1 Objections and review

When the local government or an authorised person gives a person a notice under clause 2.2(1), the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply.

PART 5—OFFENCES AND PENALTIES

5.1 Offences

- (1) Any person who—
 - (a) fails to comply with a notice issued under clause 2.2(1);
 - (b) fails to do anything required or directed to be done under this local law; or

(c) 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 1 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 1.

PART 6—INFRINGEMENT NOTICES

6.1 Form of notices

(1) The form of the infringement notice referred to in section 9.17 of the Act is Form 2 in the First Schedule of the *Local Government (Functions and General) Regulations 1996* and

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

SCHEDULE 1—PRESCRIBED OFFENCES

[clause 5.2]

PRESCRIBED OFFENCES

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
5.1(1)(a)	Failure to comply with a notice served by local government or authorised officer	500

Dated 22 July 2014.

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

MAX HIPKINS, Mayor.
GREG TREVASKIS, Chief Executive Officer.

!2014119GG!



WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041



PERTH, TUESDAY, 5 AUGUST 2014 No. 119

SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 12.30 PM

© STATE OF WESTERN AUSTRALIA

LOCAL GOVERNMENT ACT 1995

**SHIRE OF
AUGUSTA-MARGARET RIVER**

**EXTRACTIVE INDUSTRIES
LOCAL LAW 2014**

LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA-MARGARET RIVER

EXTRACTIVE INDUSTRIES LOCAL LAW 2014

TABLE OF CONTENTS

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Commencement
- 1.3 Application
- 1.4 Definitions

**PART 2—LICENSING REQUIREMENTS FOR AN
EXTRACTIVE INDUSTRY**

- 2.1 Extractive Industries Prohibited without Licence
- 2.2 Application for Licence

PART 3—DETERMINATION OF APPLICATION

- 3.1 Determination of Application

PART 4—TRANSFER AND CANCELLATION OF LICENCE

- 4.1 Transfer of Licence
- 4.2 Cancellation of Licence

**PART 5—LIMITATIONS, OBLIGATIONS OF THE LICENSEE
AND PROHIBITIONS**

- 5.1 Blasting

PART 6—MISCELLANEOUS PROVISIONS

- 6.1 Public Liability
- 6.2 Mines Safety and Inspection Act and Environmental Protection Act

PART 7—OBJECTIONS & APPEALS

- 7.1 Objections and Appeals

PART 8—MODIFIED PENALTIES

- 8.1 Prescribed Offences in the Schedule
- 8.2 Modified Penalties Amount
- 8.3 Forms

SCHEDULE

Prescribed Offences

LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA-MARGARET RIVER

EXTRACTIVE INDUSTRIES LOCAL LAW 2014

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the local government of the Shire of Augusta Margaret River resolved on 9 April 2014 to adopt the following local law.

PART 1—PRELIMINARY

Citation

1.1 This local law may be cited as the *Shire of Augusta Margaret River Extractive Industries Local Law 2014*.

Commencement

1.2 This Local Law will come into operation 14 days after the day on which it is published in the *Government Gazette*.

Application

1.3 (1) The provisions of this local law—

(a) subject to paragraphs (b), (c) and (d);

(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; and

(d) 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 sub-clause (1)(d) land includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in sub-clause (1)(d).

Definitions

1.4 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;

land, unless the context otherwise requires, means the land on which the applicant proposes carrying on the extractive industry to which the licence application relates;

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 Augusta Margaret River;

local planning scheme has the meaning given to it in the *Planning and Development Act 2005*;

occupier has the meaning given to it in the Act;

owner has the meaning given to it in the Act;

planning approval means an approval for a development and/or a land use that is issued under a local planning scheme administered by the local government;

person does not include the local government;

Schedule means a schedule to this local law; and

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

PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

Extractive Industries Prohibited Without Licence

2.1 A person must not carry on an extractive industry—

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

Application for Licence

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

- (a) The prescribed application fee as prescribed by the local government.
- (b) A site plan, including a plan of the area of extraction at a scale of not less than 1:1000, and including the following will be required—
 - (i) area depth and volume of extraction (existing and proposed final contours at 1 metre intervals);
 - (ii) 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 existing and surrounding land uses;
 - (v) existing vegetation, wetlands and watercourses, and distance to the proposed area of extraction;
 - (vi) area, height and volume of material and top soil stockpiles; and
 - (vii) the location of any buildings associated with the proposal.
- (c) A report will also be required to accompany the above plans, detailing the following—
 - (i) type of material to be excavated;
 - (ii) details of methods of extraction, including any crushing or blasting, or whether extraction only;
 - (iii) hours of operation (including crushing, blasting and excavation);
 - (iv) storage of chemicals;
 - (v) estimated completion date;
 - (vi) type of equipment to be used including size of trucks and machinery;
 - (vii) maintenance and any refueling of trucks on site;
 - (viii) number of truck movements per day/week;
 - (ix) details of staging;
 - (x) proposed haulage routes and destinations; and
 - (xi) proposed road warning signage.
- (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) proposed end use of site;
 - (v) 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);
 - (vi) assessment of the risk of spreading *Phytophthora* dieback and management techniques appropriate to that level of risk;
 - (vii) management techniques to address potential conflict with surrounding landuses and protection of environmental attributes; and
 - (viii) any other assessment the local government may require, including Aboriginal and European Heritage considerations if within a known area of significance.

PART 3—DETERMINATION OF APPLICATION

Determination of Application

3.1 (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 an 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 sub-clause (2).
- (4) Subject to sub-clause (5) 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) The local government shall not refuse an application where—
- (a) the prescribed fee is paid;
 - (b) the application contains the information and documentation required by clause 2.2; and
 - (c) the report required by clause 2.2(1)(d) demonstrates how the listed environmental considerations will be satisfactorily addressed.

PART 4—TRANSFER AND CANCELLATION OF LICENCE

Transfer of Licence

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

Cancellation of Licence

- 4.2 (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; or
 - (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
 - (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;
 - (d) failed to have a current public liability insurance policy under clause 6.1(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 6.1(2).
- (2) Where the local government cancels a licence under this clause—
- (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; and
 - (c) the local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

PART 5—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

Blasting

- 5.1 (1) A person shall 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; 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 \$5000 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 shall 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 \$2000

PART 6—MISCELLANEOUS PROVISIONS

Public Liability

6.1 (1) A licensee shall 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 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

6.2 (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 shall—

- (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 7—OBJECTIONS & APPEALS

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

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

PART 8—MODIFIED PENALTIES

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

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

Forms

8.3 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*.

SCHEDULE—PRESCRIBED OFFENCES

Item	Clause	Description	Modified Penalty \$
1	2.1	Carry on extractive Industry without licence or in breach of terms and conditions	350
2	5.1(1)(a)	Blasting without approval of the local government	250
3	5.1(1)(b)	Blasting outside times authorised	350
4	5.1(1)(d)	Blasting in breach of conditions imposed by the local government	350
5	5.1(2)	Blasting without approval on Saturday, Sunday or public holiday	250

Dated: 9 April 2014.

The Common Seal of the Shire of Augusta Margaret River was affixed under the authority of a resolution of the Council in the presence of—

MICHAEL SMART, Shire President.
ANNETTE RIORDAN, Acting Chief Executive Officer.
