

## Local Law

# Extractive Industries Amendment 2016



LOCAL GOVERNMENT ACT 1995

CITY OF KWINANA

# EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Kwinana resolved to make the following local law on 13 April 2016.

## 1. Citation

This local law is cited as the *City of Kwinana Extractive Industries Amendment Local Law 2016*.

## 2. Commencement

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

## 3. Principal local law

This local law amends the *Town of Kwinana Extractive Industries Local Law* as published in the *Government Gazette* on 10 August 2001.

## 4. Clause 1.1 amended

Clause 1.1 is amended as follows:

In clause 1.1 -

(a) delete –

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

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

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

“**town planning scheme**” means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*.

(b) insert in alphabetical order within clause 1.1 –

“**Building Price Index**” means a statistical based method of measuring building price movements over time for the purpose of updating non-residential building construction budgets;

“**bulk earthworks**” means the removal, moving or adding of large quantities of soil or rock from a particular area to another in order to make an area a suitable height and level for a specific construction purpose;

“**carry on an extractive industry**” means quarrying, bulk earthworks and excavating for stone, gravel, sand and other material and the transporting of the material off the site;

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

“**local planning scheme**” means a town planning scheme of the local government made under the *Planning and Development Act 2005*;

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

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

“secured sum” means the sum required to be paid in the form of a bank guarantee under clause 5.1;”

“Schedule” means a Schedule of this local law;

- (c) in the definition of “excavation” after “includes quarry” insert “, bulk earthworks or extraction”; and
- (d) at the end of the definition of “site” delete the delete the semicolon and insert a full stop.

#### **5. Insert new clause after clause 1.3**

New clause 1.4 is inserted after clause 1.3 as follows:

##### **“Citation**

1.4 This local law may be cited as the *City of Kwinana Extractive Industries Local Law 2016.*”

#### **6. Clause 2.1 amended**

Clause 2.1 is amended as follows:

After “Penalty” delete “5000” and replace with \$5,000”.

#### **7. Clause 2.2 amended**

In clause 2.2(1)(a)(i) delete “twenty one (21) days” and replace with “21 days”.

#### **8. Clause 2.3 amended**

(1) in clause 2.3(1)(a) –

- (a) before “of a plan of the” delete “3 copies” and replace with “One hard copy and an electronic copy in a format acceptable to the local government”;
- (b) in subparagraph (vii), delete “power lines, telephone cables” and replace with “infrastructure services including but not limited to power lines, communication cables”;
- (c) in subparagraph (viii) after “existing”, insert “bores,”;

(2) in clause 2.3(1)(b) –

- (a) before “of a works and” delete “3 copies” and replace with “One hard copy and an electronic copy in a format acceptable to the local government”;
- (b) delete subclause (xii) and replace with -

“(xii) a noise management plan, including a description of the measures to be taken to comply with the *Environmental Protection Act 1986* and *Environmental Protection (Noise) Regulations 1997*;” and

(3) in clause 2.3(1)(c) before “of a rehabilitation” delete “3 copies” and replace with “One hard copy and an electronic copy in a format acceptable to the local government”;

#### **9. Clause 3.1 amended**

Clause 3.1 is amended as follows:

(1) In subclause (4)(a), delete “30th June next” and replace with “next June 30”.

(2) In subclause (5) delete paragraphs (q), (r) and (s) and replace with -

“(q) requiring the licensee to pay an Accelerated Pavement Depreciation Fee for using roads owned by the local government for transporting extracted materials, to assist with the repair, maintenance and upgrade of such roads; and

(r) any other matter for properly regulating the carrying on of an extractive industry.”

**10. Clause 3.2 amended**

Clause 3.2 is amended as follows:

(a) After “3.2”, insert subclause number “(1)”

(b) In clause 3.2 after subclause (1), insert:

“(2) On renewal or conclusion of a licence, the licensee shall pay the local government the applicable Accelerated Pavement Depreciation Fee due to accelerated depreciation of the pavement in accordance with the condition set out in the Extractive Industries Licence. The payable fee will be based on the total amount of extracted material and the length of local authority roads used in the transport route during the financial year (period from 1 July to 30 June). The applicable fee, tabled in the local government’s Schedule of Fees and Charges, will be adjusted annually in accordance with the Building Price Index.”

**11. Clause 4.1 amended**

In clause 4.1(1) in paragraph (f), delete “fee” and replace with “fees and charges”.

**12. Clause 4.2 amended**

In clause 4.2(1) in paragraph (d) delete “3.2” and replace with “3.2(1) or 3.2(2)”.

**13. Clause 4.3 amended**

In clause 4.3(1) in paragraph (a), delete “fee” and replace with “fees and charges”.

**14. Clause 5.1 replaced**

Delete clause 5.1, including title, and replace with:

**“Security For Restoration And Reinstatement for Local Government Owned Assets**

5.1 (1) For the purpose of ensuring that all fees and charges are paid and that local government owned assets that have been used to carry out excavation operations are 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 bank guarantee of a kind and in a form acceptable to the local government for a sum determined by the local government from time to time.

(2) A bank guarantee required under subclause (1) is to be in the name of the local government for the purposes of this clause.”

**15. Clause 5.2 amended**

Clause 5.2 is amended as follows:

(1) In subclause (1) after “reinstatement works”, insert “or fails to pay any fees and charges”;

(2) In subclause (2) after “the proceeds of any”, delete “bond,”;

(3) After “towards its costs” insert “or any outstanding fees and charges”.

**16. Clause 6.1 amended**

After clause 6.1(1) after “Penalty” delete “\$4,000” and replace with “\$5,000”.

**17. Clause 6.2 amended**

In clause 6.2(2)(iii) delete “DANGER EXCAVATIONS KEEP OUT” and replace with “DANGER EXCAVATIONS - KEEP OUT”.

**18. Clause 6.3 amended**

Clause 6.3 is amended as follows:

- (1) In subclause (1) paragraph (a), after “within 40 metres,” delete “(or such lesser distance as maybe allowed, in writing, by the local government)” and replace with “(without written permission from the local government and if required, the Department of Environment Regulation)”; and
- (2) In subclause (2) delete “Department of Minerals and Energy” and replace with “Department of Mines and Petroleum”.

**19. Clause 6.4 amended**

After clause 6.4(2) after “Penalty” delete “\$4,000” and replace with “\$5,000”.

**20. Clause 7.1 amended**

Clause 7.1 is amended as follows:

- (1) In subclause (1) after “liability insurance policy”, delete “taken out in the joint names of the licensee and the local government” and replace with “naming the local government and”; and
- (2) delete “10000000” and replace with “\$10,000,000”.

**21. Clause 7.4 amended**

- (a) In clause 7.4, renumber paragraphs; delete “(1)” and replace with “(a)”, delete “(2)” and replace with “(b)”, delete “(3)” and replace with “(c)”, delete “(4)” and replace with “(d)”, delete “(5)” and replace with “(e)”, delete “(6)” and replace with “(f)”, delete “(7)” and replace with “(g)”, delete “(8)” and replace with “(h)”, delete “(9)” and replace with “(i)”; and
- (b) In clause 7.4, after paragraph (i) and before “Penalty” insert on new line “Failing to comply with any requirements of this clause constitutes an offence.”

**22. Clause 8.1 amended**

Clause 8.1 is amended as follows:

Delete entire clause and replace with:

“8.1 When the local government makes a decision as to whether it will grant a person a licence or renew, vary or cancel a licence under this local law, the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.”

**23. Clause 9.1 amended**

Clause 9.1 is amended as follows:

Delete “the Schedule” and replace with “Schedule 1”.

**24. Schedule - Prescribed Offences replaced**

Delete the entire “Schedule - Prescribed Offences” and replace with:

**Schedule 1 – Prescribed Offences**  
(Clause 9.1)

ITEM	CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
1.	2.1	Carry on extractive industry without licence or in breach of terms and conditions.	500
2.	6.1	Excavate near boundary.	500
3.	6.2(1)	Gateways not kept locked where required.	500
4.	6.2(2)	Warning signs not erected or maintained as required.	500
5.	6.2(3)	Excavation not drained as required.	500
6.	6.3(1)	Remove trees or shrubs near boundary without approval.	500
7.	6.3(2)	Store without required approval explosives or explosive devices.	500
8.	6.3(3)	Fill or excavate in breach of licence.	500
9.	6.4(1)(a)	Blasting without approval of the local government.	500
10.	6.4(1)(b)	Blasting outside times authorised.	500
11.	6.4(1)(d)	Blasting in breach of conditions imposed by the local government.	500
12.	6.4(2)	Blasting without approval on Saturday, Sunday or public holiday.	500
13.	7.4	On cessation of operations, failing to comply with the required conditions.	500

Dated: 13 April 2016

The Common Seal of the City of Kwinana was hereunto affixed in the presence of:-



**CAROL ADAMS**  
Mayor



**JOANNE ABBISS**  
Chief Executive Officer

