

12.4.6 a) Draft Dust, Sand and Erosion Local Law 2026

LOCAL GOVERNMENT ACT 1995

SHIRE OF JERRAMUNGUP

DUST, SAND AND EROSION LOCAL LAW 2026

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LOCAL GOVERNMENT ACT 1995

SHIRE OF JERRAMUNGUP

DUST, SAND AND EROSION LOCAL LAW 2026

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Jerramungup resolved on _____ 2026 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This Local Law may be cited as the *Shire of Jerramungup Dust, Sand and Erosion Local Law 2026*.

1.2 Commencement

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

1.3 Application

- (1) This local law applies throughout the district.
- (2) This local law does not apply to activities undertaken by the local government.

1.4 Repeal

The *Shire of Jerramungup Dust and Sand Local Law 2011*, published in the *Government Gazette* on 22 November 2011 is repealed.

1.5 Transitional provisions relating to repealed local law

- (1) An application for, or the renewal of a licence, permit or other authorisation made under a repealed local law that has not been finally determined before the commencement day is to be dealt with and determined as if it were an application under this local law.
- (2) A licence, permit or other authorisation under a repealed local law that is in force before the commencement day is to be regarded on and after that day as a licence under this local law and may be dealt with accordingly.

1.6 Terms used

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

Act means the *Local Government Act 1995*;

authorised person means a person appointed pursuant to the provisions of Section 9.10(1) of the Act to perform all or any of the functions of an authorised person under this local law, and includes the CEO;

builder means –

- (a) any person who holds, or will hold, a building permit issued in respect of building works on a building site, or
- (b) any person who has, or will have, effective control of a building site;

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

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, outbuilding or other Class 10 building as classified by the NCC; and
- (b) means of collection and removal of rubbish other than that specified within this local law, is in place;

CEO means the Chief Executive Officer or an acting Chief Executive Officer of the local government;

construction work means any work involving the placement, fitting together, manufacture or erection of the components of a building, and includes pouring of footings and slabs and

placement of stumps or other floor supports;

Council means the Council of the local government;

district means the district of the local government and includes any area placed under the jurisdiction of the local government pursuant to any written law;

dust and sand means granules or particles of rock, earth, clay, loam, silt and any other granular, or airborne particulate or like material, and includes gravel;

DSMP means a dust and sand management plan in accordance with clause 2.1(2);

EMP means an erosion management plan in accordance with clause 2.2(2) for minimising the likelihood of carriage by water, wind or other means of sand or other material off any lot of land, incorporating the principles within the latest version of the publication '*Erosion and Sediment Control Manual for the Darling Range, Perth, Western Australia*', published by the Upper Canning/Southern Wungong Catchment Team;

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

land includes any building or structures on the land;

local government means the Shire of Jerramungup;

NCC means the latest edition of the *National Construction Code* published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with that Code;

nuisance means –

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

occupier has the meaning –

- (a) given to it by the Act; and
- (b) where the context permits, includes any person who, at the time a written 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 or contractor;

owner has the meaning given to it by the Act;

person has the meaning given to it by section 5 of the *Interpretation Act 1984*, but does not include the local government;

set fee means a fee –

- (a) as prescribed by legislation; or
- (b) in any other instance, as fixed by the local government from time to time under sections 6.16 to 6.19 of the Act; and

written notice means a notice issued in accordance with clause 3.1.

- (2) Any other expression used in this local law and not defined shall have the meaning given to it in the Act.

PART 2 - DUST, SAND AND EROSION

2.1 Dust and sand management plan

- (1) When on any land, any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust are intended or have commenced, an authorised person may require the owner or occupier to submit a DSMP to the local government.
- (2) The DSMP shall be accompanied by the set fee, be in the form determined by the local government and shall include but is not limited to the information on the following areas –
 - (a) introduction (program scope and objectives);
 - (b) background (contextual information);
 - (c) proposed work and potential impacts;
 - (d) controls, triggers and contingencies;
 - (e) monitoring program and design;

- (f) rehabilitation or reinstatement;
 - (g) any additional information reasonably required by an authorised person; and
 - (h) any approval required under environmental protection legislation.
- (3) When deemed appropriate the local government, a bond, to fund the cost of rehabilitation or reinstatement, shall be lodged prior to approval of an DSMP.
- (4) The local government may –
- (a) approve the DSMP;
 - (b) approve the DSMP subject to such conditions as it considers appropriate; or
 - (c) refuse to approve the DSMP if it appears that the DSMP is not adequate to effectively manage air quality issues and cannot easily be made to do so, or the detail required by subclause (2) is not provided.
- (5) An owner or occupier shall not commence or continue any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust or sand without an approved DSMP as may be required under subclause (1).
- (6) An owner or occupier who undertakes any earthworks, clearing of scrub, trees or overgrowth or any other site works shall comply with the provisions of that approved DSMP and any conditions imposed.

2.2 Erosion management plan

- (1) When on any land, any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to cause erosion are intended or have commenced, an authorised person may require the owner or occupier to submit an EMP to the local government.
- (2) The EMP shall be accompanied by the set fee, be in the form determined by the local government and shall include but is not limited to the information on the following areas–
- (a) for all practicable measures to ensure that no sand or dust is carried by water, wind or other cause –
 - (i) off the particular lot or lots of land; or
 - (ii) directly or indirectly into any creek, stream, river or any other natural water course;
 - (b) rehabilitation or reinstatement;
 - (c) any additional information reasonable required by an authorised person; and
 - (d) any approval required under environmental protection legislation.
- (3) When deemed appropriate by the local government, a bond, to fund the cost of rehabilitation or reinstatement, shall be lodged prior to approval of an EMP.
- (4) The local government may –
- (a) approve the EMP;
 - (b) approve the EMP subject to such conditions as it considers appropriate; or
 - (c) refuse to approve the EMP if it appears that the EMP is not adequate to effectively manage issues of erosion by water, wind or other cause and cannot easily be made to do so, or the information required by subclause (2) is not provided.
- (5) An owner or occupier shall not commence or continue any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to be subject to erosion without an approved EMP as may be required under subclause (1).
- (6) An owner or occupier who undertakes any earthworks, clearing of scrub, trees or overgrowth or any other site works shall comply with the provisions of that approved EMP and any conditions imposed.

2.3 Notice may require specified action

Where it appears to an authorised person that dust or sand is escaping, being released or being carried by wind or water or other cause, or is likely to escape, be released or be carried, from any land, or erosion has occurred or is likely to occur, an authorised person may, by notice given in accordance with clause 3.1, direct the owner or occupier to, within a time specified in the notice –

- (a) submit to the local government for its approval a DSMP or an EMP or both in accordance with clause 2.1 or 2.2; or
- (b) take such other actions as the authorised person considers necessary to prevent or minimise –
 - (i) the escape, release or carriage of dust or sand from the land, or erosion occurring; or
 - (ii) the causing or potential causing of a nuisance.

2.4 Dust, sand or material which has escaped

When any dust, sand or other materials has been released, escaped or been carried from any land, an authorised person may, by notice given in accordance with clause 3.1, direct the owner or occupier of the land to take such measures as is considered appropriate to –

- (a) alleviate the immediate matter, and
- (b) undertake rehabilitation or reinstatement; or
- (c) rectify any nuisance and implement action to prevent any future nuisance.

PART 3 - MISCELLANEOUS PROVISIONS

3.1 Notices

Where a notice, other than an infringement notice, is given under this local law, the notice must –

- (a) be in writing;
- (b) specify the reason for giving the notice;
- (c) specify the work or action that is required to be undertaken;
- (d) specify the conditions which must be followed; and
- (e) specify the time within which the work or action is to be taken.

3.2 Offence to fail to comply with notice

A person who fails to comply with written notice given to him or her under this local law commits an offence.

3.3 False or misleading statement

A person shall not make a false or misleading statement in connection with an application in respect of a licence under this local law.

3.4 Local government may undertake requirements of notice

- (1) If a person fails to comply with a written notice referred to in clause 3.1 the local government may –
 - (a) do or cause to be done, the thing specified in the written notice, including replace the plants or other materials, or reinstate the property to the state it was in before the removal, damage or interference;
 - (b) execute the work required by the written notice; and
 - (c) recover all costs from the person, as a debt, in addition to any penalty for which that person may be liable under this local law.
- (2) This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 of the 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 4 - OBJECTIONS AND REVIEW

4.1 Objections and review

When a decision is made under this local law and a person is given written notice, the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations shall apply.

PART 5 - OFFENCES AND PENALTIES

5.1 Offences

A 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.

5.2 General penalty

A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$10,000, 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.

5.3 Prescribed offences

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

5.4 Form of infringement notices

- (1) For the purposes of this local law –
 - (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
 - (b) 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
 - (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.
- (2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

SCHEDULE 1 – Prescribed offences [clause. 5.3]

Item	Clause	Description	Modified penalty \$
1	2.1(1)	Failure to submit a DSMP when required by an authorised person	1,000
2	2.1(5)	Commencing or continuing earthworks without an approved DSMP when required	1,000
3	2.1(6)	Failure to comply with provisions and conditions of approved DSMP	1,000
4	2.2(1)	Failure to submit an EMP when required by an authorised person	1,000
5	2.2(5)	Commencing or continuing earthworks without an approved EMP when required	1,000
6	2.2(6)	Failure to comply with provisions and conditions of approved EMP	1,000
7	3.2	Failure to comply with requirements of written notice	1,000
8	3.3	Making a false or misleading statement	1,000
9	5.1	All other offences not otherwise specified	250

Dated: _____ 2026.

The Common Seal of the Shire of Jerramungup was affixed by authority of a resolution of the Council in the presence of–

Nathan BROWN, Shire President.

Martin CUTHBERT, Chief Executive Officer