

11.3 Infrastructure Services Attachments

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11.3 Infrastructure Services

11.3.2 ADOPTION OF LOCAL LAW – EROSION AND SEDIMENT CONTROL LOCAL LAW 2019

Attachment 1 – Erosion and Sediment Control Local Law

LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA MARGARET RIVER

EROSION AND SEDIMENT CONTROL LOCAL LAW 2019

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SCHEDULE 1- PRESCRIBED OFFENCES

LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA MARGARET RIVER

EROSION AND SEDIMENT CONTROL LOCAL LAW 2019

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the *Shire of Augusta Margaret River* resolved on **DATE OF MEETING** to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Augusta Margaret River Erosion and Sediment Control Local Law 2019*.

1.2 Commencement

This Local Law will come into operation 14 days after the day on which it is published in the *Government Gazette*.

1.3 Application

The provisions of this local law apply and have force and effect throughout the whole of the district.

1.4 Definitions

(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 any of the functions of an authorised person under this local law;

Best Management Practice means a physical, chemical, structural or managerial practice that prevents, reduces, or treats the contamination of water, or which prevents or reduces soil erosion;

Builder means any person who holds, or will hold, a building permit issued in respect of building works on a building site, or any person who has, or will have, effective control of a building site;

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

Building site means any lot of land for which a building permit is current, but does not include a lot upon which there exists a commercial, industrial or residential building and-

(a) the current building permit is issued in respect only of a pergola, patio, shed or other Class 10 building as classified by the Building Code; and

(b) means of collection and removal of rubbish, satisfactory to the local government but other than that specified within these local laws, is in place;

Construction work means any civil construction work associated with development sites or building sites, including land clearing, construction of roads, access ways, paths, services, importation of fill materials and working and shaping of existing ground as well as imported materials, any work involving the placement, fitting together, manufacture or erection of the components of a building or structure. It includes the pouring of footings and slabs and placement of stumps or other floor support, installation, or expansion of a building or other structure, drilling, and site alteration such as that due to dredging, grading, paving, parking or storage improvements, excavating, filling or clearing;

Contractor means any person who has been authorised by or is performing construction work on behalf of a builder or developer;

Development has the meaning given by the *Planning and Development Act 2005* and includes any human induced change to improved or unimproved land, including but not limited to construction work;

Development site means any lot of land for which a subdivision or development approval is current;

Developer means any person who holds, or will hold, a subdivision approval or development permit issued in respect of subdivision or development works on a development site, or any person who has, or will have, effective control of a development site;

District means the district of the local government;

Drainage System means facilities by which stormwater runoff is collected or conveyed, including but not limited to any roads, access ways, paths, tracks, gutters, kerbs, inlets, piped drains, culverts, retention or detention basins, natural and constructed (or altered) drainage channels, reservoirs, and other drainage structures;

Erosion means the wearing away of the ground surface as a result of the effects of gravity, wind, or water;

Ground disturbing activity means any activity that exposes soil and which removes the natural vegetative cover or other cover, leaving the soil exposed to the elements and prone to erosion, and includes activities or commercial pursuits that expose soils for extended periods as an integral part of their production or maintenance. Examples include agriculture, quarries, mining, nurseries, and maintenance of sporting fields;

Land means any private land as defined by the *Local Government Act 1995*, and includes any building sites, development sites, as well as buildings or structures on the land;

Local government means the Shire of Augusta Margaret River;

Occupier has the meaning given by the *Local Government Act 1995*. In addition it means any person who, at the time the notice is served, is in control of any place or part of any place or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to a place to perform any work in relation to any place and includes a builder, developer and contractor;

Permanent measures means a combination of plants, mulch, turf, matting, erosion control blankets, and permanent structures that will provide long-term soil stabilisation;

Pollutant means an elemental or physical material that can be mobilised or dissolved by water or air and that could create a negative impact to human health, safety, or the environment;

Schedule means the schedule to this local law;

Sediment means dust and soil deposited as a result of erosion;

Soil means granules or particles of mineral or organic matter, rock, earth, sand, clay, loam, silt, gravel and any other granular, or airborne particles causing dust, or like material, whether imported or naturally occurring on land;

Stabilise means the process of establishing an enduring soil cover of vegetation or mulch or other ground cover and may be in combination with installation of temporary or permanent measures and Best Management Practices. Stabilisation shall reduce to the maximum extent practicable the erosion process and the resultant transport of sediment;

Stormwater means water runoff or surface runoff and drainage;

Waterbody means rivers, marshes, continuous and intermittent streams and seeps, ponds, lakes, aquifers, and wetlands;

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently with some degree of regularity. Watercourses may be either natural or artificial and include drainage systems; and

Wetland means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs and similar areas.

- (2) Any other expression used in this local law and not defined shall have the meaning given to it in the Act.
- (3) Where, under this local law a duty, obligation or liability is imposed on an 'owner or occupier' the duty shall be deemed to be imposed jointly and severally on each owner and occupier.
- (4) Where, under this local law, an act is required to be done or forbidden to be done in relation to any land, an 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.
- (5) This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

PART 2 – SOIL EROSION, SEDIMENT AND POLLUTANT

2.1 Prevention of erosion and the escape of soil, sediment and pollutant

An owner or occupier of land must take and maintain reasonable measures to -

- (a) stabilise soil on the land;
- (b) ensure no soil, sediment or pollutant is released from or escapes from the land, whether by means of erosion, ground disturbing activity or any other cause; and,
- (c) ensure no soil, sediment or pollutant is released or deposited directly or indirectly into any waterbody or watercourse.

2.2 Notice may require specified action to prevent erosion and the escape of soil, sediment or pollutant

(1) Where the local government or an authorized person is satisfied that:

- (a) an owner or occupier of land has not complied with clause 2.1; or
- (b) soil, sediment or pollutant is escaping, being released or being carried, or is likely to escape, be released or be carried, from any land,

the local government or an authorised person may by notice in writing, direct the owner or occupier to, within a time specified in the notice:

- (c) comply with subclause 2.1;
 - (d) remove and clean up any soil, sediment or pollutant and make good any damage resulting from the release or escape of soil, sediment or pollutant from the land; or,
 - (e) take such other actions or comply with such other conditions as the local government or authorised person considers necessary to prevent or stop the escape, release or carriage of soil, sediment of pollutant from the land, as stipulated in the notice.
- (2) An owner or occupier of land to whom a notice is issued under subclause (1) shall comply with the requirements of the notice within the time specified in the notice.

PART 3 – OBJECTIONS AND APPEALS

3.1 Objections and review

When the local government or an authorised person gives a person a notice under clause 2.2(1), 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.

PART 4 – OFFENCES AND PENALTIES

4.1 Offences

- (1) Any person who:
- (a) fails to comply with a notice under clause 2.2 (1);
 - (b) fails to do anything required or directed to be done under this local law; or
 - (c) does anything which under this local law that person or 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.

4.2 Prescribed Offences

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

4.3 Infringement Notices

For the purposes of this local law –

- (1) the form of infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (2) the form of infringement withdrawal given under section 9.16 of the Act is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

SCHEDULE 1 - PRESCRIBED OFFENCES

(Clause 4.2)

Clause	Description	Modified Penalty \$
4.1	Failure to comply with a notice served by local government or authorised officer	500

Dated: 2019

The Common Seal of the Shire of Augusta Margaret River was affixed under the authority of a resolution of the Council in the presence of-

Shire President

Chief Executive Officer