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LOCAL GOVERNMENT ACT 1995

SHIRE OF DARDANUP

DUST CONTROL LOCAL LAW 2011

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SCHEDULE 1—PRESCRIBED OFFENCES

LOCAL GOVERNMENT ACT 1995

SHIRE OF DARDANUP

DUST CONTROL LOCAL LAW 2011

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Dardanup resolved on 14 December 2011 to make this local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Dardanup Dust Control Local Law 2011*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Interpretation

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

Act means the *Local Government Act 1995*;

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

building site means a site on which building work is being, or is proposed to be, undertaken;

building work has the meaning given to it by the *Building Act 2011*;

CEO means Chief Executive Officer of the local government;

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

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

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

district means the district of the local government;

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

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

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

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

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

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

(b) the storage of such materials or products;

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

local government means the Shire of Dardanup;

occupier has the same meaning as given to it in the Act;

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

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

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

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

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

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

(5) Where this local law refers to the giving of notice no particular form of notice is required but may be given in each of the ways set out in sections 9.50, 9.52 and 9.53 of the Act.

PART 2—GENERAL CONTROL MEASURES

2.1 Dust control measures

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

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

2.2 Escape of loads being transported

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

(2) In this clause—

load includes any material or other thing used in connection with the load; and

vehicle has the same meaning as in the *Road Traffic Code 2000*.

PART 3—DUST MANAGEMENT PLANS

3.1 Dust generating development

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

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

(2) The local government may determine that a development which—

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

is a dust generating development.

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

- (a) an application for subdivision approval for land;
- (b) an application for planning approval under a town planning scheme of the local government; or
- (c) an application for a building licence or a demolition licence.

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

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

3.2 Requirement for a dust management plan

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

- (a) a dust management plan, in a form accepted by the local government, has been lodged with the local government;

- (b) the local government has accepted the dust management plan; and
 - (c) the person complies with any term or condition to which the accepted dust management plan is subject.
- (2) Subclause (1) does not apply to an existing extractive industry until a period of 6 months has elapsed from the date that this local law comes into operation.
- (3) In subclause (2)—
- existing extractive industry*** means an extractive industry that is operating on, or has been operating before, the date on which this local law comes into operation.

3.3 Content of dust management plan

A dust management plan must—

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

3.4 Assessing a dust management plan

- (1) The local government may—
- (a) refuse to consider a dust management plan that does not comply, or in its opinion does not adequately comply, with the requirements of this Part; and
 - (b) require the owner or occupier to provide further plans, documents or other information to enable it to properly assess the dust management plan.
- (2) In assessing a dust management plan, the local government may—
- (a) consult with any person or body; and
 - (b) have regard to any relevant publications of a State environmental agency including—
 - (i) “*Land development sites and impacts on air quality; A guideline for the prevention of dust and smoke pollution from land development sites in Western Australia*” (November 1996); and
 - (ii) “*Guidance for the Assessment of Environmental Factors—Prevention of Air Quality Impacts from Land Development Sites*” (No. 18, March 2000).
- (3) The local government may refuse to accept or may accept a dust management plan.
- (4) The local government may—
- (a) impose whatever conditions it considers appropriate in accepting a dust management plan; and
 - (b) limit the period during which the acceptance of the dust management plan is to be valid.

PART 4—NOTICES

4.1 Notice to comply

- (1) This clause applies where the local government is of the opinion that—
- (a) an owner or occupier has not complied with clause 2.1(a) or (b);
 - (b) dust has been released or escaped from the owner’s or occupier’s land; or
 - (c) a person has not complied with a term or condition of an accepted dust management plan.
- (2) Where the local government is of the opinion referred to in subclause (1), it may give to the owner or occupier of the land, or the person who has not complied, a notice requiring the owner or occupier, or other person, to do one or more of the following—
- (a) comply with clause 2.1(a) or (b);
 - (b) clean up and properly dispose of any released or escaped dust;
 - (c) comply with the terms and conditions of the accepted dust management plan;
 - (d) clean up and make good any damage resulting from the released or escaped dust; and
 - (e) take effective measures to stop any further release or escape of dust.
- (3) The requirements set out in a notice issued under subclause (2) must be complied with—
- (a) where no other time is specified in the notice, within 24 hours of the notice being given to the owner or occupier;
 - (b) within such other period as is specified in the notice; or
 - (c) immediately, if the notice so specifies.

4.2 Notice to cease activity

- (1) This clause applies where the local government is of the opinion that—
- (a) dust has escaped or has been released as the result of an activity undertaken on land or as a consequence of the use of equipment on land; or
 - (b) as a result of the failure of a person to comply with a term or condition of an accepted dust management plan, there is a risk that dust may be released or may escape from the land.
- (2) Where the local government is of the opinion referred to in subclause (1), it may give a notice to the owner or occupier of the land, the person responsible for complying with the accepted dust management plan or the person in charge, as the case may be, requiring that, for the period specified in the notice—
- (a) the activity or use of the equipment on the land cease immediately; or
 - (b) any development on the land under the dust generating development cease immediately.

4.3 Notice to prevent possible breach

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

4.4 Local government may undertake requirements of notice

If a person fails to comply with a notice under clause 4.1 or 4.3, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

4.5 Revoking a notice

- (1) The local government may revoke a notice that is given under this local law to the owner or occupier of any land, or any other person, if the owner, occupier or other person satisfies the local government, within 48 hours or within any other period that is specified in the notice from the date of giving of the notice, that—
- (a) he or she was not responsible for the conduct in respect of which the notice was given under clause 4.1, or the activity in respect of which a notice was given under clause 4.2, as the case may be;
 - (b) he or she took all reasonable precautions to prevent the conduct or activity, as the case may be; and
 - (c) where another person was responsible for the conduct or activity, he or she identifies the person responsible for the conduct or activity sufficiently to enable the notice to be issued to that person.
- (2) Subclause (1) is not to apply where a notice is issued to which clause 4.1(2)(c) applies.

PART 5—OTHER OPERATIONAL POWERS

5.1 Obstruction of employees and others

A person must not prevent or obstruct an authorised person or employee of the local government from carrying out his or her duties under this local law.

PART 6—OFFENCES AND PENALTIES

6.1 Offences

Any person who—

- (a) fails to comply with a notice issued under this local law; or
- (b) contravenes any provision of this local law,

commits an offence.

6.2 Penalties

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

- (a) a penalty not exceeding \$5,000 and not less than—
 - (i) in the case of a first such offence, \$1,000;
 - (ii) in the case of a second such offence, \$2,000; and
 - (iii) in the case of a third or subsequent offence, \$3,000, and
- (b) if the offence is of a continuing nature, an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

6.3 Prescribed offences

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

6.4 Prescribed notices

For the purposes of this local law—

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (b) a form of the infringement withdrawal notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

Schedule 1
PRESCRIBED OFFENCES

[Clause 6.3(1)]

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
1	2.1(a)	Failure to take effective measures to stabilise dust; or	500
2	2.1(b)	Failure to take effective measures to ensure no dust is released or escapes from the land as required.	500
3	2.2	Failure to take effective measures to prevent a load or any part of it escaping.	500
4	3.2(1)(a)	Commencing or carrying out a dust generating development without approval; or	500
5	3.2(1)(c)	Commencing or carrying out a dust generating development contrary to a term or condition of approval.	500
6	4.1(3)	Failure to comply with a notice.	500
7	4.2(2)	Failure to comply with a notice to cease activity or development.	500
8	4.3	Failure to comply with a notice to prevent a possible breach.	500
9	5.1	Preventing or obstructing an authorised person or employee from carrying out his or her duties.	500

Dated: 14 December 2011.

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

Cr JOHN E. GARDINER, Shire President.
MARK L. CHESTER, Chief Executive Officer.
