

**WINTON SHIRE COUNCIL
(EXTRACTIVE INDUSTRIES) LOCAL LAW NO. 8**

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WINTON SHIRE COUNCIL (EXTRACTIVE INDUSTRIES) LOCAL LAW NO. 8

PART 1 - PRELIMINARY

Citation

1. This local law may be cited as Winton Shire Council (Extractive Industries) Local Law No. 8.

Objects

2. The objects of this local law are to -
 - (a) require compliance with essential standards of public safety in the conduct of extractive industries; and
 - (b) reduce the impact of extractive industries on public infrastructure to a reasonable level; and
 - (c) protect the natural and built environment from the impact of extractive industries by visual and acoustic screening and other practicable measures.

Definitions

3. In this local law -

"Act" means the *Local Government Act 1993*;

"Area" means the area of the Shire of Winton;

"authorised person" means -

- (a) the Chief Executive Officer; and
- (b) a person authorised by the Local Government to exercise the powers of an authorised person under this local law;

"Chief Executive Officer" means the Local Government's Chief Executive Officer;

"compliance notice" see section 14;

"extractive industry" means an industry for the recovery or processing of extractive

materials;

"extractive materials" means soil, sand, gravel, rock, stone or other materials extracted from the earth but does not include regulated substances;

"Local Government" means Winton Shire Council;

"operator" means a person who carries on (or proposes to carry on) an extractive industry (and includes a person whose permit to carry on the industry is under suspension or has been cancelled);

"Planning Scheme" means Winton Shire Council Planning Scheme;

"regulated substance" means -

- (a) coal as defined in the *Coal Mining Act 1925*; or
- (b) mineral as defined in the *Mineral Resources Act 1989*; or
- (c) petroleum as defined in the *Petroleum Act 1923*;

"site" means a place where an extractive industry is carried on.

Application of this local law

4. This local law does not apply to operations that are regulated by -
- (a) the *Coal Mining Act 1925*; or
 - (b) the *Mineral Resources Act 1989*; or
 - (c) the *Petroleum Act 1923*.

PART 2 - APPROVAL TO OPERATE EXTRACTIVE INDUSTRIES

Requirement to hold permit

5. A person must not carry on an extractive industry unless authorised by a permit under this Part.

Maximum Penalty - 850 penalty units

Application for permit

6. An application for a permit must include or be accompanied by -

- (a) details of –
 - (i) the nature and location of the proposed operations; and
 - (ii) the extent and duration of the proposed operations and, if the operations are to be carried out in stages, the extent and duration of each stage of the operations; and
 - (iii) the number and the height of stockpiles to be produced in the course of the operations; and
 - (iv) the vehicles that are to be used to transport the extractive materials and the proposed haulage routes; and
- (b) if the applicant for the permit is not the owner of the land on which operations under the permit are to be carried out - the written consent of the owner of the land; and
- (c) if approval of the operations is required under another law - a certified copy, or other appropriate evidence, of the approval; and
- (d) any prescribed fee¹; and
- (e) other information and materials as required by local law policy.

Grant of permit

7.

- (1) The Local Government may grant an operator a permit authorising the operation of an extractive industry if it is satisfied that the operation of the industry would be consistent with the objects of this local law and any criteria laid down by local law policy.
- (2) A local law policy may specify criteria with which an extractive industry must comply.

Authorisation conferred by permit

¹

See section 19 of the Local Government's (Administration) Local Law No.1.

8.

- (1) A permit authorises the operator to carry on an extractive industry in accordance with the conditions of the permit.
- (2) However, a permit does not authorise the use of a particular piece of land for an extractive industry or operations of a particular kind on a particular piece of land².

Term of permit

9.

- (1) A permit is granted for a term specified in the permit.
- (2) The Local Government may, from time to time, on application by the operator and upon payment of any prescribed fee³, renew the permit.

Conditions of permit

10.

- (1) A permit, or the renewal of a permit, may be granted on conditions the Local Government considers appropriate.
- (2) The conditions of a permit may, for example -
 - (a) require the operator to take specified measures to protect the safety of persons working on the site and others;
 - (b) regulate access to the site;
 - (c) require the fencing of the site and stockpiles of extractive materials;
 - (d) regulate the accumulation of water on the site;
 - (e) regulate the time when operations or specific aspects of the operations (such as blasting) may be carried out;
 - (f) require the operator to take specified action to prevent or minimise pollution

² The question whether a particular piece of land may be used for the purposes of an extractive industry, or whether operations of a particular kind may be carried out on a particular piece of land, is to be determined under the *Integrated Planning Act 1997* and, where necessary, a development permit for the relevant purpose must be obtained under the *Integrated Planning Act 1997*.

³ See section 19 of the Local Government's (Administration) Local Law No.1.

(including pollution of land, water or air and noise pollution);

- (g) require the operator to plant and maintain vegetation to screen the site and prevent or minimise visual pollution;
 - (h) require the operator to take action to rehabilitate land affected by the operations carried out under the permit;
 - (i) require the operator to give security for compliance with the conditions of the permit;
 - (j) require the operator to keep specified records containing information of a specified kind.
- (3) However, the conditions of the permit must be consistent with the conditions of any statutory authorisation or approval for the establishment of the extractive industry.
- (4) The Local Government may, by local law policy, prescribe conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

Compliance with conditions of permit

11. An operator must ensure that the conditions of the permit are complied with.

Maximum penalty - 500 penalty units.

Power to change conditions of permit

12.

- (1) The Local Government may, by written notice given to an operator, change⁴ the conditions of the operator's permit.
- (2) The Local Government may only change conditions of a permit in accordance with this section if -
- (a) the operator agrees to the proposed change; or
 - (b) the Local Government -
 - (i) has given the operator reasonable written notice of the proposed

⁴

A "change" to the conditions of a permit includes a change by omission, substitution or addition (see *Acts Interpretation Act 1954*, section 36).

change inviting the operator to make written representations about the proposed change within a reasonable period fixed in the notice; and

- (ii) if the operator makes written representations within the time allowed in the notice - has taken the representations into account.

PART 3 - ENFORCEMENT

Inspection

13.

- (1) An authorised person may enter⁵ land on which an extractive industry is carried on -
 - (a) to observe and record operations on the site; and
 - (b) to find out whether the requirements of this local law are being complied with.
- (2) A person who is apparently in charge of operations on the land must, if asked by the authorised person, produce for inspection records the operator is required to keep under the conditions of the permit.

Maximum penalty - 20 penalty units.

Compliance notices

14.

- (1) If the operator contravenes a provision of this local law or a condition of the permit, an authorised person may give the operator a written notice (a "**compliance notice**") under this section.
- (2) A compliance notice may -
 - (a) if the contravention is of a continuing or recurrent nature - require the operator to stop the contravention; and
 - (b) whether or not the contravention is of a continuing or recurrent nature - require the operator to take specified action, within a time specified in the notice, to remedy the contravention.

⁵

For power to enter premises, see Chapter 15, Parts 4 & 5 of the Act.

- (3) The operator must comply with a notice under this section.

Maximum penalty - 500 penalty units.

Local Government's power to have work carried out

15. If an operator fails to have work required by a compliance notice carried out, the Local Government may itself have the work carried out⁶.

Recovery of costs

16.

- (1) The Local Government may enter⁷ land to perform work under section 1066 of the Act.
- (2) The amount properly and reasonably incurred by the Local Government in performing the work is recoverable from the owner of the relevant land (together with interest⁸) under sections 1066, 1067 and 1068 of the Act.

Suspension or cancellation of permit

17.

- (1) If -
- (a) an operator fails to remedy contravention of a permit within the time allowed in a compliance notice; or
- (b) the conduct of an extractive industry creates, in the opinion of the Local Government, a serious risk to life or property, or a public nuisance,

the Local Government may, by written notice to the operator, suspend or cancel the permit.

- (2) However, before the Local Government suspends or cancels a permit under this section, the Local Government must -
- (a) give written notice to the operator of the proposed suspension or

⁶ See section 1066 of the Act.

⁷ For the power to enter premises, see Chapter 15, Parts 4 and 5 of the Act.

⁸ Section 1067(2) of the Act provides for the payment of interest on the same basis as for an overdue rate.

cancellation; and

- (b) allow the operator a period stated in the notice (which must be at least 14 days from when the notice is given) to make written representations to the Local Government about the proposed suspension or cancellation; and
 - (c) consider representations made in response to the notice.
- (3) The Local Government is not required to comply with section 17.(2) of this local law in the case of imminent risk to the safety of life or property.

PART 4 - LOCAL LAW POLICIES

Local law policies

18. The Local Government may make local law policies in relation to those matters about which this local law specifically allows for the making of local law policies.