



# Gravel Pits and Quarries

## ***An introduction to Gravel Pits and Quarries***

*Gravel is a non-renewable resource that is used extensively in construction, particularly of roads in Western Australia. Possible environmental impacts of gravel extraction are vegetation loss, ground and surface water pollution, erosion, noise and dust. To minimise the environmental impacts of transport, gravel pits should also be located as close as possible to markets, or to where the gravel will be utilised. As gravel is not renewable, every effort should be made to increase the recycling and use of construction and demolition waste in order to reduce demand for the virgin product.*

*This fact sheet explains the legal requirements for the different people, organisations or authorities that create and operate gravel pits, having regard to the different types of land upon which the pit is situated. For more general information about mining, see [Fact Sheet 36: Mining Law](#).*

## **Overview**

The extraction of gravel is governed by a combination of the laws that regulate mining, local government, road building and environmental protection. The applicable law will depend on the person or authority who is extracting the gravel and the person or authority who is in control of that land. This fact sheet will take you through the relevant legal aspects of the various situations.

## **Extraction of gravel by private users from Crown land**

Private users may only take gravel from Crown (public) land if they have authority to do so under a State Agreement Act or a mining lease.

### **Mining Leases**

A person who wishes to extract gravel from Crown land must first obtain a mining lease under the *Mining Act 1978 (WA)* ("Mining Act").

All Crown land, including reserves, is available for mining. However, mining on reserves requires the approval of the Minister for Mines and Petroleum. Mining in national parks and Class A nature reserves may require the approval of both Houses of Parliament.

Any person can apply for a mining lease. The applicant must first "mark out" the area to be mined, and then lodge an application with the mining registrar. Any person can object to the granting of an application for a mining lease, including on environmental grounds. For more information on the process of granting or objecting to a mining lease, see [Fact Sheet 36: Mining Law](#).

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The Mining Act states that town planning schemes will be considered by the Minister or the Warden in determining whether to grant the tenement, however, a prohibition on mining in a town planning scheme will not necessarily prevent a mining lease from being granted. In the metropolitan region, approval to mine will also need to be granted by the Western Australian Planning Commission ("WAPC") under the Metropolitan Region Scheme ("MRS"), even if a mining lease has been granted.

### **State Agreement Acts**

Many large scale developments, particularly mining, are approved by Parliament with a "State Agreement Act". A State Agreement Act is a contract between the Government of Western Australia and a developer that can create individual rights and conditions for that development. The contract is agreed to by State Parliament and is then enacted into the law of the State. Many State Agreement Acts include provisions allowing the developer to take gravel to make roads for the purpose of the Agreement, in which case an additional mining lease is not required.

### **Extraction of gravel by private users on private land**

A mining lease is not required in order to extract gravel from private land, however, gravel extraction on private land is still controlled by town planning rules administered by the relevant local government, and some local government laws may also require extractive industry licences to be granted before gravel can be extracted. You should contact your local government and ask for information on extractive industries under their town planning scheme and local laws. The following comments are based on the model town planning scheme and model by-laws prepared under town planning and local government legislation, on which many planning schemes and local by-laws are based.

Quarrying or excavating gravel or other stone or sand from land within any local government or townsite within the metropolitan area is only permitted if the parcel of land is greater than half a hectare, or is for the purpose of constructing the foundations etc of an authorised building, or is for or in connection with any public work undertaken by a local authority or Government department.

### **Planning approval from local government**

"Extractive industry", which includes gravel pits, is usually regulated as part of a local government's town planning scheme. In some zones extractive industry will not be allowed, while in other zones it may be allowed with the approval of the local government.

A town planning scheme will prescribe a particular form for the application as well as the plans and information that must accompany it. It is common, but not always the case, that an application for planning approval will need to be advertised before the local government can approve the development.

When deciding to give planning approval for a proposed development, the local government may consider a range of factors including:

- the impact of the development on the environment;
- changes to the local amenity;
- increases in the amount of traffic and size of vehicles using roads; and
- any relevant submissions from residents of the district.

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The local government should also consider (but is not bound to follow) relevant government policies. In particular, they will most likely consider State Planning Policy 2.4 – Basic Raw Materials, which sets out planning considerations for zoning, subdivision and development applications for extractive industries.

For more information on planning and development applications and the Western Australian planning scheme, see [Fact Sheet 3: Planning Laws](#) and [Fact Sheet 4: Development Controls](#).

### **Planning approval under the Metropolitan Region Scheme**

In the Perth metropolitan area, planning approval may also be required under the MRS. Where a town planning scheme for an area exists and creates zones to control land use, the MRS leaves control of the land use to the local government, which can grant approval under the MRS. However, any development on land that is a regional reserve under the MRS generally does require the consent of the WAPC.

### **Local Government Licences to Extract Gravel**

Many local Governments also have local laws modelled off the now repealed *Local Government Model By-laws (Extractive Industries) No. 9 1974*, which require that an excavation licence be obtained from the local government before extractive industry is permitted on private land. A licence application must be in writing and accompanied by detailed plans showing the extent and depth of excavation, existing contours, the location of drains, water-courses, footpaths, roads and buildings, and either the level intended for filling after excavation is complete, or a notation that no rehabilitation is proposed. No excavation is permitted within 20 metres of the boundary of an adjoining property or 40 metres of a road without the consent of the owner or the Council respectively, or a greater distance if the Council specifies.

The Model By-law also provides for measures to minimise the impact on adjoining land. Such measures include the retention of surrounding vegetation, the planting of screening trees, dust control measures and advance warning of any blasting. As well as the annual licence fee, the Council may require the applicant to pay a bond, and also to agree to pay for road repair and maintenance caused by heavy vehicles using roads around the pit.

However, you will need to contact your local government for more specific information about the local laws in your area regarding extraction of gravel on private land.

## **Extraction of gravel by public authorities**

There are a number of specific laws applicable to public authorities that vary the system of regulation described above. Public authorities do not generally need planning approval for extracting gravel for the purposes of a public work, although extraction in an MRS regional reserve does require WAPC approval.

### **Public works**

The Minister for Lands may authorise any person to extract gravel from land for the purposes of constructing or repairing any public work, under the *Land Administration Act 1997 (WA)*.

In addition, the electricity corporations in Western Australia have the right to enter and take gravel from any land where it is necessary for the construction or maintenance of any works associated with the corporation.

### **Local governments**

Local governments are permitted to take gravel for the purpose of constructing local government facilities, without requiring an application for a mining tenement, from land owned by or vested in the local government,

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including land leased by the local government to another person. Furthermore, local governments that control parks and reserves can grant licences to any other person to take gravel from those parks and reserves.

Local governments can also take gravel from private land that is not developed or cultivated in order to construct or repair any thoroughfare, bridge, culvert, fence or gate. In such cases notice must be given to the landholder at least 24 hours before the work starts. If access to the gravel is obtained through operation of the Local Government Act 1995 (WA), then a person who is the owner or occupier of the freehold land can request compensation for damage done to their property, including for the value of the material taken from their land.

### **Department of Environment and Conservation managed land**

In 1993 the Department of Environment and Conservation ("DEC") and the Department of Mines and Petroleum agreed that DEC would manage gravel and other basic raw materials occurring on DEC managed land. DEC or its agent can take gravel for any agricultural, pastoral, household, road-making or building purpose, providing that no mining tenement has been granted over that area. Where other government agencies such as Main Roads request to extract gravel from DEC managed land, DEC may lease those areas to a government agency, although a royalty may be applicable. However, gravel taken from a national park or nature reserve may only be used for establishing or re-establishing public access to the national park or nature reserve. Where such land has been leased, it is generally considered to be 'private land' for the purposes of the Mining Act, and therefore it may not be necessary to also obtain a mining lease over that land.

## **Environmental Protection**

Any proposal for quarrying that is likely to have a significant impact on the environment may be referred to the Environmental Protection Authority (EPA) for assessment before it is implemented. Any person may refer a proposal to the EPA. In addition, other decision makers who are responsible for issuing approvals for the quarry must refer a proposal to the EPA if the proposal is likely to have a significant effect on the environment.

The EPA has a broad discretion as to whether it will assess a proposal. If the EPA decides to formally assess the proposal, the procedure that will be followed will depend upon the level of assessment that the EPA considers appropriate, but will always involve an opportunity for public submissions to be considered. For more information on the assessment process, see [Fact Sheet 5: Environmental Impact Assessment in WA](#).

It may also be necessary to obtain a clearing permit in order to extract gravel. For more information, see [Fact Sheet 7: Clearing of Native Vegetation](#).

In addition, any person who obstructs, destroys, or interferes with any watercourse, race or drain flowing through or over the land, or disposes of any matter, including gravel, in such a way that it is likely to obstruct the flow of a watercourse is guilty of an offence. 'Watercourse' includes natural streams, brooks and rivers as well as artificial water channels.

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## Works approvals

Some types of premises, particularly those that present a high risk of causing pollution, are required to obtain a works approval from DEC before they commence operation. Gravel quarrying as such does not require works approval. However, if the gravel is also being screened, washed, crushed, ground, milled, sized or separated on site at quantities of more than 50 000 tonnes per year, then a works approval will be required. For more information on works approvals, see [Fact Sheet 27: Pollution and Environmental Harm](#).

## Common law remedies

Gravel pits are commonly associated with high levels of noise, vibration and dust, which may give rise to a common law action for private nuisance. Government agencies are not generally immune from such actions. For further information, see [Fact Sheet 2: Common law](#). You should obtain further legal advice before taking any action in private nuisance.

## Opportunities for public involvement

There are a number of opportunities for public involvement in the management and regulation of gravel extraction. These include:

- Objecting, on environmental grounds, to the grant of a mining lease which would enable gravel extraction on Crown land.
- Lobbying local government to refuse planning approval and / or an extraction licence for a proposed gravel pit on private land.
- Lobbying local governments or state agencies to oppose gravel extraction for public works.
- Seeking, and participating in, the formal assessment of a proposed gravel pit by the EPA.
- Using the above avenues to seek to modify, or have conditions placed on, a gravel pit.
- Obtaining a copy of approvals and licences to check that the conditions are being complied with.

## Contacts and further information

Department of Mines and Petroleum, Tel: 9222 3333 or visit [www.dmp.wa.gov.au](http://www.dmp.wa.gov.au)

Environmental Protection Authority, Tel: 6467 5600 or visit [www.epa.wa.gov.au](http://www.epa.wa.gov.au)

Main Roads, Tel: 138 138, or visit [www.mainroads.wa.gov.au](http://www.mainroads.wa.gov.au)

Department of Environment and Conservation, Tel: 6467 5000 or visit [www.dec.wa.gov.au](http://www.dec.wa.gov.au)

Department of State Development, Tel: 9222 0555, or visit [www.dsd.wa.gov.au](http://www.dsd.wa.gov.au)

Department of Planning/ Western Australian Planning Commission, Tel: 6551 9000 or visit [www.planning.wa.gov.au](http://www.planning.wa.gov.au)

For copies of legislation, contact the State Law Publisher (Western Australian legislation), Tel: (08) 9426 0000, [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

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## The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: [edowa@edowa.org.au](mailto:edowa@edowa.org.au)

## Thank you to our donors

The EDO is grateful for the funding provided by the following organisations to create and maintain these fact sheets.



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