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LOCAL GOVERNMENT ACT 1995

SHIRE OF CHITTERING

EXTRACTIVE INDUSTRIES LOCAL LAW 2014

LOCAL GOVERNMENT ACT 1995

SHIRE OF CHITTERING

EXTRACTIVE INDUSTRIES LOCAL LAW 2014

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LOCAL GOVERNMENT ACT 1995

SHIRE OF CHITTERING

EXTRACTIVE INDUSTRIES LOCAL LAW 2014

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Chittering resolved on 17 September 2014 to adopt the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law is cited as the *Shire of Chittering Extractive Industries Local Law 2014*.

1.2 Commencement

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

1.3 Purpose and effect

(1) The purpose of this local law is to establish requirements and conditions with which extractive industries, within the district, must comply.

(2) The effect of this local law is to provide for the regulation, control and management of extractive industries.

1.4 Interpretation

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

Act means the *Local Government Act 1995*;

carry on an extractive industry means quarrying, excavating, crushing and screening for stone, gravel, sand, clay, limestone, loam and other basic raw materials;

CEO means the Chief Executive Officer of the local government;

district means the district of the local government;

excavation includes quarry;

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

land, unless the context otherwise requires, means the land on which the applicant proposes carrying on the extractive industry to which the licence application relates;

licence means a licence issued under this local law or any repealed local law of the local government relating to extractive industries;

licensee means the person named in the licence as the licensee;

local government means the Shire of Chittering;

occupier has the meaning given to it in the Act;

owner has the meaning given to it in the Act;

person does not include the local government;

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

site means the land specified by the local government in a licence.

1.5 Application

This local law—

(a) subject to paragraphs (b), (c), (d) and (e)—

(i) applies throughout the district; and

(ii) applies to an excavation whether commenced before or after the commencement of this local law, unless that excavation is conducted under a valid, ongoing licence issued under the local law repealed by clause 1.6 of this local law;

(b) does not apply to the extraction of 'minerals' as defined in the *Mining Act 1978*;

(c) does not apply to the carrying on of an extractive industry on Crown land;

(d) does not apply to the carrying on of an extractive industry on a lot by the owner or occupier of that lot where the material extracted is not sold and is used solely on that lot or on an adjacent lot owned or occupied by the person carrying on the extractive industry; and

(e) does not affect the validity of a licence issued under a local law repealed by clause 1.6 of this local law if that licence is in force at the commencement of this local law.

1.6 Repeal

The *Shire of Chittering By-law Relating to Extractive Industries* published in the *Government Gazette* on 19 July 1996 is repealed.

PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

2.1 Extractive industries prohibited without licence

A person must not carry on an extractive industry—

(a) unless the person is the holder of a valid and current licence; and

(b) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

2.2 Application for licence

(1) A person seeking the issue of a licence in respect of any land must apply in the form determined by the local government from time to time and must forward the application duly completed and signed by each of the applicants, the owner of the land and any occupier of the land to the CEO together with—

(a) 3 copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing—

(i) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;

(ii) the land on which the excavation site is to be located;

(iii) the external surface dimensions of the land;

(iv) the location and depth of the existing and proposed excavation of the land;

(v) the location of existing and proposed thoroughfares or other means of vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;

(vi) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;

(vii) the location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;

(viii) the location of all existing dams, watercourses, drains or sumps on or adjacent to the land;

(ix) the location and description of existing and proposed fences, gates and warning signs around the land; and

(x) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;

(b) 3 copies of a works and excavation programme containing—

(i) the nature and estimated duration of the proposed excavation for which the licence is applied;

(ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;

(iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;

(iv) details of the depth and extent of the existing and proposed excavation of the site;

(v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;

(vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;

(vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;

(viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;

(ix) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;

(x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;

(xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;

(xii) a description of the measures to be taken to comply with the *Environmental Protection (Noise) Regulations 1997*;

(xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land to be prepared by a suitably qualified industry consultant;

(xiv) a description of the measures to be taken to minimise the destruction of existing vegetation; and

(xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;

(c) 3 copies of a rehabilitation and decommissioning programme indicating—

(i) the objectives of the programme, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;

(ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;

(iii) the method by which topsoil is to be replaced and revegetated;

(iv) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;

(v) how rehabilitated areas are to be maintained;

(vi) the programme for the removal of buildings, plant, waste and final site clean-up; and

(vii) how any face is to be made safe and batters sloped;

(d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity;

(e) a certificate from a licensed surveyor certifying—

(i) the extent of any existing excavation on the proposed excavation site; and

(ii) the correctness of the plan referred to in paragraph (a) and the datum peg and related point referred to in paragraph (d);

(f) copies of all land use planning approvals required under any planning legislation;

(g) the consent in writing to the application from the owner of the excavation site;

(h) any other information that the local government may reasonably require;

(i) the licence application fee specified by the local government from time to time;

(j) copies of any environmental approval required under any environmental legislation; and

(k) copies of any geotechnical information relating to the excavation site.

(2) All survey data supplied by an applicant for the purpose of subclause (1) must comply with Australian Height Datum and Australian Map Grid standards.

PART 3—DETERMINATION OF APPLICATION

3.1 Determination of application

(1) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.2 and, in any event, must refuse an application for a licence where planning approval for the proposed extractive industry use of the land has not first been obtained.

(2) The local government may, in respect of an application for a licence—

(a) refuse the application; or

(b) approve the application—

(i) over the whole or part of the land in respect of which the application is made; and

(ii) on such terms and conditions, if any, as it sees fit.

(3) Where the local government approves an application for a licence, it must—

(a) determine the licence period, not exceeding 10 years from the date of issue; and

(b) approve the issue of a licence in the form determined by the local government from time to time.

(4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of—

(a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 30 June, imposed by the local government from time to time under sections 6.16 to 6.19 of the Act;

(b) payment of the secured sum, if any, imposed under clause 5.1;

(c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and

(d) a copy of the public liability insurance policy required under clause 7.1(1), must issue the licence to the applicant.

(5) Without limiting subclause (2), the local government may impose conditions in respect of—

(a) the orientation of the excavation to reduce visibility from other land;

(b) the appropriate siting of access thoroughfares, buildings and plant;

(c) the stockpiling of material;

(d) the number and size of trucks entering and leaving the site each day;

(e) the hours of operation;

(f) the depths below which a person must not excavate;

(g) distances from adjoining land or thoroughfares within which a person must not excavate;

(h) the control of dust and wind-blown material;

(i) the prevention of the spread of dieback or other disease;

(j) the drainage of the excavation site and the disposal of water;

(k) a requirement for the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;

(l) any other matter for properly regulating the carrying on of an extractive industry; and

(m) a requirement for the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence.

(6) Without limiting subclause (2), the local government may impose conditions in respect of—

(a) the route or routes to be utilised by trucks entering and leaving the site;

(b) a requirement for all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour, vibration and other forms of nuisance to the satisfaction of the local government;

(c) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;

(d) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;

(e) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation; and

(f) a requirement for the licensee to enter into an agreement with the local government in respect of any conditions imposed under this local law;

3.2 Transport of materials

(1) The local government may, from time to time, prescribe by giving written notice to the licensee—

(a) that if the proposed routes are not suitable for the proposed haulage, the local government may determine alternative routes to be taken by the licensee for the transport of materials from the site through the roads within the district;

(b) the tonnage limits to be transported along a particular route; and

(c) the times during which materials from the site may be transported through the roads within the district.

(2) The licensee must pay to the local government, as and when required by the local government, the costs or estimated costs, as determined by the local government, of repairs and maintenance to any road that are required as a result of the transport of materials from the site.

(3) If a road on a route prescribed under subclause (1) is inadequate for the transport of materials from the site, the local government may require the licensee to pay all or part of the costs or estimated costs, as determined by the local government, of upgrading the road to the standard required by the local government for these purposes.

(4) Each licence is to be taken to be subject to a condition requiring the licensee to comply with this clause.

3.3 Payment of annual licence fee

On or before 30 June in each year, a licensee must pay to the local government the annual licence fee imposed by the local government from time to time under sections 6.16 to 6.19 of the Act.

PART 4—TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

4.1 Transfer of licence

(1) An application for the transfer of a licence must—

(a) be made in writing;

(b) be signed by the licensee and the proposed transferee of the licence;

(c) be accompanied by the current licence;

(d) be accompanied by the consent in writing to the transfer from the owner of the excavation site;

(e) include any information that the local government may reasonably require; and

(f) be forwarded to the CEO together with the fee determined by the local government from time to time.

(2) Upon receipt of any application for the transfer of a licence, the local government may—

(a) refuse the application; or

(b) approve the application on such terms and conditions, if any, as it sees fit.

(3) Where the local government approves an application for the transfer of a licence, the local government must transfer the licence by an endorsement on the licence in the form determined by the local government from time to time, signed by the CEO.

(4) Where the local government approves the transfer of a licence it is not required to refund any part of the fees paid by the former licensee in respect of the transferred licence.

4.2 Cancellation of licence

(1) The local government may cancel a licence where the licensee has—

(a) failed to comply with—

(i) any of the conditions of an excavation licence;

(ii) any provision of this local law; or

(iii) any term of an agreement with the local government made in accordance with clause 3.1(5)(m) or 3.1(6)(f),

(b) and the default continues for a period of 14 days from service on the licensee of written notice from the local government of such default;

(c) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;

(d) permitted another person to carry on an extractive industry otherwise than in accordance with the terms and conditions of the licence and of the provisions of this local law;

(e) failed to pay the annual licence fee within 30 days under clause 3.3; or

(f) failed to have a current public liability insurance policy under clause 7.1(1) or failed to provide a copy of the policy or evidence of its renewal, as the case may be, under clause 7.1(2).

(2) Where the local government cancels a licence under this clause—

(a) the local government must advise the licensee in writing of the cancellation;

(b) the cancellation takes effect on and from the day on which the licensee is served with the cancellation advice; and

(c) the local government is not required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

4.3 Renewal of licence

(1) A licensee who wishes to renew a licence must apply in writing to the local government at least 90 days before the date of expiry of the licence and must submit with the application for renewal—

(a) the fee determined by the local government from time to time;

(b) a copy of the current licence;

(c) a plan showing the contours of the excavation carried out to the date of that application;

(d) details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clause 2.2(1)(b) and (c); and

(e) any other things referred to in clause 2.2.

(2) The local government may waive any of the requirements specified in clause 4.3(1)(d) and (e).

(3) Upon receipt of an application for the renewal of a licence, the local government may—

(a) refuse the application; or

(b) approve the application on such terms and conditions, if any, as it sees fit.

PART 5—SECURED SUM AND ITS APPLICATION

5.1 Security for restoration and reinstatement

(1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government must require that—

(a) as a condition of a licence; or

(b) before the issue of a licence,

the licensee must give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in the amount determined by the local government from time to time.

(2) A bond, in the amount set out in the local government's schedule of fees and charges as amended from time to time that is required under subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.

(3) Subject to clause 5.2, any interest accrued in respect of the bond paid into the fund under subclause (2) is to be returned to the licensee at the completion of the restoration and reinstatement works required by the licence conditions or otherwise under this local law.

5.2 Use by the local government of secured sum

(1) If a licensee fails to carry out or complete the restoration and reinstatement works required by the licence conditions either—

(a) within the time specified in those conditions; or

(b) where no such time has been specified, within 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions,

then, subject to the local government giving the licensee 14 days' notice of its intention to do so—

(i) the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone; and

(ii) the licensee must pay to the local government on demand all costs incurred by the local government or which the local government may be required to pay under this clause.

(2) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 5.1 towards its costs under this clause.

(3) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 5.1.

(4) To avoid doubt, the local government's powers under this clause 5.2 are in addition to its other enforcement powers under this local law.

PART 6—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

6.1 Limits on excavation near boundary

Subject to any licence conditions imposed by the local government, a person must not excavate within—

(a) 50 metres of the boundary of any land on which the excavation site is located including earth bund and haul road, unless the site is located within the Special Control Area—Basic Raw Materials as depicted in the *Shire of Chittering Town Planning Scheme No 6* Map, where a lesser distance may be allowed with written consent from adjoining landowners;

(b) 20 metres of any land affected by a registered grant of easement;

(c) 40 metres of any watercourse and/or wetland;

(d) 50 metres of any thoroughfares; or

(e) 500 metres of any adjoining residence unless approved by Council and adjoining neighbours in writing in accordance with the Department of Environment and Conservation Guidelines, March 2011—"*A Guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites remediation and other activities*."

6.2 Prohibitions

A licensee must not—

(a) remove any trees or shrubs within 40 metres (or such lesser distance as may be allowed, in writing, by the local government or the Department of Environment Regulation/Department of Parks and Wildlife) of the boundary of any thoroughfare on land in respect of which a licence has been granted, except for the purpose of constructing access thoroughfares, erecting buildings or installing plant for use in connection with the excavation and then only with the express approval of the local government and the Department of Environment Regulation/Department of Parks and Wildlife, subject to any conditions which the local government may impose in accordance with clause 3.1(5);

(b) store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies other than with the approval of the local government and the Department of Mines and Petroleum; or

(c) fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government.

6.3 Blasting

(1) A person must not carry out or permit to be carried out any blasting in the course of excavating unless—

(a) the local government has otherwise given approval in respect of blasting generally or in the case of each blast;

(b) subject to subclause (2), the blasting takes place only between the hours of 8.00am and 5.00pm, or as determined by the local government, on Mondays to Fridays inclusive;

(c) the blasting is carried out in strict accordance with the AS2187 SAA Explosives Code, the *Mines Safety and Inspection Act 1994* as amended from time to time, the *Environmental Protection Act 1986*, and all relevant local laws of the local government; and

(d) in compliance with any other conditions imposed by the local government concerning—

(i) the time and duration of blasting;

(ii) the purposes for which the blasting may be used; and

(iii) such other matters as the local government may reasonably require in the interests of the safety and protection of members of the public and of property within the district.

(2) A person must not carry out or permit to be carried out any blasting on a Saturday, Sunday or public holiday except with the prior approval of the local government.

6.4 Obligations of the licensee

A licensee must—

(a) where the local government so requires, securely fence the excavation to a standard determined by the local government and keep the gateways locked when not actually in use in order to prevent unauthorised entry;

(b) erect and maintain warning signs along each of the boundaries of the area excavated under the licence so that signs—

(i) are not less than 1 metre high and not less than 1 metre wide; and

(ii) bears the words "DANGER EXCAVATIONS KEEP OUT";

(c) except where the local government approves otherwise, drain and keep drained to the local government's satisfaction any excavation to which the licence applies so as to prevent the accumulation of water;

(d) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government;

(e) take all reasonable steps to prevent the emission of dust, noise, vapour, vibration and other forms of nuisance from the excavation site; and

(f) otherwise comply with the terms and conditions set out in, or applying in respect of, the licence.

PART 7—MISCELLANEOUS PROVISIONS

7.1 Public liability

(1) A licensee must have at all times a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of not less than $10,000,000 in respect of any one claim relating to any of the extractive industry operations.

(2) The licensee must provide to the local government—

(a) within 14 days after the issue of the policy taken out under subclause (1), a copy of that policy; and

(b) within 14 days of each renewal date, evidence of that renewal.

7.2 Mines Safety and Inspection Act and Environmental Protection Act

(1) Where the *Mines Safety and Inspection Act 1994* or the *Environmental Protection Act 1986* applies to any excavation carried on or proposed to be carried on at a site, the licensee in respect of that site must—

(a) comply with all applicable provisions of that Act or those Acts; and

(b) provide to the local government within 14 days full particulars of any inspection or report made under that Act or those Acts.

(2) In this clause, the *Mines Safety and Inspection Act 1994* and the *Environmental Protection Act 1986* include all subsidiary legislation made under those Acts.

7.3 Notice of cessation of operations

(1) Where a licensee intends to cease carrying on an extractive industry—

(a) temporarily for a period in excess of 6 months; or

(b) permanently,

the licensee must, as well as complying with clause 7.4, give the local government not later than one week after those operations have ceased, written notice of the cessation and, in the case of a temporary cessation, details of the period of the intended cessation.

(2) Where a licensee has given written notice to the local government of the intention to permanently cease carrying on an extractive industry on the site to which the licence applies the licence is deemed to have expired on the date—

(a) that the licensee specifies in the written notice as the date on which it intends to cease carrying on the extractive industry; or

(b) that the licensee ceases to carry on the extractive industry,

whichever is the earlier.

(3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or the deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

7.4 Works to be carried out on cessation of operations

Where the carrying on of an extractive industry on the site permanently ceases, or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, the licensee must, as well as complying with clause 7.3, restore and reinstate the excavated site—

(a) in accordance with the rehabilitation and decommissioning programme as required by clause 2.2(1)(c) that has been approved by the local government; or

(b) in such other manner as the local government may subsequently agree in writing with the licensee.

PART 8—OBJECTIONS AND REVIEW

8.1 Objections and review

When the local government makes a decision as to whether it will—

(a) grant a person a licence; or

(b) renew, vary, or cancel a licence,

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the General Regulations apply to that decision.

PART 9—ENFORCEMENT

9.1 Offences and penalties

(1) A person who breaches a provision of this local law commits an offence.

(2) A person who commits an offence under this local law is liable, on 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.

9.2 Modified penalties

(1) An offence against a clause specified in the Schedule is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in the Schedule 1.

9.3 Forms

For the purposes of this local law—

(a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the General Regulations; and

(b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the General Regulations.

Schedule 1

PRESCRIBED OFFENCES

MODIFIED PENALTIES

[cl. 9.2(1)]

Item No.	Clause No.	Description	Modified Penalty $
1	2.1(a)	Excavate without a valid and current licence	500
2	2.1(b)	Carry on extractive industry without licence or in breach of terms and conditions	500
3	6.1	Excavate near boundary	250
4	6.2(a)	Removal of trees or shrubs near within 40 metres of the boundary without approval	350
5	6.2(b)	Store without required approval explosives or explosive devices	350
6	6.2(c)	Fill or excavate, contrary to the term and conditions of the licence	350
7	6.3(1)(b)	Carry out or permit to be carried out blasting outside hours approved by the local government	300
8	6.3(1)(d)	Failure to comply with conditions imposed by the local government in relation to blasting activities	350
9	6.3(2)	Carry out or permit to be carried out any blasting on Saturday, Sunday, or public holiday without approval	250
10	6.4(a)	Failure to securely fence and/or keep gateways locked where required	350
11	6.4(b)	Failure to erect and maintain warning signs as required	350

Item No.	Clause No.	Description	Modified Penalty $
12	6.4(c)	Failure to drain and keep drained any excavation to which the licence applies	350
13	6.4(f)	Failure to comply with the conditions of licence imposed by the local government	500
14		All other offences not specified	200

Dated 8 October 2014.

The Common Seal of the Shire of Chittering was affixed by authority of a resolution of the Council in the presence of—

ROBERT HAWES, President.
GARY TUFFIN, Chief Executive Officer.