

Western Australia

**Local Government Model By-laws (Extractive  
Industries) No. 9**

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## Local Government Model By-laws (Extractive Industries) No. 9

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**NOTES**

Western Australia

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS)  
ACT 1960

## **Local Government Model By-laws (Extractive Industries) No. 9**

Local Government Department  
Perth, 22nd October, 1962

L.G. 868/61 “B”

HIS Excellency the Governor in Executive Council, acting pursuant to the powers conferred by the *Local Government Act 1960*, has been pleased to make the draft model by-laws set out in the schedule hereto.

A. E. WHITE,  
Secretary for Local Government

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### Extractive Industries

#### **1. Citation and repeal**

- (1) These by-laws may be cited as the *Local Government Model By-laws (Extractive Industries) No. 9*.
- (2) The *Local Government Model By-laws (Extractive Industries) No. 5*, made under the provisions of the *Local Government Act 1960*, and published in the *Government Gazette* on the 29th December, 1961, are revoked.

#### **2. Interpretation**

In these by-laws, unless the context otherwise requires —

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“**the Act**” means the *Local Government Act 1960*, and words and expressions have the same meanings as they have in the Act.

**3. Extracting prohibited without licence**

A person shall not, on any land, other than crown land within the municipal district, excavate for stone, gravel, sands, clay, limestone, loam, or other material; or carry on for the purpose of recovering any stone, gravel, sands, clay, limestone, loam, or other material, any operation whereby an excavation is created or enlarged, without first having obtained a license to do so from the council.

**4. Application for licence**

- (1) An application for a license, pursuant to by-law 3 of these by-laws, shall —
  - (a) be in writing;
  - (b) be accompanied by three copies of a plan, showing —
    - (i) sufficient detail to enable the Council to understand the nature of the proposed excavation;
    - (ii) the location, together with the name and description of the owner of the land;
    - (iii) the limits of the area proposed to be excavated;
    - (iv) the existing contours of the land based on the high water mark at Fremantle;
    - (v) the depth and extent of the proposed excavation;
    - (vi) the estimated depth and description of the overburden present;
    - (vii) the level of filling for rehabilitation, upon completion of excavation operations or, if no rehabilitation is proposed, a notation to that effect; and

- (viii) the location of any existing or proposed buildings, so far as is known; and
  - (c) state the proposals, if any, for the future development of the land upon completion of excavation operations and any proposed rehabilitation.
- (2) The accompanying plans shall, in addition to the requirements of sub-bylaw (1) of this by-law, clearly indicate the distance of the proposed excavation from adjoining drains, water-courses, roads, footpaths and buildings.
- (3) Where the land the subject of an application for a license to excavate is situated within an irrigation district constituted under the *Rights in Water and Irrigation Act 1914*, or within a drainage district constituted under the *Land Drainage Act 1925*, the following provisions shall apply, that is to say —
  - (a) the plan or any amended plan of the excavation, when submitted to the Council for approval, shall clearly and legibly disclose that the land represented therein is situated within an irrigation district or within a drainage district, as the case may be, and give the name of such district;
  - (b) the council shall, on receipt of the plan or amended plan and before considering whether or not it shall be approved, refer the plan or amended plan to the Irrigation Board or Drainage Board (as the case may require) in which the land represented in such plan or amended plan is situated, for examination, consideration and report to the Council;
  - (c) the Irrigation Board or the Drainage Board concerned shall, as soon as reasonably may be, report in writing to the Council the conditions if any, that should be imposed in the granting of a license, in order that any existing works or proposed works of the Board shall not be adversely affected by the granting of a license; and

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- (d) when the Council has received from the Irrigation Board or the Drainage Board concerned the notification provided for in paragraph (c) of this sub-by-law, the Council may proceed to examine and consider the plan or amended plan of excavation together with other provisions of the Act and these by-laws and to determine whether or not the Council should approve of the issue of a license.

**5. Additional information to be provided**

An applicant for a license to excavate shall give to the Council such additional information concerning the proposed excavation, as the Council may reasonably require.

**6. Publication of intention to apply for licence**

An intending applicant for a license to excavate shall —

- (a) except in the case of an application in respect of an excavation in existence at the time of the coming into operation of these by-laws, publish in a newspaper circulating in the area, a notice of his intention to submit the application, specifying that any person interested may, within fourteen days after the date of publication, object to the granting of the license, by written notice given to the Council; and
- (b) supply to the Council for posting on its notice board, a copy of the notice, which the Council shall exhibit on the notice board for at least seven days.

**7. Agreement for road repair and maintenance**

- (1) The Council may, before granting any license under these by-laws, require the applicant to enter into an agreement for the payment to the Council of a sum of money, being the expense estimated by the Council as likely to be incurred by it, in repairing and maintaining roads under its control in the neighbourhood of the proposed excavation by reason of



extraordinary damage, as a result of heavy or extraordinary traffic conducted by the licensee or any person acting on his behalf in the exercise of the license, if granted; and any such agreement shall be deemed to have been entered into under the provisions of section 57 (1) of the *Traffic Act 1919*.

- (2) The due observance of any agreement entered into by the applicant pursuant to sub-by-law (1) of this by-law shall be a condition of the granting and holding of the license.
- (3) In the event of disagreement between the applicant and the Council as to the amount of the expense estimated by the Council pursuant to this by-law, that disagreement shall be referred to the Minister, whose decision shall be binding on both the applicant and the Council.

**8. Bond or other security**

- (1) An applicant for a license under the provisions of these by-laws shall deposit with the Council, before the issue of a license, such amount, not exceeding five hundred pounds, as the Council may, by resolution, determine, to be retained by the Council for the duration of the license and until the licensee shall have complied with by-law 14 of these bylaws; alternatively, with the consent of the Council, the applicant may provide a bond, guarantee, or other security which the Council accepts as sufficient.
- (2) Where a licensee, or person whose license has expired, is convicted of a breach of any of the provisions of by-law 14 of these by-laws, the Council may cause the necessary work to be carried out and deduct the cost of the work from the moneys deposited by the applicant and, in the event of the cost exceeding the amount of the deposit, the licensee shall forthwith, on demand, pay to the Council the amount of that excess.

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- (3) Upon the expiration of the license and the carrying out of the prescribed works, the deposit (if any) or the balance of the deposit shall be repaid to the licensee.
- (4) Any deposit paid to a Council under this by-law shall be placed in the Council's Trust Fund, and lodged in a Savings Bank; and all interest derived therefrom shall be added to the deposit, and credited to the licensee.

**9. Annual licence**

The maximum annual fee payable to the Council for a license is ten pounds, but the Council may reduce the fee in respect of an excavation deemed by it to be small in area or depth.

**10. Duration of licence**

A license shall be valid for such term not exceeding twenty-one years from the date of issue, as the council may at that date determine, but a license may be renewed by the Council, from time to time, for a further period or periods from the date of expiration on payment of the prescribed annual fee.

**11. Limitations on excavations**

- (1) Subject to sub-by-law (3) of this by-law, a person shall not —
  - (a) except by agreement with the owner of the adjoining land, verified to the satisfaction of the Council, excavate within twenty metres of the boundary of any land not owned by him: and
  - (b) excavate within a distance of forty metres of any road, unless the Council approves of excavation within a lesser distance, under the provisions of sub-by-law (2) of this by-law.
- (2) Where a proposed excavation is not to be lower than the level of the nearest road and reinstatement of the area excavated for its existing use is possible, the Council may permit a licensee to excavate to a specified distance within forty metres of that road.

- (3) The Council may, in any particular case, having regard to any Town Planning Scheme or any land-usage by-law implemented by the Council and to any regulation or order issued under the provisions of the *Town Planning and Development Act 1928*, or the *Metropolitan Region Town Planning Scheme Act 1959*, limit any excavation to such greater distance as is so specified.

*[By-law 11 amended by Gazette 21 June 1974 p.2093.]*

**12. Removal of plants near roads prohibited**

A person shall not, within forty metres of the boundary of any road or of any land owned by the Council, or such lesser distance as may be permitted under the provisions of by-law 11 of these by-laws, remove natural trees or scrub on land in respect of which a license to excavate has been granted, except for the purpose of constructing access roads or erecting buildings for use in connection with the excavation.

*[By-law 12 amended by Gazette 21 June 1974 p.2093.]*

**13. Planting trees to screen works**

Where the Council so requires, the licensee shall plant trees, of a type to be agreed upon by the Council and the licensee, to screen the boundaries of the working of any excavation.

**14. Drainage; rubbish; rehabilitation**

- (1) Where drainage is practicable and the Council so requires, excavations shall be drained and be kept drained and the responsibility for the discharge and disposal of the water drained is upon the licensee.
- (2) A person shall not tip any offensive rubbish into any excavation without the written consent of the Council.
- (3) Irrespective of the manner of its ceasing, on the cessation of any excavation work, the licensee shall ensure that —
- (a) the excavation is filled or rehabilitated in accordance with the plan referred to in by-law 4 of these bylaws;

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- (b) any face permitted to remain in the excavation is left safe with all loose material removed therefrom;
  - (c) retaining walls, where considered necessary by the Council to prevent subsidence of the surrounding area, are constructed in such manner as may be agreed upon between the Council and the licensee;
  - (d) the agreed floor level of the excavated area, where retaining walls are not required under the provisions of this sub-by-law, is graded to an even surface and the sides sloped to a batter sufficient to prevent subsidence of the surrounding area; and
  - (e) all dumps of stone, sand or other material are so left that no portion of that material can escape into any stream, watercourse or drain, that is not wholly situated within land owned or occupied by him.
- (4) The provisions of section 336 of the Act apply to these by-laws as if set out herein and, in addition where the Council considers it to be necessary as a safety precaution, a licensee may be required to fence, to the satisfaction of the Council, the area proposed to be excavated, prior to the commencement of the work.

*[By-law 14 amended by Gazette 8 February 1965 p.468.]*

**15. Blasting**

The licensee shall, before commencing any blasting, erect and keep exhibited on the approaches to, and not less than 400 metres from, the site of the blasting, notices of warning which shall be of a standard type and shall provide adequate warning to those working in the excavation and to passers-by; and between five and ten minutes before blasting, the licensee shall, by bell, whistle, or other means give sufficient warning of that danger; and the bell, whistle or other signal must be kept continuously in operation until blasting is completed.

*[By-law 15 amended by Gazette 21 June 1974 p.2093.]*

**16. No blasting at night or on Sundays**

A person shall not carry out blasting operations in or about an excavation except between the hours of 6 a.m. and 6 p.m. on Mondays to Saturdays inclusive.

**17. Dust control**

Whenever in the course of excavating operations dust arising from these operations is allowed to escape from the premises, the Council may by written notice require the licensee, within a reasonable period, to provide, use or cause to be used, the most reasonably effective means known, for the purpose of laying or removing dust and preventing it endangering any person, creating nuisance or damaging natural vegetation.

**17A. Stockpiles**

A licensee shall not stockpile any material, that is likely to escape into any stream, watercourse or drain, that is not wholly situated within land owned or occupied by him, unless he erects a wall of such height as to be capable of retaining that material.

**18. Height of excavation face**

Having regard to the nature of the material being excavated, the method of working and the equipment used, the height of the face of an excavation shall be determined by the Council as one that can be safely worked, and should there be any dispute between the Council and the licensee as to the height of any face, then the matter shall be submitted to the State Mining Engineer, or a person nominated by him, and his decision shall be binding on both the council and the licensee.

**19. Compliance with *Mines Regulations Act 1946***

A person carrying out excavating or quarrying operations shall comply with the safe working provisions of the *Mines Regulations Act 1946*.

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**20. Dispute resolution**

- (1) Where any dispute arises between the licensee and the Council, with regard to any matter referred to in these by-laws (other than in by-law 18) or in respect of any order, direction or requisition by the Council, the dispute shall be referred to the Minister and the decision of the Minister shall be final and binding on both the licensee and the Council.
- (2) In the event of a dispute as to any alleged breach of by-law 17 or 19 of these by-laws, the licensee shall not be liable to prosecution in respect of any alleged breach committed prior to the date of the decision of the Minister, if the appeal is upheld by the Minister.

**21. Default by licensee**

- (1) If a licensee falls to comply with —
  - (a) any of the terms of any agreement entered into by him with the Council, relative to the excavating of stone, gravel, sands, clay, limestone, loam, or other material; or
  - (b) any of these by-laws

and the default continues after the expiration of fourteen days from service on the licensee of written notice from the Council to remedy the default, then, the Council may, with the prior written consent of the Minister, cancel the license of the defaulting licensee.

- (2) The Council shall give to the licensee at least seven days' written notice of its intention to apply to the Minister for his consent to the cancellation of a license.

**22. Town planning by-laws prevail**

Nothing in these by-laws shall be construed to limit, diminish or restrict any general by-laws made, or to be made, under the Town Planning and Development Act, and in the case of any inconsistency the general by-law shall prevail.

**23. Liability for damage and nuisance not restricted**

The holding of a license does not exempt the licensee from liability to the public at large for any damage or nuisance occasioned by, or arising from the excavation work.

**24. Application**

These by-laws apply to all land other than Crown land, in the municipal district; and apply, except where in these by-laws expressly excluded, to every excavation, whether existing or made before or after the coming into operation of these by-laws.

**25. Notice of cessation of work**

A licensee shall give the Council at least seven days' written notice of his intention temporarily to cease operations for a period of twelve months or more, or to cease operating under his license, permanently.

**26. Breach of by-laws an offence**

Any person who, either by act or omission, contravenes these by-laws, or being the owner or occupier of property within the district, knowingly permits any act or omission on any property owned or occupied by him in contravention of these by-laws is guilty of an offence and is liable to a penalty of fifty pounds and, in addition, to a daily penalty of five pounds for each day during which the offence continues after his conviction.

**Notes**

- <sup>1.</sup> This is a compilation of the *Local Government Model By-laws (Extractive Industries) No. 9* and includes the amendments referred to in the following Table.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Local Government Model By-laws (Extractive Industries) No. 9</i>	8 Nov 1962 p. 3655-9	8 Nov 1962
	8 Feb 1965 p. 468	
	21 Jun 1974 p. 2093	