

DRAFT

044703F2000
Norm Caporn
(08) 93340388
(08) 93679913
normc@calm.wa.gov.au

To:
All Regional Managers

INTERIM ARRANGEMENTS FOR LOCAL GOVERNMENT AND MAIN ROADS WA ACCESS TO BASIC RAW MATERIALS FROM STATE FOREST AND TIMBER RESERVES

This interim arrangement is being put in place pending a thorough review and re-issue of the Department's policy applying to the removal of basic raw materials (BRM) from land managed under the *Conservation and Land Management Act 1984* (CLM Act)

Recent legal advice has determined that CLM Act leases cannot be issued for the purpose of providing access to BRM for its extraction and removal from State forest or timber reserves. Accordingly, no further leases, including short term extraction leases are to be issued.

The advice from the Crown Solicitor's Office identifies that the appropriate legal mechanism for local governments and or Main Roads WA (MRWA) to secure access for the purpose of extracting and removing gravel from land managed by the Department is through the service on the Department of a 'notice of ~~intended~~ entry' (NOE) under sections 3.27 and 3.32 of the *Local Government Act 1995* (LGA).

Under the LGA, BRM may be removed by a local government or MRWA for road maintenance or construction requirements from any land. The material that may be removed includes earth, sand, stone and gravel.

An NOE is to specify the purpose for which entry is required. In response to an NOE the Department may object to the intended entry on to the land, in which case, the relevant local government or MRWA has the option of seeking a warrant to authorize entry. However, it should be noted that unless there are exceptional environmental considerations or circumstances that warrant objection, the Department will continue to facilitate access to gravel consistent with Policy Statement No. 2: *Local Government Authority Access to Basic Raw Materials for State forest and timber reserves* (Policy No. 2).

Policy No 2 will be revised and reviewed in consultation with the Conservation Commission as soon as possible. This review could result in policy changes. However in the interim the principles and strategies embodied in Policy No 2 will remain in effect, except to the extent that conditional consent to enter by the Regional Manager will follow the receipt of an NOE from the relevant local government or MRWA, rather than the issue of a Short Term Extraction Lease as was the case previously. Conditional consent will be in the form of the attached pro forma agreement ("Agreement relating to entry under the Local Government Act for the purpose of removing basic raw materials").

Consistent with Policy No 2, gravel and other BRM will be made available to local governments and MRWA free of charge, for roadworks that service the Department's management objectives for up to 5 km from State forest (or timber reserve) boundaries unless other reasonable alternatives present themselves (for example MRWA outsourcing policy now requires contractors to attempt to find their own gravel and if difficulties arise in this respect, then MRWA will approach the Department in respect to any roads that also service Department management objectives.

As before, requests for gravel for public works beyond the 5km limit will require a well documented and justifiable case for the consideration of the Conservation Commission. Royalties are no longer applicable but compensation or environmental offsets may be considered on a case by case basis.

With respect to potentially undesirable environmental or conservation impacts, while the NOE powers under the LGA are significant in terms of securing entry, it is highly unlikely that they will be exercised without Departmental support. In the event that implementation of a proposal under an NOE has the potential for undesirable environmental impacts, the processes under *Environmental Protection Act 1986* applicable to the referral of proposals likely to have a significant effect on the environment to the Environmental Protection Authority for assessment will be used to seek protection to land managed by the Department or other land that is likely to be detrimentally affected by the proposal.

Procedure

The procedure to be followed with respect to facilitating local government or MRWA access to gravel (or other BRM) on State forest or timber reserves is:

1. the District Manager or Regional Manager reaches agreement in principle with the local government/MRWA on roading program, gravel requirements, pit locations and management etc consistent with Policy No 2 principles;
2. the local government/MRWA serves a notice of entry on the Regional Manager under sections 3.27 and 3.32 of the *Local Government Act 1995* consistent with 1 immediately above; and

the Regional Manager enters into an agreement with the local government/MRWA with conditions for entry as per the attached pro forma agreement (the authority for Regional Managers to enter into such agreements has been delegated by the Acting Executive Director, and a copy of the instrument of delegation is attached).

An electronic version of the attached pro forma agreement can be obtained by contacting Norm Caporn. If you have any queries please contact Norm Caporn or Simon Hancocks.



for Jim Sharp
Acting Executive Director
21 October 2002

Note:

Related issues:

1. With regard to access to and extraction and removal of gravel by the Forest Products Commission (FPC) through its contractors on State forest and timber reserves, neither the FPC or its contractors have any right to such gravel under the CLM Act or the *Forest Products Act 2000*. Accordingly, on the basis of the legal advice received to date, the Department cannot validly authorize this activity. The apparent options available to the FPC in this respect lie under the *Land Administration Act 1997* (section 185) or the *Mining Act 1978*. Separate advice will be provided to Regional Managers on this issue.
2. The legal advice received also determines that the Department may use gravel occurring on land managed by the Department for the purpose of road making. There is also scope, subject to the Minister's consent, for the Department to carry out road works with or on behalf of a third party.

PRO FORMA

AGREEMENT RELATING TO ENTRY UNDER THE LOCAL GOVERNMENT ACT FOR THE PURPOSES OF REMOVING BASIC RAW MATERIALS

Whereby a notice of intended entry has been served on the Department of Conservation and Land Management by the Shire of (the Shire)/Main Roads Western Australia (as applicable) for the purpose of extracting and removing earth, sand, stone or gravel (basic raw materials) from a State forest or timber reserve for road maintenance or construction in accordance with the *Local Government Act 1995* for that piece of land described in Items 1 and 2 of the Schedule (specified area), for the period of time and purposes described in Items 3 and 4 of the Schedule, the Executive Director of the Department of Conservation and Land Management hereby consents to the intended entry subject to the Shire/Main Roads Western Australia agreeing to the following conditions:

CONDITIONS

1. The Shire/MRWA shall pay a \$200 establishment fee in advance.
2. No excavated material shall be used for any other purpose, nor be made available from the specified area to any party other than the Shire/MRWA.
3. The Shire/MRWA shall manage and rehabilitate the specified area and any area disturbed in gaining access to the specified area in accordance with Policy No 10, Rehabilitation of Disturbed Land, (*insert reference to specific documentation and management plans here*) and published guidelines for gravel (or other basic raw material) excavation in State forest (or timber reserves). The standard of rehabilitation shall be to the satisfaction of the Officer in Charge and may include the battering of banks, the separate stockpiling of overburden and topsoil and subsequent return, earthworks, ripping of the pit floor, purchase of seed or plants, planting or seeding and fertilising, and monitoring and reporting of rehabilitation success. All rehabilitation works shall be at the Shire's/MRWA's expense. Pits to be operated using best management practices including maximising the utilisation of materials including crushing of rock and mixing of base clays with 'bony' gravels to produce an engineered product.
5. The specified area must be worked in a systematic manner to the satisfaction of the Officer in Charge.
6. The Shire/MRWA shall observe all instructions issued by the Executive Director and Officer in Charge regarding the prevention of spread of disease, in particular the disease caused by *Phytophthora cinnamomi*. This shall include the washing down of vehicles and equipment and construction of washing down ramps and such other measures as may be required from time to time. Any costs involved in the carrying out of such measures shall be borne by the Shire/MRWA.

7. Prior to operating on any portion of the specified area the Shire/MRWA shall remove all woody material and vegetation from that part of the specified area as directed by the Officer in Charge.
This consent does not confer on the Shire/MRWA any right to the timber on the specified area and, except as hereinafter provided, the Shire/MRWA will not fell, cut or in any way injure or destroy any forest produce or other vegetation growing on the said specified area.
8. The Shire/MRWA will not use the specified area for any purpose other than as specified in Item 4 of the Schedule except where approved by the Officer in Charge, and all material excavated from the specified area may only be used for the purposes and on roads or other sites described or designated in Item 6 of the Schedule.
9. The Shire/MRWA will observe and comply with directions that may be given from time to time by the Officer in Charge regarding the roads or tracks on or by which the excavated material obtained from the specified area herein granted may be removed or taken through any part of land under the control of the Department of Conservation and Land Management. Any damage to departmental roads or tracks resulting from the activities of the Shire/MRWA shall be repaired by it at its own expense to the extent of maintaining such roads or tracks in reasonable trafficable condition to the satisfaction of the Officer in Charge.
No roads may be constructed nor existing roads widened or otherwise altered without the authority of the Officer in Charge and shall be in accordance with specifications approved by the Officer in Charge.
10. That the Shire/MRWA will duly and faithfully observe, perform and comply with the provisions of the *Bush Fires Act 1954* and any amendments thereof and the Regulations thereunder and any proclamations and orders made under the provisions thereof so far as the same apply to the specified area. Any breach of the said Act and/or Regulations shall be regarded as a breach of the conditions of this approval.
11. Except as hereinafter provided the Shire/MRWA will not light or cause to be lighted or permit any person other than the Executive Director his agents or workmen to light any fire on the specified area: provided that the Shire/MRWA may be granted permission by the Officer in Charge to carry out prescribed burning operations on the specified area or on any specified sections thereof during stated periods exclusive of the "prohibited times" declared under the *Bush Fires Act 1954*, for the Bush Fire zone or part thereof in which the specified area is situated and subject to such conditions for the proper control of such fire or fires. Any permission granted as aforesaid may be suspended or cancelled at any time by the Officer in Charge should such action be deemed necessary for fire protection purposes.
12. The compliance by the Shire/MRWA of the conditions stipulated in connection with any permission granted to carry out prescribed burning operations as aforesaid shall not relieve or be deemed to relieve the Shire/MRWA from liability for any actionable damage sustained by the Executive Director or any other person in consequence of such burning operations.
13. In the event of any fire other than a "prescribed fire" lighted by the Executive Director, his agents or workmen or by the Shire/MRWA under any permission granted in accordance with the provisions of this consent starting on the specified area the Shire/MRWA shall forthwith upon becoming aware of such fire take all reasonable

measures at the Shire's/MRWA's own expense to extinguish such fire and if the Shire/MRWA fails to take measures as aforesaid the Shire/MRWA shall be liable to the Executive Director for the payment of any reasonable expenses incurred by the Executive Director in taking measures to extinguish such fire.

14. At any time during or after the completion of quarrying operations, the Officer in Charge may require the Shire/MRWA either to securely fence off the specified area or to cause the sides of the pit to be sloped off to the satisfaction of the Officer in Charge.
15. Any outstanding rehabilitation obligations remain the responsibility of the Shire/MRWA.
16. The Shire/MRWA will at all times indemnify and keep indemnified the Executive Director and the Crown from and against all actions claims and demands which may be made by any person firm or corporation for damages or personal injury of any person or persons arising out of or in relation to or incidental to the use of the specified area by the Shire/MRWA.
17. The right shall be hereby reserved to the Executive Director his agents or workmen to enter upon and carry out such duties and exercise such powers upon the specified area as it may be necessary or expedient to carry out or exercise in the administration or for the purposes of the *Conservation and Land Management Act, 1984* or any other enactment or any regulation made thereunder and the Shire/MRWA shall not be entitled to any compensation by reason of any inconvenience or disturbance or loss occasioned by any action on the part of the Executive Director.
18. A reference in the conditions of this agreement to the "Officer in Charge" is a reference to the employee of the Department of Conservation and Land Management nominated as the "Officer in Charge" under Item 9 of the Schedule to this agreement.

.....
REGIONAL MANAGER
Delegate of the
EXECUTIVE DIRECTOR

I hereby agree to the conditions of entry:

.....
CHIEF EXECUTIVE OFFICER
SHIRE OF
MAIN ROADS WA.(as applicable)..

S C H E D U L E

DISTRICT/REGION

LOCAL NO. 1/2002.....

DATE

ITEM 1. MAP REFERENCE AND DESCRIPTION OF SITUATION OF PRESCRIBED
AREA RELEVANT TO NEARBY ROADS AND PROPERTY ETC.
INCLUDE GPS (GDA) COORDINATES

(PLAN ATTACHED)

ITEM 2. METHOD OF DEMARCATION IN FIELD (REFER TO STANDARD CALM
DEMARCATION STANDARD ATTACHED)

ITEM 3. PERIOD OF OPERATION

ITEM 4. MATERIAL TO BE EXCAVATED (SPECIFY: SAND, GRAVEL,
LIMESTONE, SHALE)

ITEM 5. QUANTITY OF MATERIAL TO BE EXCAVATED.

ITEM 6. SITE OR SITES AT WHICH MATERIAL IS TO BE USED.

ITEM 7. HYGIENE REQUIREMENTS AND WASH DOWN POINTS

ITEM 8. OTHER PROVISIONS:

- Pit management plan attached showing location of topsoil, clearing debris disposal, method and direction of work, access, drainage, intended rehabilitation works and erosion control.
- Management of salvage of forest produce and forest products.
- Specify completion criteria here.
- Reference any agreed Management Plans.

ITEM 9. NOMINATED OFFICER IN CHARGE

.....
REGIONAL MANAGER
Delegate of the
EXECUTIVE DIRECTOR

.....
FOR APPLICANT

SHIRE OF

MAIN ROADS WA.(as applicable)

CONSERVATION AND LAND MANAGEMENT ACT 1984

DELEGATION UNDER SECTION 133(2)

POWERS OF EXECUTIVE DIRECTOR UNDER SECTION 34

1. Subject to clause 2, I, James Ross (Jim) Sharp, the Acting Executive Director of the Department of Conservation and Land Management, hereby delegate to each person for the time being holding or acting in the office of Regional Manager in an administrative region of the Department, the exercise of the powers of the Executive Director under section 34 of the *Conservation and Land Management Act 1984* (the Act) for the purposes of:
 - (a) enabling the Department to carry out its functions prescribed under sections 33(1) and 33(3) of the Act insofar as those functions may be affected by the exercise of the powers of entry to State forest and timber reserves for the purpose of removing earth, stone, sand or gravel (basic raw materials) by a local government or Main Roads Western Australia under the *Local Government Act 1995*; and
 - (b) entering into an agreement with a local government or Main Roads Western Australia with respect to the exercise of their powers of entry to State forest and timber reserves for the purpose of removing basic raw materials, as referred to in clause 1(a) of this instrument of delegation.
2. An agreement, as referred to in clause 1(b), is to be in the form of the approved pro forma agreement titled "Agreement relating to entry under the Local Government Act for the purpose of removing basic raw materials".



Jim Sharp
ACTING EXECUTIVE DIRECTOR

...17... October 2002