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**WESTERN
AUSTRALIAN
GOVERNMENT
Gazette**

ISSN 1448-949X (print)

ISSN 2204-4264 (online)

PRINT POST APPROVED PP665002/00041



PERTH, THURSDAY, 17 AUGUST 2017 No. 162 SPECIAL

PUBLISHED BY AUTHORITY KEVIN J. McRAE, GOVERNMENT PRINTER AT 12.00 NOON

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LOCAL GOVERNMENT ACT 1995

**SHIRE OF SERPENTINE
JARRAHDALÉ**

**DUST AND BUILDING WASTE
LOCAL LAW 2017**

LOCAL GOVERNMENT ACT 1995

SHIRE OF SERPENTINE JARRAHDALÉ

DUST AND BUILDING WASTE LOCAL LAW 2017

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LOCAL GOVERNMENT ACT 1995

SHIRE OF SERPENTINE JARRAHDALÉ

DUST AND BUILDING WASTE LOCAL LAW 2017

Under the powers conferred by the *Local Government Act 1995*, and all other powers enabling it, the Council of the Shire of Serpentine Jarrahdale resolved on 24 July 2017 to make this local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Serpentine Jarrahdale Dust and Building Waste Local Law 2017*.

1.2 Repeal

The *Shire of Serpentine Jarrahdale Dust and Sand Local Law 2008* published in the *Government Gazette* on 16 November 2009 is repealed.

1.3 Commencement

This local law comes into operation 14 days after the day on which it is published in the *Government Gazette*.

1.4 Application

This local law applies throughout the district.

1.5 Interpretation

(1) In this local law, unless the contrary intention appears—

Act means the *Local Government Act 1995*;

authorised person means a person authorised by the Shire under section 9.10 of the Act to perform any of the functions of the Shire under this local law;

building site means a site on which building works or construction works are being, or are proposed to be, undertaken;

building waste means builders rubble, demolition waste and other waste, from or in connection with a building site;

building works means building works in respect of which a building permit or demolition permit is required under the *Building Act 2011*;

CEO means Chief Executive Officer of the Shire;

development means the development or use of any land, including—

(a) any demolition, erection, construction, alteration of or addition to any building or structure on the land; and

(b) the carrying out on the land of any excavation or other works;

district means the district of the Shire and includes any area placed under the jurisdiction of the Shire under any written law;

dust means any visible granular or particulate material which has or has the potential to become airborne and includes organic matter and sand, but does not include smoke;

dust generating development means a development referred to in clause 3.1 of this local law;

dust management plan means a plan referred to in Part 3 of this local law;

equipment means equipment, machinery or vehicles used for or in connection with the development of land;

extractive industry means an industry which involves the activity of extraction of sand, gravel, clay, soil, rock, stone or similar substance from land, and includes—

(a) the management of products from any of those materials when the manufacture is carried out on the land from which any of the materials so used is extracted or on land adjacent to that land; and

(b) the storage of such materials or products;

land includes any land, premises, building or other structure on the land;

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) an interference which causes material damage to land or other property on the land affected by the interference;

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

owner has the same meaning given to it in the Act;

person in charge means the person on or near a site who appears to the Shire to be the person apparently in charge of a dust generating development on the site;

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

Shire means the Shire of Serpentine Jarrahdale;

sand means any granular or particulate material consisting of rocks finer than gravel, and includes dust and organic matter;

sand drift means the movement of sand, sediment and similar materials across, within or along a surface;

street means a thoroughfare which the public is entitled to use, and includes every part of the thoroughfare, including the verge and other things including bridges and culverts appurtenant to it; and

waste has the meaning given to it in section 3(1) of the *Waste Avoidance and Resource Recovery Act 2007*.

(2) Where, under this local law, a duty or liability is imposed on an owner, the duty or liability, as the case may be, is deemed to be imposed jointly and severally on each of the owner and occupier.

(3) Where, under this local law, an act is required to be done in relation to any land, the owner and occupier of the land must each cause that act to be done.

(4) Where, under this local law, an act is forbidden to be done in relation to any land, the owner and occupier of the land must each prevent that act from being done.

(5) Where this local law refers to the giving of notice, this is to be given as set out in sections 9.50, 9.52 and 9.53 of the Act. and in the form determined by the Shire from time to time.

PART 2—GENERAL CONTROL MEASURES

2.1 Dust, sand and sand drift control measures

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

- (a) stabilise dust and sand on the land;
- (b) ensure that no dust, sand or sand drift is released or escapes from the land whether by means of wind, water or any other cause; and
- (c) notify the owners or occupiers of adjoining land in writing 48 hours prior to the commencement of any activity that has the potential to cause the release or escape of dust or sand from the land giving details of—
 - (i) the nature of the activity;
 - (ii) the proposed time and location of the activity; and
 - (iii) the name of the person responsible for carrying out the activity and how and where that person may be contacted.

2.2 Building waste control measures

(1) A person must not commence or continue, or permit the commencement or continuation of, building works on a building site unless—

- (a) an Approved Receptacle is provided and maintained on the building site;
- (b) all building waste is placed, and kept securely, in the Approved Receptacle;
- (c) the lid of the Approved Receptacle is kept securely in place at all times except when building waste is being placed in, or removed from, the Approved Receptacle; and
- (d) the Approved Receptacle is maintained in an effective and operable condition.

(2) In this clause—

Approved Receptacle means—

- (a) a receptacle with a capacity of at least 4 cubic metres with a lid;
- (b) a wire enclosure with a capacity of at least 4 cubic metres with a lid; or
- (c) any other receptacle or container, with a lid, that is approved by the Shire or an authorised person.

2.3 Escape of loads being transported

(1) A person must not drive a vehicle carrying a load from a dust or sand generating development, or a building site, unless effective measures have been taken to ensure that the load, or any part of it, cannot escape from the vehicle.

(2) In this clause—

load includes any material or other thing used in connection with the load; and
vehicle has the meaning given to it in the *Road Traffic Code 2000*.

PART 3—DUST MANAGEMENT PLANS

3.1 Dust generating development

(1) A dust generating development is a development that—

- (a) has been authorised, or requires authorisation, under an application for subdivision approval for land exceeding an area of 5,000 square metres;
- (b) is an extractive industry; or
- (c) is determined by the Shire, under this clause, to be a dust generating development.

(2) The Shire may determine that a development which—

- (a) is proposed to be carried out, or is being carried out; and
- (b) involves or may involve a significant risk of the release or escape of dust or sand affecting adjoining land,

is a dust generating development.

(3) Examples of proposed developments for the purpose of subclause (2) are those that are the subject of—

- (a) an application for subdivision approval for land having an area of 5,000 square metres or less;
- (b) an application for planning approval under a town planning scheme of the Shire; or
- (c) an application for a building permit or a demolition permit.

(4) Written notice of a determination made under subclause (2) is to be given, in whatever form the Shire considers to be appropriate, to—

- (a) the owner or occupier of the land on which the dust generating development is to be carried out or is being carried out;
- (b) a contractor or developer carrying out the dust generating development;
- (c) an applicant for approval for, or in relation to, the dust generating development; or
- (d) the person in charge.

3.2 Requirement for a dust management plan

(1) A person must not commence or carry out a dust generating development unless—

- (a) a dust management plan, in a form approved by the Shire, has been lodged with the Shire;
- (b) the Shire has approved the dust management plan; and
- (c) the person complies with any condition to which the approval is subject.

(2) Subclause (1) does not apply to an existing extractive industry until a period of 6 months has elapsed from the date that this local law comes into operation.

(3) In subclause (2)—

existing extractive industry means an extractive industry that is operating on, or has been operating before, the date on which this local law comes into operation.

3.3 Content of dust management plan

A dust management plan must—

- (a) specify the nature and extent of the development;
- (b) identify the dust and sand exposure risks associated with that development;
- (c) specify the measures that are proposed to be taken to address the risks;
- (d) specify targets for maximum atmospheric concentrations of dust;
- (e) specify the measures to be taken for the monitoring of dust including, where appropriate, professionally monitored dust measuring devices to be stationed at the dust generating development site;
- (f) be signed by the owner of the land which is the subject of the dust generating development; and
- (g) be given to the Shire and accompanied by whatever plans, documents or other information as the Shire may reasonably require.

3.4 Assessing a dust management plan

(1) The Shire may—

- (a) refuse to consider a dust management plan that does not comply, or in its opinion does not adequately comply, with the requirements of this Part; and
- (b) require the owner or occupier to provide further plans, documents or other information to enable it to properly assess the dust management plan.

(2) In assessing a dust management plan, the Shire may—

- (a) consult with any person or body; and
- (b) have regard to any relevant publications from the Department of Water and Environmental Regulation or other relevant State Authority.

(3) The Shire may refuse to approve or may approve a dust management plan.

(4) The Shire may—

- (a) impose whatever conditions it considers appropriate in granting approval; and
- (b) limit the period during which the approval is to be valid.

3.5 Other situations where a dust management plan required

Where it appears to an authorised person that dust or sand 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, within a time specified in the notice, to submit to the Shire for its approval a dust management plan.

PART 4—NOTICES

4.1 Notice to comply

(1) This clause applies where the Shire is of the opinion that—

- (a) an owner or occupier has not complied with clause 2.1(a) or (b);
- (b) dust or sand or building waste has been released or escaped from the owner's or occupier's land, or
- (c) a person has not complied with a term or condition of an approved dust management plan.

(2) Where the Shire is of the opinion referred to in subclause (1), it may give to the owner or occupier of the land, or the person who has not complied, a notice requiring the owner or occupier, or other person, to do one or more of the following—

- (a) comply with clause 2.1(a) or (b);
- (b) clean up and properly dispose of any released or escaped dust, sand or building waste;
- (c) comply with the terms and conditions of the approved dust management plan;
- (d) clean up and make good any damage resulting from the released or escaped dust, sand or building waste, including any damage to adjoining or other affected properties; and
- (e) take effective measures to stop any further release or escape of dust, sand or building waste from the land.

(3) The requirements set out in a notice issued under subclause (2) must be complied with—

- (a) immediately, if the notice so specifies.
- (b) within such other period as is specified in the notice; or
- (c) where no other time period is specified in the notice—within 24 hours of the notice being given to the owner or occupier, or to the person who has not complied.

4.2 Notice to cease activity

(1) This clause applies where the Shire is of the opinion that—

- (a) dust, sand or building waste has escaped or has been released as the result of an activity undertaken on land or as a consequence of the use of equipment on land; or
- (b) as a result of the failure of a person to comply with a term or condition of an approved dust management plan, there is a risk that dust, sand or building waste may be released or may escape from the land.

(2) Where the Shire is of the opinion referred to in subclause (1), it may give a notice to the owner or occupier of the land, the person responsible for complying with the approved dust management plan or the person in charge, as the case may be, requiring that, for the period specified in the notice—

- (a) the activity or use of the equipment on the land cease immediately; or
- (b) any development on the land under the dust generating development cease immediately.

4.3 Notice to prevent possible breach

Where the Shire is of the opinion that dust or building waste may be released or escape as a result of an activity which is likely to be carried on from any land, the Shire may give to the owner or occupier of the land, or the person in charge, a notice prohibiting the activity from being carried on except in accordance with the conditions that are specified in the notice.

4.4 Withdrawing a notice

(1) The Shire may withdraw a notice that has been issued under this local law to the owner or occupier of any land, or any other person, if the owner, occupier or other person satisfies the Shire, within 24 hours or within any other period that is specified in the notice from the date of giving of the notice, that—

- (a) he or she was not responsible for the conduct in respect of which the notice was given under clause 4.1, or the activity in respect of which a notice was given under clause 4.2, as the case may be;
- (b) he or she took all reasonable precautions to prevent the conduct or activity, as the case may be; and
- (c) where another person was responsible for the conduct or activity, he or she identifies the person responsible for the conduct or activity sufficiently to enable the notice to be issued to that person.

(2) Subclause (1) is not to apply where a notice is issued to which clause 4.1(2)(c) applies.

PART 5—OFFENCES AND PENALTIES

5.1 Offences

Any person who—

- (a) fails to comply with a notice issued under this local law;
- (b) fails to do anything required or directed to be done under this local law;
- (c) does anything which under this local law the person is prohibited from doing; or
- (d) contravenes any provision of this local law,

commits an offence.

5.2 Prescribed offences

(1) An offence against a clause of this local law 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.

5.3 Prescribed notices

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 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.

5.4 Penalties

A person who commits an offence under this local law is to be liable to—

- (a) a penalty not exceeding \$5,000 and not less than—
 - (i) in the case of a first such offence, \$500;
 - (ii) in the case of a second such offence, \$1,500; and
 - (iii) in the case of a third or subsequent offence, \$3,000, and
- (b) if the offence is of a continuing nature, an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

SCHEDULE 1—PRESCRIBED OFFENCES (Refer Clause 5.2)

Item No.	Clause	Description	Modified Penalty \$
1	2.1	Failure to take effective measures to—	
		(a) stabilise dust and sand drift; or	\$500
2		(b) ensure no dust or sand is released or escapes from the land; or	\$500
3		(c) notify the owners or occupiers of adjoining land as required.	\$500
4	2.2(1)	(a) Failure to provide an approved receptacle or enclosure or approved container on a building site.	\$500
5		(b) Failure to place in, and secure, all building waste in an approved receptacle.	\$500
6		(c) Failure to keep secure lid of approved receptacle	\$500
7		(d) Failure to maintain the approved receptacle in an effective and operable condition.	\$500
8	2.3	Failure to take effective measures to prevent a load or any part of it escaping.	\$500
9	3.2	Commencing or carrying out a dust, sand or sand drift generating development—	
		(a) without approval; or	\$500
10		(b) contrary to a condition of approval.	\$500
11	3.5	Failure to provide a dust management plan.	\$500
12	4.1	Failure to comply with a notice.	\$500
13	4.2(2)	Failure to comply with a notice to cease activity or development.	\$500
14	4.3	Failure to comply with a notice to prevent a possible breach.	\$500

The common seal of the Shire of Serpentine Jarrahdale was affixed by authority of a resolution of the Council in the presence of—

JOHN ERREN, Shire President.
K. R. DONOHOE, Chief Executive Officer.

Dated: 7 August 2017.

