



WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

4617



PERTH, MONDAY, 16 NOVEMBER 2009 No. 207 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.30 PM

© STATE OF WESTERN AUSTRALIA

LOCAL GOVERNMENT ACT 1995

**SHIRE OF SERPENTINE
JARRAHDAL**

**DUST AND SAND
LOCAL LAW 2008**

LOCAL GOVERNMENT ACT 1995

SHIRE OF SERPENTINE JARRAHDALE

DUST AND SAND LOCAL LAW 2008

CONTENTS

PART 1—INTRODUCTORY AND ADMINISTRATIVE MATTERS

1. Citation and Application
2. Interpretation
3. Objections and Appeals
4. Notices
5. Application of this Local Law
6. Forms

PART 2—SAND DRIFT AND DUST

7. Air Quality Management Plans
- 8.-9. Prevention of Erosion and the Escape of Sand and Dust
10. Sand or Dust which has Escaped to be Cleaned Up

PART 3—ENFORCEMENT

- 11.-12. Offences and Penalties

SCHEDULES

Schedule 1—Air Quality/Erosion Management Plan Face Sheet

Schedule 2—Prescribed Offences for the Purposes of Section 9.16(1) of the Act

LOCAL GOVERNMENT ACT 1995

SHIRE OF SERPENTINE JARRAHDALÉ

DUST AND SAND LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers, the Council of the Shire of Serpentine Jarrahdale resolved on 24 November 2008 to make the following local law.

PART 1—INTRODUCTORY AND ADMINISTRATIVE MATTERS

Citation

1. This Local Law may be cited as *The Shire of Serpentine Jarrahdale Dust and Sand Local Law 2008*.

Interpretation

2.1 In these local laws, unless the context specifies otherwise—

‘**Act**’; means the *Local Government Act 1995*;

‘**Air Quality Management Plan**’; means a written strategy for minimising the negative impact of dust and smoke upon local air quality, incorporating the principles within the latest version of the publication *Land Development Sites and Impacts on Air Quality—A guideline for the prevention of dust and smoke pollution from land development sites in Western Australia*, first published by the Western Australian Department of Environmental Protection in November 1996;

‘**AS**’; means an Australian Standard published by Standards Australia;

‘**Authorised Person**’; means a person authorised by the Council, pursuant to the provisions of Section 9.10(1) of the *Local Government Act 1995*, for purposes of administration and enforcement of these local laws;

‘**Builder**’; means the person or persons or firm or corporation who or which shall be the holder of any building licence issued in respect of building works on a building site, and shall also include any person or persons or firm or corporation who or which shall be in effective control of such building site whether or not such person or persons or firm or corporation shall be the holder of such licence;

‘**Building Code**’; means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with the Code;

‘**Building Site**’; means any lot of land for which a building licence is current, but does not include a lot upon which there exists a commercial, industrial or residential building and—

- (a) the current building licence is issued in respect only of a pergola, patio, shed or other Class 10 building as classified by the Building Code; and
- (b) means of collection and removal of rubbish, satisfactory to the Council but other than that specified within these local laws, is in place;

‘**Bush**’; has the same meaning as is given to it in the *Bush Fires Act 1954*;

‘**Chief Executive Officer**’; means the Chief Executive Officer of the Shire;

‘**Construction Work**’; means any work involving the placement, fitting together, manufacture or erection of the components of a building, and includes pouring of footings and slabs and placement of stumps or other floor supports;

‘**Council**’; means the Council of the Shire of Serpentine Jarrahdale;

‘**Development Site**’; means and includes any lot or lots of land upon which there is currently a development or subdivision approval, and any lot or lots upon which construction work, earthworks, clearing of scrub, trees or overgrowth or any other site works are taking or have taken place, whether or not such works are subject to a development or subdivision approval;

‘District’; means the district of the Shire of Serpentine Jarrahdale;

‘Dust and Sand’; means granules or particles of rock, earth, clay, loam, silt and any other granular, or airborne particulate or like material, and includes dust and gravel;

‘Erosion Management Plan’; means a written strategy for minimising the likelihood of carriage by water or sand off any lot or lots of land, incorporating the principles within the latest version of the publication *‘Erosion and Sediment Control Manual for the Darling Range, Perth, Western Australia’*, first published by the Upper Canning/Southern Wungong Catchment Team in June 2001;

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

‘Occupier’; means any person who, at the time the notice is served, is in control of any place or part of any place or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to a place to perform any work in relation to any place and without limiting the generality of the foregoing and for the avoidance of doubt includes a builder or contractor;

‘Person’; includes persons, and also, for the avoidance of doubt, businesses, companies, firms, corporations and other commercial entities;

‘Shire’; means the Shire of Serpentine Jarrahdale, and includes its authorised person;

‘Street’; means any highway or thoroughfare which the public are entitled to use, and includes every part of the highway or thoroughfare, including the verge and other things including bridges and culverts appurtenant to it;

2.2 Any other expression used in these local laws and not defined herein shall have the meaning given to it in the Act.

2.3 Wherein these local laws a duty, obligation or liability is imposed on an ‘owner or occupier’ the duty shall be deemed to be imposed jointly and severally on each of the owner and occupier.

2.4 Where under these local laws the Shire is empowered to carry out actions or cause to be undertaken works as a consequence of the failure of any person to comply with the terms of a notice or other conduct, the right to enter land is at all times subject to the provisions of Division 3 of Part 3 of the Act.

Objections and Appeals

3. When the Council makes a decision under these local laws and/or gives a person notice, the affected person may lodge an objection under the provisions of Division 1 of Part 9 of the Act and Regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply.

Notices

4.1 Where these local laws refer to the giving of a notice, other than the giving of an infringement notice, no particular form is prescribed and it will be acceptable that the notice be in writing giving sufficient details to enable the owner, occupier or other person to whom the notice is issued to know the offence committed and the measures required to be taken, or conditions with which compliance is required, as the case may be.

4.2 Where an authorised person serves a notice purporting to be as a consequence of an opinion, no particular form of expression of that opinion is prescribed, and a written memorandum signed by the authorised person expressing that opinion together with the reason that it is held will be sufficient evidence of such opinion.

4.3 Where an authorised person serves a notice or other direction purporting to be as a consequence of an opinion or decision of the Council, a copy of an extract from the minutes of the Council meeting at which that opinion was formed or decision made, showing record of the forming of that opinion or making of that decision and certified by the Chief Executive Officer, or another officer of Council who has been delegated or authorised to do so, as being a true and accurate copy, shall be sufficient evidence of the forming of that opinion or making of that decision for any legal proceedings under these local laws.

Application of this Local Law

5. These local laws shall apply throughout the district.

Forms

6. For the purposes of these local laws—

- (a) the form of the infringement notice given under Section 9.17 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the notice sent under Section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 2—SAND DRIFT AND DUST**Air Quality Management Plans**

7.1 When on any land, any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust are intended, whether or not that work or those works are subject to a development or subdivision approval, the owner or occupier shall submit to the Shire for its approval an Air Quality Management Plan (AQMP).

7.2 The Air Quality Management Plan shall be accompanied by a face sheet in the form of Schedule 1 so as to be aligned with relevant DEC guidelines for dust management. AQMP shall include information on the following areas—

- (a) introduction (program scope and objectives)
- (b) background (contextual information)
- (c) proposed work and potential impacts
- (d) controls, triggers and contingencies
- (e) monitoring program and design.

7.3 When deemed appropriate by the Shire, a bond, to be used for funding the cost of rectification by the Shire if required and calculated on the basis of an assessment of the particular site, shall be lodged prior to approval of an Air Quality Management Plan.

7.4 The Shire may—

- (a) approve the Air Quality Management Plan;
- (b) approve the Air Quality Management Plan subject to such conditions as it considers appropriate; or,
- (c) if it appears that the Plan is not adequate to effectively manage air quality issues and cannot easily be made to do so, or the detail required by Schedule 1 is not provided, refuse to approve the Air Quality Management Plan.

7.5 An owner or occupier shall not commence any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust or sand without the Shire having approved an Air Quality Management Plan.

7.6 An owner or occupier who undertakes any earthworks, clearing of scrub, trees or overgrowth or any other site works when the Shire has approved an Air Quality Management Plan shall comply with the provisions of that Plan and any conditions imposed thereon at all times.

Prevention of Erosion and the Escape of Sand and Dust

8. An owner or occupier of any land shall take all practicable measures to ensure that—

- (a) no sand or dust is carried by water—
 - (i) off the particular lot or lots of land; or
 - (ii) directly or indirectly into any creek, stream, river or any other natural water course; and
- (b) no sand or dust is released from or escapes from the particular lot or lots, whether by means of wind or any other cause.

Notice May Require Specified Action to Prevent Erosion and the Escape of Dust or Sand

9.1 Where it appears to an authorised person that sand or dust 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 to, within a time specified in the notice—

- (a) submit to the Shire for its approval an Air Quality and/or Erosion Management Plan; or
- (b) take such other actions as the authorised person considers necessary to prevent or minimise the escape, release or carriage of sand or dust from the land.

9.2 The Air Quality and/or Erosion Management Plans to which reference is made in subclause (1) (a) shall be accompanied by a face sheet in the form of Schedule 1.

9.3 The Shire may—

- (a) approve the Air Quality and/or Erosion Management Plan;
- (b) approve the Air Quality and/or Erosion Management Plan subject to such conditions as it considers appropriate; or,
- (c) if it appears that the Plan is not adequate to effectively manage air quality or erosion issues, whichever may be the case, and cannot easily be made to do so, or the detail required by Schedule 1 is not provided, refuse to approve the Air Quality and/or Erosion Management Plan.

9.4 A person who has been required to submit to the Shire an Air Quality and/or Erosion Management Plan pursuant to sub clause (1) (a) shall not continue or commence any works on the land without the Shire having approved the Air Quality and/or Erosion Management Plan.

Sand or Dust which has Escaped to be Cleaned Up

10. When any sand and dust has been released, escaped or been carried from any land onto or through another person's land, an authorised person may, by notice in writing, direct the owner or occupier of the land from which the sand or dust has been released, escaped or been carried, within a time specified in the notice, clean up the sand and dust and make good any damage resulting from that release or escape.

PART 3—OFFENCES AND PENALTIES

11. Any person who—

- (a) fails to comply with a notice issued under the 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 is prohibited from doing; or
- (d) contravenes any provisions of this Local Law,

commits an offence.

12. Any person who commits an offence under this Local Law shall be liable to—

- (a) a penalty not exceeding \$5,000.00 and not less than—
 - (i) in the case of first such offence, \$500.00
 - (ii) in the case of subsequent offences, \$3,000.00, and
- (b) If the offence continues, an additional penalty may be applied from the day of the first such offence not exceeding \$500.00 for each day or part of a day for the duration of which the offence continues.

Schedule 1**Local Government Act 1995**

Shire of Serpentine Jarrahdale

DUST AND SAND LOCAL LAW 2008

FACE SHEET

AIR QUALITY / EROSION MANAGEMENT PLAN (Delete whichever is not applicable)					
DETAILS OF LAND					
Street				Lot No.	
Locality					
OWNER DETAILS					
Name					
Address					
Telephone No.	Office/Home		Mobile		
CONTRACTOR/S DETAILS					
Contractor Name					
Address					
Office Telephone No.		Fax No.		Email	
Supervisor					
Supervisor Name					
Mobile Telephone No.		Fax No.		Email	
After Hours Contact Details (for rectification works if necessary)					
Name					
Telephone No.	Home		Mobile		
Complaints Contact Details					
Name					
Mobile Telephone No.				Email	

*Schedule 2***Local Government Act 1995**

Shire of Serpentine Jarrahdale

DUST AND SAND LOCAL LAW 2008

PRESCRIBED OFFENCES FOR THE PURPOSE OF SECTION 9.16(1) OF THE ACT

Clause	Description	Modified Penalty (\$)
7 (5)	Commencement of site works without the Shire having approved an Air Quality Management Plan	250
7 (6)	Failure to comply with the approved Air Quality Management Plan and or related approval conditions	250
9 (1)	Failure to comply with a notice served by an authorised officer	250

Dated: 30 October 2009.

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

SHEILA TWINE, Shire President.
JOANNE ABBISS, Chief Executive Officer.
