



WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

609



PERTH, FRIDAY, 12 FEBRUARY 2010 No. 22 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

© STATE OF WESTERN AUSTRALIA

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

**PARKING AND PARKING FACILITIES
LOCAL LAW 2009**

**EXTRACTIVE INDUSTRIES
LOCAL LAW 2009**

**SAND DRIFT PREVENTION AND
ABATEMENT LOCAL LAW 2009**

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

PARKING AND PARKING FACILITIES LOCAL LAW 2009

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 18 August 2009 to make the following Local Law.

PART 1—PRELIMINARY**1.1 Citation**

This Local Law shall be cited as the *City of Albany Parking and Parking Facilities Local Law 2009*.

1.2 Repeal

The *City of Albany Parking and Parking Facilities Local Law 2001* published in the *Government Gazette* on 17 April 2002 is repealed.

1.3 Commencement

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

1.4 Interpretation

(1) In this Local Law unless the context requires otherwise—

“**ACROD sticker**” has the meaning given to it by the Code;

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

“**appropriate fee**” means the fee appropriate to the period for which a vehicle has been parked;

“**authorised person**” means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this Local Law;

“**authorised vehicle**” means a vehicle authorised by the local government or an authorised person to stand or park in an area which is designated by signs for the parking of authorised vehicles only;

“**bicycle**” has the meaning given to it by the Code;

“**bus**” has the meaning given to it by the Code;

“**caravan**” means a vehicle that is fitted or designed for human habitation and which is drawn by another vehicle, or which is capable of self-propulsion;

“**carriageway**” means a portion of a thoroughfare that is improved, designed or ordinarily used for vehicular traffic, and includes the shoulders, and areas, including embayments at the side or centre of the carriageway, used for the stopping or parking of vehicles; and where a thoroughfare has 2 or more of those portions divided by a median strip, the expression means each of those portions, separately;

“**CEO**” means the Chief Executive Officer of the local government;

“**children’s crossing**” has the meaning given to it by the Code;

“**Code**” means the *Road Traffic Code 2000*;

“**commercial vehicle**” means a motor vehicle constructed for the conveyance of goods or merchandise, or for the conveyance of materials used in any trade, business, industry or work whatsoever, other than a motor vehicle for the conveyance of passengers, and includes any motor vehicle that is designed primarily for the carriage of persons, but which has been fitted or adapted for the conveyance of the goods, merchandise or materials referred to, and is in fact used for that purpose;

“**Council**” means the Council of the local government;

“**district**” means the district of the local government;

“**driver**” means any person driving, or in control of, a vehicle;

“**fee**” means the prescribed amount of legal tender that the local government may impose and determine from time to time for the stopping or parking of a vehicle under and in accordance with sections 6.16 to 6.19 of the Act;

- “**footpath**” has the meaning given to it by the Code;
- “**GVM**” (which stands for “gross vehicle mass”) has the meaning given to it by the Code;
- “**Loading Zone**” means a parking space which is set aside for use by commercial vehicles if there is a sign referable to that space marked “Loading Zone”;
- “**local government**” means the City of Albany;
- “**median strip**” has the meaning given to it by the Code;
- “**metered space**” means a section or part of a metered zone that is adjacent to a parking meter and that is marked or defined by painted lines or by metallic studs or similar devices for the purpose of indicating where a vehicle may be parked on payment of a fee or charge;
- “**metered zone**” means any thoroughfare or reserve or part of any thoroughfare or reserve in which parking meters regulate the parking of vehicles;
- “**motorcycle**” has the meaning given to it by the Code;
- “**motor vehicle**” means a self-propelled vehicle that is not operated on rails; and the expression includes a trailer, semi-trailer or caravan while attached to a motor vehicle, but does not include a power assisted pedal cycle;
- “**occupier**” has the meaning given to it by the Act;
- “**owner**”—
- (a) where used in relation to a vehicle licensed under the Road Traffic Act, means the person in whose name the vehicle has been registered under that Road Traffic Act;
 - (b) where used in relation to any other vehicle, means the person who owns, or is entitled to possession of that vehicle; and
 - (c) where used in relation to land, has the meaning given to it by the Act;
- “**park**”, in relation to a vehicle, means to permit a vehicle, whether attended or not by any person, to remain stationary except for the purpose of—
- (a) avoiding conflict with other traffic; or
 - (b) complying with the provisions of any law; or
 - (c) taking up or setting down persons or goods (*maximum of 2 minutes*);
- “**parking area**” has the meaning given to it by the Code;
- “**parking facilities**” includes land, buildings, shelters, ticket zones, parking spaces, parking stations, metered zones, metered spaces and other facilities open to the public generally for the parking of vehicles with or without charge and signs, notices and facilities used in connection with the parking of vehicles;
- “**parking region**” means the whole of the district with the exception of—
- (a) the approach and departure prohibition areas of all existing and future traffic control signal installations as determined by the Commissioner of Main Roads;
 - (b) prohibition areas applicable to all existing and future bridges and subways as determined by the Commissioner of Main Roads; and
 - (c) any road or part of a road which comes under the control of the Commissioner of Main Roads unless the control of parking and parking facilities on that road or part of a road has been delegated by the Commissioner of Main Roads to the local government;
- “**parking space**” means a section or part of a thoroughfare, a public reserve or a parking station, which is marked, or defined by painted lines, metallic studs, pavers or by similar devices for the purpose of indicating where a vehicle may stop or be parked;
- “**parking station**” means any land or structure constituted as a parking station under this Local Law;
- “**pedestrian crossing**” has the meaning given to by the Code;
- “**property line**” means the boundary between the land comprising a thoroughfare, and the land that abuts thereon;
- “**public place**” means any place to which the public has access whether or not that place is on private property;
- “**public reserve**” means any land—
- (a) which belongs to the local government;
 - (b) of which the local government is the management body under the *Land Administration Act 1997*; or
 - (c) which is an “otherwise unvested facility” within section 3.53 of the Act;
- “**Road Traffic Act**” means the *Road Traffic Act 1974*;
- “**Schedule**” means a Schedule to this Local Law;
- “**sign**” means a traffic sign, mark, structure, inscription, road marking, symbol or device placed, marked or erected on or near a thoroughfare, a parking station, a parking facility or a public reserve for the purpose of prohibiting, regulating, guiding or directing the stopping or parking of vehicles;
- “**stop**” in relation to a vehicle means to stop a vehicle and permit it to remain stationary, except for the purposes of avoiding conflict with other traffic or of complying with the provisions of any law;

“**symbol**” includes any symbol specified by Australian Standard 1742.1—1999 and any symbol specified from time by time by Standards Australia for use in the regulation of parking;

“**taxi**” has the meaning given to by the *Taxi Act 1994*;

“**taxi zone**” has the meaning given to it by the Code;

“**thoroughfare**” has the meaning given to it by the Act;

“**ticket issuing machine**” means a machine which—

- (a) is operated by the insertion of money or such other form of payment as may be permitted to be made; and
- (b) issues tickets to indicate the period during which it is lawful to remain parked in a parking space to which the machine is referable;

“**traffic island**” has the meaning given to it by the Code;

“**trailer**” means a vehicle without motive power of its own, designed for attachment to a motor vehicle for the purpose of being towed, but does not include a semi-trailer or caravan;

“**vehicle**” has the meaning given to it by the Code;

“**verge**” means that portion of a thoroughfare which lies between the boundary of a carriageway and the adjacent property line, but does not include a footpath;

(2) In this Local Law, unless the context requires otherwise, a reference to a thoroughfare, parking station, parking facility or public reserve includes a reference to, as the case may be, any part of the thoroughfare, parking station, parking facility or public reserve.

(3) A reference to the wording of any sign in this Local Law shall also be deemed to be a reference to the corresponding symbol.

(4) Unless the context otherwise requires, where a term is used but not defined, in this Local Law, and that term is defined in the Road Traffic Act or in the Code, then the term shall have the meaning given to it in the Act or Code.

1.5 Application of Local Law

(1) Subject to sub-clause (2) this Local Law applies to the parking region.

(2) This Local Law does not apply to a parking facility which is not occupied by the local government, unless the local government and the owner or the occupier of that facility have agreed in writing that this Local Law will apply to that facility.

(3) The agreement referred to in sub-clause (2) may be made on such terms and conditions as the parties may agree.

(4) Where a parking facility or a parking station is identified in Schedule 1, then the facility or station shall be deemed to be a parking station to which this Local Law applies and it shall not be necessary to prove that it is the subject of an agreement referred to in sub-clause (2).

(5) The provisions of Parts 2 to 7 do not apply to a bicycle parked at a bicycle rail or bicycle rack.

1.6 Vehicle and Driver Classification

(1) For the purpose of this Local Law vehicles are divided into the following classes—

- (a) buses;
- (b) caravans;
- (c) motor cycles and bicycles;
- (d) taxis;
- (e) commercial vehicles;
- (f) tractors;
- (g) heavy vehicles; and
- (h) all other vehicles not otherwise classified.

(2) For the purpose of this Local Law, drivers are divided into the following classes—

- (a) authorised persons;
- (b) employees of the City;
- (c) customers or patrons of a shop, shopping centre, facility or event;
- (d) persons who work in a shop or shopping centre; and
- (e) all other persons not otherwise classified.

1.7 Application and Interpretation of Signs

(1) Where the stopping or parking of vehicles in a thoroughfare is regulated by a sign, then the sign shall for the purposes of this Local Law apply to that part of the thoroughfare which—

- (a) lies beyond the sign;
- (b) lies between the sign and the next sign beyond that sign; and
- (c) is on that side of the thoroughfare nearest to the sign.

(2) For the purposes of this Local Law a sign may prohibit or regulate parking or stopping by the use of any symbol.

(3) A sign regulating the parking or stopping of vehicles is presumed to be, in the absence of evidence to the contrary, a sign placed, marked or erected under the authority of this Local Law.

(4) An inscription or symbol on a sign operates and has effect according to its tenor, and where the inscription or symbol relates to the stopping of vehicles, it shall be deemed for the purposes of this Local Law to operate and have effect as if it also related to the parking of vehicles.

(5) A sign that—

- (a) was erected by the local government or the Commissioner of Main Roads prior to the coming into operation of this Local Law; and
- (b) relates to the parking of vehicles within the parking region, shall be deemed for the purposes of this Local Law to have been erected by the local government under the authority of this Local Law.

1.8 Powers of the local government

The local government may, by resolution, prohibit or regulate by signs or otherwise, the stopping or parking of any vehicle, any class of vehicles or any class of drivers in any part of the parking region but must do so consistently with the provisions of this Local Law.

PART 2—PARKING STATIONS

2.1 Establishment of Parking Stations

- (1) The local government may constitute any land or structure as a parking station by—
 - (a) resolution of the Council; or
 - (b) inclusion of a description of the land or structure in Schedule 1.
- (2) A parking station constituted under sub-clause (1) may be varied as to the land or structures which it comprises by—
 - (a) resolution of the Council; or
 - (b) an amendment to the description in Schedule 1.
- (3) The local government may indicate the constitution or variation of a parking station by signs.
- (4) In relation to a parking station, the local government may determine and indicate by signs the—
 - (a) location of parking spaces within a parking station;
 - (b) permitted times and conditions of parking or stopping a vehicle;
 - (c) classes of vehicles permitted to park or stop;
 - (d) classes of persons permitted to park or stop a vehicle; and
 - (e) manner of parking or stopping a vehicle.

2.2 Fees for Parking Stations

- (1) The local government may impose and determine a fee for the stopping or parking of a vehicle in a parking station under and in accordance with sections 6.16 to 6.19 of the Act.
- (2) A reference in this Part to a “fee” means a fee imposed in accordance with sub-clause (1).

2.3 Conditions of Parking in a Parking Station

- (1) A person shall not park or stop a vehicle or permit a vehicle to remain parked in any parking station during any period for which a fee is payable unless—
 - (a) in the case of a parking station having an attendant on duty, the person pays the appropriate fee when demanded; or
 - (b) in the case of a parking station equipped with a ticket issuing machine, the person—
 - (i) inserts the appropriate fee in the ticket issuing machine or makes such other permitted form of payment which is indicated on the machine; and
 - (ii) obtains a parking ticket from the machine.
- (2) The local government may by resolution declare that sub-clause (1) shall not apply in a parking station during periods or on particular days specified in that resolution.

2.4 Display of Tickets

A person shall not stop or park a vehicle in a parking station equipped with a ticket issuing machine during any period for which a fee is payable unless an unexpired parking ticket applicable to that parking station is—

- (a) displayed inside the vehicle; and
- (b) displayed so that the date, expiry time and the number (if any) on the ticket are clearly visible to and able to be read by an authorised person from outside the vehicle, at all times while the vehicle remains stopped or parked in the parking station.

2.5 Lost Tickets

If provision is made in any parking station for payment of a fee on the departure of a vehicle, and the ticket issued when a vehicle entered the parking station is not produced on the departure of the vehicle, the fee payable shall be calculated from the time the parking station was opened on that day to the time of the departure of the vehicle.

2.6 Removal of Vehicles

A person shall not remove a vehicle which has been parked in a parking station until he or she pays the appropriate fee.

2.7 Parking Within a Parking Space

A person shall not stop or park a vehicle in a parking station, other than wholly within a parking space.

2.8 Prohibitions on Stopping or Parking

- (1) A person shall not stop a vehicle in any part of a parking station—
 - (a) if the stopping of a vehicle in that part is prohibited by a sign; or
 - (b) during a period in which the stopping or parking of vehicles in that part is prohibited by a sign.
- (2) A person shall not park a vehicle on any part of a parking station—
 - (a) if the parking of vehicles on that part is prohibited by a sign;
 - (b) during a period in which the parking of vehicles on that part is prohibited by a sign;
 - (c) if a sign specifies that part is for the parking of vehicles—
 - (i) of a different class;
 - (ii) or driven by a person of a different class;
 - (d) for more than the maximum time specified by a sign; or
 - (e) so as to obstruct an entrance to, or an exit from a parking station, or an access way within the parking station.

2.9 Special Event Parking

- (1) The local government may by use of signs set aside, for any period specified on the signs, any parking station, parking facility or other land owned or controlled by the local government for the parking of vehicles by persons attending a special event.
- (2) A person shall not park or stop a vehicle in a parking station, parking facility or land owned or controlled by the local government set aside under sub-clause (1) during the period for which it is set aside, unless a ticket purchased from the City with respect to the special event is displayed in the vehicle and is clearly visible to and readable by an authorised person from outside the vehicle.
- (3) A fee payable for special event parking may be determined and imposed by the local government.
- (4) For the purpose of this clause, “**special event**” means any event or occurrence considered by the local government to be special or likely to attract a substantial number of persons driving vehicles.
- (5) During the period referred to in sub-clause (1) the provisions of clauses 2.8(1)(b) and 2.8(2)(b) & (d) shall not apply to the parking station.

2.10 Behaviour in Parking Stations

A person shall not—

- (a) remain in or on a parking station after having been directed to leave that parking station by an authorised person;
- (b) permit a vehicle to park on any part of a parking station, if an authorised person directs the driver of such vehicle to move the vehicle;
- (c) drive in a parking station in a direction other than the direction indicated by arrows.

2.11 Parking Stations May be Locked

At the expiration of the hours of operation of a parking station the local government whether or not any vehicle remains parked in a parking station may lock the parking station or otherwise prevent the movement of any vehicle within, to or from it.

2.12 Selling and Hiring in Parking Stations

No person shall at or on any part of a parking station sell, hire, give away, offer or expose for sale or hire anything of any nature, unless that person has the prior written permission of the local government to do so.

2.13 Authorised Spaces in Parking Stations

- (1) The local government may by use of signs set aside any parking station or any parking space or spaces in a parking station for the parking of vehicles by persons authorised by the local government.
- (2) Where the local government authorises a person pursuant to sub-clause (1) the local government—
 - (a) shall issue a written permit to the person; and
 - (b) may revoke the permit at any time.
- (3) A person shall not park or stop a vehicle in a parking space set aside under this clause unless a permit issued with respect to the vehicle is displayed inside the vehicle and is clearly visible to and readable by any authorised person examining the permit from outside the vehicle.

2.14 Damage to Parking Stations

A person shall not remove, damage, deface, misuse or interfere with any part of a parking station or parking facility, or attempt to do so.

2.15 Operation of Ticket Issuing Machines

- (1) A person shall not operate or attempt to operate a ticket issuing machine except in accordance with the operating instructions appearing on the ticket issuing machine.

(2) A person shall not insert or cause to be inserted or attempt to insert into a ticket issuing machine anything other than the money which is appropriate for the machine, or such other permitted form of payment which is indicated on the machine.

2.16 Damage to Ticket Issuing Machines

A person shall not remove, damage, deface, misuse or interfere with any ticket issuing machine or attempt to do any such act.

2.17 Defacing a Parking Ticket

A person shall not display in a vehicle a ticket purchased from a ticket issuing machine or from any other place authorised by the local government if the ticket has been altered, added to or defaced in any way in an attempt to avoid payment of the appropriate fee.

PART 3—PARKING ON THOROUGHFARES

3.1 Stopping or Parking Contrary to Signs

- (1) A person shall not stop or park a vehicle on a thoroughfare, or portion of a thoroughfare,—
- (a) if it is set apart by a sign for the stopping or parking of vehicles of a different class;
 - (b) if it is set apart by a sign for the stopping or parking of vehicles by persons of a different class;
 - (c) during any period when the stopping or parking of vehicles is prohibited by a sign;
 - (d) the side of which is marked with a continuous yellow edge line;
 - (e) other than wholly within a parking space if the part of the thoroughfare upon which the vehicle is standing or parked is provided with parking spaces;
 - (f) to which a “no stopping” sign applies; and
 - (g) to which a “no parking” sign applies, unless the driver is—
 - (i) dropping off, or picking up, passengers or goods;
 - (ii) does not leave the vehicle unattended; and
 - (iii) completes the dropping off, or picking up, of the passengers or goods within 2 minutes of stopping and drives on,

“unattended”, in relation to a vehicle, means that the driver has left the vehicle so that the driver is more than 3 metres from the closest point of the vehicle.

(2) A person shall not stop or park a vehicle on any part of a thoroughfare, whether or not that part is marked as a parking space, for more than the maximum time specified by a sign.

3.2 Occupied Parking Spaces

A person shall not stop or park or attempt to stop or park a vehicle in a parking space in which another vehicle is stopped or parked.

3.3 Median Strips and Traffic Islands

Subject to any law relating intersections with traffic control signals, a person shall not stop or park a vehicle on any part of a thoroughfare so that any portion of the vehicle is—

- (a) on a median strip;
- (b) adjacent to a median strip otherwise than in a parking space; or
- (c) on, or within 10 metres of any portion of a carriageway bounded on one or both sides by a traffic island.

3.4 Parking vehicle on a carriageway

- (1) A person parking a vehicle on a carriageway other than in a parking space shall park it—
- (a) in the case of a two-way carriageway, so that it is as near as practicable to and parallel with, the left boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
 - (b) in the case of a one-way carriageway, so that it is as near as practicable to and parallel with either boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
 - (c) so that at least 3 metres of the width of the carriageway lies between the vehicle and the farther boundary of the carriageway, or any continuous line or median strip, or between the vehicle and a vehicle parked on the farther side of the carriageway;
 - (d) so that the front and the rear of the vehicle respectively are not less than 1 metre from any other vehicle, except a motorcycle without a trailer, or a bicycle parked in accordance with this Local Law; and
 - (e) so that it does not obstruct any vehicle on the carriageway,

unless otherwise indicated on a parking regulation sign or markings on the roadway.

(2) In this clause, “continuous dividing line” means—

- (a) a single continuous dividing line only;
- (b) a single continuous dividing line to the left or right of a broken dividing line; or
- (c) 2 parallel continuous dividing lines.

3.5 When parallel and right-angled parking apply

Where a traffic sign associated with a parking area is not inscribed with the words “angle parking” (or with an equivalent symbol depicting this purpose), then unless a sign associated with the parking area indicates, or marks on the carriageway indicate, that vehicles have to park in a different position, where the parking area is—

- (a) adjacent to the boundary of a carriageway, a person parking a vehicle in the parking area shall park it as near as practicable to and parallel with that boundary; and
- (b) at or near the centre of the carriageway, a person parking a vehicle in that parking area shall park it at approximately right angles to the centre of the carriageway.

3.6 When angle parking applies

(1) Subject to sub-clause (2), where a sign associated with a parking area is inscribed with the words “angle parking” (or with an equivalent symbol depicting this purpose), a person parking a vehicle in the area shall park the vehicle at an angle of approximately 45 degrees to the centre of the carriageway unless otherwise indicated by the inscription on the parking sign or by marks on the carriageway.

(2) This clause does not apply to—

- (a) a passenger vehicle or a commercial vehicle with a mass including any load, of over 3 tonnes;
or
- (b) a person parking either a motor cycle without a trailer or a bicycle.

3.7 Parking Near Fire Hydrant or Public Post Box

(1) A person shall not stop or park a vehicle on a thoroughfare so that any portion of the vehicle is within 1 metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug.

(2) A person shall not stop or park a vehicle on a thoroughfare so that any portion of the vehicle is within—

- (a) 3 metres of a public post box; or
- (b) within a mail zone,

unless the vehicle is being used for the purpose of collecting postal articles from the post box.

3.8 Traffic Obstructions

Subject to any law relating to intersections with traffic control signals, a person shall not stop or park a vehicle so that any portion of the vehicle is—

- (a) in front of a right of way, crossover, passage or private drive or so close to one as to deny vehicles reasonable access to, or egress from, the right of way, crossover, passage or private drive;
- (b) upon an intersection except adjacent to a carriageway boundary that is not broken by an intersecting carriageway;
- (c) within 10 metres of the nearest property line of any thoroughfare intersecting the thoroughfare on the side on which the vehicle is parked;
- (d) alongside any excavation, works, hoarding, scaffolding or obstruction on the carriageway, if the vehicle would obstruct traffic;
- (e) in a cul-de-sac so as to obstruct the turning of vehicles within the cul-de-sac; or
- (f) on or over a footpath or a place of refuge for pedestrians,

unless a sign or markings on the carriageway indicate otherwise.

3.9 Double Parking

(1) A person shall not stop or park a vehicle on a thoroughfare so that any portion of the vehicle is between any other stopped or parked vehicle and the centre of that thoroughfare.

(2) This clause does not apply to a driver stopped in traffic.

3.10 Verge Parking

(1) A person shall not stop or park a vehicle on a verge where signs prohibit the stopping or parking of vehicles on that verge.

(2) A person, not being the occupier of the land abutting on to a verge, shall not without consent of that occupier, drive, park or stop a vehicle upon that verge.

(3) A person shall not park a commercial vehicle on a verge unless it is being loaded or unloaded with reasonable expedition with goods, merchandise or materials collected from or delivered to the premises adjacent to the portion of the verge on which the commercial vehicle is parked, provided no obstruction is caused to the passage of any vehicle or person using a carriageway or a path.

3.11 Bus Stops, Pedestrian, Railway and Children’s Crossing

(1) A person shall not stop or park a vehicle on a thoroughfare so that any portion of the vehicle is within 10 metres of the departure side of—

- (a) a sign inscribed with the words “Bus Stop” or “Hail Bus Here” (or with equivalent symbols depicting these purposes), unless that vehicle is an bus taking up or setting down passengers;
or
- (b) a pedestrian crossing or a children’s crossing established on a thoroughfare.

(2) A person shall not stop or park a vehicle on a thoroughfare so that any portion of the vehicle is within 20 metres of the approach side of—

- (a) a sign inscribed with the words “Bus Stop” or “Hail Bus Here” (or with equivalent symbols depicting these purposes), unless that vehicle is an bus taking up or setting down passengers; or
- (b) a pedestrian crossing or a children’s crossing established on a thoroughfare.

(3) A driver shall not stop in a bus zone unless the driver is driving a public bus, or a bus of a type that is permitted to stop at the bus zone by information on or with the “bus zone” sign applying to the bus zone.

(4) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of either the approach side or the departure side of the nearest rail of a railway level crossing.

3.12 No Parking within One Hour

A person parks a vehicle in a thoroughfare where parking is restricted as to time, that person shall not park that vehicle again in the same thoroughfare on that day unless it has first been removed from the thoroughfare for at least 1 hour.

3.13 Direction to Move Vehicles

A driver of a vehicle shall not permit a vehicle to stop or park on any part of a thoroughfare or public reserve, if an authorised person directs the driver to move it.

3.14 Stopping in a Loading Zone

A person shall not stop a vehicle in a loading zone unless it is—

- (a) a motor vehicle used for commercial or trade purposes engaged in the picking up or setting down of goods; or
- (b) a motor vehicle taking up or setting down passengers, but, in any event, shall not remain in that loading zone—
 - (i) for longer than a time indicated on the “loading zone” sign; or
 - (ii) longer than 30 minutes (if no time is indicated on the sign).

3.15 Stopping in a taxi zone

A driver shall not stop in a taxi zone, unless the driver is driving a taxi.

3.16 No parking of vehicles exposed for sale and in other circumstances

A person shall not park a vehicle on any portion of a thoroughfare—

- (a) for the purpose of exposing it for sale;
- (b) if that vehicle is not licensed under the Road Traffic Act;
- (c) if that vehicle is a trailer or a caravan unattached to a motor vehicle; or
- (d) for the purpose of effecting repairs to it, other than the minimum repairs necessary to enable the vehicle to be moved to a place other than a thoroughfare.

PART 4—STOPPING AND PARKING GENERALLY

4.1 Parking and Stopping of Bicycles

A person shall not park or stop any bicycle in a parking space, unless the parking space is marked “M/C”.

4.2 Authorised Parking

A person shall not, without the permission of the local government or an authorised person, stop or park a vehicle, other than an authorised vehicle, in an area designated by signs for the parking of authorised vehicles only.

4.3 Private Property

(1) In this clause, a reference to “land” does not include land which is—

- (a) a public reserve;
- (b) the subject of an agreement referred to in clause 5(2); or
- (c) a parking station.

(2) A person shall not park a vehicle on land without the consent of the owner or occupier of the land on which the vehicle is parked.

(3) The consent referred to in sub-clause (2) may be given subject to any conditions which are specified on a sign, and a person shall not park a vehicle on the land otherwise than in accordance with the consent.

4.4 Stopping heavy, commercial and other types of vehicles in built up area

(1) A person shall not park—

- (a) a vehicle or any combination of vehicles that, together with any projection on, or load carried by, the vehicle or combination of vehicles, is 7.5 metres or more in length or exceeds a GVM of 4.5 tonne;
- (b) a commercial vehicle;
- (c) a caravan;

- (d) a bus;
- (e) a tow truck;
- (f) a tractor; or
- (g) a trailer,

on a carriageway or verge in a built-up area between the hours of 6.00 pm one day and 7.00 am the following day and for more than 3 hours consecutively between the hours of 7.00 am and 6.00 pm.

(2) Nothing in this clause mitigates the limitations or conditions imposed by any other clause or by any Local Law or traffic sign relating to the parking or stopping of vehicles.

4.5 Marking of Tyres

(1) An authorised person may mark the tyres of a parked vehicle with chalk or any other non-indelible substance for any purpose connected with or arising out of that authorised person's duties and powers.

(2) A person shall not remove a mark made by an authorised person so the purpose of the affixing of such mark is defeated or likely to be defeated.

4.6 Parking on Public Reserves

A person shall not stop or park a vehicle in a public reserve, other than within a parking facility or parking station on that reserve, unless the person is an employee of the City in the course of her or his duties, or has obtained the permission of the local government or an authorised person.

4.7 No Obstruction of Public Places

(1) A person shall not park a vehicle in a public place so as to cause an obstruction.

(2) For the purposes of sub-clause (1)—

- (a) a vehicle which is parked in any portion of a public place where vehicles may not lawfully be parked is deemed to be causing an obstruction;
- (b) a vehicle that is parked in any portion of a public place where vehicles may lawfully be parked does not cause an obstruction, unless—
 - (i) the vehicle is so parked for any period exceeding 24 hours, without the consent in writing of the CEO or an authorised person; or
 - (ii) the vehicle is so parked during any period in which the parking of vehicles is prohibited or restricted by a sign.

4.8 Impounding of Vehicles

The impounding of vehicles and other goods shall be carried out in accordance with sections 3.37 to 3.48 of the Act and regulation 29 of the *Local Government (Functions and General) Regulations 1996*.

4.9 Stopping in a parking area for people with disabilities

(1) A driver shall not stop in a parking area for people with disabilities unless—

- (a) the driver's vehicle displays an ACROD sticker; and
- (b) either the driver or a passenger in that vehicle is a person with disabilities.

(2) In this clause a "parking area for people with disabilities" is a length or area—

- (a) to which a "permissive parking" sign displaying a people with disabilities symbol applies;
- (b) to which a "people with disabilities parking" sign applies;
- (c) indicated by a road marking (a "people with disabilities road marking") that consists of, or includes, a people with disabilities symbol; or
- (d) set aside within a parking region as a "parking bay for use of a disabled person" under the *Local Government (Parking for Disabled Persons) Regulations 1988*.

4.10 Restrictions on parking in particular areas

(1) Subject to subclause (2), a person shall not park a vehicle in a thoroughfare or part of a thoroughfare, or part of a parking station—

- (a) If by a sign it is set apart for the parking of vehicles of a different class;
- (b) If by a sign it is set apart for the parking of vehicles by persons of a different class; or
- (c) During any period when the parking is prohibited by a sign.

(2) If—

- (a) the driver's vehicle displays an ACROD sticker; and
- (b) a disabled person to which the ACROD sticker relates is either the driver of the vehicle or a passenger in the vehicle,

the driver may park a vehicle in a thoroughfare or a part of a thoroughfare or part of a parking station, except in a thoroughfare or a part of a thoroughfare or part of a parking station to which a disabled parking sign relates, for twice the period indicated on the sign.

(3) A person shall not park a vehicle—

- (a) in a no parking area;
- (b) in a parking area, except in accordance with both the signs associated with the parking area and with this Local Law;
- (c) in a space marked "M/C" unless it is a motorcycle without a sidecar or a trailer, or it is a bicycle.

PART 5—RESIDENTIAL PARKING PERMITS

5.1 Residential Parking Permit

- (1) A maximum of 3 residential parking permits may be issued for each residential lot fronting or with vehicle access to and from the thoroughfare.
- (2) An application for parking permit shall be made in the form determined by the local government.
- (3) The local government may in respect of an application for a permit for the purpose of sub-clause (1)—
 - (a) approve it;
 - (b) approve it subject to such conditions as the local government considers appropriate; or
 - (c) refuse to approve it.
- (4) Where the local government makes a decision under sub-clause (3), it shall issue a permit in the form determined by it to the person who applied for the permit.
- (5) A permit issued for the purpose of sub-clause (1) will be issued for a period not exceeding 1 year and expiring on 31 December in the year of issue.
- (6) Every permit issued for the purpose of sub-clause (1) is to specify—
 - (a) a permit number;
 - (b) the name of the thoroughfare to which the exemption granted by clause 5.2 applies; and
 - (c) the date on which that permit expires.

5.2 Conditions of Exemption for Residential Parking Permits

Where parking of a vehicle on any part of a thoroughfare within the district is prohibited for more than a specified time, the holder of a permit issued under clause 5.1 is exempted from such prohibitions if—

- (a) The vehicle is parked on a thoroughfare or portion of a thoroughfare specified in the permit, but not adjacent to retail premises where the parking of all vehicles is subject to a time restriction.
- (b) The permit is displayed in the vehicle in a prominent position.
- (c) The period in respect of which the permit was issued has not expired.
- (d) The holder of the permit at the time of parking the vehicle still resides at the residential lot in respect of which the permit was issued.

5.3 Removal and cancellation of residential parking permit

The holder of a permit issued under clause 5.1 who changes residence shall remove the permit from the vehicle to which it is affixed, and the permit shall be deemed to be cancelled on and from the date the holder changes residence.

PART 6—METERED ZONES

6.1 Determination of metered zones

- (1) The local government may by resolution constitute, determine and vary and also indicate by signs, metered spaces and metered zones.
- (2) In respect of metered spaces and metered zones the local government may by resolution determine, and may indicate by signs—
 - (a) permitted times and conditions of parking depending on and varying with the locality;
 - (b) classes of vehicles which are permitted to park;
 - (c) the amount payable for parking; and
 - (d) the manner of parking.

6.2 Parking fee to be paid

Subject to clause 6.5, a person shall not park a vehicle in a metered space unless the appropriate fee as indicated by a sign on the parking meter referable to the space is inserted into the parking meter.

6.3 Limitation on parking in metered space

The payment of a fee under clause 6.2 shall entitle a person to park the vehicle in a metered space for the period shown on the parking meter, but does not authorise the parking of the vehicle during any time when parking in that space may be prohibited in accordance with this Local Law.

6.4 No parking when meter is expired

Subject to clause 6.5, a person shall not leave or permit a vehicle to remain parked in a metered space during the hours when a fee is payable to park the vehicle in the space when the parking meter referable to that space exhibits the sign “Expired” or a negative time.

6.5 Suspension of requirement to pay fee

The local government may from time to time by a resolution declare that the provisions of clauses 6.2 and 6.4 shall not apply during the periods and days specified in the resolution.

6.6 Vehicles to be within metered space

Subject to subclause (b)—

- (a) A person shall not park a vehicle in a metered space in a thoroughfare otherwise than parallel to and as close to the kerb as practicable and wholly within the space, provided that where a metered space is set out otherwise than parallel to the kerb the vehicle need only park wholly within the space.
- (b) If a vehicle is too long or too wide to fit completely within a single metered space then the person parking the vehicle shall do so within the minimum number of metered spaces needed to park that vehicle.
- (c) A person shall not park a vehicle partly within and partly outside a metered zone.

6.7 Permitted insertions in parking meters

- (1) A person shall not insert into a parking meter anything other than the designations of coin or banknote or such other permitted form of payment indicated by a sign on the parking meter.
- (2) The insertion of a coin or banknote into any parking meter or the making of payment in such other form as may be permitted shall be effected only in accordance with the instructions printed on that particular meter.

6.8 Parking ticket to be clearly visible

A driver of a vehicle left parked in a metered zone which is regulated by a ticket issuing machine shall on purchasing a ticket from the machine for a period of parking, place the ticket inside the vehicle in such a position that the ticket is clearly visible to and the expiry time or time for which the ticket remains valid is able to be read by an authorised person examining the ticket from outside the vehicle.

6.9 One vehicle per metered space

A person shall not park or attempt to park a vehicle in a metered space in which another vehicle is parked.

6.10 No parking when hood on meter

Notwithstanding any other provision of this Local Law and notwithstanding any other sign or notice, a person shall not park a vehicle in a metered space if the parking meter referable to such metered space has a hood marked "No Parking", "Reserved Parking" or "Temporary Bus Stand" or equivalent symbols depicting these purposes except with the permission of the local government or an authorised person.

PART 7—MISCELLANEOUS**7.1 Affixing Signs and Notices**

A person shall not without the permission of the local government—

- (a) affix any board, sign, placard, notice or other thing to or paint or write upon any part of a sign, ticket issuing machine, parking facility or parking station; or
- (b) place, mark or erect a sign purporting to be or resembling a sign placed, marked or erected by the local government under this Local Law.

7.2 No Contravention of Sign

A person shall not contravene the direction of a sign erected by the local government under this Local Law.

7.3 Removal of Notice from Vehicle

A person other than the driver of the vehicle or a person acting under the direction of the driver, shall not remove from that vehicle any notice affixed to or put on it by an authorised person under this Local Law.

7.4 Offence

Any person who contravenes or fails to comply with a provision of this Local Law commits an offence and is liable upon conviction to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

7.5 Prescribed Offences and Modified Penalties

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified in Column 4 of Schedule 2 adjacent to the clause.

7.6 Forms

For the purposes of this Local Law—

- (a) The form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 3;
- (b) The form of the infringement notice referred to in section 9.17 of the Act is that of Form 2 in Schedule 3;
- (c) The form of the infringement notice referred to in section 9.17 of the Act which incorporates the notice referred to in section 9.13 of the Act, is that of Form 3 in Schedule 3; and
- (d) The form of the infringement withdrawal notice referred to in section 9.20 of the Act is that of Form 4 in Schedule 3.

Schedule 1

Local Government Act 1995
 PARKING AND PARKING FACILITIES LOCAL LAW 2009
DEEMED PARKING STATIONS

Schedule 2

Local Government Act 1995
 PARKING AND PARKING FACILITIES LOCAL LAW 2009
PRESCRIBED OFFENCES

Item	Clause	Nature of Offence	Modified Penalty \$
1	2.4	Failing to display unexpired parking ticket in a parking station	45
2	2.7	Parking outside a parking space in a parking station.	45
3	2.8(1)(a)	Stopping in a no stopping area in a parking station.	45
4	2.8(1)(b)	Stopping during a prohibited period in part of a parking	60
5	2.8(2)(a)	Parking in a no parking area in a parking station	60
6	2.8(2)(b)	Parking during a prohibited period on part of a parking station.	45
7	2.8(2)(c)	Parking in a parking station space set aside for a different class of vehicle or driver.	45
8	2.8(2)(d)	Parking for more than the maximum period in a parking Station	45
9	2.8(2)(e)	Parking so as to obstruct an entrance, exit or access way within a parking station	60
10	2.9(2)	Parking without a ticket in a parking space set aside for a special event	60
11	2.13(3)	Parking in an authorised space in a parking station without a permit	60
12	3.1(1)(a)	Stopping or parking on part of a thoroughfare set aside for vehicles of a different class	60
13	3.1(1)(b)	Stopping or parking on part of a thoroughfare set aside for drivers of a different class	60
14	3.1(1)(c)	Stopping or parking on part of a thoroughfare during a prohibited period	60
15	3.1(1)(d)	Stopping or parking on part of a thoroughfare marked with a yellow line	60
16	3.1(1)(e)	Parking on a thoroughfare other than wholly within a marked parking space	60
17	3.1(1)(f)	Stopping or parking on part of a thoroughfare to which a 'no stopping' sign applies	60
18	3.1(1)(g)	Stopping or parking on part of a thoroughfare to which a 'no parking' sign applies	60
19	3.1(2)	Parking on a thoroughfare for more than specified maximum time	60
20	3.2	Stopping or parking in an occupied parking space	60
21	3.3	Stopping or parking on or adjacent to a median strip	60
22	3.4(1)(a)	Failure to park as near as practicable to and parallel with the left boundary of two-way carriageway	60
23	3.4(1)(b)	Failure to park as near as practicable to and parallel with boundary of one-way carriageway	60
24	3.4(1)(a) or 3.4(1)(b)	Parking against flow of traffic on carriageway	60
25	3.4(1)(c)	Parking when distance from farther boundary less than 3 metres	45
26	3.4(1)(d)	Parking closer than 1 metre from another vehicle	45
27	3.4(1)(e)	Causing obstruction on carriageway	60
28	3.5(b)	Failure to park at approximate right angle	45

Item	Clause	Nature of Offence	Modified Penalty \$
29	3.6(1)	Failure to park at an appropriate angle	45
30	3.7(1)	Stopping or parking within 1 metre of a fire hydrant	60
31	3.7(2)	Stopping or parking within 3 metres of a public post box or within a mail zone	60
32	3.8(a)	Stopping or parking in front of a driveway or right of way	60
33	3.8(b)	Parking on an intersection	60
34	3.8(c)	Parking within 10 metres of intersection	45
35	3.8(d)	Parking next to traffic obstruction	45
36	3.8(e)	Parking in a cul-de-sac so as to cause an obstruction	60
37	3.8(f)	Parking over a footpath	60
38	3.9	Double parking	60
39	3.10(1) or (2)	Stopping or parking on a verge contrary to signs or without Consent	60
40	3.10(3)	Stopping or parking a commercial vehicle on a verge	60
41	3.11(1)	Stopping or parking within 10 metres of the departure side of bus stop, pedestrian or children's crossings	60
42	3.11(2)	Stopping or parking within 20 metres of the approach side of bus stop, pedestrian or children's crossing	60
43	3.11(3)	Stopping in bus zone	60
44	3.11(4)	Parking vehicle within 20 metres of approach side or departure side of railway level crossing	60
45	3.12	Parking vehicle again within 1 hour on a thoroughfare	45
46	3.13	Failing to move vehicle after direction by authorised person	60
47	3.14	Stopping a loading zone	60
48	3.15	Stopping in a taxi zone	60
49	3.16	Parking in thoroughfare for purpose of sale	60
50	4.1	Stopping or parking a bicycle in a parking space	60
51	4.2	Parking in authorised parking area without authorisation	60
52	4.3(2)	Parking on private property without consent of owner	60
53	4.4	Parking a heavy, commercial or other type of vehicle on road or verge	120
54	4.5	Removing authorised mark from tyres of parked vehicle	60
55	4.6	Parking on a public reserve	60
56	4.7	Parking so as to cause an obstruction in public place	60
57	4.9	Stopping in disabled parking area	120
58	4.10(1)(a)	Parking wrong class of vehicle	60
59	4.10(1)(b)	Parking by persons of a different class	60
60	4.10(1)(c)	Parking during a prohibited period	60
61	4.10(3)(a)	Parking in a no parking area	60
62	4.10(3)(b)	Parking contrary to signs or limitations	60
63	4.10(3)(c)	Parking vehicles in motor cycle area only area	60
64	5.3	Failure to remove permit when residence changed	45
65	6.2	Failure to pay fee for metered space	60
66	6.4	Parking when meter has expired	60
67	6.6(a)	Failure to park wholly within metered space	45
68	6.6(c)	Parking partly outside metered zone	60
69	6.7	Non-permitted insertion in parking meter	60
70	6.8	Failure to display ticket clearly in metered zone	45
71	6.9	Parking or attempting to park a vehicle in a metered space occupied by another vehicle	60
72	6.10	Parking contrary to a meter hood	60
73	7.4	All other offences not specified	45

Schedule 3

Local Government Act 1995

PARKING AND PARKING FACILITIES LOCAL LAW 2009

Form 1

NOTICE TO OWNER OF VEHICLE INVOLVED IN OFFENCE

To:⁽¹⁾

of:⁽²⁾

It is alleged that on / / at ⁽³⁾

at ⁽⁴⁾ your vehicle

make: ;

model: ;

registration: ,

was involved in the commission of the following offence:

.....

.....

.....

contrary to clauseof the **Parking and Parking Facilities Local Law 2009**.

You are required under section 9.13 of the *Local Government Act 1995* to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

If you do not prove otherwise, you will be deemed to have committed the offence unless—

(a) within 28 days after being served with this notice—

(i) you inform the Chief Executive Officer or another authorised officer of the local government as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or

(ii) you satisfy the Chief Executive Officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed;

or

(b) you were given an infringement notice for the alleged offence and the modified penalty specified in it is paid within 28 days after the notice was given or such further time as is allowed.

⁽⁵⁾

⁽⁶⁾

Insert—

⁽¹⁾ Name of owner or “the owner”

⁽²⁾ Address of owner (not required if owner not named)

⁽³⁾ Time of alleged offence

⁽⁴⁾ Location of alleged offence

⁽⁵⁾ Signature of authorised person

⁽⁶⁾ Name and title of authorised person giving notice

Schedule 3

Local Government Act 1995

PARKING AND PARKING FACILITIES LOCAL LAW 2009

Form 2

INFRINGEMENT NOTICE

Serial No

Date / /

To:⁽¹⁾

of:⁽²⁾

It is alleged that on / / at ⁽³⁾

at⁽⁴⁾

in respect of vehicle—

make: ;

model: ;

registration: ,

you committed the following offence—

.....
.....
.....

contrary to clause of the **Parking and Parking Facilities Local Law 2009**.

The modified penalty for the offence is \$

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorised person at ⁽⁵⁾ within a period of 28 days after the giving of this notice.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver’s licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry, additional costs will also be payable by you.

If the above address is not your current address or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver’s licence or any vehicle licence you hold being suspended without your knowledge.

⁽⁶⁾

⁽⁷⁾

Insert—

- ⁽¹⁾ Name of alleged offender or “the owner”
- ⁽²⁾ Address of alleged offender
- ⁽³⁾ Time of alleged offence
- ⁽⁴⁾ Location of alleged offence
- ⁽⁵⁾ Place where modified penalty may be paid
- ⁽⁶⁾ Signature of authorised person
- ⁽⁷⁾ Name and title of authorised person giving notice

Schedule 3

Local Government Act 1995

PARKING AND PARKING FACILITIES LOCAL LAW 2009

Form 3

INFRINGEMENT NOTICE

Serial No.

Date / /

To:⁽¹⁾

of:⁽²⁾

It is alleged that on / / at ⁽³⁾

at ⁽⁴⁾

in respect of vehicle—

make: ;

model: ;

registration: ,

you committed the following offence—

.....
.....
.....

contrary to clause of the **Parking and Parking Facilities Local Law 2009**.

The modified penalty for the offence is \$

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorised person at 102 North Road, Yakamia within a period of 28 days after the giving of this notice.

Unless within 28 days after being served with this notice—

(a) you pay the modified penalty; or

(b) you—

- (i) inform the Chief Executive Officer or another authorised officer of the local government as to the identity and address of the person who was the driver or person in charge of the above vehicle at the time the offence is alleged to have been committed; or
- (ii) satisfy the Chief Executive Officer that the above vehicle had been stolen or was being unlawfully used at the time the offence is alleged to have been committed, you will, in the absence of proof to the contrary, be deemed to have committed the above offence and court proceedings may be instituted against you.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver’s licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry additional costs will also be payable.

If the above address is not your current address, or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver’s licence or any vehicle licence you hold being suspended without your knowledge.

- (5)
- (6)

Insert—

- (1) Name of owner or “the owner”
- (2) Address of owner (not required if owner not named)
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Signature of authorised person
- (6) Name and title of authorised person giving notice

Schedule 3
 Local Government Act 1995
PARKING AND PARKING FACILITIES LOCAL LAW 2009
Form 4

WITHDRAWAL OF INFRINGEMENT NOTICE

Serial No

Date / /

To:⁽¹⁾

of:⁽²⁾

Infringement Notice No. dated / /

in respect of vehicle—

make: ;

model: ;

registration: ,

for the alleged offence of—

.....

.....

.....

has been withdrawn.

The modified penalty of \$

- has been paid and a refund is enclosed.
- has not been paid and should not be paid.

delete as appropriate.

- (3)
- (4)

Insert—

- (1) Name of alleged offender to whom infringement notice was given or “the owner”.
- (2) Address of alleged offender.
- (3) Signature of authorised person
- (4) Name and title of authorised person giving notice

Dated: 20 November 2009.

The Common seal of the City of Albany was affixed by the authority of a resolution of the Council in the presence of—

PAUL RICHARDS, Chief Executive Officer.
 MILTON EVANS JP, Mayor.

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

EXTRACTIVE INDUSTRIES LOCAL LAW 2009

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 15 September 2009 to make the following Local Law.

PART 1—PRELIMINARY

1.1 Citation

This Local Law shall be cited as the *City of Albany Extractive Industries Local Law 2009*.

1.2 Repeal

The City of Albany Extractive Industries Local Law as published in the *Government Gazette* on 28 August 2000 is repealed.

1.3 Commencement

This Local Law comes into operation 14 days after the date of publication in the *Government Gazette*.

1.4 Interpretation

In this Local Law, unless the context otherwise requires—

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

“**carry on an extractive industry**” means quarrying and excavating for stone, gravel, sand, clay, limestone, loam and other material;

“**CEO**” means the Chief Executive Officer of the local government;

“**district**” means the district of the local government;

“**excavation**” includes quarry;

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

“**licence**” means a licence issued under this Local Law;

“**licensee**” means the person named in the licence as the licensee;

“**local government**” means the City of Albany;

“**occupier**” has the meaning given to it in the Act;

“**owner**” has the meaning given to it in the Act;

“**person**” does not include the local government;

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

“**secured sum**” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1; and

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

1.5 Application

(1) The provisions of this Local Law—

(a) subject to paragraphs (b), (c), (d), (e) and (f)—

(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 apply to the carrying on of an extractive industry on land by the owner or occupier of that land for use on that land;

(e) do not affect the validity of any licence issued under the Local Law repealed by clause 1.2 of this Local Law if that licence is currently in force at the date of gazettal of this Local Law; and

(f) do not apply to land alienated in fee simple from the Crown before 1 January 1899.

(2) In subclause (1)(d) land includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in subclause (1)(d).

PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY**2.1 Extractive industries prohibited without licence**

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.

2.2 Applicant to advertise proposal

(1) Unless the local government first approves otherwise, a person seeking the issue of a licence shall, before applying to the local government for a licence—

- (a) forward by registered mail a notice in the form determined by the local government from time to time 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, advising of the application and specifying that they may, within 21 days from the date of service of the letter, object to or make representations in writing in respect of the issue of a licence by the local government.
 - (ii) every authority or person having control or jurisdiction over any of the things referred to in clause 2.3(1)(a)(vii) and (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; and
- (b) as soon as practicable after complying with the requirements of paragraph (a)—
 - (i) forward a copy of the notice to the CEO; and
 - (ii) publish the notice in a newspaper circulating in the area in which the proposed excavation is located.

(2) The local government may, within 14 days after receiving a copy of a notice referred to in subclause (1), cause to be displayed, or require the proposed applicant to display, in a prominent position on the land one or more notices—

- (a) in the form determined by the local government from time to time;
- (b) the content, size and construction of which have been approved by the CEO;
- (c) specifying particulars of the proposed excavation; and
- (d) inviting objections or comments within 21 days from the placement of the notice.

2.3 Application for licence

(1) Subject to subclause (3), a person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and shall forward the application duly completed and signed by each of the applicant, the owner of the land and any occupier of the land to the CEO together with—

- (a) three 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, 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; and
 - (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;
- (b) three copies of a works and excavation programme 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, water supply, 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 sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
 - (xii) a description of the measures to be taken to comply with 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) three copies of a rehabilitation and decommissioning programme indicating—
- (i) the objectives of the programme, 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 any 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 programme 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 thoroughfare 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 2.2(1) and (2) have been carried out;
- (g) copies of all land use planning approvals required under any planning legislation;
- (h) copies of any environmental approval required under any environmental legislation;
- (i) copies of any geotechnical information relating to the excavation site;
- (j) the consent in writing to the application from the owner of the excavation site;
- (k) documented evidence of approval from relevant government agencies relating to the application;
- (l) any other information that the local government may reasonably require; and
- (m) the licence application fee specified by the local government from time to time.
- (2) All survey data supplied by an applicant for the purpose of subclause (1) shall comply with Australian Height Datum and Australian Map Grid standards.
- (3) Where in relation to a proposed excavation—
- (a) the surface area is not to exceed 7500 square metres; and
 - (b) the extracted material is not to exceed 7500 cubic metres;
- the local government may exempt a person making application for a licence under subclause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (i) of subclause (1).

PART 3—DETERMINATION OF APPLICATION

3.1 Determination of application

- (1) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3 and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first been obtained.
- (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 shall—
 - (a) determine the licence period, not exceeding 10 years from the date of issue; and
 - (b) approve the issue of a licence in the form determined by the local government from time to time.
- (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 of the annual licence fee to 30 June, determined by the local government from time to time;
 - (b) payment of the secured sum, if any, imposed under clause 5.1;
 - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
 - (d) a copy of the public liability insurance policy required under clause 7.1(1);

shall issue the licence to the applicant.

- (5) Without limiting subclause (2), the local government may impose conditions in respect of 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) 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;
 - (g) the depths below which a person shall not excavate;
 - (h) distances from adjoining land or thoroughfares within which a person must not excavate;
 - (i) the safety of persons employed at or visiting the excavation site;
 - (j) the control of dust and wind-blown material;
 - (k) 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;
 - (l) the prevention of the spread of dieback or other disease;
 - (m) the drainage of the excavation site and the disposal of water;
 - (n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
 - (o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
 - (p) 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 programme;
 - (q) 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;
 - (r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this Local Law; and
 - (s) any other matter for properly regulating the carrying on of an extractive industry.

3.2 Payment of annual licence fee

On or before 31 December in each year, a licensee shall pay to the local government the annual licence fee determined by the local government from time to time.

PART 4—TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

4.1 Transfer of licence

- (1) An application for the transfer of a licence shall—
 - (a) be made in writing;
 - (b) be signed by the licensee and the proposed transferee of the licence;
 - (c) be accompanied by the current licence;
 - (d) be accompanied by the consent in writing to the transfer from the owner of the excavation site;

- (e) include any information that the local government may reasonably require; and
 - (f) be forwarded to the CEO together with the fee determined by the local government from time to time.
- (2) Upon receipt of any application for the transfer of a licence, the local government may—
- (a) refuse the application; or
 - (b) approve the application on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for the transfer of a licence, the local government shall transfer the licence by an endorsement on the licence in the form determined by the local government from time to time, signed by the Chief Executive Officer.
- (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.

4.2 Cancellation of licence

- (1) The local government may cancel a licence where the licensee has—
- (a) been convicted of an offence against—
 - (i) this Local Law; or
 - (ii) any other law relating to carrying on an extractive industry; or
 - (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
 - (c) permitted another person to carry on an extractive industry otherwise than in accordance with the terms and conditions of the licence and of the provisions of this Local Law;
 - (d) failed to pay the annual licence fee under clause 3.2; or
 - (e) failed to have a current public liability insurance policy under clause 7.1(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 7.1(2).
- (2) Where the local government cancels a licence under this clause—
- (a) the local government shall advise the licensee in writing of the cancellation;
 - (b) the cancellation takes effect on and from the day on which the licensee is served with the cancellation advice; and
 - (c) the local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

4.3 Renewal of licence

- (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and shall submit with the application for renewal—
- (a) the fee determined by the local government from time to time;
 - (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 2.3(1)(b) and (c); and
 - (e) any other things referred to in clauses 2.3 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3(1)(d) or (e) 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 2.3 and 3.1.

- (3) 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.

PART 5—SECURED SUM AND APPLICATION THEREOF

5.1 Security for restoration and reinstatement

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

- (a) as a condition of a licence; or
- (b) before the issue of a licence,

the licensee shall 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 subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.

5.2 Use by the local government of secured sum

(1) If a licensee fails to carry out or complete the restoration and reinstatement works required by the licence conditions either—

- (a) within the time specified in those conditions; or
- (b) where no such time has been specified, within 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions, then; subject to the local government giving the licensee 14 days notice of its intention to do so—
 - (i) 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
 - (ii) the licensee shall pay to the local government on demand all costs incurred by the local government 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 5.1 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 5.1.

PART 6—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

6.1 Limits on excavation near boundary

Subject to any licence conditions imposed by the local government, a person shall 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) 30 metres of any watercourse; or
- (e) the minimum clearance to the estimated water table stipulated by the Department of Environment and Conservation or otherwise as adopted by the local government.

6.2 Obligations of the licensee

A licensee shall—

- (a) 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;
- (b) 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";
- (c) 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;
- (d) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government;
- (e) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site; and
- (f) otherwise comply with the conditions imposed by the local government in accordance with clause 3.1.

6.3 Prohibitions

A licensee shall not—

- (a) 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 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 3.1;
- (b) 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 Mines and Petroleum; or
- (c) fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government.

6.4 Blasting

(1) A person shall not carry out or permit to be carried out any blasting in the course of excavating unless—

- (a) the local government has otherwise given approval in respect of blasting generally or in the case of each blast;

- (b) subject to subclause (2), the blasting takes place only between the hours of 8.00 a.m. and 5.00 p.m., or as determined by the local government, on Mondays to Fridays inclusive;
 - (c) the blasting is carried out in strict accordance with the AS2187 SAA Explosives Code, the *Mines Safety and Inspection Act 1994*, the *Environmental Protection Act 1986*, and all relevant Local Laws of the local government; and
 - (d) in compliance with any other conditions imposed by the local government concerning—
 - (i) the time and duration of blasting;
 - (ii) the purposes for which the blasting may be used; and
 - (ii) 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.
- (2) A person shall not carry out or permit to be carried out any blasting on a Saturday, Sunday or public holiday except with the prior approval of the local government.

PART 7—MISCELLANEOUS PROVISIONS

7.1 Public liability

- (1) A licensee shall have at all times a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of not less than \$10,000,000 in respect of any one claim relating to any of the excavation operations.
- (2) The licensee shall provide to the local government a copy of the policy taken out under subclause (1), within 14 days following the issue of the policy and shall provide to the local government evidence of renewal of that policy within 14 days of each renewal date of the licence.

7.2 *Mines Safety and Inspection Act 1994 and Environmental Protection Act 1986*

- (1) In any case where the *Mines Safety and Inspection Act 1994* or the *Environmental Protection Act 1986* applies to any excavation carried on or proposed to be carried on at a site, the licensee in respect of that site shall—
- (a) comply with all applicable provisions of that Act or those Acts; and
 - (b) provide to the local government within 14 days full particulars of any inspection or report made under that Act or those Acts.
- (2) In this clause, the *Mines Safety and Inspection Act 1994* and the *Environmental Protection Act 1986* include all subsidiary legislation made under those Acts.

7.3 Notice of cessation of operations

- (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 shall, as well as complying with clause 7.4, give the local government written notice of the cessation not later than 1 week after those operations have ceased.

- (3) 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.
- (4) 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.

7.4 Works to be carried out on cessation of operations

Where the carrying on of an extractive industry on the site permanently ceases or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, the licensee shall, as well as complying with the provisions of clause 7.3—

- (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 agree in writing with the licensee;
- (b) ensure that any face permitted to remain upon the excavation site is left safe 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 programme 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 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, and cover with topsoil and plant with grass, trees and shrubs all parts of the site where buildings, plant and equipment were erected or installed and all areas which were used for stockpiling unless otherwise specified under this Local Law.

PART 8—OBJECTIONS AND REVIEW

8.1 Objections and review

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 regulation 33 of the General Regulations shall apply to that decision.

PART 9—OFFENCES AND PENALTIES

9.1 Offences

(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) Any person who commits an offence under this Local Law is liable, upon conviction, to a penalty not exceeding \$5,000 and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence had continued.

9.2 Prescribed offences

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

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

9.3 Forms

For the purposes of this Local Law—

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the General Regulations; 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 General Regulations.

Schedule

City of Albany

EXTRACTIVE INDUSTRIES LOCAL LAW 2009

PRESCRIBED OFFENCES

[cl. 9.2(1)]

Clause	Description	Modified Penalty \$
2.1(a)	Excavate without a valid and current licence	500
2.1(b)	Carry out an extractive industry not in accordance with terms and conditions of licence	500
6.1	Excavate near boundary	500
6.2(a)	Failure to securely fence and / or keep gateways locked where required	500
6.2(b)	Failure to erect and maintain warning signs as required	500
6.2(c)	Failure to drain and keep drained any excavation to which the licence applies	500
6.2(d)	Failure to restore and reinstate the excavation site in accordance with conditions of the licence	500
6.2(f)	Failure to comply with conditions of licence imposed by the local government	500
6.3(a)	Removal of trees or shrubs within 40 metres of the boundary of any thoroughfare reserve without approval	500
6.3(b)	Store or permit to store explosives or explosive devices without approval	500
6.3(c)	Fill or excavate, contrary to the terms and conditions of the licence	500

Clause	Description	Modified Penalty \$
6.4(1)(a)	Carry out or permit to be carried out blasting without approval	500
6.4(1)(b)	Carry out or permit to be carried out blasting outside hours approved by the local government	500
6.4(1)(c)	Failure to comply with conditions imposed by the local government in relation to blasting activities	500
6.4(2)	Carry out or permit to be carried out any blasting on Saturday, Sunday or public holiday, without approval	500
7.4(a)	Failure to cease excavating and undertake restoration and reinstatement as required	500
	All other offences not specified	500

Dated: 17 November 2009.

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

PAUL RICHARDS, Chief Executive Officer.
MILTON EVANS JP, Mayor.

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

SAND DRIFT PREVENTION AND ABATEMENT LOCAL LAW 2009

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 18 August 2009 to make the following local law.

PART 1—PRELIMINARY**1.1 Citation**

This local law may be cited as the *City of Albany Sand Drift Prevention and Abatement Local Law 2009*.

1.2 Commencement

This local law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

1.3 Repeal

The *City of Albany Prevention and Abatement of Sand Drift Local Law* as published in the *Government Gazette* on 5 December 2000, amended and published in the *Government Gazette* on 16 December 2005, is repealed.

1.4 Interpretation

(1) In this local law unless the context otherwise requires—

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

“**authorised person**” means a person authorised by the local government under section 9.10 of the Act to perform all or any of the functions of an authorised person under this local law;

“**district**” means the district of the City of Albany and includes any area placed under the jurisdiction of the City pursuant to any Act or Regulations;

“**land**” includes any building or other structures on the land;

“**local government**” means the City of Albany;

“**occupier**” includes 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;

“**sand**” means any granular or particulate material consisting of small eroded fragments of rocks finer than gravel, and includes dust and organic matter.

(2) Where in this local law a duty, obligation or liability is imposed on an “owner or occupier”, the duty, obligation or liability shall be deemed to be imposed jointly and severally on each of the owner and occupier.

(3) Where, under this local law, an act is required to be done or forbidden to be done in relation to any land, the owner or occupier of the land has the duty of causing to be done the act so required to be done, or preventing from being done the act forbidden to be done.

(4) Where this local law refers to the giving of a notice, other than the giving of an infringement notice, no particular form is prescribed and it will be sufficient that the notice be in writing giving sufficient details to enable the owner or occupier to know the offence committed and the measures required to be taken or conditions to be complied with, as the case may be.

1.5 Application

This local law applies to all land in the district.

PART 2—SAND DRIFT CONTROL**2.1 Prevention and abatement measures**

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

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

2.2 Local government notice

(1) Where the local government or an authorised person forms the opinion that—

- (a) an owner or occupier has not complied with subclause 2.1(a); or
- (b) sand is released or has escaped from land onto adjoining or nearby land to cause a nuisance, risk to health, hazard or environmental damage,

the local government or an authorised person may serve on the owner or occupier of the land a notice requiring the owner or occupier to—

- (c) comply with subclause 2.1(a) or 2.1(b); or
- (d) clean up and make good any damage resulting from the release or escape of sand ; and
- (e) take effective measures to stop any further release or escape of sand.

(2) the requirements set out in a notice issued under subclause (1) must be complied with within the time specified in the notice.

2.3 Notice specifying conditions

Where the local government or an authorised person is of the opinion that, as a result of an activity being carried on, or likely to be carried on from any land, sand may be released or escape, the local government or an authorised person may give to the owner or occupier a notice providing that the activity can only be carried on subject to conditions and specifying the conditions.

PART 3—MISCELLANEOUS**3.1 Cancellation of notice**

Where a notice is served on the owner or occupier of any land and the owner or occupier satisfies the local government or an authorised person within 14 days from the date of the giving of the notice that—

- (a) it was not responsible for the conduct in respect of which the notice was given pursuant to clause 7, or the activity in respect of which conditions were imposed pursuant to clause 8 as the case may be; and
- (b) it took all reasonable precautions to prevent the conduct or all reasonable steps to comply with, or cause the conditions to be complied with, as the case may be; and
- (c) where another person was responsible for the conduct, it identifies the person responsible for the conduct sufficiently to enable the notice to be issued to that person;

the local government or an authorised person may cancel the notice.

3.2 Authorised person

(1) a person must not prevent or impede a duly authorised officer or employee of the local government from carrying out his or her duties under this local law.

(2) the local government may delegate any of its powers, functions and duties under this local law to an authorised person.

PART 4—PENALTIES**4.1 Offences and penalties**

(1) A person who—

- (a) fails to comply with a notice given under clause 2.2;
- (b) carries on an activity without complying with a notice given under clause 2.3; or
- (c) contravenes clause 3.2.

commits an offence, in respect of which the local government may issue an infringement notice.

(2) A person who commits an offence under subclause (1) is liable to—

- (a) a penalty which is not more than \$5,000.00 and not less than—
 - (i) in the case of a first offence, \$500.00;
 - (ii) in the case of a second such offence, \$2,500.00; and
 - (iii) in the case of a third or subsequent such offence, \$5,000.00, and
- (b) if the offence is of a continuing nature, a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day for which the offence continues.

4.2 Modified penalties

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

(2) The amount of the modified penalty for an offence against any provision of this local law is \$200.00.

PART 5—INFRINGEMENT NOTICES**5.1 Form of notices**

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

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

Dated: 20 November 2009.

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

PAUL RICHARDS, Chief Executive Officer.
MILTON EVANS JP, Mayor.
