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LOCAL GOVERNMENT ACT 1995

SHIRE OF WANNEROO

PRIVATE PROPERTY LOCAL LAW 1998

**EXTRACTIVE INDUSTRIES LOCAL
LAW 1998**

LOCAL GOVERNMENT ACT 1995**SHIRE OF WANNEROO****PRIVATE PROPERTY LOCAL LAW 1998**

Under the powers of the Local Government Act 1995 and by all other powers, the Council of the Shire of Wanneroo resolved to make the following local law on the 9th day of February 1999.

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PART 1—PRELIMINARY**Title**

1. This local law may be referred to as the Shire of Wanneroo Private Property Local Law 1998.

Commencement

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

Purpose and Intent

3. (1) The purpose of this local law is to provide for the regulation, control and management of street numbering, fencing, tennis court floodlighting and vehicle wrecking on private property within the district.

(2) The effect of this local law is to establish the requirements for erecting street numbers, fencing and tennis court floodlighting and for the wrecking of vehicles within the district.

Repeal

4. The following by Laws of the former City of Wanneroo—
 - (a) By Law D1: Disused Motor Vehicles and Machinery, published in the *Government Gazette*—31 October 1975, and amendments;
 - (b) By Law F1: Fencing and Private Tennis Court Floodlighting, published in the *Government Gazette*—31 October 1986, and amendments;
 - (c) By Law S8: Street Numbers for Houses, published in the *Government Gazette*—17 March 1998, and amendments;
 - (d) By Law V1: Vehicle Wrecking, published in the *Government Gazette*—12 April 1967 and amendments are repealed on the day this local law comes into operation.

Application of Local Law

5. This local law applies throughout the district.

Definitions

6. In this local law unless the context otherwise requires—

“Act” means the Local Government Act 1995;

“application” means the completed form lodged by a person seeking a licence or approval as required by this local law;

“authorised person” means a person authorised by the local government under section 9.10 of the Act to carry out functions with respect to this local law;

“boundary fence” means a boundary fence referred to in section 16 of the Dividing Fences Act 1961;

“commercial lot” means any lot situated within a commercial zone as classified by the town planning scheme and includes land predominately used for commercial purposes;

“commercial wrecking” means the activity of wrecking of vehicles or machinery for the purpose of conducting a business by offering vehicles, machinery or parts thereof for purchase, trade, sale or gain;

“dangerous” in relation to any fence means—

- (a) an electrified fence other than a fence in respect of which a licence under Part 7 of this local law has been issued and is current;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

“district” means the district of the Shire of Wanneroo;

“dividing fence” has the meaning given to it in and for the purposes of the Dividing Fences Act 1961;

Footnote: Section 5 of the Dividing Fences Act 1961 defines “dividing fence” to mean “a fence that separates the land of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary”.

“electrified fence” means a fence carrying or designed to carry an electric charge;

“estate entry statement” means a fence, or wall constructed of masonry or other materials in accordance with a licence to identify the entrance of an estate and may include but not be limited to a sign indicating the estate name and locality, sculptures, flagpoles and flags;

“estate boundary fence” means the fence erected around the external boundary of a sub division of land to indicate the extent of that sub division and includes any special works or construction that identifies the entrance to that estate;

“fence” means any structure, including a retaining wall less than 450mm in height and used or functioning as a barrier, irrespective of where it is located and includes any gate;

“floodlight” means a luminaire which emits light within a limited range of directions;

“front boundary” means the boundary that separates the road reserve and a lot adjacent the road reserve;

“front setback area” means the area between the front boundary of a lot and an imaginary line running parallel to the front boundary 6 metres into the lot

“height” in relation to a fence means the vertical distance between—

- (a) the top of the fence at any point; and
- (b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level immediately below that point;

“industrial lot” means any lot situated within an industrial zone as classified by the town planning scheme and includes land predominately used for industrial purposes;

“land” means land in the district and includes houses, buildings, works, and structures, in or upon the land;

“licence” means a licence issued under this local law;

“local government” means the Shire of Wanneroo;

“lot” means a defined portion of land for which a separate certificate of title has been issued and includes a strata lot;

“luminaire” means an apparatus which distributes, filters or transforms the light transmitted from one or more lamps and which includes, except for the lamps themselves, all the parts necessary for fixing and protecting the lamps, and where necessary, circuit auxiliaries with the means of connecting them to the electricity supply;

“non sacrificial graffiti protection” means a coating applied to a fence or wall which is not removed in the process of removing graffiti;

“nuisance” means—

- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by one person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of reasonable physical, mental or social well-being of another person;
- (b) any thing a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
- (c) any thing a person does on public or private land which unreasonably detracts from or interferes with the enjoyment or value of land owned by another person, provided that any thing done in accordance with the law or a legal right or which is consistent with the standard of behaviour in the relevant locality shall not be unreasonable for the purpose of this local law

“number” means a number with or without an alphabetical suffix indicating the address of land as assigned by the local government from time to time, in accordance with this local law;

“person” means any person, company, employer and includes the owner, occupier and licensee;

- “planning approval” means an approval given under a relevant town planning scheme operating in the district from time to time;
- “private property” means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or subject of a lease or agreement with a company or person enabling its use for private purposes and includes any building or structure thereon;
- “public lighting” means lighting provided for the purpose of all-night safety and security on public roads cycle paths, footpaths and pedestrian movement areas within public parks and gardens but not including car parks;
- “public place” means any place to which the public has access;
- “reserve” includes parklands, reserves, foreshores and other lands included in or adjoining the district, and set apart for the use and enjoyment of the public and includes parks and other lands acquired for public purposes, and vested in or under the care, control and management of the local government.
- “residential lot” means any lot situated within a residential zone as classified by the town planning scheme and includes land predominately used for residential purposes;
- “retaining wall” means any structure which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;
- “rural lot” means any lot situated within a rural zone as classified by the town planning scheme and includes land predominately used for rural purposes;
- “sacrificial graffiti protection” means a coating applied to a fence or wall which is removed in the process of removing graffiti;
- “special rural lot” means any lot situated within a special rural zone as classified by the town planning scheme and includes land predominately used for special rural purposes;
- “sufficient fence” means a fence described in clause 14;
- “town planning scheme” means any town planning scheme for the time being applying zoning or classification to land within the district;
- “vehicle” means any motor vehicle, part of a motor vehicle or machinery in a state of disrepair or in the process of being wrecked, whether licenced or not;
- “wreck” includes the dismantling, breaking up, storage and disposal of vehicles and wrecking and wrecked have a corresponding meaning.

PART 2—LICENCES AND APPROVALS

Licence Requirements

7. Where in accordance with this local law a licence is required to enable the lawful building or erecting of a fence or performance of an activity, a licence must first be obtained before any work is commenced.

Planning and Other Approvals

8. Where under any written law operating within the district, the erection and maintenance of a fence, structure or performance of an activity, requires planning or other approval, the requirement for such approval shall be additional to the requirement for a licence under this local law.

Application for Licence

9. A person seeking the issue of a licence must make application on the form provided and used for the purpose and must forward the application to the local government together with—

- (a) where required, a copy of planning approval issued by the local government under the town planning scheme;
- (b) 3 copies of plans drawn to scale of not less than 1:50 showing the size, position, design, and the method of construction of the proposed fence or retaining wall;
- (c) the relevant licence fee;
- (d) such other information as may be required by the local government to assist in determining the application.

Determination of Application

10. (1) The local government may refuse an application for a licence that does not comply with the requirements of clause 9, and in any event, shall refuse an application for a licence where planning approval is required and has not first been obtained under the town planning scheme;

(2) The local government may, in respect of an application for a licence—

- (a) refuse the application; or
- (b) approve the application on such terms and conditions, if any, as it considers appropriate.

Licence Issue

11. (1) A licence shall be issued to the person whose name appears on the application for the licence and is the owner or acting on behalf of the owner.

(2) A licence shall be issued in the form prescribed or provided by the local government for that purpose.

Licence Fees and Charges

12. All licence fees and charges applicable under this local law shall be as determined by the local government from time to time in accordance with section 6.16 of the Act.

PART 3—FENCING—GENERAL**Dividing and Boundary Fences**

13. Unless by agreement between the owners of adjoining properties, a person must not erect a dividing or boundary fence on a lot that is not a sufficient or permissible fence.

Sufficient Fence

14. (1) Subject to sub-clauses (2) and (3); a sufficient fence—

- (a) on a residential lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
- (b) on a commercial lot and on an industrial lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule;
- (c) on a rural lot and on a special rural lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule.

(2) Where a fence is erected on or near the boundary between a residential lot and any of the following—

- (a) an industrial lot;
- (b) a commercial lot;
- (c) a rural lot; or
- (d) a special rural lot,

a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule.

(3) Unless an authorised person specifies otherwise, a sufficient fence on a boundary between lots other than those specified in sub-clause (2) is a dividing fence constructed in accordance with the specifications and requirements of the Second Schedule.

Fences within Front Setback—Approval Requirement

15. (1) A person must not without the written approval of an authorised person, erect a free standing fence of non masonry construction, greater than one metre in height within the front setback area of a lot in the district .

(2) In determining an application for approval to erect a fence in the front setback area of a residential lot, an authorised person may approve the erection of a fence higher than one metre, only if the front boundary fence on each side of the driveway into the lot is to be angled into the lot for a distance of not less than 1.5m from the front boundary in order to provide splayed lines of vision for a motorist using the driveway for access to a thoroughfare;

(3) Sub-clauses (1) and (2) do not apply;

- (a) to a fence of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
- (b) that does not adjoin a footpath.
- (d) where there is a distance of 1.5m between the fence and carriageway.

Footnote: In relation to the setback in sub clause (1), where buildings constructed on adjoining lots have setbacks less than 6m, then by agreement between the owners, and, subject to the written approval of an authorised person, the fence may be erected to a maximum height of 1.8m up to the greater of those setbacks.

General discretion of the local government

16. (1) The local government may approve the erection of a fence which does not comply with the requirements of this local law;

(2) In determining whether to approve the erection of a fence, the local government may consider, in addition to any other matter that it is authorised to consider, whether the erection or retention of the fence would have an adverse effect on—

- (a) the safety or convenience of any person; and
- (b) the safe or convenient use of any land.

Maintenance of Fences

17. An owner or occupier of a lot on which a fence is erected shall maintain the fence in good condition and so as to prevent it from becoming dangerous, dilapidated, unsightly, or prejudicial to the amenity of the locality.

Fencing Materials

18. A person must not construct a fence of barbed wire on a rural property, adjacent to a public place or reserve, unless the barbed wire is fixed to the side of the fence furthest from the public place or reserve.

Prohibited Fencing Materials

19. (1) A person must not use broken glass in the construction of any fence;

(2) A person must not use barbed wire or razor wire or other material with spiked or jagged projections in the construction of any fence which is not subject of a licence or otherwise in accordance with this local law.

Gates in Fences

20. A person must not erect or maintain a gate in a fence, which does not—
- (a) open into the property; or
 - (b) open by sliding parallel and on the inside of the boundary fence, of which it forms part when closed.

Fences Across Right Of Ways, Public Access Ways or Road Reserves

21. A person must not, without the written consent of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right of way, public access way or road reserve so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

Graffiti Protection

22. (1) A person must not erect a fence or wall constructed of masonry or other materials, adjacent to a public place or reserve without treating the fence or wall with non sacrificial graffiti protection,
- (2) A person, owner, or occupier of a lot with a fence or wall erected adjacent to a public place or reserve shall treat that fence or wall with non sacrificial graffiti protection; where required by an authorised person;
- (3) The graffiti protection treatment required in accordance with sub-clauses (1) and (2) shall be applied to the manufacturer's specifications.

Record of Graffiti Protection

23. Where in accordance with this local law, a person is required to treat a fence or wall adjacent to a public place or reserve with graffiti protection, that person must cause to be affixed to that fence a plate inscribed with the approved number relating to the data base which identifies the name of the graffiti protection applied to the fence or wall, plus details of the manufacturer's recommended treatment including materials to be used for removal of graffiti.

PART 4—ESTATE FENCES**Estate Fencing**

24. A person must not erect or maintain an estate boundary fence or an estate entry statement, without having first obtained planning approval and a licence.

Estate Boundary Fences

25. (1) Where approval has been given to construct an estate boundary fence using specific materials for the purpose of defining the outer perimeter of an estate, the colour and type of materials first used, shall be the minimum standard to which that fence is to be kept repaired and maintained.
- (2) An owner or occupier of a lot adjacent to an estate boundary fence shall, where that fence is damaged, dilapidated or in need of repair, cause it to be repaired or replaced with the same or similar materials with which it was first constructed, so as far as practicable the repaired or replaced section shall be the same as the original fence.
- (3) Where in accordance with clause 22 graffiti protection has been applied to the section of a masonry fence or wall facing a reserve or public place and that wall is to be repaired or replaced, the owner or occupier of the lot adjacent to that section of fence or wall, must cause it to be treated with graffiti protection as part of the repair or replacement.

PART 5—TENNIS COURT FENCING**Tennis Court Fencing**

26. (1) This clause does not apply to a rural lot.
- (2) A person must not erect or repair a fence around or partly around a tennis court on a lot unless—
- (a) the fence is not more than 3.6m in height;
 - (b) the whole of the fence is at least 900mm from the boundary between the lot on which the tennis court is located and the adjoining lot or if it is less than 900mm, the owner of the adjoining lot has first been given the opportunity to make submissions to the local government on the location of the fence; and
 - (c) the chain link fabric mesh is not more than 3.6m in height and is 50mm x 2.5mm poly-vinyl chloride coated or galvanised, and is erected in accordance with the manufacturers specification.

PART 6—SECURITY AND FLOOD LIGHTING**Security and Floodlights**

27. (1) A person; must not erect or maintain or permit to be erected or maintained, on any private land, a luminaire which—
- (a) causes a level of illumination greater than 1 lux to spill into adjacent land by more than 1m or onto any vertical or horizontal surface of a building thereon, and;
 - (b) has the main beam angle of any floodlight or security light installed higher than 3m above natural ground level and positioned at a maximum angle of 70 degrees from the vertical plane.
- (2) The provisions of clause 27(1) do not apply to private land zoned commercial or industrial.

Lighting Exclusion

28. Clause 27 does not apply to any luminaires erected or maintained in accordance with any written law operating in the district.

Tennis Court Floodlighting

29. (1) This clause does not apply to a rural lot.

(2) In determining an application for a building licence or planning approval in respect of the erection or use of floodlights or other exterior lights for illumination of a tennis court on a lot, the local government shall not approve the application unless—

- (a) the owner of each adjoining lot is given the opportunity to make submissions;
- (b) the mounting height of light fittings is within the following range, and determined by the lamp luminous flux per pole—
 - (i) single court equal to or less than 12,500 lumens per pole—5m
 - (ii) single court equal to or less than 25,000 lumens per pole—8m
- (c) approval may be given outside the range detailed in sub-clause (b) if considered appropriate to the circumstances;
- (d) light fittings used are of a type mounted horizontally or of a type approved by an authorised person;
- (e) the level of illumination from the floodlights or external lights on any land more than 1m from the lot does not exceed 10 lux; and
- (f) where required by an authorised person, written approval for the erection of the lights or other exterior lights has been obtained from the Commissioner of Main Roads.

Tennis Court Floodlight Use and Other Restrictions

30. Unless otherwise approved, the owner or occupier of a residential lot which has a tennis court and floodlights thereon, must not—

- (a) permit the floodlights to remain lit after 2200 hours, or to cause a nuisance;
- (b) hire the court for playing tennis or any other activity for commercial gain.

PART 7—ELECTRIFIED AND RAZOR WIRE FENCES**Requirement for a Licence**

31. (1) An owner or occupier of a lot must not—

- (a) have and use an electrified fence on that lot without first obtaining a licence under sub-clause (2); or
- (b) have a fence constructed wholly or partly of razor wire on that lot without first obtaining a licence under sub-clause (4).

(2) Clause 31(1)(a) does not apply to a rural lot.

(3) A licence to have and use an electrified fence shall not be issued:

- (a) in respect of a lot which is or which abuts a residential lot;
- (b) unless the fence complies with AS/NZS 3016:1994; and
- (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.

(4) A licence to have a fence constructed wholly or partly of razor wire shall not be issued;

- (a) if the fence is within 3m of the boundary of the lot;
- (b) where any razor wire used in the construction of the fence is less than 2m or more than 2.4m above the ground level.

(5) An application for a licence referred to in sub-clauses (3) or (4) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.

Transfer of a Licence

32. (1) The holder of a licence referred to in clause 31 may transfer that licence to another occupier or owner of the lot only with the written approval of the local government.

(2) The application for a transfer of a licence shall be—

- (a) made by the proposed owner;
- (b) in the form determined by the local government;
- (c) signed by the holder of the licence;
- (d) accompanied by the fee determined by the local government; and
- (e) accompanied by such other information as the local government may require to determine the application.

(3) The local government may:

- (a) approve the application for a transfer of the licence subject to such conditions as it considers appropriate; or
- (b) refuse the application for a transfer of the licence.

PART 8—STREET NUMBERING

Assignment of Street Number

33. (1) Street numbers shall be assigned and displayed on different lots of land to assist in the ready identification of the street address for that land.

(2) The local government may assign a number to land in a street, thoroughfare or way in the district and may from time to time assign another number instead of that which was previously assigned.

Street Number to be Displayed

34. (1) The owner or occupier of land in the district must paint or affix and maintain, the current street number assigned by the local government, in a conspicuous place on the front of the building, fence or gate adjacent to the street fronting the land.

(2) A sign painted on a kerb, adjacent to a property used for residential purposes, depicting the house number and in accordance with specifications approved by the local government is satisfactory for the purposes of sub-clause (1).

Location of Number not to be Misleading

35. (1) The owner or occupier of land must not place the street number of the adjacent land in such a way as to cause confusion or be misleading.

(2) Where in the opinion of an authorised person, the location of a street number causes confusion or is misleading, a notice may be served on the owner or occupier of the land to which the number refers, specifying remedial action to be taken in accordance with clause 39.

PART 9—VEHICLE WRECKING

Commercial Wrecking of Vehicles

36. An owner or occupier of land in the district must not undertake, permit or suffer the commercial wrecking of vehicles on that land, without first having obtained planning approval from the local government.

Wrecking and Storage of Vehicles Generally

37. A person must not—

- (a) store any vehicle, part or body of a vehicle or machinery, in a state of disrepair;
- (b) allow to remain on any land, a vehicle, part or body of a vehicle or machinery, in a state of disrepair;
- (c) wreck, dismantle or break up any vehicle, part or body of a vehicle or machinery; unless—
 - (i) inside a building; or
 - (ii) within an area enclosed by a fence or wall of not less than 2 metres in height and of such a nature as to screen all vehicles, parts or bodies of vehicles or machinery from the street and from adjoining properties; or
- (d) wreck, dismantle or break up a vehicle so as to cause a nuisance.

Disposal of Vehicles, Parts and Machinery

38. (1) A person must not dispose of a vehicle, parts or body of vehicles or machinery except at a place set aside or approved by the local government for the purpose.

(2) A person shall not destroy any portion of a vehicle or machinery by fire so as to cause a nuisance to occupiers of adjacent land by smoke or odour.

PART 10—REMEDY FOR BREACH

Works on Private Property

39. (1) Where a breach of any provision of this local law has occurred on private property, the local government may give notice in writing to the owner or occupier of that property—

- (a) advising details of the breach of the local law;
- (b) requiring the owner or occupier that the breach is to be remedied within the time specified in the notice; and
- (c) advising that where the owner or occupier fails to comply with the requirements of the notice within the time specified, the local government may enter the property and do the required work.

(2) Where the owner or occupier of the property fails to comply with the requirements of the notice, the local government may by its employees, agents or contractors enter upon the property and carry out all works and do all things necessary to comply with the requirements of the notice; and

(3) The local government may recover the expenses incurred in carrying out the works in accordance with sub-clause (2) from the owner or occupier of the property in a court of competent jurisdiction.

Limit on Liability

40. A person, owner, occupier or licensee is not entitled to make any claim by way of damages or otherwise, against the local government, an authorised person, local government employee, local government appointed sub-contractor or other person authorised by the local government, to enter the land and carry out all or part of the works and do all things necessary that the owner, occupier or holder of a licence was required to do to comply with this local law.

PART 11—PENALTIES**Offences**

41. (1) Any 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 any provision of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.

(3) Any person who commits an offence under this local law shall be 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 has continued.

Infringement and Infringement Withdrawal Notices

42. For the purposes of this local law—

- (a) 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
- (b) 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 .

Offence Description and Modified Penalty

43. The amount appearing in the final column of the Fourth Schedule directly opposite an offence described in that Schedule is the modified penalty for that offence.

Prosecution for Offences

44. A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in a court of petty sessions.

Records to be Kept

45. The local government shall cause adequate records to be kept of all infringement notices served and modified penalties received.

Footnotes:

Appeal of Decision

1. When the local government makes a decision as to whether it will—

- (a) grant a person a licence or approval under this local law; or
 - (b) renew, vary, or cancel a licence or approval that a person has under this local law,
- the appeal provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 apply to that decision.

Vehicle Wrecking

2. The commercial wrecking of vehicles is covered under the provisions of the town planning scheme.

SHIRE OF WANNEROO
PRIVATE PROPERTY LOCAL LAW 1998
FIRST SCHEDULE

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

Subject to Clause 25 relating to Estate Fences, the following is a “sufficient fence” on a residential lot for the purpose of the Dividing Fences Act.

A fence constructed of corrugated fibre reinforced pressed cement sheeting which satisfies the following specifications—

- (a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;
- (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement sheet;
- (c) the sheets to be lapped and capped with extruded “snap-fit” type capping in accordance with the manufacturers written instructions; and
- (d) the height of the fence to be 1.8m.

Permissible Alternative Fences

- 1. A picket timber fence.
- 2. A fence constructed of brick, stone or concrete.
- 3. A composite fence.

Note: Specifications for Permissible Fences are detailed in the Fences Information Sheets obtained from local government offices.

SHIRE OF WANNEROO
PRIVATE PROPERTY LOCAL LAW 1998
SECOND SCHEDULE

**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT
AND AN INDUSTRIAL LOT**

Subject to Clause 25 relating to Estate Fences, the following is a "sufficient fence" on a Commercial Lot and an Industrial Lot for the purpose of the Dividing Fences Act.

A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—

- (a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
- (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
- (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post;
- (d) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together;
- (e) rail-less link, chain or steel mesh is to be to a height of 2m on top of which are to be three strands of barbed wire carrying the fence to a height of 2.4m; and
- (f) galvanised link mesh wire to be 2m in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6m and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.

Permissible Alternative Fences

1. A fence of fibre reinforced cement sheets.
2. A fence constructed of painted or galvanised steel or aluminium sheeting.
3. Fences of timber, brick, stone or concrete.

SHIRE OF WANNEROO
PRIVATE PROPERTY LOCAL LAW 1998
THIRD SCHEDULE

**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT
AND SPECIAL RURAL LOT**

Subject to Clause 25 relating to Estate Fences, a sufficient fence on a Rural Lot for the purpose of the Dividing Fences Act is a fence of posts and wire construction, the minimum specifications for which are—

- (a) wire shall be high tensile wire and not less than 2.5mm. A minimum of five wires shall be used, these to be spaced equally and threaded through 12mm holes in posts to all fences;
- (b) posts shall be of indigenous timber or other suitable material including timber impregnated with a termite and fungicidal preservative cut not less than 1.8m long x 100mm diameter at small end of round or 125mm x 60mm if split or sawn. Posts to be set minimum 600mm in the ground and 1.2m above the ground; and
- (c) strainer posts shall be not less than 2.25m long and 150mm diameter at the small end and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1m in the ground.

SHIRE OF WANNEROO
PRIVATE PROPERTY LOCAL LAW 1998
FOURTH SCHEDULE
OFFENCES AND MODIFIED PENALTIES

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
Part 3—Fencing General			
1	13	Erect a fence which is not a sufficient or permissible fence	100
2	15(1)	Erect without approval a free standing non masonry fence higher than 1 m within the front setback	100
3	17	Failure to maintain a fence in good condition/prevent fence becoming dangerous, dilapidated, unsightly	100
4	18	Construct a barbed wire fence on rural property wire not furthestmost from public place or reserve	100

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
Part 3—Fencing General—continued			
5	19(1)	Erect a fence using broken glass	100
6	19(2)	Use barbed or razor wire, spiked or jagged projections in fence construction without approval or licence	100
7	20(a)	Erect or maintain a gate in a fence not opening into the property	100
8	20(b)	Erect or maintain a gate in a fence not sliding parallel and on inside of fence	100
9	21	Erect or maintain a fence/obstruction temporary or permanent across right of way, public access way or road without consent	100
10	22(1)	Erect masonry fence/wall adjacent public place or reserve or public place without treating with non-sacrificial graffiti protection	100
11	22(2)	Failure to treat fence/wall adjacent public place or reserve without treating with non-sacrificial graffiti protection where required	100
12	22(3)	Failure to apply non sacrificial graffiti protection to manufactures specification	100
13	23	Failure to affix approved non sacrificial graffiti identification plate to treated fence or wall	100
Part 4—Estate Fences			
14	24	Erect or maintain estate boundary fence or estate entry statement without planning approval and/or licence	100
15	25(2)	Failure to repair/replace damaged estate boundary fence with same or similar materials as original fence	100
16	25(3)	Failure to treat repaired/replaced fence/wall with non sacrificial graffiti protection	100
Part 5—Tennis Court Fencing			
17	26(2)(a)	Erect or repair a tennis court fence higher than 3.6m	100
18	26(2)(b)	Erect tennis court fence less than 900mm from boundary of adjoining lot without submission from adjoining owner	100
19	26(2)(c)	Erect or repair chain link mesh fence higher than 3.6m not in accordance with manufacturers specification	100
Part 6—Security and Flood Lighting			
20	27(a)	Erect or maintain on private land a luminaire which spills 1 lux or more illumination into adjacent land/building	100
21	27(b)	Erect or maintain security/floodlight higher than 3m or at greater angle than 70 degrees	100
22	30(a)	Permit tennis court floodlights to remain lit after 2200hrs or cause a nuisance	100
23	30(b)	Hire the tennis court for tennis or other activity for commercial gain	100
Part 7—Electrified and Razor Wire Fences			
24	31(1)(a)	Have and use an electrified fence without a licence	100
25	31(1)(b)	Have and use a razor wire fence without a licence	100
Part 8—Street Numbering			
26	34(1)	Failure to paint/affix/maintain current street number in a conspicuous place on the building, fence/gate to street	100
27	35(1)	Place street number so as to cause confusion or be misleading	100
Part 9—Vehicle Wrecking			
28	36	Undertake or permit commercial wrecking of vehicles without planning approval	100
29	37(a)	Store any vehicle, part or body of vehicle or machinery in state of disrepair	100
30	37(b)	Allow to remain on land any vehicle, part or body of vehicle or machinery in state of disrepair	100
31	37(c)(i)	Wreck, dismantle or break up any vehicle part or body or machinery not in a building	100
32	37(c)(ii)	Wreck, dismantle or break up any vehicle, part or body or machinery not behind fence or screened from street	100
33	37(d)	Wreck, dismantle or break up a vehicle so as to cause a nuisance	100
34	38(1)	Fail to dispose of vehicle, parts or body of vehicle or machinery at place set aside or approved place	100

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
Part 9—Vehicle Wrecking—continued			
35	38(2)	Destroy portion of vehicle or machinery by fire so as to cause nuisance by smoke or odour	100
Part 10—Remedy for Breach			
36	39(2)	Failure to comply with requirements of notice	100
37		Other offences not specified	100

Dated this 22nd day of February 1999.

The common seal of the Shire of Wanneroo was hereunto affixed in the presence of—

C. T. ANSELL, Chairman of Commissioners.
K. WHITE, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995**SHIRE OF WANNEROO****EXTRACTIVE INDUSTRIES LOCAL LAW 1998**

Under the powers of the Local Government Act 1995 and by all other powers, the Council of the Shire of Wanneroo resolved to make the following local law on the 9th day of February 1999.

ARRANGEMENT

PART 1—PRELIMINARY	Clauses 1-6
PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY	Clauses 7-9
PART 3—DETERMINATION OF APPLICATION	Clauses 10-11
PART 4—TRANSFER, CANCELLATION AND RENEWAL OF LICENCE	Clauses 12-14
PART 5—SECURED SUM AND APPLICATION THEREOF	Clauses 15-16
PART 6—PROHIBITIONS	Clause 17
PART 7—MISCELLANEOUS PROVISIONS	Clauses 18-21
PART 8—ENFORCEMENT AND PENALTIES	Clauses 22-29
SCHEDULE 1	

PART 1—PRELIMINARY**Title**

1. This local law may be referred to as the Shire of Wanneroo Extractive Industries Local Law 1998.

Commencement

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

Purpose and Intent

3. (1) The purpose of this local law is to—
- (a) prohibit the carrying on of an extractive industry unless by authority of a licence issued by the local government;
 - (b) regulate the carrying on of the extractive industry in order to minimise damage to the environment, thoroughfares and other persons health and property; and
 - (c) provide for the restoration and reinstatement of any excavation site.
- (2) The effect of this local law is to require that any person wanting to carry on an extractive industry will need to be licensed and will need to comply with the provisions of this local law.

Repeal

4. The local laws of the former City of Wanneroo relating to extractive industries published in the *Government Gazette* on 23 April 1963, including subsequent amendments, are repealed on the day this local law comes into operation.

Definitions

5. 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 carry into effect the provisions of this local law;
 - “carry on an extractive industry” means quarrying and excavating for stone, gravel, sand and other material and without limiting the generality includes stripping vegetation and top soil, stockpiling, excavating and earthworks, loading of trucks and vehicle movements associated with an extractive industry, blasting rehabilitation and includes all of the time from commencement to the satisfactory completion of the works as required by a condition of a licence or as directed by the local government;
 - “CEO” means “Chief Executive Officer” of the local government;
 - “district” means the district of the local government;
 - “excavation” includes quarry;
 - “licence” means a licence issued under this local law;
 - “licensee” means the person or company named in the licence as the licensee;

“local government” means the Shire of Wanneroo “person” means any person, company, employer and includes the owner, licensee and previous licensee;

“secured sum” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 15;

“site” means the land specified by the local government in a licence;

“Stop Work Order” means an order issued under clause 22.

Application of this Local Law

6. The provisions of this local law—

- (a) subject to paragraphs (b), (c), (d) and (e);
 - (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;
- (d) do not affect the validity of any licence issued under the local law repealed by clause 4 if that licence is currently in force at the date of gazettal of this local law; and
- (e) do not apply where the works are approved by and carried out in accordance with—
 - (i) a condition of a subdivision approved by the Western Australian Planning Commission;
 - (ii) a development approval issued by the local government under a town planning scheme and the works are incidental to that approval;
 - (iii) building licence issued by the local government under the Local Government (Miscellaneous Provisions) Act 1960.

PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

Extractive Industries Prohibited Without Licence

7. A person must not carry on an extractive industry—

- (a) unless the person is the holder of a valid and current licence; and
- (b) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

Application for Licence

8. (1) A person seeking the issue of a licence in respect of any land must apply on the form provided or approved by the local government for the purpose and must forward the application duly completed and signed by both the applicant and the owner of the land to the CEO together with—

- (a) 3 copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing:
 - (i) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
 - (ii) the land on which the excavation site is to be located;
 - (iii) the external surface dimensions of the land;
 - (iv) the location and depth of the existing and proposed excavation of the land;
 - (v) the location of existing and proposed thoroughfares or other means of vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;
 - (vi) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
 - (vii) the location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;
 - (viii) the location of all existing dams, swamps, lakes, watercourses, drains or sumps on or adjacent to the land;
 - (ix) the location and description of existing and proposed fences, gates and warning signs around the land;
 - (x) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;
 - (xi) brief description of uses of adjoining and nearby land;
 - (xii) other details as the local government may require.
- (b) 3 copies of a works and excavation program containing—
 - (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
 - (ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;
 - (iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
 - (iv) details of the depth and extent of the existing and proposed excavation of the site;
 - (v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;

- (vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
- (vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
- (viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;
- (ix) a description of any proposed buildings, treatment plant, tanks and other improvements;
- (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
- (xi) a description of the measures to be taken to minimise dust nuisance, erosion, watercourse siltation and dangers to the general public;
- (xii) a report of an acoustic consultant verifying that the various plant, machinery and operational noise levels will comply with the requirements of the Environmental Protection (Noise) Regulations 1997;
- (xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land;
- (xiv) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation; and
- (xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;
- (c) 3 copies of a rehabilitation and decommissioning program indicating—
 - (i) the objectives of the program, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
 - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
 - (iii) how each face is to be made safe and batters sloped;
 - (iv) the method by which topsoil is to be replaced and revegetated;
 - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
 - (vi) how rehabilitated areas are to be maintained; and
 - (vii) the program for the removal of buildings, plant, waste and final site clean up.
- (d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfares or such other land in the vicinity;
- (e) a certificate from a licensed surveyor certifying the correctness of—
 - (i) the plan referred to in paragraph (a); and
 - (ii) the datum peg and related point referred to in paragraph (d);
- (f) evidence that the requirements of clause 9 (a) and (b) have been carried out;
- (g) copies of all land use planning approvals required under any planning legislation;
- (h) the consent in writing to the application from the owner of the excavation site;
- (i) an overall staging and management plan and report which by a matrix indicates the progressive stages of construction, excavation, rehabilitation, landscaping and the like together with obvious milestones of progress upon which the staging and management of the extractive industry can be measured and reviewed prior to renewal or at other nominated times;
- (j) evidence that a notice of clearing has been given to the Commissioner of Soil and Land Conservation if that is required under regulation 4 of the Soil and Land Conservation Regulations 1992.

(2) All survey data supplied by an applicant for the purpose of sub clause (1) must comply with Australian Height Datum and Australian Map Grid standards.

Applicant to Advertise Proposal

9. (1) A person or company seeking the issue of a licence shall within 60 days after having complied with clause 8, advertise and give notice of their intention, as follows—

- (a) forward by registered mail a notice and summary of the proposal in the form provided or approved by the local government for the purpose, to—
 - (i) the owners and occupiers of all land adjoining the land upon which it is proposed to excavate, or within an area determined by the local government as likely to be affected by the granting of a licence;
 - (ii) every relevant statutory authority including, but not limited to, the Water & Rivers Commission, the Department of Environmental Protection, the Department of Minerals & Energy and person having control or jurisdiction over any of the things referred to in clause 8(1)(a)(vii) or (viii) within 500 metres from the boundaries of the land, or within an area determined by the local government as likely to be affected by the granting of a licence;
 - (iii) the CEO; and
- (b) publish a notice [notice to be in the form provided or approved by the local government for the purpose], in a newspaper circulating in the area in which the proposed excavation is located;

- (c) display, in a prominent position on the land one or more notices—
 - (i) in the form provided or approved by the local government for the purpose;
 - (ii) the content, size and construction of which have been approved by the CEO;
 - (iii) specifying particulars of the proposed excavation; and inviting objections or comments within 21 days from the placement of the notice.

(2) All notices referred to in clause 9 (1) must advise that the proposal may be inspected at the office of the local government and that submissions on the proposal may be lodged with the local government for a period of 21 days from the date of the last notice.

PART 3—DETERMINATION OF APPLICATION

Determination of Application

10. (1) The local government may refuse an application for a licence—
- (a) that does not comply with the requirements of clause 8;
 - (b) for which the processes required by clause 9 have not been completed;
 - (c) after considering any submissions received within the specified period in accordance with clause 9(2);
 - (d) where planning approval for an extractive industry use of the land has not first been obtained under any relevant town planning scheme.
- (2) 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.
- (3) Where the local government approves an application for a licence, it must:
- (a) determine the licence period, not exceeding 21 years from the date of issue; and
 - (b) approve the issue of a licence in the form provided or approved by the local government for the purpose;
- (4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of—
- (a) payment of the annual licence fee, or the relevant proportion thereof of the annual licence fee;
 - (b) the payment of any outstanding licence or administration fees;
 - (c) payment of the secured sum if any, imposed under clause 15; and
 - (d) the documents, if any, executed to the satisfaction of the CEO, under clause 15, shall issue the licence to the applicant.
- (5) Without limiting sub clause (2), the local government may impose conditions, including the following matters—
- (a) the orientation of the excavation to reduce visibility from other land;
 - (b) the appropriate siting of access thoroughfares, buildings and plant;
 - (c) the stockpiling of material;
 - (d) the hours during which any excavation work may be carried out;
 - (e) the hours during which any processing plant associated with, or located on, the site may be operated;
 - (f) the hours during which trucks may enter or leave the site and equipment may operate;
 - (g) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
 - (h) the depths below which a person must not excavate;
 - (i) distances from adjoining land or thoroughfares within which a person must not excavate;
 - (j) the safety of persons employed at or visiting the excavation site;
 - (k) the control of dust and wind-blown material;
 - (l) requiring the excavation, plant and equipment and thoroughfares to be bunded, screened and landscaped prior to any excavation or construction works commencing or continuing;
 - (m) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
 - (n) the prevention of the spread of dieback or other disease;
 - (o) the drainage of the excavation site and the disposal of water;
 - (p) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
 - (q) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
 - (r) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation program;

- (s) 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;
- (t) requiring the licensee to pay a secured sum in accordance with clause 15; and
- (u) any other matter for properly regulating the carrying on of an extractive industry.

Fees

11. (1) A licensee must pay to the local government the licence fee.
- (2) Where an extractive industry is being carried on and the local government has not issued a licence, the owner shall pay to the local government the administration fee.
- (3) An application for the transfer of a licence shall incur a fee to be paid to the local government.
- (4) The fees to be paid shall be as determined by the local government in accordance with the fees and charges approved from time to time.

PART 4—TRANSFER, CANCELLATION AND RENEWAL OF LICENCE**Transfer of Licence**

12. (1) An application for the transfer of a licence must—
- (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) be accompanied by a stamped copy of a deed of agreement between the owner, transferor and transferee detailing the terms and conditions relating to the transfer of responsibility for the state of the excavation, the level of compliance with any conditions, that may have been imposed on the licence the subject of the transfer, and any rehabilitation works which may be necessary to remedy the situation.
 - (f) include any information that the local government may reasonably require; and
 - (g) be forwarded to the CEO with the transfer fee together with any outstanding administration and licence fees.
- (2) Upon receipt of any application for the transfer of a licence, and the transfer fee, 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 provided or approved by the local government for the purpose.
- (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.
- (5) The local government may refuse to transfer a licence until all outstanding fees and charges have been paid.

Cancellation of Licence

13. (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;
 - (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government; or
 - (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.
- (2) Where the local government cancels a licence under clause 13(1)—
- (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;
- (3) The licence shall lapse where the licensee has—
- (a) failed to pay the annual licence fee under clause 11; or
 - (b) failed to have a current public liability insurance policy under clause 18(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 18(2);
- (4) The local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

Renewal of Licence

14. (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 42 days before the date of expiry of the licence and must submit with the application for renewal—
- (a) the fee determined by the local government;
 - (b) a copy of the current licence;
 - (c) a plan showing the contours of the excavation carried out to the date of that application;

- (d) details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 8(1) (b) and (c); and
 - (e) any other things referred to in clauses 8 and 10.
- (2) The local government may waive any of the requirements specified in clause 14(1) (d) or (e).
- (3) If—
- (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
 - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application.
- then the applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 8 and 10.
- (4) Upon receipt of an application for the renewal 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; and
 - (c) may require the proposal to be advertised in the manner set out in clause 9.

PART 5—SECURED SUM

Security for Restoration and Reinstatement

15. (1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that—

- (a) the licensee—
 - (i) as a condition of a licence; or
 - (ii) before the issue of a licence; or
 - (iii) before the renewal of a licence; or
- (b) the owner when required by the local government;

must give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government from time to time.

(2) A bond required under sub clause (1) is to be paid into an account established by the local government for the purposes of this clause.

Use by the Local Government of Secured Sum

16. (1) If a person fails to carry out or complete the restoration and reinstatement works required by the licence conditions or by a notice served by the local government; either—

- (a) within the time specified in those conditions;
 - (b) where no such time has been specified, a reasonable period of time from the completion of the excavation or portion of the excavation specified in the licence conditions; or
 - (c) within 60 days of a notice given by the local government to the licensee or owner—
- then—
- (d) the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone; and
 - (e) the licensee must pay to the local government on demand all administrative, legal, contractor and other costs, estimated or incurred by the local government, to rehabilitate the site or which the local government may be required to pay under this clause.

(2) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 15 towards its costs under this clause.

(3) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 15.

(4) A person, owner, occupier or licensee is not entitled to make any claim by way of damages or otherwise, against an authorised person, local government employee, local government appointed sub-contractor or other person authorised by the local government, to enter the land and carry out all or part of the works and do all things necessary that the owner, occupier or licensee was required to do to comply with this local law.

PART 6—PROHIBITIONS

Prohibitions

17. Subject to any licence conditions imposed by the local government with respect to carrying on an extractive industry, a person—

- (1) must not without the written approval of the local government, excavate within—
 - (a) 20 metres of the boundary of any land on which the excavation site is located;
 - (b) 20 metres of any land affected by a registered grant of easement;
 - (c) 40 metres of any thoroughfare;
 - (d) 50 metres of any watercourse, wetland, swamp or other water reserve; or

- (e) 3 metres of the estimated maximum water table level as determined from time to time by the Water & Rivers Commission or otherwise as adopted by the local government.
- (2) must—
- (a) not 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 reserve 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 10;
 - (b) 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;
 - (c) 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”;
 - (d) 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;
 - (e) not 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;
 - (f) not fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation program approved by the local government;
 - (g) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation program approved by the local government;
 - (h) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site;
 - (i) otherwise comply with the conditions imposed by the local government in accordance with clause 10; and
 - (j) cease excavating and undertake the restoration and reinstatement of the site and comply with notices issued by the local government.
- (3) must 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;
 - (iii) the methods of detonation and blasting;
 - (iv) the types of explosives to be used; and
 - (v) 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.
- (4) must 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.

PART 7—MISCELLANEOUS PROVISIONS

Public Liability

18. (1) A licensee must 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 or such other sum as is approved by the local government 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

19. (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 must comply with all applicable provisions of that Act or those Acts; and

(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.

Notice of Cessation of Operations

20. (1) Where a licensee intends to cease carrying on an extractive industry—

- (a) temporarily for a period in excess of 12 months; or
- (b) permanently;

the licensee must, as well as complying with clause 21 give the local government written notice of the cessation not later than 1 week after those operations have ceased.

(2) Where a licensee has given written notice to the local government of the intention to permanently cease carrying on an extractive industry on the site to which the licence applies the licence is deemed to have expired on the date such cessation is so notified.

(3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or the deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

Works to be Carried out prior to Cessation of Operation

21. (1) Where the carrying on of an extractive industry on the site is proposed to permanently cease or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, the licensee of the owner must, as well as complying with the provisions of clause 20—

- (a) restore and reinstate the excavated site in accordance with the proposals approved by the local government or in such other manner as the local government may subsequently in writing require;
- (b) ensure that any face permitted to remain upon the excavation site is left in a safe condition with all loose materials removed and where the excavation site is—
 - (i) sand, the sides are sloped to a batter of not more than 1:3 (vertical:horizontal); and
 - (ii) limestone or material other than sand, the sides are sloped to a batter which, in the opinion of the local government, would enable the site to be left in a stable condition;
- (c) ensure that the agreed floor level of the excavation is graded to an even surface or is otherwise in accordance with the rehabilitation and decommissioning program approved by the local government;
- (d) ensure that all stockpiles or dumps of stone, sand or other materials are left so that no portion of that material can escape onto land not owned or occupied by the licensee nor into any stream, watercourse, lake, wetland or drain that is not wholly situated within the land owned or occupied by the licensee;
- (e) erect retaining walls where necessary to prevent subsidence of land in the vicinity of any excavation;
- (f) remove from the site all buildings, plant and equipment erected, installed or used for or in relation to the carrying on of an extractive industry on the site and fill all holes remaining after such removal to the level of the surrounding ground and compact such filled holes sufficiently to prevent settling; and
- (g) break up, scarify, cover with topsoil and plant with grass, trees and shrubs all parts of the site used for the extractive industry where buildings, plant and equipment were erected or installed and all areas which were used for stockpiling unless otherwise specified under this local law.

(2) Notwithstanding any other provision of this local law where a licensee is required to comply with this local law or a condition of a licence and that licence has been cancelled, not renewed, or expired the aforementioned obligations become the responsibility jointly and severally of the owner and the previous licensee notwithstanding that he is not or is no longer the licensee.

PART 8—ENFORCEMENT AND PENALTIES

Stop Work Orders

22. (1) Where a person is carrying on an extractive industry in contravention of this local law, the local government may issue an order to stop all work specified in the notice as being done in contravention of this local law—in this Part referred to as “Stop Work Order”.

(2) Where a copy of a Stop Work Order—

- (a) is affixed in a prominent position on the place to which it relates; or
- (b) is served on a person carrying on the extractive industry, or causing to be carried on, at that place any works or other activity,
a person who carries on, or authorises, causes or permits to be carried on, in relation to that place the extractive industry commits an offence.

Penalty: \$5,000

Daily Penalty: \$500

Stop Work Orders Not To Affect Certain Works

23. It shall be a defence in proceedings for a contravention of a provision of a Stop Work Order to show that any works, being works appropriate to the purpose—

- (a) were urgently necessary—
 - (i) to avoid an imminent danger to life or health; or

- (ii) for the immediate preservation of a building or the prevention of immediately impending damage to neighbouring property, whether or not those works were the subject of a specific prohibition contained in a Stop Work Order, where notice in writing of the proposed carrying out of the works was given, as soon as practicable after the necessity for the works arose, to the local government and no written objection was served by the local government on the person so giving notice prior to the carrying out of the work; or
- (b) were required by an Act or law, and were of such a degree of urgency that prior reference to the local government and the application for and issue of a licence under this local law would not have been practicable.

Offences

24. (1) Any 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 under clauses 7, 11 and 17 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(3) Any person who commits an offence under this local law shall be 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 \$500.00 for each day or part of a day during which the offence has continued.

Offences By Bodies Corporate, Defences Etc

25. (1) Where a contravention of this local law which has been committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of; or
- (b) to be attributable to any failure to take all reasonable precautions to secure that this local law should not be contravened by the body corporate on the part of,

any director, manager, executive officer, secretary or other person concerned in the management of the body corporate, or any person purporting to act in that capacity, that person as well as the body corporate is guilty of the contravention.

(2) Where the affairs of a body corporate are managed by its members, subclause (1) applies in relation to the acts and defaults of a member in connection with the functions of management of that member as if the member were a director of the body corporate.

(3) Where proceedings are taken against a person under this local law it is no defence for that person to prove—

- (a) that the person was the agent or employee of any other person; or
- (b) that the person was acting in pursuance of an order or direction given by any other person,

unless the court is satisfied that the person had acted without the knowledge, and could not reasonably be expected to have known, that this local law would be contravened.

(4) Where the employee or agent of a person is found liable in respect of a contravention of this local law, each person who, at the time of the commission of the contravention, was the employer of that employee or the principal of that agent is also liable in respect of the contravention, unless that employer or principal proves that he or she could not by the exercise of reasonable diligence have prevented the commission of the contravention by the employee or agent.

(5) Subject to this clause, it shall be a defence for any person who would otherwise be liable under this local law to prove that—

- (a) the contravention occurred without the consent or connivance of that person;
- (b) the person had taken all reasonable precautions to secure that this local law should not be contravened; and
- (c) that the person could not by the exercise of reasonable diligence have prevented the contravention.

(6) Where, in proceedings under this local law, it is necessary to establish the state of mind of a body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.

(7) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

shall be deemed, for the purposes of this local law, to have been engaged in also by the body corporate.

(8) Where, in proceedings under this local law, it is necessary to establish the state of mind of a person other than a body corporate, it is sufficient to show that an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(9) Conduct engaged in on behalf of a person other than a body corporate—

- (a) by an employee or agent of the person, within the scope of the actual or apparent authority of the employee or agent; or

- (b) by any other person, at the direction or with the consent or agreement (whether express or implied) of any employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

shall be deemed, for the purposes of this local law, to have been engaged in also by the first-mentioned person.

(10) A reference in this clause to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

(11) If a defence to proceedings under this local law involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.

Infringement and Infringement Withdrawal Notices

26. For the purposes of this local law—

- (a) the form of the infringement notice referred to in section 9.17 of the Act is Form 2 of the First Schedule of the Local Government (Functions and General) Regulations 1996;
- (b) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 of the First Schedule of the Local Government (Functions and General) Regulations 1996.

Offence Description and Modified Penalty

27. 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.

Prosecution for Offences

28. A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in a Court of Petty Sessions.

Records to be Kept

29. The local government shall cause adequate records to be kept of all infringement notices served and modified penalties received.

Footnote:

Appeal

1. When the local government makes a decision as to whether it will—

- (a) grant a person a licence under this local law; or
- (b) renew, 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 regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 shall apply to that decision.

Appointment of Authorised Persons, and Certificate of Appointment for Authorised Persons

2. Both the appointment of authorised persons and issue of a certificate of appointment detailing what duties and responsibilities the person is authorised to perform shall be in accordance with Section 9.10 of the Local Government Act 1995.

SHIRE OF WANNEROO
EXTRACTIVE INDUSTRIES LOCAL LAW 1998
FIRST SCHEDULE
OFFENCES AND MODIFIED PENALTIES

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
1	7(a)	Excavate without a licence	500
2	7(b)	Carry on an extractive industry not in accordance with conditions	500
3	11(2)	Failure to pay the administration fee	400
4	17(1)(a)	Excavate without approval, within 20 metres of adjacent property boundary	400
5	17(1)(b)	Excavate without approval, within 20 metres of any land affected by a registered grant of easement	400
6	17(1)(c)	Excavate without approval, within 40 metres of any thoroughfare	400
7	17(1)(d)	Excavate without approval within 50 metres of any watercourse, wetland, swamp or other water reserve	400
8	17(1)(e)	Excavate without approval, within 3 metres of the estimated maximum water table level	400

FIRST SCHEDULE—*continued***OFFENCES AND MODIFIED PENALTIES**—*continued*

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
9	17(2)(a)	Removal of trees or shrubs within 40 metres of the boundary of any thoroughfare reserve	400
10	17(2)(b)	Failure to securely fence and/or keep gateways locked	400
11	17(2)(c)	Failure erect and maintain warning signs	400
12	17(2)(d)	Failure to drain and keep drained any excavation to which the licence applies	400
13	17(2)(e)	Store or permit to store explosives or explosive devices without approval	400
14	17(2)(f)	Not fill or excavate, contrary to the terms and conditions of the licence	400
15	17(2)(g)	Failure to restore and reinstate the excavation site in accordance with conditions of the licence	400
16	17(2)(h)	Failure to take all reasonable steps to prevent the emission of dust, noise, vibration, and other forms of nuisance from the excavation site	400
17	17(2)(i)	failure to comply with conditions of licence imposed by the local government	400
18	17(2)(j)	Failure to cease excavating and undertake restoration and reinstatement as required by notice issued by the local government	500
19	17(3)(a)	Carry out or permit to be carried out blasting without approval	400
20	17(3)(b)	Carry out or permit to be carried out blasting outside hours approved by the local government	400
21	17(3)(d)	Failure to comply with conditions imposed by the local government relating to blasting	400
22	17(4)	Carry out or permit to be carried out any blasting on Saturday, Sunday or Public Holiday, without approval	400
23		Other offences not specified	200

Dated this 22nd day of February 1999.

The common seal of the Shire of Wanneroo was hereunto affixed in the presence of—

C. T. ANSELL, Chairman of Commissioners.
K. WHITE, Chief Executive Officer.

